

Whistleblower Protection in Poland – Analysis of the Situation of Polish Officers and Professional Soldiers

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Abstract: *This paper presents the legal situation of whistleblowers employed as professional soldiers and officers of militarized services in Poland. The starting point of the study is to show the specific nature of employment in the services and to identify the risks that can occur in these organizations. The paper critically analyses the international and European Union solutions that do not regulate in any special way the protection of whistleblowers employed as soldiers and officers. The study also points out the lack of adequate protection at the level of the Polish domestic law. At the same time, it is noted that the ongoing work to implement the Directive (EU) 2019/1937 of the European Parliament and of the Council on the Protection of Whistleblowers does not seem to be moving in the direction of increasing this protection. The study also shows significant differences in solutions for the protection of whistleblowers at the national level, which may be due to the cultural and historical conditions.*

Key Words: *Labour Law; Whistleblower; Whistleblower Protection; Soldiers; Officers; Militarized Services; the European Union; Poland.*

Introduction

Whistleblowers around the world can play a significant role in the fight against corruption, transnational crime, or environmental destruction. They can also perform an important function in the field of labour law, as they can be an instrument for effectively combating problems, such as bullying and discrimination.

“Whistleblowing has greatest value when the disclosure is handled thoroughly, the whistleblower is protected, procedures are initiated to clarify whether wrongdoing exists, and the wrongdoing ceases.”¹ Some

¹ See *Guide on Whistleblowing in the Defence and Security Sector* [online]. 1st ed. Oslo: Centre for Integrity in the Defence Sector, 2020. 25 p. [cit. 2023-01-05]. Guides to Good Governance, no. 10. ISBN 978-82-7924-107-2. Available at: https://www.nato.int/nato_static_fl2014/assets/pdf/2020/11/pdf/201105-BI-GGG10-en.pdf.

states in their national laws provide special protection for whistleblowers (for example the United States of America, France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Sweden, Slovakia, and the United Kingdom). Others offer only sectoral protection (for instance) in the fight against corruption or for the public sector only.² However, even where there is national regulation of whistleblower protection, individual states generally do not provide special arrangements explicitly designed to protect whistleblowers who are soldiers or officers.³

There is no comprehensive regulation protecting whistleblowers in the Polish legal order so far. Neither does any legislation provide a definition of a whistleblower. The issue of whistleblower protection in Poland took on particular importance in the context of the 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 (known also as the Directive (EU) 2019/1937 of the European Parliament and of the Council on the Protection of Whistleblowers,⁴ hereinafter referred to as the “Directive (EU) 2019/1937”), which was adopted in year 2019. The purpose of the Directive was to introduce minimum standards to protect whistleblowers from potential retaliation and to create appropriate channels for receiving reports. Remarkably, the deadline for the Member States of the European Union to implement the Directive (EU) 2019/1937 passed on December 17, 2021. The required regulation has not yet appeared in Poland. However, an analysis of the Directive’s provisions and the draft law under consideration in Poland give reason to believe that even its transposition will not change much in terms of legal protection for whistleblowing officers and soldiers.

The paper’s starting point will be to show the specific nature of employment in military and militarized services. This will be followed by a presentation of the selected international and European Union regulations on whistleblower protection (with a particular focus on solutions for soldiers and officers). Although special attention will be paid to the Directive (EU) 2019/1937, which is the latest attempt at supranational

² See *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Strengthening Whistleblower Protection at EU Level* [2018-04-23]. COM (2018) 214 final.

³ The exception is the solution operating in the United States of America.

⁴ See *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*. OJ EU L 305, 2019-11-26, pp. 17-56.

regulation of issues related to protection of whistleblowers. The study will also point out examples of legal solutions operating in individual countries to ensure the protection of whistleblowers of militarized service officers and soldiers. As a result, the analysis will lead to an assessment of the level of current protection of whistleblowers – soldiers and officers – in Poland through the perspective of solutions adopted by other (selected) countries.

The concept of militarized service. Wrongdoing in the military and militarized services

While the definition of a “professional soldier” in the Polish legal system has been defined⁵ and is not in doubt, the definition of a “militarized service officer” may raise questions. The term “militarized service” is widely used in scientific publications, even though it is not a legal language (used in legislation). The Polish literature assumes a common understanding of this term, using it without specifying its definition.⁶ For the purposes of this study, it is assumed that the militarized service is, as a rule, a uniformed and armed formation operating on the basis of the forms and methods of military organization, established to perform tasks important from the point of view of the state, with special rules of work organization introduced to secure the smooth functioning of the formation and its units.⁷ In the Polish literature on the subject, the militarized services usually include: Police, Border Guard, State Fire Service, Prison Service, Internal Security Agency, Agency Intelligence Service, Military Counterintelligence Service, Military Intelligence Service, State Protection Service, Central Anti-Corruption Bureau, Tax and Customs Service, and (as of year 2018) the Marshal Guard.⁸ An officer of the militarized service is a person employed in the militarized service on the basis of an administrative-legal service relationship.

⁵ The term “professional soldier” is defined in *Law of March 11, 2022, on Homeland Defense* [2022]. *Journal of Laws of Poland*, 2022, item 655, and means “a soldier performing professional military service.”

⁶ See MACIEJKO, W. and P. SZUSTAKIEWICZ, red. *Stosunek służbowy w formacjach mundurowych*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 5. ISBN 978-83-255-7699-8.

⁷ See GRZEŚKÓW, M. *Nawiązywanie stosunków zatrudnienia w służbach zmilitaryzowanych*. 1. wyd. Warszawa: C. H. Beck, 2020, p. 11. ISBN 978-83-8198-315-0.

⁸ See KUCZYŃSKI, T., E. MAZURCZAK-JASIŃSKA and J. STELINA. *Stosunek służbowy*. 1. wyd. Warszawa: C. H. Beck, 2011, p. 5. *System Prawa Administracyjnego*, t. 11. ISBN 978-83-255-2580-4; and GRZEŚKÓW, M. *Nawiązywanie stosunków zatrudnienia w służbach zmilitaryzowanych*. 1. wyd. Warszawa: C. H. Beck, 2020, p. 11. ISBN 978-83-8198-315-0.

The situation of officers in the militarized services is in many ways very similar to that of professional soldiers (hereinafter also referred to as the “soldier”). Therefore, the need for their position in whistleblower protection will be considered together in the following study.

The experience of almost all countries shows that services are the site of numerous cases of abuse. Research studies on the situation in the Polish services indicate that rigid, hierarchical, and authoritarian power structures promote the development of undesirable behaviour in these structures, including bullying.⁹ Both militarized and military organizations are hierarchical, hermetic institutions with strong structures of vertical subordination. Experience shows, that despite the attempts made in this regard, permanent and effective security mechanisms have not yet been developed, there has not been a sufficiently profound transformation of consciousness and, finally, the tendency in the mentality of some of the service superiors to use abuse against subordinates has not been fully overcome. The reality of the service poses a potential threat of violating, and even infringing on freedoms and human rights. However, relatively difficult and not always effective to defend against these threats. Ongoing analysis of cases combined with practical training of those involved can contribute to reducing such behaviour in the future.¹⁰

The malfunctioning of the military and militarized services could have fatal consequences for the country. At the same time, officers and soldiers are just as exposed to reprisals from their superiors and service authorities as any other employee. Their situation is even more complicated. The service relationship of a soldier or an officer contains many elements of authority that are not present in the ordinary employment relationship. They are bound to confidentiality, all matters must be handled through official channels, and (above all) they are subject to the orders of their superiors who may decide (among other things) to transfer them to lower positions, to another locality, or to initiate disciplinary proceedings or to dismiss them from the service. Such behaviour of the

⁹ See CHRONOWSKA, E. Mobbing i dyskryminacja w środowisku pracy funkcjonariuszy Służby Więziennej. *Facta Ficta* [online]. 2021, nr 2, p. 190 [cit. 2023-01-05]. ISSN 2719-8278. Available at: <https://doi.org/10.5281/zenodo.5795703>.

¹⁰ See OKLEJAK, T. and K. WILKOŁASKA-ŻUROMSKA. *Przeciwdziałanie mobbingowi i dyskryminacji w służbach mundurowych: Analiza i zalecenia*. 1. wyd. Warszawa: Biuro Rzecznika Praw Obywatelskich, 2018, p. 5. Biuletyn Rzecznika Praw Obywatelskich, nr 5. ISSN 0860-7958.

supervisors may be a reaction to the disclosure of irregularities in the service.

The need for special regulation of these groups of employees appears necessary because of the far-reaching differences in their employment status. The closed and hierarchical structures of the services provide an environment that is particularly vulnerable to irregularities that may be masked. Therefore, in this area, a particular regulation tailored to the specifics of these organizations is particularly necessary. One way to combat such abuses is through a well-functioning system of reporting irregularities.

Selected international acts on whistleblower protection

Whistleblowing is commonly referred to as the disclosure by an employee of any reprehensible and prohibited activities taking place in institutions or workplaces.¹¹ Whistleblowing even in countries with a very long tradition of whistleblowing and whistleblower protection does not always lead to the glorification of such a person, on the contrary – the opposite – he or she is often isolated, or even harassed.¹²

In year 2003, the crucial role of whistleblowers and the need to protect them was recognized as part of international law when the United Nations adopted the Convention against Corruption.¹³ Support for whistleblower protection in international law can also be seen (among others) in the Civil Law Convention on Corruption¹⁴ and Criminal Law Convention on Corruption.¹⁵ All of the mentioned acts have been ratified by Poland. Soft law also plays an important role in this area. For example, the United Nations Declaration against Corruption and Bribery in Inter-

¹¹ See KOBROŃ-GAŚIOROWSKA, Ł. Whistleblower w prawie europejskim – ochrona whistleblowera czy informacji. *Roczniki Administracji i Prawa* [online]. 2018, vol. 18, nr 2, p. 131 [cit. 2023-01-05]. ISSN 2720-7552. Available at: <https://doi.org/10.5604/01.3001.0013.1774>.

¹² See KOBROŃ-GAŚIOROWSKA, Ł. Whistleblower w prawie europejskim – ochrona whistleblowera czy informacji. *Roczniki Administracji i Prawa* [online]. 2018, vol. 18, nr 2, p. 132 [cit. 2023-01-05]. ISSN 2720-7552. Available at: <https://doi.org/10.5604/01.3001.0013.1774>.

¹³ See *Resolution No. 58/4* [United Nations Convention against Corruption] [2003-10-31]. United Nations General Assembly, 2003, UN Doc. A/RES/58/4.

¹⁴ See *Civil Law Convention on Corruption* [1999-11-04]. This Convention was adopted in Strasbourg, France, on November 4, 1999, and entered into force on November 1, 2003.

¹⁵ See *Criminal Law Convention on Corruption* [1999-01-27]. This Convention was adopted in Strasbourg, France, on January 27, 1999, and entered into force on July 1, 2002.

national Commercial Transactions¹⁶ (while not having the force of law) has had a significant impact on the actions and attitudes of countries.

The United Nations Convention against Corruption entered into force on December 14, 2005, by the Resolution 58/4 and is the legally binding universal anti-corruption instrument. This Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.¹⁷ The mentioned Convention has been ratified by 189 countries. The protection of whistleblowers is referred to in the Article 33 *Protection of Reporting Persons*, according to which “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offenses established in accordance with this Convention.” The content of the regulation does not impose an explicit obligation on parties to implement the provisions of the stated Convention. By using the term “party to consider”, the regulation leaves it up to the states to decide on legislative measures to protect whistleblowers. However, the direction for states parties to the above-stated Convention to follow is clear.¹⁸

The Council of Europe’s instruments on whistleblowers are (primarily) the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. The Criminal Law Convention on Corruption is an instrument aiming at the coordinated criminalization of corrupt practices. It also provides for complementary criminal law measures and improved international cooperation in the prosecution of corruption crimes. In the area of whistleblower protection, the Criminal Law Convention on Corruption in the Article 22 *Protection of Collaborators of Justice and Witnesses* indicates that “Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for: a) those who report the criminal offences established in accordance with the Articles 2 to 14 or otherwise co-operate with the investigating or

¹⁶ See *Resolution No. 51/191* [United Nations Declaration against Corruption and Bribery in International Commercial Transactions] [1996-12-16]. United Nations General Assembly, 1996, UN Doc. A/RES/51/191.

¹⁷ See *United Nations Convention against Corruption* [2005-12-14].

¹⁸ See KUN-BUCZKO, M. Position of Whistleblowers in Polish Legal Order. *Przegląd Ustawodawstwa Gospodarczego* [online]. 2021, nr 2, p. 42 [cit. 2023-01-05]. ISSN 0137-5490. Available at: <https://doi.org/10.33226/0137-5490.2021.2.5>.

prosecuting authorities; b) witnesses who give testimony concerning these offences.” The Civil Law Convention on Corruption is the first attempt to define common international principles in the field of civil law and corruption. It requires Contracting Parties to provide in their domestic law “effective remedies for persons who have suffered damage as a result of acts of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damages” (Article 1 of the mentioned Convention). Also in this Convention is present regulation around whistleblower protection. According to the Article 9 *Protection of Employees*, “Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”

There have been repeated attempts to provide adequate protection for whistleblowers at the European Union level as well. Initially, the European Union legislation on whistleblowers was fragmentary and only covered areas such as financial services, transport safety, and environmental protection, where there was an urgent need to ensure that the European Union law is implemented properly.¹⁹ An example of the European Union regulation is the Trade Secrets Directive,²⁰ which protects whistleblowers who disclose a trade secret to protect the public interest by exempting them from liability. Finally, the issue of whistleblower protection has taken on particular importance in the context of the Directive (EU) 2019/1937, adopted in year 2019.²¹ The purpose of the Directive (EU) 2019/1937 was to introduce minimum standards to protect whistleblowers from potential reprisals and to create appropriate channels for receiving reports. The Directive (EU) 2019/1937 does not explicitly answer the question of whether the scope of protection against unlawful retaliation extends to officers of the militarized services or soldiers. However, if a detailed analysis of the act led to an affirmative answer to

¹⁹ See *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Strengthening Whistleblower Protection at EU Level* [2018-04-23]. COM (2018) 214 final.

²⁰ See *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the Protection of Undisclosed Know-how and Business Information (Trade Secrets) against Their Unlawful Acquisition, Use and Disclosure*. OJ EU L 157, 2016-06-15, pp. 1-18.

²¹ See *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*. OJ EU L 305, 2019-11-26, pp. 17-56.

this question, this would be an important guarantee of their positions. Indeed, the correct implementation of the European Union acts by individual countries is subject to the European Union supervision.²²

There is no doubt that the Directive (EU) 2019/1937 is intended to protect, first and foremost, people in employment relationships who perceive irregularities in their workplace. However, correctly determining the boundaries of the Directive's (EU) 2019/1937 personal scope is complicated by the fact that the Directive (EU) 2019/1937 uses the European Union definition of a worker, rather than one that applies in the individual European Union Member States. Determining the subjects to be protected under the Directive (EU) 2019/1937 may, therefore, cause significant difficulties if only because of the definitional differences operating in the various legal systems of the European Union Member States. According to the Article 5(7) of the Directive (EU) 2019/1937, "reporting person" means a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities. The condition for such protection is that the person has a reasonable basis for believing that the information contained in the application is true at the time it is made (Article 6(1a) of the Directive (EU) 2019/1937). "Work-related context" means "current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information on breaches and within which those persons could suffer retaliation if they reported such information." A person working, employed or a candidate for employment who could make a notification under the Directive (EU) 2019/1937 is defined very broadly and includes both private and public sector persons who have obtained information about violations in a work-related context, including at least the following persons: (a) persons having the status of worker, within the meaning of the Article 45(1) of the Treaty on the Functioning of the European Union,²³ including civil servants; (b) persons having self-employed status, within the meaning of the Article 49 of the Treaty on the Functioning of the European Union; (c) shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members, as well as volunteers and paid or unpaid trainees; (d) any persons working

²² See KURCZ, B. *Dyrektywy Wspólnoty Europejskiej i ich implementacja do prawa krajowego*. 1. wyd. Kraków: Zakamycze, 2004, pp. 13-17. ISBN 83-7333-444-0.

²³ See *Consolidated Version of the Treaty on the Functioning of the European Union*. OJ EU C 326, 2012-10-26, pp. 1-390.

under the supervision and direction of contractors, subcontractors and suppliers. The Directive (EU) 2019/1937 also applies to whistleblowers when they make a report or public disclosure of violations, they have obtained in the context of an employment relationship that has already ended – Article 4(2), and to whistleblowers whose employment relationship is yet to be established, where information on violations was obtained during the recruitment process or other pre-contract negotiations – Article 4(3). The protections set forth in the Directive (EU) 2019/1937 also apply to: a) persons assisting in the reporting; b) third parties associated with the reporting person who may experience retaliation in a work-related context, such as co-workers or relatives of the reporting person; and c) legal entities that are owned by the reporting person, for which such person works, or that are otherwise associated with the reporting person in a work-related context. The Directive (EU) 2019/1937 does not regulate in any special way the situation of whistleblowers who are either service officers or soldiers. Although the broad concept of a whistleblower used by the European Union legislator allows its scope to include officers and soldiers, a further reading of the Directive (EU) 2019/1937 points to significant limitations and problems that may arise in the application of protective mechanisms to precisely such persons.

Restrictions on the application of the international and European Union acts protecting whistleblowers to soldiers and officers

The above-mentioned international and European Union acts do not explicitly regulate whistleblowers employed in the militarized services and the military. The lack of such a regulation, while, at the same time, the possibility of using general regulations defining the protection of “all persons” hinders the provision of real protection for these groups of employees.

The situation of officers and soldiers is special. On the one hand, they are undoubtedly exposed (as they are ordinary employees) to whistleblower retaliation. On the other hand, however, issues related to public administration are generally not the subject of international or European regulation, due to the need to preserve a certain autonomy of states in the most sensitive areas. This is particularly noticeable in the provisions of the Directive (EU) 2019/1937, which, in recent times, is the most far-reaching attempt to regulate the protection of whistleblowers in the European countries. According to the provision of the Article 3(2) of the Directive (EU) 2019/1937, it does not affect the responsibility of the Mem-

ber States “to ensure national security or their power to protect their essential security interests. In particular, it shall not apply to reports of breaches of the procurement rules involving defence or security aspects, unless they are covered by the relevant acts of the Union.” The autonomy of the Member States is also noticeable in the Recital 24 of the Directive (EU) 2019/1937, according to which “National security remains the sole responsibility of each Member State. This Directive should not apply to reports of breaches related to procurement involving defence or security aspects where those are covered by the Article 346 of the Treaty on the Functioning of the European Union, in accordance with the case law of the Court. If the Member States decide to extend the protection provided under this Directive to further areas or acts, which are not within its material scope, it should be possible for them to adopt specific provisions to protect essential interests of national security in that regard.” Additional restrictions also derive from the Recital 25 of the Directive (EU) 2019/1937, according to which its provisions should be without prejudice to the protection of classified information that, in accordance with the European Union law or the laws, regulations or administrative provisions in force in the Member State concerned, must be protected from unauthorized access for security reasons.

The above-mentioned restrictions result in the absence of minimum standards of protection in certain areas, which for the military and militarized services must be considered very important. The cited regulations of the Directive (EU) 2019/1937 may, therefore, be a fundamental obstacle to providing real protection to soldiers and officers at the level of national regulations. Indeed, the need to ensure national security, or to secure classified information in the services and the military may complicate, or even completely exclude such protection.²⁴

Examples of legal solutions operating in different countries

The United States of America was the first country to pass a whistleblower protection law. In year 1970, President Richard Nixon signed the first

²⁴ See GRZEŚKÓW, M. Ochrona sygnalistów – funkcjonariuszy służb zmilitaryzowanych w świetle dyrektywy Parlamentu Europejskiego i Rady (UE) 2019/1937 w sprawie ochrony osób zgłaszających naruszenia prawa Unii. In: A. GÓRNICZ-MULCAHY, M. LEWANDOWICZ-MACHNIKOWSKA and A. TOMANEK, red. *Pro opere perfecto gratias agimus: Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Kuczyńskiemu* [online]. 1. wyd. Wrocław: Uniwersytet Wrocławski, Wydział Prawa, Administracji i Ekonomii, 2022, pp. 127-135 [cit. 2023-01-05]. E-Monografie, nr 201. ISBN 978-83-66601-90-1. Available at: <https://doi.org/10.34616/145142>.

whistleblower law, through witness protection in the Occupational Safety and Health Act.²⁵ In year 1978, the Congress passed the Civil Service Reform Act,²⁶ which protects whistleblowers in federal agencies. Since then, the federal government has enacted some 60 whistleblower laws, all of which vary in standards and effectiveness.²⁷ In terms of the considerations carried out, it is relevant that in the United States of America, there is a specific regulation on whistleblowers who are soldiers. The Military Whistleblower Protection Act (MWPA)²⁸ provides the legal foundation for whistleblower cases in the Department of Defense and protects against reprisal and restriction.²⁹ The above-mentioned Act ensures that members of the armed forces feel safe communicating with their Congressman or the Inspector General (two entities that have a particular interest in ensuring the stability of the armed forces).³⁰

Another noteworthy solution adopted by some countries is the functioning of specialized bodies authorized to receive notifications. The institution of the Military Commissioner of Bosnia and Herzegovina (hereinafter referred to as the “MCBiH”) was established by the Law on the Parliamentary Military Commissioner of Bosnia and Herzegovina, which came into force on July 7, 2009.³¹ The MCBiH is an independent institution, separate from the bodies it supervises and from Parliament. To perform its functions effectively, the MCBiH has been endowed with powers that allow it to act without restraint in requesting information and handling complaints, which are key to functioning with transparency and ef-

²⁵ See *Occupational Safety and Health Act of 1970* [1970-12-29].

²⁶ See *Civil Service Reform Act of 1978* [1978-10-13].

²⁷ See FEINSTEIN, S., T. DEVINE, K. PENDER, C. ALLEN, R. NAWA and M. SHEPARD. *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation* [online]. 1st ed. London: International Bar Association, 2021, p. 38 [cit. 2023-01-05]. Available at: <https://www.ibanet.org/article/EE76121D-1282-4A2E-946C-E2E059DD63DA>.

²⁸ See *Military Whistleblower Protection Act of 1988 (MWPA), as amended at Title 10, United States Code, Section 1034*.

²⁹ See JACKSON, A. Beyond Snowden: Understanding the Military Whistleblower Protection Act. In: *JAG Reporter* [online]. 2019. 7 p. [cit. 2023-01-05]. Available at: https://www.jagreporter.af.mil/Portals/88/2019%20Articles/Documents/20190822%20Jackson.pdf?ver=wqWFQ_YB3zbMfvdx4NZIdQ%3D%3D.

³⁰ See GOOKIN, P. DoD Whistleblower Protection: Military Personnel: “What You Need to Know”. In: *Department of Defense Office of Inspector General* [online]. 2014. 16 p. [cit. 2023-01-05]. Available at: <https://www.dodig.mil/Portals/48/Documents/Programs/Whistleblower/What-Military-Members-Need-To-Know.pdf>.

³¹ See *Law on the Parliamentary Military Commissioner of Bosnia and Herzegovina* [2009-07-07]. Official Gazette of Bosnia and Herzegovina, 2009, No. 51-2009.

iciency.³² “The position of Parliamentary Military Commissioner was established with the purpose of strengthening the rule of law and protecting the human rights and freedoms of soldiers and cadets in the Armed Forces of Bosnia and Herzegovina and the Bosnia and Herzegovina Ministry of Defense.”³³

The Service Complaints Ombudsman for the Armed Forces of the United Kingdom provides independent and impartial oversight of the Service Complaints System. The Service Complaints Ombudsman for the Armed Forces opened on January 1, 2016. It replaced the Office of the Service Complaints Commissioner, which operated from year 2008 to year 2015. The Ombudsman’s role was established as part of wide-ranging reforms to the Service Complaints’ process. The previous reforms took place in year 2006. It expressed concerns about the complaints process and the lack of external oversight. It also recommended the creation of an ombudsman or commissioner for military complaints. In response, the Service Complaints Commissioner for the Armed Forces was created. The Commissioner’s role was to assist Service personnel in accessing the Complaints System report annually to Parliament on the operation of the Service Complaints System. In year 2015, the Ministry of Defense of the United Kingdom announced that there would be further reforms to the process. These reforms included streamlining the internal complaints process and replacing the Commissioner with an Ombudsman who had investigative powers.³⁴ The mission of the Service Complaints Ombudsman for the Armed Forces is to “provide independent oversight and investigations in support of an effective, efficient and fair Service Complaints process for members of the United Kingdom Armed Forces.”³⁵

³² See SADIKOVIĆ, L. The Military Commissioner of Bosnia and Herzegovina. In: *Ombuds Institutions for the Armed Forces: Selected Case Studies* [online]. 1st ed. Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2017, pp. 7-32 [cit. 2023-01-05]. ISBN 978-92-9222-429-5. Available at: <https://defenceintegrity.eu/en/publication/ombuds-institutions-armed-forces-selected-case-studies>.

³³ See Parliamentary Military Commissioner. In: *Parliamentary Assembly of Bosnia and Herzegovina* [online]. 2023 [cit. 2023-01-05]. Available at: <https://www.parlament.ba/committee/read/31?lang=en>.

³⁴ See History and Legislation. In: *Service Complaints Ombudsman for the Armed Forces* [online]. 2023 [cit. 2023-01-05]. Available at: <https://www.scoaf.org.uk/about-us/history-and-legislation>.

³⁵ See History and Legislation. In: *Service Complaints Ombudsman for the Armed Forces* [online]. 2023 [cit. 2023-01-05]. Available at: <https://www.scoaf.org.uk/about-us/history-and-legislation>.

The Parliamentary Commissioner for the Armed Forces in Germany is an auxiliary organ of the Bundestag in exercising parliamentary oversight of the armed forces. His basic tasks include protecting the fundamental rights of service personnel and the principles of “innere Führung” (leadership and civic education). The Commissioner documents his findings on the conditions within the Bundeswehr in an extensive report presented annually to the German Bundestag.³⁶

In some countries, there is no specific separate body created to receive reports of violations from officers or soldiers, and existing bodies have only been granted additional competencies related to receiving such reports. The Parliamentary Ombudsman of Finland is the supreme overseer of legality, elected by the Parliament of Finland – ‘Eduskunta’.³⁷ The Ombudsman’s task is to ensure that public authorities and officials observe the law and fulfil their duties within the scope of their functions. His aim is to ensure good administration and compliance with constitutional and human rights. “The Parliamentary Ombudsman of Finland has overseen the legality of the armed forces since year 1933, when he was given a special role in handling complaints about the forces, and in monitoring the treatment of conscripts.”³⁸

In Poland, there is no specialized body authorized to receive reports from whistleblowers – soldiers and officers of the militarized services. The problem of the lack of adequate protection for soldiers and officers has been raised several times by the Polish Ombudsman in speeches addressed to the Prime Minister and the Minister of Labour.³⁹ In such a case, there is only the possibility to use generally available (to all citizens) bodies, such as the Ombudsman (at least until the Directive (EU) 2019/1937 is implemented in Poland). However, even the transposition of its provisions will not change much in the legal protection of whistle-

³⁶ See The Parliamentary Commissioner for the Armed Forces. In: *Deutscher Bundestag* [online]. 2023 [cit. 2023-01-05]. Available at: <https://www.bundestag.de/en/parliament/commissioner>.

³⁷ See Parliamentary Ombudsman (Finland). In: *European Network of National Human Rights Institutions* [online]. 2023 [cit. 2023-01-05]. Available at: <https://ennhri.org/our-members/finland-parliamentary-ombudsman/>.

³⁸ See The Parliamentary Ombudsman of Finland. In: *Independent Police Complaints Authorities’ Network* [online]. 2023 [cit. 2023-01-05]. Available at: <https://ipcan.org/members/the-parliamentary-ombudsman-of-finland-2>.

³⁹ See *Ombudsman’s General Speech to the Prime Minister Ref. No. III.7050.7.2014.TO* [2015-11-03]; and *Ombudsman’s General Speech to the Prime Minister Ref. No. KMP.570.1.2018.RK* [2018-04-16].

blowing officers and soldiers. Although the latest version of the draft law⁴⁰ to implement the Directive (EU) 2019/1937 lists officers and soldiers as potential whistleblowers, it seems that this protection will still be significantly limited, especially due to the specific nature of the services.⁴¹

Effectiveness of whistleblowers

An important issue that should be considered when working to ensure adequate protection for soldiers and officers of the militarized services is the analysis of the effectiveness of whistleblowers, which will depend primarily on the level of guaranteed protection for whistleblowers, on the one hand, and the acuity of penalties for violators, on the other hand. An additional factor affecting whistleblower effectiveness can be a properly functioning whistleblower reward system.

The effectiveness of whistleblowers has been the subject of analysis in several scientific studies in different countries. The analysis of the results of this effectiveness, as well as the very fact of conducting research in this area, leads to interesting conclusions related to different approaches to the issue of whistleblowers. Based on a data set of employee whistleblowing allegations obtained from the United States of America government, it was shown that enforcement proceedings begin more quickly, and the involvement of a whistleblower increases the probability of imposing criminal sanctions by 8.58 %, and the probability of imposing criminal sanctions on the targeted wrongdoer by 6.64 %.⁴² According to Transparency International Vietnam,⁴³ the Anti-Corruption Bureau of the Government Inspectorate reported that in years 2011 – 2015, author-

⁴⁰ See Projekt ustawy nr UC101: Projekt ustawy o ochronie osób zgłaszających naruszenia prawa. In: *Rządowe Centrum Legislacji* [online]. 2021-10-18 [cit. 2023-01-05]. Available at: [https://legislacja.gov.pl/projekt/12352401#xd_co_f=ZTFiMm\]kNGQtM2EzOS00Yzl2LWEzZDktNWNkZmExY2ZlYWly~](https://legislacja.gov.pl/projekt/12352401#xd_co_f=ZTFiMm]kNGQtM2EzOS00Yzl2LWEzZDktNWNkZmExY2ZlYWly~).

⁴¹ It is planned to give powers to certain bodies to receive reports from whistleblowers; however, there are no plans to create a special body authorized to receive applications only from soldiers and officers.

⁴² See CALL, A. C., G. S. MARTIN, N. Y. SHARP and J. H. WILDE. Whistleblowers and Outcomes of Financial Misrepresentation Enforcement Actions. *Journal of Accounting Research* [online]. 2018, vol. 56, no. 1, p. 126 [cit. 2023-01-05]. ISSN 1475-679X. Available at: <https://doi.org/10.1111/1475-679x.12177>.

⁴³ The Vietnamese government adopted the Law on Denunciation on November 11, 2011 (*Law on Denunciation Ref. No. 03/2011/QH13* [2011-11-11]); Amendments to the Denunciation Law were adopted on June 12, 2018, and took effect on January 1, 2019 (*Law on Denunciation Ref. No. 25/2018/QH14* [2018-06-12]).

ities received 699 requests for protection from whistleblowers, including 99 from those who reported corruption. Between years 2011 and 2015, only a third of the requests were processed. In December 2016, the Vietnam Government Inspectorate reported that it had received and processed 69,267 disclosure forms relating to some 45,197 cases. There were 86,463 corruption disclosures resolved by authorities across all governments.⁴⁴ The 2013 survey in Vietnam revealed that only 38 percent of Vietnamese citizens surveyed were willing to disclose acts of corruption. Fifty-one percent responded that their reluctance to report corruption was due to a belief that “it won’t happen.” Fifty-one percent responded that their reluctance to report corruption was due to the belief that “it won’t make any difference”, and 28 % said they were “afraid of the consequences”.⁴⁵ In a survey conducted among the European countries, Transparency International reported that none of the 10 countries surveyed had a system for collecting information on the number of cases disclosed by whistleblowers, as well as the number of cases concluded by the initiation of proceedings before the competent authorities. The lack of this information results in an inability to visualize to the public the benefits of whistleblowing, as well as the potential damage to the general good when the disclosed cases would not have been discovered.⁴⁶

Another contentious issue that goes beyond whistleblower protection is whether whistleblowers should receive a financial reward and whether such a system increases whistleblower effectiveness. Whistleblower reward programs provide financial incentives to witnesses who report information about violations that help authorities convict the perpetrators and recover or reduce the damage they caused. Whistleblower rewards are widely used in the United States of America to reduce pro-

⁴⁴ See FEINSTEIN, S., T. DEVINE, K. PENDER, C. ALLEN, R. NAWA and M. SHEPARD. *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation* [online]. 1st ed. London: International Bar Association, 2021, p. 49 [cit. 2023-01-05]. Available at: <https://www.ibanet.org/article/EE76121D-1282-4A2E-946C-E2E059DD63DA>.

⁴⁵ See FEINSTEIN, S., T. DEVINE, K. PENDER, C. ALLEN, R. NAWA and M. SHEPARD. *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation* [online]. 1st ed. London: International Bar Association, 2021, p. 49 [cit. 2023-01-05]. Available at: <https://www.ibanet.org/article/EE76121D-1282-4A2E-946C-E2E059DD63DA>.

⁴⁶ See Alternative to Silence: Whistleblower Protection in 10 European Countries. In: *Transparency International* [online]. 2009-11-15 [cit. 2023-01-05]. Available at: <https://www.transparency.org/en/publications/alternative-to-silence-whistleblower-protection-in-10-european-countries>.

curement fraud and tax evasion, and their use has recently been expanded. One of the Assistant Attorneys General said that they are “the most powerful tool Americans have to protect the government from abuse.”⁴⁷ In the case of such the United States of America whistleblower reward laws as the False Claims Act⁴⁸ and the Dodd-Frank Act,⁴⁹ if evidence from a whistleblower leads to a successful prosecution resulting in monetary sanctions over about 44,000 USD, the whistleblower can receive a monetary reward of between 5 % and 20 % of the proceeds collected.⁵⁰

There is an ongoing debate in some European countries about their possible introduction, but the approach of the European countries seems to be far less enthusiastic about the matter than that of the United States of America. Financial incentives are not widespread in Europe.⁵¹ While there are good reasons to be cautious about the ability of the European countries to successfully import tools from the United States of America, the level of recent political debate on the subject has unfortunately been quite low.

Conclusions

The situation of officers and soldiers is particularly complicated. This is primarily a matter of increased official subordination and the need to maintain a service route in communication. Such an environment can enhance the risk of unwanted occurrences, so the protection of whistleblowers in this area should be intensified and adapted to the special nature of their work.

⁴⁷ See Assistant Attorney General Stuart Delery Delivers Remarks at American Bar Association's 10th National Institute on the Civil False Claims Act and Qui Tam Enforcement [2014-06-05]. In: *United States Department of Justice* [online]. 2014-09-17 [cit. 2023-01-05]. Available at: <https://www.justice.gov/opa/speech/assistant-attorney-general-stuart-delery-delivers-remarks-american-bar-association-s-10th>.

⁴⁸ See *False Claims Act (FCA)* [1863]. 31 U.S.C. 3729, a federal statute originally enacted in 1863 in response to defense contractor fraud during the American Civil War.

⁴⁹ See *Dodd-Frank Wall Street Reform and Consumer Protection Act* [2010-07-21], a United States federal law that was enacted on July 21, 2010.

⁵⁰ See South Korea's Whistleblower Protection and Reward System. In: *National Whistleblower Center* [online]. 2023 [cit. 2023-01-05]. Available at: <https://www.whistleblowers.org/south-koreas-whistleblower-protection-and-reward-system/>. Reward systems also function in South Korea.

⁵¹ Only narrow reward programs for reporting witnesses are used in the United Kingdom and Hungary. See NYRERÖD, T. and G. SPAGNOLO. Myths and Numbers on Whistleblower Rewards. *Regulation & Governance* [online]. 2021, vol. 15, no. 1, pp. 82-97 [cit. 2023-01-05]. ISSN 1748-5991. Available at: <https://doi.org/10.1111/regg.12267>.

The analysis conducted in this paper leads to several conclusions:

There is no comprehensive regulation providing whistleblowers protection in the Polish legal order so far. There is also no specialized body in Poland that can accept reports from officers and soldiers. The international and European norms, using rather general and imprecise formulations, do not play a particularly important role in this area. An analysis of the international and European acts shows that the solutions adopted in them regarding whistleblowers are similar, because they: 1) regulate the protection of whistleblowers primarily in the area of anti-corruption norms; 2) use general wording imposing an obligation on states to provide protection to whistleblowers, specific legal solutions, however, are left to the internal regulations of individual countries; 3) do not regulate in any special way the protection of whistleblowers who are officers of the services or soldiers; 4) do not explicitly exclude from protection whistleblowers who are officers or soldiers.

The last significant attempt to regulate the protection of whistleblowers on a supranational level was the adoption of a directive by the European Union. However, its provisions also do not directly refer to the situation of officers and soldiers. Despite the possibility of applying to them, general provisions regulating the situation of workers (in the broad European Union sense), the specifics of their work, as well as several exemptions included in the Directive (EU) 2019/1937 itself make the protection provided for these groups of employees decidedly inadequate.

The solutions adopted by individual countries give rise to the claim that specific regulations consider the cultural and historical contexts. A clear difference emerges primarily between the regulation adopted in the United States of America and in the European countries. While whistleblower protection in the United States of America has been in place for a long time, and whistleblowing has been promoted (reward system), in the European countries (including Poland) such protection is still not extensive, and the whistleblower reward system is not popular. Such a situation can be linked to differences of a cultural nature, especially historical conditions. Laws on whistleblower protection should be read in a cultural context.

Studies conducted so far on the effectiveness of the functioning whistleblower protection law have reiterated why whistleblowers choose not to disclose wrongdoing: primarily the belief that nothing will come of

disclosure, loyalty to the employer, and fear of retaliation. In the Central and Eastern European countries, an additional deterrent to reporting is the historical context. The European hesitation to introduce rewards mainly relates to fears of an increase in false reports. In addition, such concerns may also have partly historical roots, as both the Nazi Germany and the Soviet Russia relied heavily on citizens reporting on each other.⁵² Legislation must, therefore, work in harmony with public awareness programs that emphasize the public interest in stopping unlawful activity through disclosure.

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⁵² See NYRERÖD, T. and G. SPAGNOLO. Myths and Numbers on Whistleblower Rewards. *Regulation & Governance* [online]. 2021, vol. 15, no. 1, pp. 82-97 [cit. 2023-01-05]. ISSN 1748-5991. Available at: <https://doi.org/10.1111/rego.12267>.

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