

Review Article

WHISTLEBLOWER'S RIGHTS IN A LEGAL INVESTIGATION: EXPLORING THE CHALLENGES AND OPPORTUNITIES IN ALBANIA

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ABSTRACT

Background: This article examines the issues, possibilities, and methods associated with whistleblowing in Albania. Transparency and accountability became increasingly important as the country moved from communist rule to democracy. The passage of the Whistleblower Protection Law in 2016 laid the groundwork for recognising and protecting whistleblowers. This article discusses the legal framework of Law No. 60/2016, as well as other legal initiatives, in the light of the rights and protection provided for whistleblowers, following up with an administrative investigation and criminal proceeding. However, despite these legal strides, whistleblowing is hindered by several issues, including a lack of public awareness, a continuing fear of retaliation, limited legislative safeguards, and resource restrictions among whistleblower-handling organisations. As Albania continues to grapple with these challenges and seize the opportunities at hand, the challenge stands in strengthening the culture of integrity, transparency, and accountability. Commitment to this critical part of governance not only strengthens whistleblower practices but also adds to the fight against corruption and the rule of law. This article concludes with recommendations on turning challenges into opportunities and strengths through the right governance and tools, aligning with the best international practices.

Methods: The methodology applied for exploring whistleblowing practices in Albania included a thorough assessment of relevant legal texts, legislative frameworks, and academic literature. Primary sources included a careful review of Albanian whistleblower legislation, emphasising clauses covering rights, safeguards, and processes. This legal research offered a solid grasp of the statutory systems in place to facilitate whistleblowing practices in the nation. Furthermore, a thorough assessment of academic papers, reports from international organisations, and case studies was carried out to capture the practical consequences and obstacles faced by whistleblowers in Albania. This multidimensional approach enabled a full analysis of the theoretical underpinnings as well as real-world uses of whistleblower mechanisms in the Albanian setting.

Results and conclusions: *The whistleblower practice in Albania has encountered many challenges, but improvements have been made to guarantee access to justice. The main problem that the whistleblower faces is retaliation, which creates such a fear that most will choose to stay silent in the face of injustice or illegal acts. Another issue is certainly job insecurity because many can't afford to switch jobs or find jobs that meet their criteria. Some recommendations for improving whistleblowing practices and guaranteeing more protection for vulnerable subjects include whistleblower training, strengthening the whistleblower network, evaluating results often and putting financial safeguards in place.*

1 INTRODUCTION

Law No. 60/2016 'On Whistleblowers and Whistleblower Protection'¹ was adopted as a necessary tool for progress in fighting corruption in light of the new justice reform undertaken by Albania in the next couple of years. Even though the justice reform may have yielded some good results, there is still much to be done. In this fight against corruption, various individuals, including journalists, independent social media, social activists, employees, clerks, and citizens, have played a significant role as whistleblowers.

People who work in private or public institutions where corruption occurs are often witnesses to gifts, bribes, unlawful influence, and other violations of the law. These people, who may be employees or visitors, can be concerned about reporting these events because they may feel powerless and fear retaliation. There have been instances, and still happen, that those who blow the whistle instead of praises have faced angry feedback, have been dismissed, bullied, or intimidated and harassed. To break this cycle, different measures should be taken, among amending legislation; it is also necessary to inform and educate the public on the negative impact of corruption in their life and the benefits of holding those who break the law accountable.

Measuring the effects and impact of whistleblower protection is a complex task, especially when it is usually a practice followed in corruption cases. The results of whistleblowing depend on multiple factors that should be integrated to tackle the issues and apply the best practices. These factors include the legal framework, cultural context, support for the whistleblower process from the government and the education and support from the society. In Albania, there has yet to be an important case from whistleblower practices or cases that have yielded promising results. However, whistleblowing protection and procedures are regulated by law, and society is educated on it through different projects. This has resulted in the first cases coming by the public in different areas of administrative functions, primarily in medicine, university, etc.

1 Law of the Republic of Albania no 60/2016 of 2 June 2016 On Whistleblowers and Whistleblower Protection 'Për sinjalizimin dhe mbrojtjen e sinjalizuesve' <<https://arsimi.gov.al/ligj-nr-60-2016-per-sinjalizimin-dhe-mbrojtjen-e-sinjalizuesve>> accessed 12 November 2023.

The second part of this article explores the legal framework of whistleblowing protection in Albania. Albania has made significant gains throughout its history in recognising the necessity of whistleblower protection and developing a legislative framework to help individuals who dare to reveal corruption and wrongdoing. These achievements, however, should not overshadow the persistent challenges that whistleblowers and the system confront in the country.

The historical setting of Albania's transition from communism to democracy was critical in shaping whistleblower legislation. With the demise of the communist dictatorship came a renewed yearning for openness and accountability. However, in the early years of the transition, whistleblower protection was not adequately prioritised, and it took until 2016 for a complete Whistleblower Protection Law to be implemented.

The third part analyses the whistleblower's protection and rights during administrative investigations and criminal proceedings, considering specific regulations on administrative investigations and legal provisions on criminal law in Albania. Government agencies or organisations often conduct administrative investigations to ensure compliance with laws, rules, and standards. Whistleblowers who disclose administrative misbehaviour can start these investigations, leading to probes into unethical behaviour, abuse of money, or violations of the legislation inside public organisations. Whistleblower information is a critical beginning point for administrative investigations, aiding authorities in finding misconduct and implementing proper remedial steps.

In parallel, whistleblowing helps criminal investigations in Albania tremendously. Whistleblowers who disclose illicit acts such as bribery, embezzlement, or organised crime give law enforcement and prosecutors crucial information. They frequently serve as critical witnesses, offering testimony and evidence that can lead to the accused's prosecution. The legal system in Albania protects whistleblowers engaged in criminal cases by securing their anonymity, protecting them from reprisal, and allowing them to actively participate in the processes.

Whistleblowers are invaluable allies in the pursuit of justice and maintaining integrity in the public and private sectors, both in administrative and criminal investigations. Albania's dedication to respecting whistleblower rights and protections in these investigations is critical in encouraging openness and accountability, eventually contributing to the nation's progress in combating corruption and criminal activity.

The fourth section explores the challenges and opportunities related to Albania's legal framework on whistleblowing practice, as well as the role of public education and government initiatives in this context. In the search for openness and accountability, whistleblowing practices in Albania bring both obstacles and opportunities. The public and staff are often unaware of their rights and reporting methods, exacerbated by a fear of reprisal due to the restricted legal safeguards. Another difficulty is cultural reluctance, which is firmly established in traditional norms and causes people to be reluctant to disclose misbehaviour involving family members or close colleagues. Resource constraints among

institutions that handle whistleblower complaints can damage the process's efficacy, and political influence can jeopardise accountability.

On the other hand, from these challenges arise opportunities to further regulate and strengthen the whistleblowing practice. Legal reforms provide an opportunity to enhance whistleblower protection by explicitly identifying whistleblowers and broadening the extent of their rights. Initiatives focused on public awareness and educating individuals on the value of whistleblowing can affect society's views. Improved reporting procedures, legislative measures ensuring anonymity and secrecy, and the formation of whistleblower support organisations all provide practical instruments to empower potential whistleblowers. International collaboration and information sharing keep Albania up to date on best practices in the sector. Addressing these difficulties and seizing these opportunities can foster a culture of integrity and accountability in Albania by tackling these difficulties and capitalising on these possibilities, contributing to the larger battle against corruption and supporting the rule of law.

To conclude, the paper presents an overview of rethinking legal and technical measures to ensure whistleblower rights and protection related to administrative and criminal investigation to educate the public on the necessity and effectiveness of whistleblowing practices.

2 THE DEVELOPMENT OF ALBANIAN LEGAL FRAMEWORK ON WHISTLEBLOWER PROTECTION

Whistleblowing is a critical method for uncovering corruption, fraud, and wrongdoing inside organisations, increasing transparency, and protecting the public interest. This study dives into the history of whistleblower law in Albania, charting it from an embryonic notion to a more thorough legal structure. The article investigates the circumstances that created the need for whistleblower protection, important legislative milestones in Albania, and the influence on the country's governance and anti-corruption initiatives.

The whistleblower legislative framework in Albania is an important component of the country's continuous efforts to enhance transparency, accountability and the fight against corruption and misconduct. Whistleblowing, the act of individuals revealing unethical or unlawful activity within organisations, has grown in popularity as a powerful tool for discovering and correcting wrongdoing. In this context, Albania has taken major measures to create a legislative framework that recognises and protects whistleblowers, as well as their critical role in the pursuit of justice and good governance.

Albania's legislative trajectory reflects a nation in change, transitioning from a legacy of secrecy during the communist era to a democracy that emphasises transparency and honesty. This transformation has highlighted the importance of robust whistleblower

protection. Albania's legislative framework seeks to find a balance between safeguarding whistleblowers' rights and identities while ensuring that the information is used effectively to combat corruption and other misbehaviour.

Albania's communist dictatorship, led by Enver Hoxha, lasted nearly four decades, from the conclusion of World War II until 1992. Albania was characterised by isolationism, a culture of secrecy, and the suppression of opposition throughout this period. Whistleblowing, as we know it now, was almost non-existent since the administration harshly punished any resistance or revelation of state secrets.

A new era began with the fall of communism and Albania's transition to democracy in the early 1990s. Transparency and accountability in government and other sectors of society became obvious. However, throughout the early years of the transition, whistleblower protection was generally ignored as a component of governance.

Albania did not take a substantial step towards statutory whistleblower protection provisions until 2016. The passing of the Whistleblower Protection Act that year was a watershed moment. This statute specified the rights and safeguards of those who, in good faith, revealed corruption and misconduct.² While this was a significant achievement, it was only the first stage of a much larger process. This law upholds the values of a democratic society, human rights and dignity, equality before the law and freedom of expression. Law No. 60/2016 'On Whistleblowers and Whistleblower Protection' aims to guarantee and ensure employees can speak up about misconduct or corrupt practices responsibly and safely.

Under Law No. 60/2016³, a whistleblower is defined as someone who reports on acts of corruption or misconduct. This person reveals or discloses information on someone who is abusing their power or engaged in corruption. Usually, the delinquent is employed in private or public institutions but can also involve someone not employed formally yet implicated in active corruption alongside a person in a position of power. The Council of Europe⁴ defines a whistleblower as someone who reports on a threat to public interest or the rule of law based on the context of their work relationship.

Any person can be a whistleblower, and anyone violating the law can be reported; however, the disclosed information should be reliable. No one is legally obligated to whistleblow if they witness illegal acts like corruption, misconduct, or unlawful influence. If someone reports an act of corruption without reliable information or if it is proven that they are abusing the whistleblowing guidelines, they can be held accountable on the grounds of false accusations or misleading legal authorities.

However, there is a thin line between choosing not to blow the whistle and choosing not to report a criminal offence. The difference between both stands in the knowledge about the

2 *ibid*, art 3, para 13.

3 *ibid*, art 5.

4 Committee of Ministers of the Council of Europe, *Protection of Whistleblowers: Recommendation CM/Rec(2014)7 adopted 30 April 2014 and explanatory memorandum* (Council of Europe 2014) <<https://rm.coe.int/16807096c7>> accessed 12 November 2023.

crime. A whistleblower does not need hard proof to report, nor do they need to prove their doubts. Rather, the requirement is for the report to be based on reliable information and enough evidence that the person who blows the whistle honestly believes that a crime was committed.⁵ On the other hand, choosing not to report a crime is a choice made by someone fully aware that a crime has been committed, either because the person was present at the scene of the crime, witnessed the crime, or because they know second-hand after the crime was committed.

If a person suspects that corrupt practices are carried on in their workplace, they can report these activities to the head of their department (internal whistleblowing) or directly to the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (external whistleblowing), if their workplace does not have a department that investigates whistleblower reports. The institution or the department that administers the report will investigate further. However, in the case when the whistleblower believes that they can not submit a report to their department, they can disclose the information to the High Inspectorate, along with the reason for choosing so.⁶

The whistleblower's report is considered valid if it discloses information on whistleblower identification data and a full report on facts and circumstances of the suspected corrupt practice. Confidentiality of information and data is guaranteed; a whistleblower may not reveal their identity, and their report is still considered valid if the information disclosed justifies the need for anonymity and sufficient ground is provided for the administration to investigate the corrupt practices.⁷

While whistleblowing might be confused with journalists' reports, it is recommended that whistleblowers refrain from disclosing their information to journalists or other entities, except for the Head of the department or the High Inspectorate. Whistleblowing guarantees that the information disclosed will be investigated by competent people. The whistleblower will be informed of the proceedings, allowed to partake in the administrative investigation, and protected from victimisation or retaliation. The investigation's outcomes may lead to criminal prosecution or restitution of consequences of corruption. These guarantees are not provided to journalists or the whistleblower who disclose the information to a journalist.

The whistleblower may disclose information to a police officer, in which case the officer will immediately follow up with the legal procedures and investigation. The whistleblower may also take the case to court if the administration where the information was disclosed fails to take action or protect the whistleblower from retaliation. However, the involvement of a lawyer is not typically part of whistleblower practices as the goal is to strengthen the capacity of employees to report crimes confidentially, facilitating a quick administrative investigation and avoiding the judicial system.

5 Law no 60/2016 (n 1) art 3, para 15; art 6.

6 *ibid*, art 11.

7 *ibid*, art 15.

Law No. 60/2016 'On Whistleblowers and Whistleblower Protection' provides three key elements of whistleblowing:

- a. Procedure to report corruption or corrupt acts.⁸ The mechanisms offer the whistleblower protection of confidentiality and protection from harassment. The job contract can not contain clauses that prevent the employee from blowing the whistle or that aim to limit his rights and protection if he becomes a whistleblower.
- b. Procedure to investigate the whistleblowing report.⁹ The whistleblower should have reasonable cause to disclose information, which means that he should be sure that a misconduct has occurred, is occurring or is likely to, and he shall be keeping in mind the public interest and rule of law rather than some other motive. The administrative investigation follows up on the whistleblower's information, and if it is proven that a crime was committed, or there is reasonable doubt that a crime was committed, the case is referred to the criminal prosecution office.
- c. Procedure to protect from retaliation.¹⁰ In this case, the person who chooses to retaliate against the whistleblower will be legally responsible for his or her actions. Retaliation can take many forms: dismissal from office, suspension, transfer to a lower-paying position, demotion, loss of status, negative evaluation, etc. The whistleblower can not be dismissed from his job on this basis, but the reason behind the act can be justified, so the whistleblower is protected by having the option to choose to be transferred to another workplace to save himself. If there is retaliation by someone in a higher position towards the whistleblower, the fine can be up to 5000 euros, and if someone discloses the information on the whistleblower's identity, the fine is up to 1000 euros.

Law No. 60/2016 created a much-needed legal framework for the protection of whistleblowers and the implementation of whistleblowing mechanisms. However, the effectiveness of the law relies not just on its existence but on the presence of procedures and tools in place that translate it into practical action. The Network of Anti-Corruption Coordinators, re-conceptualised in terms of organisation and operation through Decision No. 618 on 20 October 2021 of the Council of Ministers, titled 'On the creation, organisation and operation of the Network of Coordinators against Corruption'¹¹ as amended, is headed by the National Coordinator against Corruption. The network comprises coordinators appointed within affiliated institutions and responsible structures against corruption in the Ministry of Justice.¹²

8 *ibid*, art 5–9.

9 *ibid*, art 12–16.

10 *ibid*, art 18.

11 Vendim i Këshillit të Ministrave Nr 618 datë 20/10/2021 'Për Krijimin, Organizimin e Funkcionimin e Rrjetit të Koordinatorëve Kundër Korrupsionit' <<http://www.akbn.gov.al/wp-content/uploads/2023/01/VKM-nr-618-datë-20.10.2021.pdf>> accessed 12 November 2023.

12 *ibid*, sect IV, art 1.

The recent anti-corruption structure founded by the Ministry of Justice¹³ aims to tackle corruption and misconduct at its roots and carry on an administrative investigation right away. The project of building this wide network of coordinators against corruption¹⁴ aims to strengthen the whistleblower practice and guarantee whistleblower rights and protection.

The Ministry of Justice, acting in the role of the National Coordinator against Corruption, coordinates the work for the drafting of policies and the preparation of legal and by-laws for the prevention and fight against corruption, the creation of structures responsible for anti-corruption issues as well as the verifications and administrative investigations carried out.¹⁵

The Network of Anti-Corruption Coordinators has powers of control and administrative investigation in 44 institutions¹⁶ at the central level as well as in every local directorate of the State Cadastre Agency, in the Regional Directories of the Operator of Health Care Services, in the Regional Directories of Pre-university Education and regional hospitals.

The General Directorate of Anti-corruption in the Ministry of Justice, tasked with addressing anti-corruption issues, is committed to several missions. These include conducting administrative investigations of denunciations/complaints for abusive, corrupt or arbitrary practices for the implementation of legality, as well as the identification of employees of institutions, part of the Network of Coordinators, who, by actions or inactions, have committed violations of legal or sub-legal acts in force. Concurrently, the Directorate is involved in developing projects and programs in the field of anti-corruption, as well as planning, coordinating and determining the necessary instruments for implementing anti-corruption policies.

The General Directorate of Anticorruption is composed of three directorates,¹⁷ namely:

- a. Directorate of the Network of Anticorruption Coordinators, responsible for supporting the activities of Coordinators appointed in the institutions of the Network; monitoring and conducting performance evaluation for each coordinator; conducting the administrative investigation; analysing and evaluating the risk of corruption in institutions that are part of the Network's activity; preparing Control Plans based on corruption risk assessment; maintaining, administering and updating the Register of complaints and denunciations; maintaining, administering and updating the Register of Final Reports and Criminal Reports; following the progress of the implementation of the measures and recommendations given by the National Coordinator against Corruption for the institutions subject to control; carrying out periodic analyses of the activity of the General Directorate of Anticorruption.

13 *ibid*, sect II.

14 *ibid*, sect III.

15 *ibid*, art 1.

16 *ibid*, sect II, art 2.

17 'Rrjeti i Koordinatorëve kundër Korrupsionit' (*Ministria e Drejtësisë*, 23 shkurt 2021) <<https://www.drejtesia.gov.al/rrjeti-i-koordinatoreve-anti-korrupsion/>> accessed 12 November 2023.

- b. The Operational Directorate for Anticorruption Issues conducts in-depth investigations in institutions that are part of the network, according to the provisions of the Decision of the Council of Ministers. It supports the activity of Coordinators appointed in the institutions of the Network for complex administrative investigations and conducts field checks according to the Order of the National Anti-Corruption Coordinator.
- c. The Directorate of Anticorruption Programs and Projects is the technical structure that plans, coordinates and defines the necessary instruments for the implementation of policies in the field, the solution and development of programs in the anticorruption field, as well as the creation of the infrastructure base that will precede this development. The Directorate leads the framework of preventive anti-corruption policies, monitors the implementation of regulatory acts, drafts policies and other institutional interventions in the field, increases public awareness, and ensures internal and external inter-institutional communication of the field. However, even if it has been up and running for the past few years, the project has not given the expected results. The Helsinki Committee in Albania has found that a great number of the anti-corruption units are not fully operative because they have to carry different duties of different roles while working in the same position, the workload is immense, there is no reward to motivate them, and they do not trust other unit's workers.¹⁸

3 THE WHISTLEBLOWERS' RIGHTS IN AN ADMINISTRATIVE AND CRIMINAL INVESTIGATION

One of the biggest cases involving a whistleblower who disclosed information led to the incarceration of the former Minister of Interior. Dritan Zagani, a Fier police official, exposed the participation of Saimir Tahiri's cousins in narcotics trafficking in 2014.¹⁹ According to Zagani, the drug kingpin Moisi Habilaj and his ring members sold narcotics using a private automobile acquired from Tahiri. For a long time, the Albanian prosecutors ignored Zagani's charges. Instead, the whistleblower, Zagani, was imprisoned and fled to Switzerland, where he was given political refuge.

Only in 2018 did Italian authorities apprehend Habilaj and his gang. Tahiri was found guilty and sentenced to five years in jail for abuse of office a year later. The sentence was lowered to 3.4 years, followed by three years on probation.

18 Komiteti Shqiptar i Helsinkit, *Sinjalizimi i Korrupsionit në Shqipëri: Sfidat e Zbatimit të Kuadrit të Ri Ligjor : Raport Monitorimi, Referuar gjetjeve të monitorimit të kryer gjatë periudhës Nëntor 2018 – Nëntor 2019* (KShH 2020) 23.

19 Jérôme André, 'Lanceur D'alerte En Albanie : Le Long Combat Du Policier Zagani Contre Le Cannabis' (*Les Courrier des Balkans*, 11 décembre 2017) <<https://www.courrierdesbalkans.fr/Albanie-le-lanceur-d-alerte-Dritan-Zagani>> accessed 12 November 2023.

However, this case shows that whistleblowers are always at risk unless there are proportionate measures to protect them and effective tools to guarantee their rights and protection.

Administrative investigations are a critical component of Albania's whistleblower practices, acting as the principal vehicle for combating corruption, fraud, and misconduct in public and commercial organisations. Whistleblowing, or individuals disclosing unethical or unlawful workplace practices, has evolved as a potent weapon for exposing wrongdoing and encouraging openness and accountability. Albania's commitment to building an integrity culture and tackling corruption is inextricably related to its ability to execute administrative investigations spurred by whistleblower claims.

The administrative investigation is projected to guarantee the rights and protection of whistleblowers, incorporating measures to protect those who wish to come forward but fear potential retaliation.

Initially, whistleblowers are encouraged to disclose information to their department at their workplace. This department is called 'internal whistleblowing'²⁰ and is specialised and trained to handle such cases. Law No. 60/2016 requires every public or private entity to create a special department with qualified employees to handle cases that come from whistleblowers. The technicalities are thoroughly provisioned in the Decision by the Council of Ministers no. 816 dated 16 November 2016 'On the structure, selection requirements, and work relations for the employees of the competent unit in the public authorities, on Law No. 60/2016'. However, in cases when the whistleblower's workplace does not have such a department or specialised unit, or there is a concern that their department will dismiss the case, the whistleblower has the option to go straight to the High Inspectorate, also known as 'external whistleblowing'.²¹

The High Inspectorate has drafted a standard form²² for internal and external whistleblowing, aiming to uniformise the practice and simplify the disclosure of information for whistleblowers. In the internal whistleblowing form, whistleblowers are required to provide their name and contact information, work position and workplace. However, they also have the option to remain anonymous, provided they can justify this choice.

From this standardised form, there are only two ways to follow the administrative investigation. If the whistleblower chooses to remain anonymous, and the reason is objectively justified, the administration proceeds with the investigation without disclosing their identity. Alternatively, if the whistleblower has to share personal data, their data remains anonymous during the investigation.

20 Law no 60/2016 (n 1) art 10.

21 *ibid*, art 11.

22 Urdhër ILDKPKI Nr 1222 datë 11/07/2017 'Për miratimin e formularëve dhe regjistrave të sinjalizimit dhe mbrojtjes së sinjalizuesve' <<https://arsimiparauniversitar.gov.al/wp-content/uploads/2021/12/Urdher-nr.1222-dat%C3%AB-11.07.2017.pdf>> accessed 12 November 2023.

The form then prompts whistleblowers to outline the facts they wish to disclose, specifying the specific criminal code article they believe has been violated. Whistleblowers are encouraged to submit any evidence they possess along with the form or indicate where such evidence can be obtained.

The other standardised form is the 'external whistleblowing' one. The initial data is the same as the internal one, where the whistleblower can either provide their personal data or opt to protect their identity and be an anonymous whistleblower. Then, the whistleblower has to justify why they are disclosing information directly to the High Inspectorate, surpassing their own work unit or department. This option clarifies that blowing the whistle directly to the High Inspectorate is an exception to the rule.

The form further delves into the reasons for choosing to disclose information directly to the High Inspectorate. The whistleblower is asked to justify by choosing among options:

- A. My workplace does not have such a specialised department or
- B. The department or unit that administers whistleblowing cases has not started the administrative investigation or refused to investigate, the head of the unit is implicated in the criminal act, there is doubt regarding the integrity and impartiality of the unit/ department, or the evidence for this particular whistleblowing can only be accessed near the unit or persons who can be involved in the criminal act thus risking the evidence to be destroyed or manipulated.

The rest of the form follows the same requirements on evidence attached to the form or guidance on where to find the evidence.

These standardised forms, along with other regulations²³ by the High Inspectorate, ensure that whistleblowers can provide comprehensive information necessary for the case. The external whistleblowing forms offer more guarantees for the whistleblower by requesting details on the reasons they chose to disclose information directly to the High Inspectorate. This makes ground for an administrative investigation not only upon the information shared by the whistleblower but also considers the reason why the whistleblower found it necessary to surpass their own work unit. Such an approach enhances protection and guarantees for whistleblowers, encouraging them to come forward without fear of intimidation or possible retaliation.

On the other hand, in Albania, the legal framework specifically addressing the position of whistleblowers in a criminal proceeding is not regulated; however, their rights and protection can be drawn by the rights and proceedings of calling a witness to testify or calling the whistleblower to report as a person who has information on the subject. Criminal procedures are an important aspect of the country's whistleblower practices, providing a significant channel for addressing and correcting criminal activity such as corruption, fraud, and other illegal actions.

23 Rregullore për Hetimin Administrativ të Kërkesës së Sinjalizuesit për Mbrojtjen nga Hakmarrja në ILDKPKI (Shtator 2016) <<http://www.urgjenca.gov.al/sinjalizimiDoc/RREGULLORE-Kerkesa-per-mbrojtje.pdf>> accessed 12 November 2023.

Whistleblowing, or individuals revealing illegal and unethical conduct within their organisations, is critical in uncovering criminal wrongdoing, increasing transparency, and supporting the rule of law in Albania. The country's commitment to accountability and combating illegal activity is inextricably linked to its capacity to undertake successful criminal investigations prompted by whistleblower disclosures. In this aspect, the whistleblower will be requested to disclose information related to the case based on their knowledge.²⁴ However, whistleblowers are not permitted to testify on morality, ethics and other personality tracks of the subject being investigated unless such information is linked or can impact the judgement related to the subject's personality regarding the criminal act committed and their social danger.

Whistleblowers can be asked about their relation to the subject and any information they have acquired through this relationship, often stemming from a direct work relationship in the private or public sector. They are obligated to disclose information they have personally encountered as well as information relayed by a third party, even if it may not be considered conclusive evidence unless the third party is unable to testify on their own behalf.²⁵

The whistleblower can not be forced to testify or disclose information that is protected by confidentiality laws or state secret laws. However, there are some exceptions in this case. The whistleblower can not disclose more information than necessary for the case, and only under certain circumstances can confidential information relevant to the case be disclosed.

State secret information is subject to a separate procedure, wherein the court must seek permission to access state-protected documents by requesting certain information directly from relevant institutions. If the state secret is deemed unnecessary for the case, it will not be disclosed. If the information is deemed necessary, the court may administer only the parts of the documents and information relevant to the case while guaranteeing that other parts of the information are not disclosed to any party, including the court, by the institutions handling such information.²⁶

The whistleblower retains the option to maintain anonymity when disclosing information to their department or the High Inspectorate. However, the same protection is not guaranteed during a criminal investigation for individuals exposing corruptive practices, misconduct, or abuse of power. The Criminal Proceedings Code of Albania has specifically predicted that only the witnesses of criminal acts, like crimes against the state and the rule of law, have the option to protect their identity and testify anonymously in court.²⁷

The legislator has not deemed it necessary to provide the same protection for whistleblowers, considering that they have the option to disclose information anonymously

24 Criminal Proceeding Code of the Republic of Albania no 7905 of 21 March 1995 'Kodi i Procedurës Penale i Republikës së Shqipërisë' art 153 <<https://qbz.gov.al/preview/b4819f4d-c246-49b3-87a9-2e6c8512c975>> accessed 12 November 2023.

25 *ibid*, art 154.

26 *ibid*, art 160.

27 *ibid*, art 165/a para 1.

if they choose to do so. Even when choosing anonymity, their information undergoes processing and investigation by the administration or the High Inspectorate.

Among the rights and protection afforded to whistleblowers are corresponding duties. The whistleblower can be sued if the disclosed information is classified as a state secret or confidential information protected by legal norms. The whistleblower can also be sued and legally responsible if the disclosed information, while true, is done so in an abusive manner or with the intent to harm someone.²⁸

4 CHALLENGES AND OPPORTUNITIES

Whistleblowing practice in Albania has not been easy or has not produced any noticeable results. Despite the implementation of various measures and tools to advance the practice, barriers persist, stemming either from societal culture and mentality or the inadequacy of supporting tools aimed at strengthening the whistleblowing practice.

In Albania, whistleblowers are afraid of losing their employment, being harassed, or even being physically harmed, leading many to remain silent. Additionally, the current legal safeguards exacerbate the problem since there are loopholes in the present legal framework that expose whistleblowers to retaliation. Cultural norms, including traditional notions of loyalty and fear of social stigmatisation, discourage individuals from reporting crimes, especially involving close acquaintances.

Furthermore, limitations in resources among organisations responsible for handling whistleblower allegations further weaken the process's efficacy. Political involvement can also jeopardise accountability efforts.

However, the challenges can be corrected and present opportunities for improvement with the right commitment and tools.

1. Inadequate Awareness: One of the most significant difficulties in Albania is a lack of knowledge and comprehension about whistleblowing. Many individuals and workers are uninformed of their rights or the reporting tools available. A lack of understanding not only discourages potential whistleblowers from coming forward but also promotes a culture of silence inside organisations and institutions.
2. Fear of Retaliation:²⁹ In Albania, potential whistleblowers are deterred by the threat of reprisal. Individuals are concerned about losing their employment, being harassed, or even being physically harmed if they reveal corruption or misconduct.

28 Criminal Code of the Republic of Albania no 7895 of 27 January 1995 'Kodi Penal i Republikës së Shqipërisë' art 305 <<https://qbz.gov.al/preview/a2b117e6-69b2-4355-aa49-78967c31bf4d>> accessed 12 November 2023.

29 Arjan Dyrmishi, Elira Hroni and Egest Gjokutaj, *Whistleblowers Protection in Albania: An Assessment of the legislation and Practice* (Institute for Democracy and Mediation 2013) 13 <<https://idmalbania.org/whistleblowers-protection-in-albania-an-assessment-of-the-legislation-and-practice>> accessed 12 November 2023.

Fear of retaliation frequently leads to silence, making it critical to address this issue through solid legislative safeguards and processes that ensure anonymity and protect whistleblowers.

3. **Inadequate Legal Protections:** Albania has passed legislation to protect whistleblowers, but the legal structure still contains gaps and restrictions. The regulations do not sufficiently cover all industries, and the concept of whistleblowers might be fairly ambiguous. To remedy this issue, legal safeguards must be strengthened, coverage expanded, and precise definitions provided.
4. **Inadequate Reporting Mechanisms:** Another key difficulty is the lack of sufficient reporting methods. Whistleblowers lack transparent, accessible, and confidential methods for reporting misconduct, which may deter them from coming forward or jeopardise their anonymity. For a certain period during the justice reform in 2017, different applications were created for whistleblowers, such as 'Stop Korrupsionit',³⁰ to report corruption and misconduct. However, most of them were later removed. Today, there is a platform³¹ where individuals can blow the whistle while maintaining anonymity. However, for the whistle-blow practice to be effective, there is a need for more user-friendly and readily available reporting channels inside organisations and via government bodies. This can include dedicated reporting hotlines, secure web platforms, and postal channels to facilitate reporting.
5. **Cultural Aversion:**³² In Albania, a longstanding cultural resistance to reveal wrongdoing might also block whistleblower practices. Individuals may be discouraged from reporting wrongdoing if it affects family members or close colleagues due to traditional notions of loyalty and fear of societal stigmatisation.' To address this cultural barrier, legal safeguards and educational programs aimed at shifting society's views are required. Raising public knowledge regarding whistleblowing can help foster a culture where disclosing wrongdoing is not only accepted but encouraged. Citizens can be educated about their rights as whistleblowers and the importance of their participation in combatting corruption through public awareness initiatives. In conjunction with civil society organisations, the government can plan and conduct public awareness campaigns using different media channels such as television, radio, social media, and community outreach. These campaigns can be developed to explain the advantages of whistleblowing, give information on reporting channels, and highlight successful situations in which whistleblowers had a beneficial influence.

30 *STOP Korrupsionit* <<https://stopkorrupsionit.al>> accessed 20 September 2023.

31 *Për Shqipërinë Që Duam: Platforma e Bashkëqeverisjes* <<https://shqiperiaqeduam.al>> accessed 12 November 2023.

32 Caitlin Maslen, 'Responses to Common Challenges Encountered when Establishing Internal Whistleblowing Mechanisms' (*U4 Anti-Corruption Resource Centre Chr Michelsen Institute*, 26 February 2023) <<https://www.u4.no/publications/responses-to-common-challenges-encountered-when-establishing-internal-whistleblowing-mechanisms>> accessed 12 November 2023.

6. **Resource Constraints:** Resource constraints within the institutions responsible for handling whistleblower disclosures might weaken the process's efficacy. These organisations may lack the people, training, and resources to effectively investigate and respond to concerns. As a result, whistleblowers may believe their revelations are ineffective, deterring future reporting. International collaboration and information sharing can help Albania develop its whistleblowing practices. Collaboration with international organisations like the United Nations, the European Union, or other nations that have well-established whistleblower protection frameworks can give useful insights and best practices. Participating in international forums and conferences on whistleblowing might assist Albania in staying current on advancements in the subject.

5 CONCLUSIONS AND RECOMMENDATIONS

To conclude, whistleblowing in Albania is a dynamic and changing endeavour, with both great accomplishments and continuing obstacles. Albania has made significant gains throughout its history in recognising the necessity of whistleblower protection and developing a legislative framework to help individuals who dare to reveal corruption and wrongdoing. These achievements, however, should not overshadow the persistent challenges that whistleblowers and the system confront in the country.

Despite this improvement, whistleblower practices in Albania continue to face various setbacks or blockages along the way. A significant difficulty is a lack of understanding among the general public and employees about their rights and the reporting tools available. The threat of reprisal remains a powerful deterrent, with people concerned about losing their jobs, enduring harassment, or being physically harmed if they expose wrongdoing. This worry has been heightened by the fairly limited legal safeguards, as the legal system still has holes.

Given the obstacles and opportunities, Albania has reached a fork in the road towards effective whistleblower protection and a culture of openness and accountability. The country's dedication to improving this vital part of government is admirable, and the path ahead, while difficult, is not insurmountable. Albania can foster a culture of integrity and accountability in both the public and private sectors by continuing to enact legal reforms, raise public awareness, improve reporting mechanisms, protect anonymity and confidentiality, provide whistleblower support, and engage in international cooperation.

Recommendations on strengthening the whistleblowing practice in Albania:

1. **Whistleblower Education and Training:** Provide training and educational programmes to enlighten potential whistleblowers, workers, and the general public about whistleblowing principles and processes. Workshops, seminars, and Internet materials may be used to keep people aware of their duties and rights.

2. The Whistleblower Network: Create networks or organisations that provide counselling, legal advice, and protection to whistleblowers. These organisations can act as go-betweens for whistleblowers and the authorities in charge of handling their reports, giving crucial assistance throughout the process.
3. Evaluation and improvement regularly: Evaluate and enhance the whistleblowing mechanism regularly. Periodic evaluations of the efficacy of legislative provisions, reporting procedures, and support services should be carried out to detect and rectify any deficiencies or new difficulties.
4. Financial safeguards: Investigate the idea of offering financial incentives, such as monetary prizes, to whistleblowers in circumstances of significant financial malfeasance. Additionally, strengthen legal safeguards for whistleblowers to ensure they are protected from any negative consequences.

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