

PROTECTION OF WHISTLEBLOWERS AND INFORMANTS IN BULGARIA

Corruption and whistleblowing in Bulgaria

Corruption is often cited as one of Bulgaria's serious problem. We have lots of anecdotes – and nicknames – and rumours about corruption and corrupt officials. Regularly held, public opinion polls reveal trends – and these trends are positive. There is visible reduction of the administrative, petty corruption on the country. The people, however, and the media, and the society are not satisfied. In fact, they seem more and more impatient to see improvements in the fight with the high-level corruption.

It is not simply a perception issue – there is a whole reality of corruption, corrupt practices and corrupt officials and businesspeople behind it. Hence the need to stimulate whistle blowing and to make sure that there is enough information for the decision makers when it comes to corruption and corrupt officials in their organization. The problem is that the evidence for the existence of this reality is often not sufficient to convince – and to lead to disciplinary or criminal sanctions.

Why there is so little hard data on specific corruption cases in Bulgaria?

One of the possible answers is – because there are no whistleblowers. It is a possible answer and one of the answers, but probably not *the* answer.

I believe the existence – and protection of - whistleblowers is undoubtedly extremely important. They provide us with valuable information. However, the very point of the anticorruption policy is to reduce corruption, not to stimulate whistleblowing – and sometimes we tend to forget this fact. Therefore, we have two outstanding issues before us today – the first one is to decide whether more whistleblowers equals to less corruption. The second one is – if not, what else do we need in addition to ensuring whistleblowers protection?

The importance of the open communication channels

We all realize the importance of securing channels that would allow for free exchange of information inside the organizations (of course we are most interested in the public service, but the private companies have similar needs). Some of these channels are

- a. Whistleblowers
- b. Hotlines
- c. Mailboxes
- d. E-mail
- e. Client satisfaction surveys (including questionnaires)

Information is vital – delay, distortion, not to speak of lack of it – leads to making decisions, that are, mildly put, detached from reality. To make sure we have sufficient information though, we need to get it from somewhere. Some of our sources are the officials, working for the organization. Some of our sources are the clients of the organizations – the citizens and the businesspeople we serve. And, of course – less often, but quite important – other people, that may have little connection to our organization, but that for some (their) reasons want to impart information they acquired.

Whistleblowers or whistleblowing?

The dilemma may seem strange, but it is logical. Do we protect the person or do we rather try to make sure that the information comes to us in a timely and trustworthy (and untraceable) fashion?

The question is – do we really need the name of this person, his/her position in the organizational hierarchy to take action? Or, do we value more the disclosed information about the wrongdoing? Do we protect the person that blows the whistle or do we rather protect the act of whistleblowing itself? Are we interested at all in the motives of this person? Or is it only the facts that he/she states that matter?

Of course, it is always the person that knows the facts. And the identity of the whistleblower could tell us a lot about the worthiness of the information. The problem is, that more often than not we assign importance to the persons that are delivering information rather than to assessing the information according to its own merit. For example the Bulgarian whistleblowers legislation provides that no complaints will be investigated if they originate from anonymous sender.

Our experience is a clear demonstration that there is very little need to know the identity of the whistleblower. In fact, a curious side effect that we observed times and

again in the work of the Bulgarian Anti-corruption commission is that the discussion drifts toward what are the personal motives of the whistleblower rather than what is the value of the information he/she provides us with. There were several occasions where information that seemed quite interesting and worthy of investigation was not paid consideration simply because it was evident that the whistleblower may have had personal interest in disclosing the wrongdoing... There we could see a most interesting effect – instead of investigating the allegedly corrupt official an inquiry may start as to what are the personal motives of the whistleblower... and it is counterproductive.

When we try to analyze the behaviour of a person we inevitably think of what are his/her motives. And they may not be idealistic at all. In fact they will be very rarely idealistic. The baker makes bread for profit, not out of altruism, as Adam Smith observed.

Instead it may be wise to focus on the information. The best whistleblower protection exists where the identity of the whistleblower is unknown. We need to start developing systems and processes within the organizations that will allow us to receive timely and truthful information – and we must recognize the natural fear of the people to disclose their identities when they go against a whole organization.

Elements of whistleblowing and whistleblower protection

In Bulgaria there are several pieces of legislation that regulate whistleblowing and whistleblowers protection. The way it works (or rather does not work) is quite classical. There is a law that provides for protection of whistleblowers and gives the right to all citizens to send a complaint – or to disclose information – to a public service organization. There is a legal ban on victimization of the whistleblowers. The citizens (including public servants) that have suffered from illegal actions of the administration could sue the Government and receive compensation. Apart from that, there is an obligation for the public servants in the Criminal procedure code - to report wrongdoings. And, in case if it all goes to court, there is a law that protects witnesses and other participants in the criminal proceedings – participants that are in some way endangered, though the danger here would be more in cases related to the organized crime. The reality though is not encouraging. Annually in the Bulgarian

anti-corruption commission we used to receive between 240 to 270 complaints. Out of those, the number of protected disclosures was absolutely minimal. Twelve to fourteen cases annually were forwarded to the Prosecutors office. Most of them were coming from people outside the public administration.

What is the reason for that? Are the people afraid to blow the whistle?

The public opinion polls held demonstrate that it clearly is not the issue. The Coalition 2000 / Vitosha Research surveys indicate that the people are reluctant to impart information for one very simple reason – they do not trust the institutions, they are sure that the act of disclosure will lead to nothing. They are not afraid from retribution – they simply think that it will not make a difference. And they have a point. Because stimulation of the whistle blowing elevates the risk for detection and for prosecution only where there an effective prosecutor exists.

The importance of the follow up

The whistle blowing by itself achieves nothing. It is only a prerequisite for further procedures that (eventually) will lead to amending a bad decision, or punishing a corrupt official. It is important to understand this fact, because far too often transparency and other specific disclosure options are seen as a cure-all.

In fact, they cure nothing – it is the specific Government agencies, through their responsible actions that take advantage of the disclosure and change the reality. Without the effective enforcement agencies the specific act of blowing the whistle – even in the media – will lead to nothing. And the people will only take note of the next example where “Government knew what is happening and did nothing”. And will lead to further disappointment and loss of trust.

The reason why I put emphasis on this aspect, is that though we all realize the importance of the follow up, nevertheless there are far too many of us that speak of “transparency” or “whistleblowing” as of a standalone solution. Probably we will have to start thinking at a different direction –at creating institutions – with detailed procedures and with trained and capable public servants– that will be able to use the information received through – and from whistleblowers to prosecute corrupt officials. It is all about effectiveness. It is about “capacity”. About leadership, about management, about public servants training, about allocating sufficient resources.

And about working with the society.

Building a new (anti-corruption) institution is not always *the* solution to the problem. Even if we start a brand new anti-corruption agency we will have to recruit public servants – from the same (corrupt) public service and society

We must realize that the public servants and the corrupt businesspeople live in the same society. Often they uphold certain values and adhere to a certain behaviour, because this behaviour is tolerated in the society. For example – the only way to enter the Bulgarian public service is through open competition. And the competitions that attract most attention and biggest number of participants are the competitions for public servants in the Customs administration... Which is perceived to be the most corrupt agency in Bulgaria. No comments on that. Therefore, the selection procedure for the public servants must be regarded as a first shield against corruption.

Other means, often seen as traditional anti-corruption measures, such as tenure and public service stability – may become a tool to preserve the *status quo* in the public administration, rather than to stimulate integrity.

The time has come when we may need to find a new approach to addressing corruption, different from the “transparency, accountability and public awareness” approach. .

Possible lessons?

Build institutions – that are trusted by the people, that receive the assistance of the public, that are well staffed by trained public servants, that have clear and detailed written procedures on how to act in the typical situations, that are adequately funded to achieve the clear goals they are given by responsible political leaders... And effectively protect the ones that dare to stand against their superiors and often – against their colleagues and organization as a whole.