

WHAT MAKES A GOOD WHISTLEBLOWER LAW?

By Paul Stephenson

Summary

Existing international standards are relatively limited, though ongoing work in the Council of Europe on a Recommendation should take Europe a step further towards consensus on some basic issues. Individual countries have adopted a variety of approaches. In operation all have proved flawed in some respects but their experiences are instructive and this paper adds to other work by looking briefly at two further examples – Ireland and South Korea. Any jurisdiction that seeks to make a good whistleblower law needs to hold an inclusive debate to develop detailed provisions to suit the national culture and legal framework, as is being done in Serbia. This paper concludes by examining some issues that need to be considered in conjunction with the implementation of a new law.

International measures

Any whistleblower law must meet the requirements of the relevant international measures. As these measures are currently rather limited, that is relatively easy to achieve.

The first relevant Convention was the UN ILO Convention of 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. A similar provision is found in the Appendix to the European Social Charter 1996¹.

The first Convention to recognise the special role of whistleblowing in anti-corruption, and to broaden the protection to cover any unjustified sanction, was the Council of Europe's Civil Law Convention on Corruption (1999), which states:

'Each Party shall provide in its internal law for 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' (Article 9).

This Convention has been ratified by 35 states, including Serbia, but Article 9 is a rather loose provision as it leaves open the issue of what is 'appropriate' protection. It has not led to widespread enactment of whistleblower laws.

There is also a relevant provision in the Council of Europe's Criminal Law Convention on Corruption (1999) - Article 22 - but as this provision covers all types of person who co-operate with investigators, it lacks the focus of Article 9. Neither of these provisions has been monitored by GRECO, the Council's anti-corruption monitoring body, though GRECO has considered whistleblowing to some extent as part of its review of codes of conduct for public officials, and that work has had some impact.

¹Under article 24-3-c.

The United Nations included a relevant provision in their Convention Against Corruption (UNCAC) - Article 33, which states:

'Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention'.

An obligation to 'consider' is relatively weak. The implementation of UNCAC is currently being monitored by the UN Office on Drugs and Crime and Transparency International have published a review of the outcomes so far².

Until now the European Union has not shown any lead in relation to its existing members, though it does consistently raise whistleblowing as an issue for candidate countries. Nor has the European Commission been responsive to its own internal whistleblowers - witness the mistreatment of Paul van Buitenen, an official who disclosed wrongdoing to the Parliament, when no action was taken in response to his internal reports. His disclosures and the failure to address them led to the resignation of the entire Santer Commission in 1999. Recently the Commission has shown the beginnings of an interest by issuing new internal staff guidance,³ though that remains excessively focused on internal reporting. It has also commissioned Transparency International to carry out a study of EU Member State laws, which is due out in late 2013. Whether that will lead to any EU action remains to be seen.

The G20 principles

The G20 (the informal group of some countries with the largest economies), has been active on whistleblowing, at least on the theoretical side. In 2011 they published a study on law and practice in the G20 countries. It concludes with a compendium of best practices and guiding principles on the protection of whistleblowers⁴. These guiding principles are very constructive, but though all G20 states committed themselves to implementing these principles in legislation by the end of 2012, it does not appear that they have fulfilled this pledge and there is no review mechanism to check this.

European Court of Human Rights (ECtHR)

Whistleblowers have a right to bring cases to the ECtHR as any retaliation against them can be argued to be an infringement of their right to freedom of expression under Article 10 of the ECHR. The Grand Chamber of the court has established principles in case of *Guja v Moldova*⁵ to determine whether an interference in a person's right to free expression could be justified. In summary the issues that need to be considered are:

²Whistleblower Protection and the UNCAC, 2013

³SEC (2012) 679 final, 6.12.2012

⁴<http://www.oecd.org/general/48972967.pdf>

⁵Case no. 14277/04, 12 February 2008

- 1 The public interest in the disclosed information.
- 2 Whether the person had alternative channels for making the disclosure.
- 3 The authenticity of the disclosed information.
- 4 The motives of the person
- 5 The damage, if any, suffered by the employer and whether this outweighed the public interest.
- 6 The severity of the sanction imposed on the person and its consequences.

Mr. Guja was Head of the Press Department of the Prosecutor General's Office. After proceedings against some policemen for mistreating suspects were dropped, he sent the press two letters on the case, which suggested that the proceedings may have been dropped for improper motives. One of these letters was from a high-ranking official in the Parliament. These letters were stated by the authorities to be classified, but were not marked as such. For releasing them he was dismissed. The ECtHR, having considered the case against the 6 principles above, held that Mr. Guja was justified in revealing information to the press in the circumstances of his case. They ordered that he should receive a certain amount of compensation.

The draft Council of Europe Recommendation

In 2012 the Council of Europe commissioned a feasibility study⁶ which I wrote with Professor Levi. That concluded that the most practical and swiftest means of supplementing the existing measures within the Council of Europe would be a Recommendation. The result would be not uniformity, but guidance on minimum standards. This seems a reasonable approach on this issue, as each jurisdiction will need to take into account existing mechanisms - for example, what regulatory authorities may exist to receive whistleblowers' reports and whether a specialized tribunal is, or could be, available for hearing their cases. Still, the Recommendation should put a little flesh on the bones of existing international provisions. It is desirable that there should be some mutual understanding of minimum standards for whistleblower laws, since cross-border cases frequently pose problems.

A draft Recommendation has now been prepared and the latest draft at the time of writing is dated 12 July 2013⁷. Its principles set out some of the basic requirements of a good whistleblower law:

- to provide a wide definition of work-based relationships, where whistleblowers may require protection (Principle 3);
- to permit a special scheme to apply to highly classified information. This refers to information only, so it does not permit categories of persons (such as security service personnel) to be subject to a modified scheme. Rather, it is the category of information that may be subject to a modified scheme. Security service personnel may have disclosures to make about issues that are not rightly secret (e.g. corruption in procurement) (Principle 5);
- to over-ride any contractual obligations of confidentiality (Principle 9);

⁶The protection of whistleblowers—a feasibility study for Council of Europe, Stephenson and Levi, (CDCJ(2012)9FIN, published 20 December 2012).

⁷ CDCJ (2013) Misc 7 final

- to ensure protection is not lost if the whistleblower's report is mistaken. All that is required is that *'he or she had reasonable grounds to believe in its accuracy'*. There is no mention of 'good faith', recognising that motivation is not important, as long as there is a public interest (Principle 13);
- to admit the possibility of media disclosures in certain circumstances (Principle 16);
- to require whistleblowers' reports to be investigated promptly (Principle 18);
- to entitle whistleblowers to raise the fact that they made a disclosure in accordance with the national framework in civil, criminal or administrative proceedings (Principle 21);
- to reverse the burden of proof, so that if a whistleblower can show that he has suffered retaliation, it will be for the employer to show that the retaliation was not due to the whistleblowing (Principle 22);
- to provide that interim relief should be available pending the outcome of civil proceedings (Principle 24);
- to ensure that there are periodic reviews of the effectiveness of the framework by the national authorities (Principle 27).

Possible improvements to the draft Recommendation

The text of the Recommendation remains a living document and it is likely to be changed before it is finalised. Some of the main points where improvement seems needed are mentioned below. The outcome of the discussions on these difficult issues will be relevant to the Serbian draft law.

Principle 3 does not refer to those who intend to become whistleblowers but have not yet revealed anything to anyone officially. Norwegian law offers protection under such circumstances. If they suffer any retaliation they should be treated as whistleblowers who have complied with procedures. With the rise in electronic surveillance of staff, this is an emerging issue of some importance. It is logical that the same should apply to those mistakenly identified as being whistleblowers.

Principle 5 allows for an excessively wide interpretation as it covers information 'relating to national security, defence, intelligence, public order or international relations'. Reports involving national security have proved recently to present highly problematic issues. Security service staff will often be reporting on acts which are normally illegal but which may have been authorized under some official procedure. The underlying and prior problem here is the democratic oversight of the security services. Governments are likely to insist that the channels for reporting are strictly confidential and can never include the media or leaking platforms such as Wikileaks. There is a distinction to be made between whistleblowers, who have a concern they want to be addressed, and those who want to leak classified information for its own sake. Governments contribute to confusion between the two if they do not ensure that security service whistleblowers can have confidence in the independence of the person to whom they report wrongdoing. If they do not have that confidence they are more likely to take their chance with the media. It is to be hoped that the Recommendation will say something about the person they report to being independent of the security services and making the results of his work known to the public.

Principle 9 contains a statement that the employer should be able to rely on internal reporting obligations. This requires clarification: employers may rightly ask for internal channels to be used first, where there is no reason to think they will not work, but the employer cannot insist on internal reporting in all cases, even as a first step. It also needs to state more clearly that employers should not be allowed to pay whistleblowers for their silence. Non-disclosure clauses should not be permitted to form part of settlements, in so far as there is a real issue of public interest at stake. The UK experience reveals that merely making such clauses inoperative did not stop them being included in settlements, and whistleblowers feel bound by them, not least for their future careers as well as for any legal consequences.

Principle 16 should be clearer than it is about the circumstances in which whistleblowers will be protected even if they go to the media. It is preferable to have matters dealt with by the authorities responsible for the issue, but this does not always work and the ECtHR made clear in the Guja case that there are circumstances in which action against a whistleblower who goes directly to the press, even with information regarded as confidential, may breach the ECHR. Justification should generally depend on the seriousness of the issue and on whether alternative channels do not exist, have not functioned, or cannot be expected to function. PIDA provides a good model here: it will not provide protection where a disclosure is made for personal gain, and it seems desirable that this should be standard practice, to discourage cheque-book journalism. (Official rewards are, however, not to be regarded as personal gain).

Principle 18 says nothing about checks on whether reports actually are investigated promptly. In many countries, Ombudsmen provide a natural home for oversight of how agencies deal with reports. We have seen in the UK that the absence of any such mechanism has led to public interest issues being ignored even if whistleblowers are protected.

Principle 21 does not go far enough: it should say the fact that a whistleblower acted in accordance with whistleblowing law will be a sufficient defence in civil proceedings. Some would go even further and say that whistleblowers should be immune from civil proceedings. The current Irish Bill, discussed below, provides a sensible compromise: it disbars all civil proceedings other than for defamation: and amends defamation law so as to confer qualified privilege on a protected disclosure.

There is no reference to compensation or rewards. As a minimum, the court should be able to order the employer to pay unlimited compensation when the employee who blows the whistle suffers retaliation.

The Recommendation remains under discussion: it is intended that it should be finalised at a meeting of the CDCJ in December 2013 and, if agreed then, is likely to go before the Committee of Ministers in March/April 2014. It is to be hoped that the outcome will prove useful in guiding future developments throughout Europe. All too often in international work, recommendations are agreed but largely ignored: it is not clear what, if any, action G20 members took to implement their published whistleblowing principles. That is why the feasibility study recommended that GRECO should be given a remit to monitor the implementation of this Recommendation. GRECO's monitoring of the Council of Europe's Recommendation on Political Party

Funding has led to substantial improvements in several countries, especially those – like Serbia - with aspirations to join the EU. GRECO has carried out some limited work on whistleblowing in the public sector in the second round of its peer reviews, but has yet to monitor the provision on whistleblowing in the Council of Europe’s Civil Law Convention. It is only logical that they should monitor this Recommendation too, to ensure that it has an impact.

Some National Models

As part of the preparation for the model law, the Information Commissioner asked me to examine the laws of six countries and his office has published the results of this work.⁸ It included experiences from the Netherlands, UK and US, which are discussed in detail elsewhere in this publication. To add to this information, two other countries’ approaches are described below.

Ireland

Ireland is an interesting example as they informed GRECO in 2006 that they would include whistleblower protection in sector-specific regulations, rather than draft a comprehensive law. Now Ireland has reconsidered its position in the light of experience. The 2012 Report of the Mahon tribunal (set up in 1997 to investigate allegations of corrupt payments to politicians) said the fragmented, sector-specific approach has led to a complex and opaque system for protecting whistleblowers which is likely to deter at least some from reporting corruption. So the Government has put forward a single overarching framework protecting whistleblowers in a uniform manner in all sectors of the economy.

The Protected Disclosures Bill, currently before the Irish Parliament, is based largely on PIDA. The legal systems of Ireland and the UK are very similar, so - for once - the adopted model may be appropriate. In addition, the Irish draft takes account of experience of PIDA and ideas from elsewhere and it goes beyond the model in several respects:

- adding new issues for whistleblowing which are not actually illegal acts - notably, ‘gross mismanagement’;
- providing that in any proceedings involving an issue as to whether a disclosure is protected it shall be presumed, until the contrary is proved, that it is (this is different from and wider than the form of presumption foreseen in Principle 22 in the draft Council of Europe Recommendation);
- introducing a new right for a whistleblower to institute civil proceedings against a third party who retaliates against him;

⁸Whistleblower Protection – a comparative analysis (with Shonali Routray). (<http://www.poverenik.rs/yu/publikacije-/studije/1489-zastita-uzbunjivaca-komparativna-analiza.html>).

- requiring public bodies to establish procedures for dealing with protected disclosures made by workers who are or were employed by them;
- making special rules for those who have access to secret information relevant to the security of the State. It will limit the internal channels through which such disclosures can be made and also exclude any external public disclosures. It resolves the vexed issue of access to an independent third party by providing for a new 'Disclosures Recipient', a judge who will be appointed by the Prime Minister and report to him annually.

South Korea

South Korea has a powerful protection body and an effective rewards system. It first adopted whistleblower provisions in the Anti-Corruption Act 2001, but these covered only corruption in the public sector. The Act was updated in 2008, and the 2008 Act remains in force, but more comprehensive coverage has been implemented in the Act on the Protection of Public Interest Whistleblowers 2011. That Act covers a wide range of unlawful behaviour in both sectors. Under the 2011 Act, the whistleblower may report to a number of authorities, though reports to the media are not protected. The 2011 Act requires that the whistleblower does not act for personal gain.

In both Acts, a special role is given to the Anti-Corruption and Civil Rights Commission (ACRC). The ACRC was created in 2008 by combining the Independent Commission Against Corruption established under the 2001 Act with the Ombudsman and the Administrative Appeals Commission. The ACRC does not investigate the issues raised itself but passes the case to other bodies and retains oversight: time limits apply for dealing with cases. The ACRC's main role is protective, dealing with requests for protection and allegations of retaliation. If physical protection is needed, the case is referred to the police. The Commission considers allegations of retaliation and if it finds them justified it orders whoever did the retaliation to undertake compensatory measures. There is a presumption that the retaliation was due to the whistleblowing if it took place within 2 years after it. The Commission is expected to make rewards where whistleblowing leads to the recovery of money or cost-saving. In practice, the ACRC provides the whistleblower with a reward of up to 20% (up to a limit of \$2m). Additionally, public interest whistleblowers may request the ACRC to pay relief money if they have faced financial damages or spent money due to their whistleblowing.

From 2002 to 2012, the ACRC received a total of 24,629 whistleblowing reports of corruption. Following on the reports, the ACRC recovered about \$50 m. in 183 cases, and provided rewards of about \$5 m to the whistleblowers. In 2012 alone, the ACRC recovered about \$10m in 40 cases, while providing about \$1 m to the whistleblowers in rewards. Since 2002, the ACRC received a total of 154 requests for protecting whistleblowers, including 27 requests in 2012 alone. Thus, significant amounts of money are recovered and rewards paid, but there is a relatively low level of requests for protection.

Lessons from national examples

There does not appear to be any encouraging example of a country implementing a legal framework they have adopted 'off the peg' from another jurisdiction. There have been such attempts, ending either with the Parliament rejecting the law (eg Moldova) or with the law not flourishing in its new environment (eg South Africa, which passed laws based on the UK's without adequate national debate⁹).

The main characteristic that unites the diverse examples of relatively successful laws is that they were devised locally. Good laws can only be based on a process of consultation in which local stakeholders debate what kind of overall system, and what specific provisions, would suit the law and culture of their country. In that process other laws, and their practical enforcement, will need to be reviewed to ensure that there is no conflict that would undermine whistleblower protection or cause sufficient doubt to workers about their safety to risk stopping them from speaking up. At the same time, the concerns of employers and the needs of national security cannot be neglected if a law that commands general assent is to be passed by the Parliament. Whistleblowing law is a controversial and complex subject that interlinks with laws on defamation, official secrets, data protection, labour laws on discipline and dismissal and provisions on whistleblowing found in other instruments.

This can be a long process: in the UK it took five years to devise the law that is now the Public Interest Disclosure Act 1998 (PIDA). There was an extensive national debate involving all stakeholders including business, trade unions, government regulators, lawyers, political parties, civil society organizations and religious groups. It was a difficult process, compromises had to be made all round, and those who wanted to see progress had to engage with the process for a long time, through many frustrations. However, the more that different stakeholders thrash out the arguments in the initial phase, the more likely it is that the law will command acceptance once it is implemented. Also, the more the initial debate takes place in public, the more likely the law will be known - and felt to be 'owned' - once it is passed.

In the UK the policy debate was, unusually, led by civil society, in particular by Public Concern at Work (PCAW), without Government support except in the final stages. The Government agreed to support the law on the basis that it did not impose any costs on them. This led to limitations in the law – it could not make any requirements of public bodies. Moreover, the general lack of Government engagement also shows in that the law is still not as widely known as it should be, and that it has not been subject to an official review, though it has been in force now for 14 years. This experience points to the need for Government commitment, which I believe Serbia has, judging by the public statements of the Justice Minister, Mr Selakovic. It also points to the importance of building into the law a provision for review. Review is essential to address both changing times and unexpected problems, including controversial judicial decisions.

Whistleblowing in Serbia

⁹ For a powerful critique of the results see: *The Status of Whistleblowing in South Africa*, by Patricia Martin (2010).

In 2012 I wrote a report on whistleblowing in Serbia for the UNDP¹⁰. In the course of that work I met many of the main stakeholders and was impressed by the level of personal commitment of some key people, including senior officials like the Ombudsman, Mr Jankovic, and representatives of civil society like Mr Radomirovic of Pistoljka. There appears to be a degree of goodwill here among different people working towards the common end of supporting whistle blowers which will be sufficient to overcome the many technical and political problems that can, and no doubt will, arise before a law that commands wide assent can be presented confidently to Parliament. I hope the key people will continue to engage fully with the process, however difficult and complex it may be.

I heard about a number of cases where brave people had spoken up about wrongdoing and had in effect been punished for that. It seems clear that Serbians have no problem in speaking up openly about wrongdoing – they only ask, quite naturally, to be protected from retaliation after they do so. That does not in principle require a law: a good employer should recognise that it is in their own interests to look after their whistleblowers. However experience has shown that all too often there is retaliation.

One of the cases Mr Sabic told me about was that of a worker in the national road company, who 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 trucks 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.

Pistoljka told me about a case where 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 880k euros more had been paid than had been approved, and that this sum had been used to pay middlemen who knew nothing about trains.

This kind of thing can happen anywhere. Not long ago a police authority in the UK, rather than face a scandal, preferred to pay compensation to a company to hush up the case of a police sergeant who dealt with procurement corruptly, and when a junior officer sought to uncover the corruption he was threatened with dismissal. The difference is that in the UK we have PIDA and the junior officer was able to rely on that

¹⁰The protection of whistleblowers in Serbia, a study for UNDP and the Serbian Anti-Corruption Agency (http://www.acas.rs/sr_cir/aktuelnosti/748-agencija-predstavlja-izvestaj-polastivensona.html).

law to uncover the corruption and still retain his job.

So there is no doubt that a law is needed, though legal change can only ever work if it is part of a wider cultural change. There are wider issues where change is needed in Serbia. Most notably, the Anti-Corruption Council stated the media are 'firmly controlled by politicians and tycoons' and the Independent Association of Journalists confirmed that the papers were politically controlled, except for some minor titles. Some other wider issues of particular relevance to whistleblowing – such as the role of the courts - are mentioned below. It is to be hoped that all these wider issues are being addressed as part of the EU accession process.

Thanks to the great efforts made by all concerned a draft model law has been devised and is currently being considered by a working group led by the Ministry of Justice, which at the time of writing was just starting its work. Mr Sabic's office sent me an English translation of the model law. It is a draft that goes a long way towards fulfilling the need for an effective law. There are however, and inevitably, issues which would benefit from further consideration, particularly now that the Council of Europe is formulating its Recommendation. I hope these issues will be addressed by the Working Group set up by the Ministry of Justice.

Making the law work

The drafting of a new law is not sufficient in itself, as the law is only part of a functioning whistleblower protection system.

Specialised tribunals

Under any system, there is a crucial role for the courts in addressing retaliation, and a need for them to act quickly on the basis of a deep understanding of the law. Unfortunately, as the Ombudsman informed me, Serbian 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 informed me 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 drawn out process which may never impact on them forcibly, rather than make an immediate payment.

Labour courts in Serbia were no quicker than ordinary civil courts when they were abolished in 1992. Thus any proposal to re-instate them may not help. There is a special Labour section within the ordinary civil courts. This shows that specialisation is possible, and 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).

This may be hard to achieve but it is well worth the effort as the benefits that flow from an effective court process are enormous. Notably, the possibility of settling cases out of court would be enhanced by the knowledge that the court is capable of taking firm and swift decisions in those cases that come before it. Also, by having specialised judges, there is a better chance that Serbia would avoid the problems that have arisen from idiosyncratic interpretations of the law, both in the US and UK.

Strengthening the hand of the regulators

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. Some of the issues that might be covered are:

- The Ombudsman has proposed a new draft law 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. 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.

Independent Advice

This is not a matter for the law itself but many problems can be avoided if potential whistleblowers have a helpline to obtain independent advice on how best to raise concerns. That includes checking whether there are ways to raise the matter internally and, if not, assisting the whistleblower to prepare the issue to be brought to an external agency. It also includes promoting awareness, and gives advice to employers. This is done in the UK by an NGO and law centre (Public Concern at Work) and in the Netherlands by the state-funded but independent Commission for Advice on Whistleblowing (*Adviespunt Klokkeluiders* or AVKL).

There may be citizen confidence in the independence of advice from an NGO but there are also risks that an NGO which is not a law centre but has wider objectives may not handle information appropriately. Such behaviour can damage the confidence of employers, who will then be unlikely to promote the advice line of the NGO concerned to their staff. This risk can be addressed by the offer of advice under strict legal privilege. PCaW operates under strict legal privilege - that is, reports to it are made within a client-lawyer relationship and will not be alluded to or made public inappropriately. This has helped it to achieve the confidence of both employers and citizens.

In many countries the office of Ombudsman enjoys both the respect of Government and the trust of citizens. In the Netherlands his office has recently played a central role in

giving advice to whistleblowers, although now the new state-funded AVKL has taken up that role. It is to be noted that the proposed House of Whistleblowers in the Netherlands would be co-located with the Ombudsman. Given the role of the Ombudsman in the model law, his office would make a suitable home for an advice service. His constitutional remit appears to be focussed on public functions, but that has apparently not been found a handicap to wider advice-giving by the Netherlands Ombudsman.

While a central specialised point for advice is desirable, funding for a new service may well be limited, in which case it may be necessary to share the burden of advice-giving. The ACA might develop their role of offering confidential advice at an early stage to those who are thinking of reporting corruption. It may be that the ACA will, as befits an anti-corruption agency, only deal with corruption cases, but they already have a remit covering both public and private sectors, and corruption, in the wide sense, is likely to make up an important part of the workload.

Conclusion

When I consider the distinguished and impressive stakeholders involved in this work in Serbia, and the range of international experience brought to bear on the issue of whistleblowing, I feel privileged to have played even a small part in preparing the way for the development of the draft law. I wish the Ministry of Justice all the best in leading this work through to a successful conclusion. This will not be an easy task, in this complex and controversial area, but with the continuing goodwill and co-operation of all the key stakeholders, it can be achieved. It has the potential to form a crucial element in Serbia's role as part of a democratic and progressive Europe.