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Abstract

By focusing on three groups of whistle-blowers in Slovakia speaking out against the use of bogus self-employment in their companies, this study contributes to the debate on the political dimension of whistleblowing. Specifically, it conceptualises whistleblowing as a practice that opens up broader societal, ethical, and political questions by examining its relationship to institutions, with particular interest in those institutions that create law. In doing so, the study analyses how labour law and enforcement institutions are deconstructed through the long process of whistleblowing, which involves the interactions of multiple institutions and social actors in a regulatory space that tend to sustain (bogus) self-employment.

Keywords

Bogus self-employment, deconstruction, labour law, Slovakia, whistleblowing.

Introduction

Whistleblowing can be defined as an 'act of disclosing information about illegal, immoral, or illegitimate practices happening at the workplace, to a party that may be able to take action and stop the wrongdoing' (Carollo et al., 2020: 727). Historically, whistleblowing research has predominantly focused on the psychological and organisational conditions around raising concerns about alleged wrongdoing (Cassematis and Wortley, 2013; Culiberg and Mihelic, 2017; Gagnon and Perron, 2020; Thomas, 2020). Recent debate calls for developing more nuanced conceptions which would highlight the processual and institutionally embedded dimension of whistleblowing (Skivenes and Trygstad, 2010; 2017) with political consequences beyond a specific workplace (Mansbach, 2009; Olesen, 2018; Uys, 2000). This study aims to contribute to this debate by focusing on three groups of whistle-blowers in Slovakia who spoke out against the use of bogus self-employment in their companies.

The act of whistleblowing often identifies serious deficiencies in the structure of an organisation (Uys, 2000). However, the use of bogus self-employment in Slovakia is a structural issue going beyond specific organisations related to weak (or virtually non-existent) enforcement of labour law (Drahokoupil and Myant, 2015; Muszyński, 2020a; 2020b). Despite the changes in the labour code in recent years, the number of bogus self-employed remains relatively stable, at least based on self-reporting using criteria of dependent work in Slovak labour force surveys (Statistical Office of the Slovak Republic, 2022: 7, 2020: 7, 2018: 7), which suggests that neither labour inspectors, nor courts or trade unions are taking effective steps to curb bogus self-employment in Slovakia. This raises the research question which directly connects whistleblowing to an institutional environment rather than a specific organisation: what relationship do whistle-blowers construct between their own injustice and the institutional environment in which that injustice was embedded?

Therefore, this study departs from the alleged wrongdoing that triggered the whistleblowing but focuses on the long-term struggle of whistle-blowers for its elimination. Thus, this article frames whistleblowing as a process rather than an event (Near and Miceli, 1985). Indeed, a focus on the struggle against the wrongdoing allows to go beyond the individual connection between a whistle-blower and their organisation. This approach has therefore the potential to illuminate many of the structural issues that affect the workplace in concrete political and historical contexts (Carollo et al., 2020), and to bring rich insights into current pervasive forms of managerial control over the workforce epitomised by widespread use of bogus self-employment in the neoliberal regimes of Central Eastern Europe (Muszyński, 2020a; 2020b). More specifically, our study examines how whistle-blowers have blown the whistle despite an institutional environment that was rather indifferent to their case, thus showing the limits of an individualistic explanation, which has proven insufficient both in this study and elsewhere (e.g. Skivenes and Trygstad, 2010, 2017). Indeed, once we understand whistleblowing as a process of transforming both the actors and the institutions with which the whistle-blower is in a relationship, we can move beyond this individual/institution dichotomy. In particular, we argue that this process represents a relational effort, that we have defined in terms of deconstruction of labour law, since institutions are not rejected but rather re-invented (Derrida, 1992). In other words, in the case studies discussed in this article, the whistle-blowers attempted to initiate a process that would expose the inconsistencies labour law enforcement institutions – such as inspectorates and courts – commit when assessing bogus self-employment. At the same time, they collectively sought to establish new precedents that would allow labour law to be reinterpreted in order to fit its logic of protecting persons in employment (or dependent self-employment), who are therefore in an asymmetrical power relationship with the employer. This gives a significant political dimension to whistleblowing, going far beyond the issue of bogus self-employment in specific organisations. Moreover, this allows to explore the possibilities of

resistance, the role of both traditional and new actors in influencing power dynamics in employment relationships, and the interplay between individuals, organisations, and institutions in the current 'employer-centric' industrial relations systems (Kalanta, 2020).

The article is organised as follows: in the next section, a literature review on whistleblowing is presented, with an emphasis on recent approaches more interested in the de-individualisation and politicisation of whistleblowing. Then the theoretical framework based on Derrida's understanding of justice as a deconstruction is introduced. After illustrating the research context and the methods, findings then present the four main dimensions characterising the practice of whistleblowing in the three case studies analysed. Finally, we discuss our findings and conclude.

De-individualisation and politicisation of whistleblowing: in search of 'justice'

How can we understand whistleblowing without relying on individual factors? Recent research has dealt intensely with this question (see Culiberg and Mihelic, 2017), mainly trying to expand the analysis of situational factors, such as personal victimisation and the seriousness of perceived wrongdoing (Cassematis and Wortley, 2013), organisational characteristics (Gagnon and Perron, 2020), relations between key actors (Thomas, 2020), or general societal factors, including the culture of communication and the welfare system (Skivenes and Trygstad, 2010) and well-institutionalised industrial relations (Skivenes and Trygstad, 2017).

Other scholars point out that this perspective, though refining the analysis by exploring new factors, remains too static and neglects that the whistleblowing is an ambiguous process of transforming whistle-blowers' subjectivity in relation to their environment rather than a specific moment of individual decision-making between silence and blowing the whistle (Teo and Caspersz, 2011; Kenny, Fotaki and Vandekerckhove, 2020). To understand whistleblowing

in a more nuanced way, various authors (such as Contu, 2014; Mansbach, 2009; Vandekerckhove and Langenberg, 2012; Weiskopf and Tobias-Miersch, 2016) have used in their analyses the Foucauldian concept of 'parrhesia', which is a specific form of criticism characterised by a 'movement by which the subject gives himself the right to question the truth on its effects of power and question power on its discourses of truth' (Foucault, 2003: 266). In this view, whistle-blowers are not organisational or societal outsiders; on the contrary, they are loyal to organisational and societal principles of liberal democracies in a radical way (Mansbach, 2009). As Mansbach (2009: 371) shows, indeed, whistleblowing, can be conceptualised as 'a personal act that individualizes, yet simultaneously, by being beneficial to the public, is not antagonistic to the "we"'.

In this frame, whistleblowing allows a reflection on organisational practices, and like parrhesia, it reflects their ethical dimension by opening up possibilities for 'new ways of relating to the self and others' (Weiskopf and Tobias-Miersch, 2016: 4). Therefore, according to this perspective, first, a critical self-relation connects parrhesia to organisational (and societal) ethics, which allows whistleblowing to be de-individualised and explored as a 'practice that is conditioned, but not determined, by the configuration of practices in which it is embedded' (Weiskopf and Tobias-Miersch, 2016: 3). Second, whistleblowing is framed as an ethico-political practice in which the political dimension is represented by possible new ways of organising relations to others, and which can create – as Kenny suggests – a 'collective self' through 'affective recognition' (2019: 53). Such a construction of whistleblowing is bound up with 'passionate attachment to organizational ideals and professional norms' (Kenny, Fotaki and Vandekerckhove, 2020: 2). However, the political impact of the relations between whistle-blowers and other actors, including institutions, and their transformations, are only partially addressed in the debate. This means that, differently from the ethical dimension, the political dimension of whistleblowing remains less explored. For instance, several former whistle-

blowers have founded associations (Mansbach, 2009; Rotschild, 2008), and in one case a political party (De Maria, 2008), to support other whistle-blowers, but in existing research, these activities remain overlooked.

This study takes full account of the ethical dimension of whistleblowing but without neglecting that whistleblowing is a legal act which also has political implications, and accordingly, it views the legality bottom-up as an ongoing structure of social relations informing everyday thoughts and practices rather than 'an external apparatus' (Ewick and Silbey, 1998: 17). Hence, besides the contribution to the debate on the de-individualisation and politicisation of whistleblowing, this article also contributes to the debate on how people use the law and construct a legality, which has been recently identified as a relevant gap in the knowledge on legal mobilisation, consciousness, and participation, especially in relation to employment relations (Dukes, 2019; Kirk, 2020b; Kirk and Busby, 2017). Moreover, this perspective on whistleblowing also involves the study of the institutional framework, thus combining labour law and industrial relations studies to examine the legal consciousness shaped by a network of power relations between employers, workers, trade unions and new social actors in employment relations (Colling, 2009; Dukes, 2019; Kirk, 2020b). This means putting labour law again into the political economy context, but in a way which is very attentive to the institutions that mediate its relationship, especially in terms of labour law enforcement and the workers' collective actions that shape it from below (Dukes and Streeck, 2022). To analyse the three case studies conducted, we take inspiration from Derrida's work on philosophy of law (1992), in which he distinguishes between 'law' and 'justice', arguing that law is a construction that requires its own deconstruction to become justice, which de facto means that 'deconstruction is justice' (1992: 15). He therefore emphasises that the applicability or the enforceability of the law is not a supplement to the law. On the contrary, 'it is the force essentially implied in the very concept of justice as law' (Derrida, 1992: 5). More specifically, it is in the space between law and

enforcement, which involves the interpretation of the law, where justice emerges. And this in-between space is also a space where a whistle-blower takes action.

To analyse the entanglement between the law, its enforcement and its interpretation, Derrida (1985, 1992) references Franz Kafka's short story '*Vor dem Gesetz*', or 'Before the Law' (1987), which was published under this title during Kafka's lifetime, and later became part of the novel *Trial*. In the story, a man from the countryside comes before the law, at the gate of which there is a doorman. The doorman tells the countryman that he may let him go, but not now; however, if he wants to enter without his permission, he can, the gate is open, but he must know that every doorman at other gates is even stronger than him. The countryman peeks through the gate, sees the light, but after a moment's thought he returns and says he will wait for permission. The story ends like this: after the countryman has aged before the law and, at the same time, has become childish, he asks the doorman, who is about to close the gate, the last question he still has: 'How is it possible that no one else has ever come to this gate all this time I am waiting?' And the guard tells him that no one has come, because this gate has been for him only. After that, he closes the gate.

Derrida uses this story to illustrate that law as an instrument of justice implies the necessity to 'enter the law' and he calls this process 'deconstruction'. As he emphasises, the deconstruction is not destruction but a very complicated disassembly and subsequent re-assembly (Derrida, 1985, 1992). Derrida thus disentangles the law, its enforcement and interpretation. A person seeking justice, such as a judge, and advocate or a whistle-blower, hypothetically thinks of the law as only intended to solve a particular case, which makes the 'universal' law particular, as well as its interpretation. At the same time, in the light of a particular case, this process actually creates a new 'universal' law through the interpretation and genealogy of the law. This means that the situation of law enforcement or its absence has potentially far-reaching political consequences and that therefore the absence of law enforcement – e.g. of a labour code –

implies the absence of justice, which is one of the structural conditions of resentment (Fleury, 2020). Resentment can indeed be described as a lack of capacity to act and a strong identification with the role of victim or powerless witness (Fleury, 2020). In this frame, whistleblowing can be studied as a potential transformation of the individual struggle for law enforcement into a collective 'ethico-politico-juridical' (Derrida, 1992: 19) experience of justice.

Research context: Bogus self-employment in Slovakia

Bogus self-employment is a colloquial term referring to a situation in which a person is classified as self-employed even if legal tests would actually find them to work as employees, who should be granted appropriate employment rights and tax status (Kirk, 2020a). Slovakia recorded substantial growth in self-employment in the 2000s with a considerable proportion of it being bogus to circumvent labour law and to avoid tax and social contributions liabilities by employers (Muszyński, 2020a; 2020b). The changes in the labour code in the years following a particularly rapid increase of self-employment after 2008, with the last amendment of the labour code in 2018, broadened the scope of dependent work to reduce bogus self-employment (Digennaro, 2020). In this context, the notion of dependent work is legally defined by the following characteristics: the work performed in a relationship characterised by the superiority of the employer and subordination of the employee; personal performance of work by the employee for the employer, carried out according to the employer's instructions; in the employer's name; during working time defined by the employer (Digennaro, 2020; Mészáros, 2018). However, despite these changes, the estimated number of persons working in bogus self-employment in Slovakia in the first quarter of 2022 is estimated to be about 104,700, which means 26% of the self-employed, 32% of the solo self-employed, and 4% of the total workforce (Statistical Office of the Slovak Republic, 2022: 7). This number has remained relatively stable

in recent years, at least based on self-reporting using criteria of dependent work in Slovak labour force surveys (Statistical Office of the Slovak Republic, 2022: 7, 2020: 7, 2018: 7), which indicates an institutional incapacity (or indifference) to deal with this issue.

The weak enforcement of labour law in Central Eastern European countries is related to wider problems of legal hyper-positivism and text-centrism, 'with the law's application following the law's letters in a quasi-mechanical way' (Varga, 2014: 87). The legal positivism emphasises the autonomous position of the legal system within society, which does not necessarily have any connection to other societal norms, such as ethical or political ones. Moreover, the legal interpretation is based on the logical decoding of the literal meaning of the legal text and not of its purpose. This approach is especially ineffective if applied in the field of labour law because it considers neither the power relations between the parties in the application of norms, nor the social, ethical, and political contents of labour disputes (Muszyński, 2020a). In fact, as documented by various authors (Čaněk, 2012; Drahokoupil and Myant, 2015; Muszyński, 2016, 2020a, 2020b), the positivism and related formalism of legal interpretation permeates the whole system of labour law enforcement in Central Eastern European countries (Kahancová and Martišková, 2022).

In Slovakia, besides courts and in the virtual absence of trade unions, only the Labour Inspection and Labour Offices are authorised to monitor employers' compliance with employment rules and regulations – the Social Security Administration and the tax authorities are rather limited in this regard (Hůrka, 2017). The resulting weak enforcement of labour law in Central Eastern European countries led Muszyński (2020b: 56) to speak about 'destandardization' of employment relations, which was already previously described in similar terms as the 'increasing irrelevance of labour law' (Drahokoupil and Myant, 2015: 336). Though in Central Eastern Europe international actors, such as the IMF and OECD, have historically set the agenda for the flexibility of labour markets, domestic business interests and

political elites have been the key agents of this *de jure*, and even more, *de facto* flexibility (Cook, 2010), and continue to exert their power over state institutions. With this background, the selected case studies represent rare but rich sources of data on activities that allow us to explore this 'destandardisation' of employment relations below the formal surface of labour law and can therefore have broader theoretical relevance and practical impact going beyond the specific circumscribed cases.

Methods

This study is based on a broader multi-sited and cross-national ethnography (Marcus, 1995; Hannerz, 2003) on the collective representation of solo self-employed workers carried out in six European countries (Murgia et al., 2020): France, Germany, Italy, the Netherlands, Slovakia, and the United Kingdom. However, it was only in Slovakia that we observed whistleblowing connected to bogus self-employment and we therefore decided to conduct an in-depth study on the Slovak context. More specifically, we focused on three case studies, selected as distinctive cases of actors involved in the challenge to identify and contest bogus self-employment. All three case studies, despite the different contexts in which they took place, showed surprisingly similar features. Specifically, they emphasised the need to go beyond the individualising narrative of whistleblowing and the narrow view that frames bogus self-employment as an issue exclusively related to the organisational context, and instead positioned both whistleblowing and bogus self-employment in the broader institutional and political economy context. The research does so, in the first case study, by studying an informal network of whistle-blowers fighting bogus self-employment in their (former) company; and in the other two case studies, mainly by focusing on the interactions between the whistle-blowers and other actors during the process of whistleblowing.

The data collection took place from March 2020 to June 2021 and altogether we conducted interviews with seven whistle-blowers. In the first case study, we also carried out participant observation at the meetings of the network as well as several hours of 'shadowing' (Czarniawska, 2007) with its leader, including two visits to labour inspectorates and two meetings with potential whistle-blowers. We also interviewed workers addressed by the network who refused to become whistle-blowers. Besides, we interviewed the representatives of the institutions and other actors in relationships with whistle-blowers, including five labour inspectors, three trade unionists, one NGO activist, and four lawyers, who represented the broader regulatory framework shaping whistle-blowers' activities in the three case studies. We were also provided with a range of materials intended for internal and external use, such as court records or evidence given to the labour inspectorate.

The interviews lasted between 60 and 90 minutes and were recorded, transcribed, and analysed. The interviews were focused on the reconstruction of the story of the whistle-blower from the period before whistleblowing to the time of the interview. Four main themes emerged: relations to other individuals; movement from resentment to deconstruction; legal interpretation; and relations to institutions. These themes were then analysed in more depth through iterative reading of fieldnotes, transcriptions and the other materials (Schwartz-Shea and Yanow, 2012).

Findings

Long whistling

In 2001, Mr. A. witnessed how the multinational financial services company, in which he worked in the position of regional branch director, transformed some of the employees into sole-traders. The change was part of the company's strategy to considerably decrease the costs of the branch structure in Slovakia by loosening it into a network of formally independent

financial services providers. Mr. A. criticised this change internally by claiming that it was in breach of the labour code. In reaction, he was dismissed for supposed redundancy. Thereafter, Mr. A. made a complaint at the labour inspectorate about his suspicion of use of bogus self-employment by the company, and at the same time sued the employer for illegal dismissal. The labour inspectorate refused to conduct an inspection of the company, claiming first that the employees ended their labour contracts voluntarily because there was no other complaint, and second, that to investigate the commercial relationship between the company and the providers was not in the competence of the labour inspectorate. The original lawsuit between the company and Mr. A., which Mr. A. initially lost, grew into a series of lawsuits which remained without a final decision until the time of data collection. In the meantime, Mr. A remained throughout all the period in close contact with the company via some of his former colleagues to collect up-to-date knowledge about any breaches of law by the company. Steadily, he created a loose network of people who became whistle-blowers and sued the company for illegal use of self-employment.

In contrast, in the other two case studies, which took place in the media sector, the journalists who worked as self-employed criticised the management of their media outlets for intervening in their work on behalf of external political and commercial interests. In response, their commercial contracts were ended. First, they made their cases public without the intention to get into legal conflict with their former clients/employers. However, after the publication, some advocacy companies contacted the journalists and offered them their services pro bono. Indeed, based on the texts published by the journalists about their dismissal, the advocacy companies in both cases concluded that the journalists were in fact dismissed illegally as their work fulfilled the criteria of wage employment. The advocates also encouraged several of the dismissed journalists to defend their cases in a legal way. Specifically, in the second case, based on the recommendation of the advocacy company, two journalists asked the labour inspectorate

for whistle-blower protection because their client/employer behaved contrary to ethical standards. However, this was refused with the argument that the journalists were self-employed, and that the protection applied only to employees. Afterwards, the journalists sued the employers for illegal dismissal, claiming that they had been employed. In the third case study, the advocacy company recommended that journalists go directly to the court. At the time of the fieldwork, both lawsuits, which started in 2018 and 2020 respectively, were still awaiting their first court decisions.

Except for the very first complaint at the labour inspectorate by Mr. A. in 2001, the act of whistleblowing in the three case studies was not represented by a clearly identifiable moment. In the first case study, Mr. A. networked with his former colleagues for several years and steadily pushed some of them to blow the whistle, and to disclose information about the wrongdoing to parties that might be able to act and stop it. Moreover, the whistle-blowers were acutely aware of the length and exigence of the whole process. A woman who obtained whistle-blower protection in 2019 explained that Mr. A. offered her a way to contribute to the effort to change an unsatisfactory state of employment relations despite being aware of many obstacles, especially the length of the process.

> Mr. A opened my eyes. I see it as an error of this society not to do anything about those breaches. Yes, lawsuits are long, everyone will say: 'I will not bother, I can't bear the stress', I feel it too, but I have already told myself that I won't let it go, that's why things are as they are, people do not decide to fight for justice.

Also in the other two case studies, whistleblowing was seen as a long process, which moreover started with the publicising of the wrongdoing, not with any legal act. Moreover, the act of whistleblowing as such resulted from the contact with initially fully external actors of advocacy companies. Analogously to the first case study, the whistle-blowers saw the process as a long

and complicated endeavour, as described by one of the two journalists suing the employer for illegal dismissal in the second case study.

> Now, when I think about it, what's the matter? […] My goal is not to get money for holiday, even if, of course, if I win the lawsuit, the company will have to pay me all my lost wages. And if we assume that it will take three or four years, it will be a bag of money. But I would like very much to set a precedent, some judgement the other courts would rely on which would be made public and people working as self-employed and unsatisfied with that, they would get the courage to stand up and fight for their rights.

In a similar way, in the third case study, one of the whistle-blowers said that the meaning of the process was to explore the state of society, rather than to decide their individual disputes.

> That some monetary reward is there, this is understandable. But this is not the principle. If I had to, I would have signed a paper that in case of victory I would give up the money. But let's find out if we have matured as a society.

The whistleblowing in the three case studies was meant to be able to cope with lengthy procedures. Over the year, the process also implied certain transformations in the relationship between the actors and the law. During this movement towards the law, as conceptualised by Derrida (1992), the whistle-blowers were accompanied, in the first case study, mainly by Mr. A., and in the other case studies by proactive advocacy companies. In this way, these actors spoke out not only against particular organisations but on the wider political and legal institutions that are supposedly tasked with regulating employment relations. In a Derridean sense, they aimed to deconstruct the functioning of these institutions, which is not just meant metaphorically. By pointing out the inconsistencies that inspectorates and courts committed in assessing bogus self-employment, and at the same time interpreting the internal logics of labour law, they sought to deconstruct (and reconstruct) this law and its enforcement. They argued,

for example, that the criteria used to identify dependent work could not be understood strictly cumulatively, but rather as indicators, at least if one assumes that the purpose of the labour code is to protect those performing dependent work, as will be discussed in more detail in the following section.

Relating to others

In the case studies, in contrast to Derrida's story, the individuals were not alone 'before the law'. On the contrary, they were only able to enter the space between the law and its enforcement, where, in Derrida's perspective, justice emerges from responsibility for the other. In fact, even Mr. A., whose position was – in his words – the closest to the image of 'a lone wolf', analogous to the 'hero or traitor' stereotype of the whistle-blower, relied on relations to other actors. In 2015, Mr. A. obtained the protection of whistle-blowers after Slovakia implemented the first such regulation. Although it did not result in any significant progress in his case, it was an important change because he did not feel completely alone in his effort, as evident from the fieldnotes taken while waiting for a meeting at the labour inspectorate headquarters.

> Mr. A. said that what is important for him now is the fact that when he was making a lawsuit about illegal dismissal before, it was always only him and the company, now he has protection as a whistle-blower, which is provisionally administered by the labour inspectorate, which means that it must give a statement to any step the company would do against him.

It was mainly after getting the protection that he started to build an informal network of whistle-blowers. Thus, as soon as he obtained enough information to make a complaint at the labour inspectorate, he tried to persuade other colleagues to make a formal complaint. One whistle-

blower from the network explicitly underlined the importance of these interactions, as reported in the fieldnotes:

> She said that individual struggle is lost in advance, because if you sue them alone, you would end up like Mr. A. (she was alluding to the fact that the company spread the news about Mr. A. being 'mad', 'crazy', 'disturbed'). Without Mr. A. she would have already given up, but he always 'sparked her off and kept in fire'.

In the second case study, the dispute began when one journalist wrote an open letter to his editor-in-chief. The letter was signed by several other colleagues; however, in the end, after discussion with the advocacy company, only two of them sued the employer for illegal dismissal. As one of them commented:

> Most of the people who had space for it didn't go into the lawsuit at all. And purely in my opinion, I think, because it's more comfortable, they don't want to, that's the kind of thinking you may know: 'Now, I'm going to drag myself from one court to another and it will take three or four years; all the courts are corrupt anyway, and even if I win, I still have to pay some costs, it's good like this to me, it does not matter that they wiped the floor with me'. They just shrug their shoulders and go further.

Therefore, it was important for the interviewee that at least two of the dismissed journalists sued the employer. The advocacy company also asked the court to merge the sessions related to these cases, which should have helped to better connect them.

In the third case study, the interviewees reported strong collective spirit in the team before the dismissal. The working team was united around common political and ethical values and a certain vision of journalism, more inquiry- and public service-oriented. The four interviewees were also close to a trade union created a short time before their dismissal, even if, as they pointed out, they were formally self-employed, which was problematic for their participation

in the union. After the dismissal, they largely publicised their case and after being contacted by an advocacy company, they sued the employer. Moreover, more than ten other journalists left the company voluntarily and supported their colleagues without initiating any lawsuit against the employer.

The three case studies showed that the whistle-blowers found themselves in continuous interactions with other people and institutions. This relational and institutional embeddedness of whistleblowing helped to explain why they decided to enter the law despite having expectations of many obstacles, differently from Derrida's story, where the lonely countryman dare not enter the law out of fear.

Deconstructing labour law

In the core of the network created by Mr. A. there were six whistle-blowers – former workers of the financial services company – defended by one lawyer who was in weekly contact with Mr. A. The lawyer defended these whistle-blowers in 22 lawsuits. Many of them launched two or three lawsuits because the breaches were often various collateral consequences of bogus self-employment, such as wrong calculation of working hours or wrong remuneration. In fact, workers were partly employed for minimum wage, partly they worked as sole traders, but their tasks were not clearly differentiated, which created a series of problems caused by the company's management of employment contracts. In light of this situation, the lawyer saw the complexity of these cases mainly as an opportunity to legally define bogus self-employment, as he explained in an interview.

> Even if in Slovakia there is no case law, in the new order there is a system that if there is a court decision that deviates, it goes to the Supreme Court which examines this

> contradiction. So, if different district courts decide differently in the same cases, the Supreme Court is obliged to give a binding interpretation of the law.

Similarly, in the two other case studies, the conflicts started with unethical behaviour in the media sector, but subsequently the disputes broke down to legal discussion about the criteria of the employment relationship. In the first case study, the lawyer expected that in a few years, once the decision had been made, the trial would have helped to go beyond the formalist interpretation of the regulation of bogus self-employment and of the labour code in general. As he said: 'The mistake is the lack of courage to go into more difficult interpretations.' This lack of courage implied a mechanical understanding of the criteria. One of the lawyers in the third case study illustrated this practice by using the example of the working time criterion whose technical control by a worker was often exercised by employers to escape from the obligation to formalise a dependent employment relationship.

> It is true that those criteria, as the law is written, are to be fulfilled cumulatively; on the other hand, the individual criteria should not be considered by the court in an isolated way. In my opinion, what is really crucial is that you look at the performance of the activity as a whole. There you see if you identify the dependence or that this person is truly independent, and the working time is exactly such an element.

The need for this interpretative approach was echoed in all the case studies, pointing out the necessity to connect particular elements within cases, but also across different cases. According to interviewees, neither in Slovakia, nor in the Czech Republic, which often had served as a source of knowledge for the decisions of Slovak courts, there existed a consistent set of decisions which should have delimited dependent employment. The lawyers rather pointed out the fragmentation of case law. Therefore, in their argumentation they referred to various scattered decisions supporting their point of view, across economic sectors, to contribute to building a clearer interpretation of dependent work and employment relationship. They also

drew attention to the contradictions of inspectorates and courts in assessing bogus self-employment, thereby attempting to reconstruct labour law and its enforcement. They specifically sought to ensure that the criteria used to identify dependent work were not seen as mandatory elements, but rather as guidelines, as this more accurately reflected the logic of the labour code, which protects persons in employment.

In the first case study, throughout the years, Mr. A. became an expert – in the words of interviewees – on labour law, and thus personally participated in the effort to construct a different legality which could have effectively curbed the bogus self-employment in Slovakia. In the other two case studies, the role of whistle-blowers was from the beginning more passive, however, their relationship to the law changed over time. This was often expressed in terms of curiosity about the process.

> I'm looking forward to the session. I'm curious about arguments the other party will come up with. I imagine that it's definitely that they will actually try to prove that I voluntarily chose that I want to be a self-employed person. It will be interesting how the judge evaluates this. Basically, I can't imagine anything else on which they could build any of their defences, so it will be interesting. The only thing I'm sorry about is the length of the process, but that's a different story.

The curiosity and certain passion for the legal dispute corresponded with increasing legal consciousness. The understanding that the employment relationship was constructed to protect the freedom of people, not to constrain it, was an especially important lesson for the journalists who highly valued their freedom and entered the industry during their university studies assuming that the generalised self-employment was part and parcel of work in the media.

> Self-employment is a common practice in the big Slovak media and television companies. If we manage to win, they will be forced to change the contracts of many

> journalists. So, they closely observe our process for how it turns out […] From the point of view of the journalistic work, it's important in this case to say that the internal employee has in my opinion greater legal certainty but also you can show a greater degree of freedom, and not only in the case of preparing a contribution but also in communication with superiors.

The individual legal disputes were supposed to contribute to the construction of different legality, hence, to re-construct both law and its institutional enforcement. However, the whistle-blowers and their networks were aware that changing the interpretation of the law in its enforcement was not enough in itself, and that the power of the weaker party in the employment relationship needed to be strengthened to contribute to the re-construction of employment relations. This transformation had potential effects that went beyond the particular encounters between the actors and the law.

Re-constructing employment relations

Besides this relational embeddedness of the process of the dispute itself, the case studies conducted shared the common feature of an ambivalent relationship to a broader institutional framework. Although often abandoned by actors and institutions involved in the regulatory space, such as trade unions, labour inspections, or courts, the research participants did not dismiss these collective institutional arrangements, but rather wanted to contribute to their re-construction. In the first case study, in the situation of weak law enforcement by the labour inspectorate and missing representation of workers, Mr. A. envisaged creating an organisation around the principle of a legal pursuit of wrongfully behaving employers by protected whistle-blowers. As he explained:

> What I have in mind is a fictional organisation that I would make. It would be like a special trade union represented directly by the people. I assume the most successful participants would contribute to the budget of that organisation. I'm looking for the model, which would be effective because unions are not working. I was a union member. So, the road doesn't lead there and I'm looking for a different model.

At the same time, he was in contact (and exchanged information) with one NGO focusing on the improvement of working conditions in Slovakia. Similarly, the interviewees in the other two case studies reported a nuanced approach to the institutional framework. They were not 'naive', in the words of one whistle-blower, for instance, about the considerable influence of employers on labour inspectorates. However, they found a way for improvement: one advocate from the second case study explained how they imagined cultivating the work of labour inspectorates.

> There are regional inspectorates where it works and where it doesn't. […] However, I cannot imagine that if in the future there is some statement of the Supreme Court defining dependent work, some local inspectorate decides to interpret it differently, that's the guarantee of loss at court.

In fact, all interviewed labour inspectors deplored the low number of lawsuits in which workers would stand up for their rights as a factor diminishing the perceived importance of labour inspections. In the third case study too, the advocacy company hoped to increase legal consciousness despite being very critical of the state of the judicial system in Slovakia.

> We want certainly to raise awareness and maybe motivate other people to pursue lawsuits. On the other hand, those lawsuits are really challenging… it takes a very long time and it's not such an effective way to get to your rights, but we certainly want people to talk about it more, in the hope that it will increase some social awareness that may

> give these people courage. I think that maybe the pandemic highlighted the problem, as we actually said, for many people it's nice to work in such a relationship because of some financial benefits, but it's precisely the pandemic that simply underlined the fact that the employment security is important, and especially in bad times, really.

The research participants then distinguished between the law and its enforcement and were aware of the problems on behalf of institutions enforcing the legal framework regulating employment relations. They were aware that trade unions, for example, were not responsible for enforcing the law in the same way as labour inspectorates, but nevertheless considered all these institutions to be part of the same infrastructure that could help enforce the law from below. They hoped indeed that besides the reinterpretation of labour law, their disputes would have also helped stimulate labour inspectors and trade unionists to protect labour law in a more 'courageous' way. The notion of 'courage', which often appeared in the interviews, and in various contexts, underlined this effort to set the enforcement institutions in a broad sense in motion to re-construct employment relations in Slovakia.

Discussion

This article considers three case studies of whistle-blowers who spoke out against the use of bogus self-employment in their companies. Our research question focused on the relationships whistle-blowers manage to construct between their own injustice and the institutional environment in which that injustice was embedded. Recent research on whistleblowing has emphasised the processual and institutionally embedded character of whistleblowing as a way to challenge its individualising conceptions, which also has the further effect of depoliticising it (see Mansbach, 2009; Olesen, 2018). Research situates 'politicisation' within the whistle-blowers themselves, transforming subjectivity that stimulates others to question the ethical and political foundations of their societies (e.g., Contu, 2014; Weiskopf and Tobias-Miersch, 2016).

Kenny even reconceptualises the whistle-blower as ‘a collective self, embedded in and constructed through multiple others’ (2019: 195). This article contributes to this debate by showing a way to specifically study ‘political surplus’ (Mansbach, 2007) spilling over individual disputes between whistle-blowers and their employers.

The first contribution points out the importance of the perspective in which the institutions are not just seen as external structures that facilitate or inhibit whistleblowing, but as part and parcel of the whistleblowing process, which is analysed as a mutual long-term relationship that is shaped alongside whistle-blowers and institutions. More specifically, whistleblowing is conceptualised as a nexus of relations between actors operating at different levels. In the presented case studies, the whistle-blowers relied on existing legal regulations of employment relations; however, they needed to deconstruct labour law, and the specific criteria used to identify dependent work, to transform the law into justice. This collective movement towards labour law, consisting of interactions which were not singular or short-term but rather a continuous transformative process between whistle-blowers, other actors, and institutions, framed whistleblowing as a relational, political and ‘passionate’ practice (Kenny, Fotaki and Vandekerckhove, 2020) in transforming labour law and its enforcement institutions, such as labour inspection and courts.

A second contribution that emerges from this understanding of whistleblowing is its specific impact on labour law, which in this study relates to bogus self-employment but touches on the broader issue of legality as a social structure (Ewick and Silbey, 1998). Most studies on whistleblowing do not distinguish between law, its interpretation, and its enforcement. This means that a whistle-blower is considered to be an ethical informant who identifies a breach of law or ethical code within an organisation. Consequently, the key question that this literature asks is how to motivate people to blow the whistle. Instead, in this study, it was the interpretative approach to the criteria used to identify dependent work, as opposed to the

'formalist' and 'mechanical' interpretation, that emerged as a politico-legal effect of whistleblowing that was potentially able to improve the enforcement of labour law and the re-construction of employment relations in Slovakia. Workers' participation in labour law enforcement has long been overlooked in the debate about the waning influence of labour law (Dukes and Streeck, 2022). Reframing whistleblowing as an ethico-political relational practice in the workplace could once again make such participation a means, however imperfect, of greater justice and economic democracy. The distinction between the law and its enforcement, and the emphasis on the fact that enforcement is not a supplement to the law, but an essential force implied in the construction of the law as justice, is also useful for analysing the meaning of whistleblowing beyond the scope of labour law. It could also shed light on broader issues of legal mobilisation, awareness, and participation, which can be enriched if understood as relational rather than individual practices.

Conclusion

Whistleblowing is a micropolitical practice and, as such, cannot eliminate major legal, economic, and political injustices. This would require broader politico-economic restructuring. However, as shown in this study, whistleblowing can possibly expand the space where workers can influence their working conditions, and thus bring certain democratisation to the workplace. Nevertheless, to contribute to the improvement of working conditions through actual enforcement of legal regulations, the improvement of workers' access to justice is necessary.

Derrida (1992)'s distinction between the law and its enforcement allows us to see access to justice as a movement towards the law and within the law rather than a singular act, such as the submission of a complaint to the labour inspectorate or the initiation of a lawsuit. Such understanding of access to justice also implies that the barriers that people face in the process

of seeking help with their grievances are not limited to issues related to the specific workplace nor to the organisation of the legal system per se, such as in the high costs of taking claims to courts, but may stem from other factors, such as a lack of knowledge of their rights, but also a lack of knowledge and experience on the side of judges and labour inspectors, or even the influence of employers on the institutions responsible for enforcing labour law (Dukes, 2019). The processual and relational dimension of access to justice then highlights the necessity of continuous and strong support that workers (and citizens) need, and which is a decisive factor in their long movement from resentment to deconstruction. This long process of a collective effort to eliminate injustice (Kenny, 2019; Mansbach, 2007; Uys, 2000) could also motivate different actors, from individuals to NGOs and trade unions, to join forces, with a potential impact largely beyond an individual dispute between a whistle-blower and an organisation.

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