

**PENALTIES FOR UNAUTHORIZED DISCLOSURE OF NATIONAL SECURITY-RELATED SECRETS:  
COMPARATIVE LAW AND PRACTICE**

**November 2013**

**Open Society Justice Initiative<sup>1</sup>**

The below chart summarizes the laws of 26 countries based on a reading of relevant statutes, and in most cases confirmed by one or more experts from the country concerned. In 13 of these countries, penalties for the unauthorized public disclosure of national security secrets are limited to five or fewer years' imprisonment where there is no espionage, treason, disclosure to a foreign state, or intent to cause harm: Brazil (one year, and only applicable to public servants); Australia, Sweden and United Kingdom (2 years), Slovenia (3 years), Panama and Spain (4 years), Colombia and Norway (4 ½ years), and Belgium, Mexico, Paraguay and Poland (5 years). Another six countries have maximum penalties of less than 10 years: Netherlands (6 years); France and Russia (7 years); Bolivia and Guatemala (8 years); and Ecuador (9 years). Four countries have penalties of up to 10 years: Argentina, Germany, Serbia, US. Denmark allows penalties of up to 12 years, but highest penalty in past 20 years was 4 months. Two countries - Chile and Italy - have indeterminate penalties.

<b>State</b>	<b>Maximum penalty for unauthorized disclosure (where no espionage or disclosure to a foreign state)</b>	<b>Limited offences or decreased penalties for members of the public without authorized access to information</b>	<b>Prosecutions</b>
Argentina <sup>2</sup>	1- 10 years for disclosure of national security related secrets; increased to 2-15 years for public servants (under the national security law). <sup>3</sup>  Or 1-6 years, for unauthorized disclosure (given different applicable laws), or 3-10 years for soldiers, and other applicable provisions reserved for public servants (under the criminal code). <sup>4</sup>  Fine for disclosure of other secrets which could harm third parties. Public interest defence available. <sup>5</sup>	Some offences and higher penalties reserved for soldiers or public servants, as compared with private persons.	
Australia <sup>6</sup>	Up to 2 years for disclosure. <sup>7</sup>	Same penalties for public servants and private persons though different provisions applicable.	2 years maximum sentence in past 20 years: 2003 conviction of defence intelligence employee for passing classified documents to be sold to foreign government (2 years); 2008 conviction of customs intelligence staff for disclosing threat assessments and security reports to media (9 months). <sup>8</sup>
Belgium <sup>9</sup>	Up to 5 years for disclosure. <sup>10</sup>	Lesser, and differentiated, penalties for unauthorized disclosure by private persons as compared with public servants with authorized access. Additional offences exclusively for public servants.	No prosecutions for unauthorized disclosures in past 20 years.
Bolivia <sup>11</sup>	Up to 8 years for disclosure by a public servant. Up to 6 years for disclosure by a private person. Up to 2 years if a result of negligence. <sup>12</sup>	Lesser penalty for unauthorized disclosure by private persons as compared with public servants with authorized access.	

Brazil <sup>13</sup>	3 months to 1 year for disclosure, exclusively an offence for public servants. <sup>14</sup>	Unauthorized disclosure is exclusively an offence for public servants unless information is provided to a foreign or illegal government, organization or group.	
Colombia <sup>15</sup>	1 1/3 – 4 ½ years in prison for unauthorized disclosure of secrets by public servants but only if results in harm; otherwise administrative penalties only. <sup>16</sup>  5-8 years for disclosure by members of the military. <sup>17</sup>	Unauthorized disclosure is exclusively an offence for public servants unless meets requirements for espionage.  Journalists are not obliged to protect the confidentiality of government information, including explicitly information related to intelligence. <sup>18</sup>	
Denmark <sup>19</sup>	Up to 12 years imprisonment for disclosure of certain designated national security information <sup>20</sup> ; 3 years if resulting from negligence. <sup>21</sup>  Up to 6 months for disclosure by a public servant <sup>22</sup> ; or for up to 2 years if for personal gain or “aggravating circumstances.” <sup>23</sup>  An explicit exception exists for acts in the public interest. <sup>24</sup>	Certain offences and penalties exist exclusively for public servants.	Intelligence officer sentenced to 4 months imprisonment for disclosure to journalists of classified intelligence reports about lack of weapons of mass destruction in Iraq. Two journalists and editor prosecuted and acquitted of related charges. <sup>25</sup> No other known prosecutions in past 20 years.
Ecuador <sup>26</sup>	6-9 years for disclosure by public servants. 3-6 years for disclosure by others. <sup>27</sup>	Lesser penalties for unauthorized disclosure by private persons as compared with public servants with authorized access.	
France <sup>28</sup>	7 years for unauthorized disclosure by a public servant; 3 years if negligent. <sup>29</sup>  5 years for unauthorized disclosure by a private person. <sup>30</sup>  Attempted unauthorized disclosure subject to same penalties. <sup>31</sup>	Some offences and higher penalties reserved for public servants as compared to private persons.	Public servants have been charged for unauthorized disclosures.
Germany <sup>32</sup>	1-10 years for “especially serious cases” of disclosure, including public servants; up to 5 years for other disclosures. Offences require “intent to cause damage” and “creat[ion of] danger of serious prejudice to the external security”; attempt punishable. <sup>33</sup>  5 years for breach of official secrets confidentiality duties, or disclosure by public servant; 3 years for violation of other confidentiality duty; 1 year for negligent disclosure by public servant. All offences require action to “cause[] a danger to important public interests”. <sup>34</sup>	Lesser penalties for unauthorized disclosure by private persons as compared with public servants with authorized access. <sup>35</sup>  Journalists explicitly protected from charges of aiding and abetting the disclosure, however, it is still a crime for journalists to instigate a violation of official secrets. <sup>36</sup>	Public servants have been charged for unauthorized disclosures.
Guatemala <sup>37</sup>	5-8 years for disclosure by public servants or others with a duty of confidentiality. <sup>38</sup>  Up to 5 years for disclosure of national security information. <sup>39</sup>	Some offences available only for public servants.	
Italy <sup>40</sup>	At least 5 years for disclosure of state secret; 6 months – 2 years if negligence. <sup>41</sup>  At least 3 years for disclosure of classified information; 6 months – 2 years if negligence. <sup>42</sup>		No record of convictions for unauthorized disclosures.

Mexico <sup>43</sup>	1-5 years for disclosure by public servants, where harm is caused. <sup>44</sup>	No imprisonment available (only community service) for unauthorized disclosure by private persons if not to a foreign government, espionage or treason.	
The Netherlands <sup>45</sup>	Up to 6 years for unauthorized disclosure. <sup>46</sup>	Lesser penalties for unauthorized possession and disclosure by private persons as compared with public servants with authorized access. <sup>47</sup>	Few prosecutions for unauthorized disclosures in past 20 years and few convictions.
Norway <sup>48</sup>	1 ½ - 4 ½ years for disclosure by public servants.  1-3 years for disclosure by private persons.  Limited to fine if negligent unauthorized disclosure. <sup>49</sup>	Lesser penalties for unauthorized disclosure by private persons as compared with public servants with authorized access.	No prosecutions for unauthorized disclosures in past 20 years.
Panama <sup>50</sup>	4 years for disclosure. <sup>51</sup>  6 months – 1 year for disclosure by public servants. <sup>52</sup>	Limited offences and penalties for private persons as compared to public servants.	
Paraguay <sup>53</sup>	Up to 5 years for disclosure; requires “expos[ure of] the Republic to the risk of serious harm to its external security.” Attempt also punishable. With separate provisions for negligent disclosures and public servants. <sup>54</sup>  1-2 years for disclosure of Council of National Defence information, increased to 2-4 years if member of Council or took part in deliberations. <sup>55</sup>	Some penalties and offences reserved for soldiers or public servants, as compared with private persons.	
Poland <sup>56</sup>	3 months - 5 years for disclosure of “secret” or “confidential” information; intent required. <sup>57</sup>  Up to 3 years if public official discloses “restricted” or “confidential” information or information obtained in the official capacity; harm required. <sup>58</sup> Up to 1 year if unintentional. <sup>59</sup>	Specific offences available only for public servants with authorized access to information.	Public personnel have been charged for unauthorized disclosures.
Russia <sup>60</sup>	Up to 4 years for disclosure of State secrets by public servants. 3-7 years if with “grave consequences.” <sup>61</sup>  Up to 8 years if aggravating circumstances (information obtained through theft, fraud, blackmail, coercion, threats of violence or other unlawful means). <sup>62</sup>  No penalties for private persons.	No penalties for private persons for disclosure of State secrets unless amounts to espionage or high treason.	In the past decade, 11 prosecutions of public servants, resulting in 10 convicted and sentenced for terms ranging from 4 to 15 years for the public disclosure of information.
Serbia <sup>63</sup>	1-10 years for disclosure of state secret. 6 months–5 years if negligent. <sup>64</sup> 6 months – 5 years for disclosure by public official of official secret. 1-8 years for disclosure by public official of official secret, if “committed for gain or in respect of particularly confidential information or for publishing or use abroad.” Up to 3 for if negligent. <sup>65</sup>	Some offences and higher penalties reserved for public servants, as compared with private persons.  No penalties for possession and/or disclosure of official secrets by private persons.	Public personnel have been charged for unauthorized disclosures, but rarely.

Slovenia <sup>66</sup>	Up to 3 years for disclosure [in violation of duties to protect classified information]. <sup>67</sup> Limited to 1 year if disclosure was result of negligence. <sup>68</sup>  Up to 5 years if disclosure was motivated by greed or with the intent to publish "abroad." <sup>69</sup>	Offence of unauthorized disclosure limited to those who violate duty to protect classified information.	Public personnel have been charged for unauthorized disclosures.
Spain <sup>70</sup>	Up to 4 years for disclosure. <sup>71</sup>  3-10 years for soldiers who disclose national security related information "without any intention to benefit a foreign power," or 1-6 years if not "legally classified." 5-20 years if committed during wartime. <sup>72</sup> Penalties are higher if the information known as a result of position, or there was public disclosure. <sup>73</sup> Up to three years if by negligence, or up to 6 years if during wartime. <sup>74</sup>	Lesser penalty for members of the public as compared to members of the military, though wartime penalties apply equally to private persons.	No convictions for unauthorized public disclosure since 1978 Constitution. <sup>75</sup> In 1987, a sub-lieutenant was sentenced to 4 years imprisonment for revealing information to an agent of the USSR intelligence services. <sup>76</sup> In 2010, Spanish courts sentenced an agent of the National Intelligence Center to nine years imprisonment for taking classified information from the National Intelligence Center to sell to the Russians. <sup>77</sup>
Sweden <sup>78</sup>	Up to 2 years for unauthorized dealing of secret information.  Up to 4 years for "gross unauthorized dealing with secret information, including public servants, assistance to a foreign power." <sup>79</sup>  Up to 6 months for disclosure out of negligence, 2 years if during wartime. <sup>80</sup>  Up to 1 year for disclosure of confidential information by public servants; fine for disclosure out of negligence; "[i]n petty cases, however, punishment shall not be imposed." <sup>81</sup>	Some offences and higher penalties reserved for public servants as compared with private persons. <sup>82</sup>	A few prosecutions for unauthorized disclosures in the past 20 years. No convictions.
United Kingdom <sup>83</sup>	Up to 2 years for unauthorized disclosure by public servants, <sup>84</sup> and other persons who have accessed information through unauthorized disclosures. <sup>85</sup>  In case of private persons and public servants not in the security or intelligence services, offence requires disclosure to be "damaging." <sup>86</sup>	Specific provisions reserved for public servants with authorized access to information, and different defences and heightened standards available for private persons.	10 prosecutions since Official Secrets Act 1989. In three, charges were dropped. In one, a jury found the public servant not guilty; in one, a public servant was required to pay a small fine. Five resulted in custodial sentences, the maximum of which was one year.
United States <sup>87</sup>	10 years for disclosure of national defence information, <sup>88</sup> with particular provisions for public servants. Offence requires the disclosure to be prejudicial to the safety or interests of the United States or to the benefit of any foreign government and to the detriment of the United States. With possible offence of conspiracy	Public servants and private persons may be penalized for unauthorized disclosure of information relating to national defence, but only public servants and others with authorized access are subject to penalties for certain other unauthorized disclosures. <sup>89</sup>	

---

<sup>1</sup> This chart was compiled by Emi MacLean, Legal Officer, Open Society Justice Initiative. The following country experts provided information or reviewed earlier drafts: Emmanuel Vargas (Colombia); Amy Jacobsen (Denmark); Bertrand Warusfel (France); Silvio Gramajo (Guatemala); Arianna Vendaschi (Italy); Wouter Hins (The Netherlands); Irmira Pachó (Poland); Ivan Pavlov & Tatyana Tolsteneva (Russia); Nevena Ruzic (Serbia); Susana Sánchez and Fernando Flores (Spain); Iain Cameron (Sweden); Adam Tomkins (United Kingdom).

<sup>2</sup> Criminal Code, Law 11.179 (Argentina), 1984, at <http://www1.infojus.gov.ar/legislacion/ley-nacional-11179-codigo-penal.htm;jsessionid=1sgpkt0wmpw4m6wea0ourke0q?0>, Arts. 153-57, 222-23. Law No. 13.985, Crimes against the security of the nation, (Argentina), 1950, modified by Laws 16.648 & 24.198, at [http://www.infojus.gov.ar/index.php?kk\\_seccion=documento&registro=LEYNAC&docid=LEY%2520C%2520013985%25201950%252009%252027](http://www.infojus.gov.ar/index.php?kk_seccion=documento&registro=LEYNAC&docid=LEY%2520C%2520013985%25201950%252009%252027), Arts. 2-3.

<sup>3</sup> Law No. 13.985, Crimes against the security of the nation (Argentina), Art. 2 (“It will be punished with imprisonment of 1 to 10 years for anyone to procure, search for, disclose, remit or use news, documents, information or objects of political, social, military or economic nature that must remain secret for the protection of security, defence or foreign relations of the Nation.”), Art. 3 (“It will be punished with imprisonment for 2 to 15 years for anyone to [procure, search for, disclose, remit or use news, documents, information or objects of political, social, military or economic nature that must remain secret for the protection of security, defence or foreign relations of the Nation] using his employment, function, state or mission.”).

<sup>4</sup> Criminal Code (Argentina), Art. 222 (“Shall be punished with imprisonment of 1 to 6 years, the person who discloses political, industrial, technological or military secrets related to security, defence measures or foreign relations of the Nation...If the disclosure or retention of the information was committed by a soldier, in the exercise of his functions, the minimum penalty will increase to 3 years and the maximum penalty will increase to 10 years.”), Art. 223 (“Shall be punished with imprisonment of one month to one year and disqualification from public service for double the time, the person who from negligence makes known the secrets referenced in the previous article, those which he is in possession by virtue of employment or office.”). See also *Ibid.*, Art. 157 (“Shall be punished with imprisonment of one 1 month to 2 years and disqualification of 1 to 4 years, the public official who reveals facts, acts, documents or data, which by law must be secret.”); Art. 156 (“Shall be punished with a fine ... and disqualification from public employment, if applicable, for 6 months to 3 years, the person who has notice, by virtue of their status, office, employment, profession or art, of a secret of which the disclosure can cause damage, and discloses it without just cause.”).

<sup>5</sup> *Ibid.*, Art. 155 (“He shall be punished by a fine ... he who is in possession of [information], not intended to be public, publishes this information improperly, if the act causes or could cause harm to others. He is exempt from criminal liability if he acted with the clear intent to protect a public interest.”). See also *Ibid.*, Art. 153, 153bis (penalty of 1 month to 1 year if accesses private communications and publishes them; if public servant, subject to extended period of disqualification for public service).

<sup>6</sup> Crimes Act (Australia), 1914 (as of 2013), at <http://www.comlaw.gov.au/Details/C2013C00369>, Arts. 70, 79. Criminal Code Act (Australia), 2002, at <http://www.comlaw.gov.au/Details/C2005C00496>, Art. 91.1.

<sup>7</sup> *Ibid.*, Art. 70 (“Disclosure of information by Commonwealth officers: (1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he or she is authorized to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of being a Commonwealth officer, and which it is his or her duty not to disclose, shall be guilty of an offence. (2) [Offence also for former Commonwealth officers.] Penalty: Imprisonment for 2 years.”); Art. 79(1) (defining prescribed information); Art. 79(3) (“If a person communicates ... prescribed information, to a person, other than: (a) a person to whom he or she is authorized to communicate it; or (b) a person to whom it is, in the interest of the Commonwealth or a part of the Queen’s dominions, his or her duty to communicate it; or permits a person, other than a person referred to in paragraph (a) or (b), to have access to it, he or she shall be guilty of an offence. Penalty: Imprisonment for 2 years.”).

<sup>8</sup> *R v Lapps* [2003] 152 ACTR 7. *Kessing v. R.*, [2008] NSWCCA 310.

<sup>9</sup> Criminal Code (Belgium), 1987, available at <http://legislationline.org/documents/section/criminal-codes>, Arts. 118- 20.

<sup>10</sup> *Ibid.*, Art. 119 (“Whoever knowingly delivered or transmitted ... to a person not authorized to have received or known of it, objects, plans, papers, documents or information ... shall be punished with incarceration of 6 months to 5 years and a fine.... He shall be subjected to the same penalty if, without authorization from the competent authority, he reproduced, published or disclosed, in whole or in part, by whatever means, ... information...”).

<sup>11</sup> Decree Law 10426 (Bolivia), 1972, at [http://www.oas.org/juridico/MLA/sp/bol/sp\\_bol-int-text-cp.html](http://www.oas.org/juridico/MLA/sp/bol/sp_bol-int-text-cp.html), Arts. 111, 115. Military Criminal Code (Bolivia), 2002, at [http://www.icacbba.com.bo/documentos/45\\_CODIGO%20PENAL%20MILITAR.pdf](http://www.icacbba.com.bo/documentos/45_CODIGO%20PENAL%20MILITAR.pdf), Arts. 56, 58.

<sup>12</sup> *Ibid.*, Art. 115 (“Disclosure of secrets: Whoever reveals political or military secrets concerning state security, the defence of the state or its foreign relations, will be subject to imprisonment of one to 6 years. The penalty will be increased one-third if the agent committed this crime abusing the function, job or commission conferred by public authority.”); Art. 116 (“(Negligence): If disclosure of the secrets mentioned in the previous Article was committed negligently by the person in possession by virtue of his employment or office, the penalty shall be imprisonment from six months to two years.”).

<sup>13</sup> Criminal Code (Brazil), Decree Law No. 2.848, 1940, at [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del2848.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm), Arts. 153, 154. Law No 7.170, defining crimes against national security, and public and social order (Brazil), 1983, at [http://www.planalto.gov.br/ccivil\\_03/leis/l7170.htm](http://www.planalto.gov.br/ccivil_03/leis/l7170.htm), Arts. 13, 14, 21. Military Code (Brazil), 1969, Arts. 143, 144, at [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del1001.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del1001.htm).

- 
- <sup>14</sup> Criminal Code (Brazil), Art. 154 (“Crimes against the protection of secrets. To reveal to someone, without just cause, a secret, which one has by virtue of their function, position, office or profession, and whose disclosure may produce damage or harm: Penalty – detention of three months to one year, or fine.”).
- <sup>15</sup> Criminal Code (Colombia), 2000, at [http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley\\_0599\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley_0599_2000.html), Arts.163, 418. Law No. 1621, Law of Intelligence and Counter-Intelligence (Colombia), 2013, at <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/2013/LEY%201621%20DEL%2017%20DE%20ABRIL%20DE%202013.pdf>, Arts. 33, 38, 39. Military Criminal Code (Colombia), 2010, at [http://www.justiciamilitar.gov.co/irj/go/km/docs/JPM/Documentos/NORMATIVIDAD/ley\\_1407\\_2010\\_n\\_cod\\_penal\\_mil.pdf](http://www.justiciamilitar.gov.co/irj/go/km/docs/JPM/Documentos/NORMATIVIDAD/ley_1407_2010_n_cod_penal_mil.pdf), Art. 130.
- <sup>16</sup> Criminal Code (Colombia), Art. 418. (“Disclosure of secrets. The public servant that improperly makes known a document or news that should be kept secret or confidential, will be subjected to a fine and loss of employment. If the conduct results in harm, the penalty will be 16 to 54 months in prison, a fine ... and disqualification from the exercise of public rights and functions for 80 months.”). Art. 418. (“Disclosure of secrets. The public servant that improperly makes known a document or news that should be kept secret or confidential, will be subjected to a fine and loss of employment. If the conduct results in harm, the penalty will be 16 to 54 months in prison, a fine ... and disqualification from the exercise of public rights and functions for 80 months.”). *See also* *ibid.*, Art. 419 (“Use of information classified as secret or confidential [by public servant is subject to administrative penalties]”). Law No. 1621 (Colombia), Art. 38 (“Those [public servants] who improperly disclose, provide, leak, market, use or allow someone to use confidential information or documents, will be subject to misconduct, without prejudice to the criminal actions available.”)
- <sup>17</sup> Military Criminal Code (Colombia), Art. 130.
- <sup>18</sup> Law No. 1621 (Colombia), Art. 33(4) (“The obligation of confidentiality [binding in relation to intelligence and counter-intelligence organisms] does not bind journalists or media when they exercise their journalistic function of government monitoring, in the context of journalist self-regulation and constitutional jurisprudence, as they are in any case obligated to protect the confidentiality of their sources.”). *See also* Sentence C-540/12, Constitutional Court (Colombia), at <http://www.corteconstitucional.gov.co/relatoria/2012/c-540-12.htm> (“in general terms the *reserve or secrecy* of a public document ... (iii) covers public servants, not journalists and, in principle, doesn’t authorize the State to impede the publication of information in the press...”).
- <sup>19</sup> Criminal Code (Denmark), 2008, Arts. 107, 109, 152, at <https://www.retsinformation.dk/Forms/R0710.aspx?id=142912#Kap13>.
- <sup>20</sup> *Ibid.*, Sec. 109(1) (“Anyone who discloses or passes on notification of the state’s secret operations, deliberations or decisions in cases concerning national security or the state’s rights in relation to foreign states, or that concern significant socio-economic foreign relations interests, shall be punished by imprisonment for up to 12 years.”).
- <sup>21</sup> *Ibid.*, Sec. 109(2) (fine or up to three years imprisonment).
- <sup>22</sup> *Ibid.*, Sec. 152(1) (“Any person who is exercising or who has exercised a public office or function, and who unlawfully passes on or exploits confidential information, which he has obtained in connection with his office or function, shall be liable to a fine or to imprisonment for any term not exceeding six months.”). *Ibid.*, Sec. 152(d)(3) (“The same penalty is imposed on any person who, without having participated in the act, unlawfully discloses information that is confidential for reasons of national security or defence of the realm.”).
- <sup>23</sup> *Ibid.*, Sec. 152(2) (“Where the offence in paragraph 1 is committed with the intent to procure gain for the perpetrator or others, or in case of otherwise aggravating circumstances, the penalty may increase to imprisonment for any term up to 2 years. As especially aggravating circumstances are considered in particular cases where the disclosure or use is made in a manner as to cause significant damage to others or pose a particular threat thereof.”).
- <sup>24</sup> *Ibid.*, Sec. 152 e(2) (“The provisions of Sections 152-152d of this Act do not apply in cases where the person in question ... acted in order to lawfully safeguard obvious public interests or the interests of himself or other persons.”).
- <sup>25</sup> Reporters without Borders, *Three Berlingske Tidende Journalists Acquitted of State Security Charges*, 4 December 2006, at <http://en.rsf.org/denmark-three-berlingske-tidende-04-12-2006,19991.html>.
- <sup>26</sup> Criminal Code (Ecuador), 1971, at [http://www.oas.org/juridico/MLA/sp/ecu/sp\\_ecu-int-text-cp.pdf](http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf), Arts. 117, 202.
- <sup>27</sup> *Ibid.*, Art. 202 (“The fraudulent disclosure or use of protected information, as well as commercial or trade secrets, will be punished with imprisonment ordinary imprisonment of 3 to 6 years and a fine .... If the fraudulent disclosure or use is made by the person or persons responsible for the custody or legitimate use of the information, they will be punished with imprisonment of 6 to 9 years and a fine ....”).
- <sup>28</sup> Criminal Code (France), 1995 (as of 7 April 2013), Arts. 411-6, 411-7, 413-10, 413-11,413-12, at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>.
- <sup>29</sup> *Ibid.*, Art. 413-10 (7 years and a fine for “duplication, as well as to the communication to the public or to an unauthorized person, by any person holding such a confidential information because of his position ... of any information ... which is a national defence secret. The same penalties apply to the holder who permits the ... removal, duplication or revelation of any [such] information ... Where the holder has behaved negligently or recklessly, the offence is punished by 3 years’ imprisonment and a fine ...”).
- <sup>30</sup> *Ibid.*, Art. 413-11(3) (5 years imprisonment and a fine for “any person not covered by article 413-10 who: ... (3) brings to the knowledge of the public or of an unauthorized person [of information which is in the nature of a national defence secret]....”).
- <sup>31</sup> *Ibid.*, Art. 413-12.
- <sup>32</sup> Criminal Code (Germany), 1998 (as of 2 October 2009), at <http://www.gesetze-im-internet.de/stgb/BJNR001270871.html>, Sec. 94- 96, 353b.

---

<sup>33</sup> *Ibid.*, Sec. 95 (“Disclosure of state secrets with intent to cause damage: (1) Whosoever allows a state secret which has been kept secret by an official authority or at its behest to come to the attention of an unauthorized person or become known to the public, and thereby creates the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment from 6 months to 5 years unless the offence is punishable under section 94. (2) The attempt shall be punishable. (3) In especially serious cases the penalty shall be imprisonment from 1 to 10 years.”). See *Ibid.*, Sec. 94(2) (defining “especially serious cases”).

<sup>34</sup> *Ibid.*, Sec. 353b (“(1) Whosoever unlawfully discloses a secret which has been confided or become known to him in his capacity as (i) a public official; (ii) a person entrusted with special public service functions; or (iii) a person who exercises duties or powers under the laws on staff representation, and thereby causes a danger to important public interests, shall be liable to imprisonment not exceeding five years or a fine. If by the offence the offender has negligently caused a danger to important public interests he shall be liable to imprisonment not exceeding one year or a fine. (2) Whosoever other than in cases under subsection (1) above unlawfully allows an object or information to come to the attention of another or makes it publicly known (i) which he is obliged to keep secret on the basis of a resolution of a legislative body of the Federation or a state or one of their committees; or (ii) which he has been formally put under an obligation to keep secret by another official agency under notice of criminal liability for a violation of the duty of secrecy, and thereby causes a danger to important public interests shall be liable to imprisonment not exceeding three years or a fine. (3) The attempt shall be punishable. (4) The offence may only be prosecuted upon authorization.”).

<sup>35</sup> *Ibid.*, Sec. 353b(2).

<sup>36</sup> *Ibid.*, Sec. 353b(3)(a).

<sup>37</sup> Criminal Code (Guatemala), Decree No. 17, 1973, at [http://www.oas.org/dil/esp/Codigo\\_Penal\\_Guatemala.pdf](http://www.oas.org/dil/esp/Codigo_Penal_Guatemala.pdf), Arts. 366, 368-70. Military criminal code (Guatemala), at <http://biblio.iuridicas.unam.mx/libros/5/2048/9.pdf>, Art. 36. Law on Access to Public Information (Guatemala), 2008, at <http://www.congreso.gob.gt/manager/images/BDF3BF91-FB41-6C68-C020-622221C9C64C.pdf>, Art. 67.

<sup>38</sup> Law on Access to Public Information (Guatemala), Art. 67 (“The public servant, official or employee who discloses or facilitates the disclosure of information of which he has knowledge by virtue of his employment and which is confidential or classified pursuant to the Guatemalan law or the Constitution, will be sanctioned with imprisonment of 5-8 years and disqualification from public service for double the imposed penalty and a fine...”).

<sup>39</sup> Criminal Code (Guatemala), Art. 366. (“Whoever, in any way, divulges secrets concerning national security, and communicating or publishing documents, drawings, plans or other information related to material, fortifications or military operations, shall be punished with imprisonment from 2-5 years and a fine...”).

<sup>40</sup> Criminal Code (Italy), 2012 (as of 3 June 2013), at <http://www.altalex.com/index.php?idnot=36653>, Arts. 257, 258, 261, 262.

<sup>41</sup> *Ibid.*, Art. 261.

<sup>42</sup> *Ibid.*, Art. 262.

<sup>43</sup> Federal Criminal Code (Mexico), 1931 (as of 7 June 2013), at <http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>, Arts. 123, 127, 128, 210, 211. Code of Military Justice (Mexico), 1933 (as of 9 April 2012), at <http://www.diputados.gob.mx/LeyesBiblio/pdf/4.pdf>, Arts. 203, 206.

<sup>44</sup> *Ibid.*, Art. 210 (“A penalty of 30 to 200 days of community service will be imposed on anyone who, without just cause and causing harm to someone without their consent, reveals any secret or classified communication of which the person has knowledge by virtue of his employment or position.”); Art. 211 (“The penalty will be of 1 to 5 years, a fine ... and the suspension of his position where applicable, of two months to a year, when the punishable disclosure has been made by a person who provides professional or technical services or by a public official or employee or when the secret revealed or published is of industrial nature.”).

<sup>45</sup> Criminal Code (the Netherlands), 1881 (as of 16 July 2013), at [http://wetten.overheid.nl/BWBR0001854/TweedeBoek/Titell/Artikel98/geldigheidsdatum\\_16-07-2013](http://wetten.overheid.nl/BWBR0001854/TweedeBoek/Titell/Artikel98/geldigheidsdatum_16-07-2013), Art. 98.

<sup>46</sup> *Ibid.*, Art. 98(1) (“He who intentionally distributes or makes information available to a person or body not authorized to know information of which secrecy is commanded in the interests of the State or its allies, an object from which such information is derived, or such data, shall, if he knows or should have reasonable grounds to suspect that this concerns such information, such object, or such data, be subject to punishment of up to 6 years imprisonment or a fine...”). See also *Ibid.*, Art. 98b (“He whose negligence has caused information ... as defined in Article 98, becoming public or known to an unauthorized person, can be punished by imprisonment up to a year or a fine...”).

<sup>47</sup> *Ibid.*, Art. 44 (a one-third enhancement of the sentence). See Communication with Wouter Hins, August 2013, on file with author.

<sup>48</sup> General Civil Criminal Code (the Kingdom of Norway), 1902 (as of 1 July 2013), at <http://www.lovdata.no/all/nl-19020522-010.html>, Sec. 90, 91.

<sup>49</sup> *Ibid.*, Sec. 90 (“Any person who unlawfully causes the disclosure of anything that should have been kept secret in the interests of national security, or who aids and abets thereto, shall be liable to imprisonment for a term not exceeding three years, but for not less than one year and not more than 10 years if the secret is betrayed to another state or considerable danger is caused. If the offender has acted negligently, a fine shall be imposed. If the secret was confided to the offender in his official capacity, the aforesaid custodial penalties may be increased by up to 50 per cent.”).

<sup>50</sup> Law 14 (Panama), 2007, at [http://www.oas.org/juridico/mla/sp/pan/sp\\_pan-int-text-cp.pdf](http://www.oas.org/juridico/mla/sp/pan/sp_pan-int-text-cp.pdf), Arts. 427-31.

<sup>51</sup> *Ibid.*, Art. 428 (“Whoever reveals confidential information of restricted access, declared as such under legal provisions concerning the security of the State, shall be punished by imprisonment of 2 to 4 years.”);

---

<sup>52</sup> *Ibid.*, Art. 430 (“Anyone guilty of revealing secrets that they hold by virtue of his office or a formal contract, or allows anyone else access to them, shall be punished with imprisonment from six months to a year or the equivalent in fines or arrest weekends.”)

<sup>53</sup> Criminal Code (Paraguay), Law 1970, 1997, at <http://www.mre.gov.py/v1/Adjuntos/Privacidad/Ley1160.pdf>, Arts. 282-85.. Law of National Defence and Internal Security (Paraguay), 1999, Art. 28, at [http://www.presidencia.gov.py/marco\\_legal/MINISTERIOS/03Defensa/ley\\_1337-1999.pdf](http://www.presidencia.gov.py/marco_legal/MINISTERIOS/03Defensa/ley_1337-1999.pdf). Military criminal code (Paraguay), 1980, at [http://www.icrc.org/applc/ihl/ihl-nat.nsf/0/cb85f2028142a0cdc12570530044190f/\\$FILE/Ley\\_843\\_1980.pdf](http://www.icrc.org/applc/ihl/ihl-nat.nsf/0/cb85f2028142a0cdc12570530044190f/$FILE/Ley_843_1980.pdf), Arts. 78-80.

<sup>54</sup> *Ibid.*, Art. 283. (“Disclosure of state secrets. (1) A person who makes accessible to another or publicly discloses a State secret that should be kept by a government entity or under the arrangement of such, and thereby exposes the Republic to the risk of serious harm to its external security, shall be punished by imprisonment of up to 5 years, unless the previous article [treason] is not applicable. (2) In these cases, the attempted offence shall also be punished.”). *See also Ibid.*, Art. 284. (“Less serious cases of disclosure. (1) A person who makes accessible to another a State secret mentioned in this article or who discloses it publicly, and negligently causes the risk of serious harm to the external security of the Republic, shall be punished with imprisonment of up to 5 years or a fine. (2) A person who by his function or mandate had access to state secrets and negligently makes accessible to an unauthorized person, thereby causing the risk of serious harm to the external security of the Republic, shall be punished imprisonment of up to 3 years or a fine.”).

<sup>55</sup> Law of National Defence and Internal Security (Paraguay), Art. 28.

<sup>56</sup> Criminal Code (Poland), 1997 (as of 1 June 2012), at <http://prawo.legeo.pl/prawo/kodeks-karny-z-dnia-6-czerwca-1997-r/>, Arts. 265, 266.

<sup>57</sup> *Ibid.*, Art. 265(1) (“Whoever discloses or, in violation of the law, uses information which constitutes a state secret shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.”).

<sup>58</sup> *Ibid.*, Art. 266(2) (“A public official who discloses “restricted” or “confidential” information or information that he obtained in the official capacity, to an unauthorized person, and the disclosure of the information could cause harm to a legally protected interest, shall be punishable by imprisonment up to 3 years”).

<sup>59</sup> *Ibid.*, Art. 265(3) (“Whoever unintentionally discloses [a state secret], with which he has become acquainted in the performance of his official function or authorization delegated to him shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.”).

<sup>60</sup> Criminal Code (Russia), 1996 (as of 29 June 2013), at <http://www.russian-criminal-code.com/PartII/SectionX/Chapter29.html>, <http://www.ug-kodeks.ru/>. Arts. 275, 276, 283.

<sup>61</sup> *Ibid.*, Art. 283(1), (2) (“Disclosure of information comprising a state secret, by a person to whom it has been entrusted or to whom it has become known through his office or work, if this information has become the property of other persons, in the absence of the characteristic features of high treason, shall be punishable by arrest for a term of 4-6 months, or by deprivation of liberty for up to 4 years, with disqualification to hold specified offices or to engage in specified activities for a term of up to 3 years, or without such disqualification. The same deed, which involved through negligence grave consequences, shall be punishable by deprivation of liberty for a term of 3-7 years, with disqualification to hold specified offices or to engage in specified activities for a term of up to 3 years.”).

<sup>62</sup> *Ibid.*, Art. 283.1(1) and (2).

<sup>63</sup> Criminal Code (Serbia), 2005 (as of 2009), at <http://www.propisinet.me/PDF/Krivicni%20zakonik.pdf>, Arts. 315, 316, 389.

<sup>64</sup> *Ibid.*, Art. 316 (“(1) Whoever without authorization discloses, hands over or makes available to another, information or documents that are entrusted to him or that he acquired otherwise and that represent a state secret, shall be punished by imprisonment of 1 to 10 years. (2) Whoever discloses to another person information or documents that he knows are a state secret, and which he unlawfully acquired, shall be punished by imprisonment up to five years. ... (4) If the offence specified in paragraph 1 is committed from negligence, the offender shall be punished by imprisonment of six months to five years.”).

<sup>65</sup> *Ibid.*, Art. 389(2), (3), (4) (“(2) Whoever discloses to another person information or documents that he knows are a state secret, and which he unlawfully acquired, shall be punished by imprisonment from six months up to five years. (3) If the offence specified in paragraph 1 of this Article is committed during a direct threat of war, state of war or state of emergency, or has resulted in compromising security, economic or military power of Serbia or SaM, the offender shall be punished by imprisonment of three to fifteen years. (4) If the offence specified in paragraph 1 is committed from negligence, the offender shall be punished by imprisonment of six months to five years.”).

<sup>66</sup> Criminal Code (Slovenia), 2008, (as of 14 June 2012), at <http://www.wipo.int/wipolex/en/details.jsp?id=6074> or <http://www.uradni-list.si/1/objava.jsp?urlid=201250&stevilka=2065>, Arts. 260, 358.

<sup>67</sup> *Ibid.*, Art. 260(1) (“An official or any other person who, in non-compliance with his duties to protect classified information, communicates or conveys information designated as classified information to another person, or otherwise provides him with access to such information or with the possibility of collecting such information in order to convey the same to an unauthorized person, shall be sentenced to imprisonment for not more than 3 years.”).

<sup>68</sup> *Ibid.*, Art. 260(4). (“(4) If the offence under paragraph 1 of this Article has been committed through negligence, the perpetrator shall be sentenced to imprisonment for not more than one year.”).

<sup>69</sup> *Ibid.*, Art. 260(3). (“(3) If the offence from paragraph 1 of this Article has been committed out of greed or with a view to publishing or using the information concerned abroad, the perpetrator shall be sentenced to imprisonment for not more than five years”).

---

<sup>70</sup> Criminal Code (Spain), 1995 (as of 2011), at <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>, Arts. 584, 598. Military Criminal Code (Spain), [YEAR], at <http://www.boe.es/buscar/act.php?id=BOE-A-1985-25779>, Arts. 50, 52, 55. See also Decision 1094/2010, Supreme Court (Spain), 10 December 2010, Criminal Section.

<sup>71</sup> Criminal Code (Spain), Art. 598 (“Procure, disclose, distort or render useless confidential or secret information. A person who, without the intent of favoring a foreign power, procures, discloses, distorts, or renders useless information legally classified as confidential or secret, related to national security or national defence or related to the technical means or systems used by the Armed Forces or the industries or military interest, shall be punished with imprisonment of one to four years.”).

<sup>72</sup> Military Criminal Code (Spain), Art. 53.

<sup>73</sup> *Ibid.*, Art. 54 (Sentences will be imposed from within “the greater half of its scope when one of the following circumstances occurs: (1) That the subject held or had knowledge of the information due to his charge or post. (2) That the disclosure was made publicly or through a method of communication that ensured its dissemination.”).

<sup>74</sup> *Ibid.*, Art. 56.

<sup>75</sup> Communication with Susana Sanchez, August 2013, on file with author.

<sup>76</sup> Communication with Susana Sanchez, August 2013, on file with author.

<sup>77</sup> Judgment 1094/2010, Supreme Court, 2<sup>nd</sup> panel (Spain), 10 December 2010. Communication with Susana Sanchez, August 2013, on file with author.

<sup>78</sup> Criminal Code (Sweden), 1962 (as of 4 July 2013), at <http://www.notisum.se/rnp/sls/lag/19620700.HTM>, Ch. 19, Sec. 5-9; Ch. 20, Sec.

3.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, Ch. 19, Sec. 9 (“A person who through gross carelessness transmits, gives or reveals information described in Section 7 shall be sentenced to a fine or imprisonment for at most six months or, if the Realm was at war, to a fine or imprisonment for at most two years”).

<sup>81</sup> *Ibid.*, Ch. 20, Sec. 3 (“A person who discloses information which he is duty-bound by Law or other statutory instrument or by order or provision issued under a Law or statutory instrument to keep secret, or if he unlawfully makes use of such secret, he shall, if the act is not otherwise specially subject to punishment, be sentenced for breach of professional confidentiality to a fine or imprisonment for at most one year. A person who through carelessness commits an act described in the first paragraph shall be sentenced to a fine. In petty cases, however, punishment shall not be imposed”).

<sup>82</sup> *Ibid.*, Ch. 19, Sec. 8.

<sup>83</sup> Official Secrets Act (United Kingdom), 1989 (as of August 2013), Sec. 8, 10, at <http://www.legislation.gov.uk/ukpga/1989/6/contents>, as amended by Criminal Justice Act (United Kingdom), 2003, at <http://www.legislation.gov.uk/ukpga/2003/44/schedule/26/paragraph/39/prospective>. Official Secrets Act (United Kingdom), 1911 (as of August 2013), Sec. 1, at <http://www.legislation.gov.uk/ukpga/Geo5/1-2/28/contents>.

<sup>84</sup> *Ibid.*, Sec. 1(1) (“A person who is or has been—(a) a member of the security and intelligence services; or (b) a person notified that he is subject to the provisions of this subsection, is guilty of an offence if without lawful authority he discloses any information, document or other article relating to security or intelligence which is or has been in his possession by virtue of his position as a member of any of those services or in the course of his work while the notification is or was in force.”); Sec. 1(3) (“A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to security or intelligence which is or has been in his possession by virtue of his position as such but otherwise than as mentioned in subsection (1) above”); 2(1) (offence for public servants to “without lawful authority” make “a damaging disclosure ... relating to defence”); Sec. 3(1) (offence for public servants to “without lawful authority” make “a damaging disclosure ... relating to international relations”); Sec. 10(1) (offences other than 8(1), 8(4), 8(5) subject to penalties of up to 2 years imprisonment and/or fine on conviction on indictment; or up to 6 months imprisonment and/or fine on summary conviction).

<sup>85</sup> *Ibid.*, Sec. 5(2) (“Information resulting from unauthorized disclosures or entrusted in confidence... (2) ... [T]he person into whose possession the information, document or article has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above [disclosed by a public servant lawfully or unlawfully].”); 8(6) (“A person is guilty of an offence if he discloses any official information, document or other article which can be used for the purpose of obtaining access to any information, document or other article protected against disclosure...”).

<sup>86</sup> *Ibid.*, Sec. 5(3) (“[A] person does not commit an offence under subsection (2) above unless—(a) the disclosure by him is damaging; and (b) he makes it knowing or having reasonable cause to believe, that it would be damaging; and the question of whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant”); Sec. 1(4) (“For the purposes of subsection (3) above a disclosure is damaging if—(a) it causes damage to the work of, or of any part of, the security and intelligence services; or (b) it is of information or a document or other article which is such that its unauthorized disclosure would be likely to cause such damage or which falls within a class or description of information, documents or articles the unauthorized disclosure of which would be likely to have that effect.”); Sec. 2(2) (damaging disclosure defined related to defence); Sec. 3(2) (damaging disclosure defined related to international relations).

---

<sup>87</sup> Espionage Act (United States), 18 U.S.C. Sec. 793-98, 1917 (as of August 2013), at <http://www.law.cornell.edu/uscode/text/18/793>. Uniform Code of Military Justice, 10 U.S.C. §906a(a) (United States), Arts. 106a, 92, 104, 134 . Several other statutes restrict the unauthorized disclosure of classified information: 18 U.S.C. Sec. 641, 952, 1030, 1924, 50 U.S.C. Sec. 783; Intelligence Identities and Protection Act of 1982, codified at 50 U.S.C. Sec. 421-26. See generally Jennifer Elsea, *Criminal Prohibitions on the Publication of Classified Defence Information*, Congressional Research Service, 24 June 2013, at <http://www.fas.org/sgp/crs/secretcy/R41404.pdf>.

<sup>88</sup> 18 U.S.C. Sec. 798 (“Disclosure of classified information (a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information (1) concerning the nature, preparation, or use of any code cipher, or cryptographic system of the United States or any foreign government; or (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or (3) concerning the communication intelligence activities of the United States or any foreign government; or (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes - shall be fined under this title or imprisoned not more than ten years, or both.”); 18 U.S.C. 793(e), (f) (“Whoever having unauthorized possession of, access to, or control over any [information] relating to the national defence, ... willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it ... (f) shall be fined under this title or imprisoned not more than ten years”). See also 18 U.S.C. Sec. 1030(a)(1) (punishing, with a penalty of up to 10 years, the willful retention, communication, or transmission, of classified information retrieved through knowing and unauthorized access to a computer, with reason to believe that information “could be used to the injury of the United States, or to the advantage of any foreign nation”); 18 U.S.C. Sec. 641 (punishing, with a penalty of up to 10 years, theft or conversion of government property or records for one’s own use or the use of another) (has been used to prosecute “leakers,” see Elsea at 13, note 85); Intelligence Identities and Protection Act of 1982, codified at 50 U.S.C. Sec. 421-26 (penalizes, with a penalty of up to 3 years, the unauthorized disclosure of the identity of a covert agent, with reason to believe that such activities would impair U.S. foreign intelligence efforts; no possible charge for conspiracy, or aiding and abetting; only two convictions on guilty pleas).

<sup>89</sup> See, e.g., 18 U.S.C. Sec. 952 (proscribes unauthorized disclosure of certain diplomatic material obtained “by virtue of ... employment by the United States.”), 18 U.S.C. Sec. 1924 (proscribes unauthorized removal and retention of classified documents or material by public servants); 50 U.S.C. Sec. 783 (proscribes unauthorized disclosure of classified information to an agent of a foreign government, unauthorized receipt by foreign government official).