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WILL THE IMPLEMENTATION OF THE ACT ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF LAW FOSTER THE DEVELOPMENT OF WHISTLEBLOWING IN POLAND?

Abstract

In my article, I have described the scope of whistleblower protection under the bill aimed at implementing 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 EU law. I have described issues such as the scope of whistleblower protection – which entities are protected, the whistleblower's good faith as a condition for obtaining the whistleblower status, the scope of applications – the scope of matters that can be reported by the whistleblower, establishing safe channels for reporting and confidentiality – ensuring whistleblower's anonymity. Implementation of the PPWRBL Act is not sufficient to increase the popularity of whistleblowing in Poland. I tried to prove that the problem with the perception of whistleblowers in Poland is rooted in our historical experience and a lack of trust in society and it is necessary not only to implement the EU Directive but also to organize a social campaign in order to build a culture of acceptance for whistleblowers.

KEYWORDS

whistleblowing, whistleblowers, public interest, right to inform, European standards

SŁOWA KLUCZOWE

sygnałizowanie nieprawidłowości, sygnaliści, interes publiczny, prawo do informowania, standardy europejskie

INTRODUCTION

Whistleblowing, or reporting irregularities, remains a rather unpopular issue in Poland. The topic started to be on the public agenda only after the Public Life Openness Bill,¹ and later also the previous Liability of Bodies Corporate for Punishable Acts Bill² emerged. Those two bills were to introduce the first regulations in Poland aimed at protecting whistleblowers.³ Unfortunately, the protection ensured for whistleblowers under the discussed bills as well as irregularity reporting rules were governed only selectively and failed to provide for appropriate protection for the reporting individuals. Upon the conclusion of the Parliament term, both bills were subject to the discontinuation principle and currently are no longer processed.

The issue of whistleblower protection returned no sooner than upon the works on a bill aimed at implementing 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 EU law.⁴ According to the Directive's assumptions, the implementing acts were supposed to enter into force by 17 December 2021. In Poland, the obligation to implement the provisions of Directive 2019/1937 encouraged the

¹ Public Life Openness Bill of 8 January 2018.

² Previous Liability of Bodies Corporate for Punishable Acts Bill submitted by the Government and filed with the lower house of the Parliament on 11 January 2019 (hereinafter: the LBC Bill). The new one – Liability of Bodies Corporate for Punishable Acts Bill no. UD 421 does not contain regulations on whistleblower protection.

³ Before the works on the bills started, a whistleblower could have only adduced the provisions of the Labour Code (Article 100(2)(4)), the Civil Code (Articles 23 and 24), the Penal Code (Article 212) or the international law, e.g. the United Nations Convention against Corruption and the Council of Europe's Civil Law Convention on Corruption.

⁴ 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 UE law (OJ L 305, p. 17) (hereinafter: Directive 2019/1937).

works on the protection of persons who report breaches of law bill.⁵ Despite the lapse of the time limit set out in Directive 2019/1937, as of the publication date of this paper, the PPWRBL Bill has not entered into force.

According to the EU Whistleblowing Monitor,⁶ a service monitoring the progress in implementing the Directive, Poland is not the only country in delay with the implementation. As many as fifteen Member States are in such delay, while Hungary has not even started works aimed at introducing relevant domestic regulations. Thus, the current status of the Directive implementation is not optimistic.

In my opinion, the situation is alarming and it is necessary to introduce the relevant regulations as soon as possible. This opinion may be backed up by the research referred to on the European Union's website,⁷ according to which as many as 81% of the respondent Europeans did not report cases of corruption that they have experienced or witnessed, and as many as 85% of the respondents are of the opinion that workers very rarely or rarely report concerns about potential danger or potential damage to the society in fear of legal and financial consequences.⁸

As mentioned before, most Member States have not yet implemented Directive 2019/1937; in the said period only ten States ensured full protection of individuals reporting breaches. In the other countries, the protection provided was partial and regarded only specific sectors or categories of workers, e.g. in the case of fighting corruption or only in the government sector.⁹ Yet, it is requisite to implement regulations that will pertain to all entities, regardless of the economic sector in which they operate. After all, abuse and unlawful behaviours may occur everywhere, both in a private company and a public organisation, both in small and large entities. Abuse may regard varying areas, such as competition law, corruption, labour law, operational health and safety, environmental protection or tax obligations. Legislators should ensure that there are relevant regulations in place encouraging businesses to introduce whistleblowing programmes, and that those regulations afford appropriate protection to whistleblowers. It is of great importance as whistleblowing involves huge risks for those who report abuse. People who decide to report a breach risk their career and source of income, and in some

⁵ Protection of persons who report breaches of law bill of 14 October 2021 (hereinafter: the PPWRBL Bill).

⁶ <https://www.whistleblowingmonitor.eu/country/> (accessed 2 August 2022).

⁷ Report requested by the European Commission, Special Eurobarometer 470, corruption, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2176>, published in December 2017.

⁸ *Ibidem*.

⁹ European Commission, *Whistleblower protection: Commission sets new, EU-wide rules*, http://europa.eu/rapid/press-release_IP-18-3441_en.htm (accessed 1 September 2022).

cases suffer from serious and long-term financial, health, image and personal repercussions.¹⁰

In the light of the above considerations, Directive 2019/1937 needs to be implemented as soon as possible. It is essential, however, to carefully design the implementation so that it governs the whistleblowing institution and protects the interests of whistleblowers in a comprehensive way.

According to Directive 2019/1937, a reporting person is a person who reports information about breaches of European Union law and who has acquired information on breaches in a work-related context (Articles 2 and 4). The protection ensured by the Directive applies both to workers and persons employed under other legal relations, such as: self-employed persons, shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, as well as volunteers and paid or unpaid trainees, persons working under the supervision and direction of contractors, subcontractors and suppliers (Article 4).

The PPWRBL Bill governs the scope of its application in a similar manner, where according to the Bill a reporting person is a natural person who reports or discloses publicly information about a breach of law acquired in a work-related context. The PPWRBL Bill provides that reporting persons include but are not limited to: a worker (even when the employment relation has terminated), a person providing work services under a basis other than employment relation (including under a civil-law contract), a business owner, a shareholder, a member of a legal person's corporate body, a person providing work services under the supervision and direction of a contractor, subcontractor or supplier, including under a civil-law contract, a trainee and a volunteer (Article 4).

It is a very broad personal scope as compared to the previous Public Life Openness Bill,¹¹ which never allowed to confer the whistleblower status to individuals performing work on behalf and for the account of another person under a civil-law contract, which, given how popular it is to hire people otherwise than under labour code employment, deprives a massive part of the society of protection.¹² The personal scope of the PPWRBL Bill, on the other hand, is defined

¹⁰ H. Szewczyk, *Whistleblowing w zakładzie pracy. Zarys problematyki* (in:) eadem, *Whistleblowing. Zgłaszanie nieprawidłowości w stosunkach zatrudnienia*, Warsaw 2020.

¹¹ The whistleblower status was supposed to be conferred on: a worker provided that the information regarded his or her employer, a natural person exercising a profession on his or her own behalf and for his or her own account and/or running a business as part of exercising such a profession, or a business owner bound with a contractual relation with the entity to which the information pertains (Article 61(4) of the Public Life Openness Bill of 8 January 2018).

¹² The Liability of Bodies Corporate for Punishable Acts Bill defines the personal scope by conferring the whistleblower status on: a worker of a body corporate, a member of a corporate body, a person acting on behalf and/or in the interest of a body corporate under a legal transaction or a contract (Article 11(1) of the LBC Bill that was filed with the lower house of the Parliament on 11 January 2019).

broadly enough to cover all potential whistleblowers and thus provide them with sufficient protection.

However, the material scope of a report to be protected raises doubts. According to Article 2 of Directive 2019/1937, a reporting person shall be provided with protection with regard to reports in the following areas:

- public procurement;
- financial services, products and markets, and prevention of money laundering and terrorist financing;
- product safety and compliance;
- transport safety;
- protection of the environment;
- radiation protection and nuclear safety;
- food and feed safety, animal health and welfare;
- public health;
- consumer protection;
- protection of privacy and personal data, and security of network and information systems.

It also pertains to breaches relating to EU competition rules, breaches affecting the financial interests of the Union and, due to their negative impact on the correct operations of the internal market, breaches of rules and/or arrangements regarding corporate tax the purpose of which is to obtain a tax advantage (Article 2(1) of Directive 2019/1937).

A material scope so defined fails to cover a very important area, i.e. worker rights. Issues such as employment protection, OHS rules, equality and human rights constitute major areas of whistleblowers' activity and should not be ignored when contemplating protection. As Directive 2019/1937 sets forth only the minimum scope of whistleblowing regulations by the Member States, the issue of worker rights should be definitely accounted for in the Directive implementation by the particular countries. Unfortunately, the material scope defined in the PPWRBL Bill (Article 3) is identical to the one in the Directive. Providing protection also in the case of worker rights issues, especially mobbing and workplace discrimination, is of particular importance as, according to research, these are breaches most often reported by whistleblowers in a company.¹³

Another area not covered by the application of the statute is corruption. I believe that a material scope so defined is definitely too narrow; limiting it to the areas specified in the Bill may lead to situations where many people reporting major breaches of the law (such as corruption or mobbing) will lack protection.

¹³ *Ochrona sygnalistów w Polsce. Świadomość pracowników i praktyki w firmach. Raport z badania pracowników firm sektora prywatnego*, Research by ARC Rynek i Opinia ordered by braf.tech, 2021, https://brief.pl/wp-content/uploads/2021/06/210609_Raport-z-badania-pracownikow%CC%81w_braftech.pdf (accessed 24 November 2021).

In addition, the option provided for in the PPWRBL Bill for an employer to introduce at their workplace an obligation to report other breaches than those referred to in the Bill needs to be outlined in more detail. The Bill is not clear about whether the reporting person will enjoy the same protection as a person reporting a breach listed in Article 3(1) of the PPWRBL Bill where an option is introduced at a workplace to report breaches other than those listed explicitly in the Bill, as well as whether reports of breaches of internal regulations or ethical standard should be proceeded in the same way as the breaches referred to in Article 3(1), including in the case of external reports. Due to the uncertainty of how to proceed in the case of an expanded report catalogue which exceeds the scope of the statute, employers may resign from such a solution in fear of additional obligations that they could avoid if the proposed wording of Article 3(2) did not apply. In my opinion, it is necessary to introduce additional regulations to eliminate the described concerns, including those based on which an employer will be able to decide whether a report made as described above should be proceeded in the statutory mode or the non-statutory one where the reporting person is not conferred the whistleblower status.

On the other hand, when comparing the material scope of the PPWRBL Bill and the one defined in the LBC Bill, it may be concluded that the material scope of the latter is defined too broadly. According to the LBC Bill, the scope is extended to cover the reports of suspicion of preparation, attempt or commitment of a prohibited act, failure to meet obligations or abuse of powers, failure to exercise due care and irregularities in the organisation of the operations of a body corporate which could lead to the commitment of a prohibited act (Article 11(1) of the LBC Bill). Such a material scope seems to be even too broadly defined. For example, many situations may be reported under the pretext of failure to exercise due care, which do not necessarily pose a danger to the public interest.

I would propose that the material scope be regulated so as to include irregularities that involve any actions dangerous to the public interest, any violations of generally applicable law, internal regulations or ethical standards applicable at an employer's organisation, without an exhaustive list of areas to which the breach of law pertains.¹⁴ This would allow to ensure the highest protection possible and cover all breaches (including those disregarded in the PPWRBL Bill).

Another material issue regarding the regulations on whistleblowers is the scope of the protection. According to Directive 2019/1937, protection provided should include protection against all forms of retaliation. For the sake of example, only the following measures are named: dismissal, demotion and other retaliation forms (Article 19), as well as effective, proportionate and dissuasive penalties applicable to persons who retaliate against individuals reporting breaches (Arti-

¹⁴ Whistleblower protection bill prepared by Batory Foundation, Helsinki Foundation for Human Rights, the Trade Union Forum and the Institute of Public Affairs, <http://www.signalista.pl/projekt-ustawy/> (accessed 5 March 2019).

cle 23). Such a definition of the scope of protection guarantees security for whistleblowers while not closing the list of potential behaviours and covering all the possible repressions.

According to the PPWRBL Bill, retaliation may not be undertaken against a reporting person (Article 11), and the reporting person may not be treated unfavourably due to his or her report or public disclosure (Article 12). Unfavourable treatment includes but is not limited to behaviours such as refusal to establish an employment relation, termination of an employment relation with or without notice, reduction of salary, or withholding of or disregarding in promotion (Article 12). It is not an exhaustive catalogue of possible retaliation measures but only a list of examples. Furthermore, the ban on retaliation also covers facilitators (Article 21). However, the difference between ‘retaliation’ and ‘unfavourable treatment’ and the related protection measures and sanctions must be more precise. According to Article 2(2) of the PPWRBL Bill, retaliation is a direct or indirect action or omission caused by a report or public disclosure, which infringes or may infringe the rights of the reporting person and/or causes or may cause harm to the reporting person. Article 11 of the PPWRBL Bill provides for a ban on retaliating against the reporting person. Furthermore, Article 12(1) of the Bill provides for a ban on unfavourable treatment due to a report or public disclosure, while paragraph (2) lists examples of unfavourable treatment. Thus, a question arises whether all cases of groundless unfavourable treatment are at the same time retaliation (subject to a penal sanction) as well as whether there are other prohibited retaliation forms that don’t constitute unfavourable treatment.¹⁵

In the Public Life Openness Bill (Article 66 and 67), whistleblowers are afforded only scarce protection against all possible retaliation forms of an employer. The whistleblower protection covers only a ban on contract termination by the employer, amendment of its terms and conditions to less favourable ones, and a refund of legal representation costs related to the incurred negative effects of a report. Thus, it does not take into account all the possible repressions, such as threats, disciplinary actions, disregarding in promotion or selection for education events, or isolating the whistleblower from other workers.

The LBC Bill, on the other hand, provides for an option to request a return to work, damages or other financial compensation if the whistleblower’s worker rights have been infringed or the employment relation with him or her has been terminated (Article 13). Such a definition of the protection scope provides whistleblowers with an opportunity to abuse their rights, as the general term ‘infringement of worker rights’ offers an extensive field of interpretation.

In light of the above, I recommend that any forms of retaliation be banned and a non-exhaustive list of exemplary banned repressions be added. In my opin-

¹⁵ Comments to the protection of persons who report breaches of law bill filed as part of social consultations by Law Firm Baker McKenzie <https://legislacja.rcl.gov.pl/docs//2/12352401/12822851/12822854/dokument538127.pdf> (accessed 7 April 2022).

ion, it is not advisable to include an exhaustive list of all banned repressions as it is difficult to predict all possible scenarios of employers' actions. I believe that the broadest range of protection is provided for by the solution proposed in the PPWRBL Bill, where a general ban on retaliating is set forth and the worker may not be treated unfavourably. In addition, a non-exhaustive catalogue of behaviours that may be considered as unfavourable treatment is added. However, the difference between 'retaliation' and 'unfavourable treatment' and the related protection measures and sanctions must be more precise.

Directive 2019/1937 also gives guidelines on how the Member States should regulate the issue of channels of informing about irregularities. According to the Directive (Articles 5 and 7), reporting persons should have an opportunity ensured to report abuses in their organisations to public authorities and the media, where the main reporting channel should be within the organisation. A whistleblower should first report information to his or her employer via internal reporting channels.

In exceptional situations, it is also possible to provide protection to a whistleblower who has disclosed information publicly, e.g. through social media, TV or newspapers. This is possible where one of the following two prerequisites is met:

- (1) the whistleblower first used other reporting channels (as part of an internal procedure or to central/EU authorities) but this has not brought any results and the whistleblower has not received appropriate feedback within a specific time limit (either 3 or 6 months), or
- (2) the whistleblower has reasonable grounds to believe that:
 - the breach may constitute an imminent or manifest danger to the public interest, e.g. where there is an emergency situation or a risk of irreversible damage, or
 - in case of making a report, he or she will be at risk of retaliation or there is a low prospect of the breach being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where an authority may be in collusion with the perpetrator of the breach or involved in the breach.¹⁶

Such channels of reporting are in line with international standards and afford protection to whistleblowers in various situations. This is because it is impossible to establish one way of reporting which will appropriately protect the interest of all potential reporting persons. Directive 2019/1937 imposes an obligation on Member States to establish such channels of reporting irregularities that ensure the confidentiality of the identity of the reporting person, which is the very foundation of the whistleblower protection mechanism (Article 9). Such a guarantee stems from the international standards and is a necessary element of ensuring a sense of security.

¹⁶ Article 15 of Directive 2019/1937.

In terms of reporting channels, both the Public Life Openness Bill and the PPWRBL Bill did not meet the international norms of irregularity reporting procedure. The Public Life Openness Bill provided that irregularities may be only reported to a prosecutor (Article 65(1)), whereas the PPWRBL Bill provided for a procedure of reporting to a management unit of a body corporate or to a person in charge of external oversight (Article 11). So, both the Bills failed to provide for a reporting procedure compliant with international standards, according to which a report should be first made within the organisation in which the whistleblower works. Next, if an internal report is impossible or no action has been undertaken, it is possible to make a report with public authorities (in particular regulatory and supervisory bodies, law enforcement agencies or state control and law protection agencies). And only then, as a last resort, is it possible to make a disclosure in the media. It might be considered that the PPWRBL Bill might have proposed such a solution as, according to the Bill, a report may be made within the organisation, to state authorities and by providing information about a breach of law to the public.

The PPWRBL Bill provides for an option of internal reports, which should be understood as provision of information about a breach of law to the employer, external reports, i.e. provision of information about a breach of law verbally or in the written or electronic form to the Commissioner for Human Rights or a public authority (which should be understood as head and central bodies of central government administration, field bodies of central government administration, state bodies with the exception of the Commissioner for Human Rights, executive bodies of local government administration, regional chambers of auditors, the Chief of the General Staff of the Polish Armed Forces and the Financial Supervision Authority¹⁷), and public disclosure (provision of information about a breach of law to the public). Importantly, the reporting person may make an external report without a previous internal report.¹⁸

Another aspect which guarantees protection to whistleblowers is the right to confidentiality. This right was infringed in the Public Life Openness Bill. According to Article 65(7) of the Public Life Openness Bill, a prosecutor was obliged to inform the employer that the whistleblower status has been conferred on a person employed by them. Such a solution not only meant the possibility to disclose a whistleblower's details but even the prosecutor's obligation to notify the employer of a received report. The Public Life Openness Bill completely failed to address the issue of confidentiality of whistleblowers' reports. Only the PPWRBL Bill provides for appropriate regulations on reporting confidentiality.¹⁹

¹⁷ Article 2(6) of the PPWRBL Bill.

¹⁸ Article 35 of the PPWRBL Bill.

¹⁹ This regards both internal reports (Article 30 of the PPWRBL Bill) and external reports (Article 41 of the PPWRBL Bill).

Pursuant to Directive 2019/1937, a whistleblower should have reasonable grounds to believe that the information reported is true at the time of reporting and that such information falls within the scope of the Directive (Article 6(1)). The Directive provides for appropriate sanctions for mala fide whistleblowers; such a solution is aimed at providing protection only to persons who have reasonable grounds to believe that the information reported was true at the time of reporting and that such information fell within the scope of the Directive (Article 23(2)). This is because the Directive's aim is to protect persons reporting irregularities, not reports of detrimental or offensive nature or those aimed at groundless reputation damage. However, reporting persons deemed to have acted maliciously will be subject to a presumption of innocence and will have the right to a fair hearing, the right to defence and access to a fair trial (Article 22(1)). The bona fide requirement is to prevent situations where protection is afforded to persons who made a malicious report, only to harm the entity subject to the report.

The whistleblower protection proposed in Directive 2019/1937, in the vast majority of its solutions, provides very broadly defined protection and has been governed comprehensively; it remains merely a minimum standard though. The Commission encourages the Member States to expand the protection by establishing a comprehensive whistleblower protection system and to go beyond the minimum standards guaranteed in the Directive.

Certainly, actions aimed at promoting whistleblowers and whistleblowing programmes are of essential meaning. It is important to raise society's awareness about the options provided for in the statutes protecting whistleblowers. It is necessary to provide for an effective legal system guaranteeing appropriate protection to a whistleblower. In order to ensure a possibly broad protection, i.e. a possibly broad definition should be developed of the material scope of breaches subject to reporting as well as of the personal scope. Another material issue is also the provision of possibly multiple channels of reporting (inside an organisation, to public authorities and to the media). It is legislators who are burdened with the obligation to provide appropriate protection to whistleblowers.

However, in order to foster a culture of reporting irregularities, it is essential to change the way of thinking and the image of whistleblowers in society. It is necessary to transform the image of a whistleblower and fight stereotypes and the identification of whistleblowing with denunciation. In my opinion, the perception of a whistleblower by society is one of the biggest problems and factors preventing people from reporting irregularities. It is essential to build the appropriate awareness and treat information shared by whistleblowers as acting in the public interest rather than denouncing or intending to harm somebody.²⁰ Without chang-

²⁰ M. Kutera, *Whistleblowing jako narzędzie wykrywania oszustw gospodarczych*, Faculty of Management and Social Communication, Jagiellonian University, http://kolegia.sgh.waw.pl/pl/KZiF/czasopisma/zeszyty_naukowe_studia_i_prace_kzif/Documents/Malgorzata%20Kutera.pdf (accessed 23 February 2020).

ing the patterns of how society thinks and perceives whistleblowers, ensuring even the broadest protection for people reporting irregularities will not significantly boost the number of reports.

CONCLUSION

To sum up the above analysis of the Bills, I believe that both the Public Life Openness Bill and the LBC Bill in the proposed wording would not provide sufficient protection to whistleblowers. The PPWRBL Bill, on the other hand, deserves positive evaluation, it is necessary, however, to introduce certain amendments, particularly with regard to the scope of protection (the material scope) to cover the broadest possible scope of potential reports.

The conducted analysis proves, however, that the mere implementation of the PPWRBL Act is not sufficient to increase the popularity of whistleblowing in Poland. As results from research carried out by the Compliance Institute, as many as 42% of the interviewed compliance officers pointed out that irregularity reporting is found improper in the Polish culture, even if it is done in good faith. In my opinion, this is caused by the fact that a whistleblower in Poland is a person perceived in a negative light as a denouncer, or informant.²¹ I believe the problem with the perception of whistleblowers in Poland is rooted in our historical experience and a lack of trust in society and the state deeply instilled in us by the partitions, occupations and communism. In the literature on the subject, it is underlined that the attitude to whistleblowing is inextricably linked to the mentality of a society and that the societies of the former socialist bloc have a bigger problem with accepting whistleblowing as something evaluated positively.²²

Therefore, in order to promote a culture of reporting irregularities it is necessary to build a culture of acceptance for whistleblowers. Common actions must be undertaken both by business owners, who should raise awareness among their employees, and through the involvement of trade unions which should guard the regulations introduced by employers.²³ Worthy of note are also the results of the conducted research, which shows a clear difference between a mostly pos-

²¹ *Raport Compliance w Polsce 2021. Systemy zarządzania zgodnością: między pandemią a nowym ładem*, Compliance Institute and Wolters Kluwer Polska, under the auspices of Viadrina Compliance Center at the European University Viadrina, 2021.

²² D. Tokarczyk, *Wprowadzenie. Whistleblowing jako problem prawny, organizacyjny (korporacyjny) i etyczny* (in:) *idem, Whistleblowing i wewnętrzne postępowania wyjaśniające*, Warsaw 2020.

²³ A. Wojciechowska-Nowak, *Skuteczna ochrona prawna sygnalistów. Perspektywa pracodawców, związków zawodowych oraz przedstawicieli środowisk prawniczych*, Batory Foundation, Warsaw 2014, p. 3.

itive evaluation of reporting bribery to a supervisor and the share of respondents, which is lower by as many as 39 percentage points, that they would do the same themselves. This difference in approach shows that respondents are aware that whistleblowing, although justified by the ethical and legal norms they know, may involve negative consequences for the whistleblower. The respondents admit that moral rightness lies with whistleblowers, that if they act in good faith and in the public interest they deserve broad legal protection, but nevertheless they themselves would often resign from reporting an irregularity. It is not only about the consequences from the employer but also the social aspect and reactions of co-workers to the report, such as ostracism from co-workers, isolation, verbal and non-verbal signs of aversion as well as a sense of lack of acceptance.²⁴ These concerns are clearly visible in the respondents' answers to the question of what, in their opinion, would be the reaction of their co-workers to a whistleblower reporting corruption at the workplace to the employer. The three most popular answers, chosen by 55% of the respondents, included only those with negative overtones. Definitely fewer people (15%) expressed a belief that a whistleblower would enjoy rewarding reactions, including as few as 2% of respondents expecting the defence of the whistleblower against the supervisor. Expectations of 10% of the respondents were that the attitude of the people towards the whistleblower would not change after his reporting a breach of law committed by a co-worker.²⁵

Considering the results of the research described above and the fact that the most sceptical group about the treatment of a whistleblower by co-workers has turned out to be students, who in nearly 70% have responded that there would be ostracism at the workplace,²⁶ it seems that relevant education should be carried out not only in businesses but also at schools. It would be advisable to raise awareness about whistleblowing in society and form its positive image early enough, as well as to start education about values, and show the difference between just and unjust behaviours and about social attitudes.²⁷ I believe it is necessary to introduce in curricula, at all levels of education, ethics lessons, which would discuss the topics of common good and attitudes towards law and civic life.²⁸

²⁴ D. Głowacka, A. Płoszka, M. Szczaniecki, *Wiem i powiem. Ochrona sygnalistów i dziennikarskich źródeł informacji*, Warsaw 2016, pp. 27–28.

²⁵ G. Makowski, M. Waszak, *Gnębieni, podziwiani i... zasługujący na ochronę. Polacy o sygnalistach. Raport z badania opinii publicznej*, Batory Foundation, Warsaw 2019, https://www.sygnalista.pl/wp-content/uploads/2019/06/Internet_Raport_sygnalisty_12-06.pdf (accessed 7 April 2022).

²⁶ *Ibidem*.

²⁷ According to the interpretation of Andrzej Powałowski, justice in business activity is understood as business owners complying with the requirements of the applicable law (just means in accordance with law). See A. Powałowski, *Sprawiedliwość społeczna a wsparcie udzielane przedsiębiorcom* (in:) *Aksjologia publicznego prawa gospodarczego*, A. Powałowski (ed.), Warsaw 2022.

²⁸ G. Makowski, M. Waszak, *Gnębieni, podziwiani...*

Poles' approach to awarding whistleblowers is equally interesting. A report about compliance in Poland shows that nearly 60% of the respondents rejected the idea of awarding whistleblowers for providing information.²⁹ Despite such a negative approach in Polish society, I believe that introducing awards for whistleblowers would be advisable in order to popularise whistleblowing. In my opinion, however, such measures should be introduced only after conducting appropriate social campaigns about whistleblowers. It is worthy of note that whistleblowing awarding works well in the US and UK.

An awarding system shows how important is the whistleblowers' role in disclosing, investigating and charging illegal and unethical behaviours. Financial awards help reduce reporting persons' fears of community ostracism (and the related need to change the job) and help raise awareness among other workers by promoting ethical behaviours and those aimed at the good interest of the business.³⁰ Let us note that owing to whistleblowers and information provided by them it is possible to minimise the negative effects of illegal and unethical behaviours.

To summarise the above considerations, let me note that it is necessary for Poland to undertake actions as soon as possible to implement the EU Directive aimed at protecting persons reporting breaches of law. Unfortunately, in my opinion, the mere implementation of the PPWRBL Act will not suffice to increase the popularity of whistleblowing. In order to increase the number of reports made by whistleblowers it is requisite to start a social campaign aimed at raising awareness among Poles about whistleblowers and acting in the public interest. Such actions should be undertaken, among others, by social organisations. Undoubtedly, it will also be necessary to launch an information campaign in organisations, institutions and schools. Taking account of the variety of target groups, i.e. workers, their superiors and management, taking account of the varied education, industry and age (in the case of schools), it is crucial to provide information which is most adequate to their role in the whistleblower protection policy. The basic goal must be to disseminate knowledge about new regulations, including what and whom to report to, what reports are legally protected, what such protection involves and the fact that, by reporting irregularities, we act in the public interest.³¹ A shift in thinking is needed here to stop treating whistleblowing as denunciation or activity aimed at revenge or obtaining some benefits by the whistleblower. In my opinion, a barrier to increasing the popularity of whistleblowing in Poland is not only the lack of appropriate regulations but also, and maybe even most of all, the Polish mentality and the stereotypes deeply rooted in the society. This is why legislation activity aimed at implementing Directive 2019/1937 should be undertaken in par-

²⁹ *Ibidem*.

³⁰ P. Chmiel, *Sygnalizowanie nieprawidłowości (whistleblowing)*, "Przegląd Antykorupcyjny CBA" 2016, No. 2, p. 42

³¹ G. Makowski, M. Waszak, *Gnębieni, podziwiani...*

allel with information campaigns to build a positive narrative around the role of whistleblowers in society.³²

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