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WHISTLEBLOWER PROTECTION IS ONLY ON PAPER

Plus three cases from abroad

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KEY FINDINGS

- **Labor inspectorates did not receive any requests for suspension of an adverse employment action since January to the end of August 2015.** In the same time seven whistleblowers, who informed the police, the prosecutor's office or another competent institution about some kind of malpractice were protected by Labor Inspectorates. **Implementation of this law is thus accompanied by an extremely small number of cases.** For comparison, the Serbian Anti-corruption Agency, which has been protecting whistleblowers since 2010, received 103 requests in 2013 and 78 whistleblowers were provided protection.
- The small number of requests for protection or for suspension of an adverse employment action could be caused by low public awareness of the new law. Legally determined responsibilities, conceptualization and the structure of the law are quite difficult to be understood and adopted in practice by employees for whom the legislation should protect. Labor inspectorates inform about protection of whistleblowers only partially, in a basic, declaratory form on their websites and they have not taken any further actions – they have not used any sample cases, trainings or informational materials. International experience proves that the quality of information could be much better. The United States Office of Special Counsel, responsible for protecting whistleblowers from public institutions, publishes on its websites comprehensive information about persons who can receive protection, about the ways of asking for protection and about their results. The Serbian Anti-corruption Agency organized a campaign in order to increase malpractice reporting as well as awareness of whistleblower protection.
- The low number of requests can be caused by a low quality of labor inspectorates' work. **Requests for advice in the name of a potential whistleblower (so called mystery shopping) were not replied to within the 7-day limit by any of the inspectorates, in spite of the fact that requests for suspension of an adverse employment action have to be made within a 7-day limit since the action.** Two inspectorates did not react even within a 14-day limit and responded only after a follow-up phone call. Even if they had responded earlier, in most cases they would not help whistleblowers significantly. **Five out of eight ¹ inspectorates did not recognize malpractice reporting and did not advise enquirers what to do in such a case.**
- An effective implementation of whistleblower protection can be hindered by the fact that **inspectorates have not obtained any extra finances for protection of whistleblowers and the number of inspectors has not increased.** Their responsibilities have been on the increase with the new law, but the number of personnel resources has not changed.

¹ The law on certain measures related to Reporting the Anti-social Activities Act was mentioned in the complaint for the ninth inspectorate, so it is impossible to say whether the inspectorate identified malpractice.

HOW (UN)PROTECTED ARE WHISTLEBLOWERS IN SLOVAKIA BY LABOR INSPECTORATES

INTRODUCTION

The Slovak Republic is one of the developed countries, which have adopted the law not only guaranteeing protection of whistleblowers but also obliging subjects from both public and private sectors to create conditions for accepting and investigating complaints filed by employees. Protected disclosure or whistleblowing is the most effective way of detecting malpractices. According to the Association of Certified Fraud Examiners 42.2% complaints result in detecting frauds.² For this reason protected disclosure has been vastly implemented in lots of countries all over the world in the last ten years.

The new law on protection of whistleblowers (hereinafter “law”)³ has been valid in Slovakia since the beginning of 2015. Citizens who report malpractice⁴ should be better protected against unlawful disciplinary sanctions as a consequence of their reporting.

The culture and a public awareness of these problems have not changed with passing the new law. The public is still suspicious of malpractices being investigated by authorized institutions and still fearful of repercussions for reporting. According to surveys carried out by Transparency International Slovakia only 5% of respondents would meet their statutory duty to report corruption.

For this reason the adoption of the law needs to be considered as the first fundamental step and it should be followed by an extensive range of steps aimed to increase public trust. It is necessary to survey employees and their willingness to report, remove obstacles that may deter people from reporting, provide consultancy services and sufficiently inform about the protection of whistleblowers in Slovakia.

In accordance with the new law Labor Inspectorates play the main role in protection of whistleblowers.⁵ They oversee implementation of the law, e.g. whether the employers have introduced a so called internal handling complaint system, whether they have adopted relevant regulations and handle complaints filed by employees. Inspectorates are open for whistleblowers who were unlawfully disciplined by their employers for their complaint. Inspectorates can also take preventive measures for protection of whistleblowers who reported so called serious anti-social activities to the police, the prosecutor’s office or other institutions. Labor inspectorates significantly influence the implementation

² Source: ACFE 2014 – Report to the nations

³ Act No.307/2014 Coll. on certain measures related to Reporting the Anti-social Activities Act, and on Amendment and Supplements to Certain Acts

⁴ The law uses and defines terms: serious anti-social activities and other anti-social activities

⁵ Labor Inspectorates in county seats and the National Labor Inspectorate in Košice

of the legislation and can help foster a culture of observance and zero tolerance to malpractices in both public and private sectors.

The aim of this study is to find out if the Labor Inspectorates are prepared for their new responsibilities regarding the protection of whistleblowers and to explore their current practice as well. We also want to highlight the possibility of improvement and suggest measures for more effective implementation of the law on protection of whistleblowers. Our experience with the bill on proving the origin of property confirmed that good intentions or a precise formulation of the law are not enough. The key to achieve the goal is the implementation of the law.

METHODOLOGY

There are eight Labor Inspectorates in Slovakia under the umbrella of the National Labor Inspectorate (NLI).⁶ In July and August 2015 we review how well prepared are they to protect citizens under the new rules. We submitted a FOIA request to the National Labor Inspectorate to find out about organizational changes related to the new law and the first experience with its implementation. We also asked each of the Inspectorates and the National Labor Inspectorate for advice in the name of person who discovered some kind of malpractice in his/her workplace and has reported it or would like to report it (so called mystery shopping).

⁶<http://www.safework.gov.sk>

ARE THE INSPECTORATES PREPARED FOR THE LAW IMPLEMENTATION AND WHAT IS THE CURRENT PRACTICE?

Competences of Labor Inspectorates

Competences of Labor Inspectorates related to protection of whistleblowers can be divided into three spheres:

- Firstly they oversee whether the employers have introduced the so called internal handling complaint system permitting the employees to report malpractices directly at the workplace.
- If the employee faces unlawful disciplinary sanction because of reporting malpractices, Labor Inspectorates can immediately suspend this adverse employment action.
- Labor Inspectorates protect citizens who had informed the police, the prosecutor's office or another competent institution about serious kind of malpractice and in this way acquired whistleblower protection.

Supervising employers

Employers working as a public authority⁷ or having at least 50 employees are obligated to authorize a person responsible for complaints of employees. Employees can file complaints about malpractices with negative impact on the company (other than serious anti-social activity)⁸, which they witnessed in connection with their work, appointment or office. Employers are obliged to inform their employees subsequently about the possibility to file complaints and they must also keep an identity of complainant confidential. The complaints must be handled within 90 days after their adoption; a complainant must be informed no later than 10 days after investigation was concluded and the complaints must be recorded.

Labor Inspectorates check, if employers carry out their legal duties. If they uncover any breach of duty, they may penalize an employer with a fine amounting to 20,000 €.

Protection measures for persons reporting serious anti-social activity

Labor Inspectorates protect whistleblowers against unlawful disciplinary sanctions, e.g. dismissal from work or redeployment to another position as a result of filing the complaint.

Preventive protection is possible only in the case of reporting *serious anti-social activities*, such as a criminal offence and administrative delicts closer specified by the law.⁹ *Criminal offence* can be reported to the police or the prosecutor's office and a citizen can submit a *request for protection* along

⁷1. State administration body, municipality or higher territorial unit, 2. juridical person legally set up by stet administration body, municipality or higher territorial unit in accordance with the special law 3. juridical person set up by the person in the first instance or the second instance, 4. juridical person or natural person, which is legally entitled to decide about rights and duties of both natural persons or juristic persons in the public administration sphere.

⁸Activity different from serious anti-social activity refers to a delict or an administrative delict; it can also refer to an activity, which does not have attributes of a delict or an administrative delicts, but it can negatively influence the company.

⁹ Serious anti-social activity refers to:

- a. Criminal offence in relation to fraud affecting the European Communities' financial interests, under **§ 261 – 263 of the Criminal Code**; the offense machinations in public procurement and public auction under **§ 266 of the Criminal Code**; the offenses of public officials by the eighth title of the second part of the separate parts of the Criminal Code; or some of corruption offenses under the eighth head of the third separate part of the Criminal Code;
- b. The offense with a sentence of imprisonment exceeding three years.
- c. Administrative offenses with the imposed fine minimally 50 000 euros (<http://www.zakonypreludi.sk/zz/2014-307>).

with the complaint or later, during criminal trial. Complainants can also turn to other competent institutions, which are designated as recipient of the complaints/ reports on administrative delicts (e.g. The Antitrust Office, The Office for Personal Data Protection) and ask for protection. If the prosecutor's office or other competent institution finds the request justified, they inform the applicant, his/her employer and the Labor Inspectorate that has taken the applicant *under protection*.

The employer can subsequently take a legal action against the protected person or issue a decision concerning an employment relation (hereinafter an adverse employment action) only with the approval of the Labor Inspectorate. Otherwise the employment action is invalid.

Suspension of an adverse employment action after reporting a minor offence

A whistleblower can report a *minor offence* to his/her employer by way of an internal handling complaint system. If an employer has not introduced an internal system, an employee still has the right to protection even if he/she files her report in another way. If a whistleblower thinks that his/her employer has taken an adverse employment action in connection with his/her complaint, he/she can turn to a Labor Inspectorate and *ask for suspension of the adverse employment action*. But the applicant is obligated to submit the request to the Inspectorate within 7 days after learning of this adverse action, otherwise the Inspectorate will not take any action.

Independence of Labor Inspectorates

General Director of the National Labor Inspectorate is appointed and dismissed by Minister of Labor, Social Affairs and Family. Chief inspectors of regional Inspectorates are appointed by the Minister on recommendation of the director of National Labor Inspectorate and the Minister is authorized to dismiss them from their positions. A Chief inspector position requires 5+ years of experience in the position of a regional inspector.

National Labor Inspectorate and Regional Inspectorates are budgetary organizations of the Ministry of Labor, Social Affairs and Family. The budget for these organizations is set by the Ministry, so the financial and personnel independence is limited.

Financial and personnel resources of Inspectorates

Our communication with the National Labor Inspectorate in August 2015 proved, that neither Regional Labor Inspectorates nor the National Labor Inspectorates have obtained any extra finances for the protection of whistleblowers.¹⁰ That means that their responsibilities have been on the increase with the new law, whereas the amount of financial resources has not changed.

According to the National Labor Inspectorate only one person in Regional Inspectorates in Prešov, Košice and Nitra is responsible for protection of whistleblowers, while other Inspectorates authorized more members of the staff to deal with received complaints. Neither Regional Inspectorates nor NLI have increased the number of the staff responsible for protection of whistleblowers.¹¹ However, in order to assess whether the current financial and staff capacities are sufficient, further analysis would be required.

¹⁰Communication with NLI, 9th September 2015.

¹¹Communication with NLI, 9th September 2015.

Internal definition of proceedings and training of the staff

The work of inspectors is regulated by the law and by Methodical Guidelines developed in December 2014. In the Guidelines, The National Labor Inspectorate included sections of the legislation relevant for Labor Inspectorates. However, it contains only a minimum of further information.¹²

Our communication with NLI also proved that staff had not been trained regarding the protection of whistleblowers. The NLI merely informed the heads of the relevant departments about the Methodical Guidelines. Then the heads were obligated to inform all labor inspectors about the law and the Guidelines.

Informing about own activities

Labor Inspectorates inform about the protection of whistleblowers and about their role insufficiently, only in a basic, declarative way. Information on their websites is practically inaccessible to the public, it cannot be found on the home page, in the main menu or in the section on Inspectorate activities. Information is available in the section “Labor inspection and reporting malpractices,”¹³ which is only an entry of the section “Important Notices” and it is not visible at first sight.¹⁴

The information included is difficult to understand as well. Potential whistleblowers might be hindered by the nature of legal language, by the extent and structure of information or by complicated formulations. For example, the page informs, that potential whistleblowers can ask for protection, but it does not explain the way of submitting a request.¹⁵

Our communication with NLI proves that Inspectorates do not use other ways to inform the public, such as informational materials or trainings.

Outcomes

Supervision of employers

Our communication with NLI proved that Labor Inspectorates did not carry out any inspection of internal handling complaints systems since the beginning of July until the end of August 2015.¹⁶

Requests for protection and providing protection

Since January 2015 until the end of August 2015 Labor Inspectorates provided protection for seven whistleblowers who reported malpractices to the police, prosecutor’s office or other competent institutions. Five whistleblowers turned to the District Prosecutor’s Office in Prešov, one to the District Prosecutor’s Office in Kežmarok and one to the Labor Inspectorate in Trnava.¹⁷

¹²Methodological guideline in comparison with the text of the Act specifies the fact that the Chief of Labor Inspectorate or the head of the office decides about assigning a task to particular inspector; Labor Inspectorate can consult with the employer or verify some facts by exploring the evidence or by calling witnesses to give evidence about a matter. However, that must be under an agreement with the employer; both employer and whistleblower must be informed about the decision and about the possibility to appeal against the decision.

¹³ https://www.ip.gov.sk/?id_af=456&ins=nip.

¹⁴On comparison, the American Office Occupational Safety & Health Administration offers information about protection on its home page in the tab “Anti-Retaliation” (<https://www.osha.gov/>). Slovenian Commission for the prevention of corruption offers the tab “Supervision & Investigation” on its home page, where information about reporting corruption can be found (<https://www.kpk-rs.si/sl>).

¹⁵American office offers the possibility to file a complaint on its pages as well and it also publishes an email address, a phone number and a postal address. Similarly, the Slovenian authority provides an e-mail address for this purpose. Our communication with NLI proved that Slovak whistleblowers can contact Inspectorates via post office, phone call or email.

¹⁶Communication with NLI, 9th September 2015.

¹⁷Communication with NLI, 9th September 2015.

Since January 2015 there have not been any requests for suspension of an adverse employment action.¹⁸

Information provided by Labor Inspectorates - mystery shopping

In July and August we reviewed how Labor Inspectorates communicate with potential whistleblowers – namely the citizens who have not made a request for protection or suspension of an adverse employment action yet - all they needed was information.

We submitted a request for advice to all Labor Inspectorates and to the National Labor Inspectorate in the name of a person who discovered some kind of malpractice in his/her workplace and has reported it or would like to report it (so called mystery shopping). Each complaint included additional information about initiated unlawful disciplinary sanctions (dismissal, refusal to assign work, threats) as a consequence of reporting or worries about sanctions if he/she files a complaint. All inspectorates were asked for advice and we consequently found out that:

- **None of the Inspectorates responded on time** – if a whistleblower is convinced disciplinary sanctions against him/her have been taken, he/she must request the suspension of an adverse employment action within a 7-day limit. Six out of nine Inspectorates needed more than 7 days and one responded on the seventh day. Two inspectorates had not responded for 14 days and they responded only after an additional phone call. If the employer imposed sanctions against the whistleblower on the day of the mystery shopper request, the response from the Inspectorate would come too late. None of the whistleblowers would be taken under protection.
- **Most Inspectorates did not offer protection** – only three Inspectorates recognized that whistleblower protection may apply to the mystery shoppers in accordance with Reporting the Anti-social Activities Act. The remaining five Inspectorates responded, but they did not mention the Act or the possibility of whistleblower protection. If the whistleblowers turned only to the Inspectorates, they would remain unprotected, even if they were entitled to gain protection. One mystery shopping request directly mentioned the Act, so it is impossible to say whether the Inspectorate would have recognized that whistleblowing was involved in the case. But even in those cases where Inspectorates mentioned the possibility of protection, sufficient information about necessary further steps was not provided to mystery shoppers (e.g. they did not inform that the request for protection has to be submitted within a 7-day limit).
- **Inspectorates responded to anonymous questions and questions from people working under other than standard work contracts** – we were pleased to find out that the Inspectorates did not make any difference between anonymous and non-anonymous complaints or among different types of work contracts or situations. They responded to all of them in the same way.
- **Inspectorates did not inform mystery shoppers about the availability of free legal assistance** – none of the inspectorates mentioned that whistleblowers are entitled to get free legal help. They also failed to mention other institutions that provide support to whistleblowers, such as non-profit organizations.

¹⁸Communication with NLI, 9th September 2015.

RECOMMENDATIONS

On the basis of our survey on the readiness and practice of Labor Inspectorates we have formulated recommendations for a more effective implementation of legislation and whistleblower protection as follows:

RECOMMENDATIONS RELATED TO MORE EFFECTIVE IMPLEMENTATION OF WHISTLEBLOWER PROTECTION	
Training of inspectors	The National Labor Inspectorate should regularly organize trainings for labor inspectors aimed at effective protection of whistleblowers.
Early response to queries	Labor Inspectorates should guarantee a prompt response to queries submitted by emails, letters or phone calls, so that potential whistleblowers are able to make a request for suspension of an adverse employment action within the seven-day limit.
Consolidation of answers related to the protection of whistleblowers	The National Labor Inspectorate should prepare and distribute among the labor inspectors a list of information to be included in responses to queries related to reporting under the law.
More information about the role of Inspectorates in protection of whistleblowers	The website of the National Labor Inspectorate should provide more information about the role of NLI and Labor Inspectorates in protecting whistleblowers. Information should be easily accessible, comprehensible even for the general public and tailored to the needs of whistleblowers. Examples include providing information on the protection of whistleblowers directly on the landing page of the NLI, including contact details or information about other institutions which can help.
Financial and personnel resources of Inspectorates	Ministry of Labor, Social Affairs and Family should check whether current financial and personnel resources of Inspectorates are sufficient and increase their capacities if necessary.

CASE STUDIES FROM ABROAD

USA

The USA pay close attention to the protection of whistleblowers and the rights and protection of them are included in dozens of acts, mainly state sector acts and federal acts. Protection of whistleblowers has a long tradition. Whistleblowers have been protected since the end of the 19th century. The most significant acts have been adopted in the last decades:

- Whistleblower Protection Act of 1989¹⁹, amended in 2012²⁰ and
- Public Company Accounting Reform and Investor Protection Act of 2002 (so called Sarbanes-Oxley Act).²¹

The first Act focuses on protection of whistleblowers, who are federal employees. Their protection falls within the competence of the Office of the Special Counsel (OSC).²² A complaint can be filed by a current or a former federal employee or a job applicant who suspects a breach of the law, significant financial waste or a serious health and safety hazard. If a whistleblower draws his/her colleague's attention to malpractice, the informal warning could be taken for a protected disclosure.

Sarbanes-Oxley Act protects whistleblowers in private companies, trading on the stock exchange, and also in their subsidiaries. Protection of whistleblowers in the private sector is supplemented with dozens of other state and federal sector acts, which deal primarily with health services, environment etc. Occupation Safety and Health Administration (OSHA),²³ which falls within the competence of Department of Labor and which deals mainly with occupational health and safety, supervises the observance of the law. Companies are legally obligated to introduce internal handling complaint systems which are intended to protect whistleblowers against retaliatory measures taken for reporting malpractices.

Competences of particular institutions

[Extent and nature of protection – communication channels, anti-corruption hotlines, guaranteeing anonymity](#)

OSC provides space for reporting malpractices directly on its website.²⁴ A complaint can be filed via an email, regular mail or a phone call. Therefore, reporting is easy. OSC receives a complaint and verifies its legitimacy. If they need further information, they can also communicate with the relevant employer.²⁵ OSC is not competent to investigate complaints. After processing information it decides which institution is going to investigate the case. The institution is obligated to inform the whistleblower about the outcomes of the investigation within a 60-day limit. The identity of the whistleblower is

¹⁹<http://www.usda.gov/oig/webdocs/whistle1989.pdf>

²⁰<http://www.gpo.gov/fdsys/pkg/PLAW-112publ199/pdf/PLAW-112publ199.pdf>

²¹<https://www.sec.gov/about/laws/soa2002.pdf>

²²<https://osc.gov/>

²³<https://www.osha.gov/>

²⁴<https://osc.gov/pages/file-complaint.aspx>

²⁵If a whistleblower asked for anonymity, this step can be skipped

confidential unless he/she decides to give up anonymity. Situations which need immediate reaction of authorities, namely serious criminal offenses or circumstances endangering the life and health of citizens are the exception to the rule.

In accordance with the Sarbanes-Oxley act and other private sector acts employers are obligated to introduce channels for internal reporting of malpractices. However OSHA does not accept complaints about malpractices directly, it accepts complaints about an adverse employment action as a result of reporting.

Defense against retaliation

Besides filing a complaint about malpractices a state employee can turn to OSC if he/she is unlawfully sanctioned.²⁶ He/she must fill in a special form directly on the OSC website, fax it or post it.²⁷ OSC will assess the complaint and if it finds it justified and an employer refuses to reverse sanctions, OSC, with the assistance of Merits System Protection Board (MSPB),²⁸ will provide appropriate remedies. These include reinstatement, awarding compensation e.g. for the loss of income, for injury or for court costs if the employee, unsatisfied with handling of his/her case, appeals to court.²⁹ If the whistleblower is still employed, OSC will oversee that he/she is not relegated while the complaint is being verified. MSPB can initiate disciplinary proceedings against individual employees responsible for retaliating against whistleblowers and it can suspend such measures as well.

Employees can also ask OSC to suspend measures which they regard as retaliation. However, suspending such measures is beyond OSC's authority. If it finds the request justified, OSC can demand suspension from the employer. If the employer does not comply, OSC will turn to MSPB, which can give an order to suspend the action.

OSHA allows employees to report cases when an employer imposed sanctions against him/her as a result of reporting malpractices e.g. dismissal from work, demotion, redeployment to another position or branch, blackmail, refusal of employment, pay cut, threats or creating such intolerable working conditions that the employee is compelled to terminate an employment contract voluntarily. OSHA offers four options to report: a webpage,³⁰ a fax/email, a phone call or a letter. Complaints can be filed in any language.³¹

As the matter of complaint is an adverse employment action, it cannot be filed anonymously. Complainant's identity is confidential until the beginning of possible court trial. Upon receipt of a complaint OSHA will contact the complainant with a request for further information. If the complainant does not respond, OSHA cannot proceed with an investigation and the complaint will be dismissed. If the evidence supports the complainant's allegation, OSHA will issue an order requiring that the complainant be reinstated and compensated for lost income or compensated for court costs if he/she appeals to the court. If an employer disclosed the identity of the complainant and sanctioned him wrongfully, the employer could be penalized or even imprisoned. An employer is sued only if OSHA has finished the investigation and a complainant is not satisfied with the conclusions. If he/she appealed directly at court, the request would be automatically rejected. The complainant must first turn to designated organizations.

²⁶<https://osc.gov/Pages/ppp.aspx>

²⁷<https://osc.gov/Pages/ppp-fileacomplaint.aspx>

²⁸<http://www.mspb.gov/>

²⁹Investigation and complaint handling procedures are regulated e.g. by Whistleblower Investigations Manual (https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-005.pdf).

³⁰<https://www.osha.gov/pls/osha7/eComplaintForm.html>

³¹http://www.whistleblowers.gov/complaint_page.html

Protecting whistleblowers with an access to classified information

Reporting classified information is regulated by a special presidential directive.³² Whistleblowers with access to classified information do not fall under OSHA or OSC protection, special rules apply to them. They can report malpractices to institutions competent to work with classified information and data. If a complainant is not satisfied with the handling of the complaint, he/she may demand that a committee is created to investigate the case, which would consist of members of similar organizations. An employee cannot be sanctioned for reporting, regardless of the legitimacy of the complaint. If he/she was sanctioned, he/she must be reinstated and financially compensated.

Independence and financial resources

Appointing and dismissing leadership

The head of OSC – Special Counsel – is nominated by the President of the USA after he/she was confirmed by overall majority of the Senate members. Special Counsel is appointed for a five-year term and an early termination is allowed in three cases only; if Special Counsel Office is wasteful or inactive, if Special Counsel neglects his/her duties or he/she is criminally prosecuted.

The head of OSHA is nominated by the President after confirmation by the Senate as well. In contradistinction to OSC the length of the term is not fixed.

Financing

OSC and OSHA are federal institutions, and therefore primarily financed from the federal budget. The overall allocation depends on a draft budget which must be approved by the US Congress. The Congress sets the total amount of money available for OSC and OSHA based on a proposal by the President's office.

Budget and personnel resources

Budget

In 2014 OSC administered the budget of \$20.6 million and requested a \$2 million budget increase for the next year.³³ MSPB budget in 2014 was \$41 million. These two institutions had more than \$61 million at their disposal for whistleblower protection and further activities, which amounts \$19,200 per 100,000 citizens.

Since OSHA is not merely interested in whistleblower protection, but also in occupational health and safety, it administers a larger budget – approximately \$556 million.³⁴ 17 million of this sum is intended for activities related to whistleblowers protection which amounts to \$5,300 per 100,000 citizens. The lion's share goes to the salaries of OSHA employees - \$13.3 million.³⁵

Personnel resources

In 2014 OSC employed 122 staff members and 65 of them were responsible for whistleblower protection.³⁶ MSPB with 226 employees markedly supported their activities.³⁷ OSHA employs thousands of staff members and 158 of them are responsible for whistleblower protection.

³²http://www.va.gov/ABOUT_VA/docs/President-Policy-Directive-PPD-19.pdf

³³OSC: Fiscal year 2015 congressional budget justification and performance budget goals

³⁴OSHA: Congressional budget justification Occupational safety and health administration.

³⁵http://www.dol.gov/dol/budget/2015/PDF/CBJ-2015-V2-1_2.pdf

³⁶<https://osc.gov/Resources/OSC%20Annual%20Report%20to%20Congress%20FY%202014.pdf>

³⁷<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=995066&version=998989&application=ACROBAT>

Information, education, motivation

Providing information about whistleblower protection

OSC website provides information for potential whistleblowers in a user friendly way. They can find out who is entitled to gain protection and what kind of information is required, how to file a complaint and how the complaint will be processed.³⁸

OSC informs about its activities as well. The public can find annual reports with an anonymized overview of resolved cases on the website together with reports informing about next year's budget and key performance indicators.³⁹

OSHA provides complainants or potential complainants with comprehensive information about its activities as well. Information about available protection and legislative measures related to the protection are available on the institution's website.⁴⁰ Complainants are provided with information about the best ways to file a complaint and about the filing period in an easily accessible and understandable manner. OSHA also informs about measures which have been taken in particular cases of violation of whistleblowers' rights.⁴¹ Information is available in English and Spanish.

OSHA also publishes information about its activities for the public to which it is accountable. Statistics about complaints accepted and resolved are also available.⁴²

Educational programs, consultations and mediation focused on protected disclosure of information

At public request OSC organizes trainings for employees and employers focused on protected disclosure of information.⁴³ It organizes 4-5 trainings every year.⁴⁴ OSC also offers certified training programs for institutions, their supervisory authorities and employees. They are aimed at problems of protected disclosure and trainings of people responsible for implementation of the law in particular institutions.⁴⁵ It publishes complementary training materials on the website as well.⁴⁶

OSC sporadically offers free mediation services for employees and employers to solve the conflicts related to adverse employment actions. According to OSC this solution is less expensive and less time-consuming than transferring investigation to another competent institution. In 2014 OSC offered mediation services in 80 cases, it was used in 56 cases. 79% of the mediation results were satisfactory for both sides.⁴⁷

OSHA has published more than 25 bulletins for whistleblowers dealing with their rights, instructions on filing a complaint in accordance with particular sector laws etc.⁴⁸ OSHA offers consultations and trainings for companies which engage in whistleblower protection policy by introducing internal handling complaint systems. These services are provided by local branches of OSHA for free and per request.

³⁸<https://osc.gov/Pages/dow.aspx>

³⁹<https://osc.gov/Pages/Resources-ReportsAndInfo.aspx>

⁴⁰<http://www.whistleblowers.gov/>

⁴¹http://www.whistleblowers.gov/news_page.html

⁴²http://www.whistleblowers.gov/whistleblower/wb_data_FY05-14.pdf

⁴³<https://osc.gov/Pages/Outreach.aspx>

⁴⁴<https://osc.gov/Resources/FY14%20PAR%20-Final.pdf>

⁴⁵<https://osc.gov/Pages/Outreach-2302Cert.aspx>

⁴⁶<https://osc.gov/Pages/Outreach-AdditionalInfo.aspx>

⁴⁷<https://osc.gov/Resources/OSC%20Annual%20Report%20to%20Congress%20FY%202014.pdf>

⁴⁸<https://www.osha.gov/pls/publications/publication.athruz?pType=Industry&pID=225>

How to motivate whistleblowers

One possible way to motivate employees is rewarding them if their complaint is confirmed and helps to save public finances. Several sector and local laws have introduced a strategic reward system, falling within the competence of another institution – Office for Whistleblowers.⁴⁹ If a whistleblower wants to receive a monetary reward, he/she can make a request to this institution which decides whether a financial reward will be given and what the amount will be. Awards exceeding \$1 million are published on the Office for Whistleblowers website. Awards vary in accordance with the law related to the complaint.

Number of complaints and outcomes

In 2014 OSC accepted an increasing number of complaints related to malpractices, when complaints doubled in comparison to 2013 and reached a total of 1747. It represents 0.6 complaints per 100,000 inhabitants. One half of these complaints are handled in 15-day limit.

Number of complaints related to malpractices accepted by OSC in last years and handling of the complaints⁵⁰

NUMBER OF COMPLAINTS ACCEPTED		2008	2009	2010	2011	2012	2013	2014
		530	724	961	928	1148	1129	1747
TOTAL NUMBER OF COMPLAINTS		614	852	1086	1011	1280	1354	1940
NUMBER OF UNRESOLVED COMPLAINTS FROM PREVIOUS YEAR		84	128	125	83	132	225	193
NUMBER OF COMPLAINTS CLOSED		488	727	1006	870	1053	1160	1315
NUMBER OF COMPLAINTS RESOLVED	WITHIN 15 DAYS	256	394	555	555	583	575	731
	AFTER 15 DAYS	232	333	451	315	470	585	584

From 2007 the number of complaints accepted by OSC and related to prohibited personnel practices (PPPs), e.g. retaliatory measures taken for protected disclosure has increased from 1,970 complaints per year to 3,371 in 2014,⁵¹ representing 1.06 complaints per 100,000 inhabitants. An increasing number of complaints brings about reduction of relevant complaints and causes growth of unresolved cases.⁵²

⁴⁹<https://www.sec.gov/whistleblower>

⁵⁰<https://osc.gov/Resources/OSC%20Annual%20Report%20to%20Congress%20FY%202014.pdf>

⁵¹<https://osc.gov/Resources/CBJ%20-%20FY16--Final%20Website%20Version.pdf>

⁵²OSC: Fiscal year 2015 congressional budget justification and performance budget goals

Number of complaints related to prohibited personnel practices accepted by OSC in last years and handling of the complaints⁵³

NUMBER OF COMPLAINTS ACCEPTED		2008	2009	2010	2011	2012	2013	2014
		2089	2463	2431	2583	2969	2936	3371
TOTAL NUMBER OF COMPLAINTS		2247	2937	3200	3446	3903	4088	4416
NUMBER OF COMPLAINTS CLOSED		1971	2173	2341	2508	2750	3041	3003
NUMBER OF COMPLAINTS RESOLVED	IN LESS THAN 240 DAYS	1889	2045	2185	2327	2570	2594	2577
	IN MORE THAN 240 DAYS	80	127	154	175	439	440	422
NUMBER OF COMPLAINTS RELATED TO ADVERSE EMPLOYEE ACTIONS RESOLVED BY APPLICATION OF POSITIVE ACTION MEASURES		20	29	55	50	95	91	114

In recent years OSHA has been receiving approximately 2,900 complaints per year – 0.9 complaints per 100,000 inhabitants. More than a half of them have regularly been rejected. In 2014 64 complainants were under the protection of OSHA. In 441 cases disputes were settled.

Number of complaints accepted and handled by OSHA⁵⁴

NUMBER OF COMPLAINTS ACCEPTED		2008	2009	2010	2011	2012	2013	2014
		2 219	2160	2314	2986	2889	2969	3060
NUMBER OF COMPLAINTS RESOLVED		1 938	1876	1904	1948	2771	3083	3147
PROTECTION PROVIDED		21	57	45	48	48	74	64
NUMBER OF DISPUTE SETTLEMENTS		328	277	312	400	406	527	441
NUMBER OF COMPLAINTS REJECTED		1280	1221	1182	1110	1662	1596	1652

⁵³<https://osc.gov/Resources/OSC%20Annual%20Report%20to%20Congress%20FY%202014.pdf>

⁵⁴http://www.whistleblowers.gov/whistleblower/wb_data_FY05-14.pdf

SERBIA

Serbia started the whistleblower protection program in 2009 by adopting The Act on Civil Servants.⁵⁵ The Act on the Anti-Corruption Agency,⁵⁶ also related to whistleblower protection, was adopted in 2010.⁵⁷ The Agency accepts complaints about malpractices and protects whistleblowers against retaliation.

A separate Whistleblowers Protection Act was adopted only in 2014.⁵⁸ In accordance with the Act, the Anti-Corruption Agency now shares competences concerning whistleblowing with the Ministry of Labor which supervises the implementation of the Act. If a whistleblower becomes a party to a lawsuit as a consequence of his/her complaint, he/she can fall under the protection of the Agency.

Whistleblowers are protected against an adverse employment action in case of reporting poor working conditions (e.g. dangerous or inappropriate working conditions,) selection procedure violations, violations of human rights, health and safety hazards, misuse of public services and in effort to prevent extensive damages. Not only full-time staff, but also part-timers and volunteers can gain legal protection.

Competences of particular institutions

Receiving complaints and whistleblower protection - communication channels, anti-corruption hotlines, guaranteeing anonymity

Complainants report malpractices not only to the Anti-Corruption Agency, but also to the police, the public prosecutor's office or other state authorities. They can inform the Agency or other institutions by letter or email. The complainant must be informed that his/her complaint was received within a 15-day limit and as soon as the Agency inquired into the matter, it is obligated to inform the complainant about the outcome within the same time limit.⁵⁹ If the Agency transfers investigation to another competent institution, the complainant must be informed about this fact in 15-day limit as well.

The Agency keeps the identity of the complainant confidential and does not disclose it to his/her employer or anyone else concerned. The complaint cannot be filed anonymously, as the Agency may be interested in asking some follow-up questions.

Defense against retaliation

Retaliatory measures include changes to the contract of employment or working conditions, demotion, redeployment to another position, dismissal from work or denial of a promotion.

The Agency does not protect complainant preemptively. After an employee was retaliated against, he/she can ask the Agency for protection. He/she must specify retaliatory measures, the nature of the complaint and what compensation he/she is seeking. His/her reinstatement or compensation of lost pay does not fall within the competence of the Agency. These compensations come under the competence of Court. In accordance with the reversed burden of proof the employer must prove in Court that retaliatory action had nothing to do with the complaint.

⁵⁵<http://www.jrga.org/repo/dokumenta/files/zakonodavstvo/nezavisne-agencije/zakoni/2008%20RS%20Law%20on%20civil%20servants.pdf>

⁵⁶<http://www.acas.rs/en/?pismo=lat>

⁵⁷http://www.mpravde.gov.rs/files/LAW%20ON%20THE%20ANTI-CORRUPTION%20AGENCY_180411.doc

⁵⁸<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2014/3140-14%20LAT.pdf>

⁵⁹Complaints can be also reported to employer. Employers with more 10 staff members are obligated to introduce channels for internal reporting malpractices. Similarly to the Agency procedure he/she must be informed about the acceptance of the complaint and about subsequent investigation and the conclusion in 15-day limit.

Complaints about classified information

If a complaint contains classified information, a complainant is obligated to reveal it to his/her immediate superior. If the superior is the subject of the complaint, the complainant can file the complaint to his/her supervisor. If he/she does not receive a response within a 15-day limit, he/she can turn to the Agency or another state institution.

If a complaint deals with a state secret, the complainant can turn to the Prime Minister, Parliamentary Speaker, General Prosecutor, the President or high state institutions, authorities and persons.

Independence and financial resources

Appointing and dismissing leadership

The Agency is headed by the managing director and the board. A person with no criminal record, with a University degree and 9+ years of experience in the field can be elected as a member of the board. The board consists of 9 members, elected by the Parliament after he/she was nominated by the Parliamentary committee, the President, the Government, Supreme Appeals Court and other state authorities, the Ombudsman and Association of Serbian Journalists. An elected member must have no affiliation with political parties and is appointed for a four-year term with a possibility for re-election for a second term.

The managing director is appointed and removed by the Parliament, he/she is appointed for a five-year term with a possibility for re-election for a second term. The candidate must not have a criminal record, must not be criminally prosecuted, must not have an affiliation with political parties and must have a university degree in the field of law and 9+ years of experience in the field.

Financing

The managing director of the Agency submits a draft budget to the Parliament. After the budget is approved, the Agency is autonomous with regard to allocation of the finances.

Budget and personnel resources

Budget

The Agency budget revenues are approximately € 1.8 million a year. One third goes to the salaries of its employees. The Agency does not reveal the sum allocated for protected disclosure.

Personnel resources

In 2013 the Agency employed 76 staff members, but information about the number of employees responsible for whistleblowers protection is not available.⁶⁰

Information, education, motivation

Providing information about whistleblower protection

The Agency website does not allow for reporting malpractices or retaliatory actions. The only offered channel is an email address designated for complaints or requests, but the address is available in Contact Us section and is intended for various purposes, not only for filing complaints.⁶¹ Even though annual reports of the Agency are published on the website, they do not primarily focus on protected disclosure.

⁶⁰World Bank Group: Survey on the Effectiveness of Anticorruption Authorities – Serbia

⁶¹<http://www.acas.rs/contact/?pismo=lat>

The Agency awards grants on an annual basis. The aim is to support projects that help strengthen anti-corruption measures and the implementation of corresponding legislation. In 2013 the Agency appropriated €35,000 for two such projects.⁶²

The Agency organizes free of charge trainings focused on the fight against corruption and protected disclosure. In 2013 it organized 23 trainings which took 37 days and were attended by 417 people.⁶³ The Agency replies to information requests as well. In 2013 only 6 requests dealt with protected disclosure.⁶⁴

Consultations for institutions and legal entities

The Agency consultations are aimed at supporting public institutions and private companies and improving their integrity and anti-corruption measures as well.

How to motivate whistleblowers

The Agency does not use monetary awards to motivate whistleblowers to come forward.

Number of complaints and outcomes

In 2013 the Agency received 1,649 reports of malpractices. 103 complainants asked for protection and 78 of them gained protection.⁶⁵ They gained the Agency's whistleblower status, which prevents an employer from taking retaliatory measures against his/her employee for a protected disclosure. Protection was rejected if a complainant did not work for public administration, or he/she was employed in a private company. In 2013 the current amendment of the law which guarantees protection for these employees as well had not been adopted yet.

The Agency receives an increasing number of complaints every year. In 2011 only 10 complainants requested protection, 3 of them successfully. Next year the number of accepted complaints tripled and 31 people applied for protection. The increase may have been affected by a campaign run by the Agency in this year with the aim of supporting a protected disclosure, reporting corruption practices and other malpractices and a raising awareness of the Agency's work. **The campaign was noticed by 80% of inhabitants.**⁶⁶

⁶²Anticorruption agency: Open competition for the provision of support to community anticorruption capacity building

⁶³Anticorruption agency: Annual report of the Anticorruption agency for 2013

⁶⁴Anticorruption agency: Annual report of the Anticorruption agency for 2013

⁶⁵Whistleblower protection in Southeast Europe: An overview of laws, practice, and recent initiatives

⁶⁶Whistleblower protection in Southeast Europe: An overview of laws, practice, and recent initiatives

SLOVENIA

Whistleblower protection in Slovenia was introduced into legislation by the Integrity and Prevention of Corruption Act⁶⁷ which came into force in 2010. The Act is upheld by the Commission for Prevention of Corruption⁶⁸ - an independent institution which deals not only with an anti-corruption agenda, but also with the protection of whistleblowers and reporting malpractices. The Act defines situations to which protected disclosure may apply: corruption, psychological and physical violence and violating of internal rules.

Competences of particular institutions

Extent and nature of protection – communication channels, anti-corruption hotlines, guaranteeing anonymity

The Commission accepts complaints from persons who have become victims of malpractice in the workplace. He/she can write an email or send a letter to the Commission⁶⁹. The Commission must handle the complaint within a 30-day limit. In the case of serious accusation which requires extension of time the complainant must be informed by the member of the Commission staff. If the Commission finds the complaint justified it will transfer the case to other investigative bodies, courts or Labor Inspectorates.

If an employee is a victim of bullying, maltreatment or forced to engage in illegal activities, he/she must report such practices to his/her superior. If he/she is not aware of any competent person, he/she can inform the Agency about these practices.

Defense against retaliation

During investigation of the complaint the Commission keeps the complainant's identity confidential. Both natural and legal persons can be penalized for attempts to disclose the name of a complainant. If his/her identity needs to be disclosed, the Commission will provide him/her protection. In order to protect state institution staff from further adverse action, they may be redeployed to similar positions. If an employer has already taken retaliatory measures for protected disclosure, such as dismissal from work or redeployment to another position, the employee can be reinstated or compensated for lost income. Courts decide whether compensation will be awarded as well as the amount of compensation. In accordance with the reversed burden of proof, the employer must prove in court that a retaliatory action had nothing to do with the complaint. In the most serious cases the Commission for Prevention of Corruption ask the Commission for Witness Protection to include the complainant in the protection program.

Employees who were sanctioned for reporting malpractices to other people or institutions than the Commission, can ask the Commission for protection as well.

Protecting whistleblowers with access to classified information

When a complainant reports classified information, he/she can also reveal the case in media. However, this only applies to situations where public awareness of the case is more important than potential damage. In situations where the report touches on highly classified information the whistleblower may only report to the Commission or other institutions competent to work with classified

⁶⁷<https://www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf>

⁶⁸ <https://www.kpk-rs.si/en/>

⁶⁹ <https://www.kpk-rs.si/sl/kontakt>

information and data. Whistleblowers disclosing classified information are also entitled to protection from the Commission.

Independence and funding

Election and removal of the board

The Commission is an independent state, but its annual reports must be submitted to Slovenian Parliament. The Commission is headed by the Commissioner and two deputies. The Commissioner's term of office is six years, the deputies' five years and they can serve up to two terms in office. Before the terms' end the official informs the President who subsequently announces a selection procedure in an official gazette in 30-day time limit. Candidates must submit an application within 14 days after the date of an announcement. Candidates must be the citizens of Slovenia with no criminal record, have a university degree and experience in the field. A selection committee consisting of a Member of Parliament, and representatives of the Government, non-governmental sector, Judicial Council and Officials Council check whether candidates meet specific requirements and if they are confirmed the candidates are invited to a public hearing.

The Commissioner and deputies can be dismissed by the President at the instance of the Commissioner or a deputy, but only in the case of criminal prosecution, bad health condition hindering them from work or loss of capacity to further carry out his/her duties.

Financing

The Commission for Prevention of Corruption is financed from the state budget of Slovenia. The Commission submits a draft budget to the Parliament for approval. The Commission is autonomous in the way it allocates the financial resources.

Budget and personnel resources

Budget

An annual budget of the Commission amounts to €1.6 million which represents almost €78,000 per 100,000 inhabitants. Over the past years the budget increased only when the Commission was tasked with new responsibilities. Unfortunately the budget designated for protected disclosure has not increased, although the Commission has been receiving an increasing number of complaints. The management solved the problem by pay cuts for the Commissioner and deputies, but also for ordinary employees.⁷⁰

Personnel resources

The Investigation and Oversight Department is the section of the Commission responsible for whistleblower protection. It has 14 employees and each of them handles approximately 130 complaints a year.

Information, education, motivation

Providing information about whistleblower protection

The website of the Commission explains in simple terms its responsibilities and the options for filing a complaint.⁷¹ The Commission instructs possible complainants to provide as much information as

⁷⁰Salaries of Chief Commissioner and his deputy decreased by 32% from €5,173 in 2010 to €3,577 in 2013. Salaries of the rest employee decreased approximately by one fourth (CPC: CPC in numbers 2013. Online: <https://www.kpk-rs.si/upload/datoteke/cpc%20in%20numbers%20-%202013.pdf>)

⁷¹<https://www.kpk-rs.si/sl/kontakt>

possible in their report, including which institutions he/she has already contacted and what was the result. The Commission recommends complainants also attach scanned documents if these could provide further insight.

The Commission informs about the extent of protection as well. It does not go into details, but it provides an email address, where queries about the Commission and about its legal basis may be sent.

The Commission provides only a brief summary of resolved cases, statistics of received and handled cases are available on its website. However, information related to retaliatory measures taken by employers is missing, as well as information related to the extent and efficiency of protection provided by the Commission. The website does not publish information about particular cases.

The Commission awards funding to non-governmental institutions for trainings of Commission staff or raising awareness of whistleblowing. The Commission organizes educational programs as well. In 2013 they organized 60 educational programs.⁷² These activities are free of charge, some are per request, others planned by the Commission. Trainings aim to inform employees about their rights, employers about the way of introducing internal mechanisms for whistleblower protection and improving internal handling of complaints.

Consultations for institutions and legal entities

The Commission does not provide consultations for legal entities and institutions, but gives counsel to citizens and answers their questions regarding its activities. In 2010 the Commission received 693 requests for advice or explanation. In the next two years 842 and 871 requests were received. In 2013 the number of requests amounted to 1,190.⁷³

How to motivate whistleblowers

Slovenia does not use monetary rewards to motivate whistleblowers to come forward.

Number of complaints and outcomes

Since 2010, the number of received and handled complaints regarding illegal activities or malpractices has nearly doubled. The year 2014 is the exception; 1,467 complaints were received. In 2010 the Commission received 1,191 complaints, but two years later the number amounted to 1,900 complaints, which represents more than 92 complaints per 100,000 inhabitants.

⁷²In previous year 56 educational activities were held and in 2011 the Commission organized 93 activities

⁷³CPC: CPC in numbers 2013. Online: <https://www.kpk-rs.si/upload/datoteke/cpc%20in%20numbers%20-%202013.pdf>

Number of complaints received and handled by the Commission⁷⁴

NUMBER OF COMPLAINTS RECEIVED	2010	2011	2012	2013	2014
	1191	1422	1888	1931	1467
NUMBER OF COMPLAINTS RESOLVED	1101	1389	1841	2300	1973

In 2010 the Commission resolved 1,011 complaints, fewer than it received. This trend remained until 2013, when the Commission began to deal with unresolved complaints from previous years. In 2013 resolved complaints outnumbered received complaints by 369 and next year the number of resolved cases amounted to 506.

⁷⁴CPC: CPC in numbers 2013. Online: <https://www.kpk-rs.si/upload/datoteke/cpc%20in%20numbers%20-%202013.pdf>

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