

Conference Panel Outline: ‘Clear Channels’ for Whistleblowing in a changing media landscape

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Whistleblowers, defined by the Council of Europe’s Parliamentary Assembly as ‘individuals who report or disclose information on threats or harm to the public interest’, have had a profound impact on public discourse.¹ Some of the biggest news items of the past decade have been the result of whistleblowing activities, such as the WikiLeaks diplomatic cables, the NSA surveillance revelations and, more recently, the HSBC leaks. These disclosures may often fall foul of civil and criminal prohibitions on the publication of confidential information. Nevertheless, the public interest in enabling (certain forms of) whistleblowing has been widely recognized, since it can create transparency and accountability for state institutions and private organisations alike.² Striking a balance between enabling effective whistleblowing on the one hand, and the legitimate institutional interests in managing sensitive and confidential information on the other, has proven a major challenge for courts and legislators.³ While some initial steps towards a delineation of whistleblowers’ rights and obligations have been taken in case law and recommendations, much clarity on their legal status is still lacking.⁴

Parallel to these challenges in the regulation of whistleblowing, the past years have also seen significant shifts in the media landscape. The gathering and spreading of newsworthy information no longer falls exclusively to professional, institutionally affiliated journalists. Internet technology has empowered a broad range of actors to perform such tasks, raising questions as to their eligibility for the legal protections afforded to journalists. NGOs in

¹ The Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to member States on the protection of whistleblowers 30 April 2014.

² The importance has been emphasized by institutions such as the Council of Europe’s Parliamentary Assembly, Committee of Ministers, as well as the EU Commission. *Q.v.*, respectively: The Resolution 1729 (2010) of the Parliamentary Assembly of the Parliamentary Assembly On The Protection Of Whistleblowers.

The Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to Member States on the Protection of Whistleblowers 30 April 2014.

Report from the Commission to the Council and the European Parliament - EU Anti-Corruption Report, Brussels, 3.2.2014, COM(2014) 38 final.

³ Uden, F., *Whistleblowers en klokkenluiders: de rechtspositie van werknemers en ambtenaren in de VS, het Verenigd Koninkrijk en Nederland* (SDU Uitgevers 2003).

⁴ *Matuz v Hungary*, App. No 73571/10 (21 October 2014).
Guja v. Moldova, App. No 14277/04 (12 February 2008).

particular have been acknowledged as playing a complimentary role to traditional journalistic channels in their role as public and social ‘watchdogs’, such that certain rights such as the protection of sources has been extended to them.⁵ However, debates are still ongoing as to the precise scope of journalistic safeguards to new media actors.

These changes in the media landscape also affect the practice of whistleblowing. Past incidents show that whistleblowers have made use of both NGOs and journalists in making their voice heard. WikiLeaks has provided a platform for many different whistleblowers, and has itself closely collaborated with traditional outlets such as the Guardian and Le Monde.⁶ In recent years, many new NGOs dedicated to the facilitation of protection of whistleblowers have been founded, such as The National Whistleblower’s Centre, the Whistleblowing International Network and Whistleblowing CEE. On the other hand, major leaks such as the Snowden files and the HSBC leaks were achieved largely without the help of such NGOs, and relied primarily on close contact between the initial whistleblower and networks of traditional journalists.⁷ These incidents show that the changing media landscape has created a wide range of platforms and intermediaries for prospective whistleblowers.

This panel discussion will focus on the dynamic, interdependent relationships between whistleblowers, NGOs and media outlets, and will bring together stakeholders from these areas. In particular, participants are invited to consider the implications of the Council of Europe Recommendation, which encourages the creation of ‘clear channels for public interest reporting’.⁸ What could these channels look like? What measures could be taken to achieve this goal? Points of discussion could include their right to protect sources and the whistleblower’s rights to confidentiality, the fact-checking duties and responsibilities of respective parties, the role of internal reporting procedures and the reach of liability resulting from the facilitation of whistleblowing activities. Participants are invited to consider, from their own professional backgrounds, the respective roles of NGOs and journalists in creating an infrastructure – or ‘clear channels’ - for effective and responsible whistleblowing.

⁵ *TASZ v Hungary*, App. no 37374/06 (14 April 2009).

⁶ Y. Benkler, ‘A Free Irresponsible Press: Wikileaks and the Battle over the Soul of the Networked Fourth Estate’, 46 *Harvard Civil Rights-Civil Liberties Review* 311.

⁷ Greenwald, G., *No Place To Hide: Edward Snowden, the NSA and the Surveillance State* (Hamish Hamilton 2014).

⁸ The Recommendation [CM/Rec\(2014\)7](#) of the Committee of Ministers to member States on the protection of whistleblowers 30 April 2014.