

WHISTLE BLOWING IN THE PUBLIC SECTOR OF ROMANIA

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Abstract: The paper presents the phenomenon of whistle blowing in the public sector and tries to explain its complexity. The concept has different significance in various countries, some of them perceive the phenomenon and whistle blowers as moral, and others have an opposite image. The article will present the concept, the regulation and procedures from different countries, in order to protect those involved, with a focus on Romanian case. We also analyzed the connection between encouraging or discouraging whistle blowing and the level of ethics in a public institution. There are a lot of questions in the professional literature we tried to give an answer to, making an exploratory research. We presented in the paper our perspective regarding this phenomenon and how it should be integrated in the management of a company or public institution, ensuring a higher control on it.

JEL classification: M12, M14

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1. INTRODUCTION

The *main objective* of the article is to clarify the concepts of whistle blowing and whistle blower and understand if the phenomenon is acceptable or unacceptable from an ethical perspective and if the perception on the phenomenon is general or dependant on the cultural context in each country.

The collateral objectives, deriving from the research, are:

- Presenting contradictory opinions regarding whistle blowing
- Explaining perceptions on whistle blowing with the help of the cultural environment
- Identifying advantages and disadvantages of the phenomenon
- Offering a solution for the management of public institutions
- Integrating the concept in a holistic view at a national level

The *methodology* of the paper include analysis and synthesis of various theories and studies related to whistle blowing in the public sector, comparison between theories and the contribution of authors is focused on the delicate problem of finding a solution to integrate this at the level of public management and in a more organized way.

First, we will try to present some of the definitions offered for the concept whistle blowing in the literature and analyze them.

Johnson R. A. (2003) highlights four aspects of whistle blowing:

- an individual act of someone that makes some information public;
- the information is brought in the attention of outside individuals or organizations that will make the subject of public interest;
- the information has to be related to something wrong that happen or could happen in that organization;
- the whistle blower is an employee or a former employee, not a journalist or an outsider.

A definition used in a lot of domains is that of Near and Miceli (1985, p. 4), according to whom, whistle blowing is “the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action”.

The definition looks simple and quite accurate, but the problem becomes more complex because whistle blowers are human beings having their own motivations of acting in this direction, when they see something wrong. Whistle blowing does not have to be a disclosure for their own benefits or as revenge, because they were fired or did not get what they wanted.

The main moral reason of whistle blowing should be the lack of power of the person doing this, because he or she needs to reveal the wrongdoing in a company or institution to a higher authority that has the power to change something.

Arszulowicz and Gasparski (2011) argue about the internal whistle blowing and the external one. The former is when the observer reveals something to a higher authority inside the organization and the latter is when the whistle blower goes to media, police or other public authorities. In many cases, the internal whistle blowing is followed by the external type because the problem is not solved.

The two authors try to build a theory of whistle blowing, starting from the well known theory of De George (1986), who wrote about whistle blowing as morally prohibited, morally permitted and morally required. This theory partially responds to our questions related to the morality of this act. The term has historically roots in USA, so many countries use terms that have a negative connotation or simply do not translate this term. Informant for example is not a positive term, being more close to a traitor.

De George proposed five criteria according to which a whistle blowing action is considered permitted or required:

- the organization will seriously and considerably harm the public through the products or services offered;
- the employee that is aware of the threat must reveal the problem to his or her supervisor;
- if the supervisors do nothing, the employee may reveal the problem to the manager or the board of directors;

These three criteria present the cases in which whistle blowing is considered morally permitted. The last two criteria show the cases in which the phenomenon is morally required:

- the employee has evidence that the threat is very serious and an outsider will be convinced by the information revealed
- the whistle blower must really believe that going public is the only viable solution to make things right and it is worth risking the job and the image.

As a basic model, the theory of De George is good, but it led to a lot of critics and debates in the professional literature. Arszulowicz and Gasparski, with the opinion of whom we agree consider that the criteria proposed by De George are discouraging revealing wrong behaviors in organizations.

The terms used – permitted and required – are very confusing from a moral point of view and may determine observers not to do anything, even if they see something wrong. In our opinion too, De George's theory can lead to a higher number of silent observers and this reality cannot be a good thing for the ethical climate in an organization.

The second and the third criteria bring us in front of the question: "Why should the problem stay inside if it is so serious and of public interest?" Will whistle blowers be protected? Maybe the supervisors are also aware of what is happening there and in this case, an internal whistle blowing will make things worse.

At the end of the critics brought to the theory of De George that has the merit to be a starting point for all the other models, Arszulowicz and Gasparski came with Universal Dignity Theory of Whistleblowing (UDTW). They consider that whistle blowing is at the same time permitted and required and present two conditions for an ethical whistle blowing:

- there are serious evidence of illegal or unethical actions done by an organization, that violate the dignity of its stakeholders;
- the lack of knowledge in the organization or the failure in taking the right measures.

The exception in which someone is exempted to reveal the problem is in the case of having information that there will be high risks and a potential retaliation. There are situations in which the law has some flaws and it is not able to offer the adequate protection for whistle blowers. Anonymity should be assured but there are countries that do not offer protection for them. The authors themselves recognized some of the limits of the theory, because even if you feel exonerated, there are situations that put the lives of others in danger and you should reveal the problems if you are aware of them.

In our opinion, the term dignity is not the most appropriate, because it does not necessarily cover all possible situations. Sometimes, illegal actions affects more than just dignity, they affect life, so, we think there is more than just dignity in an ethical whistle blowing act. Then, there are a lot of lawsuits in whistle blowers are motivated by a financial gain or they want revenge and they are not moral and do not think of anyone's dignity. But the authors say this is not a proper reason to ignore the real problem brought publicly by those people.

Kizza (2013) offers us some insights in the complex and delicate problem of whistle blowing, strengthening that things are not just black or white. There are many unreported unethical acts because people fear of the consequences, or, at the opposite side, there are whistle blowers that should not be taken serious, because they want to harm someone in the company or have some revenge. There are also whistle blowers that are ignored by the public because they reveal something bad in the organization but they keep being members in the board. And to complicate even more this problem, there are cases, as we said above, in which whistle blowers are not driven by ethics but by revenge or gain, but the problem revealed is real and should not be ignored.

We think this quote from Kizza (2013, p. 72) is relevant: "*Are whistle-blowers living saints who fight evil to bring serious problems to light, thus contributing to the protection of the public's welfare?*" The small number of whistle blowing cases can be explained by different and opposite reasons: fear of happening something bad after revealing the actions or the comfort of having some benefits if they do not go public. And these motivations are not related to ethics or dignity but neither those of people who reveal something because they will have benefits and not for the others' safety or interests.

2. THE SIGNIFICANCE OF WHISTLE BLOWING IN THE PUBLIC SECTOR

In our opinion, whistle blowing in the public sector should be encouraged and this can be done by implementing the appropriate laws. Transparency International published in 2013 a report regarding the legal framework for the protection of whistleblowers in the member states of European Union.

The report groups the countries in three categories:

- advanced, when regulations in a country include comprehensive provisions and procedures for whistleblowers in the public and private sectors. The report mentions here just four countries: Luxembourg, Romania, Slovenia and UK.
- partial provisions and procedures for whistleblowers in countries like Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Poland, Sweden.
- None or very limited in countries like Bulgaria, Finland, Greece, Lithuania, Portugal, Slovakia, Spain.

What is interesting in this report is that Romania became in 2004 the first country in continental Europe that implemented a law in order to protect whistle blowers from retaliation, no matter if they reveal the actions to their supervisors or to some external parties like journalists or other organizations.

The report also presents a synthesis of the terms used for whistle blowers and their connotation, positive, negative or neutral. This is very important, because we can understand how this phenomenon of whistle blowing is seen in different cultures. For example, the country using just positive terms is Romania, which calls whistle blowers “*avertizori de integritate*” (those who give integrity warnings), the other countries are presented with neutral terms, negative (the Bulgarian, the Czech, the Finnish, the Greek,), no specific term (Irish, Luxembourgish) or a mixture between positive, negative and neutral terms.

The Law no 571/2004 regarding the protection of whistle blowers in Romania presents the cases in which a person can reveal information:

- corruption acts, fraud and other violations at work;
- violations of financial interests of European Communities;
- preferential or discriminatory practices or treatment;
- conflict of interests and other incompatibilities;
- abuse in using material or human resources;
- incompetence and negligence at work;
- subjective evaluation in the process of hiring, firing or promoting people;
- issuance of official documents to serve interests of some persons;
- bad or fraudulently management of public and private patrimony;
- violations of other regulations regarding the principle of good administration and protection of public interest.

The persons or organizations to which whistle blowers can reveal the violations are: the supervisor of the person that did something wrong, the manager of the institution in which the whistle blower knows there is something illegal or unethical, to the commissions in charge with the conduct of employees in that institution, judicial institutions, institutions dealing with integrity and conflict of interests, some commissions in the Parliament, media, professional organizations or trade unions, nongovernmental organizations.

The measures of whistle blowers’ protection include assuring anonymity when the person accused of violations is the direct or indirect chief of them or is responsible for the control and evaluation of the whistleblower.

These regulations make us proud as Romanian citizens, but most important would be to promote these provisions in public institutions, because there are a lot of people, being afraid of revealing what they know. In our opinion, the anonymity should be granted to all whistle blowers, in order to avoid retaliation against them.

Guyer and Peterson (2013) explain the differences between USA and Europe and even focus on the wrong translation of the term in a lot of countries, because of a different cultural context. A lot of terms refer to snitching, being an informant, having a negative or a neutral meaning. The authors present the image of whistle blowing in UK, France, Germany and Italy. If UK is a pioneer in the matter of protecting whistleblowers, in Germany, whistle blowers are seen as informants and there are just partial regulations regarding them (for example, there are anonymous hotlines for reporting violations). In USA, there is also a reward program that encourages people to blow the whistle, meanwhile in Europe, just UK debated this aspect, even if it did not implement it.

According to Transparency International, corruption in Romania is a real problem, the average score on a scale from 0 (very corrupt) to 100 (very clean) being 44 in the last years. So, the existence of a mechanism for protection of whistle blowers can be used as an advantage to reduce corruption. But, the regulations must be also promoted and whistle blowers encouraged revealing corruption acts in public institutions.

Brown (2008) made a research on the impact of whistle blowing in the public sector and he got to the conclusion that “whistle blowing is widely recognized across the public sector as being important to achieving and maintaining public integrity”. The author also analyzed the reasons for revealing or not revealing wrongdoing in an organization. The most important fact was confidence that something will be done or not after reporting and the feeling of protection against retaliation.

Ravishankar (2003) considers that internal whistle blowing should be encouraged by managers in companies or by government because it can prevent the deterioration of the organization’s image. The author appreciates that there are some barriers in front of internal whistle blowing: lack of trust in internal authorities, fear of retaliation, fear of being considered snitches. The methods that a manager should use to reduce these barriers and encourage whistle blowing actions are:

- a strong policy because protection is important but there also should exist the appropriate mechanisms for reporting, like hotlines or some mail boxes;
- creating a department or delegating an expert in the human resources department dealing with all reports received from whistle blowers;
- there should be a strong connection between codes of ethics and the procedures for whistle blowers’ protection;
- managers should encourage whistle blowing and express this attitude in the organization;
- a prompt answer to all complaints and reports;
- an open policy of managers regarding whistle blowing;
- regular surveys among employees to see how they perceive the ethical culture in the organization.

Transparency International appreciates that “whistleblowers play a crucial role in saving resources and even lives”, even if there are a lot of risks that come along with revealing violations in an organization. The solution seen by the international organism is that of creating mechanisms for internal reporting and recognizing retaliation against whistle blowers as a form of corruption.

3. CONCLUSIONS

In Romania, there is a law that protects whistle blowers but it is not very well promoted and even if the term used for defining them has a positive meaning, the number of whistle blowers in a year is very low. In our opinion, the main reasons for this are the following:

- lack of trust that the law will protect them if they will face retaliation;
- passivity of citizens in a corrupted environment;
- fear of retaliation, fear of losing their job, especially when there is still an economic crisis;
- the image of informants that existed in the communism, because if officially, the term used is positive, whistle blowers may be seen as people with lack of loyalty or people revealing something just because that is in their interest.

The gap between theory and practice or between the regulations and reality is very high, in part because of fear or passivity, in part because of the lack of promotion of the rights whistleblowers have and the protection offered to them against retaliation. In our opinion, even if politicians do not have an interest in encouraging whistle blowers acts, media should do more about it, because in many cases, it proved its power.

As Transparency International also states in its report from 2013, the law is very strong in theory, but in reality, employees in public institutions are not aware of the law and public institutions do not integrate these regulations in the internal provisions.

It is very bad that neither media does more for promoting whistleblowers and the law, the Romanian or the English term for whistleblowers are not known by most of the people. And here, we consider there is a real need for introducing an ethical discipline in schools to create an ethical education and after that a real ethical culture that in time will reduce passivity of citizens, making them more active regarding the fight against corruption and the knowledge of the laws protecting those who give integrity warnings.

We appreciate that it is necessary to integrate policies and procedures related to whistleblowers in an ethical management at the level of the public sector. Of course, this is not easy to do, because people are reluctant to change and there is a lack of knowledge on ethics and ethics management.

The measures proposed by us in order to increase the number of whistle blowers and thus reduce corruption or other violations of the law in the public sector, are the following ones:

- if we want to make a sustainable improvement regarding ethics in public sector, we will have to start from education, meaning we have to create an ethical education in schools, determining future adults have a pro active attitude towards these aspects;
- ethics management should be integrated in all public institutions but not in a formal way, just on papers. Ethical codes, ethical committees, ethical trainings, ethical procedures should exist and be transparent for all members in that community;
- whistle blowers regulations should be integrated in official provisions of a public institution, encouraging people to reveal violations if they are aware of, especially in Romania, where there is no difference between internal and external whistle blowing;
- starting campaigns for promoting ethics, ethics management and whistle blowing regulations;
- correlate whistle blowing procedures with other tools from ethics management like ethical codes or ethical trainings, in order to enhance the results and increase the ethical level in public organizations;

- media should promote the cases of whistle blowers and the rights granted by the law;
- extend the protection of whistle blowers from the public sector to the private sector in Romania.

We have more than ten years since the law for whistle blowers' protection exists in Romania but the progress and the figures of whistle blowers are still low. We can conclude that this is not encouraging and there is a need to change the situation. In a report of Transparency International from 2009, there is stated that Romania has the most comprehensive provisions, covering also situations like a refusal to sign a document and though, violating the law.

According to the report, even if in Romania, whistle blowers are protected by law, almost 40% of them suffered a form of retaliation and this figure increases the fear and the lack of trust in the mechanisms that should protect them. If there is retaliation, the whistle blowers will receive remedies like return to job (if they were fired), salary compensation and other facilities.

These mechanisms should extend to the private sector too but there are lots of confidentiality agreements between the employer and private employees and a potential reform have low chances to become true in this sector, people in the sector being protected just by the labor code. The study of Transparency International revealed that the majority of public institutions did not harmonize their internal regulations with those provided by the Law no. 571/2004 regarding whistle blowers' protection.

According to a study of KMPG (2014), whistle blowers are "a critical component of fraud detection", 54% from the cases of fraud having a tip-off behind, meanwhile the global average is 19%. So the things in Romania are not so bad, but there is room for a lot of improvements related to ethics management in public sector and protection of whistle blowers as a mechanism for reducing corruption.

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