

## SECTION 8

### **The prospect of complaint-filing for financial crimes against the public sector**

The complaint, as regulated in substantive criminal law, is an institution that provides the victim and carrier of the breached legal interest with the power to direct criminal proceedings, at least to a degree. It does not only make the initiation of proceedings dependent on the corresponding victim's intentions, but it also gives the injured party the power to terminate them –upon consent of the defendant– at any stage and up until the final decision. As an institution, it is primarily associated with legally protected interests whose carrier (victim) may freely dispose anytime, thereby eliminating the actus reus of the relevant violation or the wrongfulness of the initial infringement. Moreover, the victim's explicit or implicit statement on not intending the imposition of criminal sanctions usually allows for the assumption that the relationship between perpetrator and victim at an interpersonal level has been appeased; therefore, the need for retribution seems decreased. Of course, since the penalty mainly serves objectives at the collective level, such a statement on behalf of the victim and/or the restoration of the abovementioned relationship do not cancel the legitimate aspiration to impose a sentence. This applies mostly to crimes whose magnitude attracts a greater degree of interest by the community for criminal retribution. In effect, it is always at the discretion of the legislature to determine (considering several criteria) whether it is appropriate to associate persecution with the victim's will (inter alia) or leave it exclusively to competent State agencies.

As implied by its very nature, a complaint is targeted primarily for crimes against personal legal interests. Conversely, for commonly shared social legal interests (e.g. the environment), it is extremely difficult to identify the individual or collective entity that can bindingly express the relevant will of a "collective" victim.

State legal interests are distinctively placed between the two previous categories; on one hand, their carrier is personalized (: the State as a legal entity or a legal person under public law or an assimilated private entity), but they are intended by nature for responding to the needs of societies, the latter being ultimately affected by such violations. To the extent that an identifiable carrier exists that can validly express the (direct) victim's willingness, it is correct to accept that filing a complaint is not excluded a priori. This applies mainly to legal rights whose carriers can also be private individuals (e.g. property).

At the same time, however, one should take into account that the numerous and multifaceted agencies representing the State often face heavy workload, while their decision-making routines require complex and lengthy procedures. This inflexibility is undoubtedly exacerbated in countries like Greece, with the public sector often lacking in adequate organization. Considering that complaint filing, at least under current law, is subject to tight deadlines, making the prosecution of crimes against state legal interests dependent on the expression of a corresponding will by state agencies that "manage" the violated interest runs by default the risk of unintentional serious impairments to the protection provided to state legal interests.

In view of the above, the introduction of complaint-filing procedures for relevant crimes could not be included among the possible legislative policy options, for both crimes of corruption and violations against public property. In a possible amendment of the GPC, one could opt for expanding the list of crimes against property and property whose indictment requires prior complaint to even include felonies; as discussed, such an approach should not be adopted for crimes against the State as a legal entity or a legal person under public law or an assimilated private entity. Yet, a legitimate exception could apply for cases where the induced or threatened injury is of little value, due to reduced demerit.

Associating the prosecution of these crimes to other procedural requirements (e.g. filing an application by the public authority managing the affected public property), however, is a completely different matter. Especially for crimes indicted under a complex, technical, and volatile regulatory framework (e.g. tax offenses), adopting such conditions is fair and appropriate, at least while they imply that the initiation of prosecution might not depend on the expressed volition of competent authorities under a tight deadline, but allowed only if the agency has reliably and accurately informed the relevant criminal justice authorities of the factual and legal issues related to the offense. In current law, such terms essentially introducing a special exclusive way to report an offense include: filing a complaint to the Prosecutor by the competent tax authority director, and handing over of all evidence necessary for prosecution under Law 2523/1997 by the relevant tax authority or by the secretariat of the Administrative Court that issued a final decision on the substance of the tax dispute. For that reason, it is appropriate to preserve the above provisions and examine whether they should extend to other similar areas, such as customs or public subsidy offenses.