

# The Role and Importance of the Integrity Public Advertiser in Professional Ethics

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**ABSTRACT:** The public integrity warning appeared more than 30 years ago in America and the western states, having the fundamental role of protecting the existing ethical and moral values at the level of public and private institutions. Although in the literature, the integrity warning, has been defined as a person who discloses to the public or the authorities immoral or illegal activities carried out in a government department, a public or private organization, or a company, through this paper, we intend to emphasize that the activity of the whistleblower contributes directly to the promotion at the institutional level of professional ethics and observance of procedural rules in the behavior of each individual at the level of each institution, respectively its direct involvement in the supervision and concordant support of internal procedures and activity in accordance with the applicable legislative and normative framework; moreover ensuring that this regulatory framework is respected and complied with.

**KEY WORDS:** integrity, ethics, morality

**JEL Code:** P48, P36, K49

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## Introduction

Supporting and promoting tools that support the moral and ethical values of our behavior in professional activity (Rotaru 2005,38), we consider it a priority at the level of each institution, and supporting through legislation

the obligation of the internal existence of the public integrity warning is a fact. Furthermore, information that the activities covered by the alert are those that would protect the aspects of immorality and / or illegality that are offered by an integrity alert and that can be of several types: violation of the law, violation of the rules or regulations of a company a threat to the public interest or public security, as well as fraud or other forms of corruption. People who decide to become integrity warner's by specialization can choose to support truthful information in two ways: internally or externally. Internally, a warning expert can report behavioral and legal irregularities observed to others within that organization, such as the senior manager. Externally, a whistleblower who is involved in either a public or private institution can bring the allegations to light by contacting external institutions, such as the government, law enforcement or the media.

To understand what the whistleblower is and what / whom he represents, we start from the definition provided by law, namely that the whistleblower is an informant, a person who brings to the public's knowledge of immoral or illegal activities in a government department, a public or private organization or a company. The warning did not appear recently, it was known more than thirty years ago in the US and other Western states where the institution of the "integrity warner" operates, namely the fact that people who inform voluntarily and in the public interest about committing acts of immorality and/or corruption, non-compliance with the rules regarding the declaration of income and property and violation of legal obligations regarding the conflict of interests.

Countless examples have been known throughout history in which the illegalities of various organizations have been revealed by people who, due to their moral character, did not want to admit when they saw how the rules were violated. In many cases, those who became so-called "integrity warner's" were subject to certain risks. It is noteworthy that globally there are few states that have specific legislation on the public health warning. By promoting the European Union since 2018, it has succeeded in transposing, through the Directive, the Directive on the Protection of Individuals Reporting Infringements of Union Law, into the Justice and Home Affairs Council (JHA) in Luxembourg. This Directive sets out clear mechanisms and obligations for employers.

According to the legal provisions, companies with more than 50 employees or an annual turnover of more than EUR 10 million have the obligation to provide for an internal procedure regarding the activity of whistleblowers, respectively the reports submitted by whistleblowers, thus avoiding possible abuses that could appear. Moreover, the legislation also stipulates for the institutions of the state and regional administration, as well as for all the administrations of municipalities with more than 10,000 inhabitants, the obligation to apply the procedures regarding the function of the public integrity warning. Procedures include protection mechanisms to be established and to be included:

- ✦ Clear reporting channels, inside and outside the organization, to ensure confidentiality;
- ✦ A three-tier reporting system consisting of:
  - ✓ internal reporting channels;
  - ✓ reporting to the competent authorities, if the internal channels do not work or it would not be reasonable to assume that they will work (for example, if the use of internal channels could compromise the effectiveness of the investigative actions taken by the responsible authorities);
  - ✓ reporting to the general public or the media if no appropriate action is taken as a result of reporting irregularities through other channels or if the public interest is exposed to imminent or obvious danger or irreversible damage;
- ✦ The obligations of the authorities and companies to provide feedback, responding to alerts' reports and taking action after them within 3 months if the more alert has used national reporting channels;
- ✦ Prevention of the risk of retaliation and effective protection: all forms of retaliation are prohibited and should be sanctioned. If the whistleblower is the victim of retaliatory measures, he or she should have access to free counseling and appropriate remedies (e.g. measures to end harassment at work or to avoid dismissal). In such cases, the burden of proof will be reversed, and the person or organization subject to the alert must prove that his actions do not constitute retaliatory measures against whistleblowers. Warner's will also be protected in legal proceedings, in particular by disclaiming responsibility for disclosing information.

In order to better respond to the pragmatic situation, the above-mentioned directive provided for three levels of protection of whistleblowers, respectively those who make public violations of the law among public institutions, as well as those who work in the private sector. A first level of protection refers to the establishment of internal mechanisms in organizations. Respectively in the situation where the whistleblowers can transmit the information, in confidence. A second level establishes filters for this information to be transmitted to the authorities in real time. If these two levels do not work, the third level allows the alarms to go public with this information, bypassing the internal channels. In this case, they will be protected from possible sanctions by employers. Due to the fact that the activity of prevention, correction of deficiencies and direct involvement to stop them, is often marginalized by some decision makers, integrity warner's risked dismissal, demotion or other punishments. Following this directive, national authorities will be required to train their employees and dignitaries on how to react to whistleblowing. The directive 2018/0106(COD), approved since 2018, states that Member States will have two years to introduce the provisions of the Directive into national law, which in terms of both morality, but especially the protection of those who respect moral, ethical and professional values it is an important step towards normalcy for society.

### *1.1. Methodology of scientific research*

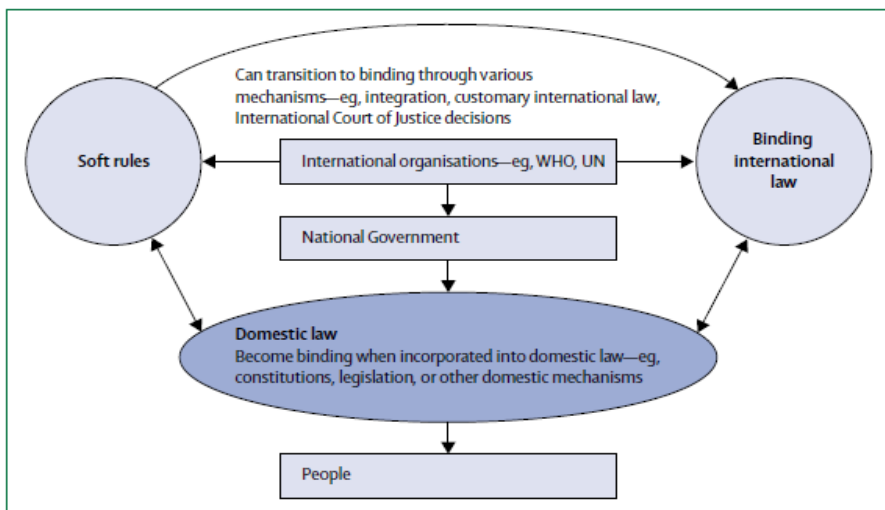
To substantiate this paper, we used observation and examination tools, research methods based on the basic principles of scientific research, and also created procedures based on factual analysis, as a result of significant practical experience and intensive documentation at the level of the specialized literature existing internally and internationally.

### *1.2. Research results*

The transposition of Directive 2018/0106 (COD) into the national legislation of each Member State has been and is a major challenge, given that cultural and political factors are a major obstacle to the effective protection of whistleblowers. Moreover, the term "integrity warning" is in many cases associated with the idea of informant, traitor, or caster. In most states, there seems to be a widespread unwillingness to adopt and actually implement integrity warning legislation. The Law on Notifications may be replaced by

other laws prohibiting the disclosure of information, and in many states, defamation and defamation regulations discourage whistleblowers from making complaints. In many cases, existing legal provisions can be a starting point for extending the rights of whistleblowers to file complaints and to be protected. In some of the states included in the study, a national law was identified as conducive to creating a legal framework that would facilitate complaints from whistleblowers and protect them. In Bulgaria, a conflict of interest law could be used as a launching pad for such legislation, and the labor codes of the Czech Republic and Italy have provisions that can be used as access points for extended legislation on whistleblowers. However, the legal provisions will become effective only if the general perception of integrity warner’s changes in a positive way. A recent study in the Czech Republic seems to indicate the following: respondents agreed that integrity warnings are necessary, but face many obstacles and often do not end well for them. Improving the environment surrounding whistleblowers in the assessed EU Member States will require measures on both legal and cultural shortcomings and barriers that could impede the implementation and enforcement of whistleblower regulations. Country-specific recommendations were identified for each case study.

Figure 1: Relationship between domestic and international law



Source: *Gostin et al. 2019*

Legal provisions will only become effective if the general perception of whistleblowers changes in a positive way. But in order to be able to understand public integrity (Rotaru 2019, 201-205), and its direct connection with morality and ethics, we start from defining public integrity, respectively public integrity presupposes the cumulative fulfillment of three conditions:

- a. the incorruptibility of the decision regardless of its beneficiary;
- b. observance of the principles of transparency and competitiveness, ethics and morality;
- c. good administration in terms of economy, effectiveness and efficiency.

In order for these conditions to be easily and without applying a checklist for each act drawn up or decision taken, the “safety nets” are: compliance with the procedures without derogation; ensuring the transparency of administrative procedures; avoidance of preferential or discriminatory practices; adopting solutions that achieve their goal with the lowest consumption of resources; following the legal prescriptions; avoiding conflict of interest; recognizing limits and declining competence and respecting the underlying principles.

Warning in the public interest is defined as the notification made in good faith of any act that involves a violation of the law, professional ethics, or the principles of good administration, efficiency, effectiveness, economy and transparency. Its role is to establish in the law to whom it is addressed and under what conditions a person can be considered a warning. The way of definition requires the complex analysis of the factual situation in order to establish the relationship between the quality of the public sector employee, the reported deed, the place of the deed and the way of reporting it.

An edifying example is given by “a person employed in a hospital is a whistleblower of integrity if he signals a fact of granting nursing care preferentially or without registering the patient in the registers. A patient in the same hospital is not a warning of integrity even if he signals the same thing”. The whistleblower is a person who notices in good faith violations (Rotaru 2016, 29-43) of the law and the code of conduct, and who may be a civil servant - the person invested, by appointment to a public office within the structure of a public authority or institution, with prerogatives in exercising their competence, in public power, with the aim of achieving a public interest, contract staff, according to the Labor Code, and staff who

carry out their activity based on special statutes, doctors, teachers, police, court clerks, priests, etc.

Integrity warner's often face retaliation from those accused of alleged illegality. Therefore, in many countries there are laws for the protection of whistleblowers, but this form of protection cannot protect them from all the problems they will face. Integrity advocates may face multiple actions and various forms, but they must remain morally, ethically and professionally integrated.

Integrity whistleblowers are persons appointed from among internal employees, or are special employees in this position, having as professional tasks the reporting of a misconduct, of a colleague or superior within the company through anonymous reporting mechanisms such as special telephone helplines (Mit, Wilcox, Gadlin 2009). It is interesting to study the circumstances in which people report or act on the spot to stop illegalities or unacceptable behaviors. In general, people are more likely to take action on illegalities if there are complaint systems, which offer not only pre-dictated standard options, but absolute flexibility and confidentiality (Rowe 1993).

Reporting procedures and mechanisms addressed at the institutional level, such as those mentioned above, help to promote a climate in which employees are more likely to report or seek guidance on actual or potential illegalities, without being exposed to certain adverse consequences. , but on the contrary addressing the direct aspects of behavioral ethics. The ISO 37001 standard, which refers to anti-fraud management systems, presents "anonymous reporting mechanisms" as one of the criteria, but from our point of view we believe that the working procedure should be in a normal, friendly and fair environment both morally and ethically.

In countless cases, external integrity warnings are used, whose main role is to report employee misconduct to other external persons or entities. However, in these cases, depending on the nature of the information and the severity of the facts, whistleblowers may report deviations to local and national lawyers, the media, the police, security guards or anti-corruption / anti-fraud agencies. It is worth mentioning that for the selection of the internal warning, especially the external ones, an essential criterion is given by the human moral character of the individual who will be appointed in this capacity of warning.

Being a relatively new process for some states, this type of warning involves the use of an external specialized agency to inform deviations of senior management or high-ranking officials, who have a lot of influence, without revealing the identity of the whistleblower. This is a relatively new phenomenon and was developed due to the lack of protection for integrity warnings. Examples of such organizations include Whistleblowing International Network or International Whistleblowers . Moreover, private companies and public institutions use specialized services in which the whistleblower is an anonymous person, including the whistleblower. This is possible through free calls to specially configured phone numbers to avoid recording the origin of the caller's call, or through web solutions that apply asymmetric encryption solutions. However, the warning activity in the private sector differs from the public environment in several respects in the warning activity in the public environment, namely: in the private environment the warning of irregularities in the private sector is generally not as visible as in the public sector, on the one hand due to the different organization of work, and on the other hand the interaction with citizens. However, warning activity in the private sector is much more widespread and suppressed in today's society (Castegnara 2003) because private corporations usually have stricter regulations that suppress warnings. An example of a private sector warning is when an employee reports irregularities to a manager or external entities, such as the police or anti-fraud agencies. Situations in which a person reports irregularities can range from inappropriate behavior (e.g. sexual harassment, vulgar language) or theft to money laundering or stock exchange fraud allegations. Reporting illegalities in the private sector is not so well known and often does not appear in the news, except for human rights violations or the exploitation of workers (Kelsey 2012).

Even though there are laws and organizations in many countries that protect whistleblowers, many employees still fear for their jobs because of threats from their employers or other parties involved (see blackmail). In an effort to overcome these fears, the United States passed the Dodd – Frank Wall Street Reform Act in 2010 to protect whistleblowers, which, among other things, provide much greater incentives to make disclosures. For example, if an alert provides information that could be legally used to



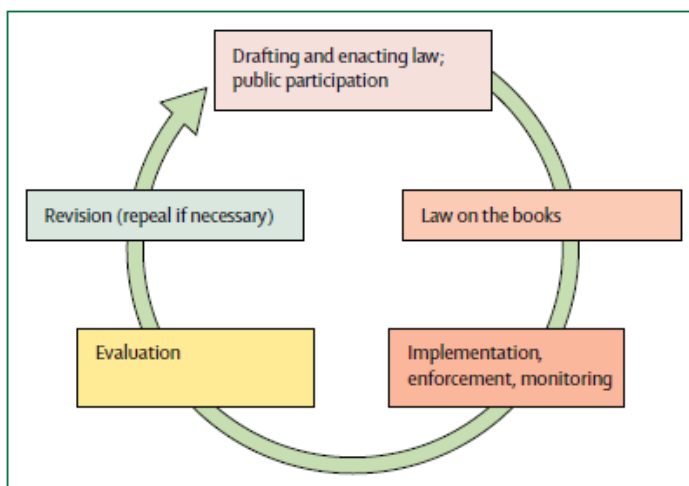
recover over one million dollars, then they could receive between 10-30% of the amount (Ferrell 2014).

Despite the government's efforts to help protect whistleblowers from integrity, they need to weigh their options well. Either expose the company and enjoy moral and ethical respect from others without losing the job; either expose the company and lose their job, reputation and even the opportunity to be hired again. According to a study from the University of Pennsylvania, out of three hundred informants studied, 69% of them were either fired or forced to retire after reporting company irregularities (Ferrell 2014).

Following numerous complaints about the protection of whistleblowers, the European Commission has committed itself to taking steps to protect them, including through public debate, as was the case in 2016 with the event "Media Pluralism and Democracy". Furthermore, strengthening the protection of whistleblowers embodies the Commission's commitment to placing a stronger emphasis on ensuring compliance with EU law, as set out in its 2016 Communication "EU Law: Better Enforcement for Better Results".

The activity of the warner does not consist only of having exceptional professional skills, but especially, as mentioned in the paper, his moral character, as well as his permanent mental state.

Figure 2. Features of an effective legal environment



Source: Gostin et al. 2019

There are few studies on the psychological consequences of the integrity warning. However, the experiences they go through can have negative effects on their health. When they try to report irregularities, they often run into a wall of silence and hostility from management or colleagues (Peters 2011) work, acute anxiety, nightmares, flashbacks and negative thoughts (Farnsworth 1987) Some of them suffer from depression, and suicidal thoughts can occur in about 10% of them. (Lennane 1993; Bjørkelo 2013). The related symptoms have many of the characteristics of post-traumatic stress disorder, although it is not always clear whether the trauma experienced by integrity more alert reaches the threshold required for diagnosis (Bjørkelo 2013).

The psychological impact on the warnings can be accentuated by the bad intentions of those who are accused of illegalities. For example, those who are accused may try to destroy the whistleblower's career by releasing false information (De Silva 2014). This technique, called gas lighting, is a common and unconventional approach used by organizations to "manage" employees who are struggling with their problems (Lund 1977). This technique involves manipulating informants by "planting" seeds of doubt that could make them doubt their memory or mental health. In extreme cases, a manager may convince others that the alarm is not mentally sound (Lennane 2012).

The integrity warning has been regulated in Romania since 2004, by a special law on the protection of integrity warnings, respectively "Law no. 571/2004 on the protection of personnel from public authorities and institutions that reveal violations of the law". This is often called the "Romanian law for the protection of whistleblowers", and was the first country in the continental legislative system to issue a comprehensive law on the protection of whistleblowers of integrity (Stratula 2016). However, it should be noted that the law on the protection of whistleblowers applies only to public sector staff, while private sector employees are not protected by this law. Private sector employees may in some cases be protected by general labor law or witness protection legislation when they face retaliation or obstruction due to disclosed information (such as abusive dismissals or if they are called as witnesses for report offenses or other violations of the law) (Stratula 2016).

Through the Protection of Persons Reporting Infringements of Union Law, within the Justice and Home Affairs Council (JHA) in Luxembourg, as well as through the quality standards maintained above, the private sector now has the legal provisions on the designation of the whistleblower within that company. Moreover, also in the directive as mentioned above in the paper, the mechanisms and clear obligations for employers are clearly specified.

It is very important to note that if the whistleblower is affected by certain reprisals, he may appeal to the courts. Many of the world's states have established a legal measure in labor law that allows employees involved the right to appeal. In countries such as Romania and Ireland, legal measures are in place to facilitate referrals and protect employees throughout the referral process. However, in Romania, legal protection regarding the public interest warning is limited to public sector employees, while private sector employees have the protection offered through the labor code. However, we believe that there should be clear rules on retaliation for whistleblowers, so that they are not left solely to the judiciary, who decides whether or not it was an unjustified dismissal, for example. In many cases, existing legal provisions can be a starting point for extending the rights of whistleblowers to file complaints and to be protected. A recent study in the Czech Republic claims that the respondents agreed with the statement that integrity warnings are necessary, but they face many obstacles and often things do not end well for them.

## **Conclusions**

Starting with May 2018, all public and private institutions in Romania had the obligation to implement at their level the standardization procedures regarding the public integrity warning and to comply with the legal legislation in force. This aspect creates a normal framework for exercising this profession (public integrity warning), and moreover the existence of this function can contribute in a balanced way to maintaining the ethical and moral values at the level of each public and / or private entity. Professional ethics is a main component of the occupation, the integrity warning, it being a main component of any occupation, a basic pillar in occupational standards. Ethical standards are essential for improving the quality of the integrity warning

activity. Moreover, job satisfaction is a major challenge for those who choose the profession of integrity warning. Respect for professional ethics and job satisfaction among whistleblowers are essential elements to the professional quality of whistleblower. Consequently, public or private whistleblowers are permanently subject to compliance with professional and moral ethics, and the exercise of the responsibilities of this occupation must be carried out below these values. From our point of view, we consider that the existence of the warning gives balance to the team at the level of public and private institutions, its role being mainly to support prevention and to determine the team to a correct, late, ethical and professional work. Moreover, we consider that the development of an occupational standard for the profession of public and private integrity warning would also delimit certain attributions of it, and would clearly exemplify the role and importance of the warning at the level of public and private institutions both nationally and internationally.

Increasing the current level of protection of whistleblowers, the proposal has a positive impact on fundamental rights, in particular:

- ✦ freedom of expression and the right to information (Article 11 of the Charter): Insufficient protection of whistleblowers against reprisals affects the freedom of expression of individuals, as well as the public's right to access information and the freedom of the media. Strengthen the protection of whistleblowers and clarify the conditions for such protection and if they disclose information to the public will encourage and allow the warning in the public interest and in the media;
- ✦ the right to fair and equitable working conditions (Articles 30 and 31 of the EU Charter): by establishing reporting channels and improving protection against retaliation in a professional context, a higher level of protection for whistleblowers will be ensured;
- ✦ the right to privacy, the protection of personal data, healthcare, environmental protection, consumer protection (namely Articles 7, 8, 35, 37 and 38 of the Charter), as well as the general principle of good administration (Article 41) will be also positively influenced, as the proposal will increase the detection of infringements and their prevention.

Alert protection standards are set out in international instruments and guidelines, such as the 2004 UN Convention against Corruption, to which all Member States and the EU are parties; G20 anti-corruption action plan; OECD report of March 2016: "Committing to Effective Whistleblower Protection" (Commitment to Effective Whistleblower Protection).

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