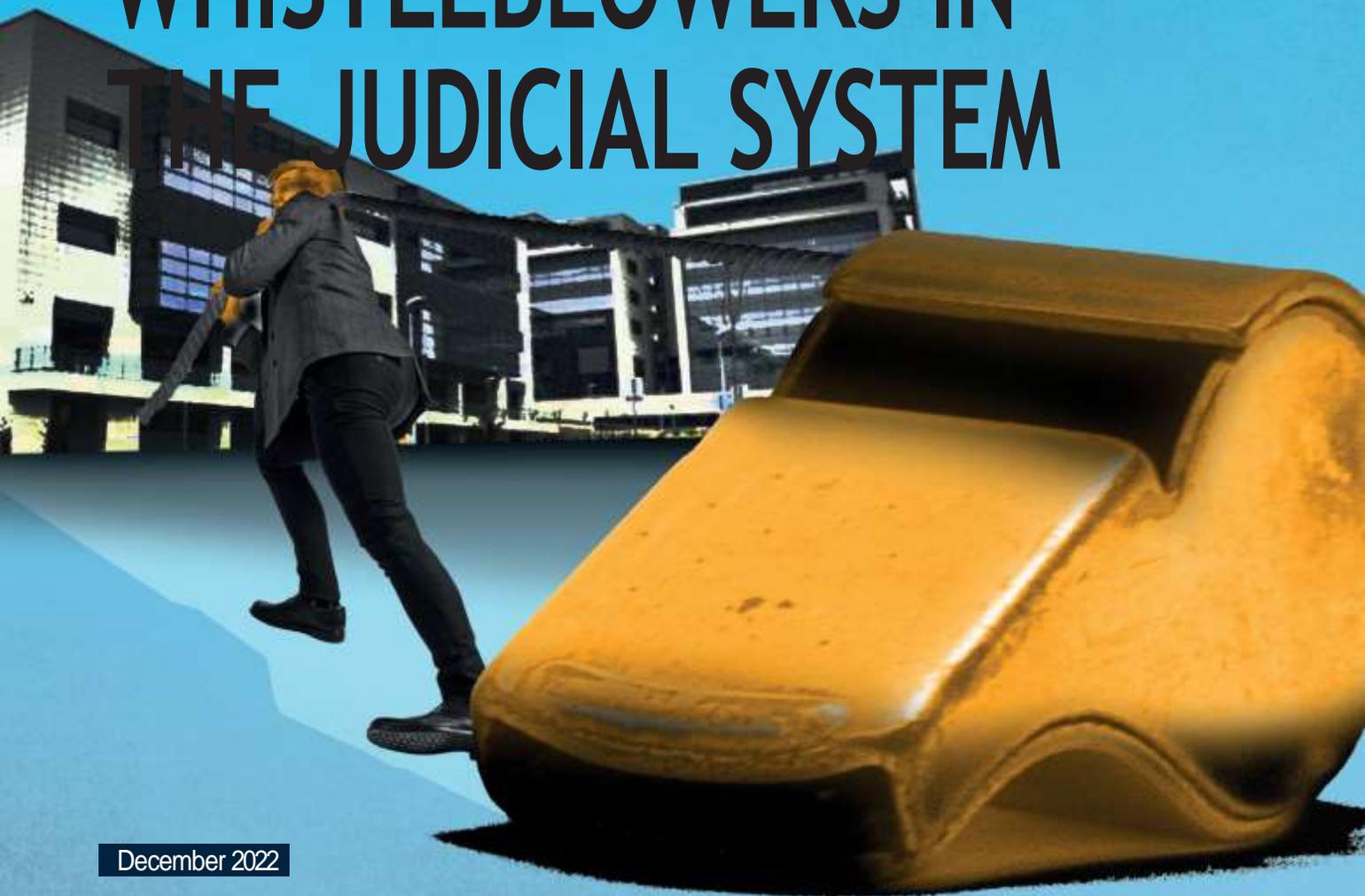


(NON)

IMPELEMENTATION OF THE LAW ON PROTECTION OF WHISTLEBLOWERS IN THE JUDICIAL SYSTEM





Kosova Democratic Institute is a branch of
Transparency International for Kosovo

KDI's mission is to support the
development of participatory
democracy and the fight against
corruption through the promotion of
transparency, accountability and
integrity at all levels and sectors of
society.

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For any evaluation, remark, criticism or suggestion, please contact us through the options provided below:

Address: Str. Bajram Kelmendi,
No. 239 10 000,
Prishtina, Kosovo.

Tel: +383 (0) 38 248 038

E-mail: info@kdi-kosova.org

Web: www.kdi-kosova.org

Authors: Albesa Humolli and Gzime Hashani

Layout and design: envinion

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ABBREVIATIONS LIST

| | |
|------------|---|
| LMI | Law on Protection of Informants |
| LPWH | Law on Protection of Whistleblowers |
| APC | Agency for the Prevention of Corruption |
| LI | Labor Inspectorate |
| JCK | Judicial Council of Kosovo |
| BC | Basic Court |
| CA | Court of Appeals |
| SC | Supreme Court |
| PCK | Prosecution Council of Kosovo |
| BP | Basic Prosecution |
| AP | Appellate Prosecution |
| OChSP | Office of the Chief State Prosecutor |
| SP | State Prosecutor |
| MoJ | Ministry of Justice |
| REGULATION | Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling of Whistleblowing Cases (Regulation) |





METHODOLOGY

For the purpose of this research, KDI has examined the legal framework that regulates the issue of whistleblowing in Kosovo, including the Law on the Protection of Whistleblowers and the relevant Regulation for the implementation of this law. The current legislation defines a series of obligations for institutions, related to the way of guaranteeing the reporting as a mechanism to prevent corruption and the form of their treatment. The implementation of these legal and bylaw obligations has been the subject of this research.

KDI, in conducting this research, used the interview method. In order to provide a comprehensive overview, KDI has addressed a request for an interview to the Agency for the Prevention of Corruption, the Constitutional Court, the Basic Prosecutor's Office, the Office of the Chief State Prosecutor, the Prosecution Council of Kosovo, the Appeal Prosecution, the Special Prosecution of the Republic of Kosovo, the Judicial Council of Kosovo, the Basic Courts, the Court of Appeal and the Supreme Court.

During the research, initially gathering information about the officials responsible for whistleblowing in the justice institutions and then conducting interviews with them, KDI in some cases encountered difficulties related to obtaining information (contacts) of the officials responsible for whistle-blowing and further on in their resistance to be interviewed, to cooperate or to declare about the institution they represent.

Out of 22 institutions to which KDI addressed a request for an interview, eighteen (18) responded positively to the interview request, while four (4) of the officials refused to participate in the interview, where one of them gave the reason that he didn't receive permission from the superior. Also, out of the eighteen (18) officials interviewed, six (6) officials responsible for signaling initially hesitated to give an interview. In two (2) cases, the officials responsible for signaling did not accept the interview without permission from their superiors and only after obtaining permission from their superiors did they accept the KDI invitation for an interview. The interviews were conducted during the period October - November 2022.



Whistleblowing is the
mechanism to deliver
the "right
information" to the
"right people"





1. ON WHISTLEBLOWING

Whistleblowing is an important tool in preventing and fighting corruption because it encourages citizens to contribute to the public good, by denouncing abuses that may occur in public and private institutions but also in society. Through whistle-blowing, an individual has the opportunity to report or disclose information related to actions that occur in his workplace, which affect the public interest. The Law on the Protection of Whistleblowers (LPWH) defines that a whistleblower is any person who reports or discloses information about a threat or violation of public interest in the context of their work relationship in the public or private sector.¹

The first elements of the concept of whistleblowing can be found as far back as 12th century England, where the king had decided that whoever reports a wrongdoing would be rewarded. This declaration represented the first example of a law, allowing private individuals to collect a reward for reporting a violation of their own country's legislation.² More similar statutes arose over the following centuries in many other countries because of the effectiveness of the "reward" in encouraging citizens to report law breakers.

In this regard, signaling as a concept has been embraced and developed in American culture and politics. Since its founding, America has fostered and embraced a culture of civic responsibility to protect the public good. Benjamin Franklin became one of the first American whistleblowers when, in 1773, he exposed confidential papers showing that the governor of Massachusetts had deliberately deceived parliament to promote a military buildup in the American colonies.³

During the last few years, the European Union (EU) has taken steps to strengthen the rights of whistleblowers, while in 2019 it also adopted the new directive for on the protection of persons who report breaches of Union law - the Whistleblower Protection Directive. This directive marks the first step of the EU towards the unification of policies in the matter of whistleblower protection and moreover it is the first time that the EU has a dedicated legislation in this field. This directive provides greater protection for whistleblowers and protection from retaliation by creating "safe channels" to report violations of the law. All EU member states must transpose the directive into their national legislation by December 2021. However, EU states are encouraged to adopt greater protections and incentives for whistleblowers beyond the minimum standard set by the directive.

1 Neni 3, par.1.1, i Ligjit nr. 06/L -085 për mbrojtjen e sinjalizuesve

2 Whistleblowers History Overview, Whistleblowers International, e qasshme në <https://www.whistleblowersinternational.com/what-is-whistleblowing/history/>

3 Po aty.





2. PROTECTION OF WHISTLEBLOWERS IN KOSOVO

For the first time in Kosovo, whistleblowing was regulated by the Law for the Protection of Informants (LPI) of 2011. This law contained 11 articles and aimed to define the procedure of reporting, treatment and protection of whistleblowers. Through this law, every citizen or employee was motivated to inform in good faith about any suspicion or existence of illegal activity to the relevant authorities.⁴ But the provisions and scope of this law were very general and as such hardly applicable to the subjects, as well as for the authorities that accepted this information.

Although this law was welcomed by civil society for the innovations it had brought in the field of protection of freedom of expression and disclosure of information of public interest, it was nevertheless criticized for insufficient protection for subjects involved in "whistleblowing". The name of the law itself was considered problematic and discouraging, in the sense that this law called whistleblowers "informants", an inappropriate term with a negative historical connotation during the communist regime.⁵ This law, in addition to not encouraging "informants" to denounce actions that were detrimental to the public interest, it was also inconsistent with European and international standards for the protection of whistleblowers.

Among the main drawbacks of this law were: the impossibility to make external reporting, the lack of assigning responsible persons (whistleblowing officers) in institutions for the handling and investigation of whistleblowing cases, the lack of safe and clear reporting channels within - the institution or the impunity of employers who retaliated against whistleblowers by applying dismissals from work or demotions in positions.

Among other things this law has shown to be difficult to implement in practice, since the appropriate legal mechanisms for monitoring its implementation were missing.⁶

Due to the many flaws that prevented the practical implementation of whistleblowing in Kosovo, this law was repealed in 2019, to pave the way for the adoption of a much more advanced law in the field of signaling, in harmony with the European Directive. Thus, on January 2, 2019, the Law on the Protection of Whistleblowers (LPWH) entered into force, which was the first step towards the creation of a consolidated legal framework regarding the protection of whistleblowers

This law, in contrast to the previous law (Law for the Protection of Informants), establishes that the whistleblower who report or disclose information are not obliged to prove the good faith and authenticity of their report, and enables the reporting of violations both in the public sector and in the private one⁷. The LPWH also includes legal provisions that regulate the whistleblowing procedure, the rights and protection of whistleblowers, as well as the obligations of public institutions and private entities in relation to whistleblowing.

The second chapter of the LPWH defines the rights of whistleblowers for reporting irregularities and their protection, while the third chapter provides for the ways or types of reporting. Among other things, the LPWH is also intended to provide employees with written instructions regarding whistleblowing procedures. This law also contains provisions regarding the protection of whistleblowers, including judicial protection from harmful actions such as dismissal, suspension from work, internal or external transfer,

4 Ligji nr. 04/L-043 për mbrojtjen e informatorëve

5 Kosovo: The Republic without Whistleblowers, BIRN, Kreshnik Gashi, 2016, e qasshme në <https://see-whistleblowing.org/kosovo-the-republic-without-whistleblowers/>

6 Whistleblowers in Kosovo Struggle for Protection, Flutura Kusari, 2016, e qasshme në <https://see-whistleblowing.org/whistleblowers-in-kosovo-struggle-for-protection/>



Signaling in Kosovo can be done in three ways:

- Internal signaling - means reporting within the public institution or private entity;
- External reporting - means reporting to the competent authority.
- Public signaling means disclosing information to the media, to non-governmental organizations, through the Internet, at a public meeting, or in any other way that makes the information public.

within public institution or private entity without its consent, demotion, reduction of payment, loss of status and privileges, non-promotion and other harmful actions related to the employment relationship⁸. Furthermore, the LPWH has foreseen that the competent bodies for external signaling are the Agency for the Prevention of Corruption (APC) for the public sector, and the Labor Inspectorate (LI) for the private sector according to the areas of responsibility.

As an obligation derived from this law, the Ministry of Justice (MoJ) in 2021 approved Regulation No. 03/2021 For the Determination of the Procedure for the Acceptance and Handling of Whistleblowing Cases (Regulation) which aims to define the rules and procedures for the acceptance and handling of whistleblowing cases as well as the rights and responsibilities for the whistleblowing officials. This regulation has defined in more detail the obligations of the institution for the appointment of officials responsible for whistleblowing, as well as the obligations regarding the provision of sufficient resources for the official to fulfill his duties, such as: space and equipment for work, place for safely storing documents and others.⁹

According to this regulation, the protection of the report must be done, and the responsible officials have the duty to accept and handle the reports, to carry out the administrative investigation in relation to the report, to prepare a report in relation to the recommended measures after confirming that the report is in public and well-founded interest, to keep the whistleblower register and to provide whistleblowers with access to case files. In addition, they prepare and send to the employer, for publication on the institution's official website, the instructions related to whistleblowing in accordance with the legislation in force, as well as they are obliged to prepare reports on an annual basis regarding the received whistleblowing cases, which are then sent to APC.¹⁰

KDI, in accordance with its mission to prevent and fight corruption, has contributed to the drafting of the LPWH and the regulation, but also to the facilitation of the implementation of this law in practice. In this regard, together with partners from Transparency International in the Netherlands, it has compiled a Commentary on the Law on the Protection of Whistleblowers with the primary purpose of helping private/public authorities in the implementation of this law by defining the meaning of each provision and the procedure for - documents for its implementation.

This Commentary is mainly addressed to the community of employees in the public and private sector, who may face violations of various natures and who have the will to signal them. By knowing the content and meaning of the legal provisions, the employee community will create safe channels regarding the notification procedure as well as their protection from possible consequences that can come as a result of whistleblowing. But at the same time, this Commentary will serve as a useful instrument for responsible officials, public institutions, and private entities related to the implementation of this law.

7 Neni 22, i Ligjit nr. 06/L -085 për mbrojtjen e sinjalizuesve

8 Neni 5, par.9, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit

10 Neni 16, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit



3. SUPERVISORY INSTITUTIONS FOR IMPLEMENTATION OF LPWH

According to the LPWH and the powers defined by this law, the institutions mandated in relation to the monitoring and implementation of this law are the Agency for Prevention of Corruption (APC) - in public sector institutions and the Labor Inspectorate (LI) - in institutions of the private sector.

APC also has the obligation to handle all cases of external signals, as well as those that can be processed by other public sectors. LPWH as external whistleblowing defines "whistleblowing that is done by employees outside the institution"¹¹ either due to the lack of a whistleblowing officer in the institution where they work, or because of a lack of trust in the official responsible for whistleblowing, but also for other reasons. In APC, alerts from outside are handled by the alerting division that operates within the agency itself.

Another obligation of the APC according to the LPWH, is the drafting of the annual report for whistleblowing. Thus, all public institutions, private entities as well as regulators according to the field in which the whistleblowing takes place must report every year by December 31, to the APC regarding whistleblowing cases handled within the institution/entity for the previous year.¹² Annual reports these institutions/entities must submit them to APC by January 31 of each year. APC then prepares and publishes by March 31, the general annual report related to whistleblowing for the previous year.¹³

APC is also responsible for preparing training programs and holding trainings for officials responsible for signaling in public institutions, depending on the request of the institution. In relation to this issue, APC has now only developed a training for whistle-blowing officials.

APC is obliged to hold such trainings, but it is facing a lack of budget and that it is currently impossible to hold trainings for whistleblowing officials without the contribution of an external donor.

Director of APC, Yll Buleshkaj

11 Neni 1, i Ligjit nr. 06/L -085 për mbrojtjen e sinjalizuesve

12 Po aty, Neni 29

13 Po aty.





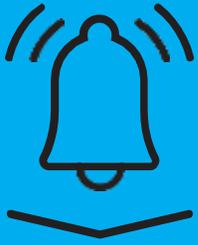
All public institutions, private entities as well as regulators according to the field in which the whistleblowing takes place must report every year by December 31, to APC regarding the cases of whistleblowing handled within the institution/entity for the previous year.

The annual reports of these institutions/entities must be submitted to APC by January 31 of each year. APC then prepares and publishes by March 31, the general annual report related to signaling for the previous year.

APC, among others, according to the regulation, is mandated to issue two guidelines for the implementation of the whistleblowing law together with the Ministry of Justice. These guidelines were supposed to be finalized within 6 months of the entry into force of the regulation, however, despite the fact that more than 1 year has passed since the entry into force, these guidelines have not yet been published. The MoJ has already initiated the procedures for drafting these guidelines by creating a working group, while it is expected that the guidelines will be completed by the end of 2022. On the other hand, the lack of guidelines for the administrative investigation of reports as well as guidelines for the protection of whistleblowers has created uncertainty to the potential whistleblowers as well to the whistleblowing officials regarding the implementation of whistleblowing legislation.

In this regard, APC has not developed any awareness campaign for citizens regarding whistleblowing, due to internal reorganization and limited budget.

Another responsibility of APC is the monitoring of LPWH implementation. Thus, each institution must inform APC about the appointment of the official responsible for signaling and for any eventual change of the officer for signaling within that institution. However, the APC has not yet operationalized the mechanisms for monitoring the implementation of the LPWH and in relation to this issue, Mr. Buleshkaj estimates that the current capacities of the APC (human resources and budget) are not sufficient to monitor the implementation of this law. Buleshkaj assesses that the lack of staff in APC is problematic not only in monitoring but also in handling cases of external whistleblowing, for which APC is mandated by law.



IMPLEMENTATION OF THE LAW ON PROTECTION OF WHISTLEBLOWERS IN THE JUSTICE SYSTEM



I. Non-appointment of officers for whistleblowing in the judicial institutions



II. Non-publication of the names of officers for whistleblowing in the webpages of institutions



III. Negligence of justice institutions in informing employees about whistleblowing



IV. Lack of technical requirements for signaling within the institutions of justice



V. Lack of training of officers for whistleblowing



VI. The profile of officers for whistleblowing



VII. Zero (0) cases of whistleblowing



I. Non- appointment of officers for whistleblowing in the judicial institutions

The LPWH and the relevant Regulation define the obligations of employers in relation to the implementation of the legal framework for the protection of whistleblowers. Within these obligations, it is foreseen that the public employer who has more than fifteen (15) employees, and the private employer who has more than fifty (50) employees are obliged to appoint the official responsible¹⁵ for whistleblowing as well as to notify all employees in writing about the reporting procedures and other rights provided by the LPWH. The regulation foresees that large public institutions that extend throughout the territory of the Republic of Kosovo, appoint the responsible official for the headquarters, and their regional units appoint the responsible official for each unit.¹⁶

PROSECUTIONS

In relation to the fulfillment of this legal obligation, the KDI has found that not all institutions within the prosecutorial system in Kosovo have appointed officials responsible for whistleblowing. In this direction, the KDI dated October 10, 2022, directed a request for access to public information to the Kosovo Prosecutorial Council (KPC) and requested the data of the officials responsible for whistleblowing in the institutions of the prosecutorial system. Even though more than two weeks had passed since this request, KDI had not received any response from KPC. Thus, KDI addressed the institutions within the prosecutorial system with individual requests for access to information, related to the appointment of officials responsible for whistleblowing. After a total of three (3) weeks of requests addressed to the KPC and the institutions within the prosecutorial system, the KDI has managed to secure the contacts of the persons responsible for whistleblowing in the prosecutorial system, where from a total of 11 institutions contacted, the data of officials responsible for signaling in only 8 of them.

The KDI's research has found that the Special Prosecutor's Office of the Republic of Kosovo (PSRK), the Basic Prosecutor's Office in Pejë (BC Pejë) and the KPC have appointed the officials responsible for handling whistleblowing cases only after the KDI addressed these institutions with a request official, where he requested the contacts of officials responsible for whistleblowing.

COURTS

The situation in the judicial system is estimated to be a little better, since the Kosovo Judicial Council (KJC) in its 289th meeting, held on June 23, 2022, made a decision by which the officials responsible for signaling in the basic courts in Kosovo were appointed, the Court of Appeal (CA), the Supreme Court (SC) and the KJC. This decision was published on the official website of the KJC. Although such a decision was late because the LPWH entered into force in 2019, while the regulation in 2021, the KJC only has appointed the officials responsible for whistleblowing in 2022. While the Court of Appeal, the Basic Court of Prizren and that of Gjakova had appointed the official responsible for whistleblowing from 2020.

KDI estimates that the appointment of whistleblower officials in the justice system was made late, taking into account that most of the officials were appointed during 2022, while the LPWH entered into force in January 2019.

14 Neni 17, par.1, i Ligjit nr. 06/L -085 për mbrojtjen e sinjalizuesve

15 Neni 5, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit





II. Non-publication of the names of officers for whistleblowing in the webpages of institutions

Every public employer (public institution) is obliged to publish on its website instructions regarding whistleblowing.¹⁷ Also, on the official websites of the institutions, the data and contact information of the person responsible for whistleblowing within that institution should appear.¹⁸ KDI assesses that this is the first and very important step that enables the implementation of this law.

PROSECUTIONS

KDI's research has found that most institutions in the prosecutorial system have not published the data and contacts of officials responsible for whistleblowing. The KDI initially accessed the official website of the KPC, to obtain the data related to the officials responsible for whistleblowing in the institutions of the prosecutorial system, but these data were not public, not even for the official responsible for whistleblowing within of KPC. Here, the Basic Prosecutor in Mitrovica makes an exception, which had published on its website the contact and data of the person responsible for alerting this prosecutor's office.

The data for other officials responsible for whistleblowing in the prosecutorial system, KDI has provided through FOIA request that were addressed to the KPC and other institutions in the prosecutorial system. The KDI has found that after these requests, the KPC in November 2022 published the list of all officials responsible for reporting in the institutions of the prosecutorial system.

COURTS

Unlike KPC, KJC had published on its official website the decision on the appointment of officials responsible for whistleblowing in the institutions of the judicial system. The exceptions are the Basic Courts in Pristina, Pejë, the Court of Appeal and the Supreme Court, which have not published the contacts of officials responsible for whistleblowing on their websites.

16 Neni 6, par.2, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit

18 Po aty, neni 6, par.3.



III. Negligence of justice institutions in informing employees about whistleblowing

LMS has determined that public and private institutions, in order to inform and raise awareness of their employees regarding whistleblowing and whistleblowing procedures, are obliged to provide written instructions for their employees.¹⁹ Even these instructions or other useful information should to be published on the web pages of institutions, to be updated and distributed regularly to employees, when technically possible. Moreover, the regulation determines that the responsible official undertakes actions to facilitate the submission of reports in the public interest, which includes the establishment and distribution of forms for the submission of reports within the institution, publication on the institution's official website as well as the establishment of information on how a whistleblowers can contact the responsible official to submit a public interest report. Failure to fulfill this obligation according to the LPWH results in the imposition of fines ranging from five hundred (500) euros to twenty thousand (20,000) euros for the public institution, the private entity and the relevant competent authority.²⁰

PROSECUTIONS

According to whistleblower officials interviewed by KDI, most of the staff in the prosecution system are unclear about "WHO" is a whistleblower and "WHERE" they should report. In fact, most of the prosecutor's offices, only in November 2022, have moved towards the implementation of the LPWH and that by taking the first step - the appointment of responsible officials who will deal with the handling of whistleblowing cases. According to the interviewed officials, in November 2022, all the staff in the institutions of the prosecutorial system received an informative email from the KPC, through which they were informed about the contacts of the officials responsible for whistleblowing in the institutions of the prosecutorial system. On the other hand, the officials responsible for whistleblowing interviewed by KDI have expressed their concerns regarding the misunderstandings that exist among employees of the institutions regarding whistleblowing. Some of the officials for whistleblowing during the interviews with KDI, have stated that their colleagues have not shown any interest in whistleblowing. These officials also mention the fact that the institutions where they work have not developed any information campaign for their employees on whistleblowing. Therefore, from the moment of their appointment in this position, most of the officials declare that due to the lack of information about whistleblowing, unpleasant situations have been created among the employees. Even in some cases, the employees of the institutions have addressed the officials responsible for signaling with pejorative terms - "spy".

COURTS

Meanwhile, based on the interviews conducted with the officials responsible for whistleblowing in the institutions of the judicial system, it was learned that the information of the employees was better. The personnel was informed about the contacts of the officials responsible for whistleblowing through official emails which were sent by the whistleblowing officials themselves or by the presidents of the courts, even announcements about the whistleblowing channels were made during meetings with the staff. However, the officials responsible for whistleblowing in the institutions of the judicial system indicate that they have not received any requests for clarification from employees in their institution and have not prepared for publication on the institution's official website the instructions related to whistleblowing. From these interviews it is learned that there is a significant lack of information among the administrative personnel, even according to the answers of some of the officials responsible for reporting, the personnel of these institutions in certain cases are confused between what constitutes a disciplinary violation and what violations are handled in within the framework of signaling and related to the public interest. KDI assesses that the justice institutions, apart from the fact that they have designated the officials responsible for handling whistleblowing cases and that with delay, their efforts to inform their employees about the whistle-blowing procedures and the rights arising from this law have been minimal, and in some institutions even non-existent.



IV. Lack of technical requirements for signaling within the institutions of justice

LPWH has determined that the responsible official is the person designated by the public institution or private entity to receive and handle the whistleblowing.²¹ According to the regulation, the responsible official must be provided with sufficient resources to fulfill his duties, including space and equipment for work, as well as suitable conditions for document storage.²²

In addition, the LPWH has provided that the responsible official and any other person who accepts or processes reports in the public interest during the performance of their official duties must at all times keep the information related to the whistleblowing confidential, not spreading or transmitting it to third parties inside or outside the institution, as well as not to use it for other purposes.²³ Moreover, the Regulation determines that non-respect of confidentiality by the responsible official and any other person who accepts reports in the public interest will be considered a violation of work duties.²⁴

PROSECUTIONS

KDI's research has found half of the officials responsible for whistleblowing in the institutions of the prosecutorial system do not have suitable working conditions to handle whistleblowing cases. KDI has found that five (5) of the 10 officials interviewed share the same work environment with their colleagues and do not have separate offices. This situation has been described as problematic even by the officials themselves, because if the employees of that institution want to signal, they find it impossible to protect their identity and the confidentiality of the reporting.

COURTS

In the institutions of the judicial system, there have been few cases when officials responsible for whistleblowing have not been created a suitable environment to carry out their work (handling whistleblowing cases). KDI has found that three (3) out of eight (8) officials interviewed do not have a suitable environment for conducting meetings with whistleblowers. Moreover, officials often share the office with one or two people, and such a thing is contrary to one of the basic principles of this procedure, such as that of confidentiality, thus hindering the development of the whistle-blowing procedure.

KDI assesses that the officials responsible for receiving whistle-blowing cases have not been provided with adequate work facilities for the performance of this task, in accordance with legal requirements.

21 Po aty, neni 3, par. 1.10

22 Neni 5.9, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit

23 Neni 11, i Ligjit nr. 06/L-085 për mbrojtjen e sinjalizuesve

24 Neni 7, i Rregullores nr. 03/2021 për përcaktimin e procedurës për pranimin dhe trajtimin e rasteve të sinjalizimit





V. Lack of training of officers for whistleblowing

The LPWH defines a series of obligations for public and private institutions, not only in terms of appointing a whistleblower but also in providing suitable conditions for potential whistleblowers. The LPWH itself is a new concept in the legal framework in the field of anti-corruption and as such brings systemic changes, in the governing and institutional culture, but also in the social mentality - through the motivation of citizens to act in the public interest.

Thus, its efficient implementation requires a multidimensional will and commitment and represents a challenge for public and private institutions. The implementation of the law is directly related to the capacity of responsible officials in public and private institutions to handle whistle-blowing cases in a professional and adequate manner. For this, qualitative and sufficient trainings for officials responsible for signaling should be in the foreground in order to ensure the applicability of the law. The regulation in force defines the legal obligation for the relevant institutions to provide training for whistle-blowing officials, while it mandates APK to prepare the training program for officials responsible for handling whistle-blowing cases at the request of public institutions.²⁵

PROSECUTIONS

From the interviews conducted with the officials responsible for whistleblowing in the prosecutorial system, KDI has realized that most of them have not been trained to handle whistleblowing cases, despite the fact that they have been charged with this additional task, without any compensation. Out of a total of 11 responsible officials, only 4 of them have undergone whistle-blowing training. All officials, without exception, even those who have not been trained, but also those who have gone through a single training, have expressed the need to attend additional training, since this is a new task for them and they are not familiar with it. - enough energy. Also, the interviewed officials have stated that they are not clear about the procedures for handling and investigating the alerts received.

COURTS

Even in the judicial system, the responsible officials have confirmed that they have not been trained to deal with whistleblowing cases. Except for the BC in Gjakova, all officials responsible for whistleblowing have considered it necessary to hold whistleblowing training.

On the other hand, the trainings were not mandatory and there were cases when officials did not participate in these trainings at all, so the law does not have any mandatory mechanism for holding trainings for these officials, although from the answers given to the KDI, the officials in question expressed the need to be part of the training, considering signaling as a new field for which they had no knowledge.

KDI assesses that training for responsible officials is crucial in the efficient implementation of the duties of these officials and the law itself.

²⁵ Po aty, neni 5, par.12





VI. The profile of officers for whistleblowing

The LPWH does not define any clear criteria regarding the professional training that an official responsible for signaling must have before assuming this task, while the regulation in force defines that "official responsible for signaling" can be any official of to that institution that is mandated to deal with issues related to ethics, anti-corruption policies or related issues.²⁶

PROSECUTIONS

From the interviews conducted in the prosecutorial system, the KDI has found that whistleblower officials have different profiles, some are administrative staff while others also exercise the position of prosecutor. Each of them is charged with this additional duty, without compensation, to handle whistleblowing cases within the institution where they are employed by primary duty.

They have stated that the additional duty of the official responsible for signaling can also interfere in the effective exercise of the primary duty that they exercise. This complaint was especially expressed to the prosecutors, who were assigned this task, since their primary job has many obligations, often with work outside the office.

COURTS

Whereas, in the judicial system, they have designated professional associates, public information officers or officials for access to official documents as officials responsible for reporting.

As for public information officers, who in most cases are also officers for access to public documents, they have a heavy workload, so the additional responsibility of the whistleblowing officer and the acceptance of whistleblowing cases can hinder you in exercising primary function.

26 Po aty, neni 5, par.2





VII. Zero (0) cases of whistleblowing

The legal framework for the protection and treatment of whistleblowing cases has defined legal obligations for institutions in order to strengthen the fight against corruption through whistleblowing.

Although the LPWH entered into force in January 2019 and the regulation in May 2021, their implementation by the institutions of the justice system has started late. The appointment of the officials responsible for whistleblowing in the prosecutor's office was made mainly during 2022. In fact, 4 of the 11 responsible officials were appointed to the position only after the KDI requested their contacts for an interview, in November of this year. Even in the courts, the officials responsible for signaling have been appointed to their duties in June 2022, i.e. two (2) and a half years after the entry into force of the LMS and over a year after the entry into force of the regulation.

Consequently, the number of whistleblowing cases within the justice system for the period January 2022 to November 2022 is zero (0) whistleblowing cases.





RECOMMENDATIONS

- The institutions of the justice system appoint the officials responsible for whistleblowing. In cases where certain officials resign for any reason, the legal deadlines in relation to the appointment of the new official responsible for whistleblowing must be respected, as well as the APC should be notified.
- To publish the names and contacts of the officials responsible for signaling on the official web pages of the courts and prosecutor's offices, so that the employees and the public have access to these contacts.
- The institutions of the justice system should contribute to raising awareness and the anti-corruption culture by taking all measures in the direction of informing all their employees about the right and procedures of whistleblowing, but also by encouraging whistleblowing as a value that benefits the public interest.
- The institutions of the justice system should provide appropriate physical and technical conditions for whistleblowing within their premises so that whistleblowers' identity and confidentiality are protected, in accordance with the law.
- APC to organize continuous training programs for responsible officials to efficiently and professionally handle whistleblowing cases in justice institutions.
- To conduct trainings by the Academy of Law for the administrative personnel so that they are informed about the whistleblowing procedure and whistleblowers' rights.
- Provide clear criteria regarding the selection of the official responsible for signaling, this to enable efficient signaling within an institution as well as to avoid the possibility of this additional task interfering with the official's primary duty.
- The Ministry of Justice and the Agency for the Prevention of Corruption, in accordance with the requirements arising from the Regulation, must draft guidelines for the protection offered to persons who submit reports in the public interest, the obligations of employers to protect whistleblowers from harmful acts and the right of whistleblowers for judicial protection as well as the guide on how to conduct the administrative investigation.





QUESTIONNAIRE - IMPLEMENTATION OF THE LAW ON THE PROTECTION OF WHISTLEBLOWERS - KDI

1 When did you take on the role of whistleblowing official in handling whistleblowing cases?

2 Do you feel professionally prepared to exercise the tasks assigned to you?

- 1 Good
- 2 Medium
- 3 Poor

3 Are you trained for this? If so, when and by whom?

4 What materials were there made available for you (Law, Regulation, Commentary, etc.)?

5 Was the information about your role spread in the institution where you work?



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6 How has this been communicated to staff (email, phone, meeting...)?

7 Have there been any whistleblowing cases that you have handled? If Yes, When?

8 Has any employee at your institution approached you with a request for any information about whistleblowing?

9 Do you have a suitable environment for meetings with parties (whistleblowers)?

10 Do you need additional training?

11 What were your difficulties (challenges), if any?

12 Has the additional duty of the whistleblowing officer affected the fulfillment of your primary work duties?

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Judicial SYSTEM

8 out of 10



Officials responsible for signaling have responded positively to the interview request

4 out of 8



Officials responsible for signaling initially hesitated to participate in the interview

3 out of 8



The interviewed officials do not have a suitable environment for conducting meetings with whistleblowers.

2 out of 8



Officials responsible for signaling did not participate in the training

4 out of 10



Institutions in the judicial system have not published the contacts of officials responsible for whistleblowing on their websites



Prosecutori al SYSTEM

10 out of 11



Officials responsible for signaling have responded positively to the interview request

2 out of 10



Officials responsible for signaling initially hesitated to participate in the interview

5 out of 10



The interviewed officials do not have a suitable environment for conducting meetings with whistleblowers.

4 out of 10



Officials responsible for signaling did not participate in the training

10 out of 11



institutions in the judicial system have not published the contacts of officials responsible for whistleblowing on their websites

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Kosova Democratic Institute (KDI)/Transparency International Kosova (TIK) believes in a Kosovo where the government, businesses, civil society and the daily life of citizens are free from corruption. KDI is a Non-Governmental Organization (NGO) committed to supporting the development of participatory democracy and the fight against corruption through the promotion of transparency, accountability and integrity at all levels and sectors of society.

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RAPORTO KORRUPSIONIN

THIRR

**0800
77 777**

ose online në linkun
<https://raporto.kdi-kosova.org/>

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