

Media Law Briefing from Professor Tim Crook UK Media Law Pocketbook 2nd Edition.

<https://ukmedialawpocketbook.com/>

Please order the printed and online book for your university/college libraries and adopt it as a course book.

[https://www.routledge.com/The-UK-](https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166)

[Media-Law-](https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166)

[Pocketbook/Crook/p/book/97811383091](https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166)

[66](https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166)



Highly significant European Court of Human Rights Grand Chamber ruling extending and strengthening Article 10 Protection of Journalists' sources to the sources themselves when they act in the role of 'good faith' whistleblowers with public interest disclosure.

Judgement in Strasbourg 14th February 2023 in the case of Halet v Luxembourg (Application no. 21884/18)

This is also known as the 'Luxleaks case' and was summarized and referenced on pages 161 to 162 of the printed 2022 Second Edition of UK Media Law Pocketbook.

Very briefly the case concerned Raphaël Halet, a French national, who worked for PricewaterhouseCoopers accountants in Luxembourg. The judges have ruled there was a violation of his whistle-blower's freedom of expression, Article 10 rights as a result of his criminal conviction for disclosing confidential documents protected by professional secrecy, comprising 14 tax returns of multinational companies and two covering letters, obtained from his workplace.

He says he did this to a journalist in the public interest for no financial reward.

Up until now Article 10 protection of journalist source rights in Strasbourg cases have been robustly asserted in respect of the journalists, but this had not been clearly extended to the sources themselves when they suffered consequences from their exposure or identification.

In Monsieur Halet's case, he had been criminally prosecuted and fined 1,000 Euros and additionally ordered to pay 1 Euro in compensation.

The Grand Chamber ruling is summarized with the following bullet-points:

Art 10 • Freedom of expression • Criminal-law fine of EUR 1,000 for disclosing to the media confidential documents from a private-sector employer concerning the tax practices of multinational companies (Luxleaks) • Consolidation of the European Court's previous case-law on the protection of whistle-blowers and fine-tuning of the criteria established in the Guja judgment • No abstract and general definition of the concept of whistle-blower • Claim for protection under this status to be granted depending on the circumstances and context

of each case • Overall assessment by the Court of the Guja criteria, taken separately, but without hierarchy or specific order • Channel selected to make the disclosure was acceptable in the absence of illegal conduct by the employer • Authenticity of the disclosed documents • The applicant's good faith • Necessary balancing of competing interests at stake by the Grand Chamber, as the domestic courts' balancing exercise did not satisfy the requirements identified in the present judgment • Overly restrictive interpretation of the public interest of the disclosed information, which had made an essential contribution to a pre-existing debate of national and European importance • Only the detriment caused to the employer taken into account by the domestic courts • Public interest in the disclosure outweighed all of the detrimental effects, including the theft of data, the breach of professional secrecy and the harm to the private interests of the employer's customers • Disproportionate nature of the criminal conviction.

See the full ruling of the court

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-223259%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-223259%22]})

PDF document also available on this link

[case-of-halet-v.-luxembourgfullruling14thfebruary2023Download](#)

The legal summary of the case is available on this link:

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-14005%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-14005%22]})

The press release about the ruling is available on the link below:

[grand-chamber-judgment-halet-v.-luxembourg-criminal-conviction-of-a-whistle-blowerDownload](#)

This is not an all-encompassing template offering a strong pre-determined legal shield for journalists' sources disclosing confidential information to journalists during their employment, but it will be influential and the seed for developing important precedents in this area.

It may strengthen the position of civil servant 'whistle-blowers' communicating to journalists public interest information without any financial reward or favour who under current English and Welsh criminal law face prosecution for misconduct in public office.

The judges explained there is no abstract and general definition of the concept of whistle-blower and the claim for protection under this status is to be granted depending on the circumstances and context of each case.

The ruling derived from principles developed in the 2008 [Grand Chamber ruling of Guja v. Moldova](#) which 'had identified for the first time the review criteria for assessing whether and to what extent an individual divulging confidential information obtained in his or her workplace could rely on the protection of Article 10 of the Convention, and specified the circumstances in which the sanctions imposed were such as to interfere with the right to freedom of expression.'

The Grand Chamber judges in Halet decided that the context for whistleblowers had changed since 2008 'whether in terms of the place now occupied by whistle-blowers in democratic societies and the leading role they were liable to play by bringing to light information that was in the public interest, or in terms of the development of the European and international legal framework for their protection.'

Halet is therefore important in confirming and consolidating the principles established in case-law for the protection of whistle-blowers by refining the six criteria for their implementation:-

(1) The channels used to make the disclosure; (2) The authenticity of the disclosed information; (3) Good faith; (4) The public interest in the disclosed information; (5) The detriment caused, and (6) The severity of the sanction.

The Grand Chamber in Halet 'verified compliance with the various Guja criteria taken separately, without establishing a hierarchy between them or indicating the order in which they were to be examined, which, while it had varied from one case to another, had never an impact on the outcome of the case. However, in view of their interdependence, it was after undertaking a global analysis of all these criteria that it ruled on the proportionality of an interference.'

The majority of 12 to 5 ruled that the interference with the Monsieur Halet's right to freedom of expression by criminal prosecution, conviction and fine, in particular his freedom to impart information, had not been 'necessary in a democratic society.'

The ruling has been welcomed by Protect the UK's whistle-blowing charity 'European Court backs LuxLeaks Whistleblower in his decision to expose tax avoidance in the public interest.' See: <https://protect-advice.org.uk/protect-luxleaks-whistleblower/>

The International Consortium of Investigative Journalists was involved in reporting the Luxleaks case and reported the Grand Chamber ruling: 'European court reverses course to rule in favor of LuxLeaks whistleblower. The European Court of Human Rights ruled that the public interest in leaking the data showing how multinationals spirited profits to the tiny nation outweighed the detrimental effect.'

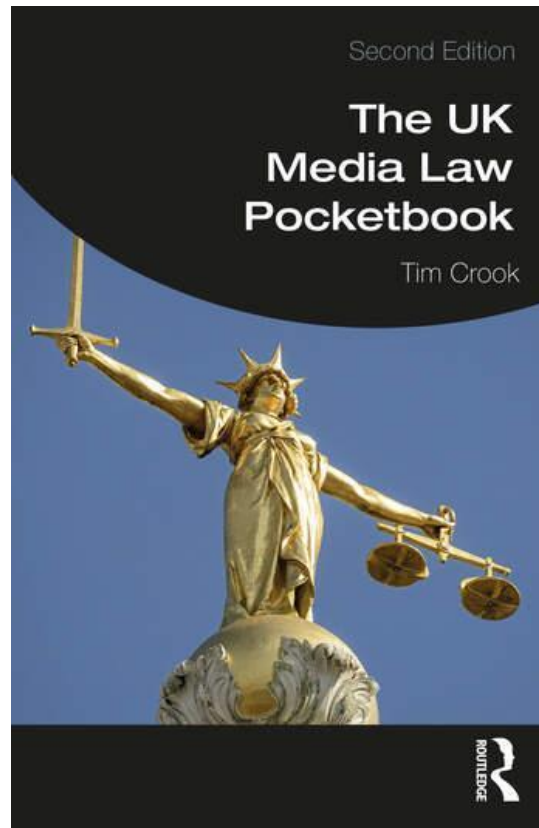
See: <https://www.icij.org/investigations/luxembourg-leaks/european-court-reverses-course-to-rule-in-favor-of-luxleaks-whistleblower/>

Stelios Andreadakis, Reader in Corporate and Financial Law at Brunel University London, and Dimitrios Kafteranis Assistant Professor at the Centre for Financial and Corporate Integrity, Coventry University observed in their article for the Oxford Business Law Blog: 'Apart from the undeniable impact of the judgment in relation to the right to freedom of expression, reference should be made to the notable protection offered to a whistleblower, who wanted to do the right thing, in good faith and without any intention to profit from it or to harm his employer. If the original criminal conviction had a 'chilling effect' on potential whistleblowers, who were considering speaking out about wrongdoings in their workplace,

the Grand Chamber's decision was a step towards the right direction: the direction of transparency, accountability and fairness.'

See: 'Halet v Luxembourg: The Final Act of the Luxleaks Saga' at:

<https://blogs.law.ox.ac.uk/blog-post/2023/02/halet-v-luxembourg-final-act-luxleaks-saga>



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

Preview:- https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166?gclid=Cj0KCQjw_r6hBhDdARIsAMIDhV87Y5f5ZJuc0aPf-FnNI6_hr3uUZgH6lxKek5sxMs9Mk2IAofCHjBYaAs4FEALw_wcB