

# WHISTLEBLOWING AND WHISTLEBLOWERS PROTECTION IN THE CZECH REPUBLIC

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## INTRODUCTION

The aim of the presented research is to provide a concise overview of existing Czech laws and current practices pertaining to whistleblower protection in the public and private sector. The analysis is divided into four parts. The first part offers a brief introduction to the issue. The second part provides a summary of existing Czech laws that may pertain to whistleblower protection, and discusses their practical application. Here we also look at the social and cultural context of the issue. In the third part, current situation in the Czech Republic is analysed from the perspective of 14 aspects generally addressed in foreign legislation pertaining to whistleblower protection. We conclude by offering a number of recommendations ensuing from the analysis.

### *Definition of whistleblowing*

The term whistleblowing derives from the English saying “*to blow the whistle*”. This word is meant to evoke the whistleblower’s attempt to say “Attention, there’s something wrong here”. We speak of whistleblowing when current or former members of an organisation (employees) warn of unfair practices in the workplace, generally of practices endangering the public and running counter to the public interest. Whistleblowers are key individuals in the process of uncovering corruption, fraud or organised crime. As such they are highly vulnerable and may be subject to various forms of reprisal or retaliation. Whistleblowing is an unfamiliar topic in the Czech Republic, as is amply demonstrated by the absence of a standardised translation of the term *whistleblower* itself. TIC suggests that the term *oznamovatel* be used in Czech. In some translations, we find the terms *informátor (informant)* or *stěžovatel (complainant)* used, but these pertain to specific activities and are lacking in neutrality.

Different types and, therefore, definitions of whistleblowing exist. For the purposes of this analysis, we have chosen a working definition of whistleblowing according to which it is the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action (Near and Miceli, 1985).

### *Benefits of whistleblowing*

Whistleblowing may be understood as one of the tools of risk management within organisations operating in both the private and public sphere. Members of an organisation (whether current or former) are generally first to learn of unfair practices in the workplace. The existence of reporting mechanisms enables the detection and timely resolution of problems within an organisation. Whistleblowers report on unfair practices that could negatively impact the public. Whistleblowing may thus be understood as one way to protect the public interest. It may also be perceived as the right to freely disseminate information and opinions.

### *Obstacles to whistleblowing*

Whistleblowers are people who refuse to acquiesce to fraud and other unfair practices and wish to take action against them. Such people may be discouraged by the fear of employer or

colleague reprisals, concerns about the legal implications of their conduct or a sense of futility ensuing from the lack or ineffectiveness of internal or external whistleblowing channels enabling the timely and effective handling of reported facts. Cultural and social mores are also at work here, with historical context and psychological or moral dilemmas having an added role. All of these factors impact the decisions of potential whistleblowers.

## **OVERVIEW OF WHISTLEBLOWING PROTECTION RULES & PROTECTION IN PRACTICE**

### *LEGISLATION PERTAINING TO WHISTLEBLOWING AND WHISTLEBLOWER PROTECTION*

No comprehensive legislation exists in the Czech Republic to regulate whistleblowing and whistleblower protection. The rules primarily applied in this area are the labour-law regulations. The protection these afford is uncertain and strictly limited to matters of employment. They fail to address explicit protection of those employees who call attention on the unfair or illegal employer practices or, among other things, criminal conduct.

For the sake of clarity, we have structured the legal assessment of whistleblower protection in the Czech Republic into three sub-chapters: (1) the whistleblowing options that exist, (2) how the system in place provides for protection and (3) the obstacles to whistleblowing that exist. None of these sub-chapters comprises a full enumeration of measures, institutions or options, but only offers a basic overview.

### ***WHAT POSSIBILITIES ARE AVAILABLE TO WHISTLEBLOWERS?***

An overview of the bodies to which a whistleblower may turn with complaints and notifications:

#### *Labour inspectorates and labour offices*

A whistleblower may contact labour inspectorates and labour offices with suspicions of labour-law violations (discrimination included). The competent civil service agency is obliged to look into a complaint, but is not obliged to accede to the whistleblower's suggestions or proposals, or even to perform an investigation. Administrative bodies may perform an investigation within their jurisdiction; they may require the removal of ascertained weaknesses and may impose fines for ascertained employer violations.

#### *Reporting infractions to local authorities and other competent administrative bodies*

As regards other infractions that a whistleblower discovers and wishes to report, he/she may do so by filing a report of the suspicion of an infraction with the competent authorities (local authorities, municipal infractions commissions, Czech law enforcement agencies, labour offices, the Czech Interior Ministry etc.) and, where he/she so requests, has the right to be notified of the results of an investigation conducted based on his/her report (within 30 days).

#### *Investigative, prosecuting and adjudicating bodies*

An employee may (and, in some cases, must) report suspicion of the commission of a crime by an employer to investigative, prosecuting and adjudicating bodies. In this manner (lodgement of a complaint), the whistleblower may seek recourse through independent agencies of the Public Prosecutor's Office, the courts or law enforcement and can do so anonymously, though this could reduce the possibility of resolving the reported offence.

### *Office of the Ombudsman*

A whistleblower may also turn to the Ombudsman. In his/her complaint, the whistleblower may only seek protections of his/her personal rights, not those of third parties, and the complaint may only pertain to activities of administrative authorities and other public entities, not private employers. The whistleblower must by law attach a signature to the complaint and furnish his/her address. The primary consequence of anonymity would be deferral of the complaint. Nonetheless, an important right of the Ombudsman is not to be bound by whistleblower complaints, but to be able to initiate an investigation at his/her own discretion. Such a situation could arise after assessment of the seriousness of an anonymous complaint. The Ombudsman also has competence in matters of the right to equality treatment and protection against discrimination, but it is rather methodical support.

### *Other institutions for whistleblower recourse*

Most generally, where not otherwise stipulated by a special law (thus, in the vast majority of cases), the procedure for lodging a complaint or a motion is regulated in Act No. 500/2004 Coll., The Administrative Procedure Code. Pursuant to the provision of § 42 of the Administrative Procedure Code, every administrative body is obliged to accept motions to initiate proceedings ex officio. Where the individual submitting the motion so requests, the administrative body is obliged within 30 days of the day on which the body obtained the motion to notify him/her that a proceeding has begun or that it ascertained no grounds for initiating a proceeding ex officio or that it has submitted the motion to the competent administrative body. A whistleblower may also seek recourse through authorities such as the Czech Commercial Inspection or Czech Environmental Inspection by lodging complaints, notifications and motions that fall within the jurisdiction of the respective agencies.

### *Other notification possibilities*

A whistleblower may contact various anti-corruption hotlines or e-mail addresses set up or operated by public administration bodies. There is the further option of contacting the central anti-corruption hotline established by the Czech Interior Ministry. Of course, there is also the added option of going to the media or political representatives.

## **WHISTLEBLOWERS PROTECTION IN CZECH LAW**

An overview of laws that regulate the above mentioned processes:

### *Administrative Procedure Code*

The Act No. 500/2004 Coll., The Administration Procedure Code regulates the administrative procedure. As explained above, this Act regulates generally the procedure of lodging a motion or a complaint and is considered as one of the whistleblower's option according to the current legislation in place. The lodging of a motion or complaint pursuant to the provision of § 42 should not be prejudicial to the complainant and no direct or indirect actions may be taken against him/her for having lodged a motion. The complainant is protected in these specific administrative proceedings as a person affected, e.g. he/she has the option of seeking

compensation of damage, has the right to lodge a motion anonymously or to have his/her identity protected. Nonetheless, this protection fails to address any specific consequences of the whistleblower's actions on his/her employment situation, its duration or the conditions for performing work. Thus, from the perspective of whistleblower protection, the legal definition is inadequate.

### *Labour Code*

Generally, the key employee protection provision is the definition of grounds for dismissal set forth in § 52 of Act No. 262/2006 Coll., The Labour Code (the "LC"). An employer may not arbitrarily and groundlessly terminate an employee. Further employee protection is afforded by the provision restricting changes in work location or type. Certain protection is also afforded by the provision authorising an employee to disregard an employer's instructions, where these are illegal (a similar treatment is in place for staff of territorial self-governing bodies). Refusal to follow such instructions cannot be understood as a breach of a work obligation and cannot establish an employer's right to terminate an employee.

Further protection lay in the principle allowing an employee to refuse to perform work that places his/her life or health, or the lives or health of others, in immediate and serious danger. Such a refusal may not be deemed failure to perform a work obligation. Failure to respect an employee's right to refuse to act on such instructions constitutes an employer infraction or administrative delict under the Labour Inspection Act.

The LC also stipulates a general employer obligation to ensure the fair treatment of all employees and explicitly prohibits discrimination of any kind whatsoever.

Pursuant to the provision of § 305 of the LC, additional employee rights may be regulated by an organisation's internal rules of procedure. Nothing prevents an organisation from formulating internal regulations addressing whistleblowing mechanisms and other whistleblower rights. Moreover, such protection may be stipulated and defined in collective agreements, in which other employee rights in employment relations, inter alia, may be regulated pursuant to the Labour Code.

### *Civil Code and Anti-Discrimination Act*

Terms pertaining to discrimination are, on the basis of an explicit statutory mandate, defined in what is known as the Anti-Discrimination Act, passed as an Act No. 198/2009 Coll. Anti-Discrimination Act do not explicitly provide protection to whistleblowers who alert on wrongdoing. The right to equal treatment and protection against discrimination is generally provided by the § 13 and § 16 of the Labour Code. Should employment discrimination or unfair treatment occur, the current legislation sets out the legal means of protecting personality in the provisions of § 11 et seq. of the Civil Code.

### *Ombudsman*

Pursuant to Act No. 349/1999 Coll. on the Ombudsman, the Ombudsman protects persons against the conduct of authorities and other institutions and may perform independent investigations in individual cases. In his/her complaint, the whistleblower may only seek

protection of his/her personal rights. However, the Ombudsman does not supersede the activity of civil service agencies and cannot amend or reverse their decisions, but may only request that remedies be effected. The protection of whistleblowers is only theoretical.

### *Labour Inspectorates*

Act No. 251/2005 Coll. on the labour inspection regulates, inter alia, other rights and obligations existing during inspections carried out within labour inspectorate or labour office powers. If an inspection is carried out at the impetus of an employee, the inspector is obliged to conceal the identity of that employee. This protection doesn't regulate the protection of whistleblowers who report wrongdoing, especially the duration of the employee's contract and in practice the inspections are usually carried out after the employee has been terminated.

### *Criminal law*

From the perspective of criminal law, it is likely that a whistleblower lodging a complaint will be in the position of a witness when reporting the facts comprising the basis for his/her suspicion to the competent authority. Under the Criminal Code provisions, a whistleblower / witness has certain statutory rights to identity protection and the provision of safe and undisturbed surroundings designed to ensure that his/her testimony is accurate and uninterrupted. However, the procedural rights of the witness are very narrow in the Czech Criminal Code, i.e. not allowing the witness to view the case file or lodge applications for remedial measures. Nor does the legislation explicitly provide for the witness to receive a copy of the protocol documenting his/her own testimony.

A whistleblower may also become an aggrieved party who has suffered damage as a result of the crime being reported and whose legal position affords him/her additional procedural rights. He/she has the right to participate in criminal proceedings, to view the case file, to sue for damages and to lodge certain applications for remedial measures. However, the Criminal Code very narrowly defines the term *aggrieved party*.

### **POTENTIAL WHISTLEBLOWING OBSTACLES**

The Labour Code and some other legislative provisions together establish employee rights and obligations that may be mutually incongruous. For example, a member of an organisation (employee) may find that he/she has a reporting duty but, at the same, that in performing this obligation he/she may be committing a criminal or other unlawful act.

Where an employee plausibly learns that an employer's conduct answers to the facts (body) of a crime, in some cases that employee – like any other citizen – has a legal obligation to report the commission of such statutorily defined crime. Failing to do so may in itself constitute the commission of a crime. The provision of § 167 of the Criminal Code (Act No. 140/1961 Coll.) addresses the criminal act of failure to obstruct a crime, while the provision of § 168 treats on the crime of failure to report a crime, which an employee may commit by mere virtue of inactivity.

On the other hand, in making a complaint the whistleblower may himself/herself perpetrate a crime or other unlawful act and thus be liable for damages based on the crimes of slander or false accusation.

The crime of slander is defined as the illegal conduct of a person who disseminates false information about another, which is capable of jeopardising his/her public reputation, in particular through professional injury, the violation of family relationships or causing of other serious detriment. The subject of the crime may only be an individual and it is enough for the perpetrator to have been aware that the information is false. It may always be assumed that a whistleblower is absolutely convinced of the truth of his/her assertions. Nonetheless, he/she runs the risk of being subject to the lodging of a complaint accusing him/her of the crime of slander as a retaliatory measure.

False accusation is also deemed a crime. It differs from slander in that from the whistleblower's perspective, it constitutes a deliberate reporting of facts that may form the basis for criminal prosecution by the "accused", i.e. the employer. The whistleblower's assertions might not be duly supported in the discovery process and the employer could subsequently file a complaint for suspicion of the commission of the foregoing crimes as a means of reprisal.

## *CURRENT SITUATION IN THE CZECH REPUBLIC*

### *Public awareness about whistleblowing*

The public awareness about the notion of whistleblowing is very low and the term whistleblowing/whistleblower is virtually unknown to the Czech public. In September 2009, a public opinion survey<sup>1</sup> was carried out among the employees in the Czech Republic and the results show that two thirds of employees, who had observed serious misconduct in the workplace, failed to address the situation or only discussed it with their colleagues. Further analysis of the responses reveals that the employees who reacted passively, failed to address misconduct primarily due to their fear of potential problems at work or because they did not believe that their disclosure would lead to a resolution. Some 34% of these employees believe that management knew of such conduct and did not wish to address it. The dilemmas that are common to every country, such as fear of job loss, the degree of implication/co-responsibility, loyalty to employer vs. loyalty to the public or other stakeholders, negative experiences with investigative, prosecuting and adjudicating bodies (law enforcement and the courts), are also observable among the Czech employees. Beyond that, local historical experience can play a certain role in the low willingness to report illegal conduct. One does not find in Czech society a high willingness to take up public causes. Regimes and values have been subject to frequent change in the Czech Republic and those who attempted to take up public causes were generally swept away at each such change. The general rule of thumb is “don’t make enemies unnecessarily”. Secondly, the past totalitarian regimes have been using informants to maintain itself in the possession of power. For some people it is hard to understand that in a democratic society whistleblowing can be a tool to control of the monopoly of power.

### *Media coverage of whistleblowing and interaction between the media and whistleblowers*

A media analysis was performed in order to gain at least a partial picture of whistleblowing in the Czech Republic. The media relationship to whistleblowers was tracked in two ways: (1) the experiences that primarily investigative journalists themselves have had with whistleblowers, and (2) how the media acknowledged and referred to whistleblowers in 2008.<sup>2</sup>

Virtually without exception, the English term *whistleblower* was unknown to the contacted journalists, who had no idea that special attention is devoted to them in other countries or that their position is addressed in special legislation. On the other hand, their *sources*, i.e. persons who relay non-public and sensitive facts to them, are a vital component of the day-to-day work

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<sup>1</sup> Transparency International – Czech Republic (2009): Survey mapping the perception of whistleblowing by employees in the Czech Republic, [www.transparency.cz](http://www.transparency.cz)

<sup>2</sup> The analysis of journalists’ experience with whistleblowers is based on information provided in e-mail, telephone and face-to-face interviews with editors working in Czech media. Media coverage of whistleblowing was tracked using searches for identified cases or key words in the electronic media archive of the company Newton Media. The search included 240 print and electronic titles, 5 national television stations and 7 national radio stations. The ascertained statistical data only provide us with approximate data, as some cases could involve duplication, where one case is covered by two mentions in a single publication (on the title page and inside the publication) or when the same article is published in both the print and online versions of a daily.

of the investigative journalist. These persons can invoke the journalist's right to protect his/her sources. If these individuals are acting in the public interest, they are anonymous whistleblowers. Inasmuch as the terms source and whistleblower overlap, an unclear picture exists as to who in fact is, and is not, a whistleblower.

The majority of sources and whistleblowers in the Czech Republic endeavour to remain anonymous. Reporters estimate that 70-90% of their sources insist on anonymity, and do so for serious reasons such as fear of persecution, retaliatory measures and a lack of faith in investigative, prosecuting and adjudicating bodies or other authorities. Generally, editors neither recommend nor welcome anonymous sources, noting the danger of journalists being manipulated by a whistleblower. However, they do as a rule respect anonymity if a politically highly sensitive case is not involved.

According to investigative editors, the structure of whistleblowers and sources differs, as do their motivations. As far as highly placed officials in ministries, the motivation is often the quest for power or an attempt to influence public contracts; they do not share information disinterestedly or without ulterior motives. Of the sources that, according to journalists, approximate the working definition of a whistleblower employed in this analysis, two different categories may be identified. When politically explosive information is involved, there is a concerted effort to disparage, discredit and silence the whistleblower. In less serious cases, the whistleblower need not suffer such consequences, but resolving the actual problem can be a lengthy process and the case may very well disappear from the public radar.

Editors state they generally do not prevent the punishment of a non-anonymous whistleblower, though they do provide other examples of how a journalist may help a whistleblower, e.g. by lending enhanced credibility, offering better familiarity with the case, collaborating with non-profit organisations or facilitating contact with an attorney.

A search for the term "whistleblower" identified a total of 3 articles (a total of 39 since 1996), but with the exception of one case they all dealt with events abroad. The Czech Republic was only touched on in a study of corporate whistleblower hotlines (Euro weekly, Ernst & Young study). It is important to note that the greatest number of mentions arises in 2007, when the press engaged in analysis of a group of public prosecutors investigating the case of the so-called Kubice report. According to the Czech Press Office (ČTK), the report's authors pointed to the institute of whistleblower protection in the USA and similar laws in Sweden. It is interesting to note that the magazine *Ekonom* systematically uses the term *udavač* [informant] as a translation of the English word whistleblower in the corporate sphere. There is no fixed translation of the word whistleblower in the Czech language; hence, it is translated in a variety of ways.

Key cases and scandals of 2008 were identified in which a whistleblower, and possibly knowledge of the case from a direct source, may have played a role. It is important to note that virtually without exception, for every person we identified as a possible whistleblower there was always some objectionable aspect that could "disqualify" that person as such, whether it be self-interest, suspect political affiliation or failure to meet some other condition. In 2008, the tracked media devoted 2 202 reports to persons we identified as possible whistleblowers. Of those references, approximately 430 articles take a more in-depth look at whistleblowers and meet the stricter criteria.

Inasmuch as Czech journalists do not employ a specific term for whistleblowers, it is not surprising that they place no special emphasis on this category of individuals. All whistleblowers

are first and foremost sources of information for journalists and their ultimate fates are of little interest to them.

#### *Use of existing channels in the Czech Republic*

Potential whistleblowers have many options of the bodies to which they may turn with complaints and notifications and each of them, as explained above, has different jurisdiction and competencies. There is no dedicated body that would receive whistleblower's reports and/or that would investigate the case and be able to take corrective action. There are such channels in the private sector, but the existence of such bodies relies only on the will of the concrete private organization. The obligation to introduce internal whistleblowing mechanisms applies only to those private entities that are also subject to Sarbanes-Oxley Act.

A whistleblower, as any other citizen, client of the public administration or employee may turn on labour inspectorates and labour offices, local authorities, municipal infractions commissions, Czech law enforcement agencies, labour offices, the courts or police, the Ombudsman, media or political representatives. From the statistics published by competent agencies and institutions, we can arrive at figures providing the number of valid decisions, but not detailed case information. In order to obtain specific information about the case and whether it involved a whistleblower, it would be necessary to go through each individual case. The absence of specific regulation and notion of whistleblowing causes that such category/circumstance is not even recorded.

#### *Reporting channels within the public sector*

Government Resolution No. 270 of 2001 enjoined representatives of ministries and central public administration agencies to issue and familiarise their staff with a Code of Ethics. The resolution includes a model Code of Ethics introducing the reporting duty for an employee who learns of a loss of property or fraudulent or corrupt behaviour. An employee is to report suspicions to his/her superior or the competent investigative, prosecuting or adjudicating body, but the Code usually does not regulate any specific process of reporting. The Code also presents no special protective mechanisms for the persons who report suspicions (and could be considered as an internal whistleblowers). In late 2006, Transparency International – Czech Republic (TIC) conducted a survey of 26 central public administration agencies (all ministries and other authorities). TIC ascertained, inter alia, whether the various authorities had adopted a Code, if so, in what form and how staff were trained. All but two authorities had adopted Codes of Ethics, generally by means of internal rules of procedure. Employees are generally familiarised with the respective Code during intake training. The statistics of use of the duty to report are not available. No internal reporting mechanism was found, with the exception of anonymous telephone lines or e-mail addresses, but these do not provide protection to whistleblowers and do not have specific procedures to deal with the whistleblowers notice.

#### *Anti-corruption hotlines*

Certain information may be obtained from the operators of anti-corruption hotlines. Anti-corruption hotlines and anonymous e-mail addresses have been, and are, generally operated in the Czech Republic by central public administration agencies and have also been set up by some cities and municipalities. They are usually run within the extent of a given agency or its powers, and the public's interest in them is negligible. These hotlines have a very limited impact and its use is negligible.<sup>3</sup> The government therefore decided in 2006 to establish a central anti-corruption hotline with the easy-to-remember number 199 and to entrust its operation to an NGO with the requisite expertise. This line is currently operated by Transparency International – Czech Republic. The central and regional public administration agencies did not abolish their anti-corruption email addresses, but keep them. There is a potential to use them to get a feedback and to provide the citizens with specialized advice related to the field they administer.

#### *TIC Legal Advice Centre*

TIC has been operating its Advocacy Legal Advice Centre (ALAC) since late 2005 and in September 2007 was also entrusted with the operation of the national anti-corruption line “199” established by the Interior Ministry. Since 2005, 2 300 citizens have contacted TIC with requests for legal aid. Of these complaints, 1,700 were made to the 199 line. Applicants in 240 cases were provided with extensive legal aid comprising long-term assistance and support (preparation of the complaint for the client, submission of complaints in the name of TIC, representation before government authorities). Among these cases of extended legal aid, we can identify roughly 15% cases involving whistleblowers, with two types of clients-whistleblowers. The first category involves witnesses to corruption who did not know where to turn with potential complaints of inconsistencies or who lacked faith in the standard mechanisms; they generally experienced no retaliatory measures. The second category experienced some form of harassment or recourse for their warnings and sought legal aid or direct attorney representation for their defence.

#### *State Labour Inspection Office*

The State Labour Inspection Office keeps separate statistics on inspection performance based on written complaints. Complaints pertain only to violations of employment relations and workplace conditions. Annual reports detail the manner in which cases have been dispatched, the violations that were involved and the kind of sanction that was imposed and, where applicable, whether investigative, prosecuting and adjudicating bodies were notified in cases of inspections in the transportation or healthcare and social welfare sectors. The last available data for 2007 indicate that 4 745 complaints were made in total and some 2,842 inspections performed at 2,664 entities. A total of 189 complaints pointed to unfair employee treatment, i.e. approximately 4% of the total number of all complaints. Inspections demonstrated complaints to be valid or partially valid in roughly 40% of cases.

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<sup>3</sup> The last report on the operation of anti-corruption e-mails, telephone lines and faxes is published in the Update of the Governments' Strategy of the Fight Against Corruption. It is available only in Czech language on the website of Ministry of Interior. <http://www.mvcr.cz/soubor/aktualizace-strategie-vlady-v-boji-proti-korupci-na-obdobi-let-2006-az-2011.aspx>

### *Ombudsman*

A total of 7,051 complaints were submitted to the Office of the Ombudsman in the course of 2008. Moreover, some 839 visitors to the Office were provided with legal advice on how to resolve their problem. Citizens most often contact the Office in matters concerning social security, the Building Code, the police, healthcare and public administration of the courts. In 2008, the Ombudsman initiated a total of 755 investigations, exercising its discretionary authority to initiate an investigation in 29 cases. These cases involved problems of a general nature or situations of which the Ombudsman found out about improper practices from the mass media. Nearly 5,000 complaints were clarified. In these cases, the Ombudsman primarily provided complainants with advice on how to protect their rights. Essentially, the work of the Ombudsman is focused on following up individual citizen complaints concerning civil service failures, and the achieved outcomes defy generalisation.<sup>4</sup>

### *Tools employed in the private sector*

The private sector uses anonymous complaint lines and other mechanisms, and whistleblower protection may be addressed in internal rules of procedure. Two surveys conducted in 2007 and 2009<sup>5</sup> provide a snapshot of the situation in the private sector. According to these surveys, whistleblowing policies are in place in 44% of surveyed companies and 16% of fraud cases were uncovered thanks to whistleblowers. The companies operate mostly anonymous information lines.

Only 13% of interviewed employees believe that the management acts honestly and, alarmingly, 64% are convinced that the management is ready to compromise business ethics to fulfill the business plans.

According to another survey executed in 2007 between the employees of multinational companies in selected European countries, including the Czech Republic,<sup>6</sup> the Czech employees feel much less protected (42%) than for example employees in Great Britain (86%). These results can indicate that the private companies in the Czech Republic do not introduce effective internal whistleblowing mechanisms.

According to the surveys, the main reasons for failing to come forward included fear of retaliation and reprisal (more than 67%). Similar results were revealed by the 2009 Global Corruption Barometer.<sup>7</sup> According to this survey, the main reasons for failing to blow the whistle on wrongdoing were sense of uselessness (44%) and fear of retaliation (23%)

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<sup>4</sup> Summary report of the Ombudsman for 2008, opinion of JUDr. Otakar Motejl.

<sup>5</sup> PriceWaterhouseCoopers – Economic crime survey 2007 – available at <http://www.pwc.com/cz/en/hospodarska-kriminalita/index.jhtml> (visited on 21 September 2009), Ernst & Young – Economic fraud survey 2009 – available at [http://www.ey.com/CZ/cs/Newsroom/News-releases/2009\\_05\\_Evropsky\\_pruzkum\\_o\\_podvodech](http://www.ey.com/CZ/cs/Newsroom/News-releases/2009_05_Evropsky_pruzkum_o_podvodech) (visited on 21 May 2009).

<sup>6</sup> Ernst & Young (2007) – Economic Fraud Survey 2007.

<sup>7</sup> Transparency International (2009) – Global Corruption Barometer, [www.transparency.org/policy\\_research/surveys\\_indices/gcb/2009](http://www.transparency.org/policy_research/surveys_indices/gcb/2009) (visited on 21 May 2009).

## **EXTENT OF WHISTLEBLOWING PROTECTION RULES & THEIR APPLICATION IN PRACTICE**

The following section examines the whistleblowing protection legislation and practice along a set of 14 assessment categories. As there is no specific legislation related to whistleblowing and protection of whistleblowers in the Czech Republic, we examined the legislation mentioned in the chapter dedicated to the overview of whistleblowing protection legislation and practice, and its potential application on the protection of whistleblowers.

### *1. Subject matter – definition of wrongdoing: How widely defined are the subject matters covered by whistleblowing legislation?*

Czech law includes no stand-alone whistleblowing legislation; all whistleblower protection rules derive from general legal principles or specific regulations in various laws. Thus, the treatment in Czech law is highly fragmented.

The definition of unfair practices or illegal conduct is primarily derived from the Criminal Code, which qualifies individual forms of criminal conduct and introduces definitions of the following crimes to which an employee may be exposed in the workplace, for example: unauthorised business activity, activity detrimental to a consumer, misrepresentation of data on the status of business and property, violation of binding commercial regulations, the misuse of information in commercial relations, failure to pay taxes, social security premiums, health insurance premiums and the state employment policy contribution, evasion of taxes, fees and similar compulsory payments, unfair competition, violation of copyright, rights pertaining to copyright and rights to databases, acceptance of bribes, bribery, indirect bribery, threatening or harming the environment, endangering health with defective foodstuffs and other consumer goods, fraud or money laundering.

As regards infractions or administrative delicts, these are defined either by Act No. 200/1990 Coll. on infractions, or in special legal regulations addressing individual spheres of public life, obligations of persons and the consequences of violating these obligations.

In the area of labour law, illegal employer conduct is treated in the Labour Inspection Act. Both the Employment Act and Anti-discrimination Act define the concepts of direct and indirect discrimination, while extensive case law has been devoted to the interpretation of these concepts. As regards the reporting duty stipulated for some crimes by the Criminal Code, these are comprehensively enumerated in the law; the same is true of the definitions of slander and false accusation. New Criminal Code that will come into effect on 1 January 2010 stipulates the analogical principles.

### *2. Scope of personnel coverage: How wide is the scope of personnel who is protected by the WB legislation?*

Here we must distinguish between several situations, the key factors being what the whistleblower reports and to whom. If an employee files a labour-law complaint (which by law

shall solely pertain to his/her personal rights) against an employer, this complaint must be discussed, and the employee can in no way be penalised or disadvantaged at work for asserting his/her labour-law (employment) rights. This principle is explicitly set out in the provision of § 14 of the LC and pertains to employees performing employment and to legal relations established by contracts for work performed outside of employment (contract for work and contract of services). However, nowhere are the meanings of the terms disadvantaged and penalised made explicit.

If a public function is performed under an employment contract, the employment is regulated by the Labour Code and the same principle set out in the provision of § 14 of the LC applies. This principle also applies to employment relationships between a co-operative and its members and to academic employees of universities, pedagogical staff, judges' assistants and other persons enumerated in the Labour Code whose employment is regulated, in part, in other legislation. Public prosecutors (and public prosecutor trainees) in an employment relationship and judicial trainees are also protected under this principle, as are employees of territorial self-governing bodies.

Neither the Labour Code nor any other legal regulation explicitly establishes protection for whistleblowers or their employment should their complaints pertain to illegal employer conduct in any area other than labour law. Protection is only afforded to such persons by special legal regulations, and applies exclusively to their rights in proceedings and, inter alia, to privacy or the right to receive information in proceedings initiated based on their motions, and is in no way reflected in labour law. The position of the employee in the area of criminal law is thus based on the general position of the aggrieved party or witness in criminal proceedings. The penal regulations provide for secrecy concerning the identity of the whistleblower and persons close to him/her.

The protection of government officials as whistleblowers is explicitly addressed in the provision of § 80 par. 4 of the Service Act pursuant to which a civil service agency shall in no way penalise or disadvantage a government worker for legally asserting his/her rights arising from civil service employment. However, this principle suffers from the same drawbacks as the Labour Code principle on which it is modelled. Thus, the issue of the reporting duty outside the civil service area is not addressed.

### *3. Internal disclosure channels: To what extent is there an adequate internal disclosure mechanism available?*

Employees may take their complaints concerning the exercising of rights and obligations arising from employment relations to their employer; the same applies to workplace safety and health protection and the threat of incurring damage. Nevertheless, the Labour Code nowhere states how the employee and employer should proceed in handling such complaints. Nor does it provide any time-limits for complaints or stipulate the form they should take.

Employees may also inform their union or other employee representative (employee councils or workplace health and safety representatives) about unfair practices, where such bodies exist. Unions may request that an employer report and discuss facts pertaining to work conditions. Employees can have their union represent them in civil litigation.

Nowhere does the Labour Code address the approach an employee is to take toward an employer should that employee learn of a breach of other legal regulations, e.g. criminal regulations. This and other rights and obligations may be stipulated in a collective agreement or internal rule of procedure.

If a directive given to a self-administrative body official is in violation of the law, the legal regulations stipulate the exact approach to be taken by such an employee, how he/she should proceed and defend himself/herself against the illegal conduct of a superior.

The provision of § 197 of the Public Service Act, though it is not currently in effect, also addresses the option of a government worker lodging a written petition or complaint in matters of service performance and service relationships, which again corresponds to the treatment found in the Labour Code. However, the Act does not address the issue of the worker's non-service-related reporting activity or the obligation to discuss such a complaint within the given office.

#### *4. External disclosure channels: To what extent is there an adequate external disclosure mechanism to independent regulators?*

Czech law does not explicitly stipulate legal procedures to be followed should a whistleblower learn of an employer's legal violation. The employee only has the reporting duty in the case of crimes enumerated in the Criminal Code, though the law does not determine how precisely to proceed (only stating to whom the complaint should be directed, i.e. a public prosecutor, law enforcement body, commander or leader). The whistleblower is obliged to make a complaint after ascertaining in a "credible" manner that another has committed an illegal act enumerated in the law or is preparing to do so.

In the case of other crimes, the employee, like any other citizen, has the right, anonymously or not, to lodge a complaint for suspicion of the commission of a crime (where he/she describes the decisive facts with respect to which he/she may be questioned). The employee can thus lodge a complaint orally or in writing in the protocol and can also ask to be informed of the result of the filing within 1 month.

An employee may lodge a complaint with a civil infraction authority or may seek recourse through the Czech Commercial Inspection, the Czech Environmental Inspection or other administrative bodies tasked with control and oversight. Where not otherwise stipulated, the employee shall proceed in accordance with the general legal definition in the Administrative Procedure Code according to which the employee has the right to be informed of the result of an investigation within a statutory time-limit. However, the employee does not have the right to such an investigation being performed automatically.

A whistleblower may also go to the Ombudsman, though the powers of this office are greatly limited vis-à-vis persons over whom the Ombudsman has any authority. In the case of the Ombudsman, the law explicitly stipulates the particulars of a complaint and the requirement to furnish a first and last name.

As regards labour law, an employee may lodge a written or oral complaint with labour inspectorates or labour offices and has the right to be informed of the result of an investigation pertaining to his/her person and the right to have his/her identity kept secret.

*5. Additional disclosure channels: To what extent does the external disclosure mechanism include a disclosure to the media, MP or civil society organisations?*

An employee may turn to individuals MPs or senators who have set up their offices for this purpose (for which they receive government expense compensation). Whistleblowers may also contact advisory telephone lines of civic associations or individual governmental agencies or, inter alia, attorneys, the media or civic associations, which in some cases may represent the whistleblower in court.

*6. Confidentiality: Does the whistleblowing legislation include provisions ensuring confidentiality? If so, how stringent and effectively applied are confidentiality rules?*

Czech law does not in any meaningful way stipulate the form a complaint should take. Thus a person lodging a complaint may do so anonymously in writing; this applies likewise for hearings of administrative infractions. However, in so doing the whistleblower surrenders the possibility of exercising his/her rights in a proceeding and the possibility of being informed of the proceeding outcome. Moreover, anonymity can hinder the discovery process.

The Criminal Code offers the possibility of witness confidentiality, either by omitting the witness's name from the protocol or excusing him/her from being in court during questioning, and also offers the possibility of the accused not being present during witness questioning as well as closure to the public to protect the witness's identity. The Czech legal order further comprises a special law on the protection of witnesses and those close to them – all are afforded extensive options, from remaining anonymous to changing their identities. A person who is an aggrieved party under criminal law can in no way be forced to exercise his/her rights or be present at criminal proceedings.

The duty to keep a whistleblower's identity confidential applies for the labour inspectorate and labour offices, where the investigating inspector may not disclose the identity of a complainant, i.e. the person suggesting that an investigation be performed.

A whistleblower may anonymously turn to virtually any public administration body; however, just making a complaint need not lead to the performance of an investigation. Complaints may only be made to the Ombudsman in writing, even though the breadth of such complaints is narrow given the Ombudsman's remit.

Pursuant to the Press Act, a journalist has the right to conceal his/her sources, even from investigative, prosecuting and adjudicating bodies, where the whistleblower so requests, and no public administration body may compel the journalist to breach this obligation (even under threat of pecuniary sanction).

*7. Restrictions: To what extent do other legal provisions exist which prevent/restrict whistleblowing in certain areas?*

The protection of confidential information is established in Act No. 412/2005 Coll. on the protection of confidential information and on security clearance. It is the objective of this law to protect the most basic interests of the state, such as constitutionality, sovereignty or territorial

integrity. Thus, restrictions are introduced for persons designated to come in contact with confidential information. These persons are obliged immediately to report cases of the unauthorised handling of confidential information to their superiors.

The protection of personal information pursuant to Act No. 101/2000 Coll. on the protection of personal information, cannot be prejudiced by the filing of a complaint or criminal complaint because the whistleblower is performing no systematic collection or complex operations as defined by the law, but is only exercising his/her rights or drawing attention to illegal conduct. If the whistleblower is an employee of a processor or administrator of personal information, then a greater scope of restrictions applies, e.g. he/she must only process this information in the extent stipulated by the employer. An employee could be accused of committing the crime of unauthorised handling of personal information, if that employee has no authorisation to report, make available, otherwise process or appropriate confidential information in the performance of public administration or employment, execution of a function etc.

As regards the protection of business secrets, we may suppose that the respecting of business secrets and its protection may in no way impede the whistleblower from reporting illegal practices. Business secrets cannot comprise illegal conduct as such conduct does not represent information of a commercial, production or technical nature protected by law.

Pursuant to the valid Labour Code, public administration employees must maintain confidentiality concerning information learned in the performance of their work and which, in the interest of the employer, cannot be disclosed to others. Similar regulation applies to members of a union or employee council and workplace health and safety representatives who, pursuant to the provision of § 276 par. 3 of the LC, are obliged to keep secret confidential information and facts they learn in the performance of their work, if a breach of confidentiality could lead to the disclosure of secret information or a violation of the warranted interests of the employer or employees. Where no workplace union is active, this obligation shall apply to regular employees with whom the employer is obliged to discuss some information or whom the employer shall inform about such information. Nevertheless, the concealment of illegal employer conduct cannot constitute a warranted interest; thus, this provision should in no way discourage a whistleblower.

#### *8. Protection against reprisal/retaliation: What is the scope of reprisals which the whistleblower is protected against?*

Pursuant to the Labour Code, an employer shall in no way penalise or disadvantage an employee for legally exercising his/her rights arising from employment relations. An employer violating this principle commits an infraction or administrative delict under the Labour Inspection Act and faces the threat of a penalty of up to CZK 400,000. A whistleblower lodges a complaint with the competent labour inspectorate for suspicion of the commission of this infraction by the employer. Nonetheless, the law does not enable the whistleblower to assert the protection of his/her rights in this administrative proceeding and so he/she cannot seek compensation of damage or another remedial measure.

The Labour Code explicitly prohibits discrimination (direct and indirect) and regulates the principle of fair treatment (in the area of working conditions, compensation for work and the provision of other pecuniary performance and performance of pecuniary value, as well as in the

area of professional preparation and the opportunity for workplace advancement or promotion); of course, this ban should also apply to discrimination for reporting illegal conduct. An employer that breaches regulations pertaining to the ban on discrimination and fair treatment may, in so doing, commit an infraction or administrative delict.

A whistleblower may, like any other employee, be seconded or transferred to perform other work only for statutory reasons; thus, secondment or transfer may not be ordered as a retaliatory measure. Nonetheless, the law does not afford a whistleblower the right to challenge the legitimacy of this legal employer act by filing an action.

A whistleblower may file an action for illegal termination within statutory time-limits; an action may also be filed in the case of non-agreement with a job evaluation.

#### *9. Offered remedies: How wide is the scope of offered remedies available to whistleblowers?*

An employee has the right to compensation of damage incurred in the performance of work tasks or in direct connection therewith, if the employee proves actual illegal conduct, the incurring of damage and a causal connection.

An employee (and, in the event of his/her death, a spouse, partner, child, parents) always has the right to solicit the protection of his/her personal rights (e.g. owing to discrimination) and to request that the employer cease unauthorised infringement of his/her right to the protection of his/her personal rights and eliminate all the effects of such infringement and to request that he/she be provided with adequate, possibly pecuniary, compensation.

If an employer commits an infraction or administrative delict by penalising an employee for asserting his/her rights, the employee may act as an aggrieved party in a hearing of an administrative delict or infraction and demand compensation for damage. If unsuccessful, the matter will be turned over to civil proceedings.

If an employee believes that he/she invalidly received a notice of termination or immediate cancellation of employment or termination of employment during the probation period, he/she may sue for a determination of invalidity within a statutory time-limit. Prior to that, the employee should notify the employer that he/she is insisting on not being let go and that the employer is obliged to provide compensation for loss of salary/wages. Payment of this compensation may always be sought in court. If the court decides that the action for invalidity has grounds, the whistleblower's employment shall continue. The employee also has the right to sue in court for an amendment of a job evaluation issued by the employer in the case of employment termination. The employee may serve as an aggrieved party in a criminal proceeding, though this is a rather more theoretical possibility.

#### *10. Right to refuse: To what extent does the whistleblowing legislation cover the right to refuse participation in illegal activities?*

An employee shall not be bound by instructions that fail to comply with all the statutory regulations. The Labour Code also allows an employee to refuse to perform work that he/she has justifiable cause to believe would directly and seriously endanger his/her life or health or

the lives or health of others. An employee may not in any way be punished by an employer for such refusal (including by transfer, termination, docked pay or any other salary withholding); this does not constitute a breach of work obligations. In contrast, failure to respect this employee's right constitutes an employer infraction or administrative delict pursuant to the Labour Inspection Act. An employee can in no way be coerced into undertaking illegal conduct. In the case of especially grievous employer conduct undertaken for the purpose of compelling an employee to perform a task, this could represent the criminal act of blackmail on the part of the employer. In cases defined by law, such employer might also indirectly commit a crime that has unwittingly been committed by an employee (e.g. by acting in error) under pressure from the employer.

Similar legislation applies to employees of territorial self-governing bodies whose position is regulated by Act No. 312/2002 Coll. on officials of territorial self-governing bodies. An official is explicitly obliged pursuant to the provision of § 16 of the Act to defend the public interest when performing administrative tasks and to carry out the instructions of ranking officials, where these instructions do not violate the legal regulations. An official is protected such that if he/she believes an issued instruction represents a legal violation, he/she is obliged immediately to inform the issuer of the instruction in writing or, where urgency is a factor, verbally. The official is subsequently obliged to act on the given instruction only upon receiving a written order to do so from the official in charge. The official again explicitly by law may not carry out an instruction or order if in so doing he/she would be committing a crime, infraction or other administrative delict, and is obliged without undue delay to inform the official in charge in writing. The approach to be taken by government officials performing their work in the civil service is similarly addressed in the as-yet ineffective Act No. 218/2002 Coll. (the provision of § 68 par. 4).

### *11. Legal liability: To what extent does the law impose legal liability for false or malicious reporting?*

The Labour Code nowhere addresses the situation in which an employee's complaint of a legal violation arising from employment relations is false; it only imposes an employer obligation to resolve such complaint. From this we may deduce that no legal consequences exist under labour law for making false reports.

In the case of a whistleblower notification to other public administration bodies, particularly investigative, prosecuting and adjudicating bodies, we may only consider liability in the event that the whistleblower wittingly furnishes untrue information with the intention of falsely accusing another of a crime. The crime of false accusation may nonetheless also be the subject of a criminal proceeding in the mere case of failure to prove the whistleblower's assertions. Another possibility to consider here is the lodging of a complaint for slander.

An infraction may be committed by one who, as a person furnishing an explanation of a crime committed by another before an investigative, prosecuting or adjudicating body, wittingly asserts a falsehood concerning a circumstance that is of substantive importance for a decision or withholds such circumstance. Pursuant to the provision of § 49, an infraction is committed by one who defames another by offending or exposing such person to derision.

An employer always has the right to protect its good name and reputation and may, where appropriate, have recourse to a court of law. A natural person (individual) may solicit protection of his/her personal rights.

*12. Whistleblower participation: To what extent is the whistleblower able to participate in follow-up process to the disclosure?*

In the realm of criminal law, a whistleblower has the right to be informed of the results of an investigation within a statutory time-limit of one month from the date of his/her motion (the provision of § 158 par. 2 of the Criminal Procedure Code).

The procedural rights of a witness are limited under the Czech criminal regulations; they do not allow the witness to view the case file or lodge an application for remedial measure, nor do they explicitly provide for the witness even to receive a copy of the protocol documenting his/her own testimony. Nevertheless, as regards following the course of the criminal proceedings, the witness may, like any other person, be present at the trial and an open session, but only where these are public (non-public hearings are unusual) and if he/she has already been heard. Again like any other individual, the witness may be present at the reading of the judgement.

A whistleblower deemed to be an aggrieved party enjoys many procedural rights, such as the right to participate in criminal proceedings, the right to view the case file, to seek compensation of damage and the right to lodge applications for certain remedial measures. Similarly, an aggrieved party may take part in administrative proceedings pursuant to the Act on Infractions. In proceedings before labour inspectorate, the person who made the complaint has the right to be informed of the result of his/her complaint or the investigation thereof in the meaning of the provision of § 5 par. 2 of the Labour Inspection Act. The whistleblower may also inquire to a public administration body concerning the result of its activities, where the respective agency is not bound by the duty to protect personal information or maintain confidentiality. A whistleblower that makes a complaint pursuant to the Administrative Procedure Code has the same right to be informed of the outcome of the complaint.

*13. Time scale: What are the limits on a time scale for whistle-blowing?*

No time scale has been set as concerns whistleblower protection. No legal regulation stipulates a condition for legal protection of any nature whatsoever in the case of a timely complaint or the consequences for a delayed complaint.

*14. Independent Review: How comprehensive is the independent review system?*

The system for controlling adherence to the legal regulations is relatively broad. Labour offices and labour inspectorates control adherence to labour-law legislation; it is also possible to appeal to labour unions. Labour offices and labour inspectorates are independent agencies. Investigative, prosecuting and adjudicating bodies (courts, public prosecutors and law

enforcement) also execute their functions independently; they act ex officio and their fundamental obligation is to prosecute all crimes that come to their attention.

Numerous specialised agencies are active in the field of infractions and administrative delicts (e.g. the Czech Environmental Inspection, water rights authorities, the Czech Commercial Inspection) and initiate administrative proceedings ex officio.

An employee may also seek recourse at independent courts in the areas of civil and labour law, in particular in an action seeking determination of the invalidity of dismissal, where the quality and balance of a judicial proceeding is reinforced by the fact that labour-law disputes are decided by a three-member panel comprising one professional judge and two lay-judges.

As regards the protection of personal rights, first instance proceedings are conducted by a municipal court or county courts whose judges are highly specialised in this area.

## **KEY RESULTS AND RECOMMENDATIONS**

The foregoing information indicates that a certain degree of legal protection exists for whistleblowers in the Czech Republic. Nonetheless, this protection is both highly fragmented and inadequate. The majority of the described channels and institutions were analyzed from the perspective, that they are potential channels for whistleblowers. No comprehensive legislation exists in the Czech Republic to regulate whistleblowing and whistleblower protection.

The rules primarily applied in the area of protection are the labour-law regulations. The protection these afford is uncertain and strictly limited to matters of employment. They fail to address the protection when an employee reports unfair or illegal employer practices or, among other things, criminal conduct. The Labour Code is the primary instrument for whistleblower protection, providing certain protection from reprisal and retaliation, but it can be, and often is, circumvented. The LC defines grounds for dismissal and allows employees not to carry out illegal instructions or those that threaten their safety. However, it does not afford special employee protection, for example, where the employee would act to protect the public interest and draw attention to the violation of other than labour-law regulations. In contrast, the protection afforded in special legal regulations applies only in proceedings and is in no way reflected retrospectively in labour law.

In the area of reporting, the Czech law does not explicitly stipulate legal procedures to be followed should a whistleblower learn of an employer's legal violation. The employee as any other citizen has the reporting duty in the case of crimes enumerated in the Criminal Code, though the law only states to whom the complaint should be directed. There are many institutions to which a whistleblower may turn, but each operates in a different area and has different competencies in relation to the reported fact or the potential protection of the whistleblowers rights. In most cases, especially when trying to remain anonymous and/or when the reported practice is not a violation of criminal law, there is no assurance of the due investigation of a reported fact. No internal mechanism has been found in the public sector, with the exception of anonymous telephone lines or e-mail addresses enabling the reporting of unfair workplace practices and affording some whistleblower protection. The private sector is somewhat better off, as it uses anonymous complaint lines and other mechanisms, and whistleblower protection may be addressed in internal rules of procedure.

There is a host of other potential obstacles to whistleblowing. This can (and does) include misuse of the crimes of slander or false accusation. Moreover, demands to ensure the protection of confidential or personal information can actually serve as a barrier to disclosure or to proper internal investigation.

The performed analysis has developed several general and legislative/legal recommendations. The latter include:

- add an explicit ban on discrimination for an employee's assertion of his/her rights in employment relations or the exercising of the right to lodge a motion, complaint or notification to the Employment Act, and possibly the Anti-Discrimination Act;
- return the burden of proof to the Civil Procedure Code in the case of discrimination for asserting one's rights or lodging a complaint;
- specify the form of motions and complaints lodged with the competent public administration bodies and the forms of their dispatch; also define the right to protect the identity of the person lodging a complaint;
- expand the procedural rights in criminal proceedings for the person / witness who gave impetus for the criminal proceedings (complaint), e.g. include the right to view the case file and the right to receive a copy of the protocol on the witness's own testimony;
- expand the powers of the Ombudsman (above all, to include the possibility of performing an investigation of an employer and, where necessary, requiring a remedy) or establish a new guardian of rights specialising in labour-law matters;
- abolish slander as a criminal act, as this matter should be addressed in civil law proceedings;
- expand the principle stipulated in the provision of § 14 par. 2 of the LC with the explicit statement that an employer may not dismiss an employee based on his/her lodging of a complaint or transfer him/her to other work, or without grounds dock his/her salary or wages;
- introduce additional sanctions for the illegal firing of employees;
- expand the procedural rights of the whistleblower in civil proceedings;
- recommend that an employer's internal rules of procedure or collective agreement address the rights of whistleblowers in employment relations, an internal whistleblowing procedure and whistleblower protection.

It would also be advisable to consider addressing this matter in a standalone law affording better orientation in this legally fragmented area. Bolstering the capacity of legal aid centres providing legal advisory to whistleblowers or establishing centres specialised in the provision of advisory to whistleblowers would represent a further step in the right direction.

In addition to improving the legal treatment of whistleblower protection, it would also be advisable to better regulate the possibility of lodging notifications, primarily within public institutions, e.g. by upgrading the internal audit function. Considering the introduction of certain whistleblower motivations (e.g. in the form of financial compensation) and the possibility of bringing an action in the public interest would also be a good idea.

The legal improvements are not the only necessary steps to be taken. In the Czech Republic, the phenomenon of whistleblowers is still unfamiliar and little discussed and the concept itself is not being perceived in too favourable a light. To this end, an extensive informational campaign fostering awareness of this issue and helping to improve its public perception could be held.

An analysis of selected cases<sup>8</sup> shows that the reported fact is sometimes not even investigated, but usually the cases remain not properly explained and the investigation very rarely leads to corrective action. Therefore it is necessary that the legislative improvement is supported by effective enforcement.

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<sup>8</sup> The cases, that were identified as those involving a whistleblower, were selected from the database of Advocacy Legal Advice Centre of Transparency International –Czech Republic, clients of Work Relations (<http://www.workrelations.eu/>) and cases from the media archive during the year 2008.

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