

# Whistle-blower Protection in Serbia



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Whistle-blowers are often among the most important actors in the fight against corruption. But the protection given to the whistle-blowers under the current regulations gives no reason to Serbian citizens to consider reporting irregularities.

## Introduction

Effective protection of whistle-blowers encourages people to stand up against corruption in their surroundings and report what could not be detected by the authorities otherwise. Serbia invests a lot of effort in fight against corruption. Yet the protection given to the whistle-blowers under the current regulations gives no reason to the Serbian citizens to consider reporting irregularities.

Some of the major corruption affairs in Serbia have been reported by whistle-blowers. Yet, instead of protection, these people were exposed to severe retaliation. One whistle-blower lost his job, remained unemployed for five years, and constantly received threats. Other whistle-blowers who kept their jobs were exposed to such retaliation and excommunication at work that they requested transfers to different, even lower positions. Some were even criminally prosecuted.

Under such conditions citizens will think twice before taking any action against corruption. And after thinking it through, most will find it extremely difficult to put the public interest before their own and the welfare and safety of their family.

## Legal framework

Serbia still does not have a system for protecting whistle-blowers. It does not even have a law that covers this area. Instead, some vague and ambiguous provisions are scattered across different laws. The most detailed regulation on whistle-blower protection is the rulebook for protection of a person who reports corruption (Rulebook). The Rulebook has been adopted by the Anti-Corruption Agency. However, the Agency, which is not a legislative body, has not had much space to manoeuvre within its competence to introduce greater protection.

Interestingly, none of these provisions protects private sector employees. Only employees in the public sector can count on protection, and even then, only in certain circumstances.

The current situation has been criticised on many levels. Whistle-blower protection should be regulated by a separate act adopted by the parliament, and not by a rulebook that lacks sufficient legal authority. Furthermore, only an act adopted by the parliament can prescribe sanctions for those who breach whistle-blower rights.

## Whistle-blower protection under the Rulebook

*Who is protected?*

The Rulebook only applies to employees in the public sector. While it applies to all employees in the state administration, when it comes to state enterprises and public institutions, only management is protected. It is often heard that it is unlikely that management would report corruption, as those are the persons who are typically in a position to be involved in unlawful activities.

#### *What are the conditions for protection?*

Whistle-blowers will be protected if: (i) they are public sector employees, (ii) they report corruption within the government body where they work (but not irregularities in other government bodies), (iii) the corruption is reported to the Agency (not some other public authority) with a written request for protection, and (iv) they act in good faith.

Whistle-blowers act in good faith if they have a justifiable reason to believe that the allegations for corruption are true, even if, at some later time, it turns out they were not true. Moreover, whistle-blowers must not have any unlawful or unethical goals when filing corruption allegations. This definition has been criticised because of its ambiguity and possible misuse. Who determines what is an unethical goal, and under what criteria? The Anti-Corruption Agency may deprive whistle-blowers protection at any time if it determines that they are not acting in good faith.

#### *What kind of protection is provided?*

The Rulebook provides two means of protection: identity protection and protection from retaliation. But there should be no need for both at a time, because no one can exercise retaliation against an anonymous whistle-blower.

Whistle-blowers enjoy identity protection if they expressly demand such protection. If their identity is then disclosed or they waive it, then they have a right to retaliation protection. Whistle-blowers are protected from employer retaliation in two ways: no change of employment status and no change of employment conditions against their will.

This includes any act against whistle-blowers that leads to physical or psychological molestation, termination of employment, exposure to disciplinary procedures, transfer to different working place, preventing from advancement, etc., as well as serious threats that any of these measures will be undertaken. It is irrelevant whether these measures are provoked by the whistle-blowers' reports or some other facts or circumstances. Protection is given for up to two years.

#### *Sanctions in case of retaliation*

The only sanction is that the name of the institution and the official in charge exercising retaliation against the whistle-blower will be published on the special annual list prepared by the Anti-Corruption Agency. The Rulebook could not prescribe any other sanction because it is the parliament's competence.

#### *Next steps*

Whistle-blower protection in Serbia has been criticised for years. The government has recently appointed a commission to prepare a new act, the first draft of which is expected by the end of 2013, and adoption in the first half of 2014 after public discussion. It is expected that the act will provide sound and reliable protection for whistle-blowers in both the public and private sector. It is yet to be seen if the new act will meet the high expectations the public has placed in the commission. And after the law is adopted, a new battle will start: implementation of the new rules in practice.

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