



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper – Czech Republic

Whistleblowing in the Czech Republic – a fragmented support

**Peer Review on “Enhancing whistleblower protection
through better collaboration between responsible
authorities – a tool to prevent and tackle
work-related crime”**

Norway, 14–15 February 2019



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1 - Employment and social aspects of European semester

Contact: Kim Henriksson

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime"

Norway, 14-15 February 2019

**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information contained in this publication does not necessarily reflect the official position of the European Commission

This document has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>

© European Union, **2019**

Reproduction is authorised provided the source is acknowledged.

Table of Contents

1	Introduction	1
2	Overview of key trends	1
3	National policy / measures	1
3.1	Legislation and its shortfalls.....	1
3.2	Options open to whistleblowers concerning the reporting of work-related crime	3
3.3	Whistleblowing in the private sector.....	3
4	Assessment of public policy implications and success factors	4
5	Questions	5
6	List of references	6
	Annex 1 Summary table	7
	Annex 2 Example of relevant practice.....	8

1 Introduction

This paper has been prepared for the Peer Review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country (Norway) and the situation in Czech Republic. For information on the host country example, please refer to the Host Country Discussion Paper.

2 Overview of key trends

The issue of whistleblowing in the Czech Republic appeared in the public domain for the first time in 2009, through the activities of the [Transparency International](#) non-profit organisation. Initially, whistleblowing was widely perceived as a way of exposing unfair practices that posed a threat to the public and acted against the public interest. Later, however – particularly in the context of the long-standing struggle against corruption – whistleblowing became mainly associated with the exposure of corrupt behaviour and whistleblowers were mostly identified as those who reported cases of corruption. Thus, whistleblowing in the sense of reporting work-related crime concerning wages and working conditions, social security and taxation, the exploitation of workers or the distortion of competition was somewhat pushed into the background.

While the legal protection of whistleblowers exists in the Czech Republic, it is fragmented and covered by a number of different pieces of legislation. Despite the increased efforts of the government to prepare one specific uniform and comprehensive legislative regulation concerning whistleblowing, the legislation proposed in this area has, to date, not found sufficient support and has yet to be enshrined in law. The only exception concerns a Government Regulation of 2015 which covers civil servants; however, as it will be explained in the following section, according to recent legal analysis, this Regulation cannot in fact be applied. In general, current legislation covering whistleblowing is perceived to be inadequate and unnecessarily complex.

In addition, the activities of those public administration bodies that are responsible for handling complaints concerning work-related crime are also seen as fragmented, making it difficult for potential whistleblowers to determine the authority under whose jurisdiction the reporting of a particular work-related crime lies. The consolidation of the activities of the various public administration institutions is clearly required so as to simplify the notification procedure.

3 National policy / measures

3.1 Legislation and its shortfalls

While no specific uniform legal provision is in place in the Czech Republic for the protection of whistleblowers, this does not mean that whistleblowers are not protected. The basic legal norm in this case – for employee whistleblowers – is Act No. 262/2006 Coll., the Labour Code, which clearly defines the reasons for which an employment relationship can be terminated (Section 50), and affirms that it is not possible to dismiss employees without providing justification. Moreover, Section 43, Paragraph 1 of the same Act defines the so-called "transfer" of employees to a place of work other than that agreed in the contract of employment, stating that this is possible only with the employee's consent and, concerning the employer, only if it is necessary in terms of operational requirements. For the whistleblower, therefore, it means that he/she cannot be transferred to another place of work without his/her consent so that he/she no longer has contact with the evidence of the unfair practices on which he/she has decided to inform. In this case, however, it depends on how precisely the place of work is defined

in the employment contract (whether it is a particular address, or it is more general, e.g. "Prague").

Further, employees have the right to refuse to perform work that they reasonably consider to present an imminent and serious threat to their lives or health or the life or health of other natural persons. Such a refusal cannot be considered to be a breach of the duty on the part of the employee (Section 106, Paragraph 2 of Act No. 262/2006 Coll., the Labour Code). However, this provision does not apply to situations in which the public interest other than the lives or health of employees themselves or other natural persons is threatened. On the other hand, employees have an obligation to comply with the instructions of their superiors provided, however, that they are issued in accordance with legislation (Section 301 (a) of Act No. 262/2006 Coll., the Labour Code). Failure to comply with an instruction issued in breach of legislation does not therefore constitute a breach of employment conditions.

Further legislation that serves to protect (not only) whistleblowers consists of Act No. 141/1961 Coll., on Criminal Proceedings (the Criminal Procedure Code), which allows for the anonymous reporting of criminal proceedings (Section 55 of the Act). Moreover, Act No. 137/2001 Coll. on the Special Protection of Witnesses and Other Persons in Connection with Criminal Proceedings also allows for witness confidentiality if the whistleblower is a witness to criminal proceedings. However, this protection is not automatically guaranteed, i.e. it depends on the discretion of the State authorities.

Act No. 40/2009 Coll., the Criminal Code, section 368, however, sets out the obligation for anyone who becomes aware of the committing of a crime to obstruct (Section 367) and report (Section 368) the offence. Otherwise, they may face a prison sentence of up to three years. However, Section 368 also sets out that offences do not have to be reported by an attorney whose staff become aware of an offence through their advocacy work or legal practice, nor with respect to the religious confession of a secret.

According to Švandová (2011) and Franková (2016), in Czech Republic the status of whistleblowers, the process of notifying unfair practices and the protection against retaliation are insufficiently regulated. In recent years, legislators have made several attempts to introduce a comprehensive legislation; however, for various reasons no such legislation has yet been passed.

The only exception concerns Government Regulation No. 145/2015 Coll., on measures related to the reporting of suspected offences in the civil service. The purpose of this Regulation is to protect State employees who notify such offences. According to this Regulation, a civil servant who reports a suspicion of an offence being committed by his/her superiors, a state employee or other employee or a person in the service of the State in a different legal relationship in connection with the performance of a civil service (employee of the police, army etc.), other work or public function or related to it according to this Regulation or a different legal procedure (hereinafter referred to as "the notifier"), even anonymously, shall not be adversely affected, disadvantaged or subjected to pressure (Section 1 of the above-mentioned regulation) as a result of such conduct. Moreover, this Regulation covers the ways in which an offence can be notified, the establishment of a location (e-mail address) to which state employees can address such a notification, ensures anonymity for the notifier, etc. According to Franková (2016), however, the problem with this Regulation lies in its non-compliance with Act No. 234/2014 Coll. on the Civil Service (this Act covers the legal conditions of civil servants working in the state administration system). It is not, in fact, possible in the Czech Republic for such a Regulation to introduce rights and obligations that are not at the same time enshrined in legislation. Thus, in the case of this Regulation, it means that its protective measures cannot in fact be enforced.

3.2 Options open to whistleblowers concerning the reporting of work-related crime

One of the ways to report unfair practices at work is to call the so-called anti-corruption lines, which are being set up by an increasing number of public authorities as well as non-profit organisations in response to the government's anti-corruption drive. These anti-corruption lines enable the notification of the suspicion of unfair practices by the employees of State offices via telephone, e-mail or in written form. However, again, with exceptions, such lines are mainly dedicated to the reporting of suspicions of corruption.

With respect to whistleblowers who wish to report work-related crime concerning wages and working conditions, social security and taxation, the exploitation of workers or the distortion of competition etc., the easiest way is to contact the State Labour Inspection Office (Státní úřad inspekce práce, SÚIP). If an employee suspects or witnesses unfair behaviour on the side of the employer, he/she can personally visit a SÚIP office on the so-called consulting days or contact the SÚIP in writing or via e-mail. Employees may also request an inspection to be conducted. Inspections based on such an initiative are performed by the relevant regional Labour Inspectorate Office. The subject of such inspections concerns primarily the compliance with legal regulations in the area to which the initiative draws attention. Upon completion of such an inspection, the notifier receives (provided he/she provided a return address) written information on the result together with the notification that the facts stated in the complaint were or were not confirmed by the inspection.

However, the main complication for whistleblowers (employees) is the fact that some work-related crimes do not fall under the competence of the SÚIP. These include, in particular, social security issues that fall under the Czech Social Security Administration (Česká správa sociálního zabezpečení, ČSSZ), health insurance issues (the responsibility of the various health insurance companies) and complaints about hygiene issues in the working environment (lighting, ventilation, the provision of beverages at the place of work, etc.) which fall under the competence of the relevant regional hygiene authority. Whistleblowers can contact and initiate inquiries with all these institutions (by telephone, e-mail, in writing) provided they fall within the authority of the respective institution; however, since these institutions are not necessarily used to investigating such complaints, they may not be able to react immediately.

It follows, therefore, that the notification of suspicious practices is far from being simple and flexible, and that it requires a knowledge of the legal environment and the institution to which the complaint be directed and the requirement to consider the possible extension of the notification process until the institution is determined under whose jurisdiction the complaint will be addressed.

The fact that the SÚIP is used by whistleblowers is illustrated by the following statistics: in 2017, the SÚIP received a total of 6 870 complaints for investigation. 4 286 of these complaints related to labour relations and conditions, i.e. a total of 60% of all the complaints received; most of these complaints are related to remuneration. A total of 876 complaints alleged violations of health and safety at work regulations. With respect to the inspection of employment, 2 034 complaints were received, of which a significant part consisted of the notification of possible illegal work.

3.3 Whistleblowing in the private sector

The previous section revealed that the legal protection of whistleblowers exists in the Czech Republic and that there are a number of authorities to which whistleblowers can (even anonymously) report work-related crimes. The problem, however, is the high degree of fragmentation of the notification process, which complicates the reporting of possible offences.

Therefore, according to Kazdová (2018), with respect to the private sector, especially branches of multinational companies, the management has developed its own procedures in this area or has adopted the rules concerning whistleblowing created by the company's headquarters where relevant. These rules are generally of a very high standard. Internal regulations (directives) identify those actions or events that are incompatible with the company's values and set out procedures for initiating the notification of unfair practices. In addition, companies generally encourage their employees to report their suspicions of unlawful or unethical behaviour as they generally require a high standard of employee conduct and do not tolerate any type of suspicious behaviour. Companies often establish so-called hot lines – a telephone number or email address – via which employees can submit a complaint. The complaint is then subjected to an internal investigation that is usually conducted by the Internal Audit, Legal or HR Department. However, again, according to Kazdová (2018), whistleblowing at the company level usually concerns allegations of corruption concerning the management or employees rather than work-related issues.

4 Assessment of public policy implications and success factors

The Norwegian and Czech models are similar in principle – in both Norway and in the Czech Republic, there is one basic statutory norm in place that regulates relations between the employee and the employer. The State Labour Inspection Office is responsible for overseeing the various obligations arising from employment legislation, including health and safety at work issues.

However, this is where the similarities end. While the Norwegian Working Environment Act is an active instrument with respect to whistleblowing in the area of work-related crime, i.e. it states that it establishes an obligation of notification in cases of harassment and serious violations of safety provisions or other aspects of the physical working environment that may represent a risk to life and health (Trygstad, 2019, p.3), the Czech Labour Code is passive in this respect – it provides only for the protection of the employee – the whistleblower; according to legal analysis, this is insufficient. It does not regulate the obligation of employees to report work-related crime. Moreover, upcoming legislation, which has yet to be confirmed as the legal norm, refers to whistleblowing as the notification of corruption, not as that of work-related crime. This represents a further difference from the Norwegian case – while in the Host Country whistleblowing has come to light particularly in connection with the enlargement of the EU, the arrival of labour from abroad and the associated social dumping (Trygstad, 2019), with respect to the Czech Republic, whistleblowing concerns the fight against corruption; while it does not exclude employee whistleblowers, it is not directly focused on this group.

In the situation where whistleblower protection legislation focuses on the fight against corruption and whistleblowers as employees who report work-related crime, legal opinion suggests that the level of protection for the latter is inadequate and that social dialogue should play a more active role in this area. Although the level of trade unionisation in the Czech Republic is low (12.5 % in 2018) and the coverage of company collective agreements is a mere 31.5 %, the trade unions still make up the most important representative of employees in the workplace (while the Czech Labour Code recognises other forms of employee representation in the workplace, the rights and obligations of these forms do not approach those that apply to the trade unions). In addition, many trade unions already provide their members with advice on labour legislation issues; thus, social dialogue could address this topic not only at the workplace but also at the sectoral and national levels. In the Czech Republic, however, the issue of whistleblowing remains outside the interest of the various social partners; we do not know if collective agreements contain whistleblowing provisions (unlike in the case of higher-level collective agreements, there is no obligation in the Czech Republic to

publish company-level collective agreements; thus, while it cannot be ruled out, it is thought very unlikely that they should do so). At the workplace level, whistleblowing is addressed either via internal guidelines (large international firms) or (most often) not at all.

Given that the Host Country already takes a more detailed and refined approach to the regulation of whistleblowing concerning work-related crime, it is difficult to recommend any measures that the Host Country might adopt. However, the Czech Republic might be advised to adopt (if one does not consider legal standards), in particular, the awareness-raising measures applied in relation to whistleblowing, the active role of the social partners and the cooperation of public institutes applied by the Host Country. Especially social partners at both the central and sectoral levels in the Czech Republic have introduced, or are introducing, a range of educational and awareness projects relating to working conditions, new forms of employment, Industry 4.0, etc. These projects are largely funded by the European Social Fund and it would certainly be possible through this means to introduce awareness-raising activities for trade unionists as well as counselling and legal support for whistleblowers. At present, a number of trade union organisations merely offer their members advice and legal assistance with concern to various areas of employment legislation. On the whole, however, the various social partners are not particularly interested in this topic, especially the trade unions, which currently have other priorities (raising wages, shortening working hours without lowering wages, etc.).

5 Questions

- *From which sources are advisory seminars, manuals etc. (public source, social partners) financed?*
- *Do collective agreements contain arrangements pertaining to whistleblowing concerning work-related crime?*
- *Do different practices apply to different employee groups (public versus private sector)?*

6 List of references

Císařová, Eliška (ed.) (2009). *Whistleblowing a ochrana oznamovatelů v České republice*. Praha: Transparency International. ISBN 978-80-87123-11-9. Available at https://www.transparency.cz/wp-content/uploads/TIC_whistleblowers_2009_cz.pdf [9. 1. 2019].

Franková, Lenka (2016). Ochrana oznamovatelů v České republice. *Pravniprostor.cz*, 3. 5. 2016. Available at <https://www.pravniprostor.cz/clanky/ostatni-pravo/ochrana-oznamovatel-u-v-cr> (in Czech only) [9. 1. 2019].

Hruška, Marek (2017). Whistleblowing v českém právním prostředí. *E-pravo*, 24. 3. 2017. Available at <https://www.epravo.cz/top/clanky/whistleblowing-v-ceskem-pravnim-prostredi-105650.html> [5. 1. 2019].

Kazdová, Alena (2018). Whistleblowing může být nástrojem k otevřené firemní kultuře. Rozhovor s Petrou Sochorovou. HR forum 9/2018. Available at <http://www.havelpartners.cz/cs/publikace-media/clanky-a-rozhovory/47-pracovni-cpravo/853-whistleblowing-muze-byt-nastrojem-k-otevrene-firemni-kulture> (in Czech) [14. 1. 2019].

Ministry of Justice of the Czech Republic (2017). *Vládní koncepce boje s korupcí na léta 2018 až 2022*. Praha: Ministry of Justice of the Czech republic. Available at <http://www.korupce.cz/assets/dokumenty/aktuality/Vladni-koncepce-boje-s-korupci-na-leta-2018-az-2022.pdf> [9. 1. 2019].

Nařízení vlády 145/2015 o opatřeních souvisejících s oznamováním podezření ze spáchání protiprávního jednání ve služebním úřadu. 15. 6. 2015. Praha. Available at <https://www.zakonyprolidi.cz/cs/2015-145>

Office of the Government of the Czech Republic (2013). *From corruption to integrity – The Government anti-corruption strategy for the years 2013–2014*. Available at http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategy-2013-a-2014_actually.pdf (in English) [14. 1. 2019].

Office of the Government of the Czech Republic (2011). *The government anti-corruption strategy for the years 2011 and 2012*. Available at http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2011_2012/Protikorupcni-strategie-puvodni-zneni---anglicka-verze.pdf (in English) [14. 1. 2019].

State Labour Inspection Office (2018). *Annual report 2017*. Available at http://www.suip.cz/_files/suip-f8430a051a6eab838f616a95e862660e/rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2017.pdf (in Czech only) [14. 1. 2019].

Švandová, Nicola (ed.) (2011). *Ochrana oznamovatelů (whistleblowerů)*. Praha: Oživení, o. s. ISBN 978-80-904829-6-8. Available at <http://www.oziveni.cz/wp-content/uploads/2013/08/ochrana-oznamovatel-u-whistleblower-u-analyza-oziveni.pdf>

Trygstad, Sissel (2019). *What do we know about whistleblowing and work-related wrongdoing in Norway?* Norway, January 2019.

Zákon č. 40/2009 Sb., ze dne 8. ledna 2009, trestní zákoník. Available at <https://www.epravo.cz/top/zakony/sbirka-zakonu/zakon-ze-dne-8-ledna-2009-trestni-zakonik-17001.html>

Zákon č. 137/2001 Sb., ze dne 29. března 2001, o zvláštní ochraně svědka a dalších osob v souvislosti s trestním řízením a o změně zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů. Available at <https://bit.ly/2SxygGq>

Zákon č. 141/1961 Sb., ze dne 29. listopadu 1961, o trestním řízení soudním (trestní řád). Available at <https://www.zakonyprolidi.cz/cs/1961-141#cast5>

Annex 1 Summary table

The main points covered by the paper are summarised below.

Overview of key trends

- In the context of the long-standing struggle against corruption, whistleblowing became associated mainly with the exposure of corrupt behaviour. Thus, whistleblowing in the sense of reporting work-related crime was somewhat pushed into the background.
- Legislative support is fragmented and insufficient.

National policy / measures

- Legal protection of employee whistleblowers is fragmented and covered by a number of different pieces of legislation.
- Despite the increased efforts of the government to prepare one uniform legislative regulation concerning whistleblowing, legislation proposed in this area has, to date, not found sufficient support and has yet to be enshrined in law.
- According to lawyers, the status of whistleblowers concerning the process of notifying unfair practices and their protection against compensation claims are insufficiently regulated
- If an employee suspects or witnesses unfair behaviour on the side of the employer, the easiest way is to contact State Labour Inspection Office (SÚIP). However, the main complication for whistleblowers (employees) is the fact that some work-related crimes do not fall under the competence of the SÚIP, but other public institutions. It follows, therefore, that the notification of suspicious practices is far from being simple and flexible.

Assessment of public policy implications and success factors

- The Norwegian model is much more developed.
- Social dialogue could play a more active role in this area in the Czech Republic, however, the issue of whistleblowing remains outside the interest of the various social partners.
- The awareness-raising measures should be applied in relation to whistleblowing,
- The cooperation of public institutions (SÚIP, financial offices, Czech Social Security Administration etc.) in relation to whistleblowing could help whistleblowers.

Questions

- From which sources are advisory seminars, manuals etc. (public source, social partners) financed?
- Do collective agreements contain arrangements pertaining to whistleblowing concerning work-related crime?
- Do different practices apply to different employee groups (public versus private sector)?

Annex 2 Example of relevant practice

Name of the practice:	Government Regulation No. 145/2015 Coll., on measures related to the reporting of suspected offences in the civil service
Year of implementation:	2015
Coordinating authority:	Ministry of Interior of the Czech Republic (Ministerstvo vnitra České republiky, MV ČR)
Objectives:	The purpose of this Regulation is to protect those who report suspected offences in the civil service, i. e. state employees.
Main activities:	Internal directive of Ministry of Interior, which applies to public institutions.
Results so far:	Rarely used. According to some lawyers, the problem with this Regulation lies in its non-compliance with Act No. 234/2014 Coll. on the Civil Service (this Act covers the legal conditions of civil servants working in the state administration system), which means that its protective measures cannot in fact be enforced.

