

LEGAL FRAMEWORK FOR WHISTLEBLOWING

Bogdan Pušić¹

Ministry of the Interior of the Republic of Serbia

Abstract: The paper, apart from the introduction, conclusion and list of used literature, consists of three logical units. Starting from the fact that corruption endangers the democratic values of a society, the first part of the paper presents the foundations on which the systemic approach in combating corruption is built. The second part is dedicated to the legal framework for whistleblowing within the legal system of the Republic of Serbia. Special attention is paid to the analysis of factors that have negative impact on the number of whistleblowers, i.e. the problems that whistleblowers encounter in the whistleblowing process, in particular the absence of adequate protection and harmful consequences suffered by the whistleblower. The third part presents the characteristics and types of whistleblowing. Finally, the conclusion provides the opinion regarding improvement of the position of whistleblowers with amendments to the Law on Protection of Whistleblowers.

Keywords: public administration, corruption, whistleblower, whistleblowing, proving corruption.

INTRODUCTION

Corruption in the public administration endangers the fundamental values of a society and presents an indicator for assessing the degree of its democracy. Timely information on the commission of corruption, along with the efficient reaction of the competent public authorities, is a key precondition for a successful fight against corruption. The existence of a dark figure and the fact that there are no dissatisfied parties in corrupt activities unequivocally indicate that there are problems in detecting corruption. The present phenomenon of the “law of silence” poses a special problem. That is the reason why the importance of whistleblowers is significant for detecting and proving corruption. Personnel in administrative bodies is at the source of information and the first to get information about corruption. Reporting a colleague of corruption is often considered an unethical act and a reflection of disloyalty to the public authority in which the whistleblower is employed. On the other hand, there are legitimate concerns and many problems to which whistleblowers are exposed.

¹ bogdan.pusic@mup.gov.rs



In order to determine the contribution of whistleblowers to prevention, and especially to detecting and proving corruption, the subject of analysis is the enforcement of the Law on Protection of Whistleblowers (Official Gazette of RS, 2014), starting with understanding of the internal whistleblowing procedures in the administration, authorized persons and awareness of employees of its existence, presence of pressure to act in a certain manner, problems in the protection of whistleblowers.

TACKLING SYSTEMIC CORRUPTION

Effective fight against corruption in the administration, in terms of its content, implies an organized and long-lasting process of implementing previously thoroughly designed anti-corruption measures. The Constitution of the Republic of Serbia (Official Gazette of the RS, 2006) defines the National Assembly as the highest legislative body. In addition to the legislative function, the functions of the National Assembly pertaining to control and elections are extremely important in the implementation of anti-corruption measures. The control function is reflected in the supervision of the work of the Government, security services, the Protector of Citizens, as well as other bodies and authorities, in accordance with the Law on the National Assembly (Official Gazette of RS, 2010). Deputies have several control instruments, starting from asking parliamentary questions, all the way to direct participation in parliamentary bodies or committees (see more: Milenković, 2013). One of the systemic anti-corruption measures is the budget function of the National Assembly. It includes planning of budget, expenditures and justification of budget funds spent by direct and indirect budget users.

In the implementation of the envisaged anti-corruption measures, the role of independent control bodies is very important: the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Protection of Equality, the Agency for Prevention of Corruption, the State Audit Institution and the Republic Commission for Protection of Rights in public procurement procedures.

Representatives of the executive authorities are in charge of the implementation of the adopted anti-corruption laws and represent a very important segment in the implementation of the envisaged anti-corruption measures.

Public administration reform, envisaged by the Public Administration Reform Strategy in the Republic of Serbia (Official Gazette of RS, 2014), especially in the area of establishing an efficient system for prevention and fight against corruption, should contribute to reduction of opportunities for corruption within public administration.

The independence of the judiciary, as a constitutional category, in addition to being a fundamental value of the rule of law, is an unavoidable factor in the efficiency of the systemic fight against corruption. In order to strengthen the independence of the judiciary, it is necessary to institute a constitutional reform, which is also part of the obligations that the Republic of Serbia has undertaken to fulfill in the process of accession to the European Union.

The systemic fight against corruption in the administration, in principle, includes coordination of all stakeholders in taking anti-corruption measures. If there is no connection between the legislative, executive and judicial powers, the expected effects of the systemic fight against corruption in the administration will not be achieved. It is necessary that each of the mentioned authorities, in accordance with the constitutional principles and legal competencies, commences with implementation of the planned anti-corruption activities.



THE CONCEPT AND PROTECTION OF WHISTLEBLOWERS

The most important condition for an effective fight against corruption is the timely disclosure of information on corruption. The whistleblower is at the source of information on corruption, the whistleblower is an individual who, in the public interest, detects corruption in the administration authority. In order to remain constant in that readiness, the whistleblower must have clear information that gathering documentary evidence will be initiated and that all mechanisms to ensure their protection will be activated.

With the adoption of the Law on the Anti-Corruption Agency² in 2008 (Official Gazette of the RS, 2008), the first step was made in terms of the legal regulation of the issue of whistleblowers. In accordance with the Law, the Rulebook on the Protection of Persons Reporting Suspicions of Corruption (Official Gazette of the RS, 2011) was adopted and provided formal protection to whistleblowers. However, the Constitutional Court decided (Constitutional Court, IUz-295/2013) that the provision of Article 56 paragraph 5 of the Law on the Anti-Corruption Agency, as well as the Rulebook on the Protection of Persons Reporting Suspicions of Corruption, are not in accordance with the Constitution.

Following the ratification of the UN Convention against Corruption (Official Journal of Serbia and Montenegro-International Agreements, 2005) and the Civil Law Convention on Corruption (Official Gazette of the RS-International Agreements, 2007), an obligation was created to have legally regulated protection of persons who report justified suspicions of corruption to the competent authorities. The adopted National Strategy for the Fight against Corruption for the period 2013-2018 stipulates the establishment of effective protection of whistleblowers, professional development of workers employed in the public sector, and undertaking activities aimed at raising public awareness of the rights and protection of whistleblowers.

There is no generally accepted definition of whistleblowers even among Member States of the European Union. The absence of a single, uniform definition of whistleblowers results in the absence of a single, uniform standard of protection (see more: Worth, 2019). The Law on Protection of Whistleblowers (Official Gazette of RS, 2014) defines a whistleblower as a natural person who engages in whistleblowing in the context of their work-based relationship, employment/recruitment procedure, use of services rendered by public and other authorities, holders of public authority or public services, as well as business cooperation or the right of ownership in a company, and whistleblowing as the disclosure of information about violations of regulations, human rights, as well as exercising public authorization contrary to the entrusted purpose³.

According to the current legal solution, legal entities do not have the possibility to be granted the status of the whistleblower, and, accordingly, to exercise the right to judicial protection on that basis⁴. The law provides for the possibility of protection of certain categories of persons who are not whistle-

2 By the Law on prevention of Corruption from 2019 the Agency for fight against corruption changed its name into the Anti-Corruption Agency.

3 The definition is very often identified with the English formulation "whistleblowing/ whistleblowers" which, in its essence, comprises disclosure of bad management, commission of illegal actions that are most often committed by persons employed within a public authority or a private run company.

4 There is a real possibility that the act of whistleblowing is initiated by a responsible person of another legal entity. As a consequence, there is a real probability that harmful consequences take place, which can be brought to a direct relation with the act of whistleblowing, for example, in the termination of business cooperation, non-fulfillment of the contractual obligation or non-exercise of rights despite the fulfillment of conditions.



blowers in terms of this law. These are connected persons, who suffer a harmful consequence due to the misconception that they are whistleblowers.

A special problem poses the absence of judicial protection of whistleblowing during the procedure of proving allegations of corruption. The judicial protection is possible for a limited time. It covers a period of six months from the day of learning about the impending harmful action and lasts for a maximum of three years from the day when the harmful action was taken. However, this deadline is insufficient. The possibility of judicial protection should be harmonized with the existing legal deadlines pertaining to the occurrence of relative or absolute obsolescence of criminal prosecution (Nenadić, 2017).

*The establishment of an effective whistleblower mechanism in the administration will largely depend on whether the whistleblower will suffer harmful consequences. It is unlikely that someone will decide to become a whistleblower if they know that previous whistleblowers were not protected and that they suffered harmful consequences. On the other hand, there is the problem of solidarity. For example, whistleblowing in the police is not generally approved by police officers (Workman-Stark, 2017). Some authors (Bouza, 2001) find the explanation in loyalty, where the public interest is subordinated to the *vow of silence* about corrupt practices.*

Whistleblowers exercise the right to judicial protection by filing a lawsuit for protection in connection with the whistleblowing. When it comes to compensation of damage, the provisions of the Law on Obligations⁵ are applied. Judicial protection is achieved by filing a lawsuit with the competent court, for protection in connection with the whistleblowing. The place of undertaking the harmful action, or the place of residence of the plaintiff, is determined by the jurisdiction of the acting court. The mentioned lawsuit can be filed within six months from the moment of learning about the harmful action, that is, three years from the moment when the harmful action was taken. The established deadlines for exercising the right to judicial protection may in certain situations prevent the exercise of the mentioned right⁶. Judicial protection procedure is urgent and is carried out with the similar application of the Law on Civil Procedure ("Official Gazette of RS" No. 72/2011), which regulates court proceedings in cases of labor disputes. In order to fully protect whistleblowers, revision as an extraordinary legal remedy is always allowed.

The lawsuit for protection in connection with the whistleblowing, among other things, contains the definition of the harmful act or its repetition, with the elimination of the consequence that occurred in the process. A lawsuit cannot challenge the legality of an individual act of the employer. The whistleblower may file a lawsuit to assess the legality of an individual act of the employer which decides on the rights, obligations and responsibilities of the whistleblower on the basis of work, if its adoption poses a harmful act in connection with the whistleblowing. The defendant bears the burden of disputing the stated claims of the plaintiff. During the procedure, as well as after its completion, and until its execution, the court may issue a temporary measure in accordance with the Law on Enforcement and Security ("Official Gazette of RS", 2015). A significant number of resolved cases has led to the establishment of court practice regarding certain rights of whistleblowers.⁷

5 Official Journal of SFRY no. 29/78, 39/85, 45/89-decision USJ, 57/89, "Official Journal of the FRY" no. 31/93 and "Official Journal of Serbia and Montenegro" no. 1 / 2003.-Constitutional Charter, Article 200.

6 For example, there is a possibility that the whistleblower, after the act of whistleblowing, be suspended by the employer from paying additional insurance. Since they were not informed about that, they can find out about the stated harmful consequence only when s/he meets the conditions for retirement. At the moment they find out that, the whistleblower has probably lost the right to judicial protection, in accordance with the Law on the Protection of Whistleblowers.

7 Court practice pertaining to determined, necessary facts has been established in order to prove the cause-



Published statistical data of the Supreme Court of Cassation, regarding the application of the Law on Protection of Whistleblowers, for the period from June 2015 to July 2017, apart from the trend of growth of resolved cases, show a trend of decreasing inflow of new cases⁸.

The implementation of the Law so far has not yielded the expected results. Insufficient motivation of persons to appear in the role of whistleblowers and the absence of an effective mechanism for protection of whistleblowers were noticed. These problems have also been recognized in EU countries, which has resulted in the adoption of the New EU Directive on the Protection of Whistleblowers (see more: Obradović and Bergant, 2018).⁹

CHARACTERISTICS AND TYPES OF WHISTLEBLOWING

The position of the whistleblower and the whistleblowing procedure itself are complex and depend on a large number of factors. In addition to a clearly defined procedure of whistleblowing, especially internal and external whistleblowing, the concretization of the subject of whistleblowing is of key importance.

Accordingly, establishing the existence of a suspicion of the existence of a corrupt act, whether it has been committed, or is being committed, by employees in administrative authorities, is a sufficient basis for whistleblowing. The effect of whistleblowing is largely conditioned by the quality of the evidence gathered. In doing so, a distinction should be made with regard to the attached relevant evidence collected by the whistleblower, in relation to which he indicates, and which are not in his possession at the time of initiating the act of whistleblowing. In order to concretize their claims, the whistleblower, before starting the act of whistleblowing, tries to document his claims as much as possible. In doing so, he must take care not to commit any criminal offense in the process of gathering evidence, including

and-effect relationship of the whistleblower and their putting in a less favorable position by the employer, by confirming that the employee has acquired the status of whistleblower, by disclosing information to the competent public authority. In this particular case, the whistleblower addressed the Ministry of the Interior, and thus started the procedure of external whistleblowing. After that, the employer passed an individual document which served in the decision making process pertaining to the right arising from labor relations, which resulted in putting the whistleblower in a less favorable position than he had before the initiation of the whistleblowing procedure. Decision of the Court of Appeals in Novi Sad, Gž Uz 6/17 dated 22 May 2017. Judicial practice has been established in the case of acquiring the status of whistleblower by an official who, in the performance of official duties, provided information that where the subject of whistleblowing. The officials took the position that the person had the right to judicial protection as whistleblower, if they made it probable that harmful action was taken against them, due to the submission of such information. Judgment of the Court of Appeals in Novi Sad, Gž Uz 6/17 dated 22 May 2017. Previous court practice has established the right to obtain the status of a whistleblower to a person related to the whistleblower, which makes it probable that a harmful action was taken against him, due to providing assistance and support to the whistleblower when taking a whistleblowing action. Judgment of the Court of Appeals in Novi Sad, Gž Uz 7/17 of 20.06.2017.

8 In the period from June 2015 to June 2016, in all acting courts were received 249 cases of which 158 cases were resolved. In the period from July 2016 to July 2017, were received 194 cases while a total of 218 cases, received by then, were resolved.

9 It is stipulated to establish new, protective mechanisms: a three-level reporting system, the obligation of feedback from the authorities, the prohibition of all forms of retaliation against whistleblowers, with mandatory stricter sanctions, provision of free legal aid to whistleblowers, more effective protection of whistleblowers in court proceedings, especially in terms of release from responsibilities regarding disclosure of information, etc.



the disclosure of the contents of documents marked with the degree of secrecy¹⁰. Possession of quality evidence is of particular importance if the whistleblower chooses to whistleblow the public, whether it is the media or other means of public information. If such disclosed information is not sufficiently substantiated, the certainty of the criminal or other responsibility of the whistleblower is almost inevitable.

The whistleblower may use the right to protection, if they disclose the information within one year, from the day of learning about the performed action due to which the whistleblowing is performed, i.e. within ten years, from the day of the performed action. At the same time, the information that is disclosed, in terms of content, must be such that a person with average knowledge and experience as a whistleblower believes in its truthfulness. The stated legal solution may, in practice, due to the lack of objective parameters, necessary for a realistic assessment of the acting court, result in the absence of judicial protection, although the whistleblower was conscientious and believed in the truthfulness of the information he disclosed, and vice versa. (See more: Nenadić, 2017).

The whistleblower has the right to actively participate in the procedure of verifying the allegations that are the subject of the whistleblowing. Various modalities of their active participation are possible, starting with the right of the whistleblower to be informed about the stage of the procedure of performed checks. Also, the whistleblower can provide assistance, whether it is to clarify existing facts, or to establish new circumstances that confirm the incriminated act.

During the disclosure of information, the whistleblower is not obliged to reveal his identity, which enables the so-called anonymous whistleblowing. In the event that the whistleblower left their personal data when the whistleblowing procedure began, the obligation to preserve the identity of the whistleblower has been established. Only in exceptional situations, the personal data of the whistleblower can be handed over to the competent authority. These cases are more closely defined by the provisions of the Law on Personal Data Protection. However, these provisions do not provide for criminal liability in cases of illegal disclosure of personal data. Therefore, the possibility of revealing the identity of the whistleblower even without his consent, very often leads to an increase in the number of cases of anonymous whistleblowing. This significantly reduces the quality of disclosure of information through the aforementioned whistleblowing procedure (Nenadić, 2017).

To reveal information, in essence, means to announce something new. When disclosing information, the whistleblower does not know whether that information is unknown to its recipient. If it is already known information, it is not about disclosure, but about notification, which results in the absence of the possibility of acquiring the status of whistleblower, and thus the envisaged mechanisms for protection of whistleblowers. The information that is disclosed must be such that a person with average knowledge and experience as a whistleblower would believe in its truthfulness. Disclosure of information that the whistleblower knows to be untrue, as well as seeking unlawful compensation in the event of whistleblowing, constitute a misuse of whistleblowing (Whistleblower Protection Act, 2014). It is necessary for the whistleblower to believe in the truth of the information which he intends to disclose. For example, the disclosure of documents, which indicate a violation of regulations, without providing additional comments by the whistleblower, will undoubtedly be a case of whistleblowing. However, if on that occasion the whistleblower had information, which he kept silent, that, for example, the disputed document was supplemented, which eliminated the illegality, it will be a case of abuse of whistleblowing. Regarding the request of the whistleblower for the payment of financial compensation,

10 In order for a whistleblower to document information about a corrupt crime in a satisfactory manner, he very often resorts to copying accounting and financial documentation, recording it or photographing it. On the other hand, very often, individual or general acts of administrative authorities oblige employees, including whistleblowers, to keep business or official secrets that they came across while performing their work tasks.



it is important to note that the Law on the Protection of Whistleblowers does not provide for such a possibility. In case of submitting such a request, it will be rejected as unfounded. It is clear that this is more about submitting an unfounded rather than an illegal request.

INTERNAL WHISTLEBLOWING

Internal whistleblowing exists when information about corruption within an administrative authority is provided by a whistleblower working in that administrative authority. Employers, i.e. leaders of administrative authorities, have a legally established obligation to act on information that is the subject of whistleblowing. The procedure comprises not only checking the allegations from the received information that is the subject of whistleblowing, but also taking all necessary measures in order to protect the identity of the whistleblower.

The Law on Protection of Whistleblowers obliges employers who have more than ten employees to adopt an internal act on whistleblowing (Rulebook on the manner of internal whistleblowing, the manner of appointing an authorized person to the employer, as well as other issues of importance for internal whistleblowing to employers with more of ten employees, Official Gazette of RS, 2015). Therefore, employers with a smaller number of temporarily or permanently employed persons, as well as persons who may find themselves in the role of whistleblowers, are exempted from the obligation to adopt the said internal act. Also, the obligation to place this act in a visible place, and depending on the technical possibilities, on the website, has been defined. The mentioned Rulebook, in essence, defines the manner of internal whistleblowing, with the obligation of the employer to appoint an authorized person to receive information that is the subject of whistleblowing.

The issue of selecting an authorized person to receive information and conduct proceedings in connection with the whistleblowing, is not, in terms of content, covered by the said Rulebook. This creates problems in practice, when it comes to internal whistleblowing. Namely, there is a possibility that the leaders of administrative authorities appoint unprofessional persons or persons of special trust. They represent the persons who are first contacted by whistleblowers. In the case of persons appointed by the leaders of the administrative authorities with the clear task of thwarting any attempt at whistleblowing, the expected effects of internal whistleblowing, especially when it comes to information regarding corruption in the administration, will be absent. Therefore, not only will no whistleblower protection mechanisms be undertaken, but it will actively participate in thwarting any serious attempt at whistleblowing. If we add to that the certainty of retaliation, the reduction of the number of whistleblowers can be expected (see more: Đurović, 2018)¹¹.

The above mentioned Rulebook provides for the possibility of submitting information that is the subject of whistleblowing, orally or in writing, with the obligation of the authorized person to make a confirmation of receipt of information. At the same time, the consent of the whistleblower is required, so that his identification data is stated in the confirmation of receipt of information.

In cases of anonymous internal whistleblowing, the Rulebook states that in order to verify the allegations of information, appropriate measures are taken, of which the employer is notified. However, the Rulebook does not cover all possibilities for anonymous reporting. This primarily refers to the decades-long practice of using special mailboxes in which, among other things, written information

11 A total of 65 cases of internal whistleblowing were recorded in the ministries, of which 29 cases of internal whistleblowing were recorded in the Ministry of the Interior, while 24 cases of whistleblowing were recorded in the Ministry of Defense, and in all other ministries a total of 12 cases of internal whistleblowing were recorded.



about corrupt criminal acts committed by employees in administrative bodies has been deposited. On the other hand, the introduction of online applications, through which information on the existence of suspected corruption is collected, has also proved to be very useful. Therefore, preventing the commencement, above all, of internal anonymous whistleblowing in administrative authorities, with the use of the above-mentioned methods, remains without a real justification (Nenadić, 2017).

Receipt of letters containing information on internal whistleblowing is of great importance, given that deadlines for action are running since then. Acting, in the full sense of the word, can mean a very long process of verifying the allegations of the whistleblower. In that sense, a general deadline of 15 days has been set, in terms of commencement to perform checks. There is no time limit for performing checks. Upon completion of the checks, the employer is obliged to inform the whistleblower about its outcome within 15 days.

The whistleblower is authorized to request and receive a notification on the course and actions taken in the procedure of performing checks, with the possibility of gaining insight into the case files. The employer is obliged to determine and correct all irregularities pointed out by the whistleblower. The procedure of internal whistleblowing in the Ministry of the Interior is defined by the Rulebook on the procedure of internal whistleblowing in the Ministry of the Interior. The said Rulebook, among other things, defines that internal whistleblowing has not been performed, if the information has been submitted to an unauthorized person. Before providing information on the subject of whistleblowing, the obligation of the authorized person is to instruct the whistleblower to provide information under full material and criminal responsibility, and to inform him that giving false testimony is a criminal offense, provided by the provisions of the Criminal Code. This obligation may be a limiting factor in deciding whether to conduct an internal whistleblowing. Indicating that giving a false statement is a criminal offense, is a category that is applied in the procedure of compiling the minutes on the receipt of a criminal report. Apart from the above mentioned, there are no justifiable reasons for anticipating the three-day deadline left for the whistleblower to declare himself, after the report on the actions taken in the conducted verification procedure has been submitted to him.

Statistical data¹² indicate that after a noticeable increase in recorded cases of internal whistleblowing in 2016, such a trend did not continue in 2017. It is obvious that the fear of retaliation prevailed over the decision of the whistleblowers to disclose information about corruption in the Ministry of the Interior through the procedure of internal whistleblowing.

The Law on the Protection of Whistleblowers explicitly prohibits the employer from placing the whistleblower and other persons related to him in a less favorable position, even if it refers to the violation of employment rights.

Provisions that violate the right of the whistleblower or persons related to him, and which are within the framework of the adopted general act, are null and void. However, the legislator failed to use the opportunity to determine the need to strengthen the capacity of a certain public authority, which would monitor the implementation of the Law on the Protection of Whistleblowers. Therefore, the role of administrative inspection (Law on Administrative Inspection, Official Gazette of RS, 2011) in performing administrative supervision over the implementation of laws and other regulations, and especially with regard to adopted administrative acts which put whistleblowers or related persons at a disadvantage, becomes very significant. However, the effects of the administrative controls performed

12 According to the official data of the Ministry of the Interior, during 2015, 2 cases of internal whistleblowing were recorded. During 2016, 18 cases were recorded while by July 2017, 9 cases of internal whistleblowing were recorded. See further: Lazar Đurović, cited work, page 14.



so far regarding the application of the Law on the Protection of Whistleblowers have not yielded the expected results.¹³

EXTERNAL WHISTLEBLOWING

External whistleblowing, in a conceptual sense, implies the disclosure of information to an authorized body, i.e. a representative of a public authority who is responsible for acting on information that is used for whistleblowing. In the case where the whistleblowing refers to persons employed in the authorized administrative authority, the whistleblower shall address the leader of that authority. If the whistleblowing refers to the head of the authorized administrative body, the whistleblower shall address the leader of the immediately superior authority.

Despite the clearly defined legal formulation of the manner of performing external whistleblowing, in practice there may be some doubts regarding the definition of whether it is internal or external whistleblowing, especially in the case of non-state entities exercising public authority, entrusted with certain administrative powers. (more: Milkov, 2016, 96-105).

For example, the submission of information to the supervisory board of a public company regarding the commission of corrupt criminal acts by the director of that company is essentially a form of external whistleblowing. This claim is confirmed by the fact that the supervisory board has a controlling role in relation to the director. It is the superior position of the supervisory board that can determine the decision of the whistleblower to perform the whistleblowing in the mentioned manner. If the director of a public company has an influence on the work of the supervisory board, which in practice is the rule, and not the exception, there will be no professional approach to verifying the merits of allegations of committing a corrupt crime. The whistleblower may inform other authorities about the existence of corruption.¹⁴

The obligation of the non-competent body, to which the information on the subject of the whistleblowing was delivered, is to forward the information to the competent public authority without delay. Given the obligation to act on the received information which is the subject of whistleblowing, the set deadlines for performing checks on the merits of allegations, acting on anonymous information, feedback on the course and outcome of performed checks, as well as providing insight into the case with review of undertaken activities, the legislator makes no difference in relation to the procedure of internal whistleblowing (Nenadić, 2017).

Due to the fact that there is no legal obligation to keep records of external whistleblowing, it is not possible to perform an objective analysis of the actual effects of external whistleblowing. Records kept

13 In the analysis of the effects of the application of the Law on the Protection of Whistleblowers, the Administrative Inspectorate performed a total of 56 inspections in the period from June 2015 to June 2017, of which 30 inspections were performed ex officio. No irregularities were found after the inspections. See more: Lazar Đurović, cited work, p. 8-9.

14 If the subject of whistleblowing is the disclosure of information on the existence of corruption in, for example, the conducted public procurement procedure, such information may be submitted to the Public Prosecutor's Office, the State Audit Institution, the State Attorney or the Ministry of the Interior. From the point of view of exercising the right to protection, in accordance with the Law on Protection of Whistleblowers, it is irrelevant which of the mentioned bodies will act on the received information.



by publicly available anti-corruption portals indicate a significant number of recorded cases of external whistleblowing.¹⁵

PUBLIC WHISTLEBLOWING

Public whistleblowing is an alternative method of whistleblowing, which can be applied after internal and external whistleblowing have taken place. However, the law allowed the possibility that in case of imminent danger to life, public health, safety, environment, large-scale damage, as well as the existence of imminent danger of destruction of evidence, public alarm could be resorted to, although no internal or external whistleblowing has been carried out.

Insufficient precision of the existing legal provisions enables the whistleblower to fulfill the obligation of internal and external whistling only in the realization of the intention to address the public. In order to realize the initial intention, the whistleblower does not leave a reasonable deadline for acting in the stated initiated whistleblowing procedures. A logical question arises as to the real reason for resorting to this type of *covert abuse of the whistleblowing procedure*. As above mentioned, the legislator gave the acting body a period of 15 days to commence the procedure of verifying the allegations of the received information, which is the subject of whistleblowing. At the same time, at least the deadline for determining the validity of the allegations from the information was not left. Accordingly, the legislator provided a *comfortable position for the competent authorities* in terms of delaying the inspections. In addition to the growing dissatisfaction of whistleblowers, a process of even greater weakening of trust in the competent institutions for the suppression of corruption is developing at the same time. Therefore, the ultimate goal of the whistleblowers, in the described situation, is to provide the *allys-public* by alerting the public, most often by addressing the media, which will put a kind of pressure on the competent state bodies in terms of performing the mentioned checks. If they succeed in that, it will provoke a kind of *chain reaction* of new cases of public alarm, despite the already started procedures of internal and external alarm. Although this is a form of illicit pressure on the competent authorities, the ultimate motive of the whistleblower seems understandable.

In cases of disclosure of information containing classified information, the Law on Protection of Whistleblowers sets precise restrictions, not only in terms of the procedure of whistleblowing, but also the manner of using such information (Law on Data Secrecy, Official Gazette of RS, 2009). If the subject of whistleblowing is information that contains secret information, the obligation to respect the order of the whistleblowing procedure has been established, starting from the internal, and after that, with the fulfillment of the legally prescribed conditions, external whistleblowing. In the mentioned way, the whistleblower is, almost completely, deprived of the possibility of whistleblowing the public. This restriction is in line with existing EU standards (Martić and Šarac, 2015).).

¹⁵ According to the available data of the anti-corruption portal “Pištaljka” (*Whistle*) in the period between June 05, 2016 and June 5, 2017, 186 cases of external whistleblowing were recorded. Of this number, 54 information was sent to inspection services, 39 to public prosecutors, 36 to courts, 18 to the Corruption for Fight against Agency (now the Anti-Corruption Agency), 17 to the Ministry of the Interior, and 18 information was to other relevant ministries. See more: Lazar Đurović, cited work, p. 19-20.



CONCLUSION

Trust in the competent institutions is one of the basic preconditions for a person to decide to disclose information regarding corruption in the administration, and to accept the status of whistleblower. It is necessary to provide conditions for the whistleblower to show readiness to react, as an individual in the society, in order to fulfill the public interest, disclose corrupt practices to representatives of administrative authorities. In order to remain constant in that readiness, the whistleblower must be convinced that throughout the entire whistleblowing procedure, if necessary, all the provided protective mechanisms relating to the whistleblower and other persons related to him will be activated.

Although the Law on the Protection of Whistleblowers has been assessed by the domestic and international professional public as modern, the expected effects, especially when it comes to the procedure of whistleblowing which indicates the appearance of the so-called systemic corruption, are absent. Adequate categorization of persons who can appear in the role of whistleblowers has not been performed. The probability of retaliation against the troublemakers in the administration is high. Moreover, the practice so far has mostly shown that whistleblowers in administrative authorities, both by managers and by a significant number of employees, have not been recognized as a *corrective, but as a disruptive factor*.

Also, it remains unclear whether the disclosure of information on the commission of corrupt crimes in all situations is an act of voluntary decision of the person who possesses such information or there is an obligation to report commission of corrupt crimes. The assumption was confirmed that the law did not provide ways to motivate whistleblowers, especially financial motivation, which is an important, limiting factor.

In the process of gathering evidence, especially if it is marked with a certain degree of secrecy, the whistleblower is exposed to possible criminal liability.

In order for the institute of whistleblowing to give the expected results, it is necessary to make the right choice and efficient reaction of the authorized person in taking the necessary measures according to the information and measures for the protection of the whistleblowers. The absence of a deadline for checking the information has created conditions for unjustified delay of that procedure. Previous expert analyzes of the Law on Protection of Whistleblowers have indicated the inadequacy of judicial protection of whistleblowers and persons related to them. In the process of enacting the Law on the Protection of Whistleblowers, the legislator failed to use the opportunity to include *new criminal offenses* within the framework of penal provisions in order to establish more efficient protection of whistleblowers. This would, in a more explicit way, point out the importance of respecting the legal provisions, especially in the part of preventing any kind of retaliation against whistleblowers in the administration due to the act of whistleblowing. In contrast, the Law provided for misdemeanor liability for non-compliance with the stated obligations.



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