



THE PROTECTION OF WHISTLEBLOWERS

Domagoj Mateković

Zagreb Faculty of Law



Content

- ▣ Introduction
- ▣ Definition of whistleblowers
- ▣ Legislation
- ▣ The term whistleblower
- ▣ Types of whistleblowers
- ▣ International solutions
- ▣ The protection of whistleblowers within the Council of Europe
- ▣ The European Convention on Human Rights
- ▣ The United States of America
- ▣ The United Kingdom, France and Finland
- ▣ Croatia
- ▣ Conclusion(s)



Introduction



- ❑ Everyone at least once in their lives encounter with some form of corruption or illegal activities, but did not have courage to contact someone to correct that injustice
- ❑ Although, the fear for our own lives is reasonable enough for not reporting corruption or illegal activities, justice is an even greater motive to come out with such information
- ❑ Modern legislations, that are aware of importance of whistleblowers, are trying to encourage people to report corruption, ensure their legal protection and provide sanctions for those who discriminate whistleblowers after their report (for example- fines, suspensions etc.)



Definition of whistleblowers

- ❑ **Whistleblowers** are employees, former employees or organization members, especially private or public organization, that report alleged misconduct within that organization to their colleagues or even institutions
- ❑ 'Misconduct' means violation of the laws and rules or the threat to the public interest, such as fraud, health and safety violations and corruption





Legislation

- ▣ Worldwide legislation on the protection of whistleblowers is still in its infancy and, accordingly, there are different legal arrangements
- ▣ Most of the European countries do not have and are not planning to issue special laws regarding the protection of whistleblowers
- ▣ The area of protection of whistleblowers is fairly new statutory area, except one american solution
- ▣ The first law protecting whistleblowers in the history was Lincoln's 1863. False Claims Act, while most of today's legal arrangements were passed in the last twenty years



The term whistleblower

- ▣ The origin of the term whistleblower is connected to practise of english "bobbies" who blew their whistles when they noticed commitment of criminal acts. Those whistles were ment to worn officials and the public.





Definition of “whistleblowing” (Transparency International)

- ▣ **Whistleblowing** – the disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action.
- ▣ Whistleblower usually isn't directly affected by these actions and therefore rarely has personal interest in result of any investigation of the matter.



Types of whistleblowers

- Internal whistleblowers are employees of organization that report misconduct of their colleagues or superiors.



- External whistleblowers report misconduct to persons outside of organization or certain institutions. Whistleblowers report to media, police, authorities of criminal persecution and local, state or federal agencies.



Reactions to whistleblowers

- ▣ Typical reaction of management is usually not to respond positively on offset of a whistleblower but to start to haze and harass him.
- ▣ Whistleblowers are degraded, forced to quit a job, they are given most difficult and impossible tasks or none at all, they are also exposed to insults, criticism etc. Consequently, harassment and chase of whistleblowers has become serious problem in many countries.



Famous whistleblower

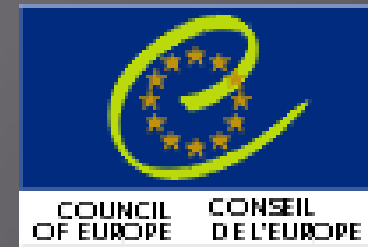
- One of the most famous whistleblowers was Paul van Buitenen, a Dutch, former civil servant in the EU Commission
- His detection and exposure of corruption and warning of one in Authorities of EU has resulted with resignation of European Commission under leadership of Jacques Santer. After that, he suffered different forms of pressure and retaliation from the side of his superiors who even asked him to resign and return to the Netherlands. Finally, after his return to the Netherlands he was selected as representative of European Parliament in which he continued to be active in fight against corruption.





International solutions

- ▣ The protection of whistleblowers was and still is a subject of researches and reports of different international organizations
- ▣ The Group of States Against Corruption (GRECO) dealt with the protection of "whistleblowers" in its Seventh General Activity Report (2006.)
- ▣ GRECO considers that the laws that promote and encourage people to report corruption they see or they suspect on within their workspace, are a valuable tool in the fight against corruption



- The protection of whistleblowers is regulated by international conventions:
 - **The Council of Europe Civil Law Convention on Corruption**
 - **The Council of Europe Criminal Law Convention on Corruption**
- Civil Law Convention on Corruption in Article 9 **provides protection of employees:** “Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”
- Criminal Law Convention on Corruption in Article 22 **provides protection of persons who cooperate with the judiciary and witnesses:** “Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:
 - a** those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;
 - b** witnesses who give testimony concerning these offences.”



- ❑ Certainly one of the most important international documents containing regulations on the protection of whistleblowers is the **United Nations Convention against Corruption**. The Article 33:
„Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.“
- ❑ Despite the fact that the protection of whistleblowers is international request, it is often not anticipated and prescribed in national laws and regulations



The protection of whistleblowers within the Council of Europe

- The Council of Europe lists **three groups of countries** (2009.):
 - the **first group** includes countries that already have special legislation to control the protection of whistleblowers (**Belgium, France, Norway, Romania, the Netherlands and the United Kingdom**)
 - the **second group** includes countries that have draft of law regarding the protection of whistleblowers already in parliament or is in some other way ready in draft version (**Germany, Slovenia, Switzerland and Lithuania**)
 - the **third group** includes countries that do not have any special laws on the protection of whistleblowers but where certain kind of protection of whistleblowers is provided by provisions of various laws, especially the ones that are related to labor and criminal law (**Austria, Bosnia, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Georgia, Greece, Italy, Poland, Serbia, Slovakia, Sweden, Macedonia and Turkey**)



- Also, the Council of Europe has announced that all member states should review their legislation concerning the protection of “whistle-blowers”, keeping in mind some guiding principles, including that:
- this legislation should protect anyone who, in good faith, makes use of existing internal “whistle-blowing” channels from any form of retaliation (unfair dismissal, harassment, or any other punitive or discriminatory treatment);
 - where internal channels either do not exist, or have not functioned properly, or could reasonably not be expected to function properly given the nature of the problem raised by the “whistle-blower”, external “whistle-blowing”, including through the media, should likewise be protected;
 - any “whistle-blower” shall be considered as acting in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives, and
 - relevant legislation should afford *bona fide* “whistle-blowers” reliable protection against any form of retaliation by an enforcement mechanism investigating the “whistle-blowers”’s complaint and seeking corrective action from the employer.



The European Convention on Human Rights

(formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*)

- ▣ The European Convention on Human Rights protects whistleblowers through the aspect of **freedom of expression** (Article 10)
- ▣ The most important case of the European Court of Human Rights concerning the protection of whistleblowers was **GUJA v. Moldova** in which the Court found violation of Article 10, because the applicant was dismissed for disclosing, in good faith, information that were true and in legitimate public interest



The United States of America

- ▣ Three important regulations:
 - a) **The False Claims Act** (also called the "**Lincoln Law**")- is an American federal law that allows people who are not affiliated with the government to take actions against federal contractors they accuse of committing claims fraud against the government. The act of taking such actions is informally called "whistleblowing." The False Claims Act was enacted as a reaction to a huge number of irregularities in public procurement system during the American Civil War.
 - b) **The Whistleblower Protection Act of 1989** is a United States federal law that protects federal whistleblowers, who work for the government and report agency misconduct
 - c) **The Sarbanes–Oxley Act of 2002** set new or enhanced standards for all U.S. public company boards, management and public accounting firms. It is named after sponsors U.S. Senator Paul Sarbanes and U.S. Representative Michael G. Oxley.



The United Kingdom, France and Finland

- ❑ **The United Kingdom** elaborates the protection of whistleblowers in the **Public Interest Disclosure Act of 1998**, which includes public and private sector, but it does not apply to intelligence and military.
- ❑ In **France**, the provisions relevant for the protection of whistleblowers are contained in the Labour Act, because French theorists believe that it is not necessary to prescribe special laws to protect whistleblowers (according to them, it would be a sign of inefficiency of the judiciary).
- ❑ In **Finland**, there are no special provisions to deal with whistleblower protection, because the emphasis is on the problem (not on whistleblower). Officials and employees in state administration are obliged, in accordance with professional conduct, to report any illegal action that they notice. Of course, anonymity is an absolute prerequisite.



Croatia



- In Croatia, the provisions relevant for the protection of whistleblowers are contained in **the Labour Act** and **the Law on Civil Servants**.
- The Law on Civil Servants:
 - prohibits the dismissal of civil servants who are whistleblowers
 - guarantees anonymity of whistleblower
 - protects whistleblowers from any form of abuse

All the regulations stimulate reporting corruption, which has preventive effects.



Conclusion(s)



- ▣ Although it may have negative connotations, the appearance of whistleblowers is generally seen as a positive occurrence
- ▣ Their minimal protection is prescribed by labour laws, and occasionally by special laws
- ▣ All the regulations in this area stimulate reporting corruption, which has preventive effects
- ▣ The protection of whistleblowers is a new area that still requires search for the best solutions



Thank you for your attention.

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