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**REWARD SYSTEM FOR WHISTLE-BLOWING, AND THE
RULE OF LAW**

Master's Thesis

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I hereby declare that I have compiled the thesis/paper independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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ABSTRACT

This master's thesis aims at finding a solution to increase the number of infringement notifications. Also, it attempts to analyse the need for a reward-system in the case of whistle-blowing and in the context of the rule of law. Could a reward-system increase the number of infringement notifications?

The thesis is based on qualitative research and the main methods used in this thesis are regulatory analysis and case studies. The author uses different interpretation methods, case law analysis and comparison. The main sources for the thesis are legislation, research books, research articles and case law.

The research problem of the thesis is to find out whether a reward-system could increase the number of infringements notifications or be beneficial for crime prevention. Can technology help to fight crime or prevent it? Also, from the perspective of the rule of law, can whistle-blowing help increase the number of infringement notifications?

The rule of law principles that are used in the thesis are equality before law and accountability to the law. This is because whistle-blowers can bring down the criminals and by that, make them accountable to the law. Crime prevention brings equality.

Keywords: Whistle-blowing, reward-system, rule of law, infringements, crime prevention, IT-systems.

INTRODUCTION

The topic of the thesis was selected because whistle-blowing is truly relevant in Estonia. However, in Estonia, we do not have laws that directly protect whistle-blowers. EU directive 2019/1937¹, on the protection of persons who report breaches of the Union law, establishes certain rules, which Estonia must adapt to its legislation to regulate whistle-blowing. The Ministry of Justice has prepared a draft regarding the protection of whistle-blowers which has to be passed by the Estonian parliament in 2022. However, Estonia is already late with adapting the directive 2019/1937² as the European Commission has started an infringement procedure against Estonia for missing the deadline for adapting the whistle-blowers directive. The deadline for adapting the directive was 17 December 2021. Whistle-blowing plays an important part in crime prevention and with the help of technological systems, it could increase the number of infringements notifications. Whistle-blowing is closely related to technology through GDPR and the channels that are used for reporting.

The subject is relevant because Estonia is lacking regulations that protect or help whistle-blowers. This could be the main reason why a lot of whistle-blowers do not report- because they are afraid of possible consequences. Also, there is the money factor involved: if there was monetary reward, more people would act. In the case of *Halet v. Luxembourg*³ the judges found that whistle-blowing needs better regulation in order for whistle-blowers to come forward. Based on that, it is possible to argue that there is a need for strengthened protection for whistle-blowers and a need for amending the law. Among other things this thesis is relevant because in 2022, a new law regulating the protection of whistle-blowers will be adopted. The author finds that this is a good opportunity to suggest a potential reward-system for whistle-blowers- now when the law is in the process of being adopted. The author would like to find out, if or on which conditions a reward-system would help to increase the number of whistle-blowers. In that sense, we could ask whether it could help to prevent infringements and still be in according with the rule of law.

The research question is: whether a reward-system would increase the number of infringements notifications? Technology could provide a tool in the fight against crime or help to prevent it. From

¹ 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.

² *Ibid.*

³ *Halet v. Luxembourg*, no. 21884/18, ECHR, §112.

the perspective of the rule of law, whistle-blowers could help increase the number of infringement notifications. A reward-system could motivate whistle-blowers to step forward since the main problem with whistle-blowers is that they are afraid of potential consequences and there is no motivation for them to prevent crime. There are many negative repercussions for whistle-blowers should they decide to come forward, so there must be some other positive rewards besides doing what is right by the law. The rule of law principles that are used in the thesis are equality before the law and accountability to the law. This is because whistle-blowers can bring down the criminals and by that, make them accountable to the law. Crime prevention brings equality and justice. The author wants to emphasize that the existing law about whistle-blowers is still in its initial stages and needs some amendments so that it would have a clearly regulated area, regarding how whistle-blowers are protected. The main source for this thesis is the Directive (EU) 2019/1937 of the European Parliament and of the Council⁴, which gives an overview on the rights and rules of whistle-blowers.

Since the thesis is based on qualitative research, the author analyses existing laws, and draft legislation on whistle-blower protection, and relevant court practice. The main methods used in the thesis are regulatory analysis and case studies. The main sources for the thesis are legislation, research books, research articles and ECHR case study. By comparing EU law to Estonian law, it can be detected what is missing from existing law and what needs amendments. Also, this way it can be found if the reward-system could help increase the number of infringement notifications. Furthermore, we can see whether a reward-system could be beneficial for crime prevention. By analysing relevant legislation and court practice, it could be seen if there is a need for motivation so as to have more notifications about infringements. One problem regarding the topic is that there are only few court cases that could give an overview of any issues in this field or provide any solutions. However, there are many research books and articles that discuss issues regarding whistle-blowers. Since Estonia has not adopted a law on protecting whistle-blowers yet and it is still draft of legislation, the author can rely on the existing legislation of the European Union.

In the first chapter of the thesis, the author will explore the rule of law and how whistle-blowing is regulated in EU and in Estonia. Also, the essence of whistle-blowing and the ways it could be understood are explored. In addition, the author studies and compares whistle-blowing laws to find any similarities and bring out problems in current legislation that regulates whistle-blowing. This

⁴ Directive (EU) 2019/1937, *supra nota* 1.

chapter is more theoretical, exploring the issues and underlining necessary amendments to the law. The second chapter of the thesis discusses the role of a reward-system in fighting crime, from the perspective of whistle-blowing coming forward and helping to convict criminals and receiving a monetary reward for it. This chapter looks at possibilities of reporting infringements and the positive effect of whistle-blowing on the prevention of infringements. The author will compare and analyse the differences and similarities in the practices of the European Court of Human Rights regarding whistle-blowing. The outcome of this chapter should indicate if a reward-system for whistle-blowing could increase the number of infringements notifications according to the principles of proportionality and equality of the rule of law and help prevent crime. The thesis is considered in terms of technology law as whistle-blowing is closely linked to technology, through its channels.

LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Court of Human Rights
ECtHR	European Court of Human Rights Treaty
EU	European Union
GDPR	General Data Protection Regulation
GRECO	Group of States against Corruption
MS	Member States
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
USA	United States of America

1. THE RULE OF LAW AND WHISTLE-BLOWING

First, let us discuss whistle-blowing: what is the essence of whistle-blowing and how can it help to prevent and stop crime or corruption. Whistle-blowers have had a bad reputation in the society because with their contribution, they can bring justice to private and public sectors criminals. However, it is not bringing justice that has given whistle-blowers their bad reputation, but the way it has been done. Some would say that whistle-blowers are snitches and some corporations have created inhouse rules that prevent whistle-blowing. In this section, the author brings out the principles of the rule of law that are used in the thesis. The author states that the rule of law and its principles are connected to the whistle-blowing in order to prevent corruption and in order for the government and the citizens to be equal and accountable to the law. Also, equality and the absence of corruption are two goals that motivate whistle-blowers. Preventing corruption helps society to obey the law and make everyone accountable to the law. By detecting crime, whistle-blowers can help to reduce the number of infringements and prevent corruption. When we compare the rule of law and whistle-blowing, there are many links to the principles of proportionality, equality, and crime prevention.

Whistle-blowing is an especially important part of crime prevention. Without any protection or other safeguards, corruption would be not detected as whistle-blower would not blow the whistle. The directive⁵ creates rules for protecting whistle-blowers and therefore, the Member States who adapt these to their laws make it easier for whistle-blowers to come forward. Whistle-blowing and the protection of whistle-blowers is not clarified in the current EU law and because of that, a potential whistle-blower may not report a crime due to the pressure from the employer. The directive “creates a three-step mechanism, the prerequisites for receiving the protection, and the prevention of using the pressure and safety methods”.⁶ The author argues that the regulations on whistle-blowers are vague because whistle-blower protection is quite new concept and creating legislation for it takes time.

In some countries, they have regulations that protect whistle-blowers, and a reward-system for them as well, but in some countries, like Estonia, we have not adapted the laws to give whistle-blowers this kind of protection or monetary reward for their input. In the Estonian law, “there is

⁵ Directive (EU) 2019/1937, *supra nota* 1.

⁶ Ministry of Justice. (2020). Intention to draft the Whistleblower Protection Act, 1.

no horizontal whistle-blower protection regulation and guarantees for blowing the whistle are included in some other areas of legislation”.⁷ Ministry of Justice noted, that “in some cases, whistle-blowers are provided with protection and confidentiality but there is no regulation on who shall provide it or how, and who are the whistle-blowers eligible for protection.”⁸

The draft created by the Estonian Ministry of Justice is one step towards acknowledging whistle-blowers and their problems because without the protection of whistle-blowers, many of them do not come forward as there is much to lose. The main idea for this draft is to give an overview of the field and set rules for blowing the whistles. Also, it aims to give an overview of the prerequisites for being eligible for protection. According to the Estonian Ministry of Justice, the draft lays out possibilities and channels for safe whistle-blowing. “In order to obtain protection, it is important that the person who has reasonable grounds to believe that the information is true and has been duly notified, and that protection does not depend on the whistle-blower’s motivation or on whether they act in the public interest”.⁹ Also the draft contains rules about penalties for submitting incorrect information on purpose. In some countries, whistle-blowers have gone to the media first and have not even consider notifying the human resources department of the employer.

The author agrees that such behaviour raises concerns about the motives of the whistle-blower and by that, they could acquire bad reputation. In the directive¹⁰, “there is a three-step reporting system: internal reporting, external reporting and notifying the public”.¹¹ This gives options to the whistle-blowers and can help to detect their motives as well. In many case laws, whistle-blowers complain that they are deprived of their freedom of expression if they cannot go public with their information. The rule of law is one of the core values of the EU and its principles are the basis for having democracy and a constitution. One of the principles of “the rule of law is effective judicial protection and it presupposes the independence, quality and efficiency of national judicial systems”.¹² The principles of the rule of law aim at keeping the society safe and directing citizens to follow the law. According to the Estonian Constitution: “the penalty imposed on a person for an offense must comply with the principle of proportionality in order to comply with the rule of

⁷ *Ibid.*, 9.

⁸ Ministry of Justice. (2020), *supra nota* 6, 1.

⁹ *Ibid.*, 13.

¹⁰ Directive (EU) 2019/1937, *supra nota* 1.

¹¹ Ministry of Justice. (2020), *supra nota* 6, 2.

¹² European Commission definition on upholding the rule of law.

law.”¹³ Regarding the proportionality of the penalty, it raises questions about the possibility of giving a reward to whistle-blowers. Is there also proportionality in complying with the law and reporting the crime from the perspective of crime prevention?

“The Article 6 of the Treaty of EU provides that the Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law- these are principles that are common to the MS”.¹⁴ Due to that, MS must uphold these values when drafting new laws and preventing threats. National judicial systems need to be free of corruption and fundamental rights must be guaranteed. Proportionality must be kept in mind when making new laws and imposing penalties in the law. The proportionality theory does support two injunctions with which most people, citizens, scholars, and professionals alike, would say they agree. Tonyr marks, that “first, no one should be punished more severely than they deserve. Second, all else being equal, people who commit more serious crimes should be punished more severely than people who commit less serious ones, and *vice versa*”.¹⁵ In most countries, upon committing a crime you get a punishment that is in accordance with the crime but in some countries, there are no principles of rule of law. The author argues that the received punishment is not in accordance with the crime committed and whistle-blowers are afraid to report because of the lack of justice and equality, and of the violations on human rights.

In the countries where human rights are not important and corruption blooms, there are law enforcements agencies that are in charge of every field. The author agrees that compliance with the law is controlled and monitored by the law enforcements. Whistle-blowing in this kind of society is not possible as there is no guarantee for the protection of whistle-blowers. Tyler states, that “one key public behaviour is everyday compliance and it is important that people comply with the laws that apply to their everyday lives”.¹⁶ In the democratic countries, cooperation between people and law enforcements and other authorities is accepted and encouraged.

However, the laws we have today prevent whistle-blowers from coming forward because they are afraid of the pressure methods in the workplace. Also, the lack of motivation could be an issue as whistle-blowers think about the potential consequences and whether is it worth it to jeopardize

¹³ Eesti Vabariigi Põhiseaduse kommenteeritud väljaanne. (2020). <https://pohiseadus.ee/>, 126.

¹⁴ Bingham, T. (2011). *The Rule of Law*. London, UK: Penguin Books, 9.

¹⁵ Tonyr, M. (2020). *Doing Justice Preventing Crime*. UK: Oxford University Press.

¹⁶ Tyler, R. T. (2003). *Procedural Justice, Legitimacy, and the Effective Rule of Law*. *The University of Chicago Press Journals*, (30), 290.

themselves. To identify and prevent serious damage to the public interest, the concept of infringement must also cover abuses within the meaning of the case law of the European Court of Justice, i.e., “acts or omissions which do not appear to be unlawful in a formal sense but contrary to the law.”¹⁷ The author finds that it is important to acknowledge whistle-blowers and court law precedents could help harmonize the practices of MS. The rule of law principles helps the society to function and the principles of equality, proportionality, procedural and legal transparency can make the legal system reliable.

1.1. The Essence of Whistle-blowing

The essence of whistle-blowing is difficult to put in one sentence because the term has changed in time and has become an action instead of being a verb. There are many definitions of whistle-blowers and the most important feature they express is that whistle-blowers are people who report on a wrongdoing. Also, they have been called as a mechanism that reveal corporate or governance infringements. Whistle-blowing has been seen as an opportunity to use the freedom of expression.

Kaye, the UN Special Rapporteur, has expressed that in his opinion, the term “whistle-blowing refers to a person, who exposes information that they reasonably consider to be true at the time of disclosure, and that they perceive as constituting a threat or harm to a specific public interest, such as a violation of national or international law, harm to public health or public safety.”¹⁸ When analysing whistle-blowing as a term, we find that it has many different interpretations that lawmakers and researchers have used. Whistle-blower can reveal violations that can be a threat to the society and the public has an interest in knowing.

According to the researchers, “there is a variety of theories and models attempting to explain whistle-blowing. Elements that influence the process include the whistle-blowers, the type of wrongdoing, wrongdoers, the decision to blow the whistle, whistle-blowing recipients, organisational factors and finally the consequences of whistle-blowing. An organisational response that prohibits an employee to speak up is the trigger that creates a whistle-blower.”¹⁹ However, media and social media are a considerable influence in different areas, and thus whistle-blowers are also influenced by that.

¹⁷ Directive (EU) 2019/1937, *supra nota* 1, 24.

¹⁸ Halet v. Luxembourg (21884/18), *supra nota* 3, §52.

¹⁹ Brennan, M. N. (2020). Whistleblowing and whistleblowers. UK: Oxford University Press.

In 2017, the UN whistle-blower protection policy was updated by the UN Secretary-General Guterres to “enhance the protection of individuals who report on possible misconduct or cooperate with duly authorised audits or investigations”, and a whistle-blower is considered to be a person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it is in a public or private sector”.²⁰ The author agrees that according to this recommendation, a whistle-blower is a person who reports on their employer to prevent any harm to the society. According to the CoE “whistle-blowing refers to the act of someone reporting a concern or disclosing information on acts and omissions that represent a threat or harm to the public interest that they have come across in the course of their work”.²¹ In the past, whistle-blowing was considered to be an act in which an employee of a company reports the infringement. Now it also includes reporting by a previous employee or a cooperation partner, if they have any knowledge on the committed crime. Furthermore, whistle-blowing can be used in different areas, where there is a need for a control mechanism, for example in copyright thefts or even traffic violations.

CoE states, that “instead of viewing whistle-blowing as a positive expression of “good citizenship,” albeit in the context of work, whistle-blowers are branded as disloyal to their colleagues or to their employer. When this happens, the attention is primarily or solely on the whistle-blower, admonishing or sanctioning the individual for “breaking ranks” rather than examining and addressing the information reported or disclosed”.²² When a whistle-blower has reported a problem or a crime, many complications may arise, such as pressure methods, offering a bribe or letting the whistle-blower go and silencing them. There can be even a court matter blaming the whistle-blower if the company feels threatened.

The author argues that the organisations and institutions that have done something wrong are the ones who do not see the benefits in whistle-blowing, as the main goal should be a safe environment where people follow the rules and rulebreakers are sanctioned. “Employers, governments and citizens increasingly recognise that while encouraging whistle-blowers to speak up averts harm and damage, it also improves public services and strengthens organisational responsibility and public accountability”.²³ For having more whistle-blowers, the society needs to accept them and

²⁰ Halet v. Luxembourg, *supra nota* 3, 54.

²¹ Council of Europe, Protection of Whistleblowers. Recommendation CM/Rec(2014)7 and explanatory memorandum, 11.

²² *Ibid.*, 12.

²³ *Ibid.*

treat them well, by providing protection or even monetary benefits. However, in many countries there are no regulations for protection of the whistle-blowers or few laws that regulate the definition of whistle-blowing. In these countries, more concerns are being raised on people who disclose problems that occur inside organisations. In these countries, whistle-blowers usually provide information anonymously because they are afraid of potential consequences and want to protect themselves, with or without relevant regulations.

Reporting anonymously can raise concerns about the trustworthiness and credibility of whistle-blowers, even if reporting is done in good faith. CoE analyses, that “anonymous disclosures can also be much more difficult to investigate or even impossible to remedy and there is no guarantee that the source of the information will not be unmasked. If the person is identified, the fact that they acted anonymously can be seen as a sign of bad faith, further jeopardising their position”.²⁴ When reporting anonymously or blowing the whistle publicly and in a good faith, without receiving any protection from the authorities, the whistle-blower is doing a good thing- however, what they get in return is a bad reputation and dismissal. Furthermore, if we look back in history, whistle-blowers reputation was considered to be bad because they reported about everything and not always in good faith. The author argues that this has affected people in the present as well because even if people fail to obey the law and make some mistakes, they are afraid that someone will tell on them, and they get in trouble or go to jail. Europe is overly sensitive on this issue, if we look back to the Nazi regime or the Soviet period in Estonia, when telling on people was quite common in the exchange of some type of reward.

The report on whistle-blowing prepared by the Parliamentary Assembly of the Council of Europe notes that “in some countries there are “deeply engrained cultural attitudes which date back to social and political circumstances, such as dictatorship and/or foreign domination, under which distrust towards ‘informers’ of the despised authorities was only normal.”²⁵ The author agrees that as people are still sensitive on this matter, it does not allow them to see through this aspect and by that they do not see the benefits of whistle-blowing. However, if the benefits were introduced by the media, more people would become aware of the issues concerning the matter, but with anonymous reporting, it is difficult to bring out any relevant problems. The whistle-blower protection laws and safe channels for reporting are particularly important in order to increase the number of whistle-blowers and discover more infringements. CoE noted, that “they are also

²⁴ Council of Europe, Protection of Whistleblowers, *supra nota* 21, 14.

²⁵ *Ibid.*

intended to ensure that regulatory authorities act on information they receive and protect those who provide it, and that wider disclosures, to the media for example, are protected when necessary.”²⁶ There are many possibilities to ensure that the given information is safe and the whistle-blower is protected, if the government sees the importance of the matter.

The definition of whistle-blowing has been extended so that it could be used in for different areas, and it would be possible to detect more violations. By creating different ways of reporting corruption, the regulation will set up safe channels for whistle-blowers to use, such as internal, external or reporting publicly.²⁷ The directive²⁸ also creates rules regarding the way of reporting crime and by that, whistle-blowers need to use internal channel first and going public with the information or approaching the media should be the last remedy. The author finds that, protecting whistle-blowers is one way to motivate them to come forward, but another aspect is to motivate them with benefits, such as a monetary reward or monetary support. In many countries, governments have created remedies and support systems for whistle-blowers who suffer because of harm and the loss of their job. Article 21 (8) of the directive also “emphasizes on the need for effective remedies, and states that MS needs to ensure that whistle-blowers have legal remedies and full compensation for their loss, pursuant with the national law”.²⁹

The appropriate remedies should be identified on the basis of the damage caused. One remedy could be that the person is reinstated or could get a compensation for their monetary loss. Under the Estonian Employment Contracts Act, the employee is eligible for compensation in the amount of three average monthly wages, if it is found that the employer has done something wrong. Also, the same principle could be used with the whistle-blowers if the law is changed. The directive notes ”that the persons who work for some organisation or are connected to it by their work, are the first ones who are aware of the organisations risks or harm to the public. By reporting on the activities that can harm the public, the persons who are doing it, are the whistle-blowers and, they are protecting the public by preventing the harm.”³⁰ The author finds that this is the main reason why the directive is so important and guaranteeing efficient protection on both national and international level is the key to ensure the protection of whistle-blowers and thereby encourage them to come forward.

²⁶ Council of Europe, Protection of Whistleblowers, *supra nota* 21, 14.

²⁷ Erikson, M. (2021). Protection of the Whistleblower in an Employment Relationship. *Juridica*, 1/2021, 58.

²⁸ Directive (EU) 2019/1937, *supra nota* 1.

²⁹ Erikson, M. (2021), *supra nota* 27, 62.

³⁰ Directive (EU) 2019/1937, *supra nota* 1, 1.

Many people are not aware that whistle-blowers are reporting in different areas, and in addition to preventing harm in finance, they can also report terrorists or even wide-range money laundering. Also, “the protection of whistle-blowers across the MS is not even and is fractured. The consequences of infringements of the Union law with a cross-border dimension reported by whistle-blowers illustrate, how insufficient protection in one MS affects the functioning of the EU policies not only in that MS, but also in other MS and in the Union as a whole”.³¹ The author agrees that in order to achieve a harmonized methodology and efficient protection across the Union, laws need to be changed on a national level and there must be strong recommendations from the EU. One can argue that there are many advantages to whistle-blowers and through the detection of infringements, they prevent and stop harm to the public. However, such kind of prevention is usually unknown to the public. With the advantages in technology, there are more new types of threats around us. Whistle-blowers can diminish and prevent that danger, but we need to provide protection for them. The author finds that many infringements what happen nowadays concern data protection and violations under the GDPR. One reason for that may be that people do not know about their rights under the GDPR. For an organisation it is easy to violate person’s rights and without whistle-blowers, even these actions could remain undetected.

According to the Directive, “whistle-blowers can help to notify the public of the violations on network and information systems under the Directive 2016/1148³² of the European Parliament and of the Council. This directive is established to set up requirements for reporting on incidents that include personal data and security requirements for authorities providing essential services in energy, healthcare, transport sections and providers of key digital services, such as cloud computing services and for basic utilities and gas supply services.”³³ These sectors are very important for the functioning of the society and whistle-blowers could prevent incidents or infringements in these sectors. Also, the goal of the EU is to prevent corruption and other illegal criminal activity within the Union. Furthermore, there is an exception regarding whistle-blowers; that is the witness protection for people who witness crime and require protection for reporting. Usually there is a reward for this kind of activity and the person is also promised protection. However, the Whistle-blower Protection Directive does not include a reward or compensation provided for whistle-blowers. Whistle-blowers have to come forward as a gesture of goodwill, not for monetary gain.

³¹ *Ibid.*, 15.

³² *Ibid.*, 20.

³³ *Ibid.*

In the court practice, whistle-blowers have relied on their freedom of expression when reporting infringements. “Freedom of expression and information, as enshrined in Article 11 of the Charter and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, includes the right to receive and impart information and freedom and diversity of the media”.³⁴ Whistle-blowers rely on the Convention, if the internal or external channels have not been successful, and the organisation is accusing them of violating the employment contract. According to the directive, the information or suspicion needs to be true, and the reporting must be done in good faith. These requirements are important safeguard against malicious unfounded or abusive communications, ensuring that the protection is not granted for a person who intentionally and knowingly provided incorrect or misleading information at the time of notification.³⁵ Detecting the infringement in an early stage is very important, because it could prevent more large-scale and dangerous activities that could harm the public. The author emphasizes that supervisory authorities should take any information or complain seriously.

There must be safe channels that whistle-blowers can use because without that, malicious persons can exhaust supervisory authorities with false information. The directive sets rules for detecting any pressure methods and prohibiting the implementation of such methods, and also getting access to the remedies. The remedies are provided under the methods and pressure or the suffered damage, the compensation should be provided with accordance of the MS law.³⁶ The remedies that a whistle-blower could be eligible for can be reinstatement to work, recovery of the license or renewal of the authorization or even compensation for present or future financial losses. The directive does not find that giving monetary reward for acting in good faith should be a motivation for whistle-blowers to come forward. The directive only states that providing protection and compensation for damages should be a sufficient measure that encourages more whistle-blowers to come forward. There has been debates on which is the best way for a whistle-blower to report an infringement: whether internally or through law enforcement authorities. A good example is the *Luxleaks* case, “which has once again put the role of whistle-blowers in promoting the public interest in the spotlight.”³⁷ The *Luxleak* case is an important one because the whistle-blower went to the law enforcement authority once the crime had become serious and the authorities acted on it, by putting an end to the violation.

³⁴ Directive (EU) 2019/1937, *supra nota* 1, 23.

³⁵ *Ibid.*

³⁶ *Ibid.*, 44.

³⁷ OECD (2017), *The Detecton of Foreign Bribery*, Chapter 2. The Role of Whistleblowers and Whistleblower Protection, 3.

“Protection should be guaranteed to whistle-blowers regardless of their motives in making the disclosure and regardless of whether they report directly to law enforcement or choose to report internally - first within the company- or to the media, an elected government official or to the civil society.”³⁸ The author agrees with that because they are risking their income and reputation- if there are no guarantees or motivation for reporting, whistle-blowers might not report the infringement. For example, Canada, Australia and USA are countries where it is common to give a reward for whistle-blowing. There is even a reward-system, based on the measure of the exposure, and the number of detected crimes tax gives an equal percent to the whistle-blower. “Corporate whistle-blowing and/or implementation of financial incentives for whistle-blowing have created an opportunity to assess contemporary regulatory structures, in particular how incentive measures could interact with corporate whistle-blowing regulatory frameworks, and whether these could contribute to improved governance”- all this could be enlightening to the MS.³⁹

“USA’s Dodd-Frank Act authorises the US government to provide monetary rewards for eligible individuals, who voluntarily provide information that lead to a successful enforcement action that results in sanctions.”⁴⁰ These sanctions can bring government millions of dollars while the small amount paid to the whistle-blower is nothing compared to that. The reward for whistle-blowers is usually from 10% to 30% of the money collected, but there are other aspects considered when assigning the amount, such as the importance of the crime, the level of assistance from the whistle-blower, and if the whistle-blower used any other channels to report.⁴¹ These aspects can increase or decrease the amount of reward that is paid to the whistle-blower. The amounts that the US government has received thanks to whistle-blowers have proved more than worth it and should set an example to other countries, showing what can be achieved with the help of whistle-blowers.

The author finds that a monetary reward could be a remedy for whistle-blowers if they have been exposed and threatened. If there are no companies who wants to hire them because of the whistle-blowing, a reward is the best way to compensate them. An organisation that has committed a crime does not usually want to disclose it and tries to do everything in their power to stop the whistle-blower. Usually there are pressure methods involved that can persuade a whistle-blower not to

³⁸ *Ibid.*, 17, 4.

³⁹ Lombard, S., Brand, V., Austin, J. (2020). *Corporate Whistleblowing Regulation*. Singapore: Springer, 12.

⁴⁰ OECD (2017), *supra nota* 37, 11.

⁴¹ *Ibid.*

blow the whistle. In some cases, “whistle-blowers have been detained or held criminally liable for revealing a wrongdoing in their employment, thus highlight the need to strike a balance between punishing the malicious disclosure of sensitive corporate information and punishing those who speak out about possible misconduct that affects the public interest.”⁴² The author argues that these cases are a good example of how important it is to adapt the protection provided in the Whistle-blower Protection Directive. With the directive, MS can harmonize their practice concerning whistle-blowing.

For example, in Korea, there are financial compensations, remedies and rewards to whistle-blowers, and in the case of internal whistle-blowing, these are provided by a protection framework, “which has led to direct recovery or increase of the revenue of central or local governments. In the UK, a compensation is provided to people who suffer a monetary loss or who have been fired because of whistle-blowing.”⁴³ These remedies, compensations and rewards can increase the number of the whistle-blowers, because provided guarantees are not enough, if you cannot work anymore or are being abused. The author finds that in the digital world, no guarantees can be given that the identity of a whistle-blower will not be revealed.

The general idea is that a whistle-blower is a good person who has either witnessed or found out about violation and wants to put an end to it. However, this can result in harm and even a dismissal, which can affect this person’s income. These are the reasons why whistle-blowers might not come forward and report on detected violations. With provided safeguards or monetary rewards, whistle-blower would feel safer and would not need to worry about the lost income. The Whistle-blower Protection Directive could enhance the safety of whistle-blowers, but the MS need to adapt it first. The remedies that are provided in USA or Korea could signal to the EU that this kind of system is efficient. The author argues that the EU should also think about creating a reward-system to increase the number of the whistle-blowers and by that, detect more violations.

⁴² *Ibid*, 18.

⁴³ *Ibid.*, 17.

1.2. Whistle-blowing Regulations in the EU

Whistle-blowing in the EU has been getting increased attention since the importance of whistleblower protection has raised questions in the Union. The directive⁴⁴ has brought attention to the need for the protection and has put pressure to the MS to adapt it to their national laws. According to the author, the issue with this matter is that cross-border jurisdiction is different, and in many countries, there are no regulations concerning whistle-blowers or their protection. However, to even these practices and provide harmonized protection throughout the Union, the directive gives guidelines for MS. MS need to address whistle-blowing and provide legal protection for the persons involved. However, some MS have whistle-blowing protection but it needs to be improved. In some countries, the government is not pro-protection and there are only few resources to ensure that the disclosures are made to regulatory authorities.⁴⁵ Also, these issues can bring more harm, and the trust can be lost, if the protection is not handled correctly.

CoE states, that “many MS have rules that cover whistle-blowing indirectly or directly, however they do not have a national framework for the protection”.⁴⁶ The directive recommends them to create a framework for having harmonized protection for all whistle-blowers. Also, this makes the work of different authorities easier and can help widen the spread of the protection to all whistle-blowers. However, a lot of valuable information is often left unnoticed by the group that has the most interest vested in it. The governments also need to promote relevant information through media. With the regulatory regime unclear, whistle-blowers need employment protection in order to ensure them that the information that is shared is also protected.⁴⁷ Also, the cross-border system, the mechanisms, and regulations need to be harmonized because otherwise this can confuse whistle-blowers. With various systems in different countries, whistle-blowers who want to come forward cannot do that in countries where there is no clear regulation or protection provided.

The author emphasizes that in some countries, anonymous reporting is accepted, but in other countries, it is not, and whistle-blowers needs to reveal their identity upon reporting. With public reporting, the government makes sure that there is no hidden agenda for coming forward. “Strong

⁴⁴ Directive (EU) 2019/1937, *supra nota* 1.

⁴⁵ Council of Europe, Protection of Whistleblowers, *supra nota* 21, 18.

⁴⁶ *Ibid.*, 19.

⁴⁷ Hyde, R., Savage, A. (2015). Whistleblowing without borders: the risks and rewards of transnational whistleblowing networks. In W. Vandekerckhove, & D. Lewis (Eds.), *Developments in whistleblowing research 2015 International Whistleblowing Research Network*. UK: University of Nottingham, 1.

whistle-blower protection and efficient handling of the process will help to ensure that whistle-blowers who come forward feel safe and are able to speak up” without feeling threatened.⁴⁸ Countries that accept anonymous reporting see it as a valuable tool for receiving information from whistle-blowers who are afraid about their work and family.

In the era when technology is increasingly prominent, we face different threats and dangers every day. By learning about machines and developing new software and hardware we make our lives easier but at the same time, we also create new dangers. Technology can do almost everything, except feeling the same feelings that we do. That distinguishes us from technology- however, the AI could have feelings in the future as well. With technology, whistle-blowers need to acknowledge that everything can be found. The author is of the opinion that the protection provided to whistle-blowers needs to be technology-proof, so that hackers could not get access to the information about whistle-blowers. MS need to enhance their approach to protect whistle-blowers’ data from reaching the media. Whistle-blowers who come forward anonymously do not want to have their name posted on media or see it in the news. The EU is working on to harmonizing the protection of whistle-blowers in all of the MS through different institutions and groups. GRECO, “which monitors the Council of Europe’s corruption prevention standards, has underlined its importance and by that kept it in the EU’s agenda”.⁴⁹ The author finds that in the light of this knowledge, the MS need to see its effect on preventing corruption.

The notion on of freedom of expression is widely used when likening whistle-blowing to using one’s voice to speak up and preventing danger to the society. The ECHR has made decisions which concern whistle-blowing, and their main reasoning is about using the right to freedom of expression under Article 10. The ruling does not mention preventing corruption *per se*, but it is connected to the freedom of expression when a person is reporting to prevent corruption. Corruption violations in the public sectors are discussed through media and have received more attention but violations in private sector are usually not detected nor discussed in the media. It is hard to say if analysing the need for supervision in both public and private sector would help to detect violations, or whether the problem lies in the lack of media attention. CoE states, that “accountability and transparency in a democracy-based society are the principles of the rule of law, it is important that there would be more public disclosures of violations shown in the media”.⁵⁰

⁴⁸ Council of Europe, Protection of Whistleblowers, *supra nota* 21, 15.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, 16.

The recognition of violations can affect the public; also, this can help to increase the number of reports if the people see that the government is transparent on that matter. Indeed, there are more positive effects when a violation is discussed in the media, but it does not mean that the whistleblower needs to be revealed as well. The author agrees that it should be sufficient to disclose the act without identifying the person who reported it.

The EU is facing the issue of variable degrees of whistle-blower protection that is provided in different MS. It concerns whistle-blowers and authorities who want to protect them and get the information to apprehend the violator. This uneven practice through the Union is also bad for cross-border cooperation. The missing harmonization increases the chance of whistle-blowers being penalised in criminal or civil lawsuits, which may happen when the courts do not recognize the decisions of other jurisdictions.⁵¹ If the courts do not recognize the decisions, there can be no cross-border cooperation. The lack of privacy and anonymity can raise concerns when some MS accepts them and others not. Although there are no international standards that regulate the protection or rules regarding whistle-blowers, some international legislations or treaties vaguely refer to whistle-blower protection. In Estonia, there are labour, criminal and anti-corruption laws that are indirectly connected to whistle-blowers. However, there are no specific laws regulating the protection of whistle-blowers.

“On 16. April 2019, the European Parliament adopted a directive that sets common rules for protecting the whistle-blowers against harm and persecution.”⁵² The directive was approved by the EU ministers and gave MS two years to adapt it to their legislation. The main purpose for the directive⁵³ was to create common rules for whistle-blowers protection and to protect their identity as well, since some MS do not accept anonymous reporting. The directive relies on the Charter of Fundamental Rights of the EU, to provide a fair trial and protect the identity of the accused and provide anonymity to the whistle-blower in the case of a processing personal data.⁵⁴ Whistle-blower is not the only one who may need the protection when there is a danger of disclosure of personal data. The whistle-blower may also need protection, if the employer uses pressure methods or violence against them. In addition, the employer could need protection when there are other persons involved, such as children and family members, whose reputation may suffer.

⁵¹ Hyde *et al.* (2015), *supra nota* 47, 1.

⁵² Chalouat, I., Carrion-Crespo, C., Licata, M. (2019). Law and practices on protecting whistle-blowers in the public and financial services sectors. ILO Working Papers, International Labour Organization, 27.

⁵³ Directive (EU) 2019/1937, *supra nota* 1.

⁵⁴ Chalouat *et al.* (2019), *supra nota* 52, 30.

The author agrees that whistle-blowing has been seen as an anti-corruption method that can reduce corruption in both private and public sector. The ECHR has established six measures under Article 10 by which the protection is provided for whistle-blowers. Chalouat states, that “there must be a strong public interest that can override a legally imposed duty of confidentiality and reporting has to be made by acting in good faith and believing that the information is true.”⁵⁵ Also, the ECHR looks at these measures when deciding if the received application is a violation under Article 10 of the ECHR. These measures can help the court to rule, but on the national level, the MS courts are governed by the national laws and regulations.

Yurttagül strongly emphasizes, “that an increasingly globalized world in a global pandemic, needs a stronger adoption of an international legally binding instrument on whistle-blower protection”.⁵⁶ The author finds that the methods of the EU are not sufficient to address the people worldwide and make the protection enforceable in every country; especially while COVID-19 has brought along confusion and distress worldwide, with splitting the Union. She also states that telling the truth or reporting on a violation, must be allowed, and not limited. The best-known whistle-blowers are Edward Snowden and Julian Assange who have brought attention to whistle-blowing and to whistle-blowers.

The case of Edward Snowden brought attention to the pressure methods that were used by the US government to silence him. However, there are more whistle-blowers who have gone through the same and have been silenced in the process. The EU provides protection for whistle-blowers so they can act, and in return, aims at giving them anonymity or provide measures that can help them. The author argues that ethical questions can arise if telling the truth and revealing a violator is not enough as a motivation for acting in good faith, and there should be other types of motivation in the form of a monetary reward, for a person to report. However, legislation can also help, if there are certain laws that oblige someone to report an infringement and not acting could bring about fines- in this case people may feel the need to comply with the law. Also, if the state has declared that an act is prohibited and can result in fines, people are more reluctant to commit the act. If there are no consequences in doing something illegal, people are more likely to be willing to break the law. The purpose of the criminal justice system and criminal law is to prevent crime, protect

⁵⁵ *Ibid.*, 22, 32.

⁵⁶ Yurttagül, H. C. L. (2021). Whistleblower Protection by the Council of Europe, the European Court of Human Rights and the European Union. An Emerging Consensus. Cham, Switzerland: Springer, 74.

the society and punish those who are breaking the law.⁵⁷ Without the judicial system, there are only recommendations for people to act correctly without harming others. The directive⁵⁸ will influence the society to protect the whistle-blowers and make people aware of the situation concerning whistle-blowers.

The EU whistle-blowing regulations provide measures that can help the MS to protect whistle-blowers and give them a safeguard. These measures can clarify the rules and conditions regarding who are considered to be whistle-blowers and on what ground they can get the protection, as not all reporting is considered to be whistle-blowing. With the protection, legislators need to provide compensation for whistle-blowers as well, since the main concern with reporting is that whistle-blowers might lose their job. In civil and criminal matters, damage is usually covered by compensation. The author agrees that the directive is one step towards providing protection for whistle-blowers and the MS need to acknowledge that.

1.3. Whistle-blowing in Estonia and the Rule of Law

Whistle-blowing is a new termin in Estonia, and we have been learning about it since the directive was drawn up by the EU. However, due to the need to adapt the Directive 2019/1937⁵⁹ to the Estonian laws, it has become a rapid learning process. The author argues that the legislators do not even know what this directive can offer to the society. The aggravating circumstance is that we do not have any court precedents in this area and adapting the laws to the directive without any case law makes it even harder. The principles of the rule of law are very strongly implemented in our court system and the authorities rely on them. Also, the EU is based on these principles, and it is important to keep these principles in mind when making legislation and adapting regulations or directives to Estonian laws. In Estonia, we rely on the principles that are barely mentioned in the law but are sufficient for regulate social relations and conflicts. However, “in the case of whistle-blowing, the officials need to be aware of their rights and obligations; also, it is important to have clear guidelines for procedures and rights for protection when blowing the whistle.”⁶⁰ The Whistle-

⁵⁷ Hodges, C. (2015). *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics*. London, UK: Bloomsbury Publishing.

⁵⁸ Directive (EU) 2019/1937, *supra nota* 1.

⁵⁹ *Ibid.*

⁶⁰ Saarniit, L., Ahi, K. (2000). Codes of Ethics and Ethical Infrastructure as Means to Prevent Corruption. *Juridica*, 8/2000, 496.

blower Protection Directive sets rules for the protection of whistle-blowers and for having these protection mechanisms, MS need to adapt them to their laws.

“In 2010, the Parliamentary Assembly of the Council of Europe adopted Resolution 1729, calling MS to review their acts about whistle-blowing or in the absence of these acts, to establish rules on regulating whistle-blowing, including the protection of the whistle-blowers in both public and private sectors”.⁶¹ In Estonia, we still do not have regulations that would provide protection to whistle-blowers or even regulations that would sets guidelines for blowing the whistle. Specifically, we do not have a legal framework that regulate matters concerning whistle-blowing, but we do have laws that are connected to reporting on violations and detecting infringements. Estonia is mainly focusing on preventing corruption and having many frameworks or even national action plans to prevent corruption crimes. The anti-corruption law and Penal Code mostly mention preventing danger or violation, but there is nothing about blowing the whistle on your employer or reporting an infringement that gives you a protection for acting according to the law. However, these laws do not allow any changes to workplace regulation.

Technology has been used as a tool for achieving different goals and providing solutions for humans to make their lives easier. The public sector also wants to keep up with the innovation and improve its services. Eger stated, that “they must operate under the rule of law, by protecting general principles, such as equality, administrative transparency, and protection of rights of all the citizens”.⁶² With these principles, the innovation needs to be transparent so that people would understand it and it would benefit all citizens. With the help of innovation, public and private sector could cooperate and create channels for whistle-blowers to use.

The Employment Act and the Civil Service Act are the laws that need to be changed if we want to adapt whistle-blowers’ rights and obligations of the workers and officials. These could regulate employees and employers’ rights concerning discrimination and dismissal in the case of whistle-blowing. Furthermore, since whistle-blowing is quite new in Estonia, we need to co-operate with other countries who have had a lot of practice with whistle-blowing and have their court practice or impact assessment on the influence on corruption and crime prevention. The author argues that whistle-blowers can help to detect crime and prevent infringements so there are a lot to gain.

⁶¹ Tiits, T. (2014). Problems in Estonia concerning whistle-blowing. *Juridica*, 5/2014, 443.

⁶² Eger, J. M., Maggipinto, A. (2009). *Information Systems: People, Organizations, Institutions, and Technologies: Technology as a Tool of Transformation: e-Cities and the Rule of Law*. Physica-Verlag, Germany: Springer, 23.

Whistle-blowers are mostly seen in the corporate area, where they report crimes that have happened or are happening, because by being an employee of the organisation, they have primary exposure. By having a primary exposure, they are the ones who can stop the violation in the first place. When it comes to the options of blowing the whistle, the first one is usually reporting internally to the manager or supervisor; if that does not help, there are possibilities to report externally to a law enforcement authority. If internal reporting is not enough, whistle-blowers tend to go public through media.

Whistle-blowers who approach the media without passing primary reporting channels first are usually mistreated and despised. This gives a negative reputation to the institution or organisation, that committed the violation, and the person who revealed the infringement is also affected negatively. However, negativity towards whistle-blowers is the main reason whistle-blowers want to stay anonymous. The negativity also impacts the legislation because the image of whistle-blowers is not good in many countries. Tiits emphasized, that “the bad reputation has prevented the recognition of whistle-blowers as fighters against corruption and crime”.⁶³ The author agrees that it has made whistle-blowing a delicate matter and the negativity towards whistle-blowers can prevent a potential positive outcome. The fear of losing one’s job is not the main reason whistle-blowers are afraid of coming forward. There are many factors that can affect the decision to report an infringement, such as pressure mechanisms from the employer, negativity from co-workers, bad reputation, monetary loss, being not able to work again, violence and threats against family members. These aspects can all affect whistle-blowers’ decision to blow a whistle or to stay silent. Also, there is no protection or reward for whistle-blower.

However, in the past, there were also negativity towards people who reported crimes. They were called snitches or people who were spies for a competitor or the government, and people were afraid of them. In Estonia, we can remember the sanctions against the people who opposed the official political views. People are more comfortable with being silent than taking a risk that could bring suffering. To change these views on whistle-blowers, we need to acknowledge them and reveal the virtuous deeds that they have done. In Estonia, the lack of awareness on the concept of whistle-blowing makes it hard to give a complete overview to the society, because the whistle-blower is usually seen as reporting in bad faith, or that the reporting was done to damage another person.⁶⁴ Also, the influence from the past affects law-making and granting protection for whistle-

⁶³ Tiits, T. (2014), *supra nota* 61, 445.

⁶⁴ *Ibid.*, 446.

blowers. The Estonian Ministry of Justice has prepared a study on corruption, “the result of which show that only 1% of citizens and entrepreneurs and 13% of officials who have been exposed to corruption are willing to report to the law enforcement authorities”.⁶⁵ This report is relevant because it shows the willingness to act morally and protect the society.

The author argues that if there was protection for whistle-blowers, these numbers would increase. In Estonia, to create a set of rules for regulating whistle-blowers framework, we should establish the quality and content of the information that is considered as under protection, and guidelines for whistle-blowers, stating under which conditions they would be eligible for protection.⁶⁶ Protection for whistle-blowers under the directive⁶⁷ sets rules and specification under which whistle-blowers can assess protection. For example, the United Kingdom “has a whistle-blower regulation that states that only the information containing certain facts about the violations is protected”.⁶⁸ Estonia could adapt the directive and make suggestions for amending relevant legislation regarding criteria that could help determine the definition of whistle-blowing. Furthermore, in Estonia, we do not have regulations on whistle-blowing, but citizens have the right to speak freely and report on infringements that are connected to the public interest. It could be said that many employees do not even know about that, and without legal protection, they choose not to report.⁶⁹

Having protection for whistle-blowing and providing relevant information about the criteria that are considered as whistle-blowing could help to increase the number of detected infringements. Even other countries’ practices could help to create and set up principles that are relevant for protecting whistle-blowers. These practices can be the basis for analysis on what needs to be changed or adapted. The most common issue in the whistle-blowing regulations of difference countries is that there are no certain criteria for who can report an infringement.⁷⁰ Estonia should clarify with the new act, who can be a whistle-blower and what are the conditions for reporting as people do not know whether they are eligible for reporting or whether only companies’ employees can report on violations. The act must also be clear about the protection and there must be a possibility to stay anonymous, so that whistle-blowers would not be afraid to come forward.

⁶⁵ *Ibid.*, 26.

⁶⁶ *Ibid.*, 449.

⁶⁷ Directive (EU) 2019/1937, *supra nota* 1.

⁶⁸ Tiits, T. (2014), *supra nota* 61, 449.

⁶⁹ *Ibid.*, 453.

⁷⁰ Aas, N., Eilart, K. (2019). Absence of Guilt of Legal Persons under Article 371 of the Penal Code. *Juridica*, 6/2019, 426.

The Estonian court procedure allows to declare the proceedings closed if it concerns business secrets or the protection of private life and family. This exception is important when a whistle-blower is reporting a violation that concerns business secrets. Also, this could be the reason employers are pressuring whistle-blowers not to blow the whistle: they do not want that their competitors to learn about their business secrets. More importantly, they do not want their violation being reported. It is hard to analyse if it is the lack of protection or being afraid of potential consequences that lies behind the fact that there are not many whistle-blowers in Estonia. Erikson analyses that "the directive is very well structured, and it grants ambitious standards of protection, also that the adapting it to the national laws is the right decision to make. However, if the attitude towards whistle-blowers will not change, there is no practical purpose for the directive".⁷¹ The directive can help to notice the current issues concerning the protection of whistle-blowers and the sacrifices that whistle-blowers have made to stop corruption or other natural disasters. The adaption of the directive can help to change the image of the whistle-blowers in many ways, but the government and media need to stop creating a bad reputation for whistle-blowers.

One way that employers use their power against whistle-blowers is imposing a disciplinary penalty on the employee, pursuant to labour laws.⁷² This is seen mostly in the public sector, where the disciplinary penalty usually end with dismissal. Some of these dismissals reach the court but usually it is the employee who is the weaker party in the proceeding. Also, in the public sector, disciplinary penalties are usually imposed on persons who have broken the law, so there is not much to argue in court. However, the whistle-blowers who have detected corruption in a public authority and want to report on it, could be treated as the same way, even if the act of corruption was prevented in the sense of public safety. In Estonia, preventing corruption is a particularly important matter and numerous authorities work hard for an anti-corruption society. The Estonian Penal Code has been amended by keeping in mind the changing future and the need to change the penalty measures for better results. Criminal law protects the legal rights by having the penalty measures for certain acts of violations.⁷³

Also, the implementing provisions helps to carry out these measures by giving certain rights to the law enforcement authorities. Without these measures, we would not have any order because no act of violence would be sanctioned. The justice system with the law enforcement authorities can help

⁷¹ Erikson, M. (2021), *supra nota* 27, 63.

⁷² Ojamäe, E. (2007). Freedom of Expression for Employees. *Juridica*, 5/2007, 300.

⁷³ Saar, J. (2013). Legal culture and crime control. *Juridica*, 1/2013, 57.

to keep the society together and punish those who have violated the law. Whistle-blowers can also be seen as complementary mechanisms for law enforcement authorities because they want to bring justice to the violator. Whistle-blowers have been judged as not being ethical people who want to gain monetary profit and demean their employer. When fighting corruption in Estonia, one tool has been Code of Ethics of Public Service with its nature, functions, and forms. The Anti-corruption Act and the Public Service Act added an annex to the Code of Ethics of Public Service, which contains many sections about the ethics and morale of civil servant.⁷⁴ It has been mostly seen as a guideline for a civil servant, stipulating what is acceptable and what is not, from accepting presents or drawing attention to illegal activities. The author agrees that the Code of Ethics of Public Service could be a basis for guideline to whistle-blowers.

The Estonian law has many gaps in regulating civil liability and there is inadequate regulation of compensation for moral damages, which prevents compensation to the entitled person.⁷⁵ It is more difficult is to compensate a person who claims to have moral damages, so there must be certain goal that the person wants to achieve. Usually, they want to get an apology from the violator. However, regarding any monetary compensation, the court relies on actual damages and rules based on that. When fighting against corruption, the best way is to use different methods simultaneously on several levels by strengthening the justice system, and also through media campaigns, as the adoption of laws alone would not help to fight against corruption.⁷⁶ Also, using different methods and accepting that whistle-blowers can help can make a difference. The existing laws can regulate our behaviour and with the protection for whistle-blowers, we can encourage them to come forward. Also, monetary compensation needs to be explicitly regulated in the laws because whistle-blowers have the right for compensation, preferably for monetary compensation.

Most whistle-blowers are in a working relationship and by reporting, they can lose their income and suffer from non-pecuniary damages, such as damage to their reputation. Also, there must be a section that regulates their legal right to claim damages. Kull emphasizes, that “the compensation should not be capped and needs to cover real damages that can be proven, and there could be a system for compensation, that is paid in the same amount as a punitive remedy”.⁷⁷ The author agrees that the victim has the right for compensation, but also the one who detected the crime and

⁷⁴ Saarniit *et al.* (2000), *supra nota* 60, 492.

⁷⁵ Kull, I. (2000). Corruption and liability in civil law. *Juridica*, 8/2000, 528.

⁷⁶ *Ibid.*, 524.

⁷⁷ Kull, I. (2000), *supra nota* 75, 526.

is suffering damages is entitled to some type of reward. “Estonian Constitution §25 states that everyone has right to compensation for non-pecuniary and non-pecuniary damage caused by them“.⁷⁸ Under this section, everyone who has suffered damages can go to court to state their claim for compensation; however, such claims must be actual and proven. Everybody is equal under the law (with minor exceptions) and are to follow the same principles. The law must be transparent and clear enough to be followed. The principles of the rule of law help the society to function and the principles of equality, proportionality, procedural and legal transparency can make the legal system reliable. Also, the adapted laws need to as transparent and clear as possible, and the compensation for non-pecuniary damages must be clear to an average citizen who does not have a legal degree.

Estonian laws need to state which non-pecuniary damages are reimbursable and which types of damages are compensated for.⁷⁹ The author argues that currently it is hard to claim that damage done to one’s reputation is enough to be eligible for a compensation. Regulations for whistle-blowing are still in the process of being drafted and other laws that mention whistle-blowers are vague. The image of the whistle-blowers needs to be changed in Estonia because that is preventing whistle-blowers from coming forward and telling their story. There must be a legal protection for their sacrifice stipulated in the Employment Contracts Act or in other civil and criminal regulations. It must be clear on which conditions the compensation is paid and who is eligible for that.

⁷⁸ Eesti Vabariigi Põhiseaduse kommenteeritud väljaanne. (2020), *supra nota* 13, §25.

⁷⁹ Kull, I. (2000), *supra nota* 75, 527.

2. REWARD-SYSTEM FOR FIGHTING CRIME

The second part of the thesis concentrates on the practical part and includes the analysis of the case law. The first part concentrated on the theoretical overview of the whistle-blowing and the rule of law. The second part also shows the possible ways to use whistle-blowers in the fight against crime and introduces the existing channels for blowing the whistle. The case-law analysis is presented in the second part, because it is the best way to conclude the thesis. Providing reward for whistle-blowing is encouraged in many countries because it has been seen as a good motivation for fighting and preventing crime. In the countries that use the reward-system, the effects of the system have been analysed, seeing if it helps to increase the number of detected infringements or reduce them. Fighting crime has many layers and different approaches, with many authorities involved. With the changing future the criminals are looking for new ways to commit crimes. Governments and authorities need to find innovative measures to fight against crime. Whistle-blowers are a useful tool for fighting crime and they have been proving that for decades.

In the EU, the system for providing reward for whistle-blowing has been seen as a bad thing and the purpose of whistle-blowing is viewed as a personal gain instead of serving the public interest.⁸⁰ For decades, whistle-blowers have had a bad reputation for speaking out in order to get a monetary reward; however, the violations that have been prevented or stopped have not gone viral and the society does not know about the positive things whistle-blowers have done. This is why the MS have not adopted this reward-system for whistle-blowing. However, there are more issues in regard to adopting the reward-system in EU: the ECHR case law defines whistle-blowing as an act that is committed in good faith, without any monetary motivation or rewards. “The introduction of such rewards might be considered as running counter to the ECHR case law”.⁸¹ Also, whistle-blowers who have gained a monetary reward for reporting are not eligible for the whistle-blower protection. This could be changed, if there were any precedent of cases that were considered as whistle-blowing when a person received a reward for acting in a good faith.

Furthermore, the protection of the whistle-blowing is being adapted in the MS but currently there are no possibilities for whistle-blowers to receive protection and escape the potentially harmful

⁸⁰ European Commission staff working Document. Impact Assessment. Accompanying the Document: Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law, 36.

⁸¹ *Ibid.*

consequences. The EU Commission marked, that the protection for whistle-blowers is a good way to ensure them that they are safe from pressure methods and slander; “also it is a successful anti-corruption framework element that can help overcome problems related to detection and act as a deterrent”.⁸² The current public image of whistle-blowers does not help either and there are crimes still happening that go undetected, because nobody wants to be harmed. Legislations related to whistle-blowing does not mention rewards for reporting because it is seen as a personal gain and that is not the essence of whistle-blowing. Whistle-blowing should be done in good faith and without any given reward. That is what the directive⁸³ states and because of it, the MS are adapting the directive without considering any other options. Analysing the objections that are the whistle-blowers intentions if the person can get a reward for reporting- is it an attempt by disgruntled employee to get a reward for reporting on a bad employer for a personal gain instead of public welfare?⁸⁴

Could it be seen in a different way if the bad employer has done something wrong and a disgruntled employee brings it out, stops the violation and receives reward for that? Or has the employer acted wrongly, by committing a misdemeanour and by reporting it, the employee wants to humiliate the employer and get a reward for that? The author argues that there is nothing wrong with getting a reward for stopping a crime if the intentions are right. Whistle-blowers can indeed stop or prevent crime and corruption. If there is a monetary reward for doing that, there is more to gain than lose. Furthermore, if a previous employer has committed a crime, then the whistle-blower could not be perceived as a good employee, and the personal gain can be found anyway, even if they have good intentions. The directive states that reporting must be done in good faith, without any personal gain and the information must be true or at least, the whistle-blower must believe it is.⁸⁵ If a whistle-blower is acting for personal gain and telling lies, it is considered to be fraud not whistle-blowing, and not because of the personal gain, but because the information was not true. The emphasis must be on telling the truth and reporting information that can prevent an infringement, not on the intention or if the person can receive reward.

Stabile stated, that “whistle-blower reward programs have proven extremely effective not only in addressing misconduct, but also in deterring future misconduct and encouraging more and better

⁸² European Commission staff working Document, *supra nota* 80, 46.

⁸³ Directive (EU) 2019/1937, *supra nota* 1.

⁸⁴ Vandekerckhove, W. (2011). Whistleblowing: Rewarding the Whistleblower- Disgrace, Recognition, or Efficiency?. New York, USA: Routledge.

⁸⁵ Directive (EU) 2019/1937, *supra nota* 1, 37.

internal compliance programs”.⁸⁶ A reward-system for whistle-blowing has brought up internal reporting issues, considering that employees might be afraid to speak up against their employers. The problem arises when the employer cannot address the issue in a timely manner and by that, the internal channel has failed.⁸⁷ The author agrees that the employer can handle the issue faster and efficiently, should they want to do it.

Governments are combating corruption by developing new legal frameworks and creating laws that can help sanction the violators. Offering and accepting bribe is one output of corruption. By offering a reward for whistle-blowing, ethical questions may arise, such as whether the reward is the only reason for reporting. There are certain threats to every reward-based system, and people might try to use the system in their own gain, by committing a fraud or giving false information.⁸⁸ People are very resourceful when it comes to making money and the reward for whistle-blowing could be seen as easy money. However, to prevent false information from being reported in order to get the reward, governments can use exclusion methods, for giving out the reward. This exclusion method could also be included in the directive. The reward is a particularly good motivation for whistle-blowing but some whistle-blowers report because they see it as their legal duty. Some people find motivation in knowing that without reporting, they could suffer from criminal sanctions or a fine. Stiegler noted, that “the idea of offering reward for honesty is not as radical as it initially seems.”⁸⁹ Also, people could have many reasons for blowing the whistle but getting a reward for doing something ethical can be seen as a good thing, if the intentions are right.

The author argues that to prevent corruption, the authorities need to acknowledge that the people who accept bribes are underpaid, and they accept bribes because of that. The solution to that is not raising their salaries but seeing this as a way to provide rewards for whistle-blowers who report people who offer or accept bribes. Stiegler also stated, that “the simplest solution is to establish a minimum reward, akin to statutory damages.”⁹⁰ Also, the minimum reward as a motivation for reporting needs to be attractive enough to tilt the weight for blowing the whistle. This could be seen as an effective method to reduce the number of bribe cases, if underpaid officials could see the reward as a significant enough. With the EU legislations on whistle-blowing protection that is

⁸⁶ Sylvia, C., Stabile, E. (2016). Rethinking compliance: The Role of Whistleblowers. *University of Cincinnati Law Review*, (84), 5, 451.

⁸⁷ *Ibid.*

⁸⁸ Stiegler, C. J. (2012). Offering Monetary Rewards to Public Whistleblowers: A proposal for Attacking Corruption at Its Source. *Ohio State Journal of Criminal Law*, (9), 2, 821.

⁸⁹ *Ibid.*, 823.

⁹⁰ *Ibid.*, 825.

implemented in the MS, and a possible reward-system for blowing the whistle, “the level of corruption across the EU could reduce significantly”.⁹¹ However, fighting crime is expensive for governments so why not to direct this money to whistle-blowers. Austin, has brought out, that rewarding whistle-blowers who report on corruption, has “spurred on by the apparent success of the whistle-blowers award program, what is administered by the USA”. Because of that success, Canada, Australia and the UK have also been thinking of adapting this system.⁹²

With the increasing number of whistle-blowing cases and the need for the protection of whistle-blowers, there has been discussion on the need for reward as well. Lombard analyses, “whether corporate whistle-blowing should introduce whistle-blowing rewards or bounties”.⁹³ As fighting crime has become increasingly difficult, there must be some measures that can stop or prevent it. Since the corporate world is now noticing the benefits of whistle-blowing, they can see how whistle-blowers can be used in detecting infringements. Whistle-blowing can be seen in many different areas, reporting on any breaches of law or practices, what can affect the wellbeing of the society.⁹⁴ Also, whistle-blowing can be seen as a method of reporting a breach that is not accepted by the law. There are endless possibilities how whistle-blowers can help to stop crime. Furthermore, laws must be designed to encourage whistle-blowers to come forward and protect them, if they report infringements.⁹⁵

However, to reduce the corruption, governments need to see the benefits of whistle-blowers. In the field of crime prevention, it is important to prepare a framework that the government employs in fighting crime. It is important to understand that law enforcement authorities, such as police, cannot be expected to prevent crime in a workplace or in areas where they have no knowledge or experience. Collins stated that, “the police must wait for requests for police assistance or a legal cause to investigate or get involved and even then, technological advances or innovations may be beyond the protective and investigative capabilities of public law enforcement involvement.”⁹⁶

⁹¹ European Commission staff working Document, *supra nota* 80, 46.

⁹² Austin, J. (2020). Corporate Whistleblowing Regulation Theory, Practice, and Design: To reward or not to reward: a cross-jurisdictional comparison of the reasons why securities regulators have adopted or rejected policies to pay whistleblowers. USA: SSRN, 65.

⁹³ Lombard *et al.* (2020), *supra nota* 39, 37.

⁹⁴ Brown, A. J., Lewis, D., Moberly, R., Vandekerckhove, W. (1992). International Handbook on Whistleblowing Research. UK: Edward Elgar Publishing, 78.

⁹⁵ *Ibid.*, 109.

⁹⁶ Collins, P., Ricks, T., Van Meter, C. (2000). Principles of Security and Crime Prevention. New York, USA: Routledge, 44.

Technological advances that have been created by the private sector companies are usually understood only by their employees. Also, they can help with the investigation of an infringement or reporting an infringement that could otherwise remain unnoticed by a layman. Unfortunately, the law enforcement authorities do not have a capability to monitor every company and by that prevent the crime.⁹⁷ The author finds that on some occasions, the law enforcement authorities are too late for preventing crime because of the shortage of staff and the lack of special knowledge. In the best scenario, whistle-blower uses internal channel for reporting, the employer acts on it, by stopping the violation and whistle-blower would get the recognition for that.⁹⁸ Unfortunately, it is not always the case, and the whistle-blower will need to use a different channel for reporting an infringement. Usually, the consequence of reporting an incident is that the whistle-blower is pressured by using different methods, and eventually dismissed. The financial incentives must be seen as a positive factor that increases the number of whistle-blowers.

Some whistle-blowers blow the whistle because they do not understand the law, some because they want to stop the termination of the contract between them and the employer.⁹⁹ These are quite common problems with whistle-blowers, and they can be prevented by having clear whistle-blowing regulations in place. Such examples exhaust the authorities and do not help to improve the reputation of whistle-blowers. A growing concern is that the people do not report crime unless they get something for return, as known from the theory of bounties.¹⁰⁰ This is not good for the society but in some ways, it is understandable, since life is expensive, and whistle-blowers could lose their income. Nowadays, it is immensely popular to share every part of your daily life. People are making posts about dangerous items and share their negative experiences with companies. Whistle-blowing could become easier if people wanted to report on infringements just to be popular or to get a compensation. Most commonly, whistle-blowers want to get their job back in case they are dismissed, or if there has been any retaliation, they want to get paid for unjustified dismissal. The directive¹⁰¹ wants to protect to whistle-blowers from retaliation and from unjustified dismissal, and therefore there is hope that it gives whistle-blowers the needed push to come forward and increases the number of whistle-blowers.

⁹⁷ Atlas, R. I. (2013). 21st Century Security and CPTED, Designing for Critical Infrastructure Protection and Crime Prevention. USA: CRC Press, 9.

⁹⁸ Fiorelli, P. (2020). Snitches Get Stitches: An Historical Overview of Whistleblower Laws and Perceptions. Journal of Leadership, Accountability and Ethics, (17), (1), 10.

⁹⁹ Lipman, F. D. (2012). Whistleblowers: Incentives, Disincentives, and Protection Strategies. USA: John Wiley & Sons, Inc, 97.

¹⁰⁰ *Ibid.*, 12.

¹⁰¹ Directive (EU) 2019/1937, *supra nota* 1.

A review of social science research brought out that a reward-system for whistle-blowing can increase the number of people who are willing to blow the whistle on infringements and according to the current literature, reward-systems may encourage them to step forward.¹⁰² There have been numerous studies that analyse and research whether a monetary reward could increase the number of whistle-blowers. Some are focused on the idea of how this reward could hinder detecting infringements from the perspective of whistle-blowers' intentions. Some are focused on the positive aspects, such how many violators could be caught and prosecuted. Other think that offering a monetary reward for reporting is not ethical and this is why people are not coming forward. Nevertheless, people are different, but most of them act if there is some method to encourage them, such as money. Without that, the risk could be too high, considering that many whistle-blowers lose their income as a result of reporting. Whistle-blowers are beginning to be viewed as a resource who detect violations before these could harm the society, and the reduction of the number of wrongdoings instead of the issues related to benefitting whistle-blowers should be seen as the social reward.¹⁰³ The author disagrees with that because society needs to see the benefits of whistle-blowers and a monetary reward is enough to recognize that.

The EU should consider different methods for fighting crime, and look for initiatives from other countries, such as the USA and China. Gong marked, that in China, the whistle-blowing has been seen as a control mechanism for the government, to fight against crime in both private and public sector, and “a legal weapon for citizens to fight against malfeasance and nonfeasance”.¹⁰⁴ However, in the USA and in China, there is a reward-system in place, to motivate citizens to report infringements and stop the corruption in public and private sectors. The author states that for providing monetary reward for whistle-blowing in the EU, the legislators must first see the benefits before even considering the reward-system for reporting. Therefore, an analysis should be conducted on the positive effects of whistle-blowers to see whether a reward-system could increase the number of infringements notifications. Also, this can show whether the number of infringements notifications increases because of whistle-blowers. Considering the rule of law, a reward-system could increase the number of detected violations and by that, also reduce crime and corruption.

¹⁰² Callahan, S. E., Dworkin, T. M. (1992). Do good and get rich: Financial incentives for whistleblowing and the false claims act. *Villanova Law Review*, (37), 2, 284.

¹⁰³ *Ibid.*, 273.

¹⁰⁴ Gong, T. (2007). Whistleblowing: what does it mean in China?. *International Journal of Public Administration*, 23(11). UK: Taylor & Francis Online.

2.1. Current Possibilities for Reporting Infringements

Whistle-blowers have three options for reporting, which are known as channels: internal, external and public disclosure. The directive¹⁰⁵ states that the first option for reporting must be the internal channel because it is the most effective channel to use. The external channel should be used when the internal channel is not an option. The third option, public disclosure is the channel that is not considered to be the right way to blow the whistle because it raises questions about whistle-blowers' intentions or ethics. The directive¹⁰⁶ creates rules for MS to follow when creating reporting channels for whistle-blowers. Three options should be enough for a whistle-blower to choose from. The ECHR has found in its rulings that reporting through public disclosure might raise questions about why the whistle-blower is reporting and, in some countries, they do not consider this whistle-blowing, when a person turns to media first. Internal reporting should be the safest way for a whistle-blower if there is no negativity towards the whistle-blower. This option should be used to get a fast result in preventing an infringement or danger to the public. Also, those who are closest to the source of the infringement are in the best position to stop or prevent it.¹⁰⁷ Because of that, whistle-blowers should firstly report through the internal channel.

The internal channel should be used if there are possibilities to do so. If the internal channel does not give results or puts the whistle-blower in a difficult position then the person has the right to turn to an external authority.¹⁰⁸ Also, if there are no internal channels available for a whistle-blower, they should consider the external channel for reporting. The directive creates rules for the MS to create reporting channels in private sector companies that have "50 or more workers, and also a possibility to share internal channels between municipalities or joint municipal authorities, considering that the shared information is protected".¹⁰⁹ However, the information that the whistle-blower is sharing, must be protected, and classified, to protect the identity of the whistle-blower. Authorities need to create channels and set up procedures that are safe, in order to process the information received from the whistle-blower, without disclosing their identity. For whistle-blowers to decide how to report, the Directive states, "that authorities need to provide clear and easily accessible information about the available options for reporting channels and the procedural

¹⁰⁵ Directive (EU) 2019/1937, *supra nota* 1.

¹⁰⁶ *Ibid.*

¹⁰⁷ Directive (EU) 2019/1937, *supra nota* 1, 17.

¹⁰⁸ Ojamäe, E. (2007), *supra nota* 71, 301.

¹⁰⁹ Directive (EU) 2019/1937, *supra nota* 1, 38.

rules”.¹¹⁰ After adapting the directive, the MS should make these procedures as easy and clear as possible, so that whistle-blowers would understand them.

There are companies in the EU that are actively creating software that can be used for whistle-blowing. Through such whistle-blowing software, people can report infringements in a secure way. They provide a protected, anonymous web-form that ensure that whistle-blowers’ identity is protected, and also provide answers for asked questions, or feedback. One of these companies operates internationally and gives a guarantee for data breaches in the sense of GDPR, with the assurance that the submitted case is being dealt with.¹¹¹ Such kind of companies are not controlled by government and their intentions are unknown. However, there can be a risk accompanying it and whistle-blowers cannot be sure if their data is safe. The author finds that with such reporting channels, the authorities need to consider the data processing in the private sector from the perspective of the GDPR. Also, it has to be determined whether there is any threat of disclosure of the information by the people who have access to it. The external channel would be the safest one because the authorities follow the GDPR rules and have to take precautions in handling sensitive data. According to the directive, “the reporting channels should enable persons to report in writing, orally, in person or through an online platform and give access to third parties, who are entitled persons and have the authorisation for receiving the reports.”¹¹² These third parties need to handle the information with care and have a relevant interest in the report, such as using it in a court case or providing protection for the whistle-blower.

”Considering democratic principles such as transparency and accountability, and fundamental rights such as freedom of expression and the freedom and pluralism of the media, whilst balancing the interest of employers“¹¹³, it is important to find a balance in protecting the public and not harming the organisation in the process. Also, for having a justified and fair process, all information considering whistle-blowers should be transparent to the public. The author is not referring to the identity of the whistle-blower but the information concerning the report, as the society has the right to know about the threat that was prevented or stopped by the whistle-blower. In some cases, the whistle-blowers first turn to the public to share their information because they find that the internal or external channels are not effective enough and the public has the right to

¹¹⁰ *Ibid.*, 37, 29.

¹¹¹ Whistleblowing & Case Management Software. <https://www.compliancesolutions.com/en/whistleblowing-software/>.

¹¹² Directive (EU) 2019/1937, *supra nota* 1, 25.

¹¹³ *Ibid.*

know. In some countries, where corruption is blooming, whistle-blowers turn to the media, because they know, that the evidence could be concealed or destroyed or even the authorities could be working together with the violator.¹¹⁴ In these countries, there are not many options for whistle-blowing, so they go to the media because they feel that nobody else would help them to reveal or stop the crime.

However, in the EU, when whistle-blower use public disclosure as the first channel, it has been seen as unreasonable and received criticism. Also, it has not been considered as whistle-blowing but informing the public of denigration of the employer. Ojamäe emphasizes, that “public disclosures are justified when the information has to reach to as many people as soon as possible but it depends on the case details.”¹¹⁵ There have been cases where the danger to society is so extensive and only the disclosure of the information by the whistle-blower through the media can stop it. The author argues that in such cases, the means are justified, and it is understandable why the whistle-blower did not go through the internal channel first. According to the directive, “the protection of the whistle-blowers shall not apply to the persons who directly discloses information to the press”, without going through the other channels.¹¹⁶ However, it depends on the case: if there were no other options to use and the danger was too great and immanent, the protection should still be granted. Also, if the whistle-blower did not want to go through the internal and external channel but wanted to talk to the press, then it would not be considered whistle-blowing. In this case, questions may arise about the motive of the whistle-blower and whether they have hidden reasons why to report on their employer.

In the EU, whistle-blowers mostly use the internal channel and blow the whistle outside of an organisation if they feel that their concerns are not being dealt with. The EU Commission assessment found that, “13 of the 26 public authorities reported 7,059 cases from the previous 10 years related to tax evasion, tax avoidance, fraud, irregularities or any other illegal activities affecting the financial interests of the EU, money laundering, mismanagement of public funds, misuse of personal data, threats to public health and the environment, violations of human rights in general and violation of financial regulations“.¹¹⁷ The number of reports is growing and whistle-blowers who use the internal channel first feel that the organisation will stop the violation. With

¹¹⁴ *Ibid.*, 38.

¹¹⁵ Ojamäe, E. (2007), *supra nota* 72, 302.

¹¹⁶ Directive (EU) 2019/1937, *supra nota* 1, 41.

¹¹⁷ European Commission staff working Document, *supra nota* 80, 9.

harmonized regulation in the Union, the reporting channels can help to detect more infringements and help to prevent violations. Also, with such number of notifications, there must be special authorities or employees who handle them. A whistle-blower will choose a channel based on the organisational climate and on the nature of their claims, deciding if the violation can be stopped inside of the organisation or if there must be another authority that intervenes.¹¹⁸ These aspects can help to choose the right channel for reporting and must be taken into account when considering providing protection to the whistle-blower.

When reporting on infringements, whistle-blower need to consider actions that can affect them and also the outcome.¹¹⁹ Whistle-blowers tend to rely on ethical behaviour and morality when deciding to blow the whistle because in the EU there are no monetary rewards for whistle-blowers. The channel that is used is chosen based on the atmosphere inside an organisation and the probability of the organisation acting on the report. If the organisational climate is negative, the whistle-blower will use external channels to report on the infringement. The third channel is used when the information needs to be delivered fast to a lot of people. Whistle-blowers can help to detect infringements and prevent them by using internal or other channels because they have inside information about these crimes that could have been missed by the law enforcement authorities because a whistle-blower as a staff or a former staff member knows the organisation better than the law enforcement authorities.¹²⁰ However, existing channels are not efficient enough, because whistle-blowers are being pressured and retaliation has been used against them. This may also decrease the number of whistle-blowers, but the protection of the whistle-blowers could provide them with assurance.

The internet of things provides opportunities for people who are willing to break the law and by taking up these opportunities, there is a substantial risk of infringements committed and an increase in crime. Hua noted, that “copyrightable works are at risk because as the copyright laws do not expand their protected subject matters and categories of exclusive rights, authors cannot be adequately compensated under the digital network environment”.¹²¹ Copyrightable works are the easiest ones to steal or violate, and this is the most common type of fraud that whistle-blowers can

¹¹⁸ Perry, J. L. (2017). The Consequences of Speaking Out: Processes of Hostility and Issue Resolution Involving Federal Whistleblowers. *Academy of Management Journal*, (1992), 1, 311.

¹¹⁹ Arszułowicz, M., Gasparski, W. W. (2011). *Whistleblowing: In Defense of Proper Action*. New York, USA: Routledge, 2.

¹²⁰ Rorie, M. L. (2019). *The Handbook of White-Collar Crime*. New York, USA: John Wiley & Sons, Inc, 248.

¹²¹ Hua, J. J. (2014). *Toward A More Balanced Approach: Rethinking and Readjusting Copyright Systems in the Digital Network Era*. Verlag Berlin Heidelberg, Germany: Springer, 201.

help to detect and report. Today, crime prevention means mostly making a change in the society, detecting crime in initial stages to prevent it, more severe penalties, and technological developments.¹²² Providing safe reporting channels for whistle-blowers can help to prevent crime in pilot stages. Technological developments can provide a more secure channel for whistle-blowers to use, and corporations or authorities can protect their data by having more secured databases. Violators have used database vulnerabilities to hack into these and steal the information.

Furthermore, companies and authorities tend to update their security measures after a potential threat or an actual attack. Hinduja noted, that “situational crime prevention can address the importance of these aspects by concentrating on the circumstances associated with a crime, also how to deal with the possible threat and how to modify them.”¹²³ These modifications and applications could prevent or reduce future attacks; with a safer strategy, there are more possibilities for protecting whistle-blowers and preventing crime at the same time. Also, one possible reporting channel for whistle-blowers could a social media platform in case the whistle-blower wants to reveal their identity. With new technological possibilities, it is possible to consider more reporting channels for whistle-blowers to use. However, blowing the whistle through the third channel first has been seen as negative since it raises questions about the motive and the intentions of the whistle-blower. The author proposes that online channels, such as social media, could be an option after the whistle-blower has used the internal channel to report an infringement, but the organisation did not act on it.

The author finds that reporting through social media is a considerable option because currently we can see there is a war happening in the social media. Lam analysed that whistle-blowers who report on social media, could have a bigger impact on the violating organisation and on the society in comparison to the traditional whistle-blowing channels. Unfortunately, the regulation for this phenomenon is lagging behind, since the protection and rewards for whistle-blowing is still not adopted in many countries.¹²⁴ To keep up with the new focuses and future problems, the regulations need to be adjusted and should look forward not backwards. However, when looking at the existing possibilities of blowing the whistle, the external channel and public disclosure seem to be the most efficient ones, since the violator usually does not see that they are doing anything

¹²² Shoham, G. S., Knepper, P., Kett, M. (2010). *International Handbook of Criminology*. USA: CRC Press, 512.

¹²³ Hinduja, S., Kooi, B. (2013). Curtailing cyber and information security vulnerabilities through situational crime prevention. *Security Journal* 26. USA: Springer, 383-402.

¹²⁴ Lam, H., Harcourt, M. (2019). Whistle-blowing in the digital era: motives, issues and recommendations. *New Technology, Work and Employment*, 34(2). USA: John Wiley & Sons, Inc, 223-232.

wrong. Perry noted that also, the external investigation could provide a “fair trial” for the whistle-blower and there is no possibility of the violator sitting as a judge and in the jury, because third parties conduct the investigation.¹²⁵ External channel can also be seen as transparent because the parties who investigate the infringement are not connected to it, so they do not have any personal interest in the matter. Also, the whistle-blower could get fairer treatment and more protection than going through the first channel.

With these existing possibilities to report an infringement, it is important to give options for the whistle-blower. “Technology can provide many possibilities for whistle-blowers, such as new communication technologies and artificial intelligence, which can provide a channel for reporting. Pender states, that “with data transparency, it enables technology to replace whistle-blowers by algorithmically preventing and detecting misconduct, it can also provide secure and anonymous channels for disclosure.”¹²⁶ Whistle-blowers can receive protection through a technological innovation that detects who is a whistle-blower and who is reporting false information.

2.2. The Positive Effect of Whistle-blowing on Preventing Infringements

The author argues that whistle-blowing can have many positive effects on preventing corruption or other kind of infringements and whistle-blowers can contribute in different areas to prevent these acts. Usually, corruption prevention frameworks focus on some field of interest and other areas will not be identified or will stay out of sight. One positive effect of whistle-blowers is that they can detect infringements from inside of the company or organisation that could stay undetected or hidden from law enforcement authorities. Whistle-blowers can help to reduce crime and to protect the principles of the rule of law. Whistle-blowers who report can give an insider access to the evidence that would be difficult to collect otherwise, and such evidence is important to catch and convict a criminal.¹²⁷ However, because law enforcement authorities lack of staff and knowledge about specific fields of work, whistle-blowers can play a significant role in preventing and stopping infringements.

¹²⁵ Perry, J. L. (2017), *supra nota* 117, 314.

¹²⁶ Pender, K., Cherasova, S., Yamaoka-Enkerlin, A. (2021). *FinTech, Law and Regulation: Compliance and whistleblowing: How Technology will replace, empower and change whistleblowers*. UK: Edward Elgar Publishing.

¹²⁷ European Commission staff working Document, *supra nota* 80, 24.

The whistle-blower protection regulation sets limits to the people who want to report a fraud, but do not work for the company or people who want to provide evidence to stop an authority's infringements. These people would not be considered whistle-blowers, even if they help to disclose ongoing infringements. The European Commission marked that "whistle-blower protection has found proof in the sense of increased amount of reports and detections of the violations of law, in MS who have the whistle-blowers protection system adapted".¹²⁸ Also, providing protection for whistle-blowers could help to increase the number of people who want to come forward and report their employer, previous employer or a cooperation partner.

In past there have been many incidents that could have been prevented if someone had come forward and warned the public or even gone through the first channel. This is something that needs to be considered as an experience from which we can learn. EU Commission states, that EU with MS, "need to use the potential of whistle-blower protection as a component in enforcing the EU law, not only ex-post in the cases where serious harm to public has already occurred", but also to prevent these events.¹²⁹ Preventing is much easier than building up the society after a serious incident. With the protection, whistle-blowers could feel safer and start coming forward. Without the protection in some MS, whistle-blowers do not feel safe, and this can cause harm to the "functioning of the internal market of the Union and does not allow businesses to operate in healthy competitive environment".¹³⁰ Also, this can cause more corruption in the field of competition law and serious harm to the public safety if there are organisations on the market that keep breaking the law without any detective measures to discover such violations.

The European Commission has put together a "survey that showed that in 2007, 5,400 companies worldwide had found that whistle-blowers helped to detect more fraud than corporate security, audits, rotation of personnel, fraud risk management and law enforcement combined. In 2016, more than 2,400 cases of fraud in 114 countries, found that about 40% of detected cases were discovered by whistle-blowers."¹³¹ These finding show that whistle-blowers are an effective and positive mechanism to detect infringements and prevent or stop them. The European Commission noted that "in the US, between 1986 and 2009, whistle-blowers under the False Claims Act have detected fraud and by that are recovered more than twenty-four billion dollars. The Global Fraud

¹²⁸ *Ibid.*, 42, 5.

¹²⁹ European Commission staff working Document, *supra nota* 80, 3.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, 4.

Report indicates that the average percentage of fraud discovered, across countries and across sectors, is 41% by the whistle-blowers, 31% by external audit and 25% through internal audit and 42% of companies use the monitoring of whistle-blowing hotline reports to assess the effectiveness of compliance programmes.¹³² However, the US provide rewards to whistle-blowers, and this is an efficient motivation for whistle-blowers to come forward. These numbers show that whistle-blowers can efficiently help to detect and prevent violations.

Whistle-blowers can be placed in distinct categories, considering the scope and severity of the threat that is caused by the infringement. Based on that, whistle-blowers who are reporting dangerous violations and who are reporting an employers' breaches of individual working conditions. The Council of Europe uses a notion of "work-based relationship" to distinguish whistle-blowers from other reporters.¹³³ However, these categories and separations do not affect the outcome, which is to stop infringements are prevent danger to the society. Furthermore, there could be a distinction between reports, showing whether they are about ongoing infringement or a complaint on some sort of product. Also, it is possible to distinguish the persons according to the aim and the reason for reporting. With whistle-blowers, there is usually a work-related connection between them and the violator, and the purpose is to prevent or stop the infringement that is committed by the employer or other employees of the organisation.¹³⁴ Also, such revelations can result in pressure methods to influence the whistle-blower, and a risk of a dismissal.

On the legal landscape, whistle-blowers have been seen as the best option to detect fraud and criminal activity through private and public sector because they can be used in a wide range of areas.¹³⁵ Because of the reporting, the world has seen revelations from various people, starting from the leaders of private companies to celebrities. Without whistle-blowers, these revelations would not have happened, and the infringements would be ongoing. There is more to lose if the person who has some important knowledge on an ongoing infringement chooses not to report it, and a lot of people could be hurt because of that. Providing protection and a reward for reporting, can urge these people to come forward and prevent infringement by reporting. Although whistle-blowing has not been considered as something positive, it has many potentially favourable effects and outcomes, as the information that is discovered based on the whistle-blowers report can help

¹³² *Ibid.*, 43, 5.

¹³³ *Ibid.*, 8.

¹³⁴ *Ibid.*

¹³⁵ Rapp, C. G. (2013). Four Signal Moments in Whistleblower law: 1983-2013. *Hofstra Labor and Employment Law Journal*, (30), 5, 389.

to prevent and stop infringements or threat to the society. Ojamäe points out that "in 1988, an explosion took place on an oil rig in the North Sea, killing 167 people and with the investigation, it was revealed that the workers had long been concerned about the safety and had made suggestions to improve them, but they were not heard."¹³⁶ This tragedy could have been prevented if the internal reporting would have helped. Whistle-blowers can affect the society and usually report in public interests.

Whistle-blowing could have many positive outcomes for the public but for the whistle-blower, the outcome could be negative. Sometimes the deciding to report depends on whether the infringement is committed in private or public sector because people are more afraid of the retaliation of the public sector than of the private sector. Rider brought out, "if the infringement involves issues of national security and was committed by a public sector authority, as was in the case of Edward Snowden, there is more to lose for the whistle-blower."¹³⁷ With these revelations, the society can learn about governments whom they trust and about their infringements that can affect their citizens. In the world of technology, crime is blooming because there are more options to commit a crime. Usually, a crime is committed to gain something and sometimes also to hurt others. Rider states also, that "financial crimes, such as fraud, corruption, and money laundering, have an impact on the economy and society too, they are also committed with the intent to cover up the misconduct."¹³⁸ These crimes are hard to detect by the law enforcement authorities and thus often remain undetected.

These revelations are greeted by the public because they need to know about such acts and the violators should be sanctioned. However, in such cases, the whistle-blower could be pressured even more to keep the information in secret and if they do decide to come forward, it is hard for them to find protection. Only conscience and a monetary reward could motivate people to blow the whistle in this case. Rider found that "a whistle-blower who discloses insider trading, market manipulation or sanctions-busting should be rewarded, rather than criticized by the society."¹³⁹ It should be seen as complying with the law and reporting an infringement and thereby stopping it should be seen as a positive thing. With more frameworks for crime prevention, whistle-blowers can have a positive influence by helping to reduce corruption. Crime prevention has changed

¹³⁶ Ojamäe, E. (2007), *supra nota* 72, 298.

¹³⁷ Rider, B. (2015). *Research Handbook on International Financial Crime*. UK: Edward Elgar Publishing, 602.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, 603.

through time since crimes have developed hand in hand with the modern technology, and the current approach for crime prevention is to learn about crime patterns.¹⁴⁰ Also, to solve crimes, we need to be open to innovations and try new approaches for fighting and preventing crime. Whistle-blowers can provide innovative approaches to fight against crime, and we need to provide them protection in return.

The author argues that whistle-blowers can be used in different areas to disclose breaches or prevent infringements. “Whistle-blowers can be valuable in the fields of network security and information systems, by preventing security incidents that would affect social and economic processes that are widely used in digital services and preventing infringements of GDPR.”¹⁴¹ The field of IT is particularly important for the society and any information about a possible infringement needs to be handled. Whistle-blowers can protect personal data by reporting infringements that are committed when processing data. Any incidents that happen in the field of health service are crucial because they can affect a lot of people and any reporting on that helps to keep the service going.

Whistle-blowing has many positive effects on preventing infringements since whistle-blowers can be used in different fields and they could bring attention to the violations that could stay undetected without the whistle-blower. Also, with the growing technological possibilities, whistle-blowers can help to stop the infringements with their knowledge and inform the public of these acts. The governments need to recognize these possibilities and promote them with protection or reward to whistle-blowers for coming forward and preventing infringements.

2.3. Comparative Analysis of Whistle-blowing Case Law

The case law analysis and comparison focus on finding and showing the necessity for whistle-blowers. Also, it aims to show that whistle-blowers need to be provided with protection. The selected cases are important because they show that the court has taken a similar view regarding the lack of protection to whistle-blowers, and how it could affect them. There have also been many cases of whistle-blowing that have not been brought to the ECHR and have found an out-of-court

¹⁴⁰ LeClerc, B., Savona, U. E. (2017). *Crime Prevention in the 21st Century, Insightful Approaches for Crime Prevention Initiatives*. Singapore: Springer, 6.

¹⁴¹ Directive (EU) 2019/1937, *supra nota* 1, 20.

settlement on the national level. Therefore, there is no analysis of the cases in this respect. The selected cases are from 2008 until 2021, so they are relevant for this thesis. ”The ECHR has ruled similarly in a number of cases examining Article 10 of the European Convention on Human Rights on the right to freedom of expression“.¹⁴² This comparative analysis of whistle-blowing case law will bring out the essence of these decisions and issues that were brought out by the judges. Because judicial system of the MS is different and there are many countries with no regulations on whistle-blowing, it is hard to find court decisions analysing issues concerning whistle-blowers. Also, since there are different approaches in the MS to the confidentiality of reporting, some court decisions are classified.

The Parliamentary Assembly of the Council of Europe invited all MS to review their legislation concerning whistle-blowers and stated that the protection of the whistle-blowers is important for having individuals who report to stop the wrongdoings that could harm other humans and this can strengthen the fight against corruption in private and public sectors.¹⁴³ The MS need to notice the positive influence of whistle-blowers on fighting corruption and need to encourage people to speak up to have a safer society. In the case of ”Heinisch v. Germany, a whistle-blower was dismissed after making a complaint alleging shortcomings in care providing, the court ruled that there should be protection against this sanction, because the only employees of that category are aware of the problems and with reporting can prevent them. In Marchenko v. Ukraine, the public servant was sent to prison after publicly accusing the superior of misappropriating public funds and requesting an official investigation.“¹⁴⁴ In these cases the court found that the national court rulings were wrong because the whistle-blowers’ intention was to warn the public about the possible danger. Also, the punishments that were assigned were too harsh considering the purpose and whistle-blowers should be provided protection against these accusations.

In the ECHR’s case law, persons acting as whistle-blowers can share information concerning public interests, even if the information is disturbing, but they need to consider the protection of the reputation of others (Article 10 § 1). In the case of Oprea v. Romania, the applicant alleged that his right to freedom of expression had been breached, in violation of Article 10 of the Convention. The applicant used the third channel, public disclosure and reported about illegal and immoral conduct that was happening in his department. With that, he was acting as a whistle-

¹⁴² Council of Europe, Protection of Whistleblowers, *supra nota* 21, 15.

¹⁴³ Heinisch v. Germany, no. 28274/08, ECHR, §37.

¹⁴⁴ Chalouat *et al.* (2019), *supra nota* 52, 33.

blower.¹⁴⁵ The Government of Romania disputed his allegation and claimed that the reporting during the press conference was done because of frustration about a refusal and he cannot be considered a whistle-blower. The applicant found that he was acting in a good faith, and it was shown by the fact that he did not hide his identity. Also, he claimed that his motives showed that he acted as a whistle-blower. Nevertheless, the court did not consider this case as a whistle-blowing case and that the interference with the applicants right to freedom of expression was not necessary in a democratic society. There was a violation of Article 10 of the Convention.¹⁴⁶

In the case of *Guja v. Moldova*, the applicant alleged that his right to freedom of expression had been breached, in violation of Article 10 of the Convention. The applicant was dismissed from his job after disclosing information about a violation to a newspaper. The applicant stated that he was acting in good faith and as a whistle-blower when disclosing the information about illegal conduct. He also claimed that he was disclosing the information to a newspaper because he wanted to fight against corruption, and he did not have any other opportunity, “as there was no whistle-blowing legislation in Moldova and the employees did not have any procedure for disclosing a wrongdoing in their place of work.”¹⁴⁷ Using the first channel for reporting in this case would not have helped, because the prosecutor general lacked independence. After using the third channel, the prosecutor’s office did not do anything to stop the violation, and the evidence would have been concealed or destroyed had the applicant used the first channel for reporting instead of approaching the newspaper. The government stated that the disclosure was not whistle-blowing and argued that in the USA and the UK, it is not considered as whistle-blowing when a person uses the third channel, or if it is, then only under rare circumstances. The court found that the interference with the applicants right to freedom of expression, in particular his right to impart information, was not necessary in a democratic society. There was a violation of Article 10 of the Convention.¹⁴⁸

In the case of *Halet v. Luxembourg*, the applicant alleged in the context of *Luxleaks* case that his right to freedom of expression had been breached, in violation of Article 10 of the Convention. The applicant stated that the ECHR case law does not grant a whistle-blower status to a person, who discloses an illegal act or lawful conduct. Under the Luxembourg law, a whistle-blower is defined based on Article 10 of the Convention. The national court found that the disclosure caused

¹⁴⁵ *Oprea v. Romania*, no. 12138/08, ECHR, §45.

¹⁴⁶ *Ibid.*, §79.

¹⁴⁷ *Guja v. Moldova*, no. 14277/04, ECHR, §62.

¹⁴⁸ *Ibid.*, §97.

harm to the employer this harm was so serious that it outweighed the general interest, and the fifth criterion had not been fulfilled. The defence stated that the applicant should not be granted a whistle-blower status because the reported information was not new and previously unknown.¹⁴⁹ “The applicant found that the Court of Appeal has misrepresented the facts and the case law of ECHR and interpreted it in a tendentious manner, so that the harm suffered by the employer outweighed the general interest, and to reject the defence of whistle-blowing and the proportionality of the harm caused in relation to the general interest was not fulfilled”. The Court of Appeal mentioned three new criteria for the information that whistle-blower discloses: it should be essential, new and previously unknown information. These criteria are difficult to fill if the information needs to be a true and in the public interest.¹⁵⁰

The EU directive required only a reasonable belief in the information that was disclosed. Also, for whistle-blowers who had access to substantial amounts of information, it was a safeguard against data leaks, and a guarantee that the disclosed information was reported in the public interest. The whistle-blowers whose information or data could not be protected were encouraged to report anonymously. Whistle-blowers are already considering whether to report because they are afraid of the consequences and these new criteria will add more distress to that.¹⁵¹ Journalists feel the need to protect their sources and the requirements that the information shared with them needs to be essential, new, and previously unknown is something that will deter the whistle-blowers from working with journalists. There are six criteria that are mentioned by the ECHR, and the proportionality of the penalty needs to be considered if a whistle-blower does not meet all the criteria. The applicant did not meet the fifth criterion and was different from others who met all conditions and were considered as whistle-blowers. “The Court of Appeal explained that the notion of whistle-blowing as a defence was derived from the Article 10 of the Convention, and this was for the purpose of preventing the violation of law.”¹⁵²

The information had to be disclosed in good faith and in a proportionate and appropriate manner and in the public interest. It was found that on the basis of the domestic law, the applicant could not rely on the defence of whistle-blowing but was entitled to the protection under Article 10 of the Convention. In the sense of proportionality, the court found that the fines are relatively modest

¹⁴⁹ Halet v. Luxembourg (21884/18), *supra nota* 3, §28.

¹⁵⁰ *Ibid.*, §39, §98.

¹⁵¹ *Ibid.*, §72.

¹⁵² *Ibid.*, §90.

and do not have a chilling effect on the applicant's freedom of expression or any affects to others who would like to report on any violation. The Court marked that the domestic courts found a fair balance between the need to protect the rights of the employer and the need to protect the applicant's freedom of expression, hence there was no violation of Article 10 of the Convention.¹⁵³

In the joint dissenting opinion of judges Lemmens and Pavli, they stated that the information disclosed by the applicants was not essential, new, or previously unknown because another employee had shared this information previously and due to that, the employer suffered more harm than the applicant. There was no question about the relevance to the public interest. This decision could have an effect on future whistle-blowers, especially in the private sector, discouraging them from coming forward, as persons who are considering reporting need to believe that their information is in the public interest and essential, new and previously unknown.¹⁵⁴ These conditions make it even harder to provided protection because it is not understandable to potential whistle-blowers; also there should not be unpredictable conditions without any clear and precise indication that is expected from whistle-blowers. Under the directive, the protection of whistle-blowers does not consider any harm caused to the employer if other conditions are met. The judges stated that "this view could create obstacles for providing protection for whistle-blowers in the private sector and create conditions that are hard to meet and can scare the potential whistle-blowers away".¹⁵⁵

In the case of *Heinisch v. Germany*, the applicant alleged that her right to freedom of expression had been breached, in violation of Article 10 of the Convention. The applicant was dismissed without notice by her employer after making a complaint about the violation through a first channel. The employer did nothing after the complaint and rejected the applicant's accusations because there was no whistle-blowing legislation in Germany at the time and the employees did not have any procedure for disclosing a wrongdoing in their place of work and there was no "enforcement mechanism for investigating a whistle-blower's complaints". The court stated that there were no objections to the fact that the person was acting as a whistle-blower.¹⁵⁶ The government claimed that the dismissal was justified under the paragraph 2 of Article 10, since the dismissal was a necessary and proportionate measure to protect the reputation and rights of the

¹⁵³ *Halet v. Luxembourg* (21884/18), *supra nota* 3, §111.

¹⁵⁴ *Halet v. Luxembourg* (21884/18), joint dissenting opinion of judges Lemmens and Pavli.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Heinisch v. Germany* (28274/08), *supra nota* 143, §75.

employer. The court found that when it came to the importance of the right to freedom of expression regarding the right of employees to report illegal conduct at their place of work, the court reaches the decision that the interference with the applicant's right to freedom of expression, in particular her right to impart information, was not necessary in a democratic society. Therefore, it can be considered "that the domestic courts failed to strike a fair balance between the need to protect the employer's reputation and the need to protect the applicant's right to freedom of expression". There was a violation of Article 10 of the Convention.¹⁵⁷

In the Guja case, the whistle-blower was dismissed after reporting. Chalouat found, that "the Court ruled that the dismissal of a civil servant because he blew the whistle on government interference in the administration of criminal justice was a violation of Article 10 of the Convention."¹⁵⁸ "There were no internal channels for the person to use and there was an evident public interest in disclosure that outweighed the damage suffered by the public authority, but the sanctions were very severe for the Guja."¹⁵⁹ However, the whistle-blower did not have any other option to report the infringement and was doing it in good faith. The government did not take that into account and perceived this reporting as negative, which ended with a dismissal. In Estonia, when you are dismissed from a public sectors position, your career in the public sector is basically finished. This is an example of what could happen to the whistle-blower and in some sense, it is a warning to a whistle-blower not to come forward. The applicant turned to the court again 10 years later and was also reinstated, under the Article 10. The ECHR case law about whistle-blowers is not homogenous and there are not enough cases to give a specific overview of these problems and concerns relating to whistle-blowers. The courts have not brought out the problems that concern providing protection to whistle-blowers and have discussed it only in the cases where there is no protection provided. In one case, the court saw that the lack of protection may have had a detrimental effect on others who were considering blowing the whistle. The ECHR has marked whistle-blowing as using the right of freedom of expression, not as a mechanism to fight the crime or prevent it. The directive states that "persons who report information about threats or harm to the public interest obtained in the context of their work-related activities make use of their right to freedom of expression."¹⁶⁰ In that sense, a whistle-blower who has obtained information about their work-related activities can

¹⁵⁷ *Ibid.*, §94.

¹⁵⁸ Chalouat *et al.* (2019), *supra nota* 52, 32.

¹⁵⁹ *Ibid.*

¹⁶⁰ Directive (EU) 2019/1937, *supra nota* 1, 23.

use their right to blow the whistle and tell the society about ongoing infringement to prevent or stop it.

The decisions show the necessity of whistle-blowers because without them, these violations could have remained undetected. Also, it demonstrates the need for the protection of whistle-blowers because in the MS where there is no protection provided to whistle-blowers, they are afraid to come forward. In the countries that provide whistle-blower protection, there are not enough channels where whistle-blowers could report. It was brought out that some countries do not consider it as whistle-blowing when it is done through the third channel. The chosen case law is ground-breaking from the perspective of whistle-blowers in the EU and hopefully there will be more case-law that discusses the need of whistle-blowers.

CONCLUSION

The aim of this thesis was to explore if the whistle-blowing could increase the amount of infringement notifications. Also, if the reward-system can increase the amount of whistle-blowing and by that prevent or stop crime. Whistle-blowing is important part of crime prevention, because by detecting crime, whistle-blowers can help to reduce the number of infringements and prevent corruption. Whistle-blowers can detect infringements from inside of the company or organisation that could stay undetected or hidden from law enforcement authorities. Whistle-blowing can be used in different areas, where there is a need for a control mechanism, for example in copyright thefts or even traffic violations. Without any protection or other safeguards, corruption would be not detected as whistle-blower would not blow the whistle.

The rule of law and whistle-blowing- there are many links to the principles of proportionality, equality, and crime prevention. Whistle-blowing has been seen as an opportunity to use the freedom of expression. Whistle-blowers can help to reduce crime and to protect the principles of the rule of law. Regarding the proportionality of the penalty, it raises questions about the possibility of giving a reward to whistle-blowers. The principles of the rule of law help the society to function and the principles of equality, proportionality, procedural and legal transparency can make the legal system reliable. The adapted laws need to as transparent and clear as possible, and the compensation for non-pecuniary damages must be clear to an average citizen who does not have a legal degree.

Whistle-blowers can use channels for reporting: internal, external and public disclosure. Reporting through public disclosure without passing the internal and external channel, is not considered as whistle-blowing according to the directive. In the EU, whistle-blowers mostly use the internal channel and blow the whistle outside of an organisation if they feel that their concerns are not being dealt with. The author proposes that online channels, such as social media, could be an option after the whistle-blower has used the internal channel to report an infringement, but the organisation did not act on it. Reporting through social media is a considerable option because currently we can see there is a war happening in the social media. External channel can also be seen as transparent because the parties who investigate the infringement are not connected to it and the whistle-blower could get fairer treatment or more protection than going through the first channel. Some whistle-blowers report anonymously because they are afraid of the complications

or there are no relevant regulations nor protection provided. Although, reporting anonymously can raise concerns about the trustworthiness and credibility of whistle-blowers, even if reporting is done in good faith. Providing safe reporting channels for whistle-blowers can help to prevent crime in pilot stages. Technological developments can provide a more secure channel for whistle-blowers to use, and corporations or authorities can protect their data by having more secured databases.

Estonian labour, criminal and anti-corruption laws are indirectly connected to whistle-blowers but there are no specific laws regulating the protection of whistle-blowers. The Employment Act and the Civil Service Act are the laws that need to be changed if we want to adapt whistle-blowers' rights and obligations of the workers and officials. These could regulate employees and employers' rights concerning discrimination and dismissal in the case of whistle-blowing. Under the Estonian Employment Contracts Act, the employee is eligible for compensation in the amount of three average monthly wages, if it is found that the employer has done something wrong. The same principle could be used with the whistle-blowers if the law is changed. Furthermore, we need to co-operate with other countries who have had a lot of practice with whistle-blowing and have their court practice or impact assessment on the influence on corruption and crime prevention. In order to achieve a harmonized methodology and efficient protection across the Union, laws need to be changed on a national level and there must be strong recommendations from the EU.

The ECHR has established six measures under Article 10 by which the protection is provided for whistle-blowers. Chosen case law show the necessity of whistle-blowers because without them, these violations could have remained undetected. Also, it demonstrates the need for the protection of whistle-blowers because in the MS where there is no protection provided to whistle-blowers, they are afraid to come forward. In the countries that provide whistle-blower protection, there are not enough channels where whistle-blowers could report. The ECHR decisions main reasoning is about using the right to freedom of expression under Article 10 and the rulings do not mention preventing corruption, but are connected to the freedom of expression when a person is reporting to prevent corruption.

The EU should consider creating a reward-system to increase the number of the whistle-blowers and by that, detect more violations. The appropriate remedies should be identified on the basis of the damage caused. One remedy could be that the person is reinstated or could get a compensation for their monetary loss. Even, the directive does not find that giving monetary reward for acting

in good faith should be a motivation for whistle-blowers to come forward and it only states that providing protection and compensation for damages should be a sufficient measure that encourages more whistle-blowers to come forward. This could be changed, if there were any precedent of cases that were considered as whistle-blowing when a person received a reward for acting in a good faith. For example, Canada, Australia and USA are countries where it is common to give a reward for whistle-blowing. The US government should set an example to other countries, showing what can be achieved with the help of whistle-blowers. The financial incentives must be seen as a positive factor that increases the number of whistle-blowers. Considering the rule of law, a reward-system could increase the number of detected violations and by that, also reduce crime and corruption.

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¹⁶¹ *The non-exclusive licence is not valid during the validity of access restriction indicated in the student's application for restriction on access to the graduation thesis that has been signed by the school's dean, except in case of the university's right to reproduce the thesis for preservation purposes only. If a graduation thesis is based on the joint creative activity of two or more persons and the co-author(s) has/have not granted, by the set deadline, the student defending his/her graduation thesis consent to reproduce and publish the graduation thesis in compliance with clauses 1.1 and 1.2 of the non-exclusive licence, the non-exclusive license shall not be valid for the period.*