STUDIES AND COMMENTS

Whistleblowing in the Slovak labor law regulation

Assistant Professor **Daniel KROŠLÁK**[1]
Associate Professor **Andrea OLŠOVSKÁ**[2]

Abstract

Corrupt behaviour is a common practice with negative effects on the whole of society. For instance, if a company wins a public procurement contract in an unfair way, it enriches itself not only at the expense of competition, but also at the expense of the whole of society, as the best applicant has not necessarily been selected within such a procurement. The same applies in the case of a supplier launching an unsafe product onto the market, threatening the health of everyone who buys it. In order to prevent such malpractice and eliminate their negative effects, the cooperation of persons aware of such behaviours is necessary. In order to ensure such cooperation, however, the existence of instruments protecting whistle-blowers against various sanctions (especially by employers) is necessary. As Slovak legislation did not include a regulation of procedures for reporting malpractice and protecting whistle-blowers, a new law aimed at solving such issues was enacted in October, 2014. The given legal regulation took effect on January 1, 2015. This paper endeavours to provide basic knowledge of the environment that the given regulation entered, as well as information on the possibilities of individuals to protect social interests on its grounds.

Keywords: *malpractice, antisocial activity, employee, protection of a whistle-blower of a serious antisocial activity, report.*

JEL Classification: K31

1. Introduction

The issue of protecting people who in the public interest notify legal authorities of a problem they have become aware of via carrying out their work (so called whistleblowing[3]), has currently resonated strongly in public debate. In its broadest sense, whistleblowing can be defined (in accordance with the definition of the International Labour Organisation) as an employee´s notification of the illegal, irregular, dangerous or unethical practices of an employer. According to

[1] Daniel Krošlák - School of Law, University of Trnava, Slovakia, daniel.kroslak@gmail.com .
[2] Andrea Olšovská - School of Law, University of Trnava, Slovakia, aolsovska@gmail.com .

[3] One of the first to use this term in the given context was consumer advocate Ralph Nader in 1972, who defined it as: *"an act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent, or harmful activity."* See: NADER, R. In NADER, R., PETKAS, P. J. and BLACKWELL, K. (eds.): *Whistle Blowing: The Report of the Conference on Professional Responsibility.* New York: Grossman, 1972, p. vii.

Transparency International, whistleblowing is considered to be a process of revealing an unlawful activity in a certain organisation by providing information to persons who should be able to interfere.[4]

Any action or behaviour perceived by society as negative, able to cause detriment and result in an unlawful state, has different punitive consequences (e.g. resulting damage, responsibility for infringement or a criminal offence) and can generally be denoted as malpractice.[5]

Many cases have appeared in the media, frequently indicating the fact that valid legal regulation (whether Slovak or other) does not provide the people revealing malpractice in the public interest sufficient protection.[6] Therefore, in preparing their 2012 – 2016 Statement of Policy, the Slovak Government committed itself to strengthen the protection of whistle-blowers of corrupt behaviour, also by adopting new legislative measures. A government bill introducing some measures related to reporting antisocial activities was submitted to the legislative process during 2014, and its final form was approved by Parliament on October 16, 2014 (Act 307/2014 Coll. on some measures related to reporting antisocial activities and on change and amendment of some laws, effective since January 1, 2015, hereinafter as "Act 307/2014").

This paper will introduce the essentials of the original and newly adopted regulation. As the majority of the active population is in the position of employees, particular attention will be paid to the private sphere and to the possibilities of reporting malpractice at the workplace. We will not deal with the issue of whistleblowing in relation to special employee categories like civil servants,

---

[4] Cf. *Analýza whistleblowingu a ochrany oznamovatelů,* p. 4. The document is available online at: <http://www.korupce.cz/assets/protikorupcni-temata/Analyza-whistleblowingu-a-ochrany-oznamovatelu.pdf>

[5] Cf. *Analýza whistleblowingu a ochrany oznamovatelů,* p. 4. The document is available online at: <http://www.korupce.cz/assets/protikorupcni-temata/Analyza-whistleblowingu-a-ochrany-oznamovatelu.pdf>

[6] With regard to the situation in Slovakia, the activities of the non-governmental organisations, Aliancia Fairplay and Via Iuris, which have been awarding courageous people acting according to the principles and values of common interest with the "White Crow" award since 2008, can be highlighted. It is an award and acknowledgement to people who have shown civil courage by concrete action, who have suppressed their personal interests in the name of public benefit, values and principles and who have taken the risk, experienced various injustices or condemnation. Since 2008 22 outstanding individuals were awarded at the 7 annual White Crow Award events. Among the laureates, there were citizens of Pezinok who have been fighting against unwanted landfill for more than 10 years; Zuzana Melicherčíková who as an employee of the Faculty of Law (Comenius University) referred to suspicious admitting of students or Ivan Cehelský, who has protected nature of Strážov Hills despite several attacks which even led to setting fire to his beloved cottage or the teacher Oto Žarnay, who drew attention to the disadvantageous contract of the school. In 2014 a former auditor of the National Forest Centre Ľubica Lapinová was awarded. She revealed serious violations of the public procurement law. A pediatrician Zuzana Pechočiaková received the award for pointing out that medical records of a new born baby have been whited out in the hospital. In the past 3 years we have also presented the White Crow Award for a long-term contribution. Awarded was Marcel Strýko (in memoriam), an underground artist and dissident, Katarína Šimončičová, an environmental activist and samizdat publisher Oleg Pastier. For more see: *Biela Vrana*. The document is available online at: <http://www.bielavrana.sk/index.php>

employees working in the public interest, or employees in service (soldiers, police officers, etc.).

In relation to malpractice, it should concern the notification of any action or behaviour harming both an employer and employees, and is either illegal or unethical, or contradicts the internal regulations and trade practices of an employer. The new Act 307/2014 uses the term "antisocial activity" (which will be dealt with within the interpretation of *de lege lata* regulation), distinguishing a serious antisocial activity and antisocial activity (the character of antisocial activity is important in order to differentiate the level of protection of a whistle-blower).

With regard to the fact that the topic of whistleblowing is extensive, this contribution will focus on the issues related to the protection of an employee reporting an antisocial activity pursuant to the new Act 307/2014 (our interpretation will thus not focus on all public aspects of such reporting, e.g. issues related to reporting a criminal offence, etc.).

2. The Cultural Context of Applying Whistleblowing in Slovakia

The first step of our analysis will be a sociological probe of the environment and approaches of people in Slovakia on the grounds of research carried out as part of the work of Pavel Nechala, who is one of only a few experts dealing with the issue of whistleblowing within the Slovak Republic.[7]

As Nechala states, the notification of facts regarding third persons to official authorities is not perceived positively in the Slovak society. According to public opinion polling ensured by Transparency International Slovakia in 2010, an unwillingness of citizens to report malpractice to the police along with a fear of retaliation prevails.[8]

The response of politicians to the negative attitude of the public to reporting malpractice has been public verbal declarations, which have been put into practice by strengthening communication channels to report malpractice. In some cases, the creation of such channels has been connected to politicians' efforts to present themselves as "fighters against corruption". On the grounds of their provided answers, the following communication tools can be identified at the Ministries: written or personal notification to a superior, black box installation, special e-mail inbox, electronic form on a web site, an application within an intranet network, and telephone lines.

An anticorruption line at the Government Office of the Slovak Republic was established on May 18, 2011. During the first year of its operation, 878 callers were recorded. Elements of suspicion of corrupt behaviour were recorded in only

[7] NECHALA, P.: *Chránené oznamovanie (whistleblowing).* Bratislava : Inštitút pre verejné otázky, 2014, pp. 101-104.

[8] We are dealing with the situation before the adoption of the new whistleblowing regulation. However its adoption is not necessarily a factor which will change the attitude of the public by waving a magic wand. The new legal regulation could be perceived as the first step towards a change in this situation. However, achieving its broad social implementation (i.e. a change in the attitude of the public) is a rather longer-term objective.

143 of these calls, while in 49 cases citizens used the possibility to report their suspicions anonymously. While the number of calls approached 200 in its first months, the number has recently stabilized at an average of 40 calls per month. However, only two calls per month on average are related to corruption.

The declining public confidence in the new ways of reporting malpractice may be the result of an insufficient technical and personnel basis of examining reports. On the grounds of collected answers, this agenda is either dealt with by the competent department, a control department, service office manager, or Minister. Ministries (with the exception of the Slovak Ministry of Foreign Affairs in one case, and the Government Office of the Slovak Republic and Slovak Ministry of Defence, which both operate their own anticorruption telephone lines) did not report any potential instances of whistleblowing, and respectively did not keep records of such between 2011-2013. It can therefore be stated that the Ministries did not represent a sufficiently trustworthy institute enabling the collection of knowledge and elimination of deficiencies.

Another deficiency identified by Nechala is with regard to informing employees on the possibility of blowing the whistle. If informing occurred, it was exclusively upon starting a job, normally through an internet site. No special trainings were arranged and no cases of successful whistleblowing inside of an organisation were published. Security procedures to protect whistle-blowers and guarantees of not disclosing the identities of whistle-blowers were not established. No Ministry had whistleblowing regulated within their staff regulations or work regulations in 2014.

Employees used the help of the Slovak National Centre for Human Rights and non-government organisations (the Centre kept statistics on discrimination in employment relations in the form of an unauthorised sanction but did not keep special records on whistleblowing).

The private sector was in a slightly better situation in terms of a framework to investigate suspicions. Different communication channels were used in order to collect knowledge, e.g. a contact form, an e-mail address, black boxes, or personal reports. The investigation of reports was either dealt with by a control department, a specially established commission, an external entity, or the director of a company. Nechala also did not manage to collect relevant statistical data on the number of whistleblowing cases in business entities due to their non-recording in such a structure, or the non-existence of such cases. In relation to the education of employees, businesses used internal regulations as well as an internal computer network, training, or a corporate magazine.

3. Whistleblowing and Labour Law before Adopting the New Act

Employment relations within the private sphere are governed by the key employment code – Act 311/2001 Coll. Labour Code as amended (hereinafter as "Labour Code"). Before adopting Act 307/2014, it was possible to find certain foundations of the whistleblowing regulation, especially in the fundamental principles and the provision of Section 13 of the Labour Code.

Article 2 of the Fundamental Principles of the Labour Code can generally be considered to be the basis of whistleblowing protection even nowadays. It enacts that the exercise of rights and duties resulting from employment relations must be in accordance with the principles of morality, and that no one can misuse such rights and duties in order to harm another participant of employment relations or co-employees. This principle is subsequently included already in the normative text of the provision of Section 13 (3) of the Labour Code.

Until the adoption of Act 307/2014, the provision in question had also enacted that no one could be persecuted or otherwise sanctioned at their workplace in relation to employment relations for filing a complaint about another employee, for suing their workplace, or filing a proposal to initiate criminal proceedings.[9]

As neither the Labour Code nor any other legal regulation directly addressed the issue of whistleblowing and its associated rights and duties, the court has ultimately been competent to decide. In general, the legal protection of employees who have spoken out about malpractice and have been sanctioned by their employers in certain ways (e.g. by means of a fabricated reason of notice, or a groundless non-provision of a bonus that the employee has normally received thus far) can be drawn from Article 9 of the Fundamental Principles of the Labour Code. Pursuant to this provision, employees and employers who have been harmed by a breach of duties resulting from employment relations can exercise their rights in court. Employers can neither treat unequally nor harm their employees because they exercise their rights resulting from employment relations. In the case of an invalid termination of employment on the grounds of a legal act by an employer, an employee can bring an action against their employer (Sections 77 and 79 of the Labour Code).

In relation to reporting malpractice, harassment and/or discrimination of the whistle-blower frequently occur.

The prohibition of discrimination is regulated by Section 13 (1) of the Labour Code, under which an employer is obliged in employment relations to treat employees in accordance with the principles of equal treatment specified for the sphere of employment relations by a special law – i.e. Act 365/2004 Coll. on equal treatment in some spheres and on protection against discrimination and change and amendment of some laws (anti-discrimination law) as amended – which also regulates the means of protection and results from reversed burden of proof.

In Section 13 (2), the Labour Code differentiated discrimination due to gender, marital status and family status, sexual orientation, race, skin colour, language, age, unfavourable health condition or a handicap, genetic qualities, belief, religion, political or other thinking, union activities, national or social origin, nationality or ethnicity, property, descent or other status.

---

[9] Act 307/2014 also changed the text of the Labour Code, amending its provision as follows: "No one can be persecuted or otherwise sanctioned at a workplace in relation to employment relations for filing a complaint about another employee or the employer, for suing them or filing a proposal to initiate criminal proceedings, *or other notification of criminality or other antisocial activity."*

The reason for discrimination expressly related to the notification of malpractice was neither regulated by the Labour Code nor the anti-discrimination law and it was questionable whether it would be possible to place the whistle-blower of malpractice within the stipulation of discrimination in a "different position". Act 307/2014 eliminated the problem by introducing a new definition of discrimination, i.e. "announcement of criminality or other antisocial activity".

Slovak legislation does not incorporate a special regulation of harassment (and does not include this term, which is why the term mobbing/bullying may be used). Section 13 (3) of the Labour Code, under which the exercise of rights and duties resulting from employment relations must follow the principles of morality, may be used as the general basis of regulation in relation to mobbing/bullying. No one can misuse such rights and duties in order to harm another participant of employment relations or co-employees.

In the case of breaching the aforementioned principles, an employee had (and still has this possibility after the adoption of the new legal regulation) a right to file a complaint against their employer and the employer was (is) obliged to respond to such a complaint, provide redress, refrain from such conduct, and eliminate its consequences (Section 13 (5) of the Labour Code) without undue delay).

Legal protection is generally regulated by Article 9 of the Fundamental Principles of the Labour Code. The Labour Code subsequently enacts in Section 14 (Dispute Resolution) that disputes between an employer and an employee regarding claims in relation to employment relations will be dealt with and decided on by the courts. Slovak legislation does not incorporate a special legal procedure for the sphere of legal relations; it is therefore based on the general arrangement of civil procedural law.

An employee assuming that their rights or legally protected interests have been affected by non-fulfilment of the aforementioned principles could (and can) apply to the court and require the legal protection enacted in the anti-discrimination act (Section 13 (6) of the Labour Code). The aforementioned implies that the procedure established in the anti-discrimination law will apply to both the proceedings related to the discrimination agenda, and the agenda regarding the examination of the exercise of rights and duties in accordance with the principles of morality and misuse of a right.

The anti-discrimination law enacts the possibility to require the following:

- refrain from unlawful acting,
- redress of an irregular situation,
- adequate satisfaction,
- financial compensation of non-material damage.

The defendant is obliged to prove that discrimination/bullying did not occur. If the plaintiff provides facts at a trial from which it can be reasonably concluded that discrimination/bullying occurred, the institute of so called reversed proof of burden implies. However, the plaintiff (employee) is obliged to specify the decisive facts to assess the act of the defendant (the burden of producing evidence).

4. The New Slovak Legal Regulation

As already stated, the need to adopt a new regulation resulted from the interest of a company in preventing and revealing antisocial activity. It focuses on revealing the perpetrators of such acts, thus contributing to the protection of the public interest on the grounds of information from persons engaging in antisocial activity and having an interest in reporting them to the respective authorities. However, a number of threats can result for the "announcers" of antisocial activity from such acts. There are currently several measures protecting whistle-blowers in a certain aspect, e.g. by the institutes of secret witness, endangered witness or protected witness, which are enacted in the Code of Criminal Procedure. Their usage is limited by relatively strict legal conditions. Whistle-blowers are typically also endangered by other consequences, e.g. loss of employment and income in the economic sphere. Act 307/2014 therefore introduces a protection in the case of retaliation by an employer. However, legal regulation cannot cover further negative effects, which are frequently connected to the notification of an antisocial activity (as blowing the whistle is not perceived by Slovak society as something to be appreciated, but rather the opposite), i.e. "being labelled a whistle-blower", which makes the possibility of finding a new job or business partners more difficult (if the whistle-blower was "forced" to terminate their employment). This fact endangers the existence of individuals, as it also results in problematic family situations, and misunderstandings with friends and acquaintances is not unusual either, leading to the whistle-blower's isolation.

The newly adopted regulation provides protection to persons (whistle-blowers of serious antisocial activities) against unjustified sanctions, which could be a result of their notification in employment relations (legal relations established by both employment contracts and work agreements outside employment are considered to be employment relations), civil servant employment, and service employment.

Employee protection depends on whether they have made such a notification:

- inside, within the internal system of an employer (an employee has filed a report), and their employment relation can be endangered, and such an employee can therefore require from the Labour Inspectorate suspension of the effects of an employer´s act, which could have a negative effect on the position of such an employee;
- outside, in the form of a complaint or a proposal to initiate proceedings of an administrative offence. If an employee has notified authorities of a serious antisocial activity and received the status of a whistle-blower, the employer can only conduct the employment act against them (those he/she does not agree with and which are one-sided and deteriorate the position of the employee) with prior consent of the Labour Inspectorate.

Even if freedom of expression collides with both the employee´s obligation of secrecy and the employee´s obligation to maintain loyalty towards the employer

upon reporting an antisocial activity, notification of an antisocial activity pursuant to Act 307/2014 will not represent a breach of the employee´s secrecy obligation.[10] As employees are entitled to information whose disclosure would threaten an important public interest or sensitive information of natural persons, the specially regulated secrecy obligation has been maintained.[11]

4.1 Malpractice versus Criminality and Other Antisocial Activity

Act 307/2014 does not recognise the term malpractice; however, it regulates **the notification of criminality or other antisocial activity**. An additional antisocial activity is an action which is a minor offence or other administrative offence. Further antisocial activities also include an action which is not a minor offence or other administrative offence, however it has an adverse effect on society (pursuant to Section 3 (b) and (c) of Act 583/2008 Coll. on the prevention of crime and other antisocial activities and on change and amendment of some laws).

Serious antisocial activity under Section 2 (1) (c) of Act 307/2014 is an unlawful action, which is:

1. one of the criminal offences having an adverse effect on the financial interests of European communities under Sections 261-263 of the Penal Code, the offence of contrivance at public procurement and public auction under Section 266 of the Penal Code, one of the criminal offences of public officials under Title VIII of Part II of the special section of the Penal Code, or one of the criminal offences of corruption under Title VIII of Part III of the special section of the Penal Code,
2. a criminal offence for which the Penal Code stipulates a custodial sentence with an upper limit exceeding three years,[12] or
3. an administrative offence for which a fine with an upper limit in the amount of a minimum of 50,000 Euros can be imposed.[13]

4.2 Notification – Whistle-blower

A notification of any facts does not establish an entitlement to granting an increased protection pursuant to Act 307/2014. Protection will only relate to those

---

[10] Section 1 (4) of Act 307/2014:*"Notification of an antisocial activity is neither considered to be a breach of the contractual obligation to maintain secrecy nor a breach of the obligation to maintain secrecy under the special law, if it is an obligation resulting from executing an employment, occupation, status or function and it does not represent a secrecy obligation under Clause 3."*

[11] Section 1 (4) of Act 307/2014: *"This act affects neither the provisions of the special law on protection of classified information, postal secrecy, business secrecy, banking secrecy, telecommunication secrecy or tax secrecy, on the provision and accessibility of medical records, on the secrecy obligation of intelligence officers, on the secrecy obligation upon providing legal services, nor the obligation to report a crime or thwart a crime."*

[12] For instance, a murder, blackmail, human trafficking, theft, unpaid tax and insurance, or general threat.

[13] For instance, within the segment of public health, forest protection, forestry and wood logging.

whistle-blowers (natural persons)[14] **who submit the notification to the respective authority. A notification** represents the statement of facts which a natural person becomes aware of in relation to executing their employment, occupation, status or position, and which can significantly contribute or have contributed to the clarification of a serious antisocial activity, or to finding or convicting its perpetrator pursuant to Section 2 (1) (b) of Act 307/2014).

A condition of a notification is the fact that the person has become aware of such facts (i) **in relation to executing their employment, occupation, status or function** and (ii) **the notification has been made in "good faith".** The aforementioned implies that at the time of a notification a whistle-blower has to be convinced (with regard to their knowledge and all consequences of the given case) about the veracity of information being the subject of such a notification. Situations may occur in which the reported facts are not true, or they can appear to be false in the course of examination, while the whistle-blower's approach is also important. If the falseness of such facts has been proven, the protection provided to the whistle-blower is automatically ceased according to law. In case of doubts, it is automatically assumed that a person acts in good faith, unless the contrary has been proven. It will therefore be interesting to monitor how the practice will deal with such an interpretation (it will be difficult to prove that a whistle-blower was not acting in good-faith).

In order for a person to have the status of a whistle-blower, they have the possibility to apply for the provision of protection within criminal proceedings or proceedings of an administrative offence pursuant to Sections 3-6 of Act 307/2014 (a whistle-blower can decide whether they will apply for the status of a protected whistle-blower, or they will have the status of a whistle-blower without protection pursuant to Act 307/2014, or they may only request that a written confirmation of the fact that they are a whistle-blower be sent, in which case, if an employer carries out a negatively perceived employment act, the employee may request the suspension of effects of such an act to the Labour Inspectorate).

An application is either submitted along with a notification or in the course of criminal proceedings, or the proceedings of an administrative offence. An application should be submitted to the public prosecutor in the case of criminal proceedings, and to the respective administration authority in the case of proceedings of an administrative offence. An application is submitted to the court in case the proceedings reach the state of a legal process. The submission of an application to a different public authority does not prevent the provision of protection, as the receiving authority is obliged to submit the application to the respective authority.

An application for protection provision may be submitted in writing or verbally in minutes, and it must include the applicant´s personal data in the extent of name, surname, and date of birth, residential address, and identification of the employer (basic data enabling their identification are sufficient; data such as an

[14] Except for Section 9 of the Act, which regulates the provision of bonuses, a whistle blower is also their close person, if in an employment relation with the same employer.

identification number, the identification of legal representatives, etc. are not necessary). Of course, Act 307/2014 allows that a notification may be submitted anonymously.

The respective authority accepts an application if it has learned that the applicant is a whistle-blower of a serious antisocial activity. The whistle-blower, employer and Labour Inspectorate will be notified in writing without delay of the fact that the whistle-blower has been granted protection. By delivering such a written notification to the employer, the whistle-blower becomes a protected whistle-blower. If a natural person is not a whistle-blower, the respective authority announces this fact to the person in writing without delay, stating the reasons that protection has not been granted.

As suggested above, Act 307/2014 allows that a person use protection after deciding to defend themselves against the acts of their employer. In such a case, the person only requests that **a written confirmation of the fact that they are a whistle-blower be sent.** Such a confirmation is not delivered to the employer and Labour Inspectorate. The employer will thus not be aware of the employee´s identity, and such a person becomes a protected whistle-blower following the delivery of the confirmation to their employer.

The protection provision prohibits an employer to take legal action or issue a decision against its protected employee without the prior consent of the Labour Inspectorate (Section 7 of Act 307/2014). In the case where an employer takes such action, it would be an invalid legal action.

An employer must submit an **application for granting an approval** to the Labour Inspectorate, which includes:

a) the identification of the employer,
b) name, surname, date of birth and residential address of the protected whistle-blower,
c) specification for which the consent of the Labour Inspectorate is requested,
d) justification of the need.[15]

In simple matters, especially if a decision can be made on the grounds of the employer´s request and the statement of the protected whistle-blower, the Labour Inspectorate will make a decision regarding such a request for granting consent without delay. In other matters, the Labour Inspectorate will decide within 30 days following the day of delivery of the request. The employer (as well as the protected whistle-blower) may appeal the Labour Inspectorate´s decision (to the National Labour Inspectorate).

The Labour Inspectorate only grants consent in cases where it has been proven that the proposed act has no relation to the employee´s notification of a serious antisocial activity. The burden of proof is borne by the employer (e.g. in a case where an employer has carried out collective

[15] According to special regulations, no terms or trial periods initiate from the employer´s submission of a request to grant consent of the Labour Inspectorate to a lawful decision on the request of granting such consent to the employer.

dismissals and the whistle-blower's position is deemed redundant, the employer could prove that the employee was dismissed for objective reasons, not related to the fact they are a whistle-blower), and before issuing its decision on the request for granting consent, the Labour Inspectorate must allow the protected whistle-blower to express their opinion on the proposed employment act within an adequate timeframe.

The Labour Inspectorate´s consent is unnecessary only in cases where the employee agrees with the given act, if such an act is to the benefit of the employee, the act grants the employee an entitlement, or if such an act is related to a termination of the employment relationship as long as such termination is independent of the employer´s will, as it results from law.

However, a whistle-blower may **voluntarily waive** the provided protection. Written notification of such a waiver may only be delivered to the Labour Inspectorate. It is not necessary to deliver such a waiver to the prosecution, court, or administrative authority (like in the case of a notification), and protection is terminated by its delivery. **Legal protection is also terminated** after the occurrence of the following (Section 8):

- proving that a notification was not submitted in good faith,
- the conclusion or termination of an employment relationship, service employment, or civil servant employment,
- the conclusion of criminal proceedings, respectively a proceeding of an administrative offence. However, protection is not terminated if criminal proceedings are concluded by referring the given matter to another authority,
- the imprisonment of the whistle-blower for false accusation or false testimony and perjury in relation to submitting the notification.

The legal practice will also have to deal with the situation where, protection has been granted but the assessment of a reported criminal offence concludes during, for example, criminal proceedings concluding that the offence is not a serious antisocial activity. In order to maintain legal certainty and protection of a whistle-blower, such protection should last – especially due to the fact that the employee cannot influence the assessment of criminality and the employer has received information related to the fact that the employee submitted a notification. The removal of granted protection could create room for imposing sanctions on such an employee by the employer, which would undermine the purpose of protection and the meaning of Act 307/2014 itself. Act 307/2014 does not regulate the subsequent removal of granted protection, expect for protection termination pursuant to Section 8 (1) of Act 307/2014.

4.3 Report and Employers´ Obligation to Introduce a System of Settling Reports

Provision 11 of Act 307/2014 introduces the obligation of employers to **introduce an internal system of settling reports.** Every employer (legal entity or natural person) employing a minimum of 50 employees, as well as an employer

which is a public authority (state authorities, municipalities/towns, self-governing regions, legal entities established by law, state authorities, municipality/town or by a self-governing region, legal entities established by these authorities and legal entities or natural persons empowered by law to decide on the rights and duties of natural persons or legal entities in public administration), have this obligation.

The person appointed by the employer – the "responsible person" (an employee or an external subject) – is responsible for the internal system of settling reports. This person must fulfil the tasks resulting from the internal system of settling reports and their records. This person may be a separate branch, the employer, or another natural person who is not an employee but has concluded a contract with the employer for this purpose. For the purpose of ensuring the impartiality and independence of the responsible person, as well as eliminating their possible manipulation, the law requires that this person is directly under the employer´s statutory representative within their organisational structure. In the case of an externally responsible person who is not an employee (the law assumes that they have concluded an agreement with the employer, however it does not regulate a particular type of contract), such a person can only be bound by the instructions of the statutory representative**.**

The employer is at the same time obliged to **issue an internal regulation** including details regarding the competence of the responsible person, submitting and examining reports related to serious antisocial activity, maintaining secrecy regarding the identity of the person having submitted a report, informing the person having submitted a report of the result of its examination, report record-keeping, and the processing of personal data provided in the reports.

The employer is obliged **to keep records** for a period of three years following the report's delivery to the following the extent: the date of report delivery, name, surname and residential address of the person having submitted the report (in the case of an anonymous report, a note informing of this fact will be entered), the subject of the report, the result of the report examination, and the concluding date of the report examination (Section 12 of Act 307/2014).

The Labour Inspectorate may impose a fine up to €20,000 to an employer who has not fulfilled any of the aforementioned obligations (Section 15 of Act 307/2014). Employers are obliged to ensure the fulfilment of such obligations regarding the internal system of settling reports within six months following the effectiveness of the law, i.e. by July 1, 2015 (Section 23 of Act 307/2014).

An employer is obliged to accept and examine every received report which includes facts related to the employer´s activity, of which a person has become aware in relation to their employment, and which could significantly contribute to the clarification of a serious antisocial activity or to convicting its perpetrator. Besides reports related to serious antisocial activities, the employer is also obliged to examine reports related to other antisocial activities, i.e. a minor offence, another administrative offence or another action which is not a serious antisocial activity but has a negative effect on society due to its character (if such a report is related to the employer).

The employer is not obliged to settle anonymous reports except those reporting a serious antisocial activity, as the given interest of society in revealing such activities is also justified by examining anonymous reports.

The law also establishes a secrecy obligation for such an employer in relation to the identity of the person having submitted a report.

The employer is obliged to **accept and examine every report within 90 days** following its receipt. This term can be prolonged by a further 30 days, during which time the person having submitted such a report (if it is not an anonymous report) will be notified of this fact, stating the reasons of prolongation. The employer is subsequently obliged to notify the person having submitted a report of the result of its examination within ten days following the report examination.

With regard to the means of submitting reports, Act 307/2014 does not stipulate a particular process, however it requests that **the identification of the responsible person and the means of submitting reports be disclosed and accessible to all employees in a common and standardly accessible way** with at least one of the means of submission being accessible **24 hours a day**.

It is up to the decision of the employer whether they select a telephone line or install a box in a place accessible to all employees (maintaining employee anonymity, of course, requiring that the placement of such a box is crucial). Another (it could be said, effective) way is the creation of a new web application accessible to all employees at any time, e.g. by establishing a special place at the workplace, but also from any computer inside or outside the workplace.

4.4 Suspension of the Effects of an Employment Act

Besides the possibility of being granted the status of a whistle-blower, the provision of Section 13 of Act 307/2014 also enacts protection for the submitters of reports who do not have whistle-blower status (e.g. employees who have only pointed to a malpractice, e.g. non-observance of hygienic procedures in production, or they have reported a serious antisocial activity but have not applied for the granting of whistle-blower status)**.**

If an **employment act** has been conducted against the submitter of a report **with which the submitter does not agree,** as they believe that such an act is a sanction for their report, they may address the Labour Inspectorate with a request to suspend the effects of such an act. **They can make a request to the Labour Inspectorate to suspend the effects of such an employment act within seven days following the day they learned** of the employment act.

If there are reasonable grounds for believing that an act has been conducted in relation to a report, the Labour Inspectorate will suspend its effects, issue a confirmation of such a suspension, and deliver it to the employer and person having submitted the report without delay. **A suspension of effects** of an employment act **commences on the day of delivering the confirmation to the report submitter.** The confirmation will include the name, surname, and date of birth and residential address of the person having submitted the report,

identification of the employer and the employment act whose effects have been suspended. The enforceability of such a decision is the suspension of the effects of the employment act.

If the Labour Inspectorate does not grant such an employee´s request, it will notify them in writing of the reasons for not suspending the effects of the given employment act.

However, such protection is only temporary. Act 307/2014 assumes that a submitter will subsequently **file an application for interim measures** (however, the Act does not regulate what the subject of an interim measure is) and requires that the Labour Inspectorate instruct the submitter of the possibility of filing an application for interim measures and related consequences. Bringing forward an action should follow the filing of an application for an interim measure (an action for invalid termination of employment or anti-discrimination action may be considered). If the submitter of a report does not file such an application to the court, the suspension of the effects of the given act ends on the 14th day following the delivery of confirmation on its suspension to the submitter. If the submitter has addressed the court, the suspension of the effects of the given act will be valid until the enforceability of the court's decision has been ensured.

The suspension of the effects of an employment act, if such an employment act has been conducted in relation to the submission of a report with which they do not agree, may be requested not only by persons working for the employer with an established internal system under Act 307/2014, but also by a person submitting a report to their employer without such a system, or an employer without a system because it has less than 50 employees. The possibility of a suspension of the effects of an employment act may be used by an individual who has submitted a report but who has not requested whistle-blower status, or an individual/whistle-blower with protection that was terminated due to the conclusion of criminal proceedings or the proceedings of an administrative offence under Section 8 (1) (c) of Act 307/2014.

4.5 Other Aspects

In order for employees to be aware of the fact that there is a possibility of reporting antisocial activities, Act 307/2014 has enacted the obligation of employers to **inform employees** at the beginning of their employment of internal regulations regulating the notification of criminality or other antisocial activity (Section 47 (2) of the Labour Code).

As stated above, Act 307/2014 introduced a new element of discrimination – notifying of criminality or another antisocial activity. The anti-discrimination law further extended employee protection and enacted the possibility of employees, in relation to the non-fulfilment of the equal treatment principle due to notification of criminality or another antisocial activity, to **claim the invalidity of an employment act** whose effects were suspended under Act 307/2014 (in addition, employees may claim that a person who has not fulfilled the equal treatment

principle refrain from such conduct and, if possible, redress the unlawful state or provide adequate compensation).

We can say that the notification of an antisocial activity frequently results in the termination of the affected employee. The employee who assumes that their employment has been terminated by their employer invalidly on the grounds of legal action (concerning e.g. purpose-based organisational changes and a fictitious notice of redundancy, a fabricated breach of work discipline on the grounds of which the employer immediately terminated their employment) may address the court and **object the invalid termination of employment** under Section 77 of the Labour Code.[16] The application of an invalid employment termination in court is allowed by Section 77 of the Labour Code following Section 36 (1) of the Labour Code, not later than two months from the day employment was to be terminated. It is important to point out that this is a preclusive time period.

If an employer has invalidly terminated an employee and the **employee has notified the employer** of the fact that they insist on further employment, such **employment will persist** pursuant to the provision of Section 79 (1) of the Labour Code.[17] At the same time it is necessary to apply the invalidity of the employment termination in court, i.e. to bring forward legal action.

As long as such employment persists, the employer is obliged to allocate work to the employee or provide them salary compensation in the case where work is not allocated in compliance with their employment contract.[18]

Pursuant to Section 79 (1) of the Labour Code, the employer is obliged to provide the employee with **salary compensation** appertaining to the employee in the amount of their average salary from the day of their notification to the employer of their insistence on further employment to the time the employer allows them to continue their work or the court decides on employment termination.

If the overall time for which salary compensation was supposed to be provided to the employee exceeds twelve months, the court can, upon the employer´s request, adequately lower, or not grant at all the employer´s obligation to compensate salary for a period exceeding twelve months. Salary compensation can be granted for a maximum of 36 months under Section 79 (2) of the Labour Code. Due to increased protection, Act 307/2014 introduces new regulations for whistle-blowers in relation to salary compensation. Under the new wording of Section 79 (3) of the Labour Code, the provision of Section 79 (2) of the Labour

---

[16] The invalidity of employment termination by notice, immediate termination, and termination during the trial period or by agreement may be applied in court by both the employee and the employer no later than within two months of the day of supposed employment termination.

[17] A different situation occurs when employment has been terminated invalidly but the employee does not insist on further employment with the employer. If employment has been terminated by the employer invalidly but the employee does not insist on their further employment, employment is deemed to have been terminated by agreement on the grounds of the provision of Section 79 (4) of the Labour Code.

[18] An exception is the provision of Section 79 (1) of the Labour Code under which employment does not persist but is ended if the court decides that the employer cannot be justly required to continue to employ the employee.

Code (regulating limitations of the amount of salary compensation) does not relate to the reporters of criminality or other antisocial activity, if employment was terminated during the protection provision under the special regulation (Act 307/2014).

4.6 *Education*

Under Section 18 of Act 307/2014, the state supports the prevention of antisocial activity and anti-corruption education as part of antisocial activity prevention. The objective of education at schools and school facilities, which is included in educational programmes under Section 4 (g) and Section 5 of Act 245/2008 Coll. on education (school law) and on change and amendment of some laws, is to instil respect for the law and foster a relationship with the prevention and avoidance of the initiation and dissemination of antisocial activity.

4.7 Reward and Legal Help

Even though the primary purpose of Act 307/2014 is to provide protection to whistleblowers, Section 9 of Act 307/2014 also establishes the possibility of providing a reward to the reporter of a serious antisocial activity. This may be granted in the amount of up to fifty times the minimum salary (i.e. EUR 19,000 from January 1, 2015). This constitutes a non-claimable reward for which a reporter may apply to the Ministry of Justice of the SR after a decision convicting the perpetrator of the crime or a decision proving the perpetration of an administrative offence becomes valid. The extent of a reporter´s participation in the clarification of a serious antisocial activity, finding, or conviction of its perpetrator and the extent of protected or returned property, if it can be quantified, will be taken into account upon decision of the reward provision. The Ministry will decide on an application for reward provision within six months of the day of its delivery, while an examination of the decision of the Ministry on a reward by the court is excluded.

Whistle-blowers will be entitled to the provision of free legal aid through the Centre of Legal Aid under conditions stipulated in the respective legal regulation.

4.8 *The Evaluation of Collected Information on Antisocial Activity*

Pursuant to Section 19 (1) of Act 307/2014, **the Slovak National Centre for Human Rights** (hereinafter as referred to as the "Centre") is entrusted with the authority to provide information in relation to the reporting of antisocial activity. The Centre is required to regularly evaluate information related to the reporting of antisocial activity and protection provisions and publish such information on its website. The Centre is further required to publish wording of the legal regulations related to this issue as well as related court decisions, scientific papers, and other

related publicly available information. In order for the Centre to be able to collect this type of information, ministries and other public authorities must provide necessary cooperation in gathering information pursuant to Section 19 of Act 307/2014.

4.9 Personal Data Protection

When an employee reports of malpractice, the employer will receive information related not only to the reporter (who may remain anonymous), but also data regarding the natural person suspicious of malpractice or other persons. However, the employer (or other competent authorities) cannot avoid working with the reported information and data upon resolving the reported issues. As this is typically information having the character of personal data, such data is to be processed. It is therefore necessary to structure an internal system so that the employer complies not only with the aforementioned but also with legal regulations dealing with personal data protection (i.e. Act 122/2013 Coll. on personal data protection).

Generally speaking, it can be said that Slovak law on personal data protection in relation to the processing of personal data for the purposes of whistleblowing requires the fulfilment of general requirements for ensuring the protection of processed personal data (i.e. especially the security and protection of personal data against damage, defacement, loss, modification, unauthorised access and availability, provision, or disclosure, as well as against any other undue means of processing), however it also stipulates some special requirements. These include the need of so-called special registration of the information system in which personal data are processed for the purposes of whistleblowing at the Office for Personal Data Protection.

5. Conclusion

This paper dealt with the new legal regulation of whistleblowing in the Slovak Republic. The new regulation was adopted based on the need to deal with the insufficient protection of whistle-blowers in the context of previous regulations. Even though society is perhaps not fully ready for employees to actively report antisocial activity to a necessary extent, there are individuals who will make use of this possibility. The adoption of this new legal regulation can therefore be evaluated positively. As cases of reporting antisocial activity on the grounds of the new legal regulation are not yet known, and the internal systems of employers will start functioning only on July 1, 2015, it is at present not possible to evaluate whether Act 307/2014 is sufficiently effective and will provide actual tools of protection for whistle-blowers.

Acknowledgement

This paper is based on research conducted during Project No. APVV-0562-11 of the Slovak Research and Development Agency entitled "Legal arguments and legal principles and sources of law".

Bibliography

1. *Analýza whistleblowingu a ochrany oznamovatelů.* [online]. [2015-04-07]. The document is available online at: <http://www.korupce.cz/assets/protikorupcni-temata/Analyza-whistleblowingu-a-ochrany-oznamo vatelu.pdf>
2. *Biela Vrana*. [online]. [2015-04-07]. The document is available online at: <http://www.bielavrana.sk /index.php>
3. Nader, R., Petkas, P. J. and Blackwell, K. (eds.): *Whistle Blowing: The Report of the Conference on Professional Responsibility*. New York: Grossman, 1972.
4. Nechala, P.: *Chránené oznamovanie (whistleblowing)*. Bratislava: Inštitút pre verejné otázky, 2014.
5. *Protikorupčné pravidlá – UniCredit Bank*. [online]. [2015-04-07]. The document is available online at: <http://www.unicreditbank.sk/sk/O-banke/Uzitocne-informacie/Informacia-pre-tretie-strany-o-Bankou-aplikovanom-systeme-WHISTLEBLOWING>