

Response by Finland to OHCHR's questionnaire on the protection of sources and whistleblowers

Question1: Please indicate if there are norms or regulations which protect those in the media from compelled disclosure of confidential sources of information. When these exist, what limitations on such protections may be accepted under the law?

The general norm on the protection of confidential sources in mass media can be found in the **Act on the Exercise of Freedom of Expression in Mass Media** (statute number 460/2003):

Section 16 — Confidentiality of sources and right to anonymous expression

The originator of a message provided to the public, the publisher and the broadcaster are entitled to maintain the confidentiality of the source of the information in the message. In addition, the publisher and the broadcaster are entitled to maintain the confidentiality of the identity of the originator of the message.

Also a person who has become aware of the confidential information referred to in subsection (1) while in the service of the originator of the message, the publisher or the broadcaster is similarly entitled to maintain that confidentiality.

Separate provisions apply to the duty to disclose confidential information referred to in subsection (1) in a pre-trial investigation or court proceedings.

The separate provisions referred to in subsection (3) of the quoted norm are the following:

In court proceedings the applicable norm is in Chapter 17, Section 24 of the **Code of Judicial Procedure** (statute number 4/1734):

Section 24

(1) A witness may refuse to reveal a fact or answer a question if he or she cannot do so without incriminating himself or herself or a person who is related to him or her in the manner referred to in section 20. In addition, a witness may refuse to give a statement which would reveal a business or professional secret unless very important reasons require that the witness be heard thereon.

(2) The author, publisher or broadcaster of a communication made available to the public referred to in the Act on the Exercise of the Freedom of Speech in Mass Communications (460/2003) may refuse to answer a question on the identity of the source of the information upon which the communication was based, as well as a question which cannot be answered without identifying the source of the information. The same right is vested in a person who has been informed of a fact mentioned above when in the employment of the author, publisher or broadcaster of the communication in question. (461/2003)

(3) A person referred to above in subsection 2 may also refuse to answer a question on the identity of the author of a communication made available to the public, as well as a question which cannot be answered without identifying the author. (461/2003)

(4) When the case referred to in subsection 2 or 3 concerns an offence punishable by imprisonment for six years or more, or to the attempt of or participation in such an offence, or information that has been given in violation of a duty of secrecy, subject to punishment under a separate provision, the person referred to in said subsection may nonetheless be ordered to answer the question. (622/1974)

The provision was amended by statute 732/2015 and the amended provision will enter into force on 1 January 2016 (Chapter 17, Section 20 of the Code). No changes to the content of the provision were made.

Respectively, in a criminal investigation the applicable norm is Section 8 of the **Criminal Investigation Act** (statute number 805/2011):

Section 8 – The obligation of a witness to provide evidence and refusal to testify

(1) A witness shall truthfully and without concealment state what he or she knows in the matter under investigation. However, if he or she would have the right or the obligation in the criminal proceedings concerning the matter to refuse to testify, reveal a circumstance or answer a question, he or she has said right or obligation also in the criminal investigation.

(2) A witness who has the obligation to provide evidence referred to in subsection 1 is also obliged to produce a document or other evidence in his or her possession that has significance from the point of view of the criminal investigation.

(3) A person referred to in Chapter 17, section 23, subsection 1 of the Code of Judicial Procedure who, in accordance with subsection 3 of said section, may be obliged to testify concerning a matter to be kept secret, has the right to testify on this also in the criminal

investigation if the maximum punishment for the offence under investigation is imprisonment for at least six years, the attempt of such an offence or complicity in such an offence.

(4) A person referred to in Chapter 17, section 24, subsection 2 of the Code of Judicial Procedure who, in accordance with subsection 4 of said section, may be obliged to respond to a question referred to in subsection 2 or 3, is obliged also in the criminal investigation to respond to such a question and to produce a document or other evidence in his or her possession that has significance from the point of view of the criminal investigation, if the offence under investigation is one referred to in subsection 3 of this section.

The provision was amended by statute 736/2015 and the amended provision will enter into force on 1 January 2016. No changes to the content of the provision were made.

Question 2: Please indicate what protections are afforded to whistleblowers in national law. Please note that this report should focus on whistleblowing in the context of public sector and adopts the definition of a whistleblower as any person who report or disclose information of a threat or harm to the public interest in the context of their work-based relationship.

Provisions for the protection of whistleblowers in national law

Finland does not at the moment of reporting have stand-alone legislation geared towards the protection of whistleblowers. This does not, however, mean that the reporting of different types of abuses is impossible or that persons reporting such cases are left unprotected.

The principles of freedom of expression and the right of access to information laid down in chapter 2, section 12 of the Finnish Constitution (731/1999) provide a sound base for reporting and the protection of whistleblowers:

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.”¹

The rights and duties of public servants are outlined in the State Public Service Act (Virkamieslaki, 750/1994). The most important duty of a public servant is that of carrying out his/her tasks correctly and without delays. He/she must furthermore comply with orders and instructions from superiors and behave in an appropriate manner (section 14 of the above mentioned Act). A public official must not demand, accept or receive any sort of benefits, which may endanger the trust in him/her as a public servant or in the institution he/she represents (section 15). When appointed, higher officials must declare all financial and other assets and bindings, which may affect the carrying out of their duties (section 8a).

In accordance with the Constitution (section 2.3) all public power should be exercised in strict compliance with the law. A public servant can be dismissed due to violations or neglect of his/her official duties (State Public Service Act, section 25 and 33). Furthermore, civil servants should, when making decision on behalf of his/her employer, act in accordance with the Administrative Procedure Act (Hallintolaki, 434/2003).

The State Public Service Act does not make direct provisions for the protection of persons reporting suspicions of corruption or other abuses. The authority in question should, however, treat its civil servants fairly and equally unless the specific tasks or position of the civil servant gives reason to deviate from this principle. The principles of equality and non-discrimination are laid down in section 11 of the State Public Service Act.

Section 16 of the Act on the National Audit Office of Finland (676/2000) lays down that e.g. state authorities and public utilities (*liikelaitos*) without delay and despite rules of confidentiality must report abuses occurred in their activities or related to funds administered by them to the National Audit Office.

The Employment Contracts Act (Työsopimuslaki, 55/2001) contains no provisions for the protections of whistleblowers once a report has been submitted. The Act does, however, demand that the employer treat employees equally unless a deviation can be justified based on the employee's tasks and position (chapter 2, section 2). It should also be noted that the Employment Contracts Act is based on the protection of the weaker party and therefore contains a number of provisions geared towards promoting the principles of equality among and non-discrimination of employees.

¹ Finlex (2015). *The Constitution of Finland 11 June 1999 (731/1999, amendments up to 1112 / 2011 included)*. Unofficial translation. Derived from <http://www.finlex.fi/sv/laki/kaannokset/1999/en19990731.pdf> on 23rd June, 2015.

The Employment Contracts Act contains a special provision related to the protection against dismissal of e.g. union representatives. The Act also contains special provisions for the protection of pregnant employees or employees on maternity/paternity leave.

The Act also, however, emphasizes the duty of employees to stay loyal to their employer (chapter 3, section 1). The duty of loyalty does also, to a certain extent, cover acts and behavior during the employee's spare time. Breaches of the duty of loyalty may lead to sanctions such as dismissal of the employee. In case of dismissal, the employer must, however, justify its decision as laid down in chapters 7 and 8 of the Act.

The working group for whistleblower protection

In February 2015, the Ministry of Justice of Finland established a working group to examine the current state of whistleblower protection. The term of the working group is 16th February–31st October, 2015.

The purpose of the working group is to examine the current state of whistleblower protection in Finland according to labor law and the regulations on public officials as well as the existing channels for reporting corruption within organizations and enterprises, and to assess how the current legislation and mechanisms correspond to the above-mentioned international obligations.

The specific tasks of the working group are to:

- a. Chart the legislation relating to reporting of corruption and the protection of whistleblowers and the current mechanisms for protection of whistleblowers
- b. Identify possible problems
- c. Outline possible solutions

At the end of its term the working group submits a report of its findings to the Minister of Justice.