CENTER FOR EURO-ATLANTIC STUDIES - CEAS

progress, determination, influence

Protection of Whistleblowers in Serbia

ANALYSIS

Public advocacy of continuity of comprehensive security system reform with special focus on Protection of Whistleblowers and legal regulations on classified information

June 2015

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Content

ABOUT THE PROJECT

In 2013, within the project **"Promoting Comprehensive Security Sector Reform"** which was supported by the **National Endowment for Democracy from Washington, USA,** after exhaustive consultations with the Protection of Citizens (Ombudsman), Saša Janković, Commissioner for Information of Public Importance and Personal Data Protection (the Commissioner), Rodoljub Šabić, and employees from their Offices, the Center for Euro-Atlantic Studies conducted a thorough analysis of 14 point[1] proposed by the Ombudsman and the Commissioner, and for the purpose of overcoming the alarming gap between the constitutionally guaranteed right of citizens to privacy and data protection and state in practice, after which the CEAS Action Plan for advocacy of adoption of the proposed 14 measures was presented
– Total reconstruction[2].

Despite certain progress, such as amendments to the laws on SIA[3], MIA and MSA, which enabled the sensitive data to be monitored with a court order, and adoption of the Law on Private Security, there are still serious gaps within the regulations that govern the rights of the citizens of Serbia to protection of data and privacy when it comes to monitoring their electronic communication, or use of their personal documents by various authorities and institutions. As an example, we may point out the fact that commercial banks in Serbia carry out illegal processing of personal data in such a manner that clients are requested to provide copies of personal documents, and these copies are being retained, because of which the Commissioner for Information of Public Importance, in March this year, sent a warning to the banks – prior to explicit prohibition of illegal processing of data.[4]

In the continuation of this project, - **Public advocacy of continuity of comprehensive security system reform with special focus on Protection of Whistleblowers and**

[1] 14 measures of the Commissioner for Information of Public Importance and Personal Data Protection and Ombudsman for overcoming the gap between the constitutionally guaranteed right of personal data protection and the state in practice, available at: http://ceas-serbia.org/root/images/14_ta%C4%8Daka_%C5%A0abi%C4%87a_i_Jankovi%C4%87a_za_Zakon_o_za%C5%A1titi_podataka_o_li%C4%8Dnosti.pdf

[2] Total reconstruction, available at: http://ceas-serbia.org/root/images/extreme_makeover.compressed_1.pdf

[3] CEAS analysis of the Law on Amending the Law on Security-Information Agency, available at: http://ceas-serbia.org/root/images/CEAS_Analiza_Zakona_o_izmenama_i_dopunama_Zakona_o_BIA.pdf

[4] IN THE ASSOCIATION OF SERBIAN BANKS ABOUT THE PROCESSING OF CLIENTS' PERSONAL DATA, The Commissioner for Information of Public Significance and personal data protection, May 26, 2015, available at: http://www.the Commissioner.rs/yu/saopstenja-i-aktuelnosti/2101-u-udruzenju-banaka-srbije-o-obradi-licnih-podataka-klijenata.html

legal regulations on classified information - CEAS went a step further and analyzed and advocated in more detail the recommendations presented in the Action Plan for advocating 14 measures proposed by the Ombudsman and Commissioner. In the conducting of the previous phase of the project, it became clear that it is necessary to implement previous measures in order to set the basis for implementation of the said Action Plan.

In this phase of the project, CEAS focused on the Law on Classified Information and Law on Protection of Whistleblowers. We issued two analyses on questions of classified information and whistleblowers – with recommendations on how to ensure robust and efficient regulatory framework.

INTRODUCTION

The Law on Protection of Whistleblowers[5] came into force on December 4, 2014, and has been implemented since June 4, 2015. The beginning of implementation of this Law coincides with the presentation of Bjornson[6] Award by the Norwegian Academy of Literature and Freedom of Expression – to Edward Snowden - "*for his work on protection of privacy and critical disclosure of American surveillance over its citizens and citizens of other countries*"; as well as the adoption of the Law by the US Senate prohibiting unlimited collection of data on electronic communication of the Americans and reforming the surveillance program that included millions of recorded telephone calls of American citizens – the USA Freedom Act[7].

CEAS believes that the Law on Protection of Whistleblowers should not be primarily anti-corruption by a law that primarily **ensures respect of those human rights and civil rights, guaranteed by the Constitution of the Republic of Serbia that are related to freedom and security, right to an opinion and expression, right to privacy, protection of personal data and labor.**

It is clear that in Serbia it was necessary to legally regulate the Protection of Whistleblowers, on which the professional public and individual competent institutions,

[5] The Law on Protection of Whistleblowers. The "RS Official Gazette", no. 128/2014, available at:
[6] The Nobel Prize in Literature 1903 was awarded to Bjørnstjerne Bjørnson "as a tribute to his noble, magnificent and versatile poetry, which has always been distinguished by both the freshness of its inspiration and the rare purity of its spirit" – available at: http://www.nobelprize.org/nobel_prizes/literature/laureates/1903/
[7] The USA Freedom Act, available at: https://www.congress.gov/bill/114th-congress/house-bill/2048

primarily the Commissioner for Information of Public Importance, have been insisted for years. We remind that in 2012, the Commissioner offered the Model Law on Protection of Whistleblowers[8] to the Ministry of Justice, after several months of preparation by a working group that consisted of a number of experts in various legal areas, **which was not noticed by the competent institutions.**

Exactly the contrary, on December 26, 2013, the Ministry of Justice published on its website its ***"Working version of the Draft Law on Protection of Whistleblowers"*** (which is not a usual form of a document for public debate) and invited the stakeholders to submit suggestions and comments during the "public debate" that lasted until January 31, 2014.

In June 2014, the Ministry published a new, insufficiently amended, now only - Draft Law on Protection of Whistleblowers, which was submitted in late September to the government for adoption, after which the Draft Law on Whistleblowers was included in the parliamentary procedure.

We believe that it is important at the very beginning to provide clear and detailed guidelines for future interpretation of both foreseen situations, and "participants" in the Law, so the enforcement itself and possible judicial epilogues would be protected from idle walk that would enable legal bypasses.

Three basic guidelines would have to dominate the legal regulation of the protection of whistleblowers:

– **Retribution** as a harmful action, **reward** to the whistleblower as the motive and justice, and **criminal responsibility** for non-compliance with prescribed provisions for all participants as *summa summarum*.

Whistleblowers should be provided with protection from injury **to their employment right**, mobbing, from violation of all of their human rights guaranteed by the Constitution and other laws. Although the rights mentioned above, and the protection thereof, are regulated by special regulations, the Law on Protection of Whistleblowers should be one comprehensive unit that would protect all those rights simultaneously. We believe that it is incorrect to limit the normative regulation of the protection of whistleblowers to only those situations that are not prescribed by another Law, because the subject of regulation here is not the action itself but the protection of whistleblowers

[8] Model Law on Whistleblowing and Protection of Whistleblowers, 2012. Commissioner for Information of Public Importance and Personal Data Protection.

– as a Constitutional Obligation.

We believe that it is very important to standardize **conscientiousness** among whistleblowers – prudence in assessment and possession of special level of information about the potential whistleblowing are key attributes for both the responsibility and for the authority of whistleblowers. We must carefully select the means with which to force the society to take seriously the future normative framework.

We also believe that penalty policy in this area **must be strict** and it must be made clear that the protection is taken seriously, so the Law would not receive characteristics of *recommendations*. Penalty is the stamp of every imperative – it outlines the intention and implements the intent, and in accordance with this we believe that any violation of the future law should be classified as a **criminal offense**. By this we mean both persons who are the subject of whistleblowing and the persons who are obliged to implement protection and of course – most of all the whistleblowers themselves, because if they were not covered by penalty clauses – they are released from the reliability which renders the entire project meaningless. If the whistleblowers themselves do not take responsibility – then it is less likely that the remaining participants in this legal traffic would do this – from the state and on.

CEAS believes that it was also necessary to introduce the **reward** for whistleblowers under certain conditions. Research results often mentioned in professional public tell us that 2/3 of the population are for giving reward to the whistleblower – which would, together with incriminated abuse of the law – give significance to the whole idea of whistleblowing.

As can be frequently heard from relevant representatives of the anti-corruption bodies –it is exactly the laws what enable irregularities, i.e. corruption – and the Center for Euro-Atlantic Studies fully agrees with this. The law with an intention to allow gaps is the most powerful weapon for legalizing corruption. Exactly for those reasons we persistently insist on the Law on Protection of Whistleblowers being such as to represent an efficient protection for whistleblowers – and not only a declarative act that essentially has no adequate power and sufficiently efficient mechanisms to carry out its main purpose. Exactly for these reasons we believe that the **model Law on Whistleblowing and Protection of Whistleblowers** that was made available to the government of Serbia by the Office of the Commissioner for Information of Public Importance and Personal Data Protection – **the decision that should have been adopted**.

Although the Council of Europe assessed the existing Law as good, the expert field, NGO sector and whistleblowers agree that, in the conditions of Serbian judicial system, it should have been much stricter and more accurate. We agree with them.

GENERAL POLITICAL CONTEXT

Although whistleblowing is widely used, in Serbia by now it has mostly been treated on legal level in anti-corruption context. The main reasons for this are activism of-corruption organizations and institutions in the Republic of Serbia and globally, international conventions on struggle against corruption, which were ratified by the Republic of Serbia, and international monitoring that accompanies implementation of these conventions.

Therefore, until the coming into force of the Law on Whistleblowers, they were supposed to be protected by the Law on Anti-Corruption Agency[9], more precisely the Rules of protection of persons who report suspected corruption[10], however, the Decision of the Constitutional Court[11] from January 26, 2015, these Rules were rendered anti-constitutional. It is evident from the explanation of the said Decision of the Constitutional Court that it is disputable that Article 56 of the Law on Anti-Corruption Agency – leaves the more detailed regulation of the procedure of protection of whistleblowers to "another regulation", namely secondary legislation issued by the Agency Director – and even the basic regulation of this protection is not defined in the Law itself. This practically means that the disputable Rules were adopted without legal basis and as such is unconstitutional.

In the previously described situation, until the beginning of implementation of the Law o Protection of Whistleblowers (June 5, 2015) whistleblowers remained without factual protection, because of which Deputy Director of the Anti-Corruption Agency Vladan Joksimović gave a public statement[12]. In his words, until then, pursuant to the Rules of the Agency, there used to be at least some protection of whistleblowers. Tatjana Đakonov – the whistleblower whose case attracted great public attention – pointed to

[9] The Law on Anti-Corruption Agency, the "RS Official Gazette", no. 97/2008, 53/2010, 66/2011 – Decision of the US RS, 67/2013 - Decision of the US RS and 8/2015 - Decision of the US RS. Authentic interpretation - 112/2013-3, Decision - 112/2013-3.
[10] Rules of protection of persons who report suspected corruption. The "RS Official Gazette", no. 56/11.
[11] Decision of the Constitutional Court, the "RS Official Gazette", no. 8/2015 from January 26 2015.
[12] Joksimović: The Agency is searching for ways to protect whistleblowers. November 26, 2014. Blic online. Available at: http://www.blic.rs/Projekat-EU/514443/Joksimovic-Agencija-trazi-nacin-da-zastiti-uzbunjivace

irregularities at the Institute for Health Protection of Employees since 2012, and was finally fired from this institute[13], although in 2013 the Anti-Corruption Agency gave her the status of a whistleblower (pursuant to the Rules that was later rendered unconstitutional and was abolished). Pursuant to the annex to the agreement, she was first transferred to a work position with lower pay grade, and was laid off in early April 2014. In the statement from the Institute, they say that Tatjana Đakonov was laid off in accordance with the **Labor Law and collective bargaining agreement,** and the employer, as they say, **is entitled to do this in case of violation of work discipline**.

What is characteristic is that the new Law will not apply retroactively, and thus the beginning of its implementation will not bring justice to the existing whistleblowers. Such a decision is primarily not in compliance with the basic aim of this Law – protection of human rights, and with those publicly proclaimed – uncompromising struggle against corruption. Given the reform process, obligations under negotiation chapters 23 and 24, and the fact that there is no rule of law in Serbia – as the main precondition for security system reform – it has remained unclear why in this case the Law does not apply retroactively. General interest, as a condition for retroactive application, certainly exists.

The Ministry of Justice, in cooperation with USAID (The U.S. Agency for International Development) within the Project for judicial system reform and responsible governance, has been implementing the **campaign "Whistleblowers are stronger now"** with the goal to inform as many citizens of Serbia as possible with the novelties of the new Law.[14]

At organization Pištaljka, whose team was in the working group for preparation of the Law, they say that their proposals were not accepted – and as the most problematic they single out the solution that the rights of whistleblowers are limited if information contains classified data.[15]

And while whistleblowers are suspicious of the new Law, the Minister of Justice Nikola Selaković reassures the public that whistleblowers will have absolute protection from now on.[16]

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[13] Another whistleblower was fired. 8.4.2014. B92. Available at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=04&dd=08&nav_id=834341

[14] Whistleblowers are stronger now, available at : http://www.mpravde.gov.rs/obavestenje/9048/predstavljanje-javne-kampanje-sad-su-uzbunjivaci-jaci.php

[15] New Draft Law on Protection of Whistleblowers was published. 24.6.2014. Portal Pištaljka. Available at: http://pistaljka.rs/home/read/455

[16] Whistleblowers: After this law, nobody will report corruption. June 2, 2015. N1. Available at:

ANALYSIS AND COMMENTS ON THE LAW ON PROTECTION OF WHISTLEBLOWERS[17]

This Law regulates whistleblowing, the procedure of whistleblowing, rights of whistleblowers, obligations of state and other authorities and organizations and legal and physical entities with respect to whistleblowing, as well as other issues relevant for whistleblowing and protection of whistleblowers.

Whistleblowing may be internal, external or public whistleblowing. Internal

whistleblowing is disclosure of information to the employer.

External whistleblowing is disclosure of information to the competent authority.

Public whistleblowing is disclosure of information by means of public media, on the internet, at public gatherings or in another way by which a notice can be made available to the public.

Whistleblowing can be made public, without prior notice to the employer or competent authority in case of immediate danger to life, public health, safety, environment, occurrence of large-scale damage, i.e. if there is immediate danger of destroying evidence.

Although in our legislation there is no practice to include under penalty clauses the individuals in state bodies, our opinion is that the intention of the lawmaker justifies also such penalty and in this way fully achieves its objective.

In working version of the Draft Law on Protection of Whistleblowers – "whistleblowing" is defined as notifying a state or other authority and organizations on jeopardizing or violation of public interest, done by the whistleblower in accordance with this Law – we welcome the adoption of the proposal to define in more details the violation of public interest – and now, it is defined in the Law as disclosure of information on violation of regulations, violation of human rights, exercising public authority contrary to the purpose for which it was entrusted, danger to public health, safety, environment, as well as to prevent occurrence of large-scale damage.

Paragraph 7 of Article 2 of the Law: "harmful act" is certainly any act or failure to act

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http://rs.n1info.com/a66200/Vesti/Uzbunjivaci-Posle-ovog-law-niko-nece-prijaviti-korupciju.html

[17] The Law on Protection of Whistleblowers. The "RS Official Gazette", no. 128/2014

with respect to whistleblowing, which jeopardizes or violates the right of the whistleblower or person who has the right to protection as a whistleblower, namely which puts those persons into less favorable position – since the term "harmful consequence" has been expunged from the Law, harmful act should have been linked to some other actions that could be subject to whistleblowing or provision – and all other harmful acts that could be regarded as harmful acts in accordance with this Law – and leave the more detailed regulation to secondary legislation, but certainly not close the definition right from the start and make it clear in the Law that violation will be evaluated on the basis of all circumstances and that the categorization is in accordance with the intention, namely that the protection of whistleblowers is a wide and large-scale endeavor, legally and factually safe. In accordance with this, we think that harmful act should be characterized more rigorously, i.e. named with its true name – **retribution,** for example – as previously proposed by experts.

Establishing balance between the intention of the lawmaker and the legislative unit – would be a significant base for creation of a secure legal environment in this area, and in this way this "endeavor" would have bigger authority among all participants. In this respect, the provisions that are related to whistleblowers themselves had to be regulated more rigorously and more completely.

Article 11 of the Law regulates Prohibition of abuse of whistleblowing - Abuse of whistleblowing is done by the person who submits a notification for which he/she knew was not true, and when, in addition to the request for action with respect to the information that is the subject of whistleblowing, seeks benefit for him/herself or another person. It is clear here that the intention of the proposer was to prescribe good faith as obligation of whistleblowers, however, given the experiences in the EU, i.e. in regional countries – the Law itself, even when adopted, typically has no support in enforcement, and taught by this experience they should provide stricter definitions of those situations that further determine the Law itself, in order to show intention and in a way to impose the obligation in further enforcement of the Law. For these reasons, we thought that the definition from Article 3 should be supplemented with the term **Conscientiousness** as a condition for whistleblowing: *in a reasonable and expected manner checked the claims he/she is making or notice he/she is giving based on the knowledge or after checking of data, i.e. evidence, without undue delay.* Reasonable and expected manner can always be evaluated in a specific case, and it could imply

typical/generally accepted patterns of behavior in healthy working environments. Gaining benefits and the intention itself may be complicated to prove, expanding the definition to personal motives would contribute to strengthening of confidence by all those that the Law possibly applies to.

Further, if the goal of the Law is protection of whistleblowers, the part of the Law that specifically relate to this goal should have been regulated more clearly. We must accurately define the terms of good faith, clear intention and other terms that categorize actions of whistleblowers, so that the goal that is focused on their protection would later be possible. According to the previous draft, whistleblower had the right to protection (Article 5) in accordance with the Draft, if he/she submits in good faith a notification that is related to:

1) An act that has attributes of criminal offense which is punishable by law with prison sentence of 3 years or more, which violates or jeopardizes public interest;

2) An act that causes imminent danger to life, health or safety of people, survival of flora and fauna, environment, violation of basic human rights and freedoms or large-scale damage, and which is not prohibited by a law or other regulation.

We pointed out then that this provision leaves a confusing impression, because if we see that a whistleblower who is an employee in public or private sector, noticed certain irregularity and has the intention of reporting it – he/she must first know whether such act is incriminated by the Law and in what way, what are prescribed penalties for such an act, and he/she is only obliged to act in good faith – which was the confusing part that brings joy to every lawyer of the defendant – it is easy to dispute it in the defense, and we welcome the fact that such a definition has been expunged from the Law, and the whistleblower now has the right to protection (Article 5) if:

1) Performs whistleblowing to the employer, competent authority or public in the manner prescribed by the law;

2) Discloses information from Article 2, clause 1) of this law (hereinafter the: information) within one year from the moment he/she has learned about the committed act because of which the whistleblowing is performed, and no later than within ten years from the day when such action was committed;

3) If, at the moment of whistleblowing, on the basis of available data, a person with average knowledge and experience as the whistleblower would believe in truthfulness of

the information. When we speak about protection of personal data of whistleblowers, Article 10, paragraph 3 of the previous Draft (*If it is necessary during the proceedings to reveal the identity of the whistleblower, the person authorized to receive the notice must previously, before revealing the identity, notify the whistleblower about this*) – there was a question of what if the whistleblower does not agree? Is he/she able to stop the procedure in that moment? Under the assumption that it is possible, we proposed that he/she needs to be informed about this at the moment of receiving the notice, and we welcome the solution in the Law that stipulates that the person authorize to receive the information from Article 2, clause 1) of this Law must, at the moment of receiving this information, inform the whistleblower that his/her identity could be revealed to the competent authority, in case the action of that authority would not be possible without revealing the identity of the whistleblowers, and must notify him/her on the measures of protection of participants in criminal proceedings.

Article 20 of the Law regulates handling of classified information - Information from Article 2, clause 1) of this Law may contain classified information.

If the information contains classified information, the whistleblower **may not whistle-blow the public**, unless the law stipulates otherwise – a solution like this leaves room for possible abuse of classified information as weapon for stopping the whistleblowing, especially if we keep in mind the fact that the Law on Classified Information Is not fully enforced by all public authorities – both because of absence of the necessary secondary legislation, and because of lack of training and lack of interest of the personnel.

Theoretically, every document concealing a crime could be proclaimed classified, thus preventing the public disclosure and protection of whistleblowers.

Classified information from paragraph 1 of this Article means data that, in accordance with regulations on classified information, has already been designated as classified. Since the existing Law on Classified Information does not correspond to the actual state in the country, namely no comprehensive revision of previously proclaimed data confidentiality was conducted – there is the possibility that classified information could be published although the act was initially designated as classified and, of course, whistleblower cannot know this. Accordingly, this provision is inefficient and declarative. Without the new Law on Classified Information – the issue of disclosure of classified information remains unsolved in this Law as well

When we speak about judicial protection of whistleblowers, Article 23 of the Law stipulates that it may be exercised by filing a claim to the competent court, within six months from the day of learning about the committed harmful act, i.e. three years from the day when the harmful act was committed – a deadline this long is not suitable to the given situation, because within six months from the day of occurrence of a harmful consequence, and depending on the type if consequence – the employer – the perpetrator – may eliminate the reasonable doubt or take actions that would that would disrupt the intention of the whistleblowers to report the case. It is necessary to prescribe a shorter deadline and thus encourage the whistleblowers to act immediately, without second thoughts or room for possible withdrawal, and still leave them enough time to evaluate the situation with due care and act in accordance with the law. A short deadline gives sharpness and a measure of strictness to the regulation – which could be a clear message to the perpetrators that institutions are ready to deal with the existing negative situation, and at the same time would encourage whistleblowers to come forward.

The position that the procedure is urgent also supports this observation – which is in accordance with the intention of the legislator, and the full effect would be achieved by prescribing shorter deadlines. CEAS welcomes the provision that revision is always allowed, but it believes that in this case it is not in accordance with, as it is proposed by Article 28 of the Law - At the first hearing, the parties are informed about the possibility of settlement – CEAS thinks that this provision should be bypassed and thus show the resolve to strictly punish the perpetrators – which could force possible perpetrators to refrain from harmful acts (not only within the meaning of the Law, but generally speaking).

Further, CEAS thinks that Article 26, paragraph 2 of the Law is also disputable – The claim from paragraph 1 of this Article **may not dispute the legality of individual act of the employer that decides on rights, obligations and responsibilities of the employees under employment** – we do not agree with the position of the legislator that the maneuver of whistleblowers should be narrowed down to such an extent that the Law would get characteristics of a recommendation. We think that this area is exceptionally important for our society and that its regulation should be approached much more seriously.

Article 27 of the Law stipulates that rights of whistleblowers **in special proceedings**, namely under claims for determination of legality of an individual act of the employer

that decides on rights, obligations and responsibilities of whistleblowers under employment, according to special regulations, in which a whistleblower may put forward a statement that an individual act of the employer constitutes a harmful act with respect to whistleblowing, in the claim itself, **or during preliminary hearing**, and after that **only if the person who submitted such statement makes it probable that he/she could not have provided such a statement without his/her fault. –** In this way, the legislator has tried to mitigate the criticized provision of the Draft according to which a labor dispute fully treated the violation of an individual legal act, however, again to the detriment of the whistleblower – namely, by purring them in a less favorable position than was necessary. The Law could have stipulated that a violation of employment agreement, or any associated act – is a harmful act /retribution and treat it in the procedure of protection of whistleblowers. Anyway, in such a case, **it would be easier to believe that the legislator had a sincere intention to absolutely and uncompromisingly protect whistleblowers.**

Previous Draft regulated representation by another body – In judicial proceedings for protection of whistleblowers and associated person, the representative may also be the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter the: The Commissioner), Protector of Citizens, provincial ombudsman, ombudsman of the unit of local self-government and Anti-Corruption Agency, under a written power of attorney – even then we raised the question of whether these institutions are trained to provide legal services before the Court, whether they have sufficient number of employees for such purpose, whether the law firm tariffs also apply to them, or they are obliged to provide such service pro bono? CEAS therefore welcomes that representation by other bodies was expunged from the Law.

Imposing a temporary injunction is a good preventive step in protection of rights of whistleblowers, because, on the one hand, it stimulates the principle of assumption of innocence and, on the other hand, the whistleblowers are protected better and stronger in the specific case – which is completely in accordance with the previously stated assessment that only balance in the law may provide full legal certainty. In the previous Draft (Article 33), imposing a temporary injunction ex officio was quite inappropriate – it stipulated that during the proceedings the court may impose temporary injunction ex officio in accordance with the law that regulates enforcement and securing for the purpose prevention of violent behavior or elimination of irreparable damage. Before all,

the reasons for which a temporary injunction is imposed ex officio must be defined much more accurately. Irreparable damage is a wide term and, ultimately, its determination – at any case not in these proceedings and under this jurisdiction. Further, violent behavior is a criminal offense for which criminal charges are filed and criminal proceedings initiated, so a temporary injunction in such a case would be implied. In the Law, imposition of a temporary injunction ex officio for the purpose prevention of violent behavior or elimination of irreparable damage is replaced with a less definite solution – *The proposal for imposing a temporary injunction shall be decided upon by the court within eight days from the day of receipt of the motion*. It is not specified when and in which case the court would impose temporary injunction ex officio, and in our assessment this is an inadvertence. The Law must clearly specify in which case ex officio measures would be imposed.

Finally, penalty clauses are the stamp on the Law and they summarize the intention – its key authority lies in the penalty, the consequence as such and that is why it is very important to achieve everything exactly by means of punishment, starting from harmony and to the clear intention to enforce the Law in practice and to really provide protection for whistleblowers – in this respect we believe that, in its penalty clauses, the Law should have prescribed also criminal and not only misdemeanor responsibility for all participants in the Law.

Namely, although it is not the practice, it is proposed to punish all those who have any obligation under this Law. Penalty clauses should also expand to include the responsible individuals who are obliged to implement the procedure and comply with the deadlines.

Further, we think that if whistleblowers are not covered by penalty clauses – they are released from responsibility, which renders the entire project meaningless, because the owners of this this project are actually whistleblowers, and if they do not take responsibility – then it is less likely that the remaining participants in this legal traffic would do this – from the state and on.

In this respect, CEAS believes that it was also necessary to introduce the reward for whistleblowers under certain conditions. Research results often mentioned in professional public tell us that 2/3 of the population are for giving reward to the whistleblower – which would, together with incriminated abuse of the law – give significance to the whole idea of whistleblowing

RULES OF THE PROGRAM OF ACQUISITION OF SPECIAL KNOWLEDGE RELATED TO PROTECTION OF WHISTLEBLOWERS[18]

According to Article 25 of the Law on Protection of Whistleblowers, the program of acquiring special knowledge with respect to protection of whistleblowers shall be prescribed by an act of the minister in charge of judicial activities, and in accordance with the Rules of the program of acquisition of special knowledge related to Protection of Whistleblowers were adopted.

The objective of the program is for judges to gain additional theoretical and practical knowledge in the field of whistleblowing and protection of rights of whistleblowers and acquire skills necessary for professional and efficient ruling in the proceedings related to protection of whistleblowers, as well as to gain necessary expert knowledge in other areas that would help them better understand the concept of whistleblowing and harmful consequences suffered by the whistleblower, namely the person who has the right to protection as a whistleblower.

The program contains three theme units, as follows: international and domestic legal sources; basic terms prescribed by the Law on Protection of Whistleblowers and types of whistleblowing (internal whistleblowing, external whistleblowing, public whistleblowing) and Protection of Whistleblowers and compensation of damages, position of the Law toward general rules of civil procedure, application of the Law in labor lawsuits, as well as penalty clauses stipulated by the Law.

The theme units from the Program are realized during one working day, divided into five classes of up to 60 minutes each.

After the realization of theme units, a practical exercise is carried out through a simulated case, in order to apply the acquired knowledge.

It remains to be seen to what extent this Program will influence the efficiency of protection of whistleblowers, especially in view of the theme unit dealing with application of the Law in labor lawsuits – which may be the most sensitive issue, since labor relation of whistleblowers has remained, as previously explained, unprotected to a large extent.

[18] Rules of the program of acquisition of special knowledge related to Protection of Whistleblowers. "RS Official Gazette" br. 4/2015. The Rules came into force on January 24, 2015.

RECOMMENDATIONS

We believe that adoption of a harmonized Law is a significant basis for creation of a secure legal environment in the area of protection of whistleblowers.

CEAS does not agree with the assessment that the Law on Protection of Whistleblowers is primarily an anti-corruption law, but believes that it is a law that should primarily ensure respect of those human rights and civil rights that are guaranteed by the Constitution of the Republic of Serbia, which are related to freedom and security, right to an opinion and expression, right to protection of information, right to work, etc.

Whistleblower should be provided protection from violation of their employment rights, mobbing, from violation of all of their human rights guaranteed by the Constitution and other laws, and although the rights mentioned above, and the protection thereof, are regulated by special regulations, the Law on Protection of Whistleblowers should be one comprehensive unit that would protect all those rights simultaneously.

We believe that three basic guidelines should have been dominant in regulating the legal framework – **retribution** as a harmful act, **reward** to the whistleblower as the motive and justice, and **criminal responsibility** for non-compliance with prescribed provisions for all participants as *summa summarum*.

We believe that it is very important to standardize **conscientiousness** among whistleblowers – prudence in assessment and possession of special level of information about the potential whistleblowing are key attributes for both the responsibility and for the authority of whistleblowers. We must carefully select the means with which to force the society to take seriously the future normative framework.

CEAS believes that it was also necessary to introduce a reward for whistleblowers under certain conditions. Research results often mentioned in professional public tell us that 2/3 of the population are for giving reward to the whistleblower – which would, together with incriminated abuse of the law – give significance to the whole idea of whistleblowing.

We also believe that penalty policy in this area must be strict and make it clear that the protection is being taken seriously, that standardization is not in the spirit of recommendations. Penalty is the stamp of every imperative – it outlines the intention

and enforces the intention and we thus believe that any violation of the future law should be incriminated, i.e. classified as a criminal offense.

Finally, CEAS reminds that, in 2012, the Commissioner for Information of Public Importance and Personal Data Protection, Rodoljub Šabić, offered the Model Law on Protection of Whistleblowers to the Ministry of Justice, after several months of drafting by the working group consisting of a number of experts from various areas of the law, which is assessed by CEAS, as well as by majority of the professional public, as complete, harmonized, adapted to our society, and therefore efficient.

ABOUT THE CENTER FOR EURO-ATLANTIC STUDIES

- The Center for Euro-Atlantic Studies (CEAS) is an independent, atheist, socio-liberal, policy research think tank organization, driven by ideology and values. It was established in 2007 by a small group of like-minded colleagues who shared an awareness of the inter-conditionality between global and regional trends, foreign policy orientation of the country, security and defense sector reform, and transitional justice in Serbia. With these linkages in mind, CEAS was established with the following mission:
- To accelerate the process of Serbian EU integration and to strengthen its capacities to confront global challenges through collective international action, resulting in full and active membership of the EU,
- To strengthen the cooperation with NATO and advocate for full and active Serbian membership in the Alliance,
- To promote regional cooperation and raise public awareness of its significance.
- To impose a robust architecture of democratic oversight of the security system,
- To support the development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; to emphasize the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy.
- To accomplish its mission, CEAS is targeting Serbian policy makers and the Serbian general public, as well as international organizations, governments and other actors dealing with Serbia and the region of Western Balkans, or dealing with the issues that CEAS covers, through the promotion and advocacy of innovative, applicable and practical policies aimed at:
- - Keeping up with the trends and developments in socio-liberal studies and practice, and at strengthening of socio-liberal democracy in Serbia;
- - Adopting the principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action;
- - Strengthening the secular state principle and promoting an atheistic understanding of the world;
- - Contributing to the erection and preservation of a more open, safe, prosperous and cooperative international order, founded on the principles of smart globalization and equitable sustainable development.

With its high quality research and devoted work CEAS generates accurate and recognized analyses primarily in the fields of foreign, security and defense policies with

recommendations based on its core value s, with specific focus on:

- Acceleration of the processes of Serbian EU integration and strengthening of its capacities for confronting global challenges through collective international action, resulting in full and active Serbian membership of the EU;
- Strengthening cooperation with NATO and advocacy for full and active Serbian membership in the Alliance;
- Promotion of the significance of regional cooperation;
- Supporting development of transitional justice mechanisms, their enforcement in Serbia and the Western Balkans, and the exchange of positive experiences; emphasizing the importance of mechanisms of transitional justice for successful security sector reform in post-conflict societies in transition towards democracy;
- Promotion of humanitarian and security norm Responsibility to Protect arguing that the state carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing, that international community has a responsibility to assist states in fulfilling this responsibility and that the international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes if a state fails to protect its populations or is in fact the perpetrator of crimes;
- Promotion of Open Government Policy, aiming to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

CEAS is carrying out its mission through various projects within its five permanent programs:

I Comprehensive monitoring of contemporary international relations and foreign policy of Serbia

II Advocacy for full-fledged active membership of Serbia in the EU and NATO

III Advocacy for comprehensive Security Sector Reform in Serbia

IV Advocacy for development of the discourse of Energy Security in Serbia

V Liberalism, Human Rights, Responsibility to Protect, Transitional Justice and Open governance in the globalized world

CEAS is an active member of the REKOM coalition, which gathers more than 1,800 organizations of civil society, individually from all former Yugoslav republics. Among them are associations of parents and families of missing persons, veterans, reporters, members of minority ethnic communities, human rights organizations, etc. or states) establish REKOM, an independent, inter-state Regional Commission for the Establishment of Facts on all the victims of war crimes and other heavy human rights violations undertaken on the territory of the former SFRY in the period 1991-2001.

In 2012, CEAS also became the first organization of civil society in the region of Southeast Europe that was accepted as a regular member of the International Coalition for Responsibility to Protect – ICRtoP. The Coalition gathers non-government organizations from all over the world for joint action on strengthening the normative consensus related to the doctrine of Responsibility to Protect (RtoP), for the purpose of better understanding of the norm, pressure on strengthening the capacity of the international community to prevent or stop genocide crimes, war crimes, ethnic cleansing, and crimes against humanity, and mobilization of the non-governmental sector to advocate for actions of saving human lives in situations where RtoP doctrine is applicable. Some of the prominent members of the Coalition are organizations such as Human Rights Watch and International Crisis Group.

In April 2013, CEAS became the first organization of civil society in Serbia that joined the Commission of the Commission for Public-Private Partnership with the Serbian Chamber of Commerce in the security sector of Serbia. In addition to representatives of the private security sector, the Commission is also comprised of representatives of the MoI and other state authorities and institutions, which are, in carrying out the work of state administration, in charge also for cooperation between public and private security sector.

In September 2013, CEAS also became a member of the Sectoral Civil Society Organization for the Rule of Law - SEKO. The program of cooperation with organizations of civil society in the area of planning of development assistance of the Office for European Integrations, especially programming and monitoring the use of instruments for pre-accession assistance for 2011, envisaged establishment of a consulting mechanism with OCS, which implies as the main holders of activities the Sectoral Civil Society Organizations (SEKO). Sectoral Civil Society Organization means a consortium of organizations of up to three partners, one of which is the leading partner.

In September 2014, CEAS became a regular member of the Policy Association for an Open Society – PASOS, an international association of expert NGO's (think-tanks) from Europe and Central Asia, which supports the building and functioning of an open society, especially with respect to questions of political and economic transition, democratization and human rights, opening of economy and good public management, sustainable development and international cooperation. PASOS has 40 regular and 10 associate members, including the prestigious European Council on Foreign Relations – ECFR.

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