

*An Independent Provision for Whistle-blowers in the Netherlands: 'the House for the Whistle-blowers'*

Presentation at the 10<sup>th</sup> Task Force on Access to Justice under the Aarhus Convention (Geneva, 27<sup>th</sup> -28<sup>th</sup> February 2017) by Dr. J.G.B. Pikkemaat, Senior Legal Counsel at the Ministry of Infrastructure and Environment (State of the Netherlands)

**1.**

Some remarks, in a nutshell, on the “Huis voor Klokkenuiders”, or: Whistleblowers Authority, as it was recently founded in the State of the Netherlands.

**2.**

- The institution was established July 1st. 2016, based on the Klokkenuiderswet, the Whistleblowers Centre Act, which came into force the very same day. This Act provides for and aims at establishing legal protection for the so called Whistleblowers: citizens connected with an organisation through some sort of employment relationship, that are aware of abuses, breach of law, public offences &c. within that organization, and who feel compelled to expose these abuses.
- Many companies and organizations already introduced some form of reporting procedure to deal with suspected abuses; the Whistleblowers Act obliges employers who have 50 or more employees to adopt a reporting procedure according to the directions of the Act.
- The institution is a so called Independent State Authority, a public body with full legal personality, although connected with a government department, operating independently:
  - Administration of the Act belongs to the Ministry of Interior Affairs and Kingdom Relations; the Minister however, has no power to intervene in its internal policies

- The Minister has no right to intervene in its internal affairs either, no right to interfere with investigations, or to request information on investigations.
- He is politically responsible for the functioning of the House and has to report directly to Parliament. The information the Minister is provided with is restricted to data and documents relating to the financial management and accounting system,
- Chairman & Commissioners are appointed directly by the head of State, the King, not by the Minister.
- Each year the Authority reports to Parliament about its activities: it sends an overview of its recommendations and actions taken.

### 3.

The Managementboard consists of a chairman and four boardmembers; they are independent and not bound by any mandate or instruction.

Chairman: is appointed (and suspended/dismissed) by his majesty the King (Royal Decree), he is responsible for the overall functioning of the House,

There are four Commissioners (appointed by the King as well): two commissioners for the Advisory Department, two commissioners appointed to the Investigation Department. Commissioners may not be appointed in both Departments.

Then there is the Bureau, supporting the Managementboard; its staff members are appointed by the chairman; they support the Advisory department, the Investigation department and the general service of the Centre.

### 4.

Main tasks of the Whistleblowers Authority are: *Advising whistleblowers, supporting them, investigating cases*

The Authority operates a 'Hot-line' for advising whistleblowers.

- An employee may report a suspected abuse to the Investigation Department for the purpose of investigating

- the Specific case;
- or request an investigation into his Employer's mistreatment of reporters of a suspected abuse

## 5.

The Whistleblowers Act rules that the Authority should serve:

- 'All employees' The concept of employee within the Whistleblowersact is used in a wide sense:
  - in public & private sector; including:
  - (former) employees/ civil servants/ contractors/ interns/volunteers, employees of other organizations as well as independent advisers fall under its scope
- Services are not intended for:
  - customers, clients, patients, citizens, students, members of the judiciary, officials appointed to het General Intelligence and Security Services
- The authority is independent, easy accessible, and services are free of charges
- Confidentiality and legal protection are guaranteed

## 6.

An Investigation will take place in case of a serious wrongdoing, if this touches the public interest: when *is a public interest at stake?*

- The Act does not specify but indicates that the abuse must be grave, for example:
- Dangerous/ illegal/ immoral practices within organisations
  - threats to the environment/ public health
  - safety of persons/ breaches of the law
  - threats to the due operation of organisations due to improper behaviour
- But also:

- Fraud, corruption, serious mismanagement, culture of fear within the organisation, intimidation or discrimination
- In general, investigations concern:
  - cases that exceed the limits of individual cases, such as personal conflicts with employers, incidents.
  - cases must have a *serious* and *structural* character, of a certain *scale*

## 7.

Potential Whistleblowers can always consult the Advice department of the Whistleblowers Authority. The department provides free, independent and confidential advice to employees who have a suspicion of an abuse and are in doubt about whether to report this. Among other things, the Advice department can:

- assess whether there is a work-related abuse of public interest, the authority can refer the person requesting advice to the body or authority where he or she can make the report (internal bodies, like specific sectoral authorities, external authorities like the public prosecution office);
- the Advice department can provide advice and support in making an internal report;
- it can provide advice about dealing with the consequences of an internal report;
- and inform the reporters of their rights and obligations;
- as well as offer mental support for the unpleasant consequences and stress that the report can entail. (The Advice department does not give legal support.)

Finally: the Authority can advise and support employers who seek means of prevention, and can offer advice on drafts for an internal protocol or reporting procedure.

## 8.

The Investigating of *suspected wrongdoings* is done by the Investigation Department

- Possible subjects of investigation are:
  - Wrongdoings that have an impact on public interest
  - mistreatment/ punishment by employers

- Investigation ONLY if requested by the reporter (no investigation will take place if the wrongdoings at stake already fall under another public inspection/supervisory or prosecution authority)
- Identity of the reporter is protected
- Employers are obliged to cooperate: they have the right to fair hearing but have the duty to provide information, data and documents. The Law on Administrative Procedure is applicable; enforcement by public authorities is possible.
- The investigation has to end in a Report:
  - The Authority has to conclude whether there has been a wrongdoing/mistreatment or not
  - The report contains recommendations (although non-binding)
  - the report is published
  - a follow up is monitored: the employer or organization investigated have to report on how to follow up the recommendation.

9.

The Whistleblowers Authority provides for a Prevention unit, that advises *employers* on ethics/ integrity issues:

- ✓ measures & policies to use
- ✓ how wrongdoing or unethical behavior can be *prevented*
- ✓ shares information/ knowledge:
  - ✓ on internal reporting procedures
  - ✓ coherent integrity management systems