Providing an Alternative to Silence:

Towards Greater Protection and Support for Whistleblowers in the EU

Country Report: SWEDEN (September 2012)

This report belongs to a series of 27 national reports that assess the adequacy of whistleblower protection laws of all member states of the European Union. *Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU*, published by Transparency International in November 2013, compiles the findings from these national reports. It can be accessed at www.transparency.org.

All national reports are available upon request at ti@transparency.org.

Responsibility for all information contained in the report lies with the author. Views expressed in the report are the author's own, and may not necessarily reflect the views of the organisation for which they work. Transparency International cannot accept responsibility for any use that may be made of the information contained therein. The project has been funded with support from the European Commission. The sole responsibility lies with the author and the Commission cannot be held responsible for any use that may be made of the information contained therein.

With financial support from the Prevention of and Fight against Crime Programme of the European Union. European Commission – Directorate-General Home Affairs



JD INGRID HELMIUS Juridicum Uppsala Universitet Box 521 SE 752 10 UPPSALA ingrid.helmius@jur.uu.se +46 18 471 76 49

WHISTLEBLOWING

1. INTRODUCTION

Transparency International defines whistleblowing as "the disclosure of information about perceived wrongdoing in an organization, or the risk thereof, to individuals or entities believed to be able to effect action".

The Swedish constitution, the Instrument of Government (Regeringsformen, RF), safeguards the human rights. Everyone shall be guaranteed the freedom of expression; that is, the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way (RF 1:2).

The freedom of expression may, like most other rights, be limited by law (RF 2:20). The limitations may be imposed only to satisfy a purpose acceptable in a democratic society. The limitation must never go beyond what is necessary with regard to the purpose that occasioned it, nor may it be carried so far as to constitute a threat to the free shaping of opinion as one of the fundaments of democracy. No limitation may be imposed solely on grounds of a political, religious, cultural or other such opinion.

Freedom of expression may be limited with regard to the security of the Realm, the national supply of goods, public order and public safety, the good repute of the individual, the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be limited in business activities (RF 2:21). Freedom of expression may otherwise be limited only where particularly important grounds so warrant. In judging which limitations may be imposed, particular attention must be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific, and cultural matters (RF 2:23).

The freedoms and rights in the constitution govern the relation between the state and the citizens or judicial persons. They don't apply directly to relations ruled by civil law.

By international comparison, freedom of expression is well protected and exceeds in many respects what is set by Article 10 of the European Convention. This convention is not described further here, as every member of the European Council and each EU member are bound by the same requirements.

2. A COMPILATION, DESCRIPTION AND ASSESSMENT OF PROTECTIVE WHISTLEBLOWING LAWS

Introduction

All rules regarding secrecy in public activities are collected in the Public Access to Information and Secrecy Act (Offentlighets- och sekretesslagen, OSL). The act stipulates that all public authorities must observe secrecy, which means a prohibition on disclosing information either orally or by making an official document available or in any other way.

The Secrecy Act also applies to employees, contractors and persons under an obligation to serve at authorities and other bodies. A prerequisite for a public functionary to be bound to observe secrecy is that he or she has obtained the information in his or her line of work, part of assignment, etc.

In some articles the presumption is secrecy and the information in question can only be disclosed if it is obvious that it will not do any harm if revealed. In other cases, public access is presumed and secrecy the exception. Irrespective of presumption, there are two kinds of secrecy: normal and qualified secrecy. The relevance of these different types is discussed below.

The Constitution

In Sweden all employment contracts are presumed to contain a general duty of loyalty towards the employer. Chapter 2 in the Constitution regarding human rights is directed to the parliament and stipulates standards for legislation that infringes these rights. In the employment relation, the human rights in the constitution are not applicable directly. An employee cannot assert the freedom of expression against an employer based on the constitution.

As an employer's entitlement to blow the whistle is formed as an exception to this obligation of loyalty, the starting point to describe the framework regarding freedom of expression for employees is the consistence of this duty.

The duty of loyalty implies protecting the employer's interests in general and performing its duties in a careful and considerate way. It also signifies an obligation to maintain secrecy regarding confidential information obtained during the duration of the employment. The duty is not prescribed by law, but can be explicitly stated in the individual employment contract or in the collective agreement between the union and an organization of employers or an employer itself. The contract or agreement has, according to basic contract law, to fulfill the principle of "good practice".

Even if the duty of loyalty is not mentioned in a contract or in a collective agreement, in practice, it is implied to be applied in any employment contract (Arbetsdomstolen, AD 1994:79). The constitutional freedom of expression is, in the private labour sector, overruled by this obligation to keep secrecy. Thus, the employer's freedom of expression has limitations as regards what he or she can communicate on the employer.

All employees

Termination of employment is regulated in the Employment Protection Act (Lagen om anställningsskydd, LAS). The act applies to all employees, both in the private and in the public sector including the public administration. The employer must have a just cause and objective grounds for a dismissal (LAS 7, 18 §§). There are two types of dismissal – with notice and immediate. The latter is applied in cases of more severe breach of contract by either part.

Disputes as to whether a just cause for dismissal exists are settled by the Labour Court. If not objectively grounded, the dismissal may be declared null and void. There is also the right of damages, both compensatory and punitive.

According to Labour Court case law, as a principal rule, the duty of loyalty takes precedence over the freedom of expression. Thus, whistleblowing can constitute a breach of contract that can be a ground for dismissal with or without notice. There are, however, many exceptions from that rule. If the revealed information regarding misconducts or serious conditions is objective and founded on facts it is not considered as a ground for dismissal.

There are no specific rules on when whistleblowing is considered a just cause for dismissal, but some guidelines can be drawn from the Labour Court's case law.

If the whistleblower has breached his or her duty of secrecy, the following can be identified as *not* being objective ground for dismissal: If the whistleblowing reported information regards

- serious wrongdoing or crime, and
- the employee has reported this situation to the employer who did not correct the situation despite given the opportunity, and
- the whistleblowing was aimed to correct the wrongdoing and not only to harm the employer.

The employee's position with the employer is also taken into consideration. If an employee is holding a position of trust, he or she is considered to have a higher degree of duty of loyalty than other employees.

Internal whistleblowing – to report wrongdoings within the company – is permitted as long as the criticism is communicated objectively and not aimed solely to harm the employer. If these requirements are not fulfilled, it can be a case of breach of the duty of secrecy in a way that constitutes a just cause for dismissal (AD 1962 nr 27, AD 1982 nr 110, AD 1986 nr 95, AD 1994 nr 79, AD 1997 nr 57, AD 2006 nr 103, AD 2007 nr 53).

Civil servants

Employees in the public administration are governed by the same legislation as those in a private company. However, in practice from the Swedish Labour Court there is a major difference between how to balance the freedom of expression and the duty of loyalty towards your employer. In cases where an employee has been discharged due to reporting unwished information outside the administration, the Court often rules in favor of the

employee and his or her freedom of expression (AD 1991 nr 106, AD 2003 nr 51, AD 2007 nr 20, AD 2011 nr 15, 2011 nr 75).

The secrecy of business activities

There is a special Act on Protection of Business Secrets (Lag om skydd för företagshemligheter, FHL, 1990:409). It prescribes that employers are prohibited to disclose secret business information. What constitutes such information has a wide definition. It includes all information that the company wants to keep secret so as not to harm competition with other companies, or business relations. To reveal information regarding crime or serious misconducts is not considered as a breach of the prohibition to disclose secrets.

The law nevertheless makes it possible for employees to blow the whistle regarding such secrets in special situations (FHL 2 §). If the secret is made public or is communicated to an adequate public authority or other organization concerns a crime suspected on reasonable grounds for which there is prescribed a penalty in prison, or other serious wrongdoing, it is considered permitted to blow the whistle. This act cannot be avoided by stating otherwise in a contract.

Thus, such disclosures cannot render the employee any kind of penalty or damage liability according to FHL. A question yet to be answered by case law is whether it is a just cause for dismissal to use this whistleblowing rule. It seems hardly likely, in the author's opinion, since this would mean that the employee is protected from liability for damages, but not from sanctions under labour laws.

The act is applicable in both the private and the public sector. However, it is in the private sphere, including state-owned companies, that the act it is of any practical use.

Regarding the public administration itself or when it comes to companies owned by municipalities, there are other ways for an employee to draw attention to wrongdoings. See more below.

Lex Sarah

The so called Lex Sarah became law after an employee named Sarah had been dismissed after reporting misconducts and serious conditions to the adequate public authority. The legislation typically applies to activities, for which the local municipalities are responsible, mainly the care of the elderly, children, and the disabled.

Lex Sarah is applicable when an employee has paid attention to wrongdoings, or considers an evident risk for wrongdoings to be at hand, and the wrongdoings concern individuals subject to the activity in question. If that is the case, the employee has an *obligation* to report the situation to the adequate authority.

An employee in the private sector (including state or municipal-owned companies) shall report to the instance or person responsible for the activity and these representatives shall report to the adequate public board. According to Lex Sarah, an employee in the public sector shall report to the municipal board that is responsible for the acitivity. (Socialtjänstlagen, SoL 14:1, 3, LSS 23 e, 24 a-f §§).

This obligation to blow the whistle is thus prescribed by law and it is not possible to make exceptions from it in an employment contract. Neither is it considered a breach of the duty of loyalty to make such reports.

Since Lex Sara is aimed at supporting those who want to report on wrongdoings in their workplace, it is not publicly sanctioned to choose not to report such circumstances. If an employee in numerous cases does not communicate the wrongdoings to the employer, the employer can sanction him or her under labour laws.

Lex Maria

Within the health and medical system special whistleblowing rules apply. Lex Maria prescribes a duty to report wrongdoings (Patientsäkerhetslagen, PSL 3:5). The rules are applicable to health care in public as well as private regime.

However, under this law the duty to report falls on the caregiver and not on the employee. The employee will report risks of injuries as a consequence of the care to the caregiver, who then in turn investigates if the National Board of Health and Welfare should be notified. If an employee neglects to fulfill this duty to report, he or she can be subject to disciplinary actions under the labour laws.

The employer's duty to report wrongdoings cannot be avoided by means of an employment contract. Making such a report is not considered a breach of duty of loyalty towards the employer.

Personal data act

Whistleblowing rules that stipulate that the employee reports information about crime to their employer may come in conflict with the Personal Data Act (Personuppgiftslagen, PUL). This law prohibits that any other parties than public authorities process personal data concerning legal offences involving crime (PUL 21 §).

Based on the same section the Swedish Data Inspection Board has issued regulations on exemptions from this prohibition.

If the personal data regarding crime concerns key persons or persons in leading positions it is possible to communicate the information within the company as long as it is objectively motivated to use special internal routines to investigate whether the person in question is involved in serious irregularities.

Personal data on other employees are not exempted and shall therefore always be reported to a public authority.

Special rules on communication with media, civil servants and employees in municipality companies

When it comes to communicating with media there are special rules for civil servants and employees in a company owned by a municipality. State-owned companies are exempted. The purpose of these special rules is transparency within the administration and public companies.

The two basic laws concerning this are The Freedom of the Press Act (Tryckfrihetsförordningen, TF) and the Fundamental Law on the Freedom of Expression (Yttrandefrihetsgrundlagen, YGL). TF regulates the printed word, i.e. books, newspapers and journals, whereas YGL deals with other media.

The point of departure is that all persons are, according to TF and YGL, free to anonymously communicate information and intelligence on any subject whatsoever, for the purpose of publication in print or other media to an author or other person who may be deemed to be the originator of material contained in such printed matter, the editor or special editorial office, if any, of the printed matter, or an enterprise which professionally provides news or other information to periodical publications (TF 1:1, YGL 1:2, OSL 13:2).

Of course, this also applies to employees in the public administration or any other employee. However, a public official and employee in companies owned by municipalities have the right to report to media even if the information is classified under the Public Access and Secrecy Act. In any other circumstance they are under the obligation to preserve secrecy. It is not of interest whether the information is in fact published, unless that is the reason why it is communicated to the publisher.

Public officials are not obliged to provide the media with secret information. It is up to each individual to decide whether he or she wants to do that.

If information is classified under the rules on qualified secrecy, it is prohibited for employers to reveal it to the media, even if the purpose is to publish it.

For example, in a police investigation of a crime, information on secret telephone interception sorts under the rules on qualified secrecy, and a policeman is therefore prohibited to communicate to media about such measures. The name of a suspect for the crime in question is on the contrary sorted under the rules of normal secrecy and a policeman can report the suspect's name to media. It is another question if the publisher actually can disclose the name of the suspect in print or other media, since this matter is governed by other rules.

Only oral information can be handed to the media, never documents.

Law penalizes both the act of handling documents to the media and to communicate information due to qualified secrecy.

This freedom to communicate with the press also applies to short-time employees, consultants or any other who works for an authority under commission.

The freedom to notify the media is supplemented by rules that prohibit the employer to inquire into the identity of the person who has communicated information (TF Ch. 3, YGL Ch. 2). Law penalizes an employer who breaches this prohibition.

In cases of communicating qualified classified information, these rules on anonymity and prohibition of inquiring are set aside.

3. PERCEPTIONS AND POLITICAL WILL

As recent as August 2012, a new parliamentary committee with the task of overseeing the rules on freedom of expression for the press and other media reported their conclusions (A Review of the Freedom of the Press and the Freedom of Expression, SOU 2012:55). Regarding the freedom to communicate with the media, it does not suggest any legislative changes except for revising the language so it will be more accurate for its time. A limitation or widening of the rules on this matter was not discussed.

Naturally this is positive for the existing freedom, but it would have been even better if the committee had suggested making these rules applicable also for employees in a state-owned company or in a private enterprise. These exceptions still remain and there seems to be no political will to make that change. This, of course, is a much desired change to strengthen the legislation regarding whistleblowing.

The Swedish government has recently commissioned a committee to review the need of strengthening and widening the right to communicate with media to employees in publicly financed private companies, especially within the healthcare and education system (Dir 2012:76, Meddelarskydd för privatanställda i offentligt finansierad verksamhet).

4. STRENGTHS, WEAKNESSES AND RECOMMENDATIONS

Public access and secrecy

The general knowledge of the rules regarding secrecy is surprisingly low. The Swedish Parliamentary Ombudsman frequently criticizes public authorities for wrongfully denying access to information. The by far most frequently asked question from public servants I get - as a researcher in Public Law - regards secrecy.

Lex Sarah

Investigations of the effectiveness of Lex Sarah have shown that the employees' reports are sometimes not remitted to the adequate board, and when they are, the boards do not always take measures against the wrongdoings. This problem is worsened by the confirmed lack of effectiveness of the revisions of municipalities in general. The state's power to take measures is limited, since the independence of the municipalities is guarded by the constitution. Supervision and sanctions by the state and the courts on municipalities is a problematic issue in Sweden. It is therefore no easy task to give recommendations to adequate changes in this matter.

Even if a court judges that a municipality does live up to requirements stipulated in an act, this does not automatically lead to a possibility to enforce the municipality to meet the requirements stated in the judgment.

Lex Maria

Just like the case with Lex Sarah, there seem to be problems regarding what the caregiver management does with a report from an employee. However, since the reports regarding wrongdoings are sent to a state agency and the revision of state agencies is considered far more efficient than the municipalities, the effectiveness of the report system is better.

Personal data act and internal whistleblowing system

After a Swedish public service TV-channel reported on suspected bribes within the city of Göteborg's administration, the municipality itself instigated a co-operation with a law firm. The aim is to introduce the employees to an institution to which they can report suspected wrongdoings. If the information the employee wants to share is regarding a crime, the sharing is illegal according to the rules in PUL. It is therefore recommended to introduce routines that will give the employees easy access to the adequate public authority.

Right to communicate with media

Even though the legislation and practice both from courts and the Ombudsman regarding the right to communicate with the press and other media are very clear, in June 2012, the director general of a central public agency said in a filmed meeting with her staff that it was extremely undesirable that employees communicate information about the agency to the media. She later claimed that she was misunderstood and that her speech was taken out of context. At present, there seems to be no legal enforcement taken against this action.

This was reported almost as a scandal in the media. One could draw from this two conclusions: There is no doubt that it is scandalous for a public officer in a high position to make such a statement. It is also, however, obvious that the knowledge among the officers of the profoundness of the freedom of expression for public servants is not what might be expected, especially since the Swedish Parliamentary Ombudsman has already been obliged, on several occasions, to criticize public managers and others in high positions for acting in opposition to those rules.

The freedom to communicate with media has a strong position in the Swedish legislative system. Of course, this freedom should be applicable also to employers in a state owned company.

Time-limited employment and agreements with staffing companies has increased. Since there is a risk among these employees for an increased fear for reporting malpractices, it is recommended to pay attention to protect persons without permanent tenure who reports such actions. Other categories not included in the legal protection for whistleblowers are for example clients, patients and pupils. They are also in need protection against reprisals.

It is a strange fact that leaders of public authorities are often shown to be ignorant of the legislation on the freedom to communicate with media, especially considering the harsh attitude in the media and otherwise towards managements in the public sector and the publicly owned companies that want to limit or infringe the freedom of expressions among their employees.

It is essential to facilitate and normalize the reporting of malpractices. But even if there are laws prohibiting retribution against whistleblowers, not everyone has the courage or even feels concerned enough to report on an employer's wrongdoings. It is therefore also essential to make everyone aware of the risks of declining quality in both the public and private sector. It is a question of a functional democracy.

Knowledge regarding obligations and rights for both employers and employees are of the utmost importance. Education on the topic is highly recommended.

5. Summary of recommendations by Transparency International Sweden

- 1. Reinforced protection by law should be introduced for employees who, in good faith and on reasonable grounds, raise genuine concerns about serious malpractices in the workplace. The protection should apply to all employees, irrespective of their form of employment, and should contain a prohibition of reprisals, regulations for burden of proof, regulations for compensation, as well as a prohibition of "buying out".
- 2. The protection should also apply to other persons who draw attention to serious malpractices, for example contractors, customers, clients, patients and pupils.
- 3. A requirement should be introduced calling for Swedish employers to facilitate for those who report serious malpractices by, for example, having sound internal regulations, training staff members and using confidential reporting systems. The requirement should be proportional in relation to the extent and nature of the work. For a large and risky operation the requirement should thus be more severe than for a small and less risky line of work.
- 4. The right for anonymity should be introduced for those who disclose corruption and other malpractices within the private sector with the regulations from the public sector serving as an example. As long as there is no protection laid down by law the employer and employee are urged to draw up a collective agreement that guarantees the right for anonymity.
- 5. Persons who have been accused for malpractices should, for legal security purposes, have a reasonable possibility of defending themselves against accusations.
- 6. The recommendation from the Council of Europe's Group of States against Corruption (GRECO) that confidential counselling is to be made available to witnesses and victims of corruption should be followed.
- 7. Sweden should work towards the establishment, on a European level, of a convention regarding the protection for whistleblowers.

REFERENCES AND SOURCES

Travaux preparatoires

Prop. 1973:129 Employment Protection Act

Prop. 1987/88:155 Act on Protection of Business Secrets

Prop. 2007/08:44 Vissa etikfrågor (PUL), Issues on ethics (Personal Data Act)

Prop. 2008/09:150 Offentlighets- och sekretesslag, Public Access to Information and Secrecy Act

Prop. 2009/10:81 Grundlagsskydd för digital bio och andra yttrandefrihetsrättsliga frågor, On Freedom of expression and digital media

Prop. 2009/10:210 Lex Maria, Patientsäkerhet och tillsyn (Lex Maria), Patient's Protection Act

Prop. 2009/10:131 Lex Sarah och socialtjänsten – förslag om vissa förändringar, Lex Sarah and Social Service Agencies

SOU 2012:55 En översyn av tryck- och yttrandefriheten, A Review of the Freedom of the Press and the Freedom of Expression

Literature

Bohlin, Alf, *Offentlighetsprincipen*, Norstedts Juridik, 2010 Nergelius, *Constitutional Law*, i Bogdan, Swedish Legal System, Norstedts Juridik, 2010 Numhauser-Henning, *Labour Law*, I Bogdan, Swedish Legal System, Norstedts Juridik, 2010

Annex A)

Abbreviations

AD	Arbetsdomstolen – The Labour Court
FHL	Lag om skydd för företagshemligheter (1990:409) - Act on Protection of
	Business Secrets
LAS	Lagen om anställningsskydd (1982:80) - The Employment Protection Act
OSL	Offentlighets- och sekretesslagen (2009:400) - Public Access to Information
	and Secrecy Act
PSL	Patientsäkerhetslagen (2010:659) – Patient's Protection Act
PuL	Personuppgiftslagen (1998:204) - Personal Data Act
RF	Regeringsformen - Instrument of Government
SoL	Socialtjänstlag (2001:453) - Social Services Act
SOU	Statens Offentliga Utredningar - Swedish Government Official Reports
TF	Tryckfrihetsförordningen (1949:105) - Freedom of the Press Act
YGL	Yttrandefrihetsgrundlagen (1991:1469) - Fundamental Law on the Freedom
	of Expression

Annex B)

Recommendations made by TI Sweden

1. Protection by law for whistleblowers

Norway and Great Britain, wise through the painful experience of accidents and tragedies, have created laws that protect employees who raise genuine concerns about serious malpractices in their workplaces, irrespective of whether they are employed in the public or the private sector. Sweden should introduce a corresponding level of protection for employees who, in good faith and on reasonable grounds, raise genuine concerns about serious malpractices and irregularities in the workplace. The protection should apply to all employees, irrespective of the form of employment, and it should contain a prohibition of reprisals, regulations for burden of proof, regulations for compensation, as well as a prohibition of "buying out".

2. Protection for persons with time-limited employment and for insiders other than employees

The proportion of employees with time-limited employment has increased in Sweden. It has also become increasingly common for staff to be hired via staffing companies. The demand for a flexible and mobile labour market has increased with new global economic challenges. Employees who leave their employment, for example in order to start at a new job with another employer or in order to retire, could be expected to find it easier to draw attention to malpractices. However, in the large majority of cases, time-limited employment leads to an increased fear of getting on the wrong side of the employer.

When formulating new legislation special attention should be paid to protecting persons without permanent tenure who point to serious malpractices. Furthermore, it should be observed that people from categories other than that of employees, for example customers, clients, patients and pupils also deserve legal protection against reprisals. In both Norway and Great Britain the whistleblowing legislation has been criticized for precisely this, the protection is too narrow and is only offered to employees.

3. Obligation to facilitate for those who report on serious malpractices

Organisations that, through their management culture, silence and punish persons who are alert and questioning, create risks that affect not only the organisations themselves, but also the surrounding environment, especially since organisations of today are often so large and complex that the management cannot have insight into all the fields of activity. By facilitating and normalising the reporting of malpractices, risks can be decreased and the quality of the enterprise can be raised, something which serves both the organisation and society. In the legislation of, for example, Norway and the United States, requirements have thus been introduced calling for organisations to facilitate the reporting of serious malpractices, at first internally and secondly externally.

Already today developments in foreign legislation have an effect on Swedish organisations, for example because Swedish companies that are listed on American stock exchanges or are a part of American affiliated groups of companies need to adapt to the requirements that exist in American legislation.

An equivalent requirement should be introduced for Swedish employers to facilitate for those who report serious malpractices, for example by way of internal regulations, staff training and confidential reporting systems. The requirement should be proportional in relation to the extent and nature of the work. For a large and risky operation the requirement should thus be more severe than for a small and less risky line of work. It is worth mentioning that several anti-corruption conventions that Sweden has adopted contain such requirements.

4. The right for anonymity for those who disclose corruption and other serious malpractices in the private sector

The right for anonymity applies primarily to employees in the public sector. In general, private employers are free to investigate among their employees to find out who has provided information to the media. A private employer can essentially also take measures, for example give notice of termination, against an employee who has provided the media with information, motivating the measure with the disloyal action of the employee. Also, the freedom of speech for private employees can be further limited by an agreement of professional secrecy. On the other hand, the parties in the employment relationship are free to expand freedom of speech by way of a contract, for example the employment contract or a collective agreement. There are a few cases today of private employers who have arrived at a collective agreement that contains stipulations for extended freedom of speech for the employees in the "same spirit" as the stipulations of the right for anonymity in constitutional law.

However, it is important to emphasise that "contracted right for anonymity" is considerably weaker than the right for anonymity in constitutional law. Above all, the prohibition of reprisals confirmed by constitutional law since the first of January 2011 that is sanctioned with a prison sentence, does not apply. The right for anonymity has been extended through the years. Since the year 2006, the right for anonymity also applies to employees and contractors in municipal companies. There are also a number of private lines of business within which the right for anonymity applies, for example in inspection and notary public activities. However, apart from this, a more general extension has not been made even though proposals have been submitted with increasing frequency. The government has chosen, after criticism from the referral body, not to proceed with the proposals concerning the right for anonymity that have previously been submitted (see e.g. the Swedish departmental memorandum, Ds 2009:1). The criticism has been summarized by the government as containing two main arguments against the right for anonymity for private employees. The first argument is that a general right for anonymity might limit freedom of contract and, more specifically, the freedom to enter a contract of professional secrecy. The second argument is that an extended right for anonymity might potentially damage the competitiveness of Swedish companies. With regard to corruption and other serious malpractices the criticism of the right for anonymity for private employees seems rather weak. Already today it is forbidden according to the praxis of the Swedish Labour Court (AD) to enter contracts that hinder the employee from disclosing crimes and other serious malpractices. This approach is also reflected in the so-called Lex Bratt Provision (Section 2) in the regulation of company secrets - this allows for the employee to disclose suspicion of crime or other serious malpractices in the business person's enterprise without taking the risk of being held liable for industrial espionage or wrongful handling of company secrets. With regards to the competitiveness of Swedish companies, we have today convincing evidence that corruption undermines the public economy and damages free competition. The idea that companies are to be able to compete by punishing employees who call attention to crimes and serious malpractices is also dubious. Against this background the right for anonymity should be extended to include private employees who disclose crime

and other serious malpractices. However, it should be emphasised that the reinforced protection by law that is suggested above (Recommendation 1) should normally be able to lead to the disclosure of malpractices without having to refer to the right for anonymity.

5. Persons who have been accused of malpractices should have reasonable possibilities of defending themselves against unfounded accusations

The reinforced protection of whistleblowers might entail a risk of the legislation being misused by people who pretend to be genuine whistleblowers but who, in reality, put forward unfounded accusations against the employer or individuals in the workplace. In order to avoid having people exploit the legislation so as to seek refuge in personal vendettas, the legislation should protect the accused person's right to a reasonable chance of defending him/herself against accusations. Effective legal means for those who are subjected to unfounded accusations should also exist.

6. Confidential counselling for witnesses and victims of corruption

In Great Britain there is an independent organisation – Public Concern at Work – that has existed for just less than twenty years. This organization helps employees who have questions about how they should take action once they have become aware of something that is wrong at their workplace. The organisation is subjected to attorney-client privilege and answers to calls from all Brits, irrespective of whether they work in Great Britain or abroad. Each year the organisation is contacted by approximately 1,000 people who have questions and are in need of advice and support. The organisation also supports employers as well as offers support to organisations that wish to develop procedures and guidelines for whistleblowing. According to the majority of analysts, Public Concern at Work has had a substantial and positive effect on the view of whistleblowing in Great Britain, and it has even been an important success factor in the implementation of the British whistleblowing act, the Public Interest Disclosure Act (PIDA).

Transparency International provides support to witnesses and victims of corruption via Advocacy and Legal Advice Centres (ALACs) which, as in Public Concern at Work, offer counselling that is free of charge and confidential. ALACs are to be found in soon more than forty countries, but not yet in Sweden. An ALAC or an organisation like Public Concern at Work in Sweden could serve an important purpose and help many Swedish employees who have questions about corruption and other malpractices in their workplaces. This would also be in line with the Council of Europe's (through GRECO) recommendations that confidential and secure counselling is to be provided for persons with questions and who need support. The recommendation from the Council of Europe's Group of States against Corruption (GRECO) that confidential counselling is to be made available to witnesses and victims of corruption should be followed.

7. The European Convention for the protection of whistleblowers

Several anti-corruption conventions today contain provisions for the protection of and the conditions for whistleblowers. Unfortunately the conventions are far too generally formulated and there is often a significant measure of obscurity as to how the parties of the convention live up to the provisions of protection and conditions for whistleblowers. From a European perspective the situation has been clarified somewhat through a couple of ground breaking verdicts from the European Court of Human Rights on protection of whistleblowers and the Council of Europe Parliamentary Assembly Resolution (1729) from 2010. In spite of these advances in Europe there still remain significant obscurities with regard to which concrete demands are to be made on the European countries concerning

protection of, and conditions for, whistleblowers Therefore, Sweden should, in accordance with the Council of Europe Parliamentary Assembly Resolution (1916) from 2010, work towards the establishment of a framework convention on a European level for the protection of whistleblowers.