Problems of the current whistleblower protection legislation

Abstract

Whistleblowing is a relatively new concept in Czech legal system, which was comprehensively regulated by the transposition of European legislation via Act No. 171/2023 Coll., on the protection of whistleblowers. The purpose of this rigorous thesis is to provide a comprehensive overview of the legal regulation of whistleblowing, its main instruments, related obligations and processes, as well as to identify the problems arising from the above-mentioned Act. These problems are analysed in detail in the thesis, and the author also presents his proposals for their potential solutions.

When properly implemented, whistleblowing has the potential to contribute significantly to the protection of public interests and the effective prevention of illegal conduct violating or jeopardizing such interests. However, its current form suffers from a number of shortcomings preventing it from fulfilling the aforementioned potential. According to the author's conclusions, a significant part of these shortcomings could have been avoided if the legislator had adhered to the wording of the transposed directive and had more consistently respected the intent and purpose for which it was adopted.

The thesis first focuses on the intent and purpose of the legislation and its substantive and personal scope. The author considers the definition of the substantive scope of the law to be its greatest shortcoming, stemming from its unnecessary extension to situations which were not intended by the transposed directive.

Furthermore, the thesis addresses the protection of whistleblowers against retaliatory measures, where we again encounter a number of pitfalls. Special emphasis is placed on defining the possibility of publishing the content of a report, where the legislator contradicts the established case law of the European Court of Human Rights.

The institute of internal reporting systems and the concept of obliged entities as the main addressees of the obligations under the relevant legislation are also analysed. Among other things, the author concludes that a large proportion of obliged entities are defined redundantly in the Act.

Finally, the thesis focuses on the whistleblowing officers and the problems they may face in relation to the performance of their function. The author is of the opinion that the law sets only very general conditions for the performance of the function of a whistleblowing officer, although in reality the demands placed on this function are much higher, and the whistleblowing officer should therefore have extensive legal knowledge in order to perform their function properly. The law does not make this task any easier for the whistleblowing officers, as it sets shorter deadlines

for the assessment of the substantiation of reports than the transposed directive and does not address the process of internal investigation. Another issue discussed is the possibility of a conflict of interest arising from the performance of this function by an attorney.