

July – August 2012

Whistleblower Protection for International Civil Servants

A very graphic account of the necessity and the dramatic consequences of whistleblowing within the UN system has recently been released in form of a movie depicting a true story. *'The Whistleblower'* (2011) portrays a former police officer who was recruited by a private contractor in order to work with the International Police Task Force of the UN peacekeeping mission in Bosnia-Herzegovina. There, she discovered evidence that some international police officers and other UN officials were allegedly involved in sex trafficking. Because of her efforts to have this conduct investigated, she put her job at risk. The individual was dismissed from the private contractor for whistleblowing.

The revelation of other scandals like the Iraq oil-for-food scandal was paramount for the introduction of whistleblower protection policies throughout the system. These policies are intended to facilitate the disclosure of wrongdoing, especially by protecting the whistleblower from any form of retaliation.

But is the promised protection sufficient? Recent cases decided by the new UN Dispute Tribunal show that the United Nations has not protected efficiently whistleblowers, whether it be in the case *Wasserstrom* (UNDT/2012/092), a former UN employee for the UN Interim Administration Mission in Kosovo UNMIK who reported a possible kickback scheme involving local politicians and senior UNMIK officials, or in the case *Dzuverovic* (UNDT/2012/105), a former United Nations Human Settlements Programme (UN-HABITAT) employee who had disclosed recruitment and procurement irregularities in UN-HABITAT.

Beside these prominent cases, the lack of efficient protection has also an impact day-to-day issues within international organizations. Thus staff members tend to fear retaliation by their Organization if they are asked to give evidence, whether it be before the various internal investigative and recourse mechanisms (Ethics Office, Internal Oversight, Appeals Boards, Disciplinary Committees, Performance Review Panels etc) or before international administrative tribunals. More often than not, witnesses decline to speak on behalf of applicants before the Tribunal, as they are too apprehensive about the possible adverse consequences to them (Judgment UNDT/2011/156).

Such apprehension is not unfounded as can be seen in another recent case involving the International Criminal Court (ICC): a staff member, after having denounced improper conduct by the Prosecutor, was subjected to disciplinary proceedings and summarily dismissed for alleged serious misconduct. Even if the ILOAT eventually compensated the staff member who had suffered retaliation for a protected disclosure, his professional career had nevertheless been severely disrupted (ILOAT Judgment No. 2757).

Finally, according to the Government Accountability Project (GAP), the UN Ethics Office, which is charged with reviewing retaliation complaints and safeguarding the interests of UN whistleblowers, has only found retaliation and recommended relief in one of the approximately 297 retaliation complaints that it has received since its launch in 2006.

But for those brave enough to put their career on the line, the ILOAT has defined the boundaries of protected disclosure: it must first have been made innocently, which means that the person concerned honestly believed on reasonable grounds that the statement is true. Secondly it must not be motivated by malicious intent, for instance defamation, and finally it must be disclosed to the appropriate internal authorities.

**Laurence Fauth, FICSA's Legal Advisor, provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: www.unattorney.com. The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice, nor does it necessarily express the views of FICSA. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice. The author wishes to express appreciation to Maximilian Girod-Laine, Legal Counsel for the Staff Union of UNESCO, for his contribution to this newsletter.*