



Providing an Alternative to Silence:

Towards Greater Protection and Support for Whistleblowers in the EU

COUNTRY REPORT: CYPRUS

This report belongs to a series of 27 national reports that assess the adequacy of whistleblower protection laws of all member states of the European Union. *Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU*, published by Transparency International in November 2013, compiles the findings from these national reports. It can be accessed at www.transparency.org and www.transparencycyprus.org

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National Report for the Republic of Cyprus

1. Introduction

The analysis of the concept of whistleblowing as can be observed in the legal order and the social community of the Republic of Cyprus, can not be conducted in isolation from the European dimension. The combined influence originating from the Council of Europe,¹ the European Union² and GRECO³ has been instrumental in reshaping the legal status of the protection afforded to individuals disclosing sensitive information about wrongdoings within different organizations. The European impact has been instrumental in defining in more detail and clarity the phenomenon of transparency and accountability, thus raising awareness for the useful role that can be performed through whistleblowing for promoting an ethos of openness and

¹ Committee on Legal Affairs and Human Rights, Council of Europe's Parliamentary Assembly (PACE), Council of Europe, Report on the Protection of Whistleblowers, 2009, available at http://fairwhistleblower.ca/files/fair/docs/ti/Council_of_Europe_Draft_WB_Resolution.pdf; Resolution 1729 (2010) Protection of “whistle-blowers” *Assembly debate* on 29 April 2010 (17th Sitting). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting), available at <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta10/eres1729.htm> See also Recommendation 1916 (2010), available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/EREC1916.htm>

² Rohde-Liebenau B., Whistleblowing Rules: Best Practice; Assessment and Revision of Rules Existing in EU Institutions, European Parliament, Directorate General Internal Policies of the Union, Budgetary Support Unit, Budgetary Affairs, IPOL/D/CONT/ST/2005_58, N° PE 373.735, Brussels, 2006

³ Council's Group of States Against Corruption (GRECO). See for example the Second Evaluation of Compliance Report on Cyprus, 2008, Recommendation 30 et seq., available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)1_Cyprus_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)1_Cyprus_EN.pdf)

legitimacy. However, it must be pointed out that the positive changes have been apparent predominantly in the legislative level and much less in the social perception level. Put differently, the debate about issues relating to the specific protection of whistleblowers has not entered in the public forum and the established perception is that external sources, in this case European supranational or intergovernmental organizations, have required from the Republic of Cyprus to fill in the preexisting gap. It is this dichotomy applicable to the effectiveness of the European influence that must be assessed in the future in terms of additional steps to be taken for improving the status quo. It is indicative to mention the call by the Environment Commissioner Charalampos Theopemptou⁴ for a public interest disclosure legislation, which if in existence could have prevented the devastating explosion at the military base in Mari on the 11th July 2011 that killed thirteen people and destroyed the main electricity supply station.

At this stage two preliminary clarifications must be made, one conceptual and one methodological. From the conceptual perspective, a distinction must be drawn between internal and external whistleblowing. In the former instance, the person revealing sensitive information relating to wrongdoing in the legal sense is a member of the same organization. In the instances of external whistleblowing, the person in question is external to the organization under scrutiny. The preceding distinction is crucial, since in the case of internal situations the relationship is founded on the employment connection, thus triggering the protection mechanisms applicable for employees. In Cyprus, the distinction is paramount since there is considerable, yet in need of codification and improvement, protection for internal whistleblowers

⁴ July 28th 2011, Cyprus Mail Interview, “Time to Legalize Whistleblowing”, available at <http://www.thefreelibrary.com/It's+time+to+legalise+whistleblowing'.-a0262673773>

especially if those are employed in the public sector. There is weaker protection for private sector workers involved in internal whistleblowing and even weaker protection for external whistleblowers that are not satisfying the employee criterion.

From the methodological perspective, there is almost absolute lack of sources in Cyprus regarding whistleblowing, thus the research has been based on national reports and primary review and analysis of the legislative and juridical framework. Therefore, the desk review, the legal review and the analysis of the social perceptions and indicator relating to the concept of whistleblowing have taken place on the basis of all available material and after conducting primary level research into the legislative framework.

Moreover, the level of protection has been elevated in relation to civil servants, while in the private sector there has been lack of equivalent progress. There is, therefore, a combined protective effect for whistleblowers resulting from a plethora of legal sources⁵ and its quality depending on the criterion of ‘identity’: more thorough protection for civil servants than for private sector employees.⁶ Accordingly, the public sector worker is in a better position to reveal important information relating to wrongdoings in the public sector, than an employee in the private sector. As will be explained, the protection for employees in the private sector is not crystal clear and needs to be supplemented.

⁵ Primarily from the Public Service Law, Law 1/90, article 69A and Parts VI and VII and also from article 369 Criminal Code and The Law on the General Principles of Administrative Law, Law 158/99.

⁶ The applicable protection results from the Unfair Dismissal Law, Law 24/67 (as amended). See also a potential source of protection under article 19 Constitution safeguarding freedom of expression, which in conjunction with the decision of the Supreme Court in *Yiallouros v. Evgenios Nicolaou* Civil Appeal No 9931, Judgment of 8 May 2001, where human rights in general were found in certain instances to create horizontal effect between individuals.

Surmising, there is a hierarchy of protective intensity whereby the internal situations prevail over external situations, the public sector worker is protected in a more complete and comprehensive manner than an employee in the private sector, and the legal changes resulting from European influence that have been favoring whistleblowers have dominated over the social debate as to the need for furthering the phenomenon of whistleblowing.

2. Compilation, Description and Assessment of Whistleblowing Protection Laws

In terms of methodological approach, the present report is addressing the issues set out in the relevant part of the directions given and relating to the preceding heading, with a direct reference in parenthesis to the supplementing questions raised at the relevant questionnaire.

The legal framework lacks a specific legislation that offers independent stand-alone protection to whistleblowers. This legislative gap is the result of a choice made by the State as regards the method of compliance with its international and European legal obligations and undertakings. The preceding omission is being partly compensated by the combined effect of different independent yet mutually impacting legislative acts. Needless to say, the lack of a *lex specialis* negates the need for analyzing whether there is universality of application or mere sectoral (public and private) scope of application. (Q1)

The amalgam of legislative acts containing provisions relating directly or indirectly to the protection of whistleblowers is founded on the sector-related scope of application.

Therefore, there is difference in scope of application of the existing legislative acts on the basis of the identity criterion, whereby the outcome is more thorough protection for civil servants than for private sector employees. In addition, the other crucial distinction is that made in the introductory part of the report and relating to internal and external aspects of whistleblowing. In the case of Cyprus, the existing legislative acts are exclusively focused on internal situations, whereas for external situations the protection is limited and untested. For example, if there is an instance of whistleblowing in the public sector and the person concerned is an employee of the State, then the protection granted is substantive. It stems from the **Public Service Law, Law 1/90** (as amended), article 69A and Parts VI and VII and also from article 369 of the **Criminal Code (cap 154)** and perhaps the **Law on the General Principles of Administrative Law, Law 158/99**. If the instance involves an employee of the private sector, the applicable legislation is the **Unfair Dismissal Law, Law 24/67** (as amended), with the protection afforded being indirect and of unclear nature. In cases of hybridity, where the whistleblower does not satisfy the substantive criterion of being an employee, the protection afforded could stem from article 19 of the Constitution safeguarding freedom of expression. (Q2)

In detail, the **Public Service Law, Law 1/90** (as amended), article 69A and Parts VI-VII provide the point of reference for public sector employees. Article 69A was introduced in 2003 by the **Public Service (Amending) (no. 3) Law (Law 183 (I)/2003)** and provides that:

“an employee that during the course of performing his duties becomes aware or has reasonable cause to believe that an act of corruption or bribery by another employee

has taken place...*is obliged to report in writing* to the responsible authority to which he reports, providing all the necessary evidence in support of his claim” (as translated by the author, emphasis added).

Therefore, article 69A creates an obligation to the civil servant to report in writing any instances of corruption, thus in the event that an employee complies then that person is to be regarded as acting in accordance with the legal obligation resulting from art. 69A and as a corollary can not be prosecuted. In a way, this provision offers a shield to the civil servant to safeguard from prosecution and/or disciplinary actions, by imposing an obligation to report to the responsible authority. Moreover, article 73 that lists the conditions for disciplinary action expressly provides (73 (1) (b)) the need for action or omission amounting to breach of duty or obligation of a civil servant. Therefore, a civil servant that is complying with the obligation arising from art. 69A, can not be the subject of disciplinary investigation since the basic precondition of article 73 is not met. In addition the law introduced in 2004 to ratify the Civil law Convention on Corruption (**Law 7 (III)/2004**) in article 7 provides that a person that has imposed an unjustified punishment on a whistleblower for reporting corruption, commits an offence that could lead to the imposition of prison sentence and/or pecuniary fine. Moreover, the possibility for civil law action is always possible for the victimized whistleblower.

In terms of supplementing legislative measures relating to the public service sector, reference must be made to article 369 of the **Criminal Code (cap 154)** stating:

“Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion

thereof, is guilty of a misdemeanor”.

Therefore, the criminal code in effect imposes an obligation on civil servants and private sector workers equally, to report on individuals committing or designing to commit a felony, thus creating a solid defense against any prosecution based on their whistleblowing activities. It is apparent that the provision in the criminal code is predating the amended art. 69A of the **Public Service Law** and is a provision of general scope that did not at the time had in mind the protection of whistleblowers. It can be stated that an amendment in the criminal code that would make express reference to whistleblowers could be beneficial and instrumental in creating a culture of transparency and accountability through the medium of active citizen reporting on crimes and corruptive practices. Such an amendment can be twofold: making it a criminal offense to prosecute or victimize whistleblowers and to make it a criminal offense if someone that becomes aware of the design to commit or actual committing of a *misdemeanor* fails to report it. The latter introduction will expand the range of criminal activity that will relate to whistleblowing obligation, while the former will strengthen the ethos of protecting those courageous individuals that decide to report on criminal activities. It is important to repeat that the **Criminal Code** provision of art. 369 applies equally to private sector employees and also to hybrid cases, as those were defined supra, where the employee criterion is absent.

In relation to the Criminal Code, important is the provision in article 105 where it creates a criminal offense for the failure of a civil servant to report any attempt to influence him in the course of his duties. This provision does not relate to corruption and/or bribery but to attempts to influence the process of recruitment, promotion and evaluation of civil servants.

Finally, reference can be made to the **Law on the General Principles of Administrative Law, Law 158/99**, which provides a codification of the preexisting case law principles governing judicial review under article 146 Constitution. It is of indirect relevance to public sector employees that are whistleblowers in the sense that article 8 provides for legal boundaries that must guide administrative action and art. 48 for the abuse of power by public authorities, thus creating a further preemptive shield against disciplinary action targeting civil service whistleblowers.

With reference to private sector workers, as stated previously, article 369 of the **Criminal Code** is relevant, as is the **Unfair Dismissal Law (Law 24/67** (as amended)), with the protection afforded being indirect and of unclear nature. This is the case, since the legislation lists a number of grounds on which an employer can rely to dismiss an employee lawfully. In that list no express reference is being made to whistleblowers, but there is unfortunately room for such interpretation. In detail, the law lists among others as ground for lawful dismissal the behavior of the employee (article 5 (f)) which is such that can no longer enable the relationship between employee and employer and also the disciplinary offenses of the employee in accordance with internal company rules. It would have preferable if an express provision is included whereby the dismissal of whistleblowers is prohibited, thus removing any room for interpretation. Nonetheless, the provisions of the **Unfair Dismissal Law, Law 24/67** (as amended), have to be construed in conjunction with article 369 of the **Criminal Code** thus creating a justifying basis for considering the whistleblowing activity as superior to any internal regulations of the company in the event that a felony is committed. Nonetheless, the overall protection is substantially weaker in comparison to that offered to civil servants.

The overview of the applicable legislation can not be complete if reference is not made to a very important and interesting decision of the Supreme Court that related to whistleblowing. That decision is *Yiallouros v. Evgenios Nicolaou*⁷ the Supreme Court examined the issue of phone tapping between two individuals on the basis of suspicion of corruption in the public service and found for the horizontal effect of the constitutional provisions in arts. 15, 35 and 17 Constitution that create triangular relationships with the State and give rise to a right to sue for compensation despite of the lack of a legislative provision. That remarkable finding was supported by the analysis of *Klass v. FRG*.⁸

In the landmark decision *Yiallouros v. Evgenios Nicolaou*⁹ it has been held “that a violation of human rights is an actionable right which can be pursued in civil courts against those perpetrating the violation, for recovering from them, inter-alia, just and reasonable compensation for pecuniary and non-pecuniary damage suffered as a result and or other appropriate civil law remedies for the violation”.¹⁰ Therefore, the right to pursue civil proceedings for human rights violations is as a corollary expanded in the horizontal sphere between individuals and is thus exercisable both against the State and private persons. The case therefore established that the violation of the plaintiff’s right to the private life and the right to secrecy of correspondence and communications, as guaranteed by the Cypriot Constitution, provided him with an

⁷ *Yiallouros v. Evgenios Nicolaou* Civil Appeal No 9931, Judgment of 8 May 2001.

⁸ *Klass v. FRG*, A 28 para 64, (1979).

⁹ *Yiallouros v. Evgenios Nicolaou* Civil Appeal No 9931, Judgment of 8 May 2001

¹⁰ As accurately summarised in Report by the Republic of Cyprus, On the Implementation of the ICSECR, March 2009,

[http://www.olc.gov.cy/olc/olc.nsf/0/0aa954e8aee4b23bc225758d001bf48b/\\$FILE/Answers%20to%20Issues%20-%20Questions.pdf](http://www.olc.gov.cy/olc/olc.nsf/0/0aa954e8aee4b23bc225758d001bf48b/$FILE/Answers%20to%20Issues%20-%20Questions.pdf), p. 6.

actionable right. Therefore, victims of human rights violations are entitled to rely directly on the provisions of the Constitution and the European Convention on Human Rights. The case concerned the action for compensation brought against Mr. Yiallourous for tapping telephone conversations made by complainant from his service phone, without the consent or the knowledge of the victim or the persons conversing with the latter over the telephone. The Court held that there was a direct breach of art. 15 on privacy, irrespective of the fact that the motive of Mr Yiallourous was to reveal anomalies, omissions and / or improprieties resulting in unlawful enrichment of the victim. The Supreme Court held in the criminal trial¹¹ that took place firstly that Mr. Yiallourous' actions constituted first and foremost a criminal offence under *the Penal Code, Cap. 154*, as amended, as it amounted to an abuse of authority and that he was thus rightfully suspended and removed from his position and duties, respectively. In the subsequent 1992 criminal appeal,¹² where Mr. Yiallourous attempted to base his defence to criminal charges brought against him for the same set of circumstances, on the truth of the content of the magnetic tapes, the Supreme Court held that Mr. Yiallourous' actions constituted a gross breach of Article 15 and the Executive Engineer's right to privacy under it and therefore the magnetic tapes, which were a by-product of such a breach, were rendered absolutely inadmissible as evidence. Evidence received or secured through the breach of fundamental rights and liberties of the person cannot be admissible for any reason whatsoever.

¹¹ (1990) 3 CLR 3532. As analysed in Apostolou, G., "Defamation & Privacy Laws in the Republic of Cyprus", available at http://apostoloulaw.com/pdf_Defamation_Article.pdf

¹² (1992) 2 CLR 147. As analysed in Apostolou, G., "Defamation & Privacy Laws in the Republic of Cyprus", available at http://apostoloulaw.com/pdf_Defamation_Article.pdf

In the following civil action,¹³ Mr. Yiallourous appealed to the Supreme Court against the first instance finding ordering the award CYP£5.000 to the victim in general damages for non-pecuniary damage or moral damage suffered. The appeal was dismissed by the Supreme Court that held that a plaintiff would be allowed to an award of general monetary damages, wherever there is a breach of a human right causing damage but where that breach does not also constitute a tort / civil wrong. The justification used by the Court was that of ‘triangular situations i.e. tritenergia (in Greek)’, whereby the Constitutional provision on the right to privacy becomes a third ‘party’ to a civil action that lacks legislative regulation, thus creating such a right of compensation simply because of the importance of the affected right. The case is potentially problematic for whistleblowers but only where they also violate the law in order to substantiate their accusations. The decision is far more important as a tool for protecting whistleblowers from persecution and unfair dismissal by their employers on grounds of whistleblowing activity. The possibility of actionable rights in horizontal relations where there is no express provision recognizing such an actionable right (as is the case with whistleblowing), creates an interesting protective option.

In relation to amendments and tabled legislation and regulations pending after 2007, it must be clarified that there has been no development despite calls for removing the requirement of art. 69A **Public Service Law (Law 1/90)** for written submission of reports relating to corruption and bribery. The written form is possibly creating an obstacle for the reporting since it could be interpreted as requiring the whistleblower to reveal his identity. The fact that such reports must be made in written form was

¹³ *Yiallourous v. Evgenios Nicolaou* Civil Appeal No 9931, Judgment of 8 May 2001

criticized in the GRECO Evaluation Report (paragraph 90)¹⁴ and led to the adoption of recommendation vi.¹⁵ The authorities had decided to maintain the requirement of written reporting as provided for in the law. However, they had also indicated that during training of public employees it would be highlighted that in urgent cases the written form would not be necessary. GRECO had stressed in the Compliance Report¹⁶ that the measure taken was of an informal, administrative character and that the law remained the same. This constituted a contradiction that could generate problems in practice. GRECO was therefore not convinced that the measure taken would satisfy the objective of the recommendation, unless the law was amended accordingly. In conclusion, GRECO welcomed the decision to allow whistleblowers to report also orally where the circumstances so require. However, it invited the authorities of Cyprus to consider further the implementation of this recommendation, which was considered partly implemented.

In responding to the argument, the Cypriot authorities submitted that by virtue of the existing provisions of the Public Service Law, a person may give information about suspected corruption in writing without identifying himself/herself (anonymously), whereas in the absence of such a requirement, the identity of the whistleblower would be automatically revealed if such information were given orally. Moreover, the authorities claim that the system would be more open for misuse, if the requirement was abolished. Besides, the competent authorities have an obligation to act upon every report (whether written or oral). The authorities also stress that the General Audit Office has an obligation to investigate any written or oral complaint and/or

¹⁴ Council's Group of States Against Corruption (GRECO). See for example the Second Evaluation of Compliance Report on Cyprus, 2008, Recommendation 30 et seq., available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)1_Cyprus_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)1_Cyprus_EN.pdf)

¹⁵ Ibid.

¹⁶ Ibid.

report made to it and, furthermore, that the Police has introduced a direct phone line for the anonymous oral reporting of any suspected offence. Finally, the authorities reiterate that it is now the practice, during training seminars for public servants, to stress that in urgent cases they can avoid the written form of reporting, if they believe it is more appropriate under the particular circumstances to do so.

Regardless how reasonable the preceding argumentation may be, as the measure of encouraging oral submission of complaints has no legal basis and contradicts the legal provision contained in the **Public Service Law** (art. 69A), the interpretation of section 81(2) of the **Public Service Law**, which according to the authorities, implies that a report, whether written or oral, shall immediately be investigated by the Public Service Committee, seems to be creating unnecessary confusion and mixed standards. (Q12)

The Republic of Cyprus has no independent authority that receives and investigates complaints about whistleblowing, nor is there any exclusive jurisdiction for such a task. On the contrary, there is a variety of agencies dealing with such cases with the Public Service Commission being the point of reference for civil servants and the police for all other instances, while the General Audit Office is also responsible in cases relating to allegations of financial nature. (Q4)

In the event of retaliation against whistleblowers, the civil action as expanded in the case of Yiallourous analysed supra is a possible remedy, while there is criminal liability under the law introduced in 2004 to ratify the Civil law Convention on Corruption (**Law 7 (III)/2004**). In article 7 it provides that a person that has imposed an unjustified punishment on a whistleblower for reporting corruption, commits an offence that could lead to the imposition of prison sentence and/or pecuniary fine.

(Q5)

There has been no official assessment of the protective system to date, except in the form of the national reports submitted to GRECO where descriptive reference to the system is being made, yet with no actual assessment as to its efficacy and effectiveness. Unofficially, there have been calls for introducing a specific legislative provision by the Environment Commissioner Charalampos Theopemptou ¹⁷ advocating for a public interest disclosure legislation, which if in existence could have prevented the devastating explosion at the military base in Mari on the 11th July 2011 that killed thirteen people and destroyed the main electricity supply station. (Q6)

In terms of disclosures expressly covered under whistleblowing, those include corruption and bribery in accordance with Article 69A of the **Public Service Law (Law 1/90)**:

“an employee that during the course of performing his duties becomes aware or has reasonable cause to believe that an act of corruption or bribery by another employee has taken place...*is obliged to report in writing* to the responsible authority to which he reports, providing all the necessary evidence in support of his claim” (as translated by the author, emphasis added).

Any other activities are possibly covered under the general provisions mentioned earlier (Criminal Code, Unfair Dismissal) but no express reference is made to whistleblowing therein. (Q7)

¹⁷ July 28th 2011, Cyprus Mail Interview, “Time to Legalize Whistleblowing”, available at <http://www.thefreelibrary.com/It's+time+to+legalise+whistleblowing'.-a0262673773>

In terms of individuals covered as whistleblowers, under the **Public Service Law 1/90**, the term employee includes anyone possessing a positions permanently, temporarily or by way of substitution (article 2). This definition excludes non-traditional employees of the State, while in relation to the private sector the absence of specific legislation seems to render the issue obsolete. (Q8)

In addition the law introduced in 2004 to ratify the Civil law Convention on Corruption (**Law 7 (III)/2004**) in article 7 provides that a person that has imposed an unjustified punishment on a whistleblower for reporting corruption, commits an offence that could lead to the imposition of prison sentence and/or pecuniary fine. The legislation does not explain the scope of unjustified punishment, but an interpretation can be made with article 79 of the **Public Service Law (Law 1/90)** that lists the possible sanctions that can be imposed against civil servants in disciplinary proceedings. Those include demotion, firing, unwanted transfer, stripping of job duties or benefits, reduction of pay, financial penalty equal up to three monthly salaries and forced retirement. The threat for such action is not included in article 7 of **Law 7 (III)/2004**. (Q. 9)

In terms of express protection granted to whistleblowers for good-faith disclosures found to be incorrect or inaccurate, there is no such provision. (Q. 10) In relation to the burden of proof, in both public and private sectors (**Public Service Law 1/90 and Unfair Dismissals Law 1967**), that rests with the employer. (Q. 11) As far as to whether the legislation includes any internal or external disclosure mechanisms, the legislative framework makes no such specific provision. (Q13) The same unfortunate

lack of reference applies in relation to hotlines, (Q15) remedies available to whistleblowers, (Q16) and to participation to follow-up reforms. (Q17) As regards classification of information on the basis of confidentiality, there seems to be an unclear state of affairs since art. 69A **Public Service Law 1/90** does not provide for a hierarchy of information and thus for the specific prohibition to disclose confidential information. Nonetheless, the same law provides in article art. 60 that any written or oral information that a civil servant possesses as a corollary of exercising his duties, is confidential and is prohibited to be communicated to any person but for the proper exercise of service duty or after the written approval of the relevant authority. Therefore, the communication of any information that relates to the obligation of the civil servant under art. 69A “an employee that during the course of performing his duties becomes aware or has reasonable cause to believe that an act of corruption or bribery by another employee has taken place...*is obliged to report in writing* to the responsible authority to which he reports, *providing all the necessary evidence in support of his claim*” (emphasis added), is implying that there is no type of information that can be excluded from disclosing. Furthermore, the **Criminal Code (cap 154)** in art. 50A provides that the disclosure of information relating to the defense of the State is a criminal offense, with the exception of where the recipient is duly authorized to handle such information. Therefore, the whistleblowing that has as a recipient an individual within the same service is likely to exclude any criminal liability, as the **Public Service Law 1990** excludes any disciplinary offense.

Nonetheless, special attention must be paid to the more specific provision of the **Criminal Code (cap 154)** relating to the disclosure of official secrets. Art. 135 provides:

“Any person employed in the public service who publishes or communicates any fact which comes to his knowledge by virtue of his office, and which it is his duty to keep secret or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it is guilty of a misdemeanor. A prosecution for an offence under the provisions of this section shall not be commenced except by, or with the consent of, the Attorney General”.

It is therefore apparent that the disclosure of even state secrets within the service that one is serving will not constitute a criminal offense, while the possibility of a prosecution for borderline cases is controlled by the Attorney General that has the sole responsibility for initiating criminal prosecution in this case. In the exercise of his duties the Attorney General is bound to take into account the broader public interests and the positive impact that the revelation of the information might have.

There is nonetheless limitation to the protection granted, since that extends only to case relating to corruption and bribery. With reference to the private sector, no similar protective provision is being made and there is therefore a considerable gap in the protection afforded to whistleblowers. (Q.14).

Finally, there is clearly considerable legal protection granted to whistleblowers in the event of prosecution, on the basis of the right to a fair trial guaranteed fully under the Constitution (articles 11, 12 and 30). In the event of disciplinary action, the decisions of the Public Service Commission are subject to appeal before the Supreme Court (art. 73-86 **Public Service Law 1990**). (Q. 18)

Surmising, the protection levels created by the complex and multi-sourced legislative

framework are primarily limited to the public sector. The dichotomy of protection between public and private sector is stark and the private sector seems to be unnecessarily and unjustifiably overlooked. In addition, the protection in the public sector is limited to cases concerning bribery and corruption, thus excluding any other variations of illegal activity, while at the same time the emphasis of the system is placed on the employee quality. Moreover, the procedural aspects of protection to public sector whistleblowers are founded on the written submission of information, with the law requiring an amendment to expressly enable oral communications and unanimity. Finally, the system needs to be supported with auxiliary provisions relating to the status of whistleblowers and to mechanisms for faster communication with the authorities both internally and externally to the organization concerned.

3. Perceptions and Political Will

It must be clarified from the outset that in the case of Cyprus there has been no study or statistics (Q23) exploring the public or intra-institutional attitude towards whistleblowers, while at the same time the small size, population and closeness of the Cypriot society must be taken into account.

In terms of perceptions, the cases where whistleblowers were involved are normally kept from the public eye, with their anonymity being protected. There has been one notable recent instance where a civil servant posted at the Agriculture Ministry made written accusations against colleagues and the Minister for nepotism in relation to appointments of workers on hourly rate. The name of the civil servant (Mr. Dimitriou) was made public most likely by his own intention in order to attract the support of the press, which actually happened primarily because he was to face disciplinary proceedings. The press, the majority of the political parties and the Attorney General

praised him for his action and a criminal investigation that resulted in prosecutions was the outcome. The saga was interesting also because the Minister was not prosecuted and was himself the institutionally responsible for dealing with the written information that Mr. Dimitriou provided while at the same time there was serious grounds for believing that the minister should have been aware of the nepotism (Q22). (Q19)¹⁸ From this case it becomes clear that when the media is involved, the whistleblower is perceived as an important person committed to fighting corruption. However, the press and the public tend to approach such cases with a rigid criterion of political affiliation, thus always questioning the motives of the whistleblower and frequently associating his actions with his political affiliation. In a small country and with a closed society such personal information is easy to obtain, thus placing the whistleblower amid the heated blaming debate of the political parties. This factor represents the main barrier to whistleblowing. (Q19) In terms of ‘labeling’ the whistleblower, the perception is dependent on political affiliations and can range from the classical ends of the spectrum, namely ‘snitch’ (karfi in Greek) or ‘hero’. (Q19, 21) The same applies equally to the political elite, which approaches the matter from the perspective of having potential for political gain or loss.¹⁹ (Q20)

Surmising, the political and public perceptions of whistleblowers are primarily politically influenced and there is frequent disclosure of information on the basis of anonymity. The whistleblower is seen favorably or negatively, depending on the political motivation associated with his actions, thus most often than not rendering the best available option being the maintenance of anonymity.

¹⁸<http://www.sigmalive.com/news/local/202514>; <http://m4trix87.wordpress.com/oi-αθώοι-και-οι-θεματοφύλακες-των-θες/>

¹⁹ Ibid.

4. Strengths, Weaknesses and Recommendations

There is no move for legislative change relating directly to whistleblowers, although there are various initiatives taking place aiming to have an impact on corruption. These take the form of creating a system for declaring financial assets for public figures and individuals holding public office, yet those initiatives are not directly or indirectly related to enhancing the protection for whistleblowers.

The main strength of the Cypriot system is its willingness to correspond through implementation to calls for change coming from Europe. The creation of a European obligation that requires the strengthening of the support and protection for whistleblowers, will certainly impact on the Cypriot legislative framework. In terms of positive elements that can be traced in the Cypriot system, the point of reference has to be the introduction of art. 69A **Public Service Law 1/90** that expressly addresses the issue of whistleblowing. Nonetheless, the positives end there since there is need for careful and structured reform rather than an unsystematic connection of whistleblowing with corruption. In other words, there needs to be an examination of the phenomenon of whistleblowing on its own right and not as a mere tool for reporting on corruption.

In terms of content, the protection levels created by the complex and multi-sourced legislative framework are primarily limited to the public sector. The need for a *lex specialis* that would apply equally to the private sector is paramount. The dichotomy of protection between public and private sector is stark and the private sector seems to be unnecessarily and unjustifiably overlooked. In addition, the protection in the public sector is limited to cases concerning bribery and corruption, thus excluding any other variations of illegal activity, while at the same time the emphasis of the system is

placed on the employee quality. Moreover, the procedural aspects of protection to public sector whistleblowers are founded on the written submission of information, with the law requiring an amendment to expressly enable oral communications and unanimity. Finally, the system needs to be supported with auxiliary provisions relating to the status of whistleblowers and to mechanisms for faster communication with the authorities both internally and externally to the organization concerned.

Therefore, the hierarchy of protective intensity whereby the internal situations prevail over external situations, the public sector worker is protected in a more complete and comprehensive manner than an employee in the private sector, need to be eradicated through centralization and streamlining of the legislation. The legal changes that would be resulting in favoring whistleblowers can find their source in the European influence (EU, Council of Europe) and will need to dominate over the social debate as to the need for furthering the phenomenon of whistleblowing.

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Transparency International Cyprus

Transparency International Cyprus (TIC) is the national contact organization of Transparency International, which aims not only to raise awareness about the detrimental effects of corruption on society, but also to put pressure on the political parties to take steps towards improving the political and economic institutions of Cyprus through transparency and integrity. Since 2010, TC conducts annual corruption perception surveys to better understand the causes of corruption in the country and identify the perceived level of this phenomenon among decision makers and policy enforcers. Better understanding the underlying causes of corruption and its consequences could be vital for policymakers who aim to improve our institutions by controlling corruption.

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