

Łukasz Łaguna  <https://orcid.org/0000-0001-5692-5262>

Jagiellonian University

MECHANISMS TO MITIGATE THE RISK OF ABUSE ASSOCIATED WITH FALSE WHISTLEBLOWER REPORTS

Abstract

This analysis focuses on evaluating the effectiveness of the mechanisms embedded in the Whistleblower Protection Act in addressing false reporting and balancing the interests of whistleblowers with those of individuals potentially harmed by unfounded accusations. Key protective instruments have been identified, including civil liability for knowingly false reports and the obligation to verify such reports through impartial entities. The analysis revealed that, while the Act introduces significant safeguards, the current measures may be insufficient to prevent abuse, particularly in cases of anonymous reports, which increase the risk of false accusations.

The study recommends implementing additional preventive mechanisms, such as mandatory training on the ethical use of reporting procedures and enhancing verification processes. Attention is also drawn to the need for more proportionate sanctions against whistleblowers engaging in deliberate misuse. The necessity of balancing whistleblower protection against retaliation with the protection of the rights of individuals potentially affected by false reports is emphasized.

The findings indicate that achieving a balance between protecting whistleblower interests and the interests of accused parties requires further refinement of regulations, systematic monitoring of their application, and fostering transparency within organizations. Such measures would enable the Act to effectively support the disclosure of genuine legal violations while mitigating the risk of abuse.

Słowa kluczowe: sygnalista, nieprawdziwe zgłoszenie, anonimowość, whistleblowing

Keywords: whistleblower, false reporting, anonymity, whistleblowing

ASJC: 3308, **JEL:** K31

Introduction

The entry into force of the Act of 14 June 2024 on the Protection of Whistleblowers (hereinafter: “WPA” or “Act”) introduced significant changes to the national legal system, establishing a comprehensive regulatory framework for whistleblower protection. This Act, implementing the requirements of Directive (EU) 2019/1937 of the European Parliament

and of the Council on the protection of persons reporting breaches of Union law, aims to ensure effective protection for individuals reporting legal violations while promoting mechanisms that foster transparency and accountability in the operations of both public and private entities. The regulations introduced by the Act impose an obligation to establish internal reporting channels for irregularities and provide a range of mechanisms to protect whistleblowers from retaliation.

However, despite the ambitious goals of the Act, certain provisions and implementation mechanisms raise practical and theoretical legal concerns. One of the key issues emerging from the discussed regulations is the problem of false whistleblower reports. While this issue is often marginalized in public debate, it poses a significant challenge to the efficiency and credibility of the whistleblower protection system. False reports can lead to abuse, undermine trust in reporting mechanisms, and result in unjustified losses for employers and public institutions.

The purpose of this analysis is to discuss the legal and organizational mechanisms that can mitigate the risk of abuse associated with false whistleblower reports. In particular, it is necessary to examine how the legislator has anticipated measures to prevent such situations and what actions can be taken by entities obligated to implement whistleblower protection systems. Critical consideration here is maintaining a balance between the effectiveness of preventive mechanisms and ensuring that they do not serve as tools to restrict the freedom to report violations.

It should be emphasized that false reports not only tarnish the reputation of innocent individuals or institutions but also burden a system that should focus on addressing genuine issues. At the same time, an overly restrictive approach to this matter could hinder the effectiveness of the whistleblower protection system, conflicting with the objectives of the Act. Therefore, addressing this issue requires balancing the interests of all parties and adopting appropriate legislative and organizational solutions.

This article presents proposals for changes that could enhance the effectiveness of the whistleblower protection system while minimizing the risk of abuse. Examples of such solutions include the development of robust report verification procedures, training for individuals responsible for handling reports, and informational campaigns promoting the responsible use of reporting mechanisms. False whistleblower reports represent a significant issue that requires integrated efforts at both legislative and practical levels to address effectively.

1. Whistleblower and False Reporting – Definitional and Theoretical Issues

According to Art. 4 (1) of the WPA, a whistleblower is defined as a natural person who reports or publicly discloses information about a violation of law obtained in a work-related context (see more on this topic: Baran-Wesołowska 2023, p. 381). The provision enumerates the entities eligible for whistleblower status, indicating that a whistleblower may include, among others, an employee, a person performing work under a basis other than an employment relationship (including under a civil law contract), a shareholder or partner, or a volunteer. Also, pursuant

to Art. 6 of the WPA, a whistleblower is afforded the protection stipulated in the Act from the moment of making a report or public disclosure, provided that they had reasonable grounds to believe that the information subject to the report or public disclosure was true at the time of reporting or disclosure and that it constituted information about a violation of law.

The scope of the norm expressed in Art. 6 of the WPA defines the prerequisites for whistleblower protection against retaliatory actions and specifies the conditions under which irregularities may be reported. This provision explicitly states that reporting or public disclosure can occur only when the whistleblower acts with the belief in the truthfulness of the information being conveyed (see more: Drożdżowski 2021, point 3.1.1; Hajn 2023, pp. 4–11).

An analysis of Art. 6 of the WPA through an *a contrario* interpretation leads to the unequivocal conclusion that reports containing false information, where the whistleblower was aware of their falsehood, do not fall under the protection provided by the Act. In such cases, the whistleblower's conduct exceeds the scope of statutory protection, justifying the exclusion of the protective mechanisms provided under Art. 6 of the WPA and the potential application of measures under provisions addressing liability for unlawful actions.

This provision plays a crucial role in maintaining a balance between protecting whistleblowers and preventing abuse in the form of false reporting, which could result in the infringement of third parties' personal rights, harm to institutional interests, or the erosion of trust in the entire whistleblower protection system. Consequently, Art. 6 of the WPA constitutes a key element of the mechanism regulating both the rights of whistleblowers and the limits of their liability in cases of improper use of the rights granted to them.

It is therefore necessary to define what constitutes a false report under the WPA. Equally important is the differentiation between a knowingly false report and an erroneous report.

A false report by a whistleblower can be defined as the deliberate and intentional submission of untrue information regarding an alleged violation of the law, aimed at producing specific legal, organizational, or personal effects. Pursuant to Art. 15 of the WPA, an individual who knowingly submits false information is liable under civil law for damages caused by such actions. Consequently, the whistleblower's intent is a key element in qualifying a report as false. The deliberate submission of false information by a whistleblower may stem from various motivations, including the desire to harm an employer or colleagues or to gain personal benefits.

Unlike an erroneous report, a false report constitutes a conscious abuse of the protection granted to whistleblowers, which does not merit legal support or protection. Such reports may concern actions that did not occur or involve a deliberate misrepresentation of events designed to mislead entities responsible for evaluating the report.

A false report requires thorough verification to determine whether the submitted information was intentionally misrepresented. Employers and other legal entities responsible for handling reports must implement verification procedures that consider the possibility of bad faith actions while maintaining data protection standards and principles of due process.

The distinction between an erroneous report and deliberate abuse is based on an analysis of intent and the circumstances surrounding the report. An erroneous report results from an action taken in good faith, where the whistleblower, based on the information available to them, considered the report credible, but subsequent analysis revealed it to be untrue. In

such cases, the whistleblower retains full protection under the Act, provided they have met the conditions outlined in Art. 6 of the WPA.

In contrast, deliberate abuse constitutes an act of bad faith characterized by the intentional submission of false information. Intent is the key element in such cases and must be proven, which presents evidentiary challenges in legal proceedings. In this context, the burden of proof rests with the party that has suffered harm as a result of the false report, in accordance with the general principles of civil liability.

The distinction between an erroneous report and deliberate abuse is of significant practical importance, as it determines the extent of the whistleblower's liability and the sanctions applied to them. Verification of such reports requires consideration of the context, including evidence substantiating the intent to act in bad faith.

2. Whistleblower Liability for False Reports Under the Whistleblower Protection Act

The Whistleblower Protection Act introduces mechanisms to protect individuals reporting irregularities in good faith while also providing for instruments of liability for whistleblowers who knowingly make false reports. The provisions of Art. 15 and Art. 16 of the WPA are crucial for a legal analysis of such liability.

Pursuant to Art. 15 of the WPA, an individual who has suffered harm due to a whistleblower's deliberate reporting or public disclosure of false information has the right to seek compensation or redress for the infringement of personal rights. This provision establishes a clear basis for the civil liability of a whistleblower acting with the intent to knowingly mislead. This means that liability does not arise in cases of erroneous reports made in good faith, provided that the whistleblower had reasonable grounds to believe that the information reported was accurate and reflective of the facts (Kalus 2018, point 35).

A prerequisite for the civil liability of a whistleblower is the occurrence of harm to the injured party, which may take the form of either pecuniary damage or non-pecuniary harm.¹ In cases involving the infringement of personal rights, such as reputation or good name, the injured party may seek compensation for non-pecuniary harm, with the amount determined according to the criteria set forth in the Civil Code (Art. 23 and 24). Article 15 of the WPA thus reinforces the legal protection of individuals adversely affected by whistleblowers acting in bad faith, providing them with a legal avenue for redress.

In contrast, Art. 16 (1) of the Whistleblower Protection Act (WPA) establishes the principle that a report or public disclosure made by a whistleblower cannot constitute grounds for civil or disciplinary liability if the whistleblower had reasonable grounds to believe that such action was necessary to expose a legal violation. This protection extends to various areas of liability, including defamation, infringement of personal rights, copyright violations, and breaches of data protection laws (see more: Gorczyński 2018, point I.3).

¹ Judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNC 1988, No. 2–3, item 40.

However, to benefit from this exemption from liability, the whistleblower must act in good faith, meaning that they must have subjectively reasonable grounds to believe in the truthfulness of the reported information and its relevance to exposing a legal violation. In practice, the question of “reasonable grounds” may be contentious and require a case-by-case analysis of the circumstances. The burden of proof in this regard rests with the whistleblower, who, in the event of legal proceedings, must demonstrate that they acted in accordance with the principles established in the Act (Drożdżowski 2021).

Knowingly reporting false information means that the whistleblower acted with the direct intention to mislead, which goes beyond the protection provided for in Art. 16 of the WPA (Karaszewski 2023, point 10). This type of action may be treated as an abuse of the right to report irregularities, which the legislator penalises by making it possible for injured persons to seek compensation or damages (Gudowski, Bieniek 2018, point 10).

It is also important to note that the deliberate submission of false information may result in criminal liability if the elements of a criminal offense, such as false accusation (Art. 234 of the Penal Code) or defamation (Art. 212 of the Penal Code), could be met. In such cases, the whistleblower may be subject to both civil and criminal liability, with each type of liability governed by separate legal bases and regimes.

In conclusion, the WPA establishes a balanced system of liability that, on the one hand, protects whistleblowers acting in good faith and, on the other hand, allows for claims to be pursued against individuals who knowingly submit false reports. Articles 15 and 16 of the WPA aim to prevent abuse and ensure proportionality between protecting whistleblowers’ interests and the rights of individuals affected by a report.

However, an analysis of these provisions leads to several theoretical and practical conclusions.

First and foremost, the introduction of the criterion of “reasonable grounds” for whistleblower actions, as stipulated in Art. 16 of the WPA, as a condition for exempting liability, requires precise clarification in case law and legal doctrine. This is particularly relevant in situations where reports are based on incomplete or difficult-to-verify information. This issue represents a key challenge for interpreting the provision.

Furthermore, the liability of whistleblowers under Art. 15 of the WPA is strictly tort-based, relying on the element of fault (awareness of the action). The legislator explicitly excludes the possibility of holding whistleblowers liable in cases of erroneous reports made in good faith, clearly emphasizing the intention to protect whistleblowers from retaliation (Sanetra 2006, p. 307).

The liability for knowingly false reports, as provided for in Art. 15 of the WPA, serves as a significant mechanism for preventing abuse of whistleblower protection systems. However, in practice, the effectiveness of this provision depends on the availability of evidence substantiating the deliberate intent to mislead, which may pose a barrier for injured parties seeking claims.

The practical application of Art. 16 of the WPA requires whistleblowers to demonstrate the existence of reasonable grounds for making a report. Consequently, the introduction of this criterion necessitates the development of evidentiary standards that will determine the whistleblower’s eligibility for the protection provided by the Act. In practice, this requirement may discourage reporting in situations where the whistleblower is uncertain about the accuracy of the information, potentially limiting the willingness to disclose irregularities in such cases.

3. Preventive Mechanisms to Mitigate the Risk of False Reports

3.1. Implementation of Transparent Internal Reporting Procedures

The provisions of the WPA, particularly Art. 25, emphasize the establishment of clear and transparent internal reporting procedures. The objective of these regulations is to ensure the effectiveness of the reporting system while minimizing the risk of abuse, including false reports. Transparent procedures play a crucial role in building trust within organizations and reducing potential conflicts arising from unjustified actions by whistleblowers. By clearly defining the reporting processes, organizations can foster a culture of accountability and integrity, further supporting the Act's goals of promoting lawful and ethical conduct (Grześków 2025).

The introduction of transparent internal reporting procedures helps eliminate false reports, functioning as a preventive mechanism on several levels.

First and foremost, internal reporting procedures, when properly communicated and implemented, provide employees with knowledge about the principles, criteria, and consequences of submitting reports. Informing employees about the liability for false reports, as outlined in Art. 15 of the WPA, can effectively discourage potential misuse of the system.

Moreover, the requirement under Art. 25 (1) (3) to appoint an impartial organizational unit or individual to verify reports helps mitigate the risk of unjustified actions based on erroneous or knowingly false information. Establishing an independent body responsible for assessing the validity of reports is a critical component in protecting organizations from the consequences of potential abuse.

Such measures enhance the credibility and integrity of the reporting system while simultaneously safeguarding the interests of both whistleblowers and the organizations they report within (Mroczyński-Szmaj 2022, pp. 214–215).

Equally important, Art. 25 (1) (4–7) of the WPA outlines specific procedural requirements for handling information about violations. Ensuring clear communication rules, the obligation to acknowledge receipt of reports, and informing the whistleblower of subsequent steps within a maximum period of three months allows for the verification of the whistleblower's intentions and reduces the likelihood of procedural misuse (Czub 2024).

Individual elements of the procedure also contribute to mitigating the risk of false reports. Article 25 (1) points (1) and (3) stipulates the obligation to designate an internal organizational unit or individual responsible for receiving and verifying reports. Ensuring the impartiality of these entities is crucial. Establishing clear criteria for their appointment and accountability prevents scenarios in which procedures are used as tools for internal conflicts or unfair competition. Additionally, Art. 25 (1) (5–7) regulates the obligation to confirm receipt of a report and provide feedback to the whistleblower. A transparent communication system, including clear timelines and methods for responding to reports, minimizes the risk of false reports escalating to external bodies, such as the Ombudsman. This allows organizations to address issues internally before reputational damage occurs. These procedural safeguards foster trust in the reporting system, ensuring both effectiveness and fairness while protecting organizations from abuse (Baran-Wesołowska 2024).

3.2. Informing Whistleblowers About the Consequences of False Reporting

Informing whistleblowers about the consequences of submitting false reports may be indirectly derived from the provisions of Art. 15 of the WPA. This article establishes the civil liability of whistleblowers for knowingly submitting false reports or publicly disclosing untrue information. Individuals harmed by such actions have the right to seek compensation for pecuniary damages and redress for violations of personal rights. This provision serves as a key preventive mechanism, emphasizing the need for responsible and careful use of reporting procedures while highlighting the importance of effective whistleblower education. Raising awareness among whistleblowers about the legal consequences of making false reports aims to reduce instances where the reporting system is used contrary to its intended purpose. Knowingly submitting false information exposes third parties to harm, both material and non-material, such as damage to their reputation, good name, or privacy. In such cases, under Art. 15, whistleblowers may be required to repair the damage caused. Compensation includes both actual material losses and remedies for non-material harm. Informing whistleblowers of these consequences should be an integral part of internal organizational procedures to ensure compliance and reduce the risk of system misuse.

Employers are obligated to ensure that all users of the reporting system are aware not only of their rights but also of their responsibilities when utilizing these procedures. In this context, employee education and training play a critical role and should be conducted regularly within the organization. These training sessions should primarily provide knowledge about legal liability, both civil and criminal, associated with making reports. It is essential to explain the distinction between an erroneous report made in good faith and a false report resulting from intentional actions aimed at harming another person.

Education should also emphasize promoting the ethical use of the reporting system. Employees must understand that the purpose of the procedures is to protect the public interest and prevent misconduct, not to serve as a tool for personal disputes or resolving private conflicts. To achieve this, practical examples and simulations should be employed to illustrate both the benefits of responsible use of the procedures and the potential consequences of misuse. Such initiatives foster a culture of accountability and trust within the organization, ensuring that the reporting system fulfills its intended purpose.

An integral part of education should also include providing employees with detailed information on the technical and procedural aspects of submitting reports. Training sessions should cover the principles of reporting irregularities, formal requirements, procedures for verifying reports, and whistleblower protection mechanisms, such as anonymity. It is crucial for employees to clearly understand what information should be included in a report and the steps that will be taken to verify its content.

At the same time, building trust in the reporting system is essential. This can be achieved by transparently communicating its rules and informing employees about the protective measures available to whistleblowers. Promoting an ethical culture within the organization, where reporting irregularities is viewed as an act in the interest of the common good rather than whistleblowing, is key to reducing the number of false reports.

In summary, the obligation to inform whistleblowers about the consequences of false reporting, supplemented by education and training on the fair use of procedures, is an indispensable element of prevention within the whistleblower protection system. Conscious use of reporting procedures, supported by clear regulation of legal consequences for abuse, aligns with the core purpose of the Act: revealing genuine irregularities and protecting the public interest. These efforts contribute to fostering a culture of compliance within the organization while minimizing the risks associated with system misuse.

Conclusions

The current provisions of the Whistleblower Protection Act offer extensive protection to individuals reporting violations, representing a significant step toward promoting transparency and accountability within organizations. However, the mechanisms designed to prevent false reports may not always be entirely effective. The possibility of anonymous reporting, while crucial for protecting whistleblowers, increases the risk of abuse, particularly in cases where sufficient information or evidence to substantiate the report is lacking. The introduction of civil liability for knowingly false reports serves as an important deterrent, but its effectiveness depends on efficient verification processes, which can be challenging when anonymity is involved. Moreover, civil liability alone may prove to be an insufficient sanction in cases of severe abuse, especially when false reporting results in substantial harm to affected individuals. Strengthening preventive mechanisms and ensuring a balanced approach between whistleblower protection and accountability are essential to address these challenges effectively.

To increase the effectiveness of the regulations and minimize the risk of abuse, it is necessary to implement additional preventive mechanisms. One such mechanism is the introduction of mandatory training for employees and individuals using internal reporting procedures. These training sessions should include detailed information on the responsible use of the reporting system, the consequences of false accusations, and the ethical approach to reporting irregularities. Additionally, it would be advisable to consider introducing more detailed guidelines for the verification of reports, including a requirement to provide a minimum set of evidence that would justify the initiation of further actions.

Limited anonymity, which involves maintaining the confidentiality of the whistleblower's identity while requiring the provision of contact details for verification purposes, could serve as a compromise between protecting whistleblowers and reducing abuse. Such a mechanism allows for the protection of the whistleblower against retaliation while enabling more effective verification of reports. It is also important for the regulations concerning whistleblower liability for false reports to be more proportional to the harm caused. Introducing higher sanctions in cases of particularly egregious abuse could act as a preventive measure and discourage the intentional submission of false reports.

Ensuring a balance between the protection of whistleblowers and the rights of individuals harmed by false reports is one of the key challenges arising from the Whistleblower Protection Act. Mechanisms such as anonymity, civil liability, and report verification,

while essential, need to be supplemented with additional preventive tools. Implementing systematic training, improving verification procedures, and introducing more proportional sanctions for individuals who engage in deliberate misuse can contribute to increasing the effectiveness of the Act.

Ultimately, the whistleblower protection system must be designed to encourage the reporting of genuine legal violations while minimizing the risk of abuse. Achieving a balance between protecting the interests of whistleblowers and safeguarding the rights of accused individuals requires continuous monitoring and improvement of regulations to meet the demands of both practical application and principles of justice. In this way, the Whistleblower Protection Act can become an effective tool for promoting transparency and accountability in organizations while minimizing the potential negative consequences of its application.

Bibliografia

- Baran-Wesołowska B. (2024) *Zgłaszanie nieprawidłowości. Whistleblowing w praktyce*, Warsaw (chapter: *Gromadzenie materiału dowodowego – na co zwrócić uwagę?*).
- Baran-Wesołowska B. (2023) *Whistleblowing* [in:] K. Walczak, M. Wojewódka (eds.), *Prawo pracy dla sędziów i pełnomocników*, Warszawa.
- Czub K. (2024) *Komentarz do art. 721 Kodeksu cywilnego* [in:] M. Balwicka-Szczyrba, A. Sylwestrzak (eds.), *Kodeks cywilny. Komentarz aktualizowany*, LEX.
- Drożdżowski Ł. (2021) *Odpowiedzialność sygnalisty za bezprawne zgłoszenie lub ujawnienie publiczne informacji na temat naruszeń* [in:] A. Sieradzka, M. Wieczorek (eds.), *Ochrona sygnalistów. Praktyczny poradnik z wzorami dla sektora publicznego i prywatnego*, Warszawa.
- Gudowski J., Bieniek G. (2018) *Komentarz do art. 415 Komentarz cywilny* [in:] J. Gudowski (ed.), *Kodeks cywilny. Komentarz*, t. 3: *Zobowiązania. Część ogólna*, Warszawa.
- Gorczyński G. (2018) *Komentarz do art. 43 Komentarza cywilnego* [in:] M. Fras, M. Habdás (eds.), *Kodeks cywilny. Komentarz*, t. 1: *Część ogólna (art. 1–125)*, Warszawa.
- Grześków M. (2025) *Komentarz do art. 25 ustawy o ochronie sygnalistów* [in:] B. Baran-Wesołowska (ed.), *Ochrona sygnalistów. Komentarz*, Warszawa.
- Hajn Z. (2023) *Ochrona interesu publicznego i ochrona sygnalistów w dyrektywie 2019/1937*, "Europejski Przegląd Sądowy," No. 9.
- Kalus S. (2018) *Komentarz do art. 23 Kodeksu cywilnego* [in:] M. Fras, M. Habdás (eds.), *Kodeks cywilny. Komentarz*, t. 1: *Część ogólna (art. 1–125)*, Warszawa.
- Karaszewski G. (2023) *Komentarz do art. 415 Kodeksu cywilnego* [in:] J. Ciszewski, P. Nazaruk (eds.) *Kodeks cywilny. Komentarz aktualizowany*, LEX.
- Mroczynski-Szmaj Ł. (2022), *Nowe europejskie prawo sygnalizowania nieprawidłowości. Rozwiązania modelowe a polski projekt ustawy o ochronie osób zgłaszających naruszenia prawa*, "Prawo w Działaniu. Sprawy Cywilne," Vol. 52.
- Sanetra W. (2006) *Odpowiedzialność za naruszenie norm prawa pracy w warunkach demokracji i społecznej gospodarki rynkowej* [in:] M. Matey-Tyrowicz, T. Zieliński (eds.) *Prawo pracy RP w obliczu przemian*, Warszawa.

Court sentences

Judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNC 1988, No. 2–3, item 40.

Legal acts

The Civil Code Act of 23 April 1964, Dz.U. 2024 item 1061 consolidated text, as amended.

The Penal Code Act of 6 June 1997, Dz.U. 2024 item 17 consolidated text, as amended.

Act of 14 June 2024 on the Protection of Whistleblowers, Dz.U. 2024 item 928.

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, OJ L 2019/305, pp. 17–56, as amended.

First View