

Providing an Alternative to Silence:

**Towards Greater Protection and Support for
Whistleblowers in the EU**

COUNTRY REPORT: SLOVAKIA

This report belongs to a series of 27 national reports that assess the adequacy of whistleblower protection laws of all member states of the European Union. *Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU*, published by Transparency International in November 2013, compiles the findings from these national reports. It can be accessed at www.transparency.org.

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August 2012, Bratislava

1. Introduction

Reporting of illegitimate practices is not a strength of the Slovak society. Despite of stringent criminal obligation, citizens opt for the risk of being subjected to prosecution for the offence of Failure to Report about Crime, rather than for the reporting and possible subsequent retaliation. Non-existence of a stand-alone piece of legislation is not the most severe obstacle to the strengthening of civic activity; however, the adoption of a law on whistleblowing would certainly help to increase awareness and positively influence the standpoint of the public, business sector or courts.

Mechanisms for the filing of reports exist both in the public and private sectors. Likewise, certain proven communication tools in the form of anti-corruption hot-lines, web forms, and external consulting companies have been successfully implemented. On the other hand, communication and training aimed at employees and business partners considerably lag behind, and this fact is in turn associated with a relatively low number of recorded cases. Information about investigated cases and their results is missing, which results in a loss of potential educational effect. Another shortcoming is the investigation of filings itself, since these are in majority of cases solved by their referral to the police or other authority. This results in a situation, where the whistleblower is not notified of and also loses the possibility of supervision over the investigation of the case in question.

Based on the published cases and their development, it can be observed that the Slovak Republic is not capable of providing sufficient protection for notifiers of illegitimate practices. Despite the improvement of such protection by means of a prospective change in legislation, the confidentiality of the whistleblower's identity will be essential for the development of a trustworthy system of reporting and investigation. Even a potential monetary reward will not be able to compensate for the risks associated with the reporting of illegitimate practices.

In addition to an analysis of legislation, this research has also been focused on the gathering of information concerning the situation in the area of whistleblowing in Slovakia with the use of other research methods. In particular, questionnaires and personal meetings have been important for the obtaining of information concerning the application of statutory provisions in practice and attitude toward the solution of the issue of protection of whistleblowers. The data has been gathered through written contact in the form of a questionnaire. The entities we have contacted included, in particular ministries and other central government bodies, further, the Ombudsman, the Slovak National Centre for Human Rights, and 45 companies with a share owned by the State or municipal governments. In addition to replies to the questions, in the case of the public sector we have also reviewed the Staff Regulations, Conditions of Employment, and other internal corporate regulations. In the case of private companies, we have also been interested in their Codes of Ethics, Annual Reports, and websites.

Slovak society needs an increase in the trust in the reporting of illegitimate practices, and therefore, the protection of whistleblowers is an essential task in this process.

2. A compilation, description and assessment of WB protection laws

The legal order of the Slovak Republic contains within various legislation provisions which by their nature either ensure protection for the notifier of illegitimate practices or impose on such person certain obligations during the revealing of such practices. A stand-alone piece of legislation governing the issue of whistleblowing does not exist in Slovakia.¹ Also, such notion or any other term corresponding in content to the notion of whistleblowing is not directly used in any piece of legislation valid and in effect in the Slovak Republic. Therefore, it is necessary to search for the individual features of whistleblowing in several pieces of legislation. Such legislation may be divided into 4 groups: 1. legislation governing the employment relationship; 2. criminal laws; 3. legislation governing the handling of information; and 4. other legislation. In the following section, we will discuss the respective groups and how they govern certain aspects of whistleblowing.

2.1 Legislation governing the employment relationship

The legal order of the Slovak Republic contains three pieces of legislation governing the relationship toward the employee, depending on the nature and legal form of the employer. The most detailed regulation - in the form of a separate law - is in place for civil servants. Further, it is the employees working for state authorities or municipalities not being in the civil service. This group is regulated by a separate law, while issues not governed by that law are governed by the Labour Code. The last group consists of private sector employees who are subject to the Labour Code. In addition to the legislation governing the basic relationships between the employer and employee, the legal order defines, by means of a separate procedural rule, the filing and handling of complaints. We will take a closer look at the provisions contained in the respective laws related to whistleblowing.

A/ Act No. 400/2009 Coll., on Civil Service („**the Civil Service Law**“), as amended governs the rights and obligations of employees within the state administration.²

Within the meaning of the Civil Service Law,³ a civil servant may file a complaint in the matters of performance of the civil service, if he/she believes that his/her rights under that Law, other generally binding legislation, and Staff Regulations have been violated.⁴ Further, the Law defines the person to whom such complaint is to be filed.⁵ Beside this right, there is also the obligation of the civil servant⁶ to notify his/her supervisor or law enforcement authority of a loss, damage to, destruction, and misappropriation of the property owned by or under the administration of the service office. If the civil servant believes that an instruction imposed on him/her is contrary to the generally binding legislation or Staff Regulations, he/she is obliged to notify his/her supervisor in writing of such fact before he/she starts to fulfil such instruction. Should the supervisor insist on the fulfilment of the instruction, he/she is obliged to notify the civil servant thereof in writing.

The civil servant shall be obliged to keep confidential the facts he/she has learned in connection with the performance of the civil service and which shall not be, in the interest of the service office, disclosed to other persons.⁷ No exception defined under law exists to such obligation.

¹ Ministers of Interior of the previous and current governments have promised to prepare such piece of legislation, while its working version already exists. This working version has been subject to review and its new wording is currently under preparation.

² They include, e.g. the employees at ministries or employees of central and local government authorities.

³ Sec. 65, Par. 1 of the Civil Service Law

⁴ within an organization, e.g. also by discriminatory practices and other sanctions

⁵ The Head of the office shall have the competence for the handling of the complaint. In the event that the complaint is directed against the Head of the office, the entity competent for the handling of the complaint shall be the responsible Director of the service office being a state administration body performing the function of the founder in relation to the service office pursuant to a special regulation. The competence for the handling of a complaint against a civil servant holding a public post in a service office being a ministry or ultimate central government body shall lie with the respective Minister or Head of the ultimate central government body; competence for the handling of a complaint against the Head of the ultimate central government body shall lie with the Prime Minister.

⁶ within the meaning of Sec. 60, Par. 2(g) of the Civil Service Law

⁷ within the meaning of Sec. 60, Par. 1(c) of the Civil Service Law

The Civil Service Law enables for the issuance of an internal regulation – Staff Regulations enabling also for a more precise definition of rules for the reporting of illegitimate practices. However, the current wording of Staff Regulations at ministries fails to contain such provisions.

B/ Act No. 552/2003 Coll., on Performance of Work in Public Interest, as amended („**Act on Performance of Work in Public Interest**“) regulates the rights and obligations of public administration employees,⁸ and states that if a natural person or legal entity notifies the employer of the violation of an obligation or restriction by an employee under this Law, the employer shall be obliged to find out whether the employee has breached the obligation or restrictions, and to notify, within 30 days of the receipt of the notification, such legal entity or natural person of the result, as well as of the measures adopted.⁹

Within the meaning of the Act in question, the employer shall be obliged to issue the Conditions of Employment,¹⁰ and thereby also to define in more detail the filing of submissions concerning illegitimate practices. This group of employees is also subject to the Labour Code, more closely discussed in the following section of the present report.

C/ The private sector is governed in particular by Act No. 311/2001 Coll., the Labour Code, as amended („**the Labour Code**“). Within the meaning of the Labour Code,¹¹ the exercise of rights and obligations resulting from the employment relationships must be in accordance with morality principles. No one shall be allowed to misuse such rights and obligations to the detriment of another participant of the employment relationship or co-employees. No one can be persecuted or otherwise sanctioned at the workplace in connection with the performance of the employment relationship in result of the filing of a complaint, action or petition for the commencement of criminal prosecution in respect to another employee or employer.

An employee who believes that his/her rights or interests protected under law have been affected, he/she may refer to a court and seek for legal protection laid down by a special law on equal treatment in certain areas and on protection against discrimination and on the amendment of certain laws (Anti-Discriminatory Law).

This provision may be regarded as the fundamental guarantee against victimisation for the reporting of illegitimate practices. However, stipulation of other tools for the achievement of better protection against victimisation is missing.

The provision of the Labour Code¹² under which an employee is obliged to keep confidential the facts he/she has learned of during the performance of employment and which shall not be, in the interest of the employer, disclosed to other persons, is conflicting as well.

D/ Act No. 9/2010 Coll., on Complaints („**the Complaints Law**“) may be regarded as a general procedural regulation of the filing of complaints, and thus, it complements e.g. the regulation of the handling of complaints from a civil servant under the Civil Service Law. The Complaints Law allows for the filing of a submission to a state body, and at the same time, it imposes on the state body a duty to process such submission. Complaints are submitted both by natural persons and legal entities. This means that the group of potential complainants is not restricted in any way. The public administration bodies registering, handling, and supervising the handling of complaints within the meaning of this Law are: state bodies and organizations established by them, local self-government bodies and organizations established by them, legal entities and natural persons entrusted by law with making decisions concerning the rights, interests protected under law or obligations of other persons.

⁸ e.g. employees of municipalities, schools under the responsibility of local self-government, municipal undertakings

⁹ Sec. 13 of Act on Performance of Work in Public Interest

¹⁰ Sec. 12 of Act on Performance of Work in Public Interest

¹¹ Sec. 13, Par. 3 of the Labour Code

¹² Sec. 81(f) of the Labour Code

The filing of a complaint shall not become an impulse or reason for the drawing of consequences causing any harm to the complainant.¹³ Upon the complainant's request, the public administration body shall be obliged to keep confidential the identity of the complainant.¹⁴

The Complaints Law does not allow for the handling of an anonymous complaint, although the state bodies assert that they occupy themselves with such complaints based on their own initiative.¹⁵

2.2 Criminal Legislation

From the perspective of the issue of whistleblowing, in particular Sec. 340 of the Criminal Code is important, within the meaning of which a person who credibly learns that another person has committed e.g. one of the crimes of corruption, and fails to report such crime or offence without delay to a law enforcement authority or police service, shall be punished by a maximum of three years' imprisonment.

This provision may be regarded as the laying down of a general whistleblowing obligation in the case of certain offences (including corruption), under the sanction of a maximum imprisonment of three years. However, the provision in question is double-edged, since it can also act as a threat against the whistleblower should he/she fail to report without undue delay to law enforcement authorities or simply within his/her own organization (not to the police). This conclusion is also substantiated by the low level of willingness of citizens to report offences despite the existence of criminal sanctions.¹⁶

The Slovak Republic has a separate regulation for the protection of the witness and his/her close persons¹⁷. Such protection is conditioned by a testimony within criminal proceedings.

On the contrary, recourse against the person reporting illegitimate practices may bring about the fulfilment of preconditions of offences of False Allegation and False Testimony and Perjury.¹⁸

In this connection, we can also mention the Civil Code which guarantees protection of personality for every natural person, and also grants rights to defence before the court.¹⁹

2.3 Regulations governing the handling of information

The issue of legislation governing the handling of information from the perspective of the notifier can be divided into two groups: the first one guarantees the notifier's anonymity, i.e. it precludes the imposing of sanctions upon the notifier, and *de facto* guarantees the freedom of handling of information, and the second group of legislation imposes upon the notifier the obligation of confidentiality.

When handling submissions from civil servants and public administration employees, the procedures pursuant to the Complaints Law shall be applied. Upon the complainant's request, the public

¹³ Sec. 7 of Complaints Law

¹⁴ Sec. 8, Par. 1 of Complaints Law

¹⁵ A complaint must contain the name, surname, permanent or temporary residence address of the complainant. In the event a complaint is filed by a legal entity, it must contain its title and official address, name and surname of the person authorized to act on its behalf. Should a complaint fail to contain such information, the public administration body shall adjourn such complaint.

¹⁶ See Section 3 of the present report

¹⁷ Act No. 257/1998 Coll., on Witness Protection, as amended

¹⁸ Within the meaning of Sec. 345 and 346 of the Criminal Code. **False allegation:** A person who falsely accuses another person of an offence with the intention to induce prosecution of the latter, shall be punished by a sentence of imprisonment of one to five years. **False testimony and perjury** A person who as a witness within proceedings before the court or within criminal proceedings or for the purpose of criminal proceedings abroad before a prosecutor or police officer or before a judge of an international body recognized by the Slovak Republic does not testify according to the truth with regard to a fact of substantial importance for the decision or conceals such fact, shall be punished by a sentence of imprisonment of one to five years. A person who within criminal proceedings before the court or for the purpose of criminal proceedings abroad does not, after taking an oath, testify according to the truth with regard to a fact of substantial importance for the decision or conceals such a fact, shall be punished by a sentence of imprisonment of two to five years.

¹⁹ A natural person shall have the right to protect his/her personality, in particular life and health, reputation, and human dignity, as well as privacy, good name, and expressions of personal nature. A person who in result of an unauthorized infringement of the right to protection of personality causes damage, shall be liable for such damage pursuant to the provisions of this Act on Liability for Damage. In this way, the affected person would be able to defend himself/herself.

administration body shall be obliged to keep confidential the identity of the complainant.²⁰ Neither the Labour Code nor other legislation intended for the private sector stipulates such obligation.²¹

Should the notifier refer to the media, the Act No. 167/2008 Coll., on Periodicals and Agency News Service, and on the Amendment to Certain Acts (the Press Law) guarantees protection of the notifier.²²

The second group includes the provisions of the Civil Service Law and Labour Code, and special legislation for the protection of a secret.

A civil servant shall be obliged to keep confidential the facts he/she has learned in connection with the performance of the civil service and which shall not be, in the interest of the service office, disclosed to other persons.²³ The Labour Code contains a provision²⁴ under which an employee is obliged to keep confidential the facts he/she has learned of during the performance of employment and which shall not be, in the interest of the employer, disclosed to other persons.

Restrictions applicable to the provision of information result from several pieces of legislation concerning the protection of a secret.²⁵

2.4 Other regulations

We have identified a special provision associated with the reporting of illegitimate practices by patients. Also, the issue of personal data processing and protection against retaliation for damage is closely connected with whistleblowing. In more detail in the following section:

A/ Rights of patients within health care

Act No. 576/2004 Coll., on Health Care, Services Associated with the Provision of Health Care, and on Amendment to Certain Acts states in Sec. 11 that no one can misuse these rights and obligations to the detriment of another person. A person cannot be persecuted or otherwise sanctioned in connection with the performance of his/her rights in result of the filing of a complaint, action or petition for the commencement of criminal prosecution in respect to another person, health care employee or provider.

B/ Personal data protection

The processing of data of natural persons within an information system is subject to obligations within the meaning of Act No. 428/2002 Coll., on Personal Data Protection. In particular, registration and reporting obligations for private entities during the implementation of whistleblowing schemes thereby arise.

C/ Remedies

The Civil Code defines the general liability for damage. Within the meaning of provisions of Sec. 420, Par. 1 of the Civil Code, everyone is responsible for the damage caused by an infringement of a legal

²⁰ Sec. 8, Par. 1 of Complaints Law

²¹ There is only the employee's right to submit a complaint to the employer in connection with the non-compliance with the conditions concerning the non-sanctioning for the filing of a notification of illegitimate practices; the employer shall be obliged to reply to the employee's complaint without undue delay, provide for remedies, waive from behaviour in question, and remove the consequences thereof.

²² The publisher of periodicals and the news agency shall be obliged to keep confidential the source of information obtained for publication in periodicals or news service, and the content of such information, so that it is not possible to ascertain the identity of the source, if the natural person providing such information has requested so, and so that the rights of third persons are not infringed in result of the disclosure of content of such information; they are obliged to handle written documents, printed matter, and other data media, in particular video recordings, audio recordings, and audio-video recordings, based on which the identity of the natural person providing the information might be established, in a way preventing from the disclosure of identity of the source of such information. The confidentiality obligation shall not apply in the case of legal obligation to preclude the committing of a crime.

²³ within the meaning of Sec. 60, Par. 1(e) of the Civil Service Law

²⁴ Sec. 81(f) of the Labour Code

²⁵ For example, Act No. 215/2004 Coll., on the Protection of Classified Information, and on Amendment to Certain Acts, Sec. 91 to 93(a) of Act No. 483/2001 Coll., on Banks, and on Amendment to Certain Acts, as amended, Sec. 40 of Act of the National Council of the Slovak Republic No. 566/1992 Coll., on the Slovak National Bank, as amended, Sec. 264 of the Criminal Code, Sec. 11 of Act No. 563/2009 Coll., on Tax Administration (the Tax Code), as amended.

obligation. Thus, both public and private sector employees could request certain compensation. Further, the Labour Code refers to the regulation governing the ban on discrimination the institutes of which may also be used for the protection of a whistleblower within court proceedings. Should adequate satisfaction be not sufficient, in particular if non-compliance with the principle of equal treatment has resulted in substantially degraded human dignity, social respect or social amenity of the injured person, such person may also seek monetary compensation for non-material damage. The amount of the non-material damage in cash shall be determined by the court taking into account the gravity of the non-material damage incurred and all the circumstances of the occurrence thereof.²⁶

The remedies in practice consist in particular in the form of a court decision on the invalidity of employee's dismissal, if it has been served in connection with the reporting of illegitimate practices. In such case, the employee shall also be entitled to wage compensation for the period without employment.

Neither in the public nor in the private sector exists and is granted a form of special financial reward for the reporting of illegitimate practices.

D/ Protection against reprisal/retaliation:

Legally defined protection only exists in the Labour Code, stating that no one can be persecuted or otherwise sanctioned at the workplace in connection with the performance of the employment relationship in result of the filing of a complaint, action or petition for the commencement of criminal prosecution in respect to another employee or employer. The Civil Service Law contains no provisions in such extent, and states, within the section dedicated to discrimination, that the service office shall not in any way sanction or penalize a civil servant in result of legally seeking his/her rights resulting from the state/employment relationship.

There is no other form of protection in place. Employees take advantage of assistance provided by the Slovak National Centre for Human rights and by NGO's.²⁷

The sanctioning of employees does not occur in direct form. Employees are either forced (mobbing, bossing) to leave the job or their employment is terminated based on organizational reasons. In principle, the Labour Code does not create major obstacles for an employer, if he/she wants to part with an employee. The Labour Inspectorate exercising supervision over the legal compliance within the meaning of Sec. 2 of Act No. 125/2006 Coll., on Labour Inspection, recommends to the notifiers, following inspections in such organizations, to seek their rights before the court within the meaning of Sec. 13 of the Labour Code.

In addition to the existing legal regulation, also a non-public draft Act on Whistleblowing has been prepared. The draft in question has been focused on the civil law protection of the notifier against reprisals at work, if he/she has made contribution to the detection of a criminal activity. Protection should be ensured by the prosecutor and Labour Inspectorates through the issuance of consents or disagreements with the employer's actions directed against an employee – notifier. The above-mentioned draft has also envisaged the possibility of granting a financial reward. At the present, the draft in question is with a working group established at the Government Office of the Slovak Republic for the purpose of revision.²⁸

²⁶ In Sec. 9, Par. 3 of Act No. 365/2004 Coll. the Anti-Discriminatory Act

²⁷ In the letter as of 14 August 2012, the Centre has informed us that it keeps statistics concerning discrimination within employment relationships in the form of illegitimate sanctions. In 2011, the Centre recorded 12 motions, in 2010 nine motions, and in 2009 17 motions. The Centre keeps no special statistics concerning the so-called “whistleblowing”.

²⁸ The author of the present report is a member of the working group for the preparation of a new draft of Act on Whistleblowing.

3. Perceptions and political will

Reporting of facts concerning third persons to official institutions is not perceived positively by the Slovak society. We can observe that a certain negative role in this case is played by the communist past and practices employed by secret services. Files containing information about citizens gathered by communist secret services in the past are being gradually disclosed to the public, including the lists of agents.

As far as the willingness of citizens to report illegitimate practices to the police is concerned, only 5% of citizens would certainly report that some one has requested a bribe from them or that they know some one who accepts bribes. This is a relatively small number. On the contrary, almost two thirds (64%) of respondents would not report bribery, while 36% would probably and 28% certainly not report it.²⁹ As the reason for not reporting corruption, the respondents state that it makes no sense (31%) or the fear of revenge (26%).³⁰ On the one hand, the statistics presented prove the distrust of citizens in the reporting to the police, but also the unwillingness to solve cases through personal activity.

Similarly to the general public, also certain public life representatives holding high posts, be it politicians or private sector representatives, have not identified themselves with the supporting of the reporting of illegitimate practices. As an example of such negative attitude we can provide the opinion expressed in a blog by Igor Vida, the President of the Slovak Bank Association and Chairman of the Board of Directors of Tatra banka a.s.: „*Thus, denunciation may achieve the same level within the hierarchy of values of the society as justice, and I do not think this is right.*“³¹

The response from politicians to the negative attitude of the public toward the reporting of illegitimate practices have taken and takes the form of verbal public declarations manifesting themselves in practical life by the strengthening of communication channels for the reporting of illegitimate practices. In certain cases, the development of such channels has been combined with efforts to present oneself in such way in the role of a corruption fighter. Based on the replies submitted, we can identify the following communication channels at ministries: written or personal notifications to the supervisor³², black box in place³³, special e-mail box³⁴, electronic form on the web site³⁵, application within the Intranet network,³⁶ and telephone lines.³⁷

An anti-corruption hot line has been established at the Government Office of the Slovak Republic on May 18, 2011. During one year of its operation, 878 citizens have used the line³⁸. Out of these phone calls only 143 showed elements of suspicion of corruption behaviour, while 49 citizens took the advantage of the option to report their suspicions anonymously. While during the first months the amount of phone calls approached 200, in the recent period, the number has stabilized at 40 per month on average. However, on average only two phone calls per month concern corruption.³⁹

The declining trust of the public in the new tools for the reporting of illegitimate practices can be assigned to the incompleteness of the technical and personnel background for the investigation of submissions. Within the meaning of replies received, either the materially competent organizational unit, Control Department, Head of the Service Office or Minister is charged with this agenda. During the past three years, the ministries (with the exception of the Ministry of Foreign Affairs of the Slovak Republic – 1 case,

²⁹ Corruption perception in Slovakia, Public opinion survey for TI Slovakia, January 2012

³⁰ Corruption perception in Slovakia, Public opinion survey for TI Slovakia, November 2010

³¹ Igor Vida: Udávanie ako morálna hodnota (Denunciation as a moral value), Hospodárske noviny, 18.8.2010, available at <http://hnonline.sk/nazory/c1-45752730-udavanie-ako-moralna-hodnota>

³² Detailed procedure is defined under Civil the Service Law or Complaints Law, as appropriate.

³³ The Ministry of Labour, Social Affairs, and Family of the Slovak Republic, the Ministry of Foreign Affairs of the Slovak Republic

³⁴ The Ministry of Healthcare of the Slovak Republic

³⁵ The Ministry of the Environment of the Slovak Republic: <http://www.minzp.sk/sluzby/spristupnovanie-informaci/ekospion/>,

The Ministry of Education, Science, Research, and Sport of the Slovak Republic: <http://www.minedu.sk/index.php?rootId=-2>,

The Ministry of Interior of the Slovak Republic: <http://www.minv.sk/?pokyny>

³⁶ The Ministry of Finance of the Slovak Republic

³⁷ The Government Office of the Slovak Republic, the Ministry of Defence of the Slovak Republic

³⁸ No distinction is made between employees or citizens outside an organization.

³⁹ <http://www.vlada.gov.sk/za-rok-sa-na-antikorupcnu-linku-dovolalo-takmer-900-obcanov/>, downloaded on 14 August 2012

Government Office of the Slovak Republic, and Ministry of Defence of the Slovak Republic⁴⁰ – both operate an anti-corruption hot line) have not recorded any filing that could be regarded as whistleblowing or do not keep records within such structure, as appropriate. Therefore, it can be observed that they do not create a sufficiently credible institute enabling for the gathering of knowledge and removal of shortcomings. Another identified shortcoming is the notification of employees of the existence of such option. If it happens at all, then it is exclusively at the time of the commencement of the employment or through a web site, as appropriate. No special trainings are organized, and cases of successful whistleblowing are not published within the organization. Further, no security procedures for the protection of the notifier and guarantees of non-disclosure of the notifier's identity are in place.

A slightly better situation from the perspective of the structure developed for the investigation of suspicions can be found within some of the approached companies.⁴¹ They use various communication channels for the purpose of gathering information, e.g. a contact form⁴², e-mail address,⁴³ black boxes⁴⁴ or personal filings. Either the control department, specially established committee, external entity⁴⁵ or company director is charged with the investigation of notifications. Also, in the case of business companies we have not been able to obtain relevant statistical data concerning the number of cases of whistleblowing due to the absence of records using such structure or non-existence of such cases.⁴⁶ As far as the education of employees is concerned, business companies make use of internal rules, but also of internal corporate computer network, trainings⁴⁷ or corporate magazine.⁴⁸

Several whistleblower cases have appeared in the media, e.g. the case of an employee of the Ministry of Labour, Social Affairs, and Family of the SR⁴⁹, case of employees of the public undertaking Forests of the Slovak Republic (LESY SR),⁵⁰ the case of an officer from the Admissions Office at the Faculty of Law, Ms. Zuzana Melicherčíková⁵¹ or the case of an ex-police officer, Mr. Jozef Žatko.⁵² In the last from the above-mentioned cases, a police officer has reported illegitimate practices of his colleagues in connection with the fuel used in official cars. He was subjected to persecution and disciplinary proceedings, also resulting in the reduction in his wage. Some of the proceedings have been discontinued, while others are still before the court. Subsequently, he has left the police service upon his own request.

Decision of the Supreme Court of the SR⁵³ has referred the interpretation of sanctions imposed upon the notifier to the next competent authority. The court has observed that if other employees have been granted a reward to which no legal entitlement existed and the only reason for the non-disbursement of such reward to the complainant has been the fact that he filed a complaint on his employer (objections to his statement), such action represents a discriminatory action contrary to the provisions of Sec. 13, Par. 5 of the Labour Code.

Negative appraisal can be assigned to the activities of the Ombudsman who could play an important role in the protection of notifiers, since according to the reply to our request: „*Since the time of its establishment, the*

⁴⁰ During 2011, the Ministry of Defence of the SR handled approximately 1,000 submissions, including submissions from employees and ex-employees.

⁴¹ By means of a request for information, 45 business companies with a share owned by the State or municipalities have been contacted; the list of companies is available at <http://firmy.transparency.sk/sk/sets/firms2012/rank>

⁴² <http://www.slovakrail.sk/index.php?id=kontakt>

⁴³ E.g. Všeobecná zdravotná poisťovňa: infolinka@vszp.sk, where clients, and also employees of this insurance company can send their questions and submissions of various nature. If an e-mail contains a submission or complaint, it is sent to the relevant branch office or directly to the Internal Control Department for the opinion of persons designated for this purpose (a list of contact persons for e-mail communication and complaints).

⁴⁴ In the lobby of the National Institute of Cardiovascular Diseases (NÚSCH, a.s.), there is a mailbox (Comments & Submissions) intended for employees but also for the public for the purpose of expressing any complaints and submissions.

⁴⁵ The law firm providing services to the Military Forests and Estates (Vojenské lesy a majetky SR, š. p.)

⁴⁶ Within the replies, we have received several specific cases recorded in business companies.

⁴⁷ E.g. JAVYS, a.s.

⁴⁸ E.g. The Slovak Post Office (Slovenská pošta, a.s.)

⁴⁹ <http://www.sme.sk/c/6394844/vyhodenu-agentku-beru-naspat.html>, downloaded on 14 August 2012

⁵⁰ <http://www.tyzden.sk/casopis/2010/6/statne-lesy-bez-rebelov.html>, downloaded on 14 August 2012

⁵¹ <http://www.sme.sk/c/5666957/bicla-vrana-dostala-styn-pracovne-ponuky.html>, downloaded on 14 August 2012

⁵² Nominated by TI Slovakia for the Integrity Award 2012,

<http://www.sme.sk/c/6486973/poukazal-na-ksefty-u-policialtov-navrhli-ho-na-cenu.html>, downloaded on 14 August 2012

⁵³ The Supreme Court of the Slovak Republic 2 M Cdo 19/2007

*Office of the Ombudsman has not registered and has no knowledge of any completed or ongoing lawsuits or petitions for court proceedings concerning whistleblowing.”*⁵⁴

As already mentioned above, there is an effort on the part of the political representation to regulate the issue in question by means of a single piece of legislation, while also the possibility of financial motivation of notifiers is being considered.⁵⁵

⁵⁴ Reply from the Ombudsman as of 3 August 2012

⁵⁵ <http://aktualne.atlas.sk/lipsic-chce-davat-odmeny-oznamovatelom-korupcie/dnes/kauzy/>, downloaded on 14 August 2012

4. Strengths, weaknesses and recommendations

Overall, the legislative regulation, level of application of the existing tools in practice, and results achieved in the area of whistleblowing can be rated as low. Also due to this reason, we recommend to regulate the issue by means of a separate piece of legislation and to open a wider discourse concerning the promotion of the socially required behaviour of notifiers. Other weak points and recommendations for their removal are as follows:

In particular, it is necessary to render the reporting easier by developing anonymous communication channels. The focus should lie on the gathering of relevant information concerning illegitimate practices, rather than on the person of the notifier. Such communication system should be unified at least within the public administration. In this respect, anti-corruption hot lines have proven as relatively successful with regard to the number of submissions received.

It is necessary to further modify the Complaints Law and to enable for the handling an anonymous complaint as well, given that it „contains specific data suggesting the violation of legislation“. Such legal regulation was applicable in the Slovak Republic in the past.

Investigation of submissions should be regulated by written procedural rules. Large differences in the approach to the handling and assessment of submissions have been identified in various organizations. Appropriate personnel and material resources of the control body within the given entity are a must. From the perspective of organizational structure, the control body should be independent and answerable to the supreme director or minister, as appropriate, within the organization in question.

In addition to internal mechanisms, an external tool should be in place enabling for the handling of failures of standard procedures. Such powers could be granted e.g. to an ombudsman who would subsequently solve submissions directly with the management of the organization in question.

Criminal sanctions, confidentiality obligation, civil actions represent a real threat to the notifier. The legal order should explicitly solve the conflict between the enforcement of public interest and breach of loyalty toward the employer. Given the fulfilment of the defined conditions (failure of the existing tools or justified presumption of such failure), explicit option and protection to address the media which substantially contribute to the protection of whistleblowers should exist.

Establishing the facts of the crime of Failure to Report about Crime is problematic. Making use of a whistleblowing scheme and failure to make a complaint of a crime may result in the complainant's prosecution for the above-mentioned crime. Justifiability of such widely formulated legal regulation is questionable.

Sanctions against employees take place in the form of institutes permitted under the Labour Code concerning the termination of employment, e.g. an agreement on termination, dismissal due to organizational reasons. In such cases, the judicial protection of an ex-employee is very problematic. The employee is in an unequal situation vis-à-vis the employer, since he/she loses lawsuits due to formal reasons. Formally, a dismissal is sound, although it is evident that the reasons for its serving have been different. In this connection, we recommend to consider the possibility of specialization of one court for the entire territory of Slovakia which would bring faster implementation of international standards in the application of law.

Regular education and notification should be the norm. Annual reports should also include information concerning submissions investigated and results thereof.

Further, we recommend the centralization of practical information on how whistleblowers should proceed at one place. Fragmentation of legal regulation and differences in application represent an information barrier when making the decision whom to contact and how. The first point of contact providing basic information for a whistleblower could be a suitable solution.

Development of statistics concerning the cases of whistleblowing enabling for the monitoring of filings and processing thereof. Regular evaluation and publication of results. The Ministry of Justice of the SR keeps the statistics, therefore, an extension for certain data enabling for the monitoring of whistleblowing would be sufficient.

Financial motivation for notifiers for the reporting of illegitimate practices. Such motivation could have a form e.g. of a share in the saved financial means of the employer.

5. References and sources

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- Act No. 552/2003 Coll., on Work Performed in Public Interest, as amended
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- Act No. 215/2004 Coll., on the Protection of Classified Information, and on Amendment to Certain Acts
- Act No. 483/2001 Coll., on Banks, and on Amendment to Certain Acts, as amended
- Act of the National Council of the Slovak Republic No. 566/1992 Coll., on the National Bank of Slovakia, as amended
- Act No. 563/2009 Coll., on Tax Administration (the Tax Code), as amended
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- Act No. 211/2000 Coll., on Free Access to Information, as amended
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- Reply from the Ministry of Interior of the SR as of 3 August 2012 (received on 8 August 2012)
- Reply from the Ministry of the Environment of the SR as of 8 August 2012
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- Reply from Vojenské lesy a majetky SR, š. p. as of 6 August 2012 (received on 8 August 2012)
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- Reply from Slovenský vodohospodársky podnik, š. p. as of 9 August 2012 (received on 10 August 2012) on the extension of deadline
- Reply from Letisko M. R. Štefánika – Airport Bratislava, a. s. as of 8 August 2012 (received on 10 August 2012)
- Reply from Železničná spoločnosť Slovensko, a.s. as of 10 August 2012
- Reply from Slovenská konsolidačná, a.s. as of 10 August 2012

- Reply from Železnice Slovenskej republiky as of 10 August 2012
- Reply from Správa majetku mesta Košice as of 10 August 2012
- Reply from Bytový podnik mesta Košice, s.r.o. as of 8 August 2012 (received on 10 August 2012)
- Reply from Všeobecná zdravotná poisťovňa as of 9 August 2012 (received on 10 August 2012)
- Reply from Národný ústav srdcových a cievnych chorôb, a.s. as of 13 August 2012
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6. Chart(s)

Complete title of law or regulation Act No. 400/2009 Coll., on Civil Service, as amended

	Yes	No	Partial	Notes
Broad definition of whistleblowing		X		
Broad definition of whistleblower		X		
Broad definition of retribution protection		X		
Internal reporting mechanism			X	
External reporting mechanism		X		
Whistleblower participation		X		
Rewards system		X		
Protection of confidentiality			X	
Anonymous reports accepted		X		
No sanctions for misguided reporting		X		
Whistleblower complaints authority		X		
Genuine day in court			X	
Full range of remedies		X		
Penalties for retaliation		X		
Involvement of multiple actors		X		

Complete title of law or regulation Act No. 311/2001 Coll., the Labour Code, as amended

	Yes	No	Partial	Notes
Broad definition of whistleblowing		X		
Broad definition of whistleblower		X		
Broad definition of retribution protection		X		
Internal reporting mechanism			X	not required by legislation
External reporting mechanism		X		There are some cases where external consultants are involved in business companies.
Whistleblower participation		X		
Rewards system		X		
Protection of confidentiality			X	
Anonymous reports accepted			X	
No sanctions for misguided reporting		X		
Whistleblower complaints authority		X		
Genuine day in court			X	
Full range of remedies		X		
Penalties for retaliation		X		
Involvement of multiple actors		X		