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## Anti-corruption Legal Reform

An analysis of the Law on the Protection of Informants in Kosovo

Lëvizja FOL

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## Summary

This document analyzes the legal framework for the protection of whistleblowers in Kosovo and whistleblowing as something that helps in fighting corruption. The findings are as follows:

- The role of whistleblowers, based on the way how the whistleblowing is regulated and perceived by the society, is considered a key factor in fighting corruption.
- The Law on the Protection of Informants recognizes whistleblowers as informants, a term that has a negative connotation in the society, thus creating different concepts on whistleblowing.
- There is no government agency overseeing the implementation of the Law on the Protection of Informants, hence there is no assessment on its implementation.
- The Law on the Protection of Informants in Kosovo contains 11 Articles regulating the scope of the law, provisions on the responsible bodies for receiving the information and on the process of reporting, verification and archiving of information. However, there is a legal vacuum observed in these articles which makes the protection of informants in Kosovo deficient.
- Compared to legal frameworks on the protection of whistleblowers in countries of the region, the law on the protection of informants in Kosovo fails to regulate the key areas that ensure whistleblower protection, thus making it more difficult for whistleblowers to report wrongdoings at their workplaces.
- Main deficiencies of this law relate to the inappropriate title of the law, lack of clear definition of unlawful act, gaps in defining responsible bodies for receiving the information and non-punishment of responsible persons or authorities in case of retaliation against whistleblowers/ informants or in case of disclosure of the identity of whistleblower/ informant.
- The Law on the Protection of Informants should clearly define for whom the law applies, that is, employees, former employees, interns and contractors, both in the public and private sectors.
- It is necessary for the law to define and provide clear mechanisms for whistleblowing, recognizing internal, as well as external whistleblowing, to the responsible authorities.

- The Law fails to provide a clear process on what happens after receiving information from the whistleblower, and what are other routes that the whistleblower can follow.
- Furthermore, the law does not provide protective measures for whistleblowers in case of any punishment or retaliatory measure is undertaken against them.
- The Law on the Protection of Informants, though adopted to meet the requirements set by the international community, did not integrate best international practices that would enable protection of whistleblowers in Kosovo.

**An analysis of the Law on the Protection of Informants in Kosovo**

## **Executive Summary**

The European Commission Report<sup>1</sup> on Kosovo for 2016 emphasizes the shortcomings of the current law on informants, stating that it is not in line with international standards concerning the whistleblowing mechanisms and informant protection (EU Commission, 2016). In addition of being viewed as a law related to the rights of informants and protection of their security after the disclosure of information, this law has also a substantial impact in fighting corruption. With this analysis, Lëvizja FOL brings the attention on the need for amending this law, using it as an instrument to fight corruption, while always having the protection of informant security as a priority.

This document presents a brief normative analysis of the Law on the Protection of Informants, taking also into consideration the research conducted by Lëvizja FOL in 2013 on whistleblowing in public institutions. Furthermore, this analysis incorporates legal frameworks on whistleblowing in countries of the region for the sake of comparison in order to be able to see the shortcomings of current Kosovo law, and through them to come up with recommendations for enhancing the implementation and efficiency of current law on the protection of informants.

The whistleblowing cases registered in recent years have made several civil society organisations in Kosovo to deal with this issue. Many concerns have been raised related to legal arrangement for the protection of informants, the scope of this law and failure to uphold it. Subsequently, there are different opinions among civil society regarding the amendments to the said law. Therefore, this document includes also the positions and recommendations of some civil society organisations, in order to ultimately have a clearer picture on the existing and desired situation related to whistleblowing in Kosovo.

## **Introduction**

Whistleblowing has proved to be among the most efficient ways to fight crime and corruption (Worth, 2015). By disclosing information on abuses in institutions, whistleblowers help in reducing the abuse that are detrimental for the public interest, security, financial integrity and rule of law (TI, 2013)

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<sup>1</sup> Also known as Progress Report (lately as Country Report)

The Council of Europe believes there is a higher probability for individuals working in different companies or organisations to report wrongdoings or harmful practices that have an impact on level of corruption (Council of Europe, 2016). However, lack of reporting space and above all, lack of whistleblowers' protection policies for both inside and outside the workplace, exposes whistleblowers to retaliation, making them question the fact whether they should report the crime or not. Some of the most frequent forms of retaliation or counteraction to the exposure of information by whistleblowers are dismissals, threats, charges, arrest as well as more extreme forms like assaults or even murder (TI, 2013).

Although the whistleblowing is about public engagement for the general good, there is a negative perception in society for whistleblowers, who are often labelled as spies. Thus, it is very important when developing the legal regulatory framework to clearly define the term, in order to encourage the whistleblowing and for the society to recognize it as an act that has an impact on the reduction of corruptive activities.

Regarding the term "whistleblower"<sup>2</sup>, international organisations, but also different states that have legal frameworks for the protection of whistleblowers in place, use different names which, in fact, reflect the same purpose of whistleblowers. The name 'whistleblower' varies in different countries. Slovenia uses the term *žvižgač* (*one who blows the whistle*), in Poland civil society refers to it as *sygnaliśc* (*signaler*), Serbia uses the term *uzbunjivač* (*one sounding the alarm*), while in Russia until recently was used the term with negative connotation "spy". The term that is currently in use has the meaning of a person who reports violation of the law. Legislation in Albania uses the term *sinjalizues* (*signaler*), while in Kosovo the law on the protection of whistleblowers recognizes them as *informants*.

As an action, whistleblowing represents a deliberate and non-mandatory act of disclosing information, which appears in public, by a person who has had or has access to data or information<sup>3</sup>.

Countries of South-East Europe are in the first steps of establishing mechanisms for the protection of whistleblowers (Worth, 2015). However, there has been some progress in these countries since they have drafted laws and have continued designing legal frameworks for the protection of whistleblowers.

In 2011, Kosovo adopted the Law on the Protection of Informants. Until that time, the

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<sup>2</sup> Alb. "Fishkëllues"

<sup>3</sup>Jubb, P. (1999) Whistleblowing: A Restrictive Definition and Interpretation, Journal of Business Ethics Vol. 21, pp. 77-94.

issue of whistleblowers was partially regulated with other laws, like Criminal Code, Law on the Protection from Discrimination, Anti-Corruption Law, Law on Classification of Information and Security Clearances and Law on Kosovo Intelligence Agency. Though adopted to meet the requirements imposed by the international community, the Law on the Protection of Informants has failed to integrate best international practices for the protection of whistleblowers, subsequently making the whistleblower protection framework rather superficial.

## **Normative analysis of the Law on the Protection of Informants in Kosovo**

Law No. 04/L-043 on the Protection of Informants contains 11 articles and regulates the scope of the law, provisions on responsible bodies for receiving the information and the process of reporting, verification and archiving of information.

Article 1 states that the purpose of this law is to establish the legal basis for encouragement of officials to report unlawful actions. Law recognizes as informant any person, who, as a citizen or employee reports in good faith to the respective authority within public institution at central or local level, institutions, public enterprises or private for any reasonable doubts about any unlawful actions;

Basic principles presented in Article 3 of this law stipulate that “The rights of the whistleblower who reports/discloses in good faith unlawful actions of officials or responsible persons within public institutions at central or local level or within institutions, public or private enterprises are guaranteed”.

The same article further defines if the informant (whistleblower employee) is dismissed from work because of the disclosure of information, he is entitled to address the court, which shall reinstate him/her and shall order the institution where the informant has worked to provide him with a compensation for the damage he/she has suffered.

Public institutions at the central or local level, institutions, public or private companies are responsible for creating conditions for independent and unobstructed work for the person who has reported unlawful activities in that institution. In addition, the same Article 4 states that these institutions should protect the integrity, human rights and interests of informants who report unlawful actions.

Article 6 of this law defines that the informant submits information about the unlawful actions to the official person in charge for dealing with reported wrongdoings or to any other supervisor. While Article 8 states that after receiving a report/disclosure for unlawful actions, supervisor or the official person notifies the respective institution to deal with the issue in accordance with the applicable laws. The rest of the law defines that the whistleblower should be aware of the procedures to be followed regarding the information and that all materials should be kept at least for five years.

The law is not properly implemented due to the shortcomings that characterize this law, so the informants or whistleblowers, due to the lack of proper legal regulation for their protection, do not report unlawful actions in institutions where they work.

FOL Movement emphasizes that the main shortcomings of this law have to do with improper title of the Law on the Protection of Informants. Some of these recorded shortcomings are: lack of clear definition of unlawful action, gaps in defining responsible bodies for receiving the information and non-punishment of persons or responsible authorities in case of retaliation against a whistleblowers/informants or disclosure of whistleblower/informant identity<sup>4</sup>.

As stated above, Law on the Protection of Informants recognizes the person reporting or disclosing the information as an informant. The issue of title of the law is important because the name "informant" in social aspect gets a negative connotation and becomes like a "spy", thus resulting in the loss of the real meaning of the term "whistleblower" or signaler. The negative nuances of the term "informant" make the terms "reporting person" or "whistleblower" more appropriate and more acceptable terms, and this is also reflected as a recommendation in the report of FOL Movement<sup>5</sup>, but also in whistleblowing workshops<sup>6</sup> with civil society actors.

Law on the Protection of Informants defines the unlawful action as any action or inaction of a person by which are violated the legal provisions in force, either in the form of a criminal offence or minor offence. The law does not define or does not limit the scope of unlawful action. Article 3, paragraph 6 of the law defines that in case of risk for the security or integrity of whistleblower, protection is to be provided in accordance with the Law on the Protection of Witnesses. Article 4 of this law clearly defines the criminal offences, which among others include the criminal offence against official duty.

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<sup>4</sup> Lëvizja FOL. (2013). "Officials do not report (whistleblow) corruption". Policy Research

<sup>5</sup> Policy Research "Officials do not report (whistleblow) corruption" (2013)

<sup>6</sup> In 2016, FOL Movement organized a workshop in Durrës with civil society stakeholders where the institutional anti-corruption framework was discussed, with special focus on the Law on Protection of Informants.

In addition to this connection with the Law on the Protection of Witnesses, Law on the Protection of Informants does not mention in any article the corruption or any other criminal offence against official duty defined in Chapter 34 of the Criminal Code of Republic of Kosovo. Albania on the other hand, in 2016 has adopted the Law on Whistleblowing and Protection of Whistleblowers, which has to do only with whistleblowers of corruptive actions and means "... any illegal action or inaction, according to the applicable criminal law, in relation to any form of active corruption, passive corruption, misuse of official position or powers, exercising illegal influence in the performance of duties or decision making, misuse of state budget revenues, illegal gains of interest and any other similar act".

Generalization in scope makes the Law on the Protection of Informants not to be applicable by institutions or by the whistleblowers/informants themselves.

Law on the Protection of Informants has gaps also in the definition of responsible bodies for receiving the information. Article 6 defines that the informant shall submit information about the unlawful actions to the official person dealing with reported wrongdoings or to any other supervisor, but does not give any explanation for cases when such information implicates the superior, or when the institution does not have mechanisms for reporting irregularities. In contrast to Albania, where Article 10 of the Law on Whistleblowing and Protection of Whistleblowers defines that: "In every public authority that has more than 80 employees and private entity that has more than 100 employees, shall be assigned a responsible unit, which shall register, conduct administrative investigation and review whistleblowing, in accordance with this law." Article 5 of the Law on the Protection of Informants states that the whistleblower should report information and that employer or one of the supervisors, should provide to whistleblower protection, anonymity, integrity, from any form of mistreatment. The law does not foresee situations when the supervisor may be involved in the information disclosed by the whistleblower/informant, nor cases of retaliation against the whistleblower/informant.

What is noticed is the limitation of reporting only inside the institution where the information is disclosed. The Law does not define whether protection of whistleblower/informant applies if he/she disclosed the information to a third party which is not part of the institution where the whistleblower/informant is working.

Non-punishment of persons and responsible authorities in case of retaliation against whistleblower/informant or in case of disclosure of whistleblower's/informant's identity is another shortcoming of the Law on the Protection of Informants. All what the law

provides is paragraph 4 and 6 of article 3, which state that whistleblower may address the court in case he/she is dismissed because of the disclosure of information, and protection under the Law on the Protection of Witnesses in case of risk for the security and integrity of whistleblower or his/her family.

Countries of the region, on the other hand, in their legal frameworks for the protection of whistleblowers clearly define the sanctioning measures for persons or responsible authorities in case of retaliation against whistleblowers or violation of the obligation to protect confidentiality. In Albania, any retaliatory action against whistleblowers is punished with a fine between 300,000-500,000 leke, while the violation of the obligation to protect confidentiality is punished with a fine between 150,000-300,000 leke<sup>7</sup>.

In Macedonia, article 8(2) of the Law on the Protection of Whistleblowers<sup>8</sup> stipulates that institution where the information has been disclosed shall ensure protection for whistleblower, to prevent violations of his/her rights or any other action that may occur in retaliation for their disclosure. Further, the law defines that if article 7(2)<sup>9</sup> is violated, the responsible institution or person shall be punished with a fine between 3000-6000 Euro.

Croatia does not have a specific legal framework for whistleblowers, but it regulates some aspects of whistleblowing in some other laws, such as Labour Law and law on Civil Service. Law on Civil Service states that every civil servant can report suspicious cases of corruption to relevant authorities, and he/she should be guaranteed anonymity and protection from any kind of abuse<sup>10</sup>. Slovenia is also considered among the countries with most advanced legal framework for protection of whistleblowers, although it does not have a specific act on whistleblowers. In the Integrity and Prevention of Corruption Act it defines that in case the person reporting corruptive or unlawful actions has been exposed to retaliatory measures, (s)he shall have the right to demand from the employer reimbursement of illegally caused damage, and that Commission for Prevention of Corruption may provide assistance in this process<sup>11</sup>.

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<sup>7</sup> Law on Whistleblowing and Protection of Whistleblowers, Article 23, paragraph b and ç.

<sup>8</sup>[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)002-e)

<sup>9</sup> "The officer authorized to receive disclosures from whistleblowers shall be obliged to protect whistleblower data, i.e. data based on which the identity of whistleblowers can be uncovered, unless whistleblowers have agreed to the disclosure of such data, in accordance with the law regulating the protection of personal data."

<sup>10</sup>Vasiljevic, S. *Tasks and challenges: Making Whistleblowing work in Croatia*  
<http://www.whistleblowing-cee.org/countries/croatia/research/>

<sup>11</sup>Integrity and Prevention of Corruption Act Slovenia. Articles 23, 24, 25  
[http://www.regulatelobbying.com/images/Slovenia\\_Lobbying\\_Law-3.pdf](http://www.regulatelobbying.com/images/Slovenia_Lobbying_Law-3.pdf)

## **Positions of civil society regarding the Law on the Protection of Informants in Kosovo**

Whistleblowing cases in Kosovo that have been made public, although only a few, have made civil society organisations get engaged and request legal amendments that would ensure appropriate protection of whistleblowers of abuses and corruption cases. In the request forwarded to local and international institutions to undertake actions for encouraging whistleblowers and protection of whistleblowers in Kosovo by the Civil Society organisations, among others it has been requested to amend the law on the Protection of Informants in accordance with standards of European Court of Human Rights (ECHR), and treat the whistleblowing cases in accordance with those standards.

Cases of whistleblowing abuse and corruption that occurred during 2015 made the Kosovo Democratic Institute express concern related to how whistleblowers were treated by institutions, where there was violation of freedom of expression. In its request addressed to local and international institutions, KDI also requested to stop the frightening of whistleblowers. KDI has raised concerns also about the whistleblowing case of former prosecutor Maria Bamieh, who expressed suspicions for management of EULEX mission, requesting publication of procedures for whistleblowing and for the protection of whistleblowers<sup>12</sup>.

Regarding the current Law on the Protection of Informants, KDI has supported the initiative to amend the law, since the current law is not in line with European standards for the protection of whistleblowers<sup>13</sup>. In the report “Assessment of National Integrity System in Kosovo”, KDI makes a recommendation to encourage, through whistleblowing, the reporting of corruptive acts by public servants either through different trainings or internal awareness campaigns in public administration.

Similar positions were presented by organisation ÇOHU. Starting from the changing of the name from Law on the Protection of Informants to the Law on Whistleblowers, ÇOHU considers the external whistleblowing to be important and assigning one responsible institution for whistleblowing.

The law should contain provisions that ensure full protection of whistleblowers. Importance should be given to deadlines within which procedures start for addressing the issue of whistleblower by his/her supervisor and measures for starting external whistleblowing. In general, the law should be amended in line with European standards

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<sup>12</sup> KDI. (2015). “EULEX should support and not frighten corruption whistleblowers”. Press Statement

<sup>13</sup>Data from the interview with Mr. Artan Canhasi-KDI

defined in the recommendation of Council of Europe regarding the issue of whistleblowers.<sup>14</sup>

## Recommendations

1. In order to avoid negative perception, the name of the law should be changed from the Law on the Protection of Informants to Law on the Protection of Whistleblowers;
2. To clarify the scope of the law and apply it for all employees, former employees, interns and contractors from public and private sector, who whistleblow unlawful activities or activities harming the public interest;
3. To define clearly the spectrum of unlawful action that is subject of whistleblowing;
4. The Law should provide for clear whistleblowing mechanisms. The Law should recognize and protect internal whistleblowing, whistleblowing to the responsible authorities and external/public whistleblowing.
5. Whistleblower should be informed about three instances of whistleblowing:
  - I. Whistleblowing to supervisor or responsible person in whistleblower's workplace
  - II. In case there is no supervisor or if information implicates the supervisor, whistleblowing continues in the second instance, which is disclosure of information to the Anti-Corruption Agency (ACA).
  - III. In case the whistleblower does not receive a reply from ACA, he/she can expose the information to the public, including to other relevant institutions and/or media.
6. After whistleblowing to the responsible authority where the whistleblower works, this authority within 30 days should inform the whistleblower on measures undertaken in regard to the disclosed information, otherwise the whistleblower may expose the information to the Anti-Corruption Agency.
7. In order to get the protection that the law guarantees to whistleblowers, whistleblower should follow three instances of whistleblowing, with the exception of cases of serious crimes, when the information should be directly sent to the prosecutor's office.

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<sup>14</sup>Data from the interview with Mr. Arton Demhasaj-ÇOHU

8. Whistleblower should be provided with the possibility to consult with the Ombudsperson, in order to clarify if the possessed information or its disclosure is in the public interest or not. The person possessing the information will be labelled as whistleblower when it is determined that disclosure of information is in the public interest.
9. The Agency for Free Legal Aid should provide free aid to whistleblowers;
10. The anonymity and any other data on whistleblower should be protected, disclosure of which would risk the security and integrity of whistleblower or his/her family. Any whistleblower data that could help during investigation, should be provided only upon whistleblower's approval.
11. In case of disclosure of whistleblower's data, sanctioning measures shall be taken against the person or authority responsible for the protection of whistleblower's anonymity, in accordance with Article 79 of the Law on Personal Data Protection. Sanctioning instance will be the Basic Court, depending on the place where the whistleblowing occurs;
12. Definitions in the law should be provided in accordance with best European standards;
13. Whistleblowers should be protected from any punishing measure or retaliation that may come from the institution where (s)he works;
14. Burden of proof – the employer should hold the burden of proof and prove with founded proofs and convincing evidence that the whistleblowing was deliberately irresponsible. Employer should carry the burden of proof to prove in grounded manner that whistleblower has not experienced retaliatory actions;
15. Prohibition of criminal civil or disciplinary prosecution - whistleblowers who have reported respecting the rights, obligations and principles of this law should be protected from criminal, civil and disciplinary prosecution;
16. Whistleblowing for confidential and classified issues should be regulated in accordance with best European standards and defined that it applies only when the public interest is greater than the damage;
17. Regarding the whistleblowing cases, ACA and Prosecutor's Office should prepare annual reports on the number of whistleblowing cases and actions undertaken, always respecting the principle of anonymity of persons included in whistleblowing cases;
18. In order to protect the whistleblowers better, depending on the offence, the law should foresee financial sanctions for employers who act in contradiction with the law.

## **Annex**

### **Does the Whistle Blow?**

**An analysis of the framework for protection of whistleblowers in Kosovo**

## Introduction

Corruption remains one of the biggest challenges for Kosovo. On the grand level, it is an obstacle for consolidation of statehood, directly linked to prosperity of the country, its democratic nature and its European future. On the societal level, it remains an obstacle to a fair life as it spills over in all aspects, from competitiveness, to quality education, to travelling visa-free in the European Union. As FOL Movement's intensive work over the last five years demonstrate, the nature of corruption in Kosovo is systematic whereas the institutional fight against this phenomenon is weak – multilayered, often duplicated, hindered by the lack of political will – thus hardly efficient.<sup>15</sup> In the 2016 Corruption Scan report, FOL established that corruption is not merely a perception in Kosovo but rather a reality.<sup>16</sup> The report showed that more than 70% of the citizens believed there is corruption in the government while a third of them said they would pay a bribe to receive a public service.<sup>17</sup> Furthermore, the report indicates a correlation between the level of corruption and the inefficiency of the judiciary.

International organizations have echoed our findings, with Transparency International rating Kosovo in the 95<sup>th</sup> position in the world<sup>18</sup> while the Freedom House's Nations in Transit ratings show that public officials have a sizable involvement in the country's economy whereas efforts to fight corruption are often politically influenced.<sup>19</sup> Although latest efforts made by authorities to combat corruption have been noted and reflected in the European Commission's Country Report (formerly known as the Progress Report), they are yet again moves towards structural reforms of the legal framework which not necessarily are deemed to bring concrete results. After all, Kosovo is known for having the best laws and then failing to implement them. Indeed, a glance at the indictments and verdicts of corruption cases suffices to realize that Kosovo is still way far from having an efficient corruption fight. Recent data show that even in cases where authorities investigate corruption they are hardly ending up in indictments, let alone verdicts. During 2016, for example, only 29% of the cases were concluded with indictments, 23% with termination of investigations whereas as much as 48% were concluded with

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<sup>15</sup> See publications on the fight against corruption by Fol Movement, available at <http://levizjafol.org/folnew/publications/anti-corruption/>

<sup>16</sup> Fol Movement (2016) Corruption Scan 2016, Pristina, available at <http://levizjafol.org/folnew/wp-content/uploads/2016/11/SCAN-CORRUPTION-2016.pdf>

<sup>17</sup> Ibid

<sup>18</sup> Transparency International (2016), Corruption Perception Index 2016, available at [http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016)

<sup>19</sup> Gashi, K. (2016) Kosovo, in Freedom House, Nations in Transit, New York, available at <https://freedomhouse.org/report/nations-transit/2016/kosovo>

dismissal of criminal reports.<sup>20</sup> The country still needs to show concrete results in this aspect, which would translate to people involved in high-level corruption cases being placed behind the bars.

The last decade in Kosovo, as well as experience of other countries going through similar transitions, have shown that the institutional efforts to fight corruption are insufficient and that a societal mobilization is required in this aspect. Academic research has shown that in the countries where corruption is systematic, institutional reforms that enhance transparency and accountability are by all means indispensable part of any anti-corruption strategy, but that they would not work out without a long-term societal foundation.<sup>21</sup> The role of the whistleblowers, the way whistleblowing is regulated and the way it is perceived by the society, is considered to be a key factor in the fight against corruption. By disclosing wrongdoings, whistleblowers protect the rule of law, even if by doing so they might be breaching the rules of the organization where they work. Evidence from other countries suggests a correlation between the number of whistleblowers and the countries' ratings in the corruption indexes.<sup>22</sup> Furthermore, the most recent research has shown that whereas causes of corruption can vary, the tools to combat corruption include an expanded use of whistleblowing, which means incentives to encourage whistleblowing and the legal framework to protect them.<sup>23</sup> Even our own last few cases of whistleblowing in Kosovo, albeit with different outcomes, have shown that whistleblowers' role in the fight against corruption can be of immediate and important impact.

In this brief paper, we focus on exploring, reviewing and problematizing the encouraging incentives and the legal protection of whistleblowers in Kosovo. The aim here is not to provide a comprehensive review of legal means to regulate whistleblowing in the world, but rather to learn from best practices abroad whilst reviewing the domestic situation and reflecting on it. Thus, we take a pragmatic approach in reviewing best international practices and standards based on the most recent academic works, while using the abduction logic in order to compile a thorough analysis and useful recommendations on improving the environment for whistleblowers in Kosovo.

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20 Miftaraj, E. and Musliu, B. (2016) Rhetoric in Fighting Corruption, monitoring report of the treatment of corruption cases in Kosovo, Kosovo Law Institute, Pristina.

<sup>21</sup> Johnson, M (1998) Fighting Systemic Corruption: Societal foundations for institutional reform, *The European Journal of Development Research*, Vol. 10, No. 1, pp. 85-104.

<sup>22</sup> Ogunbamila, Bolanle (2014) Whistleblowing and Anti-Corruption Crusade: Evidence From Nigeria, *Canadian Social Science*, Vol. 10, No. 4, pp. 145-154

<sup>23</sup> Schultz, D. and Harutyunyan, K. (2015), Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia, *International Comparative Jurisprudence*, Vol.1, pp. 87-97.

First, we review the most current academic debates on whistleblowing, its definition, standards and controversies, in order to establish the analytical framework. Secondly, we review the best international standards set by institutions such as the European Union and the Council of Europe, but also international civil society networks that specialize in the field. Then, we engage in providing an analysis and problematize current setting of whistleblowers' protection in Kosovo by reviewing the legislative framework whilst reflecting on institutional and societal environments too. Finally, we provide a list of concluding recommendations which, stemming from the analytical framework of this paper and embedded in best international practices, shall serve as blueprint to enabling protection of whistleblowers in Kosovo

## **Defining whistleblowers: a contradictory term?**

The term whistleblower is rather a new one. Its initial usage in literature is noted since late 1970s with its usage jumping in the early 2000s, a jump which is continuing to this date.<sup>24</sup> It is usually referred to a person who exposes wrongdoings in an organization. In academic debates, whistleblower is usually defined according to four characteristics: 1) it is an act of making an information public; 2) the given information is disclosed to a third party outside of the whistleblower's organization (usually the media) who make it a public record; 3) the information must not be about trivial wrongdoings but rather have a wider implication and interest; and 4) the whistleblower must be part of the organization which's wrongdoings he or she is exposing (and not a journalist or a researcher).<sup>25</sup> In more focused research, whistleblowers are directly linked to the fight against corruption; a whistleblower is a person who discloses information about an organization in order to report and correct corruption.<sup>26</sup> This organization, by all means, can be a private or a public one. The discussions on whistleblowers in academia are usually grounded on the ethical grounds, those of efficient management and, particularly, grounds of freedom of speech. In this section, we review both salient and current academic debates as well as non-academic research conducted by global governance organizations as well as international civil society.

When conceptualizing whistleblowers, academics usually make sure to emphasize and distinguish what whistleblowing is not. In this regard, whistleblowing is seen as

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<sup>24</sup> Google Books, NGram viewer

<sup>25</sup> Johnson, R. A. (2003) *Whistleblowing: When it works and why*. Lynne Rienner Publishers: London.

<sup>26</sup> Schultz, David and Harutyunyan, Khachik (2015), *Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia*, *International Comparative Jurisprudence*, Vol.1, pp. 87-97.

'deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information'.<sup>27</sup> Both, deliberate and non-obligatory features here are of crucial importance, as they distinguish whistleblowers from those who could publish information by mistake, as well as all officials who have a duty to report wrongdoings in organizations as per regulatory frameworks. Also, the term is usually stripped off features that categorize individuals for whom the society has a different obligation to protect, such are witnesses in court proceedings for example.

One of the most important distinctions, however, is that between whistleblowers and informants. Whereas informants are usually perceived to be individuals who are themselves involved in wrongdoings and use the disclosure of information to reduce their liability for it, whistleblowers are usually perceived as the 'good people' who witness wrongdoings and want to expose them. Informants, thus, are often equated with 'snitches'.<sup>28</sup> Furthermore, informants often require some favors for their act of disclosing information, whereas whistleblowers do not.

The academic debates are important not only in terms of providing meaning to whistleblowing and whistleblowers as relatively late phenomena, but also in terms of problematizing societal, legal and ethical issues related to them. In this way, they are paramount to regulations regarding protection of whistleblowers.

In the realm of justice the definitions of whistleblowing and whistleblowers are no less debatable. Whereas some leading global institutions like the Council of Europe and its European Court of Human Rights in Strasbourg have set some basic principles on defining and protecting whistleblowers, many countries have adopted specific legislation to regulate this activity while global anti-corruption watchdogs and numerous non-governmental organizations advocate for continuous improvement of climate for whistleblowers throughout the world. Cases, laws, international NGO reports as well as academic works are used to determine the 'best international practices' for regulating whistleblowing. Although a consensus on the details of such a topic could seem implausible, in a broader sense practices and standards are easily captured.

European Court for Human Rights, for example, has ruled on several occasions on cases of whistleblowers against states. The first verdict on the topic was the 2008 case *Guja v.*

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<sup>27</sup> Jubb, P. (1999) Whistleblowing: A Restrictive Definition and Interpretation, *Journal of Business Ethics* Vol. 21, pp. 77-94.

<sup>28</sup> See for example, Natapoff, A. (2004) Snitching: The institutional and communal consequences, *University of Cincinnati Law Review*, Vol. 73.

Moldova, in which a communication officer of Moldova's prosecution blew the whistle regarding political influence over prosecutors, for which action he was consequently fired. The ruling of the Court, in Guja's favour, as it stated Moldova violated Article 10 of the European Convention of Human Rights, also set the six principles under which it evaluates whistleblowing cases. Briefly, a whistleblower will be protected by the Court only if 1) the organization does not have whistleblowing policies or reporting mechanisms are insufficient; 2) there is public interest at stake; 3) the information is true and authentic; 4) the whistleblower acts on good faith; 5) punishing whistleblowers can have consequences on their careers; and 6) public interest overcomes the image of the organization.<sup>29</sup> These legal conditions have been used in every whistleblowing case of the Court and mirror, to a great extent, the academic discussions reviewed earlier herein. As such, they represent a solid base to define and identify whistleblowers.

## **Regulating Whistleblowing: A Russian Doll Problem**

The need to regulate the legal framework that protects whistleblowers is intrinsic to the importance of whistleblowers in the fight against corruption and misdeeds. Such a need became especially vivid as the number of whistleblowing cases grew while the treatment of whistleblowers varied. Issues for which a protection framework is needed are, among others, fear of retaliation, legal liability for blowing the whistle, as well as any cultural constraints that whistleblowers might face.

It is surprising that to this date, the number of countries that have special laws on whistleblowers merely passes 30. This does not mean that whistleblowing is not protected by law, but simply it is covered by other sectoral laws. Even more surprisingly, countries of the European Union (EU), which is largely seen as a leading international actor when it comes to liberal values, particularly freedom of speech and human rights, have no uniformed standards when it comes to legislation on protection of whistleblowers. Indeed, by 2013, when Transparency International published a report on legal protection of whistleblowers in Europe, only four EU member states had advanced legal frameworks for protection of whistleblowers.<sup>30</sup> Out of other countries, 16 had partial legal protections whereas seven had none.<sup>31</sup> Whereas the practices from the best four

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<sup>29</sup> For a wider elaboration, see Kusari, F. (2015) Sinjalizuesi I dyfishte Thaci [Thaci, the double whistleblower], Sbunker, 8 October 2015, <https://sbunker.net/teh/42789/sinjalizuesi-i-dyfishte-thaci/> [in Albanian only].

<sup>30</sup> Worth, M. (2013) Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU, Transparency International.

<sup>31</sup> Ibid.

performers – Luxembourg, Romania, Slovenia and the United Kingdom – shall also serve as a framework-exemplar for analysis in the next section, it is important to further review practices in the international setting.

In 2014, Council of Europe (CoE) has recommended to its member states to have a regulatory framework for protection of whistleblowers and published a brief guide and principles for implementation at the national level.<sup>32</sup> The document defines basic concepts such as whistleblowers and public interest, and provides guidance in regulating issues such as confidentiality, protection against retaliation, channels for disclosures of information, advice and awareness, etc. The guidance recommends that national legislative frameworks should foster an environment that encourages whistleblowing in an open manner, to the extent where individuals should feel free to raise public interest concerns. It further provides that authorities should investigate an act upon results of whistleblowing cases promptly, while whistleblowers should be entitled to have their identity maintained confidential. Most importantly, whistleblowers should be protected against retaliation of any form and despite the results of their disclosure.

Whereas the CoE recommendations provide sufficient guidance for regulating national legislative frameworks, its implementation might be more difficult that it seems. Such implementation depends first of all, by all means, on political will. Whether or not whistleblowers are protected in a society depends first of all on the will to have a solid legal framework for their protection and secondly on the will to implement such a framework. But even in cases where there is political will, different issues emerge, some of which are very basic. Thus, another depending variable takes us back to the lessons drawn from the academic debate, as it has to do with the terminology used to describe whistleblowers as well as the understanding of whistleblowing as activity are two basic ones. As Transparency International finds, whistleblower is not a word which is universally translated into other languages, which created problems with how the activity of whistleblowing is perceived, as in EU languages, translations usually contain some connotations, sometimes positive but mainly negative ones.<sup>33</sup> Protection of whistleblowers, thus for, depends on a broader functionality of a societal mechanisms that are interlinked, which makes it difficult to regulate once and for all. The obstacles in a way reappear similarly to Russian dolls, which are designed in such a way that one fits inside each other. Similarly, when regulating whistleblowers' protection, or any anti-

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<sup>32</sup> Council of Europe (2015) Protection of Whistleblowers: A brief guide for implementing a national framework, Strasbourg.

<sup>33</sup> Worth, M. (2013) Whistleblowing in Europe: Legal Protection for Whistleblowers in the EU, Transparency International.

corruption policy for that matter, new problems appear once those that are identified are resolved. This is why any effective protection framework must be under continuous monitoring and review, in order to ensure that regulations serve their purpose, that is fight against corruption.

## **Muting the Whistle: Kosovo and the Protection of Informants**

Now that we have established some basic principles on the topic of protection of whistleblowers and elaborated on key concepts and international best practices and standards, we have obtained elements of a framework through which we shall assess whistleblowing in Kosovo.

At a glance, Kosovo could seem to have an advanced protection for whistleblowers, since it is one of the few countries in Europe to enact a specific law for such protection. Additionally, through its Constitution, Kosovo directly applies European Convention of Human Rights as well as case-laws by the European Court of Human Rights.<sup>34</sup> A bleak picture emerges, however, once such a legislation is unpacked, before even entering the review of its implementation. First of all, the Law on Protection of Informants causes confusion, making Kosovo yet another case of translation problems. Since no equivalent of whistleblower exists in Albanian, the word informant (informatory) is used. To make things more complicated, the term whistleblower is used in the provisions of the English version of the law. In addition to being problematic for having a negative connotation, as it was used to label 'snitches' of the Milosevic regime, the term also does not reflect a societal consensus. Consequently, experts have taken own initiatives in coining the term 'sinjalizuesi' (the one who signals) or 'kallxuesi' (the one who tells).<sup>35</sup> This is yet another indicator that laws in Kosovo are promulgated without policies, driven in order to fulfill conditions set by the international community, without any prior consultative process with the society. As such, people in Kosovo today have different, if not opposing, conceptions of whistleblowers.

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<sup>34</sup> See Article 22 of the Constitution of the Republic of Kosovo, Available at: <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

<sup>35</sup> The term 'sinjalizuesi' is promoted by the organization Article 10, see for example <https://sbunker.net/te/42789/sinjalizuesi-i-dyfishte-thaci/> whereas the term 'kallxuesi' is promoted by BIRN, see for example <http://kallxo.com/kallxuesi-murat-mehmeti-nderohet-me-cmimin-per-guxim-qytetar/>

Indeed, Fol Movement already noted the semiotic issues with the name of the law in a policy brief published back in 2013.<sup>36</sup> The choice of the word to describe whistleblowers, the brief said, provides them a negative connotation, whereas uncertainties regarding means to publish information create confusion which the judiciary is likely not able to clear out. All the problems identified in this brief still stand, as no amendment process of legislation was ever initiated. Further, the brief also problematized the fact that the law was too general.

Indeed, just by taking a look at the Law on Protection of Informants, one remains disappointed with its 11 articles. It is consisted of a total of 1200 words spread over 4 pages. As such, in spite of providing some general protection principles for whistleblowers, which adhere some international best practices, it remains short when it comes to provision of a functional protection framework.

The positive aspects of the law are quite a few. The law adheres to some of the basic standards when it comes to protection of whistleblowers from legal consequences as well as guaranteeing their anonymity, and, most importantly, regulates both the public and the private sector. This protection, however, is merely formal as the law does not provide a comprehensive protection. For example, while whistleblowers are protected from retaliating legal actions, no protection is offered to them regarding private retaliations. In any case of retaliation, whistleblowers must take individual legal actions against their organization. This represents another failure to meet international standards, since the burden of proof remains with the whistleblowers and not with organizations.

Such a protection becomes even more problematic given that the law does not provide sufficient measures to protect anonymity of whistleblowers. Although the issue of anonymity is broadly regulated, the law provides no mechanisms to ensure anonymity is maintained during proceedings, neither does it provide for punitive measures of anybody who may breach anonymity principles.<sup>37</sup>

Most of the provisions of the law are broad, which, having in mind no official legal commentary was published nor there was any informative campaign or debate on the matter, creates problems in the implementation phase.

What local commentators have already highlighted, however, is that the law does not foresee disclosure of information through the media, but merely through official

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<sup>36</sup> Fol Movement (2013) Officials do not whistle corruption: the level of knowledge and experiences of public officials about the Law on Protection of Informants. Policy Brief.

<sup>37</sup> Ibid

organizational channels as well as law enforcement.<sup>38</sup> Further, the law does not oblige organizations to set up internal whistleblowing reporting channels, which disables whistleblowers from engaging in internal whistleblowing within organization.<sup>39</sup> As such, it neither reflects practices from leading countries like Luxembourg and Slovenia, nor the international standards set by the Council of Europe. In other words, it fails to truly enable whistleblowers.

All these problems make the regulatory framework on protection of whistleblowers in Kosovo partial and incomplete, as none of other laws that have provisions of whistleblowing, such as Criminal Code, Law Against Corruption, Law on Kosovo Intelligence Agency, Law on Classification of Information and Security Clearances or Law on Protection from Discrimination, fill any of the gaps identified herein. The Law on Protection of Informants, thus far, also fails to serve as an integrative law that would functionalize all other legislative provisions when it comes to protection of whistleblowers.

## **For whom the whistle blows?**

Now that we have reviewed the legislative framework whilst reflecting on societal environment, we move to further expand our understanding of protection of whistleblowers in Kosovo by learning from FOL movement's own experience, but also by problematizing some key indicators as well as some key cases.

Here, first of all, it should be noted that the issue of whistleblowers and their protection was not given a high priority by Kosovo authorities. In October 2016, FOL movement organized a seminar on the matter, whereby policymakers agreed with civil society organizations that the current legal framework needs improvements. The seminar shed light also on some other problematic aspects regarding this framework, with the foremost being the fact that no government agency identifies as the sponsor of the law. This means that no government agency whatsoever is in charge of supervising the implementation of the law. Consequently, no assessment on the implementation of the law have been made. Furthermore, it was noted during the seminar that the mechanisms for

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<sup>38</sup> Kusari, F. (2015) Sinjalizuesi I dyfishtë Thaçi [Thaçi, the double whistleblower], Sbunker, 8 October 2015, <https://sbunker.net/te/42789/sinjalizuesi-i-dyfishte-thaci/>

<sup>39</sup> Ibid.

whistleblowing as provided by the law are neither sufficiently covering the cultural aspects of the society nor are they sufficiently implemented.

It is also important to repeat some of the findings of our 2013 policy brief which indicate the worrying level of lack of knowledge and lack of basic information regarding whistleblowers by public authorities. Based on a survey with public officials in both central and local level, Fol Movement had shown that more than a quarter of them were not aware of the existence of the Law on Protection of Informants.<sup>40</sup> Even more worrying were the data regarding the level of knowledge of the law, where only 15% of the respondents said they had a very good knowledge of it. Given that no systematic awareness raising campaign has been carried out since then, it is very likely that the situation remains unchanged since 2013.

What raised awareness on whistleblowing, however, were a few important cases where individuals decided to blow the whistle even though unsure of legal protections. Furthermore, most problems with the legal framework and its implementation were revealed precisely in such cases.

Although there are no systematic data regarding whistleblowing cases in Kosovo, a mere peak at the daily press indicates that most of important journalism in the country is based on leaked information. Indeed, the state of media freedom in Kosovo improved slightly precisely due to intensive efforts of journalists and editors in the fight against corruption and organized crime, where leaked information was crucial. The fact that anonymous officials leak information about wrongdoing to the press, however, is a product of relationships between journalists and the sources and not necessarily one of an incentivizing environment for whistleblowing. As the following cases will show, when identities of whistleblowers are not kept secret, retaliation happens and the law fails to protect whistleblowers from it.

Whistleblowing are known to the Kosovo public, from revealed information about wrongdoings at the public University, to criminal activities in the public health sector, to enormous expenses of public servants that are revealed by the press every week, although they might not necessarily be perceived as a special category by the society. The two most prominent cases, however, are those of Abdullah Thaçi and Murat Mehmeti, both revealing the problems with protection framework elaborated earlier herein.

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<sup>40</sup> Fol Movement (2013) Officials do not whistle corruption: the level of knowledge and experiences of public officials about the Law on Protection of Informants. Policy Brief.

In 2012, Abdullah Thaçi, an employee of Pro Credit Bank in the town of Prizren, disclosed information about bank transactions of a public officials in the Municipality of Prizren showing that the official had abused public funds. Such an action, however, was forbidden by the bank's internal rules as well as by Kosovo law. Although Thaçi's disclosure led to an indictment of the official who was abusing with public funds, his employer fired him and sued him for revealing commercial secrets. In 2015, the Basic Court of Prizren ruled in favor of the bank and punished Thaçi with 5,000 euros. Neither the Law on Protection of Informants, nor the Constitutional provisions on freedom of expression were taken into account by the court during the proceedings, thus it can be concluded that the Kosovo system failed to protect Thaçi in practice.

In 2016, Kosovo Tax Administration inspector Murat Mehmeti disclosed information about a systematic tax evasion scheme set up within this institution, by his colleagues, through which many companies were profiting illegally. Mehmeti was demoted from his position upon raising the issues internally and only then decided for a public disclosure. Although no concrete retaliation against Mehmeti was taken, he remains insufficiently protected, as the law provides no automatic protection, nor does it provide for anti-retaliation measures.

These two salient cases draw the details of a relatively grim picture when it comes to protection of whistleblowers in Kosovo, as they indicate that uninformed officials cannot properly implement even those parts of legal framework that ensure basic protection.

## **Conclusions and recommendations**

As this brief paper has shown, Kosovo fails, to a great extent, to ensure protection of whistleblowers. The current legal framework for protection of whistleblowers is rather enacted hastily and as such does not escape from Kosovo's systematic problems with top-down legislation that does not reflect societal values and is not based on a thorough policy. As such, the Law on Protection of Informants is not embedded in Kosovo's society; it has been enacted without a consultative process thus the authorities and the society as a whole fail to understand it, let alone properly implement it. As such, the promulgation of the law could have served to tick a checklist of conditions set by the international community for Kosovo, but it fails to serve its aim, that is to protect the whistleblowers.

From the very term used in Albanian language for whistleblowers that provides a negative connotation, to the very limited scope of the law and its broad nature, to its failure to integrate other laws in protecting whistleblowers, the Law on Protection of Informants seems to have created only confusion. The failure of authorities to take into account, use and further elaborate the provisions of the law in the most salient cases of whistleblowing is a strong indicator that amending this law is by all means necessary, yet by no means sufficient. For Kosovo to ensure a solid protection of whistleblowers in accordance with best practices and international standards, a thorough political and societal process is required. It is required the engagement of the Ministry of Justice to revise the policies of Kosovo regarding the protection of whistleblowers. Through a comprehensive and detailed policy process, the Ministry and the Government need to consult all relevant stakeholders, especially civil society organizations. The aim of this process should not only be the amending of the Law on the Protection of Informants, but rather to redesign the policies of Kosovo on the protection of the whistleblowers, starting from the terminology, the explanation of basic concepts and the compatibility with the standards set by the Council of Europe. A more open process of social consulting and informing should be the cornerstone of the whole process.

Law on Protection of Informants with recommended changes

**LAW No. 04/L-043  
ON PROTECTION OF INFORMANTS**

**Assembly of Republic of Kosovo,**

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

Approves:

**LAW ON PROTECTION OF INFORMANTS  
[ To be changed to Law on Protection of Whistleblowers ]**

**Article 1  
Scope of Law and Purpose**

The purpose of this law is creation of the legal basis for encouragement of the officials to present the unlawful actions.

[The scope of the law needs to be specified- the law must apply to employees, former employees, interns and contractors, both in the public and private sector, who blow the whistle on illegal activities or activities that harm the public interest.]

**Article 2  
Definitions**

1. Terms used in this law shall have the following meaning:

- 1.1. **Whistle blower** - any person, who, as a citizen or an employee reports in good faith the respective authority within public institution at central or local level, institutions, public enterprises or private for any reasonable doubts about any unlawful actions;
- 1.2. **Public institutions at central and local level** - are:
  - 1.2.1. Highest institutions of the Republic of Kosovo (Assembly of Kosovo, President of Kosovo and Constitutional Court of Kosovo);
  - 1.2.2. Judicial and prosecutorial authorities (Kosovo Judicial Council, Kosovo Prosecutorial Council, Courts, Prosecutions);
  - 1.2.3. Highest state administration authorities (Government as a whole, Prime Minister, Deputy Prime Ministers and Ministers);
  - 1.2.4. Highest state administration bodies (Office of Prime Minister and the Ministries);
  - 1.2.5. Central state administrative bodies (subordinate bodies of the state administration performing non-ministerial tasks or other administrative tasks);
  - 1.2.6. Local state administration bodies (municipal bodies of the state administration);
  - 1.2.7. Independent state administration bodies (legal entities established to perform

activities of state administration which require in the public interest a high degree of independence);

1.2.8. Independent institutions provided for in Chapter XII of the Constitution of Republic of Kosovo and

1.2.9. Other public institutions established by law;

1.3. **Institution** - a public institution or private educational institution, health institution etc, established by law;

1.4. **Public and private enterprises** - the public and private enterprises established according to the Law on Business Associations and the Law on Business Organizations;

1.5. **Official Person dealing with reported wrongdoings** - a person, who may be authorized with a special employer's decision, within the public institution at a central and local level, institution, public enterprise or private, to act upon whistle blowers' information.

1.6. **Unlawful action** - any action or inaction of a person by which are violated the legal provisions in force, presented in a form of a criminal offence or violence.

[The unlawful action must be specified in order not to be limited only in criminal acts or minor offense]

1.7. **Information in the public interest** - any information concerning violation of the laws, rules of professional ethics and principles of good administration provided in good faith in order to preserve the interest of the state or general public interest.

[The possibility of consultation with the Ombudsperson should be provided, as to whether the information and its disclosure is in the public interest. Legal Aid Agency should provide free help for whistleblowers]

### **Article 3 Basic Principles**

1. The rights of the whistle blower who reports/discloses in good faith unlawful actions of officials or responsible persons within public institutions at central or local level or within institutions, public or private enterprises are guaranteed.

2. Whistle blower disclosing unlawful actions should act in good faith and should reasonably believe that the facts and information given in the disclosure are true.

3. Whistle blower who discloses unlawful actions in good faith shall not be subject of punitive or disciplinary measures, dismissal or suspension from work and shall not be exposed to any form of discrimination.

4. Whistle blower employee who was subject to discriminatory measures, including dismissal from work, is entitled to address the competent court, which, if proven that the whistle blower employee has been dismissed because of the disclosure of information, shall reinstate him/her and shall order the public institution at central or local level, institution, public or private enterprise to provide him with a compensation for the suffered damage.

5. Whistle blower's anonymity is guaranteed.

[The anonymity of the whistleblower and the person in relation to whom the signaling is to be maintained, must be guaranteed.]

[In case of disclosure of whistle blower's data, sanctioning measures shall be taken against the

person or authority responsible for the protection of whistle blower's anonymity, in accordance with Article 79 of the Law on Personal Data Protection]

6. If in case of disclosure of information about the commission of serious criminal offence, there is a potential risk for the security and integrity of the whistle blower and his/her close family members and to a larger scale to his/her property, whistle blower's protection is to be provided in accordance with the Special Law for Protection of Witnesses through the methods stipulated by this law.
7. While observing the principles of legality and good administration public institutions shall carry out the necessary checks pertaining to whistle blowers' disclosure of information about the commission of unlawful actions.
8. Regardless of the form and content of the whistle blowers' disclosure of unlawful action it shall be considered as an official complaint. Response to the whistle blower's disclosure shall be prepared by applying accordingly the procedures pertaining to the responses given to the parties, who file official submissions/ complaints to public administration bodies.

#### **Article 4** **Responsibilities of public institutions at central and local level, institutions, public or private enterprises**

1. Public institutions at central or local level, institutions, public or private enterprises are responsible to:
  - 1.1. create conditions for an independent and unhindered work of the person who reported potential unlawful actions;
  - 1.2. create provisions pertaining to the protection of integrity, the rights and interests of whistle blowers who are reporting unlawful actions;
  - 1.3. receive reports/disclosures about potential unlawful actions and implement the procedure in accordance with this Law;
  - 1.4. preserve material and personal evidences by which is proved the unlawful action.

#### **Article 5** **Disclosure and decision upon unlawful action**

1. Whistle blowers who doubt for unlawful actions should report the information.
2. Employer or one of the supervisors, should, towards the whistle blower who has reported the unlawful actions, ensure his/her protection anonymity, integrity, from any other form of mistreatment.
3. Protection provided for by paragraph 2 of this Article is excluded when whistle blower in bad faith and willingly reports /discloses untrue information.

#### **Article 6 Delivery** **of information**

1. Whistle blower shall submit information about the unlawful actions to the official person dealing with reported wrongdoings or to any other supervisor.  
[The procedure of whistleblowing must be specified, hence having three instanced of whistleblowing: Whistleblowing to supervisor or responsible person in whistleblower's workplace  
In case there is no supervisor or if information implicates the supervisor within 30 days from the disclosure, whistleblowing continues in the second instance, which is disclosure of information to the Anti-Corruption Agency (ACA).

In case the whistleblower does not receive a reply from ACA within 30 days, he/she can expose the information to the public, including to other relevant institutions and/or media.]

2. Information must be understandable and should contain personal data of the person against whom the report is filed and the evidences they possess.

3. Unlawful actions may be reported/disclosed in the following ways:

3.1. in writing;

3.2. through postal services or through the e-mail; and

3.3. orally.

4. When the report/disclosure is presented orally, the official person compiles the report/disclosure and the same one shall be signed by the whistle blower and the official.

#### **Article 7**

##### **Admission and Registration of Reports on Unlawful Actions**

1. Each supervisor or official shall record the admitted report/disclosure of unlawful actions. The recording should contain the following:

1.1. admission date;

1.2. name and last name;

1.3. the address;

1.4. institution of the reporting person; and

1.5. a short summary of the report/disclosure;

#### **Article 8**

##### **Verification and processing of reports/disclosures**

After receiving a report/disclosure for unlawful actions, supervisor or the official person notifies the respective institution to deal with the issue in compliance with the laws in force.

[Burden of proof falls on the party which is being signaled on potential law violation]

#### **Article 9 Reporting**

##### **unlawful actions**

1. Official person or supervisor, on wrongdoings, is obliged to inform in writing the whistle blower on procedures that were taken regarding the report.

2. Official person or supervisor shall inform the manager of the institutions about the results of the implemented procedures and about all conclusions.

#### **Article 10**

##### **Document Archiving**

The head of the institution takes measures for archiving all reports/disclosures of the wrongdoings in the institution headed by him/her. The materials will be stored for at least five (5) years.

**Article 11 Entry  
into force**

This law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

**Law No. 04/L-043  
31 August 2011**

**Promulgated by Decree No.DL-031-2011, dated 31.08.2011, President of the Republic of Kosovo  
Atifete Jahjaga.**

