



BRIEFING PAPER
WHISTLEBLOWER PROTECTION IN THE EU

Whistleblower Protection in Portugal

Introduction

Portugal has among the weakest legal protections for whistleblowers in Europe. It has no dedicated whistleblower law, extremely limited provisions for public and private sector employees, and no government agency that supports or protects whistleblowers.

Despite growing attention on the issue throughout Europe in recent years, whistleblowing has not been a priority on Portugal's political agenda. Its few legal provisions, as incomplete as they are, were passed only in response to international pressure.

Moreover, a number of legal barriers make reporting crime and corruption especially risky for workers and citizens alike. Criminal defamation and "moral damage" laws have been utilized to prosecute and silence many whistleblowers.

Laws, Institutions and Procedures

The only known legal provision in Portugal that offers any protection for whistleblowers is one brief article in Law 19/2008. It says public officials and employees of state-owned companies who report crimes cannot be "harmed." This was expanded in April 2015 to include private sector workers.

The law does not establish any type of disclosure or protection system. It does not explain how whistleblowers can be compensated for reprisals or how their identity is protected. Protection from disciplinary actions is limited to one year.

Public officials are legally required to report misconduct, yet protection mechanisms are unclear. Criminal defamation laws and civil liability for causing "moral damage" also deter people from coming forward with information.

Portugal has no agency that supports whistleblowers, or receives and investigates retaliation complaints. There are no specific, official channels to enable people to make reports safely.

Recent or Ongoing Initiatives and Trends

Currently there is no significant political momentum toward strengthening whistleblower rights in Portugal. An anti-corruption committee empaneled in 2009 produced no noteworthy recommendations or proposals.

The impact of the financial crisis in Portugal has made the situation even worse for whistleblowers. Recent changes to the Labor Code allow employers to fire employees by eliminating their job position.

Whistleblower Cases

Portugal's best known whistleblower case relates to one of the country's biggest corruption scandals in recent years. In 2006 lawyer José Sá Fernandes filed a court injunction seeking to block an imbalanced land deal between the city of Lisbon and the development company Bragaparques. When the court suspended the transaction, Bragaparques' CEO Domingos Névoa attempted to convince Fernandes' brother Ricardo Sá Fernandes to act as a go-between, offering a bribe of €200,000 to drop the injunction.

Audiotapes recorded by Ricardo Sá Fernandes in a meeting with Névoa were used as evidence against the businessman. Due to delays in the procedure, Névoa did not serve his five-month prison term or pay a fine. The Sá Fernandes brothers, however, had to contend with multiple judicial reprisals, among them illegal wiretapping and defamation.

In 2012 a court ruled that an employee of a butcher shop who reported poor hygiene and health practices to public authorities was not unjustly fired. The court ruled against him, in part, because he made the report anonymously. Even though his report was anonymous, managers ascertained his identity after they obtained a copy of the report. He was then disciplined and fired.

Data and Statistics

Because Portugal has no government agency that tracks whistleblower cases, the number of cases and retaliation complaints filed each year, and their outcomes, is not known.

Public Perception of Whistleblowing

Historically, whistleblowers in Portugal generally have been viewed as *chibo* or *bufo* – “snitches.” Defamation laws that have the effect of punishing controversial speech have contributed to this perception. Media attention on the issue has been low, even regarding coverage of corruption-related whistleblower disclosures.

Public perceptions of whistleblowers has begun to change in recent years, however slowly. Mainly due to the fallout from the country's financial crisis, whistleblowers who expose corruption and fraud increasingly are being regarded as heroes – particularly if their disclosures contributed to the country's economic recovery.

Capacities and Knowledge Centers

The only NGO known to promote whistleblower rights and protection is the Portugal chapter of Transparency International. Related issues are dealt with by the Union of Public Prosecutors and the Union of Investigative Police Agents.