PROTECTION OF WHISTLEBLOWERS IN SERBIA


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1 EXECUTIVE SUMMARY

1.1 This report was commissioned by the UNDP as part of the project “Enhancing Anti-Corruption Efforts in Serbia.” Its purpose is to provide support for the further development of an effective whistleblower protection framework in Serbia. The background and methodology to the study is further described in Chapter 2. It is based mainly on information gathered during meetings in Belgrade from 4 to 8 June 2012.

1.2 Chapter 3 describes the existing situation in Serbia. There have been developments in laws bearing on the issue of whistleblowing, partly in response to a recommendation made by GRECO, the Council of Europe anti-corruption body, in 2006. The most recent change includes giving the Anti-Corruption Agency (ACA) the role of considering requests for protection made by public sector whistleblowers with reports of corruption. However the results of these piecemeal changes have been less than satisfactory and there is a groundswell of opinion among stakeholders in Serbia that there is a need to provide better protection for all whistleblowers and for an over-arching law which looks beyond the specific field of anti-corruption.

1.3 It is clear that there are brave people in Serbia willing to speak up about wrongdoing. At present, when internal routes fail, they may - if they are lucky - find a public authority both willing and empowered to deal with the issue they have raised. The determination of some of these authorities to secure positive outcomes can be impressive, but at the end of the day the whistleblower has no right to compensation for any retaliation which they suffer. And experience shows they may well suffer retaliation. Examples of cases - showing both the problems and the occasional partial successes - are set out in Annex A.

1.4 Chapter 4 considers the issues that need to be addressed in devising solutions. International instruments are sufficiently flexible to enable each country to make its own choices. However work done in the Council of Europe and the G20 group of nations is worth particular attention. Principles set out by both of these bodies point towards the path already planned by some stakeholders in Serbia in developing an overarching law, and also give some direction to establishing its basic content. Some caselaw of the ECtHR also needs to be taken into account in devising law.

1.5 Chapter 5 looks at the obstacles and challenges in moving forward. The current limitations on effective law enforcement through the courts represent a serious difficulty. Against this background it is particularly important to look at the role of the public authorities that oversee the different sectors and ensure they encourage whistleblowers and have powers to pursue the issues raised by them, and that measures of protection are available when need be.

1.6 Chapter 6 sets out conclusions and recommendations. It outlines the basic contents of an over-arching law. This would provide employees (whether in the public or private
sectors) who report any kind of wrongdoing with a right to apply for compensation from their employer if they suffer any kind of retaliation. The law’s basic protection would apply automatically once the report was made, so there would be no need for any agency to consider requests for whistleblower status. The report, if the internal channel was not useful or appropriate in the circumstances, would be made to the appropriate authority for the subject. It will be important for an authoritative list of appropriate authorities to be drawn up under the law. The law would make it easy for whistleblowers to use that route, but - in accordance with ECtHR caselaw - it needs to allow for disclosures to the press when justified. Legal change can only provide part of the answer but if properly implemented it can provide a framework within which cultural change can take place to the benefit of all who value the rule of law.

1.7 Under the model proposed, the delivery of legal protection would be overseen by the court. In view of the need for speed in resolving issues, it is worth considering establishing a specialist unit within the Labour section of the civil court to deal with whistleblower cases. Immediate measures of physical protection would be delivered as part of the witness protection programme, which might need additional resources.

1.8 Chapter 6 also sets out measures designed to bring about cultural change, which do not necessarily require any new law. This includes action to encourage employers to introduce their own policies which make clear that they welcome reports of wrongdoing. The ACA can play a valuable role here with its power to recommend integrity plans in both the public and private sectors. Another valuable role the ACA can develop is as a point of advice for (potential or actual) whistleblowers in both the public and the private sectors on how to raise concerns about corruption. The aim would be to check whether there are ways to raise the matter internally and, if not, to assist the whistleblower to prepare the issue to be brought to an external agency.

1.9 The present report has the limitations inherent in a short-term study by an external expert. Whistleblowing is a complex issue as it touches on diverse fields, involving some difficult areas of law, and it merits a more substantial study. A longer-term project on the same subject has now been established by the Information Commissioner, with the support of the UK and Netherlands Embassies, so the work will continue and it is hoped that the present report may be helpful in that context.

2 BACKGROUND

The current context

2.1 The Serbian authorities are considering new measures on whistleblowing, particularly in the light of Serbia’s status as a candidate for EU membership. The EU 2010
Progress Report for Serbia stated that “Effective legal protection of whistleblowers is still missing, despite the newly introduced reporting obligation for civil servants. Protection is only applicable in cases where whistleblowers disclose information that is not classified. There is a lack of practical guidance on protective measures.” Similar remarks were made in the latest EU Commission working paper, in October 2011.

2.2 This issue is often seen in the context of corruption. A Working Group set up in 2011, by the Ministry of Justice (MOJ), to draft an anti-corruption strategy for 2012 - 2016, identified the protection of whistleblowers as 6th on a list of 13 priorities. In its annual report for 2011, the ACA recommended that the Government ‘establish a general legal regime for protection of persons making disclosures in public interest in various strata of social life, aimed at further enhancement of actual protection of whistleblowers’.

2.3 Internationally, whistleblowing was first identified as an area for improvement by the Council of Europe anti-corruption body GRECO in their 2006 report on Serbia. Among a package of measures to tackle corruption was a recommendation ‘to ensure that civil servants who report suspicions of corruption in public administration in good faith (whistleblowers) are adequately protected from retaliation when they report their suspicions’. In their final follow-up report in 2010 GRECO stated that out of the 25 recommendations issued to Serbia, 20 of them had been implemented or dealt with in a satisfactory manner. However this did not apply to the Recommendation on whistleblowing. GRECO noted the ‘limited scope’ of Article 38 of the Law on Civil Servants, in particular because ‘protection only refers to the disclosure of information to which public access is not restricted; therefore, instances where public officials report in good faith on corruption suspicions based on confidential information, of which they learn in the course of performing their official duties, would not be covered’. They also stated that ‘the existing rules, which are dispersed in multiple legal instruments....... fail to provide specific guidance to whistleblowers on how reporting can be done in practice’. GRECO concluded ‘that the legislative measures taken so far merely represent an initial step which, if properly followed-up, could lead to a more comprehensive/detailed protection framework for civil servants reporting suspicions of corruption in good faith’.

2.4 GRECO’s review was limited to the issue of codes of conduct for public officials. However Serbia has wider obligations in the anti-corruption field: in 2008 Serbia ratified the Council of Europe Civil Law Convention on Corruption, Article 9 of which requires ‘appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities’. This covers all employees, in both public and private sectors. In 2005 Serbia ratified the United Nations Convention Against Corruption (UNCAC), which contains a provision on whistleblowing at Article 33, which is comparable, save that it requires states to consider appropriate measures and is not limited to employees.

2.5 As corruption is a crime from which both parties benefit, it is rarely prosecuted without the help of whistleblowers. The protection of whistleblowers is thus essential to the anti-
corruption agenda - but is also crucial in preventing and investigating many other types of wrongdoing. That is recognised in the UN International Labour Organisation’s Convention on Termination of Employment (1982), which states that the filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations, or recourse to competent administrative authorities, is not a valid reason for the termination of employment.

2.6 More recently, the need for whistleblower protection to extend beyond the field of corruption has been recognised in measures taken by the Parliamentary Assembly of the Council of Europe (PACE). The PACE Resolution 1729/2010 recommended a cross-sectoral approach on whistleblowing covering ‘warnings against various types of unlawful acts, including all serious human rights violations.’ Moreover, the ECtHR have made clear in several important cases that whistleblowers in any walk of life who suffer retaliation may bring cases before it on the basis that their right to freedom of expression under Article 10 of the ECHR has been violated.

2.7 There is substantial domestic support for a broad approach. The ACA in its annual report for 2011 called for ‘a general legal regime for protection of persons making disclosures in the public interest in various strata of social life, aimed at further enhancement of actual protection of whistleblowers’. It also held an expert debate on the regulation of whistleblower protection in July 2011, which was attended by representatives of government authorities, non-governmental organizations, international organizations and the media. The result was that ‘all participants in the discussion concurred that a comprehensive system for protection of whistleblowers requires legislative regulation’.

2.8 In line with this thinking, this study considers proposals that could apply to warnings about all kinds of wrongdoing, from any worker, whether in the public or private sectors.

Methodology

2.9 This report is based on a desk study of Serbian law in the light of the Republic’s needs and commitments, and of international best practice. The desk study was carried out with the help of the ACA. It also took into account the country report on Serbia published by the project “Legal Regulation of Public Interest Disclosures in Eastern Bloc Democracies” and written by Transparency Serbia. In the light of that desk study a list of main issues was drawn up for discussion with interlocutors in Serbia. Discussions were held from 4-8 June 2012 in Belgrade with the following:

ACA (Zorana Markovic, Director; Branko Lubarda, Board Member; Milica Bozanic and others)
The Ombudsman (Sasa Jankovic, with Robert Sepi)
Ministry of Justice (Slobodan Boskovic, Assistant Minister; and Ivana Grubovic)
Police Internal Affairs Sector (Nebojsa Pantelic)
Anti-Corruption Council (ACC) (Miroslav Milicevic, Vice-President; and Jelisaveta Vasilic)
Ministry of Labour and Social Policy (Radmila Bukumiric-Katic, Assistant Minister; and
2.10 These discussions with concerned and dedicated individuals proved invaluable in identifying the real issues and practical opportunities and constraints. I am very grateful to these very busy people who gave up their time to meet me. A draft report was drawn up in the light of the discussions and sent to UNDP and the ACA for comments. Their comments have been taken into account in this final version. In view of the timescale for this report, which was drafted in English, it has not been possible to consult all parties on this final version, and it will contain some mistakes. Also it is clear there are many divergent views and there remains a need for further discussion to approach a consensus on the controversial issues involved. That discussion will need to go deeper and to involve a wider group of stakeholders, including the regulators who there was no time to meet.

2.11 On 7 June the Information Commissioner informed us that he had just agreed a project with the Embassies of the UK and the Netherlands which will aim to improve the institutional and legal protection of whistleblowers and raise awareness of all the relevant stakeholders. The existence of this larger project will ensure that the present work will continue, and that there will be an international component.

Purpose, objective and scope

2.12 This report was commissioned by the UNDP on 3 June 2012 for completion by 2 July. It forms part of the project “Enhancing Anti-Corruption Efforts in Serbia,” which supports Serbia in achieving the necessary standards and decreasing the levels of corruption as required under UNCAC and for EU accession. Its purpose is to provide expert support for the further development of an effective whistleblower protection framework in Serbia. The objective is to support efforts of the ACA to encourage systematic work towards an effective mechanism of whistleblower protection.

2.13 This report contains an overview of existing Serbian regulation dealing with whistleblowing, and how that regulation operates in practice. It then compares international best practices on whistleblower protection, communication with whistleblowers, and encouraging whistleblowers to report cases, with the situation in Serbia. It then analyses possible obstacles
and challenges to the further development of an effective whistleblower protection mechanism. The final chapter contains conclusions and recommendations.

Terminology

2.14 It may be useful to clarify the way in which some basic terms are used here. These terms sometimes cause difficulties - especially when we are communicating via translation:

‘Whistleblower’ is understood in this report as referring to a person (typically an employee) who reports suspicions of wrongdoing (typically based on inside knowledge). Such reports may also be described as making a ‘complaint’, though they typically do not relate to matters that affect him personally.

‘Confidentiality’ means that a whistleblower’s identity is known to an authority but will not be further disclosed without his consent.

‘Anonymous’ reporting refers to the situation when no one knows the identity of the person who reported the concern (e.g. the unsigned letter).

The term ‘Regulator’ is used in this report to refer to any public authority empowered to exercise oversight over any activities. In Serbia this would include law enforcement agencies, inspectorates (such as the Labour Inspectorate) and others such as the Ombudsman, the Information Commissioner, the State Audit Institution and the ACA.

3 THE EXISTING SITUATION

A THE LAW

Public sector

3.1 Whistleblowing in the public sector is regulated by three main pieces of legislation:
   • The Law on Civil Servants (Official Gazette Nos 79/05, 81/05, 83/05, 64/07, 67/07, 116/08 i 104/2009);
   • The Law on Free Access to Information of Public Importance (LFAIPI) (Nos 120/2004, 54/2007, 104/2009, 36/10); and
   • the Law on the Anti-Corruption Agency (Nos 97/2008 and 53/2010).

The Law on Civil Servants

3.2 A new Article 23a was added to this Law in 2009 to introduce a requirement for officials to report suspicions of corruption. They now have a duty to notify in writing their immediate superior or manager whenever they learn, while discharging their duties, that an act of corruption
has been committed by a public official, civil servant, or general service employee within the state authority that they work for. (This appears to exclude acts by private sector employees, even if officials become aware of them at work). From that moment retaliatory measures are prohibited. A misuse of this duty constitutes a severe violation of duty (Article 109 (5a)).

3.3 Article 18 covers the case where a civil servant thinks s/he has been ordered to carry out an illegal act. S/he should report that concern to his superior. If the superior repeats the order in writing, s/he should act upon it, unless the order would lead to a punishable offence. In that case, the civil servant would have the duty to refuse the order and to report this to the head of the office or relevant oversight body.

LFAIPI

3.4 The LFAIPI contains relevant provisions, introduced in 2009. Article 38 now stipulates that the employees of a government body cannot be held accountable or suffer adverse consequences if they provide access to information of public importance, or information indicating possible corruption, overstepping of authority, unreasonable use of public funds or illegal action by a government body, provided certain conditions are met. The conditions are (1) reporting occurs in good faith and suspicions are grounded; (2) the competent person in the public authority concerned has been informed of the suspected irregularities and has not taken corrective action; (3) that the right of access to this information cannot be restricted based on Articles 9 and 14 of this Law. [Art 14 protects privacy. Art 9 is broad - it restricts, inter alia, documents ‘accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and override the access to information interest’.] Should the employee be held accountable or suffer any retaliation contrary to these provisions, he or she will be entitled to compensation by the government body he or she works for.

Law on ACA

3.5 Amendments to the Law on the ACA, adopted in 2010, aimed to further provide for the protection of whistleblowers. Article 56 provides that a person whose report was used to initiate proceedings, or another person who gives a statement in the procedure establishing whether there has been a violation of this Law, may not suffer harmful consequences. This protection also applies to officials who in good faith submit a report to the Agency, reasonably believing that there is corruption in the body where he/she works (Article 56 (2)). For the purpose of protection of these persons, the Agency provides them with ‘necessary assistance’ and protects their confidentiality. Article 56(5) provides that a regulation stipulating in more detail the procedure to extend ‘assistance’ may be adopted by the Director.

The Rulebook

3.6 Such a regulation was adopted in July 2011 when the ACA issued its Rulebook on
the Protection of Whistleblowers. Its Article 2 provides that a whistleblower is a public servant who reports in good faith suspicions of corruption in his workplace. It does not seem to matter to whom the suspicion is reported. Under Article 3 'good faith' exists provided 'there are reasonable grounds to believe that the information s/he is disclosing is true, notwithstanding that the information might subsequently be found to be false, and if s/he has no intention of achieving an illegal or unethical objective'. Under Article 4 the whistleblower should file a request for protection to the Agency, providing the detailed information set out in Article 5, which includes information on his suspicion and whether s/he has reported it to anyone else (including the media). Article 7(2) provides that the Agency shall determine whether or not the conditions for providing protection have been met. There is no appeal from the Agency's decision.

3.7 If the whistleblower meets the basic criteria, then (under Article 8), the ACA will request information from his director and let him know that 'taking any measure related to the employment status or work conditions of the whistleblower, contrary to his/her own will, shall be deemed a reprisal starting on the protection granting date and up to two years thereafter'. It is not clear from the wording whether this is intended to be simply a reverse burden, or actually to make dismissal impossible for 2 years - which would clearly be unreasonable, if there is another sound justification for dismissal. There is also doubt whether, in the event of dispute, the courts will apply any measure in a bye law (as opposed to a primary law).

3.8 If a whistleblower informs the Agency that s/he is suffering reprisals, the Agency shall ask the relevant Director to submit a report or to certify that this treatment is not the result of whistleblowing (Article 13). If not, the name of the relevant body will be published on the 'special annual list' (Article 14).

3.9 The Information Commissioner qualified his support for the Rulebook with an observation that 'this subject matter should be regulated by a law, in a comprehensive manner, and not just in those areas for which the Agency is competent'. The Anti-Corruption Council (ACC) were concerned that the Rulebook did not sufficiently distinguish proceedings on the request for protection from proceedings on the report of corruption. The ACA were themselves clearly not entirely satisfied with their Rulebook as they state (2011 Report) 'A significant obstacle encountered during adoption of the Rules on Whistleblowers as a bye law was the fact that there are no substantive law norms in general statutes regulating the nature, content and scope of the right being protected, types and forms of disclosures in public interest, as well as content, character and type of corresponding protection'.

Private sector

3.10 A 2006 Code of Business Ethics passed by the Serbian Chamber of Commerce establishes the principles and rules of business ethics that are binding for companies, members of the Chamber of Commerce, employees, members of the bodies, and persons engaged under a contract at a business entity. Article 93 provides that no repressive measures may be taken against persons reporting in good faith violations of these provisions. Article 92 provides for
safeguarding the confidentiality of the person who reports to the Chamber of Commerce a violation of the Code. However, his identity may be revealed in the following cases: 1. When necessary for the purpose of procedures to prove the violation. 2. When required by the law. 3. When the person agrees to be identified.

3.11 A Law was passed in 2011 on Business Entities (RS 36/2011 and 99/2011), which requires them to protect an employee who reports to relevant authorities a business secret in order to uncover an illegal act. It does not deal with what happens if they report to the media/public.

3.12 The Chamber of Commerce has addressed the need for introducing integrity plans as a preventive measure aimed at combating corruption in business entities. Fundamental elements contained in the integrity plans include evaluation of an institution’s level of exposure to corruption. It is not clear if whistleblowing policies currently form part of such plans.

Harassment

3.13 The Law on the Prevention of Harassment at Work, which applies to both private and public sectors, aims to prevent a wide range of harassing conduct, which ‘recurs’ [Art 6]. Article 8 makes the employer liable to protect the employee against harassment. If a complaint is made that does not lead to a criminal charge, a mediator can be called in. Article 31 provides that if the prosecutor establishes that harassment occurred, the burden of proof that such conduct did not occur shall fall upon the employer. This law could be used by whistleblowers in cases where the retaliation against them amounts to harassment - which would require that it was relatively serious and that it recurred.

Non-reporting offence

3.14 Articles 331 and 332 of the Criminal Code establish criminal offences of failure to report a criminal offence that people are aware of through their work. The MOJ have made clear that they apply to both the public and private sectors.

Witness protection

3.15 Criminal law measures are in place to ensure the protection of witnesses involved in criminal proceedings (Article 109, Criminal Procedure Code). In addition, a Law on the Protection Programme for Participants in Criminal Proceedings entered into force in 2006. A Protection Unit was created within the Police to implement witness protection programmes. The Unit has already developed experience in connection with cases dealing with organised crime and war crimes. In addition, a specific Commission, in charge of monitoring implementation of the witness protection programme, started to operate in 2006; it is composed of a representatives of the Supreme Court, the Prosecutor’s Office, and the Protection Unit. Based on these
developments, GRECO considered their recommendation on witness protection to be satisfactorily implemented (in their 2008 Report). The MOJ assured us that the programme covers other types of case (including corruption) and that it provides a context for the protection of whistleblowers who face immediate dangers, as the person protected does not have to be a witness as such.

Secrecy

3.16 The Law on Secrecy sets out 4 categories of classification of information in Article 14:
- Top Secret, which is assigned with a view to preventing irreparable grave damage to the interests of Serbia;
- Secret, which is assigned with a view to preventing grave damage to the interests of Serbia;
- Confidential, which is assigned with a view to preventing damage to the interests of Serbia; and
- Restricted, which is assigned with a view to preventing damage to the operation or performance of tasks and activities of the public authority which defined them.

3.17 Article 8 defines more precisely which data can be classified as secret information. That is information which if uncovered to an unauthorized person would result in damage. The additional condition is that the need to protect the interest of Serbia is greater than the interest in free access to information.

3.18 Article 3 declares that information classified as secret in order to conceal illegal acts shall not be considered secret. That provision could be of importance in a whistleblowing case. No procedure is prescribed for dealing with lifting secrecy in Article 3 cases, and the MOJ informed us this could only be done by a court, though a person disclosing a secret document to a prosecutor on the grounds that s/he believed it was covered by Article 3 would not face prosecution for that disclosure.

3.19 There are provisions which allow for secrecy to be reviewed or removed in other cases. Notably, Article 25 regulates situations where secrecy is removed on the basis of the decision of the Information Commissioner. The procedure is that the Commissioner orders the person who classified the information to de-classify it. Also, Article 26 provides the possibility for top state officials (chair of Parliament, President, Prime Minister) to de-classify information for reasons of public interest or international duties.

B - IMPLEMENTATION

General
3.20 At an ACA workshop in 2011, the Information Commissioner said that Serbia could not possibly be satisfied with the current treatment of whistleblowers in the country. Annex A to this report sets out some examples of cases which illustrate the problems, but also show how results - including sparking action by law enforcement - are on occasion achieved by whistleblowers. This section considers some of the main authorities who are, or could be, helpful to whistleblowers in addressing the issues they have raised. It is a mutually beneficial relationship as whistleblowers help them fulfil their watchdog function.

3.21 It is widely recognised in Serbia that fear of the consequences is only the second most important reason why people do not speak up, and that the most important reason is the belief that nothing will be done. This was also the conclusion from research in the USA. It is therefore essential to look not only at changes to protect whistleblowers, but at the role of authorities in fixing the substantial issues they raise. The time limit for this report did not permit a proper examination of the regulators and, especially if a new whistleblowing law is to cover all wrongdoing, future work will need to look at all the regulators, including for example the Tax Administration, the National Commission to Protect Bidder's Rights, the Public Procurement Office and the regulators responsible for the financial and health services, amongst others.

**Anti-Corruption Agency (ACA)**

3.22 The Agency started its work in January 2010. It has not been given investigation or prosecution powers, but has a wide range of competences for preventive measures. It supervises conflict of interest cases and the funding of political entities. It also receives asset declarations from officials and maintains an asset register on its website. Under Article 65 of its law, it receives 'complaints' from legal entities and natural persons (who may be in the private or public sectors) on issues within its remit. It receives significant numbers of complaints (660 in 2011) and as these are reports about wrongdoing they can be seen as whistleblower cases by another name.

3.23 As noted at 3.5, the ACA has recently also been given separate powers in relation to public sector whistleblowers in corruption cases, in particular under the 2011 Rulebook. Based on the Rulebook, ten requests for whistleblower protection had been submitted to the Agency by the end of 2011. 3 of the 10 cases did not, in the Agency’s view, have legal grounds for whistleblower status. The Agency have supplied one example of a whistleblower case, which is mentioned in Annex A (A10-14).

3.24 It is a function of the ACA under Article 5 to issue guidelines on Integrity Plans in both the public and private sectors. Integrity Plans should clearly incorporate whistleblowing policies as a risk management tool. This is an aspect of the ACA's work that they intend to develop.

**Ombudsman**
3.25 The Ombudsman (or ‘Protector of Citizens’) has power to investigate all wrongdoing within public authorities, which includes any organisation acting in the name of the public (so, including private companies that carry out public functions). In principle his office operates as a last resort, but also has power to act directly in cases of serious violations, and in practice these constitute 90% of the cases dealt with (which amount to about 8,000 per year).

3.26 The Ombudsman has power to call for documents, even those classified as ‘Top Secret,’ and can therefore investigate such sensitive issues as unauthorised wire-taps. His office has no special powers in relation to whistleblowers, though it can hide their identity if they so wish. The Ombudsman has found that measures are often taken against those who make reports to his office, ranging from trivial refusals to give them papers, to serious human rights violations. He has proposed a new legal provision which would empower him to rule that any measures that have been taken against a person who has warned him about illegal behaviour should be suspended or abolished. He will also propose a new criminal offence of threatening a person who is co-operating with the Ombudsman.

3.27 While the Ombudsman’s recommendations are not legally binding, they are followed in 70% of cases, which he states is a higher rate than is achieved by the courts - less than 5% of their decisions with financial implications are implemented within the timescale set by the court.

Information Commissioner

3.28 The Commissioner has substantial powers under Article 35 of the LFAIPI - in particular to consider complaints against the decisions of public authorities that violate the rights provided for by this Law. He is thus in a position to help whistleblowers pursue their cases by ensuring information is made available to demonstrate that their concerns are justified. He has done so in several cases. Under the LFAIPI any type of information, even classified, can be made available if the public interest is strong enough. In the Commissioner’s experience information tends to be over-classified, but he can order the body who classified the information to de-classify it and make it available. The body can appeal to the administrative court.

3.29 In the Commissioner’s experience, people in Serbia in general have no problem in speaking up openly, but they do face retaliation.

Labour Inspectorate

3.30 The Labour Inspectorate have the potential to play a crucial role in relation to private sector whistleblowers. They can act ex officio or when petitioned by an employee. They sometimes receive reports in confidence, or even anonymously, and follow them up with ex officio inspections, so that the identity of the whistleblower is not revealed. They also play a role, along with the ACA, in encouraging employers to adopt integrity plans.
They can rescind decisions taken by employers, but they cannot impose sanctions and admit that there is a problem of non-compliance by employers with their rulings. In one case they ordered the re-instatement of a whistleblower, but the employer did not comply. They are empowered to petition the misdemeanour court in such cases. They are not satisfied with the existing mechanisms. They expressed the view that only a clearly stipulated competence in a special law on protection of whistleblowers would empower them to exercise jurisdiction in cases where employees suffer retaliation as a result of whistle blowing.

The Ombudsman stated that workers often come to him after disappointment with the Inspectorate, who feel obliged to adopt a legalistic approach, not considering the underlying issue of fairness. He says they are too dependent on big companies and on politicians - the Ombudsman quoted a case where the Inspectorate had refused to investigate a clear case of illegal employment within a firm owned by a prominent politician’s spouse.

The State Audit Institution (SAI) is the highest authority for auditing public funds. It was founded in 2005, by virtue of the Law on the State Audit Institution. It is an independent state authority accountable to the Parliament. Equivalent bodies in other countries (eg the National Audit Office in the UK) find their efficiency is increased by encouraging reports from whistleblowers. There was not time to meet the SAI but I understand the SAI has uncovered irregularities in public bodies though it is alleged that the police and prosecution have not followed up the cases identified by the SAI.

As regards the content of laws, this report draws in particular on the PACE Resolution 1729/2010, which sets out principles for legislation on whistleblowing, and on the similar principles drawn up by the G20 as part of their Anti-Corruption Plan in 2010-11. PACE’s views are not binding, but there is a prospect of a Council of Europe Recommendation based on the PACE principles. The G20 principles are not binding on Serbia, but they are influential. In general, international best practice is not fixed, so there is room for flexibility in addressing this issue.

As we saw at 2.4, Serbia is under international obligations to protect whistleblowers who report corruption, whether they are in the public or private sector. Although the sectors could continue to be dealt with separately, it is desirable to deal with both in a single
law, especially in view of the increasing tendency for public services to be contracted out to the private sector. Under a single law there can be no dispute about which law applies and it will be easier to build awareness and ensure all know the essential features of the law.

4.3 Serbia is not alone in focusing on corruption in the public sector so far, although a very broad definition of corruption has been used in the LFAIPI. The PACE Resolution calls for whistleblower laws to go beyond corruption, and to cover 'warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals'. The G20 Principles recommend covering disclosures of ‘a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or types of wrongdoing that fall under the term corruption, as defined under domestic law(s)’. The G20 thus propose to cover some acts that are not necessarily illegal.

4.4 This is a matter of political choice and the scope of the law could be limited, at least in a first phase, to corruption, on the grounds that is the priority area. However, Serbia could make a larger step forward by introducing a whistleblower law covering warnings and reports of all illegal acts. There may be no need, at least for now, to consider looking beyond illegal acts, particularly since Serbia has a criminal offence which covers a wide range of activity that might normally be regarded as mismanagement (article 359, Criminal Code). There is one technical issue to note here: in the UK it has been successfully argued that whistleblower law covers a report about a breach of the terms of an individual’s own contract. This is not a desired outcome: there should be a public interest in the report. The law should thus specify that the matter complained of should not be one that solely affects an individual’s own contract.

Grounds for reporting

4.5 The CoE Convention requires that the whistleblower has 'reasonable grounds to suspect'. It also requires him to act 'in good faith.' It is desirable that the law should create a presumption that the whistleblower is acting in good faith unless the contrary is shown (as under Romanian law). Provided s/he meets these criteria, it should not matter if s/he is wrong.

4.6 It is a difficulty that the meaning of ‘good faith’ is not at all clear. In the context of UK law, the courts have ruled that the term implies that the motive of the employee can be considered. This causes lengthy arguments on cases. It would be better to define the term clearly and Public Concern at Work (the whistleblowing charity that devised the UK law) have argued that it should mean ‘honestly’. The present definition of ‘good faith’ in the ACA Rulebook (see 3.6), is helpful in stating that ‘good faith’ is not called into question if a report based on reasonable suspicion turns out to be mistaken. However (although this point is based on PACE’s views), it is not helpful that it refers to ‘unethical’ objectives. There is room for extensive legal argument about what is or is not ‘unethical’, so in the result the definition does not really clarify the term, and the door remains open to discussions about motives.
4.7 Does the whistleblower’s motivation matter, if there are reasonable grounds for suspicion? I suggest that it does not matter enough to allow wasteful legal debates about it, and it is sufficient that good faith should be defined to mean ‘honestly’. Clearly an allegation made without reasonable grounds, and which is malicious, should be sanctionable. That is already the case as there is criminal liability for false reporting and accusation for criminal offences under Article 334 of the Criminal Code and in media regulation.

Public disclosure of confidential information

4.8 The judgment of the ECtHR in the case of Guja v Moldova states ‘The interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence’. Mr Guja, a civil servant, went to the press with information that his superiors regarded as confidential, and the ECtHR, in finding that his action was justified, took into account the fact that there were no other effective channels for him to make his concerns known.

4.9 The ECtHR will therefore rule in favour of whistleblowers who make disclosures to the media, in circumstances where it is reasonable for them to do so, and it follows that the law should protect them in such circumstances. Justification that it is reasonable may depend on the seriousness of the issue and on whether alternative channels do not exist, have not functioned, or cannot be expected to function. The law will need to provide for all ordinary duties of confidentiality to be over-ridden in such cases. This might be done as part of a wider provision making it a defence to any relevant civil or criminal proceedings against an individual (for example for defamation or breach of secrecy or copyright laws) that s/he complied with the law on whistleblowing. Legal privilege however should be maintained, to ensure whistleblowers can consult lawyers in confidence - the lawyer should not be able to report the whistleblower’s statement without their consent.

4.10 Problems arise with exceptional material that is so secret that its revelation would cause such serious damage as to outweigh the public interest in it. Whistleblowers (especially if they work in the military or the security services) may occasionally need to report cases involving very sensitive material, and the law may need to provide special channels for dealing with those workers. That is what is proposed in the new draft law currently under consideration in Ireland. The Irish draft maintains the key principle of access to an independent third party by providing for a new disclosure channel to a ‘complaints referee’, who will report to the Prime Minister. (Discussions on this draft are ongoing).

4.11 The G20 recommend as a best practice: ‘Individuals are not afforded whistleblower protection for disclosures that are prohibited by domestic laws in the interest of national defence or the conduct of foreign affairs, unless the disclosures are made in the specific manner and to the specific entity/entities those domestic laws require’. This is based on US law. Similarly, in Slovenia the Integrity and Prevention of Corruption Act 2010 states that those who report corruption to the Anti-Corruption Commission (KPK) or to law enforcement agencies will
not infringe laws on classified information.

4.12 Any channels prescribed by the law will need to be effective - if not, as the Guja judgment suggests, the ECtHR may uphold the right of a whistleblower to go to the press. The ECtHR also strongly defends the right of journalists not to name sources, as shown by another judgment (Tillack).

4.13 The issue of confidential information is difficult and it proved a stumbling block when whistleblowing was last considered by the Serbian Parliament in 2009. It is discussed further at 5.13ff.

Reporting to authorities

4.14 The ECtHR Guja judgment says 'disclosure should be made in the first place to the person’s superior or other competent authority. It is only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public’. Thus the law should make a fundamental distinction between reporting to authorities (including police), and reports to the media (or NGOs, or any other public disclosure). A ‘stepped approach’ is desirable (as in UK law). This would make clear that internal disclosures are more readily protected that disclosures to regulators. An internal disclosure would require nothing more than the basic requirements (in 4.5); a report to a regulator would carry an additional requirement that s/he believes that the information contained in the disclosure falls within the remit of the authority. But in essence both types of disclosure should be simple and much more readily protected than public disclosures.

4.15 The provision of clear lines on reporting to authorities will reduce the likelihood that public disclosures will be justified. The question of which authorities are appropriate for which issues can be complex. Under UK law a list is drawn up in subordinate legislation made under section 43F of the Employment Rights Act 1996. This provides legal certainty, but experience has shown that it needs to be updated quite frequently. It is for consideration which method of listing authorities might work best in Serbia, but it needs to be centralised, accessible and capable of being updated when need be.

Exceptionally serious cases

4.16 It has been found useful in the UK - and in the Irish draft law - to make special provision for exceptionally serious cases, so that the formal requirements on the whistleblower are minimised in these cases. Where a report is made about exceptionally serious wrongdoing, both laws require only good faith, belief that the allegation is substantially true, that the disclosure is not made for personal gain, and that in all the circumstances it is reasonable to make the disclosure. In determining whether it is reasonable for the worker to make the disclosure, regard is to be had, in particular, to the identity of the person to whom the disclosure is made.
When the UK law was in Parliament the Government stated that the provision ‘does not mean that people should be protected when they act wholly unreasonably: for example, by going straight to the press when there could clearly have been some other less damaging way to resolve matters’.

Assurance of confidentiality

4.17 PACE recommends that the law provide that the identity of the whistleblower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest. Clearly if the whistleblower is willing to speak openly, this is ideal. The difficult issue is, in what circumstances can his identity be revealed without his consent. As we saw at 3.10 there is a provision in a regulation made by the Serbian Chamber of Commerce, which states that confidentiality may also be lifted when necessary for the purpose of procedures to prove the violation. This arguably goes too far: if the whistleblower is not willing to give evidence, there is no point in taking that step, and it may damage him. If whistleblowers are to be encouraged to come forward they need to know that confidentiality, if they need it, will be maintained with a minimum of exceptions. It is suggested that the law should say that his confidentiality may be lifted if required by the law or by the order of a court. That should be explained to him.

4.18 The ACA Rulebook contains detailed provisions on confidentiality (Articles 18 and 19), including which officials within the ACA may know whistleblowers’ identity. These are too detailed for a general law, but the law might state that if a whistleblower seeks confidentiality, then knowledge of his identity should be carefully restricted to those who need to know, depending on the circumstances of the case. The degree of confidentiality will depend on a risk assessment made by the employer as part of his duty of care. If it is fully understood that confidentiality will be properly respected and guaranteed, there will be less reason for anyone to use the cloak of anonymity. However those advising whistleblowers need to be clear that confidentiality does not stop colleagues from guessing who raised the concern.

Definition of retaliation

4.19 In Norwegian law retaliation is understood broadly as any unfavourable treatment which is a direct consequence of and a reaction to the notification. In the UK, the law covers any 'detriment.' It has been left to the courts to define this broad term and they have held that it includes failure to investigate the report properly.

4.20 A more specific list is possible, and one is provided at Article 2.3 of the ACA Rulebook. Whichever approach is adopted, the law must have scope to cover subtle forms of retaliation. It should cover not only action by the employer, but measures are taken against an employee by co-workers. There are examples of new laws making employers responsible in such cases. For example in Luxembourg it is provided that if the employee establishes that s/he was
victim of retaliation - whether by the employer, colleagues or indeed external persons linked with the employer - it is for the employer to prove that the action was justified by other objective elements. In the Netherlands there is now a duty for management to ensure that the whistleblower is not hindered in any way to continue to perform his/her function, including preventing retaliation from colleagues (see Annex C for references). It should be part of an employer’s duty of care to prevent victimisation of whistleblowers, and it should be a defence that s/he took measures to do so.

Court hearings and compensation

4.21 The G20 call for ‘rights of whistleblowers in court proceedings as an aggrieved party with an individual right of action, and to have their genuine day in court’. PACE calls for ‘interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone (6.2.5)’.

4.22 Interim relief needs to be decided quickly and ideally the court should also be able to hear the full case swiftly. In reality court procedures are rarely swift - rather, some are longer than others. Specialisation is also desirable. In several countries the cases are heard by Labour Courts or Employment Tribunals, which have a degree of specialisation and generally are not so slow as the civil courts.

4.23 It is a weakness of international practice that remedies mainly apply after the damage has been done. However there may be no direct solution to this. Rather the intention is that the awards made by courts in cases that have gone wrong will lead to preventive measures being taken by employers. There are some signs of this happening in some countries. However the weakness and slowness of the courts make this a particular challenge in Serbia and the issue is further discussed at 5.5.

Reverse burden

4.24 The PACE Resolution states: 'it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistle-blower were motivated by reasons other than the action of whistle-blowing' (6.3). There are numerous examples of such reverse burdens in national laws, which apply when cases come to court. They are very necessary because an employer could otherwise evade a law that does not allow dismissal for whistleblowing by claiming that the dismissal was for something else. It would be hard for the employee to prove otherwise.

4.25 There is already a provision of this general nature in Serbia - Article 31 of the Law on the Prevention of Harassment at Work. There is also such a provision in the ACA Rulebook (see 3.7), though it is time-limited. If such a reverse burden is incorporated into the law and triggered automatically when a report is made, there will be no need for any request process resembling that set out in the ACA Rulebook. In any case, though it is early to draw
conclusions, the limited experience so far suggests that the establishment of an administrative process of providing a legal protection through application to an agency is not ideal. Also, the reverse burden is not time-limited in other jurisdictions.

Civil liability for retaliation

4.26 PACE state ‘the most effective option to prevent retaliation may be the personal liability of those found responsible for violating whistle-blowing laws for any punitive damages awarded against the employer’. Ireland plans to allow whistleblowers to make a claim (it is called ‘tortious liability’ in their draft law) against any third party who retaliates against them. This could be a useful provision.

Awareness

4.27 GRECO have made the point that a law will be ineffectual if it is not properly promulgated. That is mainly a matter of practice rather than law but there is a Serbian model provision which could be adapted in Article 7 of the Prevention of Harassment Act. That requires employers to notify their employees in writing, of the prohibition of harassment and the rights, duties and responsibilities of the employee and the employer in relation to harassment law. A similar provision on whistleblowing would be useful. It might require the employer also to inform the worker of the organisation’s own whistleblowing policy. That in effect requires organisations to have their own policies. The sanction would be that the communication of this policy would be taken into account by the court in any whistleblowing case that arose.

Review

4.28 GRECO stressed in 2008 that ‘the legislative framework to protect whistleblowers will need to be coupled with adequate implementation/review mechanisms to ensure that the law will work efficiently in practice’. This important need is often overlooked in international practice, and it would be useful to build it into the law.

Crime of retaliation

4.29 The provisions above address the workplace situation. There remains a problem of retaliation from third parties who are not linked with any employer. In general such forms of retaliation will be less subtle and should be covered by wider criminal law. However Art 257 of the Criminal Code of Hungary makes it a specific offence punishable by imprisonment to retaliate against a whistleblower. It states ‘Any person who takes any detrimental action against a person who has made an announcement of public concern is guilty of a misdemeanor and may be punished by imprisonment not to exceed two years, work in community service or a fine’. The ACC are in favour of a crime of retaliation in Serbia. Given the problems in the civil courts mentioned in 5.4, this may well be desirable, since it provides another route by which action
might be taken. It may also have a preventive effect. Clearly the purpose of such a provision is to cover lower level acts that may not be caught by the general criminal law. It would not seem appropriate to extend the reverse burden as proposed at 4.23 to this criminal law provision.

Rewards

4.30 There are systems, long established in the US, and recently introduced in Hungary, that provide for financial rewards for whistleblowers. The US ‘Qui Tam’ system under the False Claims Act is considered one of the strongest and most effective whistleblowing laws in the world. ‘Qui Tam’ (whose origins date back to 12th century England), allows citizens with evidence of fraud involving government contracts to sue, on behalf of the government, in order to recover the stolen funds. In compensation for the risk and effort of filing a Qui Tam case, the whistleblower may be awarded a portion of the funds recovered, typically between 15 and 25 per cent. According to the US Department of Justice, the US has recovered more than US$ 21 billion since 1986 thanks to the False Claims Act.

4.31 The introduction of a system of this kind would be a complex undertaking but it has some support in Serbia and is worth further consideration. Without going so far as that, TI have recommended that whistleblowers ‘should receive some kind of professional or social recognition for having prevented excessive harm to the organisation or society. Such a system, potentially including financial rewards, should be carefully designed, taking the particular national and legal contexts into account’.

4.32 This is an issue where opinion is divided. Qui Tam has been described in the UK as ‘using greed to fight greed’ and personally I have sympathy with this view. Some stakeholders in Serbia are opposed to systems reliant on rewards and prefer to foster a culture where the reporting of wrongdoing is natural and is motivated by the public interest. There is concern that an automatic rewards scheme could lead to ‘pre-arranged mistakes’ and that discretionary awards could be made on the basis of favouritism. If identifiable savings are made because of whistleblowers, the ideal might be to set them aside to be used to where the court orders compensation for a whistleblower but the employer is unable to provide it (eg because of bankruptcy).

4.33 A general bar on whistleblowers receiving rewards for providing information was included in the Ombudsman’s proposed amendments to the LFAIPI (see 5.13). However that provision was without prejudice to the right of an employee to be rewarded by a public authority, for having reported a problem. This is in line with UK law, whose main aim was to prevent ‘cheque-book journalism.’ The media have an essential role to play in showing the value of responsible whistleblowing: but the problem is that payments for whistleblowers from the press may discredit whistleblowers in general, encourage inappropriate disclosures and undermine attempts to implement a considered and balanced whistleblowing regime.

4.34 The ECtHR stated in Guja that ‘an act motivated by............. pecuniary gain, would not justify a particularly strong level of protection’. This might imply that payment should not
disbar protection altogether, though it might affect the size of compensation. Many whistleblowing laws make no mention of the issue of gain. This means the issue of illicit payments is left to other laws and though, in principle, a worker might be disciplined - or even prosecuted - for taking an improper payment s/he would still be entitled to protection in respect of his or her public interest disclosure. Clearly any payment already received should be taken into account in any award of compensation.

4.35 The new law proposed in Ireland does not protect disclosures made for personal gain, though an exception will be made for rewards payable under any statute. This seems a reasonable approach, provided it also covers rewards from the person’s company or professional association in recognition of good conduct. Some international companies in Serbia already give bonuses to whistleblowers.

B - IMPLEMENTATION

Role of the ACA

4.36 Article 36 of UNCAC requires each state to ‘in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement’. That does not amount to an obligation to have a law enforcement agency specialised in corruption, and there are many different models for anti-corruption agencies internationally. It is however clear that public confidence is highest in those that have power to investigate and/or prosecute. Agencies with such powers are best placed to receive whistleblower reports: for example the Office of Special Counsel in the US and the New South Wales (Australia) Independent Commission Against Corruption,. However, the ACA do not have such powers and there seems no prospect of their acquiring them. As matters stand the ACA has difficulty in resolving the issues raised by whistleblowers as it lacks powers to act itself and has to convince others to act.

4.37 The Serbian authorities advised the Council of Europe (CDCJ) that the ACA Rulebook ‘provides detailed ‘reporting’ guidelines which advise the public which authority they should notify of a corruption suspicion and how they should do that’. But one searches in vain for any such provision in the adopted version. The missing provision would indeed be valuable. It would enable citizens to take their own action and recognise that, even within the field of corruption, there may be others better placed than the ACA to take their issues forward.

4.38 As things stand, unless the issue concerns one of its core functions (political party funding, conflict of interest, register of assets), the ACA will have to approach others, and Annex A shows that this may well lead to confusion and dead ends. Rather than give any single agency an inherently unsatisfactory middle position, it seems preferable to ensure as far as possible that whistleblowers go directly to the body best able to address the issue raised. For example, the State Audit Institute will be the best body to address an issue of false accounting in a government agency.
If the law is to cover all wrongdoing, there is a need to involve numerous agencies - not just those concerned with corruption. The Pistaljka website are engaged in drawing up a list of which issues are appropriate to which authority and this would indeed be a valuable piece of work.

As for protection of the whistleblower against retaliation this is a duty which law and practice should clearly fix on the employer. A duty of care falls on the employer - once they are aware of a report which appears to meet the statutory criteria they will need to ensure there is no workplace retaliation against the whistleblower. The ACA can certainly play a role in encouraging employers to take their duties seriously, which is in effect what the Rulebook provisions require. If there is a need for practical, physical measures of protection, that should be considered in the context of the witness protection programme (see 3.15). That may well mean additional resources are needed for that programme.

Integrity Plans

Whatever the law may state, employers are free to promote a culture in which it is safe and accepted to blow the whistle. The ACA has power to encourage such developments and intends to do more as regards guidelines on internal whistleblowing systems for employers as part of their Integrity Plans. This should be a priority.

Probably the best European advice on good practice on internal policies is freely available in 'Whistleblowing Arrangements: Code of Practice' (PAS 1998:2008), which was developed by the British Standards Institution (BSI) in collaboration with PCaW. It encourages employers to communicate to staff policies which:

- provide examples distinguishing whistleblowing from grievances;
- give employees the option to raise a whistleblowing concern outside of line management;
- provide access to an independent helpline offering confidential advice;
- offer employees a right to confidentiality when raising their concern;
- explain when and how a concern may safely be raised outside the organization (e.g. with a regulator); and
- provide that it is a disciplinary matter (a) to victimize a bona fide whistleblower, and (b) for someone to maliciously make a false allegation.

It stresses that those at the top of the organization should show leadership on this issue and ensure that the message that it is acceptable to raise a whistleblowing concern is promoted regularly.
4.44 Reports are more likely to be made, and to be addressed to the right place, if potential whistleblowers have a help line to obtain independent advice at an early stage. The Netherlands will establish this year an independent Commission for Advice and Information on Whistleblowing (CAVK). This centre will act as a point of advice for (potential or actual) whistleblowers in both the public and the private sectors on how to raise concerns. It will check whether there are ways to raise the matter internally and, if not, it will assist the whistleblower to prepare the issue to be brought to an external agency. The ACA might perform this role in Serbia, in the field of corruption. This would complement, rather than detract from, the work of the voluntary sector - notably Transparency Serbia, which operates an Advocacy and Legal Advice Centre which takes several hundreds of calls a year. Once the over-arching law exists, the early advice can and should include the fact that the law provides protection once they have made a report, based on reasonable suspicion, in an appropriate way.

4.45 It is worth noting that, though it is desirable for whistleblowers to identify themselves to authorities, it is not encouraging for them to be asked to complete a substantial form, full of personal details, such as that in the ACA Rulebook, as part of their initial approach.

Anonymous reports

4.46 Article 13.2 of UNCAC states ‘each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention’. The ACA recommended in its annual report that consideration be given to relevant legal measures to apply in practice Article 13.

4.47 As the law stands the ACA are not allowed to proceed on anonymous information (under Article 65 of their law). The qualification ‘where appropriate’ in the UNCAC article provides significant flexibility and a bar on proceeding is not a bar on reporting. In my view, it may even be helpful to be able for the ACA to tell those who report anonymously that if their intelligence is to be used effectively they will need to identify themselves to the authorities, but that their identity will be kept strictly confidential.

IT-based reporting system

4.48 Some German police forces (for example Lower Saxony) and the Commission’s anti-fraud office (OLAF) use reporting systems which use technical safeguards to protect informants’ anonymity if they choose it and at the same time enable them to enter into dialogue with investigators. No one, either inside or outside the police, can discover the identity of anyone who has opted to remain anonymous. They operate like a 'blind' letterbox where both parties can drop off messages. The ACA might be able to operate such a system without any change in its law provided it is clear that the purpose is only to get those to speak up who otherwise would not dare to come forward and that it aims at gaining trust to use confidential (or open) channels. It is
Requests for whistleblower protection

4.49 There is little international practice on request-based systems. The disadvantage of this approach is that it requires a decision by an administrative body before the rights are enforceable. It also requires that citizens know they need to make a request. There is no provision for appeal if the ACA declines the request, which could present ECHR problems. Moreover, one of the few ACA cases dealt with has resulted in a whistleblower complaining as it transpired that the provision in the ACA’s law on the reverse burden applied only to one of the two jobs she held (see Annex A, A14). This kind of problem would be avoided by an automatic trigger.

4.50 If the ACA role is to advise whistleblowers on corruption which agency is best placed to deal with their report (which may or may not be the ACA), they might also have the role of deciding if special measures of protection are needed in a corruption case. This would not include the reverse burden provision, as that would be automatic. It might involve liaison with the witness protection programme (see 3.15). Generally, it is important not to create expectations that cannot be fulfilled, or citizens’ trust in institutions will be undermined.

Role of the authorities

4.51 As Annex A shows, some authorities have proved more willing and/or more able to help whistleblowers than others. The ACA should enhance its dialogue with other authorities as part of its work on integrity plans. Inspectorates and other authorities who exercise oversight in any field should encourage whistleblowers to report to them so that they can perform their functions effectively. The more employees feel able to blow the whistle to them, the more this will encourage and help responsible employers to (a) establish effective internal compliance systems and (b) adopt open and constructive relationships with the authorities.

5 OBSTACLES AND CHALLENGES

Problems of law enforcement

5.1 Laws on whistleblowing cannot function effectively without independent law enforcement and free media. This remains a work in progress everywhere, and in Serbia citizens have little confidence in the fundamental institutions of law enforcement - police, prosecution, courts - and even in the media.

5.2 This was demonstrated, as regards corruption cases, in a 2006 survey carried out by Transparency Serbia with the Westminster Foundation for Democracy, which asked a sample of people to whom would they turn for help if faced with corruption. Only 11.1% would go to the police, and 6.5% to prosecutors. Most (22.6%) would turn to family and friends and a
significant proportion (12.1%) would not approach anyone. The main institutions trusted in such cases were the Anti-Corruption Council (19.7%), and the People’s Office of the President (8.3%), neither of which has executive powers. It has to be noted that this survey took place before the ACA was established. A 2012 survey conducted by TNS for UNDP shows that 75% of people have now heard of the ACA and 13% think it should be leading the fight against corruption. Trust in the police on the specific issue of corruption remains very low, with 74% believing that the police are too corrupt to investigate corruption.

5.3 The ACA Report for 2011 says the ‘biggest obstacle for the Agency’s competence to act upon complaints of citizens is the statutory restriction of its purview to control and investigate issues from the complaints by itself. The Agency is compelled to rely to high extent on information and data obtained on request from competent bodies. Sluggishness and inefficiency of such communication and absence of enforcement in the outcome of such proceedings greatly diminishes the success rate of the Agency in these tasks’.

5.4 According to the Ombudsman the courts are neither efficient nor neutral. They are also subject to unreasonable delays, and Serbia has lost cases under the ECHR on this ground. Employment cases are dealt with under the Procedural Code as urgent cases, meaning they should be heard within 6 months. But the MOJ admitted this was not adhered to in practice and the Ministry of Labour said that in practice cases might take 4-5 years. Nor are final court decisions always adhered to. There is a procedure for the peaceful settlement of labour disputes designed to reduce the cases coming to court. However, the MOJ said that the delays and weak authority of the courts undermine efforts to settle cases out of court, because employers prefer to take their chance on a long draw out process which may never impact on them forcibly rather than make an immediate payment.

5.5 Labour courts in Serbia were no quicker than ordinary civil courts when they were abolished in 1992. Thus the current Trade Union proposal to re-instate them may not help, even if it progresses. There is a special Labour section within the ordinary civil courts. Given that specialisation is possible, it is worth considering whether a part of the Labour section (perhaps a very small group of judges) could be designated to deal with whistleblowing cases. They would be able to build expertise, and relations with regulators, and understand when decisions were needed quickly (notably on interim relief).

5.6 The overall situation of law enforcement is not conducive to whistleblowing, but it is reasonable to hope that it will change for the better, in the light of various projects for reform. In the specific field of whistleblowing, it is noteworthy that the police recently (December 2011) issued a handbook on corruption, encouraging officers to report corrupt colleagues.

Politically-controlled media

5.7 As regards the media, the ACC say they are ‘firmly controlled by politicos and
tycoons’. The Independent Association of Journalists also said that the papers were politically controlled, except for some minor titles. However, modern technology ensures there are other outlets for whistleblowers - notably the website Pistaljka, set up in 2010 by journalists sacked from a paper when they exposed its political control. It is mainly concerned with abuse of office and misuse of public funds. The problem is that it is not widely read. The ACC itself, set up as a government advisory body in 2001, has an impact on public opinion and it makes its opinions widely known. It analyses cases and forwards them to prosecutors (who, they say, have not processed any of their cases for 9 years).

Resources for Regulators

5.8 The ACC have written of ‘the non-existence of the working conditions for the independent regulatory authorities as well as their autonomy and quality work’. It is clear that in general regulators lack resources but on the other hand results can be achieved by at least some of them, as Annex A shows.

Achieving a consensus

5.9 As in all jurisdictions, it is a challenge to inter-connect the whistleblowing law with other relevant laws - for example on Secrecy, and Data Protection. This is a task that requires full consultation and engagement between stakeholders which cannot be achieved in a short space of time. Several major stakeholders are fully convinced of the need for a new approach but this may not be true of all of them.

Buy-in from Private sector

5.10 Getting buy-in from the private sector will be crucial. International companies in Serbia are well seized of the desirability of establishing whistleblower policies which encourage employers to warn them internally of issues before they become crises. This makes good business sense, and is also encouraged by the international reach of the US Sarbanes-Oxley Act. Sarbanes-Oxley applies directly to any company listed on the US stock exchange, and also indirectly to European subsidiaries of listed US companies. It obliges companies to establish independent internal audit committees and to provide opportunities for employees to make protected and, if desired, also anonymous internal whistleblowing disclosures in relation to accounting or financially relevant issues (Sec. 301).

5.11 The process of devising a law will need to take on board the views of small and medium enterprises. It will be important to make clear that the more they develop policies for dealing with issues internally, the less call there will be for outside disclosures.

Unrealistic expectations
5.12 It is important to make clear that ultimately whistleblowers cannot be protected from all risks. It may often prove impractical for them to continue in their job. The decision to blow the whistle is a difficult one, and may lead to a long-term involvement in the issue as court cases may drag on for years. An over-arching law can only aim to minimise the harm and ensure that, at the end, if there has been harm, a court can award compensation. A change in the culture requires a wider social and political commitment.

Confidential information

5.13 In 2009 the Ombudsman submitted draft whistleblower provisions (for the public sector only) for incorporation into the LFAIPI, which were not accepted by Parliament. These amendments were inspired by the Information Commissioner, who does not have the constitutional right to put legislative amendments before Parliament. These amendments would have allowed all kinds of information, no matter how secret, to be made public if conditions of the kind mentioned at 4.9 were met.

5.14 The 2010 report of the Information Commissioner explains what happened (at 6.4.2.): 'the adopted version of those provisions offers protection only to those who disclose information that the public would be allowed to access in any case in accordance with the Law, thereby making them de facto pointless. Such legislative arrangement does not guarantee any protection from liability for employees who, in the genuine belief that confidentiality is used as a screen for some illegal action, disclose such documents or information'.

5.15 Thus the use of confidential material proved the stumbling block in 2009. The Government and Parliamentary committee rejected the Ombudsman’s amendment with the explanation that the issue should be regulated in a different law, in particular the law on Secrecy. It is certainly arguable that the issue is best considered out of the context of the LFAIPI, which is about public access to information. The situation of whistleblowers is different since they already have the information, by virtue of their position, and are worried about an illegal act. The point is well made in the CEE study: ‘Whistleblowing is widely regarded as an element of the freedom of information. However, the two should not be confused. On one hand, the scope of whistleblowing covers more than the notion of freedom of information, because it may concern exceptional information. For instance, it may require the disclosure of classified information relating to maladministration. On the other hand, it can be less: generally, public interest disclosures must be done by using official channels. Whereas freedom of information means the unrestricted spreading of information, whistleblowers (according to the rule of thumb) must address the disclosures to the competent authorities’.

5.16 As discussed in Chapter 4, international practice suggests that it is accepted that there may need to be special rules for routes for military and security services workers, and for disclosures prohibited by law in view of vital interests such as national security and foreign relations. In such cases disclosures to the press may not be protected by whistleblowing law,
although disclosures through authorised channels would be. The Ombudsman is already authorised to consider top secret material. The Ombudsman also has the trust of the public and is therefore a suitable authorised channel.

5.17 If in an exceptional case, a whistleblower feels there is no reasonable alternative to making highly classified material public, Article 3 of the Law on Secrecy (see 3.18) offers a possible route by which the court will be able to ensure right is done. The whistleblower may be able to argue that that the classification conceals a crime, and that therefore the court can lift it.

Data protection

5.18 Those who apply for EU membership have to adjust their data protection regulation to Directive 95/46/EC. To be legitimate, the data processing in a whistleblowing regulation has to satisfy one of the grounds set out in Article 7 of the Directive. Under Article 7 c.), the establishment of the whistleblowing system is legitimate if it is necessary for compliance with legal obligations to which the data controller is subject. This means that the establishment of a reporting channel should have the purpose of meeting a legal obligation imposed by the EU or member state law, and more specifically, a legal obligation to establish internal control procedures in well defined areas.[29] According to Article 7 f.), the establishment of a reporting system may be found necessary for purposes of a legitimate interest pursued by the controller or by the third party to whom the data is disclosed. According to the Article 29 Working Party, the group of European data protection authorities, “the goal of ensuring financial security in international financial markets and in particular the prevention of fraud and misconduct in respect of accounting, internal accounting controls, auditing matters, and reporting as well as the fight against bribery, appears to be a legitimate interest of the employer that justifies the processing of personal data by means of whistleblowing system in these areas.”

Retaliation outside the workplace

5.19 The ACA Report for 2011 states ‘There were cases in the Agency’s practice where persons against whom complaints were filed for suspicion of corruption, resorted to retaliatory actions against the whistle blowers, where retribution was not confined only to the working environment of the whistle blower but were, in some cases, followed thus feeling threatened for their safety and that of their families’.

6 CONCLUSIONS AND RECOMMENDATIONS

Is there a sufficient basis?

6.1 Shortcomings in whistleblower protection have been identified by several authorities, both domestic (for example the ACA, Ombudsman and Commissioner for Information) and international (GRECO and the EU). Moreover, it is in any country’s own
interest to ensure it has clear channels for whistleblowers, so that risks can be identified and addressed before they develop into crises. This will also lessen the likelihood that there will be approaches to the press, which will be considered justified by the ECtHR.

6.2 While it would be possible to meet the concerns expressed by piecemeal amendment of existing laws, there is a widespread view among stakeholders in Serbia that there should be a new overarching law. In this context it is worth bearing in mind the experience of Ireland. Having previously informed GRECO that they would include whistleblower protection in sector-specific regulations, Ireland has now reconsidered its position in the light of domestic criticism, notably from the Irish Standards in Public Office Commission. Also, the 2012 Report of the Mahon tribunal (set up to investigate allegations of corrupt payments to politicians) said the fragmented approach has led to a complex and opaque system for protecting whistleblowers which is likely to deter some people from reporting corruption offences. As a result the Irish Government has announced a single overarching framework protecting whistleblowers in a uniform manner in all sectors of the economy, which has begun its Parliamentary progress. This could be a useful contemporary model for Serbia.

Legal change

6.3 There are 2 aspects: firstly, a new overarching law to provide legal protection before the courts in the event of a dispute. And secondly, legal and practical measures to strengthen the hands of the regulators. The proposals made below all require further discussion and debate.

The new over-arching law

6.4 An overarching law should be drafted to cover all workers, in public and private sectors, who report any kind of wrongdoing. The Ministry of Labour are in favour of it forming part of Labour Law. That seems desirable so that it becomes well known, applies to all employees and is recognised as an issue for the Labour Inspectorate. Separate action would need to be taken for any workers - for example civil servants - not subject to Labour Law. The main features should be:

- The law should apply to warnings or reports of illegal acts (planned or committed) [4.4]
- For the worker to be protected s/he should be required to have reasonable grounds of suspicion and act in good faith (meaning honestly) [4.5-4.7]
- If the worker reports to a regulator there may be an additional requirement that s/he believes that the information contained in the disclosure falls within the remit of the authority [4.14]
- There should be an authoritative list stating which authorities are appropriate for which types of report [4.15].
- For public disclosures the test should be whether the disclosure is reasonable in the circumstances. Justification that it is reasonable will depend on the seriousness of the
issue and on whether alternative channels do not exist, have not functioned, or cannot be expected to function. [4.9]

- It should be a defence to any relevant civil or criminal proceedings against an individual (for example for defamation or breach of secrecy or copyright laws) that he complied with the law on whistleblowing [4.9]
- Special channels for workers in the military and secret services [4.10].
- There should be special provision for exceptionally serious cases, so that the formal requirements on the whistleblower are minimised in these cases [4.16].
- Confidentiality to be respected if the whistleblower wishes and not revealed except if required by law or a court [4.17]
- Retaliation to be defined broadly to include any measure which affects a whistleblower negatively, whether taken by the employer or by co-workers [4.19-20]
- Right to apply to a court if there is any retaliation. The court to have power to order interim relief (at an early stage) and compensation at the end of the process where the worker suffers any retaliation. [4.21]
- The courts will apply a reverse burden which would operate as soon as a whistleblower has made a disclosure, or indicated his intention to make a disclosure. The effect would be that any retaliation would be presumed to be motivated by his disclosure, unless the employer could prove otherwise [4.24].
- Right for whistleblowers to bring a civil case against third parties who retaliate against them. [4.26]
- Employers to be required to inform workers of the provisions of the law and of their own whistleblowing policy, and the courts, when considering cases, to take into account whether they have done so [4.27]
- The law to be reviewed after a few years’ operation. [4.28]

6.5 In view of the need to consider circumstances outside the workplace, there also should be created a new criminal offence of threatening or taking other measures against a person because s/he has reported wrongdoing. (This relates back to the Ombudsman’s suggestion at 3.26) [4.29]

6.6 The issue of whether the law should make any provision on rewards is a matter for local decision in the light of further debate [4.30ff].

6.7 The ACA Rulebook needs to be re-considered in the light of the new law. Even within its existing remit, there are other priorities for the ACA in this field:

(i) ensuring employers put in place whistleblower policies as part of their Integrity Plans [4.41];

(ii) developing their role of offering confidential advice at an early stage to those who are thinking of reporting corruption (like the new CAVK in the Netherlands) [4.44].

6.8 Under the model proposed, the delivery of legal protection would be overseen by
the court. In view of the need for speed in resolving issues, it is worth considering the idea of a specialist unit within the Labour section of the civil court to deal with whistleblower cases (5.8). Immediate measures of physical protection would be delivered as part of the witness protection programme, which might need additional resources (4.40).

Strengthening the hand of the regulators

6.9 Especially bearing in mind the difficulty of ensuring a swift court response, there needs to be a review of the powers of regulators in relation to whistleblowers. In this study it is not possible to give more than some pointers:

- The Ombudsman has proposed a new draft law (3.26) which would empower him to rule that any measures that have been taken against a person who has warned him about illegal behaviour should be suspended or abolished.
- The Labour Inspectorate are not satisfied with their powers (see 3.31). They should be able to impose sanctions on employers who do not comply with their rulings.
- Such provisions might be considered for inclusion in the laws under which other regulators operate.
- In addition, there may be scope for more regulators to establish ‘hot lines’ to take reports of wrongdoing.

ANNEX A

EXAMPLES OF WHISTLEBLOWER CASES (UNOFFICIAL REPORTS)

A1 Ivan Ninic, a schoolboy and user of dormitory accommodation, reported abuses committed by the director of his institution. He noticed irregularities with money collection from pupils and applied under the Freedom of Information law to obtain information about the use of the funds and about a Ministry of Education inspection. The Government at first refused to comply, as Ninic was a minor, but the Information Commissioner insisted. The pupil lost his scholarship for the next year due to his engagement. However, the public prosecution initiated a criminal investigation and several people were charged. The system of money collection also changed. Ninic has also written for the web portal “Pistaljka” of irregularities in a number of public enterprises and was the victim of harassment by state inspections in 2011.

A2 Goran Milosevic, a worker in the national road company, reported anonymously large scale abuses regarding road fee collection for trucks. The company did not renew his
contract. He lacked confidence in the police so he personally collected some evidence of abuses
and tried to collect the rest of the material through the Freedom of Information law. The
company denied access. However the Commissioner for Information obtained read-outs of tolls
collected at a particular time which, matched against the worker’s video record of the number of
tucks passing the toll barrier, proved that the tolls paid did not match the number of vehicles
passing. Several months later, the police uncovered a huge organized group committing abuses
and a prosecution was initiated against the “road mafia”. There was no reward for the individual
who pointed to the abuses, and saved large amounts of money. Indeed he was out of work for 3
years.

A3 Milica Trifkovic, the Director of Geoput, a private road construction
company, stated that her company had been the victim of corruption in the procurement process
and that two state-owned companies were given preference illegally. Geoput complained to the
Commission for the Rights of Bidders, which ruled in its favour and ordered that the state-owned
companies should comply with the law and surrender the relevant sections of the road contract to
Geoput. But those companies ignored the decision of the Commission, although they were
obliged by the law to comply. Trifkovic found it impossible to interest the media in Serbia in her
report and instead informed a Brussels-based news-sheet, EurActiv.

A4 Ljubisa Milanovic, a former police inspector, was appointed by the Minister for
Health as an adviser on anti-corruption in June 2011. According to Pistaljka some progress was
made while he was in post but the appointment ended in January 2012. The Minister said that
Milanovic had decided to leave the ministry on his own but Milanovic denied he had resigned.
He added that the President Tadić had pressed Stanković to relieve him of his duty after he spoke
to TV about corruption at senior levels in the police and prosecution. He said others wished to
speak up about corruption but were afraid.

A5 Borko Josifovski was director of Belgrade Emergency Medical Service in 2006
when he discovered some doctors at the Service were taking money from private funeral homes
to alert them of the address of the deceased. Josifovski claimed that these doctors even failed to
resuscitate dying patients. He first reported this to the Ministry of Health, but as the ministry
failed to do anything, Josifovski went public. He was fired two days after the press conference,
even though a later report of the Ministry of Health supported his claims. After receiving death
threats, Josifovski left the country for a year to work with an Italian NGO as a doctor in the
Sudan. He eventually filed a private criminal charge, but the prosecutors dismissed it saying
Josifovski "had no personal interest" in the matter. In November 2011, the ACA filed criminal
charges with the office of the prosecutor against two doctors from the Emergency Medical
Service on the basis of Josifovski’s documentation. The office of the prosecutor has yet to launch
an investigation.

A6 Biljana Mraovic was not re-appointed as judge in December 2009 when the
Serbian judiciary went through a process of "reform". Mraovic, who had a distinguished career
as judge in criminal matters in the town of Sabac, blamed her non-reappointment on a corrupt
senior judge who overturned her rulings as he accepted bribes from lawyers representing criminals. She sent a letter with evidence of this to a number of institutions, including the Office of the President. Instead of checking her claims, the Office sent her letter to the senior judge who sued Mraovic for libel. Furthermore, an official from the Office of the President called Mraovic and threatened her saying she would sued for what she wrote. Later the Information Commissioner, who is also the commissioner for protection of personal data, investigated the incident and filed charges against the Office of the President and an unknown person who threatened Mraovic. The Office was fined, but prosecutors have not investigated the charge of threat.

A7 A secret services official was asked to investigate abuses in his own service, but when he did so he was transferred to the south. The administrative court was only able to look into the legality of the transfer, but the Ombudsman was able to consider the underlying fairness by testing what happened in other comparable situations. He found the transfer had been ordered as a retaliation. Nevertheless he was unable to effect a positive outcome, and the official left the intelligence services.

A8 A manager in the Railroad company reported illegal public procurements - the buying of trains without public tender. He was dismissed. An NGO referred the matter to the Information Commissioner who found that more had been paid than had been approved by 800k euros, and that this sum had been used to pay middlemen who knew nothing about trains. The directors are now in prison.

A9 A local authority worker reported to the Information Commissioner abuses in his authority - they employed more people than they were authorised, in a systematic way. The Commissioner found through documentation that his suspicions were correct. Still the worker was dismissed.

Case of Dr Bokorov

A10 Dr Bojana Bokorov, a radiologist, blew the whistle in 2010 on the practice in her Institute of allowing foreign patients, mostly Bosnians, priority radiation treatment for cancer in exchange for cash. The allegation was that the payments were corrupt. She applied to the ACA for whistleblower protection under the Rulebook, indicating that she was facing retaliation. She indicated that the additional work on the foreign patients had not been approved by the Ministry of Health (MOH) and had caused harm to those patients on the waiting list - some had died while waiting.

A11 The ACA raised this case with the MOH, who responded that they made significant efforts in order to adjust work of the Institute to the needs of Serbian citizens and that they will, in cooperation with other bodies, continue monitoring the work of that institution, its internal organization, work process management and responsibility for the legality of its work.
The ACA initiated the protection procedure with respect to Dr Bokorov’s position at the Institute, notifying responsible persons that any measure taken that influenced her employment status or working conditions, contrary to her will, in a 2 year period would be considered a reprisal. The ACA also requested the director of the Institute, to explain the circumstances of organizing and conducting the additional radiation therapy work. The ACA also requested a description of the facts in terms of carrying out radiotherapy at that Institute.

The ACA considered the requested responses very poor. They were informed that everything in that institute was conducted in accordance with the law and that Dr Bokorov didn’t suffer any retaliation. The ACA requested the Director to submit the waiting lists in the Radiation Therapy Office for 2010-2012, noting that if he didn’t comply with the decree, the ACA could initiate misdemeanour proceedings against him, as stipulated by the ACA Law. Dr. Bokorov has asked to be transferred to another post within the Institute, but the director has denied her request, even after the ACA stepped in and asked him to. Apparently the Institute Director has stated that he would not do anything unless he was proven guilty.

Dr Bokorov’s work at the Institute was covered by her whistleblower request, but her work contract at the Faculty of Medicine, where she was also employed, was cancelled, terminating her employment there. The ACA asked the Labour Inspectorate to examine the circumstances of this sacking and whether the action was related to the report submitted to the Institute by Dr Bokorov.

A related case has been reported by Dr Bokorov as follows: “A colleague of mine, Vanja Karadjinovic, also pointed out the irregularities and was instantly exposed to retaliation from the Director of the Radio Therapy Clinic. As a result she gave up her job and moved to Montenegro. Although she is a registered specialist, the Institute withdrew her license from the Medical Doctors’ Society and refused to give her back the employment records, because of which she could not have a health insurance card issued to her child. Because of this, she filed a lawsuit against the Institute.

In September 2009, I went to the court as a witness, as did another colleague of ours, who had left the Clinic because of harassment. When we entered the courtroom, we were informed that the judge in our case had been on sick leave and they had scheduled a new hearing for November 2010. We left and consulted in the corridor. Our lawyer went to another courtroom where he saw the judge in our case, who was reportedly ill. We went there and she was very aggressive to our lawyer and accused him of having caused big problems to her already with the appeals he had sent to the Appellate and Cassation Courts. She then burst into tears and said that she did not want to die at the age of 41. We all left the courtroom in shock”.

Some cases mentioned to me as whistleblower cases are really cases of criminal violence
against persons whose job is to report wrongdoing. But they illustrate the extent of the problems;

- For example, the Information Commissioner mentioned a case where a policeman, posing as a taxi driver, infiltrated an organised crime group, only to find that other policemen were engaged in it as criminals. His house was burned and his family suffered a suspicious traffic accident, and it proved impossible for him to return to work.

ANNEX B - ABBREVIATIONS

ACA - Anti-Corruption Agency of Serbia
ACC - Anti-Corruption Council of Serbia
CAVK - Commission for Advice and Information on Whistleblowing (Netherlands)
CoE Convention - Council of Europe Civil Law Convention on Corruption (1999)
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
GRECO - Group of States Against Corruption (Council of Europe)
LFAIPI - Law on Free Access to Information of Public Importance
KPK - Anti-Corruption Commission (Slovenia)
MOJ - Ministry of Justice of Serbia
OLAF - European Anti-Fraud Office (European Commission)
PACE - Parliamentary Assembly of the Council of Europe
PCaW - Public Concern at Work (UK)
The Rulebook - the ACA’s Rulebook described at 3.6-3.8.
UNCAC - United Nations Convention Against Corruption
UNDP - United Nations Development Programme
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