

Providing an Alternative to Silence:

Towards Greater Protection and Support
for Whistleblowers in the EU

Country Report Greece



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Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 branches worldwide and an international secretariat in Berlin, we raise awareness on the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it. Transparency International-Greece (TI-G), the Greek chapter of the organisation, aims to make citizens aware of the risks of corruption within Greece. Through the promotion of legal and institutional reforms at national level, the development of practical measures and tools and the use of its specialised knowledge, TI-G motivates organisations, businesses and people to contribute to the eradication of corruption.

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INTRODUCTION

Prevention and early detection – these are the most effective ways to combat crime and especially corruption cases, which are notoriously secret, and may never come to light unless they are reported by people who discover them, for example, in the course of their work. Recent scandals in Greece originating both from the public and the private sector – with the two sectors often intersecting – remained in the dark for a long period of time, although they were widely known to a number of people. None of the parties involved or people who knew decided to break their silence and report these illegal acts to the appropriate authorities or the general public, even though Greek law stipulates such an obligation. But what if the Law – instead of just obligating them to report such phenomena - could also encourage them to break their silence, protect them from retaliation or even reward them for stepping forward against corruption?

People who disclose wrongdoing – the so called whistleblowers - play a critical role in the fight against corruption, because detection is a precondition to initiate investigations that will lead to prosecution. However, the revealing of information may carry a heavy cost for the whistleblower, as he/she is exposed to significant risks such as loss of employment, involvement in legal disputes or even threats against his/her life, in order to protect the public interest. The protection of whistleblowers is therefore essential to prevent crime - particularly economic and financial crime. Previous research, carried out by Transparency International (TI), has shown that the potential of whistleblowing remains largely unexploited in Europe, although several international and regional conventions and texts are in place. The main reasons for this are the lack of legal protection of whistleblowers in many European countries - including Greece - but also the negative connotations to whistleblowers. Greek legislation does not contain a legal framework dedicated to whistleblowing protection, but it includes scattered provisions that serve similar purposes by offering protection to informants or witnesses. The private sector seems to be more receptive to the adoption of whistleblowing procedures, as large companies have already included internal reporting procedures for their employees.

The current financial crisis that Greece is facing, must turn to fertile grounds for the adoption of a clear, firm and effective legislative framework that will include measures for the protection of whistleblowers against retaliation, adequate mechanisms in public and private organizations to ensure that disclosures are properly handled and thoroughly investigated and provisions for data collection relating to the analysis of the effectiveness of the Law.

Whistleblowers can avert harm, protect human rights, help to save lives and safeguard the rule of law, if we can guarantee their right to speak up, their right for freedom of expression and freedom of conscience.



PROVIDING AN ALTERNATIVE TO SILENCE:

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WHISTLEBLOWING & WHISTLEBLOWERS

More than 30 foreign countries¹ have established and systematically implemented the institution of whistleblowing for the early detection and effective fight against illegal actions.

Throughout the years many definitions have been given to the term “whistleblowing”, such as:

“Whistleblowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing - whether actual, suspected or anticipated- in that organization, to an external entity having potential to rectify the wrongdoing.”²

“The options available to an employee to raise concerns about workplace wrongdoing.”³

“A means to promote accountability by allowing for the disclosure of information about misconduct by any person while at the same time protecting the person against sanctions of all forms.”⁴

Whistleblowing constitutes inter alia an aspect of freedom of expression, a tool for the fight against corruption, as well as a mechanism for the management of internal conflicts⁵. Whistleblowing is an emerging sui generis field of law, closely linked with codes of ethics, labour law, civil procedural law, law of contracts, libel law, constitutional rules on freedom of expression and freedom of conscience, professional responsibility, confidential and privileged information, corporate governance, dispute resolution and regulatory compliance.⁶

Whistleblowing is increasingly recognized as an important tool in the prevention and detection of corruption and other malpractice. In particular, the adoption of whistleblowing procedures in the public sector mainly concerns the reporting of cases of passive corruption as well as the safeguarding of public money by fraud and mismanagement in general. Similarly, the adoption of whistleblowing procedures in the private sector refers to the reporting of cases of active corruption and abuse. Companies have every reason to implement internal reporting procedures and thus protect their image and reputation.

By disclosing wrongdoing, whistleblowers can avert harm, protect human rights and safeguard the rule of law. Corruption and other illegal acts are most of the times conducted in secrecy, which means that unless revealed by someone directly involved, they may never come to light. However, providing information can come at a high price for the whistleblower, as he/she may be exposed to risks, varying from the loss of their job to the loss of their lives, in order to protect the public interest.⁷

Whistleblowers differ from those in the Greek legal system called “witnesses”, as the whistleblower comes forward to provide information always on his own initiative and the illegal or wrongful act comes to light for the first time thanks to the disclosure made by the whistleblower.⁸

Regarding the behavior of (potential) whistleblowers it has been observed that⁹:

- In many cases, people who knew did not provide information, as they failed to acknowledge the offence or the abusive act that was taking place in their surroundings.

Whistleblowing
is a deliberate
non-obligatory act of
disclosure about
Non-trivial illegality
or other wrongdoing

Whistleblowing
constitutes inter alia
an aspect of freedom
of expression

1. Banisar D., “Whistleblowing: International Standards and Developments”, στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.

2. Jubb P.B., “Whistleblowing”: a Restrictive Definition and Interpretation”, 21 *Journal of Business Ethics* 1999, pp. 77-94.

3. Calland R. & Dehn G., *Whistleblowing around the World: Law, Culture and Practice*, 2004, pp. 9.

4. Banisar D., “Whistleblowing: International Standards and Developments”, στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.

5. Banisar D., “Whistleblowing: International Standards and Developments”, στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.

6. Haig R. & Bowal P., *Whistleblowing and Freedom of Conscience: towards a New Legal Analysis*, 2012.

7. Transparency international, *Policy Position: Whistleblowing - an Effective Tool in the Fight against Corruption*, 2010.

8. European Parliament – Directorate General Internal Policies of the Union – Budgetary Support Unit – Budgetary Affairs, *Whistleblowing Rules: Best Practice, Assessment and Revision of Rules Existing in EU Institutions*, pp. 9.

9. Ethics Resource Center, *Inside the Mind of a Whistleblower - a Supplement Report of the 2011 National Business Ethics Survey*, 2012.

- Senior executives tend to become whistleblowers with greater frequency.
- Employees tend to become whistleblowers more often when they feel that the financial situation of the institution in which they work is good, when they themselves feel financially secure and protected by retaliation. In this regard, it is noted that employees who are members of the relevant workers' union tend to become whistleblowers with greater frequency.
- The more support/acceptance someone enjoys in a personal, social or professional level the more he/she tends to become a whistleblower.
- Most whistleblowers state that they would give up their anonymity, in order to provide information to someone they know and trust.
- Whistleblowers that went beyond the appropriate internal authorities of their company, in order to give information, claim that they did this because they believed that their seniors' moral culture was questionable.
- People that tend to provide information more often state that they are not interested in financial reward. However, people that would not make the choice to disclose information might be motivated by such incentives, especially if they were facing financial problems.

Most whistleblowers state that they would give up their anonymity, in order to provide information to someone they know and trust

GREEK LEGAL FRAMEWORK @ PRIVATE SECTOR PRACTICES

Greek legislation does not include a complete and distinct legal framework on whistleblowing. However, this does not mean that someone who becomes a whistleblower may not enjoy protection under Greek law, given that there is a number of legal provisions that serve the same purpose, scattered in different pieces of legislation. The most important provisions¹⁰ of this kind are listed below:

Art. 281 of the Civil Code on abuse of rights states that the exercise of a right is forbidden when it exceeds the limits imposed by good faith, moral rules or the social or economic aim of the right.

Art. 252 of the Penal Code on violation of classified business information states, among others, that the use of any necessary means, information or document made to satisfy the justified interest of informing the public, does not constitute an illegal act.

Art. 263B of the Penal Code on protective and clemency measures for those who contribute to the disclosure of corruptive acts, states that if an employee that committed active bribery, bribery of a judge or has participated in bribery acceptance, in crimes committed while in service, as well as in disloyalty offences, has had significant contribution (through disclosure to relevant authority), to the uncoverage of another employee's or judge's involvement to these acts, is punished with reduced sentence.

The aforementioned employee is punished with reduced sentence even when the accused person holds a considerably higher rank, and the employee in name transfers to the State all assets he personally and illegally obtained, directly or indirectly.

If someone, accused for a crime committed while in Service or for disloyalty or money laundering, offers evidence for the participation in those actions of persons who are or were members of the government, or deputy Ministers, then the judicial council, subsequent to a proposal of the prosecutor, orders the suspension of the penalty, and the transfer of the whole case to the Parliament. The above suspension can be ordered also by the Court, provided that the evidence

Greek legislation does not include a complete and distinct legal framework on whistleblowing

10. See annex 1 for detailed reference of the relevant provisions.

is offered until the appeal decision is issued. If the Parliament decides to institute criminal prosecution against a Minister or Deputy Minister according to article 86 of the Constitution, and in case of conviction by the Special Court, then the participant (according to the previous paragraph) who offered the evidence is punished less severely. If the criminal prosecution is not possible due to statutory limitations, according to point b of paragraph 3 of article 86 of the Constitution, then the accused is punished less severely.

The legal obligation for reporting illegal actions is not an alternative to the institution of whistleblowing

An employee who denounces the crimes described in articles 235 to 261 of the Penal Code (crimes committed during Service) and according to this denouncement a criminal prosecution takes place against a number of employees, then the employee who denounces may be transferred, if he/she wishes so, by decision of the relevant Minister and the Minister of Internal Affairs, despite the existent legal framework and provided that there are available vacancies.

Art. 371 of the Penal Code on Violation of professional secrecy states that the action is not illegal and remains unpunished if the accused aimed just to the fulfillment of his/her duties or to secure a legal interest or other justified interest of the State, or of his/her own, or of someone else, that could not be secured otherwise

Art. 40 of the Code of Criminal Procedure on private citizen's obligations states that even private citizens are obliged, under specific circumstances provided by law, to disclose to the Prosecutor or to other investigation officers any illegal and indictable by force of law action that comes to their attention.

Article 9 of Law. 2928/2001 on the amendment of provisions of the Penal Code and the Criminal Procedure Code and other provisions for the protection of citizens against criminal acts by organized crime groups states that during the penal procedure for the prosecution of the crimes of establishment or participation in a criminal organization as described in paragraph 1 of article 187 of the Penal Code and for all relevant actions, measures can be taken in order to effectively protect the main witnesses, the persons who, according to article 187A of the Penal Code assist to the uncovering of criminal activities, or their relatives, from possible revenge actions or intimidation.

Despite the proven value of whistleblowing, the institution is still in infancy given that only a few countries have adopted relevant frameworks with general applicability

Even though there are many relevant regulations, as mentioned above, these can be found scattered in different laws, and, as a result, they do not offer a complete and effective framework for the protection of whistleblowers - both in the public and the private sector. The legal obligation for reporting illegal actions is not an alternative to the institution of whistleblowing, while at the same time the legal framework about witnesses' protection does not offer protection equal to the one offered by whistleblowing procedures, given that all witnesses are not classified as whistleblowers, but perhaps just people who suspect illegal or abusing practices.¹¹

Despite the proven value of whistleblowing, the institution is still in infancy given that only a few countries have adopted relevant frameworks with general applicability. Most countries have included partial provisions to address only specific situations.

In the last years international community has put pressure on states for the development and implementation of whistleblowing procedures for the public and the private sector. Indicative is the commitment undertaken by Greece in the Memorandum of Economic and Financial Policies¹², in order to effectively combat tax evasion. Providing effective legal protection and clear guidance on the reporting process sensitizes and inspires confidence to potential whistleblowers and also enables the authorities to record violations of the existing legal framework. It is observed that the private sector is more receptive to the adoption of whistleblowing procedures than the public sector.¹³

The private sector is more receptive to the adoption of whistleblowing procedures than the public sector.

11. Transparency international, Policy Position: Whistleblowing - an Effective Tool in the Fight against Corruption, 2010.

12. Memorandum of Economic and Financial Policies, 2012, p. 7.

13. Banisar D., "Whistleblowing: International Standards and Developments", ota Sandoval I.E. (ed.), Corruption and Transparency: Debating the Frontiers between State, Market and Society, 2011.

We indicatively report some of the practices existing in the Greek private sector:

- In March 2011 the Hellenic Federation of Enterprises (SEV) published the Corporate Governance Code for Listed Companies, that states:

«Internal Communication

The company must provide internal communication channels with the purpose of understanding and supporting the objectives of the ICS (Internal Control and Risk Management), procedures, and responsibilities of staff at all levels (communication of Management team with the staff and with the Board of Directors, the BoD's communication with internal and external auditors, etc.). Application Examples: [...]

- Establishment of a whistleblowing policy for the reporting of illegal acts by employees. The relevant guidelines are contained in the intragroup network. "

- The Athens International Airport S.A. Code of Business Conduct that was published in November 2009, among others states:

«I am committed in doing business with integrity and according to all applicable laws and internal regulations. In the event that an incident comes to my attention that deviates from the Code's provisions and might damage the company or an employee, it should be reported to my line supervisor. I should adhere to internal rules and regulations as they apply in a given situation. Those internal rules are specific to the company and may go beyond legal compliance. Violation of internal rules and regulations may result not only in monetary damages but may even threaten the corporate interests and business ability at a certain degree.

Question: : if I am ever in doubt about an action under my responsibility being either legal or ethical or whether it might have a negative impact on the reputation of the Company, how should I deal with it ?

Answer: I should not assume anything ! I should consult with my line supervisor»

- Emporiki Bank states in its Corporate Governance Code published in May 2011 :

“Compliance with Legislation, Regulations and internal rules:

The Bank establishes a confidential procedure for the reception of complaints and comments from the Bank's employees on issues of non compliance with legislation, regulations and proper accounting practices (whistle-blowing).

- The Vodafone Company states in its "Corporate Responsibility and Sustainable Development April 2011 - March 2012" report that for the years 2011-2012 the completion of a whistleblowing mechanism for corruption cases is among its goals, while for years 2012-2013 the goal is the alignment of the whistleblowing mechanism with the proposed by the Vodafone group process for the handling of cases of corruption.

INTERNATIONAL LEGISLATIVE FRAMEWORK

Whistleblowing is provided for and protected in many international and regional conventions and documents, such as:

- The United Nations Convention against Corruption (2003), under article 33.
- The Convention of the International Labor Organization concerning the termination of employment (1982), under article 5.
- The Criminal Law Convention on Corruption by the Council of Europe (1999), under article 22.
- The Civil Law Convention on Corruption by the Council of Europe (1999), under article 9.
- The European Convention on Human Rights, under article 10.
- The African Union Convention on Combating Corruption (2003), under article 5 of Chapter 6.
- The Inter – American Convention Against Corruption (1996), under article 3 of Chapter 8.
- The World Bank Group Integrity Compliance Guidelines (2010), under chapter 9.
- The OECD Guidelines for multinational Enterprises (2000), under chapter 2.

- The OECD Good Practice Guidance on Internal Controls Οδηνός, Ethics and Compliance (2010).
- The OECD Recommendations on Improving Ethical Conduct in the Public Service (1998).
- The OECD Guidelines for Managing Conflict of Interest in the Public Service (2003).
- The OECD Convention on Combating Corruption (2009).
- Decision No 1729 (2010) of the plenary of the Council of Europe.
- Annex of article 24 of the revised European Social Charter (1996).
- The Rules of Conduct to Combat Extortion and Bribery by the International Chamber of Commerce (2005), under article 7.
- The Principles Against Corruption Initiative (PACI) by the World Economic Forum (2005), under chapter 5.5.
- The Business Principles for Countering Bribery (2003), under chapter 5.5.

The following are among the most successful pieces of national legislation on whistleblowing:

- The USA Whistleblower Protection Act (WPA) (1989), which was supplemented by the Sarbanes-Oxley Act (2002) and the Dodd-Frank Wall Street Reform Consumer Protection Act (2010).
- The British Public Interest Disclosure Act (PIDA) (1998).
- The South African Protected Disclosures Act (PDA) (2000).

TI's proposal on the guiding principles for national legislation on whistleblowing is largely inspired by these successful national laws and practices.

PROPOSAL FOR WHISTLEBLOWING LEGAL FRAMEWORK

In 2009, Transparency International set out, for the first time, a group of principles, inspired by the best national practices and legislations, in order to form the basis for all national laws about whistleblowing - both for the public and the private sector. This group of principles was reformed in 2012, after consultation with the public as well as with experts. The principles in name are the following¹⁴ :

Guiding Definition

1. **Whistleblowing**: the disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public- or private-sector organisations¹⁵ - which are of concern to or threaten the public interest - to individuals or entities believed to be able to effect action.

Guiding Principle

2. **Protected individuals and disclosures**: all employees and workers in the public and private sectors need:
 - accessible and reliable channels to report wrongdoing;
 - robust protection from all forms of retaliation; and
 - mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.

Scope of application

3. **Broad definition of whistleblowing**: whistleblowing is the disclosure or reporting of wrongdoing, including but not limited to corruption; criminal offences; breaches of legal obligation;¹⁶ miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest;¹⁷ and acts to cover up of any of these.

14. Transparency international, Recommended Principles for Whistleblower Legislation, 2012.

15. Including perceived or potential wrongdoing.

16. Including fraudulent financial disclosures made by government agencies/officials and publicly traded corporations.

17. Could also include human rights violations if warranted or appropriate within a national context.

4. **Broad definition of whistleblower:** a whistleblower is any public- or private-sector employee or worker who discloses information covered in Principle 3 (above) and who is at risk of retribution. This includes individuals who are outside the traditional employee-employer relationship, such as consultants, contractors, trainees/interns, volunteers, student workers, temporary workers and former employees.¹⁸
5. **Threshold for whistleblower protection:** “reasonable belief of wrongdoing” – protection shall be granted for disclosures made with a reasonable belief that the information is true at the time it is disclosed.¹⁹ Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed.

Protection

6. **Protection from retribution:** individuals shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. This includes all types of harm, including dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions.
7. **Preservation of confidentiality:** the identity of the whistleblower may not be disclosed without the individual’s explicit consent.
8. **Burden of proof on the employer:** in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower’s disclosure.
9. **Knowingly false disclosures not protected:** an individual who makes a disclosure demonstrated to be knowingly false is subject to possible employment/professional sanctions and civil liabilities.²⁰ Those wrongly accused shall be compensated through all appropriate measures.
10. **Waiver of liability:** any disclosure made within the scope of whistleblower legislation shall be immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The burden shall fall on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law.
11. **Right to refuse participation in wrongdoing :** employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination (see Principle 6, above) if they exercise this right.
12. **Preservation of rights:** any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights shall override employee “loyalty” oaths and confidentiality/nondisclosure agreements (“gag orders”).
13. **Anonymity:** full protection shall be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent.
14. **Personal protection:** whistleblowers whose lives or safety is in jeopardy, and their family members, are entitled to receive personal protection measures. Adequate resources should be devoted for such protection.

Whistleblower shall be protected from all forms of retaliation, disadvantage or discrimination at the workplace

Disclosure procedures

15. **Reporting within the workplace:** whistleblower regulations and procedures should be highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and

18. Protection shall extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.

19. Reasonable belief” is defined as when a person reasonably could suspect wrongdoing in light of available evidence.

20. The burden shall fall on the subject of the disclosure to prove that the whistleblower knew the information was false at the time of disclosure.

independent investigations of whistleblowers' disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers' retaliation complaints (including a process for disciplining perpetrators of retaliation).²¹

16. **Reporting to regulators and authorities:** if reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures.
17. **Reporting to external parties:** in cases of urgent or grave public or personal danger, or persistently unaddressed wrongdoing that could affect the public interest, individuals shall be protected for disclosures made to external parties such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations.²²
18. **Disclosure and advice tools:** a wide range of accessible disclosure channels and tools should be made available to employees and workers of government agencies and publicly traded companies, including advice lines, hotlines, online portals, compliance offices, and internal or external ombudspersons.²³ Mechanisms shall be provided for safe, secure confidential or anonymous disclosures.²⁴
19. **National security/official secrets:** where a disclosure concerns matters of national security, official or military secrets, or classified information, special procedures and safeguards for reporting that take into account the sensitive nature of the subject matter may be adopted in order to promote successful internal follow-up and resolution, and to prevent unnecessary external exposure. These procedures should permit internal disclosures, disclosure to an autonomous oversight body that is institutionally and operationally independent from the security sector, or disclosures to authorities with the appropriate security clearance. External disclosure (i.e. to the media, civil society organisations) would be justified in demonstrable cases of urgent or grave threats to public health, safety or the environment; if an internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals.²⁵

Whistleblower regulations and procedures should be highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and independent investigations of whistleblowers' disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers' retaliation complaints (including a process for disciplining perpetrators of retaliation).

Relief and participation

20. **Full range of remedies:** a full range of remedies must cover all direct, indirect and future consequences of any reprisals, with the aim to make the whistleblower whole. This includes interim and injunctive relief; attorney and mediation fees; transfer to a new department or supervisor; compensation for lost past, present and future earnings and status; and compensation for pain and suffering.²⁶ A fund to provide assistance for legal procedures and support whistleblowers in serious financial need should be considered.
21. **Fair hearing (genuine "day in court"):** whistleblowers who believe their rights have been violated are entitled to a fair hearing before an impartial forum, with full right of appeal. Decisions shall be timely, whistleblowers may call and cross-examine witnesses, and rules of procedure must be balanced and objective.

21. Employees are encouraged to utilise these internal reporting channels as a first step, if possible and practical. For a guide on internal whistleblowing systems, see PAS Code of Practice for Whistleblowing Arrangements, British Standards Institute and Public Concern at Work, 2008.

22. If these disclosure channels are differentiated in any manner, the disclosure process in any event shall not be onerous and must allow disclosures based alone on reasonable suspicion (e.g. UK Public Interest Disclosure Act).

23. Individuals seeking advice shall also be fully protected.

24. In accordance with relevant data protection laws, regulations and practices.

25. "Classified" material must be clearly marked as such, and cannot be retroactively declared classified after a protected disclosure has been made.

26. This may also include medical expenses, relocation costs or identity protection.

22. **Whistleblower participation:** as informed and interested stakeholders, whistleblowers shall have a meaningful opportunity to provide input to subsequent investigations or inquiries. Whistleblowers shall have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence. They also have the right to be informed of the outcome of any investigation or finding, and to review and comment on any results.
23. **Reward systems:** if appropriate within the national context, whistleblowers may receive a portion of any funds recovered or fines levied as a result of their disclosure. Other rewards or acknowledgements may include public recognition or awards (if agreeable to the whistleblower), employment promotion, or an official apology for retribution.

Legislative structure, operation and review

24. **Dedicated legislation:** in order to ensure clarity and seamless application of the whistleblower framework, stand-alone legislation is preferable to a piecemeal or a sectoral approach.
25. **Publication of data:** the whistleblower complaints authority (below) should collect and regularly publish (at least annually) data and information regarding the functioning of whistleblower laws and frameworks (in compliance with relevant privacy and data protection laws). This information should include the number of cases received; the outcomes of cases (i.e. dismissed, accepted, investigated, validated); compensation and recoveries (maintaining confidentiality if the whistleblower desires); the prevalence of wrongdoing in the public and private sectors; awareness of and trust in whistleblower mechanisms; and time taken to process cases.
26. **Involvement of multiple actors:** the design and periodic review of whistleblowing laws, regulations and procedures must involve key stakeholders including employee organisations, business/employer associations, civil society organisations and academia.
27. **Whistleblower training:** comprehensive training shall be provided for public sector agencies and publicly traded corporations and their management and staff. Whistleblower laws and procedures shall be posted clearly in public- and private-sector workplaces where their provisions apply.

Enforcement

28. **Whistleblower complaints authority:** an independent agency shall receive and investigate complaints of retaliation and improper investigations of whistleblower disclosures. The agency may issue binding recommendations and forward relevant information to regulatory, investigative or prosecutorial authorities for follow-up. The agency shall also provide advice and support, monitor and review whistleblower frameworks, raise public awareness to encourage the use of whistleblower provisions, and enhance cultural acceptance of whistleblowing. The agency shall be provided with adequate resources and capacity to carry out these functions.
29. **Penalties for retaliation and interference:** any act of reprisal for, or interference with, a whistleblower's disclosure shall be considered misconduct, and perpetrators of retaliation shall be subject to employment/professional sanctions and civil penalties.²⁷
30. **Follow-up and reforms:** valid whistleblower disclosures shall be referred to the appropriate regulatory agencies for follow-up, corrective actions and/or policy reforms.

27. Criminal penalties may also apply if the act of retaliation is particularly grievous (i.e. intentionally placing the whistleblower's safety or life at risk). This would depend on a country's particular context, and should be considered as a means to establish proportionate sanctions only when needed.

THE SIGNIFICANCE OF A LEGAL FRAMEWORK ON WHISTLEBLOWING

The scandal of Illegal tapping of mobile phones on the Vodafone Greece network²⁸

The phone tapping scandal that occurred during 2004–2005 was one of the biggest scandals during the last decades in Greece. It involved illegal phone tapping against important public figures.

The illegal phone tapping was uncovered on March 4, 2005, after a routine check conducted by Vodafone in its software. The government was informed on March 10, 2005 and revealed the fact to the public on February 2, 2006. It was discovered that, through special software that was installed in the company, about 100 phones were monitored using 14–16 prepaid "mobile shadow phones", which recorded the conversations. After a two-year judicial investigation that did not yield results, in August 2008, the case was closed. Two years later, in 2010, the case was reopened with the emergence of new evidence that suggested involvement of the U.S. Embassy in an espionage case. The death of a member of Vodafone staff is linked with the case. K.T., who was responsible for developing the company's network, was found dead on March 9, 2005, a day before the authorities were informed on the existence of the malicious software. His death was initially marked as suicide, a scenario supported by the first judicial report. However, the case was reopened in 2010, as new evidence revealed close connection between his death and the case of the illegal wiretapping and gave grounds to support the possibility of him being murdered. Evidence shows that high ranked executives of the Greek Vodafone company had been informed about the existence of a system that allowed interception in the software that Vodafone acquired, through a letter and a disc by Ericsson. The vice president and chief executive of Vodafone at the time said that he had not been informed about this system. The investigation also revealed that five employees of Vodafone had electronic access to the digital center K.T. had also expressed great concern to his fiancée about something going wrong in the company. He did not mention anything specific on wiretapping or illegal activity, but he said something bad was happening that, if it was to be made public, it would cause disaster. He had also told his fiancée, in the last days of his life, that he leaving the company was "a matter of life and death."

Until today, the people responsible for these illegal actions have not been traced and no political responsibility has been attributed to any of the two governments in power during the unfolding of the scandal. Vodafone, on the other hand, denies any involvement in the case. However, a relevant court decision ruled that "*Vodafone did not exercise due diligence [...] and did not address the issue to the competent Public Prosecutor and the competent Hellenic Authority for Communication Security and Privacy. On the contrary, and especially on March 8, 2005, the company disabled the malicious software, an act that resulted in the loss of critical data for the identification of the perpetrators, since this way they were given the opportunity to be informed that the software has been detected and thus cover their tracks.*"

The Ferrostaal bribery scandal²⁹

In 2000, the Greek government, following the decision of the Government Council for Foreign Affairs and Defense, proceeded to order new submarines, choosing to buy a new type, for which there was neither a prototype nor a model. Nevertheless, the government agreed to buy the first out of the chain of production, on which, inevitably, tests and trials were conducted. It is the one named "Papanikolis", that was later found to be tilting.

28. http://www.koel.gr/index.php?option=com_content&view=article&id=3192:2009-05-11-13-57-55&catid=169:265-08052009
<http://el.wikipedia.org>
http://crisisandresponsibility.blogspot.gr/2010/01/vodafone_28.html
http://www.press-time.com/new/index.php?option=com_content&view=article&id=1714:lr-vodafone&catid=16:reportage&Itemid=72
http://tsalikiidis.com/case_presentation_gr.html

28. <http://www.fimes.gr/2011/02/upovrychia-skandalo/>
<http://erodotos.wordpress.com/2011/02/08/skandalo-yovvryxio/>
<http://www.ekeo.gr/2011/05/%CF%84%CE%BF-%CF%80%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1-%CF%84%CE%BF%CF%85-%CF%83%CE%B4%CE%BF%CE%B5-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B1-%CF%85%CF%80%CE%BF%CE%B2%CF%81%CF%8D%CF%87%CE%B9%CE%B1-%C2%AB214/#more-13622>
<http://www.pame.gr/politiki/politika/skandalo-ipovrixion-oliki-atimorisia.html>
<http://www.newsbomb.gr/apokalypseis/story/213597/skandalo-yovvryxion-ferrostaal-h-germaniki-pleyra>
<http://www.otyposnews.gr/archives/24797#axzz209LOHcto>

At the end of 2010, the then government, which came from the same political party as the government of 2000, signed a revision of the 2000 contract. According to the new agreement, the Greek government accepted the "Papanikolis" submarine with 5 years delay, gave away penalties of hundreds of millions euro for the delayed delivery of the submarines, undertook the payment of all fines imposed by the European Union and committed to almost zero penalties for any further delays in the delivery of new submarines.

In a publication by the German magazine "Der Spiegel" reference is made to suspicious payments in the case of the sale of the submarines. As the magazine indicates, "at the end of October 2010, investigation had not yet identified which politicians and military personnel in Greece, Portugal and South Africa had been bribed". However, it underlines that "the distribution of bribes is not doubted by those charged with the investigation of the case".

The data that composes the case of the purchase of the German submarines is part of a broader investigation on the German company, which followed the practice of "non-transparent" payments and bribes in other countries. The investigation concerns dubious or non-proper payments by Ferrostaal, relating to its biggest projects that stretch along different business sectors in many countries. In the case-file prepared by the Public Prosecutor in Munich there is a reference for non-transparent payments by Ferrostaal to a so called secret "prayer circle". This cycle appears to consist of persons of great influence, lobbyists and consultants with strong interfaces.

The report issued by the Financial and Economic Crime Unit (S.D.O.E.) recorded one of the biggest scandals of recent decades, in which over 70 people appear to be involved, starting with the then Minister of Defense to the General Armaments Directors, members of the Administration of Skaramanga Shipyards and members of the committees responsible for conducting and monitoring the contracts in question. In a move that leads to the closure of the case concerning the scandal around the purchase of the submarines and acquits everyone involved in Germany and in Greece, the German Justice, by way of summary procedure, sealed the file of the scandal by imposing a mere fine of 177 million euro. The Greek Justice continues to investigate the matter without having imposed any penalties on the offenders.

The scandal at the local branch office of the largest social security service (IKA) in the city of Kallithea ³⁰

Several employees of the local branch office in the city of Kallithea, one of the largest in the country, were accused of massive fraud against the largest Social Security Service (IKA). Employees of the branch underwent investigation for issuance of false certificates, licenses, payments and benefits in kind. The Financial Police proceeded to make arrests for the big scandal in the IKA branch of Kallithea. This fraud against IKA resulted in damage that exceeds 12 million euro for the service.

Some of the "patients" who collaborated with the gang have allegedly admitted to police that: *"A long time ago we received a phone call from employees in the IKA branch in the city of Kallithea, who asked us if we wanted to receive a respectable amount of money every month - if we wanted to collect a pretty good allowance. They suggested that we appear as in - hospital patients or ask for other medical services. Then, they would issue the relevant certificates and would do the relevant records in our health books."*

Meanwhile, it was revealed that many by standers (other employees or assured persons), that did not benefit from the illegal actions in any way, were aware of these actions.

Similarities and differences between the three cases

- All the above mentioned cases constitute scandals against the public interest.
- Financial benefit is not always the motive (see, for example, the Vodafone scandal). Consequently, the implications of these scandals were not of an economic nature in all cases.

30. <http://www.tovima.gr/society/article/?aid=448190>
<http://www.tovima.gr/society/article/?aid=447465>
<http://www.tovima.gr/society/article/?aid=447813>
<http://www.protothema.gr/greece/article/?aid=181965>

- The aforementioned cases refer both to the public and the private sector, while in many cases these sectors cross (see, for example, the Vodafone scandal).
- All the above mentioned cases of corruption remained in shadow for a significant period of time.
- It was revealed that each of these cases had been known to a wide circle of people for a significant period of time, without this meaning that all these people had any criminal or other liabilities. Some of them had just mere knowledge of the incidents.
- Throughout the period that the above scandals took place, the Greek law contained provisions on the obligation of every citizen to report any offence brought to his attention to the competent authorities (Article 40 of the Penal Procedure Code).

WAY FORWARD IN A ROAD SOWN WITH THORNS

The mere establishment of a legal framework on whistleblowing will not yield the expected results. It is imperative that as a society we overcome prejudices and pathogenies present for centuries, as indicated by G. P. Drakos' book entitled "Silenced Malice..." ("Kakia Siopithisa..." in Greek)³¹, published in 1979³², which could perhaps be described as the first well constituted study on the need for a legal framework on whistleblowing in Greece. In this book G. P. Drakos tries a historical retrospection to prove that the moral obligation to denounce corruption and opacity effects, harmful to the public interest is not foreign to the Greek culture, as formulated from ancient times until today.

Here are some interesting quotes from G.P. Drakos' book:

*"If modern society is missing something that is our inclination to denounce openly violations and sins of others that come to our attention. And that lack is organically tied to our national deficiency of irresponsibility."*³³

*"Lykourgos, the Athenian orator, in his speech against Leokratous said: neither the laws nor judges can bring any results unless someone denounces the wrong doers."*³⁴

Similar references can be found in other ancient classical texts, states G.P. Drakos:

*"We indicatively mention Plato in Gorgias where he states that the biggest and first of all evil is those who are unfair to remain unpunished, but also advises not to blame people with ease and casualness. Socrates who, according to the Neo-Platonic scholar Stoivaivos, said that the city is managed optimally, when its mere existence coincides with the existence of the law and when those who break it are punished. Menandros, according to Stoivaivos, said that if each and everyone one of us fought willingly the unjust ones, considering the injustice done as his own, never would the bad people multiply so much. Demosthenes who in his speech against Meidias said that the laws are stronger because of you and you because of laws. You must help the laws and consider offenses against the laws that are against the general interest."*³⁵

Finally, the following extracts of this book are worth quoting because they spherically illuminate the story and the problem:

*"It is no coincidence that under these legal principles democracy shone in ancient times, since democracy requires citizens with the mentality of a responsible ruler."*³⁶

*"In Byzantium, under the Justinian legislation, one of the Ioustinianos' works, citizens are obliged to denounce offences."*³⁷

*"Experience acquired by those who dared to denounce, has taught others that indifference brings bliss. So blessed are the indifferent ones. [...] And we have eased our conscience, or as much of it as we had, with sayings that folk wisdom creates in such cases."*³⁸

31. The title comes from a quote by Saint Basil the Great «Malice silenced is a very treacherous decease»

32. G.P. Drakos "Κακία σιωπηθείσα...", 1979

33. Pp. 12-13.

34. P. 20.

35. P. 21.

36. P. 22.

37. P. 24.

38. Pp. 35-36.

- One cuckoo does not bring the spring
- Will I be the one to fix Greece?
- Mind your business..."

"The lack of support to others is not only a negative event. It takes on the worst possible form when we characterize someone as "snitch", for who we often use the familiar Italian word ³⁹. Even in our childhood years, in school, we were bothered by the title of the "telltale"." ⁴⁰

"Indifference leads to rewarding illegality. Avoiding of denouncing constitutes complicity." ⁴¹

"Have we any shame for our own happiness when all around us people's misfortune cries?" ⁴²

"Have we any obligations or just demands and rights?" ⁴³

"Have we sense of responsibility in everything we do? Whether we are administrators or governed do we act responsibly? Do we abide the laws when we can break them?" ⁴⁴

IS THERE LIGHT AT THE END OF THE TUNNEL?

In 1999, the Santer Commission was forced to resign; the incident in name shook the whole of Europe. The resignation of 20 Commissioners took place after the Control and Budget Committee of the European Parliament pointed out irregularities in the assignment of contracts to external companies. ⁴⁵ Paul van Buitenen, the Dutch auditor of the Directorate of Financial Control of the European Committee at that time, and afterwards Member of European Parliament, was the whistleblower of the case. However, before elected to the Parliament, he suffered serious reprisals from his supervisors and was forced to resign. ⁴⁶

Adoption of legislation
without parallel
cultivation of culture
against corruption
is a step into the void

With the aforementioned example it is clear that even an advanced body as the central administration of the European Union, which is considered a model of transparency and good governance, until recently had not absorbed practices such as whistleblowing. This demonstrates that mere adoption of legislation without parallel cultivation of culture against corruption is a step into the void.

Despite the existence of article 40 of the Penal Procedure Code on the obligation of people to report to the appropriate authorities illegal actions brought to their attention, it is obvious that the certain provision has not induced sanctions on violators without exception. So whistleblowing is undoubtedly a choice and not a legal obligation. The famous British writer Edward Morgan Forster had once –very eloquently and ironically- said: "If I have to choose between betraying my country and betraying my friend, I hope I have the courage to choose the betrayal of my country."⁴⁷

This is the dilemma every possible whistleblower faces, given that by making the disclosure he/she automatically shifts him/herself to a sphere of dangerousness. Firstly, because his/her motives are questioned. Is it his/her strong desire for fame or glory that motivates him/her to make disclosures? But do incentives really matter when a complaint is justified and leads to the protection of the public interest? It could easily be argued that making the right decision for the wrong reasons, does not change the soundness of the decision.

39. In Italian culture the phrase «Chi fa la spia, non è figlio di Maria» is also typical.

40. Pp. 36-37.

41. Pp. 42-43.

42. Pp. 50-51.

43. P. 51.

44. P. 52.

45. www.europarl.europa.eu/highlights/el/105.html

46. Council of Europe Parliamentary Assembly – Committee on Legal Affairs and Human Rights, The Protection of Whistleblowers, 2009, p. 6.

47. Bouville Mathieu, "Whistle-blowing and morality", 81(3) Journal of Business Ethics 2008, 579-585.

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The reality is cold and disarming: everyone wants to be a hero, but no one wants to be a victim. In this perspective, whistleblowers are far "heroes of the chair." Cases where the whistleblower did not suffer a single one of the very painful consequences such as job loss, social isolation, physical harm or death are very few. The intense controversy and prejudice surrounding the institution can be summarized in the question «whistleblowers: heroes or traitors?»⁴⁸, as well as in the motto «shoot the messenger!».

The importance of establishing an effective legal framework is directly linked with the dilemma of whether whistleblowing is the right decision. This is because the successful outcome of a dark case that was revealed thanks to a whistleblower means that he made the right decision. Yet even if some argue that, despite the unfortunate outcome of the case, the whistleblower made the right decision, it is certain that few will follow his/her lead in the future. However, a well-governed state, especially a country that came to the brink of economic disaster because of mismanagement, irregularities and opacity, cannot rely on the self sacrifice of a few "martyrs" for much longer. It is imperative that the institution of whistleblowing be fully implemented in Greece and whistleblowers put in the middle of an impenetrable protection fence.

APPENDIX

Until recently there has been none or little political momentum to address these shortcomings, even though financial and political scandals continue to emerge.

However lately newspaper articles mention that the Ministries of Justice, Finance and Administrative Reform are currently working together and that joint legislative committee has been assigned to draft a law that will encourage whistleblowing. It remains to be seen whether these rumors will transform into a solid law..

ANNEX 1: GREEK LEGISLATIVE FRAMEWORK

Article 281 Civil Code: Abuse of Right

"The exercise of a right is forbidden when it apparently exceeds the limits imposed by good faith, moral rules or the social or economic purpose of the right."

Article 252 of the Penal Code: Violation of classified business information

"1. The employee who [...], despite his/her commitment, makes known to somebody:

- a) something that the employee knows due to his/her position at work or*
- b) a text which has been trusted to him/her or accessible to him/her due to the employee's work position, if the employee gave this piece of information, in order to gain some kind of advantage, or to cause harm or loss to the state or someone else, will be punished with imprisonment of least for three (3) months.*

2. If an employee, at the office of the Prime Minister, or of any Minister, having any kind of working relationship, and particularly as a special assistant, special consultant, or member of working groups or committees, notifies someone of: a) a piece of information that has come to the employee's knowledge due to his/her position or b) a trusted document or a document accessible due to his/her position, is punished with imprisonment of at least six (6) months.

48. Council of Europe Parliamentary Assembly – Committee on Legal Affairs and Human Rights, The Protection of Whistleblowers, 2009, page. 5.

If he/she is acting in order to gain an advantage or to cause harm or loss to the state or someone else, is punished with imprisonment of at least one (1) year and a penalty ranging from one hundred (100.000) to five hundred (500.000) euro.

3. The above mentioned penalties are applied also to any third person who is using that piece of information, or document, having knowledge of the origin, in order to gain an advantage, or to cause harm or loss to the state or someone else.

It is not illegal to use, to the extent necessary, information or documents, in order to satisfy the justified interest of the public opinion.”

Article 263B of the Penal Code: Protective and Clemency Measures for those who contribute to the disclosure of corruptive acts

“1. If the person who is responsible for the acts of articles 236 paragraph 1 and 2 (active bribery) and 237 paragraph 3 (bribery of judge) or is a participant in the acts of the articles 235 (passive bribery), 237 paragraph 1 and 2 (bribery of judge) and from 239 to 261 (crimes committed in business context), as well as of article 390 (disloyalty), is an employee who contributes substantially, by testimony to the relevant authority, to the disclosure of the participation of an employee or a judge in these acts, then the contributor is punished less severely, according to article 44 paragraph 2 of the Penal Code. The court can suspend the execution of the penalty, regardless if the circumstances of article 99 and following apply. The Sentencing Council, after relevant proposal by the prosecutor, can order the suspension of the criminal prosecution against the liable person for a specific period of time, in order to verify the validity of the offered information. The suspension can be ordered also by the court, provided that the information is offered until the announcement of the of appeal court’s decision. If, after the suspension, the court decides that the new information offered by the accused is not sufficient for the prosecution of the employee or the judge, then the relevant decision is cancelled, and the suspended penal procedure against the accused resumes.

2. An employee, accused for the actions described in articles 235 to 261 (crimes committed in business context), as well as in article 390 (disloyalty) or participating in relevant actions, that substantially contributes, by reference to the relevant authority, to the disclosure of information on the participation of other employees in these actions, is punished according to the above mentioned paragraph, if the person who is accused, holds a considerably higher rank , and the employee in name hands over to the State all his illegally obtained (directly or indirectly) assets.

3. If someone accused for the crimes of the articles 235 to 261 (crimes committed in the Service) and 390 (disloyalty) or money laundering, offers evidence for the participation in those actions of persons who are or were members of the government, or deputy Ministers, the judicial council, subsequent to a proposal of the prosecutor, orders the suspension of the penalty, and the transfer of the whole case to the Parliament. The above suspension can be ordered also by the court, provided that the evidence is offered until the appeal decision is issued. With the same decision a removal or replacement of the procedural enforcement measures can be also ordered. If the Parliament decides, according to paragraph 3 of article 86 of the Constitution, that the evidence is not sufficient for the criminal prosecution of a Minister or Deputy Minister, the decision of the judicial council or the court is removed and the suspended penal prosecution continues. If the Parliament decides to institute criminal prosecution against a Minister or Deputy Minister according to article 86 of the Constitution, and in case of conviction by the Special Court, then the participant (according to the previous paragraph) who offered the evidence is punished less severely according to article 44 paragraph 2 of the Penal Code. The court may order the suspension of this penalty according to paragraph 1.

4. If the criminal prosecution is not possible due to statutory limitations, according to point b of paragraph 3 of article 86 of the Constitution, then the accused is punished less severely, according to article 44 paragraph 2 of the Penal Code. The court may order the suspension of this penalty, regardless of whether the prerequisites of article 99 exist, provided that:

a) during the same parliamentary period in which the statutory limitation took place and no later than the end of the first scheduled convention of the next parliamentary period, a Special Examination Committee is convened

β) the Special Examination Committee decides that the evidence is sufficient.

The Special Examination Committee decides, taking into consideration the decision of the Court of Appeals, which is responsible for checking the sufficiency of evidence, according to the paragraph 6 article 147 of the Regulation of the Parliament.”.

Article 371 Penal Code: Violation of professional secrecy

- “1. Priests, lawyers and all relevant professionals, notaries, doctors, mid wives, nurses, pharmacists and other professionals who due to their profession or their qualifications are trusted with confidential information, as well as the assistants of the above professionals, are punished with financial penalty or imprisonment of maximum one (1) year if they disclose classified information known to them due to their profession or status.*
- 2. The same penalty applies to someone who, after the death of one of the persons described in paragraph 1 became the trustee of the relevant classified information and made it known.*
- 3. The criminal prosecution takes place subsequent to lawsuit.*
- 4. The action is not illegal and remains unpunished if the accused aimed just to the fulfillment of his/her duties or to secure a legal interest or other justified interest of the State, or of his/her own, or of someone else, that could not be secured otherwise.”*

Article 40 of Penal Code: Individuals Obligations

- “1. Even private citizens are obliged, under specific circumstances provided by the law, if they are informed about an illegal action prosecuted ex officio, to announce the action to the Prosecutor or to other responsible employee. This announcement can be done in writing or orally, so a report is filed.*
- 2. All details concerning this action, the prosecuted person and the evidence must be included in the report or the oral declaration.*
- 3. If many people are aware of this illegal action, each one separately is under this obligation.”*

Article 15 par. 2 of Law 3849/2010 on the modification of Law 3213/2003, on provisions of the Penal Code concerning offences in Public Services and other provisions:

- «2. An employee who denounces the crimes described in articles 235 to 261 of the Penal Code (crimes committed during Service) and according to this denouncement a criminal prosecution takes place against a number of employees, then the employee who denounces may be transferred, if he/she wishes so, by decision of the relevant Minister and the Minister of Internal Affairs, despite the existent legal framework and provided that there are available vacancies»*

Article 9 of Law. 2928/2001: Protection of witnesses

- “1. During the penal procedure for the prosecution of the crimes of foundation or participation to a criminal organization of paragraph 1 article 187 of the Penal Code and for all relevant actions, protective measures can be taken in order to effectively protect from possible revenge actions or intimidation of the main witnesses, the persons who, according to article 187A of the Penal Code help to discover crime activities, or their relatives.*
- 2. Protective Measures are protection by properly trained police staff, testimony by using electronic devices and of verbal and optical, or only verbal transmission, non-reference in the report of the name, the place of birth, place of living and working, profession and age, ordered by virtue of a justified order of the Prosecutor in charge, as well as the change of the identity, the change of the working place for unspecified period of time, with a possibility of cancellation, for public sector employees, despite of the existing relevant legal framework, by virtue of Ministers’*

decisions subsequent to an opinion issued by the Prosecutor. The decision of the Minister can provide that it will not be published in the Government Gazette, as well as other terms, in order to secure the secrecy of the action. The witness should consent to the enforcement of the aforementioned protective measures, which should not limit in any way the witness's personal freedom beyond the degree necessary and which should be cancelled as soon as the witness requests so in writing or is not collaborating for their success.

- 3. During the hearing process in the court, a witness whose identity details have not been revealed, is called by the name written in the testimony report, unless the prosecutor or a part of the trial asks for the revelation of the real name and the court orders so. The revelation can be also ordered by the court. In any case the court may order any actions according to article 354 of the Code of Penal Procedure.*
- 4. If the identity details of the witness are not revealed, his/her testimony solely is not sufficient for the conviction of the accused."*

ANNEX 2: CHART

	YES	NO	PARTIAL	NOTES
Broad definition of whistleblowing		✓		
Broad definition of whistleblower		✓		
Broad definition of retribution protection	✓			Protection by provisions in administrative, penal and civil law
Internal reporting mechanism		✓		
External reporting mechanism			✓	Article 252 Penal Code Article 263B Penal Code Article 371 Penal Code Article 40 Code of Penal Procedure The above mentioned articles contain case where the disclosure of information for the protection of a higher public interest, without however containing a clear process, with the exception of article 40 Code of Penal Procedure
Whistleblower participation		✓		
Rewards system		✓		
Protection of confidentiality			✓	Scattered provisions such as art.9 of Law 2928/2001 that concerns the protection of witnesses that disclose information on criminal organizations
Anonymous reports accepted	✓			Not prohibited by existing provisions
No sanctions for misguided reporting	✓			
Whistleblower complaints authority		✓		
Genuine day in court	✓			Protection by provisions in administrative, penal and civil law
Full range of remedies		✓		Protection by provisions in administrative, penal and civil law
Penalties for retaliation	✓			Protection by provisions in administrative, penal and civil law
Involvement of multiple actors	✓			

REFERENCES

1. Banisar D., "Whistleblowing: International Standards and Developments", στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.
2. Jubb P.B., "Whistleblowing": a Restrictive Definition and Interpretation", 21 *Journal of Business Ethics* 1999, pp. 77-94.
3. Calland R. & Dehn G., *Whistleblowing around the World: Law, Culture and Practice*, 2004, pp. 9.
4. Banisar D., "Whistleblowing: International Standards and Developments", στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.
5. Banisar D., "Whistleblowing: International Standards and Developments", στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.
6. Haig R. & Bowal P., *Whistleblowing and Freedom of Conscience: towards a New Legal Analysis*, 2012.
7. Transparency international, *Policy Position: Whistleblowing - an Effective Tool in the Fight against Corruption*, 2010.
8. European Parliament – Directorate General Internal Policies of the Union – Budgetary Support Unit – Budgetary Affairs, *Whistleblowing Rules: Best Practice, Assessment and Revision of Rules Existing in EU Institutions*, pp. 9.
9. Ethics Resource Center, *Inside the Mind of a Whistleblower - a Supplement Report of the 2011 National Business Ethics Survey*, 2012.
10. See annex 1 for detailed reference of the relevant provisions.
11. Transparency international, *Policy Position: Whistleblowing - an Effective Tool in the Fight against Corruption*, 2010.
12. Memorandum of Economic and Financial Policies, 2012, p. 7.
13. Banisar D., "Whistleblowing: International Standards and Developments", στο Sandoval I.E. (ed.), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, 2011.
14. Transparency international, *Recommended Principles for Whistleblower Legislation*, 2012.
15. Including perceived or potential wrongdoing.
16. Including fraudulent financial disclosures made by government agencies/officials and publicly traded corporations.
17. Could also include human rights violations if warranted or appropriate within a national context.
18. Protection shall extend to attempted and perceived whistleblowers; individuals who provide supporting information regarding a disclosure; and those who assist or attempt to assist a whistleblower.
19. Reasonable belief" is defined as when a person reasonably could suspect wrongdoing in light of available evidence.
20. The burden shall fall on the subject of the disclosure to prove that the whistleblower knew the information was false at the time of disclosure.
21. Employees are encouraged to utilise these internal reporting channels as a first step, if possible and practical. For a guide on internal whistleblowing systems, see PAS Code of Practice for Whistleblowing Arrangements, British Standards Institute and Public Concern at Work, 2008.
22. If these disclosure channels are differentiated in any manner, the disclosure process in any event shall not be onerous and must allow disclosures based alone on reasonable suspicion (e.g. UK Public Interest Disclosure Act).
23. Individuals seeking advice shall also be fully protected.
24. In accordance with relevant data protection laws, regulations and practices.
25. "Classified" material must be clearly marked as such, and cannot be retroactively declared classified after a protected disclosure has been made.
26. This may also include medical expenses, relocation costs or identity protection.
27. Criminal penalties may also apply if the act of retaliation is particularly grievous (i.e. intentionally placing the whistleblower's safety or life at risk). This would depend on a country's particular context, and should be considered as a means to establish proportionate sanctions only when needed.
28. http://www.koel.gr/index.php?option=com_content&view=article&id=3192:2009-05-11-13-57-55&catid=169:265-08052009
<http://el.wikipedia.org>
http://crisisandresponsibility.blogspot.gr/2010/01/vodafone_28.html
http://www.press-time.com/new/index.php?option=com_content&view=article&id=1714:lr-vodafone&catid=16:reportage&Itemid=72
http://tsalikidis.com/case_presentation_gr.html
29. <http://www.fimes.gr/2011/02/upovrychia-skandalo/>
<http://erodotos.wordpress.com/2011/02/08/skandalo-ypovryxio/>
<http://www.ekeo.gr/2011/05/%CF%84%CE%BF-%CF%80%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1-%CF%84%CE%BF%CF%85-%CF%83%CE%B4%CE%BF%CE%B5-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B1-%CF%85%CF%80%CE%BF%CE%B2%CF%81%CF%8D%CF%87%CE%B9%CE%B1-%C2%AB214/#more-13622>
<http://www.pame.gr/politiki/politika/skandalo-ipvovrixion-oliki-atimorisia.html>
<http://www.newsbomb.gr/apokalyptseis/story/213597/skandalo-ypovryxion-ferrostaal-h-germaniki-pleyra>
<http://www.otyposnews.gr/archives/24797#axzz209LOHcto>
30. <http://www.tovima.gr/society/article/?aid=448190>
<http://www.tovima.gr/society/article/?aid=447465>
<http://www.tovima.gr/society/article/?aid=447813>
<http://www.protothema.gr/greece/article/?aid=181965>
31. The title comes from a quote by Saint Basil the Great «Malice silenced is a very treacherous disease»
32. G.P. Drakos "Κακία αἰωννθείσα...", 1979
33. Pp. 12-13.
34. P. 20.
35. P. 21.
36. P. 22.
37. P. 24.
38. Pp. 35-36.
39. In Italian culture the phrase «Chi fa la spia, non è figlio di Maria» is also typical.
40. Pp. 36-37.
41. Pp. 42-43.
42. Pp. 50-51.
43. P. 51.
44. P. 52.
45. www.europarl.europa.eu/highlights/el/105.html
46. Council of Europe Parliamentary Assembly – Committee on Legal Affairs and Human Rights, *The Protection of Whistleblowers*, 2009, p. 6.
47. Bouville Mathieu, "Whistle-blowing and morality", 81(3) *Journal of Business Ethics* 2008, σελ. 579-585.
48. Council of Europe Parliamentary Assembly – Committee on Legal Affairs and Human Rights, *The Protection of Whistleblowers*, 2009, page. 5.

