Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1729 (2010)[1]
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Protection of "whistle-blowers"

Parliamentary Assembly

1. The Parliamentary Assembly recognises the importance of whistle-blowers – concerned individuals who sound an alarm in order to stop wrongdoings that place fellow human beings at risk – as their actions provide an opportunity to strengthen accountability and bolster the fight against corruption and mismanagement, both in the public and private sectors.

2. Potential whistle-blowers are often discouraged by the fear of reprisals, or the lack of follow-up given to their warnings, to the detriment of the public interest in effective management and the accountability of public affairs and private business.

3. A series of avoidable disasters has prompted the United Kingdom to enact forward-looking legislation to protect whistle-blowers who speak up in the public interest. Similar legislation has been in force in the United States of America for many years, with globally satisfactory results.

4. Most member states of the Council of Europe have no comprehensive laws for the protection of whistle-blowers, though many have rules covering different aspects of whistle-blowing in their laws governing employment relations, criminal procedures, media and specific anti-corruption measures.

5. Whistle-blowing has always required courage and determination and whistle-blowers should at least be given a fighting chance to ensure that their warnings are heard without risking their livelihoods and those of their families. Relevant legislation must first and foremost provide a safe alternative to silence and not offer potential whistle-blowers a "cardboard shield" that would entrap them by giving them a false sense of security.

6. The Assembly invites all member states to review their legislation concerning the protection of whistle-blowers, keeping in mind the following guiding principles:

6.1. Whistle-blowing legislation should be comprehensive:

6.1.1. the definition of protected disclosures shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies;

6.1.2. the legislation should therefore cover both public and private sector whistle-blowers, including members of the armed forces and special services, and

6.1.3. it should codify relevant issues in the following areas of law:

6.1.3.1. employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation;

1. *Assembly debate* on 29 April 2010 (17th Sitting) (see Doc. 12006, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting). See also Recommendation 1916 (2010).

6.1.3.2. criminal law and procedure – in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses;

6.1.3.3. media law – in particular protection of journalistic sources;

6.1.3.4. specific anti-corruption measures such as those foreseen in the Council of Europe Civil Law Convention on Corruption (ETS No. 174).

6.2. Whistle-blowing legislation should focus on providing a safe alternative to silence.

6.2.1. It should give appropriate incentives to government and corporate decision makers to put into place internal whistle-blowing procedures that will ensure that:

6.2.1.1. disclosures pertaining to possible problems are properly investigated and relevant information reaches senior management in good time, bypassing the normal hierarchy, where necessary;

6.2.1.2. the identity of the whistle-blower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest.

6.2.2. This legislation should protect anyone who, in good faith, makes use of existing internal whistle-blowing channels from any form of retaliation (unfair dismissal, harassment or any other punitive or discriminatory treatment).

6.2.3. Where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistle-blower, external whistle-blowing, including through the media, should likewise be protected.

6.2.4. Any whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.

6.2.5. Relevant legislation should afford bona fide whistle-blowers reliable protection against any form of retaliation through an enforcement mechanism to investigate the whistle-blower's complaint and seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.

6.2.6. It should also create a risk for those committing acts of retaliation by exposing them to counter-claims from the victimised whistle-blower which could have them removed from office or otherwise sanctioned.

6.2.7. Whistle-blowing schemes shall also provide for appropriate protection against accusations made in bad faith.

6.3. As regards the burden of proof, it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistle-blower were motivated by reasons other than the action of whistle-blowing.

6.4. The implementation and impact of relevant legislation on the effective protection of whistle-blowers should be monitored and evaluated at regular intervals by independent bodies.

7. The Assembly stresses that the necessary legislative improvements must be accompanied by a positive evolution of the cultural attitude towards whistle-blowing, which must be freed from its previous association with disloyalty or betrayal.

8. It recognises the important role of non-governmental organisations in contributing to the positive evolution of the general attitude towards whistle-blowing and in providing counselling to employers wishing to set up internal whistle-blowing procedures, to potential whistle-blowers and to victims of retaliation.

9. In order to set a good example, the Assembly invites the Council of Europe to put into place a strong internal whistle-blowing procedure covering the Organisation itself and all its partial agreements.