

CHAPTER 9

Being a Whistleblower

Raphaël Halet

Lux Leaks whistleblower

This is one of the biggest financial scandals Europe has ever known. A gigantic system of tax evasion was set up by powerful multinationals with the complicity of audit firms and the Luxembourg state. Hundreds of billions of euros have for years escaped the coffers of dozens of countries, including France.

The Lux Leaks affair broke out in 2012 thanks to a whistleblower who sent the French press the famous “tax rulings”, the tax agreements made between Luxembourg and giant companies like Apple, Amazon or Arce-
lor. But two years later, the scandal took on another dimension.

Thanks to new leaks, Lux Leaks are in the headlines of all major international media. Luxembourg is under intense pressure, and Jean-Claude Juncker, prime minister at the time of the agreements, is forced to justify himself. The eyes of the whole world are focused on the Grand Duchy. Because of the scale of the revelations, Europe goes as far as to introduce measures to reduce the tax avoidance techniques that some multinationals have until now benefited from.

Behind this rebound, a new whistleblower: my name is Raphaël Halet.

Unlike the first whistleblower, I have never made the headlines. Unlike him, I did not benefit from any support movement or any major financial assistance. And finally, unlike him, I received no public recognition, no

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citizen's prize for having sacrificed my personal welfare for the common good ...

Yet for two years I have lived a real thriller, a story worthy of a spy novel. It was the tale of a simple employee who chooses to stand up to his company, one of the most powerful in the world, despite threats and intimidation. The story of a father trapped in a hellish machinery, and who risks losing everything, his wife and two children, his job, his home ... I was a man alone, without means, faced with the errors and iniquities of French and Luxembourg justice. Fired by my employer, sentenced thrice despite my status as whistleblower, I today deliver my testimony: that of an ordinary citizen who, against all odds, has become "an extraordinary whistleblower", as one lawyer called me.

Initially, nothing predisposed me to become a symbol of the fight against tax evasion. As an adult, I made a living by doing odd jobs, until the day when luck finally seemed to smile. PwC, the world's leading consulting firm, a multinational company with more than 200,000 employees, well known to governments and major corporations, offered me an administrative position. The job was not really prestigious, but it carried an unlimited contract. Another world, a new life. I seized the opportunity and became a model employee. Although I only had a junior position, I worked in a strategic department where I could see all the tax documents established by PwC for their clients.

This is ultra-sensitive data that I will understand the scope of in May 2012, during a broadcast of the report "Cash Investigation" devoted to revelations. It's the day when everything changes. The documents presented as proof of tax evasion are the documents I handle every day. Now they are like fire in my hands. If I do nothing, I am complicit in this system of tax evasion; if I react, I put my future, and especially that of my family, at risk. I cannot continue without doing anything.

After a few months, they unmask me. Thus the nightmare begins. A bailiff, HRD and Price's legal director, a locksmith, an IT expert and policemen come to my home. The bailiff explains that they are there on the order of the French court to seize all my computer equipment. But how could Justice leave the audit firm, a private company acting as a public service? Why does she not protect me against my employer?

In studying the complaint against X filed by PwC, the French judge in charge of examining the file actually makes a serious mistake: she forgets to consider me a whistleblower. If she had done so, I could have benefited from the provisions of the Code of Criminal Procedure and the ECHR jurisprudence concerning the secrecy of sources and their protection. But without official recognition of this status, I am a mere employee who has stolen and made public confidential documents. This is an inexplicable mistake that will cost me a lot, because now I (and my family) am in the hands of my employer, alone before a foreign multinational willing to do anything to quash the scandal.

After several intimidation attempts, I must agree to sign a confidentiality agreement in exchange for the promise of not being sued. But if I breach this agreement, I will have to pay 10 million euros, give my house to PwC and be sued by PwC. From this day on, my wife and I must remain in complete silence.

Two years later, it is time for the trial before the Luxembourg courts. On the dock are the first whistleblower, as well as the journalist Edouard Perrin, and more surprising still, me. During the investigation a few months earlier, the other whistleblower had denounced me as the other employee of PwC who transmitted confidential documents to the press.

Though I had hoped to escape unscathed, I was finally summoned by the judges and indicted. However, everyone is still unaware that I am subject to a confidentiality agreement. If I speak, I lose everything. In order to escape, I will have to change my story. During the investigation, I did indeed tell the judges that it was actually Edouard Perrin who contacted me to try to extract confidential documents from me against my will. So, on the first day of the trial, the entire hearing depends on what some call “this very mysterious accused”.

That day, in front of the judges, in front the representatives of PwC who threatened me, in front of their lawyers and hundreds of journalists, I will change everything. And cause an earthquake without equivalent in the opaque universe of tax evasion.

I was sentenced in the first instance to a six-month suspended prison sentence and €1000 fine, then only €1000 on appeal, a verdict which the Luxembourg Court of Cassation has just confirmed. I am preparing an

appeal to the ECHR to sue Luxembourg. The support around me is essentially composed of anonymous citizens who made donations online and on www.luxleaks.fr to finance our legal fees.

I have had to sell my car and borrow a lot of money. Some NGOs helped me towards specific public interventions (debates, conferences, etc.). The vast majority of politicians, NGOs, political parties, etc. have not gone beyond statements of public support at the time of the trial, without ever taking concrete action. In short, I am almost alone in this fight.

In its judgment, the Court of Appeal writes: “The tax returns submitted by Raphaël Halet only confirm the result of the journalistic investigation conducted by the team of Edouard Perrin. They were certainly useful to the journalist, but they do not provide any cardinal information previously unknown to revive or feed the debate on tax evasion.” In a peremptory manner, the judges minimized the value of the information transmitted during the second investigation. In their view, the public debate was launched and the information and documents submitted were not relevant for the continuation of this debate. Nevertheless, the ECHR and the European Commission affirmed the contrary: it was absolutely necessary ...

Thanks to my revelations, the European Commission found that Luxembourg gave illegal tax benefits to Amazon worth around €250 million. Apple (€13 billion), Ikea (€1billion) and dozens of companies are also being sued by Margrethe Vestager. Pressure from public opinion on European politicians is also still there as people do not understand their austerity politics despite the mountains of money tax-exempted by multinationals. There remains much needed information that is still not available, for example other tax rulings granted to multinationals by Luxembourg and other European countries.

From now on information is exchanged between national tax administrations but not made public. States must take responsibility and tackle the black holes in global finance, which are tax havens. For this, nothing is more effective than a blacklist: provided it is credible, on the one hand, and accompanied by really dissuasive sanctions, on the other. The first condition can only be met by establishing objective and relevant criteria, such as proposing ridiculously low effective tax rates or providing

tax benefits to non-residents. A share of foreign capital disproportionate to the size of the national economy must also be a determining factor. In addition, it is essential that the country's assessment process is fully transparent – otherwise suspicion of political-diplomatic arrangements cannot be ruled out. Finally, all countries must be evaluated in the same way, including the member states of the European Union.

The current blacklist of the EU, including only nine countries, without Luxembourg or Ireland or any of the notorious tax havens like Qatar or Singapore, is a joke. The second condition requires effective and common sanctions at the European level. Tax havens have been stealing our public finances for too long already. Possible sanctions include the prohibition for banks to operate in these jurisdictions, the suspension of any program of aid or subsidy to these countries, or the prohibition for companies operating there to access public markets. Let us also take the necessary steps to tax the profits that escape. Greater transparency and better exchange of information are essential.

Intermediaries such as banks or law firms must be forced to disclose to the authorities the tax arrangements they establish on behalf of their clients. We must adopt “country-by-country public reporting”, obliging the multinationals to publish the taxes they pay in each of the countries in which they operate – a proposal unfortunately blocked by the European governments. This is essential to facilitate prosecution and increase the resources dedicated to the fight against this scourge. The decline in specialized police and legal staffing is inexplicable.

Becoming a whistleblower disrupts your life: your family, your professional life, your finances, your health. The fight is long and difficult. The early supporters move away over time, the media moves on. Only suffering and daily difficulties remain. When we launch an alert we must first prepare for what will follow next, hence the need for long-term national or official European support. Finally, it is necessary for the courts, the French government and European public opinion to recognize that an ordinary citizen like me has become, despite myself, an “extraordinary whistleblower”.