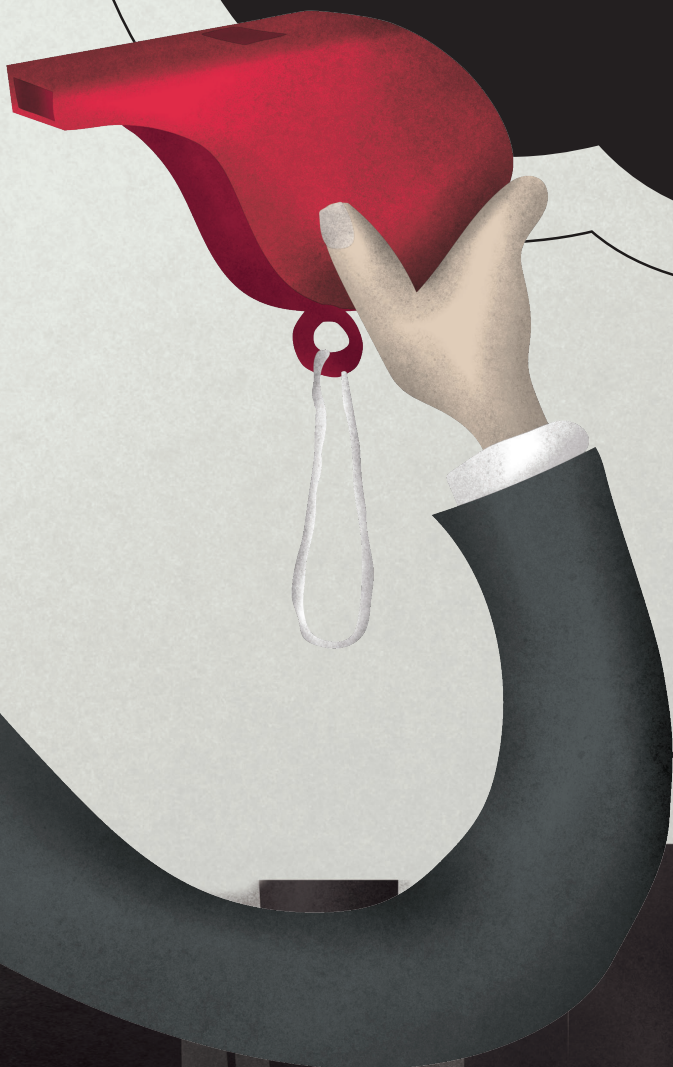


Guideline for whistleblowing in private sector





Guideline for whistleblowing in private sector

Title: Guideline for whistleblowing for private sector

Published by FOL Movement

Web: www.levizjafol.org

Address: Andrea Gropa, No.35
10000 Prishtinë, Kosovë

Copyright @ 2020. FOL Movement. All rights reserved. No part of this Guideline may be reproduced, stored in any retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written consent of the publisher.



Norwegian Embassy



Publication of this Guideline is made possible by the 'Civil Society Program for Albania and Kosovo', funded by the Norwegian Ministry of Foreign Affairs and managed by the Kosovo Civil Society Foundation (KCSF) in partnership with Partners Albania for Change and Development (PA). The content and recommendations presented do not represent the official position of the Norwegian Ministry of Foreign Affairs and the Kosovo Civil Society Foundation (KCSF).

08

- Purpose of the guideline
- Public interest
- Private interest
- Integrity
- Why whistleblowing

09

- Private sector
- Who is the whistleblower
- Person connected to the whistleblower
- What is whistleblowing

10

- Whistleblowing Violations
- Whistleblowing in the workplace
- Responsible officer

11

- Case submission
- Should evidence be presented
- Procedural deadlines
- Case review

12

- Parties to proceedings
- Completion of the investigation
- Establishment of internal procedures
- Whistleblowing outside the workplace

13

- Regulatory bodies
- Public whistleblowing
- Protection from harmful actions

14

- Judicial protection
- Court decisions

15

- Penalties for minor offenses
- Actions for the implementation of the Law

16

- Annual reporting on whistleblowing cases

17

- Recommendations

19

- Annex A

25

- Annex B

I. INTRODUCTION

The private sector is an integral part of the national economic sector. Its role is essential, because it contributes to national tax revenues and ensures the efficient circulation of services and capital. This sector is owned and managed by individuals and organizations that aim to generate profit. The private sector is the main provider of goods and services to the community. Therefore, the safety and quality of these goods and services are vital to citizens.

Within this sector, actions or practices may occur which pose a threat or violation of the general interest. Employees within the private sector or other persons who have working contacts with this sector, are often the first to know about actions that harm the public interest but for various reasons, they in most cases remain silent or indifferent to these actions because it is considered that reporting procedures are inefficient or that whistleblowing can cause problems in the workplace in one form or another. Whistleblowing of violations in the private sector can play a crucial role in protecting human health, food safety, or improving the quality of services. Therefore, it is very important that whistleblowing is done for these actions and not remain silent.

The whistleblowing field and the protection of whistleblowers is a new and sui generis field. The new law on whistleblower protection aims to establish clear legal procedures, explain how these violations are reported and guarantee and protect whistleblowers. The law has a scope in the public and private sector, because the activities of these sectors are interrelated. Practices show that in many cases an action or violation is done through cooperation between organizations (persons) from the public and private sector. The new Law on Protection of Whistleblowers aims to promote whistleblowing, ensuring effective protection of whistleblowers. The law does not interfere in the scope of other laws, but its implementation is also related to the implementation of criminal legislation; of labour; against corruption and economic crime; code of ethics, integrity plan, etc.

Its implementation for the effective implementation of the Law requires the commitment of public institutions, the private sector, employees, civil society and the media. Civil society advocacy is essential because it increases accountability, encourages the rule of law, and protects whistleblowers. One of the biggest challenges in the path of the implementation of the law is considered the private sector. For this reason, the legal provisions for this sector entered into force one year later than that of the public sector.

FOL Movement is continuously committed to improving the legal framework and environment for the protection of whistleblowers. The guideline for whistleblowing in the private sector is part of the package of activities within the project "Whistleblowers, the law protects you". The Guideline is intended to be used as a reference tool for private sector employees regarding whistleblowing procedures. A Model Regulation is attached to the Annex A which can serve as a guideline for drafting the internal acts for private sector for the implementation of the law. Meanwhile, in Annex B is the Analysis of the current situation regarding the implementation of the Law on Whistleblowing Protection in the private sector.

Purpose of the guideline

The guideline contains general instructions which facilitate the meaning and content of Law no. 065/L-085 Whistleblowing Protection, related to whistleblowing in the private sector.¹ This guideline is designed to help all employees in the private sector, who may carry out whistleblowing of suspicious actions or practices in their workplace. The guideline contains concrete reference points on how they should act in the event that employees decide to carry out a whistleblowing and how to exercise their rights as whistleblowers.

Public interest

Whistleblowing is done only for public interest and not for personal or private interest. The motives that influence for whistleblowing are different, but the law establishes the presumption of public interest for whistleblowing. The main components of the public interest are: fundamental rights; human safety, health and social welfare, economic development and cultural heritage. The public interest is our common interest.

Private interest

Can a whistleblowing be carried out for a personal interest or dissatisfaction? No. The law stipulates that whistleblowing can only be done to protect the public interest. For the realization of personal interests or rights, individuals follow administrative procedures inside and outside the institution or court proceedings.

Integrity

Integrity includes, among others: adherence to ethical standards; the predominance of the public interest; reporting practices or actions that lead to misuse; promoting human rights, avoiding harassment and discrimination; promotion and recruitment transparently and based on results (performance).

¹ Law no. 065/L-085 on Protection of whistleblowers, Official Gazette of the Republic of Kosovo, no. 22/18 December 2018, Prishtina. While provisions that refer to the private sector begin to apply one (1) year after its entry into force. The law reflects and integrates European principles and standards prescribed by the Council of Europe Recommendation (2014)/7 and Directive of the European Parliament and the Council for the Protection of whistleblowers.

Why whistleblowing

Whistleblowing in the private sector is one of the most effective ways to detect various violations. This sector is the main supplier of goods and services and whistleblowing can save lives, large sums of money, environmental safety, prevent corruption, prevent misuse of public money through public procurement or other violations that harm the public interest.

Private sector

This sector consists of all legal entities (legal entities) outside the public sector. According to the legislation, this sector includes (i) companies; (2) non-governmental organizations and (iii) any other organization established under the law. Business companies are: individual businesses, general partnerships, limited partnerships, limited liability companies and joint stock companies.² Non-governmental organizations are legal entities that can be organized in three forms, as follows: association, foundation and institute.³ Whereas, the third category includes legal entities which have a specific scope and are regulated by special laws such as: Political parties, Religious communities; unions; Red Cross of Kosova, etc.

Who is the whistleblower

Whistleblower can be any employee in the private sector, who in the context of his work, carries out whistleblowing. According to the Law, categories of persons who have the right to be whistleblowers are:

- employees and former employees, regardless of duration, pay and nature of work;
- external or occasional collaborators;
- candidates for employment; volunteers; persons in professional practice or training;
- service contractors or subcontractors.

Person connected to the whistleblower

The person connected to the whistleblower is the person who assists the whistleblower or may provide evidence related to the whistleblower, or any other person who may be harmed by any connection to the whistleblower. This person has all the rights and legal protection, as does the whistleblower.

² Law no. 06/L - 016 for Business Organizations, Official Gazette of the Republic of Kosovo/no. 9/24 May 2018, Prishtina, Article 5. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16426>.

³ Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations, Official Gazette of the Republic of Kosovo/No. 11/24 April 2019, Article 19, Prishtina, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=19055>.

What is whistleblowing

Whistleblowing is the reporting or disclosure of information regarding various violations to the detriment of the public interest that may occur in the private sector. Through whistleblowing, information is detected on illegal, fraudulent or dangerous activities carried out within the institution. The law defines three types of whistleblowing: internal whistleblowing; external whistleblowing and public whistleblowing.

Whistleblowing Violations

Through whistleblowing, the private sector employee reports or discloses information that he/she believes is in the public interest and tends to indicate that one or more of the following issues are occurring now, have occurred in the past, or are likely to occur in the future:⁴

- a criminal offense;
- violation of a legal obligation;
- miscarriage of justice;
- environmental destruction;
- endangering the health or safety of the individual;
- an intentional coverage of information intended to indicate any of the above violations;
- discriminatory and repressive actions;
- consumer protection and competition.

Whistleblowing in the workplace

Internal whistleblowing is done within the enterprise or business where the whistleblower works. This reporting is considered to be the best way to obtain relevant information which can contribute to the early and effective resolution of the risk and threat to the public interest. In principle it should be tried to use internal whistleblowing.

⁴ Law no. 065/L-085 on Protection of whistleblowers, Article 5.

Responsible officer

Every private entity that has fifty (50) or more employees has a legal obligation to appoint the responsible officer for reviewing whistleblowing cases. This officer submits the cases of whistleblowing within the private entity. The officer acts on the principle of honesty, confidentiality, and avoiding conflict of interest. In case the number of employees is less than fifty (50), the internal whistleblowing is done directly to the head of the institution (director or chief manager). However, employees may also provide direct whistleblowing in other cases: (i) when the responsible officer is involved in the suspected case; (ii) when there is a reasonable suspicion that the officer is unfit to present the case; (iv) when there is a reasonable doubt that internal procedures are ineffective.

Case submission

Whistleblowing can be done in writing, by mail, telephone, e-mail, and verbally. If you are whistleblowing a case, the responsible officer receives the information by creating a register which contains the main data about the whistleblower and the date of receipt. In fact, this register is the book (block) in which are recorded the whistleblowing cases are within the private business. At the moment of filing the case, the whistleblower is given evidence of the information presented and a list of the names of the documents that were submitted in relation to the case.

Should evidence be presented

Whistleblowing is done when we have “reasonable belief” in suspicious acts or practices not in “well-founded suspicion”. So, the whistleblower at the moment of whistleblowing consciously believes that there is a threat or violation of the public interest. The whistleblower is not obliged to prove the reliability and truthfulness of the whistleblowing information, and has no obligation to collect or provide evidence.

Procedural deadlines

When whistleblowing is done for a case, it should be addressed as soon as possible. After reporting, within 15 days, the responsible officer (employer) notifies the whistleblower of the whistleblowing status. So, during this deadline, the information is filtered and depending on its content will be evaluated if the administrative investigation of the case will continue. The deadline for reviewing the whistleblowing case is 45 days and in case of specific circumstances it may exceptionally last another 45 days, closing the time cycle of 90 days, from the day of registration of the case.

Case review

During the administrative investigation, the facts and circumstances relevant to the handling of the case are assessed. If necessary, the responsible official may request additional information from relevant persons, order inspections and consult with the relevant expert. These actions help the responsible official to conduct a thorough, appropriate and accurate investigation to uncover (clarify) the objective truth. During the administrative investigation, the principles of the law on General Administrative Procedure are applied.⁵

Parties to proceedings

The parties in the administrative investigation procedure are developed by the responsible official as the representative of the employer, whistleblowers can also be part of the proceedings and the third persons related to the case can also be parties in the procedure. The parties have the right: (i) to be heard; (ii) have access to the investigation file; (iii) present evidence, opinions or statements.

Completion of the investigation

When the administrative investigation of the whistleblowing case is completed and it represents a legal violation, the responsible official (employer) takes measures according to the results of the investigation and if necessary is forwarded to the competent bodies for further action. Competent body in this case may be different bodies, depending on the nature of the administrative or criminal violation: Disciplinary Commission; Anti-Corruption Agency; Auditor General; State Prosecutor, Financial Intelligence Unit; Tax Administration; Kosovo Police, etc. If the reported violation or action continues to cause harmful consequences in the public interest, the employer takes immediate measures to prevent them.

⁵ Law No.05/L-031 on General Administrative Procedure, Official Gazette of the Republic of Kosovo no. 20/21 June 2016. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12559>

Establishment of internal procedures

Private sector entities, pursuant to the Law, must determine by their act the procedure of internal whistleblowing and its review. This act (regulation, instruction) describes the procedural actions within the organization that must be done in the case of whistleblowing and its treatment. A model of such an act is attached in the Annex to this guideline.

Whistleblowing outside the workplace

External whistleblowing is the reporting that the whistleblower does to another institution outside the business where he/she works. The whistleblower may make external whistleblowing after having performed the internal or directly external whistleblowing, in cases when the whistleblowing: (i) concerns the employer manager; (ii) has an urgent character related to serious or immediate risk or irreversible damage; (iii) there is a reasonable suspicion that harmful action may be taken against the whistleblower, that evidence may be deleted or destroyed if it were to carry out internal whistleblowing; (iv) when the whistleblower has reasonable doubts that the internal procedures are ineffective.

Regulatory bodies

External whistleblowing for the private sector is reported to the institutions that serve as responsible regulators⁶ in various areas as follows: Tax Administration of Kosovo; Business Registration Agency; Chambers (of Lawyers; of Doctors); Central bank; Public procurement review body; inspectorates; Various Divisions or Departments within ministries. Regarding the procedure, deadlines and handling of cases, regulators implement procedures for handling internal whistleblowing.

⁶ Article 14 of Law no. 06/L-113 on the organization and functioning of the state administration and independent agencies determines: "The Regulatory Agency regulates and supervises the activity of the operators of a certain market in order to protect consumers and ensure free competition. Law no. 06/L-113 on the organization and functioning of the state administration and independent agencies" Official Gazette of the Republic of Kosovo/no. 7/01 March 2019, Prishtina.
<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18684>

Public whistleblowing

Public whistleblowing can be done in the media; to non-governmental organizations; at rallies or social networks when the whistleblower reasonably believes that: (i) he/she will be punished if he/she reports internally or externally; (ii) it is probable that evidence relating to the relevant harmful acts will be deleted or destroyed; (iii) in the event of an immediate threat to life, public health, safety or the environment, (iv) if internal and external whistleblowing has not been reviewed by the responsible authorities. In case the whistleblower chooses to make a public whistleblowing, he/she must respect the principle of presumption of innocence of the accused person, the right to protection of personal data, as well as not to hinder the development of court proceedings.

Protection from harmful actions

The whistleblower is protected from any harmful action that may be taken by the private sector employer by reporting or disclosing information. The person related to the whistleblower enjoys the same protection. The law stipulates that whistleblowers are protected from any harmful or retaliatory action that may be imposed on them due to whistleblowing. Harmful actions from which the whistleblower is protected are: 1) dismissal; 2) suspension from work or of one or more tasks; 3) transfer inside or outside the institution without his/her consent; 4) reduction in position; 5) reduction of payment; 6) loss of status and privileges; 7) not rising to the position; 8) deprivation of the right to participate in trainings; 9) negative evaluations in the employment relationship; 10) revocation of a license or permit; 11) the termination of a contract for goods or services; 12) other harmful actions related to the employment relationship.

Judicial protection

In case he/she has suffered from harmful actions, the whistleblower has the right to file a claim without being obliged to exhaust the legal remedies in the internal administrative procedure within the employer. The claim is filed within 6 months from the day when the whistleblower was notified and not later than 3 years from the day when the harmful action was taken. The claim is filed with the General Department of Basic Courts, where the employer is based or where the whistleblower resides.⁷

⁷ Law no. 03/L-202 on Administrative Disputes. Official Gazette of the Republic of Kosovo, Prishtina: Year V/No. 82/21 October 2010. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2707>

Court decisions

In all cases where the whistleblower or the person connected to the whistleblower claims to have suffered from harmful actions due to the whistleblowing, the burden of proof lies with the employer that the harmful action has no causal connection with the whistleblowing. After adjudicating the case, the competent court, if it determines that the whistleblower has suffered from a harmful act, decides according to the case, to: (i) return him/her to the workplace; (ii) compensation for damage; (iii) order the public or private employer to take certain actions. Cases related to whistleblowing are reviewed with priority by the Courts.

Penalties for minor offenses

The competent court shall impose a fine from five hundred (500) euros to twenty thousand (20,000) euros on the private entity and the relevant competent authority, if:

1. does not protect the whistleblower from any harmful action or does not take all necessary measures to stop the harmful action;
2. does not notify in writing all employees regarding the rights provided by law;
3. does not appoint the responsible official;
4. does not take action after reporting the information within the deadline determined by this law;
5. does not inform the whistleblowers about the result of the procedure, within the determined deadline;
6. does not inform the whistleblower, upon his/her request, regarding the progress and actions taken in the procedure, or does not enable the whistleblower to have access to the case file and to participate in the actions taken during the whistleblowing procedure;
7. in case it interferes with the whistleblowing;
8. in case it does not act on the principle of confidentiality.

The competent court imposes a fine of five hundred (500) euros up to twenty thousand (20,000) euros for the responsible official of private entities in case he is responsible according to points 1, 2, 4, and 6 above. The competent body for initiating misdemeanor proceedings for the private sector is the Labor Inspectorate. If the competent body within sixty (60) days does not take any action or refuses to act, then the whistleblower himself can initiate the procedure.⁸

⁸ Law no. 065/L-085 on Protection of whistleblowers, Article 27.

Actions for the implementation of the Law

Employers have a legal obligation to develop or create written instructions regarding whistleblowing procedures. These instructions can be in the form of guides, handbooks, manuals, guidelines, which should be appropriately distributed to employees. This can be done by exhibiting them in the workplace and on their websites.

Annual reporting on whistleblowing cases

Every entity within the private sector has a legal obligation to prepare the Annual Report, regarding the cases reported for the previous year until December 31. This Report contains cases of internal reporting and is sent to the Anti-Corruption Agency, as the central institution for overseeing the implementation of the Law, by January 31 of the following year. This obligation ensures, among other things, the accountability of the private sector regarding the implementation of the Law.

II. RECOMMENDATIONS

Effective implementation of the Law requires commitment and integrated approach from citizens, public institutions, the private sector, the media, and civil society. Regarding its implementation in the private sector it is important that:

Recommendation 1

Private sector entities to appoint officials responsible for handling whistleblowing;

Recommendation 2

Develop internal procedures by creating regulations or internal acts;

Recommendation 3

Inform their employees who is the assigned response officer for handling the whistleblowing;

Recommendation 4

Organize trainings for responsible officials and all employees in order to increase the level of knowledge about the Law and the way of reporting;

Recommendation 5

Oversight Organizations: The Labor Inspectorate and Regulatory Agencies need to prioritize monitoring of the implementation of this law;

Recommendation 6

Advocacy by civil society organizations and the media is undoubtedly essential in raising civic awareness for whistleblowing various violations that violate the public interest;

Recommendation 7

Networking and organizing joint platforms between NGOs, integrating their experiences will strengthen their role in implementing the law.

III. References:

- Law no. 065/L-085 on Protection of whistleblowers, Official Gazette of the Republic of Kosovo, no. 22/18 December 2018, Prishtina; <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18303>.
- Law no. 06/L-016 for Business Organizations, Official Gazette of the Republic of Kosovo/no. 9/24 May 2018, Prishtina, Article 5 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16426>;
- Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations, Official Gazette of the Republic of Kosovo/no. 11/24 April 2019, Article 19, Prishtina, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=19055>;
- Law no. 03/L-202 on Administrative Disputes. Official Gazette of the Republic of Kosovo, Prishtina: Year V/ No. 82/21 October 2010. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2707>;
- Law no. 06/L-113 on the organization and functioning of the state administration and independent agencies "Official Gazette of the Republic of Kosovo/no. 7/01 March 2019, Prishtina. <https://gzk.rks-gov.net/Act-DocumentDetail.aspx?ActID=18684>;
- Law No. 05/L-031 on General Administrative Procedure, Official Gazette of the Republic of Kosovo no. 20/21 June 2016. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12559>.

IV. Annex A

Pursuant to Article 17.6 of Law no. 06/L085 for the Protection of whistleblowers, company "NEW VISION" approves:

THE ACT FOR RECEIVING AND HANDLING OF WHISTLEBLOWING CASES

Chapter I General Provisions

Article 1 Purpose

The purpose of this act is to determine the rules and procedures for the receipt and handling of internal whistleblowing cases within the Company "NEW VISION" pursuant to Law no. 06/L085 on Protection of Whistleblowers.

Article 2 Scope

The act for accepting and handling the whistleblowing cases is valid for all employees in the Company "NEW VISION".

Article 3 Definitions

For the purpose of this act, the following expressions will have the following meanings:

1. *Whistleblowing* - means reporting or disclosing information on actions and omissions committed in the workplace which pose a threat or violation to the public interest.
1. *Whistleblower* - means the person in the context of his employment relationship in the company "New Vision" carries out a whistleblowing on an action or practice which is a violation under Law no. 06/L085 for the Protection of whistleblowers.
1. *A person in the context of an employment relationship* - means: (1) all employees in the Company "New Vision"; 2) external or occasional collaborator, volunteer, in professional practice or training 3) candidates for employment or internship and 4) persons who can be a contractor or subcontractor of works or services in the company "New Vision".
1. *Violation* - means any illegal action or omission, facts or circumstances committed in the company "New Vision", which the whistleblower suspects in good faith that they represent causes provided in Article 5 of the law.
1. *Responsible officer* - means the official assigned within the company who is in charge of the task of administrative review of the whistleblowing and review of the request for protection of the whistleblower.
1. *Company Manager* - means the executive director of the company "New Vision".

1. *Regulator*– The body or agency that regulates and supervises the activity of the operators of a certain market in order to protect consumers and ensure free competition.

Chapter II

Principles of procedure

Article 4

Confidentiality

1. The Responsible Officer must at all times keep confidential the information related to the whistleblowing, by not spreading or transmitting it to third parties, as well as not to use it for purposes other than the written consent of the whistleblower or for the fulfillment of a legal obligation.
2. During the procedure of administrative investigation of whistleblowing, the identity of the whistleblower is made known to third parties only with his/her written consent.
3. The Responsible Officer in communications with the organization where the whistleblower works or with any other entity or authority, private or state, respects the obligation of confidentiality and communicates the necessary information only to persons designated for administrative investigation or to take measures to follow the reported facts, under a confidentiality agreement between the parties.

Article 5

Protection of personal data

1. The personal data of individuals involved in the administrative investigation processed only for the implementation of the Law on Protection of whistleblowers. In any case, the processing of personal data is carried out according to the principles and procedures of the legislation in force for the protection of personal data.
2. In cases when, pursuant to this regulation, non-compliance with the legislation on personal data protection is found, the matter is immediately referred to the Agency for Information and Privacy.

Article 6

Working principles of the responsible officer

1. The responsible officer during the review of whistleblowing cases shall:
 - 1.1. act honestly, impartially and efficiently, taking into account the legitimate interests of the whistleblower
 - 1.2. act independently from the political point of view and any other unjust influence that may hinder the accomplishment of duties, according to this law;
 - 1.3. avoid any possible conflict of interest and to immediately declare to the organization the conflict of interest before starting the administrative investigation of a whistleblowing;
 - 1.4. take all appropriate measures to protect the documentation and evidence related to the whistleblowing from disappearance, concealment, alteration, falsification and other actions, which aim at their destruction;
 - 1.5. maintain the confidentiality of information and to protect the data in the content of each whistleblower, in accordance with Articles 11 and 12 of the Law on Protection of Whistleblowers.
2. Procedural actions to be performed in accordance with this law and the relevant Law on General Administrative Procedure.
3. During the administrative investigation process, the whistleblower has the right not to disclose the sources of information.

Chapter III

Administrative investigation procedure

Article 7

Form and content of whistleblowing

1. The whistleblowing can be submitted in writing or verbally to the Responsible Officer who is obliged to document it in writing through minutes.
2. Whistleblowing contains but is not limited:
 - 2.1. whistleblower identity data;
 - 2.2. whistleblower contact details;
 - 2.3. description of the facts and circumstances of which the whistleblower is aware of the suspected act or practice of corruption, accompanied by relevant evidence, as far as possible;
 - 2.4. referral, as far as possible by the whistleblower of the suspected act or practice of corruption;
 - 2.5. in the case of external whistleblowing, the legal causes and circumstances of the fact, as far as possible by the whistleblower, for the use of the external whistleblowing mechanism.
3. The whistleblower may choose to remain anonymous and the whistleblowing is received by the Responsible Officer and as such, only if the reasons for anonymity are clearly stated and justified and the whistleblowing data provide a sufficient basis to administratively investigate the suspected breach.
4. Notices of procedural actions, for which the Responsible Officer sets deadlines must contain the warning expressed on the consequences of non-compliance with the deadline.
5. In cases when the whistleblowing has not been filed according to the form and content required in point 2 of this article, the Responsible Officer requests in writing from the whistleblower to correct these defects within 7 days from the date of receipt of the notice of correction.

Article 8

Registering a whistleblowing

1. The whistleblowing is registered in a special protocol or electronic register created for this purpose.
2. The Responsible Officer may not refuse for any reason the registration of the whistleblowing.

Article 9

Cases of conflict of interest

1. In cases where the Responsible Officer ascertains or becomes aware that he/she or related persons are involved or have a direct or indirect, property or personal interest in relation to the reported violation, he/she is obliged to avoid this conflict of interest immediately by declaring it to the Company Manager, before initiating the administrative whistleblowing investigation.
2. In case of conflict of interest of the responsible officer, the whistleblowing is made to the Company Manager.

Article 10

Whistleblowing to the Company Manager

1. Whistleblowing can be done to the Company Manager in other cases as follows:
 - 1.1. The Responsible Officer is involved in the suspected case;
 - 1.2. there is a reasonable suspicion that the official is unfit to present the case;
 - 1.3. there is a reasonable suspicion that internal procedures are not effective.
2. In case the whistleblowing is done to the Company Manager, the latter is the Responsible Officer.

Article 11

Failure to initiate administrative investigation

1. The Responsible Officer has the right not to initiate an administrative investigation if:
 - 1.1. the whistleblowing contains facts and circumstances that do not constitute a violation according to article 5 of the Law and according to the definition made in article 5 of this Regulation;
 - 1.2. in case it is clear from the content of the whistleblowing that there are no elements of administrative offense or criminal offense.
2. Failure to initiate an administrative investigation is made by a reasoned decision of the Responsible Officer.

Article 12

Administrative investigation procedure

1. The responsible official during the review of the whistleblowing acts according to the procedure defined in the Law on Protection of Whistleblowers. Unless otherwise provided in this law, the Responsible Officer shall apply the provisions of the Law on General Administrative Procedure.
2. The Responsible Officer has the right to request information and documents, to order inspections or analyzes, to collect statements or to ask persons aware of the circumstances of the case, or to consult with experts in various fields.
3. The whistleblower and any other third person participates in the administrative investigation, when it is suspected that he possesses documents or has knowledge of the whistleblowing circumstances, including the whistleblower, if deemed necessary by the responsible unit.
3. Each party participating in the administrative investigation is guaranteed the right to a fair trial, in accordance with the provisions of the administrative procedure and have the right to:
 - 4.1. present evidence that is relevant to the case;
 - 4.2. consult the investigation file;
 - 4.3. be heard in connection with the allegations in person or through a representative.

Article 13

Evidence

1. The parties are obliged to submit information, evidence, documents, and statements or to appear in person before the Responsible Officer whenever requested. Any violation of this obligation by officials or private organizations constitutes a reason for initiating legal proceedings depending on the violation found.
2. The Responsible Officer is obliged to document in writing any action performed during the administrative investigation. The minutes must be signed by all members of the responsible unit. In case of control or inspections, the act must also be signed by the officials of the organization. If the latter do not agree with the content of the act, they have the right to submit written remarks, a copy of which is attached to the act.
3. The Responsible Officer is obliged to record any evidence presented by the parties and to

justify the decision of their non-acceptance if he deems that the evidence presented has no value for the case. A written remark may be made against this decision, a copy of which is attached to the act. The necessary documents for the investigation are received by the responsible unit free of charge.

Article 14

Collection of Evidence

1. During the administrative investigation, the responsible unit, in order to determine the state of facts and circumstances related to the case, may:
 - 1.1. collect statements from parties, witnesses and experts;
 - 1.2. obtain other documents documented through photographic, recording or other technical means;
 - 1.3. inspect certain places;
2. When a written evidence, on which the resolution of the case depends or which influences its clarification, is in danger of being manipulated, to be disappeared or become difficult to obtain, the Responsible Officer, mainly or at the request of the whistleblower, may decide to obtain this evidence in advance or order no performance of any action on these documents (provision of evidence). In each case a minutes is kept which is signed by the staff who submits the letter and the Responsible Officer who receives the same.

Article 15

Deadline for decision making

1. When a whistleblowing case is made it should be dealt with as soon as possible. After reporting, within 15 days, the Responsible Officer notifies the whistleblower of the whistleblowing status.
2. The deadline for the review of the whistleblowing case is 45 days and in case of specific circumstances it may exceptionally last another 45 days, closing the time cycle of 90 days from the day of registration of the case.

Article 16

Termination of administrative investigation

1. The Responsible Officer terminates the administrative investigation if:
 - 1.1. during the investigation it turns out that the whistleblowing of the suspected act or practice of corruption is grounded, in which case the Responsible Person shall inform the competent body;
 - 1.2. finds that the whistleblower did not act in good faith.
2. if at the end of the administrative investigation it turns out that the suspected whistleblowing action or practice constitutes or may constitute a violation according to law, the responsible unit is obliged to immediately inform the competent body.
3. The responsible official shall take immediate, immediate and as far as possible measures to prevent or hinder the continuation of harmful consequences from the act or practice of the reported violation.
4. The decision to terminate the administrative investigation is recorded In the whistleblowing file, justified for all the causes that led to the relevant decision-making, as well as the measures taken in relation to the whistleblowing.

Article 17

Notifying the whistleblower

1. The responsible unit notifies the whistleblower of any action taken in response to the whistleblowing no later than 30 days from the moment of performing the action.
2. Despite the notice period provided for in this point, the Responsible Officer is obliged to respond within 30 days of receiving the request for information, submitted in writing by the whistleblower, at any time, in relation to the whistleblowing case reported by him.

Article 18

The right of the whistleblower to contact a Regulator or Anti - Corruption Agency directly

1. The whistleblower has the right to report the suspected violation of corruption to the Regulator or the Anti-Corruption Agency, in cases when:
 - 1.1. The responsible official does not initiate the administrative investigation according to the provisions of the law or this Regulation.
 - 1.2. there is a reasonable suspicion that the Responsible Officer or the Manager of the Company or persons related to it are involved or have a direct or indirect interest, property or personal, in the suspected breach.
 - 1.3. there are other reasons based on suspicion about the integrity and impartiality of the Responsible Officer and the review of the whistleblowing, in accordance with the principles of law and Regulation;
 - 1.4. whistleblower evidence, in connection with the alleged act or practice may be deleted or destroyed by the organization.
 - 1.5. In this case, if the Responsible Officer has started the investigation, he is obliged to terminate it by making the relevant note in the file.

Article 19

Relation between Regulation and the Law

In case of conflict between the provisions of this Act and the Law on Protection of whistleblowers, the provisions of the law prevail and apply.

Article 20

Entry into force

This Regulation enters into force 7 (seven) days after its approval by the Management of the company "New Vision".

Date : _____

Official Person : _____

Place : _____

Signature : _____

V. Annex B

Analysis of the current situation regarding the implementation of the Law on Protection of whistleblowers in the private sector

Whistleblowing has proven to be one of the most effective ways to fight crime and corruption. By revealing information about abuses in institutions, whistleblowers help reduce abuses that undermine the public interest, security, financial integrity and the rule of law. Until recently, however, the lack of space for reporting, and above all the lack of protection policies for whistleblowers both inside and outside of their workplace, exposes whistleblowers to retaliation, leading them to question whether they should report crime or not. Although in essence, whistleblowing is about public commitment to the common good, in society there is a negative perception of whistleblowers, who often take on the epithet of snitches. It has therefore been very important that the legal framework governing whistleblowing clearly defines the terms, in order to encourage whistleblowing and for it to be accepted in society as an act which affects the reduction of corrupt activities.

It should be noted that the level of corruption in Kosovo is perceived as the second biggest problem in society⁹ and ranks immediately after unemployment. Meanwhile, businesses are considered to be greatly affected by this phenomenon. The report “Supply-side corruption – business perspective” states that the overall perception of the 500 businesses surveyed shows that there is a consensus that corruption in Kosovo society is quite widespread, with a main focus on central institutions, public procurement, and obtaining building permits and licenses.¹⁰ Moreover, almost two-thirds of businesses consider that there is no service that is affiliated with public institutions that can be obtained without paying a bribe. Some 73% of businesses consider corruption as a serious problem for doing business. Only 27% of them deny that it is a problem. However, only half of the businesses surveyed consider corruption to be prevalent in the sector where they operate. Further, businesses think that about 25% of companies in their sector are involved in corruption scandals.¹¹

Reporting corruption remains a very important step but it is a challenge in itself. According to the report “Study on Corruption Perception 2019”¹², a total of 22% of respondents who have faced corruption have reported it to the relevant authorities. Despite the slight improvement compared to the 2018 study, reporting levels are still very low, and as such are not satisfactory. This data suggests the need for further analysis and addressing the factors that influence this reluctance of businesses to report corruption, which are listed as follows: fear of retaliation from the institution in the future (65%), lack of trust in the judiciary (47%) and unsatisfactory results in the fight against corruption (32%). Furthermore, bribery, misuse of public property, nepotism and clientelism are listed as the three most prevalent forms of corruption in Kosovo. The main reasons that push businesses to get involved in corruption include: avoiding punishment, providing favorable treatment in an open/competitive process, and gaining access to a particular service.

Given the above findings, progress should be made in addressing the factors that strengthen the reluctance of businesses to report corruption but also other abuses that may be encountered

9 UNDP. 2018. Annual Report. Prishtina.

10 INSTITUTI RIINVEST. 2019. Supply-side corruption – the perspective of businesses. Prishtina.

11 Ibid.

12 American Chamber of Commerce in Kosovo. 2019. Study on Perception of Corruption 2019. Prishtina.

during the exercise of their activity. It should be borne in mind that corruption, nepotism, misuse of public property have negative consequences on fair and equitable competition, economic development, investment and business image.

Based on the above, whistleblowers play an essential role in protecting the public interest by reporting or disclosing various violations which are committed in both the public and private sectors. Whistleblowing and protection of whistleblowing persons is one of the fundamental rights deriving from the right to freedom of expression guaranteed by the Constitution of the Republic of Kosovo and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Law no. 06/L-085 on Protection of Whistleblowers (hereinafter the Law) is an effective mechanism for the protection of whistleblowers and offers a new perspective in combating negative phenomena and creates an affirmative approach to the public interest. The most important component in this law is the guarantee of protection for anyone who will do whistleblowing of a practice or action that constitutes a violation of the law.

Law on Protection of whistleblowers, which is already in force, composed of 32 articles in which in detail regulates the entire whistleblowing procedure. So this law defines the rules and procedures of whistleblowing, the rights and protection of whistleblowers, as well as the obligations of public institutions and private entities related to whistleblowing.¹³ In addition to reporting violations by public sector institutions, this law also pays attention to the private sector, whose provisions have started to be implemented one year after the entry into force of this Law (in January 2020).

For the purposes of this law, a whistleblower is any person who reports or discloses information about a threat or violation of the public interest in the context of his/her own employment relationship in the public or private sector, and every whistleblower has the right to protect his/her identity during the whistleblowing process; maintaining the confidentiality of the source of the whistleblowing information, as well as protection against harmful actions. These rights are guaranteed to the whistleblower during the duration of the investigation, after the investigation procedure, as well as after the termination of the employment relationship. Also, according to this law, the whistleblower or the person who discloses the information may not be subject to criminal or civil liability or disciplinary proceedings due to its whistleblowing.

According to Article 13 of this law, there is internal, external and public whistleblowing. In the case of internal whistleblowing, both in the public and private sector, according to this article, the information is reported to the employer (the person responsible for receiving the whistleblowing). According to the provisions of this law, employer means any public institution and private entity.

Whereas, according to the law, the procedure for external whistleblowing for the public sector is initiated by reporting the information to the Anti-Corruption Agency, as the competent authority, while for the private sector the procedure is initiated to the regulators according to the areas of responsibility.

Article 17 of this law stipulates that the public employer who has more than fifteen (15) employees, and the private employer, who has more than fifty (50) employees, are obliged to appoint the responsible officer who is responsible for receiving and handling the whistleblowing.

However, this law has enabled the whistleblower to report directly to the head of the employer (head of the public or private institution), in case the employer has not appointed a responsible officer, if the employer has not defined and published internal procedures for receipt and treatment of whistleblowers, if the whistleblower has reasonable suspicions that the responsible officer is or may be involved in the suspected whistleblowing practice, if the whistleblower has

¹³ Law on Protection of whistleblowers. 2018.

reasonable doubts that the whistleblower due to any relationship or association with a person may be involved in the matter claimed in the whistleblowing, if the person is not suitable to be informed of the whistleblowing, as well as if the whistleblower has reasonable doubts that the internal whistleblowing procedures are not effective.

According to the final provisions of this law, the Anti-Corruption Agency for the public sector and the Labor Inspectorate for the private sector are obliged to initiate proceedings under the law for violations against employers and responsible officers who have not fulfilled their obligations under this law.

According to paragraph 6 of Article 17 of this Law, private entities are obliged to create internal acts to determine the procedure for receiving and handling whistleblowing cases. This means that the private sector institutions must adopt an internal act which within the private company would guarantee the rights and obligations deriving from the Law on Protection of Whistleblowers, respectively would determine the person responsible for receiving the whistleblowing, the procedure of whistleblowing as well as further handling of the case, within the scope of this law.

Such a legal solution has been accepted by the Republic of Northern Macedonia, where in the Law on Protection of Whistleblowers of R.N.M., in paragraph 6 of article 4 of this law, it is stated that internal whistleblowing in the private sector is regulated by an internal act.¹⁴ This law also obliges the Minister of Justice to adopt instructions for the adoption of internal acts (in paragraph 8 of Article 4). Meanwhile, unlike our law, the supervision over the implementation of the provisions of the Law on Protection of Whistleblowers of the Republic of Northern Macedonia, according to this law, is performed by the Ministry of Justice.

Whereas the Law on Whistleblowing and Protection of Whistleblowers of the Republic of Albania, in paragraph 3 of its article obliges the High Inspectorate of the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) to determine by instruction the structure, selection criteria and training of employees for review of the administrative investigation of whistleblowing of private entities¹⁵. According to this law, every public or private organization, according to the instructions of HIDAACI must approve special internal regulations for the procedure of reviewing the administrative investigation of whistleblowing and the mechanisms of protection of confidentiality.

Meanwhile, regarding the regulation of whistleblowing within the European Union, it should be noted that the European Parliament in 2019 has adopted Directive 2019/1937 on the protection of persons who report violations.¹⁶ Article 8 of this Directive obliges member states to ensure that private legal entities with fifty (50) or more employees establish channels and procedures for the internal reporting of information on infringements occurring in these institutions.

14 Official Gazette of the Republic of Northern Macedonia, no.196/15, 35/18). 2015. Law on Protection of Whistleblowers of the Republic of Northern Macedonia.

15 Republic of Albania - Assembly, 2016. Law no. 60/2016 on Whistleblowing and Protection of the Whistleblowers. Tirana.

16 European Union, 2019. DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law.

According to this directive, the procedures for reporting and tracking violations, both for the public and the private sector, shall guarantee the confidentiality of the reporting person, appoint a person or department competent to submit reports, provide clear and easy accessible information in relation to reporting procedures, as well as to provide a response to the reporting person within a reasonable time, which may not exceed 3 months after reporting.

Following the adoption of this directive, the member states of the European Union (as well as the states that are in the process of accession) have been obliged to adopt legal acts, respectively to adapt them to the spirit and purpose of the directive.

FOL, since 2019 has been engaged in monitoring the implementation of the LPW in the public sector, and since 2020 it has begun monitoring this law in the private sector. During the meetings it had with the Labor Inspectorate and some of the Chambers of Commerce, it noticed that this Law is still unknown to the private sector even though it entered into force in January this year. Given the challenges posed by the COVID-19 pandemic and the businesses being severely affected, it has been extremely difficult to conduct a more detailed monitoring of the readiness of businesses to implement this Law.

It should be noted that the formalization of whistleblowing as a genuine practice, accepted by the society that exposes and prevents crime and corruption, is already covered by the Law on Protection of Whistleblowers. As such, it is important and understandable that this Law should be constantly respected and promoted, especially in the private sector. It is therefore more than necessary that the institutional efforts be supplemented with an advocacy campaign which should be developed in terms of promotion and information. In line with the information and promotion of this Law, FOL has published the Handbook with 10 response scenarios for whistleblowing cases in the private sector, and this analysis of the current situation regarding the implementation of the Law in the private sector is an annex to the Guideline for whistleblowing in the sector private.

