

Protecting Public Interest Whistleblowers

Law, democracy and public accountability

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WIN's purpose is to strengthen civil society **capacity to protect public interest whistleblowers** worldwide and ensure that this expertise and learning **serves the greater good**.

- **WIN's members** are **national non-profit civil society organisations** who advise and support whistleblowers
- **WIN provides an expert technical exchange hub** via which whistleblower protection organisations can strengthen their skills and effectiveness
- **WIN works** across civil society to **promote whistleblowing as a matter of human rights and democratic accountability** at national, regional and international levels.



Steering Group

Open Democracy Advice Centre – **South Africa**

Government Accountability Project – **USA**

Public Concern at Work – **UK**

Whistleblowers-Netzwerk - **Germany**

TI Ireland – **Ireland**

Pištaljka - **Serbia**

Commonwealth Initiative for Human Rights – **India**

Centro de derechos humanos, U de Chile – **Chile**

Larger coalition: 85+ participants from 35 countries

Includes selected participants investigative journalists, jurists, academics, advocates for right to information, human rights, anti-corruption, etc...



Ferguson

What is whistleblowing?

A democratic system of government in which individual rights and freedoms are officially recognized and protected, and the exercise of political power is limited by the rule of law.

- exposing “illegal practices” - challenge existing powers & put themselves at risk
- stop harmful conduct / prevent future conduct
- main feature - power imbalance
- protect the community “public interest”
- challenges?

What is whistleblowing?

Individuals using free speech rights to challenge abuses of power that betray the public trust - overwhelmingly, people who witness abuse of power in their places of employment. *Source: Government Accountability Project, USA*

A worker raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and/or externally (i.e. regulators, media, MPs) *Source: Public Concern at Work, UK*

What is whistleblowing?

A person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector *Source: Council of Europe (2014) CM Recommendation on the Protection of Whistleblowers*



CONGRATULATIONS
FRANK
WHISTLEBLOWER
OF THE
MONTH

BILL PROUD

The macro challenges

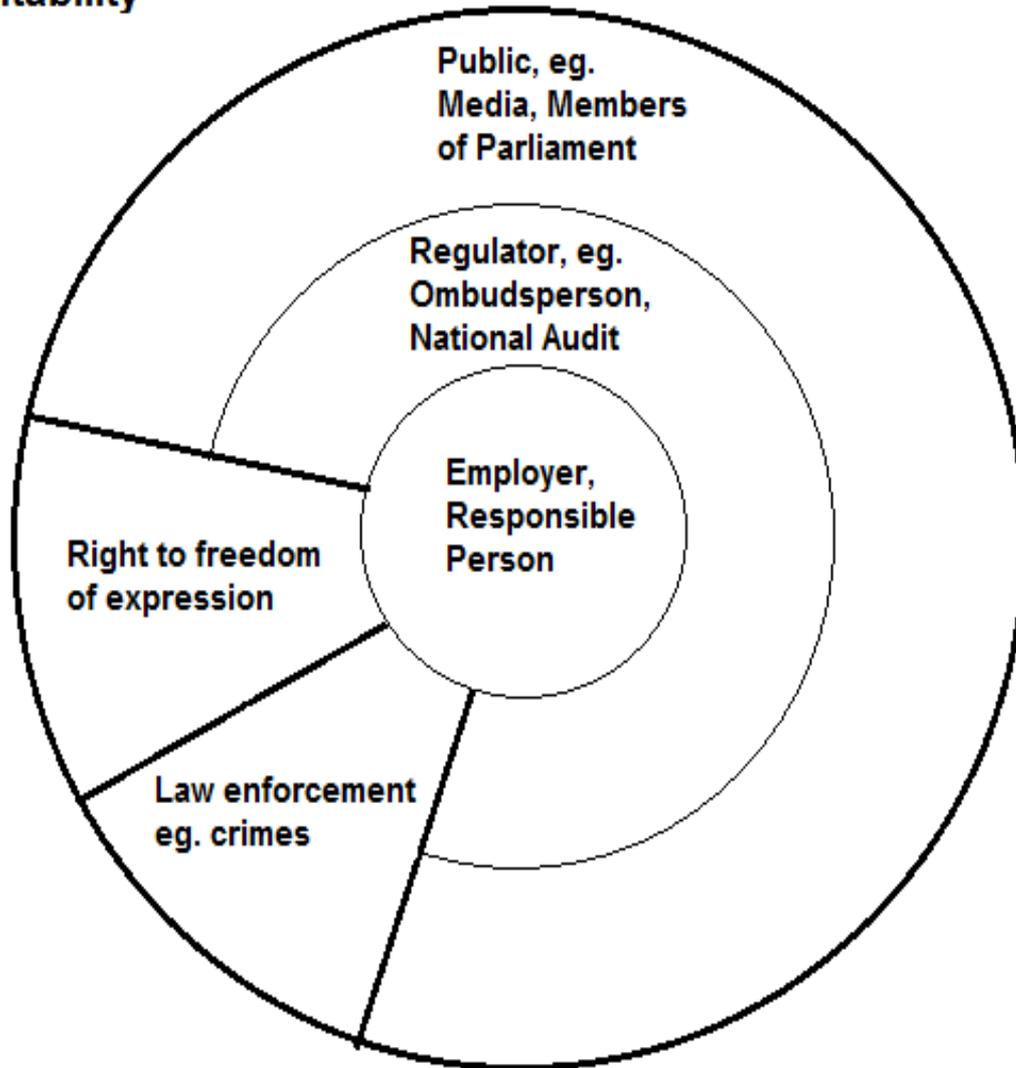
individual v. collective or common good

democratic accountability v. information control

“illegal” practices v. public interest information

All speech

Accountability



Source: Council of Europe, Explanatory Memorandum to the Recommendation on the Protection of Whistleblowers, 2014

Key issues in law (& practice)

Reasonable belief in facts / good faith?

Loyalty / confidentiality (secrecy)

Rights & duties to others

Secrecy :

- National security
- Trade secrets

Anonymity

Extra territoriality immaterial to protection

Protective measures

- Guarantee of confidentiality
- **Significant penalties for retaliation
- Independent advice
- Feedback
- **Reversal burden of proof**



Protective measures

- Protection against civil or criminal liability
- Interim relief / early injunctive measures
- Compensation for damages and retaliation
- Physical protection



Protect i o n s

Non legal protections

Right to refuse

Means of disclosures (how)

How disclosures handled

Investigations

Feedback

National laws' highlights

SERBIA - Protection of Whistleblowers Act, No. 128/2014

Some key elements (specific to Serbia) that have proved very helpful:

- **Interim relief** - in one case interim relief was decided in 3 days and the positive decision issued on Christmas Day (6 Jan)
- **“Special knowledge in whistleblowing”** required (Article 25) - judges have been trained on the new law and its specificities - it has made a qualitative difference in judicial understanding of the purpose of law and a quantitative increase in positive decisions for whistleblowers
- The law **does not include any good faith requirement** which was an important victory but is fairly weak on national security.

National laws' highlights

IRELAND – Protected Disclosures Act 2014

- Whistleblower or **any person associated with a whistleblower** (colleagues or family members for example) who suffer a detriment, has **right to sue** (ie. civil court) the person who took the detrimental action.
- The law provides **immunity from civil proceedings** being taken (including amending the law of defamation) against whistleblowers and provides that **making a protected disclosure does not constitute a criminal offence.**
- The person who receives the report must not disclose any information that would reveal the whistleblower's **identity** without their consent and when such information is **unreasonably disclosed, the whistleblower has a right to sue for any damages or losses caused.**

National laws' highlights

Sweden – Whistleblowing Act (2016/749) in force 1 Jan 2017.

Aimed at protecting **private-sector employees** from employer reprisals when information has leaked out. A statutory liability to damages for an employer who exposes an employee to reprisals as a consequence of the employee raising the alarm.

Freedom of the Press Act (1949/105) establishes **the right of public-sector staff to communicate secret information to journalists**, the media or news agencies with the purpose of publication. This now applies to employees of companies running school, care and welfare institutions that are to some extent tax-funded.

If the employee chooses to criticise the company anonymously, the **employer has no right to try to find out who was behind the information** – there can be no investigation of who made use of their statutory right to communicate under the 'protection for informants' regime.

National laws' highlights

Sweden – Whistleblowing Act (2016/749) in force 1 Jan 2017.

The **employer has no right hinder or punish the person who has spoken out**, nor reprimand in any way anyone who publicises wrongdoings.

The **media is obliged to protect the identity of their sources**. Public authorities or agencies are legally prevented from trying to find out who the source was or punish him or her in any way. However, there are **limited exceptions** where the person

- **commits severe crimes** against national security or the state;
- intentionally discloses classified official documents for publication;
- or
- **breaches duties of confidentiality specifically** mentioned in Chapter 16 of the Public Access to Information and Secrecy Act (2009/400).

No, there is **no leniency mechanism** provided for by Swedish law.

National Contexts

Four key areas

cases/public inquiries/scandals

practice & custom

institutional capacity

laws & policies – *gaps?*

THANK YOU

Feel free to contact me

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