

Oliver in action

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Introduction



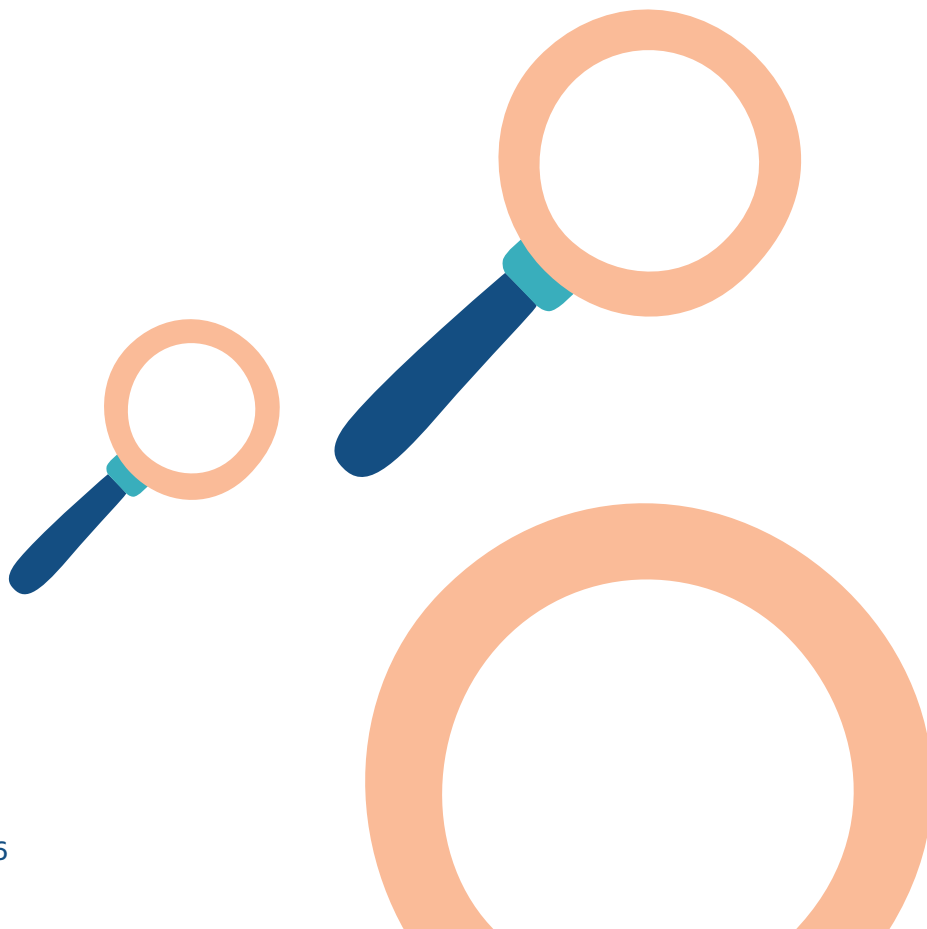

In the months when several major corruption scandals and stories of whistle-blowers occupy the most of the public's attention, the media's radar does not show equally important everyday "silent" battles that common people go into to fight the system and struggle for justice. Whistle-blowers are those who do not remain silent when they see that laws are being violated. Stories of whistle-blowers spread the word about people who do their best and whose enthusiasm and dedication do not fade away, who are courageous enough to confront those on the other side of the law. This case study is about a whistle-blower who has proven that rising voice makes sense. Oliver Adžić, water bailiff from Pančevo, has helped reduce poaching in his area by 90 percent in the last three years. Since the term whistle-blowing is fairly new and seldom erroneously shown in public, this study shall present an overview of the Whistle-Blower Protection Act and outline the current practice in relation to whistle-blowing cases.



Methodology



The research was conducted by analysing individual examples of whistle-blowing in Serbia and their outcomes. Secondary sources were analysed in the form of media announcements and research by organisations dealing with whistle-blowing issues. Since the status of whistle-blowers in Serbia is regulated only by the Whistle-Blower Protection Act, this study provides an overview of the main legal provisions. Lastly, a whistle-blower was interviewed about his struggles through institutions, including court proceedings.



Oliver becomes a whistle-blower

Oliver Adžić, 43, former military officer, participant in three wars, wounded, active fisherman, assumed in 2017 the position of water bailiff on the river Tamiš. Authorisation to perform water bailiff duties in that territory is vested in the Vojvodina Fisheries Association, which has established its limited liability company and appointed the chairperson of the executive board of the Association as director. The director is practically their own employer.

In the beginning, his work runs smoothly. Oliver performs usual duties: tours the terrain, finds illegal fishermen, seizes and destroys their nets. He performs the job that he is paid for by fishermen with regular licences of the Association. Over time, he starts facing obstacles in his work. The fishery equipment purchased by the director on behalf of the company, uniforms and technical protection boots were inadequate for use on the boat and carried the risk of strangulation in the event of falling into the water. Because of this, Oliver reported the director to the Labour Inspectorate.

The situation got complicated when during his usual rounds, Oliver caught illegal fishermen red-handed and confiscated their boat to which he was entitled and obligated as an official. Unhappy with this decision, the director ordered him to return the boat to the thieves. Oliver refused and that's where his problems began. As all water bailiffs are equipped with GPS devices tracking their position in the field, Oliver noted that illegal fishermen knew his routes and working hours and removed all traces before his arrival. The then director even banned night patrols at one point, although illegal fishermen were the most active at night. Oliver opposed such a decision, which resulted in its repeal. After this series of events, Oliver decided to become a whistle-blower. Investigating irregularities in the work of the company, he soon discovered details that raised suspicion about the director's connection to illegal fishermen, found out suspicious contracts for procurement of equipment, examples of non-compliance with occupational health and safety standards, etc.

Thanks to his experience from military school and subsequent involvement in military administration, he became familiar with legal regulations and initiated the procedure. His first step was internal whistle-blowing and he informed the company's Supervisory Board of all identified irregularities. The Board did not examine Oliver's submission in any of their meetings. This did not happen mainly because the director, as already stated, was his own superior.

The whistle-blowing process did not go smoothly. Oliver was physically assaulted several times, stoned, the tyres on his car were punctured. Each of these cases was reported to the police and to the court. He was repeatedly threatened and offered money to withdraw. As he said, endangering his security was a minor problem, he was more affected by endangering the safety of his loved ones and producing false evidence affecting his family.

As the internal alert did not produce results, determined not to give up, Oliver took the next step and alerted the public. The information reached all fisheries associations members of the Vojvodina Fisheries Association. By a narrow majority, at the Association's assembly held in June 2019, the director was dismissed. It was the victory of justice and whistle-blowers, but it did not go off without a hitch. After the director hired lawyers and challenged the decisions of the assembly, the real victory was achieved only in February 2020, when the decisions of the assembly became final and a new director was appointed, with the approval of all employees.

Despite all the problems he experienced during the whistle-blowing process, Oliver filed dozens of complaints with the authorities and addressed the courts for various types of irregularities. Several court cases are pending against him. He has no dilemma that everything will be adjudicated in his favour, as he carefully analysed legal background of each of complaints and filed all necessary evidence. To this day, he has not lost a single case.

What does the Law say?

The Whistle-Blower Protection Act, adopted in 2014 was the first law of this type ever approved in the Republic of Serbia. When it was adopted, it was a gold-standard law that stood up to a number of international law governing this matter. The law defines the position and rights of the whistle-blower, the whistle-blowing procedure, the whistle-blower protection and the compensation of damages. What is whistle-blowing and who is the whistle-blower then? According to the Law, “*whistle-blowing is the disclosure of information about violations of regulations, violations of human rights, exercise of public authority contrary to the purpose for which it was entrusted, threats to life, public health, safety, environment that also aims to prevent large-scale harm.*” In this sense, a whistle-blower is a natural person who discovers the information related to his work.¹ A whistle-blower must not be prevented from alarming and must be protected.



¹ A whistle-blower is a natural person who blows the whistle in relation to his work engagement, employment process, use of services of state and other bodies, holders of public authorities or public services, business cooperation and ownership rights in a company, the Whistle-Blower Protection Act, article 2, paragraph 2

Whistle-blowing procedure

Whistle-blowing can be internal, external and public. A different procedure is foreseen for each type of whistle-blowing. In the case of internal whistle-blowing, the whistle-blower contacts the employer and discloses sensitive information. When it comes to external whistle-blowing, the whistle-blower addresses the authorised body. Finally, public alert implies that information is communicated through the media, social networks, rallies or is otherwise made available to the public.²

1. Internal whistle-blowing

The procedure begins when the whistle-blower communicates the information to the employer, who is obliged to take all measures to eliminate any irregularities pointed out by the whistle-blower. The employer is obliged to act on the information immediately, within 15 days, and to inform the whistle-blower of the outcome of the procedure.

2. External whistle-blowing

The external whistle-blowing procedure begins with the submission of the information to an authorised body, specifically to the head of that body or to the superior. The notified body shall act immediately upon receipt of the information, within the same time limit as in the case of internal whistle-blowing.

3. Public alert

Another option a whistle-blower has is to alert the public. It can be carried out without initiating the previous two forms of whistle-blowing if there is a danger to life, public health, safety, environment, a large-scale damage, or if there is an imminent danger of the destruction of evidence.

Regardless of the type of whistle-blowing, the employer must respect the rights of the whistle-blower and protect them from disadvantages (loss of employment, loss of promotion opportunities, punitive transfers to another position with worse working conditions). The practice has so far shown that a whistle-blower suffers some kind of damage due to the disclosure of information, more precisely cases of pressure such as loss of employment or reassignment to another job. In the event of a harmful act inflicted on the whistle-blower, the Law in that case protects them and they can protect their rights in various ways before the court. Judicial protection is achieved by filing a lawsuit for protection, which is related to the alert, to the territorially competent higher court within six months from the day of finding out about the harmful action taken, and not later than three years from the day when the harmful action took place.³ The Law recognises such procedures as urgent and allows for the protection of rights by allowing an extraordinary legal remedy - review. A whistle-blower seeking protection by a lawsuit may demand the prejudice they suffered be established, that the said prejudice be forbidden from performing and repeating; they may ask that consequences of prejudice be eliminated, as well as compensation for material and non-pecuniary damage, and the publication of a judgment at the defendant's expense. In order to prevent retaliation against employees, the Law provides for a temporary measure, by which the court protects the whistle-blower from possible adverse consequences. If the employer fails to undertake the necessary measures to remedy and suspend the consequences of the harmful act for such failure to act, a fine is provided. In addition, as a form of special protection, the Law allows the whistle-blower to initiate proceedings before the court to protect their employment rights in the event of dismissal or transfer to another job.

² The Whistle-Blower Protection Act, article 12

³ The Whistle-Blower Protection Act, article 23

And what ever happened to the others?

Having a law that defines the protection of whistle-blowers still does not mean that individuals will be encouraged to act as whistle-blowers. The practice shows that there are still very few whistle-blowing cases in Serbia. Cases like Borko Josifovski from the Emergency Room in Belgrade, Tomislav Veljković, whistle-blower from Rača, a very well-known Krušik affair and the whistle-blower Aleksandar Obradović, remain rather isolated cases.

Having opted for whistle-blowing, Aleksandar Obradović sacrificed his freedom. As an employee of the holding corporation Krusik a.d, for years he has witnessed corrupt practices that led to the privileged position of individual customers over others, which had budgetary implications. He decided to alert the public by providing evidence to the press about these corrupt practices. He spent two months under house arrest because he was tried on suspicion of disclosing a trade secret. The public was not aware of the fact that he had been in detention for twenty days because the media did not broadcast the news. The silence was broken by an article in the NIN weekly newspaper, which provoked public reactions and Obradović was released from house arrest. After protests and public support, the Krušik case and Aleksandar Obradović caught the public's attention.⁴ Although various government officials tried to deny the truthfulness of his claims, news of the whistle-blowing reached both international media and non-governmental organisations. In parallel, the institutions' responsibility to protect him as a whistle-blower on the one hand and on the other to take further action on the allegations he made remained silent. In the end, he was the only one who suffered consequences from whistle-blowing due to different interpretations of the regulations by different institutions.

Why is there a small number of whistle-blowers? In addition to fear they endure because of the institutions' unaccountability, the answer probably lies also in repercussions they suffer after they disclose a certain sensitive information. The whistle-blower works for the benefit of the public, but often to his own detriment. So far, the practice has shown that whistle-blowers suffer pressures and adverse criticism,⁵ often lose their jobs or are reassigned to another position. Although whistle-blowers are protected by Law, their employers often act as if the law does not exist.⁶ Besides, the problem is also the way that the media broadcast information about whistle-blowing. In the case of Krušik, only some media in Serbia broadcast the news, whereas the majority remained silent. With all this in mind, it is clear why there are very few whistle-blowers.

The first step that would contribute to the change is to educate employees more thoroughly about their rights as employees, how to invoke this law, what actions to take in case of irregularities and how to protect themselves from possible retaliation. The second, and a more important one, is to systematically change reporting about whistle-blowers. In practice, advancements in terms of compliance with the law and the whistle-blowing process itself could be made by giving the institutions clear instructions on how to act in cases of whistle-blowing. This would help achieve a uniform attitude towards whistle-blowers and whistle-blowing.

4 Aleksandar Obradović released from detention <https://www.krik.rs/aleksandar-obradovic-pusten-iz-pritvora/>

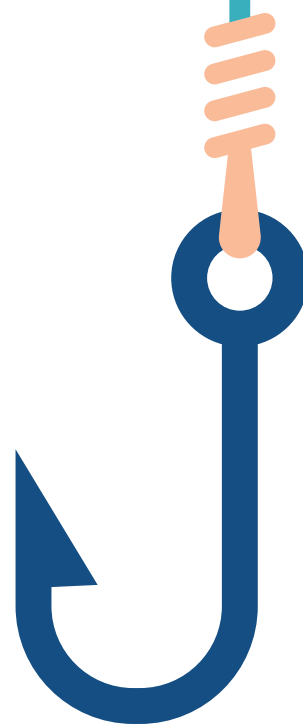
5 Josifovski pointed out in 2005 the cooperation between the ER doctors and undertakers. Not only competent authorities did not verify his claims and arrest those who misused their office, but Josifovski got also fired. <https://www.danas.rs/dijalog/licni-stavovi/da-li-ce-srbija-cutati/>

6 The whistle-blower Tomislav Veljković pointed out to wrongdoings related to the construction of a plant. The Municipality of Rača laid him off in 2017 after he pointed out that it was unknown how the amount of 600,000 euros was spent on the construction of the then inexistent wastewater treatment plant. <https://pistaljka.rs/home/read/859>

Conclusion

Oliver's heroic commitment resulted in 90 percent decrease in poaching in the last three years, judging from the amount of equipment seized. Perhaps more importantly, other colleagues began to look upon him. When asked what he would advise those who would dare to blow the whistle is never to give up once they start, and to strictly obey the law, because it is the only possibility of victory and independence. Despite statistics that show a fairly small number of whistle-blowers⁷ the results of their actions and their determination to stand up against the perceived irregularities remain crucial. By deciding not to turn the blind eye to injustice and corruption, these brave men rejected the conviction that whistle-blowing was futile and that the battle with the system was lost in advance. They have shown that this is not necessarily true and that the most important thing is to preserve the personal integrity and integrity of the collective in which they work.

And Oliver? He obtained his licence but has not gone fishing since 2017. When asked if he would go this year, he replied with a smile - I guess.



7 From 2015 to June 30th 2019, the total number of whistle-blowing in the Republic of Serbia is 689, but the available data do not show the number of cases resolved in favour of the whistle-blower. <http://www.protivkorupcije.rs/upload/2019-09-09%20Statistika%20i%20preporuke%20za%20primenu%20ZZU%20-%20Konferencija.pdf>

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