

Legal expedients on protection of persons signaling or publicly disclosing information regarding breaches

Mladen Mladenov* ^A

*Corresponding author: PhD, Associate Professor, e-mail: mmladenov@abv.bg, ORCID: 0000-0002-1441-4488

^A Higher School of Security and Economics, Plovdiv, Bulgaria

Received: March 8, 2023 | Revised: March 27, 2023 | Accepted: March 31, 2023

DOI: 10.5281/zenodo.7775599

Abstract

Lawful behavior is the foundation of the rule of law, a healthy society and a sustainable civilization. Any danger of behavior deviating from the legal requirements represents a threat to the legal order, to the stability of public institutions and to the legitimate interests of legal entities. It is for this reason that signaling and notification of offenses is the expected, lawful and valid action on the part of citizens. The new legal framework in relation to promulgations further develops the legal regime from a procedural point of view and details the legal protection of whistleblowers and whistleblowers. The need to address this specific legal matter is so great that this article was drafted shortly after the law was promulgated, but before it came into force.

Key words: legal certainty, public order, law, breaches, whistleblowing.

Introduction

Civic activism, courage and responsibility lie at the foundation of the rule of law. But citizens should not limit themselves to their lawful and proper behavior in society. They can and should report the wrongful behavior of any other legal entity to the relevant institutions and officials.

Only in this way can real legal certainty and public order be achieved. Because illegal acts harm both the state and society, as well as each individual citizen. In the case of the supranational entity – the European Union, there is a risk of its interests being affected by individual offenses. Often, with one act, different rights, freedoms and legal interests could be endangered in terms of type, volume and order.

The legal system has developed a fairly extensive toolkit for reporting offences. But from April 4, 2023, new legal methods will be in effect for the Republic of Bulgaria for the protection of persons who file reports or publicly disclose information about violations under a new law (Law on Protection of Persons, accessed 5th March, 2023), which introduces the requirements of the European Union regulatory framework concerning this legal matter (Regulation (EU), accessed 5th March, 2023). Nothing else could be expected because “it is also axiomatic that there is much “vertical interaction” between the national, the regional and the global...EU law is the foundation for much regulatory activity...” (Craig, P. 2015, p. 2).

This presentation will focus on the more important and visible provisions of this new law – Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches (a.k.a. Whistleblower Protection Act). Its detailed, in-depth and extensive examination will be the subject of many future scientific developments, which will step into administrative and judicial practice, as well as scientific polemics as a result of different doctrinal views, proposals and conclusions.

Results and Discussion

Subject, Purpose and Scope of the Law

The new one Law on Protection of Persons Signaling or Publicly Disclosing Information regarding

Breaches governs the conditions, order and measures for the protection of persons in the public and private sectors who report or publicly disclose information about violations of Bulgarian legislation or acts of the European Union that endanger or damage the public interest and the law of the European Union, as well as the terms and conditions for submitting and considering such signals or publicly disclosed.

It should be explicitly emphasized that the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches does not override the rules of the current legislation, providing for the existence of different bodies with powers to check signals in different spheres of the public sector.

In order to follow the topic, not all the legal and by-laws that regulate the competence of bodies and structures for working on reported reports, as well as the procedures for this activity, will be indicated here. But it is certainly necessary to mention at least two laws that have a general application in relation to the matter under consideration for the Bulgarian legal system.

In the first of them – Code of Administrative Procedure (Law on Personal Data Protection, accessed 5th March, 2023) Chapter Eight is titled “Suggestions and Signals”. Although the normative text is extremely clear, there are huge ambiguities and problems in its application.

This necessitates the intervention of legal doctrine which interprets the normative framework in the sense that *obiter* “Proceedings on motions and signals are atypical proceedings in the general administrative process. Typical proceedings are those on the issuance, contestation and execution of administrative acts – individual, general and normative, as well as possible secondary proceedings on them – their contestation by administrative and judicial procedure, as well as their forced execution. The purpose of any codified administrative process is to regulate the general rules, phases and steps in the legal relations between authorities and private legal entities, when rights or obligations are created or rights, freedoms or legal interests are directly affected by an express declaration of will of the authorized entity.

Therefore, it should be noted that proposals and signals are possible under other legal regimes, other than the APC, which are developed before bodies with administrative or other authoritative powers” (Mladenov, M., 2016, pp. 72-73).

The second of them – Law on Administration (Law on Administration, accessed 5th March, 2023) for his part pointing out the inspectors to the cost of the ministers as the structural units in the administration that deal with all matters of irregularities and with the discussion of the submission in relation to this signal. Legal theory supports the following thesis: “There is a brand-new legal construction, unique in its nature – normative empowerment of the inspectorates as part of the administration with quasi-powers of an administrative body. There are “quasi-powers” because the inspectorate is not a state body, and although it can exercise these powers, they are granted to it by the legislature just like an administrative body. In fact, the powers of administrative control belong entirely to the minister, simply their operational exercise is carried out by the inspectorate, and at the will of the legislator” (Mladenov, M. 2017, p. 24).

The Inspectorate *inter alia* carries out verification of signals against illegal or improper actions or inactions of employees of the administration, carries out control and performs checks on Law on Combating Corruption and for Confiscation of Illegally Acquired Property (Law on Combating Corruption, accessed 5th March, 2023), and also performs other functions in connection with administrative control, resulting from normative acts or assigned by the executive authority.

The necessary distinction between the new law and existing legislation is more than necessary for the proper enforcement of existing legislation. The exact choice of the applicable law depends on the respective case, which can be brought under the relevant legal regime.

The purpose of the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches is to ensure the protection of persons in the public and private sectors who file reports or publicly disclose information about violations of Bulgarian legislation or acts of the European Union, which became known to them during or on the occasion of the performance of their work or official duties or in other work context.

The field of application of the new law is casuistically outlined in its normative texts, and this makes its future application easier from the point of view of applicability or non-applicability. It applies to reports or public disclosure of information about violations of Bulgarian legislation or of the acts of the European Union in the field of public procurement specified in the annex to the law; financial services, products and markets and the prevention of money laundering and terrorist financing; product safety and compliance; transport safety; environmental Protection; radiation protection and nuclear safety; food and feed safety, animal health and animal welfare; public health; consumer protection; the protection of privacy and personal data; and the security of networks and information systems.

Furthermore, the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches is also applicable to violations that affect the financial interests of the European Union from Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (Consolidated versions, accessed 5th March, 2023); violations of the internal market rules of the Treaty on the Functioning of the European Union, including the rules of the European Union and Bulgarian legislation on competition and state aid; violations related to cross-border tax schemes, the purpose of which is to obtain a tax advantage that is contrary to the object or purpose of the applicable law in the field of corporate taxation; committed crime of a general nature, about which a person learned in connection with the performance of his work or in the performance of his official duties.

It is expressly specified that the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches is also applicable in relation to reports or public disclosure of information about violations of Bulgarian legislation in the field of rules for payment of due public state and municipal receivables; labor legislation; and the legislation related to the performance of public service.

The legal rule *Lex specialis derogat generali* can be found in the express provision of the law, which states that where the sectoral acts of the European Union referred to in Part II of the Annex provide for special rules on whistleblowing, the rules set out in those acts or national regulations that introduce the relevant rules.

From his side the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches applies insofar as a matter is not peremptorily regulated in the relevant sectoral acts and national regulations. This leads us to the only correct conclusion – this new law claims to be a general law. But in this case, it competes with the other general law – Code of Administrative Procedure. Since both laws in their signal part have a protective function, competition between them is unthinkable and they could be applied both alternatively and cumulatively.

Pursuant to its main purpose – the protection of whistleblowers – the law declares that such protection is provided to a whistleblower from the moment of the filing of the report or the public disclosure of information about a violation. Protection under this law is also provided to any other whistleblower who reports a violation that has become known to him in a work context. Moreover, protection is also provided to persons who assist the whistleblower in the whistleblowing process; individuals who are related to the whistleblower and who may be subject to retaliatory retaliation because of the whistleblower; legal entities in which the whistleblower has an equity interest, works for, or is otherwise associated with in a work context.

The prerequisites for ensuring the protection are precisely spelled out in the law. A person reporting violations through an internal or external channel within the meaning of this law is entitled to protection, provided that he had reasonable cause to believe that the information submitted about the violation in the report was true at the time of submission and that this information falls within the scope of the policies, legislation and procedures specified in the law and has simultaneously reported a breach under the terms and conditions of this law. In this situation, the person who reports a violation to institutions, bodies, offices or agencies of the European Union also has the right to protection. Such reporting shall be considered external channeling.

The Law on Protection of Persons Signaling or Publicly Disclosing Information regarding

Breaches refers to an element that is cognitive in nature and will certainly lead to problems in law enforcement, namely – a person who publicly discloses information about a violation is entitled to protection under this law when he had reasonable cause to believe that the information about the violation was correct at the time of disclosure and that the information is within the scope of the law, and any of the following conditions are met: the person filed a report under the conditions and according to the procedure of this law, but no relevant actions were taken on the report; the person has reason to believe that: the violation may represent an immediate or clear danger to the public interest or there is a risk of damage that cannot be remedied; in the event of an external whistleblowing, there is a risk of retaliation or the likelihood that the breach will not be effectively dealt with due to the risk of evidence being concealed or destroyed, suspicion of collusion between the competent authority and the perpetrator of the violation, or of complicity of the authority in the violation, as well as due to other specific concrete circumstances of the case.

Such judgments can hardly be made by ordinary citizens who do not have and are not required to have in-depth legal, procedural and institutional knowledge. Therefore, with this approach the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches is too intellectually and educationally demanding of the whistleblower to be confident that he will receive protection after whistleblowing. This legislative approach would rather discourage many citizens from reporting violations, because they will not be sure whether they have correctly assessed all the legal prerequisites to guarantee their right to protection as a result of their report. But still, “cultural cognition includes common sense” (Posner, R. 2010, p. 116) and therefore it can be assumed that most legal entities will navigate without problems in this complex legal matter.

On the contrary, there is a commendable legislative procedure – the rights granted to persons under this law cannot be limited. Any provision in a public-law act or stipulation in a private-law act that excludes or limits their rights are void.

It is apparent that the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches supports the legal position that proceedings are not initiated on anonymous reports, as well as on reports relating to violations committed more than two years ago. In this legal disposition, it completely coincides with the statement of Code of Administrative Procedure.

The choice of the way to submit the report is up to the relevant legal entity, but the legislator indicates his preferences. In this sense, in view of the possibility of quickly preventing a violation or removing the consequences of such a violation, the signal should be submitted as a priority through an internal reporting channel. In the event that there is a reasonable assumption that the whistleblower is at risk of retaliatory discriminatory actions, and that no effective measures will be taken to verify the whistleblower, the whistleblower may be submitted through an external submission channel. In view of the high public interest in preventing violations of Bulgarian legislation and acts of the European Union, public disclosure of information about such violations is encouraged.

The persons publicly disclosing such information, in addition to the protection under this law, also enjoy the protection of free dissemination of information established in the Constitution. Whistleblowers or whistleblowers may choose to report one way, a combination of two ways, or all three ways at the same time.

Basic Concepts

The range of persons who fall under the protection of the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches. This is because, according to the autonomous understanding of this general law, a whistleblower is an individual who files a report or publicly discloses information about a violation that has become known to him in his capacity as a worker, employee, public official or other person engaged in wage labor, regardless of the nature of the work, the method of payment and the source of funding; a person who works without an employment relationship and/or exercises a free profession and/or craft activity; volunteer or intern; partner, shareholder, sole owner of the capital, member of the management or control body of a commercial company, member of the audit committee of an enterprise; a person who works for a

natural or legal person, its subcontractors or suppliers; a job candidate who participated in a competition or other form of selection for employment and in this capacity received information about a violation; worker or employee, when the information was obtained within the framework of an employment or service relationship that was terminated at the time of the filing of the report or of the public disclosure.

For the purposes of the Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches violations are actions or omissions that are illegal and related to Bulgarian legislation or the acts of the European Union in the areas specified in the law, or contradict the subject or purpose of the rules in the acts of the European Union and the areas indicated in the normative casuistic of this law.

Terminologically, it is important to remember that information about a violation is information, including reasonable suspicions, about actual or potential violations that have occurred or are very likely to occur in the organization in which the whistleblower works or has worked, or in another organization, with which he is or was in contact during his work, as well as for attempts to cover up violations.

The two main methods of whistleblowing are explained as follows: Internal whistleblowing is the oral or written communication of information about wrongdoing within a legal entity in the private or public sector, while external whistleblowing is the oral or written communication of information for violations of the competent authorities.

Signaling (Reporting)

As a general rule, employers from the private and public sectors are considered for the internal reporting of obliged entities. They establish an internal whistleblowing channel that meets the following requirements: is managed in a way that ensures the completeness, integrity and confidentiality of information and prevents unauthorized persons from accessing that information and allows for a record to be stored on a durable medium information for the needs of the investigation of the report and for further investigations. They shall also review their internal whistleblowing and follow-up rules at least once every three years, analyze the practice of implementing this law and update the rules as necessary.

From an organizational point of view, it is important to know that the obliged entities designate one or more employees who are responsible for handling alerts. Officers responsible for handling reports may be the officials in the structure in charge of the processing and protection of personal data, and when there are none, another officer responsible for handling reports may be designated. Whistleblowers may also perform other activities assigned by the employer in case their reconciliation does not result in a conflict of interest, but they must not be in a conflict of interest for each case considered.

In view of the outsourcing practice, it is provided that the obliged entities can assign the functions of receiving and registering reports of violations to another natural or legal person outside their structure, subject to compliance with the requirements of this law, as well as they can use an internal submission channel of signals created by the economic group to which they belong, if the channel meets the requirements of this law.

The Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches describes a fairly detailed and precise procedure in connection with the signal. In this sense, the report is submitted to the employee responsible for handling reports, in writing, including by e-mail, or orally.

Verbal reporting can be done by telephone, other voice communication systems, and at the request of the reporting person – through a personal meeting in a suitable time agreed between the parties. For the registration of reports, the obliged entities use forms according to the model approved by the national body for external reporting of reports, which contain at least the following data: the three names, address and telephone number of the sender, as well as an email address, if any; the names of the person against whom the report is filed, and his place of work, if the report is filed against specific persons and they are known; specific details of a violation or of a real danger that it

will be committed, the place and period of the violation, if it was committed, a description of the act or the situation and other circumstances, as far as these are known to the whistleblower; date of submission of the report; signature, electronic signature or other identification of the sender.

The written notification is submitted by the sender by filling in a form. In turn, the verbal report is documented by the completion of a form by the officer in charge of handling reports, who offers the whistleblower to sign it if he wishes. It is envisaged that any kind of sources of information supporting the statements made in it and/or reference to documents, including the indication of data on persons who could confirm the reported data or provide more information. In the event that the signal does not meet the requirements, a message is sent to the reporting person to eliminate the admitted irregularities within 7 days of receiving the signal.

If the irregularities are not corrected within this period, the report together with the attachments to it is returned to the reporting person. The scrupulousness of the administrative process finds its place here as well, in view of the legal requirement that every report be checked for its credibility. Signals that do not fall within the scope of this law and the content of which do not give reasons to be considered plausible are not considered. Reports that contain patently false or misleading statements of fact will be returned with instructions to the sender to correct the statements and the sender's responsibility for persuasion.

The organizational and management aspects in connection with the work on the signals in the field of application of Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches are strongly manifested in that the employees responsible for the consideration of reports are obliged to: receive the reports and confirm their receipt within 7 days of receipt; ensure that the identity of the whistleblower and any other person named in the whistleblower will be properly protected and take the necessary measures to limit access to the whistleblower by unauthorized persons; maintain contact with the whistleblower, requesting additional information from him and third parties if necessary; provide feedback to the sender of the signal about the actions taken within a period of no longer than three months after confirming the receipt of the signal; provide the persons wishing to file a report with clear and easily accessible information about the procedures for external reporting of reports to the competent national authority, and when appropriate – to the institutions, bodies, services and agencies of the European Union; document verbal cues; maintain a register of submitted signals; listen to the person against whom the report was filed, or accept his written explanations and collect and evaluate the evidence indicated by him; provide the affected person with all the collected evidence and give him the opportunity to object to them within 7 days, subject to the protection of the whistleblower; provide an opportunity for the affected person to present and indicate new evidence to be collected in the course of the investigation; in the event that the facts presented in the report are confirmed: organize the taking of follow-up actions in relation to the report, and for this purpose they may require the assistance of other persons or units in the structure of the relevant obliged entity; propose to the obliged subject to take specific measures with the aim of stopping or preventing the violation in cases where it has been established or there is a real danger of its imminent commission; direct the whistleblower to the competent authorities when his rights are affected; forward the signal to the external whistle-blowing authority if it is necessary to take action on its part, and the whistle-blower is notified in advance of the forwarding; in case the report is filed against the whistleblower's employer, the employee, responsible for considering the report directs the person to simultaneously report to the external reporting authority. This last hypothesis is logical, but hardly realistic given the dependence of the employee who administers the signal on his employer.

As a rule, the duty subject, based on the received report and the proposals of the officer responsible for reviewing the report, takes actions within his competence to stop the violation or to prevent it if it has not started, and also prioritizes in advance certain criteria and rules for the consideration of multiple reports of more serious violations.

From an information point of view, the obliged entity shall create and maintain a non-public register of reports of violations. The register contains information about: the person who received the

signal; the date of submission of the signal; the affected person, if such information is contained in the report; summary data on the alleged violation, such as the place and period of the violation, a description of the act and other circumstances in which it was committed; the connection of the transmitted signal with other signals after establishment and in the process of processing the signal; information that is provided as feedback to the person who submitted the report and the date it was provided and; follow-up action taken; the results of the alert check; the signal storage period. It is important to remember that the information entered in the register is stored in a way that guarantees its confidentiality and security.

The reversibility of internal and external whistleblowing is prescribed by the legislator in the following way – the employees responsible for considering whistleblowing are obliged to regularly submit the necessary statistical information to the national body for external whistleblowing according to the procedure established by it, including in the presence of technical possibility by establishing a direct connection between the register of the obliged person and the register kept by the national body for external reporting.

It is easy to assume that in the case of external whistleblowing, there is a completely different law prescribed by the legislator for this. The central authority for external whistleblowing and for the protection of the persons to whom such protection is provided in the sense of this law is the Commission for the Protection of Personal Data (the Commission). The Commission: organizes the reception of the signals and directs them to the competent authorities in order to check them and take follow-up actions; approve forms for receiving signals; coordinates and controls the activities of consideration of signals by the obliged entities, as well as all bodies and organizations that receive or work with such signals; gives methodological instructions to the obliged entities, conducts trainings for their employees responsible for the consideration of reports under this law, and adopts an ordinance for keeping the register and for forwarding internal reports to it; maintains a register of signals, analyzes and summarizes the practice of working with them and transmits the necessary statistical data to the European Commission; fulfills the other powers that are also attributed under this law, and ensures the protection of the persons filing reports or publicly disclosing information about violations, including through the application of the administrative measures provided for in this law.

It should be noted that reports related to illegal processing of personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council (Directive (EU) 2019/1937, accessed 5th March, 2023), Law on Personal Data Protection (Law on Personal Data Protection, accessed 5th March, 2023) and other special laws or acts of the European Union, are considered by the Commission according to the general procedure provided for in these laws and acts.

Taking into account the functional and subject-matter competence of the various authorities, for the purposes of verifying the signals and publicly disclosed information about violations, as well as for taking the appropriate actions to prevent the violations or to eliminate their consequences, the Commission forwards the signals immediately, but not later than 7 days after their receipt, to the body competent for the subject of the report. This assessment is purely legal.

In principle, the Commission forwards the report to the competent authority without disclosing data about the person who submitted the report. In the event that in order to establish the truth of the facts alleged in the report, it is necessary to reveal the identity of their sender, the Commission may do so before the competent authority only after obtaining written consent from the sender of the report.

Upon obtaining consent, the competent authority is obliged to provide conditions for working with the signal and with the sender of the signal in strict compliance with the requirements of this law for preserving the identity of the sender of the signal and his protection. The competent authority shall notify the Commission of the subsequent actions in connection with the report.

The allocation of a specialized administrative unit shows the importance of the process of registering and examining signals. The law specifies that the Commission builds a channel for

external reporting of signals, as it is an independent structural unit of the Commission, provided with a sufficient number of employees specially trained for the work of examining signals. The distribution of received signals among the employees of the unit takes place on a random basis. The employees of the unit have no right to provide information about the signals received, and especially about their senders, to other employees, including the other members of the Commission.

In cases where a report is received at the Commission in a manner other than that described above, or by officials other than those responsible for the consideration of the reports, the officials who received it are prohibited from disclosing any information that could the identity of the whistleblower or the affected person is established, and they undertake to immediately forward the report without changes to the officials responsible for handling reports.

Expediency, correctness and precision are required for working with signals. In this context, in their activity, the employees of the Commission's unit – an external whistle-blowing channel, fulfill the duties and: immediately confirm the receipt of the signal, unless the whistle-blower has expressly requested otherwise or the employee has reason to believe, that acknowledging receipt of the report would jeopardize the protection of the whistleblower's identity; in accordance with this law, provide feedback to the whistleblower within a period of no longer than three months, which may be extended to 6 months in duly justified cases requiring a thorough investigation; transmit the information contained in the signal as appropriate to the competent institutions, bodies, services or agencies of the European Union for the purpose of subsequent investigation, when it concerns violations of Union law and this is provided for in it or in national law.

Receiving and working with signals from the unit – a channel for external reporting of signals – is done by its employees. Persons who have publicly disclosed information about violations are guaranteed immediate protection by the Commission upon their request. For this purpose, the Commission notifies in writing the employer or the other person against whom the publicly disclosed information is directed, that the whistleblower is placed under the protection of the law, indicating the consequences if repressive retaliatory actions are taken against the whistleblower.

Special powers are provided with a view to the efficiency of whistle-blowing proceedings. For this purpose, it is legislated that employees from the structure of the external reporting channel: review the received reports and forward them for verification to the relevant competent authority in view of the subject of the report; forwarding takes place no later than 7 days after the receipt of the signal, of which its sender is notified; maintain continuous contact with the sender of the signal and with the competent authority in charge of carrying out the inspection, assisting in the exchange of information between the two parties regarding the request or transmission of additional information and information; carry out independent checks on reports of violations; for this purpose, they have the right to request and receive information from state and municipal bodies, as well as from legal entities and individuals, necessary to establish additional factual circumstances related to the report; authorities and persons are obliged to submit the necessary information and documents within 7 days of receiving the request.

The working algorithm indicates that, based on the report of the relevant employee, the head of the unit proposes to the Commission: taking specific measures with the aim of stopping the violation in the cases where it is found; sending the information contained in the signal to the competent institutions, bodies, services or agencies of the European Union for the purpose of subsequent investigation, when this is provided for in acts of the European Union; in these cases, the whistleblower is notified of the referral within 7 days; referral to the prosecutor's office in cases of a detected crime; taking measures to protect the person who filed the report; or termination of the inspection.

The collective body is the decision-maker for each specific case of external reporting. Therefore, the Commission issues a report on the actions taken within a period of no longer than three months, or in duly justified cases – 6 months, from the receipt of the signal. The report shall include a description of the information contained in the report, the actions taken, the final results of the review of the report and the decision taken. The Commission's report shall be communicated to the

whistleblower and the affected person through the officer.

A uniform and consistent approach is particularly important in all legal proceedings. In the event that a report of violations of the Bulgarian legislation or the law of the European Union has been received directly by one of the authorities under Art. 20, the relevant manager is obliged to immediately forward the report to the Commission through the relevant external reporting channel.

In the event that the report reaches employees other than those responsible for handling reports, the employees receiving it are prohibited from disclosing any information that could identify the reporting or affected person, and the report is forwarded immediately, without modification, to the officers responsible for the consideration of the signals.

Contact with the reporting person is established immediately, but no later than 7 days, by the Commission through the unit – channel for external reporting, which notifies the sender of the change in the address of his report. The work on the report may be assigned to the same authority where the report was originally filed, if it is competent in the case, under the direction and supervision of the Commission and in compliance with the procedures provided for in this law.

The information foundation of the whistleblowing process is expressed in the fact that the Commission creates and maintains a register of whistleblowing in accordance with the regulations. The register of the commission is linked and can receive information from the registers of obliged entities, as well as transmit information to them if necessary.

Measures to ensure Protection

It should be noted with satisfaction the presence of an explicit and detailed normative text in Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches in the direction that any form of retaliatory actions against persons having the nature of repression and putting them in a disadvantageous position, as well as threats or attempts at such actions, including in the form of: temporary suspension, dismissal or application of any other grounds for termination, are prohibited of the legal relationship under which a person performs hired work; demotion or delay in promotion; a change in the place or nature of work, the length of working hours or a reduction in remuneration; refusal to provide training to maintain and improve the professional qualification of the worker or employee; negative evaluation of work, including in a job recommendation; application of pecuniary and/or disciplinary liability, including imposition of disciplinary sanctions; coercion, rejection, threat of retaliatory action or action, expressed physically, verbally or in any other way, which aim to harm the dignity of the person and create a hostile professional environment; direct or indirect discrimination, unequal or unfavorable treatment; taking away the possibility to switch from a fixed-term employment contract to an employment contract for an indefinite period of time, when the worker or employee had a legal right to be offered a permanent job; premature termination of a fixed-term employment contract or refusal to re-conclude it, when such is permissible by law; damages, including to the person's reputation, in particular on social networks, or financial losses, including loss of business and loss of income; inclusion in a list drawn up on the basis of a formal or informal agreement, in a sector or in an industry, which may result in the person not being able to start working or not being able to supply a good or service in that sector or industry (blacklist); early termination or cancellation of a contract for the supply of goods or services when the person is a supplier; termination of a license or permit; directing the person to undergo a medical examination.

The above prohibition is intended to limit the demotivation of potential whistleblowers to a minimum. The practice of applying Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches however, it will show what the actual state of affairs is. It is not desirable, but it can be assumed with a high degree of certainty that, despite the legal prohibition, there may be adverse consequences for some whistleblower. It is a matter of proof to establish the causal relationship between the legal facts and it is the personal choice of the injured person, the whistleblower, to claim compensation. And it is due to the legal text that in the event of a violation of the ban, the whistleblower has the right to compensation for the property and non-property damages suffered.

The institutional commitment of public authorities is also manifested in the fact that

individuals have the right to access the following support measures: free and accessible information and advice on procedures and protection measures; assistance to any authority necessary to protect them against reprisals, including by duly communicating the fact that they are entitled to protection under this Act; legal assistance in criminal, civil, administrative and in international disputes in civil cases related to the protection of the reporting person in connection with the report submitted by him or the disclosed information, in accordance with the Law on Legal Assistance; out-of-court resolution of cross-border disputes through mediation in accordance with Law on Mediation (Law on Mediation, accessed 5th March, 2023). The measures are provided by the Commission, respectively – by the National Bureau of Legal Aid, respectively – by a mediator entered in the Unified Register of Mediators.

The sensitive subject matter of protected information is permitted in statutory provisions which state that whistleblowers are not responsible for obtaining or accessing information that is reported or publicly disclosed, provided that acquisition or such access does not constitute a separate crime.

Whistleblowers are not liable for breach of disclosure restrictions imposed by contract, statute or regulation or administrative act, provided they have reasonable grounds to believe that the whistleblowing or public disclosure was necessary for disclosure of the violation. Where a person reports or publicly discloses information about violations within the scope of this Act, and that information includes a trade secret, and where that person meets the conditions of this Act, such reporting or public disclosure shall be deemed lawful within the meaning of Law on Commercial Secret Protection (Law on Commercial Secret Protection, accessed 5th March, 2023).

Judicial protection is in principle the most powerful form of providing legal certainty. Therefore, when criminal, civil or administrative proceedings have been instituted against a person in connection with a report submitted by him or publicly disclosed information, he has the right to request the termination of these proceedings, if there was a reasonable reason to assume, that the filing of the report or public disclosure of the information was necessary to detect a violation. The decision to terminate the court proceedings or not is within the competence of each court panel.

The opposite hypothesis – the persons against whom a report has been filed also have their constitutional right to protection. In this sense, the affected person enjoys to the full extent his right to defense and to a fair trial, as well as the presumption of innocence, including to be heard, and his right of access to documents relating to him.

That person is entitled to compensation for all pecuniary and non-pecuniary damages when it is determined that the person knowingly reported false information or publicly disclosed false information, and when under the circumstances he should have assumed that the information was false.

Balancing potential competing legal interests is very difficult in the legislative process. Whether it will motivate or demotivate legal entities to take certain legal actions is a question whose answer is a function of many variables. Therefore, it is only a matter of time after the application of Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches to carry out a follow-up assessment (*ex post*) of this legal act and to make the relevant summary conclusions and recommendations. “This is why generalizations need to be as carefully formulated as possible if they are to serve as basic for future research” (Nichols, T. 2019, p. 63).

From now on, the wording that the whistleblower is liable according to Bulgarian legislation and the law of the Union for an action or inaction that is not related to the filing of the report or is not necessary for the disclosure of the violation is controversial. In the event of a judicial or administrative legal process in which a person claims to have been subject to retaliatory actions, it must be proven that these actions are a reaction to a report filed by him.

It should not be assumed that the retaliatory action was carried out as a reaction to a report submitted by the person, if the assessment of all the circumstances indicates that the person who imposed the measure has another legal basis for applying the measure. Here, the possibility of different perverse interpretations of the facts on a case-by-case basis, together with the stretchable

legal text, poses many unknowns in view of future administrative and judicial practice.

Conclusions

The new one Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches there are many features, but some of them should be explicitly taken into account, namely:

First, the law's casuistic enumeration of hypotheses of applicability makes it virtually ubiquitous. Invoking a citizen or a public authority in its field of application is almost always possible, because the numerous enumerations of public policies, substantive legislation, procedural rules and references to national legal order and to the legal system of the European Union create prerequisites for its implementation almost in any case of irregularity.

Second, this law recognizes itself as a general law, but it also appears as such Code of Administrative Procedure. As far as competition between two laws protecting legal certainty, public order and public interest is unimaginable, they should be applicable both alternatively and cumulatively.

Third, the legislator gives its preferences regarding the channels for reporting the signal, but ultimately leaves it possible for the reporting legal entity to choose the way of reporting – through an internal reporting channel, external reporting or the public disclosure of information about such violations. But in their freedom of choice, they can even make the following choices – as one, a combination of two ways, or all three ways at the same time.

Fourth, the explicit designation of one or more officials who are responsible for the consideration of reports under this law is an appropriate legislative requirement, in view of the important interests that the law protects, as well as the complex procedure regulated therein. Thus, there is the legal expectation for good law enforcement and positive effects in the various dimensions of legal certainty.

Fifth, of utmost importance is the explicit legal prohibition of retaliatory actions against persons who have reported or publicly disclosed information about a violation. This legislative approach will increase civic engagement and courage, as well as zero tolerance for wrongdoing.

Finally and sixthly, only the future interpretation and application of Law on Protection of Persons Signaling or Publicly Disclosing Information regarding will show in what administrative and judicial practice its subject, purpose, field of application, principles and procedures will manifest themselves. The hope is – as with any legal act in a legal state – that it will only have positive results for the state, society, the European Union and legal entities.

Legal security and public order are also a function of the reporting and disclosure of violations by anyone who has information about them. However, all the above-mentioned risks of future interpretation and law enforcement of this inherently complex and challenging legal matter in view of the various interests must be taken into account even now.

References

- Code of Administrative Procedure*. Promulgated. State Gazette. № 30 of April 11, 2006, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/laws/ldoc/2135521015>, accessed 5th March, 2023.
- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*. Official Journal of the European Union, C 202, 7 June 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:202:TOC>, accessed 5th March, 2023.
- Craig, P. *UK, EU and Global Administrative Law – Foundations and Challenges*. Cambridge University Press, ISBN 978-1-107-56308-7, VI-830, Cambridge, United Kingdom, 2015.
- Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*. Official Journal of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1937>, accessed 5th March, 2023.

- Law on Administration*, Promulgated. State Gazette. № 130 of 5 November 1998, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/laws/ldoc/2134443520>, accessed 5th March, 2023.
- Law on Combating Corruption and for Confiscation of Illegally Acquired Property*. Promulgated. State Gazette. № 7 of January 19, 2018, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/bg/laws/ldoc/2137180227>, accessed 5th March, 2023.
- Law on Commercial Secret Protection*. Promulgated. State Gazette. № 28 of April 5, 2019, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/en/laws/ldoc/2137192307>, accessed 5th March, 2023.
- Law on Mediation*. Promulgated. State Gazette. № 110 of December 17, 2004, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/laws/ldoc/2135496713>, accessed 5th March, 2023.
- Law on Personal Data Protection*. Promulgated. State Gazette. № 1 of 4 January 2002, available at Lex.bg – the Bulgarian Legal Gate, <https://lex.bg/laws/ldoc/2135426048>, accessed 5th March, 2023.
- Law on Protection of Persons Signaling or Publicly Disclosing Information regarding Breaches*. State Gazette, Official release of the Republic of Bulgaria, № 11 of February 2, 2023, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=185482>, accessed 5th March, 2023.
- Mladenov, M. *Proceeding of Consideration and Solving on Proposals and Signals, arranged by Code of Administrative Procedures*. (In Bulgarian). Publication in NORMA, The Legal Journal (Electronic Legal Journal NORMA), ISSN 1314 – 5118, Issue 8/2016, pp. 66-95, <http://www.norma.bg/bg/article/440/> Sofia, 2016.
- Mladenov, M. *Normative Authorizations of Inspectorates as a Part of Administration with Quasi-Competences of Administrative Organ*. (In Bulgarian). Legal Journal “Administrative Justice”, Supreme Administrative Court of the Republic of Bulgaria, ISSN 0861-5268, <http://www.sac.government.bg/pages/bg/magazine>, Year XX, № 4/2017, pp. 15-29, Sofia, 2017.
- Nichols, Tom. *The Death of Expertise*. Oxford University Press, 2017, ISBN 9780190865979, VI-238, New York, United States of America, First issued as an Oxford University Press paperback, 2019.
- Posner, Richard A. *How Judges Think*. Harvard University Press, ISBN 978-0-674-02820-3, III-377, Cambridge, Massachusetts, United States of America, 2010.
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*. Official Journal of the European Union, Volume 59, 4 May 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1937>, accessed 5th March, 2023.