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Topic: The Institutionalised Concept of Whistleblowing

-*Clarification of the concept "Whistleblower.*

-*Concerns of improper translation of the concept "Whistleblower" in Greek, and other non-English native countries.*

-*Social impact.*

-*Negative impact of such association with pre-existing legal definitions*

definitions:

-The whistle-blower concept is the (active member of the society)/ person that exposes at his/her absolute discretion/ free volition, a classified or secret information, distributes supporting evidence anonymously or not, about an act or omission or an activity within public or private sector that is deemed as wrong doing, illegal, fraudulent, corrupt or unethical, through independent channels and protective anonymous secured websites such as the EAT reporting channel. The exposure may refer to any type and kind of malpractice and wrongdoing and can be brought on surface either internally or externally, first hand or second-hand for the benefit of the public interest and society. The term should not be confused with any existing relevant terms such as "witness of public interest".

-***Concept****: The Whistle-Blower* institutionalised autonomous concept.

-**Μάρτυρας δημοσίου συμφέροντος**: Witness of public interest.

-E.A.T project: Expansion Anonymous Tipping.

-Εκθέτω : Expose

-***Καταγγέλλω*** *:Impeach*

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Certain degree of impediment is anticipated due to corruption within Governmental departments.

Introduction:

In 2019 the EU issued a Directive, regarding the legal protection of Whistleblowers. All members of the EU are obliged to include this Directive within their national laws, within a period of two years.

Whistleblowing is a concept and not a stand -alone wording. It should be dealt with and be given an appropriate description in other languages across the world, where English is not used as a native language.

-Let’s raise the question: what is a Whistleblower in the 21st century?

History of origin:

The phrase Whistle blower attached itself to law enforcement officials in the 19th century because they used a whistle to alert the public or fellow police. Nowadays a Whistleblower has a vast and diverse meaning. (1) The term “Whistleblower” was adopted in 1970’s as description of a voluntary act, (reporting wrong doing by ordinary people) .

We often use the expression “give a tip off “and become a whistleblower. However, the era has changed and the method of reporting wrongdoing has evolved. Today a whistleblower may choose to investigate, hearsay, or collect and distribute evidence of wrongdoing, due to moral beliefs and, or personal motivations.

It is to my understanding that a whistleblower, nowadays, has evolved into an institutionalised autonomous concept. This concept (Whistleblowing), is a tool to fight corruption, report wrongdoing, unethical practices both criminally and socially, as well as a corrective action mechanism against unfairness.

This is the core of our democracy, and anyone must feel free to act in it (active, thus activist), at free will, (voluntary) in order to make a positive impact at his family, school, workplace, society and country. By deciding to report wrongdoing, a civilian takes initiative to correct an ongoing injustice.

It is therefore to my belief that whistleblowing is an institutionalised concept, it can become a symbol of fighting corruption, a brand if I may say, that represents the power of the people to act freely and participate in fighting corruption, by reporting wrongdoing voluntarily.

At last, whistleblowers are filling the gap left by a failed system that cannot and will not restrain corruption and wrongdoing.

There are two types of whistleblowers:

I. Internal and external

The Internal whistleblower is considered to be someone who chooses to report wrongdoing using internal channels e.g. at his workplace while the external whistleblower chooses to go out of his/her organisation in order to report wrongdoing. The implications, risks and success rates differentiate in each category and require further study. The EAT project will provide metadata to such statistics.

II. "First-hand" & "second-hand" (5)

The information and wrongdoing obtained first-hand by a whistleblower defines him as first-hand whistleblower, while the information and wrongdoing obtained by **a third party** and brought to a whistleblower's attention (such as an investigative journalist) defines him as a second hand whistleblower.

A recent study by the University of Utah and George Washington (6) states that there are serious indications that second-hand information reports are 47.7% more likely to be credible than first-hand reports. This is due to the lack of emotions as the second-hand whistleblowers are not directly involved in the wrongdoing, either affected by the information, so they can be less biased when proceeding to a report.

There is a chaos regarding the interpretation given to whistleblowing within cultures, societies as well as in the Judicial Bodies. The recent attempts by NGOS to translate the term "Whistleblower" in other EU countries can be misleading and will only cause delays and complications to the success of various projects such as the EAT project across Europe.

A direct approach of interpretation in such a complex concept (Whistleblowing) that has diverse meaning, can be detrimental. In Greece, for instance, the term is interpreted as "AN INFORMER, A MARTYR, A COURT WITNESS " and is associated with the concept of a pre-existing and outdated legal definition of such as the "Witness of public interest". If we are not careful with such decisions, the whistleblowing act as an autonomous, independent

institutionalised concept, unrelated with the previous mentioned terms will be compromised, and no significant progress shall be made in fighting corruption.

Within this document, I will attempt to explain the differences in translation, point out fundamental flaws, such as incorrect translation, possible legal and social complications, as well as recommendations to overcome such flaws.

1. Judicial consequences of associating the term "Whistle-blower", in Greek, to that of the "witness of public interest" («**Μάρτυρας δημοσίου συμφέροντος»)**

The formal translation of the definition, "Whistleblower", was introduced as "witness of the public interest by the outdated Greek Law 2928/2001 on the protection of citizens against criminal acts by organised crime and terrorist groups and refined later on via Law 4254/2014, in order to provide a competitive legal framework in accordance with the EU Directives by the judicial system in Greece. However, such a definition of a whistleblower only refers to criminal offences and civil officials. The 4254/2014 Act introduced Article 45B3 on "public interest witnesses" to the Code of Criminal Procedure, extending protection provided earlier only to witnesses of organised crime and terrorism under Article 9 in 2928/2001 Act to individuals reporting corruption and related wrongdoings. It has, furthermore, amended the Civil Service Code to ensure that no disciplinary or any other internal procedure may be taken against an official, who is accorded the status of public interest witness.

According to the above report of OECD regarding Greece:

"To receive such protection the competent prosecutor must designate the individual as a "public interest witness". Three cumulative prerequisites need to be fulfilled for this to happen: (i) The individual should have provided information that contributes substantially to the revelation and prosecution of the corrupt acts, (ii) The individual was not personally involved in any way in the offences in question and (iii) The individual did not aim to gain any sort of benefit for him/herself by reporting the wrongdoing.
Greece's Phase 3 Report by the OECD Working Group on Bribery in International Business Transactions expressed concern at the high threshold for designation as a public interest witness.4 5. It is unclear whether the provision is contingent on the individual continuing to provide evidence during criminal proceedings. It is also unclear whether Article 45B requires that the person reports in "good faith". The requirement that the person derives no personal benefit from the report and has no involvement in the criminal act would suggest a de facto good faith requirement. While some commentators support this opinion, neither the text of the provision nor the explanatory statement introducing the law to the Parliament refers to it.

In principle, the law protects every person and not only employees and workers, but also consultants, contractors, trainees/interns, volunteers or even journalists and activists who provide information to the competent prosecuting authorities. It is, however, unknown whether the law applies to Greek workers based abroad or foreign workers based in Greece. 6. The protection offered to public interest witnesses under Article 45B is extremely limited. If a complaint is lodged against them for the offences of perjury, false accusation, defamation or violation of official secrecy and the Deputy Public Prosecutor of the Supreme Court deems that the prosecution of the public interest witness does not serve the public interest she/he may order the competent prosecutor to abstain from prosecution. The protection therefore is

not automatic, but it is at the absolute discretion of the prosecutor and limited in any case to the protection against criminal prosecution.

According to the explanatory statement introducing the law to the Parliament: "In balancing the conflicting interests of such persons and those persons implicated who may consider that information rendered by the public interest witness may prejudice their honour and reputation, such a decision is always **discretionary**, granted only in the public interest and once issued **revocable**". But even if the prosecutor decides to abstain, the public interest witness is not totally protected from such complaints, because the protection deals with criminal prosecution and not claims for civil damages, for example, for defamation. What is more, Article 45B does not provide any protection against discriminatory or disciplinary retaliation, such as dismissal from employment, demotion, punitive transfer or workplace harassment but only the protection of Article 9(7) of 2928/2001 Act (see below). It is unknown how many individuals have received protection under Article 45B of the Code of Criminal Procedure and the type of protection provided."

It is alarming as to how many members of the Greek judicial system, politicians and policy makers share the misconception that:

-Whistleblowers are no different that of plain witness of a criminal offence.

-In order for an individual to be granted "a legal status of Whistleblower ", s/he would have to enter witness protection status ,cannot have any personal gain ,the information provided has to lead to case solving and conviction ,as well as anonymity is not warranted.

-If the information is proven incorrect the whistleblower will lose protection status and might be prosecuted.

Alarmingly most of the above misconceptions are within pre-existing Law 2938 and 4254 and are directly in contradiction with the Eu - Directive of 2019.

CONCLUSION:

In view of the above, it is transparent that a fragmented, scattered and partial legislation, thus incomplete and scattered in a variety of regulations instead of a one- piece Act dealing with whistleblowing solely and exclusively and in whole, exists in Greece. Regulations that can only apply to a criminal court witness and also refers to preconditions, as defined on the obsolete criminal procedure in 2928/2001 Act against criminal acts by organised crime and terrorist groups, as well as refined later by Law 4254/2014 to include public servants and ordinary citizens .(A grey area).

The association of the Whistleblower concept with that of a witness of public interest confines the **freedom of expression** as well as the Human rights of the whistleblowers. Furthermore, we discourage them to come forward and reveal wrongdoing, since the current legal framework has multiple grey areas.

Citizens that come forward to speak up, investigate corruption (media) or collect and provide evidence of such ,are not protected by Law 2928/2001 and 4254/2014.The Judicial system has to drastically alter such Laws in order to be in line with he EU Directive .

By separating the two (whistleblower concept and witness of public interest) terms we can custom- tailor a legal framework that will be in line with the EU Directive of 2019 regarding whistleblowing protection rights and leave the pre-existing Laws to deal purely with criminal witnesses.

2. Social impact and consequences.

Most Whistleblowers act subconsciously, due to their urge to reveal the truth and positively contribute towards a better society. Others can have a personal gain and motivation. A Whistleblower thus **volunteers** to tender such information without being forced to act due to his legal obligation to the Authorities.

The problem, however, is that the institution of this concept is relatively new, carries many taboos, the meaning is complex, and the society not yet educated enough to accept the true value and contribution towards improving their social standards by embracing whistleblowing practiced as part of their everyday routines through reporting channels such as the EAT .

Regrettably in Greece we have introduced a bureaucratic sentence, by using an outdated legal definition, such as "Μάρτυρας δημοσίου συμφέροντος" (4) in order to describe the concept "Whistleblower", in a noble attempt to translate, understand and incorporate an internationally recognised and culturally friendly foreign word(Whistleblower) within our own Greek cultural unique needs.

Our Society for decades has associated the Whistleblower concept, with that of an informer, a snitch, that carries a common fear of persecution and even worst, retaliation, thus discourages the public from coming to report wrongdoing. (7)

The EAT project (8) is designed to deal with such challenges by allowing Anonymous and safe reporting.

If we do not create public awareness campaigns, coordinated by experts such as our teams of expert NGOs, that already utilised the EAT project across Europe, our whistleblowing campaign will be met with confusion, suspicion and resistance.

School education is a must. We need to start lectures at schools as early as possible, in order to root out social fear and bias thinking on children, that reporting a wrongdoing is a taboo. By implementing a common policy across European countries regarding the Whistleblowing concept (branding promotion, education) we could achieve a unified common goal towards this concept idea. Positive public reaction will allow the EAT project to be adopted worldwide.

3.Expected resistance regarding the interpretation of the concept due to corruption within Governmental departments.

Expect to find resistance from within corrupted organisations and Government municipalities of the public sector. It is not at the best interest of such corrupted institutions to allow free access to Whistleblowers via projects such as the EAT in order to report common practice such as bribery on public sectors, a common corruption practice in southern east Eu countries. In regard to public sector the only solution will be to access ministry offices

directly and not their advisors as in most cases ministers are blocked from proper information due to corruption.

We should not allow any grey areas to be introduced within judicial system regarding Whistleblowers.

If allowed to do so, we will create a hostile legal and social environment towards Whistleblowers, thus discouraging them to willingly come forward and voluntarily report wrongdoing out of fear of retaliation and persecution, both criminally and civilly.

Such grey areas are already pre-existing within the Greek legal framework of 2928/2001 Act, in regard to the protection of citizens against criminal acts by organised crime and terrorist groups, as well as in 4254/2014 Act.

Recommendation:

1.The whistleblower should be an institutionalised autonomous area or concept and not a wording.

2.An awareness-raising campaign should be introduced within EU, regarding the Whistle-blowing concept by the existing EAT project team members.

3.We should legally separate the two terms "witness of public interest" and "Whistle-blower".

4. An academic research should be conducted urgently, in order to justify such separation.

5.The EU legislation is focusing on the term Whistleblower and should be avoided to be associated with the pre-existing term of witness of public interest in various countries.

6.In Greece we should either introduce the word whistleblower to our vocabulary or agree on a translation that justifies the concept and is more friendly to our society. I believe the same solution can be the answer to other countries with similar problems.

7. I propose the wording **εκθέτω** (9) (expose) within the EAT front page of the Greek translation document instead of ***καταγγέλλω*** (report)

The same word can be used as a public awareness campaign in Greece. When I expose, I do so with many dynamics, not just by giving information.

Referral:

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The above views are solely the views of Aristides Danikas.