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The legislation on whistleblowers' protection in the Slovak Republic

Ustawodawstwo dotyczące ochrony tzw. *Whistleblowers*
w Republice Słowackiej

Abstract

The aim of the article is to present the content of the legal regulation on the protection of whistleblowers in the Slovak Republic. The purpose of the new legislation was to establish efficient and effective whistleblowers' protection, the report whereof can contribute or contributed significantly to the clearing up of corruption or other serious antisocial activity and to disclosing or convicting its offender, based on the information that came to his or her knowledge in connection with the execution of his or her employment, profession, position or function. The need to introduce protection of whistleblowers of corruption crime in the legal system of the Slovak Republic ensued from a number of international obligations and recommendations, by which the Slovak Republic is bound. One of them is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the international organization OECD.

Keywords

corruption crime, serious antisocial activity, protected whistleblower, request for protection in criminal proceedings, internal system for dealing with complaints

Streszczenie

W artykule niniejszym zaprezentowane zostaną rozwiązania prawne poświęcone ochronie tzw. *whistleblowers* (osób ujawniających naruszenia prawa i inne nieprawidłowości, dalej: „ujawniający”) w Republice Słowackiej. Celem nowych przepisów było ustanowienie wydajnej i skutecznej ochrony ujawniających, których zgłoszenia mogą przyczynić się lub znacząco przyczyniły się do wyjaśnienia przypadków korupcji bądź innych zachowań godzących w interes społeczny oraz do ujawnienia lub skazania sprawcy, w oparciu o informacje uzyskane przez ujawniających w związku ze świadczeniem pracy, wykonywaniem zawodu, zajmowaniem stanowiska lub pełnieniem funkcji. Potrzeba wdroże-

nia w systemie prawnym Słowacji ochrony osób ujawniających przestępczość korupcyjną była pochodną licznych międzynarodowych zobowiązań i rekomendacji wiążących Słowację. Jednym ze źródeł takich zobowiązań jest Konwencja o zwalczaniu przekupstwa zagranicznych funkcjonariuszy publicznych w międzynarodowych transakcjach handlowych przyjęta na forum Organizacji Współpracy Gospodarczej i Rozwoju (OECD).

Słowa kluczowe

korupcja, działania poważnie naruszające interes społeczny, ochrona ujawniającego, wniosek o ochronę w postępowaniu karnym, wewnętrzny system postępowania ze skargami.

1. Introduction

Corruption is one of the most daunting challenges of the 21st century. Bad governance, corruption, abuse of power and lack of responsibility are almost associated, eroding the institutions from the inside and making vulnerable both their functioning and socio-economic development. Corruption, especially in the public sector, includes many facets, which determines inefficiency, bureaucracy, affects the proper functioning of democracy and the constitutional state, threatening by the very diverse forms that it may take, the national and international security.

The treaty regarding the functioning of the European Union recognizes corruption as a serious crime, with cross-border dimensions, which the states are not prepared to approach on their own. Corruption is mentioned as an area of particularly serious criminality, alongside terrorism, human trafficking, weapons, drugs, money laundering, computer and organised crime. Regardless of the nature and extent of corruption, it affects all member states and the European Union as a whole, by reducing investment, by the negative impact on the rightful functioning of the internal market field and by reducing the public finances. Moreover, corruption may undermine confidence in democratic institutions and may decrease the trust given to political leaders.

Many international organizations and institutions, which are dealing with corruption at the international level, adopted a number of international conventions and recommendations to prevent the spread of this negative social phenomenon. International conventions define generally the legislative instruments and institutional arrangements for preventing and combating of corruption offenses, therefore their practical application in the Member States with different legal systems is significantly different. The provisions of the international conventions are not directly binding the Member states, but they are based on obligation to incorporate them into the legal system and ensure their effective implementation and full functionality. One of these international conventions

is the OECD Convention on Combating Bribery of the Foreign Public Officials in International Business Transactions (hereinafter “the Anti-Bribery Convention”)¹.

2. Preconditions on whistleblower protection

International instruments aimed at combating corruption recognized the importance of having whistleblower protection laws in place as part of an effective anti-corruption framework. Whistleblower protection requirements have been introduced in the Anti-Bribery Convention and related the 2009 Recommendation², the 1998 OECD Recommendation on Improving Ethical Conduct in Public Service³, the United Nations Convention against Corruption⁴, the Council of Europe Civil Law Conventions on Corruption⁵ and Criminal Law Conventions on Corruption⁶, the Inter-American Convention against Corruption⁷, and the African Union Convention on Preventing and combating corruption⁸. The conventions advise countries to provide clear rules and procedures for whistleblowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.

Recognising the role of whistleblowing in corruption-fighting efforts, many countries have pledged through international conventions to enact whistleblower protection laws. And, ever more governments, corporations and non-profit organisations around the world are putting whistleblower policies and procedures in place. It is essential, however, that these policies provide accessible disclosure channels for whistleblowers and meaningfully protect whistleblowers from all forms of retaliation. It also helps businesses prevent and detect bribery in commercial transactions. The protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption and other wrongdoing is therefore integral to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment.

Public and private sector employees have access to up to date information concerning their workplaces' practices, and are usually the first to recognise wrongdoings. How-

¹ https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf [access: 19.05.2019].

² OECD Anti-Bribery Convention, 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Section IX. iii. and Section X. C. v., and Annex II to the Recommendation, *Good Practice Guidance on Internal Controls, Ethics and Compliance*, Section A.11.ii.

³ OECD Recommendation on Improving Ethical Conduct in the Public Service, Principle 4.

⁴ United Nations Convention against Corruption (UNCAC) Articles 8, 13 and 33.

⁵ Council of Europe Civil Law Convention on Corruption, Article 9.

⁶ Criminal Law Conventions on Corruption, Article 22.

⁷ Inter-American Convention against Corruption, Article III (8).

⁸ African Union Convention on Combating Corruption, Article 5(6).

ever, those who report wrongdoings may be subject to retaliation, such as intimidation, harassment, dismissal or violence by their fellow colleagues or superiors. In many countries, whistleblowing is even associated with treachery or spying. Whistleblower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. Providing effective protection for whistleblowers supports an open culture where employees are not only aware of how to report but also have confidence in the reporting procedures.

Transferring whistleblower protection into legislation legitimises and structures the mechanisms under which whistleblowers can disclose wrongdoings in the public and private sectors and protects them against reprisals. If it is adequately implemented, legislation protecting whistleblowers can become one of the most effective tools to support anti-corruption initiatives, and detect and combat corrupt acts, fraud and mismanagement. The absence of appropriate legislation impedes the fight against corruption and exposes whistleblowers to risks of retaliation. The enactment of a comprehensive, dedicated law as the basis for providing whistleblower protection is generally considered the most effective legislative means of providing such protection.

Comprehensive and standalone legislation may give the law heightened visibility, thereby making its promotion easier for governments and employers. This approach also allows for the same rules and procedures to apply to public and private sector employees, rather than a more piecemeal approach through several different laws, which often only apply to certain employees. The enactment of stand-alone legislation can also contribute to ensuring legal certainty and clarity. However, providing protection to whistleblowers through specific provisions in different laws may constitute a fragmented approach and result in protection only of specific persons or for the reporting of specific offences. This may create loopholes in the legal framework and lead to legal uncertainty and ambiguity.

Whistleblower protection mechanisms should include channels by which protected disclosures can be made. These could include internal disclosures, external disclosures to a designated body, and external disclosures to the public. An online or telephone whistleblower hotline could be established to facilitate the reporting of wrongdoing, especially related to corruption. Moreover, to encourage whistleblowing, a rewards systems, including monetary rewards, could be included as part of the whistleblower protection mechanism. Where trustworthy internal mechanisms are not in place, the media might be addressed by whistleblowers to disclose wrongdoings publicly. A functioning system of free, independent and responsible media is key to facilitating public disclosure, when appropriate.

A clear definition of the scope of disclosures that are afforded protection should be provided in order to ensure legal certainty and clarity to potential whistleblowers. Also

a clear procedure and effective channels for reporting retaliation against whistleblowers should be available. Experience has shown that the establishment of specific independent bodies with the legal capacity to receive complaints related to retaliation against whistleblowers, to investigate these complaints and to provide remedies has proved effective.

Retaliation for whistleblowing usually presents itself in the form of disciplinary actions or harassment in the workplace. Therefore, broad protection of the whistleblower's employment status should be provided, including against unfair dismissal, direct and indirect disciplinary action and discrimination particularly with regard to remuneration, training, assignments, professional promotion, or contract renewal. In addition a mechanism that provides anonymity or confidentiality to the whistleblower while also ensuring robust protection and sanctions for disclosing the identity of the whistleblower can strengthen such protection.

The act of reporting and the related protection may be superseded by other laws which prohibit the release of information. Many countries count on Official Secrets Acts, which prohibit the release of information obtained under government employment under certain circumstances. Experience also shows that a similar barrier exists in the form of libel and defamation laws, which are used to deter whistleblowers from disclosing illegal activities. Whistleblower protection mechanisms need to be balanced when contrasted against the duty of loyalty to an organisation and to other agreements of nondisclosure. As the European Court of Human Rights held on a recent case, the public interest in being informed about the quality of public services outweighs the interests of protecting the reputation of any organisation.

An effective whistleblowing protection mechanism needs to take into account these obstacles and other legal hurdles to disclosure, and to protect "good faith" whistleblowers from civil and criminal liability. Whistleblower protection should be supported by effective awareness-raising, communication and training efforts. Communicating to public or private sector employees their rights and obligations when exposing wrongdoing is essential. Raising awareness about the value added of reporting wrongdoings and related protection for the whistleblower contributes to changing negative cultural perceptions and public attitudes towards whistleblowing which may be considered an act of loyalty to the organisation.

Steps should also be taken to evaluate the effectiveness of the whistleblower protection laws and policies. Systematically collecting data and information is a means of evaluating the effectiveness of a whistleblowing mechanism. An independent public body could ensure systematic data collection regarding the number of cases, if follow-up took place and the results obtained. Such efforts play a key role in assessing the progress or lack thereof in whistleblower protection mechanisms.

All the above mentioned aspects of whistleblower protection as well as recommendations of international organisations were in the consideration and implemented into the new legislation on whistleblowers protection in the Slovak Republic. The Slovak National Centre for Human Rights is the central body, which in accordance with the valid Act conducts awareness-raising activities with focus given to reporting and to granting the protection of whistleblowers and ensures systematic data collection regarding the number of cases in the Slovak Republic.

3. The OECD system of monitoring anti-corruption efforts

A clean and competitive global economy is impossible if companies and individuals continue to bribe in their international business dealings. Bribery distorts markets and raises the cost of doing business. Today, among the states the vast majority, which are the world's major exporters and investors have joined the Anti-Bribery Convention and become Members of the OECD Working Group on Bribery in International Business Transaction (hereinafter "the Working Group on Bribery")⁹ in order to effectively combat this crime.

The Anti-Bribery Convention is one of the world's most powerful tools to promote more transparent international business practices. It sets the highest and toughest standards for fighting bribery in business. Bribing public officials in international business transactions is a crime that distorts markets and undermines good governance. Proper implementation and active enforcement of the Anti-Bribery Convention can help countries save billions of dollars and improve public services by increasing competition and transparency in their public procurement systems.

The Secretary General of the OECD, Mr. Angel Gurría, said: "Twenty years after the Anti-Bribery Convention came into force, the Working Group on Bribery, which is comprised of the 43 Parties to the Anti-Bribery Convention, continued to assess the effectiveness of its members' legislative and institutional frameworks for combating the supply-side of bribery of foreign public officials. The reviews showed progress in a number of areas including an increased use of corporate fines and improved whistleblower protections in several jurisdictions".

The Anti-Bribery Convention is the only international, legally binding instrument to focus exclusively on the bribery of foreign public officials in international business. This focus has allowed the Parties to the Convention, under the auspices of the Working Group on Bribery, to rigorously monitor performance of each of the Parties since the

⁹ <http://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyin-internationalbusinesstransactions.htm> [access: 19.05.2019].

Convention entry into force in 1997. Process of the monitor and mutual evaluations of the Parties to the Convention consists of several Phases. The Working Group on Bribery meets four times per year at the OECD in Paris and publishes all of its country monitoring reports on the OECD website¹⁰.

The Slovak Republic was evaluated in three performed Phases of the OECD evaluations. The Report on the Slovak Republic form Phase 3 OECD evaluations by the Working Group on Bribery evaluates and makes recommendations on the Slovak Republic's implementation and enforcement of the Anti-Bribery Convention and the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, adopted on 26 November 2009 (hereinafter "2009 OECD Recommendation")¹¹.

The Phase 3 Report on implementing the Anti-Bribery Convention in the Slovak Republic and its recommendations reflect findings of members of the OECD Secretariat and the evaluators from Norway and Turkey and was adopted by the Working Group on Bribery. It is based on legislation and materials provided by the Slovak Republic, as well as information obtained by the evaluation team through its three-day on-site visit to the Slovak Republic. During the on-site visit team of evaluators met representatives of the Slovak Republic's public administration, judiciary, private sector and civil society.

The Phase 3 Report on implementing the Anti-Bribery Convention in the Slovak Republic¹² recommends that "With regard to whistleblower protection systems in the Slovak Republic, the lead examiners encourage the Government to complete its drafting of whistleblower protection legislation for both public – and private-sector employees, as foreseen in the initial draft law under consultation via an inter-ministerial procedure at the time of the on-site visit. The lead examiners recommend that the Government urgently pass whistleblower protection legislation and, once passed, take steps to raise awareness of these new protections".

On the basis of the 2009 OECD Recommendation, the Member countries should ensure: „appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions“. The 2009 OECD Recommendation calls on Convention countries to establish whistleblower reporting mechanisms and protections for public and private sector employees, and to periodically review their laws implementing

¹⁰ www.oecd.org/daf/anti-bribery [access: 19.05.2019].

¹¹ <http://www.oecd.org/daf/anti-bribery/44176910.pdf> [access: 19.05.2019].

¹² <http://www.oecd.org/daf/anti-bribery/SlovakRepublicphase3reportEN.pdf> [access: 19.05.2019].

the Convention and their approach to enforcement in order to effectively combat international bribery of foreign public officials.

In order to perform international obligations under the Anti-Bribery Convention and related the 2009 OECD Recommendation the Ministry of Interior of the Slovak Republic elaborated draft legislation on whistleblowers protection. Because of the nationwide importance non-government organization, Transparency International Slovakia¹³ has participated on preparation of this draft law. Government of the Slovak Republic approved a draft law by the Act No. 307/2014 Coll. on Certain Measures Relating to Reporting of Antisocial Activities and on Amending and Supplementing Certain Acts (hereinafter “the Act”), which entered into force on 1 January 2015.

4. Act No. 307/2014 Coll. on Certain Measures Related to Reporting of Antisocial Activities and on Amending and Supplementing Certain Acts

Despite the fact that international documents have tendency to protect only whistleblowers of corruption, the Act on Certain Measures Related to Reporting of Antisocial Activities and on Amending and Supplementing Certain Acts besides setting the protection for whistleblowing of corruption, the protection also set for whistleblowing of any other antisocial activity. Protection applies to an employee, the report whereof can contribute significantly to the clearing up of serious antisocial activity¹⁴ and to disclosing or convicting of its offender, based on the information that came to his knowledge in connection with the execution of his employment, profession, position or function.

According the Act the protection of an employee itself depends on whether he made such report outwardly, in the form of a criminal complaint or motion to commence proceedings on administrative offence, or whether such report was made by him inwardly to his employer within an internal system.

If there is criminal proceedings or administrative offence, prosecutor or court consider whether the employee fulfills conditions for being a whistleblower and if the protection against employer can be given. By Protection, it is meant additional approval of all steps made by employer in labor relation by Labor Inspectorate.

¹³ Nechala P., *Chránené oznamovanie (Whistleblowing)*, Inštitút pre verejné otázky, Bratislava 2014, p. 106.

¹⁴ Criminal offences of damage done to the European Communities' financial interests, criminal offences of deceitful practices in public procurement and public auction, criminal offences committed by public officials, corruption criminal offences, criminal offences attracting the penalty exceeding 3 years, administrative infractions for which the fine amounting to 50,000. – euros may be imposed.

4.1. Criminal Complaint or Motion to Commence Proceedings on Administrative Offence

A request for protection in criminal proceedings is lodged by a complainant to the prosecutor, except for proceedings before the court where a request is lodged with the court that hears the case. A request for protection in the proceedings on administrative offence is submitted to the administrative authority. In the case of criminal proceedings or proceedings on administrative offence, the prosecutor or the court in criminal proceedings, or the administrative authority in the proceedings on administrative offence, evaluates whether an employee meets the whistleblower law requirements, and whether he is entitled to be granted protection against his employer.

The prosecutor, court or an administrative authority forthwith notifies in writing the Labour Inspectorate, employer and the whistleblower of the protection to be provided to the latter. After notifying of the employer, the reporting person shall become the protected whistleblower. However, the person may request the prosecutor only to be issued the letter confirming his position of the whistleblower without disclosing his identity to his employer. He may use such confirmation for the suspension of any action changing the employer-employee relations.

The protection is provided in such a way that the Labour Inspectorate have to agree with any employment action of the employer against an employee, for which the consent of the employee is not required. The employer has to file an application for granting approval to the Labour Inspectorate. Prior to awarding the approval, the Labour Inspectorate allows the protected whistleblower to comment on the proposed employment action.

The Labour Inspectorate grants approval to the employer only if the employer proves that the employment action concerned does not have a causal relationship with the act of reporting. The employer is obliged to bear the burden of proof. A decision rendered by the Labour Inspectorate may be appealed both by the employer and by the protected whistleblower. The Administrative Procedure Code shall apply to such proceedings.

In order to prevent abusing of the system of reporting, the protection of the protected whistleblower expires upon:

- a) Delivery of the written notice sent by the protected whistleblower that he waives the protection granted by the Labour Inspectorate,
- b) Termination or expiry of the employment relationship of the protected whistleblower,
- c) Termination of criminal proceedings or proceedings concerning administrative offence; the protection, however, does not cease to exist when the criminal proceedings end up by referring the case to another authority,

- d) Conviction of the protected whistleblower for the criminal offence of false accusation or the criminal offence of false testimony and perjury related to the act of reporting, or
- e) If it is proved that the report was not made in good faith.

The Ministry of Justice may grant to the whistleblower, upon his request, a monetary reward of up to 50 times the minimum wage if the criminal proceedings were concluded by a final and conclusive judgment whereby the offender was found guilty of a criminal offence, or if the administrative proceedings were concluded by a final and conclusive decision whereby the commission of an administrative offence has been proved.

The authority which provided protection to the whistleblower is obliged to notify him of coming into force of the above decision. An application may be submitted by the whistleblower within the period of 6 months of receiving notification of the decision. There is not legal entitlement to such reward. When making a decision on granting the reward, the degree of assistance provided by the whistleblower in the process of clarification of serious antisocial criminal activity is taken into account. The Ministry of Justice decides on the application within the period of 6 months.

4.2. Reporting within Internal System

In regard reporting within Internal System, there is provision for all public authorities and medium and for large enterprises (employers having at least 50 employees) the obligation to establish an internal system for dealing with complaints, including anonymous reporting by the employees who have insider knowledge of antisocial activities.

Under the Act every aforementioned employer have to designate a responsible person or a separate organizational unit for receiving and processing of motions, which is directly answerable to a top management of the company or to the public authority. The employer also have to create communication channels through which the staff can put forward such motions and determine time limits for their processing and for notifying the employees of their outcomes. The employer is also obliged to keep records of filed motions for the period of 3 years. There is also the obligation of the employer to issue an internal regulatory act.

The person who filed a motion and who deems that, in this connection an action changing the employer-employee relations has been made against him, may request the Labour Inspectorate to suspend this employment action within 7 days. After examining the action concerned, the Labour Inspectorate issues a decision on suspension of such action, and it serves it on the employer and on the person who filed the motion. If the Inspectorate dismisses the request, it notifies the person of the grounds.

The Labour Inspectorate advises in writing the person who filed the motion of the possibility to lodge a petition for a preliminary injunction with the court. The protection provided by the Labour Inspectorate is temporary; it expires by lapsing of 14 days from the delivery of the letter of confirmation. Its continuation is connected with lodging a petition for a preliminary injunction.

Through this new power, the labour inspectorates may immediately suspend an action changing the employer-employee relations if reasonable suspicion is present that it was taken as a retaliatory personnel action against the employee for reporting antisocial activities carried out by the employer. A subsequent petition for preliminary injunction filed with the court extends the duration of the suspension validity until the court renders the decision on the petition.

4.3. Other legislative provisions of whistleblower protection

An important change in the protection of the employee against undue sanctions by the employer for filing the report is the extension of the prohibition of discrimination also to the prohibition of discrimination on the grounds of reporting antisocial activities, in addition to the existing grounds. As a consequence, legal grounds for protection came into existence: a possibility to seek the court order to refrain from any act of discrimination, rectify a wrongful situation, or to provide adequate satisfaction, reversal of the burden of proof on the defendant.

Failure to comply with the obligations of natural persons and legal entities related to the granting of consent for the protection when reporting serious antisocial activities and to the suspension of an action changing the employer-employee relations is sanctioned by the Labour Inspectorate, which is authorized to impose, even repeatedly, a fine of up to 500 euros, just like in the case of obstruction of performance of the labour inspection activities pursuant to the Labour Inspection Act.

An employer who failed to fulfil any of its obligations in connection with the internal system of processing reports or with keeping records of motions may be imposed a fine up to 20,000 euros by the Labour Inspectorate.

The whistleblower and the entity whose employment action has been suspended have the right to legal aid by virtue of the Act on the Provision of Legal Aid to Persons in Material Need, applicability whereof has been extended also to legal aid provided to the persons reporting serious antisocial activity. Another advantage, which is meant to motivate employees to announce antisocial activity, which they got known about in relation with their employment, is no limitation of salary compensation in case of invalid termination of employment.

The Slovak National Centre for Human Rights collects information about whistleblowers and conducts awareness-raising activities with focus given to reporting and to granting the protection pursuant to this Act.

Approval of the draft Bill on Certain Measures Related to the Reporting of Antisocial Activities and on Amendments to Certain Acts brought uniform rules with regard to the prohibition of persecution or other penalty for reporting antisocial activities in the context of employment or other similar labor relation.

5. Conclusion

In the field of corruption, whistleblowers play a vital role, as they provide substantial information that would otherwise probably remain a secret. By exposing themselves in disclosing this information, in most cases for the public good, whistleblowers usually become vulnerable in various aspects of their lives. In this sense they are also in need of various forms of protection. Since the international instruments are either really broad in referring to the protection of whistleblowers or refer only to those whistleblowers that report on acts of corruption amounting to crime, this is probably also one of the reasons that this topic is not so well defined in some national legislations.

Nevertheless, states should recognize the importance that reports from all persons reporting on corruption, fraud or other wrongdoing bear for the public good. In this respect, those persons should be provided with certain rights for addressing their needs arising from their whistleblower status (e.g. the right to protection from disclosure of their identity, the right to obtain legal aid, the right to receive a reasoned response to the report, the right to protection from retaliation). The classical perception of the whistleblower as a mere reporting tool in a corruption should be overcome.

While whistleblower systems vary from one country to another, there are also different country specific problems arising with regard to these systems. There are basically two approaches by which the countries tackle whistleblower protection, either in a separate thematic law, or with provisions included in relevant legislation. No provision in this legal system should be in any way understood to restrict or limit the right to free speech as foreseen in national laws and in European Convention on Human Rights.

The right of citizens to report wrongdoing is a natural extension of the right of freedom of expression, and is linked to the principles of transparency and integrity. All people have the inherent right to protect the well-being of other citizens and society at large, and in some cases they have the duty to report wrongdoing. The absence of effective protection can therefore pose a dilemma for whistleblowers: they are often expected to report corruption and other crimes, but doing so can expose them to retaliation.

Keeping in mind the sole goal of keeping their identity hidden, whistleblowers hesitate to report a case due to the fact that they are not familiar enough with the whistleblower protection procedures. This includes finding the right way to disclose the information, as well as having the knowledge on the further procedure of co-operation with other institutions on the protection of whistleblowers.

If the whistleblower turns to an institution with his claim which is not authorised to deal with such claims, this institution should refer the whistleblower about the designated body. Non-government organisations are seldom specializes in whistleblower protection. They do not have sufficient means and capacity to ensure full protection of the whistleblower and can thus represent a weak link in whistleblower protection system.

In many societies, whistleblowing is considered to be a negative phenomenon of an information leak. Whistleblowers are often seen as breaching the moral code of the society by breaking the loyalty to the organization. While quite the opposite is true, whistleblowing is beneficial for the society as by reporting a wrongdoing in the area of corruption crime and other antisocial activities. In order to protect the whistleblowers from any negative attitudes from the public as well as to stimulate other potential whistleblowers to report, awareness-raising activities are needed to change the negative perception on whistleblowers as well as to stimulate whistleblowing.

Implementation clear whistleblowing policies in the Slovak Republic under the Act require a lot of work to change cultural attitudes and enhance the appreciation of whistleblowing and whistleblowers throughout society, in order to promote whistleblowing as an effective tool for stopping corruption and other antisocial activities, improving accountability and serving the public interest in society at large.

6. Wnioski

Ujawniający odgrywają zasadniczą rolę wobec zjawiska korupcji, zważywszy, że dostarczają oni istotnych informacji, które w innych okolicznościach prawdopodobnie pozostałyby w ukryciu. Poprzez ujawnienie informacji, w większości przypadków dla dobra publicznego, ujawniający wystawiają jednak samych siebie na ryzyko w różnych obszarach życia. Z tego też względu potrzebują ochrony w różnych formach. Okoliczność, że instrumenty międzynarodowe albo tylko ogólnie odnoszą się do potrzeby ochrony ujawniających, albo też stanowią o takiej ochronie jedynie w odniesieniu do ujawniających, którzy zgłaszają działania korupcyjne, uznawane za przestępstwa, jest prawdopodobnie jednym z powodów, dla których problematyka takiej ochrony nie jest dobrze rozwinięta w przepisach niektórych państw.

Niemniej, państwa powinny uznać wagę faktu, że zgłoszenia otrzymywane od wszelkich osób odnoszące się do korupcji, oszustw bądź innych naruszeń służą dobru publicznemu. Z tego też względu osobom takim powinno się przyznać pewne prawa odpowiadające ich potrzebom powstałym na gruncie statusu osoby ujawniającej (np. prawo do ochrony przed ujawnieniem tożsamości, prawo do pomocy prawnej, prawo do otrzymania odpowiedzi wraz z uzasadnieniem w związku z przekazanym zgłoszeniem, prawo do ochrony przed działaniami odwetowymi). Powinno także zostać przełamane typowe postrzeganie ujawniającego jedynie jako narzędzia służącego zgłaszaniu korupcji.

Systemy ochrony ujawniających różnią się pomiędzy państwami, a zatem występują również szczególne, typowe na gruncie takich krajowych rozwiązań, problemy. Istnieją zasadniczo dwa podejścia ze strony państw do kwestii ochrony ujawniających, tj. albo obejmujące oddzielną, wyspecjalizowaną tematycznie ustawę, albo przepisy zamieszczone w odpowiednich aktach prawnych. Żadne postanowienie w ramach przyjmowanych systemów nie powinno być w jakikolwiek sposób rozumiane jako ograniczające prawo do wolności wypowiedzi przewidziane w przepisach krajowych oraz w Europejskiej Konwencji Praw Człowieka.

Prawo obywateli do zgłaszania naruszeń stanowi naturalne przedłużenie prawa do wolności wypowiedzi i jest powiązane z zasadami przejrzystości i uczciwości. Wszyscy ludzie mają niezbywalne prawo do ochrony dóbr innych obywateli i społeczeństwa jako całości, a w niektórych przypadkach mają także obowiązek zgłaszania naruszeń. Dlatego brak skutecznej ochrony może stawiać ujawniających przed dylematem: często oczekuje się od nich zgłoszenia korupcji lub innych przestępstw, niemniej postępowanie takie naraża ich na działania odwetowe.

Mając na uwadze cel zachowania w tajemnicy swojej tożsamości, ujawniający wahają się, czy zgłosić daną sprawę, nie będąc wystarczająco zaznajomieni z procedurami ochrony. Powyższe dotyczy zidentyfikowania właściwego sposobu ujawnienia informacji, jak również posiadania wiedzy na temat procedury dalszej współpracy z innymi instytucjami w odniesieniu do ochrony ujawniających.

Jeśli ujawniający zwróci się ze swoją skargą do instytucji, która nie jest właściwa do załatwienia skargi, instytucja ta powinna skierować go do właściwego organu. Organizacje pozarządowe rzadko specjalizują się w ochronie ujawniających. Nie mają one wystarczających środków i zdolności, aby zapewnić pełną ochronę ujawniającemu, stanowią zatem słaby element systemu ochrony.

W wielu społeczeństwach ujawnianie uznawane jest za negatywne zachowanie i traktowane jako donos. Ujawniający często są postrzegani jako łamiący niepisany kodeks moralny poprzez naruszenie wymogu lojalności wobec danej społeczności lub organizacji. Tymczasem prawda jest inna. To ujawnianie jest korzystne dla społeczeństwa,

odnosi się bowiem do korupcji lub innych działań godzących w interes publiczny. W celu ochrony ujawniających przed jakimkolwiek negatywnym traktowaniem ze strony otoczenia, jak również w celu zachęcenia potencjalnych ujawniających do przekazania informacji, niezbędne są działania podnoszące świadomość, aby zmienić negatywne społeczne postrzeganie takich osób.

Wdrożenie jasnych polityk ujawniania w Republice Słowackiej określonych w ustawie wymaga znaczącej pracy w celu zmiany postaw kulturowych i odbioru ujawniających przez społeczeństwo, w celu wspierania ujawniania jako skutecznego narzędzia powstrzymującego korupcję i inne działania godzące w interes publiczny, poprawiającego rozliczalność i służącego interesowi społeczeństwa jako całości.

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