

CALL FOR CONTRIBUTION

FUDAMENTAL RIGHTS RESEARCH CENTER (CREDOF) – CTAD UMR 7074

IN COLLABORATION WITH THE

HUMAN RIGHTS NATIONAL CONSULTATIVE COMMISSION (CNC DH)

With the support of

TRANSPARENCY INTERNATIONAL FRANCE (TIF)

« *Whistleblowing and human rights* »

Seminar april 10, 2015

Organized by Serge Slama & Jean-Philippe Foegle

The Research Center on Fundamental Rights (CREDOF) – member of the center for Theory and law analysis (UMR 70 74) and the National Consultative Commission on Human Rights (CNC DH) organize in collaboration with Transparency international France (TIF), a conference on the following subject: « *Whistleblowing & human rights.* »

The conference will take place in Paris (Sorbonne) on Friday April 10th 2015. It will be held in both English and French language with live translation.

Especially headed to young researchers, a call for papers is launched on the basis of the following proposed thematic areas.

The paper submissions shall be written in French or English, with a word limit of approximately 7000 signs. Applicants shall **send the proposed paper, joined with** a cv and a significant publications list, by e-mail at the following address.

The deadline for contribution is fixed on **November 30th, 2014.**

The selection's result should be released on December 20th 2014. The papers will be presented during an entire day at the Sorbonne university (amphithéâtre Liard). Depending upon submissions received, the submissions, which shall not exceed 20 minutes, will be spread over several thematic roundtables.

The proceedings should be published in 2016 to the "Documentation française" Collection "Seminar CNC DH."

Seminar organized by :

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Key issues of the conference

The whistle-blower is defined by the Parliamentary Assembly of the Council of Europe (Resolution 1729 (2010),§1) as “*a concerned individual who sound an alarm in order to stop wrongdoings that place fellow human beings at risk*”

Having been subjected to a legal framework in the United-States since 1863 with the *False Claims Act* and then popularized by the lawyer and consumer activist, Ralph Nader in 1972, the *whistleblower* has been emerging for a decade as a global legal concept, as the Manning and Snowden cases have recently shown. As reported by Daniel Banisar in a study led by Transparency International, nearly 30 states have adopted a legislation to protect whistleblowers so far.

In the United-Kingdom, the *Public Interest Disclosure Act (PIDA)* protects whistleblowers from redundancies and pressures since 1998. In the United-States, a complex set of laws passed between 1912 (« *Lloyd-La Follette Act* ») and 2002 (« *Sarbanes-Oxley Act* ») protects them. Several other countries benefit from such protective legislations : New Zeland, Australia or South Africa.

In France, it was not until 2013 that a real “whistleblower” status emerged. However the adoption of 5 laws concerning this thematic since the year 2008 seem to have made room for significant progresses on this subject. These new laws allowed to accurately address the gap in enacting a protective legislation. Nevertheless , French law is still characterized by a partial approach of this phenomenon.

Moreover, very little legal works in French are devoted to the notion. Since the 90's, voices reclaiming a better statutory protection for whistleblowers mainly came from sociologists, scientists and civil society or political movements. In the present research framework, we suggest to expand the study of the whistleblower legal concept.

Usually, due to the influence of sociological works on sciences and risks, the concept of “whistleblowing” is defined in reference to « *a danger for human being or their environnement* ». In a still more restrictive way, whistleblowing is often seen as an act of denunciation of « *corruption facts* » and « *conflicts of interests* ». As far as we are concerned, we wish to focus the study on human rights and the evolution in the methods of protection of those rights.

Indeed, the increasing complexity of the market operating and emerging technologies tends to put the power out of the reach of public view, and, therefore, out of the reach of human rights enforcement mechanisms. Therefore, their guarantee should not only be thought in reference to the public

authorities but also in reference to private persons, especially firms. By permitting the liberation of information which would otherwise have been kept secret if they had not been revealed on by «insiders », the whistleblower may enable human rights to be more effective.

A twofold relationship between human rights and whistleblower protection could be outlined. First, as there are likely to bring to light substantial violations of human rights, affecting or threatening life, health, freedom, whistleblowers may contribute to making human rights a reality for all. Second, whistleblowers are themselves holders of human rights, among which are the right to freedom of expression and the right of resistance to oppression.

The study on how channels of disclosures and systems of expertise are made -or not made- trustful and secure is also relevant in our study framework. Indeed, without reliable expertise, whistleblowers would virtually never be able to prove the reality of their assertions. Whistleblowers should then benefit from procedural guarantees that could fairly assert their claims. This issue raises others : how to conciliate two opposing democratic needs, the need to protect third parties and the public from defamatory statements and inaccurate information in the one hand, and the need to free whistleblowers's voices in the other hand ? Is it only possible to go beyond this apparently irreducible tension ?

In order to do a tracer study on the subject, it seems necessary, in our study framework, to expand on the following thematics.

Thematic 1: The “right to sound an alarm” : a human right ?

The conceptual proximity between the concept of *whistleblowing* and human rights raises the question of the legal qualification of the supposed “right to sound an alarm”. Because whistleblowing is permanently questioning power, it appears to have close ties with human rights in political terms. But what about the ties between whistleblowing and human rights in a strictly juridical sense? We would like to investigate the possibility of considering the “right to sound an alarm” as a human right, without referring to a natural rights epistemology.

In this perspective, should whistleblowing be considered a right of a duty? Is it a subjective right *per se*, or is it the corollary of an existing fundamental right, and if it is the case, which human right is it? May it be the “*right to resist oppression*” ? May it be a somehow “new” right, born in the wake of social practices of law, in reaction to a sometimes unbridled progress? In this context, who are the persons holding this “right to sound an alarm” ? In particular, who would be the prime beneficiaries of this right ? Would it be the “public” and its “right to know” about government and corporate misconduct, or would it mainly be the public bodies ? And, in all situations, how is it possible to reconcile the “right to sound an alarm” with the requirements of administrative discipline and professional secrecyes ? More broadly, what level of transparency would be necessary to ensure the full development of the supposed “right to sound an alarm”?

Thematic 2 : How does French law understand the concept of whistleblower and how does it protect people as well as alarm processes ?

Ranked by Transparency International among the states giving only partial protection to whistleblowers, France maintains ambiguous and contentious relations with whistleblowers. However, the international priorities concerning the fight against corruption, as well as the “emotional emergency” linked to health problems, conflicts of interest and corruption cases are gradually leading to a consolidation of whistleblowers legal status.

How can this recent evolution be provisionally assessed? Do the different texts about whistleblowers protection give them a real status? Who are the persons protected by the legislation ? What is the scope of wrondings likely to entitle people with a “right to alert” ? Are channels of disclosures efficient, or even pertinent ? How are judicials and administrative bodies understanding the notion ? What is the place occupied by *soft law* and ethics in the laws protecting whistleblowers ? And, lastly, is it possible to

assess the effectiveness of current laws on this topic ?

Thematic 3 : What are the lessons learnt from foreign experiences concerning the protection of whistleblowers?

In contrast with France, some other countries, especially the US and the UK, as well as Sweden and Romania, have had set up protecting laws for whistleblowers for a long time now. Carrying out a comparison between those legislations appears particularly relevant in trying to understand the mechanisms involved in whistleblowing.

How do foreign legislations perceive the notion of whistleblowers ? How are human rights mobilised in order to protect whistleblowers ? Are those legislations favoring disclosures to the public, or to the authorities ? Are we heading towards a universal recognition of whistleblowers ? At the minimum, is it possible to outline factors of "norms circulation" ? What is the common standard of protection given to these people, and what debates does the notion raise ?

Thematic 4 : What are the likely prospects for the future of whistleblowing in France ?

As a new notion in the field of legal studies, the concept of whistleblower is subjected to a permanent change, as shown by recent legal developments. What changes in legislation are currently being proposed by public bodies ? What are the factors (case-law, European draft laws...) likely to introduce substantial

changes in French legislation ? What are the foreseeable trends in the development of whistleblower protection in the French legal context ? Should a specific administrative body be established in order to adequately protect whistleblowers ? What is the role played by civil society and medias in protecting whistleblowers ?

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