TRANSPARENCY INTERNATIONAL
Korruptsioonivaba Eesti

Transparency International Estonia

Whistleblower Protection Assessment Report on Estonia

Country Report

Prevention of and Fight Against Crime 2009
With financial support from the Prevention of and Fight Against Crime Programme
European Commission - Directorate-General Justice, Freedom and Security

Table of Contents

1. Introduction

The main objective of the report is to analyse the Estonian legal framework on whistleblower protection as well as its application. The report considers the framework for private as well as public sector employees. As there is no separate definition of whistleblowing in Estonian legislation, the report follows the definition by Miceli and Near (1985): "the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action". Estonian legislation as well as practices are analysed according to this definition.

The question of whistleblowing has not received much attention in Estonia. Informing of corrupt behaviour still reminds people of KGB snitches and the resulting injustice. However, there has been some progress over the last years: since 2004, the whistleblowing issues have been included in anti-corruption strategies, corruption surveys, and other research papers. Still, there is only minimal information on corruption and whistleblowing in private sector. There are also some signs of changing practices in institutions as well as general attitude in the society.

The main data sources for this report include legal acts (e.g. Anti-Corruption Act, Penal Code, Public Service Act, Witness Protection Act etc) and organisational regulations (e.g. ethics codes, codes of conduct) and practices, existing research (e.g. on corruption, on roles and attitudes in public service, one research paper on attitudes towards whistleblowing in ministries) as well as key informant interviews. Key informants include ethics advisors in public service, representatives of different institutions (police, prosecutor's office, different ministries, NGO-s etc). The interviews were conducted as personal or phone interviews; written notes were used to record the answers. The list of interviewees is included in the references; to preserve their anonymity interviewees' names have not been connected to a specific opinion.

In addition, short questionnaires were sent by e-mail to all of the 11 ministries as well as 16 largest private companies[1] (by turn-over). Full list of those institutions is listed in Appendix 1. As the response rate from private companies was extremely low (only two responses by e-mail were received), all the rest were contacted by telephone. Both public institutions and private companies were asked whether they have any internal regulations or organisational practices concerning whistleblowing (please see Appendix 1 for more details). The answers were received from all ministries and 9 companies[2]. In some cases the contacted person from the ministry forwarded the questions to a subordinate administrative agency (e.g. Ministry of Finance to Tax and Customs Board). Based on these answers, some institutions were also contacted over phone, to ask some additional questions.

[1] A few of those companies are partly publicly owned, e.g. Eesti Energia, Eesti Telekom.
[2] 7 companies refused to answer for different reasons that were usually not explained, but sometimes „business interests and privacy“ were referred to.

The report is divided into three main chapters. First chapter gives an overview of whistleblower protection rules and their practical application. Estonian cultural context, especially its transitional background (still existing influence of Soviet system) as well as small society characteristics are discussed. Second chapter focuses on the evaluation of the extent of whistleblower protection ruled regarding the scope of whistleblower legislation, disclosure channels, remedies etc. Final chapter lists key results as well as recommendations made based on the analysis as well as key informant interviews.

2. Overview of Whistleblowing protection rules and protection in practice

The following chapter is divided into four parts: analysis of legal framework, whistleblowing in practice, organisational culture and cultural context in society.

2.1. Legal provisions

At the moment, Estonian legal regulations on whistleblowers focus mostly on public sector. There is no free standing legal act on whistleblowing, the main legal act referring to it is the Anti-Corruption Act (ACA), however there are other minor regulations as well (e.g. Public Service Act, Equal Treatment Act, Penal Code etc). ACA, however, does not deal with private sector employees. When it comes to private sector, the regulations are almost non-existent, being limited to two paragraphs in the Penal Code.

According to the ACA §23[3] public officials are obligated to inform the head of the institution, Security Police Board, Police Board or Prosecutors' Office[4] of any corrupt activities that are known to him. This obligation is extended to all corruption offences defined by the ACA, Penal Code, Political Parties Act, or Public Procurement Act. The same paragraph guarantees the official his anonymity (if he should wish so), unless the whistleblowing is motivated by personal gain or other "low motives". The anonymity is also not guaranteed if the criminal proceedings require questioning this person as a witness to prove a crime. If a person does not comply with this regulation he can be released from office or fined.

There is no direct regulation on whistleblowers' protection (excluding guarantees on anonymity). However, if disciplinary punishment is imposed on the public official (including releasing from the office) the Public Service Act § 160 states that he has a right to contest that decision in court. § 135 of the same act states that the official has a right to be restored in office or if he decided to forgo that option he has a right to be awarded damages.

On 7 May 2009 a new draft of ACA was approved by the government and submitted to the parliament for discussion and adoption. The new draft changes the existing whistleblower regulations to quite a large extent. The main changes include:

[3] This provision was adopted as a result of the Anti Corruption Strategy 2004-2007 and has been in force since 2004.

[4] Police Board deals with investigating corruption in local and central government, Security Police Board investigates corruption of high public officials, and Prosecutors' Office investigates corruption in law enforcement authorities (e.g. police) (ACA §26[8]).

1. Instead of an obligation to inform, the new draft formulates the regulation as "official is not allowed to withhold information on corrupt acts". The new draft does not include any sanctions, although the explanatory memorandum states that all the relevant sanctions from the Penal Code (§§ 306-7) still apply.

2. Extended regulation on guaranteeing the anonymity of the whistleblower: confidentiality of the information is guaranteed unless the whistleblower signs a release document. If that person is included in the investigation of the offences, it is done without violating his/her confidentiality. However, if the whistleblower knowingly delivers wrong or defamatory information, his anonymity is not guaranteed. The regulation is similar to the regulations of the Surveillance Act (§ 14), in addition Penal Code §§ 319-320 foresee sanctions.

3. To protect the whistleblower, the court will enforce among other things the principles of equal treatment as they are stated in the Equal Treatment Act. Reversed burden of proof is applied, as regards motives of the alleged discrimination. Although the Equal Treatment Act does not specifically mention equal treatment in case of whistleblowing, it does not exclude it either: § 2, p.3 states that other motives for discrimination that are not mentioned in the law, are not excluded. If a case of discrimination is proved, he may be awarded damages by the court or the labour dispute committee depending on the extent, duration and nature of discrimination (§24)[5].

Although the first change – obligation to inform is changed for the right to inform – may imply weakening of the law, it can actually be expected to become stronger as several interviewees mentioned: as the current law has not been fully implemented, i.e. no-one has been punished for failing to report a corrupt activity, the potential new regulation can be seen as a rule that is actually possible to follow and implement. Therefore, the new draft of ACA improves the regulation on whistleblowers, by increasing the confidentiality as well as stating some basic legal provision for whistleblower protection.

For private sector, the main acts that can be interpreted as whistleblower regulation, is the Penal Code and Witness Protection Act. § 306 of the Penal Code states that the penalties for non-disclosure of criminal offences in the first degree (including some cases of bribes) are punishable by a "pecuniary punishment or up to 5 years of imprisonment". Failure to report the same offences (§ 307) can be punished by a "pecuniary punishment or up to 3 years of imprisonment".

In addition, the Witness Protection Act states that witnesses can be protected before during and after the court proceedings (§ 8) in case there is chance of unlawful influence (§ 3) on them. However, the decision to include a witness in witness protection takes into account "the gravity of a criminal offence in question, the significance of the evidence given by the person

[5] However, as one of the interviewees put it, the Equal Treatment Act cannot be interpreted that way in the private sector: the law applies more to the qualities a person cannot change, whistleblowing is a conscious choice and thus the employer would be justified to fire the employee for loss of confidence (Employment Contracts Act § 86, 104).

in the criminal matter and the extent of the risk to the protected person" (§ 2). § 18 on the same law lists the possible defence measures that start with defending the protected person and his property and end with giving the person a new identity. Still, the law does not state explicitly that these measures can be applied in case of whistleblowing if necessary.

There are no other regulations that can be interpreted as whistleblower regulation in other laws such as Employment Contracts Act, Public Information Act, Nature Conservation Act, etc. Still, there are paragraphs in other legal acts that could provide a basis for whistleblower protection, but do not. For example:

- General Part of Civil Code Act refers to transactions that are contrary to good morals or public order (§ 86) or to law (§ 87), however, there is no additional regulation on what should be done if an outsider knows of such transaction. The only paragraph related to notification (§ 95) concerns new circumstances in transactions: not informing the other party of important circumstances can be considered a mistake (§ 92) or a fraud (§ 94).

- Consumer Protection Act regulates unfair (§ 12^2) or misleading (§ 12^3) commercial practices, but there is no regulation what an employee of the company should do if he regards the commercial practices of his employer as unfair or misleading.

A new legal act concerning the private sector - the leniency programme on cartel agreements which aims to amend Penal Code, Code of Criminal Procedure, and Competition Act - is being discussed in the parliament at the moment (May 2009, bill no. 438 SE I). The main content of the amendments are aimed at reducing penalties for competition crimes (e.g. for cartel agreements) for the party that supplies police with information about the crime. However, these amendments are rather specific and are not aimed at private sector whistleblowing in general. Still, it is hoped that the amendments will result in more successful discovery and investigation of competition crimes (Performance report 2008: 3).

In conclusion, although there is no separate whistleblower protection act, a number of elements of a legal framework on whistleblowing in Estonia do exist. However, there are two sets of problems: firstly the regulation is focused on the public sector only and secondly, the regulations are distributed between different legal acts. Therefore it can be said, that it is rather difficult to find out, what one should do in case one notices corrupt activity and what kind of protection can one expect in case of harassment.

2.2. Whistleblowing in Practice

It is extremely difficult to assess how common is the practice of whistleblowing in Estonia. On the one hand there are some examples of cases where whistleblowing has resulted in successful criminal proceedings. Criminal investigation that resulted in conviction of Estonian Road Administration (ARK) officer for taking bribe was initiated after the hint was received by the Security Police Board from colleagues of corrupt officer. (Judgement 1-06-3277) On

the other hand there is no evidence how common it is, how many such cases there are all together, what has happened to the whistleblowers, what is the situation in the private sector etc. The research on whistleblowing in Estonia is minimal, though: there are some questions in regard to whistleblowing in corruption surveys and a more thorough analysis of attitudes towards whistleblowing in ministries (Sihver 2007). There is no information, however, on whistleblowing (nor on corruption) in private sector (Anti-Corruption Strategy 2008-2012, p. 14); the corruption surveys from 2004 and 2007 simply state that corrupt behaviour is more accepted by private sector employees than by public officials which is a result of the former being less informed.

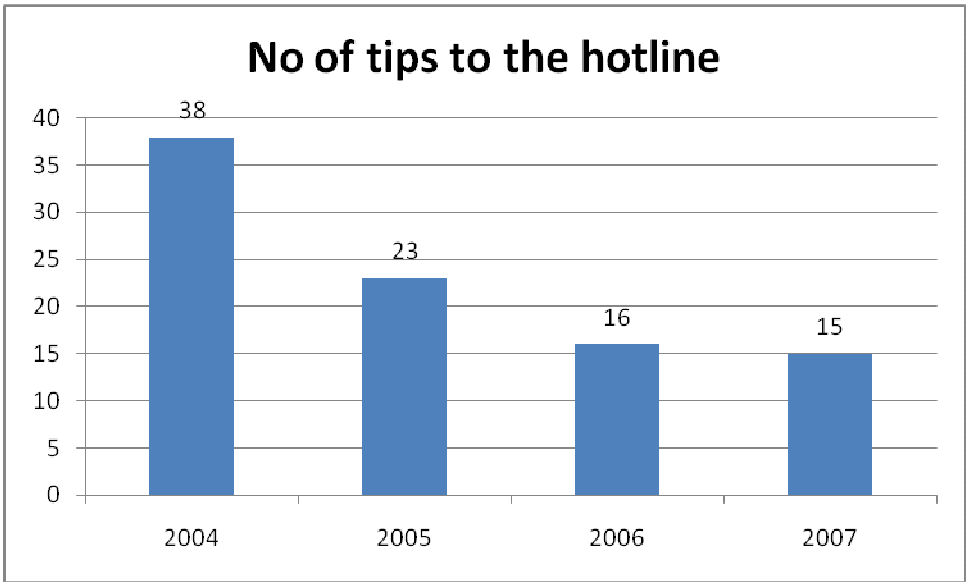
When it comes to statistics, there is none, except for the statistics of the telephone hotline and results of corruption surveys, which are discussed below. Although the documentation in the criminal proceedings must list the documents that were the basis for investigation (e.g. someone's tip, including whistleblowing), there is no statistics nor analysis how many such cases exist. In addition, as one of the interviewees said, the documentation may include only one possible basis for investigation, i.e. the whistleblowers tip might not be included if there is other legal basis for the investigation. There are neither known cases of whistleblower harassment, nor is there any information on public officials being prosecuted for knowing of corrupt activity and not reporting it (which is a possibility according to the existing ACA). Thus no conclusions can be made about prevalence or incidence of actual cases of whistleblowing in Estonian private or public sector.

In June 2004 a telephone hotline for anonymous reporting of corruption cases[6] was opened. The phone is answered by Security Police Board's official on duty. Although, it was expected that the telephone hotline would allow people to report on corruption, the number of tips has not been as high as initially expected. The number of calls has decreased every year: in 2004 it was 38, in 2008 only 12 (see chart 1). When the hotline was first opened, it was publicly announced, it got some media coverage. However, since the initial information, the "advertising" of the hotline has not continued. That can be seen as the main reason for such a decrease in the number of calls. In 2007 one case of criminal proceedings was started based on a tip from this hotline.

The e-mails sent out to ministries and private enterprises gave very little results about real cases of whistleblowing: almost none from the private sector and some from public sector which can be explained by the fact that public sector organisations are obligated to answer. However, most of the answers were "there have been no such cases" or "there have been cases, but I cannot discuss them publicly as it would break the confidence and anonymity rules".

[6] Although the hotline was mainly advertised in connection to corruption, they are accepting tips concerning other crimes (Report on Anti-Corruption Strategy 2007:5)

Chart 1. Number of tips to the corruption hotline 2004-2007 (Source: Report on the Application of Anti Corruption Strategy "Honest State" 2004-2007)



2.3. Organizational Culture

There are very few studies and examples of organisational systems for promoting whistleblowing. Only a few organisations in public and private sector have their own ethics code or code of conduct, even less specify what to do, if one sees a case of unsuitable behaviour; annual reports rather cover the tangible results of the organisation's activities but do not discuss the cases of (un)ethical behaviour. General attitudes towards whistleblowing are discussed in the next section of the report.

Survey "Roles and attitudes in public service" that was based on focus group interviews and a questionnaire carried out among public servants, brought out that when it comes to reporting unsuitable behaviour, most officials would first of all try to talk to the suspect; second course of action was reporting to the superior, but only if the suspicions could be proved. Talking about a colleague's unsuitable behaviour outside the institution, especially informing the media was regarded as highly unethical (2005: 39). Similar examples are brought out by Sihver (2007: 48-49, 56-58): discussing the unsuitable behaviour inside the institution is seen as the first and best solution. It can be concluded, that in order to develop a successful whistleblower framework, organisational practices should be promoted.

The same survey also posed a hypothetical situation: what would you do as an official, if you have to implement a decision you personally do not agree with. 78% of the respondents answered that they would express their opinion inside the institution; none would leak the information to the media and 8% would actively work against the decision. Another question asked the respondents to evaluate the suitability of certain activities: only 5% disapproved of signing public petitions, whereas when it comes to commenting on web-pages 18% disapproved of commenting in general, 34% commenting his own institution's work, and 23% commenting another institution's activities. It can be concluded that although respondents see

expressing their opinion in general as a suitable activity for a public officials, commenting on the work of public institutions is seen as less acceptable.

Sihver (2007: 50) also analysed how many ministries actually promote reporting corrupt behaviour: her research that focuses only on the ministries (19 in-depth interviews across all ministries), brings out the Ministry of Foreign Affairs that has developed a trustee system which can also be used to inform of corruption (trustee as a person from whom to get advice as well as a person who would inform the management if necessary) and the Ministry of Defence that has adopted a set of rules that specify course of action when an official notices illegal behaviour (every official has to sign the document). Sihver concludes, that although most ministries have not adopted a code of conduct regarding whistleblowing, most of them do not see a need for it: most of the interviewees emphasised the importance of internal audit systems and open organisational culture (2007: 50-52). She brings out the opinion of one of her interviewees who said that the problem is not the lack of options of whistleblowing, but rather the lack of willingness (2007: 52); several interviewees emphasised the possible negative attitude of co-workers if the information on whistleblowing should become public (53-55).

The e-mails sent out to ministries did not give many results. Most of them do not have separate codes of ethics or codes of conduct, and state that they only apply the regulations as they are specified in the ACA. The same applies to the governing areas of ministries. Those ministry officials who mentioned that there have been cases of whistleblowing inside the ministry, would not specify the cases; as one of them said "these cases are told in confidence and even a general description could result in a breach of confidence as Estonia is such a small country".

More thorough systems have been applied in the Police Board and Tax and Customs Board. Police Board's system for whistleblowing is the most advanced one in Estonia: the police cadets are informed of their obligations even during their studies, and this information is reinforced through the introduction of several internal documents, that include the obligation to inform the superior or the Police Control Department (which in addition to a central unit, exists also in all 4 prefectures) of any corrupt activities. All the tips are registered and followed; if several tips from different sources point to the same person, the investigation is speeded up. Some officials have also used the Defence Police Board for informing; media is not regarded as a good source, as it makes investigation (legally) more difficult[7].

The Tax and Customs Board has included whistleblower related regulations in their internal procedure rules according to which it is compulsory for board officials to notify the head of internal audit department (who forwards the information to the head of the board as well as relevant investigative body) of relationships involving a risk of corruption, corrupt acts, and any offers of bribes or gratuities. These procedures do not make notifying of unethical behaviour compulsory, although during ethics trainings this has been promoted as well.

[7] An interviewee recalled a case, where the first information about a possible blackmail including a police official was received through a internet discussion-site.

The reason for these organisations having separate systems may be related to them having a more favourable attitude towards whistleblowing, as their reputation and success in their work relies on reporting unethical or corrupt behaviour. One of the interviewees explained it through the influence of hierarchical organisations such as police, jails and military: if you notice unsuitable behaviour on your level, it is easier to go one level above you and report it, but in case of very low and small organisations, quite often the next level does not exist. If this interviewee's opinion is combined with the results of the two surveys mentioned above in this section, we can conclude that whistleblowing becomes less likely in smaller and less hierarchical organisations as there is no-one to inform inside and going outside the organisation is regarded as unacceptable.

The e-mails and follow-up phone-calls to private organisations gave even less information: 7 companies refused to answer, 4 said they did not regulate this topic internally, one said that a document on whistleblowing in being developed, and 4 had some sort of regulation. Of the last group – only one organisation sent their code of conduct, two others said they have a code that refers to whistleblowing indirectly; all three of these companies said that their regulation comes from the international mother-company. Another company said that there are some references to informing about unsuitable behaviour in their internal procedure rules. The only code of conduct that was made available by the company, specifies among other things, what should be done in case an employee is worried about unethical behaviour: according to the code, the employee should contact the local personnel department or financial director; if he is not satisfied with the answer, he may contact the internal audit department of the corporation; the code also promises confidentiality. Still, such ethics codes seem to be more of an exception than a rule.

Based on these results and comments made by the company representatives informing of corrupt activities (e.g. embezzlement of company assets and conflict of interests situations were mentioned several times) is more of a rule, than an exception. Some representatives mentioned that “our organisational culture is open enough”, so that all cases can be dealt with no need for a formal document. However, all the companies that agreed to answer the questions favoured reporting of corrupt activities inside the organisation: firstly through the hierarchy – to the superior, or to the internal control / audit units or personnel units.

In conclusion it can be said that there is a rather strong attitude to try to solve cases of corrupt behaviour inside organisation first. Going outside the organisation is seen as unethical. In addition, only very few organisations (in private as well as public sector) have developed their own systems for reporting corrupt behaviour. Although there are examples of organisational culture being aimed at promoting whistleblowing, they are rather examples of organisational context (in case of a public sector it has mostly to do with the nature of the organisational tasks – strong control functions; in case of private sector stronger whistleblowing practices cannot be associated with any one particular aspect), not overall development in Estonia.

2.4. Cultural Context

Cultural context in Estonia does not facilitate whistleblowing: this is apparent from key-informant interviews, corruption surveys as well as media.

Estonian corruption surveys (2004, 2005, 2007) have addressed two main questions connected to whistleblowing: firstly, would people who witness a corrupt activity be willing to inform the police and secondly, why they are not willing to report corruption cases.

Corruption Survey (2004:19) concluded that witnessing a case of bribery 74% of respondents would react passively (i.e. tell friends and relatives or keep the information to themselves). Only 16% would inform the police, only 4% would be willing to testify in court, others would do it anonymously. Those who regard corruption as a natural part of everyday life, are less willing to inform the police. The reasons for not informing were addressed in the survey "Corruption in Estonia" (2005). The most common reasons for not reporting corruption included not knowing where to report (general population), the whistleblowers will suffer the most as a result (entrepreneurs and public officials), not sure that it is corruption (public officials) and there is no point in reporting as the participants would not be tried in court (all target groups) (2005: 32-33).

Survey "Corruption in Estonia" (2007: 47) showed that only 1% of general population, 5% of public sector employees, and 1% of entrepreneurs who have had contact with corruption actually reported the case to law enforcement institutions. Most of them did not tell anyone (46%) or told friends or relatives (22%). Main reasons for not reporting included believing that corruption is difficult to prove and not wanting to cause additional problems, as well as participants would not be tried in court and cases being insignificant. The main differences in results between 2005 and 2007 surveys are a result of different formulation of questions (hypothetical situation in 2004, real situation in 2007).

The results of these surveys are confirmed by key informant interviews. Several interviewees have mentioned, that the whistleblowing practices as well as the adoption of new, more detailed legislation is hindered by the cultural context – as one of the interviewees put it, namely the "aura of KGB snitches". Although whistleblowing cases emerge every now and then, the general attitude is negative. As one of the interviewees mentioned, when the topic is discussed in ethics training for public servants, the general attitude is negative. When the question is raised, whether it is better to inform the necessary authorities of the corrupt activity or to put up with it, usually the latter course of action is chosen. Another interviewee mentioned that especially on local level, the officials do not really see the "point of whistleblowing": officials do not seem to believe in whistleblowing having any results, there is a rather strong sceptical outlook whether anything will change as a result of whistleblowing. Still, one of the interviewees mentioned that there are not many options for discovering crimes, and whistleblowing is a “normal” part of investigation.

In addition, people do not want to talk about corruption cases or cases of whistleblowing. Estonia is often described as a small society where everybody knows everybody, even more so on the level of local government. That creates a rather strong interdependence: people on whom you blow the whistle today, may influence your life in some other respect tomorrow.

The media is also rather careful in handling the subject: they rather try to remain neutral and present the cases as a news item not offering any comments. For example, in a recent case of a former inspector who dealt with controlling pyrotechnics companies, the newspaper article (Äripäev 14.05.2009) referred to "former colleagues told" (to the journalists).[8] Another piece of news about a head of a hospital calling the police to a drunk doctor (Õhtuleht 08.05.2009) received rather varied feedback from the readers: some commented that this situation (that the police was involved) is just an exception and that usually nothing is done, others praised the head of the hospital, although criticised that the name of the drunk doctor was not made public, still others focused on the danger a drunk doctor presents. Most of the feedback from readers was rather positive, saying that such cases should be made public (and even in some cases saying that the name of the doctor should be made public); some comment were negative, though blaming the head of the hospital not being able to see the doctor's problems and not solving them before the incident happened.

A more visible case of whistleblowing took place in 2007, when the head of surveillance department of the Healthcare Board gave an interview on a popular TV investigative journalism programme where he talked about doctors selling prescriptions to narcotics. He justified giving an interview by a feeling of hopelessness as well as not being an initiator of the interview (journalists contacted him based on some information in Finnish media) (Postimees 18.04.2007b). For that interview he was imposed a disciplinary penalty, as he had shown real, filled out prescriptions on TV screen thus violating the regulations on sensitive personal data protection. The discussion that followed this case, asked several questions: were the personal data visible from the TV screen? was he right to give an interview to the journalists? was the head of the board right in punishing him? would that penalty discourage other from talking about such problems in public? did that case damage the reputation of the board? (Postimees 31.03.2007, 18.04.2007a, b). The minister of social affairs at the time, pointed out that something is wrong, when a public official can point out wrong-doing only by breaking a law. In general the opinions expressed in different articles (as well as in readers' comments) were on the side of the official: he was right to expose those doctors and the way he did it should not have been reprimanded.

However, there are also signs of changes in attitudes, although they are minor. There are clear examples such as informing the police of an erratic (possibly drunk) driver on the roads, sending newspapers photos of illegal parking[9], filing complaints to the Chancellor of Justice[10] on public officials because of unfair decisions. There are also signs how the government is trying to change the situation: Ministry of Social Affairs has published a poster on school violence that tries to explain that telling a teacher if someone is bullied is not "snitching" but a way to protect yourself and others. Still, these are rather isolated cases when "complaining" is tolerated.

[8] Readers' comments to the same article refer to the inspector being made a scapegoat for things he did not do.
[9] These photos are published for instance in a daily newspaper Postimees (mainly in the online version, but in the paper version as well although to a more limited extent): the photos that are sent by the general population include people parking on lawns and in parks and politicians parking on parking spaces for handicapped people at the shopping centres.
[10] Chancellor of Justice also carries out the duties of an ombudsman, thus reviewing cases of mal-administration.

3. Extent of whistleblowing protection rules and their application in practice

3.1. Scope of personnel coverage

How wide is the scope of personnel who is protected by the WB legislation?

Currently existing whistleblower protection covers all public officials who inform of corrupt behaviour and who are not motivated by personal gain or low motives (ACA § 23). In criminal proceedings, the Witness Protection Act applies to witnesses in criminal cases. In some cases it is hoped that the Equal Treatment Act will provide some protection for public service employees, but in the opinion of one interviewee it cannot be applied in case of private sector employees. Thus it can be said that the scope of personnel coverage is rather narrow.

3.2. Subject matter (definition of wrong-doing)

How widely defined are the subject matters covered by WB legislation?

ACA regulates that an official has to inform the authorities of any "corrupt activities", which are defined as "use of official power for self-serving purposes by making undue or unlawful decisions or performing such acts, or failing to make lawful decisions or perform such acts" (§ 5). Penal Code § 307 refers only to criminal offences in the first degree, i.e. crimes for which the code prescribes imprisonment of more than 5 years, life imprisonment or compulsory dissolution. Thus the list of potential wrong-doings where whistleblowing might help detection and investigation does not cover danger to public health, unfair and unnecessary delay etc.

3.3. Internal disclosure channels

To what extent is there an adequate internal disclosure mechanism available?

Internal disclosure channels for public sector include organisational mechanisms (a trustee system, talking to superiors) as well as informing the police or the prosecutor's office. The internal organisational mechanisms are rather varied: there are a few institutions where such systems are very detailed (e.g. police), whereas in other organisations there are no internal regulations. Mostly the procedures for internal disclosure rely on the existing legal framework (ACA). Burden of investigation lies with the police or the prosecutor's office; supplying sufficient information to start the investigation lies with the whistleblower.

Internal disclosure channels for private sector include only organisational mechanisms, of which only one of the researched companies reported.

3.4. External disclosure channels

To what extent is there an adequate external disclosure mechanism to independent regulators?

Employees of both sectors can use the corruption hotline as an external disclosure mechanism. For public sector, there are no additional external disclosure mechanisms to

independent regulators. For private sector external disclosure channels include police and prosecutor's office. The rules that apply are the same as described in section 3.3.

3.5. Additional disclosure channels

To what extent does the external disclosure mechanism include a disclosure to the media, MP or civil society organisations?

Additional disclosure channels for the public sector include the media and non-governmental organisations. However, using these channels for information is not regulated and concluding from the information provided in the interviews and different surveys, it is not regarded as the best option inside the organisation. Still, the case of exposing doctors selling prescriptions for narcotics, showed that the general public might not be as opposed to this option. There is no evidence of disclosing corrupt behaviour to non-governmental organisations.

3.6. Confidentiality

Does the WB legislation include provisions ensuring confidentiality? If so, how stringent and effectively applied are confidentiality rules?

In case of public officials, anonymity is guaranteed unless the whistleblowing is motivated by personal gain or "low" motives or the official needs to be questioned to prove a crime. There is also a possibility to report corruption on an anonymous phone. The new draft of ACA increases the anonymity even more (see section 2.1 for more details). For private sector, no confidentiality regulations exist.

3.7. Time-scale

What are the limits on a time scale for whistleblowing?

The ACA does not specify the time-scale when the whistleblowing has to take place. In case of crimes, the limitation periods vary from two to ten years (Penal Code §81), thus it may be logically concluded that the informing has to take place before the limitation period is over.

3.8. Protection against reprisal/retaliation

What is the scope of reprisals which the WB is protected against?

Currently there is no specific regulation related to whistleblowers' protection against harassment. However, there is an Equal Treatment Act, which (as discussed above) is problematic in its application: the new draft of ACA aims to use it for any harassment resulting from whistleblowing; at the same time in the opinion one of the interviewees the same logic cannot be applied in the private sector. However, if discrimination is proved in court as the law aims, the person has a right for damages. In the case of public sector, additional legal regulation is provided by Public Service Act that specifies public official's right to demand damages from his employer if he has been punished or released from office illegally.

3.9. Right to refuse

To what extent does the WB legislation cover the right to refuse participation in illegal activities?

In public service every official has a right to refuse carrying out illegal orders or participating in corrupt activities.

3.10. Legal liability

To what extent does the law impose legal liability for false or malicious reporting?

In public sector if whistleblowing is motivated by personal gain or "low" motives, the anonymity is not guaranteed. The regulation that applies at the moment prescribing the obligation to inform relevant organisations of corrupt activities and imposing penalties for failing to do so, does not work in reality: there have been no cases of somebody being prosecuted for failing to uncover corrupt behaviour he knew of.

The Penal Code (§§ 319-320) states that if a person knowingly gives false information in court proceedings or files a false complaint, he can be punished with a pecuniary punishment or imprisonment (up to 3 years in case of false information in court proceedings, up to 1 year in case of a false complaint). If the person also falsifies evidence, the prison sentence can be up to 5 years.

3.11. Whistleblower participation

To what extent is the WB able to participate in follow-up process to the disclosure?

If whistleblowers testimony is needed to prove a crime, he will be required to stand up in court. According to the new ACA the whistleblower may be asked to testify, but the fact that the investigation started from his tip may remain confidential. There are no procedures regarding how much the whistleblower is or has to be informed of the investigative processes.

3.12. Independent review

How comprehensive is the independent review system?

There is no independent review system specifically regarding whistleblowers. Private sector employees have the right to contest potential harassment and sanctions (termination of employment contract, disciplinary punishment) in labour dispute committee or in court. This right is a general rule and does not have an explicit mention to harassment resulting from whistleblowing.

Public sector employees may also turn to court for dispute settlement. If the harassing party is a public sector organisation the Chancellor of Justice may be a mediator.

Ethics council for public service is currently in formation and one of its tasks will be providing an independent opinion on civil servants' behaviour. Officials with the right to impose disciplinary punishments may ask opinion on cases concerned before initiating disciplinary proceedings. The official, who does not have the right to impose a disciplinary penalty, may turn to the council in the matters concerning himself, if disciplinary proceedings has not been initiated and internal options to resolve the matter have been exhausted.

3.13. Offered remedies

How wide is the scope of offered remedies available to WB?

The scope of offered remedies is rather narrow: according to different legal acts (Public Service Act, Equal Treatment Act etc), the main remedies include awarding damages and reinstatement in former position in case the person was fired or demoted unlawfully. No rewards are offered for whistleblowing.

4. Key results and recommendations

The main conclusions that can be made based on the analysis presented above are the following:

- Legal regulation of whistleblowing is rather limited, even more so in case of private sector. The existing regulation does not meet the recommendations made by GRECO in its reports that suggest developing institutional protection measures and more legal regulation (Anti-Corruption Strategy 2008-2012, p. 23). New draft of ACA extends the regulation by changing the definition of official, stronger guarantees on anonymity as well as stating the basis for whistleblower protection related to the Equal Treatment Act. As Greco's recommendations (2004: 14) are rather general, it is difficult to assess whether the new draft of ACA would correspond more to Greco's wishes, however it seems to be a movement in the right direction.

- Development of organisational practices varies considerably in public as well as private sector, but well developed organisational practices for promoting whistleblowing are rather an exception than a rule. In public sector organisations with higher risk of corruption seem to have more organisational regulations (e.g. Tax and Customs Board, Police Board etc.). In case of private sector, the companies that have stronger whistleblowing regulation internally are either part of an international corporation or are partly publicly owned, although these two aspects are not necessarily a cause of having such regulation.

- When it comes to whistleblowing organisational measures are clearly preferred over external measures. Different surveys show that solving the problem inside the organisation is seen as the right way of doing things: going to the media is seen as unacceptable. At the same time exposing wrong-doing in the media is appreciated by the general public which is afraid of cover-ups.

- The public attitude is rather negative towards whistleblowing: it has an "aura of KGB snitches". Still, there are examples of cases when exposing corrupt activities of private or public organisations is seen as a right thing to do. It can be said that attitudes are changing, especially concerning the cases where people see a direct threat to public security (e.g. drunk drivers) or where the corrupt activity results in grave injustice (e.g. selling prescriptions to drugs). However, it is still too early to adopt a separate law on whistleblowing, as the negative public attitude might hinder the implementation of the act, and result in worse situation when it comes to abiding the laws.

The main recommendations for Estonia are the following:

- As there is a clear lack of information on whistleblowing (cases, possible harassment), gathering information should be one of the first steps. As there are plans to form an ethics council for the public service at the Ministry of Finance, part of its tasks could also include gathering information, commenting on cases, advising on activities etc. For private sector organisations such activities could be organised through umbrella organisations such as Estonian Chamber of Commerce and Industry, Estonian Employers Confederation etc.

- More effort and resources should be spent on informing the public of cases of whistleblowing and how it can help detection and investigation of corruption. For realizing the difference between being a snitch and a whistleblower, the cases that involve a direct threat to the public (e.g. traffic violations) are probably most helpful in the beginning.

- Possibilities for information distribution can include clear guidelines what should one do in case when he notices corrupt activities (officials asking for bribes, companies offering bribes, unethical and illegal business practices). Such guidelines are especially important in high-risk areas (e.g. medical sector, public procurement, etc.). The guidelines should be available to the general public as well as distributed to organisations.

- More resources should be spent on developing organisational systems and procedures as well as supporting organisational culture. Advice on systems and procedures as well as ethics training should be offered to public as well as private sector organisations.

- Taking into account that whistleblowing is still seen as "being a snitch", adoption of a separate law on whistleblowing cannot be recommended. Adopting such a law right now may be seen as an attempt to go back to the past – developing a society, where informing the government was seen as a possibility to promote one’s personal interests not as a way of serving the public. Before adopting such a law, the belief that whistleblowing is protecting the public, must be strengthened. But as there is evidence of changing attitudes, adopting a separate law on whistleblowers should be reconsidered in about 5 years time, which should give enough time for attitudes to change assuming continuous distribution of information as well as development of organisational practices.

References

1. Surveys, publications

Corruption in Estonia: a survey of three target groups. 2007. Ministry of Justice. Available at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=39962/korrupts_uuring_2006.pdf

Corruption in Estonia: a survey of three target groups. 2005. Ministry of Justice. Available at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=28632/Korruptsiooniuuringu+aruanne+%282004_2005%29.pdf

Corruption Survey 2004. (Korruptsiooniuuring) Justiitsministeerium. Available at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=9368/korruptsiooniuuring.pdf

GRECO 2004. "Evaluation report on Estonia" Available at (22.07.2009): http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2003)4_Estonia_EN.pdf

Postimees 31.03.2007. "Tööandja näeb Peeter Mardnas võimalikku mainekahjustajat"

Postimees 18.04.2007a. "Minister Maripuud häirib Mardna karistamisega seonduv"

Postimees 18.04.2007b. "Retseptiärist rääkinud Peeter Mardna sai karistada"

Roles and attitudes in public service. (Rollid ja hoiakud avalikus teenistuses) 2005. State Chancellery. Available at (18.05.2009): http://www.riigikantselei.ee/failid/avaliku_teenistuse_uuring_2006.pdf

Sihver, Anneli 2007. "Teavitaja kaitse ("vilepuhuja kaitse") süsteemi rakendatavus korruptsiooni avalikustamisel Eesti avalikus teenistuses". Magistritöö. Tartu Ülikool. Available at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=30215/Magistritoo_AnneliSihver.pdf

Õhtuleht, 08.05.2009 "Töölt purjuspäi tabatud arst 'Oleksin pidanud koju jääma.'"

Äripäev, 14.05.2009 "Endisel pürotehnikute esikontrollijal lasub pistisekahtlus"

2. Legal acts and other documents

Anti Corruption Act[11] (Korruptsioonivastane seadus)

Anti Corruption Act 2009. Draft law and its explanatory memorandum.

Anti Corruption Strategy 2008-2012. (Korruptsioonivastane strateegia 2008-2012.) Available in English at (18.05.2009) http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=35712/ANTI+CORRUPTION+STRATEGY+2008-2012.pdf

Anti Corruption Strategy "An Honest State" 2004-2007. (Korruptsioonivastane strateegia "Aus riik" aastateks 2004-2007.) Available in English at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=13373/AN+HONESTSTATE.pdf Explanatory memorandum of the strategy available in English at:

[11] All laws are referenced through the electronic web-page of official gazette "Riigi Teataja" at riigiteataja.ee

http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=13375/EXPLANATORY+MEMORANDUM.pdf
Bill no. 438 SE I "Law to amend the Penal Code, Code of Criminal Procedure, and Competition Act" Available at (18.05.2009): http://riigikogu.ee/?page=en_vaade&op=ems&eid=565462&u=20090520093743
Employment Contracts Act (Eesti Vabariigi töölepingu seadus)
Performance report for 2008 of the Anti-Corruption Strategy. Available in English at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=41231/Performance+report+for+2008+of+the+Anti-corruption+strategy.pdf
Report on the Application of Anti Corruption Strategy "Honest State" 2004-2007. (Ülevaade korruptsioonivastase strateegia "Aus riik" aastateks 2004-2007 meetmete rakendamisest.) Available at (18.05.2009): http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=35013/Korruptsioonivastase+strateegia+AUS+RIIK+2004-2007+l%F5pparuanne.pdf
Civil Code (Tsiviilseadustiku üldosa)
Consumer Protection Act (Tarbijakaitseseadus)
Nature Conservation Act (Looduskaitseseadus)
Penal Code (Karistusseadustik)
Public Information Act (Avaliku teabe seadus)
Public Service Act (Avaliku teenistuse seadus)
Surveillance Act (Jälitustegevuse seadus)
Witness Protection Act (Tunnistajakaitse seadus)

3. Case law

Viru County Court judgement 15.03.2006 1-06-3277

4. Interviews

Tanel Kalmet, advisor at the penal law and procedure division, Ministry of Justice (19.05.2009)
Martin Perling, Security Police Board, 26.05.2009
Aive Pevkur, former advisor on ethics questions at the State Chancellery (14.05.2009)
Anneli Sihver, advisor on ethics questions at the State Chancellery (18.05.2009)
Mari-Liis Sööt, head of criminal statistics and analysis division, Ministry of Justice (19.05.2009)
Meelis Taniel, senior superintendent, Department of Police Control, Police Board (21.07.2009)

Appendix 1 List of institutions and questions

Public sector:

- Ministry of Justice
- Ministry of Research and Education
- Ministry of Defense
- Ministry of Environment
- Ministry of Culture
- Ministry of Economics and Communications
- Ministry of Agriculture
- Ministry of Finance
- Ministry of the Interior
- Ministry of Social Affairs
- Ministry of Foreign Affairs

Private sector:

- Swedbank
- SEB
- Sampo
- Eesti Energia
- Eesti Telekom
- Tele 2
- Elisa
- Tallink Grupp
- Olympic Entertainment Grupp
- BLRT grupp
- Tallinna Sadam
- Tallinna Kaubamaja
- G4S
- Tallinna Vesi
- Merko
- Kunda Nordic Tsement

The questions included (the exact formulation of the questions depended on the respondent):

1. Does your organisation have any regulations, codes of conduct or other similar documents regulating reporting on unethical, illegal or corrupt behaviour? Please attach them, if possible.

2. Are there any organisational practices (e.g. internal audit, trustee) for reporting such behaviour? Please describe them.

3. Have there been any cases of whistleblowing in your organisation? Please describe them. Have any of these cases resulted in court proceedings?