

LAW No. 06/L –085

ON PROTECTION OF WHISTLEBLOWERS

Assembly of the Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Adopts

LAW ON PROTECTION OF WHISTLEBLOWERS

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

The purpose of this Law is to enable the whistleblowing of violations in the public and private sector and the protection of whistleblowers.

**Article 2
Scope**

This Law sets out the rules on whistleblowing, whistleblowing procedure, rights and protection of whistleblowers and the obligations of public institutions and private entities regarding whistleblowing.

**Article 3
Definitions**

1. For purposes of this Law, the following terms have the following meanings:

1.1. **Whistleblower** – is any person who reports or discloses information on threat or damage to the public interest in the context of own employment relationship in the public or private sector;

1.2. **Public interest reporting or disclosure** – means reporting or disclosure of information on acts or omissions that pose a threat or damage to the public interest;

1.3. **Reporting** – means reporting in the public institution or private entity or to the competent authority;

1.4. **Disclosure** – means making information public;

1.5. **A person in the context of an employment relationship** – means a natural person who is or has been:

1.5.1. in employment relationship with a public institution or private entity, regardless of the nature of the relationship, its duration or payment;

1.5.2. an external or occasional associate, volunteer, in professional internship or training relationship;

1.5.3. a candidate for employment, volunteering activities, professional internship or training;

1.5.4. in contractual relationship for works, services or other types of cooperation or use of services of public institution or private entity, including contracting or subcontracting;

1.6. **Employer** – means any public institution or private entity belonging to any of the categories defined in subparagraph 1.5 of this paragraph;

1.7. **Anti-Corruption Agency** or any other authority that has the right to get reports in compliance with the legislation into force, with regard to whistleblowing in the public sector, while the regulators according to the field where whistleblowing is made in the private sector;

1.8. **Public institution** – means public bodies, authorities and agencies at central and local level that exercise legislative, executive, administrative, judicial or prosecutorial powers or other public institutions established by Law;

1.9. **Private entity** – means business organizations, legal persons under the Law on Freedom of Association in Non-Governmental Organizations and other legal persons determined by Law;

1.10. **Responsible officer** – the person assigned by the public institution or the private entity to receive and handle whistleblowing;

1.11. **Detrimental act** – any direct or indirect action or omission that harms the legitimate interest of the whistleblower or person associated with whistleblower;

1.12. **Person associated with the whistleblower** – is the person who assists the whistleblower or can provide evidence related to whistleblowing or any other person that may be harmed due to any association with the whistleblower;

1.13. **Personal data** – means any information about an identified or identifiable natural person as defined by the applicable law on personal data protection;

1.14. **Classified information** – is any classified information as defined by the applicable Law on classification of information and security clearances.

Article 4

General principles of duties and responsibilities of the responsible official

1. In exercising his/her functions, the responsible official shall:

1.1. act honestly, impartially and effectively by taking into consideration the legitimate interests of whistleblowing;

- 1.2. keep the confidentiality of information;
- 1.3. act independently towards the political attitudes or any other unfair impact that can prevent the exercise of his/her duties from this Law;
- 1.4. avoid any potential conflict of interest and shall immediately disclose before the Competent Authority any kind of conflict of interest before the commencement of administrative investigation of the whistleblowing;
- 1.5. undertake all necessary measures in order to defend the documentations and evidences regarding the notification of disappearance, hiding, change, falsification and other actions the purpose of which is their destruction.

CHAPTER II

WHISTLEBLOWING, RIGHTS AND PROTECTION OF WHISTLEBLOWERS

Article 5

Protected reporting and disclosure

1. Public interest reporting and disclosure is protected if it is related to the following:
 - 1.1. an offence has been, is being or is likely to be committed;
 - 1.2. a person has failed, is failing or is likely to fail to comply with any legal obligation;
 - 1.3. a miscarriage of justice has occurred, is occurring or is likely to occur;
 - 1.4. the health or safety of any individual has been, is being or is likely to be endangered;
 - 1.5. the environment has been, is being or is likely to be damaged;
 - 1.6. a misuse of official duty or authority, public money or resources of a public institution has occurred, is occurring or is likely to occur;
 - 1.7. an act or omission by or on behalf of a public institution is discriminatory, oppressive, grossly negligent or constitutes serious mismanagement; or
 - 1.8. information tending to show any matter falling within any of the preceding subparagraphs has been, is being or is likely to be concealed or destroyed.
2. Reporting or disclosure is presumed to be in public interest unless the contrary is proven.

Article 6

Prohibition of preventing whistleblowing

1. Any action or omission aimed at preventing public interest reporting or disclosure is null and void and the responsible official or any other person in respective cases is criminally prosecuted according to criminal provisions into force in Kosovo.

2. Any provision in an agreement is void in so far as it purports to:

- 2.1. prohibit or restrict the making of public interest reporting or disclosure;
- 2.2. exclude or limit the operation of any provision of this Law;
- 2.3. preclude a person from bringing any proceedings under or by virtue of this Law, or;
- 2.4. preclude a person from bringing any proceedings for breach of contract in respect of anything done in consequence of the making of a reporting or disclosure of information in public interest.

Article 7 Rights of whistleblower

1. A whistleblower has the right to:

- 1.1. protection of his/her identity during the whistleblowing process;
- 1.2. preservation of the confidentiality of the source of reported or disclosed information;
- 1.3. protection against detrimental acts.

2. The rights of whistleblower are guaranteed under this Law as following:

- 2.1. during the duration of the administrative investigation procedure of whistleblowing;
- 2.2. after completion of the administrative investigation procedure of whistleblowing, with the aim to normally perform the functional duties of the whistleblower at his/her employment relationship;
- 2.3. after termination of the employment relationship of the whistleblower with his/her employer, when, by reasonable circumstances, the whistleblower has requested protection under this Law.

Article 8 Rights of person associated with whistleblowing

1. The person associated with the whistleblower enjoys the same protection as the whistleblower if such person proves that the detrimental act is taken against him/her due to his/her association with the whistleblower.

2. A person who proves that detrimental act is taken against him because the person who commits such detrimental act incorrectly believes that he is a whistleblower or a person associated with a whistleblower, enjoys the same rights and protection as the whistleblower.

3. The responsible official enjoys the same protection as the whistleblower if there is proved that detrimental act has been taken against him regarding the receiving and treatment of the whistleblowing.

Article 9 Protection of whistleblowers

1. The whistleblower that reports and discloses information in compliance with the provisions of this Law can not be subject to criminal or civil liability or disciplinary procedures.
2. A whistleblower has the right to protection under this Law in cases when he/she:
 - 2.1. reports or discloses information, as defined in this Law;
 - 2.2. reasonably believes that the information reported or disclosed is true.
3. The whistleblower is not obliged to prove the good faith and authenticity of the whistleblowing information.
4. The protection guaranteed to the whistleblower under this Law should not be prejudiced if the alleged threat or damage to the public interest has not been materialised.

Article 10 Prohibition of abuse of whistleblowing

1. The protection of whistleblowers is excluded in the following cases:
 - 1.1. whistleblowing is not performed for the reasons set out in Article 5 of this Law;
 - 1.2. reporting or disclosure is made on the basis of facts, information or documents provided in connection with the provision of legal aid;
 - 1.3. the whistleblower reports or discloses information that he knows or must know is false.

Article 11 Confidentiality

1. Responsible officer and any other person who accepts or processes reports in the public interest while performing an official duty shall at any time keep confidentiality of the information related to whistleblowing by not revealing or transmitting to third parties within or outside the institution and not using it for other purposes, except with the written consent of the whistleblower or for the fulfilment of a legal obligation that concerns:
 - 1.1. the effective investigation of legal violations;
 - 1.2. the prevention of serious risk to the security of Kosovo, public health or public safety, or the environment;
 - 1.3. the prevention of crime or the prosecution of a criminal offence;
 - 1.4. the necessity to disclose in public interest or whenever required by Law.
2. Responsible official and any other person shall not inform any person mentioned in the whistleblowing, unless otherwise provided by Law.

3. Responsible official shall obtain the written consent of the whistleblower when he or she is required to provide information that might reveal the identity of the whistleblower to any competent authority for actions that cannot be undertaken without revealing the identity of the whistleblower.

4. In cases when it is required by Law the identity of a whistleblower to be revealed, the responsible official shall notify the whistleblower for this fact before revealing his/her identity.

Article 12 **Protection of personal data of whistleblowers**

1. The personal data of the whistleblower and other persons involved in whistleblowing are processed only for purposes of this Law.

2. Responsible official and any other person receiving personal data under this Law must process them in accordance with the applicable Law on the protection of personal data.

3. If during handling the information provided by the whistleblower, personal data are encountered that are not relevant to the case being dealt with, the responsible official or the competent authority cannot proceed such data further and shall justify them.

CHAPTER III **WHISTLEBLOWING TYPES AND PROCEDURE**

Article 13 **Types of whistleblowing**

1. Whistleblowing can be internal, external, or public.

2. Reporting information to the employer is considered to be internal whistleblowing.

3. Reporting information to a competent authority is considered to be external whistleblowing.

4. Disclosure of information to the media, non-governmental organizations, through the Internet, at a public meeting, or in any other way that makes information public is considered to be public whistleblowing.

Article 14 **Form and content of whistleblowing**

1. A whistleblower submits the information to the responsible official.

2. The information must be understandable and must contain the details of the person against whom whistleblowing is presented as well as the facts possessed by the whistleblower.

3. Whistleblowing can be presented:

3.1. in writing;

- 3.2. by mail or e-mail; and
 - 3.3. verbally.
4. When the information is presented verbally, the responsible officer compiles a written notice which is signed by the whistleblower and the responsible official.

Article 15 **Receiving and recording whistleblowing**

1. The responsible official records the received report and set up a register which must contain:
 - 1.1. the date of receipt;
 - 1.2. the name and surname of the whistleblower;
 - 1.3. the whistleblower's contact details;
 - 1.4. the whistleblower's institution, and
 - 1.5. a brief information content.

2. The whistleblower shall be provided with attestation of the filed report and a list of any documents filed with it.

Article 16 **Internal whistleblowing**

1. The internal procedure of administrative investigation of whistleblowing is initiated from the moment of reporting of whistleblowing information.
2. The employer notifies the whistleblower of the receipt or rejection of whistleblowing report within fifteen (15) days from the date of receipt of the whistleblowing.
3. The procedure of administrative investigation of whistleblowing shall be completed as soon as possible, but in any case not later than forty-five (45) days from the date of submission of whistleblowing, unless a postponement of deadline is required from the circumstances of the case and which can not be longer than forty-five days (45).
4. During the phase of administrative investigation, the responsible officer examines and evaluates the allegations raised by the whistleblower.
5. During the phase of administrative investigation, the responsible officer might request additional information and relevant documents, order inspections or gather statements from persons who are aware of the case or consult with experts of relevant field.
6. The whistleblower and any other third person may participate in the administrative investigation, when it is believed that he/she is aware of the reported circumstances or possess relevant documents.

7. Each party participating in the administrative investigation is guaranteed a due process, in accordance with the law on the general administrative procedure, and the party:

- 7.1. may make written statements;
- 7.2. may present evidence or opinions;
- 7.3. can consult the investigation file;
- 7.4. has the right to be heard about his or her claims.

8. The employer must make available to the investigation the records, documentation and evidence under his or her possession.

9. If, at the conclusion of the administrative investigation of whistleblowing by the employer, it results that the alleged suspected act or practice constitutes or could constitute a legal violation, the employer notifies the competent authority.

10. The employer shall take immediate measures to the extent possible, to prevent or impede the continuation of detrimental consequences of the suspected activity or practice involved in the whistleblowing.

11. Except as otherwise provided under this Law, the provisions of legislation on general administrative procedure shall apply.

Article 17

Obligations of the employer

1. A public employer with more than fifteen (15) employees, and a private employer with more than fifty (50) employees are obliged to appoint a responsible official.

2. Each employer is obliged to take all necessary measures regarding the whistleblowing, including the protection of documentation and evidence relating to whistleblowing from disappearance, concealment, alteration, falsification and other actions aimed at their destruction or extinction.

3. The employer is obliged to protect the whistleblower from any detrimental act and to take all necessary measures to stop the detrimental act and to remove any consequence of a detrimental act.

4. Exceptionally, the whistleblower may address directly to the employer manager in cases when:

- 4.1. the employer has no responsible official;
- 4.2. the employer has not defined and published internal procedures for receiving and handling whistleblowing;
- 4.3. the whistleblower has reasonable suspicion that the responsible official is or may be involved in the suspected whistleblowing practice;

4.4. the whistleblower has reasonable suspicions that the responsible official, due to any relationship or association with a person who is or may be involved in the alleged issue related to whistleblowing, is not the appropriate person to be informed with whistleblowing;

4.5. the whistleblower has reasonable suspicion that the internal whistleblowing procedures are not effective.

5. The Government, upon proposal of the Ministry of Justice, shall determine by a sub-legal act the procedure for receiving and handling whistleblowing cases.

6. Private entities shall determine the procedure for the receipt and handling of whistleblowing cases by an internal act in accordance with this Law.

Article 18 External whistleblowing

1. The whistleblower may make external whistleblowing after having performed internal whistleblowing or go directly for external whistleblowing when:

1.1. whistleblowing is related to the employer's manager;

1.2. whistleblowing has an urgent character that is associated with serious and immediate danger or irreversible damage;

1.3. there are reasonable suspicions that detrimental acts may be taken against the whistleblower or the evidence may be concealed or destroyed if internal whistleblowing would be carried out;

1.4. the whistleblower has reasonable suspicion that the internal whistleblowing procedures are not effective.

2. The external whistleblowing procedure is initiated by reporting information to the Anti-Corruption Agency. The Anti-Corruption Agency shall implement the procedure provided for in Article 16 of this Law.

3. The Anti-Corruption Agency reviews cases of whistleblowing that fall under its scope.

4. If the Anti-Corruption Agency has no power to act, it shall without delay transmit the information to the competent authority and shall inform the whistleblower of such action.

5. When the whistleblower refuses to disclose his/her identity, and the Anti-Corruption Agency has no authority to handle the information, prior to forwarding the information to the other competent authority, it shall request the consent of the whistleblower, unless otherwise provided by Law.

6. At the request of the whistleblower, the competent authority provides him or her with information on the status of the proceedings and all actions taken and enables him or her to have access to the case files and to participate in the actions during the proceedings in accordance with the Law.

7. The competent authority shall notify the whistleblower of the outcome of the procedure after its completion.

8. Competent authorities for external whistleblowing shall apply deadlines defined in Article 16 of this Law.

Article 19
External whistleblowing in private sector

Regarding whistleblowing in the private sector, the regulators according to the areas of responsibility, shall apply mutatis mutandis the procedure provided for in Article 16 of this Law.

Article 20
Public whistleblowing

1. In addition to internal and external whistleblowing cases, the whistleblower may also make public whistleblowing when:

1.1. at the time the whistleblower discloses the information, he or she reasonably believes that he or she will be subject to punishment if he or she makes internal or external reporting;

1.2 the whistleblower reasonably believes that the evidence regarding the respective detrimental acts is likely to be concealed or destroyed if the whistleblower reports in the manner specified in Articles 16 and 18 of this Law;

1.3 in case of immediate threat to life, public health, safety, environment, or when large or irreparable damage is caused;

1.4 the responsible authorities referred to in Articles 16 and 18 of this Law have not taken any relevant action regarding the whistleblowing within a period of six (6) months from the reporting date of the information provided.

2. A whistleblower who discloses information to the public in accordance with this law is obliged to respect the principle of presumption of innocence of the accused person, the right to the protection of personal data, and not obstruct the operation of court proceedings.

Article 21
Whistleblowing related to national security, protection, intelligence and international relations

1. When the internal or external whistleblowing according to this Law relates to classified information, national security, protection, intelligence and international relations, the whistleblower shall present it to the competent authority in such fields.

2. Within six (6) months, responsible institutions must, according to paragraph 1 of this Article, determine rules and procedures for receiving and handling the types of whistleblowing. If there are not determined the rules and procedures, then the general rules shall be applied in compliance with this Law.

Article 22

Protection from detrimental acts

1. The whistleblower shall be protected from any detrimental act taken against him by the employer due to the whistleblowing in accordance with the provisions of this Law, including but not limited to:

- 1.1. dismissal;
 - 1.2. suspension from work or of one or more duties;
 - 1.3. transfer within or outside the public institution or private entity without his consent;
 - 1.4. downgrade in duty;
 - 1.5. reduction of payment;
 - 1.6. loss of status and privileges;
 - 1.7. restriction of promotion;
 - 1.8. refusal of right to attend training;
 - 1.9 negative appraisal in employment relationship;
 - 1.10 cancellation of a license or permit;
 - 1.11 termination of a contract for goods or services;
 - 1.12 other detrimental acts related to employment relationship.
2. Any detrimental act against the whistleblower is null and void.
3. A whistleblower in the capacity of an employee, who is subject to detrimental acts at the workplace has the right to address the competent court.

Article 23

Compensation in case of detrimental acts

Any person who may have suffered any detrimental act as a result of whistleblowing has the right to claim compensation to the competent court for damage suffered from the detrimental act in accordance with the applicable legislation.

CHAPTER IV JUDICIAL PROCEEDINGS

Article 24 Judicial protection

1. A whistleblower or the person associated with the whistleblower who has suffered detrimental acts in connection with the whistleblowing has the right to judicial protection, without being obliged to exhaust the internal legal remedies in the administrative procedure.
2. The lawsuit against the detrimental act shall be filed with the court within six (6) months from the day when the whistleblower has been notified but not later than three (3) years when the detrimental act has been taken.
 - 2.1. for cases related to civil servants, the lawsuit shall be filed with the Department for Administrative Issues at the Basic Court in Prishtina.
 - 2.2. for cases related to other categories of employees, the lawsuit shall be filed with the General Department of the Basic Court, where the headquarters of the employer is located or where the whistleblower has the residence.
3. Along with the lawsuit from paragraph 2 of this Article, the whistleblower may even submit a request for the compensation of damage.
4. In cases when the competent court verifies that the whistleblower in the context of the employment relationship has suffered from detrimental acts due to whistleblowing, decides, as per case, to return him to his place of work, to compensate for the damage caused and order the public institution or private entity to undertake certain actions.
5. All cases related to whistleblowing shall be handled with priority by the Court.

Article 25 Burden of proof

In all cases when the whistleblower or person related to the whistleblower considers that he/she has suffered from detrimental acts due to whistleblowing, the employer shall bear the burden of proof in order to prove that the detrimental act has no causal link with the whistleblowing.

Article 26 Ensuring the statement of claim and the security measure

1. Whistleblower and person related to the whistleblower may submit a proposal for appointing the security measure of the statement of claim and security measure at the competent court.
2. Regarding the security measure of the statement of claim and security measure, there shall be applied mutatis mutandis the provisions of the Law on Contested Procedure and Law on Administrative Conflicts.
3. Whistleblower shall be exempted from the obligation to deposit the guarantee at the court due to the submission of the proposal according to paragraph 1 of this Article.

Article 27

Misdemeanour provisions

1. The competent court shall impose a fine from five hundred (500) Euro to twenty thousand (20.000) Euro to the public institution or private entity as well as respective competent authority, if it:

1.1. does not protect the whistleblower from any detrimental act or does not undertake all necessary measures to terminate the detrimental act, as well as elimination of any consequence of detrimental act within its competence;

1.2. does not notify all employees in writing of the rights provided for by this Law;

1.3. does not appoint the responsible official;

1.4. does not undertake actions after reporting the information within the deadline determined by this Law;

1.5. does not inform the whistleblowers on the outcome of the procedure within the determined deadline;

1.6. does not inform the whistleblowers, upon his/her request, about the progress and actions taken in the procedure or does not make it possible for the whistleblower to have access to the case files and to participate in the actions taken during the whistleblowing proceedings;

1.7. in case it precludes the whistleblowing, as determined by Article 6 of this Law;

1.8. in case it acts in contradiction to Article 11 of this Law.

2. The responsible official of the public institution, private entity as well as of the respective competent authority shall be fined from three hundred (300) Euro to two thousand (2.000) Euro in cases when he/she is responsible according to sub-paragraphs 1.1, 1.2 and 1.4 to 1.6 of paragraph 1 of this Article.

3. The request for initiation of the minor offense proceedings shall be submitted to the competent court by the Anti-Corruption Agency for the public sector and Labour Inspectorate for private sector.

4. If within sixty (60) days responsible institutions do not undertake any action or refuse to act then the whistleblower may initiate the procedure himself/herself.

5. If the responsible person is recidivist, a misdemeanour sanction by fine up to the double amount foreseen by this Article may be imposed to him/her.

CHAPTER V TRANSITORY AND FINAL PROVISIONS

Article 28 Awareness of employees

1. An employer is obliged to provide the employees with written instructions regarding the procedures for whistleblowing
2. The instructions from paragraph 1 of this Article and any other useful information regarding whistleblowing are published and updated on a regular basis and appropriately distributed in the employer's premises and website whenever this is technically possible.

Article 29 Annual report

1. Public institutions, private entities as well as regulators according to the field where whistleblowing is made, shall prepare an annual report on whistleblowing for the previous year by 31 December.
2. The annual report from paragraph 1 of this Article shall be submitted to the Anti-Corruption Agency at latest by 31 January of the following year.
3. The Anti-Corruption Agency shall prepare and publish a general annual report on whistleblowing for the previous year by March 31 of the following year.
4. The annual report from paragraph 1 and 2 of this Article shall contain:
 - 4.1. the number of public interest reporting or disclosures;
 - 4.2. actions taken in respect of those reports or disclosures.

Article 30 Sub-legal acts

1. Sub-legal acts for the implementation of this Law shall be issued within six (6) months from the day of entry into force of this Law.
2. Within six (6) months after the entry into force of this Law, the employers shall, according to this Law, appoint the responsible officials for whistleblowing and notify the ACA for the public sector, respectively the Labour Inspectorate for the private sector.
3. Anti-Corruption Agency and Labour Inspectorate shall be obliged to initiate the procedures according to the Law on Minor Offences against the employers and responsible officials that have not fulfilled the obligations according to this Law, not later than six (6) months.

**Article 31
Repeal**

With the entry into force of this Law, Law No. 04/L-043 on the protection of informants shall be repealed.

**Article 32
Entry into force**

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, while provisions referring to the private sector shall start to be applicable one (1) year after the entry into force of this Law.

**Law No.06/L - 085
23 November 2018**

Promulgated by Decree No.DL-062-2018, dated 13.12.2018, President of the Republic of Kosovo Hashim Thaçi.