

## WHISTLEBLOWING IS AN EMERGING HUMAN RIGHT

The Czech and Slovak Leaders Magazine prides itself not only to interview leading experts in the field but also to raise awareness about important societal issues. Given the current pandemic, whistleblowing has proven as a very useful method to protect individuals, companies and the society as a whole. Li Wenliang, a Chinese medical doctor, was the famous first whistleblower who warned against the pandemic, unfortunately later only to die from Covid-19 himself.

We should also recognize the fact that the pandemic stopped physical travelling but did not hinder international cooperation. It was within the scope of the E.A.T. (Expanding Anonymous Tipping) project that the Czech NGO Oživení (Revival), together with eight other partner organizations working across 11 different EU countries, got involved in the project. The E.A.T. project helps to widely expand anonymous tipping technology deployment, operation and trustworthiness to combat corruption in Eastern and Southern Europe.

Dr. Suelette Dreyfus is the Executive Director of Blueprint for Free Speech. Suelette's career has spanned academia, journalism and activism. She is a specialist in privacy technologies, Internet freedoms and media integrity. Inspired by the open-source software movement, Suelette founded Blueprint with a view to improving the standards of laws around the globe that protect freedom of expression generally. She is particularly interested in raising the standards of protection for whistleblowers and for freedom of speech for the media. Blueprint is one of the few NGOs globally active in advocating for the legal protection of whistleblowers and whistleblowing, and particularly protections for going to the media. Blueprint for Free Speech gives Whistleblowing Prizes and Special Recognition Awards to highlight the bravery of those whistleblowers who come forward in the public interest. I was pleased to find on Blueprint website an interview with Mr. Libor Michálek, a famous Czech whistleblower, a former Director of the Czech State Environment Fund who refused to sign a contract that was being overcharged by 150 million USD.



**Suelette, you are an Australian expert being involved in the EU whistleblowing project, all happening in times of pandemic. What an emblematic connection between the global collaboration and the urgency to protect free speech and whistleblowers rights and protection. Before discussing the whistleblowing as a subject matter, let me ask you about your personal connection to the Czech Republic.**

I was due to visit the Czech Republic for the first time in April last year actually, and then the pandemic hit. It's high on my bucket list. However, I know a lot about your country, as one of my close friends was a daughter of Czechoslovakian immigrants and thanks to her family, I learned a lot about your country's history. On personal level, I love working with our Czech partner, not-for-profit community organization, Oživení. My organization, Blueprint for Free Speech has a branch in Germany and in Spain, so I am familiar with these and other EU countries thanks to our presence in Europe. As you have mentioned in the introduction, my organization has done research on whistleblowing in the Czech Republic and the resources can be found on our website. As soon as the pandemic allows, I will be delighted to visit Prague, one of the most vibrant and beautiful cities in the world.

**The year 2020 in the Czech Republic brought several causes where whistleblowers played crucial role. One of these dealt with the lack of protection gear in the beginning of the pandemic, the other dealt with the toxic pollution of the river Bečva, just to name**

**the most significant ones. But there is also an external pressure. Why should we pay attention to whistleblowing in 2021?**

Following years of pressure by civil society, in 2019 a new EU Whistleblower Directive was approved in the European Parliament. It was a joyful day for so many community groups – we travelled to Strasbourg to watch the historic vote. We all sat in the gallery of the Parliament to see the legislation pass. We could feel the buzz of change, it was so exciting after years of hard work. This was a turning point. I think at some point in the future we will look back at that event as the moment when the right to dissent from wrongdoing – to speak up – achieved a critical milestone as an emerging freedom of expression human right.

The new Directive provides minimum standards which will be enacted across all EU member states. The law will require employers to provide channels for making reports and protect whistleblowers from retaliation.

E.A.T. project (Expanding Anonymous Tipping) responds directly to the Directive by providing secure and anonymous submissions systems for public and private sector organizations, exactly the kinds of systems the Directive will ask organizations to implement. EAT represents a series of examples of how these systems can be set up, best practice for running them and the positive consequences that result. This project has brought together nine NGOs covering 11 countries with the highest perception of corruption in Europe. It not only raises the awareness on whistleblowing but on the practical level it provides a secure digital drop box for whistleblowers to be able to make disclosures in a technologically protected manner.

It's been pretty amazing to share the experiences across so many countries. There are many common barriers across them all to adopting proper whistleblower protection. The NGO's working together really figured out how this works far better than we would have done apart.

**Being a whistleblower is not easy. As much as whistleblowers are vital to society, speaking up is hard. They provide us with information about serious wrongdoing in the public interest. Whistleblowers and their families often face harsh repercussions and, in some cases, even persecution.**

There are two major ways you can protect a whistleblower. One is in law and policy. The organizations involved in the project also work in their respective countries to support the national transposition of the mentioned Directive, passed in 2019, into their own laws for each member state. The Directive has to be translated into national laws by the end of this year, 2021. I hope that in some cases the national laws will be even more ambitious than the Directive itself.

The second way to protect whistleblowers is by applying appropriate technology. For example, you can use a computer or even a mobile phone to make a disclosure that is either confidential or anonymous or both. Depending on the configuration, the confidential disclosure means that on the website where you make a disclosure, the path between your computer and the website where you make the disclosure is encrypted from end to end. It's much better protection than sending a plain text e-mail via a not very secure email provider. You can also add a layer

of anonymity by using Tor (The Onion Router) network which prevents others from seeing your identity. Exposing corruption can be a risky business. Sometimes anonymity can be the best protection.

**You mentioned that the technology is available. Nevertheless, as many other cases have shown, technology is a tool, not a solution. How to convince organizations to start using it when it comes to sensitive issues?**

The first barrier is convincing that it will be beneficial. The law is coming, and organizations need to be prepared. That is why organizations should start preparing now and not wait until the last minute. Then we get to the process of setting the whole internal structure. There are organizations that can help to set up the digital drop boxes for whistleblowers for companies at no charge. When it comes to dealing with the cases, any particular company needs to think in concrete terms, such as who will operate the "drop box". Who will have access to the documents? How will they be assessed and investigated? How will they be stored securely? Eventually, the discussion leads to the complex governance issues of various departments, such as legal, compliance and HR. The anticipated benefit is not only getting the digital drop box, the artifact that gives anonymity and/or confidentiality. It is also around getting the organization to deal with sensitive issues, such as possible fraud, in general. The organization might otherwise sweep the thing under the carpet – where it can quickly grow to be a very big problem that could bankrupt the company.

**The parallel with audit comes to my mind. It is not only about the final certification, but the journey and the new standards the whole process takes them on.**

I quite agree with the parallel. The companies start asking questions - how do we actually deal with a disclosure that someone makes when it is uncomfortable? The process has to be about fairness and justice. You need to have an independent assessment, and it must test truth and accuracy. The proper process gives legitimacy to all the whistleblowers who come after, so their disclosures are not swept under the carpet, shunted to the side or ignored completely. Figuring out what that process should be takes some thought.

**Australia and the US have been quite ahead of the EU, when it comes to stand-alone whistleblowing legislation. What can we learn from the experience of both countries?**

Well, both systems are different. The US system tends to use financial rewards. If you happen to know people cheating in a company by breaking company regulations, such as cartel activity, fraud or tax cheating, if you whistle blow in the US, you may get a percentage of money that is recovered, up to 30% of the saved money. This 'bounty' approach works for many in the US but isn't a cultural fit for some countries, such as Australia. Australia passed legislation in 2013 that covered

the public sector on the federal level, to promote integrity and accountability. Of note is the fact that the first real test of this legislation in a court case is expected to happen this year. Definitely worth following!

In 2019 a new law came into effect in Australia to provide greater protections for whistleblowers in the private sector, especially in the corporate, financial, tax and credit sectors. Companies are covered by the new legislation, which has some similar elements to the EU Directive.

**Your organisation Blueprint for Free Speech has done a lot of work in neighboring Germany. What did you achieve?**

We are very much involved in educational outreach, in the sense of building public awareness, and supporting both decision-makers as well as the general public with our research analysis. We worked on proposed drafting of legislation that would allow the transposition of the Directive in a way that's true to the original intention. The draft is a very good one and the debate continues, so everyone involved can still put a red pen into it. My view is that it is always better for engaging the community to have something to write on in the first instance than to try it to build it from a scratch. That is one of the purposes of Blueprint in general. The concept actually originally came from the free software movement; you take a part, you build upon it, adapt it and make it better – and you replicate it at lower cost rather than reinventing the wheel each time. You improve it as you go along.

Our philosophy is that we consider whistleblowing as a kind of freedom of expression. It's the right to speak up and to dissent from wrongdoing. What drives us is our belief that whistleblowing is emerging as part of the human right of freedom of expression.

If we want society to get better, we need to be ok with people speaking up when there is serious wrongdoing. Without protection, who would do that?

**Blueprint for Free Speech also gives out Annual Prizes for Whistleblowing. Can you share one particular story with us?**

Have a look at all the stories, but I want to mention the 2020 UK Prize winner, Sally Masterton. Her story is very interesting. Her whistleblowing has played a key role in uncovering one of the largest frauds in UK banking history. While we don't know the final numbers yet, preliminary estimates place the value up to 1 billion GBP. There's an inquiry being conducted right now into Lloyd Banking Group by former UK High Court judge Linda Dobbs.

We have recognized Ms Masterton and promoted her story because we wanted to draw attention to her commitment to speak up in her organization in the public interest. Ms. Masterton has paid a big price for disclosing the case. We do not want to see future whistleblowers to go through what she had to endure. We also wanted to show the enormous public benefit that was brought by her acting responsibly and fearlessly. She can not speak publicly about her case, just as many

whistleblowers are gagged in the same way by former employers, but the fact that her story was covered by The Financial Times, also speaks for itself. A lot of people lost their life savings, and their small businesses in these fraud activities. Husband and wife partnerships saw what they had toiled so hard to build being wiped away before their very eyes. People were devastated. It's not only the money, it's the trauma of unjustly losing a business you have created.

**Whistleblowing can prevent not only financial frauds, but also can promote safety, security or environment protection...**

As we know from the #MeToo movement, there are other types of wrongdoing which can have substantial bad repercussions on companies. If you have sexual harassment at the workplace, you really need to have a safe avenue for employees to report it. You need to offer ways to report it anonymously and also confidentially. A company culture that supports whistleblowing and communicates that it is ok to make a disclosure provides protection for the whole company against something going wrong in these areas. A significant amount of whistleblowing has occurred during the current pandemic. During COVID, we want to protect individuals, companies and society. There were cases reported, the Czech Republic not being an exception, where medical workers were being forced to work without proper personal protective equipment, so this was a big safety risk.

Other things have also been exposed. When you do not have proper disease-stopping procedures at retirement homes, the aged can be put at great risk. The epidemic has revealed issues with supply chains and low-quality or unreliable medical supplies being delivered. Likewise, kits for testing were either lacking proper certification or they were patchy in quality – thus creating a real risk. You really want your COVID-19 tests to work reliably! In this way, whistleblowing presents a corrective mechanism not only for a particular company, but for the rest of the society.


**If you agree that whistleblowing is an emerging human right, here you can find more information as how to get involved.**

**Czech NGO Oživení (Revival)**  
<https://www.oziveni.cz>

The aim of the organization is to promote the principles of accountability and transparency in public administration, the development of civil society, democracy and the rule of law, and to support the active participation of citizens in the administration of public affairs.

**E.A.T. Project**  
<https://eatproject.eu>  
**Suelette Dreyfus, Blueprint for Free Speech Organization and Annual Award Prize**  
<https://www.blueprintforfreespeech.net>

By Linda Štucbartová

 české znění naleznete v elektronické verzi magazínu na [www.czechleaders.com](http://www.czechleaders.com)