



Russian Federation: Laws on “Whistle Blower” Protection

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RUSSIAN FEDERATION

LAWS ON “WHISTLE BLOWER” PROTECTION

Russia at present has no legal framework for protecting “whistle blowers” and regulating their activities. Since 2009, government employees have been required to report to their immediate supervisors all attempts at bribing them. A recent Presidential Decree extended the reporting requirement to all cases of bribe offerings; not reporting such attempts is punishable by termination of employment. This obligation does not apply to those who serve in the military or in law enforcement. Being restricted in reporting, officers often make their reports publicly available through the Internet, losing anonymity and a chance for protection. Cases of retaliation have been reported. Private companies adopt their own, internal regulations to determine reporting procedures. Anonymous reporting appears to be the only form of “whistle blower” protection. Monetary incentives for “whistle blowers” are not allowed.

Reporting of fraud or other violations discovered by employees in the course of their work performance (“whistle blowing”) is not a widely accepted practice at present in Russia and is not regulated by legislation. The Director of the non-governmental organization Transparency International Russia, Ms. Yelena Panfilova, together with other analysts, attributes the underdevelopment of “whistle blowing” to cultural stereotypes, the absence of legal norms, and the lack of programs aimed at protecting “whistle blowers.”¹

It appears that there is no legislative act in Russia that would establish a legal framework for the reporting of fraud by government or private employees and for their protection from subsequent persecution. Specific provisions of criminal, administrative, and labor legislation, which provide for the obligations of employees of non-governmental organizations to report particular information to government authorities; prohibitions against interference in the activities of journalists and hiding information from the public; and the inability of an employer to terminate a labor contract with an employee because of his “whistle blowing” activities cannot be considered comparable to U.S. laws aimed at protecting “whistle blowers.”

I. Reporting on Government Officials’ Corrupt Activities

The first attempt to introduce measures aimed at promoting and supporting “whistle blowing” was made in 2008, when the Bill on the Fight against Corruption was introduced into

¹ Vasilii Kashin, Ulyana Gorbolskaya, *Korrupsiia Pod Udarom* [Corruption is Under Attack], VEDOMOSTI No. 87, May 15, 2008, at 5.

the State Duma (legislature) of the Russian Federation by the Administration of the Russian Federation President. The Bill provided for the obligation of all employees of federal, provincial, and municipal government agencies to report all the facts of their colleagues’ involvement in acts of corruption, if such facts became known to them. Not reporting was supposed to be punishable with termination of employment. The Bill did not foresee any incentives for those who were supposed to report. Also, there were no legal mechanisms of reporting defined, and there was no explanation of what is “an act of corruption.”² These provisions were removed from the Bill and were not included in the final version of the Anticorruption Law passed on December 28, 2008.³ The only provision of this Law that slightly resembles the principles of “whistle blowing” is the requirement for all employees to report to the law enforcement authorities cases in which they personally were offered bribes. Refusal to report such facts is punishable by firing.⁴

In order to implement this provision, most of the federal executive agencies issued their own regulations defining the reporting procedure. As a rule, they define “acts of corruption” as

abuse of official position, offering a bribe, accepting bribe, abuse of official duties, use of position in violation of legal interests of the state and the public in order to receive a favor in the form of money, valuables, other property, property rights, or material services for themselves or third persons, or illegal offering of such favors to a civil servant by other individuals.⁵

As a rule, these reports must be submitted to the Agency’s Chief of Staff, who organizes a review of the facts reported. The report should include information about the fact, time, and place of the event; information on persons involved; information on activities or non-activities performed by the civil servant in response to this attempt(?); information on any refusal of the civil servant to commit an act of corruption; and information on existing agreements (if any) to continue meetings with the people who convinced the civil servant to act corruptly. A standard form of a registry for such reports has also been introduced.⁶

In July 2009, President Dmitry Medvedev of Russia issued a decree amending the Regulation on Conduct of Civil Servants, which reintroduced the requirement to report all facts about corruption activities known to civil servants; this requirement had not been included in the 2008 Anticorruption Law.⁷ Because no special acts implementing this Regulation’s requirement have been found, it appears that the rules established for reporting by civil servants of cases of

² Olga Pavlikova, *Korrupsiaia – Delo Intimnoe* [Corruption is a Private Matter], GAZETA, No. 230, Dec. 3, 2008, at 4.

³ Federal Law of the Russian Federation No. 273-FZ on Fighting Corruption, ROSSIISKAIA GAZETA (a government-owned daily newspaper, official publication, RG), Dec. 30, 2008, at 2.

⁴ *Id.*, art. 9(1).

⁵ See, e.g., Resolution of the Federal Agency of the Russian Federation on Youth Affairs of Jan. 19, 2010, No. 4-R on Approval of the Procedure of Reporting by Federal Civil Servants of Facts of Convincing Them to Commit Corruption Activity, Registration and Review of Such Reports, RG, Mar. 5, 2010, at 8.

⁶ *Id.*

⁷ RG, July 30, 2009, at 3.

attempts to convince him/her to commit an act of corruption will apply in cases of reporting in regard to other government officials. Adoption of this decree did not create any amendments to the Criminal Code or the Code of Administrative Violations, and each agency decides how to deal with this problem individually. No additional incentive or protection measures were introduced.

Being limited to reporting cases of bribe offering and bribe acceptance, the existing system does not address other violations, such as problems related to abuse and misuse of government funds, fraud, etc.

II. “Whistle Blowing” in the Military and Law Enforcement

The system of taking reports on corrupt government officials is not applicable to the military and para-military agencies, such as the police, prosecution, customs service, or border protection service. All reports within these services shall be reported to the immediate supervisor, limiting the efficiency of potential actions and the protection of the person who reports the abuse; alternatively reports may go to the Bureau of the Main Military Prosecutor under the Russian Federation Attorney General Office.⁸ As a temporary measure, the military prosecution initiated hotlines of telephone communication and encouraged new conscripts, who are more susceptible than any other category of military servants to abuse and violation from senior officers, to report cases of disciplinary and other violations. There were cases in which the military refused to prosecute conscripts who left their military units if they reported abuse to the authorities and returned to their places of service after protective measures were undertaken. In most cases, if their complaints were justified, such individuals were amnestied and allowed to continue service in other units. In previous years, about 8,000 soldiers have used this opportunity to report abuse and protect their lives.⁹

The lack of opportunities to bring information about violations within the police system to the attention of the authorities created the so-called “Major Dymovsky” phenomena. In November 2009, Major Aleksei Dymovsky, who served as a police officer in the southern Russian city of Novorossiisk, placed on You-Tube his videotaped address to President Medvedev in which he spoke about mass violations of law by the officers of his police department and his unsuccessful attempts to bring this issue to the attention of his superiors. Following this appeal, Dymovsky was dismissed from service and criminally investigated, being accused of labeling his colleagues and committing a number of conduct violations during his term of service.¹⁰ A series of similar statements and reports published online by other “whistle blowers” in the law enforcement agencies immediately followed. Most of them accused police

⁸ Instruction No. 200 on handling complaints from the military personnel was been approved by the RF Attorney General on Dec. 17, 2007, & amended Mar. 17, 2010 [in Russian], <http://genproc.gov.ru/documents/legal-base/document-8/> (official site of the Main Military Prosecutor of the Russian Federation,).

⁹ Information on the website of the Main Military Prosecutor of the Russian Federation [in Russian], <http://genproc.gov.ru/structure/military/info/> (last visited Sept. 3, 2010).

¹⁰ *Major Dymovsky Case Transferred for Investigation to Novorossiisk* [in Russian], NEWSRU.COM INFORMATION AGENCY (Mar. 13, 2010), <http://www.newsru.com/russia/13mar2010/slm.html>.

leadership of corruption and association with criminals. Most of those making these reports were later prosecuted in a way which looked like retaliation.¹¹ Some of them were even murdered.¹²

III. “Whistle Blowing” in Private Sector

It appears that the matter of discovering fraud and encouraging employees to report the illegal activities of other personnel to the management has become very important for private companies. In most companies, this issue is regulated by internal rules, and specific departments or officials are designated to accept such information. Often, the company’s security service, legal department, or one of the board members accepts reports and performs initial investigations. Some large companies introduce special policies and pass internal acts aimed at establishing a so-called “whistle blowing” system.

For example, one of the largest Russian companies, the Joint Stock Financial Corporation Systema (JSFCS)¹³ introduced a special program of problems and shortcomings reporting, “Employees Inform!,” which was approved in March 2010 as a company regulation mandatory for all employees.¹⁴ The regulation provides for different ways of reporting discovered violations in such fields as accounting and audit; use of finance; legal violations; internal control procedures; ethics violations and misconduct; illegal access, and use of commercial secrets. Different procedures for reporting and handling reports are prescribed depending on the circumstances and involvement of upper or middle management.

The Program allows anonymous reports and prohibits management from attempts to identify the “whistle blower,” except for cases in which such identification is required by law. The Program emphasizes that it is based on the best practices of corporate management in the United States and United Kingdom, where the company conducts its business and works according to the requirements of Russian law. That is why the program prohibits submission of knowingly false reports¹⁵ and does not contain provisions which would allow issuing incentive monetary awards, such as a payment of a specific amount of the recovered funds to the “whistle blowers.”

Mass media reports indicate, however, that in some cases monetary motivation is used to provoke employees to look at their colleagues and report their misdeeds. For example, in a recently closed illegal striptease club in Moscow, employees who reported violations committed

¹¹ *BBC Monitoring. Russian Police Whistleblower Shares Experiences of Remand Prison, Text of Report by Privately-Owned Russian Television Channel Ren TV* on 9 March, JOHNSON’S RUSSIA LIST, 2010, No. 48 (Mar. 10, 2010), <http://archive.constantcontact.com/fs053/1102820649387/archive/1102911694293.html>.

¹² *Killers of the Murdered “Dymovsky of Krasnoyarsk” Are Detained* [in Russian], NEWSRU.COM INFORMATION AGENCY (Apr. 26, 2010), <http://www.newsru.com/crime/26apr2010/miltngkillerskras.html>.

¹³ JSFCS website, <http://www.sistema.com/> (last visited Sept. 3, 2010).

¹⁴ JSFCS webpage [in Russian], <http://www.sistema.ru/doc/doc.asp?obj=79794> (last visited Sept. 3, 2010).

¹⁵ The Russian Criminal Code, in art. 306 (1), states that the submission of a knowingly false report shall be punishable by a fine or imprisonment for a term of up to six years.

by their colleagues to management were paid about thirty percent of the fine imposed on the violators by management.¹⁶

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¹⁶ *Diuzhinoi Putan Rukovodil Trudnyi Podrostok* [A Delinquent Teenager Managed a Dozen Prostitutes], MOSKOVSKII KOMSOMOLETS, No. 185, Aug. 25, 2010, at 8.