



WHISTLEBLOWERS MEXICO



Study of the state of the art in whistleblower protection

March 2022

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Introduction

Undoubtedly, an asset of great importance in the fight against corruption is the figure of the so-called "whistleblowers", which can refer to "any person who, working in the public or private sectors, denounces an act of corruption constituting a crime, danger or fraud, and which is being silenced or omitted in the light of the public interest".¹

It is relevant for this new era, where the fight against corruption is one of the main priorities of the governing class, to propose and build a regulatory framework and a social narrative that favours the figure of the whistleblower, starting by changing the very name of whistleblower, since a person who dares to denounce, to raise their voice, is not a "whistleblower", is not a person who should be stigmatised for collaborating with justice. On the contrary, a whistleblower is a key protagonist for justice, undoubtedly a "people's witness", someone who has dared to speak out when others have remained silent, which makes him or her a fundamental element for the effective delivery of justice in Mexico.

A whistleblower should be considered to be not only a civil servant, worker or employee, whether permanent, temporary, or under any of the various contracting schemes, but also those who have or may have a relationship with the institution, such as suppliers, applicants to work in the institution, consultants, contractors, interns, volunteers or even workers in the informal economy and other "insiders". Whistleblower protection seeks to prevent "blacklisting" as a way or strategy that prevents people from reporting corruption.

Whistleblower protection is a struggle to defend the collective work of transparency and whistleblowing in the name of justice against all illicit acts, and not a way to create a society of whistleblowers as authoritarian governments have often made it out to be. This sensitive issue, which has so often been used for public exercises based on demagoguery - due to success stories in other countries in the fight against corruption - is an effective and inclusive tool for citizens, as an active form of democratic participation and social intelligence for crime prevention, since it awakens interest in public affairs, in the demand that should prevail in citizens for transparency, accountability and their right to proper public administration, as well as in results with greater impact on the application of justice; and when it comes to the private sector, integrity and the fulfilment of their obligations.

In this context, the strengthening of the law is the first step towards the real construction of all these elements focused on the protection of whistleblowers. Precisely in Mexico, having the constitutional obligation to comply with international commitments, it is aligned with the United Nations Convention against Corruption (UNCAC), which recognises that an efficient and transparent public function is the basis of good governance. Likewise, we find that in 6 of its articles reference is made to the subject:

¹ World Compliance Association. "El whistleblowing como sistema eficiente en la lucha contra la corrupción". 2018. [Online]. Disponible en: <https://www.worldcomplianceassociation.com/1446/articulo-el-whistleblowing-como-sistema-eficiente-en-la-lucha-contra-la-corrupcion.html>

Chart 1. United Nations Convention against Corruption and other international conventions.

<p>Article 8, para. 4: Public sector Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.</p>	<p>Article 13. Participation of society</p> <p>Facilitate access to anti-corruption bodies for the public to report, including anonymously, incidents of corruption.</p>	<p>Article 37. Cooperation with law enforcement authorities</p> <p>Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent.</p>	<p>Article 38. Cooperation between national authorities</p> <p>Alentar la cooperación between public agencies/public officials and agencies responsible for investigating and prosecuting crimes.</p>	<p>Article 39. Cooperation between national authorities and the private sector</p> <p>Encouraging cooperation between private sector entities/nationals/residents and agencies responsible for investigating and prosecuting crimes.</p>
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And the most important, Article 33, indicates that it is the obligation of States Parties to provide protection to whistleblowers, and the possibility of incorporating into their domestic legal system appropriate measures to provide protection against any unjustified treatment for persons who report to the competent authorities, in good faith and on reasonable grounds, any facts relating to offences established in accordance with it.²

In this sense, the text of the "Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses", promoted by the Department of Legal Cooperation of the Organisation of American States (OAS), states in its article 1 that its purpose is to protect freedom of expression for persons who give testimony in cases of betrayal of public trust, thus contributing to the fight against corruption³

Thus, the Model Law seeks to protect whistleblowers from the dangerous circumstances that may threaten them, and recognises the figure of the witness as the cardinal element of programmes for the prevention and investigation of corruption and the criminal prosecution of corrupt individuals.

Likewise, the interpretation of the Explanatory Notes to the Resolutions of the OAS General Assembly point out that Article 1 of the Model Law states: "In the absence of a free flow of information from reliable witnesses, anti-corruption campaigns are empty and lack vitality. However, experience shows that, in a repressive environment, they will be silent observers

² UNODC. United Nations Convention against Corruption. 2003. [Online]. Available at: https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Convencion_de_las_NU_contra_la_Corrupcion.pdf

³ OAS. Department of Legal Cooperation. Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses. [Online] Available at: https://www.oas.org/juridico/ley_modelo_proteccion.pdf

rather than expressing their voice on behalf of the people. Freedom of expression gives our citizens the freedom to engage in genuine anti-corruption operations."⁴

In the same vein, Article III ("Preventive Measures"), point 8 of the Inter-American Convention Against Corruption⁵ provides for the protection of whistleblowers, establishing the obligation of States Parties to protect public officials and private citizens who report acts of corruption in good faith, including the protection of their identity, in accordance with their Constitution and the fundamental principles of their domestic legal system. In accordance with the aforementioned provision, whistleblower protection has been promoted by the Organisation of American States through two particular initiatives: the aforementioned "Model Law on the Protection of Persons Who Report Acts of Corruption" and the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption, thus being a regional strategic tool for the fight against corruption with a democratic and participatory vision to promote whistleblowing and protect whistleblowers.

Finally, it should be noted that at the same level as the above conventions, there are a number of international instruments to which States from other regions are parties that also call for reporting and whistleblower protection, such as:

- Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention; OECD Council Recommendation on Strengthening the Fight against Bribery of Foreign Public Officials in International Business Transactions 2009, Recommendation IX(iii); OECD Recommendation on Improving Ethical Behaviour in Public Administration (1998).⁶
- African Union Convention on Preventing and Combating Corruption (2003); and Southern African Development Community Protocol against Corruption (2001).⁷
- Council of Europe Civil Law Convention on Corruption (1999) and Criminal Law Convention on Corruption (1999)⁸ and its Recommendation on Whistleblower Protection (2014).⁹

⁴ OAS General Assembly. Department of International Law. Explanatory Notes on the Model Law on the Protection of Whistleblowers. [Online]. Available at: http://www.oas.org/juridico/spanish/preventivas/guate_docs/Devine_Vaughn_Henderson.htm

⁵ OAS. Inter-American Convention against Corruption. [Online]. Available at: https://eos.cartercenter.org/uploads/document_file/path/336/IACAC_SP.pdf

⁶ See in particular Principle 4. Public officials should be aware of their rights and obligations in exposing wrongdoing. Available from <http://www.oecd.org/gov/oecdprinciplesformanagingethicsinthepublicservice.htm>.)

⁷ Under this Protocol, 13 African countries have committed to protect whistleblowers. Available from <http://www.sadc.int/documents-publications/show/>.

⁸ See <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>, as well as the Criminal Law Convention on Corruption (1999), <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>, and its Recommendation on Whistleblower Protection (2014)

⁹ Recommendation CM/Rec(2014)7 of the Committee of Ministers of the Council of Europe to member states on the Protection of Whistleblowers. Available at <https://wcd.coe.int/ViewDoc.jsp?id=2188855&Site=CM>

Thus, the foundations of the rule of law, specifically with regard to this study, lie in the need for constant legal enrichment and are centred on the development, consolidation and execution of the law, regulating the behaviour of each subject in society and aligning the public function with the social interest without breaking the internal system through the fight against corruption.



WHISTLEBLOWERS MEXICO

1.1 Mexico

With regard to the international treaties to which Mexico is a party, it is important to take a specific look at their implementation at the national level, focusing on the whistleblower protection regulations that have been developed and those that are actually in operation. To this end, we must first refer from the general to the particular", and the following table shows the conventions ratified and the national legal regime with respect to the protection of whistleblowers and witnesses of acts of corruption:

Protection for Whistleblowers and Witnesses of Acts of Corruption (Mexico)	
International Instruments	Whistleblower Protection Regulations
United Nations Convention against Corruption (UNCAC).	<ul style="list-style-type: none">- Codes of conduct for public officials- Article 13, para. 2: Participation of society- Article 37: Cooperation with law enforcement authorities- Article 38: Cooperation between National Agencies- Article 39: Cooperation between national authorities and the private sector- Article 33: Protection of reporting persons
Inter-American Convention against Corruption of the Organisation of American States (OAS)	<ul style="list-style-type: none">- Article III ("Preventive measures"), paragraph 8
Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.	<ul style="list-style-type: none">- Paragraph. Recommendation of the Council for Strengthening the Fight against Bribery of Foreign Public Officials in International Business Transactions - Subparagraph C.

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Mexico has made an international commitment to take appropriate and necessary measures to strengthen the protection of whistleblowers who report acts or facts of corruption. Fulfilling these international commitments, from the public and private sectors, will contribute to the development of a democratic culture and the construction of a just society. Notwithstanding

the reviews and review mechanisms on the implementation and effectiveness of these international instruments in Mexico, they have not been rated highly or comprehensively. There are recommendations derived from the diagnosis of Mexico in this area. An example of this is the "Follow-up Report on the OECD Study on Integrity in Mexico", which points out the following proposals for action:

- Propose a legislative reform to guarantee whistleblower protection.
- Formalising channels for reporting irregularities
- Strengthening an open organisational culture
- Strengthen the actions of Internal Control Bodies to guarantee the protection and investigation of whistleblowers' rights.
- Strategies to raise awareness of whistleblowers' rights among public officials.
- Develop a cross-cutting approach to raise awareness in society and the private sector on whistleblowing and whistleblower protection.
- Consolidate training courses and strategies for social witnesses in the private sector.

Therefore, Mexico still needs to strengthen domestic legislation not only in the generation of initiatives, but also in the efficiency of its operation.

National regulatory framework	Whistleblower Protection Regulations
Political Constitution of the United Mexican States	<ul style="list-style-type: none"> - Art. 16. Para. 8 Protection of persons or legal property. - Art. 19, para. 2: The Public Prosecutor's Office may request pre-trial detention to ensure the protection of the victim, witnesses or the community. - Art. 20. Subparagraphs B and C. Protection of the victim, witnesses or minors. - The Public Prosecutor's Office must guarantee the protection of victims, offended parties, witnesses and in general all those involved in the process. Judges will oversee compliance with this obligation.
National Code of Criminal Procedure	<ul style="list-style-type: none"> - Art. 109. Protection of the rights of the victim or offended party and when there is a risk to their life or personal integrity. - Art. 137. Protective measures and precautionary measures. - Art. 170. Protection for the victim, offended party, witness or community. - Art. 367. Protection of witnesses. - Art. 370. Protection measures
General Law on Administrative Responsibilities	<ul style="list-style-type: none"> - Art. 22. International best practices for reporting and whistleblower protection. - Art. 64. Request for protection by public officials who report acts of corruption.
Federal Law for the Protection of Persons Involved in Criminal Proceedings.	<ul style="list-style-type: none"> - Federal Centre for the Protection of Persons - Federal Programme for the Protection of Persons - Protection Measures and Protected Persons covered by the law: Victim, Offended Party, Witness, Collaborating Witnesses, Experts, Police, Public Prosecutors, Judges and any other person who is related to, close to, participates in or has collaborated with the aforementioned persons and is at risk or under threat.

General Law on the National Anti-Corruption System	- It provides a centralised electronic platform through which any citizen can report wrongdoing anonymously.
General Law on Transparency and Access to Public Information	- It ensures that the personal data of complainants are kept strictly confidential during investigations and disciplinary proceedings.
General Guidelines for the integration and functioning of Ethics Committees.	- Measures to protect and safeguard information in response to complaints and whistleblowers of acts of corruption.
- Protocol for the Protection of Corruption Watchers	
- Agreement amending the one establishing the guidelines for the promotion and operation of the system of internal and external citizen corruption alerters.	
Initiatives	
- Initiative with a Draft Decree that enacts the Federal Law for the Protection of Whistleblowers and Informants of Acts of Corruption.	

In this sense, Mexico at the local level has actively participated in the development and implementation of norms that encourage reporting and protect those who participate in its presentation, but there are still states in the various regions of the nation that have not adopted laws, let alone proposed regulatory initiatives in this area. Based on this, it is not only a matter of creating the national compliance framework, but also of establishing capacities to know how to operate it on a day-to-day basis and with a view to strengthening it in the face of risks and threats in the medium and long term. Openness and integrity must be established and consolidated within Mexico's public bodies.

Over the years, the international focus on whistleblower protection has expanded from initial efforts to consolidate integrity to a global vision that, at the very heart of integrity, consists of effective mechanisms for whistleblowing without fear of reprisals. Countries are more receptive to the fact that protecting whistleblowers encourages the reporting of wrongdoing, fraud, tax evasion, money laundering and corruption, generating a culture of accountability, legality and integrity.

Mexico has made important progress in initiatives and gradual implementation of whistleblowing channels, as well as strengthening the functions of public servants responsible for handling complaints and denunciations to take appropriate measures. However, further efforts could be made to provide and use appropriate remedies for whistleblowers who suffer harm to their physical, mental or emotional integrity, as well as all kinds of reprisals, as well as to reinforce the positive perceptions and attitudes that society has towards whistleblowers in Mexico. Finally, along the same lines, if the current provisions of the Mexican whistleblower protection and reporting law and whistleblower protection law in Mexico are not effectively and functionally implemented in practice, then the law will remain just that - a law.¹⁰

¹⁰ OECD Study on Integrity in Mexico. Whistleblower Protection. 2017. [Online]. Available at: https://read.oecd-ilibrary.org/governance/estudio-de-la-ocde-sobre-integridad-en-mexico/proteccion-de-denunciantes-en-mexico-garantizar-canales-seguros-y-proteccion-para-denunciar-la-corrupcion_9789264280687-7-es#page25

It is essential for Mexico to legitimise and systematise the mechanisms through which public officials and citizens can report irregularities or corruption offences, real or perceived, on a small or large scale.

1.2 United States

In the United States, there are a number of regulations applicable to both the public and private sectors regarding whistleblowers. However, all this legislation must be consistent with the Whistleblower Protection Act of 1989. Thus, each government agency may have its own whistleblower protection mechanism, but in no case may these mechanisms contravene the Whistleblower Protection Act.

Whistleblower and Corruption Witness Protection (United States)	
National regulatory framework	Whistleblower Protection Regulations
Whistleblower Protection Act	<p>The most recent update was the Whistleblower Protection Enhancement Act (WPEA), passed in November 2012. The WPEA contains important advances, including broadening the definition of "protected disclosure" and allowing whistleblowers to collect compensatory damages.</p> <p>The Whistleblower Protection Act protects "any disclosure of information" by federal government employees who "reasonably believe it evidences activity that constitutes a violation of law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific abuse." Endangerment to public health and safety".</p> <p>It prohibits retaliation such as demotions, pay cuts or dismissals for whistleblowing and provides legal recourse for whistleblowers who experience such retaliation. It also allows whistleblowers to make their disclosures confidentially.</p>
Dodd-Frank Act (2010)	<p>This law was created in the aftermath of the 2008 financial crisis, and establishes a US Securities and Exchange Commission Whistleblower Programme, with the objective of helping the SEC detect and prevent fraud and violations of US capital markets rules. Some of the main features of this Programme are:</p> <ul style="list-style-type: none"> - It provides financial rewards to individuals who voluntarily provide original information about capital markets violations to the SEC, provided that the violations result in monetary penalties in excess of US\$1 million. The range of rewards can fluctuate between 10% and 30% of the total sanctions. - Safeguards the confidentiality of whistleblowers. - Prohibits retaliation by employers against employees who file SEC complaints.
Civil service Reform Act. Prohibited personnel Practices. 5 U.S.C. 2302	<ul style="list-style-type: none"> - By the 1970s, federal employees had begun to express dissatisfaction with perceived deficiencies in their procedural protections and discriminatory workplace practices. The resulting

	Civil Service Reform Act of 1978 (CSRA) reaffirmed the merit system selection process, codified collective bargaining procedures, and identified prohibited practices in the federal workforce, including nepotism and discrimination on the basis of age, sex, race, religion, or other specified factors. The legislation also created guidelines for the removal of personnel for unsatisfactory performance.
Rules and regulations of the Office of Special Counsel.	<ul style="list-style-type: none"> - The US Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities derive from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act (USERRA). The primary mission of the - OSC is to safeguard merit by protecting federal employees and applicants from prohibited personnel practices, especially whistleblower retaliation.
Responsible Bodies	
Office of Special Counsel (OSC)	It is an independent federal agency that investigates and prosecutes prohibited personnel practices by federal agencies, including whistleblower retaliation.

Within its Whistleblower Protection Pillar Act, the United States maintains special guidelines for the exercise of the law. The Whistleblower Protection Act (WPA) protects federal employees and job applicants who lawfully disclose information that they reasonably believe evidences wrongdoing, such as:

- A violation of law, rule, or regulation;
- Serious mismanagement;
- Major loss of funds;
- Abuse of authority;
- Or a substantial and specific danger to public health or safety.

The WPA protects federal whistleblowers working for the government. However, it specifically excludes whistleblowers in the intelligence community and those working for the FBI, focusing on employees working in an unclassified environment.

The rule also defines basic steps regarding the clarity of the whistleblowing procedure, which must be submitted to the Office of Special Counsel once the whistleblower believes he or she has exhausted all avenues within his or her organisation. To this effect, each government agency has specific procedures for reporting acts or facts of corruption. It also explicitly protects disclosures to the Office of the Special Counsel and the Office of the Inspector General. Each executive agency has an Inspector General.

Notwithstanding the above, whistleblower protection practice in the U.S. has areas of vulnerability, including the failure to establish the obligation of line managers to inform employees of the existence of the whistleblower protection law and the mechanisms available for reporting, as well as the appropriate institutional whistleblower protection channels.

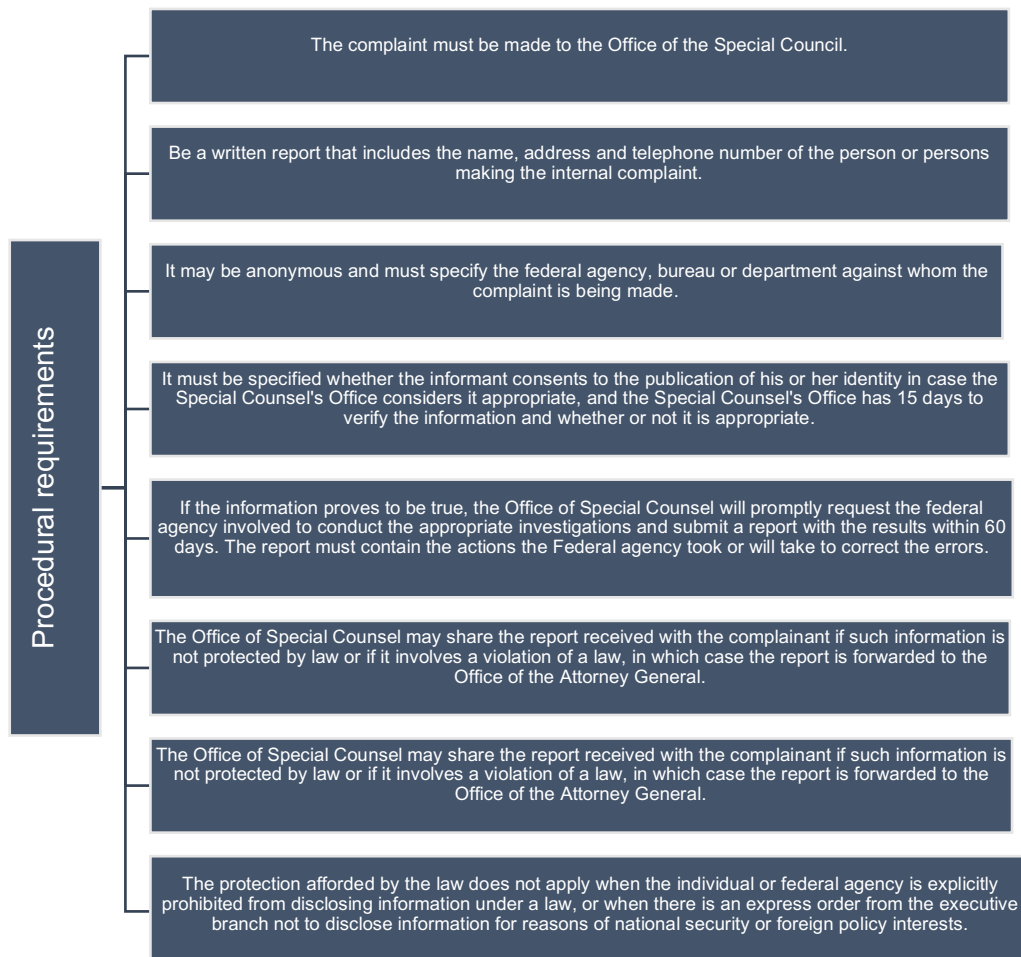
It also has provisions for the following remedies if the competent authorities or bodies determine that retaliation has occurred:

- Reinstatement to the complainant's previous job.

- Legal fees
- Back pay (wages and benefits lost as a result of an unlawful dismissal) Medical costs incurred
- Travel expenses
- Reasonable and foreseeable consequential damages
- Compensatory damages (including interest, reasonable expert's fees and costs)

Regarding anonymity as a means of whistleblower protection, the process can be anonymous. The law protects the identity of the whistleblower, unless the whistleblowing would endanger public or national health or safety.

Finally, the requirements and/or procedures for a report to qualify as protected under the WPA are as follows:



1.3 Peru

In Peru, the panorama of whistleblowing and whistleblower protection has been consolidating over the last decade, both in the regulatory and institutional system. In this sense, individuals are now open and available to report illicit acts, among them: public servants, former public servants and any citizen who has knowledge of any act or fact of corruption.

In this jurisdiction, public entities are responsible for ensuring the interoperability of the procedures for reporting acts of corruption and whistleblower protection measures, through the "State Interoperability Platform". To this end, the Presidency of the Council of Ministers, through the Secretariat of Digital Government, is developing the Single Digital Platform for Citizen Complaints, which is the Peruvian State's single digital channel of contact with citizens for such complaints and alerts.

In this regard, in addition to the combination of new technologies with the national regulatory framework and its operability, there is also an incentive to file a complaint in other ways, such as the regulation in which natural or legal persons who detect an act of corruption during the processing of an administrative procedure and report it to the competent authority will benefit from the refund of the administrative costs generated by such procedure. Thus, the law seeks to facilitate and encourage good faith reports of acts of corruption.

To this end, it also extends a clarity and guarantee of protection to the anonymity of the informant, whistleblower or whistleblower. The whistleblower has the right to confidentiality of his or her identity, which will be waived by the entity concerned, which will assign him or her a special numerical code for procedures. Such protection may be maintained even after the completion of the investigation and sanctioning of the reported breach of public ethics.

In this context, any negligent infringement of the confidentiality of the identity of the whistleblower when required, of the subject matter of the complaint and of the actions derived from it, will be sanctioned as an administrative disciplinary offence under the applicable regime.

In this way, protection measures are established in accordance with the decrees of the national law. The measures are granted within a maximum period of fifteen (15) working days, counted from the day following the filing of the complaint with the request for such measures. The following rules apply:

1. confidentiality of identity.- In accordance with the provisions of Legislative Decree No. 1327, in order to extend this measure after the investigation and sanction procedures have been completed, a cause justifying such a decision must be identified and motivated.
2. Labour protection measures: In addition to the confidentiality of identity, the highest administrative authority of the entity or the Office of Institutional Integrity, as appropriate,

may grant the labour protection measures that are necessary and appropriate to the case, including the following:

- I. Temporary transfer of the whistleblower or temporary transfer of the whistleblower to another organic unit, without affecting his or her working or service conditions, or the level of the post.
- II. Renewal of the contractual relationship, pre-professional or professional internship or volunteer agreement or similar, due to an announced non-renewal.
- III. Leave with pay or exemption from the obligation to attend the work place of the person reported, as long as his or her presence constitutes a certain and imminent risk for the determination of the facts that are the subject of the complaint.
- IV. Any other measure that may be appropriate in order to protect the whistleblower.

On the other hand, in relation to the norm on the matter, Peru encourages its exercise by means of the following regulation:

Protection for Whistleblowers and Witnesses to Acts of Corruption (Peru)	
National regulatory framework	Whistleblower Protection Regulations
Ley 29542 Ley de protección al denunciante en el ámbito administrativo y de colaboración eficaz en el ámbito penal	Law 29542 Law on the protection of whistleblowers in the administrative sphere and effective collaboration in the criminal sphere.
Legislative Decree No. 1327	The purpose of this Legislative Decree is to establish procedures and mechanisms to facilitate and encourage good faith reports of acts of corruption and to sanction bad faith reports.
Regulation of Legislative Decree No. 1327	Idem
Instancias Encargadas.	
Office of Institutional Integrity	This is the organic unit that regularly assumes the work of promoting integrity and institutional ethics in public entities, and among its functions is that of: Receiving complaints about acts of corruption made by whistleblowers and containing a request for whistleblower protection.

Finally, it should be noted that within the Law, Peru has implemented the use of new technologies for the submission of complaints, where it states that "to facilitate the submission of anonymous complaints, public entities implement IT tools"¹¹

¹¹ Presidency of Peru. Regulation of Legislative Decree No. 1327. [Online] Available at: <https://busquedas.elperuano.pe/normaslegales/aprueban-reglamento-del-decreto-legislativo-n-1327-que-esta-decreto-supremo-n-010-2017-jus-1509249-1/#:~:text=N%C2%B0%201327%20DECRETO%20LEGISLATIVO,DENUNCIAS%20REALIZADAS%20DE%20MALA%20FE>



1.4 Chile

In Chile, the figure of the whistleblower and measures for his or her protection have been expressed institutionally, technically and normatively. National legislation regulates the actions of public officials in the light of the enshrinement of the principle of constitutional probity, and in particular, at the institutional level in the framework of the conduct of public officials.

The Political Constitution of the Republic enshrines the principle of probity, providing in Article 8 that "the exercise of public functions obliges their holders to strictly comply with the principle of probity in all their actions".

In congruence with this, Law No. 18.575, Organic Constitutional Law of General Bases of State Administration (LOCBGAE) contains a series of provisions regarding this principle:

- I. Art.3, inc. 2° "The State Administration shall observe the principles of responsibility, efficiency, efficacy, coordination, ex officio promotion of the procedure, challenge ability of administrative acts, control, probity, administrative transparency and publicity, and citizen participation in public management (...).
- II. Art. 13. "Civil servants of the State Administration shall observe the principle of administrative probity and, in particular, the general and special legal norms that regulate it. (...).

Under the same body of law, Chapter III refers to "administrative probity", making its "strict compliance" permeable to the "authorities of the State Administration, whatever they are called by the Constitution and the laws, and the civil servants of the Public Administration, whether they are staff or contract employees" (art. 51 LOCBGAE), defining it in article 52 as the observance of "impeccable official conduct and honest and loyal performance of their function or position, with the preeminence of "strict compliance". 51 LOCBGAE), which is defined in Article 52 as the observance of "impeccable official conduct and an honest and loyal performance of the function or position, with the general interest taking precedence over private interests" (subpara. 2).

For its part, in accordance with the integral exercise of public servants, Chile designates its Internal Control Bodies as responsible for the inspection and oversight of compliance with the law and the prevention of acts that contravene the law, in accordance with the provisions contained in paragraph 4 of Article 61 LOCBGAE. It is also stipulated that the infringement of the required conducts "will incur liability and will entail the sanctions determined by law".

In this sense, in terms of whistleblower protection, Law 20.205 obliges the need to "protect civil servants of the State Administration who report to the appropriate authority the commission of acts that constitute a crime or a breach of probity on the part of a public

agent, and, in return, to establish a drastic sanction against those who make irresponsible or bad faith reports"¹².

In this way, a new numeral was introduced in article 62 of the LOCBGAE, previously mentioned, establishing as conduct that contravenes the principle of probity:

- 9. Making allegations of irregularities or breaches of the principle of probity of which he or she claims to have knowledge, without foundation and which are proven to be false or deliberately intended to harm the accused.

Both the Administrative Statute and the Administrative Statute on Municipal Officials incorporated a new official duty, and for the purposes of this report, the Administrative Statute is transcribed below:

- Article 61, letter k): To report to the Public Prosecutor's Office or to the police if there is no prosecutor's office in the place where the official provides services, with due promptness, crimes or simple offences and to the competent authority the facts of irregular nature, especially those that contravene the principle of administrative probity regulated by Law No. 18.575.

In the same vein, the provision in question, in its art. 90 A, states the restriction of any type of mistreatment or reprisal towards an official who denounces acts that violate probity or public integrity.

- a) They may not be subject to the disciplinary measures of suspension from employment or dismissal from the date on which the authority receives the complaint until the date on which it finally decides not to consider the complaint as having been lodged or, as the case may be, until ninety days after the end of the summary investigation or inquiry initiated on the basis of the said complaint.
- b) Not to be transferred from their place of work or the function they perform, without their written authorisation, during the period referred to in the preceding paragraph.
- c) Not to be subject to annual prequalification, if the accused is their hierarchical superior, during the same period referred to in the preceding paragraphs, unless the complainant expressly requests it. If he/she does not do so, his/her last qualification shall be valid for all legal purposes.

¹² National Congress of Chile. Law N20205. [Online] Available at: <https://www.bcn.cl/leychile/navegar?idNorma=262932>

Protection for Whistleblowers and Witnesses of Acts of Corruption (Chile)	
Marco normativo nacional	Numerales sobre Protección a Denunciantes
Political Constitution of the Republic	Art. 8 The exercise of public functions obliges their holders to strictly comply with the principle of probity in all their actions.
Law No. 18.575, Constitutional Organic Law on the General Bases of State Administration (LOCBGAE).	Art 51 and 61. Principle of probity and probity throughout the public administration as a means of compliance and prevention of administrative misconduct.
Law No. 20.205	Protects the official who reports irregularities and breaches of the principle of probity
Constitutional Organic Law of the Public Prosecutor's Office, No. 19.640	Art. 17, letter a), second paragraph, provides: it shall be the responsibility of the National Prosecutor (...) to issue the general instructions he/she deems necessary for the adequate fulfilment of the tasks of victim and witness protection.
Law No. 20.000, on drugs ¹³	Empowers the Public Prosecutor's Office, and obliges the court, to protect the identity of collaborators in drug proceedings, and of their family members.
Administrative Statute on Municipal Officials	To report crimes or simple offences to the Public Prosecutor's Office or to the police if there is no public prosecutor's office in the place where the official provides services, with due promptness, and to the competent authority any facts of an irregular nature, especially those that contravene the principle of administrative probity.
Initiatives or Bills of Law	
The bill establishing a new whistleblower protection statute is currently in the process of being approved, corresponding to the consolidated Bulletins N° 13.115-06 and 13.565-07. This bill was approved by the Chilean Senate with amendments on 5 January 2022, some of which were rejected by the Chamber of Deputies (the chamber of origin), so it will continue to be reviewed.	
Responsible Bodies.	
<p>III. The Office of the Comptroller On the merits of the complaint, it may order the authority endowed with disciplinary powers to initiate the appropriate proceedings, or to initiate disciplinary proceedings directly in matters relevant to the public interest.</p> <p>IV. Internal bodies of the State Administration. V. Public Prosecutor's Office VI. Police VII. Competent Authority</p>	

Finally, some of Chile's protection measures in the presentation of the complaint according to the normative framework already presented are:

¹³ National Congress of Chile. Substitutes law no. 19.366, which punishes the illicit traffic of narcotics and psychotropic substances. [Online] Available at: <https://www.bcn.cl/leychile/navegar?idNorma=235507>

- a) Not to be subject to the disciplinary measures of suspension of employment or dismissal, or early termination of their appointment or contract, except when based on the concurrence of a fortuitous event or force majeure.
- b) Not be subject to disciplinary measures other than those provided for in the preceding subparagraph.
- c) Not to be transferred to another location, unit or function without his written authorisation. Notwithstanding the foregoing, his conditions of employment, level or post may not be adversely affected.
- d) Not to be subject to annual prequalification, if the person complained of is his or her hierarchical superior. If he/she does not do so, his/her last qualification shall apply for all legal purposes.
- e) Other measures established in special statutes for the protection of the complainant.
- f) Secrecy of certain actions, records or documents with respect to one or more participants.
- g) Transfer of the proceedings to be attended by the whistleblower to a place other than the place where they are to be held, the location of which shall not be recorded in the respective register.
- h) Use of mechanical or technological procedures that avoid the physical participation of the witness in the proceedings.
- i) Possibility of receiving statements in advance and through other suitable means, such as voice distorters or covered faces, among others, to prevent the physical identification of the complainant.
- j) Reinstatement in the same or similar conditions, as a precautionary measure.
- k) Any other measures deemed appropriate.

1.5 Spain

On 16 December 2019, EU Directive 2019/1937 on the Protection of Whistleblowers entered into force. Member States must uniformly transpose the directive into national law by 17 December 2021. The whistleblower directive aims to provide legal certainty and guarantees for whistleblowers in both the private and public sectors.

However, Spain has not yet issued its whistleblower protection law, although various Spanish sources indicate that the project is at an advanced stage. The Council of Ministers has presented, on 4 March 2022, the draft law regulating the protection of whistleblowers and the fight against corruption¹⁴, also known as the Omnibus Law against corruption, as a result of the transposition of an EU directive on the matter.

Thus, with the prospective approval of this draft bill, Directive (EU) 2019/1937 of 23 October 2019 is transposed into Spanish law. This text specifies the guidelines aimed at establishing common rules in the Member States to ensure the effective protection of those persons who report breaches of European Union law.

¹⁴ Spanish Ministry of Justice. Preliminary draft law regulating the protection of persons who report regulatory infringements and the fight against corruption. 2022 [Online] Available at: <https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/APL%20INFORMANTES.pdf>

The differences in treatment between the various existing legal systems of the Member States have created difficulties in ensuring the consistent application of European law and in prosecuting infringements of European law. To this end, the Directive regulates minimum aspects that the various channels of information must satisfy. Specifically, it obliges many companies and public entities to have internal channels of communication because it is considered, and this has also been reflected in reports and statistics gathered during the drafting of the European text, that it is preferable for information on irregular practices to be known by the organisation itself in order to correct them or repair the damage as soon as possible. In addition to these internal channels, the Directive requires the identification of other channels of communication, known as "external", in order to provide citizens with a means of communication with a specialised public authority, which can give them more confidence by allaying their fear of reprisals in their environment.

These two clear objectives of the Directive, to protect whistleblowers and to establish minimum standards for communication channels, are incorporated in the content of this law.

In this regard, Transparency International Spain stated that "The proposal of 25 articles brings about a real and systemic change in the Spanish legal framework in relation to corruption issues. All that remains now is for the parliamentary groups to improve the content of this legal norm as much as possible". He also pointed out that the proposal currently has 387 amendments, and that its content has a lot of value.

In this regard, Transparency International Spain drafted a document entitled "Proposals of TI-Spain on the Proposed Comprehensive Law against Corruption".¹⁵, from which the following information is obtained:

- The objective scope of the Law includes the employment personnel dependent on public administrations who do not have civil servant status.
- The confidentiality of the complainant is guaranteed through various measures, such as the one that subjects the persons participating in the procedure to the duty of secrecy in their actions.
- A maximum time limit is established for the resolution of the complaint and the possibility of extending this time limit is envisaged in the event that the complexity of the matter makes it advisable to do so.
- The complainant is given the possibility of requesting protection measures against actions that violate his or her rights and that may be taken as a result of the complaint filed. In this case, the Independent Authority is granted the power to suspend possible decisions, agreements or resolutions that may cause harm or prejudice to the complainant.
- Measures are established to guarantee the granting of a provisional transfer to another post guaranteeing, among other things, professional category, as well as the granting of

¹⁵ Transparency International Spain. TI-Spain's proposals on the Proposed Comprehensive Law against Corruption. 2022. [Online] Available at: <https://transparencia.org.es/propuestas-de-ti-espana-sobre-la-proposicion-de-ley-integral-contra-la-corrupcion/>

a period of leave of absence for a specific period of time with the right to maintain remuneration.

- It establishes the possibility for the public authority to take precautionary measures to protect the complainant, his or her freedom, property or family members.
- An independent authority is envisaged in the law, which should not be a body that merely receives complaints and initiates proceedings, but should also be active in this area, providing training in ethical conduct and promoting a culture of corruption prevention.
- Consideration is given to the possibility of the Public Authority agreeing to the imposition of repeated coercive fines to ensure the cooperation of whoever is necessary.
- It is envisaged to provide the whistleblower only with legal advice and not with legal representation.
- Strict requirements for the admission of a complaint are envisaged, including that the complaint must be supported by documents or verified facts as a precondition for its admission.

As has already been pointed out, Spain does not yet contemplate the figure of the whistleblower, but adjacent laws in that country do address the whistleblower, the witness and, above all, the repentant in criminal matters.

Articles 86 and 464 of the penal code indicate that this figure could be applied in cases where an accused or investigated person shows their repentance by collaborating with justice, receiving as an incentive the reduction or exemption of their sentence. It also establishes the protection of the victim and, above all, the complainant, as well as the party or defendant, lawyer, attorney, procurator, expert, interpreter or witness in a procedure to which violence or intimidation is applied to directly or indirectly influence any of the aforementioned. The penalty shall be imprisonment for a term of one to four years and a fine of six to twenty-four months. If the perpetrator achieves his objective, the penalty shall be imposed in its upper half.

The same penalties shall be imposed on anyone who carries out any act against the life, integrity, freedom, sexual freedom or property, in reprisal against the persons mentioned above.

The previous section, for their actions in judicial proceedings, without prejudice to the penalty corresponding to the offence of which such acts constitute an offence.

Therefore, although Spain is in the process of establishing its whistleblower protection law, the Criminal Code already provides for the protection of whistleblowers and reprisals.

Finally, at regional level, Castilla y León has a law creating and regulating the office for the prevention and fight against fraud and corruption of the community of Castilla y León and establishing the statute for whistleblowers.

On the other hand, in the private sphere, there is Circular 1/2016 of the State Attorney General's Office, which introduces the need to implement internal whistleblowing channels for the registration of non-compliance or illegal activities within the company. The Circular, which interprets the reform of the Criminal Code in relation to the criminal liability of legal

persons, considers whistleblowing channels as one of the key elements of prevention models, specifying that they must allow employees to report breaches or irregularities confidentially, while guaranteeing that they will not suffer reprisals for reporting.

1.6 Japan

In Japan, the figure of Whistleblower does exist and it is stated that any person, whether in the public or private sector, can make a report referring to acts or facts of corruption, and likewise expect some means of protection in such a case.

Thus, in Japan, under the Whistleblower Protection Act, people who have made a report cannot be subjected to retaliatory measures, such as:

- Dismissal
- demotion
- Reduction of wages,

Let alone acts or deeds that jeopardise the life, integrity, property and other interests of whistleblowers as a consequence of the whistleblowing. Furthermore, the Whistleblower Protection Act stipulates that whistleblowers must endeavour not to harm the justified interests of third parties. This provision can be a safeguard against irresponsible disclosures - for example, publicly disclosing personal information that may undermine the reputation of third parties and those entitled to the presumption of innocence. The publication of personal information should not normally be necessary for a case to be examined.

Accordingly, this law is comprehensive, explicitly listing violations of food, health, safety, security and environmental legislation for whistleblowing and whistleblower protection.

However, with regard to resilience in the opportunity areas of the law, the Consumer Agency announced, on 15 June 2020, the enactment of draft legislation to partially amend the Whistleblower Protection Act:

In particular, the amendments make it easier for companies to report to administrative bodies and increase whistleblower protection by providing additional protection for whistleblowers, as well as by extending such protection to employees who have retired within the last year. In addition, the amendments exempt whistleblowers from civil liability for damage caused to organisations by their whistleblowing. The amendments will enter into force within two years of their enactment.

In the same context, the scope of whistleblower protection will be extended. Under the current Whistleblower Protection Act (Act No. 122 of 18 June 2004) ("WPA"), only workers (as defined in section 9 of the Labour Standards Act (Act No. 49 of 7 April 1947, as amended by Act No. 107 of 9 June 1995) during their tenure are protected as whistleblowers. According to the amendments, the scope of whistleblowers who will be protected under the

WPA will be extended to include workers who have retired (where a period of one year has not elapsed from the day of retirement) and officers (including directors, executive officers, accounting advisors, company auditors and liquidators)".

Similarly, the amendments introduce new requirements for organisations, including the mandatory establishment of whistleblowing mechanisms for whistleblowers, the expansion of reportable events subject to whistleblowing and a new duty of confidentiality for employees participating in a company's whistleblowing mechanism.

Another major change is that the amendments require business operators to develop the necessary systems to ensure proper handling of whistleblowing. Under the amendments, this is an obligation for business operators employing more than 300 employees.

Finally, with regard to investigation, to ensure compliance, the person in charge of handling complaints and investigations of reportable facts is obliged to keep confidential any information which may identify the complainant and which has come to his or her knowledge in the course of such investigation. Failure to comply with this duty of confidentiality shall be punishable by a criminal fine not exceeding 300,000 yen (about 2,480 euros)".

Protection for Whistleblowers and Witnesses of Corruption (Japan)	
National regulatory framework	Whistleblower Protection Regulations
Whistleblower Protection Act No. 122 - 2004	The Purpose of this Law is to protect Whistleblowers to provide for the nullity, etc. of dismissal of the Whistleblower on the basis of Whistleblowing and the measures that the employer and the Administrative Body shall take in relation to Whistleblowing, and to promote compliance with the laws and regulations concerning the protection of life, body, property and other interests of citizens, and thus to contribute to the stabilisation of the general welfare of citizens' lives and to the healthy development of the socio-economy. Laws to prevent the dismissal or any other disadvantageous disadvantageous treatment of any national civil servant in the regular service, etc., on the basis of Whistleblowing on acts or facts of corruption or irregularities
Temporary Measures Act in relation to the Court Officer (Act No. 299 of 1951)	
Diet Officers Act (Act No. 85 of 1947)	
Self-Defence Act (Act No. 165 of 1954)	
National Public Servant (Act No. 120 of 1947)	
Law on Temporary Measures Relating to Court Officials	
Local Government Officers Act (Act No. 261 of 1950)	
Responsible Bodies.	
VIII.	Imperial Household Office
IX.	Ministries which are constituted as bodies dealing with administrative affairs and are under the jurisdiction of the cabinet.

1.7 South Korea

In the case of South Korea, the law is very broad, as it provides regulatory coverage for all sectors under the same law, including any citizen in its definition of whistleblower.

South Korea, through its Anti-Corruption and Civil Rights Commission (CADC), is consolidating and executing various programmes to strengthen regulations and prevent corruption, among its strategies are: the implementation and operation of a "Corruption Reporting Centre", which provides various forms of advice for reporting corruption, through a visit, call and Internet.

The CADC also meets with compliance officers of central government agencies, local organisations and civil society organisations and public service related organisations in order to share basic directions of the government's anti-corruption and integrity policies and jointly implement important policies with other public agencies.

Regarding such reports or complaints, they can be submitted to an employee representative, to an authority, to an investigative agency or to the Anti-Corruption and Civil Rights Commission (hereinafter CADC). It does not provide for external channels, nor does it provide for the reception of anonymous complaints, which is a major area of opportunity and vulnerability for such a system.

Thus, the CADC has made several efforts to successfully establish the anti-corruption system in South Korea since the enactment of the "Anti-Corruption Act".

As noted above, the CADC is implementing the "Corruption Report Center" with cross-sectoral proximity to protect the identity and integrity of individuals as well as the confidentiality of whistleblowers to the extent possible.

The text includes several protection measures for the whistleblower, including physical protection by the police if required by the CADC. Article 15 prohibits whistleblowers from suffering any kind of "disadvantageous measures", including situations ranging from dismissal at work to physical and psychological violence. However, the whistleblower has a period of three months after suffering reprisals to request the activation of protective measures. On the other hand, the law provides for two very important rights for the whistleblower such as the reversal of the burden of proof in case of retaliation and the exception to the duty of confidentiality. It also provides for sanctions against persons who retaliate against the whistleblower or disclose information related to the whistleblower's identity.

Under the same analysis, it should be noted that there is no provision for whistleblowing to contain classified information and, unlike in other countries, there is no special regulation in South Korea to protect whistleblowers who are members of the armed forces. The subject of the complaint has to be a violation of the public interest.

The law allows whistleblowing through internal channels or official channels without prioritising between them, but does not provide for the possibility of using external channels. Furthermore, although it guarantees the confidentiality of the whistleblower, it rules out the

possibility of anonymous whistleblowing, as it requires data on the identity of the whistleblower for the complaint to be admitted.

You will also be required to provide certain information along with your complaint. In the event that the CADC finds that a complaint is false, the law provides for depriving the complainant of protection if he or she acted in bad faith in providing the information.

In this sense, the text includes several protection measures for the complainant, including physical protection by the police if required by the CADC. Article 15 prohibits whistleblowers from suffering any kind of "disadvantageous measures", including situations ranging from dismissal at work to physical and psychological violence. However, the whistleblower has a period of three months after suffering reprisals to request the activation of protective measures.

Finally, the text contemplates the possibility of providing financial incentives to whistleblowers when their complaints result in the recovery of funds for local or central governments.

Protección a Denunciantes y Testigos de Actos de Corrupción (Corea del Sur)	
National regulatory framework	Whistleblower Protection Regulations
<i>Act on the Protection of Public Interest Whistleblowers 2011</i> ¹⁶	X. It refers to the protection of whistleblowers in a comprehensive manner in all its content, in the various social sectors of the Nation.
Anti-Corruption Act 2001	XI. It outlines the normative guidelines, instances and process of corruption prevention.
Responsible Bodies.	
XII. Anti-Corruption and Civil Rights Commission (CADC)	
XIII. Internal Control Bodies and Instances of origin of the reported act or fact	

1.8 The Netherlands

The legal framework for whistleblower protection in the Netherlands is complex, as there are several texts dealing with whistleblower protection. On the one hand, Article 125 of the Civil Service Act (Ambtenarenwet) regulates the protection of whistleblowers in the public sector, while the protection of private sector workers is not formulated as a law but as soft law, through recommendations issued by the Stichting van de Arbeid, an umbrella organisation of the main trade unions and employers' associations. In addition, the Whistleblower Centre

¹⁶ Republic of Korea. Public Interest Whistleblower Protection Act (Act No. 10472 of 2011). [Online] Available at: <https://InternationalLabourOrganization.com>.

Act was passed in 2016¹⁷, a law establishing a body responsible for the protection of whistleblowers and the investigation of irregularities and reprisals. This body is cross-cutting, being competent in both the public and private sectors.

In this country, protection covers both the public and private spheres, with the object of the complaint being non-compliance with statutory or administrative rules, dangers to public health, safety or the environment, as well as acts or omissions that jeopardise the proper functioning of the public sector.

As regards the complaints procedure, priority is given to internal channels, although provision is made for complaints through external channels. As regards the subjective scope of the rule, the whistleblower is defined, in the public sector, as a civil servant or former civil servant, and as an employee in the private sector. In both cases, the confidentiality of the whistleblower is protected, although only in the public sector is the possibility of anonymous whistleblowing provided for, leaving this possibility to the discretion of each company in the private sector.

As regards the rights of whistleblowers, the fact that no time limit is set for requesting protection, as well as the extension of protection measures against all types of reprisals, is noteworthy. On the other hand, there are no rules on the reversal of the burden of proof, no exception to the duty of confidentiality, and no right of the whistleblower not to be involved in wrongdoing.

Protection for Whistleblowers and Witnesses of Corruption (Netherlands)	
National regulatory framework	Whistleblower Protection Regulations
Civil Service Act (Ambtenarenwet) Whistleblower Centre Act	XIV. Both laws in their main paragraphs support their objective of ensuring the protection of those who report acts of irregularities in the public interest.
Responsible Bodies.	
XV. <i>Stichting van de Arbeid</i>	

¹⁷ Court of Justice. The Netherlands. Whistleblower House Act. 2016. [Online]. Available at: <https://wetten.overheid.nl/BWBR0037852/2018-06-13>



1.9 United Kingdom

In the UK, whistleblowing and whistleblower protection legislation applies to both the public and private sector. Employees and former employees who at some point had some kind of employment relationship with the organisation. This includes substitutes, those persons who carry out some function within the organisation but who were hired by another employer or organisation other than the one they work for. In other words, all types of employees, including those employed by third parties, and trainees.

Complaints can be made both inside and outside the organisation. This will depend on the situation: the law indicates that it must first be made to the employer, and depending on the type of offence, its seriousness, urgency or the degree of involvement of the employer in the facts being reported, it may be made to a Crown Ministry or to an official within a Ministry.

This rule has a broad scope of application covering public bodies as well as private sector entities. It is important to note that in the UK whistleblowing is considered to be a public interest disclosure and as such there is protection for potential whistleblowers who may bring to the attention of the authorities issues ranging from quality of service delivery, possible cover-ups, to specific corruption offences.

However, it is not clearly established whether the whistleblower has the right to keep his or her data confidential at the time of reporting. In that sense, the requirements for filing a report are:

For any protected disclosure, it is established that the worker must have a reasonable belief that the disclosure of information tends to prove the fact complained of. In determining the reasonableness of the disclosure made to external entities, the court must eventually take into consideration the identity of the recipient of the information, the seriousness of the concern, the recurrence or persistence of the malpractice, the possible breach of confidentiality duties, the steps taken if there has been prior disclosure, and the adherence to internal disclosure procedures.

It is only assessed if the employee has the belief and it is reasonable; it is not relevant for protected disclosure if the employee ultimately had a mistaken belief. The following key elements are also considered:

1. Anyone who works or has worked for any employer can make the complaint. They can also report:
 - Substitute workers
 - Workers who work for an employer other than the organisation where they provide services.

2. The disclosure may be made to the employer, to any employee who reports to a Minister of the Crown, to any person empowered by a Minister of the Crown or to legal counsel.
3. Where the disclosure is not made to any of the above, in order to receive protection the employee must:
 - Disclose the information in good faith.
 - Have a reasonable belief that the information is substantially true.
 - Not disclose the information for personal gain.

It is possible to determine three levels for the reception and processing of citizen complaints and denunciations, thus providing greater opportunities and guarantees to potential complainants:

- I. The "first level" refers to the reception of complaints in the same entity. To this end, each entity, according to its nature, should have some kind of organisation that receives and processes complaints. As mentioned above, there is no uniform system and each entity may have different peculiarities for receiving and processing complaints.
- II. The "second level" refers to a set of governing or supervising entities of the first level entities where complainants can submit their complaints if they feel that there is no system for dealing with complaints or they simply do not find the guarantees or confidence to file a complaint, or if perhaps they have already filed a complaint at the first level and still do not find timely attention.
- III. The "third level" refers to the possibility of using the press and the media to publicly draw the attention of the authorities.

When making the complaint, the employee should take into account:

- The identity of the person to whom the information was disclosed;
- The seriousness of the malpractice. This refers to the seriousness of the concern, the recurrence or persistence of the malpractice, the possible breach of confidentiality duties;
- The extent to which the malpractice is likely to recur in the future.
- Whether the disclosure of the information is in response to a confidentiality commitment to another person.

With regard to the above, the rule maintains a principle of territoriality, where there is a clause that states that it does not matter whether the event that is the subject of the complaint occurs, occurred or is about to occur in the United Kingdom or outside it, it is protected against disclosure of the information.

Finally, on measures of redress for the whistleblower, UK law states that compensation or reparation for the damage suffered by the person making the disclosure is the main protection against retaliation; indeed, the law does not provide for any other specific measures of protection. Compensation covers all damages personally suffered by the

employee; the law does not set a maximum amount of compensation, and states that the expenses incurred by the claimant and the loss of benefits should be considered.

Protection for Whistleblowers and Witnesses of Corruption (United Kingdom)	
National regulatory framework	Whistleblower Protection Regulations
Public Interest Disclosure Act 1998 ¹⁸	<ul style="list-style-type: none">- Concerning the prohibition of any form of retaliation for describing illegal acts or irregularities in the workplace within the workplace.- This rule has a broad scope of application covering public bodies as well as private sector entities. It is important to note that in the UK, whistleblowing is considered a public interest disclosure and as such there is protection for potential whistleblowers and authorities can be made aware of issues ranging from quality of service delivery, possible cover-ups, to specific corruption offences.
La Ley de Soborno del Reino Unido (United Kingdom Bribery Act, “UKBA”)	
Employment Rights Act1996	
Responsible Bodies.	
XVI.	Employment Tribunal

1.10 France

In the criminal field, France has a wide range of legislation, the main regulation being the Code of Criminal Procedures, which has a special chapter on witness protection. It is important to point out that the persons covered by this protection are witnesses who, according to French law, are all those persons who can provide useful evidence during a criminal proceeding and who are not suspected of participation or involvement in it¹⁹. However, this precision can be extended to victims when it is considered that they can also be considered as witnesses if they have elements, knowledge or information that can be handed over to the authorities.²⁰

Among the protection measures is the possibility of reserving the identity, which is applied as long as there is an express authorization from the judicial authority. In the event of a violation of the confidentiality of identity, a penalty of five years' imprisonment and a fine of 75,000 euros has been considered. It is also possible to request the statement using

¹⁸ United Kingdom. Public Interest Disclosure Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/23/contents> (July, 2020).

¹⁹ French Code of Criminal Procedure (original in French language). Article 706-57: Persons against whom there is no plausible reason to suspect that they have committed or have attempted to commit an offense and who are in a position to provide useful elements of evidence in the proceedings may declare their domicile to that of the police station or the gendarmerie. The addresses of these persons are recorded in a classified register, initialed, which is opened for this purpose.

²⁰ UNODC (2012). Country review report of France. UNODC, Vienna, p.75

alternative means that facilitate remote testimony from any part of the country, using voice distorting means, among others.

If necessary, and if there is a need to conduct an additional investigation, it is possible to assign a special examining magistrate to conduct or take testimony using the same alternative means indicated above. In addition, according to the referred Code of Criminal Procedures, there is a set of provisions aimed at punishing any retaliation, pressure, threat, act of violence, maneuver and even offers or gifts that seek to intimidate, persuade or impede a statement or a judicial action before a national or foreign court of judges, jurors, interpreters, experts, advisors or persons who may participate in a criminal proceeding²¹.

The penalties considered are effective imprisonment and a fine in different proportions depending on the case.

It should be noted that France does not have any means or measures that allow the obtaining of a pecuniary or other benefit for witnesses or whistleblowers in good faith who have reported to the authorities the commission of any corruption offense, without prejudice to the right to compensation that is always demandable by the victims after the respective judicial process.

On the other hand, France has not signed any bilateral treaties or conventions allowing for the relocation of persons as part of personal protection measures. Likewise, it is not possible to appeal a request for a change of identity.

A noteworthy aspect is the creation of a Special Judge Delegated for Victims whose function is to intervene when there is a request from the victim to guarantee the full exercise of their rights at all stages of the process, as well as compliance with the reparation and protection measures that have been delivered to them.²²

The United Nations Office on Drugs and Crime in its evaluation report on the implementation of the United Nations Convention against Corruption has pointed out that France needs to improve its provisions for the protection of witnesses' relatives and other persons who may

²¹ It should be noted that France does not have any means or measures that allow the obtaining of a pecuniary or other benefit for witnesses or whistleblowers in good faith who have reported to the authorities the commission of any corruption offense, without prejudice to the right to compensation that is always demandable by the victims after the respective judicial process. On the other hand, France has not signed any bilateral treaties or conventions allowing for the relocation of persons as part of personal protection measures. Likewise, it is not possible to appeal a request for a change of identity.

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The United Nations Office on Drugs and Crime in its evaluation report on the implementation of the United Nations Convention against Corruption has pointed out that France needs to improve its provisions for the protection of witnesses' relatives and other persons who may be close to them, and that it does not have mechanisms to assign a new identity to whistleblowers.

²² French Code of Criminal Procedure. Title XIV: The judge delegated for victims, the president of the commission for the compensation of crime victims. Section D47-6-1 Code of Criminal Procedure: The judge delegated for victims ensures, in relation to the balance of the rights of the parties, the exercise of the rights recognized by law to victims. To this end, he exercises the judicial functions and, without prejudice to the functions of the victim's attorney or future action, the administrative and judicial administrative functions under this title. Section D47-6-13: As part of the exercise of his or her functions, the Judge Delegate for Victims participates, under the authority of the Chief Judge of the Chief District Court and in connection with the prosecuting district, in the development and implementation of coordinated measures to assist victims within the jurisdiction of the District Court.

be close to them, and that it does not have mechanisms to assign a new identity to whistleblowers.²³

In the administrative field, France has a general protection mechanism set out in its Labor Code, which guarantees effective protection against any disciplinary action that could be taken against an employee who testifies to an act of corruption.²⁴

The protection measures are aimed at guaranteeing the exercise of the rights of whistleblowers in their workplace, so that they cannot be excluded from hiring or promotion processes, penalized, discriminated against or dismissed because of their whistleblowing, and any act of retaliation is null and void and has no legal effect.

The French Report on the implementation of the United Nations Convention against Corruption has recommended that the competent authorities consider the possibility for all citizens to obtain from the authorities guidance on how to proceed when they become aware of conduct that could be related to corruption.²⁵



1.11 Argentina

There is a whistleblower's guide, procedures for reporting acts of corruption. In this, section 6 talks about protection measures for whistleblowers and witnesses, in which there is a program for the protection of witnesses and defendants (law 25.764), as well as in art. 79, inc., CPPN, law 23.984, it points to the protection of the physical and moral integrity of the subject and his family.²⁶ The following laws are also considered:

- Bill Regime for the protection of whistleblowers who report acts of corruption or crimes against public administration, 03/06/2019.²⁷
- Law on the rights and guarantees of persons who are victims of crimes - Law 27372.²⁸
- General law for the criminal field- criminal procedural code and special laws (terrorism, drugs) that cover indirectly upon request of the Ministry of Justice Chapter III, Rights of the victim and witness, art.79, From the beginning of a criminal

²³ UNODC (2012). Country review report of France. UNODC, Viena, p. 76

²⁴ Labor Code. Article L1161-1: No person may be excluded from a recruitment procedure or access to an internship or a traineeship in a company, no employee may be penalized, dismissed or discriminated against, directly or indirectly, especially in terms of remuneration, training, reassignment, missions, qualification, grading, classification, career advancement, transfer or renewal of contract for having reported or testified about, in good faith, either to his employer or judicial or administrative authorities acts of corruption that he was aware of in the exercise of his duties. Any breach of employment contract that would result therefrom, any provision or act to the contrary is null and void. In case of dispute on the application of the first and second paragraphs, from the moment the employee concerned or applicant for employment, training or internship in a company establishes the facts of which it is assumed that he reported or gave evidence of corruption, it will be for the respondent, in view of these elements, to prove that its decision is justified by objective factors and unrelated to the statements or testimony of employees. The judge forms his opinion after ordering, where appropriate, the investigations he deems necessary.

²⁵ UNODC (2012). Country review report of France. UNODC, Viena, p.78

²⁶ Source : Oficina Anticorrupción y Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, Guía del denunciante, available in: www.argentina.gob.ar

²⁷ Bill, file: 2831-D-2019, available at: www.hcdn.gob.ar

²⁸ Public Prosecutor's Office and Criminal Enforcement Prosecution Unit, Ley de derechos y garantías de las personas víctimas de delitos - Ley 27372, available at: www.mpf.gob.ar

proceeding until its completion, the national State shall guarantee to the victims of a crime and witnesses summoned to the case by a judicial body the full respect of the following rights: Subsection c) To the protection of the physical and moral integrity, including their family.

Argentina has an Anti-Corruption Office as an organ of the Executive Branch in charge of implementing anti-corruption strategies and public policies in the country.

Legally, according to Decree 102/99, the Anticorruption Office of Argentina is empowered to receive complaints, conduct preliminary investigations independent from other authorities, formalize complaints, and become a plaintiff in the investigation and prosecution processes.²⁹

Based on this provision, the Bureau of Investigations of the Anticorruption Office has developed an internal regulation for its actions, which addresses specific aspects of the procedures and mechanisms for complaints.

The Internal Regulations of the Directorate of Investigations of the Anticorruption Office approved by Resolution of the Ministry of Justice and Human Rights 749/00 establishes that any act of its institution is initiated by the complaint of any individual, legal person or any official of any entity at all levels of administration, company, society or any entity that has state participation or major financial contribution.

As a specific provision, it is established the possibility of informing the denouncer the possibility of preserving his identity by leaving a respective note that will remain under the custody of the Anticorruption Office assigning him a registration number. This safeguarding of the identity may only be disclosed if there is a judicial authorization that demands it. This confidentiality of identity will be maintained even after the completion of the investigation and prosecution of the case.

In the case of anonymous complaints, it is established that these may only be considered if they meet minimum criteria and possibilities of verisimilitude, there is seriousness in the reported fact and reasonableness in the intention of the complainant to remain anonymous.

It is essential to point out that Resolution 458/2001 of the Ministry of Justice and Human Rights, which approves the Action Plan of the Anticorruption Office, establishes "criteria" to determine which complaints will be handled by the Investigations Department.

²⁹ Decree 102/99, Art. 2. The ANTI-CORRUPTION OFFICE is competent to: a) Receive complaints made by individuals or public agents related to its purpose. b) Preliminarily investigate agents to whom the commission of any of the acts indicated in the previous paragraph is attributed. In all cases, the investigations shall be carried out by the ANTI-CORRUPTION OFFICE alone and without the need for any other state authority to order it. c) To preliminarily investigate any Institution or Association whose main source of resources is the state contribution, whether directly or indirectly provided, in case of reasonable suspicion of irregularities in the administration of such resources. d) To report before the competent courts any facts which, as a consequence of the investigations carried out, may constitute crimes. e) To become a plaintiff in proceedings in which the assets of the State are affected, within the scope of its competence. f) To keep a record of the sworn statements of public officials. g) To evaluate and control the content of the sworn statements of public officials and situations that could constitute illicit enrichment or incompatibility in the performance of their duties. h) To prepare programs for the prevention of corruption and the promotion of transparency in public administration. i) To advise State agencies on the implementation of policies or programs to prevent acts of corruption.

These criteria allow a selection of the complaints, thus avoiding an overload of complaints in the Anticorruption Office, and also a better attention to the preliminary investigation processes.

The criteria used are economic, institutional and social significance, and help to relate the complaints to the State's interest in them.

The criterion of economic significance considers the attention of a complaint as long as it has affected an entity economically to the point that it prevents it from developing or has radically altered its activities or functioning. As a reference, and without prejudice to each case, a reference amount of one million Argentine pesos (equivalent to approximately one hundred and eighty-three thousand dollars) was established.

The criterion of institutional significance is explained when the magnitude of the act of corruption has affected or prevented the normal and usual operation of the entity. Likewise, within this criterion, the institutional quality or relevance of the officials involved is also considered.

Finally, the criterion of social significance refers to a strong social impact, either relative or absolute in relation to the number of individuals who may have been harmed by the act of corruption.

It should be noted that these criteria are applied in a preclusive manner by the Directorate of Investigations. Thus, the complaints are first evaluated with the economic criterion, and if they do not meet its rigorous criteria, the institutional and social criteria are evaluated for each complaint filed.

Once the complaints to be dealt with have been determined, the Anticorruption Office initiates preliminary investigations, which are of a reserved nature, which, if applicable, are subsequently forwarded to the Minister of Justice and Human Rights, to the National Treasury Procurator's Office and to the highest administrative official of the department in question.

Only in certain proceedings selected by the Administrative Control Prosecutor (the officer in charge of the Anticorruption Office) may he/she appear as a prosecuting party (plaintiff) with the power to offer, produce or incorporate evidence, as well as to appeal any adverse decision.

As regards specific channels for the handling of complaints, the Anticorruption Office has provided a web-based service module²⁷, special telephones only for the handling of complaints, a special e-mail, a post office box or personalized attention by specialists of the Investigations Division.

Likewise, and in order to simplify the reporting process, they have prepared a form that includes basic data on the complainant's identification (names, telephone numbers, address, ID number, e-mail) -these are specified as long as the complainant has not opted for anonymous reporting or with identity confidentiality-, identification of the accused and the

entity where the act of corruption was committed, a space to describe the act of corruption, as well as the possibility of attaching supporting documents, if applicable.

This form can also be filled out via the web, and upon completion of the complaint, an identification number is given that allows the investigation or processing of the complaint to be followed up.

It should be mentioned that there is no updated official information on the handling of corruption complaints, however, it should be noted that from January 2000 to June 30, 2006, a total of 5,696 complaints were received, of which 1,439 were anonymous complaints and 122 were complaints with identity confidentiality³⁰.

In addition, it is important to point out that through the Anticorruption Office important cases have been denounced such as the Skanska Case related to the payment of bribes to public officials linked to the construction of the North and South gas pipelines, or the IBM-Banco de la Nación case which involved the payment of bribes for more than 21 million dollars, among others³¹.

1.12 Israel

The whistleblower protection system in Israel allows the President to award a certificate of merit to any public servant who reports in good faith, to an inspection body and in accordance with established procedures, a corrupt act or other violation of ethical conduct committed in his or her workplace, and where it has been proven that the report was justified. The certificate is a symbol of public recognition of that person's contribution to ethical conduct in public institutions in Israel.³²

Protection for Whistleblowers and Witnesses of Corruption (Israel)	
National regulatory framework	Whistleblower Protection Regulations
Witness and Whistleblower Protection Law Art. 32 and 33	<ul style="list-style-type: none">- The Witness Protection Law applies to any person who reports corruption offenses, as the law is not limited to a specific type of crime.- The Israeli Witness Protection Authority has been established to protect witnesses exposed to the highest levels of threat. It offers a unique protection program comprising security, management and support, both in Israel and abroad if necessary. This authority accompanies witnesses and their families throughout the entire criminal
Crime Victims' Rights Act	

³⁰ OAS (2006). Final Report on the implementation in the Republic of Argentina of the provisions of the Convention selected for review in the Second Round of Review. OAS, Washington DC, p. 33.

³¹ Information obtained from the website of Argentina's Anticorruption Office. http://www.anticorruption.gov.ar/denuncias_03.asp# and corroborated in an interview with Nicolás Raigorodsky, a former official of the entity.

³² OECD. OECD study on integrity in Mexico. 2018. [Online] Available at: <https://books.google.com.mx/books?id=7kB7DwAAQBAJ&pg=PA148&lpg=PA148&dq=law+on+whistleblower+protection+in+Israel&source=bl&ots=3Z3RhqYHd&sig=ACfU3U0nnKUN1XC7trI6aCNqreLDhP->
HmQ&hl=en&sa=X&ved=2ahUKEwiAz8z_j9r2AhUIDkQIHcIOBX0Q6AF6BAgbEAM#v=onepage&q&f=false

	<p>process, providing them with as independent and normal a life as possible.</p> <ul style="list-style-type: none"> - The definition of the term "witness" in the aforementioned law includes victims of crime. Regarding the rights of victims in general, the Crime Victims' Rights Act includes, among others, the right to a review of the charges, to be informed of the proceedings and to have a say in the various stages that make up the proceedings. A fairly extensive protection network has been established in terms of legislation, procedures and structures, dedicated to the protection of whistleblowers in the public and private sectors. Within the latter, the Office of the State Comptroller collaborates with the witness protection authority to improve the protection tools available.
Responsible Instances.	
- State Comptroller's Office collaborates with witness protection authority	

1.13 Germany

Witness protection programs have existed in Germany since the mid-1980s. They were first used in Hamburg, in connection with crimes related to biker gangs. In the following years, they were systematically implemented by other states in the country and the Federal Criminal Police Office. In 1998, the Witness Protection Act was enacted. It included provisions regulating criminal proceedings, with special attention to the following:

- a) The use of video technology for questioning witnesses at risk (especially children testifying as victims);
- b) Improving the possibilities for ensuring the confidentiality of witnesses' personal data at all stages of criminal proceedings;
- c) The provision of legal assistance to victims and witnesses.

Also in 1998, the Criminal Police Task Force formulated a concept for witness protection, setting out for the first time the objectives and measures to be implemented by the agencies involved, which led to the issuance of general guidelines for the protection of witnesses at risk by the federal and state ministries of the interior and justice. Until the adoption in 2001 of the Act on the Harmonization of the Protection of Witnesses at Risk, the guidelines were the main basis for Germany's witness protection program.³³

In May 2003, the guidelines were aligned with the legal provisions of the Act and are now the implementing provisions of the Act for all witness protection offices in the country. The 2001 Act was adopted to harmonize the legal conditions and standards for witness protection at the federal and state levels. Its main provisions cover the following areas:

- a) The categories of witnesses eligible for consideration for inclusion in the program and the respective admission and separation criteria. Under the Act, persons who are at risk because they are willing to testify in cases involving serious or organized

³³ Government of Germany. Witness Protection Harmonization Act. [Online] Available at: <https://dejure.org/gesetze/ZSHG/1.html>

crime may be admitted. Participants must be both suitable for and willing to participate in the program;

- b) The decision-making and implementing authority. While the Act provides that the protection unit and the prosecutor's office should jointly make decisions on admission, it also recognizes that witness protection units should have independent decision-making authority over the measures to be implemented, using criteria such as the seriousness of the crime, the extent of the risk, the rights of the accused and the impact of the measures;
- c) Confidentiality of information relating to the personal data of protected witnesses within protection units and other public and non-State agencies. Files on protected witnesses are kept by the protection units and are not included in the investigation files, but are made available to the prosecutor upon request;
- d) The conditions for the creation of a cover identity and the issuance of supporting personal documentation and allowances to be paid for the duration of protection. The German witness protection program consists of witness protection offices established at the federal level and in each state. The Federal Criminal Police Office is responsible for witness protection in federal cases and for coordination functions at the national and international levels, in particular the following:
 - I. The preparation of an annual report on the witness protection program;
 - II. The organization and delivery of training and continuing education;
 - III. The organization of periodic conferences in which the directors of the federal and state offices in charge of witness protection participate;
 - IV. Cooperation between the states, federal agencies and offices located abroad;
 - IV. International cooperation.

In addition, the Federal State Project Group on Quality Assurance in the Field of Witness Protection (consisting of the heads of the seven state witness protection offices and chaired by the Federal Criminal Police Office) ensures effective cooperation through the development of a uniform nationwide procedure for admission to the program, the creation of a uniform catalog of prescriptions for witness protection caseworkers and the formulation of common notions for training and continuing education.

1.14 Romania

Romania has a general criminal protection legislation applicable to different crimes and a recent special legislation dealing specifically with the protection of witnesses and corruption whistleblowers.

In the criminal field, the Code of Criminal Procedures considers several articles aimed at guaranteeing the participation of persons in the investigation process, mainly through personal security measures granted by the Prosecutor's Office.

Among them is the protection of the identity of the witnesses who, in an authorized manner, may be exempted from declaring their identity and address, among other personal data during the investigation process³⁴.

Another measure of protection during the process is the possibility of giving testimony or information through video, voice recordings, voice or image distorters, among others, to protect those who participate in the process. Likewise, if the authority deems it necessary, security mechanisms may be established with police protection either when traveling to the courts or on a permanent basis.

The Romanian Code of Criminal Procedures is complemented by Law 682/2002 Law for the Protection of Witnesses, which regulates the entities responsible for implementing protection as well as protection measures -applicable by extension to corruption whistleblowers- among other aspects.

Thus, the National Office for Witness Protection is under the authority of the Ministry of Interior of Romania, which is responsible for receiving requests for inclusion in the witness protection programs, establishing protection measures and being the contact with the protected whistleblowers, among other operational aspects.

According to this legislation the protection measures offered are:

- a) Protection of the identification data of the protected witness.
- b) Protection of his statement.
- c) Possibility of attending the hearing of the protected witness, by the judicial bodies, under an identity different from the real one, or by means of special image modalities and voice distortion.
- d) Protection of witnesses, provisionally detaining the accused.
- e) Increased security measures for the residence, and for the protection of witness transportation to and from judicial bodies.
- f) Change of residence.
- g) Change of identity.
- h) Change of physical appearance.

There is also a specific section related to assistance or support measures that are aimed at facilitating or compensating possible damages for the protected persons, highlighting the following:

- a) Reinsertion in another social environment.
- b) Professional requalification.
- c) Change of place of work.
- d) Provision of an income until a place of work is found.

³⁴ Code of Criminal Procedures (original in Romanian language). Protection of data for the identification of the witness. If there is evidence or strong indications that by declaring the true identity of the witness or his place of domicile or residence the life, bodily integrity or freedom of this or another person could be endangered, the witness can be given permission not to declare this information, is attributed a different identity in which he appears in front of the judicial body.

In the administrative field, the protection of corruption whistleblowers was adopted since 2004 through Law 571/2004, which regulates the protection measures for those who report violations of the rules within public entities committed by public officials.³⁵

This is a rule of broad coverage and provides protection for all those whistleblowers who have complaints or information that allows elucidating infractions committed in institutions, public entities or budgetary units by public authorities or persons who have held management or executive positions.

In this sense, it is applicable to public institutions of the Executive Branch, local administrations, Parliament, the Office of the President, autonomous administrative authorities, public institutions of culture, entities of the education sector, health and social services, national companies, autonomous administrations of national and local interest, public companies, persons with mandates in advisory and scientific councils, and special commissions, among others. Exceptions are concentrated in officials or servants who have special hiring regimes, judicial employees, among others³⁶

Regarding the nature of the reportable acts, the norm uses the general term of offenses and describes a set of applicable assumptions; It explicitly mentions crimes of corruption or infractions related to acts of corruption, in addition to a series of other assumptions related to the abusive use of power for personal benefit, for example the improper use of human and material resources of the entities, incompatibilities, political bias in public actions, and other assumptions that are related to administrative offenses related to the breach of duties such as discriminatory treatment, incompetence in the position, breach of the laws of access to information, breach of administrative care procedures, among others.

As for protective measures, these are related to the provision of adequate conditions for due disciplinary process, such as the presumption of innocence, the granting of measures to ensure a public trial with the participation of the press and union representatives. An important caveat is that if the complaint involves an immediate superior with whom the complainant maintains a relationship of subordination or dependence, the confidentiality of identity is a fully enforceable right.

In addition, it is necessary to consider that in Romania, if any, and as long as the judicial authorities so determine, it is possible to strengthen the protection measures with the application of the measures considered in Law 682/2002 Law for the Protection of Witnesses.

A condition for the granting of protection measures is the participation of the complainant in the investigation process, being able to intervene either by submitting appeals, documents or further evidence of his complaint.

³⁵ Law 571/2004 (original in Romanian language) Article 1: The present law regulates the protection measures or violations of the reporting rules within the public authorities, and other establishments, perpetrated by persons occupying leading or operating positions within the public authorities and institutions and in the other budgetary institutions provided for by art 2.

³⁶ Idem. Article 5 of Law 571/2004

Moreover, in the Romanian system, the Whistleblower Protection Law has a priority and preferential application compared to other laws, so even if a whistleblower has already been sanctioned, in application of this law the sanction can be reformulated and even annulled.

According to Transparency International Romania, there is a generalized lack of knowledge of the law and even suspicions among the beneficiaries and potential recipients of public interest complaints that do not allow the application of the potential of the law. In this sense,

"The establishment of an adequate legal framework is undoubtedly an important step, but only the first step in building an effective and sustainable anti-corruption effort".