FOL

Handbook with 10 response scenarios for whistleblowing cases in the private sector

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Content

This document is one of the products of the project “Whistleblower, the law protects you”, which aims to contribute directly to the construction of bridges and communication channels between various institutions and the private sector. The document aims to present ten (10) response scenarios in cases of whistleblowing in the private sector.

SCENARIO #1:

Whistleblowing for non - payment of taxes

On the contrary, the director of the corporation constantly stated in meetings that “one should be careful in relation to the state, not to have any evasion in relation to taxes and duties.” Bledi and Zana later realized that this deviation had been made in coordination between the Chief Financier and the General Manager.


TATIMET

SCENARIO #1:

Whistleblowing for non - payment of taxes

Assumed facts:

Bledi and Zana have worked for two (2) years in the public sector as Junior Auditors in the National Audit Office (NAO). Three (3) months ago Zana had seen an announcement for two positions in internal audit in the Company "Rich Corporate" based in Prishtina, which operates and provides services and products throughout Kosovo and the region. After reviewing the vacancy criteria, the announced positions seemed quite attractive in terms of job responsibilities and financial compensation. They applied and were hired in the Central Audit Department at this company. During their work, they noticed that the corporation had not submitted taxes to state bodies. The company did this by distorting the financial statements data to avoid public taxes. For this they had undeniable evidence even though only suspicion of these violations was enough to start whistleblowing. But, they realized in the meantime that this was done without the knowledge of the executives of the "Rich Corporation" Company. On the contrary, the director of the corporation constantly stated in meetings that "one should be careful in relation to the state, not to have any evasion in relation to taxes and duties." Bledi and Zana later realized that this deviation had been made in coordination between the Chief Financier and the General Manager. Being auditors they had wide access to corporate documents and communications. During an audit they noticed that these company officials had exchanged emails proving tax evasion and distortion of financial data in order to "increase the company's profitability and reduce unnecessary costs that can be avoided without major problems."

Zana and Bledi are auditors with high professional integrity and work ethic which they do not want to compromise in any case. They were informed about the whistleblowing in general. When they worked in the National Audit Office they had held a training on whistleblowing in the public sector. But they now want to know if they are protected by the law, if they decide to present themselves as whistleblowers in the private sector? Also, they ask if the whistleblowing should be addressed to an authorized party or disclosed publicly?

Actions that can or should be taken

The first question that needs to be addressed is whether they enjoy legal protection to present themselves as whistleblowers in the private sector? It is noted that since the first provisions of the Law has defined that "The purpose of this law is to enable the whistleblowing of violations in the public and private sector and the protection of whistleblowers." It is therefore clear that whistleblowing in the private sector is protected and guaranteed under the provisions of the Law on the Protection of Whistleblowers. But addressing this question is not enough to determine the actions that should or can be taken.

Next we need to address the next question that Bledi and Zana have raised. The question was whether the whistleblowing should be addressed to an authorized party or disclosed publicly? The law has defined three whistleblowing possibilities: (i) internal; (ii) external and c. (iii) public (disclosure).

Zana and Bledi can choose one of these ways for whistleblowing. Internal whistleblowing is done to the employer. In this case, Bledi and Zana, if they choose this type of whistleblowing, could turn to the company "Rich Corporation". According to the Law, internal whistleblowing shall be done to the responsible official (which according to the Law means "the person appointed by the public institution or private entity to receive and handle the whistleblowing"). However, it should be noted that the Law has set a criterion for private entities regarding the obligation to have such an official. Article 17 paragraph 1 of the Law stipulates that only private entities with over fifty (50) employees are obliged to appoint the responsible official. Therefore, Bledi and Zana should consider this element to know if they have the opportunity to address this to the responsible official within the institution.

Another way that Zana and Bledi can use is the direct whistleblowing to the head of the private entity according to paragraph 4 of article 17 of the Law. In this case this seems more appropriate as the corporation may not have officials responsible for whistleblowing, or even if it does, it may be closely controlled or involved with the parties involved in the fraud. In this case, given that Bledi and Zana had realized that the Director of the corporation was against irregularities in relation to taxes and duties, they can address it to the Director of the Corporation directly in accordance with Article 17.

Zana and Bledi may also consider external whistleblowing. This can be done before, in parallel or after internal whistleblowing. External whistleblowing according to the law is "Reporting information to the competent authority". The law stipulates that "The whistleblower can make external whistleblowing after performing internal whistleblowing or direct external whistleblowing". This provision is important because it does not oblige whistleblowers to use internal whistleblowing before doing external whistleblowing. This is because if it were such a criterion, it could give a chance to private entities (companies) to avoid, or damage the evidence and testimonies that are the object of external whistleblowing.

With regard to external whistleblowing in the private sector, the Law stipulates that whistleblowing to regulators according to areas of responsibility is implemented in accordance with the procedures provided for internal whistleblowing. As for which regulators they can turn to if they choose this whistleblowing given the scope of violations Bledi and Zana, regulators in this area are: Tax Administration of Kosovo (TAK), respectively the Office for Fines and Administrative Penalties (OFAP) or any other department as instructed by TAK. In parallel, they can also address the State Prosecutor or the Kosovo Police, the relevant Department for Economic Crimes. It should also be said that Article 19 of the Law should be read in conjunction with the Criminal Procedure Code of Kosovo which defines the obligation of everyone to report criminal offenses to the Police and the Prosecutor.

SCENARIO #2:

Whistleblowing the mismanagement of justice

“Look, Genc, I know that Lawyer has informed us that we have no chance to win the case in Court. But we have no chance of surviving unless we win the 47 Million tender. I have nothing else to do. Someone told me that with 120 thousand euros this can be done in Court. We return the case to zero and then look at what we can do in the PRB. Do you understand? You need to find a way to record this 120 thousand euros in the accounting books.”

SCENARIO #2:

Whistleblowing the mismanagement of justice

Assumed facts:

Genci works as an accountant in the company "Tender LLC.". This company deals with the implementation of projects and services funded by the Ministry of Transport. Two weeks ago, the company lost a case to the Public Procurement Review Body (hereinafter: PRB) for a highway construction project worth 47 million Euros. The company had only one more tool to change this situation: to file a complaint in the competent court. However, the Legal Office of the company run by lawyer Drin Drini had issued an opinion on the company listing the pros and cons of the case. He had come to the conclusion that the company did not have a good case for court so he had recommended not to spend time, energy and resources to open the court case.

But, the General Director of the company, Mr. Maksut Maksuti, invited Genc to a meeting in his office and demanded 120,000 Euros in cash from the Company's accounts. Genci asked him why he needed these funds, the General Director informed Genc that he needed those funds to give a "small gift" to some people in court (judges, administrative staff, and lawyer). Genci was shocked but did not panic and the Director noticed this and addressed him with the words: "Look, Genc, I know that Lawyer has informed us that we have no chance to win the case in Court. But we have no chance of surviving unless we win the 47 Million tender. I have nothing else to do. Someone told me that with 120 thousand euros this can be done in Court. We return the case to zero and then look at what we can do in the PRB. Do you understand? You need to find a way to record this 120 thousand euros in the accounting books." Genci informs the General Director that he will

see what he can do. With that the meeting ended. Later in the week, Genci went to withdraw 120 Thousand Euros from the "Bank". The bank requested an additional authorization from the Director or for the Director to come himself, as the amount was high.

On the same day Genci wrote an email to the Director with the following content (most relevant parts): " _ The bank does not allow me to withdraw funds for the gift we talked about as the amount was high. "I need an authorization." Maksuti delivered the required authorization after a few hours. The next day, Genci withdrew the money from the Bank and brought it to Maksut's office. He informed Genc that he had talked to a lawyer and they had scheduled the meeting after two weeks and that he had received a guarantee that "the deal is done with 120 thousand".

After returning to his office, Genci began to think about the next steps. He did not want to get involved in this deal, but was forced to withdraw money because he was authorized and had a job description to handle finance and accounting matters. But his professional integrity and work ethic told him to report the case because he knew justice was in danger of being undermined. Genci decided at the end of the day that he will be the whistleblower for this case. He was not sure if the law protected him from such whistleblowing? The case became more complicated because this whistleblowing would involve the private sector but also the public one. And above all, Genci was hesitant about who to turn to, and what was the procedure for such a whistleblowing?

Actions that can or should be taken

But the Law on the Protection of Whistleblowers (Article 5) stipulates that whistleblowing is in the public interest and protected, even in cases where "mismanagement of justice has occurred, is occurring or is likely to occur". Therefore, in this case Genci is protected by the Law on Protection of Whistleblowers and Article 5 is the basis for whistleblowing in cases of mismanagement of justice. Since the Company Director is in question here, according to (article 18) Genci is allowed to do the external whistleblowing directly. This article contains some criteria for when external whistleblowing can be done. Among the most important, and that apply in this case are the following criteria:

Now we need to clarify Genc's last question: to whom should he address, if whistleblowing was allowed, and what was the procedure for such whistleblowing? Since this whistleblowing is more complex due to the fact that it involves both public and private parties, we will divide the answer into two parts.

First, in relation to whistleblowing of the potentially corrupt behavior of judges, administrative staff and lawyers, Genci should address it to the Anti-Corruption Agency (ACA). This is because according to Article 18 of the Law on Protection of Whistleblowers, ACA is competent to handle external whistleblowing in the public sector. Therefore, even though Genci is not a public employee, the fact that the whistleblowing in question would be made against public sector employees is a sufficient element to determine the competence of the ACA in this case. Furthermore, the ACA obtains this competence from the basic legislation for its establishment and scope. Genci can also address it to the President of the Court and the Kosovo Judicial Council. For the potentially corrupt behavior of the lawyer mentioned as a mediator, Genci should address it to the Office of the Disciplinary Prosecutor that operates within the Kosovo Bar Association.

Secondly, in relation to whistleblowing of the potentially corrupt behavior of the Company Director, Genci can address it to several institutions. First of all, according to the legislation in force for reporting criminal offenses, he should address the police and the prosecution. Such competence of these bodies is determined by the Law on Police and the Criminal Code as well as the Criminal Procedure Code of Kosovo. This is because the whistleblowing in this case is done on the basis of mismanagement of justice and these bodies are competent to investigate and prosecute such types of offenses

SCENARIO #3:

Whistleblowing on Environmental damage

Two days after this report, Besnik was invited to a meeting with the Director of the company, Mr. Destroyer of Nature. He asks Besnik not to “make this disinfectant matter great because they will most likely be removed by the first or second rain”.

SCENARIO #3:

Whistleblowing on Environmental damage

Assumed facts:

Besnik works as a laboratory technician/chemist in the company "Natural Hygiene". The company deals with disinfection services according to tender requirements with Kosovo Municipalities. Recently Besnik learned that the company in order to save on the cost of disinfectants had bought some cheaper ones. They would reduce the cost of expenses by 40%. The problem arose when some samples of the new disinfectants were sent to Besnik for testing in the company's laboratory.

Besnik realized that disinfectants were too powerful for their intended purpose and that they would not be easily removed from nature even after rainfall (as, normally happens). He wrote his laboratory report with the key recommendation that "Such chemicals/disinfectants **should not be used because of the long - term adverse effects on insects, animals and plants.**" These effects can be long-term and consequently transmitted to humans through the food cycle."

Two days after this report, Besnik was invited to a meeting with the Director of the company, Mr. Destroyer of Nature. He asks Besnik not to "make this disinfectant matter great because they will most likely be removed by the first or second rain". He also asks Besnik not to share his laboratory report with other colleagues of the company "Natural Hygiene". The planned dumping of these chemicals will initially take place in the "Clean Municipality" next week. Besnik is a professional with high ethics and professional integrity. He wants to report this violation but wants to know what to do next? He does not want to be part of this natural disaster. How should Besnik make the whistleblowing of this case? Who should it be addressed to (internal, external or public whistleblowing)?

Actions that can or should be taken

In this case, Besnik raises a very serious and urgent concern. The premises of an entire municipality are about to be disinfected with a substance that can harm insects, plants and have negative effects on animals and consequently on the food that the people of that municipality consume throughout the year.

As in other cases Besnik has several alternatives. Although in theory Besnik can do the internal whistleblowing, it most likely will not be effective as the Company Director himself had told Besnik to silence the case. Therefore in such cases the external whistleblowing and the public whistleblowing (disclosure) seem to remain the alternatives from which results can be expected.

Regarding whistleblowing and the grounds for whistleblowing we should refer to Article 5 of the Law on Protection of Whistleblowers. It states that one of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to fulfill any legal obligation". As an additional basis, it states that whistleblowing is in the public interest when **"the environment has been damaged, is being damaged or is likely to be damaged"**. Therefore, in this case Genci is protected by the Law on Protection of Whistleblowers and Article 5 is the basis for whistleblowing in cases of mismanagement of justice.

The next question that Besnik rightly raises is to whom should he address? We note that Article 19 of the Law on Protection of Whistleblowing stipulates that in relation to whistleblowing in the private sector, whistleblowing is done to regulators according to areas of responsibility. Therefore, since the current situation is related to the environment and the eminent risk of environmental damage, Besnik should make an external whistleblowing to the Department of Environmental Inspection, Nature, Water, Construction and Spatial Planning - Division for Environmental Protection Inspection, Nature and Waters. This body operates within the Ministry of Environment and Spatial Planning. Besnik, as he has the evidence, can provide them, although in these cases only the suspicion of violations that are expected to occur in the near future through disinfection with harmful materials in the Clean Municipality, is a sufficient basis for whistleblowing.

SCENARIO #4:

Whistleblowing for the safety of people in the context of construction

Arben has all the evidence to prove these violations. As an engineer with professional integrity and civic ethics he has the will and feels the obligation to report this event. He just does not know how to proceed in whistleblowing this case? Should he contact the director of the "Poor Construction" company or any other party or institution? He wants to know how to act in this case?

SCENARIO #4:

Whistleblowing for the safety of people in the context of construction

Assumed facts:

Arben works as a chief engineer in the company "Poor Construction". The company deals with high-rise construction of residential buildings. He noted that the company is using construction materials and techniques that do not comply with the construction standards set out in the "Safe Building Code". He noted that this was done in coordination between the engineering department and the Chief Manager of the Company. Arben had analyzed the materials and techniques used for two weeks in a row and had come to the conclusion that such a building would not withstand a 2.3 magnitude earthquake. The criterion set by the Safe Building Code is that a residential building must be able to withstand a magnitude 7 earthquake.

Arben has all the evidence to prove these violations. As an engineer with professional integrity and civic ethics he has the will and feels the obligation to report this event. He just does not know how to proceed in whistleblowing this case? Should he contact the director of the "Poor Construction" company or any other party or institution? He wants to know how to act in this case?

Actions that can or should be taken

According to the methodology set out above, in the following we will treat Arben's questions in order. He initially wants to know how to continue with whistleblowing of this case? More precisely, should it be addressed to the director of the company "Poor Construction" or any other party?

In this case Arben raises a concern about the quality of construction, which is very serious and urgent. Buildings must be able to withstand an earthquake up to 7 on the Richter scale. Otherwise an earthquake no matter how small can cause great casualties in people and buildings. Furthermore, the urgency of this whistleblowing is related to the crucial moment at which violations are observed. If Arben does not do the whistleblowing now, when the facility is built it may be too late and the negative consequences will only be noticed when the disaster happens.

According to Article 5 of the Law on Protection of Whistleblowing. One of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to meet a legal obligation". As an additional basis, it states that whistleblowing is in the public interest when "the health or safety of the individual is endangered, is being endangered or is likely to be endangered." Therefore in this case all three criteria are met.

In the following we will return to the questions raised above. As in other cases, here too, Arben has several alternatives. He can choose to do internal, external whistleblowing or public disclosure.

Internal whistleblowing is done to the employer. In this case, if Arben chooses to do the internal whistleblowing, they could turn to the company "Poor Construction". According to the Law, internal whistleblowing must be done to the responsible official. However, it should be noted that the Law has defined a criterion for private entities regarding the obligation to have such an official. Article 17 par.1 of the Law stipulates that only private entities with over fifty (50) employees are obliged to appoint the responsible official. Therefore, Arben should consider this element to know if they have the opportunity to address the responsible official within the institution. In case the responsible official is not appointed due to the smaller number of employees (less than 50) then Arben should address directly to the director of the Company "Poor Construction" in accordance with Article 17 paragraph 4 of the Law.

In the event that in Arben's judgment the whistleblowing to the responsible official or the director of the company is not or is not expected to be effective, Arben can make the external whistleblowing directly to the competent bodies. In this case, the competent bodies may include more than one body. Since the field of construction at the local level is primarily supervised by the Directorate of Inspectorate at the local/municipal level, Arben should first address this body. Alternatively or in parallel, Arben can choose to address the Ministry of Environment and Spatial Planning, respectively the Department of Environmental Inspection, Nature, Water, Construction and Spatial Planning - Division for Construction Inspection and Spatial Planning.

According to the Law, Arben has one last chance if the above alternatives do not give or are not expected to give effect (this must be determined in each case in the judgment of the whistleblowers). He can do the public whistleblowing (disclosure). According to the Law, this whistleblowing can be done when:

1. at the time when the whistleblower that is carrying out the disclosure, reasonably believes that he will be subject to punishment if he reports internally or externally;
2. the whistleblower reasonably believes that it is likely that the evidence relating to the relevant harmful actions will be deleted or destroyed if the whistleblower reports in the manner prescribed in Article 16 (internal whistleblowing) and 18 (external whistleblowing) of this law.
3. in the event of an immediate life threatening, public health, safety, the environment, or when large-scale or irreparable damage is caused;
4. responsible authorities from article 16 and 18 of this law have not taken the respective actions regarding the whistleblowing within the period of six (6) months from the moment of reporting the whistleblowing information.

If he chooses to do this type of whistleblowing, Arben 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. This whistleblowing can be done through the media, or other means of publication.

SCENARIO #5:

Whistleblowing in the context of health protection in the field of health

Someone told me that with 120 thousand euros this can be done in Court. We return the case to zero and then look at what we can do in the PRB. Do you understand? You need to find a way to record this 120 thousand euros in the accounting books." Genci informs the General Director that he will see what he can do.


MEDIKAMENTI 2

SCENARIO #5:

Whistleblowing in the context of health protection in the field of health

Assumed facts

Blerta and Nita work as pharmacists in the "Cheap Healing" pharmacy. The pharmacy was established in 2000 and has 150 employees. They have recently noticed that the Chief Pharmacist has ordered that the drug "Medication 1" be packaged in the packaging of the drug "Medication 2". This is strictly forbidden by the "Law on Safe Pharmacy". According to general medical knowledge these herbs can in principle be used as a substitute for each other. However, Nita and Blerta know that in patients with a certain health condition "Fragile Condition" if Medication 1 is used instead of Medication 2 this can lead to respiratory complications, which can lead to a stroke or sometimes even direct death. . According to recent studies, these cases occur in 15% of situations when these herbs are confused with each other. This negative impact should therefore be taken as existing.

Blerta and Nita, as professional pharmacists and with integrity and professional ethics cannot tolerate this situation with direct or potential risk to the citizens of Kosovo. They want to be whistleblowers but do not know how to do it? They also want to know if they should do the whistleblowing through the media or are there other more discreet ways? If so, what ways and mechanisms can Nita and Blerta use to address these violations.[1]

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1 During their professional research they had a reference: Biochemist Jeffrey Wigand revealed that he exposed that the tobacco company Brown & Williamson had deliberately manipulated the mixing of tobacco with chemicals such as ammonia to enhance the effect of nicotine on cigarette smoke. Gaps in the System: Whistleblower Laws in the EU www.blueprintforfreespeech.net.

Actions that can or should be taken

As in other cases, Blerta and Nita can use internal whistleblowing, external whistleblowing or public whistleblowing (disclosure).

In the following we must address whether such whistleblowing is authorized on one of the grounds set out in the Law according to which whistleblowing is considered in the public interest. Regarding these issues, we should refer to Article 5 of the Law on the Protection of Whistleblowers. It states that one of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to fulfill any legal obligation". As an additional basis, it states that whistleblowing is in the public interest when "the health or safety of the individual is endangered, is being endangered or is likely to be endangered." Therefore, in the present case all three of these criteria have been met.

Given that the company "Cheap Healing" has over 50 employees, according to the Law on Protection of Whistleblowers, it is assumed that this company has appointed the official responsible for whistleblowing. So the first step that Nita and Blerta must take is to address the Responsible Officer for Whistleblowing in the company "Cheap Healing". There, Nita and Blerta must present all the evidence for these legal violations that are endangering or expected to endanger people's health. This way of whistleblowing is provided and authorized according to Article 16 and Article 17 paragraph 1-3 of the Law. But this is not the only way through which Nita and Blerta can carry out the whistleblowing of such a dangerous violation.

If they consider that the whistleblowing through the Responsible Official is not expected to be effective (this should be evidenced in each case separately), then they can carry out the whistleblowing directly to the company leader. This is authorized by Article 17 paragraph 4 of the Law.

The second way of whistleblowing is that according to article 18, i.e. through external whistleblowing. But we noticed that Nita and Blerta were not sure who to turn to? We note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector whistleblowing is done to regulators according to areas of responsibility (listed below).

Given the area of the alleged violations, we can understand that in case of external whistleblowing, Nita and Blerta should address:

1. The Pharmaceutical Inspectorate that operates within the Ministry of Health. and
2. The Ministry of Health as a body within which the Pharmaceutical Inspectorate functions.

According to the official description of the scope of activity, this Inspectorate is, among others, competent to assess the implementation of legislation, as well as to take administrative measures and impose fines aimed at avoiding risks that may be caused to public health, public safety and the environment and legitimate interests of natural and legal persons.

According to the Law, Nita and Blerta have one last chance if the above alternatives do not provide or are not expected to give effect (this should be determined in each case in the judgment of the whistleblowers). They can do public whistleblowing (disclosure). According to the Law, this whistleblowing can be done in accordance with Article 20 of the Law on Protection of Whistleblowers. If they choose to do this type of whistleblowing, Nita and Blerta 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 conduct of court proceedings. This whistleblowing can be done through the media, Non-Governmental Organizations, or other means of publication.

SCENARIO #6:

Whistleblowing for non - payment of pension contributions for grocery - store employees

Both realized while their colleagues who checked the status of the “Trust” realized that their pension contributions were not being paid. They know that this is a direct violation of one or more laws governing pension schemes.

SCENARIO #6:

Whistleblowing for non - payment of pension contributions for grocery - store employees

Assumed facts

Albert and Dren are good friends. They have been working in two supermarkets in their city for the last two years. One day Albert had applied for a visa and consequently had to prove the duration of his employment through the status of "Trust" (the institution that manages and administers pension contributions). When he got the statement for the past two years he was surprised to see that his pension contributions have not been paid. After sharing this information with Dren, Dren also did the same and he found out that his pension contributions had not been paid.

They then communicated to the group on "Viber" which included all workers of similar sectors to their respective employers. Both realized while their colleagues who checked the status of the "Trust" realized that their pension contributions were not being paid. They know that this is a direct violation of one or more laws governing pension schemes. They also believe that this issue is in the public interest because workers whose pension contributions are not paid will become an economic burden for the country at the time of retirement. Furthermore, through the funds raised, the state finances various schemes in the general interest, which it then returns to the pension fund to offset the investment financed by the "Trust" funds.

Therefore, Albert and Dren want to do the whistleblowing. They want to know what alternatives they should pursue.

Actions that can or should be taken

Initially we must address whether such whistleblowing is authorized on one of the grounds set out in the Law according to which whistleblowing is considered in the public interest. In relation to these issues we should refer to Article 5 of the Law on the Protection of Whistleblowers. It states that one of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to fulfill any legal obligation". Therefore in this case both of these criteria are met because the violation of the laws set for pension schemes has been committed and is being committed, and also certain persons have failed to act to meet the legal obligation of employers to contribute to the pension schemes for employees.

As in other cases, Albert and Dreni can use internal whistleblowing, external whistleblowing or public whistleblowing (disclosure).

Given that the grocery stores in which Alberti and Dreni are employed, are supposed to have over 50 employees, according to the Law on Protection of Whistleblowers it is assumed that this company has appointed the official responsible for whistleblowing. So the first step that Albert and Dren should take is to turn to the Responsible Official for Whistleblowing at the grocery stores where they work. They must submit all evidence to the Responsible Official for these legal violations that are occurring in relation to non-payment of employee pension schemes. This way of whistleblowing is provided and authorized according to Article 16 and Article 17 paragraph 1-3 of the Law. But this is not the only way through which Dren and Albert can carry out whistleblowing of such a dangerous violation.

If they consider that whistleblowing through the Responsible Official is not expected to be effective (this should be evidenced in each case separately), then they can carry out the whistleblowing directly to the company leader. This is authorized by Article 17 paragraph 4 of the Law. If this method is not expected to be effective either, or is not effective after it is exhausted, then Albert and Dreni may choose to do external whistleblowing.

We note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector, whistleblowing is done to regulators according to areas of responsibility. Given the scope of the alleged violations, we can conclude that the competent institutions for whistleblowing this case may be the following institutions:

1. Labor Inspectorate,
2. Tax Administration of Kosovo, and
3. Kosovo Pension Trust.

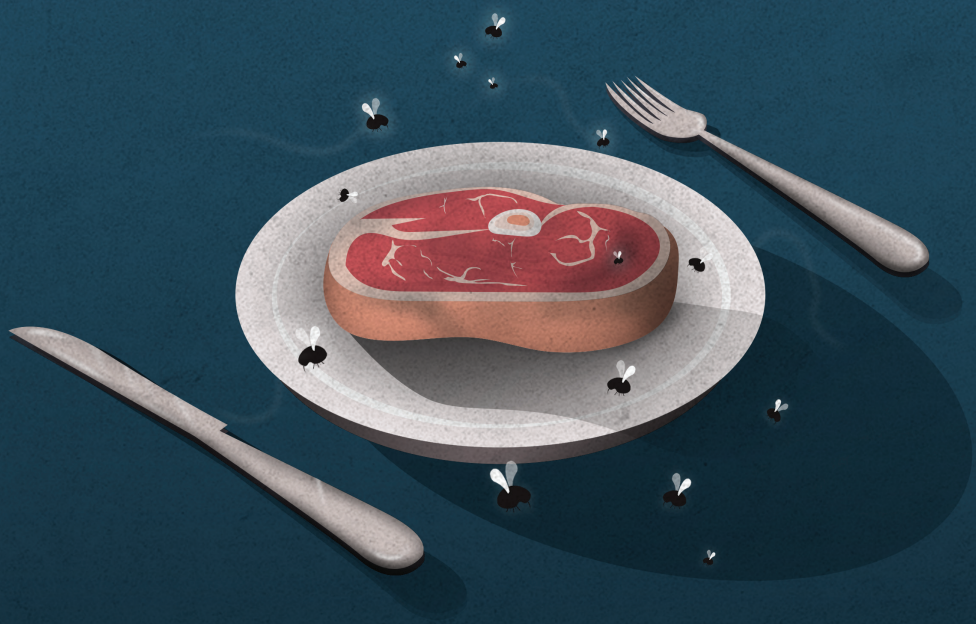
These three institutions are competent to oversee the implementation of labor, tax and pension legislation respectively. Therefore, whistleblowing in one or all of these institutions is authorized according to Article 19 of the Law on Protection of Whistleblowers and relevant legislation, which regulates the scope of activity of these above-mentioned institutions.

According to the Law, Dreni and Albert have one last chance if the above alternatives do not give or are not expected to give effect (this must be determined in each case in the judgment of the whistleblowers).
They can make public whistleblowing (disclosure) according to Article 20 of the Law. If they choose to do this type of whistleblowing, Dreni and Albert 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 conduct of court proceedings. This whistleblowing can be done through the media, Non-Governmental Organizations, or other means of publication.

SCENARIO #7:

Whistleblowing for serving of dangerous food products

Now, for Dalian and Besa everything made sense. Even poisoning of a group of clients before 2 weeks. Even the different aroma of meat during cooking. They want to know if whistleblowing can be made in this case and what steps/procedures to follow?



SCENARIO #7:

Whistleblowing for serving of dangerous food products

Assumed facts

Daliani and Besa work in the restaurant for family parties "Happy Wedding". Mostly the restaurant organized weddings and other festive parties. They work as cooks. Their restaurant bought the meat from the "Careless Market" shopping mall. One day they saw that the meat had a different color. When consulted with the head chef he asked them to "throw away the identified meat and continue with the work". They did not stop there. With a little research after work they found that the meat they bought from the "Careless Market" was expired. The next day they raised this issue with the Chief Manager. He informed them that with the knowledge of the general manager, he had started for a few weeks to buy meat that is near expiration or expired. The "Careless Market" sold that kind of meat to the restaurant at a 50% cheaper price.

Now, for Dalian and Besa everything made sense. Even poisoning of a group of clients before 2 weeks. Even the different aroma of meat during cooking. They want to know if whistleblowing can be made in this case and what steps/procedures to follow?

Actions that can or should be taken

Based on the facts mentioned above we notice that Besa and Daliani find it practically impossible to use internal whistleblowing (either to the Responsible Official or to the Restaurant Manager) for the fact that according to the statements of the General Manager, it was the general manager who had authorized the purchase of expired or freshly expired meat. Therefore, in this case, Besa and Dalian have only two ways of whistleblowing available: a. external whistleblowing and b. public whistleblowing (disclosure).

In the following we must address whether such whistleblowing, according to the presumed facts, is authorized on one of the grounds set out in the Law according to which the whistleblowing is considered in the public interest. Regarding these issues, we should refer to Article 5 of the Law on the Protection of Whistleblowers. It states that one of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to fulfill any legal obligation". As an additional basis, it states that whistleblowing is in the public interest when **"the health or safety of the individual is endangered, is being endangered or is likely to be endangered."** Therefore in the present case all three of these criteria have been met. It is especially important to emphasize the criterion of health risk and the fact that this risk is occurring even at the moment we are talking about but it, which is likely to continue to exist.

Regarding external whistleblowing, we note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector, whistleblowing is done to regulators according to areas of responsibility. Given the scope of the alleged violations, we can conclude that the competent institutions for whistleblowing this case may be addressed to the following institutions:

1. Sanitary Inspectorate, which operates within the Veterinary and Food Agency in the Republic of Kosovo,
2. Directorate of Inspectorate at Municipal level,
3. Market Inspectorate, within the Ministry of Trade and Industry.

The first two institutions are competent to oversee the implementation of legislation and sanitary and quality standards regarding food quality and safety. The third institution is authorized and competent to supervise the market and legal criteria and other standards in the field of market and trade of food and non-food products.

They can make public whistleblowing (disclosure) according to Article 20 of the Law. If they choose to do this type of whistleblowing, Besa and Dailani 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 conduct of court proceedings. This whistleblowing can be done through the media, Non-Governmental Organizations, or other means of publication.

SCENARIO #8:

Whistleblowing in the context of financial institutions

But the next day he saw the owner of the corporation in question signing the loan agreement with his colleague (Greedy Banker). Blerton ask for a minute to talk with the Greedy Banker. When asked why the owner of the Corporation that Misused Taxes was signing the contract for which its application was rejected, his colleague replied, "This guy had talked to the Director.

SCENARIO #8:

Whistleblowing in the context of financial institutions

Assumed facts

Blertoni works as a banker in the "Rich Bank of Kosovo". This Bank had received a grant from the Government of Kosovo to support new businesses, loans for agriculture and loans for energy efficiency (which means that this Bank should stimulate loans that increase electricity savings, e.g. houses less dependent on heat by using windows with high standards). These grants were therefore given to the Bank from Kosovo taxpayers' money. Start-up businesses could apply for loans from 20,000 to 400,000 Euros (criteria were increasingly higher depending on the loan amount in terms of number of employees, economic activity, taxes, etc.). The interest rate was zero and the repayment period was 10 years, but if more than 100 people were employed from this funded activity, the loan was forgiven in full. The Central Bank of Kosovo was designated as the body responsible for overseeing grants.

One day Blerton received a loan application from a "new business." But after reviewing the documentation, he realized that it was not really a new business but a well-known company ("Corporation that misuses taxes"). The corporation applied for 376,000 Euros. Being a professional banker but also a person with professional integrity and work ethic of course he refused this loan application as it did not meet the conditions set by the purposes for which the grant was intended. The case seemed closed with that.

But the next day he saw the owner of the corporation in question signing the loan agreement with his colleague (Greedy Banker). Blerton ask for a minute to talk with the Greedy Banker. When asked why the owner of the Corporation that Misused Taxes was signing the contract for which its application was rejected, his colleague replied, "This guy had talked to the Director. Even the Director was nervous with you

for refusing his request. Do you know who this is? This is related to the Minister of the Ministry of Banks and Microfinance Institutions and Trade. He told the Director that if you do not approve my loan, I will even withdraw your license. Even the Minister had called the Director, the situation is very complicated".

That day Blerton was invited to a meeting with the Director. He did not change his mind because he knew and he also told the Director that the Corporation that Misused Taxes did not qualify for this loan. He was saved this time in this meeting with a verbal "warning". The director also asked Blerton "not make this a big deal" and that "if you have a friend who has a business let him come and apply and that we approve the loan in his favor". Being a person of integrity Blerton could not tolerate this situation. He decided to carry out a whistleblowing. He wants to know how to do it and to who to turn to.

Actions that can or should be taken

In the above facts we have two situations. The first concerns the whistleblowing in relation to the Director and the Bank. The second concerns the whistleblowing in relation to the Corporation that Misuses Taxes and the Minister. Therefore, we will divide the following part into two parts.

1. Whistleblowing in relation to the Bank

Given that, according to the alleged facts, the Director of the Bank was aware of the breach, the internal whistleblowing to the responsible official or the Director is expected to be an ineffective whistleblowing as he himself has ordered the action for which the whistleblowing is being made.

Therefore, in the present case, Blerton has only two whistleblowing ways available: a. external whistleblowing and b. public whistleblowing (disclosure).

In the following we must address whether such external whistleblowing, according to the presumed facts, is authorized on one of the grounds set out in the Law according to which whistleblowing is considered in the public interest. Regarding these issues we should refer to Article 5 of the Law on Protection of Whistleblowers. It states that one of the reasons why whistleblowing in the public interest is protected includes situations where "the violation has been committed, is being

committed or is likely to be committed" or when "the person has failed, is failing or is likely to fail to fulfill any legal obligation". As another basis for whistleblowing in the public interest is defined in the situation when **"there has been misuse of official duty or authority of public money or resources of a public institution, this is happening or is likely to happen."** Therefore in this case both of these criteria are met. It is especially important to emphasize the criterion of endangering health and the fact that this endangerment is occurring even at the moment we are talking about it, but it is likely to continue to exist in relation to whistleblowing in relation to the service of inadmissible matter during a coffee.

We note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector, whistleblowing is done to regulators according to areas of responsibility (which will be mentioned below). Given the scope of the alleged violations, we can conclude that the competent institutions for whistleblowing this case in relation to the Director and the Rich Bank of Kosovo, are:

1. Government of Kosovo as a donor of the Grant for the loans in question;
2. Central Bank of Kosovo as a regulatory body of the banking system in Kosovo,
3. Tax Administration of Kosovo (TAK), respectively the Office for Fines and Administrative Penalties (OFAP) or other relevant department according to the instructions given by TAK.

These institutions/bodies are competent to oversee the implementation of banking and tax legislation. Therefore, the whistleblowing in one or all of these institutions is authorized according to article 19 of the Law on Protection of Whistleblowers and the relevant legislation that regulates the scope of activity of these above-mentioned institutions.

2. Whistleblowing in relation to the Owner of the Corporate who Misuses Taxes and the Minister.

In relation to the whistleblowing of these violations, from the alleged facts, we notice that the owner of corporation and the Minister had called the Director of the Bank, pressuring him and blackmailing him that if the loan was not approved the bank would suffer negative consequences.

Although one of these persons is a public official, since the breach that prompted the whistleblowing was born in the context of a private report (loan application), Blerton can still rely on other parts of the law for whistleblowing in the public context. There we note that according to article 19 paragraph 3 the competent body to address this whistleblowing in relation to the Minister and the Director is:

1. Anti-Corruption Agency.

However, since such offenses most likely consume one or several criminal offenses, whistleblowing in this case in parallel with whistleblowing to the Agency, it can also be done to the following bodies:

2. Kosovo Police, Department for Economic Crimes,
3. State Prosecution,

These institutions are competent to oversee the implementation of legislation in the field of corruption and criminal offenses in general.

But Blerton can do the public signaling (disclosure) under Article 20 of the Law. If they choose to do this type of whistleblowing, Blerton 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 conduct of court proceedings. This whistleblowing can be done through the media, Non-Governmental Organizations, or other means of publication.

SCENARIO #9:

Whistleblowing for violation of personal data

The program collected data on computer user searches, it had access to emails sent and received, calls made to programs installed on the computer, and even online transactions through banks (although the program could not order any transactions on its own but could only observe transactions).

SCENARIO #9:

Whistleblowing for violation of personal data

Assumed facts

Besiani works as a technology expert in the "Fast Computer" computer and tablet store. He has a degree in technology and is a good connoisseur of programming (software) and computer parts (hardware). One day his immediate manager asked him to install a small program called "Insidious" on all future computers and tablets they sell.

Besiani, being a technology and programming expert one night he took this program with an external disk and analyzed it in detail at home. He was extremely upset when he realized that the program had the ability to stay hidden on the computer being installed and send sensitive data to an address. The address was as follows: partia.politike.kosove@gmail.com. The next day Besiani confronted his Manager. After he was discovered, the Manager admitted that he was doing this because their company had been offered 600,000 Euros if they installed this program on each computer. When Besiani asked the Manager from whom these were offered, he did not say, but he admitted that the general manager knew about this event and that the Manager had offered him a salary of 4000 Euros per month for the next 5 years.

Not believing what he had heard and understood, Besiani decided to analyze the "Insidious" Program further. He realized that the data was sent to the address of a political party in Kosovo. The program collected data on computer user searches, it had access to emails sent and received, calls made to programs installed on the computer, and even online transactions through banks (although the program could not order any transactions on its own but could only observe transactions). It should be added that the company "Fast Computer" owns 45% of the market and has activities and sales facilities throughout the country.

Shocked by what he saw and understand, Besiani is interested in whistleblowing this case. He wants to know how to do this and to whom should he turn to?

Actions that can or should be taken

We note that the concrete case raises quite serious concerns for both powerful and disturbing reasons. Firstly, there is an illegal violation in the personal data and computer systems of individuals (buyers) and secondly these are done by a political party in order to create an advantage by having in hand numerous personal data of citizens of the State.

Since the general director of the institution was in co-perpetration of the action for which the whistleblowing is done, we can say that the internal whistleblowing is not expected to be effective. Therefore Besiani has only two possibilities for whistleblowing: a. external whistleblowing and b. public whistleblowing (disclosure).

We note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector, whistleblowing is done through regulators according to areas of responsibility.

Given the scope of the alleged violations, we can conclude that the competent institutions for whistleblowing this case may be the following institutions:

4. Information and Privacy Agency,
5. Central Election Commission.

These two institutions are competent to oversee the implementation of legislation on personal data and that on the functioning and measures against political parties respectively. Therefore, whistleblowing to one or all of these institutions is authorized by Article 19 of the Law on Protection of Whistleblowers and the relevant legislation that regulates the field of activity of these above-mentioned institutions.

Besiani has one last chance if the above alternative does not give or is not expected to give effect (this should be determined in each case in the judgment of the whistleblower). He can do the public whistleblowing (disclosure). According to the Law, this whistleblowing can be done when:

1. at a time when the whistleblower who discloses reasonably believes that he will be subject to punishment if he reports internally or externally;
2. the whistleblower reasonably believes that evidence relating to the relevant harmful actions will be deleted or destroyed if the whistleblower reports in the manner prescribed in Article 16 (internal whistleblowing) and 18 (external whistleblowing) of this law.
3. in the event of an immediate life threatening, public health, safety, the environment, or when large-scale or irreparable damage is caused;
4. the responsible authorities from article 16 and 18 of this law have not taken the relevant actions regarding the whistleblowing within the period of six (6) months from the moment of reporting of the whistleblowing information.

Given the nature and systematic nature of violations of legislation on personal data but also of other laws, and given the high interest of the public to know about these violations, in similar cases public disclosure is preferred. If Besiani chooses to do this type of whistleblowing, he 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. This whistleblowing can be done through the media, or other means of publication.

SCENARIO #10:

Whistleblowing on copyright infringement

As the relevant inspectorates had prevented unauthorized photocopying of books during the day, the owner of the photocopier had told the Manager to arrange a small shift of workers to work at night to photocopy the books when inspections were not expected to occur.

SCENARIO #10:

Whistleblowing on copyright infringement

Assumed facts

Blerta works in the photocopy/printing house "Quality Printing". During the day she and her colleagues help students print study materials. However, it has been 1 month since the Photocopy Manager invited the workers (10 workers in total work in this printing house) to go to work in night shifts. When it was Blerta's turn to work at night she understood the reason why the working hours had been changed.

As the relevant inspectorates had prevented unauthorized photocopying of books during the day, the owner of the photocopier had told the Manager to arrange a small shift of workers to work at night to photocopy the books when inspections were not expected to occur.

Blerta has a special connection with books because her father was a writer. She had grown up in poverty even though her father could have sold books. But it did not happen because people did not buy his books but bought copies that were sold 70% cheaper.

Therefore, she decided to carry out a whistleblowing on this case, thus by feeling a personal obligation. She wants to know how? And to whom should she address?

Actions that can or should be taken

Given that in this case the manager and director of the photocopy knew and were co-authors of the event being signaled/whistleblowing, and given that the photocopier probably has no designated officials responsible for whistleblowing (since it has less than 50 employees), then we realize that Blerta actually has

only two options for whistleblowing. Rather she can choose to do external whistleblowing or public whistleblowing (disclosure).

Regarding external whistleblowing, we note that Article 19 of the Law on Protection of Whistleblowers stipulates that in relation to whistleblowing in the private sector, whistleblowing is done to regulators according to areas of responsibility. Given the scope of the alleged violations, we can conclude that the competent institution to carry out the whistleblowing for this violation is the Office for Copyright and Related Rights that operates within the Ministry of Culture.

This institution is responsible and competent for the implementation of legislation related to copyright. Therefore, the whistleblowing to this Office is authorized according to article 19 of the Law on Protection of Whistleblowers and the relevant legislation that regulates the scope of activity of the above mentioned institutions. Blerta has one last chance if the above alternative does not give or is not expected to give effect (this should be determined in each case in the judgment of the whistleblowers). She can do public whistleblowing (disclosure). According to the Law, this whistleblowing can be done when:

5. at the time when the whistleblower reasonably believes that he will be subject to punishment if he reports internally or externally;
6. the whistleblower reasonably believes that it is likely that the evidence relating to the relevant harmful actions will be deleted or destroyed if the whistleblower reports in the manner prescribed in Article 16 (internal whistleblowing) and 18 (external whistleblowing) of this law.
7. in the event of an immediate life threatening, public health, safety, the environment, or when large-scale or irreparable damage is caused;
8. the responsible authorities from article 16 and 18 of this law have not taken the relevant actions regarding the whistleblowing within the period of six (6) months from the moment of reporting the whistleblowing information.

Given the nature and systematic nature of violations of legislation on personal data but also of other laws, and given the high interest of the public to know about these violations, in similar cases public disclosure is preferred. If Blerta chooses to do this type of whistleblowing, 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. This whistleblowing can be done through the media, or other means of publication.