

How to blow the whistle: The new Whistleblower Protection Act in the Slovak Republic

In the wake of a highly critical whistleblower protection report by Transparency International in 2013, which rated the protection of persons reporting criminal activity in the Slovak Republic as "none or very limited", the Slovak legislator has adopted a new Act on certain measures connected with the reporting of anti-social behaviour (the "**Whistleblower Protection Act**"). Under the legislation currently in force, the protection of whistleblowers is limited to witness protection programmes in criminal proceedings. The Whistleblower Protection Act thus seeks to fill the legislative void in the protection of whistleblowers as previously addressed in various pieces of legislation by the OECD and the Council of Europe.

Key issues

- Purpose of the Whistleblower Protection Act
- Anti-social behaviour
- External protection
- Internal protection
- Effectiveness of the regulation

Purpose of the Whistleblower Protection Act

The Whistleblower Protection Act aims to financially motivate individuals to report any anti-social behaviour that they learn about in connection with their employment, position or office. These individuals will be protected from the potential negative consequences of their reporting made in good faith and, in certain circumstances, will also be rewarded by the Slovak Ministry of Justice (up to approximately EUR 19,000). The legislator predicts this will lead to more effective exposure of anti-social behaviour and a decrease in damage caused by the perpetrators. But what does anti-social behaviour really mean?

Anti-social behaviour

The term "anti-social behaviour" covers various types of harmful conduct that qualifies as a criminal or administrative offence. It is divided into two categories: serious anti-social behaviour and other anti-social behaviour. Serious anti-social behaviour comprises the following offences:

- criminal offence of damaging the financial interests of the European Union
- criminal offence of deceitful practices during public procurements and public auctions
- criminal offence of abuse of power by a public official
- criminal offence of neglect of duty by a public official
- criminal offence of active or passive bribery
- any other criminal offence punishable by at least three years' imprisonment

- any administrative offence punishable by a fine of at least EUR 50,000

Other anti-social behaviour is defined more broadly and includes any other criminal or administrative offences, as well as other unethical or uneconomical activities.

External protection

There are two ways that potential whistleblowers can be protected: external protection and internal protection. Under external protection, a person who reports serious anti-social behaviour (even anonymously) can apply for protection, which is granted by the judge or prosecutor (in criminal proceedings) or the competent administrative authority (in administrative proceedings). Unless the whistleblower requests otherwise, his or her employer and the labour inspectorate will be notified about the commencement of protection by the court, prosecutor or competent administrative authority.

Following this notification, the employer can no longer validly perform certain employment-related acts in respect of the protected employee (such as terminate the employment relationship or cut their salary) without the prior consent of the local labour inspectorate. When requesting this consent, the employer will have to prove that the proposed act in relation to the employee is not connected with their reporting of serious anti-social behaviour. The protection is therefore not absolute. For example, if the employer demonstrates that the grounds for termination of employment are justified (e.g. the protected employee breached his or her duties by coming to work in a state of intoxication), the inspectorate would most likely grant the employer permission to terminate the employment.

Internal protection

Internal protection, on the other hand, concerns larger employers regardless of whether any anti-social behaviour is actually reported. Under the Whistleblower Protection Act, all employers with at least 50 employees are required to develop an internal reporting system through their internal regulations. Employers will have to appoint either a person (an employee or a third party) or a specific department in their organisation responsible for receiving and examining reports of anti-social behaviour. Unlike in the case of external protection, the employer may perform employment-related acts in respect of the protected employee without the prior consent of the local labour inspectorate. The employee may, however, apply to the local labour inspectorate to suspend any such acts within seven days. Once granted, the suspension will be effective for 14 days (or until a final court decision on the matter if

the employee files for a preliminary injunction within this 14-day period).

Employers will have to publish information about the person or department in their organisation responsible for processing the reports and about the means of reporting that the organisation has adopted. Each report has to be investigated within 90 days of receipt (this period may be extended by an additional 30 days) and the whistleblower has to be notified about the result of the investigation within 10 days. Records of the reports have to be kept and archived for three years.

The employer's internal regulations on protection of whistleblowers must include details about:

- filing the report
- investigation of the reports and competences of the responsible person
- maintenance of confidentiality
- archiving of records
- informing the person who filed the report
- processing the personal information which is part of the report

The employer must implement the reporting system within six months after the law comes into force. Failure to comply with this obligation may result in a fine of up to EUR 20,000 on the employer in breach.

Effectiveness of the regulation

The Whistleblower Protection Act will enter into force on 1 January 2015; however, external protection will also be granted to individuals who report anti-social behaviour even before the effective date upon their request.

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