Committee of Ministers: Protection of whistleblowers

IRIS 2014-7:1/3

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On 30 April 2014, the Council of Europe's Committee of Ministers (CM) adopted Recommendation CM/Rec(2014)7 to member states on the protection of whistleblowers. This follows previous engagement with the topic by other Council of Europe bodies, e.g., the Parliamentary Assembly's Resolution 1729(2010) and Recommendation 1916(2010), both entitled, "Protection of 'whistle-blowers'" (IRIS 2010-5:Extra) and case-law of the European Court of Human Rights (e.g. Heinisch v. Germany, no. 28274/08, ECHR 2011).

The starting premise of the Recommendation is that whistleblowers "can contribute to strengthening transparency and democratic accountability" (Preamble). Its central recommendation is that member states "have in place a normative, institutional and judicial framework" (hereafter, national framework) to protect whistleblowers. For the purposes of the Recommendation, a whistleblower is "any person who reports or discloses information on [acts and omissions that represent] a threat or harm to the public interest in the context of their work-based relationship, whether it be in public or private sector" (Appendix, para. (a)).

The Appendix to the Recommendation comprises "a series of principles to guide member states when reviewing their national laws or when introducing legislation and regulations or making amendments as may be necessary and appropriate in the context of their legal systems". The principles are grouped as follows: material scope; personal scope; normative framework; channels for reporting and disclosures; confidentiality; acting on reporting and disclosure; protection against retaliation; advice, awareness and assessment.

In terms of material scope, the national framework facilitating public-interest disclosures should include, "as appropriate, collective labour agreements" (para. 1). In terms of personal scope, the national framework "should cover all individuals working in either the public or private sectors, irrespective of the nature of their working relationship and whether they are paid or not" (para. 3). It should extend to after the cessation of the work-related relationship and "possibly" also to "the recruitment process or other pre-contractual negotiation stage" (para. 4). However, a "special scheme or rules, including modified rights and obligations, may apply to information relating to national security, defence, intelligence, public order or international relations of the State" (para. 5).

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An important feature of the envisaged normative framework is that States should ensure the existence of an effective mechanism or mechanisms "for acting on public interest reports and disclosures" (para. 9). The Recommendation calls for prompt and efficient follow-up to public-interest reporting and disclosures, i.e., investigation and, "where necessary", other action by "the employer and the appropriate public regulatory body, law enforcement agency or supervisory body" (para. 19). It also calls for whistleblowers to be kept informed of relevant follow-up action taken (para. 20).

There should be clear channels for public-interest reporting and disclosures: within an organisation "(including to persons designated to receive reports in confidence)"; to "relevant public regulatory bodies, law enforcement agencies and supervisory bodies", and to the public, e.g. to "a journalist or a member of parliament" (para. 14). Furthermore, employers should develop - in consultation with workers and their representatives - internal reporting procedures (paras. 15-17).

Whistleblowers are entitled to confidentiality ("subject to fair trial guarantees"") (para. 18) and to protection against "retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer" (para. 21).

The Recommendation concludes with a call for "[p]eriodic assessments of the effectiveness of the national framework [...] by the national authorities" (para. 29).

Recommendation CM/Rec(2014)7 of the Committee of Ministers to member states on the protection of whistleblowers, 30 April 2014

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