Secrecy and information

The need to find the right balance

The rule of law and the individual rights are inextricable parts of our democratic system, the maturity of which can be measured, to a large extent, by its capability to serve both aims.

It goes without saying that any anti-criminal State force needs a certain level of discretion to operate: finding out if a wrongdoing is happening obviously means that the suspect wrongdoer should not be warned in advance when and how the investigation is going to take place.

Conversely, public has the ultimate right to know about public wrongdoings, and everybody - innocent or culprit - has the right to be informed of what he is accused of before a trial, so that he can defend himself.

In reality, things are not always that simple. Just to quote one of the most obvious examples, police authority often warns of the location and the timing of speed limit controls, since it is often more interested in preventing speeding than in punishing speedy drivers.

Otherwise, there are cases where it is quite clear that the ultimate aim of the secrecy imposed on information possessed by the authorities is not to defend the ongoing investigation but rather to use this investigation as a tool to publicly attack somebody.

The recent scandal unveiled during the current Summer in Portugal concerning tape recordings of conversations between a journalist and several police officers - including the national director of the Portuguese Judiciary Police - as well as the press officer of the Portuguese public prosecutor's is very telling.

The public revelation of these tape recordings showed that State authorities abused the privilege of secrecy stamped on the information they handled.

The problem here is that the very strict rule of information secrecy existing in Portugal was shown to be misused: instead of preventing any investigation to be torpedoed it allowed the manipulation of information and the trial by the public opinion of a public personality without possible defence.

The accusations were shown to be without credibility, and the prosecutor's office decided to drop them, but, of course, the public damage caused by this action was already done.

In the context of the European institutions, the recent raid on a journalist premises raises important questions regarding the balance to be established between the freedom of information and the confidentiality of investigations.

Although the most questionable facts regarding the assault on the journalist premises have to do with Belgium legal procedures rather than with European ones (according to the press the famous Miranda procedure was not followed and the journalist was interrogated during ten hours without a lawyer's assistance) there are important questions related to European institutions that cannot be forgotten.

If a journalist obtains classified information, the publication of which can damage an ongoing investigation, the first logical step should be to try to prevent the damage, and this should be possible either by mutual agreement or through the judicial system.

Regarding a possible unlawful action of the journalist, by which he would have had access to the classified information through the corruption of any officials, this should naturally be persecuted.

However, it would be most unfortunate if, just to confirm such a suspicion, irreversible damage would be caused to the work of a journalist and therefore to the democratic right of the citizens to be informed of what is going on with public affairs, even before the suspicion is confirmed in judicial instances.

In any circumstance, an objective balance has to be established between the several goals. It seems to be clearly disproportionate to seal all the work material of a journalist for an undetermined period of time just because of such an investigation.

This particular incident comes after the so-called "Eurostat affair". As I did point out on several occasions, the crucial aspect of this scandal was that the secrecy of procedures - established on the basis of the suspicion of criminal activity and in order to protect the public interests - was actually used as means to leave untouched situations where obvious administrative wrongdoings were taking place and needed immediate correction.

The question that all these examples raise is that in each situation, when it is necessary to establish what has to be considered secret, reserved information or publicly available information, it is necessary to carefully establish the balance between different public interests.

The number one rule on this issue is that every actor in the process (officials, politicians, journalists) fully understands his own role and responsibilities and obeys basic ethical principles.

The number two rule is that it is necessary to have a common and understandable set of information procedures regarding every actor on the process.

In any circumstance, I do believe that in numerous occasions to decide what should get in the public domain and what should not, will not be simple, and we will need a sort of information Ombudsman that can decide on what information should be delivered or should be kept secret.

Presently, I think that this could be a task performed by a body like the OLAF Supervisory Committee.

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