



# **REPORT ON THE LEGAL FRAMEWORK AND CASES OF WHISTLEBLOWERS IN MONTENEGRO**



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Milan Radović

**Authors**

CA team

**Editor**

Arian Marini

**Proofreading**

CA team

**Design and press preparation**

Zoran Zola Vujačić

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## I INTRODUCTION

Whistleblowers are integral part of society that foster democratic consolidation by aiding the establishment of the rule of law through reporting on corruption and other illicit activities that they come across in various segments of, both public and private sector. While there is no universally accepted definition on whistleblowers, there are relevant domestic, regional and international documents that have defined what they stand for and their importance in combatting corruption and preserving the consolidation of democratic principles into practice. Whistleblowers are natural or legal persons whose role is crucial for “for detecting misconduct, fostering transparency and promoting integrity<sup>1</sup>,” through disclosing information on “corruption or other wrongdoing being committed in or by an organization<sup>2</sup>” to entities that would be able to address them properly, i.e. relevant institutions, individuals and/or the general public. The report can be submitted “in writing, orally, electronically or by mail<sup>3</sup>,” while the whistleblower can choose to do so, both anonymously or publicly.

However, all of this comes at a high price, which endangers, both private and professional lives of whistleblowers. In most cases, if not always, whistleblowers are susceptible to retaliation from the inflicted parties deriving as a consequence of reporting, which can take many forms (*discussed further in this report*), leading to immense psychological and emotional distress, loss of privacy, stigmatization and possible legal consequences. In addition to these, due to the complexity that whistleblowing cases can take, there is a mixed view from the public with regards to whistleblowers, revolving around a combination of admiration and skepticism depending on the case at hand. Of particular importance to be stated is also that whistleblowing is a relatively new concept that can be found within the legal realm, not only within Montenegro’s legal framework, but also broader at the EU level. This will be elaborated further in the sections to come.

Considering the above-mentioned and in order obtain a clearer image on the situation of whistleblowers in Montenegro, this report will briefly elaborate on the following. Firstly, it will elaborate upon a) Montenegro’s legal framework when it comes to whistleblower protection, noting that there is no specific law concerning solely whistleblowers within such framework. Accordingly, the elaboration of other laws, which can be directly or indirectly utilized for the protection of whistleblowers will be concisely displayed. While elaboration on the national legal framework is essential when it comes to disseminating the situation of whistleblowers within Montenegro, that is former and ongoing cases, it is necessary to elaborate on the regional and international legal instruments, norms and standards as well. This is important, considering Montenegro’s EU integration goal and its pledge to democratic values and principles. As such it is necessary to analyze the compliance of the domestic legal framework with those at the regional and international level. In addition to elaborating on the national, regional, and international legal framework concerning whistleblowers, this report will also b) shed light on some of the most prominent whistleblower cases in Montenegro, both former and current, which will be analyzed under the intent of finding best and/or worst practices and common issues on whistleblower protection among others, which would in turn pave the way for concluding remarks and recommendations in the final section of this report.

1 OECD. Fair Market Conditions for Competitiveness in the Adriatic Region Whistleblower Protection to Fight Corruption. Policy Briefing Note. N.d. Global Relations South East Europe, <https://t4.oecd.org/south-east-europe/programme/Policy-Briefing-Note-on-Whistleblower-Protectionvs.pdf>

2 Transparency International. What is a whistleblower? N.d., <https://www.transparency.org/en/our-priorities/whistleblowing>

3 Assembly of Montenegro. Whistleblowers. N.d., <https://www.skupstina.me/me/gradjani/zvzdaci>

In order to support the elaboration of the report's main idea, secondary research approach has been utilized primarily. Namely, various credible sources, both national and international, have been used in order to enrich this report with sufficient reliable information. These include the Constitution of Montenegro, various domestic Laws found on the Official Gazzette of Montenegro, European Convention on Human Rights, UN Convention against Corruption, EU Directive (EU) 2019/1937, Council of Europe Recommendation CM/Rec (2014)7, EU Progress Report 2022, Transparency International reports, and domestic and international media news agency articles.

## II LEGAL FRAMEWORK

The alignment of Montenegro's national legal framework with regional and international norms and standards is of utmost importance, especially when speaking of whistleblower protection. Hence, the following paragraphs will elaborate upon the national, regional and international norms and standards, when it comes to whistleblower protection in various sectors of society.

### a) National legal framework

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In the spectrum of the national legal framework, there are a few key documents which provide protection for whistleblowers in various sectors of society. To begin with, the Constitution of Montenegro (*Official Gazette of Montenegro*, no. 01/07 and 038/13) protects the dignity and inviolability of persona (Article 28) and in cases when such right is violated, it also establishes the right to legal remedy (Article 20) and aid (Article 21) through a fair and public trial (Article 32)<sup>4</sup>. In theory these rights as provided by the Constitution stand a solid foundation and a building block upon which other domestic laws could further advance the protection of whistleblowers.

As mentioned previously, the importance of whistleblowers relies in the fact that they stand as symbol for combatting corruption in general, but particularly that which threatens public interest by reporting it to relevant institutions and the general public. The Law on Prevention of Corruption (*Official Gazette of Montenegro*, no. 53/14 and 42/17)<sup>5</sup> represents a key milestone for Montenegro in combatting corruption in general, but also in defining critical provisions within the law spectrum when it comes to whistle-blowers. Apart from this, this Law established under Article 4 the Anti-Corruption Agency (further in the text: *Agency*). The Agency's role is of paramount importance, as it is responsible for performing the "tasks of prevention of conflict of public and private interest, restrictions in the exercise of public functions, verification of the reports on income and assets of the public officials, acting upon whistle-blower applications, whistle-blower protection, as well as other activities in accordance with this Law."<sup>6</sup>

In order to exercise the right to protection, Article 60 of the Law on Prevention of Corruption states that whistleblowers need to submit to the Agency a request for protection, which can be done either in writing or in person (as a transcript of a verbal statement). Such request needs to be submitted within the six-month timeframe from "the date of damage or knowledge of the possibility of damage due to the application submitted by the whistle-blower." In addition to that, the request needs to have the following data: a) information on the applicant filing for such protection, b) data from the application filed, c) data on the party against whom the whistleblower has filed the report and therefore is requesting protection, considering the party's actions have caused significant damage to the whistleblower, and d) data on the damage or the possibility of damage that has been inflicted on the whistleblower due to the filing of the report<sup>7</sup>.

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4 Constitution of Montenegro. *Official Gazette of Montenegro*, number 1/2007, 038/2013, <http://sluzbenilist.me/>

5 Law on Prevention of Corruption "Official Gazette of Montenegro, No. 53/2014" dated 12/19/2014. <http://sluzbenilist.me/pregled-dokumenta-2/?id={635DCFFA-2091-4D8E-82A7-D83D8D8F3FBD}>

6 Law on the Prevention of Corruption. *Official Gazette*, no. 53/14 and 42/17 – the decision of the Constitutional Court. [https://track.unodc.org/uploads/documents/BRI-legal-resources/Montenegro/1\\_Law\\_on\\_Prevention\\_of\\_Corruption\\_EN.pdf](https://track.unodc.org/uploads/documents/BRI-legal-resources/Montenegro/1_Law_on_Prevention_of_Corruption_EN.pdf)

7 Ibid.

Fines from 1,000 to 20,000 euros for violations of legal entities according to the provisions from the Law on Prevention of Corruption are included in case of:

- not designating a person for receiving and acting upon a whistleblower's report (Article 49 paragraph 1);
- not informing the whistleblower about the measures taken on his behalf report, that is, about the outcome of the measures taken, within 45 days from on the date of submission of the application (Article 50);
- that the data is not handled in accordance with the law by which governs the confidentiality of data even if protection from all has not been provided forms of discrimination and restrictions and denial of whistleblower rights (Article 56);
- not making a decision within 30 days from the date of submission of the request (Article 70 paragraph 1) or not setting a deadline for award payment or to set a deadline which is longer than six months<sup>8</sup>.

While this law clearly elaborates upon whistle-blowers, there are also other laws within the national legal framework that can be utilized to address whistleblower cases indirectly.

The Labor Act (*Official Gazette of Montenegro*, no. 074/19, 008/21, 059/21, 068/21, and 145/21 and 145/21 ) protects individuals from harassment (bullying) in the workplace under article 14 of the Act, which is of particular importance when it comes to whistleblower cases, as in most cases due to the reporting of any irregularities that they come across, they are faced with harassment from various individuals, predominantly those within the organizations chain of command and colleagues. Article 14 of the Labor Act prohibits any abuse directed to an individual or group of individuals, which is systematic (repeated) and violates the “ dignity, reputation, personal and professional integrity, position of an employee that causes fear or creates a hostile, degrading or offensive environment, worsens working conditions or leads to it that the employee isolates himself or causes him to cancel the employment contract on his own initiative.”<sup>9</sup> (Note: unofficial translation)

In relation to the Labor Act, prohibition of ill-treatment at Work Act (*Official Gazette of Montenegro*, no. 030/12 and 054/16) defines bullying in further detail (Article 2), displaying employee protection entitlement from bullying (Article 12) and describing the procedure of what such protection constitutes of (Article 15 – 24),<sup>10</sup> which initially begins with a) the employees written request to the mediator that he or she considers him/herself to be a victim of bullying, after which the b) mediator must initiate the mediation proceedings within three days of receiving the request, which (mediation proceedings) must be completed within eight days or at most be extended to thirty days, in particular cases.<sup>11</sup> This Act also offers protection against bullying. In Article 24, paragraph 2, it is clearly defined that the right to protection against bullying is also available to an employee who reports to the competent state authority a violation of the public interest established by law committed by the employer, and has a reasonable suspicion that he will be exposed to bullying.<sup>12</sup>

8 Anti-Corruption Agency (ACA). Loud and Clear against Corruption. [https://www.antikorupcija.me/media/documents/Bro%C5%A1ura\\_-\\_zvi%C5%BEda%C4%8Di.pdf](https://www.antikorupcija.me/media/documents/Bro%C5%A1ura_-_zvi%C5%BEda%C4%8Di.pdf)

9 The Labor Act. “Official Gazette of Montenegro”, no. 074/19 from 30.12.2019, 008/21 from 26.01.2021, 059/21 from 04.06.2021, 068/21 from 23.06.2021, 145/21 from 31.12.2021

10 Law on the Prohibition of Abuse at Work. “Official Gazette of Montenegro”, no. 30/2012 from June 8, 2012, and 054/16 from 15.08.2016, <http://sluzbenilist.me/>

11 Ibid.

12 Ibid.



Still, there is no provision within this Act that is concerned specifically with bullying related to whistleblowers.

Key legal role on whistleblower cases has also the Criminal Procedure Code (*Official Gazette of Montenegro*, no. 57/09, 49/10, 47/14, 2/15, 35/15, 58/15, 28/18, 116/20 and 145/21). Under Article 1 of the Scope and Objective, it sets forth the rules, which enable “a fair conduct of the criminal proceedings and ensure that no innocent person be convicted” (*unofficial translation*), while also imposing criminal sanctions on a “criminal offender under the conditions provided for in the Criminal Code and on the basis of legally conducted proceedings.”<sup>13</sup> (*unofficial translation*). Article 256 of the Criminal Procedure Code is of particular importance for whistleblower cases, as it provides directives on how to file a criminal charge in accordance with the law, therefore regulating the entire criminal charge filing procedure between the person filing the charge and the body responsible to address such charges, i.e. the State Prosecutor in this case.<sup>14</sup> Within this Code, Article 120 – *Protection of witnesses from intimidation*, refers to whistleblowers on paragraph 3, by stating that the “protection can also be provided to a whistleblower when he is being heard as a witness, at his discretion request.”<sup>15</sup>

Reporting corruption in state institutions endangers whistleblowers in various ways. One of these can include threats from police officers, especially if the corruption or illicit activities<sup>16</sup> reported are connected to the work of the Police Administration. In this respect, the Internal Affairs Act (*Official Gazette of Montenegro*, no. 070/21, 123/21, and 003/23) specifically Article 33 therein, can be utilized from individuals to seek judicial protection and thus compensation should they deem that their freedoms and rights were violated from police officials while performing their duties.<sup>17</sup> This law is very general and it is clear that it was not drafted for regulating whistleblower cases. However, the broad spectrum that it covers can be utilized from whistleblowers who deem that their rights and freedoms were violated from on-duty police officers, which may come as a result of whistleblowers reporting. Apart from the abovementioned the courts utilize judgements from previous similar cases within the domestic case-law in order to finalize their assessments and decide on their verdicts.

## b) EU legal framework

The European Union has introduced on 23<sup>rd</sup> of October 2019 the Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law. This directive was adopted by the EU in order to enhance the implementation of Union regulations and guidelines in particular areas, by establishing universally agreed-upon standards that ensure high-level protection for individuals who disclose violations of Union Law.<sup>18</sup> These violations include breaches a) within the scope of the Union acts which constitute of ten sub-areas, i.e. public procurement, product safety and

13 THE CRIMINAL PROCEDURE CODE. *Official Gazette of Montenegro*, no. 57/09, 49/10, 47/14, 2/15, 35/15, 58/15, 28/18, 116/20 and 145/21, <http://sluzbenilist.me/>

14 Ibid.

15 Ibid.

16 see Spadijer v. Montenegro further in the text

17 Law on Internal Affairs. “*Official Gazette of Montenegro*”, no. 070/21 from 25.06.2021, 123/21 from 26.11.2021, 003/23 from 10.01.2023, <http://sluzbenilist.me/>

18 Official Journal of the European Union. 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. The European Union, 26 November 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX-32019L1937>

compliance, transport safety, financial services, money laundering and terrorist financing, public health, consumer protection etc.; b) affecting the Union's financial interests as clearly stated in Article 325 of the Treaty on the Functioning of the European Union (TFEU); c) to the internal market as referred to in Article 26 (2) of TFEU.<sup>19</sup> In addition to these, Chapter II and III of this directive state that Member States shall establish internal and external reporting and follow-up, by also displaying the procedure to be followed in such cases.<sup>20</sup> Chapter IV enables protection for persons who make public disclosures if specific conditions are met, namely if the person has reasonable grounds to believe that i) "the breach may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage", or if "no appropriate action was taken in response to the report within the timeframe referred"<sup>21</sup> to in the directive. Chapter V states the provision applicable to internal and external reporting, whereas Chapter VI clearly defines the protection measures.

The Council of Europe, as the continent's leading human rights organization, has also developed a legal instrument for the protection of whistle-blowers. The Committee of Ministers, on April 30th of 2014 during the 1198<sup>th</sup> meeting "adopted Recommendation CM/Rec (2014)7 on the protection of whistleblowers prepared by the European Committee on Legal Co-operating (CDCJ) of the Council of Europe."<sup>22</sup> Recommendation CM/Rec (2014)7 sets forth guidelines and suggestions to Member States on how to construct and establish effective legal frameworks and mechanisms to ensure whistle-blower protection. The recommendation puts emphasis on establishing channels for reporting and disclosures, confidentiality, protection against retaliation, as well as it endorses awareness raising "in order to develop positive attitudes amongst the public."<sup>23</sup> In addition to this recommendation, while indirectly connected to whistleblowers, Council of Europe has also drafted the Criminal Law Convention on Corruption ( CETS no.: 173) in Strasbourg on January 27<sup>th</sup> of 1999. What is particularly important for whistleblowers within this Convention, is Article 22 on the protection of collaborators of justice and witnesses, which establishes the rules that need to be followed by Member States in order to ensure effective protection for, both those who report and those who give testimonies concerning criminal offenses related to Article 2 (Active bribery of domestic public officials) and Article 14 (Account offenses) of the Convention.<sup>24</sup> In relation to this, the Group of States against Corruption (GRECO), which monitors the member States compliance with the Organization's corruption prevention standards, has played an important role in fostering whistleblower protection, as it has recommended "to most member States that staff in public administration should be trained in reporting suspected corruption and be properly protected when they do so."<sup>25</sup> The abovementioned Convention has been ratified by Montenegro in 2002 and entered into force in 2006.<sup>25</sup>

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19 Ibid.

20 Ibid.

21 Ibid.

22 Council of Europe. Protection of Whistleblowers. N.d., <https://www.coe.int/en/web/cdcj/activities/protecting-whistleblowers>

23 Council of Europe. Recommendation CM/Rec (2014)7 and explanatory memorandum. 30 April 2014, <https://rm.coe.int/16807096c7>

24 Council of Europe. Criminal Law Convention on Corruption. 27 January 1999, <https://rm.coe.int/168007f3f5#:~:text=domestic%20public%20officials-,Each%20Party%20shall%20adopt%20such%20legislative%20and%20other%20measures%20as,for%20anyone%20else%2C%20or%20the>

25 Criminal Law Convention on Corruption CETS No.: 173. Status as of: 31.03.2007, <https://www.osce.org/files/f/documents/1/1/25019.pdf>

### c) United Nation's Convention against Corruption (UNCAC)

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The United Nation's Convention against Corruption (UNCAC) represents the most important international legally-binding instrument when it comes to the protection of reporting persons. Montenegro has ratified this Convention on 23<sup>rd</sup> October 2006<sup>26</sup>, and as such is legally-bound to uphold and promote the provisions stated therein. The purpose of this Convention revolves around a) the promotion and strengthening of measures to prevent and combat corruption efficiently and effectively, b) the promotion, facilitation and supporting international cooperation and technical assistance, emphasizing on preventive measures of and the fight against corruption, and c) the promotion of integrity, accountability and proper management of public affairs and public property.<sup>27</sup>

Within the wide scope of areas covered within this Convention, the position of reporting persons, which by definition is what whistleblowers do, is also addressed briefly. Paragraph 4 of Article 8 stresses the importance of establishing measures and systems that would facilitate "the reporting by public officials of acts of corruption to appropriate authorities"<sup>28</sup>. Article 13, paragraph 2 emphasizes on the importance that the public should be informed on the existence of the relevant anti-corruption bodies referred to in the Convention, and that in line with that State Parties need to provide access to such bodies respectively.<sup>29</sup> While these two Articles are of paramount importance in paving the foundations upon which whistleblowers can operate, they would not be complete without Article 33 of the Convention which is concerned with the protection of reporting persons. Article 33 emphasizes that State Parties should establish measures that would provide protection from any unjust treatment of persons, who in good faith and on reasonable grounds report to the competent authorities' corruption related offenses as referred to in the Convention.<sup>30</sup>

In addition to that Article 32 provides for the protection of witnesses, experts and victims from potential retaliation or intimidation, who testify on various offences related to corruption,<sup>31</sup> while Article 35 ensures "that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation."<sup>32</sup>

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26 United Nations. Convention against Corruption: Signature and Ratification status. N.d., <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

27 United Nations Office on Drugs and Crime. UN Convention against Corruption. United Nations. New York, 2004, [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)

28 Ibid.

29 Ibid.

30 Ibid.

31 UN Convention against Corruption. Article 32 – Protection of witnesses, experts and victims

32 UN Convention against Corruption. Article 35 – Compensation for damage



### III CASES OF WHISTLEBLOWERS

In this section of the report, whistleblower cases in Montenegro will be displayed. These cases will be elaborated thoroughly and court decisions will be shown (where applicable). Credible national media news reports and other relevant documents have been utilized to obtain the information related to the following whistleblower cases, namely P.B (Ramada Hotel), M.D. (Railway Transport), R.G. (Budva Parking Service and Rafailovići public garage), anonymous history and geography teacher (Nepotism), and D.H. (Čistoća city utility company), as well as European Court of Human Rights decision on the case *Špadijer v. Montenegro* will be displayed. The aforementioned cases, represent the most prominent ones covered by national media. It is therefore important to state, that the number of whistleblower cases displayed in the following paragraphs does not exhaustive on the matter.

#### i. Data from the Anti-Corruption Agency (ACA)

Since the establishment of the Anti-Corruption Agency (ACA) in 2016 and until 01.01.2023, whistleblowers filed 750 reports in total, while the Agency initiated an additional 58 on official duty.<sup>33</sup>

Two areas that are of paramount concern in the field of combatting corruption according to whistleblower reports filed to the Agency, constitute a) the existence of corruption in labor relations and b) the existence of corruption in public procurement within government bodies, namely within State owned public enterprises and institutions. Public procurement is one of the governments activities that is most susceptible to corruption, which occurs as a result of “the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders.”<sup>34</sup>

From the period 2016 until 2023, whistleblowers have filed 70 public procurement<sup>27</sup> related reports and 257 related to the existence of corruption in labor relations within state owned enterprises and institutions<sup>35</sup>. In relation to the existence of corruption in labor relations, whistleblowers reported 86 cases within state owned public enterprises, 48 cases within public institutions related to the health system, 56 cases within public institutions related to education, 30 cases within government bodies, 3 cases within the justice system, 11 cases in the private sector, 19 cases within public institutions in relation to culture, and 4 cases within independent and regulatory programs.<sup>36</sup>

When speaking of the existence of corruption in public procurement, whistleblowers reported 35 cases within government bodies, 8 cases within public institutions related to education, 9 cases within public enterprises, one case each refers to i) public institution related to the health system, ii) the private sector, iii) justice system and 15 cases within local self-governments and administrations.

33 Agency for the Prevention of Corruption. analysis of public procurement procedures for the period 01.01.2016 - 01.01.2023. 10 April 2023, [https://www.antikorupcija.me/media/documents/Analiza\\_postupaka\\_iz\\_oblasti\\_javnih\\_nabavki\\_za\\_period\\_01.\\_01.\\_2016\\_-\\_01.\\_01.\\_2023..pdf](https://www.antikorupcija.me/media/documents/Analiza_postupaka_iz_oblasti_javnih_nabavki_za_period_01._01._2016_-_01._01._2023..pdf)

34 OECD. Preventing Corruption in Public Procurement. 2016, <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>

35 Anti-Corruption Agency (ACA). Analysis of procedures in the field of labor relations for the period 01.01.2016 – 01. 12. 2022. 13 December 2022, [https://www.antikorupcija.me/media/documents/Analiza\\_postupaka\\_iz\\_oblasti\\_radnih\\_odnosa.pdf](https://www.antikorupcija.me/media/documents/Analiza_postupaka_iz_oblasti_radnih_odnosa.pdf)

36 Ibid.



The last two years represent record whistleblower report submission year for the Agency. In 2021, whistleblowers filed 142 reports, out of which only 28,2 percent were submitted anonymously.<sup>37</sup>

The reports have been submitted to the Anti-Corruption Agency and amounted to around 89 percent more filed reports than the previous year, while also representing the highest number since the beginning of the operation of the Agency on an annual basis. Similarly, the trend continued in 2022, in which whistleblowers had amounted for 172 corruption related reports to the Agency.<sup>29</sup>

In relation to that, the President of the Council of the Agency stated that “out of the total number of completed procedures conducted by the ACA based on whistleblower reports, in 38.5 percent of cases it was determined that the public interest was endangered,”<sup>38</sup> which significantly exceeded the number of reports from the annual reports of previous years. In addition to that, he stated that the protection of whistleblowers remained a significant issue in Montenegro, and called on relevant state authorities to increase efforts in providing effective protection to them.<sup>39</sup>

## **ii. Whistleblowing cases in Montenegro**

This part of *II. Cases of whistleblowers* section elaborates upon the most prominent whistleblower cases in Montenegro, namely those cases that have been covered the most by relevant national media news agencies within Montenegro. As such, it is important to state that the following do not include all of the whistleblower cases that have occurred in Montenegro. However, the cases which will be displayed in the paragraphs to come are distinctive from one another and therefore can be utilized to obtain better acknowledgment of the issues that whistleblowers cover within Montenegrin society, while simultaneously displaying the various setbacks that they encompass. In 2016, P.B., then manager of the Ramada Hotel located in Podgorica, pointed out to member of parliament M.B. on two party gatherings of the Social Democrats at the hotel, which were covered by the state budget, specifically from the Directorate for Railways. The Anti-Corruption Agency however, did not protect P.B. from persecution as she did not fulfill the requirements that would enable her protection from the Agency. In relation to that the Agency stated that it could not provide the necessary protection required as she did not go directly to the Agency to share the information, but instead shared it with the MP first. As such, she was not eligible to be given whistleblower status but was merely assessed as an assistant to the whistleblower, which is not covered by the scope of application of the Law on Prevention of Corruption, which the Agency is responsible for implementing. The Agency stated that the protection of related persons to whistleblower cases remains a shortcoming within the Law on Prevention of Corruption that needs to be addressed promptly. The employer of P.B. did not extend her employment contract, and a major cause for that occurrence can be linked with the case that she pointed out. She stated that in addition to the stress that she and her family had been dealing with on daily basis due to various threats, she also could not get involved on any state related projects and find employment, consequences which she would have to live with for the rest of her life. Her whistleblowing however, led to the sentencing of the director of the Directorate of the Railway Transport, N.O., who was sentenced with imprisonment to three months by the Podgorica High Court.<sup>40</sup>

37 MINE. Whistleblowers filed 142 reports in 2021. Vijesti. 24 November 2022, <https://www.vijesti.me/vijesti/drustvo/632000/zvzdaci-u-2021-podnijeli-142-prijave>

38 Ibid.

39 Ibid.

40 Boricic, M. Whistle if you can. Vijesti. 24 November 2019, <https://www.vijesti.me/vijesti/drustvo/410670/zvzdi-ako-smijes>

Since the Law on Prevention of Corruption entered into force, “about 330 whistleblowers approached the Agency, 13 asked for protection, and in only four cases did the ASK determine that it was founded.”<sup>41</sup> These included a) M.D., an employee at the Railway Transport, b) R.G., former head of public garages in Budva Parking Service, and a history and geography professor who wished to remain anonymous. M.D. and D.M. pointed towards the malfunctioning of trains and various irregularities in the work of the Railway Transport. R.G. indicated to the fraud in the Parking Service and theft in the Rafailovici public garage construction, which amounted to multimillions. The anonymous professor pointed out towards nepotism, namely the illegal employment at the school where he worked.<sup>42</sup> M.D. after pointing out the irregularities in the work of the Railway Transport, was susceptible to bullying on a constant basis, removed temporarily from work from July to October 2014 and “disciplined with a three-month deduction of 20 percent of his salary.”<sup>43</sup>

He was granted the status of whistleblower in 2016 and resigned from the position held. The whistleblowing of R.G. with regards to the fraud committed in the Parking Service and the theft in the Rafailovici public garage construction, led to the arrest of D.Lj., Budva’s former director of the municipal Parking Service. This however came at a high cost to R.G. and his family, who had been on an ongoing fight against the abovementioned director and the municipal management. He stated “that he, his wife, son and daughter-in-law lost their jobs, while the state institutions, which he called to react, and which were obliged to do so according to on official duty, they were silent.”<sup>44</sup>

Another recent whistle-blower case is that of D.H., who pointed out towards the purchase of university diplomas from individuals that hold key positions in public institutions, while also criticizing the Anti-Corruption Agency for not doing their job as prescribed by Law, referring to it as the Agency that protects corruption rather than prevents it. He talked about the great ignorance of ‘personnel’ in public companies who are primarily employed through party channels, and who in most cases have fake diplomas. Within this respect, he pointed out that he was fired from the city utility company “Čistoća”, precisely because he was working “conscientiously and responsibly, and his place was taken by the president of the “Čistoća” city utility company, who was supposed to protect his rights,”<sup>45</sup> and has, as he says, a purchased diploma as well. Accordingly, he said that he was told by the Anti-Corruption Agency to leave aside his activism and since then was neglected from the Agency, even though he was given the status of whistleblower by the Agency in 2021.<sup>46</sup>

In relation to the utility company “Čistoća”, he pointed out towards the lack of adequate personnel, stating that in most cases he had to explain to the employed personnel the simplest of tasks, i.e. how to turn on a computer, what an email stands for etc.<sup>47</sup> He also emphasized that whistleblowing has taken a toll on, both personal and professional areas of his life. D.H. had been an employee at “Čistoća” since February of 2018, while after the expiration of the last fixed contract,

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41 Ibid.

42 Ibid.

43 Cadenovic, I. Engineer Dragojevic endured mobbing. Vijesti, <https://www.vijesti.me/vijesti/drustvo/403699/inzenjer-dragojevic-je-trpio-mobing>

44 Lajovic, V. SDT pozvalo Glendžu da ispriča kako se kralo u Parking servisu. Vijesti. 25 December 2021, <https://www.vijesti.me/vijesti/crna-hronika/582586/sdt-pozvalo-glendzu-da-isprica-kako-se-kralo-u-parking-servisu>

45 “WHISTLER” DENIS HOT FOR VOP: Employees with purchased diplomas do not know what email is, ASK told me to fight (VIDEO). 1 October 2022, <https://volimpodgoricu.me/najcitanije/zvzdac-denis-hot-za-vop-zaposleni-sa-kupljenim-diplomama-ne-znaju-sta-je-mejl-iz-ask-a-mi-porucili-da-batalim-borbu-video>

46 Ibid.

47 Ibid.

the company passed on a decision for the termination of the employment contract.<sup>48</sup> He was reinstated on May 11<sup>th</sup> of 2021, based on a verdict in his favor. However, he was assigned to another already filled position, given an employment termination notice and was sent on annual leave on that same day.<sup>49</sup> Recently, based on the document - final and enforceable judgment of the Basic Court in Podgorica P. no. 2159/21 of May 16, 2022 and according to the decision of this court I. no. 70/23 of February 20, 2023, “2,000 euros will be charged from the account of “Čistoća” from Podgorica, and 500 euros from the account of the responsible person,” executive director A.Č., because the company did not fulfill its obligation according to the judgment of the Basic Court from May last year, and February of this year on the reinstatement under a full working contract of D.H. with the company.<sup>50</sup>

### iii. Špadijer v. Montenegro – European Court of Human Rights

On 27 June 2018, D.S. filed application (no. 31549/18) against Montenegro submitted with the European Court of Human Rights under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (further in text: *the Convention*), which paves the way for individual applications. The case of D.S. (further in text: *the applicant*) was concerned primarily with bullying at work, which had affected “the applicant’s psychological integrity”, while also pointing out towards “the failure of the relevant domestic bodies to protect her.”<sup>51</sup> In January 2013, D.S. reported irregular behavior at work from five colleagues at work during the New Year’s Eve. It was established that some male guards had entered the women’s prison and had “physical contact” with them, while their actions were tolerated from some female guards. Since after “whistleblowing” on such occurrence, the applicant reported to have been threatened on a constant basis by her fellow colleagues.

On the 12<sup>th</sup> day of that same month, she reported to have been contacted and threatened by N.R., another colleague of hers. One night after that, the applicant’s car’s front windscreen was broken at the premises where she lived. She filed a complaint against the abovementioned colleague, while also attaching video evidence, in which the perpetrator could be seen breaking the windscreen and planting something underneath the car. Because of her “whistleblowing”, her colleagues who had been a part of the irregularities that she reported on the New Year’s Eve, had been found guilty during disciplinary proceedings and hence were fined between 20% to 30% of their salaries for around two to three months. She was transferred to another position, under the presupposition that she was failing to do her job accordingly.<sup>52</sup>

On August 16<sup>th</sup> of that same year, the applicant requested the initiation of proceedings against mobbing from the side of her employer, describing that from the period of January – August, a) she was forbidden to organize duty shifts from the head of the penitentiary, b) she was ignored by her colleagues and neglected to complete tasks that were allocated by her, c) the report that she submitted regarding illicit actions of one of the prisoners was never addressed, and d) she

48 Kalac, D. Još jedan rok da se Hot vrati u „Čistoću”. Vijesti. 25 February 2023, <https://www.vijesti.me/vijesti/drustvo/645004/jos-jedan-rok-da-se-hot-vrati-u-cistocu>

49 Kalac, D. “Čistoća” i Čađenović da plate 2.500 jer Hota nisu vratili na posao. Vijesti. 6 May 2023, <https://www.vijesti.me/vijesti/drustvo/655410/cistoca-i-cadenovic-da-plate-2500-jer-hota-nisu-vratili-na-posao>

50 Ibid.

51 European Court of Human Rights. Case of Spadijer v. Montenegro. (Application no. 31549/18). 9 November 2021, <https://hudoc.echr.coe.int/fre#%7B%22tabview%22%3A%22document%22%2C%22itemid%22%3A%22001-212970%22%7D>

52 Ibid.

was ordered to make coffee twice a day for one of the prisoners. All of these along with continuous humiliation at work, were causing significant health problems to the applicant, to which she complained as well.

On 6 November 2013, her request for the initiation of proceedings against mobbing were dismissed as unfounded by the mediator, even though the mediator had no authority by law in doing so. Regardless, the mediator stated that while assuming that the applicant's allegations may be true, they still lack continuity, which is a precondition in order to amount to bullying. In relation to this, the applicant filed civil proceedings against her employer, as she deemed that, both her personal and professional integrity had been breached. During the proceedings, it was conveyed by a witness that the applicant was suffering immense psychological problems, pointing out towards post-traumatic stress disorder and episodes of psychosis that reduced the applicant's capacity to function by 20%.<sup>53</sup> This distorted state was worsened when the applicant was attacked on 10 February 2015, while the proceedings were coming to an end.

Regardless of the verbal and physical assaults that the applicant endured, the Court of First Instance in Podgorica ruled in favor of the defendant in civil proceedings, dismissing the applicant's complaints of bullying, "as they lacked the necessary frequency." Particularly, the court went on to define bullying as a "form of systematic psychological ill-treatment, rather than being sporadic and individual, and as such required repetition of the actions over a certain period"<sup>54</sup>, pointing out that this has not been the applicant's case. Within academia, this "certain period" refers to "at least once a week for at least six months,"<sup>55</sup> which according to the Court of First Instance was not the case in the civil proceedings filed by the applicant. The applicant appealed to such decision, stating that the court had incorrectly assessed the evidence and similarly interpreted the relevant legal framework. Regardless of such appeal however, the initial judgement was backed by, both the Higher and the Supreme Court, on similar grounds as the Court of First Instance in Podgorica.

Following this, the applicant on August 2016 filed an appeal to the Constitutional Court, however it was dismissed on 15 November 2017, as it found that there were no signs of bullying at work, therefore withholding the already given judgments of the previous courts. This stance, apart from the courts, was also withheld from the Ombudsman's office as well, which had failed to hear the applicant's concerns and based its decision primarily on the defendant's submissions. At this point, the applicant had exhausted all domestic remedies and turned to the European Court of Human Rights, filing the abovementioned application (no. 31549/18) against Montenegro.<sup>56</sup>

**The European Court of Human Rights found the application as admissible**, holding that there had been a violation of Article 8 of the Convention. In the Court's view, the State's positive obligation of the effective application of laws per Article 8 in protecting individuals from harassment takes particular importance when such harassment has occurred as a result of whistleblowing activities. The Montenegrin Courts however, have failed to address this issue from such perspective. In this way, the Court could not disregard the applicant's claims that the incidents that followed after the applicant's reporting of her colleagues on the New Year's Eve were directly connected to the treatment that she was subjected to, which was utilized as means of punishing and silencing her. Furthermore, the Court notes the failure of the national courts to address the

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53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid.

criminal complaints raised by the applicant, even though that the relevant national criminal legal framework provides sufficient protection for such complaints. The failure of domestic courts to effectively implement the relevant civil and criminal law mechanisms, the inability of obtaining and assessing information to all the incidents that were raised by the applicant, which then led to the failure of taking into account the general context, particularly the whistleblowing context, has had a backsliding effect to the case, as it constituted a violation to the State's positive obligation under Article 8 of the Convention. The applicant "claimed 50,000 euros (EUR) in respect of non-pecuniary damage", and was awarded by the Court with "EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable." <sup>57</sup>

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57 Ibid.



## IV CONCLUSION AND RECOMMENDATIONS

This report began with defining what whistleblowers are and what they stand for. It further encompassed their crucial role for the preservation of the public interest and thus the consolidation of democratic principles and the rule of law (by pointing out deficiencies therein). The report put profound emphasis on the risks that are associated to whistleblowers, which due to their reporting expose themselves to different risks that predominantly take a negative toll on, both the professional and personal aspect of their lives. As such, this report gave importance towards establishing adequate protection that would promote their rights, firstly their fundamental human rights and secondly their rights as whistleblowers upon obtaining whistleblower status. Therefore, in order to provide a clear picture on the situation of whistleblowers within Montenegro, it was necessary to look at the existing domestic legal framework that is concerned with various areas related to whistleblowers, as well as other regional and international norms and standards on whistleblowers, which Montenegro is obliged to comply with as a result of ratification of various regional and international legally-binding documents. In addition to this, this report also provided brief detailed information on some of the most prominent cases of whistleblowers in Montenegro, by initially displaying the general data on whistleblower cases provided by the Anti-Corruption Agency. The findings from elaborating on the existing legal framework on whistleblowers and whistleblower cases in Montenegro, have been utilized for the drafting of recommendations, which will be displayed in the following paragraph.

The most important law to date within Montenegro's legal framework is the Law on Prevention of Corruption (*Official Gazette of Montenegro*, no. 53/14 and 42/17), representing a major milestone in, both combatting corruption in general but also in terms of whistleblower protection. Article 4 of this Law established the aforementioned Anti-Corruption Agency whose role has been of particular importance in preventing conflict of public and private interest and other preventive measures on corruption, but also when referring to whistleblowers and their applications, protection, as well as other areas concerning them. This can be found specifically in Articles 44 to 70 within the Law. While it can be said that this Law represents the building block when it comes to whistleblowers, there are also other laws that can be applied to regulate whistleblower related areas, i.e. their protection, criminal charge filing etc. These have been elaborated upon in the *Legal framework* section and include the Labor Act, Criminal Procedure Code, and the Internal Affairs Act. Regardless, it is necessary to point out that other domestic legislation can be utilized depending on the case at hand. At the regional level, it can be said that the area of whistleblower protection is relatively new, considering that the EU introduced its Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law in 2019. At the international level, the UN Convention against Corruption issued a recommendation on strengthening the implementation of Article 33,<sup>58</sup> concerned with the protection of whistleblowers to State Parties, noting that efforts need to be increased especially within the domestic legal framework and its applicability. Considering these, it can be concluded that the existing legal framework with regards to the protection of whistleblowers, while theoretically available, it needs revision, especially in establishing mechanisms that would ensure the effective implementation of provisions regulating all areas within the scope of whistleblowers. With respect to this, the following recommendations have been provided in order to further enhance such application of whistleblower related laws in Montenegro.

58 United Nations Office on Drugs and Crime. Focus areas – Whistleblower Protection. N.d., <https://www.unodc.org/unodc/en/ft-uncac/focus-areas/whistleblower.html>

## Recommendations

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The creation and enactment of a comprehensive **specific domestic law on whistleblowers** which would regulate in detail areas that are not particularly covered by current existing domestic laws that need further elaboration, is necessary. For example, within the existing legal framework, whistleblowers are mentioned solely in the Law on Prevention of Corruption in Articles 44 to 70. However, that is not sufficient considering the complexity that whistleblowing cases can take. As could be seen from elaborating on the aforementioned domestic laws, there are various provisions within different laws that can be applied to whistleblowers, however their application is not possible at this current stage, as these existing provisions leave immense room for interpretation, which can in turn hinder the scope of actual implementation during court proceedings and so forth when it comes to whistleblower cases. Considering the number of filed reports from whistleblowers is constantly increasing on an annual basis, it is of utmost importance to establish solid legal grounds for their protection, thus regulating procedures that are connected to such protection. Specifically, provisions related to guarantees on confidentiality, safeguards against retaliation, proper compensation, and ensuring effective internal and external reporting mechanisms are of particular significance and need to be established. In doing so, Montenegro can promote democratic consolidation and the rule of law, but also the promotion of human rights.

While the creation and adoption of a specific law on whistleblowers would represent a profound positive step forward, it would mean nothing without establishing the necessary mechanisms that would ensure its actual implementation in an impartial, professional and independent manner. It is therefore necessary to increase efforts on advancing the **impartiality, professionalism and independence of all relevant stakeholders dealing with whistleblowers, in particular the judiciary**, which represents one of the key branches when dealing with whistleblower cases.

Continuing reforms in the judiciary has also been a recommendation of the European Commission, deriving from its annual Progress Reports on the country. The importance of establishing an impartial, professional and independent judiciary branch can be seen for example on the aforementioned *Spadijer v. Montenegro* case. The applicant had exhausted all domestic remedies, considering her application was deemed inadmissible from the Court of First Instance, Higher Court and the Supreme Court, which was a major criticism from the European Court of Human Rights (which found it admissible), stating that the domestic courts had failed to obtain the full picture of the case, by also failing to account for a possible “whistleblowing” case. In addition to that, considering that there is still no specific law on the protection of whistleblowers, the European Commission recommended the **harmonization of the Law on Prevention of Corruption** with the abovementioned EU Directive on the protection of whistleblowers, by entering the amending procedure of the existing law to address the abovementioned issues related to whistleblowers.<sup>59</sup> Furthermore, the European Commission on its 2022 Progress Report noted the work of the Anti-Corruption Agency (ACA). However, previous recommendations on the legislative and institutional framework when speaking of the prevention of corruption and the ACA’s capacities, especially ensuring its financial independence and human resources, remain to be addressed.<sup>60</sup>

59 CEMI. Comparative analysis of the Montenegrin legislative and institutional framework in the field of whistleblower protection with recommendations for improvement. 2021, <https://cemi.org.me/storage/uploads/4f1b4Qk-Dylj7T31fDqXVVKJhnrIpWf3cksrZRIQh.pdf>

60 European Commission. 2022 Montenegro Progress Report. 12 October 2022, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>

Therefore, in order to **ensure the proactive work of the Anti-Corruption Agency (ACA)** as an effective independent body combatting corruption, sufficient financial and human resources need to be allocated.



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