The hundred Russian whistleblowers

The subject referring to protection of individuals who reveal information about violations to the public gets more and more topical not only in Russia, where the whistleblowers are regularly subjected to retaliation, including murders, violence, prosecution and imposing of disciplinary measures, but also in the rest of the world. The questions relevant to protection of whistleblowers have become subject to discussions in the UN, OSCE, Council of Europe, OECD, the bodies of the European Union and the G20. Up to date the national legislations of more than 60 countries envisage various measures aimed at guaranteeing of security and protection from retaliation of individuals who objectively act in favor of society by revealing of inaccessible information.

The review of the subject relevant to protection of whistleblowers shall include the existing materials in the field. Mainly the Project on basic principles of laws on reporting of facts about corruption and illegal activities[1] realized by Transparency International and the report of experts of this organization published in 2012 on 'Corruption Reporting and Whistleblower Protection'[2] describing in details the existing international and foreign approaches that may be used at elaboration of mechanisms for protection of individuals who report violations of greater size.

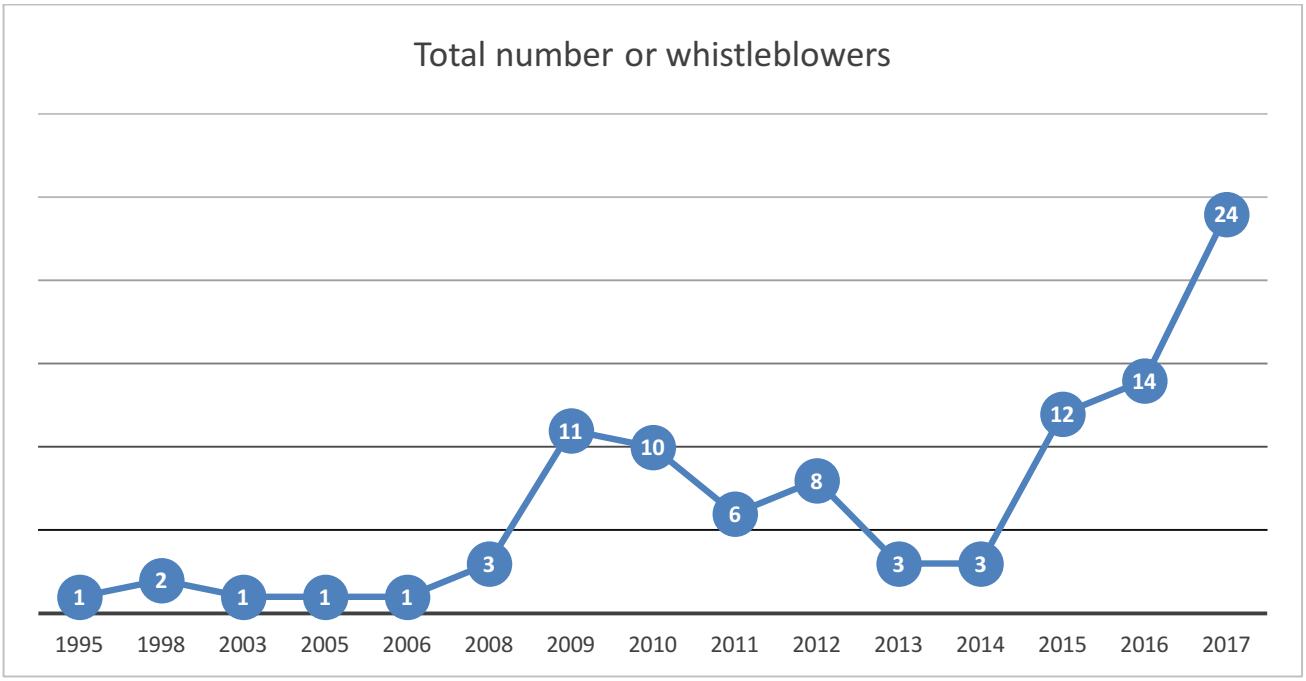
The assurance of access to information is one of the problems closely related to the protection of whistleblowers. According to a report of Team 29 'The right to know' the practice in Russia when it comes to assurance of access to information is not always in conformity to the international requirements and often contradicts to these requirements[3]. The authors of the report point out the increasing of number of criminal cases for high treason, espionage and disclosure of state secrets as one of the symptoms confirming the negative trend to classify and make confidential more and more criminal cases.

The vague formulation of the applicable provisions of the law and the unpredictable law enforcement practice in such cases put a wet blanket on the intention of citizens to reveal facts that threaten the social welfare especially when such facts have some, even indirect relation to the national security.

Since 1995 we have detected not less than 100 cases, in which different violations and abuses have been revealed – information, which in our opinion is undoubtedly of public interest. Furthermore, it shall be noted that these are only cases of internal

[1] http://bit.ly/2zqiR0J
[2] http://bit.ly/2ApRaCY
[3] http://bit.ly/2hbmJZ7

whistleblowing, when the revealed information becomes known to a person in the framework of his official, employment, contractual or other formal relations with an organization or a state authority. The number of cases of external whistleblowing, which are not only at federal, but also at regional and local level may not be calculated even in rough figures.

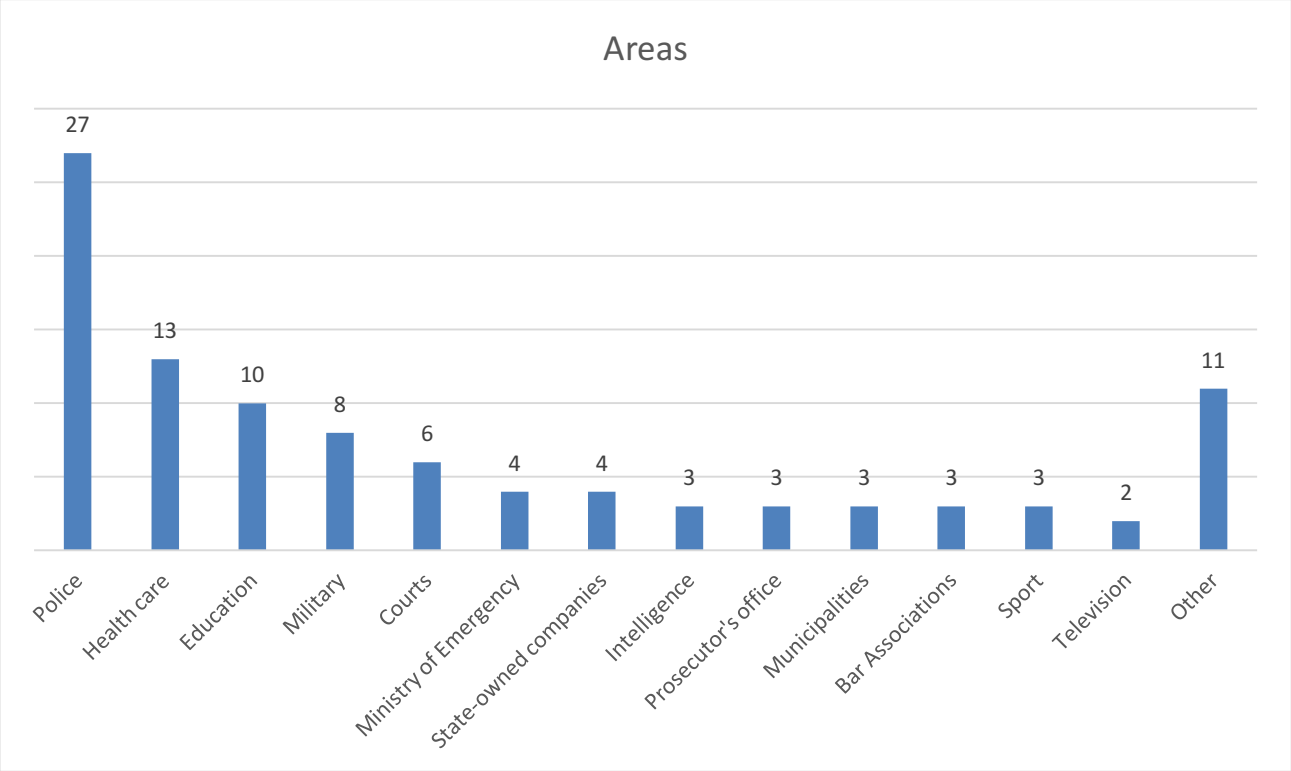


The graphics shows that during the last 20 years the cases of whistleblowing have increased significantly in two occasions: first time – in 2009 and second time in 2015, after that the trend of increasing continues until the present day. In 2009 most of the cases of whistleblowing were initiated by police officers and the most famous among them is Alexey Dimovski.

Probably, the activities of representatives of the Ministry of Interior were caused by the enormous public resonance of the shooting of the head of Internal Affairs Unit of Tzaritzino region, Moscow Denis Evsyukov who killed two and wounded seven persons. It was exactly the case that led to dismissal of the head of Moscow General Directorate of Internal Affairs and served as a trigger event of discussions on reforms in the police forces. Ultimately, the reform took the form of renaming of the service and inquiry of officers under a non-transparent procedure and equivocal criteria, but in 2009 the awareness of the need of reforms pushed many people to speak out loud about the problems in the organization.

Military servants, doctors, officers at the Ministry of Emergency Situations, teachers and many others followed the example of police officers. After a slight decreasing during the period 2011-2014, the number of these cases increases significantly and obviously this trend will continue in the future.

No doubt that this trend is to a large extent a result of the use of Internet, whose audience of 21 million people per 24 hours in the summer of 2009 reached 70 million people in the summer of 2017. Eight years ago YouTube was an exotic platform for the Russians, but today when practically everyone may have a smart phone with unlimited access to the Internet, it takes only few touches to the screen to make something publicly known.

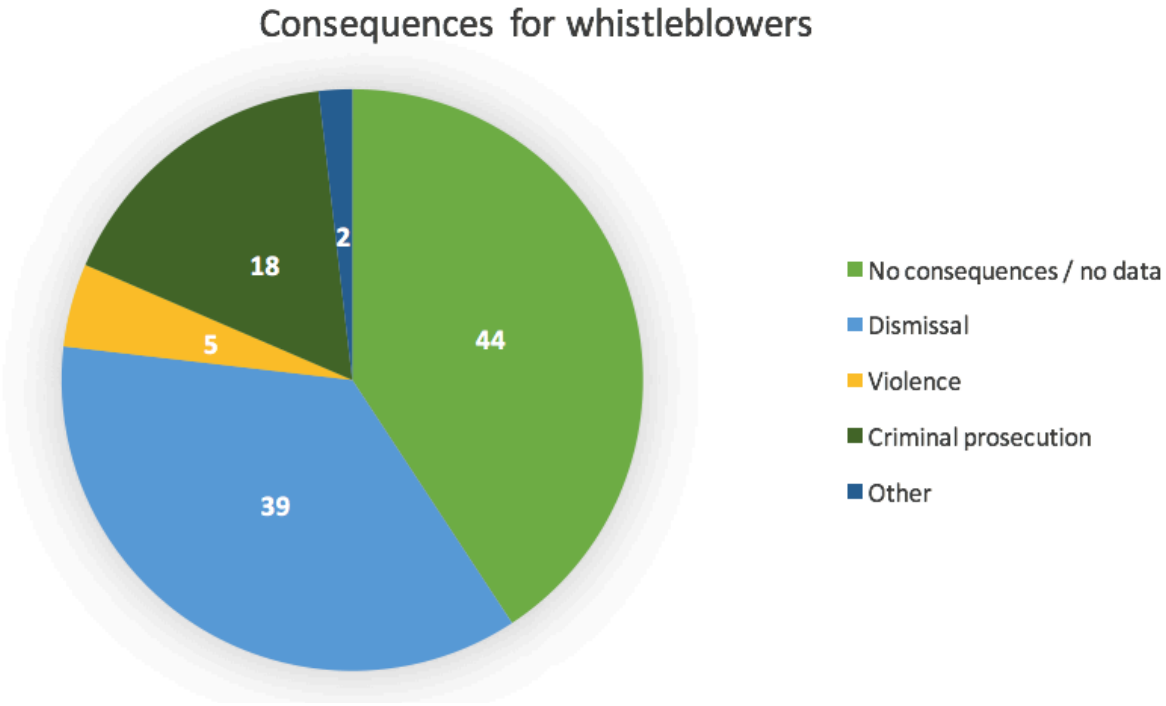


Exactly half of the cases of whistleblowing (50 of 100) covered by our monitoring are in the field of internal affairs, medicine and health protection. It shall be pointed out that the rapid growing of activities in separate fields may be caused by some external events, when one case of whistleblowing encourages large number of people to raise questions, which were out of public interest at an earlier stage.

For example, the Olympic Games in Sochi and the subsequent doping scandal obviously pushed some athletes and sports officials to start to talk about the existence of a state doping program. Public reproach of the role and mechanisms for promotion of ‘fake’ news pushed some employees of state-owned media and the ‘troll factory’ to start to talk even if anonymously.

The revealing of such sensitive information often is a threat to the security and welfare of the whistleblowers. The practice shows that even the using of admissible mechanisms for reporting of violations from authorities` point of view – informing

of the management, application addressed to the law enforcement bodies etc. – becomes the reason the whistleblowers to be dismissed or to be prosecuted, often both things together, due to lack of effective mechanisms for protection from discrimination. This also explains the final sum in the diagram below, which exceeds 100.



Background of the event and dispute about the terms

After the publishing in 2006 of his most novel 'Camorra', dedicated to mafia activities, the Italian journalist and writer Roberto Saviano was forced to go in hiding, to change his place of residence often and to be guarded 24 hours a day, because the Neapolitan criminal organization 'Camorra' sentenced him to death. After witnessing of some of public murders organized by the criminals, the journalist decided to examine the mafia activities from the inside and for this purpose he planted himself in one its criminal groups. The novel contains description of mafia finances and organizational structure, its international relations and various business activities, which besides drug traffic include collection and transportation of waste, production of construction materials, slavery and involvement of children and teenagers in criminal activities[4].

In general the global subject about the whistleblowing comes from the United States

[4] https://esquire.ru/roberto-saviano

where in the 60-ies and 70-ies it has started from a campaign dedicated to protection of consumers` rights. The attorney at law Ralph Nader who examined the security (or rather the insecurity) of American automobiles gave the start to a mass movement of activists ('the Nader's Raiders'), which investigates corruption in the government and the violation of rights of American citizens. But the protection of whistleblowers has become part of the global discussion on human rights, freedom of expression and searching of balance between the national security and the rights of citizens to receive important information only since the last decade.

However, Nader became so famous that four times he was nominated for president of the USA and in 2008 as an independent candidate he competed with Barack Obama.

It was exactly during Obama`s mandate when the event 'whistleblowing' was transferred permanently to the political area and the former assistant at the USA National Security Agency Edward Snowden became a sample of a whistleblower. He told the world about the systems for mass electronic observation used by American special service. As a result of this the activities of NSA became subject to an inspection by the Congress and the powers of the special service were significantly reduced upon Obama`s initiative.

Nevertheless, even the most democratic leaders, one of which undoubtedly is Barack Obama (one of his last acts as president was the reprieve of Chelsea Manning, sentenced to 35 years of imprisonment for delivery of secret documents to WikiLeaks) protect 'the interests of the state' by attempts to limit the distribution of confidential information.

Usually all these abuses become known after whistleblowing of a person who has learned this important information at his/her office or work place. The information about the secret prisons of CIA, the photographs and the reports on tortures of prisoners in the Abu Ghraib prison and the violations of human rights in Guantanamo have become known to the public due to the fact that some of the officials delivered these materials to journalists and civil activists. For example, the video of the attack of American helicopters in a suburb of Bagdad that caused the death of twelve civilians, including two correspondents of Reuters and two children were wounded[5], which now is accessible to every user of YouTube, was delivered to WikiLeaks by the military officer in the US army Chelsea Manning.

The importance of the revealed information undoubtedly is so global that it obviously spreads out of the framework of 'national interests' of a separate country. This is exactly the reason why the violation of human rights may not be considered as an interval affair of a separate country, they affect the whole mankind.

[5] https://www.youtube.com/watch?v=5rXPrfnU3G0

One of the first national laws on protection of whistleblowers was adopted in 1989 in the USA – this is The Whistleblower Protection Act, which was significantly amended and supplemented during Obama`s mandate. Then The Office of Special Counsel was created, which is a special independent body for examination of signals filed by whistleblowers. The individuals who wish to reveal information about violations shall address this body. Furthermore, the whistleblowers have the opportunity to provide information[6] about cases of discrimination and chasing also to the federal Ministry of Labor. The rules adopted in the USA are very progressive (in Russia the best opportunity offered to the whistleblower is to inform his/her own manager or to report the violation to the law enforcement bodies under the standard general procedure), but obviously they are not sufficient. We will see that the approach towards the organization of the system for filing of signals for violation is gradually changing.

The term used in the English speaking part of the world *whistleblower* does not have an adequate translation in the Russian language. The word 'Informer' (or even worse – 'sneak', 'informant') has permanent negative connotative meaning related to investigation activities. It is a synonym of 'agent', who is not an independent actor and most often acts out of mercenary motives. These are exactly the arguments – accusations of greed – used by the representatives of the government with regard to such individuals.

Usually *whistleblower* is an individual releasing confidential or secret information although he/she is under an official or other obligation to maintain confidentiality or secrecy.

> 'Whistleblowers' are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy. ‚Whistleblowers' releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in 'good faith'.
>
> *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression dated December 6, 2004*

But it is not that simple and more and more often proposals are heard the status of the whistleblower to be extended to all individuals who reveal information about violations of public importance.

The definition offered under Resolution 1729(2010) of PACE on Protection of Whistleblowers[7]: *The Parliamentary Assembly recognises the importance of whistle-blowers – concerned individuals who sound an alarm in order to stop wrongdoings*

[6] https://www.osha.gov/whistleblower/WBComplaint.html
[7] http://bit.ly/2yCVmlW

that place fellow human beings at risk.

We offer to use the neutral term 'whistleblower', which together with the term 'informer' and 'individual, releasing information on violations' is used in the official translation of respective documents. **Under the term whistleblower we will understand any individual or organization, which release information on circumstances that put at risk the civil society and (or) the democratic country, including on violations of human rights and corruption that put at risk the public security, health of citizens or the environment.**

The whistleblowers may be external and internal. The first ones are civil activists, journalists, human rights activists, who perform investigations of facts relevant to corruption, arbitrariness, violence, abuse and violation of human rights. For example, in 2015 American ecologists analyzed the content and the volume of exhaust gasses of different brands of automobiles and established significant non-conformities to the official data presented in relation to the diesel engines of 'Volkswagen'. The chairperson of the automobile concern submitted resignation, the total size of losses may exceed EUR 25 billion and only now the German court has started proceedings upon the collective claim of 15 thousand automobile owners[8].

The second type of whistleblowers includes the officials in the organizations (corporations) who publish information, which they have received in relation to performance of their functions. We include in our monitoring exactly this kind of cases and the results are presented in the appendix.

The whistleblowers are often anonymous – Chelsea Manning had no intention to reveal the information known to her, it becomes public only under the investigation of 'complicity with the enemy' – but they may announce their names even in cases when their security and welfare are really at risk.

We also take into consideration the need to differentiate the term 'whistleblower' from the terms 'criticism' and 'an individual, appealing violation of rights', in cases when it comes to revealing of obvious faults without revealing of any information or significant part of it, which is not known to the public. In this regard we need to point out that the guarantees for protection of criticism and especially when it comes to criticism of the government are sufficiently developed not only under the national legislation (see for example The Decree of the Plenum of the Supreme Court of Russian Federation No 11 dated June 28, 2011 'On the case law under criminal cases for extremism'), but also at ECHR level, which is not the case with the freedom of whistleblowing.

[8] Over 15 thousand owners of automobiles with diesel engines have filed a claim against Volkswagen. 'Kommersant' newspaper November 6, 2017 // https://www.kommersant.ru/doc/3459848?tw

International standards in the field of protection of whistleblowers

The subject relevant to special legal protection of individuals who release information on violations of public interest in the context of the right of expression is relatively new, although similar whistleblowing cases have hundreds of years of history. Initially the question was mainly about guarantees granted to individuals who release information on corruption.

There is a whole separate set of international agreement and standards relevant to protection of the whistleblowers of corruption. Such document of key importance is the United Nations Convention against Corruption[9], adopted by resolution 58/4 of the UN General Assembly on October 31, 2003. The part of the Convention, which is of interest to us, envisages an obligation for each state party to assure access (including anonymous access) of the citizens to the bodies that act against corruption (art. 13) and separately regulates the legal status of witness under corruption criminal cases and whistleblowers as well as the obligations towards them (art. 32 and art. 33).

Moreover, the first ones shall receive particular effective measures of protection, including measure for their physical security and if needed non-disclosure of identity, while the special protection of the second ones is only recommended and is applied upon discretion of respective authorities.

> **Article 33**
> Protection of reporting persons Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention
>
> *United Nations Convention against Corruption (UNCAC)*

The Russian Federation ratified the Convention on March 8, 2006 with series of remarks, which however do not relate to articles 13, 32 and 33 but for more than ten years the Russian authorities have not taken any real steps aimed at regulation of activities of whistleblowers (at least in the field of anti-corruption).

Furthermore, the need at regional level of elaboration of special guarantees for the security of individuals releasing information about corruption is envisaged for example under the Inter-American Convention against Corruption of 1996 (art. 3)[10].

> **Article III. Preventive measures**
>
> For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

[9] http://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml
[10] http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp

> <…>
>
> Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems .
>
> *Inter-American Convention against Corruption*

The guaranteeing of security of whistleblowers and their encouragement is one of the recommendations relevant to decreasing of risk of corruption made by OECD Council[11].

At their meeting in Seoul held in 2010 G-20 declared the protection of individuals, reporting facts of corruption as one of the priorities in the field of combating against corruption. Subsequently the appeal for adoption of legislative guarantees for protection of individuals who reveal information on corruption addressed to the states, which have not done so is included in all tow-year anti-corruption action plans of G-20[12]. In the following section we will review the way Russia has implemented in practice these recommendations.

The enumerated facts of corruption as an event causing generally recognized negative attitude is out of any doubt, but the situation is changing and the provisions aimed at special protection of individuals who reveal facts about any kind of abuses and violations of human rights, not only corruption, gradually has become part of the international law.

The subject relevant to protection of whistleblowers is seriously developed under the report of the UN Special Rapporteur David Kaye, presented in 2015 before the General Assembly and dedicated to the protection of sources of information and individuals reporting violations[13].

The document contains formulation of five principles based on the analysis of national legislation and international agreements that are of key importance for defining of the legal status and the limits of protection of whistleblowers.

First, **the protection shall refer not only to the individuals who have received information of public interest in the framework of their employment or official relations, but also to everyone who report violations in one way or another**. For example, the patients who release information on abuses in hospitals; the students and their parents, who file signals about violations in schools and universities; applicants for vacant positions, trainees and other persons of similar status. In view of the obvious difficulties that emerge at evaluation of the motivation and 'good faith' of the actions of whistleblowers for the purposes of providing of protection, **the motives of the individual who reports the violation shall not be considered**

[11] http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf
[12] http://bit.ly/2zcdLBJ, http://uscham.com/2glTvK4 and http://bit.ly/2yre6Tv
[13] http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ProtectionOfSources.aspx

of significance if the person is sure of the truthfulness of revealed information.

Second, the information the revealing of which makes necessary provision of protection to the whistleblower shall be defined in view of the 'public interest', which includes not only reports on violations of particular persons, but also significantly broader range of subjects. Furthermore, **the information, at revealing of which protection shall be provided, shall be understandable for the individual capable to report violations**.

> 63. State law should protect any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety.
>
> *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted in accordance with UN Human Rights Council resolution 25/2*

Third, **there shall be alternative channels for revealing of information**: in case of lack of adequate internal institutionalized mechanisms for reaction to reporting of violations, the whistleblowers need to have guaranteed opportunity to address external supervisory institutions (for example ombudsman), directly the media or nongovernmental organizations.

Fourth, **the whistleblowers shall have guarantees for confidentiality and if necessary – anonymity**. In particular, this shall be assured through the fact that the authorities may not require the media or other recipients of information on violations to reveal the source of their information.

Fifth, **the national laws shall envisage detailed and explicit measures for protection of whistleblowers and of members of their families**, including particular civil and criminal law sanctions for the persons retaliating the whistleblowers.

At European level in addition to the above mentioned Resolution of PACE No 1729 (2010) the subject has been significantly developed by Recommendation CM/Rec(2014)7 of the Committee of Ministers to member states on the protection of whistleblowers elaborated on the basis of the resolution[14], according to which the member states of the Council of Europe shall recognize the legal status of whistleblowers at legislative level as individuals revealing 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. However, it is noted under Resolution of PACE No 1729 (2010) that this status shall cover under equal conditions the military and special service officers.

Such individuals shall receive protection from direct or indirect retaliation and the

[14] http://bit.ly/2zm5aQK

right to use as grounds the applicable national legislation, which implies the need of availability of such legislation.

> 12. The national framework should foster an environment that encourages reporting or disclosure in an open manner. Individuals should feel safe to freely raise public interest concerns.
>
> *Recommendation CM/Rec(2014)7*
> *of the Committee of Ministers to member states on the protection of whistleblowers*

The information of public interest in any case shall include reporting of circumstances that represent violation of human rights and other violations or threats to the public security, health of citizens or the environment.

The individual who wishes to disclose information of public interest in view of particular circumstances shall have the opportunity to use different channels - reporting within an organisation or enterprise (including to persons designated to receive reports in confidence); reporting to relevant public law enforcement agencies and supervisory bodies and reporting directly to the public, for example representatives of media or members of parliament.

The European Court of Human Rights also has reviewed many times the different aspects of the status of whistleblowers in the context of art. 10 of Convention for the Protection of Human Rights and Fundamental Freedoms and the most comprehensive expression of the position of ECHR on this issue is presented in the Grand Chamber Judgement under the case 'Guja v. Moldova'[15].

The applicant under the case - Head of the Press Department of the Prosecutor General's Office Iacob Guja delivered to the journalists a copy of a letter of Deputy Minister of Interior and notes of the Chairperson of Parliament Vadim Misin addressed to the Prosecutor General, which actually contain request for termination of prosecution against several police officers accused of illegal detentions and cruelty. After that the criminal case was terminated. On the basis of these documents one of the newspapers published an article named 'Vadim Misin intimidates the prosecutors' together with copies of the letters. Guja insists that by revealing of the abuse of power by state officials he has acted in the best interest of justice. Nevertheless, Guja and the prosecutor suspected as the one who gave him the published letters were dismissed.

At review of the complaint of the former prosecutor the ECHR specified eight principles relevant to legality of interference with the freedom of expression of state servants who published the information on violations. Part of these principles are specified for the first time:

(1) **The protection under article 10 of freedom of expression applies also to**

[15] Guja v. Moldova, application No 14277/04, judgment of 12 February 2008, §§73–78

the workplace in general and to the separate civil servants;

(2) The duty of loyalty, reserve and discretion to the employer and especially the duty of reserve and discretion of civil servants is not absolute. **The signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection**. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large.

(3) the authenticity of the information disclosed is of significance;

(**defamatory accusations devoid of foundation or formulated in bad faith shall not enjoy protection**);

(5) **the content of disclosed information and the specific features of the affected public authority are also of significance** and shall be taken into consideration at weighing of the damage suffered by the public authority as a result of the disclosure in question and assess whether such damage outweighed the interest of the public in having the information revealed;

(6) **The motive behind the actions of the reporting employee is another determinant factor in deciding whether a particular disclosure should be protected or not:** an act motivated by a personal grievance or a personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection;

(7) **The lack of effective alternative ways of disclosing of information justifies the fact that the issue was reported directly to the media;**

(8) At assessment of proportionality between the interference and the aim pursued **careful analysis** of the **sentence** imposed to the whistleblower and its consequences shall also be performed. Therefore, **the dismissal shall be regarded as quite a harsh measure**.

We may see that the criteria applied by the ECHR in 2008 are significantly more conservative than the approaches towards the protection of whistleblowers proposed in 2015 by the UN Special Rapporteur. This is the right place to point out a key contradiction relevant to the assessment of the role of motivation of the whistleblower, to which the ECHR attributed main significance together with the public interest and the discretion at choosing of a way of disclosing of information.

The discretion of the ECHR is demonstrated again under the case 'Karapetyan and Others v. Armenia' (2016)[16], under which several servants at Armenian Ministry of

[16] Karapetyan and Others v. Armenia, application No 59001/08, judgment of 16 November 2016

Foreign Affairs appeal as unlawful their dismissal as a result of their public statement that the results of the elections for president were manipulated. In this case the ECHR confirmed that the civil servants have rights to express their opinion, but the national authorities may limit their freedom of participation in political activities.

What is the situation in Russia? Almost nothing at all

The Russian Federation in its capacity as a party to the UN Convention against Corruption[17] and to the Council of Europe Criminal Law Convention on Corruption[18] has assumed an obligation to take particular steps, including legislative measures, aimed at protection against eventual retaliation of individuals who report circumstances of corruption. But for quite a long time no progress has been marked in this field.

The Report on review of activities in the Russian Federation relevant to the application of articles 15-42, Chapter III 'Criminalization and Law Enforcement' and articles 44-50, Chapter IV 'International Cooperation' of UN Convention against Corruption performed by Ukraine and Ecuador and covering the period 2010-2015[19] shows that the experts have decided that the Russian Federation has fulfilled its obligations in this regard, because '*the protection of individuals who report to the competent authorities any kind of facts related to crimes, including for crimes recognized as such under the Convention, is performed by virtue of Federal Law No 119-ФЗ of 20.08.2004 on State Protection of Victims, Witnesses and other Participants in Criminal Proceedings* (item 499) *and 'many ministries have also adopted Codes of Ethics, according to which the individuals who reveal information may not be dismissed without respective decision of the Conflict of Interests Commission'* (item 505).

However the described measures may hardly be considered as sufficient, because the measures of protection envisaged under Federal Law No 119-ФЗ refer only to participants in criminal proceedings and the codes of ethics are not legislative acts.

Moreover, significant part of these act contain provisions of the opposite meaning. 'The Sample Code of Ethical Official Conduct of Civil Servants of the Russian Federation and of Municipal Servants' (approved by a decision of the Presidium of the Council of the President of the Russian Federation on Combating against Corruption dated December 23, 2010), on the basis of which all other codes of ethics of separate organizations are elaborated and adopted in the recent years, explicitly imposes an obligation to civil servants '*to abstain from public statements, opinions and evaluations referring to the activity of the state authority or the local self-*

[17] Ratified by Federal Law No 40-ФЗ of March 8, 2006
[18] Ratified by Federal Law No 125-ФЗ of July 25, 2006
[19] http://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=RUS, and http://bit.ly/2yopoZu

government authority and its head, if this does not form a part of the job description of the civil (municipal) servant' [20]. It is worth noting that similar interdiction was envisaged under the Decree of the President of Russian Federation No 885 dated August 12, 2002 on Approval of the General Principles of Official Conduct of Civil Servants.

The respective provisions are included in the codes of ethical conduct of officials at the Ministry of Health[21], the Ministry of Labor[22], the Ministry of Finance [23], the Ministry of Defense[24] and many other state departments. Usually the Codes of Professional Ethics do not envisage provision of special protection to individuals who report violations in the professional circles. For example, the code of ethics of attorneys at law envisages an opportunity for attorneys at law to file complaints against their colleagues before the professional self-government bodies, but does not envisage any special rules for review of these complaints or any guarantees for the individuals who have filed them. The codes of professional ethics of doctors[25] and notaries[26] do not limit, but in any case do not encourage either, the revealing of information of public interest and do not envisage protection for such cases.

Furthermore, the described provisions in the codes of ethics of civil servants actually are based on the Law on Civil Service, which contains an interdiction for the civil servants *to make public statements, to express opinions and evaluations, including in the media, referring to activities of state authorities and their heads as well as to the decisions of a superior state authority or a state authority, at which the civil servant occupies certain position under an employment contract, if this falls outside the scope of his/her official duties*[27].

In 2009 the Constitutional Court gave instructions referring to the exact way of application of this provision, but refused to overturn it, so it is still in force.

It shall be pointed out that the obligation for adoption of normative acts relevant to protection of individuals who have reported cases of corruption exist for the Russian Federation from the moment of ratifying of the UN Convention in 2006, but the first

[20] http://base.garant.ru/55171108/

[21] Code of Ethical Official Conduct of Federal Civil Servants and Servants Appointed under Employment Contract at the Ministry of Health approved by Order of the Russian Federation Minister of Health of No 487 dated September 1, 2014 // http://bit.ly/2gpdFTN

[22] Code of Ethical Official Conduct of Federal Civil Servants and Servants Appointed under Employment Contract at the Russian Federation Ministry of Labor and Social Protection approved by Order of the Russian Minister of Labor No 604 dated December 17, 2012 // http://rosmintrud.ru/docs/mintrud/orders/611

[23] Code of Ethical Official Conduct of Federal Civil Servants and Servants Appointed under Employment Contract at the Russian Federation Ministry of Finance approved by Order of the Russian Minister of Finance No 115 dated April 17, 2015 // http://bit.ly/2zgIZaM

[24] Code of Ethical Official Conduct of Federal Civil Servants and Servants Appointed under Employment Contract at the Russian Federation Ministry of Defense // http://bit.ly/2j2nhEB

[25] http://www.consultant.ru/document/cons_doc_LAW_174773/

[26] http://www.consultant.ru/document/cons_doc_LAW_189129/

[27] art. 17, para 1, item 10 of Federal Law No 79-ФЗ of July 27, 2004 on the State Civil Service in the Russian Federation

step in this direction was made in 2013 by the adoption of Decree of the President of Russia No 309 dated April 2, 2013 on the Measures for Implementation of Separate Provisions of the Federal Law on Combating Corruption, which envisages an interdiction for application of disciplinary measures against individuals, who reported to law enforcement or other state authorities or mass media facts about corruption, without the consent of the Commission on Observation of Requirements towards the Official Status and Settlement of Conflict of Interests.

Subsequently in 2014 a representative of the President`s Administration several times stated that regardless of the increasing of the number of civil servants who make public facts of corruption, a significant part of them are subjected to serious retaliation in their offices and the provisions of the relevant laws relevant to protection of those individuals are not applied[28].

At present the Russian Federation Government has imported in the Parliament a draft elaborated by the Ministry of Labor of a federal law on amendments to the Federal Law on Combating Corruption in the part that regulates the protection of individuals who revealed information on corruption cases[29]. The draft law envisages protection of the state and municipal servants who reveal facts about corruption (in fact only to the employer, prosecutor or other government authorities), including guarantees for confidentiality, legal assistance free of charge and limitation of the application of disciplinary sanctions, as well as the right of receiving of information on the development of the process of review of the signal filed.

If we discuss the protection of whistleblowers in general, without focusing only on combating corruption, we will establish the complete lack of any kind of regulation in this field, without taking into consideration the interdiction of public appearance of representatives of the state.

All international acts that in one way or another refer to *whistleblowers*, even though they have some non-conformities on certain issues, contain absolutely unanimous understanding that the effective protection is impossible without special guarantees envisaged under national legislations.

In the report described above David Kaye marks that not less than 60 states in one form or another have included in their national legislations provisions that regulate the protection of individuals who reveal information on violations. In 2007 the number of these states was around 40[30]. Russia is not included in this number, but this is not only its problem.

[28] *Nikolay Sergeev*. Evaluation of whistleblowers has been made at the Public Chamber, Kommersant newspaper, 18.12.2014 // https://www.kommersant.ru/doc/2635922

[29] http://sozd.parlament.gov.ru/bill/286313-7

[30] *David Banisar*. Silencing Sources: An International Survey of Protections and Threats to Journalists' Sources [EN] // https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706688

> 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.
>
> *PACE Resolution 1729(2010) on protection of whistleblowers*

In our country the guarantees for protection of individuals who reveal information on violations that are of public interest are limited only to general provisions regulating freedom of speech and ensue from the generally recognized principles and norms of the international law and the legal opinions of the European Court of Human Rights and (in very narrow range) of the Constitutional Court.

However, we need to point out that according to the position of the Russian Federation Supreme Court the content of generally recognized principles and norms of the international law may be found particularly in the documents of UN and its specialized bodies, including the Human Rights Council, which appoints a special rapporteur on the freedom of expression and confirms its powers.

In 2009 Federal Law on Assuring of Access to Information on Activities of State Authorities and Local Self-government Authorities was adopted that envisaged openness, accessibility and truthfulness of the information on the activities of state authorities and local self-government authorities and guaranteed the freedom of searching, receiving, transferring and distribution of information on the activities of state authorities and local self-government authorities in any lawful way. But the limitation of information that may be subject to free revealing to public only to the framework of information created by the government authorities in the scope of their powers, which is introduced by art.1, deprives this law of any practical value in view of protection of the freedom of speech.

One of the most important sources of information about the activities of government authorities, except the formal official notices, are the statements of civil servants. Moreover, the civil servants are addressees of the direct interdiction for public statements, opinions and evaluations, which refers also to the civil servants at internal affairs authorities and at National Guard of Russia[31].

Provisions of respective laws were examined by the Constitutional Court[32] in relation to the statements of the regional police officer Alexey Mumolin and the civil servant at Tax Administration Luybov Kondratieva in 2009 and the court did not find any contradiction of these provisions to the Constitution, but pointed out that *at evaluation of lawfulness of actions of a state civil servant or a police officer the content of public statements, opinions or evaluations of such individual shall be*

[31] Art.14 of Federal Law No 342-ФЗ of 30.11.2011 and art.44 of Federal Law No 227-ФЗ of 03.07.2016

[32] Decree of Russian Federation Constitutional Court No 14- П of June 30, 2011 under the case for review of conformity to the Constitution of provisions of art. 17, para 1, item 10 of Federal Law on State Civil Service of the Russian Federation and art. 20.1 of Russian Federation Law on Police Forces with regard to complaints of the citizens L.N. Kondratieva and A.N. Mumolin

taken into consideration and also their importance for society and the motives, the proportion between the caused (or eventual) damage to the state and public interests and the damage prevented as a result of the respective actions of the civil servant, the existence or lack of an opportunity for the civil servant to protect his/her rights or the state or public interests, the violation of which formed the grounds for the public statement, in some other lawful ways and other important circumstances.

The criteria defined by the Constitutional Court that refer to the lawfulness of revealing of information on the part of civil servants completely conform to the approach of the European Court of Human Rights under the case Guja v. Moldova (the Constitutional Court points exactly this judgement of ECHR) and include:

- Content of information;
- Public interest;
- Motives of the individual who reveals information;
- Balance between the damage to the state and public interests and the damage, prevented by the revealing of information;
- Existence of lack of alternative ways of action.

However, it shall be pointed out that the facts under the cases of Guja, Mumolin and Kondratieva differ significantly. The Moldovian case refers to publication of an official document, which the national authorities consider confidential, and the opinion of the Constitutional Court of Russian Federation refers to the expression of opinion on the part of the applicants. It is obvious that the admissible range of interference in these cases shall be different.

Major Mumolin from the city of Tolyatti has recorded a video announcement, in which he tells that the neighbourhood police officer's objectives were based on monthly targets of opening certain number of case files (*in Russian - „палочная система". The expression is related to the activity of the law enforcement bodies. The police officers receive a plan for the number of solved crimes that shall be reached for a certain period of time. Each crime solved is marked with a line /or with figure 1/ in the report. If the unit reaches the necessary number of lines or exceeds it the officers receive bonuses otherwise they suffer reprimands or other kinds of punishments. This system leads to a significant number of abuses, because the police officers do not try to find the guilty ones, but try to reach the target under the plan and press charges former prisoners, drug users, drifters or alcoholics – translator`s note*) and the abuses, to which this system leads[33]. The video received very strong public response (over 150 000 visits in You Tube up to the present moment), but Mumolin was subjected to retaliation on the part of the service. After an interview in

[33] https://www.youtube.com/watch?v=D1Yzmqw69AY

the local newspaper *'Tolyattinskoe obozrenie'* he was deprived of his additional remuneration, he was punished with reprimand and finally dismissed after a single protest. The court states in its decision, by which the dismissal of Mumolin is found lawful that "*such actions cause damages to the reputation of internal affairs authorities, because they may form an opinion in the society that the police forces are not capable to solve internal conflicts and to assure to its offices the necessary means for solving of tasks assigned to them"*.

Inspector of taxes Kondratieva performed an inspection of activities of the management of Tula district and found many violations of financial rules, which she reported to her director, but received instructions 'to close her eyes and to forget' [34]. After a short period of time Kondratieva was dismissed due to the fact that she gave an interview in TV channel 'TV Stolica' and revealed information on violations at payment of business trip expenses of civil servants.

The cases of Mumolin and Kondratieva were the only cases reviewed by supreme judicial bodies. It is typical that despite the generally positive decision of the Constitutional Court, which confirms the right of civil servants to criticize the management, neither Mumolin, nor Kondratieva were restored to their positions.

The appeal of Mumolin was filed before the European Court, which may assess also the arguments of the Constitutional Court and the legal consequences of its decision.

Russian whistleblowers

We decided to record the history of Russian whistleblowers, starting from the case of retired captain of first class Alexander Nikitin. During the USSR era Nikitin was a head of a group for inspection of the nuclear safety in the nuclear plants of the Ministry of Defense. After his retirement in 1995 he started realization of environmental projects, he was an expert in a Norwegian non-governmental environmental organization 'Bellona', where he participated in the elaboration of the report *'The Northern Fleet – potential risk of radioactive pollution in the region'*.

In the autumn of 1995 during a search of the Murmansk branch of 'Bellona' the agents of Federal Security Service (FSB) seized the unpublished draft of the report. Nikitin was accused of high treason by espionage and disclosing of state secrets, because the report was supposed to reveal information on accidents of Russian nuclear submarines.

The ecologist spent several months in the Investigation Office Isolation Ward, but in 1999 was completely acquitted. Initially the Sankt Petersburg City Court and after the Supreme Court of the Russian Federation decided that the charges pressed against

[34] *Dmitry Kaznin, Anastasiya Izyumskaya,* Tax Inspector is brought to trial for the right to criticize the director. TV Channel 'Dozhd'. October 4, 2011 // http://bit.ly/2yD1ERj

Nikitin were formed improperly and the materials under the case did not include evidence that the report contained confidential information[35].

On November 17, 1998 FSS lieutenant colonel Alexander Litvinenko and four of his colleagues (officers at Tracing and Interception of Activities of Criminal Groupings Department Victor Shebalin, Andrey Ponkin, German Shcheglov, Konstantin Latishonok) and colonel at the Federal Tax Police Service Mihail Trepashkin dismissed at that time by the State Security authorities made a press conference at 'Interfax' agency, at which they revealed information about the order they had received from their directors to kill Boris Berezovski and about the inducement to perform series of other crimes[36].

After the press conference Litvinenko was dismissed from FSS and subsequently prosecuted under several charges. He was acquitted under the first criminal case, the second criminal case was terminated by the prosecutor`s office and after initiation of a third criminal case he left for Great Britain where in 2001 he received political asylum and subsequently civil asylum. In 2002 Alexander Litvinenko was sentenced on probation in absentia in Russia to three and a half years of imprisonment on charges for abuse of office and illegal possession of fire arms and ammunitions[37].

In 2001 together with the journalist Yuriy Felshtinsky Litvinenko wrote and published a book named '*Blowing Up Russia*: Terror from Within' and in the next year – the book 'Lubyanka Criminal Group', in which he states the version about the participation of FSB in explosions in residential buildings in the autumn of 1999 and describes other criminal activities of special service. In 2005 in an interview for Polish media he stated that one of the leaders of Al Qaeda Ayman al-Zawahiri had been trained at FSB[38]. In 2006 Alexander Litvinenko was killed in London by the use of radioactive Polonium-210. The British Authorities that investigate the murder requested from Russia to transfer to Britain the former FSB officer Andrey Lugovoy pointed as the main suspect. Russia refused to do so, Andrey Lugovoy was elected as member of the State Duma from the Russian Liberal Democratic Party. According to the report of the Supreme Court of London 'the FSS operation for the murder of Litvinenko probably was approved by Patrushev and by the President Putin' [39].

The member of parliament Lugovoy commented the report in the following way: 'The accusations against me are absurd <…> The results of investigation published today again confirm the anti-Russian attitude of London, the narrowmindedness and the unwillingness of Englishmen to establish the real reason for the death of

[35] http://hudoc.echr.coe.int/eng?i=001-61928
[36] https://www.youtube.com/watch?v=MyDjxDZwjGc&t=292s
[37] Berezovskiy and Tracing and Interception of Activities of Criminal Groupings Department / Litvinenko Case Agentura.ru // http://www.agentura.ru/timeline/1998/urpo/
[38] http://bit.ly/2hlECVh
[39] https://echo.msk.ru/blog/echomsk/1703630-echo/

Litvinenko' [40].

Earlier in 2007 in response to the question of journalists about the death of Litvinenko Vladimir Putting stated: 'As far as Litvinenko is concerned I have nothing more to add to what I have said already <…> I will say it again only the investigation may find the answer to the question what happened there. As far as the people who want to cause harm to the Russian Federation I may say that they are well known' [41].

After the press conference Mikhail Trepashkin was also forced to quit the Federal Service 'Tax Police' and became an attorney at law. As such he acted as counsellor of Alexander Litvinenko even after his departure from Russia. In 2002 a search was performed in the office of Trepashkin ('Kommersant' newspaper cited the order on performance of the search, in which it is stated that the purpose of the search is 'subjects and documents that show the whereabouts of the wanted A.V. Litvinenko'). During the search some documents were found and declared confidential by the prosecutor`s office as well as 19 bullets of different calibre. In 2004 Trepashkin was sentenced to four years of imprisonment and released in 2007 after serving of the sentence. Trepashkin himself stated that the retaliation was a revenge for his contacts with Litvinenko[42].

In the summer of 2003 the judge at Moscow City Court Olga Kudeshkina tried a criminal case under which the defendant was the investigator Pavel Zaytsev, accused of abuse of powers at investigating the case of 'Three Whales' for smuggling of furniture. Due to a conflict with the prosecutor under the case Olga Kudeshkina was suspended from the case. After a few months she terminated her powers as judge in relation to her participation in elections for the State Duma. During the campaign Kudeshkina gave an interview for 'Echo of Moscow' radio, in which she revealed information about the abuses and the 'incredible nuisance' in Moscow courts in general and particularly in Moscow City Court. Kudeshkina stated that during the trial against Zaytsev several times she had been invited by the Chairperson of Moscow City Court Olga Egorova to report on the development of the case and afterwards without any explanations the case was transferred to another judge. Subsequently the Qualification College of Moscow Judges upon an appeal of Egorova terminated the powers of Kudeshkina and stated that the latter 'presented before the public fake and fabricated facts'.

The appeal of Kudeshkina against her dismissal was reviewed by the European Court which found that the Russian authorities had violated article 10 of the Convention,

[40] *Elizaveta Foht*. Lugovoy defines as absurd the conclusions of the English judge under the case of Litvinenko RBC, January 21, 2016 // http://bit.ly/2xy4qnn

[41] Shorthand minutes of press conference for Russian and foreign journalists Kremlin.ru, February 1, 2007 // http://kremlin.ru/events/president/transcripts/24026

[42] *Ekaterina Zapodinskaya* A lawyer revealed a state secret of a chekist Kommersant March 18, 2003 // https://www.kommersant.ru/doc/371480

despite of the case law of the court that 'it is a duty of the civil servants and especially of servants in courts to be loyal and discreet, so that even the true information to be distributed in conformity to the requirements for moderateness and appropriateness'. The subject raised by Kudeshkina referring to the independence of courts and 'troublesome facts about the state of affairs' according to the opinion of the Court undoubtedly are of public interest, which falls outside the limits of the loyalty obligation of civil servants. Furthermore, the Court considered the fact that Kudeshkina revealed these facts in the framework of political campaign and after she had been deprived of the opportunity to participate officially in the court trial against Zaytsev[43].

Regardless of the victory in Strasbourg, Kudeshkina was not restored to her office as a judge – the same Moscow City Court presided by Olga Egorova refused to review again the appeal against dismissal.

The most famous Russian whistleblower (and the only one of our compatriots mentioned in an article *List of Wistleblowers* in the English language version of Wikipedia[44]) is Sergei Magnitsky. In September 2008 Magnitsky who at that time was a managing partner in Firestone Duncan consulting company and a consultant of Hermitage Capital Management investment fund was arrested and accused of assistance to the company to perform large scale avoidance of taxation. The colleagues of Magnitsky suspected that the criminal case initiated against him was aimed at concealing of the fact that auditor revealed a scheme for spending of budget funds through setting off of VAT, realized with participation of high-ranking civil servants[45].

One year later Magnitsky died in the hospital of the Investigation Office Isolation Ward 'Matrosskaya Tishina'. The relatives and the defense lawyers of Magnitsky claim that he did not receive the necessary medical care and that the investigator and the employees in the isolation ward 'had regularly poisoned him'. The attorneys at law also claimed that the notes of Magnitsky and his appeals that 'he does not feel good' were missing from his cell[46]. The international organization 'Doctors without Borders' accused the Russian authorities of hiding of the reasons for the death of Magnitsky[47].

The founder of video announcement genre is the police forces major Alexey Dimovski, who on November 5, 2009 published in his YouTube channel two video

[43] http://hudoc.echr.coe.int/eng?i=001-109233
[44] https://en.wikipedia.org/wiki/List_of_whistleblowers
[45] *Evgenya Nazaretz, Vladimir Kara-Murza, Elena Polyakovskaya* Unsolved case of Magnitsky Radio Freedom November 16, 2014 // https://www.svoboda.org/a/26692144.html
[46] Sergey Magnitsky Lenta.ru // https://lenta.ru/lib/14202380/#53
[47] Human rights activists: investigators destroy evidence under Magnitsky case. Russian BBC June 7, 2012 // http://www.bbc.com/russian/rolling_news/2012/06/120607_rn_magnitsky_phr.shtml

announcements (addressed 'to the officers' and 'to Vladimir Putin'), in which he criticized the 'line system' and revealed information on abuses, violation of rights of officials and crimes of the management team. Two days later Dimovski was dismissed and subsequently accused under art. 159 (fraudulence), but the criminal case was prescribed[48]. In the following months a series of video announcements of officers at law enforcement bodies were published in the net, some of which directly stated that they support major Dimovski and reveal information on abuses of the management team[49]. One of them was the above mentioned Alexey Mumolin.

In February 2011 the speaker of Hamovniki Regional Court – Moscow Natalya Vasilieva gave an interview for the internet site 'Gazeta.ru', in which she claimed that the text of the second verdict of Mikhail Khodorkovsky and Platon Lebedev was completely coordinated by judge Danilkin with the officials of Moscow City Court and the text itself was written by the 'judges of second instance of cassation of criminal cases'[50]. After the interview Vasilieva was forced to quit[51] and several years later was not able to find a job.

On May 12, 2011 the Internal Troops major Igor Matveev published a video[52], made in the store house of the army unit and announced that the military servants were fed with 'dog cans' in the form of stew. Several days later Matveev was dismissed and on May 21, 2011 was accused and then sentenced twice to a total of four and a half years of imprisonment for fraudulence by using of official position and abuse of power by application of special means[53].

During the same period of time Air Force first lieutenant Igor Sulim who served at the Lipetsk center for battle application and re-training of pilots published in his Live Journal an opened letter to the Minister of Defense, the head of Investigation Committee and the Air Force Headquarters, in which he revealed information on regular blackmail on the part of the command team of the military unit. Subsequently Sulim and the deputy commander of squadron Anton Smirnov gave an interview for 'Moskovski Komsomolets' newspaper and confirmed the information, which had been revealed earlier[54]. They were suspended from flights and later on Sulim was

[48] Criminal case against Dimovski closed Russian BBC April 6, 2010 // http://www.bbc.com/russian/russia/2010/04/100406_dymovskiy_case_closed.shtml

[49] *Arthur Skalskiy* Followers of major Dimovski BABR24, November 15, 2011 // http://babr24.com/msk/?IDE=82173

[50] *Roman Badanin, Svetlana Bocharova* 'The verdict was ordered by Moscow City Court I know that for sure' Gazeta.ru February 14, 2011 // https://www.gazeta.ru/politics/2011/02/14_a_3524202.shtml

[51] Natalia Vasilievna who denounced the judge under the case of Khodorkovsky was forced to quit the court at Hamomniki NEWSru.com. March 28, 2011 // http://www.newsru.com/russia/28mar2011/vasiljeva.html

[52] https://www.youtube.com/watch?v=syzgPosDS8U

[53] *Nikita Sologub*. „Let the cops eat this". Mediazona February 29, 2016 // https://zona.media/article/2016/29/02/major-matveyev

[54] *Olga Bojeva*. Fragments of aerobatics. MK.ru, May 22, 2011 // http://www.mk.ru/politics/2011/05/22/591103-kupyuryi-vyisshego-pilotazha.html

dismissed from the air forces 'due to health reasons' [55].

In September 2015, the employee at the Russian IT company Qrator, specialized in the field of cyber security and protection from hacker attacks, Alexander Vyarya left Russia and gave an interview for Meduza, in which he revealed information on the eventual participation of Russian authorities and state-owned corporations 'Rostech' in the organization of politically motivated ddos-attacks[56].

In May 2016 The New York Times published an article named *'Russian Insider Says State-Run Doping Fueled Olympic Gold'* [57], which contained detailed description of the state doping program existing in Russia with reference to the former director of State 'Anti-doping Center' Grigory Rodchenkov. Simultaneously Rodchenkov addressed WADA and IOC with an open letter, in which he offered to provide information on the changing of the tests during the Olympic Games in Sochi and to change the doping control rules[58]. Rodchenkov is in the USA, a criminal case against him has been initiated in Russia and he is declared wanted.

The former head of the Russian Anti-Doping Agency (RUSADA) Nikita Kamaev died unexpectedly on February 14, 2016 while preparing to write a book for the use of doping in the Russian sport[59]. Heart attack is recorded as the probable cause of death.

In March 2017 the Russian athlete – runner Andrey Dmitriev was forced to leave Russia – after his interview about the violations of anti-doping rules in the Russian sport by journalists from the German TV channel ARD, he was summoned to join the army[60].

In December 2014 ARD showed the first part of the movie *'Secret Case – Doping. The way Russia prepares winners'* [61], which made reference to Russian athletes who claimed that they had paid for concealing of their results from doping testing and that over 99% of Russian professional athletes use forbidden medicines.

In the autumn of 2016 the graduate from the Faculty of Law Alexander Eyvazov starts to work as judicial secretary at the Regional Court of Oktyabrsky region, Sankt Petersburg, where according to his words he witnessed various violations of the

[55] Where the pilot-justice seeker from Lipetsk Igor Sulim flew? Gorod48.ru, June 28, 2017 // https://gorod48.ru/news/445481/

[56] *Daniil Turovskiy*. Full capacity loading. Meduza. September 3, 2015 // https://meduza.io/feature/2015/09/03/gruzit-po-polnoy-programme

[57] *Rebecca Ruiz, Michael Schwirtz*. Russian Insider Says State-Run Doping Fueled Olympic Gold. The New York Times, May 12, 2016 [EN]// https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics- 2014.html

[58] *Dmitriy Somov*. Grigory Rodchenkov: 'I left Russia due to concerns about my personal safety'. Sport Express May13, 2016 // http://www.sport-express.ru/doping/reviews/999454/

[59] https://echo.msk.ru/news/1716748-echo/

[60] WADA Informer Andrey Dmitirev has left Russia. RBK March 18, 2017 // http://www.rbc.ru/rbcfreenews/58cd743b9a79477fd2fb5181

[61] TV channel ARD: 99% of Russian athletes use doping Russian BBC December 4, 2014 // http://www.bbc.com/russian/sport/2014/12/141203_russia_doping_athletes_allegations.shtml

judge Irina Kero as well as violations of labor rights of the servants at the administration of the court. After the revealing of these facts Eyvazov was forced to quit his job and in January 2017 criminal case has been initiated against him for interference in the functioning of the court by using of his position – Eyvazov has been accused of failure to elaborate records of a court session, at which he was present as secretary. Since August 2017 Eyvazov is in detention[62].

In 18 cases the whistleblowers were subjected to prosecution, in 39 – were dismissed. Oxana Semkina was sent to a psychiatric clinic without any reason, Andrey Dmitirev was summoned to join the army and this way forced to leave the country. Alexander Litvinenko was murdered, Sergei Magnitsky died in the isolation ward, Ilgizar Ishmuhametov committed suicide, Nikita Kamaev died under strange circumstances, Sergey Tatarintsev was beaten by his colleagues policemen.

It is clear that most of the whistleblowers are representatives of the state and mainly civil servants in the law enforcement bodies. None of the citizens, included in the present report, except for the head of Serpuhovo region Alexander Shestun, who was included in a witness protection program[63], has received protection on the part of the state. Just the opposite the authorities themselves subjected these individuals to retaliation and encouraged retaliation.

External whistleblowers

When describing the legal status of whistleblowers we may not miss those civil activists, journalists and representatives of non-governmental organizations, which systematically and purposefully are dealing with finding, investigation and announcement of different kinds of abuses and violations.

Theoretically the NGOs and the public associations specialized in different public investigations in the field of ecology (Greenpeace), anti-corruption (Transparency International and Anti-Corruption Foundation), violation of civil rights (Committee Against Torture), freedom of speech (Komanda29 / Team29), combating plagiarism in science (Dissernet) etc. have the biggest chances to receive protection. For example, the investigation related to genital mutilation operations performed on girls in the Republic of Dagestan published in 2016 by the organization 'Legal Initiative in Russia' had very strong public response[64]. This investigation illustrates one remarkable principle of external revealing of a cruel, inhuman and human rights violating practice, which is applied in one of the subjects of the Federation.

In a certain sense the status of such associations is analogical to the status of media

[62] https://memohrc.org/special-projects/eyvazov-aleksandr-hikmetovich

[63] *Oleg Rubnikovich* Yury Chaika had a parents` day. Kommersant March 30, 2011 // https://www.kommersant.ru/doc/1610992

[64] http://bit.ly/2bnwamJ

and their cases the authorities will be forced to prove the grounds for retaliation. But there are some exclusions.

Wikipedia characterizes Alexei Navalny as a Russian politician and a public figure, who became known for his investigations of corruption in Russia. He is a professional whistleblower, who became well known and famous in the field, which gave him the opportunity to occupy the second place during the elections for a mayor of Moscow in 2013 and in 2017 confidently to challenge Vladimir Putin in the framework of the upcoming campaign for president elections in March 2018.

Navalny started his anti-corruption activities in 2008 as a minority shareholder in various big Russian companies. This status assured him access to documents relevant to their commercial activities in view of assessment of conformity of these activities to the requirements of the law. His first revealing of violations refer to Foreign Trade Bank (VTB) and the drilling equipment purchased by the Bank in China at high price. He received evidence from one of the counterparties of VTB. Later the Bank admitted the violations and even dismissed the employees who had been involved with the transaction.

In 2010 Alexei Navalny published documents referring to large scale embezzlement of almost USD 4 billion at construction of 'East Siberia – Pacific Ocean' pipeline, performed by the natural monopolist 'Transneft'. This fact is confirmed by the Audit Office, there is some information that criminal investigation has been initiated. It was announced that taking out of documents relevant to activities of 'Transneft' was the reason for the dismissal of one of the employees of the company[65].

According to our qualification initially Navalny was an external whistleblower with regard to violations in the private sector. Soon he transferred his efforts towards the state. He revealed information on series of cases of corruption and profiteering, undeclared expensive personal properties, conflicts of interest of representatives of the government.

In 2013 Navalny published documents about undeclared apartment of the member of parliament from 'United Russia' Vladimir Pekhtin, who was forced to leave the parliament as a result of the public scandal. Afterwards the term *pekhting* was created, which means revealing of high-ranking officials who violate the limitations imposed to them. In the same year Navalny accused the senator from Buryatia Vitaly Malkin that he did not declare his Israeli citizenship, his business activities in Canada and the application for issuing of a permanent residence permit filed before Canadian authorities. As a result of this Malkin left his senator`s office. Later on Navalni revealed information on thefts performed at construction of sites for the Olympic games in Sochi, the activities of the head of Russian Federation Investigation Committee Alexander Bastrykin, the Prosecutor General Yuriy Chayka and his sons,

[65] http://pravo.ru/news/view/72292/

the first deputy prime minister Igor Shuvalov, the prime minister Dmitry Medvedev etc.

It is clear that such activities will cause the negative reaction of the government. In May 2011 the first criminal case was initiated against Navalny, which subsequently became known as the 'Kirovles case'.

The first administrative detention of Navalny was after his speech at a protest meeting held on December 5, 2011 – one day after elections for parliament. On May 9. 2012 he was sentenced again to 15 days of detention for his participation in the meeting on the Kudrinskaya square. Later on during the period 2012-2017 Navalny has been fined and detained many times.

In December 2012 the Russian Federation Investigation Committee initiated the second criminal case against Navalny and his brother Oleg – the case 'Russian Post' and simultaneously the third one – the case 'Yves Rocher'. In the same month information on another investigation was published – for embezzlement of funds of political party 'Union of Right Forces', allegedly performed by Navalny in 2007. The last case was never brought to court. Under the first three cases Navalny was found guilty and was sentenced on probation.

During the same period state authorities initiated a series of criminal cases against members of the team of Navalny – Georgy Alburov, Nikita Kulachenkov, Vladimir Ashurkov, Nikolay Lyaskin, Leonid Volkov and Ivan Zhdanov.

In addition to the administrative retaliation and prosecution, Navalny regularly is subjected to discrediting campaigns in the state-owned and close to the government mass media, to criminal attacks and is constituted as respondent under significant number of cases initiated upon claims of civil servants for protection of their dignity and honor. Almost always the judges are against him. The result of this is a pile of cases before the European Court of Human Rights, some of which have been finalized with positive decisions. But until the present moment ECHR refuses to recognize the retaliation of Navalny as politically motivated (initially – by his investigation activities, subsequently – by his political ambitions) and confines itself to establishment of particular violations.

Development of new technologies in general and of internet in particular gave a strong impulse to the whistleblowing. The increasing of the speed of access and entering put the sender of information of public interest at a single click distance from the addressees/the audience of such information. Furthermore, internet naturally removes the borders between the personal pages, private blogs and the media. Panama archive contains around 11,5 million documents for 214 488 off-shore companies. The revealing of such volume of information was impossible in the pre-digital era.

'Daching' (*from the Russian word 'dacha' – 'a country house'*) of Anto-Corruption Foundation is realized due to the drones and the publicity of Rosreestr (*Federal Service for State Registration, Cadastre and Cartography*). This made the government first to limit the usage of pilotless devices (not only this, of course) and second to restrict the access to part of the data in property registers. On September 27, 2017 the Supreme Court of the Russian Federation refused[66] to esteem the appeals against decisions of courts, which declined the requests towards Rosreestr to reveal the names of owners of real estates. The claim was filed by Alexei Navalny and Combating Corruption Foundation. They request from the court to declare unlawful the declining of the request on the part of the register to announce publicly the names of the sons of Prosecutor General Yuriy Chayka.

Conflict Intelligence Team and Bellingcat are in fact journalist investigations – projects armed with quick access to internet and calculation capacity of modern computers that grant opportunities for comparing of established facts and press releases of state authorities with the content of social networks.

Conclusion

Today it became different to draw a line between the internet version of a popular newspaper and the civil initiative for searching and revealing of information on activities of the government. Nevertheless, despite all difficulties that the journalists face in modern Russia, their status is very much more protected than the rights of citizens who take risks when they reveal facts threatening the welfare of society.

The separate provisions of anti-corruption legislation and the furtively expressed opinion of the Constitutional Court with ignoring and demonstrative neglecting of the legal positions of the European Court of Human Rights, do not grant an opportunity to the whistleblowers to count on effective protection.

Russian authorities not only do not encourage the revealing of significant information, but also impede such revealing in any way possible, by permanent extension of the scope of information, covered by statutory requirements for confidentiality, use of different semi-legal categories of secrecy and introduction of additional limitations for communication between separate categories of individuals (for example military servants) and the media and for publications in the internet. As a rule the whistleblowers may not count on serious attention and investigation of violations, which they reveal and in addition very often they are subjected to retaliation – from imposing of disciplinary sanctions, including dismissal to prosecution, attacks and murders.

We understand very well that the single adoption of a law on protection of

[66] http://www.vsrf.ru/stor_pdf.php?id=1584830

whistleblowers without strong civil society, independent courts and media, free internet, veracious law enforcement bodies and good-faith civil servants may not be considered as a solution of the problem.

The natural and understandable aspiration of the state to control the sensitive information shall not form an impediment to the society to receive information on issues, which seriously threaten its evolution and welfare. We are convinced that the state does not have any own interests different from the interests of society, therefore in case of lack of really effective (with proved effectiveness) mechanisms for presenting of issues before internal instances, the publishing of significant information with public access shall be protected.

The lack of such mechanisms at present gives a change for elaboration of a system for protection in view of the various experience of many countries and after consideration of all known faults and achievements. The concept of law on protection of whistleblowers shall be ambitious to the maximum possible extent in order to be able to establish the highest possible standards and guarantees for the freedom of speech in an environment where the individual who raises his/her voice against abuses and violations of human rights most often stays alone against the revengeful civil servant or the mighty corporation.

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International Human Rights Group Agora is an association of dozens of lawyers from several countries, specialized in legal defence of civil freedoms on the post-soviet territory.