



Whistleblower Rights in European Union Civilian Missions: EULEX Leaks

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Agenda

- o Introduction
- o European Union Civil Missions – EUCM
- o Case study: EULEXLeaks
- o Existing legal/judicial framework on the protection of whistleblowers
- o Available whistleblowing protection mechanisms within EUCM
- o Conclusions

European Union Civilian Missions - EUCM

- o 22 EUCM across Europe
- o Placed in developing countries
- o EULEX – assist Kosovo in rule of law area
- o 89 million euro annual budget
- o 1600 employees – half of them internationals



EULEXLeaks case



Former EULEX prosecutor Maria Bamieh received information for alleged misconduct within EULEX. She requested internal investigation. Two years after, she blew the whistle publicly by accusing the mission for neglecting her request for investigation. Currently, several investigations and legal actions are taking place.

Protection of Whistleblower on Paper – What has been proclaimed?

- o United Nations
- o Council of Europe
- o European Court of Human Rights
- o European Commission

Reality?

- o Lack of external reporting channel
- o Lack of specific rules on whistleblowers
- o ECtHR case law used wrongly and superficially

EU Review

“The conditions for applying the status of external whistleblower under the ECHR have not been met...”

Jean Paul Jacque 2015

EULEX Modus Operandi: Shoot the Messenger

"From: Gabriele Meucci <Gabriele.Meucci@eulex-kosovo.eu>
Date: 18 Oct 2014 18:25:49 GMT+02:00
To: Catherine Fearon <Catherine.Fearon@eulex-kosovo.eu>, Joelle Vachter
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"THRAN Bernd (EEAS)" <Bernd.THRAN@eeas.europa.eu>
Cc: Thomas Hofmann <Thomas.Hofmann@eulex-kosovo.eu>, Thomas Muehlmann
<Thomas.Muehlmann@eulex-kosovo.eu>, Jaroslava Novotna
<Jaroslava.Novotna@eulex-kosovo.eu>
Subject: RE: Koha Ditore Questions

Spoke with Alexis about the possibility of cases of burnout of judges or prosecutors involved for a long time in very difficult cases while working in an extremely critical local environment. It is a contractual obligation of the mission to exercise duty of care for the wellbeing and the health of all employed personnel, if necessary releasing the interested units from their duty for the time necessary to restore the full health capabilities. That is our duty and that is in the interest of the health of the personnel unit in question.

I am new to this mission but I understand that these burnout cases may occur and I would proceed along this line for any individual cases that manifest themselves in the daily work of the mission.

We could explain this approach to journalists. It is a guarantee for the wellbeing of the personnel working with us.

It is also understood that in a very complex organization like ours, with hundreds of people employed, some individual cases may go undetected until they come afloat, which is after the person gives signs of a burnout.

This seems to me to be one of those cases.

GM"

Disclosing information in EUCM – Whish legal system is the right one?

Employees are exposed to three or more legal and judicial systems

- o Their hometown legal system
- o Belgium
- o Legal system of the country where they operate

Legal uncertainty puts whistleblower in a difficult position to claim their rights

Conclusions

- o EU Civil missions have no transparent policy on whistleblowing or public interests disclosure
- o Employees do not enjoy the right to freedom of expression guaranteed by Article 10 of ECHR
- o EULEX failed to abide by EU legal practice on protecting whistleblowers

Conclusion (con...)

- Being exposed to more than three legal systems creates legal uncertainty for whistleblowers
- Whistleblowers are primarily protected by their hometown legal system

Thank you!

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This research project is financially supported by:

Media Foundation of Sparkasse Leipzig

media foundation

of sparkasse leipzig