



To: UN Special Rapporteur
on freedom of opinion and expression

On protection of whistleblowers and journalistic sources in Serbia

In November, 2014 Serbian parliament adopted the Whistleblower Protection Law, a comprehensive piece of legislation that covers both public and private sector employees, shareholders of companies, job applicants and even users of public sector services who get hold of information detailing abuses.

The working group to draft the law included two whistleblowers, a police inspector and a judge, and the draft went through a comprehensive consultation process before adoption.

Implementation of the law started on June 5th, and while it is too early to ascertain its effectiveness, it can be said that it sends a strong message to potential whistleblowers that they will have judicial remedy for any retaliation against them or their family members.

However, one loophole may prove to be detrimental to whistleblowers and the public's right to know. Article 20, para 6, states that a whistleblower will be denied protection if they release "secret data" to the public, "unless it is sanctioned by law".

The law referred to here is the Law on Data Secrecy, and the issue is that the government has not adopted any bylaws that should have defined data classification. Therefore, employers could arguably classify any data, thus preventing whistleblowers from enjoying protection if they share even the seemingly non-sensitive information with journalists.

The 2014 Media Law states (article 4, para 3) that free flow of information cannot be jeopardized by "pressuring, threatening or blackmailing editors, reporters, or sources of information". Article 52 of the same law states that a journalist is "not obliged to reveal the source of the information, except data referring to a criminal act, or perpetrator of a criminal act punishable by more

than 5 year prison sentence, if the data about the criminal act cannot be acquired in a different manner”.

Article 41 of the Serbian Criminal Code states that reporters and editors will not be held criminally accountable if they withhold identity of their source, provided that the source did not commit an act punishable by five or more years in prison, “or in order to prevent such an act”.

In practice, prosecutors have tried to pressure journalists into revealing their sources. In 2011, Jelena Spasić, a reporter with a daily from Novi Sad, was indicted for not revealing a source for her story that quoted a top secret defence report. She was charged for “aiding the perpetrator of a crime punishable by more than five years in prison”. Following public pressure, prosecutors moved to stop the proceedings, but the case has never been officially closed.

In 2013, on order of Belgrade prosecutors, police questioned Ivan Ninić, a reporter with Pištaljka whistleblowing website about an article on embezzlement of funds at a blood bank. The police wanted to know who the source for article was, and Ninić said he would not reveal the source.

In general, both journalists and whistleblower remain vulnerable to pressure from politicians and big business. The implementation of the Whistleblower Protection Law, generally praised by Serbian, American and British experts as a good piece of legislation, will be best served with free media and functioning institutions. Both of these remain a challenge for Serbia.

(For more information, please see my article for Nieman Reports: In the Balkans, Whistleblowing Outlets Struggle to Survive)



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