

REPUBLIC OF ALBANIA
THE PARLIAMENT
LAW

Nr. 60/2016

ON WHISTLEBLOWING AND THE PROTECTION OF WHISTLEBLOWERS

Pursuant to the articles 78 and 83, paragraph 1, of the Constitution, with the proposal of the Council
of Ministers

THE PARLIAMENT OF THE
REPUBLIC OF ALBANIA

DECIDED

CHAPTER I
GENERAL PROVISIONS

Article 1

Object

This law establishes rules on whistleblowing on a suspected corruption act or practice by whistleblowers in the ***public and private sector***, the mechanisms for the protection of whistleblowers and the obligations of public authorities and private entities related to whistleblowing.

Article 2

Purpose

The purpose of this law is to:

- a) prevent and counter corruption in the public and private sector;
- b) protect whistleblowers that report suspected corruption practices or actions in their workplace;
- c) promote whistleblowing on suspected corruption acts on practices.

Section 3

Definitions

In terms of this law, the following terms mean:

1. "**Public authority**" has the same meaning as that given to the law on the right to information.
2. "**Revenge**" is ***any action, direct or indirect, or a threat, carried out by the organization, of discriminatory nature, disciplinary or, in any other unfair form, harms the whistleblower's legitimate interests and that results from whistleblowing.***
3. "**The responsible person**", one or more persons suspected to act or practice corruption against whom a whistleblower has reported, in accordance with this law.
4. "**HIDAACI**", the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests, in terms of the law on declaration and control of real conflict of interest.
5. "**Public information**" has the same meaning given in the law on the right to information.
6. "**Corruption**" is any unlawful act or omission, according to the criminal legislation in force, related to any form of active corruption, passive corruption abuse of duties or competences, illegal exercise of influence in the performance of duties or decision-making, misuse of state budget funds, illegal benefit of interests, giving/receiving a bribe, as well as any other similar act to the above.
7. "**Protection**", protection of a whistleblower from retaliation, in accordance with the mechanism set out in Chapter V of this law.

8. "**Responsible unit**" a special body, set within a public authority or private entity, consisting of one or more employees of the organization, charged by the organization with the task of reviewing and conducting an **administrative** investigation of the whistleblowing until the case is dismissed and the review of application for protection of whistleblowers, according to this law.
9. "**Organization**" public authority and private entity.
10. "**Whistleblowing**", the reporting of information by a whistleblower to the responsible entity or the HIDAACI on suspected corruption acts or practices committed in his/her place of employment being a public authority or private entity
11. "**Internal reporting**" is the reporting conducted by a whistleblower to the unit responsible within the organization, according to Article 10 of this Law.
12. "**External reporting**" is the reporting conducted by a whistleblower to the HIDAACI, in accordance with Article 11 of this Law.
13. "**Whistleblower**", is the individual who **has applied for** or employed or has entered in a labour relation, or has previously worked at the public authority or private entity, ***regardless of the nature of employment or its duration and whether paid or not***, reporting a suspected corruption act or practice.
14. "**Private entity**", a private legal person, according to the Civil Code of the Republic of Albania, including the commerce, **in accordance with the law on commerce and the commercial companies**.
15. "**Suspected corruption act or practice**" an action or omission, facts or circumstances materialised in an organization, for which the whistleblower has doubts ***in good faith***, according to this law, ***that could constitute a criminal corruption offense***.

Article 4

Whistleblowing principles

Protection of whistleblowers reporting suspected corruption acts or practices under this law is based on the principles of:

- a) ***protection of confidentiality*** of the information reported and of the state secret from the responsible unit and HIDAACI;
- b) the knowledge of the of the whistleblower identity, with the exception of cases of anonymous reporting established by this law;
- c) voluntary whistleblowing an suspected act or practice of corruption;
- d) integrity and impartiality of the responsible unit and the HIDAACI during the examination of whistleblowing;
- e) ***implementation of effective and adequate mechanisms*** for the protection of the legitimate rights and interests of whistleblowers;
- f) the procedure of ***fast, reliable and regulated administrative investigation*** of whistleblowing.

CHAPTER II WHISTLEBLOWING

Article 5

Whistleblowing

Any person who becomes aware of facts or circumstances that constitute or may constitute suspected corruption acts or practices during or in connection with the activities of his/her work at the organization, has the right to report this fact to the responsible unit within the organization of the HIDAACI, accordingly.

Article 6

Whistleblowing in good faith

1. A whistleblower is provided protection under this law for reporting a suspected corruption act or practice in good faith.
2. A whistleblower is deemed to have acted in ***good faith***:
 - a) when he/she ***did not know or had no objective means to know that the information reported was not true or accurate, even if later it turns out to have been wrong about the authenticity or accuracy of the report or it has been ruled by competent authorities that no criminal or corruption offence has occurred***;
 - b) reporting ***was not based on motives of or defamation or the whistleblower has not reported for deception motives***.
3. ***A whistleblower is presumed to have acted in good faith until the contrary is proved. The burden of proof to reject the allegations falls on the responsible [reported] person.***

Article 7

Form and content of reporting

1. Reporting will be done in writing and shall contain at least:
 - a) Identity of the whistleblower;
 - b) the contact details of the whistleblower;
 - c) a description of the facts and circumstances known by the whistleblower on the suspected corruption act or practice, supported by relevant evidence to the possible extent;
 - d) the provision to the possible extent from by the whistleblower of the relevant reference to the Criminal Code of the Republic of Albania on the suspected corruption act or practice;
 - e) in the case of external reporting the provision of the legal reasons and circumstances for the use of external reporting mechanism.
2. The whistleblower ***may choose to remain anonymous***, but the report will only be accepted if, in the judgment of the responsible unit or the HIDAACI the causes of anonymity are justified and that acting otherwise would cause the whistleblower real, immediate and irreparable damage.
3. Regardless of the responsible unit within the organization, the whistleblower may initiate an external reporting procedure to the HIDAACI in accordance with the Article 11 of this Law.

Article 8

Public reporting

In case the whistleblower announces publicly the reported alleged act or practice of corruption, he/she will lose the right to protection under this law.

Article 9

Cooperation

Pursuant to the principle of confidentiality, state secrecy and protection of personal data, the responsible units cooperate with each other and with the HIDAACI to exchange data, in full and without any reservation, independently of the whistleblowers organisation, with the purpose of reviewing and resolving a case when the reported persons belong to different organizations.

CHAPTER III THE STRUCTURES FOR THE REVIEW OF THE REPORT

Article 10

The internal reporting and the responsible bodies

1. At *each public authority that has more than 80 employees and private entity that has more than 100 employees a responsible unit is established*, which records, investigates and examines the whistleblowers reporting under this law.
2. Depending on the composition and structure of the organization, the responsible unit may consist of one or more persons specially trained in the field of protection of whistleblowers.
3. The HIDAACI shall issue regulations to determine the structure, selection and training criteria for the employees of responsible unit in the private entities. The Council of Ministers shall issue regulations to determine the labour relations, structure and criteria for selection of employees of the responsible unit in the public authorities.

Article 11

External reporting to the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest

1. *HIDAACI shall investigate directly the reports on alleged corruption acts or practices* in the organizations that do not have a responsible unit for that purpose.

1. 2. Regardless of the responsible unit within the organization, the whistleblower has the right report to the HIDAACI in cases when:
 - a) the responsible unit does not start an **administrative** investigation or dismisses the case contrary to Article 14 of this Law;
 - b) there is a doubt that the receiver of the whistleblower report in the responsible unit, or persons associated with him/her are involved, or have a direct or indirect personal or property related interest, with the alleged act or corruption practice.
 - c) there are other reasonable grounds to doubt the integrity and impartiality of the responsible unit in reviewing the whistleblowers report, in accordance with the principles of this law;
 - d) the evidence related to the suspected corruption act or practice can be erased or destroyed by the organization.
3. In the cases referred to in paragraph 2 of this Article, any investigation by the responsible unit is suspended, if initiated, and the HIDAACI takes over the investigation.

CHAPTER IV

THE PROCEDURE OF **ADMINISTRATIVE INVESTIGATION**

Article 12

General principles of **administrative investigation**

1. In carrying out its functions, the responsible unit or the HIDAACI should:
 - a) act honestly, impartially and efficiently, taking into account the legitimate interests of the whistleblower;
 - b) act independently from any political consideration and any other influence that can unfairly hinder the realization of the tasks set out by this law;
 - c) avoid any possible conflict of interest and immediately declare to the organisation or the HIDAACI the conflict of interest before the **administrative** investigation of an whistleblowing report;
 - d) take all appropriate measures to protect the documents and evidence related to the whistleblowing case from the disappearance, concealment, alteration, falsification and other actions aimed at their removal;
 - e) protect the confidentiality of the information and protect the data contained in each whistleblower report, in accordance with Articles 15 and 16 of this Law;

f) protect the state secrets contained in a whistleblower report.

2. **During the investigation, the whistleblower has the right not to reveal the sources of information.**

Article 13

Procedures of **Administrative** Investigation

1. Each responsible unit or the HIDAACI shall conduct **administrative** investigation of whistleblowers reports case by case in accordance with the procedure laid down in this law. To the extent not otherwise provided in this law, the responsible authority in a public entity and the HIDAACI apply the provisions laid down in the Code on Administrative Procedures.

2. **The administrative investigation procedure of a whistleblower case is terminated within the shortest possible delay, but in any event no later than 40 days from the date of commencement of the investigation,** unless a longer period is needed due to the circumstances.

3. During the **administrative** investigation period, the responsible unit or the HIDAACI shall examine and evaluate the claims raised by the whistleblower related to the alleged corruption act or practice. For this purpose, the responsible unit or the HIDAACI has the right to request information and documents, order inspections or tests, collect evidence or consult with experts of various fields.

4. In the **administrative** investigation may participate the whistleblower and any other person when in possession of documents or aware of the circumstances of the case, including the reported person, if deemed necessary by the head of the investigation.

5. Each party involved in the **administrative** investigation **is guaranteed a due process, in accordance with the Code of Administrative Procedures,** and

- a) may provide written statements, arguments or opinions;
- b) may consult the investigation file;
- c) has the right to be heard to present his/her claims.

6. The organization or the HIDAACI has to make available to the investigation the evidence at its disposal.

7. **The responsible unit or the HIDAACI shall notify the whistleblower on any measure taken in response no later than 30 days from filing the report.** Regardless of the notification deadline provided in this Section, the responsible unit or the HIDAACI is obliged to respond within 30 days to a request for information submitted in writing by a whistleblower on the issue reported by him/her.

8. If the **administrative** investigation of the whistleblower's report by the responsible unit of a public authority or the HIDAACI shall show that the act or practice reported by a whistleblower constitutes or may constitute an administrative offense to the law, the responsible unit or the HIDAACI shall accordingly inform the competent authority.

9. The HIDAACI and the organization, in cooperation with the HIDAACI, take immediate measures to prevent or halt the ongoing harmful effects of the alleged corruption act or practice reported by the whistleblower.

10. Every organization and the HIDAACI should adopt specific internal regulations regarding the procedures for reviewing the **administrative** investigation of whistleblowing and the mechanisms for the protection of confidentiality under this law.

Article 14

Non-initiation of **administrative** investigation and dismissal of cases

1. The responsible unit or the HIDAACI has the right not to initiate an **administrative** investigation if:

a) the report has not been filed in form and content in accordance with the provision of Article 7 of this law, and the whistleblower fails to correct the deficiencies **within 7 days** of receiving the notification for the correction.

b) **the report includes facts and circumstances that are not included within the scope of this law, as provided in article 3, paragraph 6, of this law;**

c) **there is sufficient evidence that in the whistleblowing report there are no elements that show any administrative malpractice or crime.**

2. The responsible unit or the HIDAACI has the right **to terminate an administrative** investigation if:

a) the initial investigation shows that the whistleblowing for the alleged corruption act or practice is based. In this case the responsible unit or the HIDAACI notify the case to the prosecution or the police.

b) the whistleblower has not acted in good faith, as provided in the Article 6 of this law;

3. The whistleblowing case file includes the decision taken for the dismissal of the case, the justification for the reasons that have led to the decision not to initiate the **administrative** investigation or to dismiss the case, and the measures taken in relation to the whistleblowing report.

Article 15

Confidentiality

1. During the **administrative** investigation of an internal or external whistleblower reporting, the identity of the whistleblower is made known to third parties only with the written consent of the whistleblower.

2. The HIDAACI or the responsible entity must maintain the information related to the whistleblower reporting confidential at all times by not disclosing or transmitting to third parties within or outside the organization or the HIDAACI, and not to use it for other purposes, except with the written consent of the whistleblower or for the purpose of the fulfilment of a legal obligation.

3. The responsible unit or the HIDAACI, respect the obligation of confidentiality in all the communications with the organization where the whistleblower works, or any public or private entity or authority, and shall communicate the necessary information only to persons assigned to the **administrative** investigation or for taking measures in the pursuance the case reported by the whistleblower, under a confidentiality agreement between the parties.

4. Any person who receives confidential information from responsible units or the HIDAACI, for the purposes of this law, has the same obligation for the processing of confidential information.

Article 16

Protection of personal data

1. The personal data of individuals involved in the administrative investigation are processed only for the purpose of this law. In all cases, the personal data processing is carried out according to the principles and procedures of the law on protection of personal data.

2. In the cases when, in the process of the implementation of this law, there is evidence that the legislation on the protection of personal data has not been implemented, the case is referred to the Commissioner for Freedom of Information and Protection of Personal Data

2. The Commissioner for Freedom of Information and Protection of Personal Data issues the regulations with instructions on processing conditions and criteria and the time for retaining the personal related to the protection of whistleblowers under this law.

CHAPTER V RIGHTS AND PROTECTION OF WHISTLEBLOWERS

Article 17

The rights of whistleblowers

1. The rights and interests of whistleblowers are protected in a reliable, efficient and convenient way.
2. The whistleblower has the right to:
 - a) confidentiality during the process, which also includes the possibility, in legitimate circumstances, anonymous reporting an alleged act or practice of corruption;
 - b) maintain the confidentiality of the source of the information related to the whistleblowing report;
 - c) **protection against retaliation.**
3. the whistleblower rights are guaranteed by this law:
 - a) for the duration of the procedure of **administrative** investigation the whistleblowing;
 - b) after completion of the **administrative** investigation the whistleblowing, with the aim to ensure the normal performance of functions and tasks of the whistleblower in his/her organization;
 - c) after the termination of the work relations of the whistleblower with his/her organization, when on based and reasonable circumstances the whistleblower has requested protection from the HIDAACI.
4. Any rules or private agreement, under which the rights and protection of the whistleblower by this law are excluded or limited, is invalidated. Whistleblowing rights take precedence over confidentiality agreements.
5. The whistleblower is informed by the organization and the HIDAACI, in full and in a language understood by the whistleblower for the rights and protection provided by his organization and the HIDAACI under this law.

Article 18

Protection against retaliation

1. The whistleblower, who reports an alleged corruption act or practice in accordance with the provisions of this law, is protected against any retaliatory measures taken against him by the organization, including, but not limited to:
 - a) dismissal;**
 - b) suspension from work or from one or more tasks;**
 - c) transfer within or outside the organization;**
 - d) duty/position downgrade;**
 - e) downgrade of the salary and / or financial incentives;**
 - f) loss of status and privileges;**
 - g) failure to promotion;**
 - h) removal of the right to participate in training;**
 - i) negative assessments in relation to the job;**
 - j) other forms of punishment related to the work.**
2. Any act of retaliation against the whistleblower is invalid.
3. If the whistleblower decides to be transferred to a different position within the organization as a means to be protected from a hostile reaction in his immediate environment of work, the organization shall take reasonable and appropriate measures to enable such a move. To the contrary, **the HIDAACI shall, at the request of the whistleblower, demand to the competent authority, under the legislation in place, to order the public authority or private entity to take**

all measures under this article. If the competent authority or private entity does not take the measures required by the HIDAACI, any interested person has the right to address the court.

Article 19

The procedure of the investigation of the request for protection

1. **The whistleblower, who claims that is the subject of an act of retaliation, applies for protection to the responsible unit. If the responsible entity does not take immediate measures to repair the consequences of the illegal act of revenge, the application for protection is submitted to the whistleblower HIDAACI.**
2. The HIDAACI investigates the retaliation allegations to determine whether there are reasonable grounds to believe that an act of retaliation has occurred, is occurring or expected to occur.
3. The HIDAACI shall, within 3 days of receipt of a request for protection against retaliation, notify in writing the whistleblower on the registration of the claim and on the responsible person who will pursue the case within the HIDAACI.
4. **The organization, upon the request of the HIDAACI, must prove that any measure taken at the expense of the whistleblower are based on other reasons and are not related directly or indirectly to the whistleblowing.**
5. The HIDAACI shall inform the whistleblower in writing within 10 days on the status of the administrative investigation of the request for protection and any procedural action taken. Regardless of the terms of notification, as provided in this section, the HIDAACI is obliged to respond at any time to any request for information submitted in writing by the whistleblower, in connection with his request.
6. The procedure of administrative investigation of the application for protection is processed as soon as possible and in any event not later than 30 days from the date of registration of the application.
7. If after the administrative investigation procedure it appears that an act of revenge was carried out against the whistleblowers by the public authority, the HIDAACI shall call on the competent authority under the legislation to demand the public authority to take all the measures to repair the committed violation. If after the examination results whistleblower against the whistleblowers by a private entity, the HIDAACI shall order the private entity to take all measures to repair the committed violation. If the competent authority or the private entity does not take the measures required by the HIDAACI, under this section, any person concerned has the right to address the court.
8. The HIDAACI and the responsible units adopt internal rules of procedure on the examination of demands by the whistleblowers for protection from retaliation.

Article 20

Compensation in case of revenge

The whistleblower has the right to demand to the court compensation for the damage suffered by the act of revenge, as provided in this law, pursuant to the Civil Code.

CHAPTER VI MONITORING MECHANISM OF WHISTLEBLOWING

Article 21

The functions of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest

In addition to what it is provided in this law, the HIDAACI task include to:

- a) monitor and issue instructions on internal and external reporting mechanisms;
- b) check the proper functioning of the internal reporting mechanism of the responsible units in the organizations;
- c) evidence the administrative offenses under this law and impose fines in accordance with the Article 21 of this Law;
- d) receive and investigate requests for protection against retaliation against whistleblowers and to guarantee the protection of the whistleblowers from retaliatory measures provided in this law;
- e) draft assessments and make recommendations for the implementation of this law on the basis of annual reports issued by the responsible units;
- f) offer advice and support regarding the implementation of the law on protection of whistleblowers;
- g) increase awareness of the public on the whistleblowing and the protection of the whistleblowers, and boost cultural acceptance whistleblowing.

Article 22 Reporting

1. The unit responsible execute the duties assigned by the HIDAACI to facilitate and develop the whistleblowing process and presents to the HIDAACI, annually, not later than January 15 of the following year, a written report on the recorded whistleblowing reports, means applied for the **administrative** investigation of the whistleblowing reports and the protection of whistleblowers.
2. Three years after the entry into force of the sublegal acts under Article 24 of this Law, the HIDAACI shall submit a consolidated report to the Assembly pertaining to its implementation. Following this first report, the reports are submitted to the Assembly every two years.
3. The HIDAACI shall publish annually a report on the implementation of this law. This information includes the number of whistleblowing reports, the results of the cases, the degree of awareness and confidence in the mechanisms of whistleblowing by the public, the time set for the review of the cases and the implementation of mechanisms of protection from retaliation.

CHAPTER VII VIOLATIONS AND ADMINISTRATIVE MEASURES

Article 23

Violation and Administrative Measures

1. The violation of the provisions of this law, does not constitute a criminal offense, it constitutes an administrative offense punishable by fine, as follows:
 - a) failure to establish the responsible unit of the organization in accordance with paragraph 1 of Article 10 of this Law shall be punished with a fine of 100,000 lek;
 - b) any act of retaliation against the whistleblowers taken from the organization under Article 18 of this Law, including a refusal to act under paragraph 3 of Article 18 of this Law shall be punished with fine from 300,000 to 500,000 lek;
 - c) the violation of the principles of **administrative** investigation of whistleblowing by the employee, according to letters "a", "b", "c" and "d" of paragraph 1 of Article 12 of this Law, shall be punished with a fine from 100,000 to 300,000 lek;
 - d) breach of the obligation to protect the confidentiality and/or the personal data by the employee, under Articles 15 and 16 of this Law, shall be punished by a fine form 150,000 to 300,000 lek;
 - d) failure of the investigation or dismissal of the case by the employee in contravention of Article 14 of this Law shall be punished with a fine of 100,000 to 300,000.

2. The HIDAACI has the right to determine the violations and impose fines. The HIDAACI decision may be appealed under the law on administrative offences.
3. The revenues administered from the fines shall go to the state budget.

CHAPTER VIII TRANSITIONAL AND FINAL PROVISIONS

Article 24

Issuance of Sublegal Acts

1. The HIDAACI shall issue, within **two** months from the entry into force of this law, the sub legal acts pursuant to paragraph 3 of Article 10; Paragraph 10 of Article 13; Paragraph 9 of Article 19; letter "a" of Article 21, of this Law.
2. The Council of Ministers shall issue, within **two** months from the entry into force of this law, the sub legal acts pursuant to paragraph 3 of Article 10 of this Law.
3. The Commissioner for Freedom of Information and Protection of Personal Data shall issue, within two months from the entry into force of this law, the sub legal acts pursuant to paragraph 3 of Article 16, of this Law
4. **The private legal subjects and the public authorities, in accordance with the guidelines issued by the HIDAACI, within six months from the entry into force of this law, shall issue the regulation pursuant to Article 13, paragraph 10, of this Law**

Article 25

Entry into force

This law comes into force **15 days after the publication in the Official Gazette** and becomes legally applicable starting from 1 October 2016, except for the obligations set out in Article 10, of this Law, on the external whistleblowing reporting, that will become applicable starting from 1 July 2016.

Adopted on 2 June 2016

The Speaker [of the Parliament]

Illir Meta