



Selecting the Chair of the Whistleblower Protection Office in Slovakia: “Fight against Corruption” as the Last (and Only) Public Interest?¹

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ABSTRACT Based on an analysis of public hearings organised to select the Chair of the Office for the Protection of Whistleblowers in Slovakia, this study asks how the notions of “public interest” and “anti-social activity” have been interpreted and re-enacted, and what role the topic of corruption played in this process. The analysis reveals the tension between a narrow understanding of anti-social activity as corruption and its wider interpretation, which encompasses a broader notion of public interest. In fact, the hearing stimulated an exploration of larger ethico-political questions related to the role of the state in the protection of “the social”. Therefore, this article argues that the organisation of the hearing, and specifically its public dialogical character, led to a shift away from the strict anti-corruption framing of whistleblowing. Second, the article contributes to the theoretical debate on whistleblowing by emphasising the so far rather neglected institutional and relational elements.

KEYWORDS anti-social activity, East-Central Europe, ethics, corruption, framing, public interest, whistleblowing

Introduction

In his book *The End of Post-Communism*, Boris Buden (2013) develops the argument that the “fundamental experience of the social” was lost in East-Central European societies after 1989. In the afterword to this book, its translator, Radovan Baroš, adds that “corruption is the last thing we have left of society” (2013: 236), as it reminds citizens that it is still not possible to enrich oneself in a completely unregulated way at the expense of others. According to him, this explains the particular obsession of post-communist democracies with “fighting corruption”, as opposed to “traditional” democracies in Western Europe.

In 2014, the Slovak Parliament adopted a law (Act. No. 307/2014 Coll.) to protect so-called whistleblowers—citizens who inform about the anti-social activities of their employers that threaten the public interest—and in 2019, it adopted a new law (Act. No. 54/2019 Coll.) that called for the establishment of a specialised Office for the Protection

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of Whistleblowers of Anti-Social Activities (OPW). Both laws were to a large extent adopted thanks to their framing in terms of the fight against corruption, which was difficult for Slovak legislators to refuse in a situation of extreme crisis of confidence in the state and its justice. Such a framing was also supported by NGOs, such as Stop Corruption and Transparency International Slovakia. The selection of candidates for the position of Chair of the OPW was organised as a public hearing—which was also streamed on the Facebook profile of the Slovak Government—before a committee consisting of legal experts from state and non-state sectors. This format was intended to ensure the credibility of the new institution at a time of crisis. The public hearing, which took place in 2019, provides a unique opportunity to study precisely how the notions of “public interest” and “anti-social activity” have been interpreted and re-enacted, and what role the topic of corruption played in this unique manner of appointing a prominent public officer, as well as in building a new institution created to tackle so-called anti-social activities.

Indeed, the last two decades have seen a boom in whistleblower protection legislation. Globally, until 2000, only five countries had adopted such legislation (Vandekerckhove 2006), while between 2000 and 2021 at least twenty additional countries have done so. Moreover, the transposition of the EU Whistleblowing Directive into the national legislation of the Member States implies that twenty-seven European countries will introduce, significantly strengthen, or at least review their whistleblowing legislation. Until 2000, all legislative proposals on whistleblowing framed whistleblower protection as a form of establishing freedom of expression. However, only when successive bills rephrased whistleblowing as an anti-corruption tool was it possible to enact whistleblower protection (Vandekerckhove 2016). Vandekerckhove (2021) argues that in countries where the debates started after 2000, law proposals skipped the human rights/freedom of expression phase and immediately adopted anti-corruption/anti-fraud rhetoric. Nevertheless, the scope of wrongdoing for which disclosures are protected, typically framed by “public interest”, remains a site of struggle. Some international groups consider the anti-corruption framework too narrow and consequently formalistic. For example, trade unions have advocated for workers’ rights to be recognised as a public interest, while other civil society organisations have argued that the scope must include human rights violations (Vandekerckhove 2021).

This widening of the framework for whistleblowing is about the legal wording that delimits the material scope, as well as about its interpretation (Abazi 2016). In contrast to many other countries, Slovakia decided to create its own institution responsible for the protection of whistleblowers. This article, through an analysis of the conduct of the public hearing on candidates for the position of Chair of the OPW, asks whether (and eventually how) the public hearing was framed narrowly by the anti-corruption agenda or opened up different understandings of “the social”. This is an important question, because the answer may foreshadow whether the OPW will represent a space in which the protection of whistleblowers is determined primarily by the anti-corruption framework, or if whistleblowers pointing out other anti-social activities will also be protected.

The contribution of the article is two-fold. First, by analysing the proceedings of a public hearing, it breaks down the anti-corruption framework into individual discursive elements to understand how its depoliticising effect, evoked by Buden (2013), works in East-Central

European context. Second, it contributes to the theoretical debate on whistleblowing by emphasising institutional and relational elements that play a crucial role in the application of laws regulating whistleblowing, and thus in the trajectories of individual whistleblowers.

The article is organised as follows: The next section outlines a genealogy of whistleblowing protection and different perspectives on it. After this, the history of whistleblowing regulation in Slovakia is presented, and the context and implications of its anti-corruption framing are introduced. The methodological section explains the way the public hearing was analysed. The findings show three main pairs of discourse elements that emerged during the hearing; these are then traced in terms of their relation to the anti-corruption framing of whistleblowing. Finally, the findings are discussed, and the study concludes that the organisation of the hearing, specifically its public dialogical character, stimulated the exploration of larger ethico-political questions related to whistleblowing, and thus allowed for expanding the dominant anti-corruption framing to include the protection of employees who point out other anti-social activities as well.

Whistleblowing between Business Ethics and Radical Democracy

In 2015, the European Commission (EC) proposed to the European Parliament (EP) a draft of the EU Trade Secrets Directive. The proposal, however, did not show “significant regard to the interconnectedness and implications of trade secrets protection for freedom of expression and information as well as individuals who would disclose information in the public interest, i.e. whistleblowers” (Abazi 2016: 1066), which prompted the EP to amend the draft. This effort resulted in a text stipulating an exception in Article 5 for when disclosure is made “for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest” (EU Trade Secrets Directive 2016). The EP approved this modified version of the EU Trade Secrets Directive in April 2016. However, as Abazi (2016) highlights, even after the amendment, it is the whistleblowers who must provide convincing evidence that their disclosures are in the public interest, and thus, in practice, it remains to be seen how the dynamics will play out between resourceful companies invoking trade secrets protection and individuals bearing the burden of proof that they act in the public interest.

In fact, Vandekerckhove (2021) argues that it was the approval of the EU Trade Secrets Directive in 2016, which gave employers too much discretion to impose secrecy, that started the process of campaigning for the EU Whistleblowing Directive. This campaign, led by trade unions and NGOs, sought to disrupt the dominant framework of whistleblowing as a financial efficiency tool, that is, a tool for protecting only the EU’s financial interests. Indeed, as a result of this framing, the core of the first EP resolution in February 2017 on whistleblowing was called “on the role of whistleblowers in the protection of EU’s financial interests” (European Parliament 2017a). Already by October 2017, the second resolution had the title “on legitimate measures to protect whistleblowers acting in the public interest when disclosing confidential information of companies and public bodies” (European Parliament 2017b). The addition of the word “public interest” in the resolution’s title was a significant development in the sense that it made explicit what the aim was: to make whistleblowing

a legitimate exception to secrecy, justified by the public interest, which is broader than just financial interests.

It is also worth noting that the word “freedom” does not appear in the first resolution, yet “freedom of expression” appears in six different parts of the second resolution (Vandekerckhove 2021). However, the subsequent effort of trade unions and NGOs to further delimit the material scope of whistleblowing such that it would explicitly cover disclosures about wrongdoing related to working conditions, social protection of workers, human rights violations, gross waste, and gross mismanagement was not successful. The final EU Whistleblowing Directive, which was approved in 2019 and bound all EU member states to incorporate it into their legislation by the end of 2021, thus retained the general framing of whistleblowing as the disclosure of information in the public interest, encouraging member states to legislate more broadly (EU Whistleblowing Directive 2019).

This tension between organisational secrecy and public interest has been present in the issue of whistleblowing from the very beginning. In the early 1970s, Ralph Nader’s classical conception of whistleblowing was based on a conflict between the organisation and broader society, presuming the whistleblower’s loyalty toward the latter (Nader et al. 1972). By the end of the 1990s, whistleblowing was increasingly framed as a management control/compliance tool that would make the organisation more efficient and able to render the conflict between the organisation and society invisible (Du Plessis 2020). This tension can be seen also in academic literature. Historically, whistleblowing research coming mainly from the field of business ethics has predominantly focused on the individual psychological conditions of raising concerns about alleged wrongdoing, but has not come to any clear conclusion about factors determining the need for whistleblowing (Cassematis and Wortley 2013; Culiber and Mihelič 2017).

Other scholars have pointed out that this perspective, although it refines the analysis by adding new contextual factors, such as organisational characteristics (Gagnon and Perron 2020) or relations between key actors (Thomas 2020), nevertheless remains too linear and narrow and neglects the fact that whistleblowing is an ambiguous process involving a transformation of the whistleblower’s subjectivity in relation to their environment, rather than a specific moment of individual decision-making between silence and blowing the whistle (Teo and Caspersz 2011). To understand whistleblowing in a more nuanced way, the analyses of various authors (e.g., Contu 2014; Mansbach 2007; Vandekerckhove and Langenberg 2012; Weiskopf and Tobias-Miersch 2016) have employed the Foucauldian concept of “parrhesia”, which is a specific form of criticism characterised by a “movement by which the subject gives himself the right to question the truth on its effects of power and question power on its discourses of truth” (Foucault 2003: 266). In this view, the whistleblower is not an organisational or societal outsider; on the contrary, they are loyal to the societal principles of democracies in a radical way (Mansbach, 2009), and this leads them to radically criticise organisational practices.

In this way, whistleblowing is perceived as allowing a general reflection on organisational practices and, like parrhesia, it reflects an ethical dimension (Weiskopf and Tobias-Miersch, 2016). This critical self-relation connects parrhesia to organisational and ultimately societal ethics, which allows an analysis that partly de-individualises whistleblowing and explores

it as a “practice that is conditioned, but not determined, by the configuration of practices in which it is embedded” (Weiskopf and Tobias-Miersch 2016: 3). Moreover, Weiskopf and Tobias-Miersch (2016) frame whistleblowing as an ethico-political practice in which the political dimension is represented by the possibility that there are new ways of organising relations to others. However, in the research, the relations of whistleblowers to other actors (including institutions) and their transformations are neglected or only roughly sketched. This means that the political dimension of whistleblowing is rather overlooked.

Anti-corruption Framing of Whistleblowing in Slovakia and the Public Hearing as a New Discursive Field

In Slovakia, the first law on the protection of whistleblowing was adopted already in 2014 and thus preceded the European debate sketched in the previous section. This law was pushed through mainly thanks to the efforts of NGOs, such as Transparency International Slovakia and Stop Corruption, which focus mainly on corruption and financial fraud in the public sector; correspondingly, these issues also framed the concept of whistleblowing. The anti-corruption framing also prevailed in the discussion of the 2019 amendments to the law, which anticipated the creation of the specialised Office for the Protection of Whistleblowers of Anti-Social Activities (until it was established in 2021, regional labour inspectorates were the responsible authority). Concerning public discourse, for example, the Slovak version of Google in February 2022 showed more results for the phrase “whistleblowers of corruption” than for “whistleblowers of anti-social activity”, and media framed whistleblowing predominantly as part of the fight against corruption. The words “framing”, “frame”, or “framed” are here used to conceptualise “articulation mechanisms in the sense of tying together the various punctuated elements of the scene so that one set of meanings rather than another is conveyed, or, in the language of narrativity, one story rather than another is told” (Snow 2004: 384 - 175:2). Frames thus focus our attention on what is relevant and what is irrelevant in the field.

The starting point of this study is the fact that the anti-corruption framework has fit the “discursive opportunity structure” (Koopmans and Statham 1999: 228) in Slovakia and allowed the passage of the whistleblowing law—that is, the law that can put public actors at risk, meaning its implementation is not necessarily in their personal interest. This explains the very slow and reluctant implementation of the whistleblowing law in most countries. However, unlike the majority of other countries, Slovakia has additionally introduced the creation of a separate independent office, which opens a new discursive field in which contests over meaning can occur (Snow 2004). In this case, it is the field in which the dominant anti-corruption frame may or may not be modified, depending on the ability of other frames to disrupt it.

Hence, to summarise, there are epistemological links between the anti-corruption frame of whistleblowing promoted mainly by advocates of the broadest possible trade secrets protection and the mainstream business ethics literature on whistleblowing that tries to calibrate the most efficient channels of internal reporting about financial fraud in organisations in order to control and channel it. The common elements are the portrayal

whistleblowers as heroic individuals and whistleblowing as a one-off individual decision, while public interest is narrowed down to the protection of financial interests, meaning it is framed in terms of (economic) efficiency.

On the other hand, there is the framing of whistleblowing as a form of freedom of expression in the public interest, which is less predictable because it radically erodes the boundaries between organisations and society. Within this frame, allowing employees to have their say raises ethical disputes about organisational practices and disrupts power hierarchies, thereby politicising organisational space. Public interest is understood more broadly and goes beyond financial interests, while whistleblowers are embedded in relations and need further support while blowing the whistle, and the whistleblowing process is a lengthy ethico-political conflict that affects a wider area than just specific individuals and their organisations.

Research Context and Methods

In Slovakia, civil society actors also had a significant influence on the unprecedented manner of selecting the Chair of the OPW as well as the composition of the committee. However, in the end, the public hearing on the candidates for the position was held in two rounds, which was not the original intention. The first round was held in June 2019 in a hotel in Bratislava that serves the needs of the Office of the Government of the Slovak Republic. During this round, eleven candidates were assessed by a five-member committee of lawyers (see Office of the Government of the Slovak Republic 2019). Three members of the committee were state employees: the first, the chairman of the committee, was a representative of the government, serving as the Director General of the Corruption Prevention and Crisis Management Section at the Ministry of the Interior; the second was a representative of the Public Defender of Rights, serving as the Head of the Department for the Protection of Fundamental Rights and Freedoms at that office; and the third was a representative of the Office of the President of the Slovak Republic, serving as the Head of the Department of Legislation and Pardons at that office. This trio was joined by two more members: a representative of the Civil Service Council of the Slovak Republic who worked as the head of the Competition Department in a private law firm (this member was also the former Director of the Cartels Department at the Antimonopoly Office); and a representative of the Government Council for Non-Profit Organisations working as a private attorney and associate of the Stop Corruption Foundation.

After the first round, this committee nominated two candidates with the highest scores for presentation to the Slovak Parliament. However, neither candidate received an absolute majority. Therefore, a second round was held in October 2019, which again produced two high-scoring candidates. One of the top candidates from the previous round also won the second round, while her previous opponent did not participate in the second round, and so the candidate who came third in the first round made the cut in the second round. Both were subsequently heard by the Constitutional Law Committee of the Chamber of Deputies, which was the initiative of a Member of Parliament who had personally participated in both rounds and wanted to prevent any obstruction by the Slovak Parliament. From these two candidates, the Parliament eventually selected the first Chair of the OPW in February 2021, the candidate who accumulated the highest score in both rounds.

Eleven candidates took part in the first round of public hearings, which lasted eleven hours. Nine candidates participated in the second round, which lasted nine hours. For the purpose of analysis, I transcribed both rounds from the publicly available audio-visual recording (Office of the Government of the Slovak Republic 2019). The combined transcription from the first and second rounds totalled 474 standard pages. The second round included eight candidates from the first round and one new candidate, which allowed the participants to develop certain specific issues more fully; but the analysis showed that the same framework could be applied to both rounds, so no particular distinction will be made between the rounds in the empirical analysis that follows.

I analysed the transcript using Atlas.ti, which made it easier to code the conversations between the committee members and the candidates. During the analysis, I looked for consistent constellations of frame elements in the public hearings and evaluated their relation to the anti-corruption frame. Three key element pairs emerged during the coding process: 1) morality vs. ethics; 2) power symmetry vs. power asymmetry; and 3) limited vs. unlimited responsibility. The first element pair captures an understanding of individual behaviour on a continuum ranging from morality (in terms of the prescriptive detached rationality of the disembedded subject) towards a more relational, interactional, practice-based, and intersubjective understanding of ethics (Abbott 2020). The second pair reflects the differences in the perception of power balance between whistleblowers (who are employees) and their employers. This was captured by a continuum ranging from power symmetry towards power asymmetry. The third pair of observed discourse elements grasps different understandings of responsibility, ranging from legally defined responsibility towards a more open sense of responsibility with blurred boundaries.

I then analysed the course that the hearings took, based on the constellations of these elements that emerged, that is, in particular, the extent to which (and about what) the committee members questioned the candidates, and when and how they expressed their dissatisfaction or satisfaction. In addition to the audio-visual recording, the candidates' statements and, above all, the evaluation cards of the committee members for each candidate were publicly available (Office of the Government of the Slovak Republic 2019). The evaluation cards contained both scores and short verbal evaluations, and became a supporting source of interpretation about which candidates were assessed by the committee as being more suitable or less suitable for the position and why; this gave insights into the meaning of whistleblowing that was created and affirmed during the hearings. In addition, I also analysed the separate evaluation of candidates published by Transparency International Slovakia after the first round (Ivančík et al. 2019).

All sources of the analysis presented here are publicly available. Nevertheless, in the following empirical section, I have chosen to number the candidates chronologically in the order in which they appeared in the first round, and to work with the numerical designation despite the risk that this may be less convenient for readers. I do not want to draw attention to specific candidates by directly naming them, but rather to focus on their interactions with the members of the committee, as well as the latter's collective output. The empirical analysis of the hearings is an interpretation based on the theoretical framework presented, not an evaluation of the candidates.

Putting Whistleblowing in Its (Work)Place

Morality versus Ethics against Anti-social Activities

Most of the candidates started their presentations by highlighting corruption as a key problem in the Slovak society. For instance, Candidate Nine said in his introduction in the first round, “when I say corruption, I mean, in short, everything that falls within the remit of this office.” This mixing of corruption and anti-social activity was echoed by most of the other candidates.

If the candidates did not address corruption right at the beginning of their speeches, certain members of the committee asked them directly. The usual way was as follows: “How do you, as a citizen and as a spokesperson, perceive the state of corruption in society over the last few years?” Usually, the committee members related the question both to the professional experience of the candidates—in the case of Candidate Seven being a spokesperson for a public institution—and to the candidate’s personal opinion. In addition, one Member of Parliament who was present at the hearing during the public part asked all of the candidates an identical question: What three anti-corruption measures would they introduce if they could do so immediately?

For most candidates, the perception of corruption had a specific character. Corruption was seen as pervasive and located at the core of society. Candidate Seven replied to the question on corruption this way:

It really starts somewhere in the elementary schools, somewhere in the arrangement of a good high school for a child, and basically it’s very deeply ingrained in people from the days when, I don’t know, they used to bring sausages to doctors and rulers.

Only two candidates explicitly challenged this anti-corruption framework of anti-social activities. Both were, at the time of the hearing, the only actually protected whistleblowers among the candidates. Candidate Eight turned attention to the workplace as a prominent place where anti-social activities happen:

I see corruption as one of the components of anti-social activity, perhaps the most visible to the public; the anti-social activity of private companies is just so hard to identify, it looks like the entity has the right to do anything just to make more profit. That is the reality.

Similarly, the other whistleblower, Candidate Eleven, pointed out the complexity of the fight against anti-social activities going beyond a simple one-off alert about corrupt behaviour:

One thing we have to realise is that whistleblowing is not, shall we say, a single act. That act is basically just the initial step where a person comes to a point and decides to express some kind of complaint or submit a criminal report. However, all this is only a trigger of something.

This difference in the perception of the nature of anti-social activity and the fight against it implied different perceptions of the figure of a whistleblower. The anti-corruption framing portrayed whistleblowers as those who, for some reason, managed to escape the pervasive atmosphere of corruption. They were portrayed as “heroes” and “bearers of truth”. For instance, Candidate Nine declared emphatically: “I assume that things, life, and decisions must be based on truth. Because this is also in the long run the best for society as a whole, as

well as for each individual.” Candidate One echoed this vision of disembedded morality and transposed it also to the position he applied for:

An ethical leader, in my opinion, should meet not only the legal requirements of the job, but especially have moral integrity, such that he does not make decisions based on what information some of his surroundings, subordinates, or superiors are trying to push. And I think the rule that should apply to any ethical leader is that, I don’t know what’s going to happen tomorrow, but I know how he’s going to behave.

This was opposed by a radically different view, which was not so much interested in the whistleblowers themselves, but in the practices they pointed out. Two whistleblowers emblematically and explicitly focused on the anti-social practice rather than the figure of whistleblower. Candidate Eight said:

In fact, in terms of the actual identification of the anti-social practice, it is not so important how the whistleblower came to decide to visit, say, the public prosecutor, or simply the tax administration of the authority in question. What is important is whether the substance of the whistleblowing is true or not. I guess that would be the basic criterion for me, and I would then proceed on the basis that I would, of course, try to assume that the practice that the whistleblower has pointed out is indeed a problem and I would try to protect them.

Candidate Eleven, when asked explicitly about the potential misuse of the status of whistleblower, echoed this vision:

I would see the abuse of the whistleblower’s protected status in terms of the confirmation or non-confirmation of the facts that form the content of the submission. And to me, that means the merits of the case, and the circumstances that led this whistleblower to make the submission, I would evaluate as secondary. To me, the priority is whether the acts that are being pointed out are confirmed or not.

The committee members pressed all candidates to comment on their vision of the morality of whistleblowers. Some candidates tried to maintain a third position between the two poles sketched above. For instance, Candidate Two was sceptical about psychologising whistleblowers, and pointed out that the OPW can also support those who have not so far blown the whistle.

Maybe we’re getting into the psychological level here, the moment of decision for the whistleblower. I think that the office can make it possible, not to resolve, but to make a significant contribution in terms of setting up communication and a sense of trust. [...] [M]any things can be influenced just by the way the office communicates towards the whistleblower who, for example, is only thinking about the whistleblowing at the moment.

Similarly, Candidate Four, from her own experience, stressed the need to support people who are just thinking about whistleblowing.

The office that is being created should also address this issue as to assisting those people who may not have evidence of any serious corruption, but are experiencing what are considered

not exactly good practices. [...] I think that legislation allows for the office to somehow link or connect with those employers and require explanations. I believe that it will not just be on a strictly legal level; we will give protection to those who qualify for it.

The third position thus looked for a legally correct way to create supporting infrastructure for (potential) whistleblowers. In contrast to the first position, it emphasised the need to support whistleblowers who were not portrayed as morally exceptional individuals outside of actual relationships and institutions. At the same time, it considered the motivations of the whistleblowers and did not overlook them as radically as the proponents of the second position, and thus did not directly undermine the ‘moral’ anti-corruption framework. In sum, the third position constructed more relational, interactional, practice-based, and intersubjective understanding of ethics.

Power (A)Symmetry within Whistleblowing and the Role of the OPW

The candidates who framed whistleblowing predominantly as an anti-corruption tool focused on its potential to fight financial fraud from the point of view of whistleblower as well as the employer. They thus emphasised the role of ethical codes, standards such as anti-corruption norm ISO 37001, and internal whistleblowing channels in all firms employing more than fifty employees, as defined in the law.

Candidate Nine spoke about “synergies” between employers and the OPW:

With regard to employers, I think that, first and foremost, the office should build up respect. It is of course the legal things that are in the law, like controlling that internal system, etc., that can create very interesting synergies when acting with whistleblowers towards employers, which the office should take advantage of.

Similarly, Candidate Five highlighted the potential of ISO norms in his view:

At the same time, I would like to see good cooperation with other, not only public, institutions, namely the media, the third sector, and the private sector, where I see the ISO standard as a great opportunity.

On the other hand, Candidates Eight and Eleven, probably thanks to their own whistleblowing experience, placed whistleblowing in the clearly defined context of a workplace where whistleblowers face an extreme power asymmetry. Thus, not only did these candidates expand the scope of anti-social activity to include work-related breaches—for example, bogus self-employment, undeclared work, or bullying—but they also argued that the OPW must be inherently pro-employee. In other words, they framed whistleblowing predominantly as a conflict between the employee and the employer, so the OPW must therefore take the employee’s side.

Candidate Eight said:

I hope that you will approach this by electing a chair of the office who is pro-employee, because that office is for the protection of whistleblowers. It should not be a chair who pretends to be an independent arbiter, who will vet whistleblowers or try to find out why they have actually gotten into a situation such that they have decided to report the employer’s anti-social activity.

Similarly, Candidate Eleven spoke about “complex” protection, pointing out that the protection cannot involve only stopping an employer’s legal actions, such as dismissal of the employee, but must include also effective support during the conflict between the employee and the employer at the workplace, where the latter has much more power.

Since I have had very bad experiences, I consider it extremely important for the concept of the new office to include more than just legal protection in terms of preventing dismissal or other legal actions taken to the detriment of a whistleblower, because I see that only as an extreme solution that comes up from time to time. But it is necessary to support an employee who operates in a workplace where there is an atmosphere of intolerance, of building mistrust, of isolation, of damning a person who basically only draws attention in good faith to an activity that basically should not be part of any office or institution.

Again, the third position was represented by candidates who nuanced their position by explaining how they understood the philosophy of the law on whistleblower protection. Their reasoning prompted the committee members to ask further questions and stimulated a dialogue, which led to the development of the notion of public interest. The most detailed were dialogues with Candidates Two and Four. Candidate Two started by describing her professional experience as a human rights lawyer:

If I had to mention, maybe, at least one example of one who came very close to whistleblower protection, it was the case of a geologist who I represented in a lawsuit against bullying in a situation where he wrote a critical article in a city newspaper in which he criticised a company that was operating a landfill. So I know how extremely difficult it can be for a person when faced with a powerful, influential, wealthy entity.

Developing this topic of power asymmetry, the candidate was asked how she would deal with the fact of very short deadlines to grant or not to grant basic protection to whistleblowers:

My understanding is that whistleblower protection should take precedence. For two reasons. The office is not really given any investigative authority by law, but there is an obligation to give space to both sides. That’s rather briefly expressed, but I think that the legislators meant to hear both sides and draw some conclusion from that. I mean, I can’t think of any other explanation for that sort of unintelligible legal term “prima facie”. [...] So I would grant the protection, unless the prima facie evidence does prove the opposite.

She added that the ensuing litigation would clarify the public interest, which by definition only arises in a controversy with a private interest: “Public interest is not, if memory serves, a legally defined term. It is certainly the easiest way to get into some sort of controversy with what is private interest in order to find what is public interest”.

Candidates Two and Four thus argued that a conflict between private and public interests is the only way to delimit on a case-by-case basis what constitutes the public interest. This was in contrast to the anti-corruption framing, which narrowed the content of whistleblowing to financial interests, thus moving towards a vision of the whistleblower and the employer as actors with common financial interests to save (public) funds. At the same time, however,

the third position avoided a straightforward pro-employee understanding of whistleblowing and worked primarily with the perspective of constructive conflict between different interests.

(Un)Limited Responsibility of the OPW

Within the anti-corruption narrative, whistleblowing has been seen as a tool for efficiency. This has also defined its role within the state. Candidate Nine declared:

I offer a sort of chain of reasons showing that Slovakia has a corruption problem. If you don't believe it, it can be proven numerically. [...] There are also studies that have shown that whistleblowing is an effective tool for curbing these things, and there have been attempts in Slovakia to protect whistleblowers, but they have been ineffective so far. So this, to me, says quite clearly that, yes, we need a new office that has whistleblower protection as its main task.

Even more significantly, Candidate Five, a former collaborator of Transparency International Slovakia, narrowed the public interest to combating corruption and thus delimited the area of responsibility of the OPW:

So I will answer perhaps quasi-philosophically, actually the aim of all such offices is—for example, when I worked for Transparency, they often got questions about: What if there is no corruption one day? We can close it down. In a way, that is the dream of every such institution, I wish it would be so one day, but I don't know whether we will live to see such a state of affairs, because there will be a constant need to narrow the space for corruption.

This narrow understanding of the office's function was coupled with references to the law as a clear framework for what is or is not anti-social activity. Candidate Six was even accused by one committee member of “formalism”. He reacted again with a reference to the law as a clearly determined framework for his and the OPW's actions.

[Committee member] From what you say, it seems that you care more about form than content, so I'm giving you space to explain if this is a misunderstanding on my part.

[Candidate Six] Of course I want to be active, but not activist—that's always the point, because being too activist might mean that I'm overstepping my authority and that wouldn't be right, so I'll definitely be active.

This answer did not satisfy the committee member, and the candidate was also reproached for excessive formalism on the evaluation card.

On the other hand, other candidates, especially the whistleblowers, saw the establishment of the OPW as a trigger for a much larger change towards law enforcement. Candidate Eight even saw corruption as only a partial problem in the public sector and highlighted bigger problems in the private sector.

I see corruption as being a very important or serious phenomenon in that area of public administration. In the private sector there are many more problems, and yet the whistleblowers are silent and do not want to report the activity. This is the main problem.

His vision was to create a network of a very large number of whistleblowers who would, thanks to their protected status, improve the situation of employees in Slovakia whose rights were being violated by employers. The OPW would play the role of coordinator of this network, with eight detached offices in cities where courts dealing with labour disputes are located. On their evaluation cards, committee members reproached him for unrealistic targets completely outside the legal framework.

While the narrative of efficiency avoided the question of the political role of the OPW, extending its reach to anti-social activities other than corruption inevitably implied a political role. Some candidates tried to find a middle way by highlighting the importance of cooperation with other public and non-governmental institutions, and in this way opened up the possibility of the responsibility of the OPW towards other areas. Candidate Two advocated for the necessity to create a public interest that is in cooperation, and occasional conflict, with other institutions.

Based on my experience, I have come to realise that if we want to promote the public interest, then good constructive cooperation between different bodies is essential. One institution cannot solve the problem of corruption or the problem of whistleblower protection. I therefore want to build on my experience of dialogue so far, and to be active precisely where the powers of the authorities will intersect significantly, and therefore to communicate with labour inspectorates and prosecutors' offices, and where some organisations are interested in this subject, especially NGOs.

Candidate Two was the only one to explicitly mention the conflict between trade secrets and whistleblower protection. In the future, she said, she would like to be part of the debate on the topic of extending protection to the self-employed, as well as the debate on a stronger public interest position towards trade secrets as envisaged in the European Directive.

The Directive is also for contractors, subcontractors, volunteers, and self-employed persons. This may yet be an interesting debate. I think it will be, and I will be happy to participate in it if I get the opportunity. And one important aspect is also the exclusion of trade secrets. We have it set up in the law today that trade secrets cannot be breached, cannot be broken through that whistleblower protection, whereas under the Directive, trade secrets are not to be an obstacle.

Similarly, Candidate Four had also set more ambitious goals than simply controlling internal systems and protecting whistleblowers of corruption: "My vision is to build that office not just on protecting whistleblowers, but to become a kind of think tank in this area." This was a shift from the anti-corruption framework, but at the same time it did not go as far beyond the current legal framework as the candidates-whistleblowers presented.

Discussion

This article answers the question how the notions of "public interest" and "anti-social activity" have been interpreted and re-enacted during public hearings organised to select the Chair of the Office for the Protection of Whistleblowers in Slovakia and what role the topic of corruption played in this process.

The first contribution of the study is theoretical. By analysing the evolution of whistleblowing protection in Europe in parallel with reviewing academic literature on whistleblowing, it identifies epistemological links between the anti-corruption framing of whistleblowing and the business ethics literature on whistleblowing. The latter treats whistleblowing as an individual decision that consists of various steps influenced by diverse factors (for the review, see Culiber and Mihelič 2017). However, this perspective fails to capture the ambiguity of whistleblowing and tends to narrow its focus, on wrongdoing, to relatively straightforward violations of the law, such as financial fraud and corruption. This study argues that to capture the ambiguity of whistleblowing, where it is only in the ensuing conflict that concepts such as anti-social activity or the public interest are clarified, it is necessary to change the whole frame of reference, which is offered by the radical democracy perspectives (Contu 2014; Mansbach 2007, 2009; Weiskopf and Tobias-Miersch 2016). From this angle, relationships and institutions, as a formalised network of relationships, are not just another set of factors to explain (and predict) whistleblowing, but instead become the main perspective through which the complexity of whistleblowing and its impacts are best seen.

The second contribution builds on the theoretical part. Unlike previous studies on whistleblowing, this research specifically studies the institution that is supposed to support whistleblowers. Although it captures only the emergence of the institution, the ethico-political impact of whistleblowing does not remain only abstract in the form of parrhesia (Mansbach 2007; 2009). On the contrary, its potential importance is shown concretely in the legal sphere for the renegotiation of what is in the public interest. As was shown, the organisation of the hearing, specifically its public dialogical character, led to a shift away from the strict anti-corruption framing of whistleblowing and offered a pathway for reinterpretation of the law on whistleblowing towards the protection of working conditions, human rights, and freedom of expression. In fact, the hearing stimulated the exploration of larger ethico-political questions related to the role of the state in protecting “the social”, which was not reduced to a mere aggregate of individual (taxpayers’) financial interests.

The contribution of this study is therefore internationally relevant and not limited to the Slovak environment. In most countries, whistleblower protection legislation is adopted without establishing a special institution dedicated to whistleblower protection, but only as a regulation of the internal channel for whistleblowing within larger enterprises. This paper argues that such implementation is likely to be quite ineffective in actually protecting whistleblowers, or in fulfilling its purpose as a tool of democracy, because in such a framework whistleblowing is not understood as embedded in a web of concrete relationships, including institutions, of which the whistleblower is only a part. Specifically, the dominant framework—reflected in the anticorruption framing in the public hearings analysed in this study—presupposes morally exceptional individuals are those who step forward, making them essentially equal in strength to the adversary and able to confront a corrupt environment on their own. At the same time, whistleblowing is anticipated primarily in the context of reporting financial fraud and relevant mainly for the public sector.

In contrast, this study emphasises institutional and relational elements which play crucial roles in the application of laws regulating whistleblowing, and thus in the trajectories of individual whistleblowers. In the hearings, this position was based primarily on a creative

interpretation of existing law, as the candidates and committee members inspired each other to develop a dialogue on public interest and anti-social activities. This implied an openness to the notion of anti-social activity that included corruption but was far from limited to it. Similarly, from this point of view, the moral character of the whistleblower was not as relevant as the prima facie evidence that the whistleblower's report revealed relevant facts. The fact that whistleblowing, according to the law, takes place in the workplace also implied the weaker power position of whistleblowers. Therefore, whistleblowers were seen as in need of support, in some cases even before blowing the whistle. At the same time, such comprehensive protection required the acceptance of much broader responsibilities by the dedicated institution than simply granting or not granting protection.

Conclusions

The most valued position in the hearings was represented by candidates who drew primarily not from an abstract anti-corruption framework or a concrete experience of whistleblowing but focused on the legal interpretation. Although “the fight against corruption” was the dominant framing of the public hearing, the resulting slight detour from it—personified in particular by the two top-ranked candidates from the first round—symbolises a certain change in the perception of anti-social activity and whistleblowing mediated by the public hearing and the dialogue between the candidates and the members of the committee.

On the other hand, the position of the two whistleblowers among the candidates, who rejected the anti-corruption framing most explicitly, was considered too radical. Their frame was not positively assessed by the committee or by Transparency International Slovakia, because in their view it did not respect the legal framework. If only anecdotally, this observation points to the danger of institutionalising whistleblowing. Specifically, a special institution dedicated to the protection of whistleblowers may stimulate a shift away from the mere formal support of whistleblowing towards a more dynamic conception of public interest protection, but it equally risks stalling and protecting the status quo. It is therefore crucial that such an institution retains a great deal of openness about what constitutes public interest and anti-social activity, which means that it must encourage parrhesia even within itself. In light of this study, however, despite this danger of institutionalisation, it seems more likely that such openness will be preserved if a special institution exists than if there is no dedicated institution at all and the discussion of public interest and anti-social activity is left only to individual whistleblower litigations.

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