LuxLeaks Whistleblower Not Protected by Article 10 ECHR – Case Analysis of “Halet v. Luxembourg” (ECtHR, Appl. no. 21884/18)

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A. Introduction

From the Offshore Leaks to the Panama Papers, the last decade was marked by some of the most spectacular disclosures of confidential information which revealed highly complex financial and legal constructs aiming to use national tax systems for tax optimization purposes. While some of the individuals behind those revelations remained anonymous, others, like the LuxLeaks whistleblowers Antoine Deltour and Raphaël Halet, faced criminal charges for having disclosed confidential documents to journalists. In its *Halet v. Luxembourg* judgment delivered on 11 May 2021,[1] the ECtHR had to decide whether the criminal conviction of Mr. Halet was compatible with the safeguard afforded by Article 10 ECHR to whistleblowers.

The ECtHR first introduced a right to blow the whistle in 2008. In its precedent-setting *Guja* judgment, the ECtHR held that an employee who reports a wrongdoing by disclosing in-house information, including secret information, may enjoy protection under the ECHR if the divulgation of that information corresponds to a strong public interest,[2] emphasizing however that employees also have a duty of loyalty, reserve and discretion toward their employers.[3] According to the ECtHR, the balancing exercise between those conflicting interests must be assessed on the basis of six criteria: (1) the reporting channel used, (2) the public interest in the disclosed information, (3) the authenticity of the information, (4) the damage suffered by the employer, (5) the good faith of the employee, and (6) the severity of the sanction imposed.

Over the last 13 years, the ECtHR consolidated its case-law around those six criteria and promoted a rather whistleblower-friendly approach. But its latest *Halet v. Luxembourg* ruling does not augur well for whistleblowers in Europe. It is in sharp contradiction with the ECtHR’s previous case-law on whistleblowing and the European consensus on stronger whistleblower protection.[4] The ECtHR indeed held that the criminal conviction of the applicant – LuxLeaks whistleblower Raphaël Halet – was a legitimate interference in his right to freedom of expression and did not constitute a breach of Article 10 ECHR. The ECtHR thereby confirmed the decision of the Luxembourg Court of Appeal, which held that the information the applicant disclosed was not “*essential, new and hitherto unknown*”. The interest of the public in receiving such information was therefore not strong enough to override Mr. Halet’s duty of professional secrecy.

B. The facts of the case

Between 2012 and 2014, different media outlets published a large number of PricewaterhouseCoopers' (PwC's) internal company documents, which occurrence is now known as the LuxLeaks or Luxembourg Leaks. These internal documents, including tax declarations and tax rulings dated from 2002 to 2012, revealed particularly favorable fiscal agreements between multinational companies and Luxembourg tax authorities.[5] An initial internal investigation conducted by PwC identified the first author of the leak – the former employee Antoine Deltour – who had copied 45,000 pages of confidential documents before leaving the firm in October 2010. In summer 2011, Mr. Deltour transmitted the documents to the journalist Edouard Perrin, who used them for an episode of the television program *Cash Investigation*. Broadcast in May 2012 by the French public national television channel France 2, the episode entitled "Paradis fiscaux: Les petits secrets des grandes entreprises" referred to the confidential documents, without disclosing the source of the information. Following this first revelation by the press, the applicant – the French national Mr. Halet – contacted the same journalist in May 2012 to offer him other internal PwC documents, including 14 tax returns and two accompanying letters.[6] Mr. Halet worked as an administrative officer for PwC at the time and was responsible for collecting the tax returns and tax rulings of PwC clients. As part of a small group of individuals with access to a highly secure IT repository, he was in charge of centralizing, scanning and saving the tax returns and tax rulings in this IT system.[7] The 16 documents he transmitted to the journalist led to a second television episode of *Cash Investigation* entitled "Le scandale de l'évasion fiscale: Révélations sur les milliards qui nous manquent," in which some of the documents were reproduced on screen. The second internal investigation PwC conducted identified the applicant as the author of the leak, which led to his dismissal in December 2014.[8]

C. LuxLeaks and the Luxembourg courts

The District Court of Luxembourg sentenced the applicant to 9 months of imprisonment and a €1,000 fine based on charges of internal theft, computer fraud, breach of professional secrecy, breach of trade secrets and the offense of *blanchiment-détention*.[9] In its judgment, the District Court did not question the applicant's status of whistleblower, emphasizing that the LuxLeaks scandal and its international consequences make it impossible to argue against Mr. Halet's whistleblower status. The District Court further acknowledged that the revelation was undeniably in the public interest since the information disclosed by the applicant had led to greater transparency and financial equity.[10] Notwithstanding these observations, the District Court held that Mr. Halet could not enjoy protection as a whistleblower under Article 10 ECHR because the seriousness of the offenses outweighs the public interest in the information disclosed.[11]

The Court of Appeal of Luxembourg had a more nuanced approach with regard to the application of Article 10 ECHR but focused its attention on the same issue: the relation between the proportionality of the sanction and the seriousness of the offenses. Examining each of the six whistleblowing criteria developed by the ECtHR, the Court of Appeal did not call into question the legitimacy of the reporting channel used, the authenticity of the information disclosed or the good faith of the applicant. It also confirmed the public interest in the disclosed information, emphasizing that the disclosure

contributed to the public debate on fiscal justice and the taxation of multinational companies. The Court of Appeal agreed that the denunciation of transnational companies' tax optimization practices raised an important question in relation to fiscal transparency and the fair treatment of taxpayers, noting that the fight against tax fraud and tax evasion had become a top priority on the European agenda following the LuxLeaks revelations.[12]

However, when evaluating the fourth criterion the ECtHR developed, namely the balance between the damage the employer suffered and the public interest in the information disclosed by the employee, the Court of Appeal concluded that the interest of the public receiving said information did not outweigh the damage suffered by PwC. According to the Court of Appeal, PwC had "certainly" and "necessarily" suffered damage following the publication of the documents, and concluded that the value of the information contained in the documents was too low as to legitimize a violation of the applicant's duty of professional secrecy.[13] In the Court of Appeal's view, the documents disclosed were mere tax returns[14] with limited relevance[15] and including no essential and fundamentally new information.[16] Referring to the first LuxLeaks revelations made by Mr. Deltour a year earlier, the Court of Appeal held that the applicant should have thus concluded that the public debate was already ongoing, which should have prompted him to respect his duty of professional secrecy,[17] the issues raised by his disclosure having already been amply illustrated by the first revelation made by Mr. Deltour.[18] While the Court of Appeal acknowledged that the information Mr. Halet disclosed may have been useful to the journalist, it nonetheless held that the documents did not contain cardinal and hitherto unknown information able to revive or contribute to the public debate on tax evasion.[19]

The Court of Appeal concluded that *"[l]es documents […] n'ont donc ni contribué au débat public sur la pratique luxembourgeoise des ATAs ni déclenché le débat sur l'évasion fiscale ou apporté* ***une information essentielle, nouvelle et inconnue jusqu'alors***."[20] According to the Court of Appeal, the applicant thus had no compelling reasons to violate the law by divulging those confidential documents[21] and consequently did not fulfill the conditions of proportionality between the public interest in the disclosure and the damage suffered by the employer.[22] The fact that the applicant acted in good faith was interpreted as a mitigating factor, however, leading to a reduced sentence of a €1,000 fine without imprisonment.[23] The *Cour de cassation* of Luxembourg confirmed this judgment, declaring that it was within the sovereign power of the lower courts to decide whether or not the applicant can be protected as a whistleblower, stating that the Court of Appeal's reasoning was neither insufficient nor contradictory.[24]

D. The ruling of the ECtHR

The central question the ECtHR had to answer was whether the balancing determined by the domestic courts between the damage the employer suffered and the public interest in the information disclosed complied with the ECtHR's own interpretation of Article 10 ECHR.[25] Recalling its *Heinisch* ruling, the ECtHR reiterated that the right to freedom of expression extends to the professional sphere, which includes employees in private law employment relationships.[26] As judges Lemmens and Pavli rightly highlighted, this case

was unprecedented insofar as it involved for the first time a fully private employer.[27] In previous cases involving whistleblowers employed under private law contracts, the ECtHR systematically reiterated States' "positive obligation to protect the right to freedom of expression even in the sphere of relations between individuals."[28] In its *Halet v. Luxembourg* ruling, however, the ECtHR remained concise and held without further elaboration that the criminal conviction of the applicant was indeed an interference in his right to freedom of expression under Article 10 ECHR.[29] The ECtHR also declared that the applicant should be seen a priori as a whistleblower within the meaning of its jurisprudence, highlighting the similarities of the present case to the *Guja* and *Heinisch* case.[30] The ECtHR observed that the applicant had disclosed confidential documents – information he had obtained in the course of his work – to a journalist and recalled that he had a duty of loyalty, reserve and discretion arising from his subordinated work-based relationship with his employer.[31] In accordance with its subsidiary role and supervisory powers, the ECtHR therefore had to evaluate whether the domestic authority had conducted its balancing exercise with due regard for the relevant facts and the principles developed by the ECtHR. In doing so, the ECtHR emphasized that it would need strong reasons to substitute its opinion for that of the domestic authority if the latter had conducted its balancing exercise in compliance with the criteria developed by the ECtHR.[32]

The ECtHR first recalled that the reputational damage PwC suffered should be taken into consideration, recalling its *Heinisch* ruling where it had held that there was an interest in protecting the commercial success and viability of companies for the benefit of shareholders, employees and the wider economic good.[33] However, the ECtHR highlighted that there was a distinction to be made between the damage to the reputation of a natural person, which could affect their dignity, and damage to the commercial reputation of a company, which has no moral consequences.[34] The ECtHR further noted that while PwC had initially suffered prejudice due to the wide media coverage of LuxLeaks, with the company having experienced a difficult year following the revelation,[35] the company did not appear to have suffered a long-term reputational damage considering that its turnover increased past that first year.[36] The damage the employer suffered having to be balanced with the public interest in receiving the information disclosed by the employee, the ECtHR evaluated the elements taken into consideration by the national courts to assess the relevance of that information.[37] In this respect, the ECtHR recalled the Luxembourg Court of Appeal's main argument according to which the documents reported by the applicant neither contributed to the public debate on tax evasion nor provided essential, new and hitherto unknown information.[38] Because the domestic court based its argument on a detailed statement of reasons, the ECtHR held that it would require serious reasons to substitute its opinion for that of the national court, which it did not consider to have in the present case.[39] While the ECtHR acknowledged that the qualifiers "*essential, new and unknown information*" could be considered too narrow in other circumstances, it held that in the present case, they were in compliance with its own jurisprudence under Article 10 ECHR.[40] According to the ECtHR, these qualifiers should be seen as clarifications that led the domestic court to conclude that the revelations made by the applicant did not present an interest sufficient to outweigh the damage suffered by the employer.[41]

Regarding the criminal sanction imposed on the applicant, the ECtHR briefly held that it should be seen as an incitement to reflect on the legitimacy of the course of action envisaged by an employee with no real chilling effect on freedom of expression or other employees.[42] The ECtHR therefore concluded that the domestic courts had struck a fair balance between the rights of the employer and the employee's right to freedom of expression,[43] deciding five to two against a breach of Article 10 ECHR.

E. Final opinion

Halet v. Luxembourg was a significant missed opportunity for the ECtHR. Instead of consolidating its whistleblower protection case-law by aligning it with the European and international consensus, the ECtHR's latest ruling sets a dangerous precedent and greatly weakens the protection of whistleblowers under Article 10 ECHR.

The main point of dispute was whether the qualifiers "*essential, new and hitherto unknown information*" developed by the domestic court were in conformity with the whistleblowing criteria under Article 10 ECHR. The ECtHR acknowledged that those qualifiers could be viewed as too narrow in other circumstances.[44] However, instead of explaining why they were considered as relevant and sufficient in the case at hand to justify an interference in the applicant's right, the ECtHR limited itself to the observation that the domestic court had based its argumentation on a detailed statement of reasons[45] and that those qualifiers were used to conclude that the public interest in the revelation was insufficient to outweigh the damage the employer suffered.[46] In other words, the fact that the national court gave a reasoned judgment and that those qualifiers were part of that judgment was satisfactory enough to the ECtHR for it to justify an interference in the whistleblower's right to freedom of expression. In doing so, the ECtHR did not review the national court's reasoning in the light of Article 10 ECHR and thus failed to exercise its supervisory powers. According to well-established case-law, the supervisory role of the ECtHR is indeed not limited to ascertaining whether the national authorities exercised their discretion reasonably, carefully and in good faith.[47] Instead, the ECtHR should have examined the interference in the light of the case as a whole to determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons brought forward by the national authorities to justify it were "relevant and sufficient," taking into account the relevant facts.[48]

As judges Lemmens and Pavli noted in their dissenting opinion, the way the national court assessed the revelations made by the applicant "*ne cadre guère avec la position générale – et l'on pourrait ajouter de bon sens – de la Cour selon laquelle le fait qu'un débat public sur une certaine question soit en cours plaide en faveur de nouvelles divulgations d'informations alimentant ce débat*."[49] This is all the more true in cases of whistleblowing. Indeed, when the wrongdoing an employee wished to report has been the object of broad media coverage or national and/or international campaigns to fight against it, the ECtHR has consistently held that the public interest in receiving the information outweighs the damage the employer suffered, even if such damage affects strategic State entities, such as the surveillance services.[50] In the case at hand, neither the national nor the European Court questioned the public interest in the disclosure, but they failed to appreciate all the relevant facts to determine whether that information and the television

episode “were part of an ongoing debate of evident concern to the local, national and international public”.[51] Indeed, by stating that the information may have been useful to the journalist but was not a hitherto unknown and cardinal information able to contribute to the public debate, the Court of Appeal substituted itself for journalists entrusted with the role of public watchdog in a democratic society. It also put a considerable hurdle on employees, who might not have the know-how and expertise required to determine whether the information they wish to disclose are cardinal, essential, fundamentally new and hitherto unknown. This is especially true when the information touches on a highly complex issue, like in the case of international tax avoidance and tax evasion schemes. The Court of Appeal should have applied by analogy the reasoning used by the ECtHR in its *Gawlik* ruling. To enjoy protection as a whistleblower under Article 10 ECHR, employees are indeed under the obligation to carefully verify, to the extent permitted by the circumstances, whether the information they wish to disclose is accurate and reliable. The ECtHR specified in this respect that the professional function and qualifications of the employee should be taken into consideration when determining the extent of this obligation.[52] An analogous application of this reasoning to appreciate the public interest character of the information would be in line with the criterion of good faith developed by the ECtHR, according to which a whistleblower should act in the belief that the information was true and that it was in the public interest to disclose it. Such an approach was already promoted by the Court of Justice of the European Union, which held that the determination of whether employees could have reasonably and honestly presumed the existence of possible irregularities should be established on the basis of the level of responsibility and the nature of the duties they performed.[53]

The public interest in the disclosure having to be balanced with the damage suffered by the employer, it is also important to recall, as judges Lemmens and Pavli did in their dissenting opinion, that the criterion of damage entails in itself a public interest component.[54] Indeed, to determine whether the damage outweighs the interest of the public in receiving the information, the ECtHR has to assess whether or to what extent the disclosure of the information is likely to cause damage to the State’s national interests.[55] It is therefore not the damage to the employer per se that has to be taken into consideration but rather the public interest component of that damage and whether it outweighs the public interest in receiving the information disclosed by an employee. On the basis of this reasoning, “the subject matter of the disclosure and the nature of the [employer] concerned may be relevant” when conducting the balancing exercise between the damage suffered and the public interest in the information.[56] In its *Halet v. Luxembourg* ruling, if the ECtHR recalled that the commercial success and viability of companies benefit stakeholders, employees and the wider economic good, thus enjoying protection, it failed to specify that employees in private law employment relationships have a less pronounced duty of loyalty toward their employers compared to civil servants.[57] This is particularly relevant to emphasize considering that “the nature and extent of loyalty owned by an employee has an impact on the weighing of the employee’s rights and the conflicting interests of the employer.”[58] The ECtHR also failed to determine whether the domestic court correctly evaluated the nature and extent of the damage the employer suffered in the case at hand. While the ECtHR emphasized that PwC’s rise in turnover should be taken into consideration to assess the actual and concrete

reputational damage suffered,[59] it did not review the Luxembourg Court of Appeal's position on this point. This is particularly unfortunate since the domestic Court limited itself to stating that PwC had necessarily suffered damage without appreciating whether this was the case in concreto,[60] thus contradicting the ECtHR's own interpretation of the whistleblowing criteria.

Lastly, the proportionality of the interference having to be determined taking into account the severity of the sanction imposed on the employee, the ECtHR did not mention the applicant's dismissal following his disclosure. However, the ECtHR consistently held that the harsher the sanction, the more fear it will induce, creating a chilling effect on potential whistleblowers of the same profession or working in the same sector and consequently hinder public debate.[61] In accordance with this reasoning, when employees were dismissed following their disclosure, the ECtHR has tended to consider the interference as disproportionate.[62] It is therefore particularly surprising that the accumulation of penalties, namely the applicant's dismissal and his criminal conviction, was not considered has having a chilling effect on other whistleblowers in the sector. In view of the foregoing, I believe that the ECtHR contradicted its own case-law and failed to exercise its supervisory role. As judges Lemmens and Pavli stated in their dissenting opinion, the different whistleblowing criteria developed by the ECtHR should not be considered mere checkboxes to tick off but rather principles guiding the comprehensive review and analysis of the case as a whole under Article 10 ECHR.[63] The interpretation promoted by the Luxembourg Court of Appeal and confirmed by the ECtHR in its *Halet v. Luxembourg* judgment indeed distorts these criteria and deprives them of their substance. In light of the above, I can only agree with the conclusion of judges Lemmens and Pavli:

En conclusion, la mise en balance effectuée par la majorité entre, d'un côté, l'intérêt général lié aux révélations de lanceurs d'alerte et, de l'autre, l'intérêt privé au maintien du secret, est en conflit avec la jurisprudence Guja de la Cour ainsi qu'avec les nouvelles normes européennes en la matière. À notre humble avis, cela entrave la protection effective des lanceurs d'alerte dans le secteur privé.[64]

Let us wait and see whether the case will go up to the Grand Chamber.

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[1] ECtHR, Appl. no. 21884/18, *Halet v. Luxembourg*, Judgment of 11 May 2021.

[2] ECtHR, Appl. no. 14277/04, *Guja v. Moldova* [GC], Judgment of 12 February 2008, para. 72.

[3] ECtHR, *Guja* (Fn. 2), para. 70 (civil servants); ECtHR, Appl. no. 28274/08, *Heinisch v. Germany*, Judgment of 21 July 2011, para. 63 (employees under private law employment contracts).

[4] On the European consensus which emerged over the last decade in regard to whistleblower protection, see *Yurttagül*, Whistleblower Protection by the Council of Europe, the European Court of Human Rights and the European Union: An Emerging Consensus, 1st ed. 2021.

[5] ECtHR, *Halet* (Fn. 1), para. 6.

[6] Ibid., para. 8.

[7] Luxembourg Court of Appeal, No. 117/17X, Judgment of 15 March 2017, p. 22.

[8] Ibid., p. 9.

[9] Luxembourg District Court, No. 1981/2016, Judgment of 29 June 2016, p. 62

[10] Ibid., p. 35.

[11] Ibid., pp. 51 and 54.

[12] Luxembourg Court of Appeal, (Fn. 7), p. 37.

[13] Ibid., p. 43.

[14] Ibid., p. 43.

[15] Ibid., p. 44.

[16] Ibid., p. 45.

[17] Ibid., p. 44.

[18] Ibid., p. 43.

[19] Ibid., p. 45.

[20] Ibid., p. 45. *Transl*. “the documents […] did therefore neither contribute to the public debate on the Luxembourg practice of ATAs nor did it trigger the debate on tax evasion or provide **essential, new and hitherto unknown information**.” [emphasis added].

[21] Ibid., p. 44.

[22] Ibid., p. 45.

[23] Ibid., p. 54.

[24] Luxembourg Cour de cassation, No. 3911, Judgment of 11 January 2018.

[25] ECtHR, *Halet* (Fn. 1), paras 94 et sequ.

[26] Ibid., para. 86.

[27] Dissenting opinion in ECtHR, Appl. no. 21884/18, *Halet v. Luxembourg*, Judgment of 11 May 2021, para. 11.

[28] ECtHR, Appl. no. 23922/19, *Gawlik v. Liechtenstein*, Judgment of 16 February 2021, para. 47. See also ECtHR, *Heinisch* (Fn. 3), para. 44.

[29] ECtHR, *Halet* (Fn. 1), para. 86.

[30] Ibid., para. 91.

[31] Ibid.

[32] Ibid., para. 96.

[33] Ibid., para. 97; see also ECtHR, *Heinisch* (Fn. 3), para. 89.

[34] ECtHR, *Halet* (Fn. 1), para. 97.

[35] Ibid., para 100.

[36] Ibid., paras 101-102.

[37] Ibid., para. 103.

[38] Ibid., para. 104; See Luxembourg Court of Appeal, (Fn. 7), p. 45.

[39] ECtHR, *Halet* (Fn. 1), para. 106.

[40] Ibid., para. 109.

[41] Ibid., paras 109-110.

[42] Ibid., para. 111.

[43] Ibid., para. 112.

[44] Ibid., para. 109.

[45] Ibid., para. 106.

[46] Ibid., paras 109-110.

[47] e.g. ECtHR, Appl. no. 59/1997/843/1049, *Hertel v. Switzerland*, Judgment of 25 August 1998, para. 46.

[48] Ibid.

[49] Dissenting opinion, (Fn. 27), para. 13. *Transl.* “hardly fit in with the general position – and one might add common sense – of the Court, according to which the fact that a public debate on a certain issue is ongoing pleas in favor of new disclosures of information fueling this debate.”

[50] ECtHR, *Guja* (Fn. 2), para 87; ECtHR, *Heinisch* (Fn. 3), para. 91; ECtHR, Appl. no. 40238/02, *Bucur and Toma v. Romania*, Judgment of 8 January 2013, para 101; ECtHR, Appl. no. 49085/07, *Görmüş and Others v. Turkey*, Judgment of 19 January 2016, para. 54.

[51] In reference to ECtHR, Appl. no. 21980/93, *Bladet Tromsø and Stensaas v. Norway* [GC], Judgment of 20 May 1999, para. 63; see also *France Culture*, Des LuxLeaks aux Panama Papers (2/4): les petits secrets des multinationales pour échapper à l’impôt, 06/01/2021, available at https://www.franceculture.fr/emissions/mecaniques-du-journalisme-saison-2-laffaire-benalla/lux-leaks-24-les-petits-secrets-des-multinationales-pour-echapper-a-limpot [accessed 28/05/2021]: “La diffusion de son deuxième reportage, en 2013, lui ouvre les portes du Consortium international du journalisme des journalistes d’investigation (ICIJ) [et] aboutit à l’affaire LuxLeaks : pour la première fois, ce ne sont pas quelques accords, mais tout un système financier d’évasion fiscale qui est mis à jour”. *Transl.* “The broadcast of his second report, in 2013, opened the doors to the International Consortium of Investigative Journalists (ICIJ) [and] led to the LuxLeaks affair : for the first time, it was not just a few agreements, but a whole financial system of tax evasion that was brought to light.”

[52] ECtHR, *Gawlik* (Fn. 28), paras 77-78.

[53] EU General Court, Case T-530/12 P, *Bermejo Garde v. EESC*, Judgment of 8 October 2014, ECLI:EU:T:2014:860, para. 152; EU Civil Service Tribunal, Case F-41/10 RENV, *Bermejo Garde v. EESC*, Judgment of 2 June 2016, ECLI:EU:F:2016:123, para. 84.

[54] Dissenting opinion, (Fn. 27), para. 6.

[55] ECtHR, *Guja* (Fn. 2), para. 76. It refers in particular to its *Hadjianastassiou* and *Stoll* rulings. In those two cases, the ECtHR held that the disclosures of the information were likely to cause a considerable damage to the States’ national interests, concluding that the interferences in the applicants’ right to freedom of expression were therefore legitimate under Article 10 ECHR. See ECtHR, Appl. no. 12945/87, *Hadjianastassiou v. Greece*, 16 December 1992, para. 45; ECtHR, Appl. no. 69698/01, *Stoll v. Switzerland* [GC], 10 December 2007, para. 130.

[56] ECtHR, *Guja* (Fn. 2), para. 76.

[57] ECtHR, *Heinisch* (Fn. 3), para. 64.

[58] Ibid.

[59] ECtHR, *Halet* (Fn. 1), para. 101.

[60] Luxembourg Court of Appeal, (Fn. 7), pp. 40 and 43.

[61] ECtHR, *Guja* (Fn. 2), para. 95; see also ECtHR, *Heinisch* (Fn. 3),para 91; ECtHR, *Bucur and Toma (Fn. 50)*, para 119; ECtHR, *Görmüş and Others* (Fn. 50), para. 74; ECtHR, Appl. no. 4063/04, *Marchenko v. Ukraine*, 19 February 2009, para 51; ECtHR, *Kudeshkina v. Russia*, Appl. no. 29492/05, 26 February 2009*,* paras 99-100.

[62] ECtHR, *Guja* (Fn. 2), para 95; see also ECtHR, *Heinisch* (Fn. 3),para 91; ECtHR, Appl. no. 73571/10, *Matúz v. Hungary*, 21 October 2014, para. 48.

[63] Dissenting opinion, (Fn. 27), para. 9.

[64] Ibid., para. 17. *Transl.* “In conclusion, the balancing act carried out by the majority between, on the one hand, the general interest linked to the revelations of whistleblowers and, on the other, the private interest in maintaining secrecy, is in conflict with the *Guja* case-law of the Court as well as with the new European standards in this area. In our humble opinion, this hinders the effective protection of whistleblowers in the private sector.”