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MEDZINÁRODNÝ VEDECKÝ ČASOPIS MLADÁ VEDA / YOUNG SCIENCE

Číslo 3, ročník 12., vydané v septembri 2024

ISSN 1339-3189, EV 167/23/EPP

Kontakt: info@mladaveda.sk, tel.: +421 908 546 716, www.mladaveda.sk

Fotografia na obálke: Jesenný spln. © Branislav A. Švorc, foto.branisko.at

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Javorinská 26, 080 01 Prešov

Slovenská republika

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INTERNAL WHISTLEBLOWING – A FRAGILE BUT POWERFUL TOOL IN THE HANDS OF SLOVAK BUSINESS LEADERS

INTERNÝ SYSTÉM OZNAMOVANIA PROTISPOLOČENSKÉHO SPRÁVANIA –
KREHKÝ, ALE MOCNÝ NÁSTROJ V RÚKACH SLOVENSKÝCH
PODNIKATEĽSKÝCH LÍDROV

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Autor absolvoval štúdium peňažníctva na Ekonomickej univerzite v Bratislave a následne pôsobil v komerčnej sfére v oblasti auditu, podnikových financií, internej kontroly, riadenia rizík a Compliance. V súčasnosti je interným doktorandom na fakulte Managementu Univerzity Komenského v Bratislave. Vo svojej dizertačnej práci sa venuje rozvoju podnikateľskej etiky v prostredí slovenského hospodárstva.

Author graduated his monetary studies at University of Economics in Bratislava and subsequently worked in commercial sector in various functions: audit, corporate finance, internal control, risk management and Compliance. Currently being a PhD. student at the Faculty of Management, Comenius university Bratislava, in his dissertation thesis he addresses the topic of the business ethics development in Slovak economy.

Abstract

This article examines the effectiveness parameters of internal whistleblowing systems within Slovak organizations, particularly in the context of corporate ethics and compliance programs. It highlights the challenges posed by historical stigmas associated with whistleblowing in post-communist countries like Slovakia. Despite legislative efforts and the establishment of a dedicated state institution, the uptake and effectiveness of these systems remain limited, with low reporting rates indicating a lack of trust and maturity. The author suggests that success in whistleblowing relies on factors such as organizational culture, leadership style, and comprehensive protection mechanisms for whistleblowers. It also calls for enhanced management education, stronger law enforcement, and greater support from professional associations to improve these systems. The need for continuous promotion of business ethics and participative leadership is emphasized to foster a more effective whistleblowing culture in Slovakia.

Key words: business ethics, whistleblowing, whistleblower protection, ethical climate

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Abstrakt

Tento článok sa venuje parametrom efektivity interných systémov oznamovania protispoločenského správania v slovenských organizáciách, najmä v kontexte etických a Compliance programov. Poukazuje na výzvy spojené s historickou stigmu spojenou s oznamovaním v postkomunistických krajinách ako Slovensko. Napriek legislatívnym snahám a vytvoreniu špecializovaného štátneho orgánu zostáva využívanie a efektívnosť týchto systémov obmedzená, pričom nízka miera oznamovania naznačuje nedostatok dôvery a vyspelosti. Autor naznačuje, že úspech oznamovania závisí od faktorov, ako je organizačná kultúra, štýl vedenia a komplexné ochranné mechanizmy pre oznamovateľov. Tiež sa zdôrazňuje potreba zlepšenia manažérskeho vzdelávania, silnejšieho presadzovania práva a väčšej podpory zo strany profesijných združení na zlepšenie týchto systémov. Je kladený dôraz na neustálu podporu podnikovej etiky a participatívneho vedenia s cieľom podporiť efektívnejšiu kultúru oznamovania na Slovensku.

Kľúčové slová: podnikateľská etika, oznamovanie, ochrana oznamovateľa, etická klíma

Introduction

In light of prominent whistleblower cases on a global scale, such as the Pfizer case in 2003, LuxLeaks in 2014, the Panama Papers in 2016, Cambridge Analytica in 2018, particularly those that unequivocally safeguarded the public interest (e.g., Watergate in 1972, Urenco in 1975 or NSA in 2013), the role of internal whistleblowing within corporate Ethics and Compliance programs has garnered substantial support. This shift has been driven by intense political, media, and NGO scrutiny, alongside an evolving regulatory framework. While the discourse around whistleblowing is deeply rooted in the U.S. context (Breyer et al., 2021), its relevance and application have extended to the European landscape as well. The European Union's framework (European Commission, 2019) has progressively been transposed into the national legislations of all EU member states, including those within the post-communist bloc, where whistleblowers were historically stigmatized as informants, subversives and enemies of the society. This historical stigma undoubtedly poses a significant challenge to the development of effective internal whistleblowing mechanisms within the corporate sector, although the persecution of whistleblowers itself currently does not appear as major unethical practice perceived by commercial organizations in Slovakia (Remišová et al., 2020). However, there are instances of countries making notable strides in establishing, from the perspective of public administration, the necessary infrastructure for these systems to thrive. Slovakia, for instance, may be considered a leading example in the region. The country has (1) enacted a (as compared to peer countries within the region) robust piece of legislation, subject to multiple updates, and (2) established a dedicated state institution tasked with implementing the law, overseeing compliance, offering guidance (Úrad na ochranu oznamovateľov, further referred to as "ÚOO") and training, and, where necessary, mediating whistleblower protection. Yet, this prompts a critical question: Are these foundational measures sufficient? Can they effectively overcome the deeply ingrained cultural barriers that continue to impede the maturation of internal whistleblowing systems?

Closer look on effectivity parameters

In professional business ethics practice, whistleblowing provided by internal stakeholders surely is considered to be the most effective source of detecting unethical behavior (Deák et al., 2022). The same applying to Slovakia, it is important to note that this information source proves to be significantly more effective in companies that have implemented a secure and reliable internal reporting channel and related infrastructure and program, being emphasized also by administrative guidance made available by relevant authorities (Nejvyšší státní zastupitelství České republiky, 2020; ÚOO, 2021; Ministerstvo spravedlnosti České republiky, 2021). And even as it appears easy to list all the relevant elements and factors, the more difficult it seems to finetune them into a functioning, effective mechanism fitting into the respective organizational context, because, as Nejvyšší státní zastupitelství České republiky states, the fact that internal reporting system is not being utilized, does not necessarily mean that unethical behavior is not occurring within the organization, but rather that the system may be dysfunctional in some way, or that potential whistleblowers lack trust in it (Nejvyšší státní zastupitelství České republiky, 2020).

The form (technical solution) of the internal whistleblowing channel itself does not appear to be a significant factor. An encrypted communication channel with isolated and secured database, as made available on the market by many commercial providers, might appear as optimal solution that might be welcome by potential reporting persons due to favorable user ergonomics and security, due to overall low sensitivity on security aspects this does not represent a significant advantage when focusing on aspects that support the system's frequent usage. Combined with the fact, that most of locally transposed acts within the EU space do not provide explicit ban on simple e-mail solutions, this is (and will remain for some time) the form we most often see in place. As many companies might be obliged to operate various reporting channels (ISO certification purposes, cyber-security, environmental protection, various anti-bribery certifications, local workplace health and safety regulations as well as obligations, as cascaded from Group companies to its subsidiaries, to operate a standardized ethics line), it is viable to merge these whistleblowing tools to minimize user's confusion on which to utilize in the specific context.

As Deák et al. propose, the effectiveness of the whistleblowing system appears highly dependent on the communication and transparency of the organization's entire whistleblowing framework, as the local practice indicates that cultural specifics and the setup of the company still hinder the more effective practical application of ethical hotlines in Slovakia's context (Deák et al., 2022). Nichols et al. (2021), in their work, identified a set of factors that affect the likelihood of reporting unethical conduct in the workplace:

- a) Personal – demographic criteria, moral typology, general attitudes, personality, values, attitude towards the organization, emotions, sense of responsibility, nature of the job,
- b) Organizational – profile of the organization, leadership style, ethical climate, principles, rewards for reporting, whistleblower protection,
- c) Loss versus benefit – harm in case of reporting versus potential rewards (financial reward, recognition),
- d) Nature of the unethical behavior,
- e) Design of the whistleblowing channel,

- f) Person against whom the report is directed – their position in the company, their relationship to the whistleblower, the real intent behind the report,
- g) Social factors – attitude of those in the immediate environment, support, prevailing cultural norms, which the organization needs to consider when setting up the channel, related processes, communication, and potentially education.

Referring to the cultural specifics pointed out by Deák et al., especially personal and social factors seem to be those that need to be sensitively reflected in the internal communication concept behind implementing (and, subsequently, operating) the internal whistleblowing system. On top of that, as a general rule it can be recommended to avoid negative pressure in the course of internal communication, emphasizing the employee's duties to report, but rather focus on the benefits that proper addressing of information coming to light are delivered to the organization, such as removing inefficiencies, improved workplace atmosphere, accelerating both routine and innovation processes (Novaro et al., 2023).

According to several authors (e.g., Jannat et al., 2021; Remišová et al., 2021a; Nichols et al., 2021), the effective implementation of a whistleblowing channel also hinges on associated mechanisms, particularly the protection of whistleblowers against retaliatory measures, as mandatorily codified in all EU-countries' locally transposed laws. As Jannat et al. (2021) emphasize, without such protection, employees are unlikely to use the channel, ultimately allowing unethical behavior to proliferate within the organization rather than being curbed. In practice, however, this appears the most difficult point when designing an whistleblowing system, due to several reasons: (1) limitations to protect whistleblower's identity in cases where using provided information clearly points on sole possible information source, (2) protecting whistleblower against retaliation, who, already at the moment of blowing the whistle, faced labor law measures by the employer in disciplinary or performance-related context, (3) access management gaps embedded in the organization's IT architecture, potentially causing unlawful enfolding of the reporting person's identity. All these situations can make it difficult to consider the form and level of protection, making this part of the whistleblowing system extremely vulnerable and the only way to mitigate these risks is to adopt risk-based approach when drafting the whistleblowing system including all back-to-back processes, ensuring all relevant internal knowledge and expertise participating in the designing phase.

According to Deák et al. (2022), a well-founded suspicion of unethical behavior should trigger standard processes aimed at clarifying the circumstances of the reported misconduct, delineating responsibility, and taking measures to minimize harm, prevent future incidents, and sanction those responsible. These measures are emphasized and required by compliance certification standards, such as the German standard IDW PS 980 (Gammisch, 2012). The organization does not necessarily need to rely solely on its internal capacities and expertise but can also utilize external expert resources. In this context, the authors underscore the need for thorough documentation and the appropriate communication of detected violations within the organization. Nejvyšší státní zastupitelství České republiky (2020) adds that the purpose of the internal investigation process is not to replace criminal or administrative proceedings, but to legitimately clarify suspicious circumstances within the boundaries defined by civil and labor law. In its response to confirmed findings, the

organization always has the option to refer the matter to an administrative authority or law enforcement.

In any complex system, its success in operation is highly determined by the competence of its operator. The regulatory framework in general indicates the person operating internal whistleblowing system needs to be impartial (European Commission, 2019) to be eligible to trustworthily resolve received report, however, does not mention personal competencies that person should possess. The guidance of the Slovak authority ÚOO stipulates that the person responsible for operating the internal whistleblowing system should not only be impartial (i.e. free of any conflict of interests towards persons or subject of handled reports) and independent (i.e. organized in a way that prevents any outside interventions to the report evaluation process), but also “must have the professional prerequisites to perform the tasks, ideally from the field of law, compliance, audit, internal control, personnel departments etc.” (ÚOO, 2021). On top of that, however, it must be considered that the person might become subject to pressure and therefore needs also certain personal prerequisites, such as being high personal integrity and strong values, showing good conflict management, ability to maneuver through complex political situations (Berenheim, 2010), as well as preparedness for the unpreparable hand-in-hand with ability to adopt flexible and innovative solutions in unforeseeable situations (Skaloš, 2022). We can state with great certainty that without these qualities, this person will not enjoy sufficient trust that he/she will thoroughly investigate relevant reports and, if necessary, provide the whistleblower with effective protection.

Last but not least, as Nichols et al. (2021) proposed, leadership style and organization’s ethical climate represent further success-determining factors for the whistleblowing system, as well as any other element of the organization’s ethics and Compliance programs. As Lašáková et al. (2021b) propose, ethics management in general represents a highly participative and collaborative phenomenon, therefore supporting interactions between leaders and employees, as well as authentic and systematic empowerment of employees do represent a critical success factor for enhancing organizational ethics. In reference to the whistleblowing tool, the positive workplace atmosphere of trust, collaboration, open communication and management’s commitment to doing a right thing in any situation bring positive effects, where employees (1) more openly bring up issues in information exchange (especially with their superiors) before issues escalating and gathering legal imperative, (2) more easily accept available reporting channels as an effective and secure last option. In this respect, the organization’s HR organization plays a crucial role, as, according to many authors (e.g. Adobor, 2006; Berenheim, 2010; Arulrajah, 2015; Alizadeh et al., 2021), there are powerful tools in their hands: employee selection, performance management, employee relations management, making the HR team eligible to form leadership styles, resolve conflicts and thus significantly influence the workplace atmosphere. As Danis proposes, however, in the Slovak context “Negative correlation of cultural dimensions, being on a high level in Slovakia, such as uncertainty avoidance, high power distance, or assertiveness (connected with masculinity) with this leadership style indicates that the Slovak population can consider participative style as ineffective and unworthy of

following...” (Danis, 2024), causing many organizations still traditionally following rather authoritative leadership styles.

Current status in Slovakia

Although Slovakian citizens in general shows relatively high preparedness to blow the whistle when needed (42% in November 2022) and generally positive acceptance of whistleblowers, in June 2022, only around 55% of Slovak commercial organizations subject to legislative obligation to deploy an internal whistleblowing channel have actually done so (ÚOO, 2023). Results of the project Development of Business Ethics in the Slovak Business Environment (APVV-16-0091), a large multi-phase and multi-method research project comprehensively assessing the state of business ethics in Slovakia carried out during the years 2017-2021 showed only slightly more positive results, where 63% of respondents representing commercial organizations with at least 50 employees declared to already have a working internal whistleblowing channel (Remišová et al., 2021).

Even more alarming is the fact that in 2021, only 4% of commercial organizations subject to legal obligations have received a report via the whistleblowing channel (ÚOO, 2023). Comparing to the average of approximately 3 reports received per 100 employees in average by US commercial organizations up to 2.499 employees during 2023 (NAVEX, 2024), this definitely indicates low level of implementation, maturity of internal whistleblowing systems in Slovakia and their acceptance by potential users. In this perspective, there is a huge space for further improvement in making internal whistleblowing an established and effective mechanism in Slovak business environment.

Conclusion

Internal whistleblowing channels represent an important component of the ethical infrastructure (Remišová, 2021; Lašáková et al., 2022) that replenishes the detective orientation of the corporate ethics program (Martineau et al., 2017). By ignoring and/or rejecting this tool that enables responsible employees to safely bring up sensitive and searing issues, businesses encroach on own legitimate interests – to work effectively, efficiently in order to gain sustainable profits within their scope of business, e.g. by cultivating the organization’s innovation processes (Lan et al., 2024). There are some indications that improvement might be achievable. According to the results of the project Development of Business Ethics in the Slovak Business Environment (APVV-16-0091), 31% of Slovak commercial organizations would welcome advice in how to effectively implement a whistleblowing system, and even every third company in this group already had, at least partially, such system in place (Remišová et al., 2021) and only would be interested in bringing it to a next level.

Referring to the complexity of success factors, as summarized above, several initiatives appear to be needed, with involvement of various stakeholders:

1. Continuous promotion of business ethics and internal whistleblowing as its integral part – this task appears to be for a spectrum of non-governmental organizations, such as employer and professional associations established in Slovakia, which raise the voice for fair

- entrepreneurship in long term. Though, the utmost top tone needs to be set from the political spectrum and supported by further legislative support of business ethics.
2. Management education of new business leaders towards participative leadership – the transformation and re-focus of management education formats is a long-term process but appears to be accelerated by the intensifying imperatives of sustainability, partnership and social responsibility.
 3. Effective law enforcement of legal obligations in the area of business ethics – although negative arguments and stimuluses appear contra-productive in promotion of the purpose, extremely low legal fines and follow-up action appears to contribute to the current negative situation.
 4. Education of responsible persons – as pointed out above, implementation and operation of internal whistleblowing channels is a tough and complex role that requires good preparation of those who implement and operate those systems. As the university education for ethics professionals only emerges in the western Europe and is practically missing in its central part, this again is more a playfield for professional associations (e.g. Slovak Compliance circle) focusing on exchange of knowledge and experience.

*This article was recommended for publication in the scientific journal Young Science by:
prof. Mgr. Anna Lašáková, PhD.*

*This work was supported by the Slovak Research and Development Agency under contract no.
APVV-16-0091.*

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ISSN 1339-3189