

Whistleblowing: A Draft Law to Silence Whistleblowers

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On 16th December 2019, the Swiss “Conseil des Etats” the upper house of the Swiss Parliament, approved the draft law on whistleblowing, in pipeline since 2003. The proposed law on whistleblowing and related labour laws in Switzerland are not only important for the Swiss population, but also for the entire world.

Switzerland is home to many international organisations and multinational companies in important areas, including pharmaceuticals and foods as well as banking. It is from their headquarter in Switzerland that many of these organisations and companies govern worldwide activities. The role of Switzerland, as cockpit for world’s economy, is demonstrated by global events, such as the Davos Forum, where political, business and cultural leaders get together to shape world policies. The World Economic Forum, the international organisation for public-private cooperation, which hosts this event, is located in Geneva (Switzerland).

Thus, employees of these organisations and businesses are well placed to have an overview of global activities and signal any misdoings of global importance. Yet, their rights and protection fall under Swiss labour laws and they are prohibited from reporting their observations, irrespective of how critical they may be for society. Thus, there is conflict of interests, where a national government is asked to take a stand and judge cases of global importance.

Whistleblowing is essentially intended to protect society from corruption, illegal acts or situations endangering people. The Swiss “Responsible Business Initiative” was created in recognition of the need to protect the world’s population from misdoings by Swiss multinational companies. Given the intent of whistleblowing, why should the Swiss people and wider society not benefit from effective laws that not only allow reporting of wrongdoing, but actively encourages and protects employees doing so? Are these not good reasons for Switzerland to adopt the best possible laws as other countries, such as the Republic of Serbia, have done?

The European Commission has just adopted Directives to protect whistleblowers. However, the European Union Directives were strongly inspired by the experiences of whistleblowers in the financial sector. As a result, some of the provisions are difficult to apply to sanitary and health risks, such as the safety of food and pharmaceutical products or medical devices. The EU Directives allow companies a period of three months to react to an alert followed by a further three months for the authorities overseeing their activities. Such a timeframe is too long where inaction could impact on population-wide health. Also, the EU Directives restrict definition of a whistleblower

to employees, where any citizen who reports irregularities should benefit from judicial protection.

The Swiss draft law has the advantage of clarifying the situation, which until now has been ambiguous. **However, it is a law that regulates the alert process rather than protecting whistleblowers.** In fact, it offers no protection. In the framework of the Swiss labour law, a law, obliging whistleblowers to report internally, would result in their professional and social death. Indeed, according to recent court decisions, under certain conditions, psychological harassment or mobbing is not illegal in Switzerland. In addition, sanctions against unfair dismissal are trivial: compensation is generally few months salary (maximum six months), which is insignificant for someone who is at high risk of being socially and professionally excluded as a consequence of their actions to protect others.

For example, in a lawsuit related to a food safety alert, the Court of the Canton of Vaud acknowledged the harassment of a manager, without condemning the employer or compensating the victim. It stated that law had not been violated. The Court also disregarded the context, specifically that the employer did not take any action to deal with the lapses in food safety, which led to serious incidents across the world. In another case in the Canton of Fribourg, judges held that the whistleblowers received a good salary and should have endured and accepted the abuse. Under such circumstances, we cannot expect managers, the most knowledgeable people in an organisation or a company, to report irregularities to senior staff, especially if they are part of the problem.

For whistleblowing to be effective, the issue must be considered in the broader context of labour laws, specifically laws governing harassment and bullying, unfair dismissal, criminal prosecution for failure to follow up alerts internally and potential obstacles in the course of justice. Developing functional and effective laws requires that the experiences of whistleblowers are examined closely, since no one knows better the difficulties in navigating the system.

Finally, in the light of the global importance of information provided by whistleblowers of multinational companies or international organisations, these courageous individuals must be protected by international laws and their cases directly heard in international courts of justice.

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Yasmine Motarjemi is co-winner of the GUE/NGL Award for 'Journalists, Whistleblowers and Defenders of the Right to Information.

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