

## ECOLOGICAL WHISTLEBLOWING AT WORK FOR RECONCILING LABOUR AND NATURE

### DENUNCIA ECOLÓGICA EN EL TRABAJO PARA RECONCILIAR EL TRABAJO Y LA NATURALEZA

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**ABSTRACT:** There have been many reminders that the combined challenges of our times including deep inequalities and systematic corruptions cannot be solved unless the truth is exposed. Unlawful acts and ecological destruction which increase these crises are usually brought to light only by individuals who blow the whistle on the violations that they witness in their daily lives. In this respect, many workers become whistleblowers and can detect more fraud than traditional actors such as auditors and supervisory organisations. Having an essential role in improving planetary wellbeing, ecological whistleblowing at work constitutes an important and emerging aspect of whistleblowing in the era of climate emergency. By focusing on ecological whistleblowing of private sector workers, this article aims to introduce some solution offers under a comparative and critical approach regarding both legislation and practice. Accordingly, all workers must have the right to whistleblow against ecological breaches which is exercised in a fair, effective and transparent manner. Since ecological whistleblowing at work has the capacity to be successful in several areas like worker participation, ecological sustainability, democracy, social justice and worker empowerment against employers' ecologically harmful conducts, it is indispensable for better protection and enforcement of labour rights.

**RESUMEN:** Ha habido muchos recordatorios de que los desafíos combinados de nuestros tiempos, incluidas las profundas desigualdades y la corrupción sistemática, no se pueden resolver a menos que se exponga la verdad. Los actos ilegales y la destrucción ecológica que aumentan estas crisis generalmente solo salen a la luz cuando individuos denuncian las violaciones que presencian en sus vidas diarias. En este sentido, muchos trabajadores/as se convierten en denunciantes y pueden detectar más fraudes que los actores tradicionales, como los auditores y las organizaciones de supervisión. Al tener un papel esencial en la mejora del bienestar planetario, la denuncia ecológica en el trabajo constituye un aspecto importante y emergente de la denuncia de irregularidades en la era de la emergencia climática. Centrándose en la denuncia ecológica de los trabajadores/as del sector privado, este artículo presenta algunas propuestas de solución desde un enfoque comparativo y crítico con respecto a la legislación y la práctica. Dado que la denuncia ecológica en el trabajo tiene la capacidad de tener éxito en varias áreas como la participación de los/las trabajadores/as, la sostenibilidad ecológica, la democracia y la justicia social, es indispensable para una mejor protección y aplicación de los derechos laborales.

**RESUM:** Hi ha hagut molts recordatoris que els reptes combinats dels nostres temps, com ara les profundes desigualtats i la corrupció sistemàtica, no es poden resoldre si no s'exposa la veritat. Els actes il·legals i la destrucció ecològica que augmenten aquestes crisis solen ser posats a la llum només per persones que xiulen les violacions que són testimonis en la seva vida quotidiana. En aquest sentit, molts treballadors es converteixen en denunciants i poden detectar més fraus que els actors tradicionals com els auditors i les organitzacions de supervisió. Tenint un paper essencial en la millora del benestar planetari, la denúncia ecològica en el treball constitueix un aspecte important i emergent de la denúncia en l'era de l'emergència climàtica. En centrar-se en la denúncia ecològica dels treballadors del sector privat, aquest article pretén introduir algunes ofertes de solucions sota un enfocament comparatiu i crític tant pel que fa a la legislació com a la pràctica. Atès que la denúncia ecològica en el treball té la capacitat de tenir èxit en diversos àmbits com la participació dels treballadors, la sostenibilitat ecològica, la democràcia i la justícia social, és indispensable per a una millor protecció i compliment dels drets laborals.

**KEYWORDS:** whistleblowing – labour law – ecology – work – labour rights

**PALABRAS CLAVE:** denuncia de irregularidades – derecho del trabajo – ecología – trabajo – derechos laborales.

**PARAULES CLAU:** denuncia – dret del treball – ecologia – treball – drets laborals.

**SUMARIO:** I. WHISTLEBLOWING AT WORK IN A NUTSHELL. II. PROMINENT REGULATIONS AND COURT DECISIONS ABOUT WHISTLEBLOWING. III. EXAMPLES OF LEGISLATION FOR ECOLOGICAL WHISTLEBLOWING AT WORK. IV. SOLUTION OFFERS FOR EMPOWERING ECOLOGICAL WHISTLEBLOWERS. V. BIBLIOGRAPHY.

## **I. WHISTLEBLOWING AT WORK IN A NUTSHELL**

Until today there have been so many reminders that the complex challenges of our times like climate crisis, pandemic, deep inequalities and systematic corruptions cannot be solved unless the truth is exposed, and wrongdoing is disclosed. Illegal acts and ecological destruction that proliferate these challenges are usually brought to light only by individuals who blow the whistle on the wrongdoings which they witness in their daily lives. These individuals, as whistleblowers, are the ones who save countless lives, prevent ecological degradation and avoid unnecessary expenditures in the expense of their physical and mental health, employment and sometimes lives. “The term ‘whistleblower’ finds its roots in an old practice of the English police officers who would blow a whistle to alert other officers and the public that a crime was being committed nearby” (Becker, 2014: 69). It has evolved today into the act of a person (as mainly worker) for reporting/alerting others of legal and ethical violations which have been or are being committed within a company or government agency.

Yet, there is still no consensus on neither the term, nor its definition so that whistleblowing, alert, disclosure and reporting can be used along with disagreements over the kind of misconduct (from immoral conduct to concrete violations of law), the channels for reporting (as internal, external or public) and the requirement of whistleblower’s good faith. Despite these uncertainties,

whistleblowing is actually one of the most effective ways for uncovering wrongdoings. In a democratic society, whistleblowers have vital importance in terms of ensuring transparency, accountability and public oversight besides preventing corruption. Whistleblowers detect more fraud than traditional actors such as auditors and supervisory organisations, even though they usually have low financial resources compared to the spending on traditional monitoring actors. In this regard, workers of organisations which engage in violations have easy, early and low-cost access to information by working inside the organisation. Many workers also become whistleblowers in order to avoid personal liability from the misconduct being committed in their organisation. Positive monetary incentives encourage workers for whistleblowing too, although they exist in limited sectors such as healthcare. Moreover, whistleblowers usually help to identify the wrongdoing early even in cases where the infringement would become known eventually. Finally, “the very presence of potential whistleblowers in a workplace likely deters misconduct from ever occurring” (Becker, 2014: 72). Hence, whistleblowers ensure that the wrongdoing has a smaller effect, while decreasing the costs of subsequent investigations. For example; “whistleblower claims against the pharmaceutical industry recovered \$12 billion from 2001 to 2011” (Becker, 2014: 72-73).

Within this scope, ecological whistleblowing at work plays an essential role for the protection of nature under various aspects. Firstly, workers can have the knowledge and technical skills that help them to become effective internal monitoring actors regarding ecological violations. Also, they increase compliance with no or little additional cost, whereas helping to guarantee that non-compliance is more costly than compliance (Simoff, 1999: 326). Furthermore, workers usually learn ecological breaches when they are happening and can be fast to contain or prevent a time-sensitive ecological damage. In addition, they help to ensure that organisations are accountable for their ecological impacts and there is appropriate intervention where required. Companies increasingly claim to be eco-friendly or are changing their production methods to adapt to the climate emergency, however the reality is usually different and greenwashing is rising. As the co-director of Climate Whistleblowers, which is an environmental NGO in France dedicated to protect and support climate whistleblowers, draws attention,

more and more people will report climate crimes because there is more concern about this type of corruption. And the amount of fraud we see related to climate, the amount of lies and deception by companies and governments is increasing. Citizens want to do something against it and whistleblowing is very effective (Cuenca, 2023).

Whilst every worker can speak up for shaping their organisation's actions related to the climate crisis, workers from any sector, profession and position (like a finance officer, seafarer or farm worker) can prevent ecological damage. Environmental Whistleblowing Toolkit of Protect, which is a whistleblowing charity in the UK, points out that ecological whistleblowers have already succeeded in exposing and preventing ecological harm. In this regard, "nuclear whistleblower Rick Parks helped to ensure accountability for residents when they and the natural environment were exposed to nuclear radiation" in the USA; "Desiree Fixler's whistleblowing on greenwashing by asset management firm, DWS, led to police raids and fines" in Germany; and "anonymous whistleblowers helped to expose the English environmental regulator's failure to prevent water pollution" in the UK (Protect, 2023: 5).

Despite these important contributions of whistleblowers, they often suffer severe consequences like dismissal, harassment, blacklisting, prosecution, threats and lawsuits besides psychological strains and suicide attempts due to their actions. Many people cannot even consider blowing the whistle because of the fear of stigma as traitor and losing everything including house, career, family and reputation. Too often workers know the dangers before any damage occurs, yet they are very afraid of speaking up, report to the wrong people or are ignored. As for gendered barriers to whistleblowing, women lack voice, time and financial resources to report, while "reporting mechanisms are often ill-equipped to handle gender-specific forms of corruption" (Chene, 2021: 11-12).

Whistleblowing for ecological misconduct has even more specific challenges to face. Since "(1) environmental dangers can be hard to monitor; (2) enforcement of environmental regulations tends to be costly and is often dependent upon industry self-reporting; (3) regulated entities often have a financial incentive not to comply with environmental laws; and (4) environmental harm is time-sensitive and difficult to reverse" (Becker, 2014: 75), it is not easy to prevent ecological

damages and enforce green-friendly regulations. Also, many small polluters, which are difficult to monitor individually, can cause a big threat collectively. As regards time-sensitivity, the longer environmental harm continues, the greater risk it bears. Thus, it is crucial to act quickly since some ecological damages are irreversible.

Moreover, ecological whistleblowers often cannot rely on internal reporting channels like line manager or employer alone contrary to other types of violations, since ecological misconduct generally has negative impacts on third parties by creating lingering harms. In order to ensure that their employers do not avoid compensating third-party victims or paying the costs of green recovery, ecological whistleblowers have to report externally to competent authorities or publicise the breach otherwise. Lastly, ecological whistleblowers from several backgrounds such as cleaning workers, factory workers, media workers and scientists encounter pollutants and chemicals at different stages. So, it can be difficult to ensure that ecological whistleblowers know the applicable laws including the procedures for reporting, time limitations and conditions for protection. As a result, it is very significant and urgent to provide fair and robust protection for whistleblowers, offer sufficient incentives for whistleblowing and recognise the right to whistleblow for all persons including workers regardless of their employment status. Whistleblowers deserve a strong and comprehensive protection, since they contribute to the enhancement of democracy and human rights, prevention of crime and formation of transparency in the society.

In this respect, a suitable definition for ecological whistleblowers can be; persons currently, prospectively or formerly working in private (or public) sector including workers (and civil servants), self-employed, volunteers and paid or unpaid trainees who report to internal or external reporting channels or disclose to public when they acquire information about actual or potential ecological breaches (principally) in a work-related context. These ecological breaches cover, without being limited to, any environmental crime and ecocide together with any violation of the legal regulations related to;

- nature,
- biodiversity,

- climate,
- air, noise and marine pollution,
- waste management,
- energy efficiency,
- protection or management of soil and water, organic products, chemicals and unsafe products (which can harm nature).

Accordingly, ecological whistleblowing at work is a matter of fundamental rights like the freedom of expression, right to the protection of personal data and right to privacy because workers should be able to disclose violations freely without arbitrary interference and fear of retaliation, while their personal data and privacy should be protected effectively during and after any disclosure (Blin-Franchomme and Desbarats, 2009; Lousada Arochena, 2019). In addition, workers and their representatives should have the right to information about the work-related activities of employer as well as participating in all types of decision-making at work. Also, the duty of every citizen to protect nature is an indispensable basis for ecological whistleblowing since it empowers the whistleblower status of workers against ecological wrongdoings<sup>1</sup>.

Furthermore, ecological whistleblowing at work is closely related with the obligation of loyalty and secrecy in the employment relationship. In this regard, workers have to protect the interests of the workplace and avoid causing economic, commercial or professional damages to employer. Workers cannot use the information (especially production and business secrets), which they have obtained while working, for their own benefits or disclose them to others during the employment relationship. Workers' obligation of secrecy can continue even after the termination of employment contract under certain conditions. However, workers must have the duty of loyalty and secrecy as long as employer has a legitimate interest.

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<sup>1</sup> As seen in Turkey, Spain, Italy and Zimbabwe, constitutions can directly regulate the protection of nature. Within this context, Charter for the Environment of 2004 in France is an important constitutional instrument which contains fundamental rights and obligations related to environmental preservation. Being citizens and consumers as well, workers are obliged to enhance and protect nature together with employers and the state.

In this respect, workers must be able to exercise the right to refuse to obey<sup>2</sup> when employer violates the constitution, law, employment contract, public order, human dignity, morals, principle of good faith, personal rights and/or principle of equality. According to this right to refuse to obey employer's unlawful instructions and violations (also called the right to disobey or the right to refuse violating the law/participating in violations), workers should be obliged to comply with employer's instructions and orders within the limits of his/her managerial prerogative and principle of good faith. Since employer must not give instructions contrary to his/her obligations of protecting the worker and of equal treatment in the employment relationship and must not violate the mandatory provisions of the law, public order and personal rights, he/she has to make lawful and honest decisions by avoiding acting abusively. Otherwise, workers should not have an obligation to obey employers' unlawful instructions even if this refusal to obey affects the interests of the workplace. As a valuable example, Article 399 of Turkish Code of Obligations No.6098 provides that; "employer may make general regulations regarding the performance of the work and the behaviour of workers in the workplace and may give specific instructions to them. Workers shall comply with them to the extent required by the rules of good faith (honesty)".

The right to refuse to obey overlaps with the right to whistleblow, when a worker acquires the information about a breach in the context of work-related activities. After such information is obtained, a worker may exercise his/her right to refuse to obey, right to whistleblow or both of them. Whilst the first option can eliminate the need for whistleblowing only if the right to refuse to obey is sufficient to prevent the wrongdoing, second option may require the support of the right to refuse to obey for a more powerful, efficient and comprehensive result. As regards the third option, best safeguard is accomplished under the collaboration of two important tools against illegal conduct as long as both provide a sound protection for worker.

Within this scope, employer must neither give unlawful instructions/orders and ignore his/her obligations, nor impose any reprisals on worker due to the exercise

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<sup>2</sup> This right can appear as the right to refrain from working under different legislation due to employer's violation of his/her obligations such as delayed or unpaid salary, mobbing and failure to take all necessary measures for occupational health and safety.

of the right to refuse to obey. Otherwise, if employer terminates the employment contract based on the worker's right to refuse to obey, this will constitute an abuse of right linked to the malicious termination without a rightful or valid reason. As Article 5/1(c) of ILO's Termination of Employment Convention No.158 states, "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" cannot be considered as a valid reason for termination. On the contrary, worker can be entitled to terminate the employment contract if the requirements are fulfilled.

Moreover, worker's right to refuse to obey unlawful instructions can and must contain employer's ecologically harmful orders and conducts as well (Escribano Gutiérrez, 2017: 44). When employers cause ecological degradation by their activities, they also violate their constitutional or legal duty to protect the nature, abuse their managerial prerogatives besides committing environmental crime(s). Therefore, worker's right to refuse to obey against ecological destruction has to be recognised and implemented urgently in the most equitable and effective way for improving the exercise of ecological whistleblowing at work and ending the exploitation of labour and nature.

## **II. PROMINENT REGULATIONS AND COURT DECISIONS ABOUT WHISTLEBLOWING**

Council of Europe (CoE) stands out as the first international organisation with substantial instruments on the protection of the whistleblower. In addition to the adoption of the Civil Law Convention on Corruption in 1999, institutions of the CoE have taken a number of decisions about whistleblowers including the Resolution 1551 (2007)<sup>3</sup> and the Resolution 1729 (2010)<sup>4</sup> of the Parliamentary Assembly. Also, Committee of Ministers within the CoE adopted the Recommendation CM/Rec (2014)<sup>7</sup> on the Protection of Whistleblowers as a more detailed instrument related to whistleblowing, whereas Article 17 of the

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<sup>3</sup> Resolution 1551 (2007) on "Fair Trial Issues in Criminal Cases Concerning Espionage or Divulging State Secrets" of Parliamentary Assembly, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17535&lang=en>.

<sup>4</sup> Resolution 1729 (2010) on "Protection of 'Whistle-blowers'" of Parliamentary Assembly, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851&lang=en>.

Recommendation CM/Rec (2015)5 focuses on the protection of worker's personal data in internal reporting mechanisms<sup>5</sup>. Nevertheless, since these documents adopted within the CoE are not legally binding, the Parliamentary Assembly issued another recommendation<sup>6</sup> in October 2019 and requested the Committee of Ministers to prepare an international agreement on whistleblowers. When this international agreement enters into force, protection of whistleblowers will be the topic of an international instrument for the first time with obligations imposed on member and non-member states (if they become parties). Until then, European Convention on Human Rights (ECHR) is also a legally binding international instrument regarding the protection of whistleblowers together with the decisions of the European Court of Human Rights (ECtHR) which monitors the compliance to the ECHR.

The ECtHR faced the issue of whistleblower protection firstly in 2008 under the case of *Guja v. Moldova*<sup>7</sup> and concluded that there was a violation of Article 10 (freedom of expression) of the ECHR. In this judgment, ECtHR decided that whistleblower's disclosure of unlawful acts committed at the workplace was within the scope of the freedom of expression. Another important aspect of this decision is the acceptance of the whistleblower status in the ECHR system and the determination of some criteria to benefit from this status as whether; (1) the applicant has alternative means for disseminating the information, (2) there is a public interest in the information disclosed, (3) there is any damage to employer, (4) the applicant has good faith, (5) the disclosed information is accurate and reliable, and (6) the sanction is severe. Hence, workers must disclose information

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<sup>5</sup> Pursuant to Article 17/1 of the Recommendation CM/Rec (2015)5 on the Processing of Personal Data in the Context of Employment, "Where employers are obliged by law or internal rules to implement internal reporting mechanisms, such as hotlines, they should secure the protection of personal data of all parties involved. In particular, employers should ensure the confidentiality of the employee who reports on illegal or unethical conduct (such as whistleblowers). Personal data of the parties involved should be used solely for the purpose of appropriate internal procedures relating to the report and as required by law, or as may be required for subsequent judicial proceedings". Within this scope, also see, Article 24 entitled "Information Systems for Internal Disclosures" of the Organic Code No.3/2018 in Spain.

<sup>6</sup> Recommendation 2162 (2019) on "Improving the Protection of Whistle-blowers All Over Europe" of Parliamentary Assembly, <https://pace.coe.int/pdf/62bb9f4507f41bd8205f7e678a5df4dd276b72f7cdb2d2736558e6b99a6f0fcc/rec.%202162.pdf>.

<sup>7</sup> European Court of Human Rights, *Guja v. Moldova*, Application No.14277/04, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-85016%22%7D>.

proportionately, for the public interest and to the public as a last resort in order to be entitled for protection under the ECHR.

Whilst the Guja decision is about the protection of whistleblower in the public sector, in the *Heinisch v. Germany* case in 2011<sup>8</sup>, the ECtHR focused on this dispute in the private sector and used the term of whistleblower for the first time. In *Heinisch* case, a nurse was dismissed from her job in a geriatric nursing home since her lawyer lodged a criminal complaint against her employer who did not solve serious shortcomings deriving from staff shortages, inadequate standards and unsatisfactory care along with insufficient documentation of care despite several notifications to the management. After applying the criteria of Guja in this case, the ECtHR held that the dismissal of the applicant was not necessary in a democratic society, given the importance of the applicant's right to freedom of expression and right to disclose the employer's unlawful conducts. So, ECtHR found again that there was a violation of Article 10 of the ECHR in *Heinisch* case.

The ECtHR had the opportunity to confirm the broad protection that it granted to whistleblowers in other cases too<sup>9</sup> and to decide that even persons working in the state's secret service have a broad right to the freedom of expression in the light of the six criteria set out in Guja judgment. According to the ECtHR, public interest in the awareness of the unlawful acts, which take place in the workplace, outweighs worker's obligation of loyalty to the employer. In order to benefit from the whistleblower status, the person disclosing the information must be in good faith, the information must be true, and there must be public interest in the disclosure of the information to the public. However, the person should not make any judgments while disclosing the information and should describe the events in an objective manner. In addition, there must be a causal link between the measures that the person is exposed to and the disclosure of information and documents. In the absence of this causal link, the ECtHR does not accept the applicant as a whistleblower and does not offer him/her a broad protection. Within the scope of the case law of the ECtHR, the freedom of expression afforded to

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<sup>8</sup> European Court of Human Rights, *Heinisch v. Germany*, Application No.28274/08, [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22002-446%22\]%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22002-446%22]%7D).

<sup>9</sup> For more information about those cases on whistleblowing, see ECtHR Factsheet-Whistleblowers and Freedom to Impart and to Receive Information, [https://www.echr.coe.int/documents/d/echr/FS\\_Whistleblowers\\_ENG](https://www.echr.coe.int/documents/d/echr/FS_Whistleblowers_ENG).

whistleblowers is wider than that of an ordinary applicant. Yet, it is important that the information disclosed contributes to a democratic society. The fact that documents or information are 'top secret' has no effect in this sense. Journalists are protected as whistleblowers through the freedom of press under the case law of ECtHR as well.

In terms of environmental whistleblowing, *Aghajanyan v. Armenia* case (which became final in January 2025)<sup>10</sup> is a significant example focused on the freedom of expression regarding ecological risks and protection of nature. Accordingly, the applicant had been working as a senior researcher at a factory of chemical products since 2003. He filed several reports with his management between 2006 and 2010 about the need to properly handle a chemical waste (lacquer with ethynol solvent) which was stored in the factory's plants. He also proposed (with his colleague) the production of a water-dispersion paint from the waste to protect the pipes and equipment of the factory against corrosion. In 2007 this proposal was tested, yet the results were not satisfactory since it had not been carried out properly. In April 2010, an article was published in a local newspaper featuring an interview with the applicant. In this article, he discussed certain problems in the running of the factory besides the potential harm to the nature and public health due to the non-usage of the waste for an extended period of time. He also mentioned that the solution he had proposed did not receive support from the company's management team. Moreover, he expressed frustration over his income with comparisons to the incomes of deputy directors. In May 2010, factory's managing director dismissed the applicant without prior notice based on the false information disclosed in the published article.

As Miñarro Yanini highlights, even though the ECtHR held that there was a violation of Article 10, two elements are missing in the judgment for an adequate enhanced protection (2025: 292-293). Firstly, the potential whistleblower status of worker, which provides additional protections under the EU Directive on Whistleblowers, was not evaluated. Secondly, instead of emphasising the vitality of public interest violated by the company's actions and the essential role of

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<sup>10</sup> European Court of Human Rights, *Aghajanyan v. Armenia*, Application No.41675/12, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-236131%22%7D>.

whistleblowing in its preservation<sup>11</sup>, the ECtHR only took into account the right to freedom of expression. Without analysis related to the whistleblowing or environmental protection as a key topic of public interest, the ECtHR observed that domestic courts failed to assess the case before them in accordance with its case-law under Article 10. It is important to underline that public interest represented by environmental protection, prevention of harm to health and workplace safety was prioritised over worker's duty of loyalty by the Court. Since planetary wellbeing is intertwined with the public interest and public health, prevention of environmental crimes needs to prevail over business interests and reputation of the companies (Kostic, 2024: 222). Nevertheless, ecological whistleblowing deserves more attention under the ECHR with higher level of safeguards to workers. International courts including the ECtHR should contribute to the future of a genuine and powerful ecological whistleblowing at work.

In addition to the CoE instruments, regulations in the EU on whistleblowing constitute other prominent legal sources. After the adoption of the EU Trade Secrets Directive in 2016, development of the EU Whistleblowing Directive gained momentum. A campaigning platform was launched by Eurocadres in October 2016 and the European Commission presented a legislative proposal about the protection of whistleblowers in April 2018. As a result, the EU Directive 2019/1937 of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law (EU Directive on Whistleblowers)<sup>12</sup> entered into force on 16 December 2019 with a transitional period for member states until 17 December 2021. Having a comprehensive material scope which contains the wrongdoings falling within the scope of the EU acts concerning 12 areas, EU Directive on Whistleblowers does not exclude the protection of environment in the text and its annex as well as explicitly referring to the European Commission's communication entitled "EU Actions to Improve Environmental Compliance and

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<sup>11</sup> According to the Preamble of the EU Directive 2024/1203 on the Protection of the Environment Through Criminal Law; "Environmental criminal offences harm nature and society. Persons reporting breaches of Union environmental law perform a service of public interest and play a key role in exposing and preventing such breaches, and thus in safeguarding the environment and the welfare of society".

<sup>12</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law, *OJ L 305*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1937>.

Governance”. In this respect, the purpose of the EU Directive on Whistleblowers is mainly based on the enhancement of internal market by creating a harmonised protection across the EU. Due to the scandals of corruption, tax evasion, mass fraudulent use of personal data and money laundering like LuxLeaks, Panama and Paradise Papers, Dieselgate and Cambridge Analytica, which could only be disclosed by whistleblowers, EU Directive on Whistleblowers includes a wide material and personal scope with important safeguards.

In terms of material scope, it applies to 12 EU policy fields including public procurement; product safety and compliance; protection of the environment; public health; food and feed safety, animal health and welfare; and consumer protection. Also, it covers the breaches which mean “acts or omissions that; are unlawful and relate to the Union acts and areas falling within the material scope”; or “defeat the object or the purpose of the rules” in the aforementioned EU acts and fields. Therefore, EU Directive on Whistleblowers exclude the violation of moral and ethical rules, whereas it does not permit the circumvention of the law to violate the rules under its scope. Moreover, it does not cover the protection for reporting about working conditions and occupational health and safety (OHS) which was highlighted by the pandemic.

Yet, when a worker’s working conditions are closely linked to one of the aforementioned policy areas, he/she would be protected under the Directive (Abazi, 2020; Alpagut, 2021). For instance; as we saw for medical workers during the pandemic, a worker’s disclosure regarding the lack of proper equipment is directly linked to public health which is covered by the Directive. Similarly, if a worker’s working conditions harm the nature, he/she should be protected under EU Directive on Whistleblowers for reporting it. In addition, some member states may expand the scope of protections for disclosing working conditions under national laws. On the other hand, the Directive does not affect “the protection granted to workers when reporting breaches of Union employment law” as Article 11 of Council Directive 89/391/EEC provides in the area of OHS. Lastly, while the scope of EU Directive on Whistleblowers does not include information protected under national security regimes or classified information (political whistleblowing) contrary to the ECtHR, its application must be in accordance with EU data protection and privacy regulations.

As regards personal scope, the Directive applies to reporting persons prospectively, currently or formerly working in private or public sector including workers and civil servants; self-employed; volunteers and paid or unpaid trainees; and anyone working under the supervision and direction of suppliers, contractors and subcontractors. Besides, where relevant, it applies to facilitators who assist a reporting person in the reporting process, and whose assistance should be confidential; third persons such as colleagues or relatives of the reporting persons; and legal entities which the reporting persons own, work for or are otherwise connected with in a work-related context. Thus, the basic condition is obtaining information about the violation in the context of work-related activities. However, the confidentiality of communications between health care providers and their patients along with lawyers and their clients remains inviolable.

Furthermore, EU Directive on Whistleblowers does not contain a definition of whistleblowing, rather it has several definitions related to the different concepts within its scope under Article 5. Accordingly, reporting person is at the centre as “a natural person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities”, whilst report or to report means “the oral or written communication of information on breaches”. Finally, reporting persons will be qualified for protection granted by the Directive, provided that “(a) they had reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of this Directive”; and (b) they reported it in accordance with the Directive by using the reporting channels prescribed. So, reporting inaccurate information about violations by honest mistake is also protected. Since the motives for reporting are irrelevant in the decision about protection, good faith of reporting persons is not required under the Directive. Reporting in the public interest is not compulsory for protection, a person can pursue a personal purpose (like the refusal of salary increase request) for reporting a real breach within the workplace. Whistleblower protection under the Directive exempts reporting persons from any kind of liability.

Within this context, the Directive offers three types of reporting channels as internal, external and public disclosure. In internal reporting, a person discloses the work-related breach to another person or unit in the same enterprise like

supervisor, manager, legal compliance officer and board of directors. On the other hand, external reporting occurs when a person discloses the work-related violation to the competent authorities outside of the workplace directly or after having reported firstly through internal reporting channels. Nevertheless internal reporting can reveal the identity of the whistleblower and expose him/her to reprisals more easily, while external reporting may lead to a violation of worker's duty of loyalty and secrecy. As such, the Directive gives priority to the public interest over the employer's interests and the worker's duty of loyalty. Pursuant to Article 7, member states will encourage internal reporting channels "where the breach can be addressed effectively internally and where the reporting person considers that there is no risk of retaliation". As Alp states, the fact that internal reporting has not a mandatory priority is a crucial development in understanding the worker's duty of loyalty which can only cover the legitimate interests of employer (2021: 27). Worker cannot be forced to act as an accomplice to employer in violating the laws.

In addition, whilst internal reporting requires that legal entities in the private and public sectors with 50 or more workers must establish channels and procedures for reporting and for follow-up, external reporting requires that member states must designate the competent authorities (as independent and autonomous reporting channels) to receive, give feedback and follow up on reports. As Abazi emphasises, whistleblowers can report by using any medium including in writing and/or orally, by telephone or other voice messaging system, or by means of a physical meeting (2020: 650).

In terms of public disclosure, a whistleblower can report the breach through public channels like media, non-governmental organisations or social media platforms. However, a person can report a wrongdoing publicly only if he/she first reported internally and externally, or directly externally and none of them took an appropriate action. Also, a public channel is permissible under Article 15 only if a whistleblower has reasonable grounds to believe that; "(i) the breach may constitute an imminent or manifest danger to the public interest" or "(ii) in the case of external reporting, there is a risk of retaliation or there is a low prospect of the breach being effectively addressed, due to the particular circumstances of the

case". Hence, whistleblowers who publicise the work-related violation are protected by the EU Directive on Whistleblowers solely under certain conditions. As regards the prohibition of retaliation, Article 19 provides that member states must take the necessary measures to prohibit any form of retaliation against all people under the personal scope of the Directive, containing threats and attempts of retaliation such as suspension, dismissal or equivalent measures; reduction in wages or change in working hours; imposition or administering of any disciplinary measure; harm, including to the person's reputation (particularly in social media) or financial loss; and blacklisting. This broad enumeration of retaliations is accurate in preventing unfair practices that remain veiled but are actually very common. Under Article 20, member states are obliged to provide all kinds of support measures to those who are exposed to these and similar reprisals. One of these measures is the provision of comprehensive and independent information and advice which are easily accessible and free of charge. Moreover, effective assistance must be provided by the competent authorities to whistleblowers and whistleblowers should have legal aid in criminal and cross-border civil proceedings. Member states may also provide for financial assistance and support measures, like psychological support, for whistleblowers in the framework of legal proceedings.

In terms of measures for protection, firstly (under Article 21), member states must ensure that whistleblowers are not held responsible in any way, and that they are not subject to any criminal, legal or administrative sanctions due to reporting. Whistleblowers can only be punished for the acquisition of or access to the information which is reported or publicly disclosed, provided that such acquisition or access constitutes a self-standing criminal offence. Remedial measures against retaliation such as interim relief are possible as well. Secondly (under Article 23), member states are obliged to impose proportionate, effective and dissuasive penalties to natural or legal persons that; "(a) hinder or attempt to hinder reporting; (b) retaliate against persons referred to in Article 4; (c) bring vexatious proceedings against persons referred to in Article 4; (d) breach the duty of maintaining the confidentiality of the identity of reporting persons". Thirdly, the burden of proof is not on the whistleblower in order to encourage reporting because whistleblowers generally have difficulty in proving and encounter

negative experiences in this regard. Lastly, member states must guarantee that the rights and remedies provided in the Directive cannot be waived or limited by any agreement, form or condition of employment or policy. Whereas member states may introduce or retain provisions more favourable to the rights of whistleblowers than those under the Directive, the guarantees prescribed in the Directive must not reduce the level of protection already afforded by member states.

Before concluding the EU Directive on Whistleblowers, anonymous reporting, which is the disclosure without revealing the identity, is another issue to be taken into account. In case of anonymous reporting, risks are minimised for the whistleblower and reporting becomes easier. Yet, untrue claims and slanders may increase and it becomes difficult to investigate the accuracy of the reporting. For this reason, anonymous reporting is generally not accepted in countries with specific regulations and the whistleblower is expected to reveal his/her identity. In any case, privacy of the whistleblower must be ensured. Under the Directive, no obligation is imposed on the member states regarding anonymous reporting, but anonymous whistleblowers will also benefit from the same guarantees if they meet the conditions for protection.

Consequently, EU Directive on Whistleblowers can be considered as a successful regulation at the EU level provided that all member states implement it without any regressive changes or lower protection (Saloranta, 2021: 775-776; Abazi, 2020: 656). It empowers worker's right to whistleblow which is also recognised by the case law of the ECtHR. Also, employers are obliged to act more carefully related to misconducts and not to discourage workers from reporting by threats and financial incentives. Although the right to whistleblow is still limited to the violation of EU law under the Directive, its material scope can expand in the near future. According to Article 27/3, where appropriate, amendments with a view to extend the scope of the Directive to further EU acts or fields (particularly the improvement of the working environment to protect workers' health and safety and working conditions) can be evaluated in the European Commission report submitted by 17 December 2025. In addition, if special risks like environmental pollution and high-carbon emissions are justified, it will be appropriate to include smaller entities with less than 50 workers under

national legislation. Yet, since the penalties for non-compliance are to be set by the member states individually, an efficient enforcement of the Directive depends on the genuinely dissuasive, proportionate and effective sanctions under national legislation.

On the other hand, Lewis highlights that reporting based on work-related context constitutes an obstacle because this requirement ignores valuable information about a potential wrongdoing which emerge from a non-professional situation (2020: 7). In addition, lack of emphasis on preventing retaliation without an obligation to conduct risk assessments can be very problematic, whereas raising awareness remains insufficient under the Directive. Even though the staff responsible for handling reports in external authorities must receive specific training, the Directive does not regulate such training obligations for internal reporting arrangements either. According to Lewis, it would have been helpful if the Directive had determined some minimum standards about training (2020: 20). Ensuring the training of judges and those involved in alternative dispute resolution related to whistleblowing is highly important as well. Finally, matters related to defence, national security, trade secrets and classified information should be included by being subject to specific and clear reporting schemes with the guarantee of strict confidentiality and the creation of a competent institution. Whilst plain rules about medical and legal secrets should be regulated without complete exclusion, “reasonable grounds to believe” must be defined clearly (Terracol, 2021: 18). Protection for anonymous reporting needs to be strengthened too.

Beyond the law, the functionality of whistleblower protection definitely requires a radical change in the organisational culture. As Abazi underlines, in organisations with a prevailing culture of secrecy, fear and cover up, which penalises speaking out instead of encouraging, and with a tendency for infringing the law, legal rules including EU Directive on Whistleblowers are not sufficient for full compliance (2020: 654). In this profound culture change, trade unions have an important role to play as well. They can and should defend the whistleblowing at work as they did during the legislative process of the Directive.

### III. EXAMPLES OF LEGISLATION FOR ECOLOGICAL WHISTLEBLOWING AT WORK

Even though the CoE documents, ECHR and EU instruments do not solely focus on ecological whistleblowing at work, they are essential sources which also cover environmental breaches. Where appropriate, they are valid and applicable for the effective protection of ecological whistleblowers. As regards a direct focus on ecological violations, the right of alert in matters of public health and environment (*droit d'alerte en matière de santé publique et d'environnement*) regulated under French Labour Code is an important attempt. It is one of the rare direct ecological labour legislation around the world. Under the OHS part of French Labour Code, there is a general right of alert and right of withdrawal/refrain (*droits d'alerte et de retrait*) in articles L4131-1-L4132-5. Accordingly, Article L4131-1 prescribes that;

if worker has reasonable grounds to believe that any work situation presents a serious and imminent danger to his/her life or health, he/she shall immediately alert the employer about it as well as any defect he/she notices in the protection system. Worker may withdraw from such situation. Employer cannot ask a worker, who has exercised his/her right of withdrawal, to resume his/her activity in a work situation where a serious and imminent danger persists, resulting in particular from a defect in the protection system<sup>13</sup>.

Having some requirements for exercise, this general right also includes a right of alert in matters of public health and the environment with specific conditions and protections under articles L4133-1-L4133-4. According to these provisions modified by the Code No.2022-401 of 21 March 2022 Aimed at Improving the Protection of Whistleblowers;

1- Without prejudice to the right to use, if the conditions are met, the reporting or public disclosure system provided in the Chapter II of Title I of Code No.2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, worker shall immediately alert the employer if he/she believes, in good faith, that the products or

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<sup>13</sup> While “the right of withdrawal shall be exercised in such a way that it cannot create a new situation of serious and imminent danger for others” (Article L4132-1), “employer shall take the necessary measures and give the necessary instructions to enable workers, in the event of serious and imminent danger, to stop their work and seek safety by immediately leaving the workplace” (Article L4132-5).

manufacturing processes used or implemented by the establishment pose a serious risk to public health or environment. The alert shall be recorded in writing under conditions determined by regulation. Employer shall inform the worker, who has sent the alert, of the result.

2- Without prejudice to the right to use, if the conditions are met, the reporting or public disclosure system provided in the Chapter II of Title I of Code No.2016-1691, worker representative at the social and economic committee who finds, in particular through a worker, that the products or manufacturing processes used or implemented by the establishment pose a serious risk to the public health or environment, shall immediately alert the employer. The alert shall be recorded in writing under conditions determined by regulation. Employer shall examine the situation jointly with the worker representative at the social and economic committee, who transmitted the alert, and shall inform him/her of the result.

3- The persons mentioned in Article L4133-1 cannot be subject to the measures referred to under Article L1121-2<sup>14</sup>. They shall benefit from the protections provided in I and III of Article 10-1 and Articles 12 to 13-1<sup>15</sup> of the Code No.2016-1691.

4- The social and economic committee shall be informed of the alerts sent to the employer in accordance with articles L4133-1 and L4133-2.

This right of alert of workers in matters of public health and environment had been prescribed by “Code No.2013-316 of 16 April 2013 Related to the Independence of Expertise in Matters of Health and Environment and the Protection of Whistleblowers”<sup>16</sup> as well. With Code No.2013-316, National Commission for

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<sup>14</sup> According to Article L1121-2 of Labour Code; no person can be excluded from a recruitment procedure or from access to an internship or a period of training in a company, no worker can be sanctioned, dismissed or be subject to any discriminatory measure, direct or indirect, particularly in matters of remuneration (related to gender equality), profit-sharing measures or distribution of shares, training, qualification, classification, professional promotion, working hours, performance evaluation, transfer or contract renewal, or any other measure mentioned in II of Article 10-1 of Code No.2016-1691, for having reported or publicly disclosed information under the conditions regulated in the same code.

<sup>15</sup> According to Article 12; “In the event of termination of the employment contract following the reporting of an alert within the meaning of Article 6, worker can resort to the labour court. In the event of any dispute, labour court can, in addition to any other sanction, require the employer to contribute to the personal training account of the worker who raised the alert up to the maximum limit specified in Article L6323-11-1 of the Labour Code”.

<sup>16</sup> Loi No 2013-316 du 16 avril 2013 relative à l'indépendance de l'expertise en matière de santé et d'environnement et à la protection des lanceurs d'alerte, Legifrance, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000027324252>.

Ethics and Alerts in Matters of Public Health and Environment was established which is still “responsible for supervising the ethical rules applied to scientific and technical expertise and the procedures for recording alerts in the area of public health and environment”. Under articles 2-7, duties, structure and members of this national commission are regulated. However, three years later “Code No.2016-1691 of 9 December 2016 on Transparency, the Fight Against Corruption and the Modernisation of Economic Life”<sup>17</sup> was adopted and it modified or repealed many provisions of the Code No.2013-316. After the EU Directive on Whistleblowers had entered into force, it became evident that Code No.2016-1691 needed important modifications too. In order to transpose the Directive into French law, Code No.2022-401<sup>18</sup> came into effect in 2022 and was supplemented by the Decree No.2022-1284 of 3 October 2022. As seen before, the Code No.2022-401 gave the final shape to environmental alert in Labour Code whilst referencing to the Code No.2016-1691. Hence, these three regulations about worker’s right of alert are interrelated in France with significant progress in time.

Under French law, a natural person who acts in good faith to report a crime, misdemeanour, threat of actual harm to the public interest or breach of a legislation, EU law or an international commitment without a direct financial benefit can qualify for whistleblower protection by following certain procedural rules. As a worker, it is possible to choose making an internal or external reporting and also public disclosure in ecological matters or other areas when the conditions are fulfilled. For internal reporting, a worker, in good faith, must alert his/her superior or employer in companies with less than 50 workers, whereas has to follow the internal procedure for collecting and processing reports (established by the employer) in companies with 50 or more workers. Also, worker representative at the social and economic committee has the right of alert in ecological matters or other areas through internal reporting. Although internal

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<sup>17</sup> Loi No 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique, Legifrance, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033558528>.

<sup>18</sup> Loi No 2022-401 du 21 mars 2022 visant à améliorer la protection des lanceurs d'alerte, Legifrance, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388745>.

reporting is not mandatory, it is only possible for the information obtained as part of professional duties.

For external reporting, a worker can choose to apply directly or after an internal reporting to an external authority which can be; one of the competent authorities referred to in Decree No.2022-1284, the Defender of Rights (Defenseur des droits)<sup>19</sup>, the judicial authority (such as the Public Prosecutor) or a EU institution, body or organisation that is competent to collect information within the scope of the EU Directive on Whistleblowers. In terms of ecological whistleblowing, Decree No.2022-1284 covers the General Inspectorate for the Environment and Sustainable Development (IGEDD), National Agency for Food, Environmental and Occupational Health and Safety (ANSES) and General Directorate of Maritime Affairs, Fisheries and Aquaculture (DGAMPA) as the competent external authorities.

For public disclosure, (a) a worker must have approached an external authority that failed to provide with an appropriate response within the required time frame; (b) a worker must risk possible retaliation as a result of approaching the external authority or the authority must not effectively remedy the issue that worker is reporting; (c) there must be a serious and imminent danger for reports that do not contain information obtained regarding a professional situation; or (d) there must be an imminent or evident danger to the public interest for reports which contain information obtained regarding a professional situation. Public disclosure is not possible when a worker only uses an internal whistleblowing channel. As regards the protections afforded to ecological whistleblowers at work, exemptions from civil and criminal liability, assistance with professional reinstatement, conveniences in burden of proof and an advance payment for the costs of the proceedings based on the respective economic situation of the parties and the foreseeable cost of the proceedings come into fore.

On the other hand, French legislation and practice of ecological whistleblowing have important drawbacks. Firstly, they contain vague concepts of 'serious risk' and 'immediately' which must not complicate the exercise of the right. Secondly,

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<sup>19</sup> Being responsible for informing, guiding and protecting whistleblowers in all sectors and supervising external reporting authorities, the Defender of Rights is an independent administrative authority enshrined in the French Constitution.

there is merely a general duty of employer to inform the worker and worker representative of the result without other detailed obligations (of employer) regarding environmental alert. When worker representative at the social and economic committee exercises the right of environmental alert, employer has to examine the situation jointly. But this situation is not regulated as detailed as the general right of alert of the worker representative at the social and economic committee. Furthermore, workers who exercise the right of environmental alert cannot be subject to the retaliatory measures referred to under Article L1121-2 and II of Article 10-1 of Code No.2016-1691. Therefore, ecological whistleblowers are deprived of a comprehensive and substantial protection from retaliation contrary to other whistleblowers in France. In addition, provisions related to ecological whistleblowing need to be known and visible more by employers, workers, worker representatives and public institutions (Bugada, 2020: 87-88). Training activities of workers should include ecological whistleblowing and trade unions should promote a favorable environment and culture of whistleblower protection by actively supporting whistleblowing at work (Maison des Lanceurs d'Alerte, 2024).

As Leclerc points out, in the case of public health and environmental risks, it is necessary to protect whistleblowers who report information gathered outside their professional activity too, whilst legal entities should also be protected as whistleblowers for reducing the risk of retaliation against whistleblowers as natural persons (2024: 14). Since the effective handling of alerts in ecological matters requires the strengthening of real investigative capacity and necessary skills of the external reporting channels, these authorities must have appropriate financial, human and technological resources to ensure effective processing of the alerts. Moreover, although the National Commission for Ethics and Alerts in Matters of Public Health and Environment covers ecological matters and has unique experience in dealing with environmental alerts, it was not designated as an external authority under the Decree No.2022-1284. As Leclerc draws attention, “the Commission's prerogatives have been continuously challenged against a background, where the institutions responsible for the assessment and management of health and environmental risks in France are already fragmented” (2024: 11). Hence designating a single authority “which would be

responsible for centralising them, archiving them and exploring the data thus collected in order to identify risks that the external authorities, to which the report was initially sent, would not have been able to identify” is proposed for enhancing ecological whistleblowing (Leclerc, 2024: 14).

Lastly, report of the Maison des Lanceurs d’Alerte and Law Clinic of Université Paris Nanterre underlines that security and confidentiality of information regarding whistleblowing must be guaranteed within the external authority when its expert team handles reports (2023: 26). Paper information must not be accessible to unauthorised people, while email exchanges and other digital communication channels must be highly secure. Also, external authorities must be obliged to provide psychological and financial support measures for whistleblowers and have sufficient financial resources to implement these measures for ensuring the effectiveness of the right to whistleblow in France (Maison des Lanceurs d’Alerte, 2023: 27). Furthermore, legal requirements of reporting in good faith and without direct financial benefit do not conform with the Directive and violate international standards by legitimising retaliatory investigations that target the whistleblower (Terracol, 2023: 17). As the Biennial Report 2022-2023 of the Defender of Rights reveals, whistleblower protections are still inadequate in France due to the insufficient public awareness, exclusion of certain sectors from protection like national security and slow implementation of 2022 reforms (2024: 57). Consequently, regulation of ecological whistleblowing at work under French Labour Code is a crucial and pioneering example for reconciling labour and nature. But it should be improved rapidly without ignoring gender equality, right to refuse to obey and worker participation.

As regards other countries, all EU member states except Malta, Portugal and Sweden missed the deadline for transposition of the EU Directive on Whistleblowers. Accordingly, the adoption of whistleblowing codes in all EU countries completed by the end of 2023 (EU Whistleblowing Monitor). As stated in the Report from the Commission to the European Parliament and the Council on the implementation and application of the EU Directive on Whistleblowers, all member states transposed the Directive’s main provisions such as the conditions for protection, operation of the internal and external reporting channels, measures of protection and support to whistleblowers besides prohibition of

retaliation (2024: 9). Whilst a large majority of member states extended the Directive's protection regime to other areas of national law, several of them introduced additional measures of support including financial and psychological assistance to whistleblowers. Nevertheless, it was also underlined that "the transposition of the Directive needs to be improved on certain key areas, such as the material scope, the conditions for protection and the measures of protection against retaliation, in particular the exemptions from liability and the penalties" (European Commission, 2024: 10). Similarly, as Transparency International draws attention, "only eight member states –Denmark, France, Ireland, Latvia, Lithuania, the Netherlands, Slovenia and Sweden– have adopted legislation with comprehensive and consistent material scope" (Terracol, 2023: 11). Hence, it recommends that EU member states should amend their legislation to guarantee compliance with the EU Directive on Whistleblowers under a prompt and transparent legislative process by involving all key stakeholders including civil society (Terracol, 2023: 2).

On the other hand, report of the International Bar Association and Government Accountability Project found in 2021 that national laws or policies which have the best records for compliance with 20 best practices<sup>20</sup> regarding whistleblower protection include the EU Directive on Whistleblowers, Australia and the USA (16/20), Ireland and Serbia (15/20) and Namibia (14/20) (Feinstein and Devine, 2021: 10). Accordingly, the EU Directive on Whistleblowers and Australia's Public Interest Disclosure Act of 2013<sup>21</sup> lack right to refuse violating the law, realistic time frame to act on rights, option for alternative dispute resolution with an independent party of mutual consent and transfer option<sup>22</sup>. Also, laws of Lebanon, Norway and Canada are tied for the world's weakest whistleblower protection by

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<sup>20</sup> Some of these best practices are; broad whistleblowing disclosure rights with 'no loopholes', wide subject matter scope with 'no loopholes', right to refuse violating the law, protection against spill over retaliation at the workplace, protection for those beyond the workplace, reliable identity protection, providing essential support services for paper rights, realistic standards to prove the violation of rights, realistic time frame to act on rights, compensation with 'no loopholes', interim relief, coverage for legal fees and costs, personal accountability for reprisals, and credible internal corrective action process (Feinstein and Devine, 2021: 13-34).

<sup>21</sup> As regards ecological whistleblowing under Australian law, Human Rights Law Centre's valuable guide entitled "Climate and Environmental Whistleblowing" covers detailed information and case studies.

<sup>22</sup> Transfer option is important for whistleblowers who prevail in a lawsuit since they should have the ability to transfer internally, where feasible, for a genuinely fresh start and the prevention of repetitive reprisals (Feinstein and Devine, 2021: 30-31).

meeting only 1 out of 20 best practices. Finally, the report emphasises five main trends as;

- the underutilisation of whistleblower laws,
- lack of access to court decisions and statistics about whistleblowing which undermines the evaluation of their effectiveness,
- small financial awards, lengthy procedures and high costs for resolving retaliation cases which usually lead to 'lose by winning' even when whistleblowers officially prevail,
- failure of the majority of whistleblowers in retaliation complaints on balance, and
- understatement of the efficiency of whistleblower laws by the win-loss data due to the settlements in an important portion of cases.

Within this context, increasing the awareness and effectiveness of ecological whistleblowing at work around the world by ensuring robust protection and enforcement in the light of best practices and fair legislation is indispensable. Ecological whistleblowing must become a fundamental component of labour codes and other regulations in all countries to achieve a brighter future for labour rights.

#### **IV. SOLUTION OFFERS FOR EMPOWERING ECOLOGICAL WHISTLEBLOWERS**

In spite of the importance of effective and fair legal regulations, they only form the first step for whistleblowers since many of them have proven to be insufficient in practice. When whistleblower laws are not implemented, whistleblowers either have to opt for remaining silent or alternative paths; when they are, they often do not provide genuine or any protection against retaliation. Furthermore, some countries have extremely limited whistleblower legislation focused on only areas like corruption, economic sphere or public institutions, whereas there are other countries with several different regulations on whistleblowing which have contradictions, disconnections and deficiencies. In terms of ecological whistleblowing, the situation can be worse since there are national and international regulations which exclude ecological violations, let alone providing

protection for whistleblowers. Also, there are very few studies, resources, news, research and legislation about ecological whistleblowing despite the climate emergency. Many workers around the world are not aware of the meaning and advantages of whistleblowing as labour codes and other regulations do not mostly cover the right to whistleblow.

Within this context, enactment of equitable whistleblowing codes (including ecological whistleblowing) that reflect worldwide best practices and enable effective protection and enforcement is crucial supported by education, court decisions, public and workplace policies, labour inspectors, trade unions and NGOs. As recommended in the report of the International Bar Association and Government Accountability Project, campaigns and reports with detailed information about the benefits of whistleblowing legislation should be promoted by the states, all national whistleblowing legislation should be subject to a periodic review for effectiveness, and court decisions on whistleblowing should be accessible, understandable and fair (Feinstein and Devine, 2021: 69-71). In addition, there must be intensive education and training about whistleblower rights by the state, trade unions and NGOs for increasing awareness, courage and protection as well as for struggling against discrimination and cultural bias. In this regard, public education and training is essential for changing the mentality of various stakeholders such as employers, law professionals, NGOs, workers and public institutions.

Protection of whistleblowers requires an evolution, so the public must be aware of the reality as rapidly as possible that it needs whistleblowers as, if not more than, governments and companies do. According to the aforementioned report, the key for persuading the public is to show that whistleblowers make a fundamental difference by enhancing collective and institutional wellbeing. For instance; the European Commission estimated that lack of whistleblower protection across the EU in public procurement alone causes financial losses between €6 and €10 billion a year (Eurocadres, 2020: 4). Thus, higher volumes of whistleblowing save governments' and businesses' money together with leading to fewer lawsuits and crimes. Similarly, ecological whistleblowing can play an important role in dismantling wildlife crime which is a multibillion dollar industry threatening marine and terrestrial life (Hajost, 2018), in exposing

breaches which harm food safety and public health (Food Integrity Campaign, 2018), and in decreasing the risk of environmental crimes such as the use of forbidden chemicals, damaging the protected areas and species, mismanagement of waste, illegal mining and misreporting of environmental activities (Henriksson, 2019). As Kostic emphasises, environmental crimes are often connected with other criminal offences including money laundering, tax evasion, corruption, forgery and drug trafficking so that ecological whistleblowing needs higher levels of protection and support due to its multidimensional impacts (2024: 218)<sup>23</sup>.

Moreover, economic barriers for whistleblowers who challenge retaliation must be removed by laws. As the same report emphasises, there is a huge power imbalance between the worker and employer in terms of resources, time and access to justice from the start of a whistleblower retaliation case. Some cases can take so long to be resolved in courts that careers, mental health, family relations and finances of whistleblowers can be severely damaged. In practice, whistleblower retaliation remains hard to prove and many whistleblowers lose their retaliation claims even if they are right. In order to solve these problems, firstly due process should include the right to seek temporary relief in whistleblower legislation against instances by employers like causing delays in proceedings and cutting off the whistleblower's income. Forcing employers to keep whistleblowers on payroll until the final verdict can help to reduce the power imbalance and incentivise rapid resolutions in the cases. Secondly, "access to affordable counsel through attorney fee reimbursement and legal assistance funds is also important to give whistleblowers a fighting chance to sustain litigation against their employers" (Feinstein and Devine, 2021: 69). Active and effective support of lawyers and NGOs is vital for whistleblowers to take action and succeed in their efforts with minimum hindrance. Thirdly, whistleblower cases should be an exception in jurisdictions which retain the 'loser pays' principle in civil litigation to prevent a higher power and economic imbalance between

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<sup>23</sup> Within this scope, pursuant to Article 14 of the EU Directive 2024/1203; member states must take the necessary measures to ensure that persons, who report environmental crimes, provide evidence or otherwise cooperate with competent authorities, have access to support and assistance measures in the context of criminal proceedings.

workers and employers. Lastly, alternative dispute resolution can be an option to resolve whistleblowing disputes sooner provided that the mediators are independent, the process is transparent, objective, accessible and just, and there is no conflict of interests.

Furthermore, trade unions can ensure a sound and effective protection for ecological whistleblowers at work by encouraging good practices, representing whistleblowers, holding employers to account and raising concerns collectively. In this respect, union representatives are often the first place a worker will consult about whistleblowing. Since whistleblowers can feel afraid or isolated about making a disclosure, support and reassurance of their trade union are very important against retaliation. Collective labour agreements can also play an effective role in the fair recognition and implementation of the right to whistleblow. Even though growth-oriented and short-term approaches of employers, reductions in unionisation rates and collective bargaining coverage along with the weakening of trade unions can give rise to the mentality based on greenwashing and greed for profit within collective agreements, the right to collective bargaining is a vital means for worker voice and dignity against employers' illegal and ecologically harmful activities (Uncular, 2022). Having normative effects as a fundamental source of labour law in many countries, the more collective agreements embody equitable and detailed provisions on worker's right to refuse to obey, whistleblowing at work, environmental sustainability besides worker participation, the more ecological whistleblowers become powerful at various levels (Escribano Gutiérrez, 2017: 69).

In addition, union representatives should be trained comprehensively about whistleblowing and they must be protected from detriment as well. When concerns about a violation are at an early stage or there is a genuine risk of retaliation if a worker's identity is disclosed, only a trade union can bring forward concerns on behalf of a group of workers. Moreover, unions are capable of guaranteeing the effectiveness of workplace policies and practices related to whistleblowing (Eurocadres, 2020: 33-35) as well as the best protection for ecological whistleblowers by holding employers to account if organisational structures fail. Accordingly, good practices in ecological whistleblowing policies at work include;

- fair, reliable and transparent internal arrangements based on a speak up culture,
- commitment from leaders (with a board level director acting as a whistleblowing 'champion'; an internal team to support the champion's role and to lead the investigation and recording of internal reports; regular evaluation of whistleblowing reports at board level such as audit and risk committees; and regular revision of policies for effectiveness and fairness), and
- clear, accessible and understandable procedures and policies in writing (Eurocadres, 2020: 13-17).

Also, regular training of all staff including managers in accordance with their positions and responsibilities besides guidance for staff backed by efficient communications including team briefings, staff surveys, posters/flyers, intranet and newsletters encourage ecological whistleblowing substantially.

Within this scope, trade unions can amplify workers' voice and improve workplace democracy through active participation of workers. The more support unions provide, the more whistleblowing becomes an essential element for worker participation in ecological decision-making at work. Union representatives also help workers in identifying and accessing information about external reporting channels or public disclosures. In fact, trade unions can be regarded as a reporting channel for whistleblowers on their own as EU Directive on Whistleblowers refers to. Furthermore, unions must actively encourage national legislators and judges for the robust protection of ecological (and other) whistleblowers together with environmental organisations, public and international institutions and NGOs. Preventing stigma and changing attitudes, beliefs and behaviours about whistleblowing require constant effort, commitment and action of all stakeholders. Whistling the blow must become an ordinary reflex of every responsible people to stop illegal conducts and mitigate the climate crisis.

In this regard, this article offers the EU Directive on Whistleblowers as the compass for national legislation regarding ecological whistleblowing with some aforementioned revisions and additions. First pillar of this legislation can be formed as a general code on the protection of whistleblowers in both private and

public sectors supported by the specific provisions in labour code (as the second pillar) about ecological whistleblowing at work and worker's right to refuse to obey. As such, under labour codes, specific articles or a chapter on ecological whistleblowing at work should include that;

- all workers, regardless of their employment status, have the right to whistleblow against ecological breaches in line with the general code on the protection of whistleblowers;
- employer shall not violate worker's right to whistleblow and discourage or prevent them from reporting by providing material and/or moral interests and/or by any kind of retaliation;
- employer shall take all necessary measures for the effective, fair and transparent exercise of the right to whistleblow by ensuring gender equality, freedom of expression, protection of nature, worker's right to refuse to obey and protection of personal data and privacy;
- employer shall not violate any rights and freedoms of trade unions for an effective and lawful exercise of the right to whistleblow;
- employer shall provide each worker in writing with clear, comprehensive and adequate information on their right to whistleblow and whistleblowing procedures in an easily accessible, visible and understandable manner;
- in case of infringements regarding the right to whistleblow, dissuasive, effective and proportionate penalties shall be imposed on employer which cover the failure to fulfil obligations such as establishing reporting mechanisms, measures of support and protection for whistleblowers.

Also, social partners, labour inspection authorities and external reporting channels must guarantee a proper enforcement of the right to whistleblow. Independent, accountable and impartial competent authorities must be established and encouraged as external reporting channels for ecological whistleblowing (Ruetzel, 1994: 64-65). In terms of internal reporting channels, impartial and fair internal procedures should be provided based on the consultation and agreement with social partners, whereas direct public disclosure should have less conditions without being exceptional. Most importantly, such general and specific regulations must recognise the right to whistleblow as a fundamental right and one of the prohibited grounds for discrimination. They

should empower ecological whistleblowing at work with favourable provisions to workers in order to ensure a strong nature and labour cooperation against socio-ecological crises. On the other hand, protection of ecological whistleblowers under labour codes can be possible within the context of the existing provisions regarding non-discrimination, freedom of expression, duty of loyalty and termination of the employment contract (Aydın, 2003: 97). As long as these (and other relevant) topics are regulated fairly under labour legislation, they can provide at least some level of protection regarding ecological whistleblowing at work.

As a result, ecological whistleblowing at work has the capacity for being successful in many aspects like worker participation, ecological sustainability, democracy, accountability and social justice. In addition, it has significant impacts on production, collective action and gender equality. Accordingly, ecological whistleblowing at work contributes to a fair, nature-friendly and transparent production process by preventing environmental infringements, to worker empowerment against employer's ecologically harmful conducts and to the prohibition of any kind of discrimination including human supremacy. Therefore, the more ecological whistleblowing at work is adopted and implemented fairly, the more it will be capable of ensuring an eco-friendly and decent work organisation, of including workers in ecological decision-making at work and of encouraging workers to protest against unlawful instructions of employer, either individually or, better, collectively.

Since ecological whistleblowing at work can reinforce the freedom of expression, the right to information, the right to refuse to obey, worker voice and dignity, equal treatment for all workers and planetary wellbeing by reducing or preventing environmental violations, it improves equality, democracy and justice. Yet, more safeguards are urgently needed for profound changes in production, participation and collective action at work. Also, it should be backed by international organisations like ILO, national and international court decisions besides public and workplace policies. As we are racing against time to lower greenhouse gas emissions, ecological whistleblowing at work is not only possible and desirable, but also irreplaceable for the socio-ecological sustainability of our world in a genuine and powerful way. Together with climate-friendly work culture and

widespread good practices, effective and equitable regulation of ecological whistleblowing at work under legislation, collective agreements and employment contracts will bring better protection and enforcement for labour rights.

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