

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

In reply to this question, Germany would like to quote Section 53 of the German Code of Criminal Procedure. For ease of reference, the most relevant parts with regard to the question have been underlined:

THE GERMAN CODE OF CRIMINAL PROCEDURE

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Full citation: Code of Criminal Procedure in the version published on 7 April 1987 (Federal Law Gazette [*Bundesgesetzblatt*] Part I p. 1074, 1319), as most recently amended by Article 3 of the Act of 23 April 2014 (Federal Law Gazette Part I p. 410)

Section 53

[Right to Refuse Testimony on Professional Grounds]

(1) The following persons may also refuse to testify:

1. clergymen, concerning the information that was entrusted to them or became known to them in their capacity as spiritual advisers;
2. defence counsel of the accused, concerning the information that was entrusted to them or became known to them in this capacity;
3. attorneys, patent attorneys, notaries, certified public accountants, sworn auditors, tax consultants and tax representatives, doctors, dentists, psychological psychotherapists, psychotherapists specializing in the treatment of children and juveniles, pharmacists and midwives, concerning the information that was entrusted to them or became known to them in this capacity. In this respect other members of a Bar Association shall be deemed to be attorneys;
- 3a. members or representatives of a recognized counselling agency pursuant to sections 3 and 8 of the Act on Pregnancies in Conflict Situations, concerning the information that was entrusted to them or became known to them in this capacity;
- 3b. drugs dependency counsellors in a counselling agency recognized or set up by an authority, a body, an institution or a foundation under public law, concerning the information that was entrusted to them or became known to them in this capacity;
4. members of the Federal Parliament, of the Federal Convention, of the European Parliament from the Federal Republic of Germany or of a *Land* parliament, concerning persons who have confided certain facts to them in their capacity as members of these bodies, or to whom they have confided facts in this particular capacity, as well as concerning the facts themselves;
5. individuals who are or have been professionally involved in the preparation, production or dissemination of periodically printed matter, radio broadcasts, film documentaries or in the

information and communication services involved in instruction or in the formation of opinion.

The persons named in number 5 of the first sentence may refuse to testify concerning the author or contributor of comments and documents, or concerning any other informant or the information communicated to them in their professional capacity including its content, as well as concerning the content of materials which they have produced themselves and matters which have received their professional attention. This shall apply only insofar as this concerns contributions, documentation, information and materials for the editorial element of their activity, or information and communication services which have been editorially reviewed.

(2) The persons designated in subsection (1), first sentence, numbers 2 to 3b, may not refuse to testify if they have been released from their obligation of secrecy. The right of the persons named in subsection (1), first sentence, number 5, to refuse to testify concerning the content of materials which they have produced themselves and matters which have received their professional attention shall lapse if the testimony is required to assist in clearing up a felony, or if the object of the investigation is

1. a crime against peace and of endangering the democratic state based on the rule of law, or of treason and of endangering external security (sections 80a, 85, 87, 88, 95, also in conjunction with sections 97b, 97a, 98 to 100a of the Criminal Code),

2. a crime against sexual self-determination pursuant to sections 174 to 176 and section 179 of the Criminal Code, or

3. money-laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1) to (4) of the Criminal Code,

and an enquiry into the facts and circumstances or an investigation as to the whereabouts of the accused would otherwise offer no prospect of success or be much more difficult. The witness may refuse to testify even in such cases, however, where testimony would result in disclosure of the identity of the author or contributor of comments and documents, or of any other informant, or of the information communicated to him in his professional capacity pursuant to subsection (1), first sentence, number 5, or of the content of such communication.

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.*

The existing regulations under German civil service law provide appropriate protection for whistleblowers already today.

Under Section 63(2) of the Act on Federal Civil Servants, federal civil servants are not only authorized but obliged to report any reservations as to the lawfulness of an official order to

their immediate supervisor without delay. The same applies to Land civil servants under Section 36(2) of the Act on the Status of Civil Servants. (so-called "duty of remonstrance").

In their external relationships, civil servants are required under Section 67(1) of the Act on Federal Civil Servants and Section 37(1) of the Act on the Status of Civil Servants to maintain official secrecy. This is one of the major duties of civil servants and is meant primarily to protect the public interest. The duty to maintain official secrecy concerns all matters of which civil servants become aware in the course of their official activities.

Under Section 353(b) of the German Criminal Code, disclosing an official secret and thereby damaging vital public interests is a punishable offence.

German law, however, also provides for certain exceptions from the duty to maintain official secrecy guaranteeing impunity to civil servants (legal justification). For example, there is no obligation of secrecy in the case of reasonable suspicion of corruption to be reported to the responsible highest service authority, a law enforcement agency or other agency or non-service body designated by the highest service authority (Section 67(2)(3) of the Act on Federal Civil Servants and Section 37(2)(3) of the Act on the Status of Civil Servants). Another justification for not observing secrecy is the obligation under Section 138 of the German Criminal Code to bring planned offences to the attention of the authorities.