

THE ACHILLES HEEL OF WHISTLEBLOWING PROTECTION (PART B)

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In 1777, before the passage of the Bill of Rights, 10 sailors and marines blew the whistle on fraud and misconduct harmful to the United States. The Founding Fathers unanimously supported the whistleblowers and provided them with monetary assistance for reasonable legal expenses necessary to prevent retaliation. In an effort to demonstrate their full support, the members of the Continental Congress unanimously enacted the first whistleblower legislation in the United States that read:

'It is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanors committed by any persons in the service of these states, which may come to their knowledge.'



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On 30 July 2013, the US designated that day as 'Whistleblower Appreciation Day'. Many countries have enacted legislation to protect whistleblowers, including the USA (1989), South Africa (2000), Australia (1984, amended 2013), UK (2013), Malta (2002), Belgium (2004), Hungary (2010), Slovenia (2010), Ireland (2011), Italy (2012) and Greece (2014). The Republic of Cyprus does not have a comprehensive legal framework for the protection of whistleblowers. Nevertheless, provisions that somehow serve this goal are found scattered in various parts of the legislation. Some of the most important of these provisions are the following:

- Article 19 of the Constitution guarantees the right to freedom of speech and expression.
- Article 69A of the Public Service Law of 1990 (Law 1/1990) establishes

the obligation of public officials to report in writing to the competent authority any act of corruption or bribery witnessed or reasonably believed to have occurred.

- Article 369 of the Criminal Code requires public and private employees and, generally, all citizens of the Republic, regardless of having the status of an employee or not, to take all necessary measures to prevent a felony that comes to their attention, which is being committed or is anticipated to be committed.

- Article 9 of the Civil Law Convention on Corruption and Additional Provisions Act of 2004 (Law 7 (III)/2004) stipulates that whoever imposes an unjustified punishment upon a whistleblower, i.e. punishment due to a disclosure of an act of corruption, commits an offense punishable by imprisonment or a fine, or both penalties.

The above provisions cannot, however, compensate for the existing legislative gap regarding the protection of whistleblowers in the Cypriot legal system in general. Legislative frameworks empower people to speak up and report incidents of corruption. The effort to change mentality is reinforced by the adoption of a legal and regulatory framework on whistleblowing, since it obliges the State to acknowledge that whistleblowers deserve legal and physical protection. At the same time,



legislation gives strong incentives to a person not to be afraid to step forward and disclose information. Generally, legislation ensures that in the event of a reprisal against a person who makes such a disclosure, civil remedies (including compensation, injunctions and reinstatement of employment) will protect him/her. The European Commission has provided suggestions on how whistleblowing ought to be addressed by Member States:

- The national framework should be designed and developed to facilitate public interest reports and disclosures by establishing rules to protect the rights and interests of whistleblowers.
- The national framework should foster an environment that encourages reporting or disclosure in an open manner.
- There should be clear channels in place for public interest reporting and disclosures and recourse to them through appropriate measures.
- There should be an effective mechanism in place for acting on public interest reports and disclosures.
- Whistleblowers should be protect-

ed against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer. They should retain the protection and the remedies available under the rules of general law and be entitled to have the confidentiality of their identity maintained, subject to fair trial guarantees.


- Whistleblowers' disclosures should be investigated promptly, and where necessary, the employer and the appropriate body should take action to address the issues of public concern.
- A special scheme of rules may apply to information relating to national security, defence, intelligence, public order or international relations of the state.
- National authorities should undertake periodic assessments of the effectiveness of the national framework.

A three-pillar framework is suggested by the EU. Firstly, a clear and operational **Normative framework** ought to be developed and incidents that impact the public interest ought to be disclosed. Secondly, these disclosures ought to be made in good faith. Thirdly, the disclosure ought first to be made internally and, if no remedial action is taken, then the whistleblower ought to make the disclosure externally. Finally, protection against retaliation ought to be provided to whistleblowers.

Transparency International Cyprus has suggested that to implement an **Institutional Framework**, the Government should establish a Whistleblowing Agency, which will protect and provide assistance and support to the whistleblow-

er. In addition, the Agency will be empowered to take immediate action to remedy the situation and to prevent loss of human life and/or recurring financial costs.

Finally, a **Judicial Framework** should be developed to provide access to authorities, tribunals and courts, which have the power to sanction those found to have taken unfair action against a whistleblower or failed to properly examine the disclosure

In order for the authorities to encourage whistleblowing, they need to develop a comprehensive framework. The legislation suggested by the Ministry of Justice and Public Order addresses only one of the three pillars. The Government ought to develop an institutional framework to ensure that remedial action is taken to prevent loss of human life and/or financial costs. After all, we owe that much to the victims of the Mari explosion. 

Cyprus does not have a comprehensive legal framework for the protection of whistleblowers