



AMERICAN EMBASSY



"Globe International" NGO

# **"PROTECTING JOURNALIST'S SECRET SOURCE"**

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**SURVEY REPORT**

Ulaanbaatar  
2008

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# FOREWORD

People play specific role in the information source system and in the American study of journalism people are defined as “alive sources”. The main principle of identifying and mentioning openly the source in journalism is connected to the fact that the trust of the public in the information provided by the journalist increases. Nevertheless, the journalist has responsibility and duty to conceal the source in case of danger and possible damage to the informant’s life, health and other interests due to becoming the “source’ of serious and secret information. The protection of the confidentiality of the source by the journalist allows the next informants to trust the journalist and thus it is more beneficial for the public interests and wellbeing by revealing and healing any illegal actions and non-actions hidden deep in the society. The more the case is involved with people the more dangerous and risky it is for the informant. Therefore, it is accepted and agreed worldwide to protect the secret source and it is promoted to legalize the special rights of the journalist, ensure that rights are not being violated and take under protection “whistle blowers”.

Laws and legislations defining the rights of journalists to protect secret source is non-existent in Mongolia.

34.2 of the Law on Public Broadcasting radio and TV approved in 2005 states: “ ... in cases other than the court ruled to disclose the source in order to prevent the crime and for the public interests the public broadcasting radio and TV worker has a right to conceal the source”. This reflects the fact that other media workers and journalists besides the public broadcasting radio and TV are not covered and provided with the same rights and thus this regulation violates the principle of equal rights. There is no official explanation from the State Supreme Court on the implementation of the provision.

According to the journalists principles and professional code of conduct they are provided with duties and responsibilities to protect own secret source. In the part 4 of the “ Principles of Mongolian journalists” approved on the 11th of March, 2005 from the Mongolian Journalists Union it is stated that “ the information source obtained via trust shall be strongly secreted and protected in any conditions”. The provision of similar context is also present in the International Journalists Association’s code of conduct which also forces the Mongolian journalists as members to follow the provision.

Moreover, according to the 8th provision of Recommendation approved on 25th of June, 2000 during the civil case hall meeting of State Supreme Court the journalist’s right “ to protect and secrete the information source” was accepted. However, this is not the official explanation, but merely recommended measure, and thus it is not implemented in the court practice.

Thus, weak, less powerful codes of conducts in terms of law in the environment where the principle of the protection of the secret source by the journalist is not legalized in the law and the legal regulations concerning the journalists are not established can not be a protection in the court. On the other hand they can not be enough legal bases to be taken for the consideration during the court procession. Therefore, there is a need for the legal protection for journalists to implement their code of conduct stating the responsibility to strongly protect the information source obtained via trust in any circumstances.

In order to do in depth need-assessment of the above legal protection and its defining conditions “Globe International” NGO conducted the comparative research on the legal regulations and its scope of international standards along with the survey among the journalists.

We are excited to deliver and present to you the research report and outcomes collected and done within the scope of “Amendments in the journalist’s right to protect own source and provisions on slander and defamation in the Criminal Code” project financed by the USA Embassy. We do believe that it will be contribution in your activities and goals.

**I. "PROTECTING JOURNALIST'S  
SECRET SOURCE"  
Survey among the journalists**

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## I.1. INTRODUCTION

In the democratic society people have rights to access all information permitted by the country's law and regulations. This is the key principle of the democracy. In this way the information provides authority to people to demand responsibility from the state and on the other side it creates the trust in own society.

European Union considers: "The protection the information source is the main way to provide the conditions for the media to act its important role of a public "watch dog" in democratic society. If journalists are under the pressure to reveal the information source then it will create obstacles in their duty to provide information regarding issues of public concern and interests. In above situations the public and individual interests may be cornered thus any form of pressure and force shall be limited" and in democratic countries, particularly in Belgium, Austria, USA, France, Germany, Sweden and others the issue is under the special legal protection. In the world, in around 100 countries the legal regulation protecting the information source, its confidentiality is in power, from which in 20 countries it is stated in the Constitution and in around 90 countries it is reflected in special provisions of media law, civil and criminal laws.

Journalists like any other citizens have rights to access (obtain) to information and the as accepted the special and only one duty of the journalist is to secure the confidentiality of the information source. Unfortunately, 2006 monitoring report on "Media freedom and present Mongolian conditions" and its parts on violation of journalists' rights show that violations continue to occur in regard to the pressure on journalists to reveal the information source, to threaten by legal attract responsibilities in case of resistance and to press to breach the professional code of conduct.

The research was conducted nationwide among journalists working on social, political issues and in news. The purpose was to have realistic information on how the absence of legal regulation protecting the secret-source creates the conditions before the court and during the court sessions, how the requirements to reveal the source and provisions in Criminal code becoming "weapons" for high positioned bureaucracy to negatively influence the journalisms in implementation of their public "watch dog" duties and what are the further steps. The main purpose of the research is to identify the journalist's form of dealing with secret-source, obstacles faced in protecting the secret source, to assess how Criminal code provisions on wrong accusations and attacks on reputation influencing the situation and to define what legislations are required to protect and free journalists from fear. The sample study covered 203 journalists in total.

### **Research objectives, scope, and methodology.**

#### **Goal, objectives**

The purpose of the research is to identify the level of usage of secret source by journalists, how they approach and contact the secret source, how preserve the communication and what obstacles are faced in protecting the secret source.

To achieve the goals the following objectives are identified:

1. To establish level of attracting the secret source by journalists and forms of cooperation.
2. To identify obstacles, challenges faced in the protection of the secret source and pressures faced when resisting to reveal it.

3. To identify how the Criminal code provisions of wrong accusations and loss of reputation influence the work of journalists.

### **Research scope, term**

The research was conducted among journalists involved in the social, political and financial media and who write/prepare programs/further referred as “journalists”, from which 177 journalists are from Ulaanbaatar and 26 journalists from 21 aimags. Out of total 203 journalists 106 work for newspapers, 78 for TVs, 15 for radios and 4 journalists for online media. Involvement of only 26 journalists from rural areas indicates the few media operating in the countryside. In addition, in rural areas there was not enough number of journalists specializing in social, political and financial areas, therefore 1 journalist from each aimag, in some more media developed aimags- 2 journalists were selected in the research.

Research methodology was developed in November and December of 2007 and the data was collected in period of the 2nd-31st of January and was processed in one month period.

### **Research methodology**

“Globe International” NGO established a research team consisting of 6 people, developed research methodology and questionnaire and reflected opinions of consultants. The research data was gathered by questionnaire and collected in by 26 researchers in total, out of which 5 researchers collected data in Ulaanbaatar and one each in 21 aimags. When the information was considered to be of ambiguous nature the additional inquiry was done.

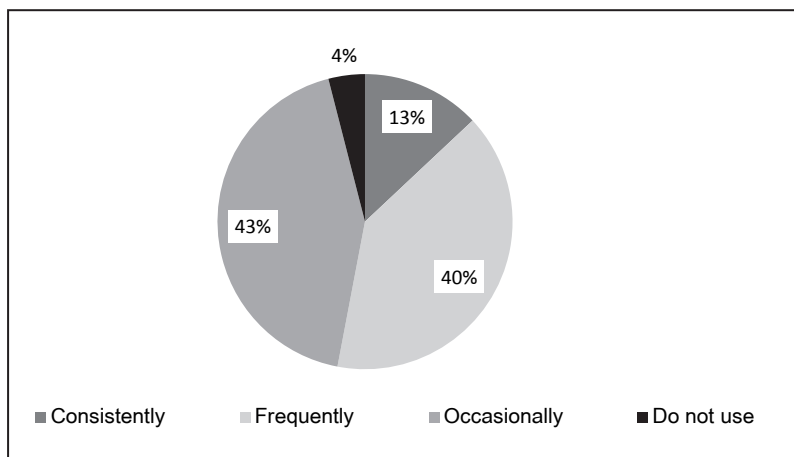
Monitoring team has processed the gathered data on SPSS11.5 software by quantitative and qualitative analyses.

## **I.2. USAGE OF SOURCES BY JOURNALISTS**

### **I.2.1 Journalists level of usage of secret-sources**

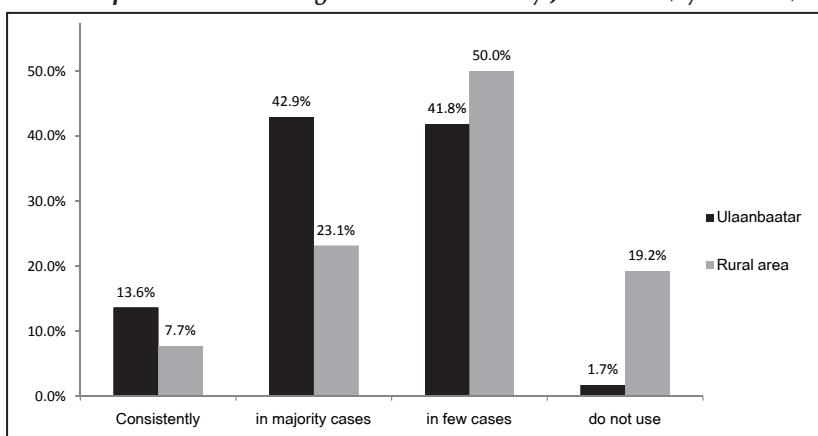
Out of total 203 journalists participated in the study 13 percent use consistently the secret source of information, 40 percent use it in the majority of their programs/ articles and 43 percent use it occasionally or few times. Only 4 percent have never based their work on secret source of information.

*Graphic 1. Level of usage of secret source by journalists*



In Ulaanbaatar journalists rate relatively higher in usage of secret sources. For example, in Ulaanbaatar journalists use the secret sources twice more on consistent level and on majority cases in comparison to rural journalists.

**Graphic 2. Level of usage of secret source by journalists (by location)**



From rural journalists merely 8 percent use actively or on consistent level the secret source to prepare their programs /publications, also 23 percent of them stated that they use it in most cases, half replied that they use secret source only in big necessity and 12 percent do not use it at all or never use the source as base f their stories.

If we compare media by types, then newspaper journalists tend to use the secret source much more than other journalists. Particularly, as for journalists using the secret source on constant base newspaper journalists make 18 percent when TV journalists make 8 percent, for journalists using it in majority cases newspaper journalists make 48 percent and TV journalists make 37 percent. In comparison, radio and online journalists use sources relatively less. If connect this to the publication and broadcasting policy then we can conclude from the research that newspapers and TV are more into investigation of social and economic topics.

As for the gender of journalists the percentage of usage of secret source is different. 18 percent out of 72 male journalists and 11 percent out of 131 female journalists use constantly the secret source. Also 43 percent of male journalists and 39 percent of female journalists in most cases use the secret source in their publications and programs.

If to compare by work experience in the sector it is common for the journalists with 2-3 years of experience to use the secret source in their work.

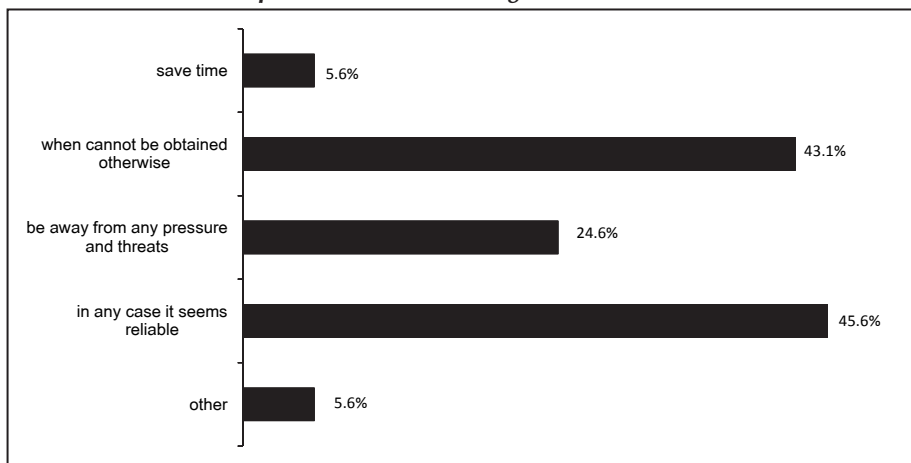
**Table 1. Level of using the source (by years worked in the media sector)**

	Constantly	In majority of cases	In few cases	Do not base on sources
1 year	10.3	37.9	44.8	6.9
2-3 years	22.2	48.9	24.4	4.4
4-6 years	9.8	41.2	45.1	3.9
7-10 years	11.9	35.7	50.0	2.4
11-more years	8.3	36.1	52.8	2.8

**1.2.2. Reasons for using the secret source.**

The reasons and justifications for 195 journalists using the secret source in their publications and programs are reliability (45.6 %) and possibility to obtain information when not possible otherwise (43.1 5). It can be directly referred to the lack of information integrity and freedom in the country.

**Graphic 3. Reasons for using the secret source**



Particularly, 52 percent out of 26 rural journalists use it when the information can not be obtained otherwise, and 57 percent consider it to be reliable in any case, which indicates that in rural area much more difficult to obtain information in comparison to Ulaanbaatar. Also in “other” journalists included reasons such as making the news more balanced, enhancement of the information, protection of public interests, providing public with true information and etc.

As for the journalists who use the secret source constantly or frequently the reliability of the secret source plays the main role and importance, as for the journalists who use secret source less frequently the unavailability of the information is the reason for using the secret source.

**Table 2. Reasons for using source (level of usage of secret source)**

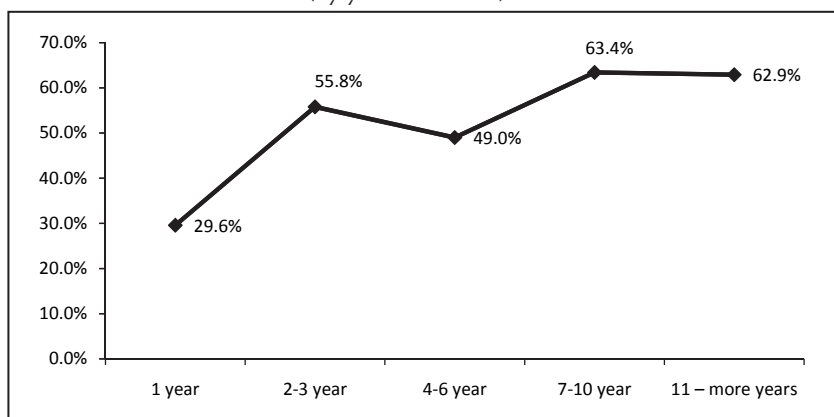
	Constantly	Frequently	Occasionally
Time saving	11.5	4.9	4.6
Information is unavailable	30.8	36.6	52.9
Be away from threats and pressure	34.6	18.3	27.6
In any case it seems reliable	57.7	58.5	29.9

**1.2.3. Journalists who sustain stable connection with their secret sources**

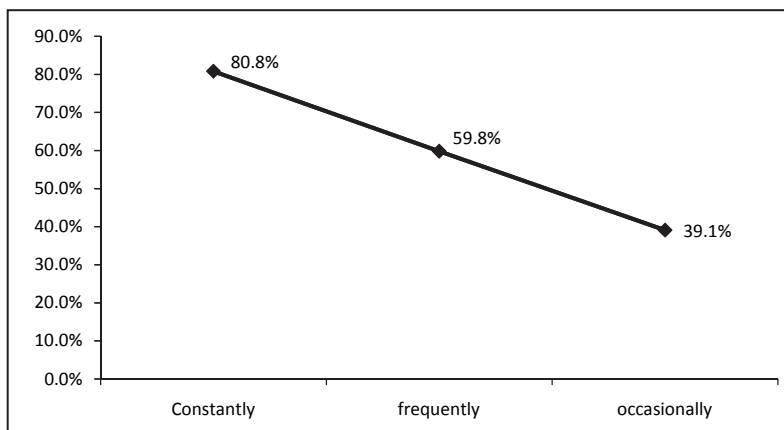
Out of total 195 journalists 53 percent have a stable communication with their secret source of information. As for gender 66 percent of male, 46 percent of female journalists and as for location 53 percent of Ulaanbaatar, 57 percent of rural journalists have stable communication with their secret source of information.

Also the secret source usage level and the work experience of journalists in the media sector are interrelated, its stable communication increases with years:

**Graphics 4. Whether journalists have stable secret source (by years in media)**



**Graphics 5. Whether journalists have stable secret source (secret source usage level)**

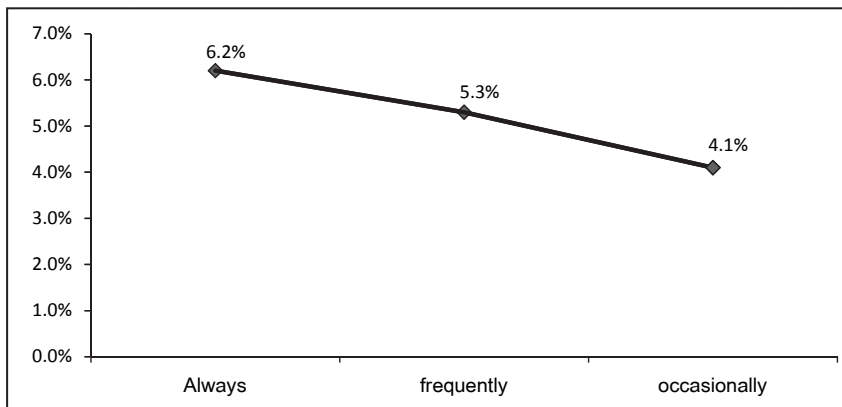


As for journalists, who have stable secret source, they are reluctant to open up the actual number of the sources. For example: from journalists involved in the research

104 replied to have stable secret source and communication and out of which 41 percent revealed the number of secret source. From the replies there are 5 stable secret sources per journalist.

Journalists who prepare their publication/programs always based on the secret source tend to have more stable secret sources. For example, 26 journalists who work with secret sources on average have 6.2 sources, 82 journalists whose work frequently based on secret sources on average have 5.3 sources, and also the trust level is defined by the stability.

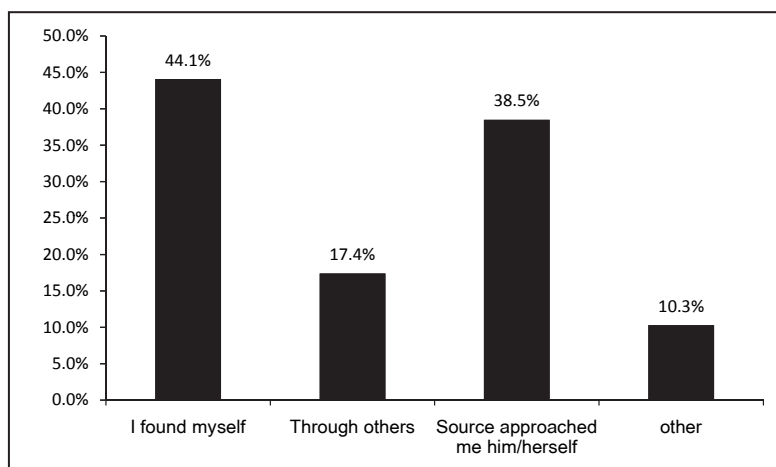
**Graphic 6. Number of secret source and level of secret source usage**



#### **I.2.4. Forms of connection with secret source**

As for the forms of connecting with secret source it is common for journalists to seek the source of information by themselves and the source to approach the journalists.

**Graphic 7. Forms of approaching the sources by journalists**



Common tendencies, in Ulaanbaatar journalists tend to contact sources themselves (in Ulaanbaatar 44 percent, in rural area 43 percent), in rural area sources contact journalists first (in Ulaanbaatar 35 percent, in rural areas 67 percent) and through others (in Ulaanbaatar 17 percent, in rural areas 24 percent). This can be explained by the uneven number of location of journalists working with secret sources. For example, in Ulaanbaatar media is more concentrated, thus there is more competition and choice of journalists to offer the secret information, and thus the journalist's active actions are important. In rural areas number of journalists to offer information for secret sources is few, choice is limited, and thus active actions of secret sources are observed to be more common than journalists' initiatives.

If compare media by types introduced to public the ways of approaching and contacting sources differ among 195 journalists. For example, it is common for the source to approach a journalist (TV -48 percent, newspaper 33 percent), and for the journalists to seek for the information sources themselves (in newspaper 58 percent, TV 27 percent).

If compare with the journalist's level of usage of secret source the majority of journalists who use sources constantly and in most cases (constantly 81 percent, in most cases 54 percent) find own secret source as a result of active search and investigations.

### **1.2.5. Confirmation of the information received from the source with additional source.**

Journalists have a duty to provide public with true information. By this journalists responsibility is to check and confirm any information with additional source. When asked about the confidences in information provided from the source 62 percent out of 195 journalists said that even though they are confident with the source they always confirm and check the information with additional source. It leads to the conclusion that publications and programs released in media are true and well justified. In addition 9 percent of journalists are fully confident with the information provided by sources thus do not check it and 20 percent right away release the information which meets interests of public. However, 4 percent do not trust the information provided by the source, but have to use it. It proves that journalists take risks for the public interests, plus it shows the trust level in their sources.

***Graphic 8. In what level journalists confident in their information source?***

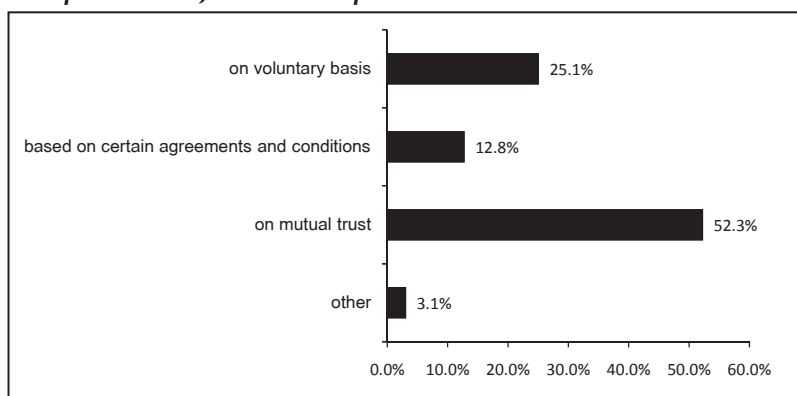
If compare by type of media it is common for newspaper journalists to be fully confident in their sources (newspaper 13 percent, TV 5 percent), for TV journalists to confirm the information with additional source (newspaper 61 percent, TV 67 percent), to release for the public interest (newspaper 17 percent, TV 20 percent), do not trust, but have to release (newspaper 3 percent, TV 5 percent).

If compare with work experience and years in media the checking and confirming with additional source and releasing for the public interest are increasing. However, as for 104 journalists with stable sources 14 percent are fully trust their sources, 68 percent check with additional sources, 15 percent release for public interest and 2 percent do not trust but have to use it.

#### 1.2.6. Forms of cooperation of journalists with their secret sources

The majority of journalists have established their relationships with sources based on the mutual trust.

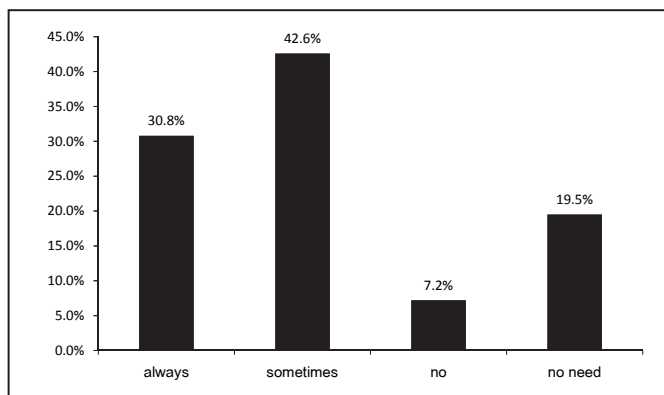
**Graphic 9. How journalists cooperate with their sources of information?**



If compare it by location of media in Ulaanbatar 25 percent are on voluntary basis, in rural area it is 29 percent. Based on certain agreements and conditions in Ulaanbatar 16 percent, in rural area 24 percent, based on trust in Ulaanbaatar 54 percent and in rural area it is 38 percent.

One of the important issues determining the information quality is the awareness of the journalist of the underlying reasons of the secret source to provide the information. 31 percent of journalists always determine and ask about the purpose of the source, 43 percent in some cases, 27 percent do not enquire or think there is no need for it. If we look from media location point of view it is more common to determine the underlying reasons of source in Ulaanbaatar (city 32 percent, rural 19 percent). This is related to the fact that in rural area the population is less dense and people know each other better.

**Graphic 10. Whether journalists determine purpose of the source providing the information**



The majority of journalists constantly relying on secret sources (69 percent) enquire about the purpose of the source. From total number of journalists with stable secret sources 30 percent always ask about the purpose, 39 percent ask sometimes and 31 percent do not ask or think there is no need which shows high percentage of not determining the reasons among journalists with stable sources leads to the conclusion that long term cooperation creates trust in information source.

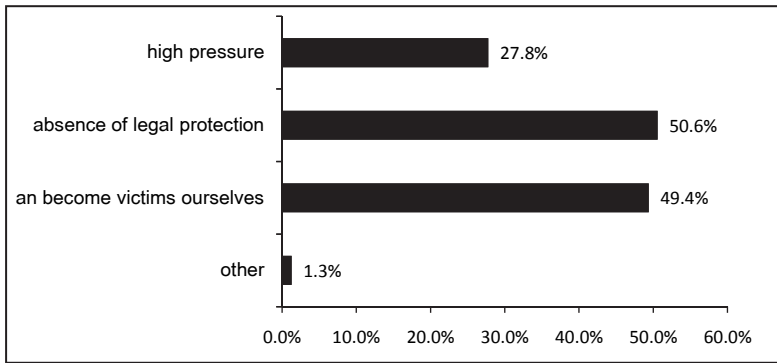
### I.3. OBSTACLES AND CHALLENGES FACED IN PROTECTION OF SECRET SOURCES

#### I.3.1. Belief of journalists in ability to protect their secret sources.

41 percent of journalists involved in the research agreed that they are not confident in their ability to protect and hide the sources. If take by location this is true for 37 percent of journalists out of 174 journalists in Ulaanbaatar and 71 percent of rural journalists, which shows the high pressure and threat for rural journalists. Also if take into consideration the fact that 39 percent of journalists who sue constantly secret sources, 29 percent of journalists who use it most cases and 52 percent of journalists who use it occasionally are not confident in their ability to protect their secret sources, which can be the main reason for not using the secret sources for journalists who rarely use them.

The majority (1/2) of journalists identified as reasons for not being confident in their ability to protect sources as absence of legal protection, thus it most likely for journalists to become victims themselves.

**Graphic 11. Reasons for not being confident in their ability to protect sources.**



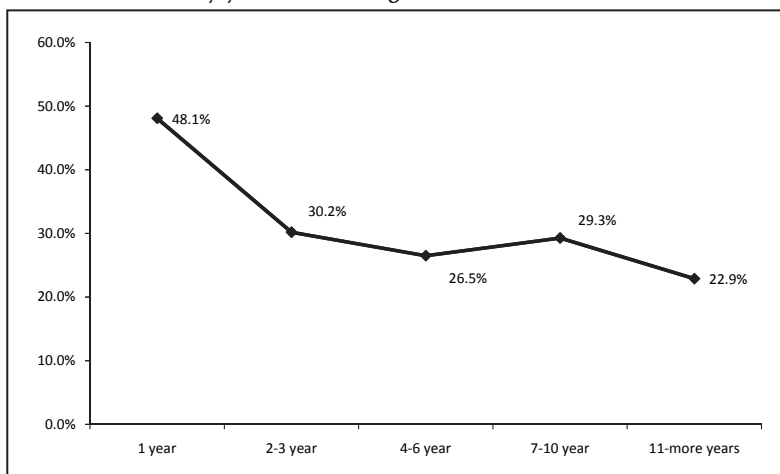
The majority of rural journalists emphasized the high pressure and potential of becoming victims themselves, majority of Ulaanbaatar journalists emphasized the absence of legal protection which shows on one hand the high pressure on rural journalists from high officials, on other hand weak legal protection for journalists.

**Table 3. Reasons for not being confident in ability to protect sources (by location)**

	High pressure	Absence of legal protection	High potential of becoming victims ourselves
Ulaanbaatar	21.9	54.7	48.4
Rural	53.3	33.3	53.3

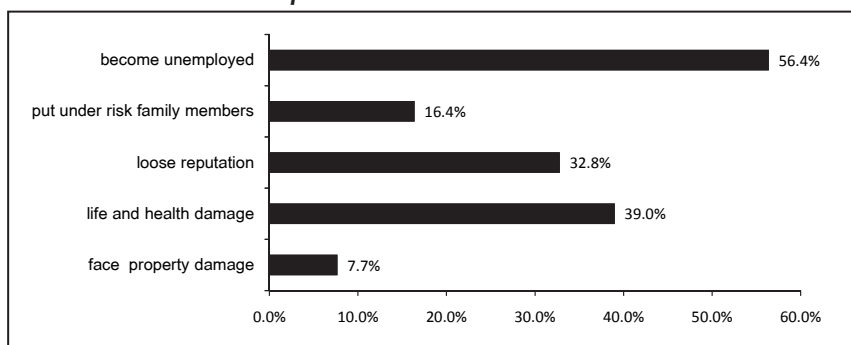
70 percent of 195 journalists do not provide any promises to their sources. This situation is 68 percent in city and 86 percent in rural area. As years of working experience increase the promises to sources decrease. For example, 46 percent of journalists always using sources provide promises; however as for journalists who use sources frequently and occasionally 72 percent can not provide promises.

**Graphic 12. Journalists providing promises to their sources (by years of working in media sector)**



They consider that there is high potential and risk for the source becoming unemployed, their health and life being under danger and losing reputation.

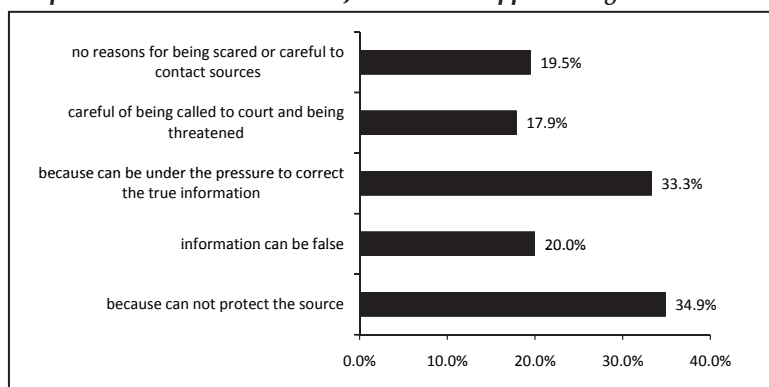
**Graphic 13. Fears of secret sources**



In rural area the main dangers for secret sources are considered risks related to becoming unemployed (71 percent) and losing reputation (57 percent), as for Ulaanbaatar threats for secret sources are related to becoming unemployed (55 percent) and losing life and health (41 percent).

When asked what are fears of journalists in relation to secret sources the majority of journalists replied that not being able to protect the source (35 percent), and being under the pressure to correct the true information (33 percent).

**Graphic 14. Reasons for fear of journalists in approaching secret sources.**



In rural area the inability to protect the information source and threat to go to court and police make journalists fear more. In Ulaanbaatar out of 174 journalists 21 percent have no reasons to fear and replied that worry about post- pressure.

**Table 4. Reasons for journalists to fear to contact sources by location**

	Ulaanbaatar	Rural area
Because can not provide the protection for the source	32.2	57.1
Information can be false	20.7	14.3
Even the information is true there is pressure to make false corrections	32.8	38.1

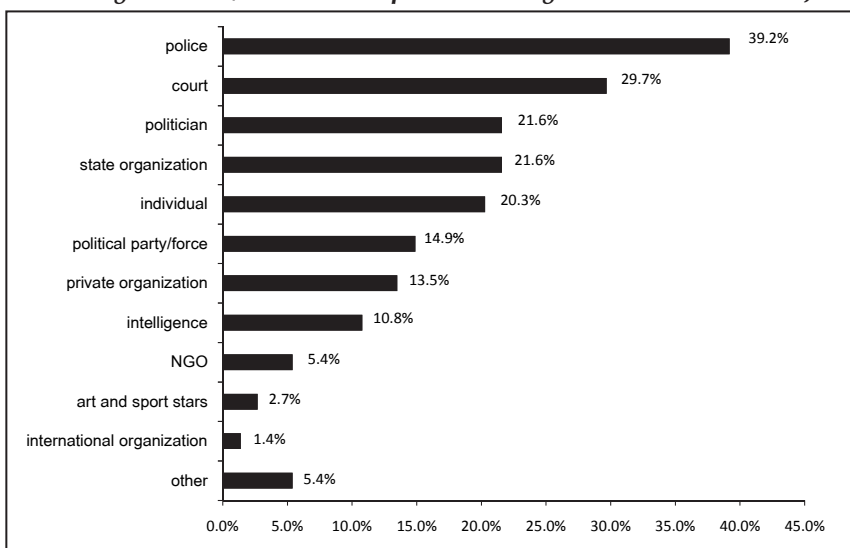
Careful, avoiding intimidation and threats to call to court	14.9	42.9
No reason to fear	21.3	4.8

### I.3.2. Be forced to reveal the secret source

38 percent out of total 195 journalists are under the pressure to reveal their sources. This is 37 percent in Ulaanbaatar and 48 percent in the countryside. Also the pressure to reveal the source increases with the percentage of level of usage of secret sources. For example, 58 percent of journalists using secret sources on consistent level, 43 percent of journalists using in most cases and 28 percent of journalists using it occasionally were under pressure to reveal their sources. It can be concluded that with deeper content of the publications and broadcasting the more it is under the pressure.

The pressure to reveal the resource is common from police (39 percent), court (30 percent), politicians (22 percent) and state organizations (22 percent). In category “other” journalists stated pressure from the organization management.

**Graphic 15. Organizations/individuals required revealing the secret-source from journalists**



In rural areas the pressure mainly comes from court, politician, state organizations, as for Ulaanbaatar the pressure derives mainly from police.

**Table 5. Organization/individual required to reveal the source from journalists (by location)**

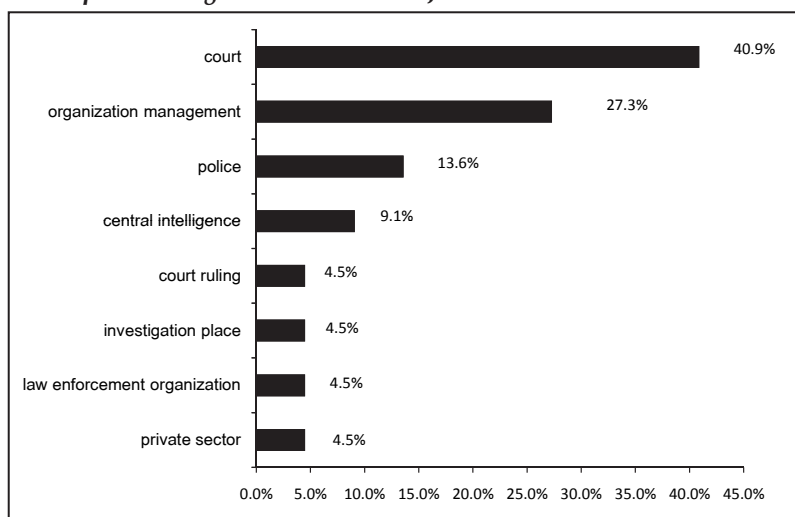
	Ulaanbaatar	Rural
Court	26.6	50.0
Central intelligence	12.5	-
Police	43.8	10.0
State organization	18.8	40.0
International organization	1.6	-

NGO	6.3	-
Private organization	15.6	-
Political party/force	12.5	30.0
Politician	18.8	40.0
Art and sport stars	3.1	-
Individual	20.3	20.0
Other	6.3	-

### I.3.3. Journalists revealing secret source

23 percent (45 journalists) or one out of each 4 journalists has revealed their secret source of information. It is similar in terms of location (city 23 percent, rural 24 percent) and form of media (TV 23 percent, newspaper 24 percent). Number of journalists who revealed secret sources to the court, police and own organization management is high (27 percent).

**Graphic 16. Organizations to which journalists revealed their source**



It was common for rural journalists to reveal their source to the court, in Ulaanbaatar it was common to reveal to the court and organization management.

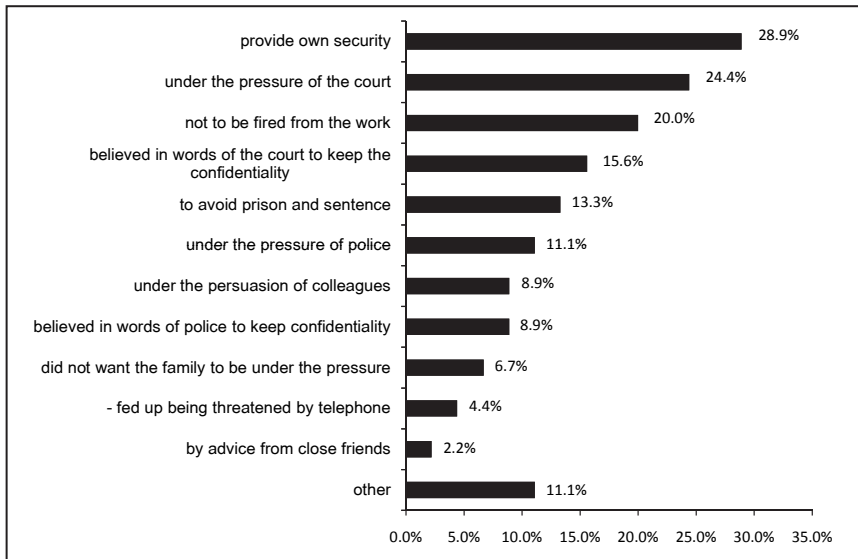
**Table 6. Organizations to which journalists revealed their source (by location)**

	Ulaanbaatar	Rural
Court	33.3	75.0
Intelligence	11.1	0.0
Police	11.1	25.0
Private sector	5.6	0.0
Own management	33.3	0.0
Enforcement organizations	5.6	0.0

Investigation departments	5.6	0.0
Court decision enforcement agency	0.0	25.0

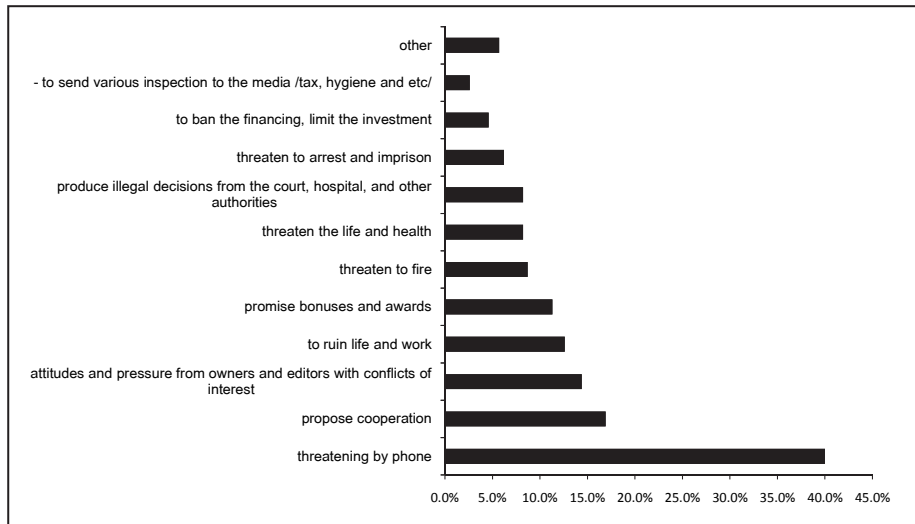
Journalists reveal their secret sources of information to ensure own security, under the pressure and threat from court and organizations, in order not to be fired from the work, believed in words of the court and organizations to keep the source confidential and not to go to prison and be sentenced.

**Graphic 17. Reasons of journalists to reveal secret sources**



In case of refusal to reveal the source it is common for journalists to receive threats by telephone, cooperation proposals, attitudes of owners and editors with conflict of interests and pressure.

**Graphic 18. Pressure and threats in case of refusal to reveal the source.**



The widely spread form of pressure is the telephone threat, and 18 percent of Ulaanbaatar journalists out of 174 receive cooperation proposals and 19 percent out of 21 rural journalists feel pressure from owners and editors with conflict of interests. It can be related to the ownership.

**Table 7. expected pressure and threat in case journalist has not revealed the secret source (by location)**

	Ulaanbaatar	Rural
Telephone threat	39.7	42.9
Threaten life and health	8.0	9.5
Prohibit financing, limit investment etc	3.4	14.3
Illegal decisions from the court, court hospital and other authorities	7.5	14.3
Promise bonus and awards	12.1	4.8
Cooperation proposal	17.8	9.5
Threaten to ruin work and life	12.6	14.3
Threaten to arrest, imprison	6.3	4.8
Threaten to fire from work	8.6	9.5
To send various inspections to media /tax, hygiene etc/	2.3	4.8
Pressure and attitudes from owners, editors with conflict of interest.	13.8	19.0
Other...	6.3	

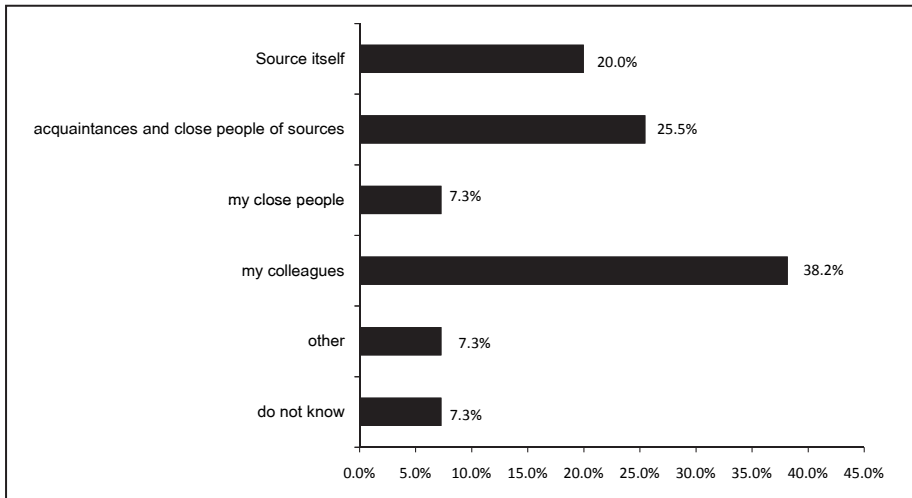
#### **I.3.4. Secret source is revealed without journalist's involvement**

Media experts consider that it is not rare in Mongolia when the secret source is not revealed by the journalists it still revealed to the public. Out of 195 journalists 28 percent experienced the same situation when their secret source of information became open to public without their involvement.

If we dig deeper 35 percent of journalists using the secret source on constant basis have experienced this case.

When identified who revealed the source it is common to observe the involvement of the journalist’s colleagues, acquaintances and close friends of the source.

**Graphic 19. Source which revealed the secret source**

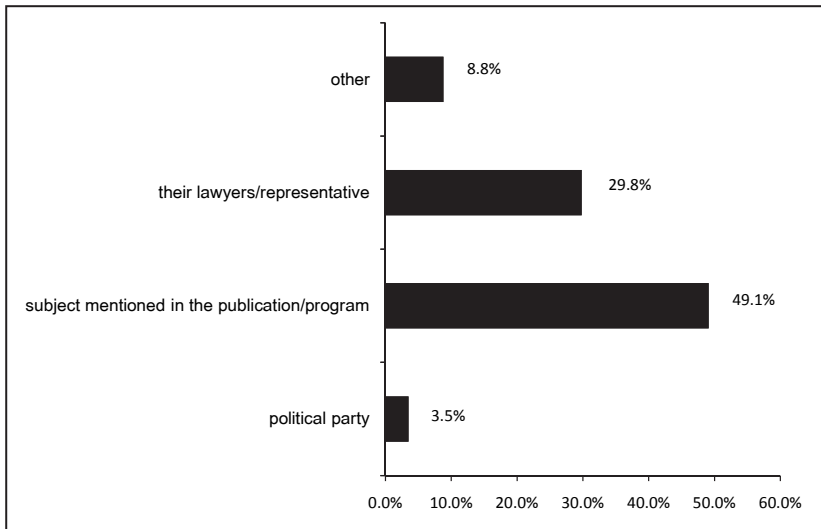


### **1.3.5. Criminal cases, civil arguments**

Depending on the information provided by the secret source 29 percent or 57 journalists were involved in criminal cases and civil arguments. From Ulaanbaatar journalists participated in the research 30 percent and from rural journalists 24 percent were involved in legal cases. When categorizing 16 percent were criminal cases and 63 percent were civil arguments. If compare by location the criminal cases are common in rural areas (city 15, rural 20) and civil cases are common in Ulaanbaatar (city 64, rural 60).

49 percent of claimers against the journalist are subjects mentioned in the publication/ broadcasting, 30 percent their lawyers/defense, 4 percent political party/force and 9 percent other subjects.

**Graphic 20. subject claimed against the journalists**



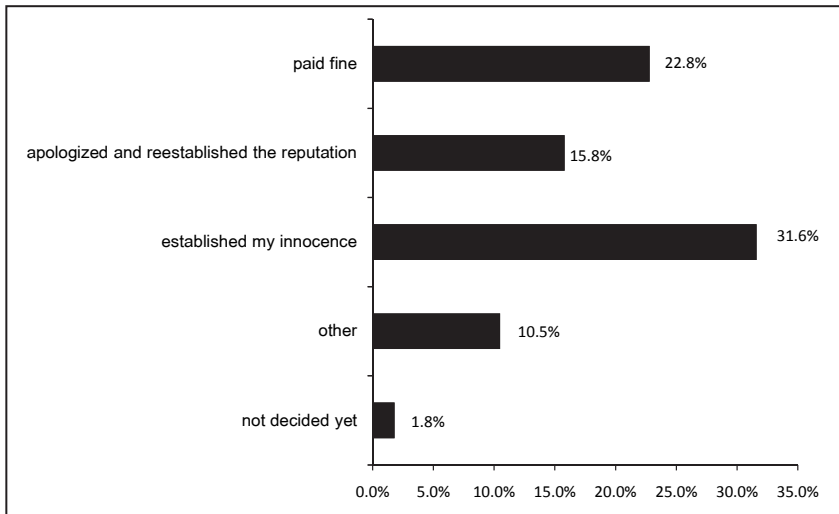
If compared by years of work in journalism the following can be observed:

**Table 8. Subject claimed against the journalist and years of work of the journalist in media**

	Political party	Subject mentioned in the publication/program	Their lawyer/representative
1 year	-	14.3	-
2-3 years	-	14.3	17.6
4-6 years	-	17.9	29.4
7-10 years	-	32.1	29.4
11-more years	100.0	21.4	23.5

We can prove that journalists are threatened and controlled by law from the fact that 32 percent of journalists or one out of three journalists were found not guilty. However, 23 percent paid fine, 16 percent apologized, and restored the reputation, 11 percent solved the conflict by mutual agreement and other ways and 2 percent or 1 journalist's case was not finalized yet during the research.

**Graphic 21. Subject claimed against the journalist**

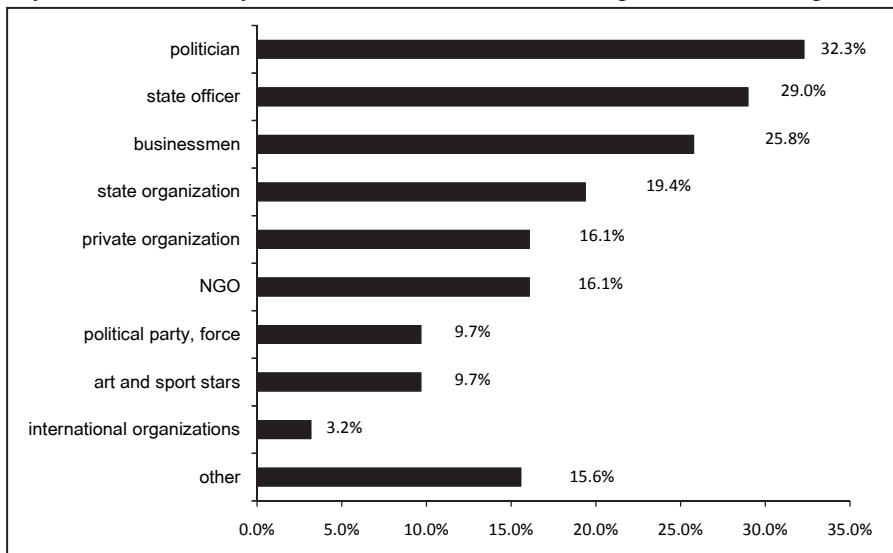


15 percent or 31 journalists are been called to the court as witnesses for the information provided by the secret source. If compared by location, 19 percent were rural journalists.

If compare it by years worked in media sector, 7 percent are journalists working in the first year, 18 percent worked for 2-3 years, 14 percent for 4-6 years, 19 percent for 7-10 years and 17 percent for more than 11- years. Also from journalists who constantly use secret sources one out of 4 participated in the court session as a witness.

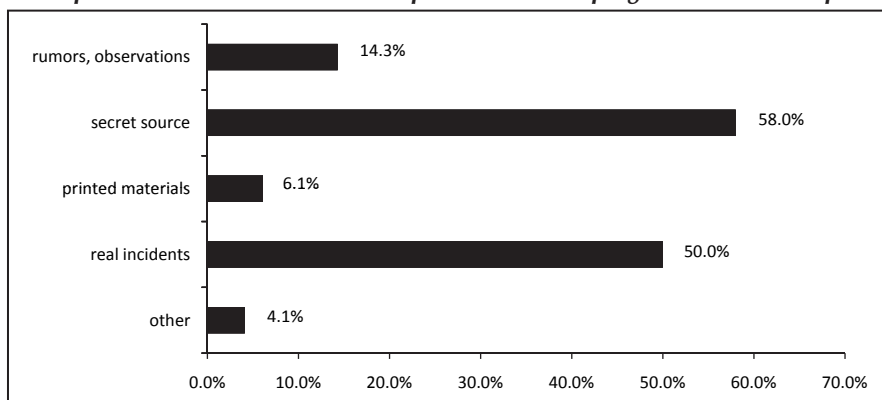
When asked against whom journalists provided any evidence and statement:

**Graphic 22. Journalists provided statements and evidence against the following subjects**



Out of total 57 journalists who faced criminal provisions related to wrong accusations and reputation loss 58 percent prepared their publications/program based on secret source, 50 percent on real situation, 14 percent based on rumors and observations.

**Graphic 23. Based on what sources publications and programs were developed**



If compare the above indicators by punishments received from the court 75 percent of journalists who were imprisoned based their publications/programs on the information from secret sources and 25 percent based on rumors. As for journalists who were fined, they based their publications and programs on sources and real incidents.

**Table 9. On what sources were your publications and programs based on, if received punishment by the court what punishment?**

	Imprisonment (3-6 months)	Fine
Rumors	25.0	23.5
Secret source	75.0	66.7
Real situation	0.0	41.2

14 percent of journalists who relied on secret sources revealed their sources and all received punishment in the form of paying fine. This means that journalists to avoid imprisonment and to ease the punishment revealed their sources. As for the journalists who refused to reveal their sources 30 percent were imprisoned and 70 percent paid fine.

### **I.3.6. F. Information confidentiality dependent on the criminal case**

5 percent of 203 journalists involved in the research depending on the provisions related to the wrong accusations and attack at reputation in Criminal code are always under fear to provide public with true and real information, 68 percent in some cases were scared depending on their publication/program, 27 percent do not fear. Answers do not differ in Ulaanbaatar and in rural areas.

If compare journalists by level of usage of secret sources it is interesting that journalists who use secret sources constantly are always scared and under fear like journalists who do not base their work on secret sources.

**Table 10. On what sources have you based your publications and programs, if punished by the court what is the punishment?**

	Always	In some cases	No
Always	11.5	73.1	15.4
In most cases	2.4	75.6	22.0
In few cases	3.4	63.2	33.3
Do not happen	25.0	37.5	37.5

Reasons for being scared to deliver true information to public journalists explained by the following reasons: fear of destroying someone’s reputation, much pressure from officials, being threatened by arrest and imprisonment, being scared to loose life and health, because the local community is small, high officials threaten by court and police, absence of the legal environment protecting journalists, legal provisions are not clear, prohibit our activities and strict, and thus enforcement organizations treat journalists in unethical manner to push the case.

## I.4. CONCLUSION

It is common for journalists working on publications/programs of social, political and economical nature to use secret sources. For example, 13 percent of journalists use the secret source constantly, 40 percent use for the most of their publications/programs and 43 percent use it occasionally or when necessary. However, the rest of journalists, 4 percent, never use sources or have no contacts with secret sources.

In most cases journalists use secret sources for reasons such as being reliable and when the information is not available otherwise.

53 percent of journalists have stable contacts with their secret sources, on average there are 5 secret sources per journalist. This is directly related to the level of usage of the secret source. For example, journalists who use secret sources constantly have stable contacts with 6.2 on average, journalists who use secret sources in most cases with 5.3 and journalists who use it occasionally have on average 4.1 secret sources.

Journalists are responsible for providing public with true information. By this journalists bear duty to double check and confirm any information by additional sources. When asked about the level of trust in their secret sources by the predetermined habit out of 195 of journalists 62 percent are confident in their sources , however always double check with additional source, which leads to the conclusion that publications and programs released via media are true, well justified.

One of the important direct indicators of the quality of the information is the journalist’s knowledge of the reasons of the secret source to provide the information. When clarified from journalists 31 percent always require the reason from their secret sources and 43 percent clarify the reasons sometimes. However, 27 percent of journalists do not require about reasons and do not find it to be necessary.

Even though in Mongolia the censorship is prohibited by law, it still exists in open and hidden forms. For example, 38 percent of journalists were forced to reveal their sources. This indicator is 37 percent in Ulaanbaatar, 48 percent in rural area. 23 percent (45 journalists) of these journalists or one journalist out of 4 has revealed own secret source of information which shows that freedom of information and journalists’ professional rights are continue to be violated. Establishment of media

control and requirements for journalists to serve limited interests is beyond democratic nature, norms and principles and can not be tolerated.

Decision makers use own power and authority to press down fair criticisms and in order to hide own wrongdoings from people are misleading the true information which leads to the serious damage of the public interests. Journalists had experienced frequent pressure to reveal their information sources from politicians, police, and court and state organizations.

In the Mongolian Criminal law of 2002 provisions related to wrong accusations and humiliation became even stricter and enforced that right to require journalists to reveal their sources and in case of refusal to make accountable. All these allow decision makers and authorities to widely use Criminal Code to shut journalists' mouths. Results of monitoring show the current wide spread tendency among politicians and high officials to use Criminal code and Civil code provisions as censures. For example, depending on the information provided by the secret source 29 percent of journalists were involved in criminal cases and civil arguments, out of which 16 percent were criminal cases and 63 percent were civil cases.

49 percent of subjects who claimed against journalists were people mentioned in publications/programs themselves, 30 percent were their representatives/lawyers, 4 percent were political parties/force and 9 percent were others.

In those criminal cases and civil argument 32 percent of journalists or one in three did not receive any punishment, which is encouraging, however 23 percent paid fine, 6 percent publicly apologized and restored the reputation, 11 percent concluded some form of agreement and 2 percent or 1 journalist's case was still pending for the decision during the research period.

Such violations of journalists' rights limit freedom of media, and journalists are in situation of not being able to distribute true information and the real damage to interests of democracy and society occur.

## **II. "PROTECTING JOURNALIST'S SECRET SOURCE" COMPARATIVE STUDY.**

### **II.1. PLAN AND METHODOLOGY OF THE COMPARATIVE STUDY ON LAW OF "PROTECTING JOURNALIST'S SECRET SOURCE"**

#### **Justification**

In several countries it is considered that protection of the source is part of the Constitution's right to freedom of expression. In the chapter 2 of the Mongolian Constitution the human rights and freedom are approved. Therefore, based on the above justifications if in Mongolia we will adopt the independent law on "Protecting the journalist's source" it would be possible to create more progress among Asian countries. Therefore, proposing the following issues which need to be reflected.

In foreign countries it is accepted and approved by the legislations that “protection of the journalist’s secret source is one of the main conditions for protecting freedom of information”.

In democratic society the role of journalists in revealing crimes, violations and wrong doings is important. Decision makers use criminal laws as censorship to shut journalists’ mouths.

Around the world journalists thrive to protect people who provide them with confidential information. However, journalists do not seek special rights and status for themselves. They consider it to be their duty for informants who face serious consequences for taking out the information to public and journalists. Otherwise the information will stay hidden and it would not be possible to fulfill needs of public demanding information. If even only one informant’s confidentiality is revealed other people with important information will stop approaching journalists.

The legal protection is required for journalists to fulfill their ethical duty to keep confidentiality of the information source obtained by trust in any situation /condition. In Mongolia it is common to require journalists to disclose their sources before the court and during the court. Majority of people pressing journalists mostly threaten journalists by court, police, and imprisonment. There is a case when it was promised not to touch the source to obtain the information. Journalists were scared to report on those cases when threatened before the court. Some informants will want to share information only when confident in the journalist’s independence which is the main principle. It is important that the information shall be obtained from the source only when meeting the requirement of secrecy.

Thus, in Mongolia the status of journalists is not definite and thus their role and real influence is absent. If court, police, intelligence and other enforcement organizations require journalists to work on their side and start pressing them to disclose the secrets and provide proof in the form of video recording, written documents and other, then journalists can not be independent.

Thus, in order to define the law on protecting journalist’s secret source, its principles with theoretical and practical justifications there is a need to compare laws, related regulations and international standards of other countries, specially countries with relatively well developed legal environment and to establish basic knowledge and understanding.

### **Outcomes of the research**

Outcomes of the comparative study would be the establishment of preliminary understanding, contribution in the development of legal regulations based on the best practices and forming an opinion in Mongolia on the protection of journalist’s secret source by comparing international legal definitions for the journalist’s secret source, what are the protections, limitations and regulations and what are conditions for the journalist to fulfill its professional duties.

## **II.2. COMPARATIVE STUDY**

The main purpose of the comparative study is to establish best practices in protecting the secret source by comparing legal acts, practices and models and by proposing some legal principles and justifications that can be reflected in the Mongolian laws and legislations.

Within the scope of the study the European Union countries’ legal acts were thoroughly covered. It is related to the fact that the issue of protecting the journalist’s secret source is broadly discussed

and the legalization is done further in European countries in comparison to Asian countries where detailed regulations are not formed yet.

Moreover, European Human Right's Convention, European Council of Ministers' recommendations on "journalist's right not to reveal the information source" 2000/7 were studied. The recommendations mainly cover European Union member countries, however these are legal acts showing and recommending terminology, definitions, justifications in clear and detailed manner and can be used as samples in Mongolian related regulations.

As the outcome of the comparative study we aimed to define terminology, scope of protecting the source, involvement of the court, principles and other that can be reflected in the Mongolian legislations related to Protection of journalist's sources.

In Sweden, in 1766 the directive on Written and Press freedom adopted and accepted for the first time the principle of protecting the confidentiality of the informant <sup>1</sup>.

- **Belgium Law** protecting journalist's source was approved in Apr 7, 2005 and was in force in May 7, 2005.

Belgian law on Protection of Journalist's source not only defines who is the journalist, what information is to be protected, but also decreased the full authority of the court in ordering the journalist to disclose the secret source.

According to the 2nd provision the protection of source is secured for the following people: subject directly providing support in collection, editing, writing and distributing of information for media via media, - regardless of whether being involved in the information collection, development, writing and distribution or not the person occupying the position authorized to order to disclose the source or can be a professional editorial committee.

According to the 3rd provision the journalists and members of editorial committee have a right to refuse to disclose the information in the following 4 conditions if it is required from the authorized official. – if nature of information can disclose the real true nature of the source, - if information can reveal the information's origin and nature, -if information can have audio and video form or can reveal the true nature of the text, - if disclosure can reveal related information and documents. Even though there are circumstances stated in the 4th provision it is possible to request from the journalist or editorial committee to disclose the source in the following 3 extraordinary circumstances: - if information is related to the crime seriously threatening lives of one or more people, - if required information is important to prevent those, -if required information can not be obtained otherwise.

If it is not the subject stated in the provision or provision 4 which prevents the crime then any measures to examine and investigate the related information source should not be directed at the journalist and editorial committee according to the provision 5 /investigation, taking measures, telephone recording etc/. The order to reveal the source should meet the legal requirements: there are not any other choices or ways to obtain the information or the information in possession of the journalist can prevent the crime which seriously threatening lives of one or more people.

According to the 6th provision journalists and an editorial committee while implementing the right to keep silence about the information source would not be punished according to the provision 505 in Criminal law of Belgium. The provision 505 of Criminal law is about punishing a subject who obtained, used or received documents collected by illegal ways. Journalists are not punished

<sup>1</sup> §4. Translation available in the First Freedom of Information Act: Anders Chydenius' legacy today (Chydenius Foundation, Kakkola, Finland 2006).

for implementing the right to protect own sources or for breaking professional confidentiality and for conspiracy. Moreover, as defined in 458 provision of Criminal law in case of breach of professional confidentiality people are covered in the 2nd provision of law on Protection of the source are not punished while implementing their right to keep silence about the source, in other words journalists and editorial committee are not punished for being involved/ conspiracy in crime. .

- **England**, the 10th provision of the law on Disregard to the court, 1981. Goodwin's case has created few amendments in the legislations. It plays a significant role in explanation of the status of European Human Right court convention and its operation.

The 10th provision of 1998 Data protection act: it states that journalist can not be forced to disclose the secret source other than in conditions when keeping silence threatens national security, discovery of crime, prevention of crime or establishing the justice.

The 58th provision of Act on Protection of Information includes provision on disclosure of the information. It states that any law prohibiting or limiting to disclose or open the source according to this act can not prohibit/create obstacle to provide the necessary information to the court and a commissar implementing own duties stated in the act. The disclosure of the information is legal in the following situations: a/ the particular source has provided consent, b/ the information was provided in order to meet public interests, c/ disclosed for necessary requirements and purposes- according to this act there are directives and duties – Association's role, a/ disclosed for criminal and civil case procedure purposes, b/ disclosed for the public interests, it is considered to be the country with the most comprehensive system in Western Europe.

- **Germany**, in Media laws of most districts (county) provisions provide rights to journalists to refuse to disclose the true nature of their secret sources. In the 1st part of chapter 24 of the North Rein Besfile's Media law there is a common regulation. In addition the 383rd provision of Civil procedure law and the 53rd provision of Criminal procedure law regulate too. In the North Rein Wesfiale's Media law, article 24.1 : it is permitted for media related professionals such as editors, journalists, publishers and others to refuse to disclose the author, messenger, authorized subject and evidence documents related to the content, part of the product or the whole information released in the media. Journalist is provided with the right to protect the source even it is suspected in crime. In the 383 provision of civil procedure law: journalist depending on the profession is provided with the right to refuse to disclose proves regarding the confidential facts without consent from the source. The 53rd provision of Criminal procedure provides the right for radio and print media journalists to refuse to provide evidence related to confidential source and content.

- **Austria**, the protection of journalist's secret source is reflected in detail in the 31st provision of 1981 Media law. Publishers, editors, journalists and employees occupied in media organizations called to the court and other authorized officials have a right to refuse to answer the questions related to the information source, supporter, author and their professional activities.

Austrian law protects the journalist's secret source very efficiently in both practice and legislations.

- **Philippines**, the law in this country is specialized. The law was first adopted in 1946, in 1956 it was empowered more by new amendments. According to the civil and criminal laws it is forbidden for newspaper and journal publishers, reviewers and speakers to require journalists to disclose the secret source of information if it is not considered to be related to national security from Congress committee and court.

- **Finland**, in 1918 the rights of journalists to protect own source was legalized and approved. It is permitted to force the journalist to disclose the source if it is related to the crime for which to serve 6 –more years.

- **European Human Rights Convention**<sup>2</sup> Provision 10 of European Human Rights Convention: Increased the “right and responsibility” of each person to receive information without third party involvement of the authority and conditions to limit that right. – These limits shall be stated in the law. Any official without legal right can not limit the rights. – They should follow and obey “the essential democratic requirements”. In order to prevent the revelation of secret source information the limitations are put on the freedom of expression. The decision to disclose or not any secret information is the case of breaching the trust thus it is considered that it must not be protected by provision 10.

Provision 10:

10.2. In order to utilize the freedom to receive and release information the certain responsibilities shall be taken on, thus it is possible to limit or punish the guilty person defined in the law, necessary for the democratic society, for national security, geographic wholeness, social order, and to prevent from social disorder, crime, to protect citizen’s health, moral, reputation and rights, to prevent from revealing secret information obtained for trust, to preserve the court power and justice.

Human rights court has established the highest standard for protection of the journalist’s source. The confidentiality of the source is the “ main condition of the media freedom” . The court has firm standing and position on the protection of the source and pays significance.

- **In Austria**, France, Germany, Netherlands, Norway and Sweden it is rare for journalists to be ordered to disclose the source.

- **In France**, in 1993 Criminal procedure law the new amendment was done, the principle related to the criminal procedure was approved. In 109.2 of provision 109: “If the journalist is called as a witness in relation to the information collected in the process of the work he/ she has a right to refuse to disclose the source. Some of the ideas and opinions are invaluable. Firstly, the right to hide the source is extreme, however not confidential. In second, this law covers only people called as witnesses, refused to approve, not confidential and sentenced. In third, by this act the journalist and journalist’s activities are not defined.” In 56.2 of provision 56 of criminal procedure is reflected “not to interfere and touch the professional freedom of the journalist”, and investment and interview related to the journalists professional activities should be approved by court or state procurator. According to the French law the real protection for the journalist’s source is provided. The most importantly, besides the words in the law, it considered to be a shame for the court if a journalist was sentenced for refusing to disclose the source. This fair situation at the court is related to the broadly accepted concept of not forcing the journalist to disclose the source.

- **Netherlands’s** Media council broadly supports and recognizes the journalist’s right on the confidentiality of the information source.

- **Swedish Media freedom** law, provision 1 supports the above mentioned special subjects to protect the information source. The journalist who disclosed the source without its consent can be punished. These protections allow to provide information without any fear. Government officials can make related requests to information source in permitted certain situations defined by the Media

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<sup>2</sup> Strasburg court of European Human Rights in 1953 in September was adopted and in enforced according to the European committee adopted Human rights convention approving the main right and freedom.

freedom law. Generally, if government officials have definite reasons to consider the information source to be a traitor, spy or being involved in similar type of activities. Editor can be responsible for publishing and the actions of a policeman who investigated to discover the crime are justified. The court can order to disclose the source to protect the national security. For example, the information proving the innocence of the person who was sentenced, a policeman who obtained information proving the crime would be considered are examples of priority interests.

- **USA** Constitution amendment, the protection of freedom of expression does not protect the journalist in refusing to name the source in front of the jury. However, there are many regulations of states protecting the journalist's confidentiality. For example: in New York law the information is classified as confidential and non-confidential. The first information is protected by the extreme rights, the later not.

- **Australian** legal regulations related to the protection of the journalist's source derives from the common law. Currently, there is no county or state written provision. Furthermore, there is no provision accepting the domineering right of the journalist, however in Australian law, particularly even if it is required for the evidence the journalist's source is protected.

- **Canadian law**, if Canadian Supreme court can not prove that the following 4 indicators are met the court can rule the right:

- o Communication shall be based on the trust in confidentiality.
- o The trust shall play very important role between parties
- o Communication between them shall be of supportive nature.
- o The disclose will lead to more severe circumstances than mere argument

The above indicators are related to all trust communications and support journalists in their will and wish to protect their source. The relationship between the journalist and its source in general shall be covered by the first three conditions, however whether or not the forth condition is met depends on the particular circumstances.

First of all, the court shall define whether the revelation is one of 4 particular justifications or not. For example: directives ordering to disclose the source for other reasons, even for the public health purposes, are not approved. Secondly, the court shall define whether the information is really "must". Need to prove that it is "appropriate", "best" to reveal. The name of the source shall be considered "must". The court shall define the definite higher priority reason against the "journalist's information obtained on the basis of trust". Thirdly, in case of the special conditions to disclose the source are defined then decide whether to refuse to order to disclose it or not.

- **Portuguese** Constitution, Media law and 1999 journalistic law fully accept the principle on the protection of the journalist's source. In September of 2002, the journalist was imprisoned for refusing to disclose the information source which reported about the illegal cross border drug/narcotics trade of Loius, Manso and Preto. However, in the recent case the journalist refused to reveal the source who informed about the misappropriation of the public project due to professional code of conduct. The legal refusal was accepted by the court and did not request to announce openly the name of the source. .

- **Czech Republic**, the law adopted in February 2000 within certain limited conditions the element of protection of the secret source is reflected in the legal system. However, legislators refused the Journalists Union proposal to legalize the journalist's duty to protect the name of the

source according to the special circumstances. The recent events showed the ambiguity of the law on protection of journalist's source in Czech Republic. Case: Sabina Slonkova and Jiri Kubic were politically attacked in relation to Members of Parliament. When they received the sentence from the government for refusing to reveal the source the President released them from the punishment. The government continued to sentence them until the state procurator was not involved from the outside to stop the process.

- **Armenian Republic**, Media law, provision 25 states " Can not require to disclose source from media, can not release the name of a person who introduced the information without consent of related people. The law enforcing agency only has a right to request to disclose the information source from editorial committee and the journalist when needed in the court".

- **Indonesian** Media law provides right "for journalists to refuse to disclose the name of the source and other true facts from professional standing, it is stated as the right to refuse".

- In some countries in certain type of cases it is protected more strictly. In Ireland the extreme right is provided only in civil cases. In Kosovo in 2006 Wrong accusation law the extreme right is provided in the protection of the source, and it is prohibited to have any third party influence in refusing to reveal. In some countries with extreme rights there are some stages which are considered to be more of priority according to the legislations and practice. Journalists report that in the most countries judges and officials require to disclose the source. In addition, there are many issues related to the source and there are still cases of breaching the extreme right in the court process. The Constitutional court in Litua has decided that the extreme right to protect the source in Public Broadcasting law violates the Constitution. It is considered that if this protection creates more damage then it would not be able to play a significant influence in protection of human rights by Constitution.

- **African Union Human Rights charter**, it includes the provision protecting the source and other materials of the journalist, which indicates that it is forbidden to request to disclose the secret source of information from media workers and request information materials from the journalists for purposes other than stated in the following principles:

- o The true nature of the source is necessary to investigate and reveal the serious crime, or required to protect the person blamed in criminal case,
- o The similar information with the above conditions can not be obtained otherwise,
- o The freedom of expression can create more damage for public interest than public revealing,
- o If order to disclose was ordered after the hearing of the case from the court

- **Luxemburg**, 2004 Media law on freedom of expression states that it is allowed to order the journalists to disclose the source if it is important to prevent a crime against an individual, illegal trade of narcotics crossing the border, money laundering, terrorism and national security.

- **Belarusian**, Media law permits to require to disclose the source in the court process if it is found to be necessary for the investigation and in decision making on the crime.

- **Kyrgyzstan**, it is allowed for court and investigation officials to require to disclose the source in civil and criminal cases.

- **Eli Salvador**, the law has been approved recently. In 2004, in the Criminal process law a new amendment on protection of the journalists was approved. In part A of 187 provision : 1/ it is

prohibited to require journalists or former journalists to attend the trial as witnesses in the process related to the information and facts gathered by them 2/ the above people are provided with rights to refuse to name the information source. In 2006 the general procurator promised to provide the above right to media.

- **Peru**, a new amendment was approved in the Criminal process law of 2004. Part 2 of provision 165: the following people are provided with the right: a/ if not requested from the court in other cases shall not reveal the information obtained in work related to professional confidentiality. These people are specially protected professionals by law such as notaries, doctors, journalists and other.

- **Chili**, Law on freedom of expression, information and journalists, according to the 7th provision states "media management, editors, journalists, students studying journalism have rights to support the confidentiality of the source". This extra right covers also people involved or related to the journalist's activity.

- **UN** earlier, many years ago accepted and recognized the importance of the journalist's professional confidentiality. In 1952 the sub committee of the media freedom developed the Law on Ethics. This states that the professional confidentiality arises from the trust. The extra rights tease the legal limits.

- **Article 19**, organization confidentiality, in the 11th provision of 4.4 is stated: 1/ the professional confidentiality of the source is under the exceptional protection, no one has a right to request to disclose it. 2/ no one has a right to request to disclose the confidential information without the court decision defined by the law or consent from the information owner. 3/ when the necessity is proved only then the court can order to disclose the secret-source. 4/ the confidential information disclosed during the court trial process shall be used only for the intended purposes.

#### **Recommendation 2000/7:**

In order to secure the efficient protection of the journalist's source and to follow more the practical recommendations from European Ministers' council has approved the recommendation 2000/7 " on rights of journalist to not disclose the information source".

**Principle 1:** "The domestic laws and practices existing in member countries shall clearly and definitely define the protection of the journalist's right not to disclose the information defining the source as stated in the provision 10 of the Convention." The right of the journalist not to disclose the source is understood and reflected as to a subject "whose professional duty or permanent duty is to collect and distribute information via public media".

**Principle 2:** this recommendation teaches that all people "distributing the information obtained from the journalist's professional contacts" are included in the regulation protecting the source. According to the recommendation the protection of the journalist's source is discussed in rather broad scope, which: "Journalists can obtain information in any form of source. There is a need to broadly define this terminology. It is possible to detect the sequence related to the source. For example, when the source was called upon, when it wrote to the journalist, when sent, when the information was recorded on the voice recorder, photo etc. Passive information or information left out in the information can only be disclosed with the consent of the source and the journalist is provided with the possibility to voice and video record it.

The notion of "information defining the source" should be explained in broader scope, because in case of protection of the source any information which may lead to the source shall be protected.

In the recommendation the following information is protected because they may lead to the defining of the information source.

- Name of the source, address, telephone, fax numbers, voice of the source and photos and pictures with the source on them.
- “The real settings where the information was obtained”, for example the accommodation where met with the source, timing, agreements made between the source and journalist, methods and tools used.
- The unreleased content from the source. For example pictures, voice recording, given information and other facts which can lead or point at the true nature of the source or journalist’s unreleased information.
- Private information of the journalist and other people. In other words, the private information created within the journalist’s work activities. For example: address list, telephone call list, computer information, registration.

Regardless of information which could be oral, written, voice record and photo or any other form it shall be included in the confidential information.

**Principle 3:** orders and directives requiring to disclose the source can be of legal nature only in the following cases:

- There is no other choice except disclosing the information or the government officials and other people tried all other possibilities.
- It would be legal to disclose it openly for public interests otherwise the following consequences may appear:
  - o Actions requiring to disclose and against the right to protect shall be proved.
  - o Conditions and circumstances are of life importance and serious nature.
  - o The requirement to disclose is the answer or response to the public demands and needs.
  - o The member countries defined certain gap in the above issue, however it was examined by the European court of Human rights.

The first condition refers to the sector principle: the policeman and government officials shall seek for other choices and methods initially and shall try to adjust to the protection of journalist’s right and not to touch as much as possible the journalist’s right to protect own source. When the legal force or choice is preferred the other chosen methods proved to be unreliable.

The second condition is related to the principle of balance. Protecting the source is less priority in comparison to “ protection of a person’s life”, “ preventing serious crime”, and thus it was forced to reveal the source. Also it could be murders, crimes which could threaten life and health of people, crimes against national security and organized crimes. It is possible to justify the disclosure of the journalist’s source to prevent crimes of this nature.

The order to disclose the source is legally accepted to defend the person accused in serious crime.

The order to disclose should be defined by the law and in each such cases it must be clear, well justified and necessary for the democratic society to use it. This is related to the Human rights convention’s provision 10, act 10.2.

The 3rd principle of the recommendation is used to assess the above requirement.

**Principle 4:** In case of starting a claim against the journalist in regard to the attack at personal reputation, name and wrong accusation the authorized subjects can decide to receive the information in order to define the truth, but not to reveal the source. If the court has facts proving the judge's information in wrong accusation the judge shall acknowledge the right to protect the source.

**Principle 5:** this principle is related to the court condition initiating any activity against the journalist in order to disclose the source. The sanction for the journalist refusing to disclose the source can be ordered only by the judge during the hearing process as stated in the European Convention , provision 6 (fair trial).

**Principle 6:** this principle prohibits the following methods which may be used to attack the journalist's right refusing to disclose the information defining the source.

- To release orders and directives to create obstacles in the journalist's activities
- To release orders for monitoring and investigating related to the journalist's and their contracts and agreements
- To release orders and make decisions related to the journalists, private and work promises, information which may reveal the source, or related activities.

Any investigation and measuring activities can disclose information revealing the source. Officials and authorities ordering to investigate and take measures shall limit as much as possible monitoring and investigation and measures in regard to the protection of the journalist's source.

**Principle 7:** the last principle is the principle to defend oneself from being sentenced.

Situations where the collection of the information was by illegal methods and the source provided the information breaching professional duty in regard to confidentiality shall not eliminate the journalist's right to protect the source.

The main principles of the recommendation shall be reflected more in legislations and court practices of European Union member countries.

## II.3. CONCLUSION

### **On the international level:**

Numerous cross government organizations of Europe are thriving to protect the journalist's source, and working on the recommendations and standards.

In USA in general county and states constitutions provide rights to journalists in regard to their sources. In most state laws the rights of journalists to refuse to disclose the source are defined.

### **Promises of the source:**

If I will sell my secret source it means that I will in the future sell my colleagues and public. This action will decrease the role of whistle blower. What shall I do if I discover that my source provided me with false information of illegal, immoral nature or even with intention to kill? Can his/her promise be of good nature? After all these the underlying reasons the information can be still kept confidential because it is protected from the release to public. If the information is truly groundless, if the information may create more damage than good should we neglect our duty in front of the

source? We can find exit from the legal relations. The most important thing we can do after all these is to establish the ethical rules. Some laws are very simple.

Sources are promised of confidentiality and journalists have extra rights not to share it with anybody else. However before giving a promise editors and management shall establish a safety for the journalist according to the agreement. If media company guarantees the safety of the journalist it means the journalist shall inform its management about the true nature of the source. These are editors, newspaper editorial, producers and journalists. It means the implementer shall not break the extra rights of the informant and require the truth from the informant.

#### **Conditions when the source can be revealed:**

The interests of justice stated in the 10th provision of European Convention are the interest for being fair. This creates the actions against the source. "Necessary" means the following principles are to be clearly defined. – for interests of justice, - for interests of national security, - in order to prevent crime, social disorder.

If we are going to limit the rights of the journalists to protect own source then there is a need to define clearly in the law and only for the interests and benefits of the democratic society.

It is common to require to disclose the confidentiality in relation to the subject accused in the criminal case and its right to have a fair trial.

#### **When assessing the information source safety scope:**

- Journalist obtained the information though illegal actions
- Journalist became a third party witness in any violation of rights
- Journalist was accused of crime
- Journalist was accused of wrongly blaming /accusing someone
- Journalist can have information about the crime.
- Journalist became a witness of the crime.

In case of the absence of legal protection the journalists have no other choice than to name the source, otherwise they will have to hold legal responsibility. In these cases, journalists can not use their source and thus can not fulfill their watch dog duty on behalf of the public

#### **Recommendation:**

Any country shall approve and adopt the law securing the journalist's right to protect its information source and shall accept their rights and provide proper protection.

The protections shall cover all people involved in the journalist's activities such as editors, full time and half time staff. Media can be of any type, form, print, book, web site and other. The requirement to reveal the source shall be related to the extremely severe crimes and shall be of limited nature. The requirement to reveal the source shall be delivered only from the independent judge's decision according to the fair /just court principles investigating the case. The requirements to the court shall be the following:

- The information is required to prove the innocence, or can prevent the serious physical damage.
- The information is the main key to issue of being guilty or not guilty

- The information can not be obtained in other ways; all the methods and ways to obtain the information were tried unsuccessfully.
- The request is produced from the weaker side in the case
- The judge has discovered that by disclosing it the information interests of public are dominating.

# ANNEX

#	Journalist's secret-source definition, conception about journalists	Indicators o protect journalists' secret-source, journalists' rights	Justifications to limit the journalist's rights to reveal the secret source	Regulations of security and inviolability of secret source. Contracts, agreements and promises to be made by journalist to the secret source.	A d d i t i o n a l recommendations
1.	The protection of secret source is secured for the following people: subject directly providing support in collection, editing, writing and distributing information for media via media, - regardless of whether being involved in the information collection, development, writing and distribution or not the person occupying position allowing to request to reveal the source or can be professional editorial committee.				

	In spite of the condition stated in the 4th provision in following 3 extraordinary cases it is allowed to require the journalist and editorial committee to disclose the secret source from the court. These include: information related to the crime threatening one and more people's lives, - if the required information is important in preventions of those crimes, - if the requested information can not be obtained otherwise.				
	Related amendments need to be reflected in civil and criminal process legislations.				
2 . The right of the					
-Can not					

3. All	P u b l i s h e r s , editors, journalists and employees occupied in media organizations called to the court and authorized officials have a right to refuse to answer the questions related to the information source, supporter, author and their p r o f e s s i o n a l activities.	In order to utilize the freedom to receive and release information the certain responsibilities shall be taken on, thus it is possible to limit or punish the guilty person defined in the law, necessary for the democratic society, for national security, geographic wholeness, social order, and to prevent from disorder, crime, to protect citizen's health, moral, reputation and rights, to prevent from revealing secret information obtained for trust, to preserve the court power and justice.	this principle prohibits the following methods which may be used to attack the journalist's right refusing to reveal the information defining the source.		
-	To release orders and directives to create obstacles in the journalist's activities				
-	To release orders for monitoring and investigating related to the journalist's and their contracts and agreements				
-	To release orders and make decisions related to the journalists, private and work promises, information which may reveal the source, or related activities.				
4.		The court can accept the right if it is not proved that following 4 indicators are not met:			

-	Only the civil cases	-	1/ the professional		
- the trust must play	are provided with extreme rights. Or it the case is classified as civil or criminal.		confidentiality of the source is under the exceptional protection, no one has a right to request to disclose it. 2/ no		
-the			one has a right to request to disclose		
	-	it is forbidden to request to disclose the secret source of information from media workers and request information materials from the journalists for purposes other than stated in the following principles:	the confidential information without the court decision defined by the law or consent from the information owner. 3/ when the necessity is proved only then the court can order to disclose the information secret-source. 4/		
-The true			the confidential information disclosed during the court trial process		
-The			shall be used only for the intended purpose.		
- I f					
5:	Name of the source, address, telephone, fax numbers, voice of the source and photos and pictures with the source on them.	1/ it is prohibited to require journalists or former journalists to attend the trial as witnesses in the process related to the information and facts gathered by them 2/ the above people are provided with rights to refuse to name the information source.	There is no other choice except disclosing the information or the government officials and other people tried all other possibilities.		
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