

**Providing an Alternative to Silence:**

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

Country Report: Estonia

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](http://www.transparency.org).

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## **IV. Country report ESTONIA**

### **1. Introduction (1 page)**

Current report aims to briefly describe the status of whistle-blowers protection in Estonia both in public and private sector, main legislative changes and recommendations for improvement. It also tries to capture the perception of whistle-blowing among public.

As prescribed in the Council of Europe Parliamentary Assembly resolution 1719 “Protection of whistle-blowers”<sup>1</sup>, the whistle-blower protection regime should not create the illusion of “cardboard shield” which seems to protect the individuals seeking protection, but in reality does not. Thus the whistle-blower protection legislation should be clear, straightforward and without any loopholes that could trick the person making the disclosure. Moreover, an obligation to report, backed up with a misdemeanour sanction for failure to report is a dangerous combination if the law is weak and not likely to protect the whistle-blower. Currently that is the case in Estonia.

The new Anti-Corruption Act adopted on the 6<sup>th</sup> of June 2012 and going into force on the 1<sup>st</sup> of April 2013 will bring along some changes regarding the whistle-blowers protection as well. The new legislation seems to be more compliant with the requirement laid down in the resolution 1719 and also seems to meet the expectations of OECD phase 2 recommendations<sup>2</sup>. But to determine its practical expediency and strengthen its potential impact it is necessary to take steps to ensure and foster its application in practice. The results of a short questionnaire distributed among Estonian ministries show that not much attention has so far been paid on establishing internal whistle-blowing mechanisms or regulations or guidance for whistle-blowers in those institutions. Also, only few ministries reported that genuine whistle-blowing about corruption has taken place, although, details were usually not provided.

It is still difficult to say anything about public perception of whistle-blowers or people reporting on wrongdoings in general. This is because the concept of whistle-blowing is not very well known and is often confused with bad faith reporting or reporting on somebody in order to damage the person (snitching). Also, there are no statistics or public perception data directly linked to the issue. The Three Target Group surveys<sup>3</sup> conducted by the Ministry of Justice show that only 1% of the general population respondents would report corruption to law enforcement authorities. This figure is considerably higher among civil servants (13%). Still this is about reporting in general, not essentially whistleblowing.

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<sup>1</sup> Council of Europe Parliamentary Assembly (2010), Resolution 1719: “[Protection of ‘whistle-blowers’](#)”

<sup>2</sup> OECD follow up report on the implementation of the phase 2 recommendations. 2010.

<sup>3</sup> Ministry of Justice, Corruption in Estonia: study of three target groups, 2006, 2010.

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

There is no uniform act adopted in Estonia related to whistle-blowing and protection of whistle-blowers and different laws (e.g. Anti-Corruption Act, Penal Code, Witness Protection Act, Public Service Act, Employment Contract Act, Environmental Liability Act, Occupational Health and Safety Act) need to be reviewed in order to assess whistle-blowers protection in Estonia.

The Anti-Corruption Act (ACA) previously in force (enacted 28.02.1999) foresees an obligation of civil servant to inform the head of the institution, Security Police Board, Police Board or Prosecutors' Office of any corrupt activity that is known to him. On the 6th of June 2012 the parliament (Riigikogu) adopted the new ACA which had been discussed since 2009 but dropped out of the legislative proceedings due to parliamentary elections and expiration of the term of Riigikogu in March 2011. New law will come into force on the 1st of April 2013 and involves also some changes to the whistle-blowers protection. Old law was outdated in many aspects – some of the limitations, e.g. absolute ban of entrepreneurship of civil servants were long seen as unconstitutional (that ban was revoked by the Supreme Court of Estonia in March 2012) and some measures such as the system of declarations of assets has significant loopholes and shortcomings. The society had also changed over the time since the adoption of the old law. Thus it was decided that the whole law will be replaced with the new one based on the analysis and collection of best practices from other countries (including UK, Canada, USA, Australia, Finland, Germany, and South-Korea).

As noted above, **civil servants including officials<sup>4</sup> are currently legally obliged to report on corrupt acts** which are deemed to be abuses of position by an official in order to gain personal profit by making unjustified or illegal decisions or acts or by leaving legal decision or acts undone (ACA §§ 5;23).

The obligation to report is not present in the new law and has been replaced with **prohibition to conceal acts** described in § 3 or other corrupt activities. Also the misdemeanour sanction for failure to report<sup>5</sup> will be abolished and the person who has failed to report might receive disciplinary punishments for loss of trust<sup>6</sup>.

Previous ACA was applicable solely in public sector, but the new law states that *“the principles provided for in this section also apply in the case of notification of an incident of corruption occurred outside the performance of public duties”* (§ 6 sub 5) i.e. in cases if reporting on corruption takes place in private sector. Yet it remains unclear how and to what extent the principles can be applied, e.g. how it will be ensured that the confidentiality of the disclosures will be guaranteed – although this remains unclear among public sector as well as there are no

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<sup>4</sup> See „Circle of reporting persons“ below for definitions of civil servant and an official.

<sup>5</sup> According to the current ACA § 26<sup>4</sup> a civil servant that has failed to report on corruption will be fined with up to 300 fine units (1 fine unit is 4€).

<sup>6</sup> Explanatory note to the new ACA (adopted 6.06.2012).

sanctions in place for the person leaking the information about the disclosure nor special remedies or compensations for whistle-blower whose identity has been disclosed unlawfully. Additionally, private sector employees can rely on regular employment protection measures arising from Employment Contract Act prohibiting the termination of contract with no valid grounds and illicit worsening of employment conditions, including reduction of pay and substantial change of duties.

### Whistle-blower's confidentiality

Current ACA guarantees anonymity if the person making the report wishes so. By the new ACA, confidentiality of the fact of reporting is guaranteed – that is automatic and may only be invoked if the person has given a written consent. For the purposes of extended confidentiality Code of Criminal Procedure<sup>7</sup> was amended in 2010 so that the primary documents used by the law enforcement authorities in order to commence a crime investigation shall not be annexed to the indictment bill if confidentiality is guaranteed to the informer according to the law (§ 226 sub 4).<sup>8</sup> This should be considered as an important change as otherwise the allegedly corrupt person that has been reported on can find out about the whistle-blower's identity from the indictment bill at latest and impose undue sanctions on the person that has reported. Suspension of the accused person from the office for the duration of the criminal proceedings is within the discretion of the prosecution who must submit the relevant application to the responsible judge who again has the discretion to grant such a decree or not<sup>9</sup>. The persecution of the disclosed whistle-blower might be commenced nevertheless by the loyal colleagues of suspended official. Anonymity will not be guaranteed by the law if the report was motivated by personal gain or low motives. It does not say whether correct and accurate report will always be kept anonymous notwithstanding whistle-blower's motives or not, but probably it will. According to the new ACA confidentiality of the act of reporting will not be guaranteed if whistle-blower knowingly communicates wrong information. Hence, all the protective measures apply also in cases where the whistle-blower was reporting in good faith but the information was proved to be wrong or inaccurate.

In addition to above, knowingly filing a false complaint about criminal activity of another person is punishable by criminal law (PC § 319).

### Scope of application

In comparison with the current ACA the wording of new ACA seems to encompass wider range of corrupt activities that civil servants are expected to report on, but one can conclude that lawmaker's intention was to include all the activities that can be regarded as corruption (both criminal acts and misdemeanours).

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<sup>7</sup> Code of Criminal Procedure (adopted 12.02.2003, enacted 01.07.2004).

<sup>8</sup> OECD follow-up report on the implementation of the phase 2 recommendations. 2010. Page 9.

<sup>9</sup> Code of Criminal Procedure § 141.

The scope of two Penal Code qualifications – concealment of crime (§ 306) and failure of reporting the crime (§ 307) – are all crimes of first degree (an offence the maximum punishment prescribed for which is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution<sup>10</sup>).

Witness Protection Act<sup>11</sup> provides protective measures to witnesses, persons conducting proceedings or victims whose safety is jeopardized (§ 6).

### Procedure of reporting

Current ACA foresees an obligation of an official or civil servant to inform the head of the institution, Security Police Board, Police Board or Prosecutors' Office of any corrupt activities that are known to him/her. New law prescribes that the confidentiality of the act of reporting of corruption will be guaranteed if public office, public official working for this office, the superintendent of this office, inspector of the declarations of interest or the body conducting proceedings on offences is being notified of corruption. Hence we can say that current nor the new system does not foresee or regulate unofficial channels of disclosure such as media or NGO-s. Although neither of the acts rules out the applicability of whistle-blower protection measures in case of using external communication channels the issue of guaranteeing confidentiality would be problematic in those cases. There is no explicit mention of disclosing of state and business secrets, but such information is deemed non-publishable even within the court proceedings.<sup>12</sup>

### Burden of proof

There is no special division of the burden of proof at the moment between the parties (whistle-blower and the person who retaliated against one) in case of a dispute and regular rules of substantiation are applied. New ACA will establish more favourable conditions for the whistle-blower that has been retaliated or discriminated against and shared burden of proof will be applied. The discriminated or retaliated person is required to present factual proof that he/she has suffered negative treatment as a result of blowing the whistle. The person or office that the claim is placed against must prove otherwise and if it does not, it will be assumed that the negative treatment was related to the act of reporting.<sup>13</sup>

In case of discrimination disputes in a sense of Equal Treatment Act and Gender Equality Act shared burden of proof is applied already.<sup>14</sup>

### Circle of reporting persons

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<sup>10</sup> Penal Code § 4 sub 2.

<sup>11</sup> Witness Protection Act (adopted 15.06.2005, enacted 21.07.2005).

<sup>12</sup> See e.g. Code of Civil Procedure § 257 sub 3.

<sup>13</sup> Explanatory note to the ACA adopted on the 6th of June 2012, p. 15.

<sup>14</sup> Equal Treatment Act § 8, Gender Equality Act § 4.

As there is no free standing law on whistle-blowing in Estonia, only the circle of people covered by ACA can be determined. Here we have to make a distinction between persons obliged (current ACA) or expected (new ACA) to report on corruption.

Current ACA covers all the civil servants (including officials), but the new ACA covers only officials when it comes to duty to inform.<sup>15</sup> According to the new ACA an official is a person in civil service who has the right to make binding decisions<sup>16</sup>, perform acts<sup>17</sup> or take part in their making notwithstanding if he or she is performing those tasks permanently or temporarily, for remuneration or for free or has been elected to the office or appointed to the office (§ 2).

The new law does not exclude any of the physical persons reporting on corruption when it comes to protection measures i.e. anybody reporting on corruption will enjoy the protection provided by this law. That conclusion is also supported by § 6 sub 5 which stipulates that whistle-blower protection principles are also applied outside the performance of public duties. Yet again it remains unclear how the principles such as confidentiality will be adhered by (private sector) organizations.

### Means of compensation

There are no separate means of compensation for whistle-blowers; the measures in place for compensating damages are contained under several different acts.

In case of discrimination disputes the person has a right to file a civil suit or seek assistance from the Labour Dispute Committee and demand that the discrimination was stopped and direct financial damages occurred due to the discrimination compensated.

In addition the victim can demand compensation for non-material (moral damages) up to a reasonable amount.<sup>18</sup> Compensation for damages is decided according to the Law of Obligations Act<sup>19</sup> or according to the Employment Contracts Act in the case of an unlawful termination of employment contract in private sector. Here the employee has a right (during 30 days) to file a complaint in the civil court or refer the matter to the Labour Dispute Committee in order to have the termination of contract overturned<sup>20</sup> and to receive the salary for the period of time spent away from work due to the unlawful termination of the contract.<sup>21</sup>

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<sup>15</sup> Strict obligation to report has been lifted in the new ACA and respective misdemeanour sanction for failure to do so have been removed.

<sup>16</sup> A decision is the decision making directed at the creation, alteration or extinguishment of the rights and obligation of other persons, including agencies performing public duties, which regulates individual cases or an unlimited number of cases, including legislative acts, administrative acts within the meaning of the Administrative Procedure Act, judicial decisions, and internal legal instruments of an agency (ACA sec 2 sub 1).

<sup>17</sup> An act is an activity which causes legal and unavoidable factual consequences to other persons, including agencies performing public duties, and which is not the making of a decision. An act may also mean performing of any other procedural acts, omissions or delays (ACA § 2 sec 2 sub 2).

<sup>18</sup> Equal Treatment Act (ETA) § 24, Gender Equality Act (GEA) § 13

<sup>19</sup> Law of Obligations Act

<sup>20</sup> Employment Contracts Act (ECA) § 104.

<sup>21</sup> ECA § 108.

A civil servant can challenge the disciplinary punishment or the termination of the contract according to the Public Service Act (PSA) and Administrative Procedure Act<sup>22</sup> and demand reinstatement of the contract and the salary for the period he/she was unlawfully forced to spend away from work.<sup>23</sup>

If an unlawfully fired person does not wish reinstatement into office, the person has the right to demand to have the termination of the contract declared illegal and receive compensation in the amount of six monthly salaries.<sup>24</sup> The new PSA however does not allow for reinstatement and has reduced the payable compensation to three monthly salaries (§ 105).

In case of the breach of the non-discrimination clause set by the Public Service Act § 36<sup>1</sup> the upper bound of compensation (six monthly salaries) does not apply.<sup>25</sup> Public Service Act adopted 13.06.2012 (enacted 1.04.2013) relies on the same principles (§ 105) but the equal treatment principle (§ 13) is broader in comparison with the current PSA and in theory a civil servant can rely on this clause when seeking protection in event of any of discrimination (including the cases where the persecution occurs due to whistle-blowing).

### Organisational level

The legislator has not set an obligation for state agencies to develop and enforce organisational systems for whistle-blowing and the discretion for creating such a system has been left to agencies themselves.<sup>26</sup>

Since the healthcare sector has been deemed as a high corruption risk sphere, the Government's Anti-Corruption Strategy for 2008-2012 set a goal for developing effective reporting and whistle-blowing mechanisms in the sector, unfortunately there has been no progress in this field and by the end of 2011 most the activities planned for improving the health care sector from the standpoint of anti-corruption were unfulfilled.<sup>27</sup>

The freedom of information (FOI) requests<sup>28</sup> sent to the ministries and the Tax and Customs Board in July 2012 were answered within the official time limit for answering official information requests) and all institutions provided their replies. Most ministries do not have specialised inter-organisational regulations that compel employees to blow the whistle, only the Tax and Customs Board has regulations set up (a code of ethics) that obligate employees to inform about high corruption risk activities or corruption witnessed directly. The Ministry of Defence plans to develop (during 2012) a unified procedure for reporting violations in agencies under their jurisdiction. In their replies to the information request regarding whistle-blowing measures the ministries referred to the general reporting procedure set by the Anti-Corruption Act (ACA) and the possibility to use internal auditing departments as a channel for whistle-

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<sup>22</sup> Administrative Procedure Act (adopted 06.06.2001, enacted 01.01.2002).

<sup>23</sup> Public Service Act (PSA) § 135 section 1.

<sup>24</sup> PSA § 135 section 2.

<sup>25</sup> PSA § 135 section 3.

<sup>26</sup> See also 06.06.2012 adopted ACA's explanatory note p. 14

<sup>27</sup> Estonian Government's session 14.06.12 Available at:

<http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=56944/2011.+a+aruanne.pdf>.

<sup>28</sup> See questions in Annex 1.



blowing. Only the Ministry of Foreign Affairs replied that they have two employee trustees in place who can also be informed about corruption related violations. In addition to the previous mechanisms, the Ministry of Defence has conducted training seminars on anti-corruption for their officials and they plan to provide further training on the regulations in the new ACA. The Tax and Customs Board has provided a possibility for the officials to use a tip line or an e-mail address for reporting, these opportunities are however also available for the general public and can't be viewed as agency specific.

### Other Acts

There are no special whistle-blower protection provisions in place in other acts (for example the Public Information Act, Employment Contracts Act and Consumer Protection Act) but some aspects in the Environmental Liability Act and Occupational Health and Safety Act are worth mentioning:

- According to the Environmental Liability Act<sup>29</sup> § 9, in case of the environmental damage or the risk of such damage the responsible party is obligated to immediately inform the Environmental Board and in case there is also a health risk to people the Health Board as well. The failure to notify the authorities is punishable with a fine up to 200 units and in case of a legal person a fine with up to 20 000€.
- Occupational Health and Safety Act<sup>30</sup> § 14, section 6 states that the employee is obligated to immediately inform the employer or his/her representative and the working environment representative about the following- an accident or a risk of an accident, health condition that prevents working, shortcomings in the work safety system. If the employee feels that the workplace safety is not guaranteed by the measures the employer has set up, he/she has the right to file a complaint to working environment representative, working environment council, trustee of the employees or the local labour inspector (§ 14 section 7).

Occupational Health and Safety Act § 17 states that the employees are obligated to elect a working environment representative. Since the fulfilment of the representatives duties can lead to conflicts of interest between the representative selected from employees and the employer, the § 17 section 7 forbids the discrimination of the work environment representative due to fulfilling his/her lawful duties. On the other hand, the aforementioned law foresees no special protective measures if such discrimination still occurs.

Therefore it is worth considering applying the same principle as in the recently adopted (06.06.2012) new ACA § 6. This means distributing the burden of proof equally among the representative and the employer - the employer would be obligated to prove that if

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<sup>29</sup> Environmental Liability Act (adopted 14.11.2007, enacted 6.12.2007).

<sup>30</sup> Occupational Health and Safety Act (adopted 16.06.1999, enacted 26.07.1999).

the work environment representative was treated unfavourably, such treatment did not occur due to fulfilling their lawful duties as a representative.

### 3. Perceptions and political will

In comparison with 2009, when TIE conducted the last study on whistle-blowers protection, there are no significant changes in whistle-blowing practice. The Study of Three Target Groups 2006 (a sociological survey periodically conducted by the Ministry of Justice) showed that only 1% of regular people, who had had personal experiences with corruption, reported the instances to the law enforcement agencies. Amongst civil servants the number was slightly higher – 5% and amongst entrepreneurs disturbingly low – 1%. The next survey in 2010 showed no change in percentage among the regular people and entrepreneurs but the rate of reporting among civil servants had increased to 13%<sup>31</sup>. The main reason stated for not reporting by most of the people was the complicated nature of corruption crimes and lack of belief that the reporting would be followed by a successful investigation. Another important reason for not reporting was self-preservation; people do not wish to complicate their lives or the lives of others. The results verify the strong psychological aspect related to reporting – the people are afraid to disturb the microclimate of their organisation and are afraid of psychological pressure.

It was also concerning to learn that prosecutors and judges that had suffered a severe threat in relation to their work duties are not keen on reporting this to law enforcement.<sup>32</sup>

An important aspect in promoting or discouraging the reporting is the media coverage of whistle-blowing. For example Delfi – an online news portal has appealed to readers to report civil servants who have abused administrative resources<sup>33</sup>. The mainstream attitude in the media however is still discouraging. The reporting of such violations is still occasionally perceived as snitching and the legacy from Soviet times still lingers (due to the activity of KGB reporting was feared and abused on regular basis)<sup>34</sup>.

The term whistle-blower - “vilepuhuja” translates into Estonian directly and as in English, it has the exact same meaning along with its rather negative connotation. The better and more neutral term in Estonian is “väärkäitumisest teavitaja”, which means the one who informs about wrongdoings. This term however does not convey the meaning of whistle-blowing well enough. The original term whistle-blower signifies a former or a current employee of the organisation who informs the authorities of illegal actions and occasionally the term also covers consultants, subcontractors or interns who report. However it generally does not signify people who are completely unrelated with the organisation as the term “väärkäitumisest teavitaja” does. The reasoning behind this is the logic that an unrelated person is already protected from prosecution through other acts and mechanisms and he/she is not as vulnerable as the member of the

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<sup>31</sup> Study of Three Target Groups 2010, p. 52-53.

<sup>32</sup> Ministry of Justice, Eesti kohtunike ja prokuröride mõjutamine, 2011, p. 11. Available at: <http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=53634/Eesti+kohtunike+ja+prokur%F6ride+m%F5jutamine.pdf>.

<sup>33</sup> Available at: <http://rahvahaal.delfi.ee/news/uudised/anna-teada-ametnikest-kes-on-riigi-raha-valesti-kasutanud.d?id=64113341>.

<sup>34</sup> For example see an article by Priit Pullerits „Kitujate riik“, 16.07.2012, Postimees. Available at: <http://arvamus.postimees.ee/908762/priit-pullerits-kitujate-riik>.

organization is. So the concept of whistle-blowing poses a terminological problem when translated into Estonian. The former does not however mean that the general protective provisions do not apply in case of genuine whistle-blowers but whistle-blowers need additional protection from retaliation at workplace.

There is no statistics or data on instances where an official has informed the authorities about corruption because of §23 in ACA which sets the obligation to do so, nor there are any cases where sanctions have been applied for not reporting (the § 26<sup>4</sup> of ACA in force foresees a punishment for failing to report). The freedom of information request that were sent to the ministries and the Tax and Customs Board in July 2012 don't prove otherwise.

Although some of the aforementioned organisations claimed that there have been successfully prosecuted cases based on officials reporting, the examples mainly consisted of incidents where an official was offered a bribe and reported the bribery attempt as the law obligates.

There has been considerable media coverage on a case concerning removal of Narva city's Property and Economy Department's director placeholder. Narva is a third largest city in Estonia and the municipal government and council members have been subject to number of corruption scandals.<sup>35</sup>

The case concerns summations between the city and the director's placeholder over the allegedly illegal termination of service of the director's placeholder due to her whistle-blowing in a corruption case that occurred in the department she ran. According to the media she was raising concerns both internally and externally about several potentially corruption-related activities such as assigning public procurement contracts to companies affiliated with the politicians in power and shady building leases that were unfavourable for the city.<sup>36</sup>

19.08.2008 Narva City Council issued a decree by which T.L was appointed to the position of the director's placeholder as a temporary arrangement due to the criminal investigation that was initiated against the former director of the Department.<sup>37</sup> T.L was appointed to office as of 21.08.2008 and until the former director A.N. returns or until T.L is released from the office.

27.10.2011 Narva City Council published an advertisement for recruiting a new director's placeholder who would take T.L's place. 18.11.2011 T.L. challenged the legality of the initiated recruitment process, because it violated her contractual right deriving from the Public Service Act to stay in office until the former director returns or T.L is released. In her complaint she also mentioned that the recruitment process to find a new director's deputy was initiated because she had given statements in corruption proceedings concerning the mayor of Narva which had made her a *persona non grata*. Court decided to satisfy her complaint and ordered

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<sup>35</sup> „How business mixes with politics in Narva“ 28.06.2012, Baltic Business News, available at <http://balticbusinessnews.com/article/2012/6/28/how-business-mixes-with-politics-in-narva>

<sup>36</sup> Äripäev, „Narva vallandas kahtlastele tehingutele tähelepanu juhtinud ametniku“, 9.01.2012. Available at: <http://www.ap3.ee/article/2012/1/9/narva-vallandas-kahtlastele-tehingutele-tahelepanu-juhtinud-ametniku>

<sup>37</sup> According to the decision of Ida-Viru County Court on the 14<sup>th</sup> of December 2011 in criminal matter 1-11-13665 former head of Narva city's Property and Economy Department, Arkadi Nikolajev was found guilty in repeated accepting of gratuities.

the termination of the recruitment process<sup>38</sup>. The Narva City Council complied with the verdict in 28.12.2011 and the court closed the case.<sup>39</sup>

In January 2012 T.L. was released due to a disciplinary violation.<sup>40</sup> T.L. challenged the termination of the office in court and won. T.L. was reinstated to office. Shortly after the verdict, the Narva City Council took number of steps to reorganize the department in which T.L was employed (this was allegedly done to get rid of her)<sup>41</sup>.

#### **4. Strengths, weaknesses and recommendations (1-2 pages)**

The case described above is one of the few public cases where an official's whistle-blowing has resulted in potential retaliation and it illustrates the risks that arise in case of whistle-blowing within the organisation.

It is complicated to assess whether the new ACA that will enter into force 1.04.2013 would have offered more protection. The § 6 section 3 of the new ACA will however include the principle of shared burden of proof. Despite this, the situation will still be complicated in practice because assessing whether discrimination based on whistle-blowing has taken place or not would require an objective basis for comparison with the treatment of another employee/official. In the case of T.L. the basis for comparison would be inadequate and the official would have to rely on other protective measures set in place under the Public Service Act against unlawful disciplinary punishments<sup>42</sup>. In addition to the monetary compensation for the uncollected salary due to forced absence from work, the official who's persecution due to whistle-blowing has been, beyond reasonable doubt proven in court, should also receive sufficient compensation for retaliation, because it has negatively affected one's work environment. Such a mechanism would also act as a pre-emptive measure, since the official due to who's actions the discrimination claim occurs, should take into account the fact that if the court rules in the favour of the victim – the whistle blower, the compensation paid to the victim could be later collected by court order from the retaliator.

PSA (from 1.04.2013) provides that unlawfully discharged civil servant is entitled to compensation of three months' of his salary and the court might change it taking into account the nature of the dismissal and interests of both parties. Not explicitly mentioned, but dismissal for good faith whistle-blowing could be one of the grounds for the court to increase the payable amount. Current PSA (until 31.03.2013) does not foresee such an option, but payable compensation is significantly higher as well – six months' salary.

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<sup>38</sup> 22.11.2011 Tartu County Court's Jõhvi courthouse's court ruling in an administrative matter nr 3-11-2694. Available at: <https://dokregister.narva.ee/index.php?page=docshow&docid=81776>.

<sup>39</sup> 31.01.2012 Tartu County Court's Jõhvi courthouse's court ruling in an administrative matter nr 3-11-2694. Available at: <https://dokregister.narva.ee/index.php?page=docshow&docid=86142>.

<sup>40</sup> Äripäev, „Narva vallandas kahtlastele tehingutele tähelepanu juhtinud ametniku“, 9.01.2012. Available at: <http://www.ap3.ee/article/2012/1/9/narva-vallandas-kahtlastele-tehingutele-tahelepanu-juhtinud-ametniku>

<sup>41</sup> Postimees, „Narva kaotab ametnikust vabanemiseks ameti“, 23.05.2012. Available at: <http://www.postimees.ee/851558/narva-kaotab-ametnikust-vabanemiseks-ameti/>.

<sup>42</sup> Primarily PSA § 135.

It is also worth noting that according to the current PSA (until 31.03.2013) § 135 civil servants who have been discharged from the office unlawfully have the right to claim reinstatement, but new PSA does not provide that option<sup>43</sup>. Thus it seems that PSA entering into force on the 1<sup>st</sup> of April 2013 will undermine the protection of whistle-blowers as it makes it easier and less costly for the public institution to get rid of “*persona non-grata*” i.e. a person that is disclosing abuses and wrongdoings by the leadership.

Although it seems on the paper that the new ACA entering into force on 1.04.2013 fulfils some of the primary criteria set by European Parliamentary Assembly with its resolution 1719 “Whistle-blowers protection” the question of practical implementation side still raises concerns and “card board shield” illusion might still be present if the law is not rigorously implemented and duly communicated to the target group in both public and private sector. Problems also arise from minimal reporting culture and lack of knowledge about importance of whistle-blowing both in public and private sector.

We recommend:

- To evaluate the effects of the new ACA and PSA entering into force on 01.04.2013 on protection of whistle-blowers in practice paying attention to both public and private sector.
- To consider additional sanctions against retaliators and additional compensation for whistle-blowers.
- To promote whistle-blowing in public and private sector via organising training for officials. We also recommend thorough evaluation of reporting mechanisms in state agencies (ministries, healthcare institutions, army, etc.)
- To establish a link between whistle-blower protection measures set by the new ACA and Employment Contract Act to ensure higher legal clarity
- To organize trainings for judges dealing with civil, administrative and criminal cases regarding the protection and compensation of whistle-blowers
- Consider establishing a separate statutory approach in case of unlawful discharge and dismissal of whistle-blowers and related claims
- Consider establishing personal liability regime of the person that has intentionally retaliated against the whistle-blower

## **5. References and sources**

1. Council of Europe Parliamentary Assembly (2010), Resolution 1719: “[Protection of ‘whistle-blowers’](#)”
2. Explanatory note to the new ACA (enacted 1.04.2013)

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<sup>43</sup> See § 105

3. Estonian Government's session 14.06.12 Available at:  
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### **Court decisions**

11. 22.11.2011 Tartu County Court's Jõhvi courthouse's court ruling in an administrative matter nr 3-11-2694. Available at:  
<https://dokregister.narva.ee/index.php?page=docshow&docid=81776>
12. 31.01.2012 Tartu County Court's Jõhvi courthouse's court ruling in an administrative matter nr 3-11-2694. Available at:  
<https://dokregister.narva.ee/index.php?page=docshow&docid=86142>

### **Laws**

13. Administrative Procedure Act (adopted 06.06.2001, enacted 01.01.2002)
14. Anti-Corruption Act (adopted 27.01.1999, enacted 28.02.1999)
15. Anti-Corruption Act (adopted 06.06.2012, enacted 1.04.2013)
16. Code of Civil Procedure (adopted 20.04.2005, enacted 01.01.2006)
17. Code of Criminal Procedure (adopted 12.02.2003, enacted 01.07.2004)

18. Employment Contracts Act (adopted 17.12.2008, enacted 01.07.2009)
19. Environmental Liability Act (adopted 14.11.2007, enacted 6.12.2007)
20. Equal Treatment Act (adopted 11.12.2008, enacted 01.01.2009)
21. Gender Equality Act (adopted 07.04.2004, enacted 01.05.2004)
22. Law of Obligations Act (adopted 26.09.2001, enacted 01.07.2002)
23. Occupational Health and Safety Act (adopted 16.06.1999, enacted 26.07.1999)
24. Penal Code (adopted 06.06.2001, enacted 01.09.2002)
25. Public Service Act (adopted 25.01.1995, enacted 01.01.1996)
26. Public Service Act (adopted 13.06.2012, enacted 1.04.2013)
27. Witness Protection Act (adopted 15.06.2005, enacted 21.07.2005)

**List of institutions contacted:**

- Ministry of Justice
- Ministry of Research and Education
- Ministry of Defence
- Ministry of Environment
- Ministry of Culture
- Ministry of Economics and Communications
- Ministry of Agriculture
- Ministry of Finance
- Ministry of the Interior
- Ministry of Social Affairs
- Ministry of Foreign Affairs
- Estonian Tax and Customs Board

**6. Chart(s)**

**Complete title of law or regulation:** Anti-Corruption Act (current)

	Yes	No	Partial	Notes
Broad definition of whistle-blowing		x		
Broad definition of whistle-blower		x		
Broad definition of retribution protection		x		

Internal reporting mechanism			x	
External reporting mechanism			x	
Whistle-blower participation		x		
Rewards system		x		
Protection of confidentiality			x	Protection of anonymity upon request
Anonymous reports accepted		x		
No sanctions for misguided reporting	x			
Whistle-blower 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:** Anti-Corruption Act (1.04.2013)

	Yes	No	Partial	Notes
Broad definition of whistle-blowing		x		
Broad definition of whistle-blower		x		
Broad definition of retribution protection		x		
Internal reporting mechanism			x	
External reporting mechanism			x	
Whistle-blower participation		x		
Rewards system		x		
Protection of confidentiality	x			The act of disclosure is deemed confidential without any additional actions required by the person making the disclosure
Anonymous reports accepted		x		
No sanctions for misguided reporting	x			
Whistle-blower complaints authority		x		
Genuine day in court		x		
Full range of remedies		x		
Penalties for retaliation		x		
Involvement of multiple actors		x		



## **Annex 1**

1. Are there regulations (code of ethics, guidelines etc.) in your organisation that cover the topics of reporting corruption and whistle-blowing for officials? If applicable, please add the relevant document(s)!
2. Is there a system in place through which officials can report wrongdoings and corruption (for example audit service, trustee, tip-line, mail-box)? Please describe the system if applicable.
3. Have there been any cases of reporting corruption or whistle-blowing in your organisation (for example cases which would require officials to report according to ACA § 23)? Please describe the cases if any. If there have been cases have any of them led to a judicial decision?