



13th International
Anti-Corruption Conference
IACC

**Global Transparency:
fighting corruption for a sustainable future.**
Athens, Greece | 30 October - 2 November 2008

WORKSHOP REPORT FORM

Number and title of workshop

Workshop 2.6:
“Protecting the Whistleblowers – Asian and European Perspectives”

Date and time of workshop

31st October 2008, 11h00-13h00

Workshop Coordinator

Mr. Peter Ryan
Director for Intellectual Exchange
Asia-Europe Foundation

Moderator

Dr. Sriprapha Petchamesree
Lecturer, Office of Human Rights Studies and Social Development, Faculty of Graduate
Studies, Mahidol University, Thailand

Rapporteur

Prof. Dr. Roel Fernhout
Professor of Law, Radboud University Nijmegen and former National Ombudsman of the
Netherlands

Panellists

Ian Harden
Secretary-General
European Ombudsman's Office

Christoph Speckbacher
Head of Section II GRECO Secretariat
Council of Europe

Mircea Toma
Director
Media Monitoring Agency, Romania

Melinda Quintos de Jesus
Executive Director
Center for Media Freedom & Responsibility, Philippines

Inje Park
Vice President and Acting Secretary General
Anti-Corruption and Civil Rights Commission, Korea



Main Issues Covered

Mr. Ryan introduced the objective of the workshop in his welcome remarks. The topic of whistleblowers' protection falls in line with the Asia-Europe Foundation's work on democracy and governance issues. He stressed the importance of the civil society approach by providing a common platform for both civil society and governments to encourage dialogue also between the two regions. This was resembled in the composition of the panel as well (representatives from governments/ IGOs and civil society) from both regions. The outcomes of this workshop will be circulated to all governments of the Asia-Europe Meeting (ASEM) process, which includes all EU member states and the European Commission, as well as all member states of the Association of Southeast Asian Nations (ASEAN), Japan, China, South Korea, India, Pakistan and Mongolia together with the ASEAN secretariat.

Mr. Harden stressed the importance of an ordinary process within institutions that ought to react to whistleblowers, particularly in the public sector. If not, employees should have the possibility to address an external institution. Whistleblowing should be the last resort.

Three elements are important in this process:

1. The protection of the whistleblower
2. Whistleblowing as an obligation
3. Recognition of the whistleblower.

At the same time the protection of whistleblowers should not be at the expense of the accused. Principles as the presumption of innocence and the rights of defence of the accused must be respected.

Mr. Speckbacher highlighted the results of a recent GRECO survey revealing that out of 44 European countries, 26 do not offer protection mechanisms for whistleblowers. Specific legislation is not always required. However, the scope of protection should be clear (public and/or private sector) as well as the scope of suspicion (reporting on a mere suspicion or on clear knowledge). Whistleblowers should act in good faith. Aside from reporting mechanisms within an institution the involvement of a third party is crucial. Whistleblowers should not only be protected against immediate repercussions such as direct sanctions but also against secondary effects such as harassment etc. Whistleblowers should also have the possibility to enforce the protection offered (e.g. access to the courts) and protection should include compensation which could comprise the immediate family.

Mr. Toma revealed that although whistleblowing legislation is in force in Romania since 2004 not many local administrations have implemented the law. There are strong negative sentiments about whistleblowing due to the communist past where whistleblowing was part of the state security system. To tackle whistleblowing at present, education about values and ethics is required as well as the provision of adequate redress facilities and the development of a more transparent society. In order to further reduce the fear associated with whistleblowing and to ensure the freedom of speech, the protection of sources etc. has to be guaranteed.

The importance of a free press in this respect was stressed by Ms. Quintos de Jesus as well. She distinguished two forms of whistleblowing: whistleblowing with clean hands and whistleblowing by people directly involved in corrupt practice. Although the latter faces more problems, the impact is greater, as the credibility of these whistleblowers is enhanced by admitting their involvement in corruption.

Mr. Park too underlined the negative attitude to whistleblowing due to cultural and societal values. To overcome this obstacle a change of mind will be necessary and to achieve this the media can play an important role. At present the whistleblowers protection in Korea is limited to the public sector but it needs to be extended to the private sector as well; through legislation or a business code of ethics. The scope of protection should be expanded to external informants, such as consumers or parties to a contract. He stressed the importance of a reward system, such as that available in Korea to enhance the willingness of people to come forward with information.



Main Outcomes

- Although laws and mechanisms are already put in place in many countries in Asia and Europe, whistleblowers' protection is still lacking in many others.
- Whistleblowers' protection should include the public and the private sector.
- The rights of the accused should be secured as well such as presumption of innocence and the right of defence.
- Protection of whistleblowers could be guaranteed through different forms: administrative protection, (quasi) judicial protection or corporate protection.
- Press freedom, freedom of expression could help to protect whistleblowers. The more instances are revealed, the better the whistleblower is protected. The press can create positive images of heroes who have identified corrupt practices.
- Civil groups such as whistleblowers' associations play an important role.
- It is necessary to put legislation in place, but this might not work adequately in countries where the rule of law does not prevail or is not respected.
- While whistleblowing in some countries/cultures is seen as betrayal (see the examples from Romania and South Korea) raising awareness is recommended and a culture of candor is needed to supplement legislation.
- There is a linguistic element involved as well in that the expression "Whistleblower" can have a very negative connotation, for example the French expression "denonciateur".

Main Outputs

- In any whistleblowers' protection system - irrespective of the public or private sector in which it operates - a third party/ external body should be included.
- A culture of transparency and information sharing is a prerequisite for any system of whistleblowers' protection.
- Whistleblowing is in the interest of the public. Organisational and security interests are subordinate to the overall public interest.
- Whistleblowing is clearly linked to the idea of a sustainable society.
- An effective and efficient whistleblowers' protection system has a deterrent and a purifying effect even when the numbers of cases actually dealt with are low.
- Not only protecting whistleblowers but also rewarding them should be taken into consideration to enhance their willingness to come forward.

Recommendations, Follow-up Actions

- The system of (legal) protection of whistleblowers can't be transferred from one country or culture to another. Each culture requires its own protection mechanisms.
- A legal approach alone will not suffice for the protection of whistleblowers. A sociological approach and capacity building are required as well.
- More exchange of information on available protection schemes should take place with an emphasis on the sharing of best practice.
- Awareness of the existing international instruments (UN, OECD) should be raised in order to convince and encourage governments to introduce adequate whistleblowers' protection systems.
- In those countries where whistleblowing has negative connotations public awareness should be raised in order to change the mind set.



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Workshop Highlights (including interesting quotes)

“The press is supposed to be a watchdog. But who watches the watchdog? Sometimes the press has not immaculate hands as well. Press Councils should not be manned only by journalists themselves but also include other sectors of society. If so, whistleblowers will have more courage to bring forward their information to the press.”

“Often there is suspicion about the level of seriousness and credibility of information given by whistleblowers, which usually may not be accompanied with evidence. If so, a reliable system of verification and validation has to be in place”.

“Whistleblowing is a risky exercise. However, in this borderless world the whistleblowers may not need to be exposed. New media and new technology can be instrumental to disseminate information of wrongdoings”.

“Public interest and security of people must be put before the interests of organisations and state security concerns”.

“Whistleblowers are often the equivalent of dissidents: in that one person is pitted against the entire system. Therefore, it is easy to squash him or her. Dr. Brian Martin has observed a predictable pattern of repression and there are points in which civil society can exert pressure to protect the whistleblowers and empower those who fight against corruption”.

“The culture of transparency can not exist wherever a culture of corruption and impunity prevails”.

Signed

Peter Ryan
Director for Intellectual Exchange
Asia-Europe Foundation
