INTEGRITY WHISTLEBLOWERS IN THE ROMANIAN LEGAL SYSTEM

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Abstract

Illegal activities and abusive practices can occur in any organisation, public or private, small or large. They can take many forms, such as corruption or fraud, unfair business practices or negligence. If no action is taken, they may cause serious damage to the public interest.

A law itself gives the appearance of a safety instrument for situations in which an official public or contract employee intends to refuse the execution of an order that he considers illegal. Although this provision is theoretically included in the legislation, any employee who does not fulfils an order outside of legality was subject to a series of unsustainable behaviors that resulted in removal or withdrawal from the system.

At this moment, in the Romanian landscape, we lack a culture of integrity whistleblowers, and those who find the strength to report they are seen rather as an exception and idealised as heroes of the system. Perhaps we could rather say that there is a culture strongly marked by the traumas of the past in terms of reporting. Starting from the culture of the country which, at the moment, discourages integrity whistleblowers, we note that, just as in the European directive that we were obliged to transpose, this proposed law encourages and prioritises internal reporting.

We can understand the reasons behind this encouragement, however, in the Romanian context, we believe that the prioritisation of internal reporting can and must be corroborated with subsequent instrumentation actions a anonymous reports.

Seen as a measure that comes to consecrate the modernism of the Romanian legal system, but also as a measure of the legislative maturity it has reached after countless reforms, the initiation of investigations regarding integrity whistleblowers has become a reality. What will be the impact on Romanian society? How will they integrate into the judicial system? What will be the value as proof?.

Keywords: *freedom of speech, freedom of expression in a professional context, whistleblowers in interest, Romanian legal system.*

1. Introduction

According to the doctrine, „although it seems an easy thing for a person to do, the activity of disclosing information on actions or facts that can endanger public interest, is in fact difficult to achieve, due to the fact it entails certain legal consequences”[1]. At the EU level, we have recently witnessed the norming of an increased protection of whistleblowers. These legislative measures are welcome in the context in which, in this matter, domestic regulations are generally fragmented (in October 2019, it was found that only 10 of the totals of 28 Member States benefited from comprehensive legislation for the protection of integrity whistleblowers) and limited to certain sectors of activity (such protection being predominantly found in the field of financial services). This is also the case of Romania, which, at this moment, does not benefit from a comprehensive legal framework regarding the protection of integrity whistleblowers, but it is limited to the protection of personnel from public entities that report violations.

Ever since the current Whistleblower Directive was at the proposal stage, the integration of these rules into the whole of the Union's policies was envisaged in the Explanatory Memorandum[2], as follows: „The introduction of sound whistleblower protection rules will help protect the budget Union and to ensure a level playing field which is necessary for the proper functioning of the single market and for businesses to operate in a fair competitive environment.” Also, the same document [3]mentions the role of prospective whistleblower protection

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[1] E.E. Ștefan, *The topical nature of the Whistleblowing Directive transposition in our country,* in Journal Legal and Administrative Studies no. 2 (25), Year XX, C.H. Beck Publishing House, Bucharest, 2021, p. 78, *https://www.upit.ro/_document/222369/jlas_2_2021.pdf*, accessed on 04.04.2024.

[2] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of persons who report violations of Union law, *https://ec.europa.eu/commission/presscorner/detail/en/MEX_19_6032*.

[3] *Ibidem*.

rules, consisting of: (i) contributing to the prevention and detection of corruption that slows down economic growth, creating economic uncertainty, slowing down procedures and incurring additional costs; (ii) increasing the transparency of the business environment, contributing to the EU strategy on sustainable financing; (iii) providing additional support to the actions taken by the European Commission to ensure fairer, more transparent and more effective taxation in the EU; and, in particular (iv) complementing recent initiatives to protect national budgets against harmful tax practices, as well as the proposed strengthening of rules on money laundering and terrorist financing. The new influences of these European regulations on the protection of whistleblowers will inevitably affect the national criminal law as well.

2. Contents

2.1. The origin of legislation

As doctrine pointed out „in its daily work, public administration is dominated by the regime of public power, i.e. the legal regime in which the public interest takes precedence over the private interest[4]". Part of the modernization package of the Romanian judicial system, Law no. 361 of December 16, 2022 regarding the protection of whistleblowers in the public interest (referred to as the „Law") is actually a transposition of European legislation into national legislation as a result of the member state. Therefore, Directive (EU) 2019/1937 on the protection of persons who report violations of Union law („Directive"), adopted on October 23, 2019, entered into force on December 16, 2019.[5]

The main objective of this act written in art. 1 of the Directive, is to provide the unique framework for the uniform application of EU law and policies in specific areas by establishing common minimum standards that provide for a high level of protection for persons who report violations of Union law.

The scope of application of this normative act is quite extensive, being rendered both materially (art. 2) and personally (art. 4).

From a material point of view, it concerns the reporting of three categories of violations, namely:

a) violations aimed at violating the EU acts contained in the annex to the Directive and which concern the following areas: (i) public procurement; (ii) financial services, products and markets, as well as the prevention of money laundering and terrorist financing; (iii) product safety and compliance; (iv) transport safety; (v) environmental protection; (vi) radiological protection and nuclear security; (vii) food and feed safety, animal health and welfare; (viii) public health; (ix) consumer protection; (x) protection of privacy and personal data and security of networks and computer systems;

b) violations affecting the Union's financial interests, as referred to in art. 325 TFEU and as detailed in the relevant Union measures;

c) Violations related to the internal market, as mentioned in article 26 para. (2) TFEU, including violations of the Union rules on competition and state aid, as well as regarding acts that violate the rules on corporate taxation or mechanisms whose purpose is to obtain a fiscal advantage that is contrary to the object or purpose of the applicable law in matters of corporate taxation.

From the perspective of the personal field of application, this normative act considers the following:

a) if they operate in the private or public sector and have obtained information regarding violations in a professional context, such as, but not limited to: (i) persons who have the status of worker, within the meaning of art. 45[6] para. (1) TFEU, including civil servants; (ii) persons carrying out an independent activity, within the meaning of art. 49 TFEU[7]; (iii) shareholders and persons who are part of the administrative department, management or supervisory body of an enterprise, including non-executive members, as well as volunteers and paid or unpaid interns; (iv) any person working under the supervision and direction of contractors, subcontractors and suppliers;

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[4] E.E. Ștefan, *Public Interest – Essential Concept of Administrative Law*, in Proceedings of the 33rd International RAIS Conference on Social Sciences and Humanities, Princeton, NJ, USA, 03-04.08.2023, *https://rais.education/wp-content/uploads/2023/09/RAIS-Conference-Proceedings-August-2023.pdf*, accessed on 04.04.2024.

[5] The directive was published in the OJ L 305/26.11.2019 and entered into force on the twentieth day from the date of publication (art. 28 of the Directive).

[6] Consolidated Version of the TFEU, *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT*.

[7] *Ibidem*.

b) if they report or publicly disclose information related to violations, obtained in an employment relationship concluded in the meantime;

c) whose employment relationship has not yet begun, if the information regarding the violations was obtained during the recruitment process or other pre-contractual negotiations.

The protection measures for persons who make reports, according to the Directive, also apply, as the case may be, to: (i) facilitators (defined in art. 5 point 8 of the Directive as natural persons who assist the person making the report in the reporting process in a professional context, and whose assistance should be confidential); (ii) to third parties who are connected to the reporting persons and who may suffer retaliation in a professional context, such as their colleagues or relatives; or (iii) the legal entities that the reporting persons own, work for or have other types of connections with in a professional context.

Reporting, understood as „oral or written communication of information regarding violations", can be internal, when it takes place within a legal entity in the private or public sector, or external, in the situation where it is addressed to the competent authorities (art. 5 points 3-5 of the Directive). With regard to internal reporting[8], the Directive stipulates the obligation for Member States to ensure that legal entities in the private and public sectors establish channels and procedures for this type of reporting, as well as for undertaking subsequent actions. In terms of external reporting, Member States designate competent authorities to receive reports, provide feedback and take action on reports and ensure that they, among other measures, establish independent and autonomous external reporting channels for receiving and handling information regarding violations. The subsequent actions may consist, for example, in internal investigations, investigations, criminal prosecution, and actions for the recovery of funds or the conclusion of the procedure, according to the definition contained in art. 5 point 12 of the Directive. Public disclosure means „making information about violations available in the public domain" (art. 5 point 6 of the Directive).

One of the support measures provided for the benefit of the previously mentioned persons, according to art. 20 para. (1) lit. (c) of the Directive, is legal assistance in cross-border criminal and civil proceedings in accordance with Directive (EU) 2016/1919 and Directive 2008/52/EC.

In art. 21 para. (3) of the Directive, the rule is provided that the persons who make reports are not responsible for acquiring the information that is reported or publicly disclosed or for access to it. However, in the event that such acquisition or access constitutes an autonomous crime, this rule becomes inapplicable, and criminal liability continues to be governed by applicable domestic law. in the event of the liability of the reporting persons, arising from acts or omissions that are not related to the reporting or public disclosure or that are not necessary for the disclosure of a violation under the Directive, it is further governed by EU law or by applicable domestic law, as provides art. 21 para. (4) of the Directive.

The deadline for the Member States to transpose the provisions of this Directive was December 17, 2021, this deadline being extended by two years, by way of derogation, until December 17, 2023, in order for the Member States to comply with the obligation to adopt the normative framework regarding the establishment of internal channels in respect of legal entities in the private sector that have between 50 and 249 workers (art. 26 of the Directive). Term at which Romania also acquired the latter.

2.2. New legislation

At the EU level, on October 23, 2019, Directive (EU) 2019/1937 was adopted by the European Parliament and of the Council on the protection of persons who report violations of Union law and was published in the OJ L no. 305/26.11.2019.

As a member state of the European Union, Romania has the obligation to transposition by December 17, 2021.

According to art. 26 para. (2) of the Directive, Member States have the obligation to adopt the normative framework regarding the establishment of internal channels in what viewing private sector legal entities that between 50 and 249 de workers until December 17, 2023.

By law, the institution of whistleblower protection is in the public interest regulated by Law no. 571/2004 on the protection of personnel from public authorities, public institutions and other signalling units violations of the law, published in the Official Gazette of Romania, Part I, no. 1214/14.12.2014.

[8] *Idem*, part II.

Regulation of the institution measures to protect the staff employed in public authorities and institutions, which report certain irregularities or facts illegal acts committed within these entities, being a tool intended to encourage reporting and, by way of consequence, discovery and the sanctioning of these acts, as well as to protect these persons by granting the whistleblower status in the public interest, against eventualities negative professional or personal consequences to which they may be exposed as a result of the transmission of a session.

The person making the report must be classified in one of public authorities, public institutions or in other units that need it the law is relevant, namely the authorities of the central public administration and local, the apparatus of the Parliament, of the Presidential Administration and others The Government, but also within the autonomous administrative authorities, national companies, autonomous governments of national and local interest and national companies with state capital. Analysing the law, it can be observed that it is based on the principles of the Romanian Constitution regarding 'freedom of conscience' (art. 29)[9], 'freedom of expression' (art. 30)[10] and „the right to information" (art. 31)[11], as well as the principles of the European Charter of Rights Fundamentals regarding „freedom of thought, conscience and religion" (art. 10 para. 2), „freedom of expression and information" (art. 11), „the right to protection against the dismissal and abusive termination of the employment contract" (art. 30) and „The right to good administration" (art. 41).

I think that it is essential in the continuation of our approach to have some terminological clarifications, namely what whistleblower in the public interest meant in the sense of Law no. 361/2022, the definition is regulated in art. 3 point 7. The notion used in the Directive, the Romanian version „person who carries out the reporting" (art. 5 point 7); in the English version, the notion is reporting person (art. 5 point 7). The directive, the version in Romanian, also uses the notion of „warning" (Consideration no. 1, no. 14); in the English version, the notion is whistleblower (Recital no. 1, no. 14). We prefer to consider the terms „public interest whistleblower", „whistleblower" and „reporter" as synonyms. In other official documents in the Romanian language, the notion of whistleblower has other forms. For example, in the context of the translation of CJEU decisions, we can identify the notions of „whistleblower"5), „warner"6), „official who sent an alert"7) [12]or „informant".

Returning to Law no. 361/2022 on the protection of whistleblowers in the public interest, with subsequent amendments, outlines the general framework for the protection of persons who report violations of the law, which have occurred or are likely to occur, within the authorities, public institutions, other legal entities of public law, as well as within legal entities of private law.

As I pointed out Law no. 361/2022 transposed into national legislation Directive (EU) 2019/1937 on the protection of persons who report violations of Union law. This obligation also constitutes Milestone 430 of the National Recovery and Resilience Plan (PNRR). The European framework has established a common minimum standard at the level of all European Union states to provide for a high level of protection for whistleblowers, Romania, as a member state of the European Union, having the obligation to transpose its provisions into national legislation.

2.3. Purpose of the law

From the point of view of the scope of application, this law applies to all persons who obtained/considered/knew situations/information regarding the violation of the legislation in a professional context. Thus we can identify the following active subjects of the legislation: - workers;

- persons carrying out an independent activity, as provided by art. 49 TFEU;

- shareholders and all persons who are part of the administrative, management or supervisory body of a company, including non-executive members of the board of directors, as well as volunteers and paid or unpaid interns;

- any person who works under the supervision and direction of the natural or legal person with whom the contract was concluded, its subcontractors and suppliers;

- persons whose employment relationships have not yet begun and who make reports through internal or external reporting channels or publicly disclose information regarding violations of the law obtained during the

[9] Constitution from 21.11.1991, republished in the Official Gazette of Romania no. 767/31.10.2003. *https://legislatie.just.ro/Public/DetaliiDocument/47355?isFormaDeBaza=True*.

[10] *Ibidem*.

[11] *Ibidem*.

[12] D. Ionescu, *Public interest Whistleblower 2.0. Law no. 361/2022 In the European context*, Cluj Bar Journal no. 2/2022 *https://www.baroul-cluj.ro/wp-content/uploads/2023/03/ionescu.pdf*.

recruitment process or other pre-contractual negotiations or if the employment relationship or the employment relationship has ended;

- People who report or publicly disclose information about violations of the law anonymously.

Romanian legislation has extended the scope of the Directive, so that protection is to be granted to whistleblowers who report non-compliance with the legal provisions that represent deviations from the rules provided in the annexes to the law.

It is well known that the first to learn about the existence of illegal activities and abusive practices are the people who work for an organisation/authority or who are in contact with them in their professional activities, therefore they are in a privileged position to inform those that can solve the problem.

Whistleblowers or whistleblowers in the public interest[13], *i.e.*, people who report or disclose (to the public) information regarding an illegal fact obtained in a professional context, contribute to the prevention of harm and to the detection of the threat or harm to the common public interest. There is a presumption that if they did not do this, it is likely that the respective information would not come to light.

2.4. Which facts can constitute the subject of an integrity warning?

Trying to define the concept of „violations of the law", we understand facts that consist of an action or inaction that constitute non-compliance with the legal provisions set out in annex no. 2 of Law no. 361/2022, and consider areas such as: financial services, products and markets, prevention of money laundering and terrorist financing; public procurement; product safety and conformity; transport safety; environment protection; radiological protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer's protection; the protection of privacy and personal data and the security of networks and IT systems.

The legislative provisions also focus on other objects of interest:

- violations related to the financial interests of the European Union (as mentioned in art. 325 TFEU and as detailed in the relevant measures of the European Union);

- violations related to the internal market [referred to in art. 26 para. (2) TFEU], including violations of the European Union rules on competition and state aid. are of deep interest and violations related to the internal market in terms of acts that violate the rules on corporate taxation or mechanisms whose purpose is to obtain a fiscal advantage that is contrary to the object or purpose of the law applicable in matters of corporate taxation, which represent disciplinary violations, misdemeanors or crimes, or contrary to the object or purpose of the law.

2.5. Procedural provisions in case of infringement reporting

The law establishes certain reporting procedures for persons reporting violations of the law that have occurred or are likely to occur within authorities, public institutions, other legal persons under public law, as well as within legal persons under private law. Thus we identify 3 modalities:

1. Internal reporting, which takes place within the public or private entities in which the entity operates;

2. External reporting, to the National Integrity Agency or to other public entities that, according to special legal provisions, receive and resolve reports of violations of the law in their area of competence;

3. Public disclosure of information - making available, in any way, in the public space of information related to violations of the law (*e.g.*, press, professional, trade union or employer organisations, non-governmental organisations, parliamentary committees, etc.).

For entities with at least 50 private employees and public authorities and institutions and their unincorporated structures, which have at least 50 employees, the obligation to identify or establish internal reporting channels and to establish procedures for internal reporting and for subsequent actions is established according to the normative act.

A report on breaches of the law is mainly made through existing internal reporting channels, but in some cases whistleblowers may directly use external reporting channels or even public disclosure (via social media, media, press, etc.). However, in situations where there are grounds for obstruction of rights with a risk of retaliation against the whistleblower or where it is impossible to effectively remedy the breach of the law thus

[13] CJEU, Guide regarding art. 10 ECHR, prepared by the Court's Jurisconsult Directorate.

reported, the whistleblower in the public interest has the option of reporting breaches through external channels.

The law establishes the possibility for the whistleblower in the public interest to resort to public disclosure of information in the situation where he has first reported internally and externally or directly externally, and assesses that appropriate measures have not been ordered with respect to the legal deadlines set for this purpose. The same procedure may also apply where the breach may constitute an imminent or obvious danger to the public interest or there is a risk of damage that cannot be remedied or in the case of external reporting there is a risk of retaliation or a low likelihood that the breach will be effectively remedied given the specific circumstances of the reporting.

The external reporting channel is also useful in the absence of internal reporting channels for private legal entities with less than 50 employees, the public interest whistleblower wishing to report a breach. In this case, according to the law, the person reporting on violations of the law may report by name or anonymously.

Analysing from a procedural point of view, we identify differences between the two ways of reporting. Thus for nominal reporting there is the possibility of communication to clarify certain issues presented in the report between the whistleblower in the public interest and the person designated by the entity (with powers to receive, record, examine, carry out subsequent actions and resolve reports in the interest of the law); We must point out a flaw in the law, namely that the person who reports violations of the law anonymously cannot benefit from exemption and protection under the provisions of Law no. 361/2022; On the other hand the person who reports violations of the law anonymously cannot be notified about the registration of the report, the progress made and the way of resolution.

For the Report in the interest of the law, the referral shall contain the following: name and surname, contact details of the whistleblower in the public interest, the professional context in which the information was obtained, the person concerned, if known, a description of the fact likely to constitute a breach of the law within the public or private entity, evidence in support of the report, date and signature. By exception, entities are also required to review and address anonymous reports that do not include the name, surname, contact details or signature of the whistleblower in the public interest to the extent that they contain indications of violations of law.

The law also establishes the material method of making the report, namely it is made in writing, on paper or electronically, by communication on telephone lines or other voice messaging systems or by face-to-face meeting, at the request of the whistleblower in the public interest.

2.5.1. Internal reporting

At the level of each entity there is an obligation to nominate a person, referred to by law as a „designated person", whose duties shall be to receive, record, examine, take follow-up action and resolve reports in the interest of the law and to ensure that employees are informed of the internal reporting procedure. The duties of the designated person include:

– maintaining the confidentiality of reports received,

– informing the whistleblower of the registration of the report within 7 calendar days of receipt,

– maintaining contact with the whistleblower in the public interest to request further information and intelligence,

– informing the whistleblower in the public interest within a reasonable period of time, not exceeding 3 months or, in justified cases, 6 months after receipt of the report, and whenever there are developments in the conduct of the follow-up action, unless informing the whistleblower could jeopardise the conduct of the follow-up action.

In all cases, the designated person is obliged to draw up a report comprising the following elements: presentation of the situation which was the subject of the report, including a description of the information brought to the attention of the competent authority by the registered report and, where appropriate, communication to the authorities, public institutions, other legal persons governed by public law concerned, as well as to legal persons governed by private law, of conclusions and recommendations which may include references to possible protective measures,

The law establishes the obligation to communicate, within 5 days of the completion of the examination, to the whistleblower and the person concerned the manner of the resolution of the report.

Following the conclusion of the analysis process the designated person may decide to close the procedure if after examining the report it is found that it is clearly a minor violation and does not require further subsequent action other than closing the procedure.

The law also identifies cases in which the report is classified. Thus when it does not contain the elements prescribed by law, other than the identification data of the whistleblower in the public interest, and the designated person has requested its completion within 15 days, without this obligation being fulfilled; In the case where the report is submitted anonymously and does not contain sufficient information on violations of the law, which would allow the analysis and resolution of the report, and the designated person has requested its completion within 15 days, without this obligation being fulfilled. At the same time and when a new report is received with the same subject matter, without providing additional information justifying a different subsequent action, the report is closed.

Taking the example from the civil code, if a person makes several reports with the same subject matter, they are linked, the public interest whistleblower will receive only one information.

2.5.2. External reporting

The law identifies the external reporting channel for persons reporting violations of the law and names the National Integrity Agency (ANI)[14].

At this institution, the procedure involves several steps. Thus, the registration of reports and confirmation of their receipt by the specialised structure within ANI is done immediately, but no later than 7 calendar days from the date of receipt, unless the whistleblower in the public interest has expressly requested otherwise or when ANI reasonably considers that a confirmation of receipt of the report would jeopardise the protection of the identity of the whistleblower in the public interest.

At the level of the National Integrity Agency the review process provides for several steps to be completed. Thus this institution has the right to request the submission of documents from the entity and to collect and process data and information on the registered report, with the obligation to maintain confidentiality, and the entity has the obligation to respond to ANI's request within a maximum of 15 working days from receipt of the request.

It must inform the whistleblower within a reasonable period, not exceeding 3 months or, in justified cases, 6 months from receipt of the report, and whenever there are developments in the conduct of subsequent actions, unless the information could jeopardise their conduct,

The Agency also has a duty to provide confidential advice, on request, to persons wishing to make reports and to assist in protecting such persons against reprisals before any authority. Through its special structures, the NIA detects and punishes offences provided for by law.

2.6. Protective measures for whistleblowers in the public interest

As we have pointed out, the legislation under discussion proposes protective measures for whistleblowers in the public interest. Thus, the Law provides for three cumulative conditions to be met for public interest whistleblowers to benefit from protection measures.

In the first phase, the whistleblower must be one of the persons who makes reports according to the provisions of the law (employee, former employee, shareholder in a company, volunteer, etc.) and who has obtained information about violations of the law in a professional context. Then the whistleblower must have had reasonable grounds to believe that the information relating to the reported breaches was true at the time of reporting. Another main condition is that the whistleblower must have made an internal report, an external report or a public disclosure.

When there is a suspicion that there might be retaliation at the level of the institution/entity, whistleblowers benefit from protective measures.

Thus the whistleblower is not liable for the reporting or public disclosure of such information if a report or public disclosure was made under the terms of the law and the whistleblower had reasonable grounds to believe that the reporting or disclosure was necessary to disclose a violation of the law.

[14] ANI, Information regarding the operationalization of the external reporting channel - integrity whistleblowers, *https://www.integritate.eu/Avertizori-%C3%AEn-interes-public.aspx*.

The whistleblower is also not liable if the access to or acquisition of data and information of which they have knowledge by virtue of their duties or employment relationship is for the purpose of reporting or publicly disclosing a violation of law and the public reporting or disclosure was made under the terms of the law. Also, in legal proceedings concerning violations such as image infringement, copyright infringement, breach of professional secrecy, breach of data protection rules, disclosure of trade secrets or actions for damages, liability cannot be incurred as a result of public reporting or disclosure made in accordance with the law.

Where a person reports or publicly discloses information relating to breaches of the law under the terms of the law and such information includes trade secrets, such reporting or public disclosure shall be deemed lawful under art. 3(3). (2) of GEO no. 25/2019[15]on the protection of know-how and undisclosed business information constituting trade secrets against unlawful acquisition, use and disclosure, as well as on the amendment and completion of some normative acts,

Whistleblowers shall be entitled to full compensation for the damage suffered as a result of public reporting or disclosure. if they have made a public reporting or disclosure under the terms of this Law.

The new legislative framework in force since 2022 but implemented in 2023 also provides for other direct protection measures especially against reprisals against the whistleblower leading to suspension of the whistleblower's individual employment contract or employment relationship, dismissal or dismissal from public office, modification of the employment contract or employment relationship; reduction of salary and change of working hours, demotion or prevention of promotion in employment or public office and professional development, including through negative evaluations of individual professional performance, including public servants, or negative recommendations for the professional work performed.

They are prohibited by law:

– the application of any other disciplinary sanction;

– coercion, intimidation, harassment;

– discrimination, creation of another disadvantage or unfair treatment;

– refusing to convert a fixed-term employment contract into a contract of indefinite duration if the worker had a legitimate expectation that he or she would be offered a permanent post;

– refusal to renew a fixed-term employment contract or early termination of such a contract;

– causing damage, including damage to the reputation of the person concerned, in particular on social media, or financial loss, including loss of business opportunities and loss of income;

– inclusion on a negative list or database, based on a formal or informal sectoral or industry-wide agreement, which may imply that the person concerned will not find a job in that sector or industry in the future;

– unilateral extra-judicial termination of a contract for goods or services without the conditions for such termination being met;

– cancellation of a licence or permit;

– a request for a psychiatric or medical assessment.

The public nuisance whistleblower may challenge the measures taken in retaliation against him by applying to the court having jurisdiction, depending on the nature of the dispute, in whose district he is domiciled.

It should be pointed out that infringements of the provisions of Law no. 361/2022 entail civil, disciplinary, contravention or criminal liability, as appropriate.

3. Conclusions

There are international legal instruments for the defence of the rights and freedoms of citizens, such as conventions, agreements, treaties, etc.[16] At the level of the Romanian state we still feel the wounds of the Cooperation and Verification Mechanism, even if today raised, the implications in the Romanian judicial and institutional system have not materialised in a definitive institutional reform. We cannot conclude that we have modern institutions where the rights of the European citizen are respected, and with an identity crisis the European institutions are also suffering.

[15] GEO no. 25/2019 on the protection of know-how and undisclosed business information that constitute trade secrets against illegal acquisition, use and disclosure, as well as for the amendment and completion of some normative acts. *https://legislatie.just.ro/Public/DetaliiDocumentAfis/212998*.

[16] E.E. Ștefan, *News and perspectives of public law*, in Athens Journal of Law, vol. 9, Issue 3, July 2023, p. 396, *https://www.athensjournals.gr/law/2023-9-3-4-Stefan.pdf, DOI: 10.30958/ajl.9-3-4*, accessed on 04.04.2024.

Under the umbrella of Romania's National Recovery and Resilience Plan. The National Integrity Agency has taken all steps to fulfil its legal obligations under the organisational aspect. Thus ANI is the main hub of warnings resulting from the application of the law. We hope that time will show whether this solution corresponds to reality and whether this institution, which appeared after Romania's integration into the EU area, will manage to implement the requirements of Law no. 361/2022 adequately, *i.e.*, to be able to improve prevention as the main purpose of this law. We see a very useful need for a coordinator of this component to avoid institutional chaos.

It is known at this point the plethora of reports faced by most public institutions, which receive reports on violations of the law that have occurred or are likely to occur within them (including in subordinate/coordinated entities. These reports will be analysed in the light of the applicable legislation and will be forwarded to the competent institutions, the ANI, the Public Prosecutor's Office or other entities with legal competence in this field. However, until the practice is stabilised, confusion will arise, especially as regards jurisdiction. We hope that when all the actors of society will sit down at the table and will be actively involved to support the citizens. Let's not forget that this law is only to protect the common interest and support the active involvement of citizens.

The best conclusion: „Whistleblowers are courageous people who dare to bring illegal activities to light and stand up on their own to protect the public from wrongdoing.[17]" Frans Timmermans, First Vice-President of the European Commission).

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