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**Whistleblowers protection in Albania:
An assessment of the legislation and practice**

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1.Introduction

Whistleblowing has been increasingly recognized worldwide as an important tool to prevent and detect corruption and other malpractices. By disclosing wrongdoings whistleblowers can avert harm, protect human rights, help to save lives and safeguard the rule of law. On the other hand due to their disclosure whistleblowers are often exposed to different barriers including retaliation and dismissal from their job, different types of harassment and in some cases even to physical attacks.

Considering the importance of whistleblowing in fighting corruption and other types of misbehaviors and malpractices several international conventions emphasize the need for whistleblowing protection. Therefore, several countries have adopted whistleblowing legislation and the means for their protection.

In the Albanian context whistleblowing remains a rather new and recent phenomenon and the practice is unknown to the general public. Concerning the legal framework, there is no single legal act that comprises whistleblowing protection. Moreover, legal dispositions on whistleblowing are split into several sectoral laws. Even existing legal provisions lack clearness and consequently suffer from weak implementation. Likewise, there is poor institutional culture regarding disclosure of information and proper investigation of disclosures made by public officials. Consequently, there is little evidence of whistleblowing action, and little incidence regarding the usefulness of such practices in tackling misbehaviours and corrupt affairs in public institutions. Fragmented legislation and weak institutional culture is accompanied also by lack of assessments on the effectiveness of existing provisions on whistleblowing in Albania as well as on their adaptability within the wider legal and institutional context.

Considering the above-mentioned shortcomings, this paper assesses the Albanian legal framework, social environment attitudes and practice of whistleblowing instrument within Albanian public institutions. Gathering and assessing reliable data and information on whistleblowing will help decision-makers, relevant stakeholders and the wide public to create a clear picture on the effectiveness of whistleblowing mechanisms in detecting and preventing corruption and other malpractices in public administration. Moreover, this study intends to raise awareness on the need for enforcing clear whistleblowing legislation as well as on the need to consolidate such practices as an efficient tool to strengthen good governance and rule of law within the Albanian context.

The main instruments of this research include an analysis of the existing laws and regulations concerning whistleblowing in Albania, several international assessments on legislation and practicing of such actions within the Albanian context, media sources, and social studies that asses institutional performance and public perceptions on corruption and anti-corruption legislation in Albania. Moreover, in order to gather a more practical insight on the

state of whistleblowing practices in Albania and relevant challenges, focus groups with key stakeholders from state institutions, media and civil society were organized to discuss the preliminary findings of this research.

The paper is composed of four sections. The first section defines whistleblowing and emphasizes its role as an effective anti-corruption instrument. The second section includes a review of the current Albanian legislation that contains provisions relevant to whistleblowing. The third section discusses the practices of whistleblowing under the current legislation, challenges and problematic, social perceptions on the phenomena in Albania and public attitudes towards whistleblowing cases publicized in the media. Lastly, conclusions and recommendations and policy advice on the improvement and effective implementation of whistleblower mechanisms are presented.

2. Definition of whistleblowing

There is no single and widely accepted definition of whistleblowing. It can be defined as an act of free speech, a tool in the fight against corruption and an internal dispute mechanism.¹ There are, however, several widely used definitions of the term.

The first definition of whistleblowing was provided in 1972 by Ralph Nader.² In 1982 Michelli and Near defined whistleblowing as: “the disclosure of former or current organizational members’ illegitimate practices under the control of their employer to persons or organizations able to affect action.”³ This definition has been widely used ever since.

Whistleblowers report by free will, selfless and to protect public interest. As such, they are distinguished from informants and officials with the duty to inform. Informants are involved in wrong-doings and offer information for personal benefits (to clarify their position or to reduce liability). Officials with the duty to inform report wrongdoings obliged by their duty and not by free will.⁴

Whistleblowing is recognized as an important tool for detecting and preventing corruption. Since corruption episodes occur in secrecy, only individuals engaged in corrupt affairs or those working closely with them in an organization are in the best position to report.⁵ Given that the risk for corruption is significantly higher in environments where reporting of wrongdoings is not protected, protection of whistleblowers in public and private sectors is essential to facilitate reporting of passive bribery and misuse of funds, waste, fraud and other forms of corruption.

¹Banisar David, (2012). Whistleblowing International standards and development.

²Nader defines whistleblowing as “An act of men or women who believing that public interest overrides the interest of the organization blow the whistle that the organization is in corrupt illegal, fraudulent or harmful activity”, See. *Ibidem*

³*Ibidem*

⁴*Ibidem*

⁵G 20, Anti corruption Action Plan Action point 7: Protection of whistleblowers

The most obvious barriers to whistleblowing include:

- *Fear from retaliation* that results from disclosure. Retaliation can take many forms ranging from minor harassment at the workplace, to being fired, blackmailed and in extreme cases to physical attacks and danger for the whistleblower's life.
- *Legal barriers* including legislation for libel, laws restricting the information flow within an organization and laws on state secrets.
- *Cultural perceptions*. In post-dictatorial societies for instance due to associations with activities of the past secret police, whistleblowers are perceived as 'snitches', 'spies' or persons acting for personal benefits.
- Whistleblowers can also face social sanctions within an organization including exclusion from social events and unauthorized or unnoticed harassment by their colleagues.⁶

While several international treaties highlight the importance of adopting whistleblowing protection legislation at national level,⁷ none of these acts define the most appropriate means to enforce it. Moreover, in most countries worldwide whistleblowing protection legislation is spread within several sectoral laws.⁸

Despite no agreement on the best way for effective national whistleblowing legislation, research by Transparency International sets some main principles including:

- A single legal framework to ensure whistleblowers protection that covers public, private and non-profit sectors and includes a broad range of misconducts.
- Ensuring safety from reprisals for whistleblowers and their family members by granting them access to court procedures.
- Protected internal and external reporting channels for whistleblowers and in extreme cases protection of disclosures made in the media.
- Effective enforcement of laws for whistleblowers' protection by an independent body that oversees implementation and receives and investigates complaints.⁹

⁶ Banisar David, (2012). Whistleblowing International standards and development.

⁷ Most prominent examples include the United Nations Convention against Corruption, the Council of Europe Civil Law Convention against Corruption, and the Council of Europe Criminal Convention against Corruption. See: Transparency International, (2007). Alternative to silence: whistleblowing protection in 10 European countries.

⁸ Countries with comprehensive national laws on whistleblowing protection include Canada, Japan, New Zealand, South Africa, United States, and United Kingdom. See: Banisar David, (2012). Whistleblowing, International standards and development. Appendix B

⁹ Transparency International, (2010). Whistleblowing: an effective tool in the fight against corruption.

3. Legal provisions on whistleblowing in Albania

The Albanian legislation provides a number of provisions that are supposed to encourage whistleblowing and the protection of whistleblowers presented in box 1 .The most specific one is the law on cooperation of the public in the fight against corruption. On the other hand, there are different sectoral laws that include provisions on whistleblowers. However, these provisions are too broad and as such are not suitable for effective implementation in practice. Moreover, these provisions are limited either to ensuring the right for blowing the whistle in certain cases (corruption/malpractice) or simply to guarantee the protection of whistleblowers without defining any other regulation or procedure for disclosing information.

Albanian laws containing provisions on whistleblowing:

Law No. 9508, date 3.4.2006 “On Public Cooperation in the Fight against Corruption”
Law No. 7961 date 12.07.1995 “The Labour Code of the Republic of Albania”
Law No. 8549, date 11.11.1999 “On the Status of the Civil Servant”
Law No 9367, date 7.4.2005 “On the Prevention of Conflict of Interest in the Exercise of Public Functions”
Law No. 8485, date 12.5.1999 “The Code of Administrative Procedures of the Republic of Albania”
Law No. 10 173, date 22.10.2009 “On the Protection of Collaborators of Justice and Witnesses”

The inclusion of provisions on whistleblowing in the Albanian national legislation is recent and is mostly a result of response to international requirements.¹⁰ Several international instruments in the fight against corruption ratified by Albania emphasize the importance of whistleblowing and stress the necessity of adopting legislation that regulates this activity.¹¹ These provisions have acted to certain extends as push factors regarding implementation of provisions on whistleblowing protection in Albania.

In order to comply with these requirements the Albanian parliament adopted in 2006 the **law on cooperation of the public in the fight against corruption**¹² (from here in after law on cooperation), broadly considered as the Albanian law on whistleblowers. This law guarantees legal immunity and anonymity for citizens and public officials that denounce corrupt practices

¹⁰Under GRECO’s second evaluation round, that covered the general anti-corruption measures applicable to the administration and public officials; a recommendation was made to more than half of the GRECO members to introduce a mechanism for the protection of persons

¹¹ Council of Europe’s Civil Law Convention on Corruption ratified with Law No. 8635 date 06.07.2000; Criminal Law Convention on Corruption, ratified with Law No. 8778 date 26.04.2001; United Nations Convention against Corruption; ratified with Law No.9492 date 13.03.2006; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”, ratified with Law No. 9646 date 27.11.2006; Resolution (97) 24 “ for the 20 guiding principles for the fights against corruption”; Recommendation R (2000) 10 “On codes of conducts for the public officials”.

¹² Law No.9508, date 3.4.2006

even when suspicions are unfounded.¹³ Nevertheless, the law on cooperation reveals several weaknesses including: unclear definition of key concepts, mixing the framework for citizens' complaints with that of notifications made by public officials (whistleblowing) and limitations of the scope of this law only to corrupt practices.¹⁴

Moreover, while the law includes some of the main components of whistleblowing legislation the law is not completed by the necessary legal sub-acts. Subsequently, its practical implementation is almost nullified.

In general, comprehensive whistleblowing laws comprise broad concepts of wrongdoings.¹⁵ The Law on Cooperation does not refer to any other wrongdoings or malpractices rather than to denunciations of corruption practices that derive from any institution of public administration. In addition, a whistleblower is someone who discloses information (for the sake of public interest) that he/she is aware of because of his/her work, while this law includes both denunciation from citizens and public officials who are aware of corruption cases.

The **Law on Cooperation**, however, sets in principle the protection for the persons involved in denouncing corruption. As a matter of fact, public institutions cannot initiate any administrative, civil or penal proceedings against that person. This is also valid for false denunciations until they are investigated. The exception to the rule relates to cases when the whistleblower is an employer of a state institution that intentionally discloses a clearly lawful practice. Nevertheless, even though the law is considered to comply with international standards as it provides adequate protection for whistleblowers against administrative, civil and criminal sanctions¹⁶, it does not cover other forms of sanctions such as unfair dismissal or protection of the whistleblower working status which is generally the most feared action by the employees under these circumstances.

The concept of financial reward to whistleblowers, which is underscored as a key motivation in the Law on Cooperation, remains also one of its weaknesses. Even though, a whistleblower acts in the interest of the public, this law provides for financial compensation of those who denounce corruptive practices. According to this law, persons who denounce cases of corruption have the right to receive a financial reward after the investigation process is completed and the denunciation has resulted well-grounded, real and previously unknown. However, the law is far from reaching its objective of defining the rules and procedures for denouncing, registration and compensation of the persons who denounce. In practice, its implementation has been hampered

¹³ Speckbacher, Christopher. (20.3.2009). The protection of whistleblowers in the light of GRECO's work.

¹⁴ PACA, (June 2012). Technical Paper: Facilitating and preventing complaints of alleged official corruption and malpractice in Albania: The current system and recommendations of improvements.

¹⁵ Typically the definitions on whistleblowers, (as stated in the first section) cover different types of wrong doings: maladministration, criminal acts, abuses of power etc.

¹⁶ GRECO, 2009, Third evaluation round – Albania: evaluation of transparency of party funding

because the sub-legal acts from the Council of Ministers as well as specific regulations that need to be adopted within each institution have not been issued, yet.

This law foresees also the use of established internal institutional channels for disclosing information on corruption. However, one of the problematic issues is that this law remains unclear about the responsible authority for conducting the preliminary investigation. This is because the cases of corruption are being denounced internally to the official, whom the denunciation is addressed to, or within the institution where corruption has occurred. Moreover, the responsible authority has the discretion to either initiate an administrative investigation for individuals involved and respective circumstances or not, when the denunciation is considered unreliable, not concrete or clearly false. These latter cases, fall under the complete discretion of the official responsible for investigation.

a. Sectoral legislation containing provisions for whistleblowers protection

Albania's legal system also comprises a number of sectoral laws that contain provisions for regulating the whistleblowing activity. Different provisions stipulate protection in the cases when employees denounce malpractices from public authorities.

The whistleblowing of corruption cases from the employees is also envisaged in the Albanian **Labour Code**. The 2008 amendments¹⁷ to the Labour Code have adopted protective measures for the employees against unjustified actions taken by their employers. In specific terms it states that, any unjustified measure or administrative sanction taken against employees that have reasons to suspect cases of corruption and that denounce these cases to the responsible persons or authorities is invalid. Against these decisions the employees have the right to make a claim to the court.¹⁸ Additionally, the Labour code, apart from denouncing corruption practices, includes also cases of malpractices. The employees that are aware of any kind of malpractice resulting in criminal offence or breach of labour law or contract have also the right to make a denunciation to the competent authorities.¹⁹

Another form of evading corruption by employees or civil servants that may be linked to the whistleblowing is the right to refuse obey to certain orders or commands given by superiors or employers. On this issue, **the law on the civil servant** states that civil servants while exercising their duties have the right to disobey any order or decision when they are not convinced about its lawfulness. In this case, they should immediately inform the decision-making institutions, as well as superior institutions. As a result, the civil servant is not obliged to obey an unlawful order. Although, one of the objectives of this law is to guarantee the rights and define the duties

¹⁷ Law No. 10053, date 29.12.2008 "On an addition the Law no. 7961 dated 12.07.1995 "The Labour Code of the Republic of Albania"

¹⁸ Article 10.1, Law No.. 7961 dated 12.07.1995 "The Labour Code of the Republic of Albania"

¹⁹ Article 26/5, *Ibidem*

of the civil servants the law does not provide for any protection from potential retaliatory actions against the whistleblower in cases when they do not obey an unlawful decision or order.

The law on the prevention of conflict of interest in the exercise of public functions is another law, considered to be important in fighting corruption. Its scope is to provide for an impartial and transparent decision-making by preventing conflicts of interest of public officials. With reference to whistleblowing this law states that ‘any official, institution, interested party, or individual has the duty to disclose information about the private interests of any official subject of this law’.²⁰ In addition the law considers disclosures in the media or complaints coming from the public as legitimate sources of information for discovering possible cases of conflicts of interest,²¹ and provides for protection of individuals who offer such information. Protection measures include the fact that the official concerned in the disclosure cannot exercise any administrative measure with punitive effect over the informing subject.²² The law on conflict of interest provides for external and internal channels for reporting cases of conflict of interest. There is a central responsible authority - the High Inspectorate for the Declaration and Audit of Assets (HIDAA) - which is responsible for the implementation of this law, as well as the responsible authorities inside each institution.

The Code of Administrative Procedure sets the guiding principles for public administration organs and aims to protect the fundamental rights of the individual or personal interests. Although it does not explicitly refer to whistleblowing activity, the code provides that, any individual may complain against any administrative act,²³ or against the refusal to enact the act, to the responsible body or his/her superior.²⁴ Civil servants have also the right to request revocation, annulment or amendments of the act.²⁵ However, private person’s actions against any administrative bodies are not directly linked to the whistleblowing concept. They do not act to protect any public interest from public administration unlawful decision-making but rather to protect their own interests. However, the administrative code states that, among other duties and responsibilities, public administration organs take decisions about any kind of complaints, petitions or requests related to the breach of the Constitutions, laws or the public interest.²⁶ Although protection of whistleblowers is not explicitly mentioned in any of the articles of the Code, it is nevertheless provided that the public administration organs, during exercises of their function, should protect public interest and also should not infringe the legitimate rights of

²⁰ Article 8, Law No.9367 / 2005 on the Prevention of Conflict of Interest in the Exercise of Public Functions”

²¹ Article 9, *Ibidem*

²² Article 20, *Ibidem*

²³ An administrative act is ant decision taken by public administration organs which creates legal consequences.

²⁴ Article 137 and 139, Law. No. 8485, date 12.5.1999, “The Code of Administrative procedures of the republic of Albania”

²⁵ Article 135, *Ibidem*

²⁶ Article 15, *Ibidem*

private persons.²⁷ Moreover, they might be responsible in cases when damage is caused to private persons through their illegal decision-making.²⁸

The law on protection of collaborators of justice and witnesses²⁹ defines that its provisions apply within the framework of the criminal proceedings for intentional offences sentenced to no less than 4 years of imprisonment. Thus, protection of witnesses is provided in cases of threats against life or physical integrity or in cases of serious offences. The law does not specifically refer to whistleblowing protection. Nevertheless, this law precludes whistleblowing activity in relation to proceedings on criminal offence pursuant to article 260 of the Criminal Code on passive corruption of high state officials or local elected representatives. In this case the law precludes protections for witnesses and collaborators of justice that disclose such affairs.

Beyond the legal provisions mentioned above, the law on protection of collaborators of justice often fails to offer practical protection. This is true even for cases of whistleblowing as demonstrated by the example in the box below.

*Box 1: The case of Kosta Trebicka*³⁰

Kosta Trebicka was a businessman who uncovered evidence of public corruption in exporting of communist-era ammunition from Albania to the US in June 2008. He recorded and published a phone call, on which allegations for corruption and trafficking of ammunitions were made against senior Albanian officials. Shortly after his disclosure, he was found dead inside his car in a rural road in Albania. Official investigations by Albanian authorities and FBI experts concluded he died because of a car accident.

Within the framework of witness protection and without prejudice to other details of the case, it must be emphasized that after his disclosure was made public, Mr. Trebicka expressed several times concerns that his life was endangered. Such concerns were expressed publically and to state authorities responsible for witness protection. Nevertheless, he never gained the status of a protected witness and was never treated as such. This case demonstrates that the actual witness protection provisions fail to grant practical witness protection.

b. Information disclosure: a legal barrier for whistleblowing

The whistleblowers “mission” for an effective fight against misconduct and malpractices is not possible without a proper flow of information so, access to information is a very important tool regarding whistleblowing.³¹

²⁷ Article 10, *Ibidem*

²⁸ Article 14, *Ibidem*

²⁹ Law No. 10 173, date 22.10.2009 “On the Protection of Collaborators of Justice and Witnesses”

³⁰Media reference to Trebicka case include: Kulish, Nicholas (7.10.2008), Speculations surrounds cases on whistleblowers’ death and Koleka, Benet. (12.9.2008), Albanian witness in U.S. arms probe dies suddenly

The right for information over official documents for each individual is guaranteed by the **Law on the right to information on official documents**.³² Requests for information nevertheless may be denied in cases when access to required documents is restricted by other laws. In cases where some information is partially restricted, the person who requests information is entitled to access the part of information that is not subjected to such restriction.³³

However, this law lacks implementation in practice. In most of the cases public institutions delay processing of requests, provide negative answers or incomplete information. In addition, there is a lack of awareness of the citizens regarding this law and also a general public administration attitude of preserving information and classifying it as “secret”.

In addition, this law is ambiguous when referring to situations restricted by other laws without making any other specification or reference. Such ambiguity appears as a deterrent to deny access to information even without reasonable grounds. The same restriction is provided in the administrative procedure code,³⁴ where the persons involved in an administrative procedure have the right to take information and get familiar with any document used in that procedure, except for the case when restrictions are provided by law.

Another limitation to disclose of information is provided by **the Law on information classified as a “state secret”**. This law designs the regulations for classification, use, retaining and declassification of the information for national security which is considered a state secret. Although the law clearly states that the information classified as a state secret should be regulated in accordance with the freedom of information of the citizens over the activity of the state, many abuses have occurred in the name of protecting national security by not disclosing relevant information that may threaten it. One of such cases is illustrated in the box below.

*Box 2: The case of Gërdec*³⁵

On March 15, 2008 an explosion occurred at a munitions disposal factory in Gërdec, near Tirana, which killed 26 people, injured 302 and destroyed about 5,500 nearby houses. According to prosecutors the accident occurred due to the company’s private owners’ disregard for safety rules and training of the workers. Moreover investigations revealed that the factory was operated mostly by women and children of nearby area. The existence of the facility was unknown to the public until explosion occurred. Given that ammunitions demolition is a military task most information on this facility was kept within a closed circle and classified as state secret.

³¹Banisar David, (2012). Whistleblowing International standards and development.

³²Each person has the right to request information over official documents related to the activity of state organs or persons exercising state functions without being obliged to explain the motives for such request. Article 3, paragraph 1 Law No.8503, date 30.6.1999 On the right to information over the official documents

³³Article 4, *Ibidem*

³⁴The access to information is also guaranteed in the Administrative Code which states that the administrative organs exercise their activity in close cooperation with private persons guaranteeing the necessary information or explanations.

³⁵Wikipedia Shpërthimi në Gërdec http://sq.wikipedia.org/wiki/Shp%C3%ABrthimi_n%C3%AB_G%C3%ABrdec

In addition, the law on state secrets prohibits classification of information in cases when the purpose is to hide law breaches, public administration ineffectiveness and mistakes; or to deprive a person, organization or institution of the right to access information, or to delay or obstruct the release of the information, which does not require protection for the interest of national security.³⁶ No sanctions are foreseen if this situation occurs. However, the Albanian **Criminal Code** lays down provisions for punishments in case of divulgement to third parties or assistance in discovering data that are secret under law, by a public official or a person in charge of a public service, by the person entrusted with it or who became aware of such information thanks to his position and by any person who becomes knowledgeable of them.³⁷

The Administrative Procedure Code also protects the disclosure of information classified as a state secret by the person who exercises duties in an administrative body or participates or is called to take part in an administrative procedure.³⁸

4. Practice of whistleblowing in Albania

Similar to other Central and Eastern European countries,³⁹ whistleblowing in Albania is unknown recently introduced practice. Moreover, as revealed in the previous section the fragmented and ambiguous legislation on whistleblowing is not encouraging. Apart from cases published in the media, there is a lack of information on whistleblower cases that occur in public administration, the type of disclosures made and the final results on their investigation. Likewise, there is no proper translation of whistleblowing and media articles commonly use the English term while the law uses a term equivalent in English for denouncer, which bears also the negative connotation that it has assumed during the communist period.⁴⁰

Lack of comprehensive legislation on protection of whistleblowers and improper understanding of the need to encourage whistleblowing is influenced in the first place by social attitudes. In this regard an insight on social perceptions to whistleblowing can be achieved using surveys and polls-based studies on public perceptions on corruption and public trust in law-enforcement institutions and on public perceptions on corruption.

Almost every Albanian government of the post-communist transition period emphasized the importance of anti-corruption measures and ethics within the public administration. In this regard, corruption and money laundering are considered crimes in compliance with the obligations deriving from the Criminal Convention on Corruption of the Council of Europe.

³⁶ Article 10, Law No.8457 date 11.02.1999 on information classified “state secret”

³⁷ Article 294, 295, 295/a, Law No. 7895, date 27.01.1995, Criminal Code of the Republic of Albania,

³⁸ Article 19, Law. No. 8485, date 12.5.1999, “The Code of Administrative procedures of the republic of Albania”

³⁹ A study on 10 central and eastern European countries concludes that in most of them the practice of whistleblowing is rather unknown and poorly developed. Nevertheless there are some positive examples on whistleblowing legislation such as in the case of Romania. See: Transparency International, (2007). Alternative to silence: whistleblowing protection in 10 European countries.

⁴⁰ Law No. 9508, dated 03.04. 2006, For public cooperation in the fight against corruption, Article 2 (3).

Moreover, a Code of Ethics on the conduct of civil servants was adopted in 2004 and the law on the declaration of assets requires that high ranking public officials declare their assets for audit. They were later followed by the National Anti-corruption Strategy which has been renewed every five years since 2004.⁴¹

Data on public perceptions on the government's efforts to fight corruption, reveal that a considerable number of respondents assess such efforts as insufficient.⁴² Moreover, judiciary performance on investigating corruption cases remains poor⁴³ and there is lack of convincing track records on investigation, prosecution to corruption and conviction on corruption cases at all levels of public administration.⁴⁴ Weak performance of the courts and the subsequent insufficient records on investigation of corrupt cases among public officials leads to low levels of trust placed by the public upon the judiciary.⁴⁵ Public scepticism on the government's effort to tackle corruption and on the performance of the judiciary negatively influences the efforts for successful whistleblowing practices within the Albanian context.

Lack of internal channels within public institutions specifically charged with gathering and investigating disclosures made by public administration staff for possible allegation in misbehaviours of their colleagues is another factor that affects negatively whistleblowing practices in Albania. Moreover, often whistleblowers disclosures investigated through internal channels are treated similarly with denunciations raised by the public.⁴⁶

Another factor that hampers whistleblowing practices within public administration in Albania is the lack of a specialized oversight body that has the necessary competences to oversee the implementation of the current framework, and to investigate complaints made by whistleblowers. Within the Albanian context certain oversight functions are covered by the so-called Independent Oversight Bodies (IOB)⁴⁷, according to their area of competence. An example of a

⁴¹Trust Law, Anti corruption profile Albania

⁴² In 2008 48% of Albanians thought the government was not doing enough to fight corruption, in 2009 the figure rose to 52% and in 2010 it was about 42%. Gallup Balkan Monitor, Summary of findings 2008, 2009 and 2010. In 2010 only 17% of Albanian thought the government was successful in fighting corruption. IDRA (2010). Corruption in Albania: Perceptions and experiences

⁴³ Gjipali, Gledis (2013). Nations in Transit: Albania

⁴⁴ European Commission, (10.110.2012), Commission staff working document Albania 2012 progress report. Accompanying the document communication from the European Commission to the European Parliament and the Council Albania, enlargement strategy and main challenges.

⁴⁵ The share of respondents placing little trust on the judiciary increased from 45% in 2008 to 62% in 2010. Gallup Balkan Monitor, Summary of findings 2008, 2009 and 2010.

⁴⁶ In the case of State Police for instance there are two structures charged with investigation of complains: the Sector of Complains in the Directorate of Professional Standards and the Internal Intelligence Service. Nevertheless the Sector of Complains in the Directorate of Professional Standards, deals not only with complains made by state police employees for misbehaviours of their colleagues (i.e whistleblowing) but also gathers and investigates complaints from the public regarding different misbehaviours or malpractices of state police staff. The same situation as in the case of state police is present in almost all institutions of public administration and in Independent Oversight Bodies. This point was emphasized in almost all focus groups organized for this project.

⁴⁷Independent oversight bodies are institutions with oversight functions created by the Parliament and accountable to it that exercise oversight functions in different areas. Examples include The People's Ombudsman, the Commissioner for Personal Data Protection, the Commissioner for Protection against Discrimination, the State Supreme Audit Institute, the High

whistleblowers' case investigated by an IOB, the Commissioner for Protection from Discrimination (CPD) is presented in the box below

Box 3: The Commissioner for Protection against Discrimination (CPD)

The CPD was created by the Albanian Parliament in April 2010 following the approval of the Law on Protection from Discrimination (LPD).⁴⁸ The CPD is tasked with protection of citizens against all forms of discrimination including discrimination in employment.⁴⁹

In 2012 CPD investigated a case in Fier region. The case concerned a staff member of Regional Health Directorate there. She disclosed to the media information on unfair appointment of her superior. Subsequently after she suffered retaliation including denial of regular sick leave being fired from her position and re-assigned to a lower task without motivation. Therefore, she complained to CPD claiming discrimination in the working place by her employer due to allegations made by her on behalf of her superior.

The CPD investigated the case and concluded that the complaining party has suffered discrimination in employment. Consequently the CPD recommended return to the previous job and a fine of 30.000 All to the head of Health Directorate. The same decision was sustained also by the District Court.⁵⁰

There are several weaknesses related to the IOB-s as external channels that oversee the implementation of whistleblowers legal framework in Albania. First the IOB-s in principle oversees implementation of legislation in specific areas such as human rights, discrimination and so on. As such the IOB-s are thematic and do not cover all aspects of whistleblowing lacking the capacity to act as a single independent body that specifically oversees practical implementation of whistleblowing legislation.

A second weaknesses is the fact that most IOB-s consider complains coming from public institutions employees within the same framework as complains coming from the general public. This coupled with incomplete legislation provisions often does not guarantee the needed protection for whistleblowers from public administration that discloses information to protect public interest.

Enforcement of successful whistleblowing practices is impeded also by the weak organizational culture that exists within the Albanian public administration. Consequently,

Inspectorate for Declaration and Audits of Assets and for the Conflict of Interest and the Procurement Advocate: Dyrmishi, Arian et.al (2011), An assessment of the role of independent oversight bodies in Security Sector Reform in Albania, Institute for Democracy and Mediation

⁴⁸ Law No. 10221, date 4.2.2010 "On Protection from Discrimination" from now on LPD

⁴⁹ Specific provisions on protection from discrimination from Employment are set up on chapter 2 of LPD (Articles 12-19)

⁵⁰ Decision No.21, date 08.12.2012 of the CPD and Decision of the District Court of Fier No.04.06.2013

Albanian public administration suffers from weak institutional culture characterized by little respect for administrative and court decisions within public administration, limited freedom of information and improper administrative procedures.⁵¹ Moreover, lack of the necessary organizational culture precludes the enforcement of provisions, procedures and practices discouraging disclosures to protect public interest within the public administration.⁵²

Encouraging of whistleblowing practices in Albania are hampered also by conflicting social norms. Moreover, likewise with other post-communist societies,⁵³ the Albanian public often tend to associates reporting to protect public interest with the close surveillance of citizen conducted by the secret police during communism.⁵⁴ Consequently, whistleblowers are viewed with suspicion and are perceived as ‘snitches’ or ‘spies’ or as individuals acting for mere personal gains. Low levels of institutional trust contrast with the high importance attached to family members and the strong sense of individualism in Albanian society re-enforced in reaction to forced collectivism during communism and to the lack of strong state institutions.⁵⁵ Individualism, high importance attached to family and little respect for public institutions and the rule of law harden social understanding and implementation of practices to protect public interest such as whistleblowing.

Even though in most practices of whistleblower’s protection framework disclosure in the media is identified as the final channel,⁵⁶ in Albania, due to the lack of efficient official disclosure channels and low trust placed in institutional structures, disclosure in the media is amongst the most common ways to reveal corruption episodes and misbehaviours in public administration. During the last years, Albanian media have increasingly covered corruption and misbehaviour stories. The media has been assessed by the Albanian public as a major contributor in the fight against corruption.⁵⁷

However, only a limited number of stories published by the media have been fully investigated by the relevant institutions.⁵⁸ In spite in some cases administrative measures such as dismissal from the workplace and the initiation of penal proceedings have been undertaken

⁵¹ Sigma (2010), Assessment Albania 2010

⁵² This argument was stated in all the three focus groups organized within the framework of this project

⁵³ A study on whistleblowing practices in post-communist countries actually EU members concludes that negative perceptions surrounding whistleblowers are influenced by its associations with surveillance activities of former secret police structures. Transparency international, (2007). Alternative to silence: whistleblowing protection in 10 European countries.

⁵⁴ For instance an article published in top channel website calls whistleblower as “denoncuesit/denouncers”, See Top-Channel Website (29.10.2013) “Denoncuesit me status dëshmitari” <http://www.top-channel.tv/artikull.php?id=266578&ref=ml>

⁵⁵ Tamo, Adem, Baka, Besnik and Gjokuta Egest (2011) Social Trust and institutional Authority in the Albanian democracy, Institute for Democracy and Mediation

⁵⁶ Banisar David, (2012). Whistleblowing International standards and developments

⁵⁷ From 2005 to 2009 the percentage of those that asses media as the main ‘fighter’ against corruption has increased with 4.2%. During the whole period the media has been assessed as the institution that provides the most significant contribution in fighting corruption in Albania. IDRA, (2010), Corruption in Albania: perceptions and experiences

⁵⁸ USAID, (2013). Media sustainability index 2012. Albania

following media disclosure. Nevertheless many proceedings on corruption affairs treated by the media are suspended on procedural grounds. Some examples are included in the box below.

*Box 4: Two cases involving higher officials dismissed within the same year*⁵⁹

During 2009 two prominent corruption cases involving high rank officials that were widely covered by the media were suspended on procedural grounds. The first is related to the investigation of former Minister of Defence Fatmir Mediu regarding Gërdeci tragedy mentioned above. Mediu was accused for severe injury caused due to diligence in 2008. He was stripped by his immunity and was subject to investigations. Nevertheless he was re-elected as a member of Parliament during 2009 Parliamentary elections. Subsequently, in 2009 the High Court suspended investigations related to him on the grounds that he re-gained immunity after being re-elected a Member of Parliament.

The second case suspended by the High Court within 2009 relate to Mr. Lulzim Basha. In 2007 he was the Minister of Transports and Telecommunications. He was suspected for official abuse and showing favourable stances in public tenders during the procedures for selecting the firms that would construct the Durrës-Prishtina highway in 2007. His case was suspended by the High Court on March 2009 which argued that the Prosecution has carried investigations beyond the legal deadline for doing so.

Moreover, in principle there exists a law on access to information regarding official documents that provides public access to official information. Nevertheless several problems exist regarding implementation of this law. First, there is a lack of transparency of state institutions when providing public information to the media.⁶⁰ Secondly there are often delays in proceeding information requests from state institutions. Aware of the weak state of the judiciary, most journalists do not press charges when their right to information is not respected.⁶¹

Another obstacle to freedom of information in regard to whistleblowing legislation is that the law on information classified as state secrets. Journalists must be very careful when publishing whistleblowers disclosures since often they can be accused for revealing classified information. Although rarely used to press charges against journalists, libel and defamation remain criminal offenses in the criminal code of Albania.⁶² Moreover, government officials use economical and political pressure to harass and silence critical media.⁶³ Pressure and harassment of different kinds coupled with a lack of independent resources hamper development of impartial

⁵⁹See Bertelsmann Transformation Index 2012: Albania,

Available on <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Albania.pdf>

⁶⁰Albanian Media Institute, (February 2009). Corruption and the Media: Monitoring daily newspapers on coverage of corruption.

⁶¹Kronholm Alex, (2013). Press freedom in Albania

⁶²Bertelsman Stichtung, (2012). Bertelsman Transformation Index 2012: Albania country report.

⁶³USAID, (2013) Media sustainability index 2012. Albania

investigative journalism.⁶⁴The box below presents an example of whistleblowing cases publicized in the media.

*Box 5: Col. Myslym Pashaj denounces the agreement for sea border delimitation between Albania and Greece*⁶⁵

One of the most prominent cases of former state functionaries denouncing unfair practices of state institutions that go against public interest is that related to the Col. Ret. Myslym Pashaj. He has been former director of the military cartographic center of Albania until 2007.

He used his experience and through detailed studies published in the media and press during 2009 demonstrated that the Albanian government was signing an agreement on sea border delimitation about which most public opinion was unaware. Moreover, he demonstrated that this agreement was ceding about 300 miles of Albanian sea space to Greece. By publically blowing the whistle he managed to raise public attention as well as the attention of several other experts in the area. Subsequent to positive pressure generated by Col. Pashaj's disclosure, the agreement was nullified as anti-constitutional by the Constitutional Court of Albania on 26th of January 2010.

Another trend that might influence social attitudes to whistleblowing is the risk that this phenomenon is associated to political involvement. Moreover, as the cases in the box below reveal, in Albania there exists a trend of famous whistleblowers using the 'fame' gained through their disclosures in the media to achieve personal political interests and to climb the ladders of political career.

Box 6: From whistleblower into a politician

The first evidence of politicization of whistleblowing relates to Trebicka case mentioned above. His disclosure was to certain extent politically used by the Socialist Party in opposition at the time to gather supporters and to initiate protests against the government of the time.⁶⁶

Another case that reveals the trend of politicization of whistleblowing activity in Albania is that of Mr. Dritan Hila. In 2010 he was a diplomat at the Ministry of Foreign Affairs in Albania. Through an open letter in the press he blew the whistle regarding unfair appointment as an

⁶⁴United States Department of State, (24.5.2012). 2011 Country Reports on Human Rights Practices: Albania.

⁶⁵ References for the case of Col. Pashaj include Peshku pa ujë 19 tetor 2009) Koloneli në rezervë përballë shtetit dhe Shoqërisë <http://arkivi.peshkupauje.com/2009/10/koloneli-ne-rezerve-perballe-shtetit-dhe.html>; Forumi virtual (11.10.2009) Shtohet presioni për të mos ratifikuar paktin detar me Greqinë <http://www.forumivirtual.com/lajme-nga-shqip%C3%ABria-54/marr%C3%ABveshja-p%C3%ABr-kufijt%C3%AB-ujor%C3%AB-p%C3%ABrse-k%C3%ABrkon-greqia-detin-shqiptar-17159/> Peshku pa uje (26 janar 2010) Kushtetuesja hedh poshtë paktin me Greqinë <http://www.peshkupauje.com/2010/01/kushtetuesja-hedh-poshte-paktin-me> and Blushi, T (01.05.2009) "Qeveria Shqiptare i ka falur Greqisë rreth 225 km² sipërfaqe deti.http://pashtriku.beepworld.de/files/Kosova_09/prill-09/27-30/tedi_blushi_marreshja_greqi_shqiperi_berisha_karamanlis_29.4.09.htm

⁶⁶ See Kulish, Nicholas (7.10.2008), Speculations surrounds cases on whistleblowers' death

ambassador of the daughter of former head of High Court. Subsequently after he was removed from his position in the ministry. He started legal proceedings and won the right of re-appointment and financial re-compensation.⁶⁷ Following his disclosure, he got politically engaged with the Socialist Party. In view of the rotation of power after the elections of June 23d 2013 he is actually the new Vice Minister of Defence.

Thirdly, even Col. Pashaj shortly after his name was publicized regarding the above-mentioned whistleblowing episode was for some months during 2013 the Secretary General of a political force (Red and Black Alliance).

Fourth and last the founder of Red and Black Alliance in June 2012 Kreshnik Spahiu has also been related to whistleblowing previous to his engagement in politics in 2005. So in between 2000 and 2004 he has been the director of the Office for Protection of Citizens, the director of Transparency International Albania and a board member of Albanian anti-corruption coalition.⁶⁸

As previously discussed and as several social and economic studies reveal, the Albanian society is characterized by weak citizens' participation spirit in both civic⁶⁹ and political⁷⁰ activities. On the other hand, due to several factors related to historic legacy and to lack of democratic experience and culture, Albanians tend to be suspicious towards whistleblowing. Considering the fact that Albanian society is actually suspicious towards actions such as whistleblowing, as well as the negative connotations that exist regarding the "moral" of people involved in politics, it could be very likely that association of whistleblowers to politics negatively influences the social perceptions on this phenomenon. This in turn would be another barrier to developing successful whistleblowing practices in Albania.

5. Conclusion

This paper discusses the legal framework, practices and social environment features that relate to the implementation and adaptability of whistleblowing in Albania. This research concludes that current legislation on whistleblowing in Albania is fragmented in several sectoral laws. The existing provisions are ambiguous and fall short of adequate protection mechanisms for whistleblowers. Accordingly, the prohibition of taking any administrative, civil or penal

⁶⁷Media references to Hila case include: Shqiptarja.com, (6.3.2013). Dritan Hila fiton gjyqin me MPJ. Merr 8.4 milionë lekë. ICUB.al, (6.6.2010). Letër për emërimin e bijës së kryetares: Dritan Hila; Balkanweb.com, (14.1.2011). Becaj: Videopërgjimi ska lidhje me aferat.

⁶⁸Wikipedia Kreshnik Spahiu http://sq.wikipedia.org/wiki/Kreshnik_Spahiu

⁶⁹A 2010 study conducted by IDM concludes that Albanian citizens would rather spend time with their friends or in other social activities than to engage in civic activities or in voluntary work. See Civicus, Civil Society Sustainability Index for Albania 2013, Institute for Democracy and Mediation.

⁷⁰The same study concludes that despite the fact that political engagement looks better than civic one most Albanian citizens are apathic towards political engagement. See *ibid*

sanction against the whistleblower is not followed by any other legal guarantee stating the procedures in case the protection rights are infringed.

The existing laws on whistleblowers lack clear procedures and regulations for effective internal and external disclosure of information. The only piece of legislation which defines the procedures and authority for the investigation is the law on public cooperation in the fight against corruption. However, also in this case provisions remain very ambiguous and unclear and leave much room for discretion on conducting the investigation process.

Apart from the ambiguous and incomplete legal framework, public administration in Albania suffers also from weak institutional culture concerning enforcement of legislation. The latter combined with weak whistleblower protection mechanisms, decreases trust in official disclosure channels and consequently negatively impacts on the development of whistleblowing practices.

Due to the above mentioned shortcomings the media has resulted as the main disclosure channel widely accessed by the public. Disclosure in the media of corruption affairs and misbehaviours has often pushed relevant institutions to take administrative measures or to criminally prosecute several corrupt officials. Nevertheless, disclosure in the media does not guarantee the protection of whistleblowers.

Social attitudes towards whistleblowing are in the best case indifferent. Factors influencing such attitude are related to the weak performance of the judiciary and low public trust associated to it, cultural resistance and weak democratic and participatory culture. This general lack of awareness on the usefulness of whistleblowing influences that lack of a comprehensive approach towards this instrument. Moreover, recently there is a positive association between prominent whistleblowers and political engagement. Considering the patterns of Albanian society it could be very likely that such trend negatively influences social attitudes towards whistleblowing in Albania as well as the encouragement of its practice.

6. Recommendations

1. The government in wide consultation with civil society actors and international experts shall draft a single and comprehensive legal act to regulate whistleblowing practices in public institutions. The legislation shall include a wide definition of wrong-doings and guarantee protection from dismissal or any form of retaliation against whistleblowers
2. Public institution shall adopt the necessary sublegal acts that enable effective enforcement of whistleblowing legislation.
3. Public institutions shall guarantee the establishment and functioning of efficient internal disclosure channels that guarantee the efficient processing of disclosure, grant anonymity to whistleblowers and generate results on their disclosure.

4. Strengthen investigative capacities of the judiciary regarding the resolving of disclosure cases as well as to guarantee the protection of whistleblowers in order to encourage the practice and to increase public trust in this institution.
5. Public institutions shall raise awareness among their employees on the internal mechanisms for disclosing cases of wrongdoings/malpractices
6. Public awareness-raising campaigns should be conducted by the relevant institutions using different media sources to make citizens aware of whistleblowing mechanisms.

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