

WHISLEBLOWERS NEED PROTECTION

Examples of whistleblowers being threatened or prosecuted for revealing information of public interest are on the rise. In Turkey, the soldier Utku Kali is facing a possible 25-year jail sentence under an indictment for leaking confidential documents about the preparation of bombings at the Syrian border in May 2013. In the United States, WikiLeaks source Bradley Manning has been sentenced to 35 years in prison. A similar fate would probably await Edward Snowden, who revealed the existence of the NSA's worldwide surveillance programme PRISM. In Switzerland, former HSBC computer expert Hervé Falciani has been subjected to judicial persecution for leaking a list of thousands of European tax evaders.

Furthermore, those who report the information leaked by whistleblowers are themselves targeted. This has been the case for Glenn Greenwald, his partner David Miranda and filmmaker Laura Poitras, who have helped to prepare Edward Snowden's leaked information for publication, and for Kostas Vaxenanis, the Greek journalist who published extracts from the "Lagarde list" of suspected tax evaders.

Without protection for these "concerned individuals who sound an alarm in order to stop wrongdoings that place fellow human beings at risk"¹, the right to information and the future of investigative journalism will be in danger. Persecuting the sources of leaks directly affects the ability of journalists to investigate sensitive subjects, especially those involving national security, and to alert public opinion about violations of human rights and privacy.

The vulnerability of whistleblowers leaves a hole in the protection of the right to information. No binding international instrument of a general nature enshrines the obligation to protect whistleblowers, affirms that there can be no real freedom of information if they are left unprotected, and calls on states to adopt comprehensive whistleblower legislation.

Nearly a third of UN member states already have laws covering whistleblower activity to varying degrees. Some of these laws, such as those in the United States and United Kingdom, were regarded as exemplary. They have nonetheless proved inadequate when the information disclosed is not limited to corruption or financial, environmental or public health scandals, but concerns the activities of the state itself, especially activities involving national security. It is then easy for a state to deny whistleblowers protection by accusing them of spying.

Nowadays there is a broad consensus within the international community on the concept of whistleblowers. Their protection is envisaged in international and regional conventions on combatting corruption. For example, article 33 of the United Nations Convention Against Corruption says each state's legal system should include measures providing protection for persons who leak information about corruption². Similarly, at its November 2010 summit, the G20 identified "protection for whistleblowers" as a priority for the fight against corruption and fraud³.

¹ Parliamentary Assembly of the Council of Europe Resolution 1729 (2010) on Protection of Whistleblowers : <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta10/eres1729.htm>

² See also article 9 of the Council of Europe's [Civil Law Convention on Corruption](#), article 22 (a) of the Council of Europe's [Criminal Law Convention on Corruption](#), article 3 (8) of the [Inter-American Convention against Corruption](#) and article 5 (6) of the [African Union Convention on Preventing and Combatting Corruption](#).

³ See G20 Anti-Corruption Action Plan. Action Point 7: Protection of Whistleblowers: "Whistleblower protection is essential to encourage the reporting of misconduct, fraud and corruption."

The international community must now take a step forward by adopting a comprehensive instrument on this subject, and the Human Rights Council should pave the way by passing a resolution on the principle of protecting whistleblowers.

This resolution should be based on the joint statement that the UN special rapporteur on freedom of opinion and expression, the Organization of American States special rapporteur on freedom of expression and the Organization for Security and Cooperation in Europe's representative on freedom of the media issued on 6 December 2004.

Their joint statement urged governments not to abuse the label "secret" with the sole aim of preventing the disclosure of information that is in the public interest, and to protect whistleblowers against "legal, administrative or employment-related sanctions if they act in 'good faith'." Whistleblowers are defined as "individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy"⁴.

This resolution should also be based on Council of Europe Resolution 1729 (2010) and should include the following key elements:

- Recognition that whistleblowers contribute to the public interest by drawing attention to wrongdoing or human rights violations;
- A precise definition of whistleblowers as individuals who sound an alarm about wrongdoing or situations that place fellow human beings at risk;
- A definition of protected disclosures that includes all bona fide warnings – even when the accuracy of the information has not been verified – about unlawful acts, including corruption, mismanagement in the public or private sector, serious violations of human rights or humanitarian law, and serious threats to the environment, which affect or threaten the life, health, safety and liberty of individuals, even when the activities concerned are linked to defence and national security;
- Protection for whistleblowing by both private and public sector employees including members of the armed forces and intelligence services;
- Measures to protect against all forms of retaliation against whistleblowers;
- Special protection for the confidentiality of journalistic sources, guaranteed by specific protective mechanisms⁵;

4 <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=319&IID=1>

⁵ The confidentiality of journalists' sources provides whistleblowers with indirect protection. Paragraph 33 of Report 12006 of the Parliamentary Assembly of the Council of Europe says: "The protection of sources of journalists is linked to the protection of whistleblowers, when a disclosure is made public. On the one hand, it is up to the whistleblower to disclose reliable and reasonable information to the media, especially when the matter has failed to be properly addressed after the use of appropriate internal channels. On the other hand, once the disclosure is made to the media, the journalist should have the right to protect his or her sources. If a whistleblower cannot make a disclosure internally because he/she reasonably fears that he/she would be sanctioned internally, or that the internal disclosure would not have the desired effect, and therefore decides to use the media as an external avenue to 'blow the whistle,' he/she should benefit from an indirect protection in the form of the journalist's protection of sources." This report also refers to the European Court of Human Rights ruling of 27 November 2007 in the case of Tillack against Belgium and says: "This judgment should incite lawmakers throughout Europe also to reflect on **the importance of the media as an external voice for whistleblowers.**"

— The need to create an independent agency or authority that monitors implementation of these provisions and enables whistleblowers and journalists to defend themselves after disclosing information;

— The need to protect foreign whistleblowers who are threatened in their country of origin.

A resolution of this kind by the Human Rights Council would be the first international instrument of a general nature affirming the need to protect whistleblowers.

At the very least, the Council could adopt a resolution asking the High Commissioner for Human Rights to consult with states and other concerned parties on protecting whistleblowers and journalists' sources and to present a report on this subject at the Council's next session.