



Whistleblowing and Protection of Whistleblowers

Collection of Texts from and International Workshop

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*Project to strengthen anti-corruption
and anti-money laundering systems
in the Czech Republic*



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Project to strengthen the system of fight against corruption and money laundering in Czech Republic.

Through the Norway Grants and EEA Grants, Norway contributes to reducing social and economic disparities and to strengthening bilateral relations with the beneficiary countries in Europe. Norway cooperates closely with the EU through the Agreement on the European Economic Area (EEA).

For the period 2009-14, Norway's contribution is €1.7 billion. Grants are available for NGOs, research and academic institutions, and the public and private sectors in the 12 newest EU member states, Greece, Portugal and Spain. There is broad cooperation with Norwegian entities, and activities may be implemented until 2016.

Key areas of support are environmental protection and climate change, research and scholarships, civil society, health and children, gender equality, justice and cultural heritage.

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Introduction

On 8 December 2014, on the occasion of the International Day against Corruption, the Lichtenstein Palace in Prague hosted an international workshop on Reporting of Malpractice and Protection of Whistleblowers. At the workshop, Czech and foreign experts delivered their presentations on whistleblowing as the key tool to prevent, detect and prosecute corruption.

The organisers of the workshop wished to facilitate exchange of information and experience on whistleblowing and to provide information on the currently drafted Council of Europe's Recommendation on Whistleblowers. The panel of speakers offered a wide variety of experts from the executive administration, the academia, and NGOs.

This collection of presentations presents to the reader a summary of selected papers delivered by experts at the workshop.

The workshop was organized under the auspices of Jiří Dienstbier, the Minister for Human Rights, Equal Opportunities and Legislation and the Financial Analytical Unit of the Ministry of Finance under the umbrella of the CZ10 programme "Support for the detection and investigation of corruption" financed by the Norwegian funds.

This collection is complemented by a summary of conclusions of a research paper on potential functions of a Whistleblowers Centre in the Czech Republic. The conclusions are a good source of information on relevant international experience and institutions specializing in protection of whistleblowers. Readers of this material will gain access to key recommendations made by the authors of the paper to the Czech Government in respect of potential establishment of a Whistleblower Centre to assist and support notifiers of malpractice in the Czech Republic.

Presentations of Selected Experts

3. Protection of Whistleblowers from the NGO Point of View

Radka Pavlišová: Whistleblowing Concerns us all

Radka Pavlišová, Transparency International CZ

In the recent years, the Czech Republic has joined the wider debate on whistleblowing. It is a subject that elicits considerable emotion, as demonstrated during the debates on the need or uselessness of comprehensive legal regulation of this phenomenon. Although the debaters – participants of both professional and lay debates - often fail to agree on a common definition or perception of the terms *whistleblowing* and *whistleblower*, they mostly have one in common - a strongly negative attitude to the very idea of person who "leaks information". Such people are informants, snitches, tipsters, finks, or, at best, troublemakers or fighters with windmills ... the negative perception and terms describing people who point out certain issues shows a strong tendency to despise such behaviour.

Potential whistleblowers are aware of the above and the unflattering perception of their efforts to remedy the wrongdoing adds to fears of possible sanctions and retaliation. That is why many people prefer to remain silent.

What is lost on both sides is the essence of the message: more frequent use of whistleblowing could contribute significantly to the detection and removal of irregularities and illegal practices in both public and private sector.

Transparency International and whistleblowing

Since 2005, Transparency International has been offering services of legal counselling and advice providing assistance to citizens who faced or witnessed corruption and helping whistleblowers – people wishing to report corruption and other serious malpractices at work. In 2009, Transparency International introduced whistleblowing to the Czech Republic as a completely new phenomenon. Since then, we have, on a number of occasions, initiated discussions and awareness rising of this issue. We have gained a body of experience both in terms of possible legislative and non-legislative whistleblowing provisions as well as comprehensive support to whistleblowers. Transparency International has thus promoted significantly the importance of whistleblowing and contributed to discussions on the need for the legal protection of whistleblowers.

In 2013, under the umbrella of a project called Lighthouse in the sea of corruption supported by a grant program of the Ministry of the Interior, we established a TI Centre for Whistleblowing, which responds to the needs of whistleblowers and the demand for services that Transparency International, thanks to our experience in the field and contacts with the key institutions, has to offer. The TI Centre has substituted, to some extent, an institutional support of whistleblowing and whistleblowers. Research has shown that this service is extremely necessary since people seem to be much more willing to blow the whistle and report serious misconduct if they have somewhere to turn to for assistance in case of need. The growing number of our customers, many newly established organisations and projects to assist whistleblowers has confirmed this trend.

The Essence of Whistleblowing

The term whistleblowing refers to the process of revealing malpractice in an organization by ways of providing information to individuals or institutions that may initiate inquiry and, possibly, intervene. In this context, I wish to draw your attention to the fact that whistleblowing is often incorrectly perceived solely as the actual process of reporting malpractice without reference to the examination of the information provided. But the possibility of reporting information to someone who has the authority to deal with the malpractice as well as to objectively and authoritatively enforce remedy is more than substantial since a whistleblower usually lacks any power to take action against corrupt practices.

The biggest obstacle in the world of whistleblowing is the misunderstanding of the term whistleblower. A whistleblower is not a person who would proactively search for information on wrongdoings. A whistleblower is an individual who finds himself or herself rather accidentally in a situation which they must solve or feel that they should do something about. The final action of such individual, however, will ultimately depend on many factors.

In an attempt to introduce a definition of a whistleblower, we can say that is an individual having a privileged access to information about the activities of the organization in which they work (i.e. has access to information different from people from the outside of the organisation) and reports on a serious wrongdoing that may pose threat or damage public interest.

The term whistleblower originated from the words to *blow the whistle*, meaning to cast light to malpractice or wrongdoing. The most commonly used Czech equivalent for this English term is "*oznamovatel*" (a notifier).

Activities of the TI Centre for Whistleblowing

We have been providing whistleblowers with long-term and comprehensive assistance and support. We analyse each case thoroughly and search for the most effective and the least risky solution. Together with the whistleblower, we first clarify the material facts related to the case and determine the type of misconduct, including the extent to which the whistleblower may evidence their suspicions. At the same time, we inform the potential whistleblower on possible risks associated with the respective approaches to the issue. As a result of our Analysis, we recommend the most appropriate strategy for the whistleblower to take- The final decision, however, rests solely with the whistleblower himself or herself since it is them who may face retaliation in reaction to their decision to blow the whistle and to report misconduct.

Should the whistleblower require so, we help formulate the report and recommend whom or where to submit it.

Many whistleblowers decide to report misconduct only if they remain undisclosed and their identity remains protected. Therefore, if it is possible and desirable, we will enter the case under our name to protect the whistleblower's identity.

From our experience we know that there are many people, especially working in the public administration, who are aware of criminal conduct at their workplace or related to where they work. They feel like doing something, but don't want to approach the Police on their own. In such cases, we

act as intermediaries and try to make the Police aware of the issue as on time to allow for proper detection and evidencing of the respective crime. The problem is that corruption plotted and committed in a sophisticated way is very difficult to investigate and the Police often find it very difficult to disclose it without information from inside of the organisation.

Limits of the counselling

We are a non-governmental organization and our counselling therefore has its limits. We cannot promise the impossible and one has to have realistic expectations.

First, it is important to realize that NGOs have no special powers and therefore can neither investigate the case nor impose sanctions. NGOs further analyse all information obtained from whistleblowers and the public sources and, based on their experience and professional know-how, process such information and can indicate directions to take. They cannot, however, guarantee that the relevant public authorities will investigate the case properly and thoroughly and that the conduct of those who bear responsibility for the malpractice will bear consequences.

Regarding the limits of advice provided by non-governmental organizations, there are fairly significant differences between notifiers from the public sector and the private sector. The key tools of all non-governmental organizations in their work are the public sources. Private entities, however, are not obliged to provide information and the legal access to information needed to solve a case is therefore very limited. If the whistleblower refuses to get actively involved in such case, their report of malpractice may "fail" due to the lack of evidence.

The Importance of Counselling

Expert advice provided by non-governmental organizations is long-term and comprehensive and, in addition to the legal advice, provides whistleblowers with psychological support in difficult life situations.

In the Czech Republic nowadays, with no legislative protection or institutional support, counselling offered by NGOs plays a vital role in securing support for whistleblowers. NGOs often initiate "action" and motivate and encourage whistleblowers to provide information as soon as possible, i.e. in time to allow for effective intervention by the law enforcement. NGOs may also serve as an intermediary and help protect notifier's identity by facilitating anonymous submissions or communication with the Police without the notifier having to disclose their identity.

The sooner the whistleblower contacts the NGO expert for advice, the better, ideally before any action taken. At this stage, NGO experts have time and resources to take the relevant steps in the correct order. Early consultation with independent experts may also prevent the whistleblower from taking hasty decisions that may lead to acts which not only fail to resolve the situation, but may lead the whistleblowers into the trap of retaliation from which there is often no escape.

Since the whistleblower is undoubtedly in a weaker position than those whose misconduct they wish to report, the purpose of the legal advice centres is to, at least partially, restore some balance of power.

Understanding of whistleblowing

The most important factor influencing whistleblowers and their situation is the overall social context, i.e. perception of their conduct by the society. Whistleblowing may be widely accepted and considered as a benefit for the entire society but may also be condemned and whistleblowers may be perceived as snitches, troublemakers, or, at best, a mavericks fighting with windmills.

In this context, we should openly discuss arguments, fears and prejudices related to the question of whether and why it is important to protect whistleblowers. It is undoubtedly in the public interest to investigate serious malpractice and corrupt behaviour and prevent negative consequences of such conduct. Our society has the right to be informed about such serious incidents. These are the basic aspects of whistleblowing and all existing legislative and non-legislative provisions take them into account. Are these aspects that determine which reports of wrongdoing are desirable and which are not also the main reason for the existence of respective legislation? Would the intensity of the legal protection be the fundamental factor in the whistleblower's decision whether to report the malpractice or not? Can the legal protection of whistleblowers be the truly safe alternative to silence? What about people who may abuse such legal protection?

We shall try to approach whistleblowing from a different perspective but the rather distant and unsupportive public view. Let's look at it through the eyes of a potential whistleblower and their closest environment. Prior to making any decision, a whistleblower must find answers to numerous fundamental questions. He or she usually concludes that there is no safe alternative to silence. Reporting of malpractice is a difficult and lonely process. The aim of whistleblower's protection is to make their situation easier.

Whistleblowers do not come to us from the Universe and none of them was neither born one nor desired to become a "celebrity". Whistleblowers should be encouraged and supported not so much because it is in the public interest, but rather because we can one day find ourselves in this difficult situation, too, and we will need help. It is also necessary to realize that their actions can help us, too.

Let us perceive whistleblowing through the prism of need for support and protection of whistleblowers. Let's stop searching for reasons not to protect them. High quality legislative regulation of whistleblowing will be of use for each of us one day.

The author studies teaching at the Department of Pedagogy of the Hradec Králové University and the Department of Law, Charles University, Prague. As a student and a fresh graduate, she first worked at law firms and later in the judiciary. She has completed professional exams. She has been working at Transparency International Česká republika since 2010.

Lenka Franková: Activities of Oživení, an NGO, in Support of Whistleblowers

Lenka Franková, Oživení, o. s.

Background

Oživení was founded in 1997 and have dedicated its activities to promoting sustainable transport. Since 1999, under the umbrella of Bezkorupce.cz programme, we've been working on systematic revealing if conflicts of interest and corruption in public administration and improvement of transparency of the public sector. Our main areas of interest include monitoring of conflict of interest and corruption and subsequent dissemination of information to the public, preparation of system related measures including lobbying for legislation and, last but not least, awareness raising and spreading of anti-corruption know-how. Among our goals are transparent and responsible public governance and protection and promotion of democratic principles. To reach this objective, we analyse, facilitate networking of the civil society and activists, act as a watchdog and provide anti-corruption assistance. In 2013, our organisation discontinued its activities in the area of sustainable transportation and became a purely anti-corruption oriented entity.

Whistleblowing (*due to the absence of a proper term in the Czech language, we prefer to use the term *notifier* instead of the English term *whistleblower*) is one of the most important tools used to protect public interest. It helps detect and prevent malpractice, fraud and corruption in both the public administration as well as private companies. It helps protect and save public money, re-install safety and, in some cases, save human lives. Whistleblowing is about active reporting of malpractice or corrupt conduct at (most often) work. Employees are the first to learn about malpractice or corrupt behaviour and have the capacity to blow the whistle. The benefit of whistleblowers in the detection of corruption and its prevention is obvious and proven.

Results of the Economic Crime Survey conducted by PricewaterhouseCoopers Global show that 23 per cent of respondents who faced serious economic crime in their companies learned about the malpractice thanks to a notifier (an anonymous telephone line, various helplines or hotlines, etc.) or somebody reporting it within the organization (PWC 2014). The research conducted by KPMG shows that of the total of 596 analysed economic crime cases, 19 per cent were revealed by a notifier (KPMG 2014). The Czech Republic already has its own examples of cases where notification led to the detection of crime and subsequent punishment of offenders.

In most cases, whistleblowers of malpractice or corrupt conduct face retaliation for their actions and the Czech society often perceives their decision to speak up with embarrassment (if not anything worse). Whistleblowers are often perceived negatively as snitches, condemned as crazy people or, on the opposite end of the scale, celebrated as heroes. The case Analysis of 40 cases of whistleblowers in the Visegrad 4 countries and Estonia have recently confirmed this situation (Oživení/Revival, 2014).

The Czech legislators have already drafted a legislative proposal and a text of an Act to protect whistleblowers. This legislative Initiative and the subsequent proposal activated selected professionals to take more interest in the issue of whistleblowers and their protection and an expert debate followed (e.g. a publication on whistleblowing - Whistleblowing, Jan Pichrt, 2013). Finally, the proposal remained in the drawers and was never submitted to the government, partly for the departure of its initiator and promoter Karolína Peake, former Deputy Prime Minister. The current Government, in its current anti-corruption strategy and the action plan for 2015 announced legislation to protect whistleblowers as one of the four priorities of the government's fight against corruption.

Although at the moment there is no specific legislative idea on the table and protection of whistleblowers has not been included in the plan of legislative activities for 2015, it is not possible to sit back and accept the existing conditions of whistleblowers' protection. Oživení has addressed the issue of protection of whistleblowers at different levels and has been individual counselling, system related recommendations, advocacy, education, and awareness raising activities.

Legal assistance

Oživení has been providing professional legal assistance since 2011, when it launched its anti-corruption line (199) under the Ministry of the Interior. Following the discontinuation of the 199 line in 2012, Oživení continued providing legal assistance to whistleblowers of corrupt behaviour and malpractice. In 2011, the 199 operators received altogether 621 calls, in 2012, we were asked for help by a total of 140 individuals and entities and in 2013, by 356 individuals and entities.

The Oživení legal counsels receive complaints and observations regarding corruption primarily by email at poradna@oziveni.cz or other means, such as through personal contact, by post, or from the press. The legal counsels are often the first point of contact when they need information on how to proceed further. Legal counsels offer assistance in resolving cases and help process submissions or reports. They can also provide assistance in getting proper media coverage of the case, if desired. Sometimes media remain the only means or drawing attention to the issue.

In 2011-2012, most of the individuals receiving extended legal assistance - including, in particular, the analysis of documents provided by the notifier, drafting of a basic case analysis, and recommendations of directions to take – were notifiers. In 2013 and on, we provided extended assistance to dozens of people a year.

The Oživení legal counsels have proven themselves as an effective tool to help. We shall bear in mind, however, that the primary focus of the Oživení legal assistance is counselling in matters related to corruption. Malpractice has many different demonstrations, which we do not cover in detail.

Source: Protection of whistleblowers, an analysis drafted for the purposes of new legislative Initiative in the CZ, (Oživení, 2012).

System related recommendations, advocacy

Analytical work casts light on the problem reflecting both the current level of protection of whistleblowers as well as possible solutions which have unfortunately lacked any significant response by the lawmakers. There is one exception, however, in the minimum protection of whistleblowers embedded in the Civil Service Act. Many foreign countries guide their protection of whistleblowers through their civil service related legislation.

In 2012 we drafted a text called Protection of whistleblowers, an analysis made for the purposes of assisting the legislative efforts in the Czech Republic (2012).

The publication presents a comprehensive set of recommendations for a separate legislation guiding protection of whistleblowers. It is based mainly on the analysis of selected provisions in the Czech legislation, which relate to the protection of notifiers and on a description of foreign regulation with emphasis on examples of good practice, which could be implemented in our country, too.

Subsequently, in May 2014, we drafted an in-depth analysis of personal experience of whistleblowers in the Czech Republic, the Slovak Republic, Hungary, Poland and Estonia. We had 40 personal interviews available to us and based on them, we partly revised our recommendations.

The analysis led to very alarming conclusions. Of the 40 notifiers interviewed, only a single one was not subject to subsequent retaliation for their action. We proposed the following:

- Legislation to protect whistleblowers would first have to define the terms of whistleblowing and notifier. It should apply both to whistleblowers in the public and those in the private sector and should not be limited to employees only.
- Legislators should introduce a system of internal and external notification mechanisms. The method of reporting must be clearly defined and set up and provide for objective and independent investigation. As regards internal mechanisms within the organization, it is recommended to introduce an internal ombudsman. This measure shall be independent of the law.
- We support the idea of establishing an institution to bear responsibility for investigating respective cases, or, at least, to coordinate activities, communication and cooperation of individual organisations and the notifier during the investigation. This doesn't necessarily mean a new institution, but may take the form of extending the current powers and capacity of the public defender of rights.
- Whistleblower protection should be extensive and comprehensive and cover a wide range of potential threats of retaliation as well as compensations.
- A public awareness rising campaign should promote the concept of perception of whistleblowing as means of protecting public interest and public funds as well as means participation at the public governance.

Representatives of Oživení have sought to promote the above recommendations in the current (non) legal context and take various opportunities, such as, for example, their membership of the Working Committee of the Chairman of the Government Council for Whistleblowing.

Education and awareness rising

Many potential whistleblowers finally decide to remain silent primarily for the social stigma assigned to notifiers, fear of retaliation and for insufficient legal protection.

People often have rather blurred idea about whistleblowers and their motivation, which they tend to doubt. Whistleblowers are often perceived though cases heavily covered by the media which fail to explain the entire scope of the conduct or malpractice the whistleblower uncovered. Sometimes the economic or monetary damage seems to be minor, but social impact may be very damaging. The public also won't learn about those cases, where whistleblowing played a preventive role, i.e. the damage was prevented. Such cases are not attractive for the media and the public will never learn about them.

In this respect, we concentrate primarily on awareness raising of whistleblowers. We describe cases in their very detail (in cooperation with the respective whistleblower and pursuant to their consent based on an informed decision to face potential impact of the media coverage). We consider awareness raising campaigns to be the key factor of success.

At the same time, we provide training for employees of the both private and public sectors, e.g. in the field of internal measures (help lines, open lines) in private companies.

Conclusions

In respect of whistleblowing, non-profit organizations are an important stakeholder. In some cases, they are, in the eyes of whistleblowers, much more trustworthy than public institutions. Results of the above mentioned analysis of 40 notifiers showed that more than half of the whistleblowers turned to an NGOs or the media. Within the limit of their capacity, some non-profit organizations recognize individuals for their actions and courage.

It seems that the media and NGOs partially substitute for the non-functioning mechanisms in the public sector and private companies and beyond. Their capacity and ability to support investigation of cases are, however, limited. The range of services such organizations can offer is limited primarily for the lack of personnel and finance. Most NGO are fully dependent on private donors and priorities defined by them.

The key role of the non-profit sector is in providing immediate assistance and guidance to notifiers as well as their protection and confidentiality of their report. The experience gained in such interventions gets further disseminated by means of training and awareness raising campaigns targeted at the public at large as well as in advocacy.

Currently, NGOs are absolutely indispensable for whistleblowers for which they offer a safe harbour. The public authorities have been playing far more passive role. They indeed publicly appreciate whistleblowers who report serious cases of malpractice, but, in most cases, fail to offer a helping hand.

It may happen to any one of us that we may have to blow the whistle. That is why we shall join forces and try to change the current situation, when whistleblowers are, often rightfully, labelled as „kamikaze“

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The author graduated from the Police Academy, Prague, Czech Republic, where she studied law and public security, police management, and criminology. She took special interest in the criminal law, especially regulation of bribery. Since 2011, she has been collaborating with Oživení, where she first worked as an operator of the anti-corruption line 199. Since 2012 she has been working as a legal Counsel in the Oživení legal counselling office providing assistance primarily in the field of free access to information. She co-authored a publication on whistleblower protection called About us - Protection of whistleblowers in the Czech reality and in comparison with other countries (2014). She is a member of the Task Force for whistleblowing under the Chairman of the Government Council for Coordination of Fight against Corruption.

Petr Soukenka: protection of whistleblowers – activities of the Anticorruption Endowment (Nadační fond proti korupci)

Petr Soukenka, Director, Anticorruption Endowment (Nadační fond proti korupci)

Introduction – presentation of the Anticorruption Endowment (hereinafter ae)

The ae was established in 2011 by Karel Janeček, a businessman, Jan Kraus, an actor and a talk show host, and Stanislav Bernard, an entrepreneur. The ae concentrates primarily on the following four areas of activity:

- Own investigative activities,
- Support of whistleblowers,
- Awarding of annual awards for courage
- Legislative activities.

The Anticorruption Endowment awards annual Prizes for Courage to people who had courage to protest or report corrupt conduct or corrupt handling of the public money. So far, the Endowment has awarded 10 Prizes for Courage combined with financial awards. The ten award recipients received in total of CZK 2, 3 million.

In 2011-2014, the ae allocated about CZK 7 million in contributions (grants).

The ae is financed exclusively from donations by private people or entities. So far, the ae received neither state or other subsidies nor any public financing.

Anticorruption Endowment – Protection of Whistleblowers in Practice

The Anticorruption Endowment is fully aware of the fact that whistleblower protection as a long and complex process. From the perspective of the Anticorruption Endowment, a whistleblower is an individual who turns to the Fund for professional help or advice they can trust. From the very moment the notifier communicates their story and the story gets subsequently accepted as a case within the scope of the Fund's activities, the fate notifier's fate, to a certain extent, falls in the hands of the Anticorruption Endowment. The underlying principle and the rule is that the interest of the notifier is superior to the interests of the Fund. This means that it may happen that the notifier, at some stage in the development of their case, decides to take a direction that does not fully correspond with the approach and expectations of the Fund. So far, this rule has always been respected both by the Board and the donors.

Our experience shows that decisions made by notifiers and their approach to various aspects of their situation depend on many factors, e.g., among others, their communication with the employer of the Fund who is in assistance to them. The relationship of the notifier with the contact person assigned by the Fund is very personal and sensitive. Moreover, the entire process may last several months to years.

The Anticorruption Endowment provides whistleblowers with free legal services and counselling. These services are provided both in respect to the case that the notifier brought to the Fund's

attention as well as aspects relation to the notifier's protection in case they would, for example, face dismissal from work or should there be criminal proceedings initiated against them. Two men, who were awarded the Price for Courage, Mr. František Mráček and Jiří Chytil, serve a good example of the above. Mr. Mráček received funding for legal services he sought in connection to a court action he filed for annulment of dismissal. Mr. Chytil was granted funding to cover legal services related to the criminal prosecution he face in the Opencard case.

The Anticorruption Endowment, in keeping with its internal rules, awards an annual Price for Courage. The award is a moral appreciation of the notifier's courage and contains a financial element as well. All the awarded individuals used most of the funds received to cover costs related to their dismissal from work or legal services they sought in respect of their employment or criminal proceedings initiated against them.

The Anticorruption Endowment also provided for physical/personal protection of whistleblowers, since there was a reason to believe that their life or health and life or their family members may be in danger. It is undoubtedly true that in these cases, the Police should play the crucial role in protecting citizens. Hands of the Police, however, are tied by legal restrictions, while the Anticorruption Endowment may respond flexibly and efficiently. The Anticorruption Endowment is limited solely by its capacity to finance its activities related to the personal protection of the respective individual. Since costs related to personal protection are significant, such activities are rather exceptional.

The Anticorruption Endowment may, if necessary, provide accommodation and relocation to the notifier in danger, including accommodation and relocation of their family until such protection will have been granted by the law enforcement.

Last but not least, the Anticorruption Endowment may act as an intermediary between the notifier and the law enforcement bodies involved in the criminal proceedings. The reason for such mediation is obvious – whistleblowers' distrust in the official authorities remains very high. The Anticorruption Endowment essentially guarantees that the notifier will not be subjected to some non-standard treatment by the Police.

The Anticorruption Endowment has implemented a risk management system, which should help reduce risks associated with violations of confidentiality of the whistleblower - especially in cases where such protection is sought by the notifier for a particular reason.

Conclusions

From our experience we conclude that even if the Czech legislators managed to embed protection of whistleblowers in the law and even should such legal provision be absolutely bullet proof and perfect, one cannot expect a substantial increase in the number of courageous people whose step out and blow the whistle. There are many reasons to conclude so, be it the wide spread practice of labelling these people as "snitches", historical and social reasons, laziness, fear, indifference, you name it.

I also believe that, should the public authorities establish, at some point in the future, a facility (e.g. a whistleblowers centre), which would become a focal point for notifiers. Its functioning would depend mainly on the credibility of such institution. The general distrust in public institutions is very

high

and there is virtually no public institution, which would, in a long term, be able to win the public trust. The only exception to this unfortunate rule is the office of the Public defender of Rights (Ombudsman).

The author is the director and analyst of the Anticorruption Endowment (Nadační fond proti korupci). He studied machine engineering at the Czech Technical University (ČVUT) in Prague and subsequently worked for the military and medical insurance company, where he was in charge of security risks. He was one of the founding fathers of the Anticorruption Endowment.

Potential Functions of a Whistleblowers Centre in the Czech Republic

Conclusions of a research paper on Potential Functions of a Centre for Notifies – a Whistleblowers Centre in the Czech Republic by Ann Myers and Petr Leyer

The two authors of the research paper on Potential Functions of a Centre for Notifies – a Whistleblowers Centre in the Czech Republic (hereinafter only the “research paper”) intended to analyse key aspects of such activity and to make recommendations as to an establishment of such Centre in the CZ based on an analysis of the current legislative and institutional support of notifies of malpractice and corrupt conduct in the both public and private sectors. The following text is a brief summary of the key findings of the authors.

The authors derive their recommendations from the current situation in respect of protection of whistleblowers in the CR. In the CR at the moment, there is no single legal instrument to provide for complex guidance in whistleblowing and protection of whistleblowers. Protection of whistleblowers is, however, to some extent embedded in the Labour Code, Code of Criminal Procedure, and some other binding legal instruments. The Labour Code, for example, guarantees employees fair treatment and the Code of Criminal Procedure stipulates the obligation to report crimes, including those related to corruption.

In 2014, the Government had enacted its Regulation to lay down rules to protect public servants who reported their suspicion of unlawful conduct. It stipulates, among others, measures to be taken to protect such notifiers. The Regulation, however, concerns solely the public servants.

In its Anti-corruption Strategy and the related Action plan, the current government declared protection of whistleblowers as one of its key priorities under the umbrella of its fight against corruption. For this reason, the Chairman of the Government Council for Coordination of Fight against Corruption established, in 2014, a dedicated task force (hereinafter only the “task force”). The key activity of the task force with a membership of representatives of various ministries, NGOs, or the academia, is to, among others, prepare a draft text of the future provision to protect whistleblowers.

In the CR, legal counselling in respect of whistleblowing is the domain of Transparency International Česká republika and Oživení o. s. Both organisations provide free counselling and assistance to notifiers of corrupt practice. Both providers are financed from diversified sources and combine public financing (e.g. from the Ministry of the Interior) and private sources¹. In 2014, Transparency International Česká republika provided 536 consultations in legal matters while Oživení provided legal assistance in 318 cases. There are other providers of support, such as wbos.cz and Anticorruption Endowment (Nadační fond proti korupci).

¹ More information available in annual report Transparency International Česká republika: <https://www.transparency.cz/vyrocní-zpráva-2014/> and Oživení available at: <http://www.bezkorupce.cz/vyrocní-zpravy/>

The above brief analysis of the current situation in respect of protection of whistleblowers served the authors as a background for their recommendations for the Czech authorities.

Before getting to particular demodulations to improve the situation of whistleblowers in the CR, the authors concentrate on the analysis of key aspects of whistleblowers support, which are the following:

- Institutional support;
- Well-functioning mechanism of receiving and examining reports of unlawful conduct
- Systematic and regular monitoring and evaluation of established parameters pro whistleblowers protection and public awareness campaigns.

The current trend in most European countries is to improve legal and strengthen legal protection of those, who decide to report unlawful conduct (in 2014, Slovakia introduced in instrument to strengthen legal protection of whistleblowers, in 2015 it was Serbia). As regards institutional mechanisms, the key is that each notifier/whistleblower who decides to report information in public interest had at their disposal both internal and external channels for reporting. Unfortunately, it has remained so that whistleblowers often have to search for the most efficient way to blow the whistle. Often times, their efforts bear no fruit. Currently, most notifiers decide to blow the whistle with a representative of the institution in which they encountered the respective malpractice. Only after failure to solve the issue with the employer, they decide to turn to external stakeholders, including the media. In such phase, however, it may be very difficult to investigate, what had happened. Moreover, such approach can be hardly used to prevent malpractice or corrupt conduct.

The key prerequisites for high quality institutional background are good conditions for whistleblowers protection and proper investigation of unlawful conduct. In this context, the authors recommend the Czech Government to review the role and powers of the supervisory bodies in both private and public sectors (the National Audit Office/NKÚ, the State Environmental Inspection/ČIŽP, etc.), to strengthen the role of the Public Defender of Rights and other similar institutions that may play a crucial role in protecting whistleblowers against retaliation. The Government shall also establish an institution which would oversee investigation of individual cases².

In the context of effective mechanisms for receiving and investigating notifications, the authors of the research paper highlight two key aspects of the protection of whistleblowers – the access to independent and confidential counselling and the need to protect employees in both the public and private sectors. Protection of whistleblowers in both sectors is necessary due to their interdependence - activities of private companies naturally impact the public interest.

The authors pay increased attention to the whistleblowers' access to the expert, independent and confidential counselling. Such access plays a crucial role especially in the early stages of the reported cases when the notifier needs to confidentially consult their findings in particular with regard to the need to assess the seriousness of the misconduct, to choose the relevant subject to report the malpractice to matter and to consider and evaluate potential consequences of the whistleblower's actions, including the protection available. Besides the initial consultation, the notifier often needs help with representation in litigation or assistance and consultation

² As an inspiration we can use the Office of Special intendant (USA) or The office of public ombudsman (NL)

in matters other but legal, such as psychological and moral support or financial means to make the ends meet. In this context, the authors point out the fact governments often fail to recognize the need for counselling and assistance, the fact which is easy to evidence by the fact that in Europe there is only one single government-funded counselling centre for whistleblowers³. In most countries, services of counselling and assistance are provided by NGOs.

The longest running non-profit non-governmental organization, supporting whistleblowers - the British Public Concern at Work - was launched in 1993. The organization receives no financing from the government budget and operates solely on donations from individuals and businesses as well as grants for selected projects. Its aim is to protect society by assisting and protecting whistleblowers and promoting corporate social responsibility. The Public Concern at Work provides advice to whistleblowers and helps organisations introduce comprehensive internal mechanisms for disclosing and reporting malpractice. Last but not least, the organisation has been actively promoting legislative changes. Since 1993 the organization has provided assistance and support to over 18 thousand notifiers.

The above mentioned publicly financed Adviespunt Klokkenuiders, a Dutch consulting centre for notifiers (established in 2012) serves another example of an organisation providing assistance to whistleblowers. This advisory centre was incorporated in the organisational structure of the Dutch Ministry of the Interior and the Ministry of Social Affairs but has remained independent of them. The main activity of the centre is to provide advice to anyone who may suspect unfair practice taking place at workplace which threatens or violates public interest. Furthermore, the centre collects information and analyses trends in the field of malpractice and unlawful conduct using this knowledge to disseminate information to the relevant bodies. In 2013, the counselling centre received 435 requests for assistance or guidance of which 61 cases involved support for whistleblowers. Moreover, in 2016, the Dutch parliament adopted a new law establishing the Whistleblowers' House in charge of investigation of malpractice as well as counselling. The Act also imposes new obligations on employers regarding internal notification mechanisms⁴.

Besides institutional support and mechanisms for receiving and investigating reports, whistleblowing requires, as a key aspect of promoting whistleblowing, proper monitoring and regular assessment of trends and existing rules and regulations. Without monitoring and regular assessment, enforcement would not be complete. The British Public Concern at Work serves a good example of an organization that monitors current trends. It conducts regularly a comprehensive review of judicial decisions or commissions public opinion surveys. In the USA, its equivalents would be the OSC, SEC, the Government Accountability Project and the Project on Government Oversight.

Finally, the authors propose specific recommendations to improve protection of whistleblowers in the Czech Republic. In the spirit of the previous text, the whole exercise shall be approached mainly as a legislative and institutional reform. Specifically, the legislators should better anchor in the legislation the existing task force and clearly define its position, competences, membership, and responsibilities. The task force should become a professional guarantor of the development of the legal framework for protection of whistleblowers. Its initial efforts should concentrate on drafting a high quality and well founded proposals for a legal reform. Next to the independence

³ Consulting Centre for whistleblowers Adviespunt Klokkenuiders in Netherlands

⁴ More at: <http://kvdl.nl/en/news/dutch-senate-adopts-house-for-whistleblowers-act/>

of the task force, it is very important to secure expertise and representativeness of its members, among whom the authors propose representatives of whistleblowers and the private sector. Without that, it would be rather difficult to increase public awareness of the issue of whistleblowing. One option is also to strengthen the mandate of the task force and make it into an interagency body.

Once the respective legislation followed by an institutional reform will have been completed, the authors recommend amendment of the existing task force into a Monitoring and Evaluation Committee, which would regularly monitor and evaluate key aspects of the newly introduced rules. The Committee would then submit its recommendations to improve the system to the Parliament.

Regardless of the existing legal, regulatory or institutional framework, it is necessary to ensure direct support for whistleblowers under the current conditions. The current Government support is provided in mainly in the form of financial support for anti-corruption activities of selected NGOs. In this context, the authors pose a question of how to provide the professional assistance to whistleblowers with more stable grounds and how to help protects and assist notifiers of malpractice other but corruption.

The Government should also consider establishing a special commission who's to provide independent and confidential legal advice to whistleblowers reporting malpractice (hereinafter only the "special commission"). The special commission should have at least four members representing the private sector, the public sector, trade unions and legal experts. As its first task, it should make recommendations for a system to provide for counselling of whistleblowers, whether through existing legal services provided by non-profit organizations, launching of confidential electronic tools and services, or funding from several Government agencies' budgets. The special commission should further address the issue of legal assistance in complex cases and litigation and other forms of assistance, e.g. psychological, moral and so on. The Whistleblower Centre is one of the proposed options and the special commission could help establish and develop its activities and services.

The special commission would submit its draft recommendations to the Chamber of Deputies and the Senate as well as to representatives of employers and employees.

As an inspiration for establishment of such a commission we could use above mentioned Dutch organization Adviespunt Klokkeluiders. This organization should be studied in more details.

The purpose of recommendations mentioned in the research paper is especially support of the government in efforts up to now and fulfilment of government's priority of legal protection of whistleblowers.

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Conclusions

The European Parliament has concluded that it is essential for Member States to protect whistleblowers/notifiers. To ensure public control of both national governments and the EU institutions and their functioning, the European Parliament envisages good and enforceable legislation to protect whistleblowers. In March 2015, the European Parliament issued a Resolution to the European Commission in which it invited the Commission to help promote enactment of the relevant legislation.

In the Czech Republic, notifiers of malpractice often face retaliation for their actions. The Czech society perceives them with some degree of embarrassment – the scale of perception ranges from a negative perception of whistleblowers as snitches, through their condemnation as fools to glorification of whistleblowers as heroes.

The current will of the government to tackle the issue of their protection should be accompanied by a public discussion of all those who have their say in this phenomenon, as was the case of the workshop this material derives from. Should the Czech Government decide to adopt an approach based on recommendations of experts, protection of whistleblowers may increase and become true and fair.