

LAW

**No. 60/2016**

**WHISTLEBLOWING AND WHISTLEBLOWER PROTECTION**

Pursuant to Articles 78 and 83, paragraph 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

V E N D O S I:

CHAPTER I GENERAL PROVISIONS

Article 1

**Scope**

This law defines rules on whistleblowing regarding a dubious corruption conduct or practice by the whistleblowers in public and private sector, mechanisms for the protection of whistle-blowers and obligations of public authorities and private entities in connection with whistle-blowing.

Article 2

**Purpose**

The purpose of this law is:

- a) Prevention and clamping down on corruption in public and private sector;
- b) Protection of individuals who whistle-blow dubious corruption conduct or practices at their work stations;
- c) Encouraging whistleblowing of dubious corruption conduct or practices.

Article 3

**Definitions**

Definitions in this law, the following terms have these meanings:

1. "Public Authority" has the same meaning with the one given in the law on the right to information;
2. "Retaliation" means every direct or not direct action or threat, carried out by the organization and being of a discriminatory or disciplinary nature, or which in another unfair way harms the legitimate interest of the whistleblower and emerging out of the whistleblowing.
3. "Exposed" is one or more persons whereon whistleblowing occurs, under this law, with regard to a dubious corruption conduct or practice;
4. "HIDAACI" is the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest.
5. "Public information" has the same meaning ascribed in the law on the right to information.
6. "Corruption" is any illegal conduct or omission under the effective criminal legislation regarding any form of active corruption, passive corruption, abuse of office or powers, exerting illegal impact in the course of assuming the office or decision making, abuse of state budget revenues, illegal appropriation of interests, as well as any other act similar to them.
7. "Protection" is the protection of the whistle-blower against retaliation, as per instrument provided for in Chapter V of this law.
8. "Responsible unit" is the respective body set out within the public authority or private entity, composed of one or more employees of the organization, being assigned by the organization with the task of examining the

administrative investigation of whistleblowing and examination of the request for the protection of the whistleblower, under the provisions of this law.

9. "Organization" is the public authority or the private entity.

10. "Whistleblowing" is the reporting of information to the responsible unit or HIDAACI by the whistle-blower regarding dubious corruptive conducts and practices, carried out at their workstation with the public authority or private entity.

11. "Internal whistleblowing" is the whistleblowing made by the whistleblower within the responsible unit of the organization, under Article 10 of this law.

12. "External whistleblowing" is the whistleblowing made by the whistleblower before HIDAACI, under Article 11 of this law.

13. "Whistle-blower" is the individual who applies for is in employment relationship or has previously worked with a public body or private entity, regardless of the nature of labor relations or its duration, as well as whether paid or not, whistleblowing a dubious corruption conduct or practice;

14. "Private entity" is the private legal person, in accordance with the Civil Code of the Republic of Albania, including the trader, under the commercial law;

15. "Dubious corruption conduct or practice" is a conduct or omission, facts or circumstances occurring in an organization, whereof the whistleblower is in good faith suspicious that they may consist a corruption offence.

#### Article 4

### **Principles of whistleblowing**

The protection of whistle-blowers in connection with dubious corruption conduct or practices under this law is based on the principles of:

- a) Preservation of confidentiality of the information of whistleblowing and the state secret by the HIDAACI responsible unit;
- b) Recognition of the identity of the whistle-blower, unless this law permits the admission of an anonymous whistleblowing;
- c) Voluntary whistleblowing on a dubious corruption conduct or practice;
- d) Integrity and impartiality of the HIDAACI responsible unit during the examination of whistleblowing;
- d) Application of efficient and appropriate mechanisms for the protection of the legitimate rights and interests of the whistle-blowers;
- e) The procedure of a fast and reliable administrative investigation of whistleblowing.

## CHAPTER II

### WHISTLEBLOWING

#### Article 5

### **Whistleblowing**

Any person who becomes aware of dubious corruption conduct or practices in the course of employment or in connection with his activity during employment with the organization shall be entitled to whistle-blow on this fact with the responsible unit within this organization or with HIDAACI, as appropriate.

#### Article 6

### **Good faith of whistle-blowers**

1. The whistle-blowers shall be granted protection under this law regarding the whistleblowing of a dubious corruption conduct or practice, carried out under the circumstances of good faith.

2. The whistle-blower shall be considered to have acted in good faith, if there are reasonable ground to believe that he is whistleblowing a dubious corruption conduct or practice, and that:

a) he did not know or there was no objective possibility for him to know that the reported information was not true or accurate, even if it subsequently emerges that he was wrong regarding the authenticity or accuracy or it is established by the competent authorities that no corruption criminal offence has been committed;

b) The whistleblowing is not conducted for abusive or slandering motives or the whistle-blower does deceive regarding the reported information.

3. The whistle-blower is considered to have acted on good faith, as long as the opposite is not established by the responsible unit or HIDAACI, as appropriate.

#### Article 7

### **Form and contents of whistleblowing**

1. Whistleblowing is made by any means of communication, in writing or verbally to HIDAACI or the responsible unit and shall be documented in writing by them. Whistleblowing shall contain at least:

a) Data on the identity of the whistle-blower;

b) Contact data for the whistle-blower;

c) Description of facts and circumstances known by the whistle-blower about the dubious corruption conduct or practice, associated with the respective evidence, to the extent possible;

ç) Respective reference to the Criminal Code of the Republic of Albania, to the extent possible, by the whistle-blower for the dubious corruption conduct or practice;

d) In the event of external whistleblowing, the legal grounds and factual circumstances, to the extent possible, by the whistle-blower, for the use of the external whistleblowing instrument.

2. The whistle-blower may choose to remain anonymous, and the whistle-blowing shall be admitted, if the anonymity grounds are justified in it and that the information reported provide sufficient grounds for the administrative investigation of the dubious corruption conduct or practice.

3. Notwithstanding the responsible unit within the organization, the whistle-blower may initiate an external whistleblowing procedure with HIDAACI, under Article 11 of this law.

#### Article 8

### **Whistleblowing in public**

In the event the whistle-blower shall disclose the dubious corruption conduct or practice publicly, he shall be entitled to protection under this law up to the moment when whistleblowing becomes public.

#### Article 9

### **Collaboration**

In abidance by the principle of preservation of confidentiality, state secret and protection of personal data, the responsible units shall collaborate with each-other and with HIDAACI for sharing the data, being comprehensive and without reserves, to the effect of examining and settling a reported instance when, regardless of the organization of the whistle-blower, the exposed belong to different organizations.

## CHAPTER III

### STRUCTURE FOR EXAMINING WHISTLEBLOWING

#### Article 10

### **Internal whistleblowing and responsible units**

1. A responsible unit shall be established with each public body with more than 80 employees and private entity with more than 100 employees, which shall record, administratively enquire and examine the whistleblowing, under this law.
2. The responsible unit may consist of one or more persons, referring to the composition and structure of the organization, specifically trained in the field of protection of whistle-blowers.
3. HIDAACI shall, by way of instruction, set out the structure, criteria of selection and training of employees of the responsible unit of private entities. The Council of Ministers shall, by way of instruction, set out the employment relations, structure and criteria of election of employees of the responsible unit of the public bodies.

#### Article 11

### **External whistleblowing with the High Inspectorate of Declaration and Auditing of Assets and Conflict of Interests**

1. HIDAACI shall directly enquire the whistleblowing regarding the dubious corruption conduct or practices with the organizations, which have no responsible unit to this effect.
2. Regardless of the responsible unit within the organization, the whistleblower shall be entitled to blow the whistle on the dubious corruption offence with the HIDAACI, if:
  - a) The responsible unit does not institute the administrative investigation or terminates the proceedings at variance with Article 14 of this law;
  - b) Grounded suspicion exists that the recipient of the information with the responsible unit or persons connected to him are involved or have a direct or indirect, propriety or personal interest in the dubious corruption conduct or practice. Where appropriate, related person has the same meaning with the provisions in the commercial law or the law on prevention of conflicts of interest in assuming public functions;
  - c) There are other grounded reasons to be skeptical about the integrity and impartiality of the responsible unit in examining the whistleblowing, under the principles of this law;
  - d) The evidence of the whistle-blower regarding the dubious corruption conduct or practice may be deleted or destroyed by the organization.
3. In the instances referred to in point 2 of this Article, any investigation by the responsible unit, if initiated, shall be terminated and the whistleblowing shall subsequently be enquired by HIDAACI.

#### CHAPTER IV

### ADMINISTRATIVE INVESTIGATION PROCEDURE OF WHISTLEBLOWING

#### Article 12

### **General principles of administrative investigation**

1. To the effect of assuming their functions, the responsible unit or HIDAACI shall:
  - a) Conduct themselves with fairness, impartiality and efficiency, taking account of the legitimate interests of the whistle-blower;
  - b) Act independently of the political conviction or any other inappropriate influence, which may hinder the accomplishment of the tasks under this law;
  - c) Avoid any eventual conflict of interest and declare immediately with the organization or HIDAACI the conflict of interest prior to the institution of an administrative investigation into whistleblowing;
  - d) Take all the appropriate measures for protecting the documentation and evidence pertaining to the whistleblowing against extinction, hiding, changing, forging and other acts aiming at their destruction;
  - e) Maintain the confidentiality of information and protect the data in content of any whistleblowing, in compliance with Article 15 and 16 of this law;
  - f) Preserve the state secret in the content of a whistleblowing in compliance with the law.
2. In the process of administrative investigation, the whistle-blower shall be entitled not to divulge the sources of information.

## Article 13

### **Procedure of administrative investigation**

1. Every responsible unit or HIDAACI shall, as appropriate, administratively investigate into the whistleblowing in compliance with the procedure set out in this law. To the extent not provided for differently in this law, the responsible unit with the public authority and HIDAACI shall implement the provisions of the Code of the Administrative Procedures.
2. The procedure of administrative investigation into the whistleblowing shall be completed as soon as possible, however, under no circumstances later than 40 days of the date of instituting the investigation, unless the circumstances dictate a longer period.
3. During the administrative investigation period, the responsible unit or HIDAACI shall examine and evaluate the allegations made by the whistle-blower regarding the dubious corruption conduct or practice. To this effect, the responsible unit or HIDAACI shall be entitled to require additional information and documents, order inspections or analysis or collect testimonies or consult the experts of various fields.
4. Participating in the administrative investigation shall be the whistleblower or any other third person, if he is thought of possessing documents or being aware of the circumstances whistle-blown on, including the exposed, as long as it is deemed necessary by the person presiding over the investigation.
5. Any party participating in the administrative investigation shall be ensured a due process, in compliance with provisions of the Administrative Procedure Code, and:
  - a) May make statements, arguments or opinions in writing;
  - b) May consult the investigation file;
  - c) Shall be entitled to be heard on his allegations.
6. The organization or HIDAACI shall make the evidence, documentation it is disposing of, available to the investigation.
7. The responsible unit or HIDAACI shall notify the whistle-blower on any measure taken in response to the whistleblowing not later than 30 days of the moment of the accomplishment of the measure. Regardless of the notice period provided for in this Article, the responsible unit or HIDAACI shall be obliged to respond within 30 days to the request for information submitted in writing by the whistle-blower at any time, regarding the matter whistle-blown on by him.
8. Where upon the completion of the administrative investigation of whistleblowing, the responsible unit of a public authority or HIDAACI indicate that the dubious conduct or practice being whistle-blown on consist or may consist an administrative violation, under the law, the responsible unit or HIDAACI shall, as appropriate, inform the competent body.
9. HIDAACI and the organization in cooperation with HIDAACI shall take immediate measures at the same moment and, to the extent possible, to prevent or hinder the continuation of harmful consequences of the dubious corruption conduct or practice being whistle-blown on.
10. Any organization, in accordance with the instruction of HIDAACI, and HIDAACI, shall approve the specific internal regulations in connection with the procedure of examination of administrative investigation of the whistleblowing and the instruments for protecting the confidentiality under this law.

## Article 14

### **Non-institution and termination of administrative investigation**

1. The responsible unit or HIDAACI shall be entitled not to institute the administrative investigation if:
  - a) Whistleblowing was not filed appropriately in terms of form and contents, provided for in Article 7 of this law, and the whistle-blower does not rectify these shortcomings within 5 days of receiving the notice for rectification;
  - b) Whistleblowing contains facts and circumstances which are not included in the scope of this law, in accordance with Article 3, point 6, of this law;
  - c) When the contents of the whistleblowing clearly show that there are no elements of administrative violation or criminal offence.

2. The responsible unit or HIDAACI shall be entitled to terminate the administrative investigation if:
  - a) In the course of investigation it emerges that the whistleblowing for the dubious corruption conduct of practice is grounded. In this case, the responsible unit or HIDAACI shall immediately give notice to the prosecution office or State Police;
  - b) The whistle-blower has not acted in good faith, in compliance with Article 6 of this law.
3. The decision on non-institution or termination of the administrative investigation shall be noted in the whistleblowing file, being grounded in connection with the entire causes having brought about the relevant decision making, as well as the measures taken with regard to whistleblowing.

#### Article 15

### **Confidentiality**

1. The identity of the whistle-blower shall, in the course of the procedure of administrative investigating into the internal or external whistleblowing, be made known to the third persons only upon his own written consent.
2. HIDAACI or the responsible unit shall always keep the information regarding whistleblowing confidential, thus not disseminating or transmitting it to third parties within or outside the organization or HIDAACI, and not to use it for other purposes, unless with the written consent of the whistle-blower or while meeting a legal obligation.
3. The responsible unit or HIDAACI shall, in its correspondence with the organization where the whistle-blower is employed or any other private or state entity or authority, abide by the obligation of confidentiality and it shall communicate the necessary information only to the persons appointed for the administrative investigation or taking the measures for following up the facts being whistle-blown on, in the context of a confidential agreement among the parties.
4. Any person receiving confidential information from the responsible units or HIDAACI for the purposes of this law shall be subject to the same obligation for the processing of information in a confidential fashion.

#### Article 16

### **Protection of personal data**

1. The personal data of individuals involved in the administrative investigation shall be processed just for the purposes of this law. The processing of these data shall always be accomplished in accordance with the procedures of the law in effect for the protection of personal data.
2. In cases where, in the implementation of this law, it has been identified a breach of legislation on protection of personal data, the case shall be referred to the Commissioner for the Right to Information and Protection of Personal Data.
3. The Commissioner for the Right to Information and Protection of Personal Data shall, in a specific instruction, determine the conditions and criteria of processing and time of maintaining the personal data in the field of protection of whistle-blowers under this law.

## CHAPTER V

### RIGHTS AND PROTECTION OF WHISTLE-BLOWERS

#### Article 17

### **Whistle-blower Rights**

1. Whistle-blower rights and interests shall be protected in a reliable, efficient and appropriate fashion.
2. The whistle-blower shall be entitled to:
  - a) Confidentiality in the course of whistleblowing process, including also the possibility of anonymous whistleblowing of a dubious corruption conduct or practices, in accordance with Article 7, point 2, of this law;

- b) Maintaining confidentiality of the source of information by the whistle-blower;
  - c) Protection against retaliation.
3. The whistle-blower rights shall be protected against any retaliatory measures taken by the organization against him, where in reasonable and grounded circumstances, the whistle-blower has requested protection from HIDAACI.
  4. Every rule or private agreement, based whereon the rights or protection of whistle-blower under this law is exempted or restricted, shall be invalid. The whistle-blower rights shall have priority over the confidentiality agreements.
  5. The whistle-blower shall be informed thoroughly and in an understandable language for him by the organization and HIDAACI over the rights and protection provided by his organization and HIDAACI under this law.

## Article 18

### **Protection against retaliation**

1. The whistle-blower blowing the whistle on a dubious corruption conduct or practice in compliance with the provisions of this law shall be protected against any retaliatory measures taken by the organization against him, including, however, not limited to:
  - a) Dismissal from office;
  - b) Suspension from office or from one or more tasks;
  - c) Transfer within or outside the organization;
  - d) Demotion;
  - e) Reduction of salary and/or financial benefits;
  - f) Loss of status and privileges;
  - g) Failure to affect promotion;
  - h) Depriving the right to participate in trainings;
  - i) Negative evaluation in employment relations;
  - j) Other forms of retaliation regarding employment.
2. Any act of retaliation against the whistle-blower shall be invalid.
3. Where the whistle-blower wishes to be appointed to another structure of the organization to be protected against retaliatory reactions in his close circle of employment, the organization shall take the reasonable and appropriate measures to facilitate such a move. Otherwise, HIDAACI shall, upon the request of the whistle-blower, approach the competent body, under the legislation in effect, to order her public authority or it orders the private entity to take all the measures under this Article. Where the competent body or private entity does not take the measures required by HIDAACI, any interested person shall be entitled to approach the court.

## Article 19

### **Procedure of enquiring into the protection request**

1. The whistle-blower alleging that he is subject to an act of retaliation submits a request for protection with the responsible unit. The responsible unit shall immediately take measures, and in each case, no later than 10 day of submission of the request, it shall decide through an intermediate reasoned act to repair the unlawful consequences of the retaliation act. In case of violation of this deadline, the request is submitted to ILDKPKI, which shall decide within 10 days of receiving the request.
2. HIDAACI shall investigate into the allegations of retaliation to establish whether there are reasonable grounds to believe that it has occurred, it is occurring or it is expected to occur an act of retaliation.
3. HIDAACI shall, within 5 days of receiving the request for protection against retaliation, notify the whistle-blower in writing concerning the registration of the allegation and the name of the person with HIDAACI, who is to pursue the matter.
4. The organization shall, upon the request of HIDAACI, establish that the measures taken to the detriment of the whistle-blower have been based on various grounds, which bear no direct or indirect connection to the whistleblowing.

5. HIDAACI shall notify the whistle-blower within 10 days of the date of receipt of the request on the status of administrative investigation of the request for protection and on any procedural arrangement being undertaken. Regardless of the notification timing, provided for in this Article, HIDAACI is bound to respond to any request for information in writing, submitted at any time by the whistle-blower in connection with his request.

6. The procedure of administrative investigation into the protection request shall be completed as soon as possible, however, never later than 30 days of the registration of the request.

7. Where upon the completion of the administrative investigation it emerges that a retaliation act has been committed against the whistleblower within the public body, HIDAACI shall approach the competent authority under the legislation in effect to order the public body to take all the measures for rectifying the violation committed. Where upon the completion of investigation it emerges that a retaliation act has been committed against the whistle-blower by the private entity, HIDAACI shall order the private entity to take all the measures for rectifying the committed offence. Where the competent authority or private entity do not take the measures required by HIDAACI under this point, any interested person shall be entitled to approach the court.

8. HIDAACI and the responsible units, in compliance with the instructions issued by HIDAACI, shall approve regulations about the procedure of examining the request of the whistle-blower for protection against retaliation.

#### Article 20

### **Indemnity in the event of retaliation**

The whistle-blower shall be entitled to seek compensation before the court regarding the harm sustained due to the retaliation act in the sense of this law, in accordance with the Civil Code.

#### CHAPTER VI

### MONITORING THE WHISTLEBLOWING MECHANISM

#### Article 21

### **Functions of the High Inspectorate of Declaration and Auditing of Assets and Conflict of Interests.**

In addition to what has been foreseen in this law, HIDAACI shall be tasked to:

- a) Monitor and issue instructions on the mechanisms of internal and external whistleblowing;
- b) Check out the appropriate functioning of the mechanism of internal whistleblowing and of the responsible units of organizations;
- c) Find out the administrative contraventions, under this law, and impose penalties in compliance with Article 23 of this law;
- d) Receive and investigate into the requests for protection against the retaliatory measures against whistleblowers and guarantee the protection of whistle-blowers against the retaliatory measures under this law;
- e) Draft evaluations and issue recommendations for the implementation of this law, based on the annual reports of the responsible units;
- f) Offer advice and support in connection with the implementation of the law on whistle-blower protection; e) Make the public aware about whistleblowing and protection of whistle-blowers, as well as boost the cultural admission of whistleblowing.

#### Article 22

### **Reporting**

1. The responsible unit shall accomplish the tasks assigned by the HIDAACI for facilitating and developing the whistleblowing process and it shall submit to HIDAACI annually, no later than 15 January of the upcoming



year, a written report on the whistleblowing registered, ways pursued for the administrative investigation into the whistleblowing instances and whistle-blower protection.

2. HIDAACI shall annually publish a report on the implementation of this law. Included in this information report shall be the number of instances of whistleblowing, outcome of proceedings, degree of awareness and trust of the public with whistleblowing mechanisms, time set out for examining the cases and implementing the mechanisms of protection against retaliation.

## CHAPTER VII

### ADMINISTRATIVE VIOLATIONS AND MEASURES

#### Article 23

##### **Administrative violations and measures**

1. Where the infringement of the provisions of this law does not consist a criminal offence, it shall consist administrative contravention and it shall be punished by fine as follows:

a) Failure of the organization to appoint the responsible unit in compliance with point 1, Article 10 of this law, shall be punished by fine to 100 000 ALL;

b) Any retaliation act against the whistle-blower committed by the organization under Article 18 of this law, including the refusal to act under point 3, Article 18 of this law, shall be punished by fine from 300 000 ALL to 500 000 ALL;

c) Violation of whistleblowing principles of investigation by the employee under letters “a”, “b”, “c” and “d” of point 1, Article 12 of this law, shall be punished by fine from 100 000 ALL up to 300 000 ALL;

d) Violation of the obligation to preserve confidentiality under Articles 15 of this law shall be punished by fine from 150 000 ALL to 300 000 ALL;

e) Failure to institute investigation or the termination of the administrative investigation by the employee at variance with Article 14 of this law shall be punished by fine from 100 000 ALL to 300 000 ALL.

2. HIDAACI shall be entitled to find out the contraventions and to impose the penalty. Against the decision of HIDAACI, a complaint may be filed, under the law on administrative contraventions.

3. The proceeds of penalties shall be transferred to the state budget.

## CHAPTER VIII

### TEMPORARY AND LAST PROVISIONS

#### Article 24

##### **Issue of bylaw acts**

1. HIDAACI shall be tasked to issue the bylaw acts in compliance with point 3, Article 10; point 10, Article 13; point 8, Article 19; and letter “a”, point 1, Article 21 of this law, within two months of the entry into effect of this law.

2. The Council of Ministers is tasked to issue the bylaw acts under point 3, Article 10, of this law, within two months of the entry into effect of this law.

3. The Commissioner for the right to Information and Protection of the Personal Data is tasked to issue the bylaw acts under point 3, Article 16 of this law, within two months of the entry into effect of this law.

4. Private entities and public authorities are tasked, in accordance with HIDAACI instructions, to approve the rules provided for in Article 13, point 10 of this Law, within six months from the date of entry into force of this law.

Article 25

**Entry into effect**

This law shall enter into effect 15 days after its publication in the Official Journal and shall extend its legal effects from 1 October 2016, except for the obligations set out in Article 10 of this law regarding the internal whistleblowing for private entities that shall start to apply on 1 July 2017.

Head of the parliament

Ilir META

Approved on 2/6/2016