

24.5.2017

THE IMPORTANCE OF PROTECTING WHISTLEBLOWERS

- *Whistleblowers are protected by the right to freedom of expression when disclosing information in the public interest*

When divulging information in the public interest, whistleblowers can invoke their right to freedom of expression as enshrined in the European Convention on Human Rights (ECHR).

This has been confirmed by the case law of the European Court of Human Rights (ECtHR).¹

Art. 10(1) ECHR protects the right to hold and communicate an opinion as well as the freedom to impart and receive information. The protection granted under Art. 10 ECHR extends to information which may "disturb the State or any sector of the population".²

- *Whistleblowers are important sources of information enabling the media to fulfil their role as public watchdog*

The media are important vectors of freedom of expression, which includes the right to disseminate information received from third parties. It is mainly through their news and information programmes that the media play their "vital role as public watchdog", reporting on all matters of public interest.³ This is crucial to allow citizens to form their opinions about current affairs and to participate in political debates and exercise their democratic rights.⁴

The protection of journalistic sources, which is essential for the freedom of the media,⁵ and the protection of whistleblowers are complementary. Both protect the media's access to valuable information, which is necessary for them to fulfil their key role in democratic societies. The protection of journalistic sources is also important for whistleblowers who want to remain anonymous.

While it is important that internal channels of reporting do exist for whistleblowers, it is equally important that whistleblowers may disclose relevant information to the media, where appropriate. This is not only essential in cases where internal channels do not exist or do not function properly, or cannot be expected to do so, but also where wrongdoings are so

¹ ECtHR, *Guja v. Moldova*, Application no. 14277/04, Judgment of 12.2.2008; *Bucur and Toma v. Romania*, Application no. 40238/02, Judgment of 8.4.2013.

² ECtHR, *Handyside v. United Kingdom*, Application no. 5493/72, Judgment of 7.12.1976, para. 49.

³ ECtHR, *Jersild v. Denmark*, Application no. 15890/89, Judgment of 23.9.1994, paras. 31, 35; ECtHR, *Thoma v. Luxembourg*, Application no. 38432/97, Judgment of 29.6.2001, para. 45.

⁴ ECtHR, *Castells v. Spain*, Application no. 11798/85, Judgment of 23.4.1992, para. 43.

⁵ ECtHR *Roemen and Schmit v. Luxembourg*, Application no. 51772/99, Judgment of 25.2.2003, para. 46.

serious that the public has a right to know irrespective of the availability of internal reporting mechanisms.

- *The need for comprehensive legal protection of whistleblowers*

The establishment of more concrete and comprehensive safeguards is at the heart of the 2014 Recommendation of the Council of Europe's Committee of Ministers on the protection of whistleblowers.⁶ It calls on member States to put in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, disclose information on threats or harm to the public interest.

It aims at facilitating public interest reporting, formulating a number of principles in line with the case law of the ECtHR, which has set common minimum standards. While whistleblowers are protected in some member States, such protection tends to be spread across national legislation and often subject to loopholes.

The EBU is in favour of a comprehensive and coherent protection of whistleblowers, across all (public and private) sectors and not limited to one particular legal field (such as labour law). This will require combined efforts of the EU and the Member States. Establishing horizontal minimum standards at EU level can help to achieve this objective, while ensuring that the current level of protection in Member States is not weakened and that effective national systems are maintained.

An essential aspect of whistleblower protection is that they must feel safe when they consider reporting. The threat of retaliation, in the form of dismissal, denunciation or any kind of discriminatory treatment, may have a chilling effect and prompt potential whistleblowers to remain silent. It is thus important to establish a framework that promotes whistleblowing on matters of public interest and protects those who decide to blow the whistle.

- *The need for a cultural change to recognize whistleblowing*

The above-mentioned Recommendation also intends to raise awareness for the importance of whistleblower protection and to bring about a cultural change that promotes such activities.

The value of whistleblowing should be fully recognized in all areas, e.g. in the fight against corruption, the protection of public health, of the environment etc. The 2016 Global Fraud Study revealed that 40 percent of all detected fraud cases are revealed by whistleblowers.⁷

⁶ Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum. See also Council of Europe Parliamentary Assembly Recommendation 1916 (2010) and Resolution 1729 (2010) calling on the Council of Europe to draw up guidelines for the protection of whistleblowers and consider drafting a framework convention.

⁷ Association of Certified Fraud Examiners, Report to the Nations on occupational fraud and abuse, 2016 Global Fraud Study, p. 28. The report is available at <http://www.acfe.com/rtn2016/resources/downloads.aspx>.

Protection of whistleblowers promotes a culture of public accountability and enhanced transparency. Governments and other public bodies must be subject to public scrutiny so that they continue to act in the public interest. Similar reasoning also applies to other powerful actors and private undertakings whose activities affect the public.
