

(NON) IMPLEMENTATION OF THE LAW ON WHISTLEBLOWERS PROTECTION





The Kosova Democratic Institute is a branch of
Transparency International for Kosovo

The mission of KDI 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.

COPYRIGHT © 2023. Kosova Democratic Institute (KDI).

The Democratic Institute of Kosovo reserves all rights and no part of this publication may be reproduced or transmitted in any form, mechanical or electronic, including photocopying or any other storage and retrieval system, without written permission of the publisher. This publication may only be reproduced or transmitted if it is used for non-commercial purposes. Whenever and whoever uses quotes or different materials from this publication, is obliged to make clear the source from which they obtained those quotes or materials that are used.

For any assessments, remarks, criticism or suggestions, please contact us through the options provided below:

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

Tel: +383 (0) 38 248 038

E-mail: info@kdi-kosova.org

URL: www.kdi-kosova.org

Author: **Albesa Humolli**

Layout and design: **envinion**

TABLE OF CONTENTS

06

List of Abbreviations

07

METHODOLOGY

09

1. ON WHISTLEBLOWING

10

2. HOW ARE WHISTLEBLOWERS PROTECTED IN KOSOVO

13

IMPLEMENTATION OF THE LAW ON WHISTLE-BLOWING IN GOVERNMENT SECTOR

14

I. NON-PUBLICATION OF THE NAMES OF THE RESPONSIBLE OFFICERS FOR WHISTLEBLOWING

15

II. NON-DISSEMINATION OF INFORMATION TO EMPLOYEES OF INSTITUTIONS ON THE POSSIBILITY OF WHISTLEBLOWING

16

III. LACK OF TECHNICAL CONDITIONS FOR WHISTLEBLOWING WITHIN THE INSTITUTIONS

17

IV. WHISTLEBLOWING OFFICERS HAVE RECEIVED ONLY BASIC TRAINING

18

V. LACK OF INSTITUTIONAL SUPPORT FOR RESPONSIBLE OFFICERS FOR WHISTLEBLOWING

19

VI. EXTRA WORK WITHOUT PAYMENT

20

VII. LACK OF CASES OF WHISTLE-BLOWING IN INSTITUTIONS ALTHOUGH THE IRREGULARITIES ARE OBVIOUS

21

RECOMMENDATIONS



LIST OF ABBREVIATIONS

LPI - Law on Protection of Informants

LPW - Law on Protection of Whistleblowers

REGULATION - Regulation No. 03/2021 On Determining the Procedures for Receiving and Handling the Cases of Whistleblowing (Regulation)

GUIDE ON ADMINISTRATIVE INVESTIGATION - Guidelines for the Conduct of Administrative Investigation, approved by the Ministry of Justice, with Decision No. 158/2023, dated 18.07.2023

GUIDE FOR WHISTLEBLOWER PROTECTION - Guidelines for the protection of persons who report in the public interest, the obligations of employers for the protection of whistleblowers from harmful acts and the rights of whistleblowers for judicial protection, approved by the Ministry of Justice, with Decision No. 179/2023, dated 19.09.2023

APC - Agency for the Prevention of Corruption

LI - Labor Inspectorate

OPM - Office of Prime Minister

MFAD - Ministry of Foreign Affairs and Diaspora

MFLT - Ministry of Finance, Labor and Transfers

MoJ - Ministry of Justice

MD - Ministry of Defence

MIAPA - Ministry of Internal Affairs and Public Administration

MoH - Ministry of Health

MESTI - Ministry of Education, Science, Technology and Innovation (MESTI)

MKRS - Ministry of Culture, Youth and Sports

MLGA - Ministry of Local Governance Administration

MESPI - Ministry of Environment, Spatial Planning and Infrastructure

MAFRD - Ministry of Agriculture, Forestry and Rural Development

MIET - Ministry of Industry, Entrepreneurship and Trade

ME - Ministry of Economy

MRD - Ministry of Regional Development

MCR - Ministry for Communities and Returns



METHODOLOGY

The analysis on the implementation of the Law on the Protection of Whistleblowers (LPW) in the Government of Kosovo is the second research within the KDI research cycle on the applicability of this law in the public and private sectors and follows the analysis that was made in 2022 on the implementation of LPW in the justice sector. During the year 2024, KDI is expected to continue with the monitoring of this law, and similar research will follow for other sectors such as local government, public enterprises and the private sector.

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, the relevant Regulation for the implementation of this law as well as two guidelines approved by the Ministry of Justice (MOJ) during this year regarding the way of conducting the administrative investigation as well as the protection of persons who report in the public interest. The current legislation defines a series of obligations for the institutions, which is related to the way of guaranteeing the whistleblowing as a preventive mechanism of corruption and the form of their treatment.

In addition to the analysis of the legal framework, KDI, for the performance of this research, also used the interview method. In order to provide a comprehensive overview of the applicability of the LPW at the government level, the KDI during September 2023, addressed the request for an interview to the Office of the Prime Minister as well as fifteen (15) relevant ministries, including the Ministry of Foreign Affairs and Diaspora (MFAD); Ministry of Finance, Labor and Transfers (MFLT); Ministry of Justice (MoJ); Ministry of Defense (MoD); Ministry of Internal Affairs and Public Administration (MIAPA); Ministry of Health (MoH); Ministry of Education, Science, Technology and Innovation (MESTI); Ministry of Culture, Youth and Sports (MCYS); Ministry of Local Government Administration (MLGA); Ministry of Environment, Spatial Planning and Infrastructure (MESPI); Ministry of Agriculture, Forestry and Rural Development (MAPRD); Ministry of Industry, Entrepreneurship and Trade (MIET); Ministry of Economy (ME); The Ministry for Regional Development (MRD) and the Ministry for Communities and Returns (MCR).

During the research, initially collecting information about officials responsible for whistleblowing in institutions at the executive level, as well as conducting interviews with them, KDI in some cases encountered difficulties in obtaining information (contacts) officials responsible for whistleblowing due to non-publication of the officials' data by the institutions, but there have also been cases when the officials have initially hesitated to declare about the institution they represent.

Out of the sixteen (16) institutions to which the KDI addressed a request for an interview, a total of fourteen (14) interviews were conducted with the officials responsible for whistleblowing. Most of the interviews, a total of eleven (11) of them were conducted in person, while in three (3) cases the officials preferred to conduct the interview through electronic communication - email. Despite the positive mood of the officials responsible for whistleblowing to be interviewed by KDI, they were initially reluctant to declare their position. Out of a total of sixteen (16) requests for interviews, the KDI received negative answers or no answers at all from seven (7) officials. Only after the second insistence (re-sending the invitations or contacting the officials by phone), KDI managed to conduct interviews with five (5) officials. While two (2) of the 16 contacted officials did not agree to declare at all. The interviews were conducted during the September - October 2023 time period.



**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 general public good by denouncing abuses that may occur in public and private institutions, as well as 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 (LPW), 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 employment relationship in the public or private sector.¹

The first elements of the concept of whistleblowing in the world can be found in 12th-century England, where the king had decided that anyone who reports a wrongdoing would be rewarded. This statement represented the first example of a law allowing private individuals to collect a reward for reporting a violation of their country's legislation.² More similar statutes arose over the next few centuries in many other countries because of the effectiveness of the "reward" in encouraging citizens to report law offenders.

In this regard, whistleblowing as a concept has been embraced and developed in American culture and politics. Since its founding, United States of 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

In the recent years, the European Union (EU) has taken steps to strengthen the rights of whistleblowers, while in 2019 it also adopted the new directive on "Protection of persons who report violations of Union laws" (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 Article 3, par. 1.1, of Law no. 06/L -085 On the Protection of Whistleblowers

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

3 Ibidem.





2. HOW ARE WHISTLEBLOWERS PROTECTED IN KOSOVO

Whistleblowing for the first time in Kosovo was regulated by the Law on the Protection of Whistleblowers (LPW) of 2011, this law contained 11 articles and aimed to define the procedure of reporting, treatment and protection of whistleblowers.⁴ But the provisions and scope of this law was very general and as such hardly applicable both to the informing subjects and to the authorities that received this information. Although this law was welcomed by civil society for the novelty it had brought in the field of protection of freedom of expression and disclosure of information of public interest, it was criticized as it did not encourage "informants" to report and was also inconsistent with European and international standards for the protection of whistleblowers.

Thus, due to the many shortcomings that LPW had, on 2 January 2019, the Law on the Protection of Whistleblowers (LPW) entered into force, which marks the first step towards the creation of a consolidated legal framework in harmony with Directive of the European Union in terms of the protection of whistleblowers. This law, unlike the previous law (LPW), establishes that whistleblowers who report or disclose information are not obliged to prove the good faith and authenticity of their reporting, and enables the reporting of violations in both the public and private sectors⁵. The LPW also includes legal provisions that regulate the whistleblowing procedure, the rights and protection of whistleblowers, including judicial protection of whistleblowers. LPW has foreseen that the competent bodies for external whistleblowing are the Agency for the Prevention of Corruption (APC) for the public sector, and the Labor Inspectorate (IP) for the private sector according to areas of

responsibility. The LPW also provides that APC monitors the implementation of this law and is also responsible for promoting awareness and holding trainings. Another obligation of the APC according to the LPW, is the drafting of the annual alert report that must be published every year by 31 January for the previous year⁶ on the basis of reports that public or private entities have submitted to APC.⁷

4 Law no. 04/L-043 On the Protection of Informants

5 Article 1 of Law no. 06/L -085 On the Protection of Whistleblowers

6 Ibid

7 Ibid, Article 29





Based on the LPW, whistleblowing in Kosovo can be done in three ways:

- Internal whistleblowing - means reporting within the public institution or private entity;
- External whistleblowing - means reporting to the Agency for the Prevention of Corruption
- Public whistleblowing means disclosing information to the media, to non-governmental organizations, through the Internet, at a public meeting, or in any other way.

The legal framework on the protection of whistleblowers has been further expanded in 2021, with the approval of Regulation No. 03/2021 on the Determination of the Procedure for the Receiving and Handling of Whistleblowing Cases (Regulation) which defines the rules and procedures for receiving and handling of whistleblowing cases as well as the rights and responsibilities of the responsible 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, suitable conditions for storage of documents and others⁸. According to this regulation, the reporting must be protected, and the responsible officials have the duty to receive and handle the reports, to carry out the administrative investigation in relation to the reporting, to prepare reports on an annual basis in relation to the received cases of whistleblowing, which then are sent to APC⁹.

Update of legal framework on whistleblower protection during 202

During 2023, the legal framework that regulates the protection of persons who report in the public interest has been expanded with two new guidelines that regulate in detail the issue of administrative investigation and the protection of persons who report in the public interest. The approval of these guidelines comes almost two years late, from the approval of the regulation, despite the need and pressure on the MoJ and APC to complete the work on these guidelines.

The first guide on how to conduct an administrative investigation¹⁰ was approved by the MoJ in July of this year. This guide contains instructions on the procedure to be followed and the tools that the responsible official has at his disposal when conducting an administrative investigation procedure, including the principles on which the administrative investigation is conducted, the steps for handling whistle-blowing cases, registration of the report, keeping the register, conducting the administrative investigation, the rights of the participating parties, the actions after the administrative investigation, as well as defining the forms of documents that must be used by the responsible official during the administrative investigation.

8 Article 5, par. 9, of Regulation no. 03/2021 on determining the procedure for receiving and handling whistleblowing cases

9 Article 16, of Regulation no. 03/2021 on determining the procedure for receiving and handling whistleblowing cases

10 The guide on how to conduct the administrative investigation was approved by the Ministry of Justice, through Decision No. 158/2023 dated 18.07.2023



While the second guidance on the protection of persons who report in the public interest, the obligations of employers to protect whistleblowers from harmful acts and the rights of whistleblowers to judicial protection¹¹ approved in September of this year, contains instructions on the protection of whistleblowers from harmful acts and further defines the rights of whistleblowers in the case of reporting a wrongdoing. This guide consists of three parts, where the first part refers to the creation and maintenance of an internal confidential and secure whistleblowing management system in institutions, the second part refers to the protection of whistleblowers from harmful actions, including the creation and maintaining a secure mechanism to respond to complaints and adverse actions, while the third section deals with judicial protection for handling cases involving whistleblowers or persons related to whistleblowers.

It is important to note that these two guides do not replace the LPW or the Regulation but the purpose of these guides is to explain the requirements of the LPW and the Regulation in a more practical way, as well as to facilitate the practical implementation of the legal requirements regarding whistleblower protection and reporting in the public interest.

KDI, in accordance with its mission to prevent and fight corruption, has contributed to the drafting of the LPW and the regulation, but also to the facilitation of the implementation of this law in practice. In this regard, jointly 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 report them.

By knowing the content and meaning of the legal provisions, the employee community will create security regarding the notification procedure as well as their protection from possible consequences 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.

¹¹ The guide for the protection of persons who report in the public interest, the obligations of employers to protect whistleblowers from harmful acts and the right of whistleblowers to judicial protection approved by the Ministry of Justice through Decision No. 179/2023 dated 19.09.2023.



IMPLEMENTATION OF THE LAW ON WHISTLE-BLOWING IN GOVERNMENT SECTOR

Key findings:

- 

I. Non-publication of the names of the responsible officers for whistleblowing
- 

II. Non-dissemination of information to employees of institutions on the possibility of whistleblowing
- 

III. Lack of technical conditions for whistleblowing within the institutions
- 

IV. Whistleblowing officers have received only basic training
- 

V. Lack of institutional support for responsible officers for whistleblowing
- 

VI. Extra work without payment
- 

VII. Lack of cases of whistleblowing in institutions although the irregularities are obvious



I. Non-publication of the names of the responsible officers for whistleblowing

Every public employer (public institution) is obliged to publish on its website instructions regarding whistleblowing.¹² Also, on the official websites of the institutions, the data and contact information of the person responsible for handling cases of whistleblowing within that institution should appear.¹³ KDI considers that this is the first and very important step that enables the implementation of this law.

The research has found that not all ministries within the Government of Kosovo have fulfilled their legal obligations in accordance with the publication of the name and data of the official responsible for whistleblowing on their official website. Furthermore, visiting the official websites of 16 institutions (Prime Minister's office and ministries) in September 2023, KDI has found that nine (9) institutions' websites lack data on the official responsible for whistleblowing, while only in seven (7) cases this data has been presented. Even from these seven (7) cases where we find data on the official responsible for whistleblowing on the website of the relevant institution, this data is not complete. In one case, only the email where employees can report is presented, but the name of the responsible official is missing, while in the other case, only the name of the responsible official is presented, but the contact form for the official is missing.

During the time of the interviews and until the publication of this analysis, the KDI has reviewed the websites of the institutions if they have undergone any changes regarding the publication of the names and contacts of the official responsible for whistleblowing and has found that two (2) ministries, namely the Ministry of Defense (MoD) and the Ministry of Agriculture, Forestry and Rural Development (MAFDR) have made public on their websites the names and contacts of the officials responsible for whistleblowing.

Moreover, a positive change is marked by the Ministry of Internal Affairs and Public Administration (MIAPA), which at the time of the interview made public the name of the official responsible for whistleblowing, but access to it was limited, while after the interview, the ministry in question has placed on the home page of the institution a button dedicated to whistleblowing, making it very easy for employees or the public to find the name of the whistleblowing official in this institution.

12 Article 6, par. 2, of Regulation no. 03/2021 On determining the procedure for receiving and handling whistleblowing cases

13 Ibid., article 6, par.3.2





II. Non-dissemination of information to employees of institutions on the possibility of whistleblowing

LPW 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 employees¹⁴. Even these instructions or other useful information should be published on the web pages of institutions, updated and distributed regularly to employees, when it is technically possible.

Moreover, the regulation stipulates that the responsible official undertakes actions to make it easier for employees to report irregularities or abuses within that institution that are in the public interest. This includes the placement and distribution of forms for submitting reports within the institution, the publication of this form on the official website of the institution, as well as the placement of information on how a whistleblower can contact the responsible official to submit a report in the public interest.

Failure to fulfill this obligation according to the LPW 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 as well as the relevant competent authority.¹⁵

AAs was mentioned earlier, the KDI has found that information about the official responsible for handling whistle-blowing cases was missing from most of the ministries' websites. However, these institutions have made efforts to inform their staff about the person who is assigned to exercise the duty of the official responsible for whistleblowing. At least 9 of the 14 officials interviewed have reported that the institutions where they perform the duty of the responsible official, have sent notification emails to all employees and provided the contacts of the official responsible for handling whistleblowing cases.

From the interviews conducted with the officials responsible for handling whistle-blowing cases, KDI has been informed that the employees of the ministries have very little information on whistle-blowing, despite the fact that they have been informed by email. Even one of the officials interviewed declares that: "since I was appointed, none of my colleagues have asked me about this role or what the whistle-blowing is... I don't believe it's a lack of interest, but actually colleagues talk about irregularities in the institution all the time, in the office or in the cafe... but no one comes to me to blow the whistle". This official alludes that the main reason that he has not accepted any cases of whistleblowing lies in the lack of training of his colleagues on this concept, because, he quotes: "if they knew the rights and protection that the law guarantees to whistleblowers, they would come to me to report... and not maybe talk at the corners of the offices... but the ministry has not worked at all in the direction of promoting this law".

In conclusion, KDI considers that the institutions at the executive level have been content with appointing officials responsible for handling whistleblowing cases, while their efforts to inform their employees about the whistleblowing procedures and the rights stemming from this law have been minimal.

14 Article 28 of Law no. 06/L -085 for the protection of whistleblowers

15 Ibid., Article 27





III. Lack of technical conditions for whistleblowing within the institutions

The LPW has determined that the responsible official is the person designated by the public institution or private entity to receive and handle the whistleblowing.¹⁶ 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 the storage of documents.¹⁷ Moreover, the guide for the protection of whistleblowers, which has recently been approved, defines the obligation of institutions to provide the officials responsible for whistleblowing with means to safely store files of whistleblowers, such as the provision of a safe or steel lockers.¹⁸ Furthermore, the LPW has provided that the responsible official and any other person who receives or processes reports in the public interest during the performance of official duties must at all times preserve confidential the information related to the whistleblowing, not spreading or transmitting it to third parties inside or outside the institution, as well as not using it for other purposes¹⁹. Moreover, the Regulation determines that failure to respect confidentiality by the responsible official and any other person who receives reports in the public interest will be considered a violation of work duties.²⁰

KDI's research has found that most of the officers responsible for whistleblowing do not have adequate working conditions to handle whistleblowing cases. KDI has found that 11 of the 14 interviewed officials share the same work environment with their colleagues and do not have separate offices. In most ministries there is a concept of open working offices, which means that most whistleblowers assigned to the ministry share a working environment with 20 to 30 other officials. This situation has been described as problematic even by the whistleblowing responsible officials interviewed, who have discovered that every time one of their colleagues wants to whistle, they are forced to go to another vacant room or office or perhaps to assign a meeting even outside the premises of the ministry, so as not to compromise the whistleblower's identity.

From the conducted interviews, the KDI has found that the institutions, in addition to not providing separate work premises, to the designated officials for whistleblowing, have also not provided them with work tools in accordance with legal requirements. Therefore, none of the whistleblower officials has a separate steel cabinet or safe, intended for keeping papers and documents related to whis-

tlowers.

while the use of other work tools such as computers or printers with shared access remains problematic. In this way, one of the interviewed whistleblowing officials stated that the printer where he prints the letters he receives from the whistleblowers in the public interest is in service and about 30 other officials also have access to it. Thus, the responsible official for whistleblowing declares that "whenever I receive reports that I need to have as a hard copy, I find it very difficult to maintain the confidentiality of the party, and I am often forced to stay close to the printer for fear that another official may have access to those documents".

KDI considers that, in general, the institutions at the executive level have failed to provide the officials responsible for receiving whistleblowing cases with suitable work environments and necessary tools to perform this new task in accordance with the obligations arising from the LPW.

16 Ibid, Art. 3 par. 1.10

17 Article 5.9 of Regulation no. 03/2021 On determining the procedure for receiving and handling whistleblowing cases

18 Safe preservation and treatment of data (1.1.9), the guide for the protection of persons who report in the public interest, the obligations of employers to protect whistleblowers from harmful acts and the right of whistleblowers to judicial protection approved by the Ministry of Justice through Decision No. 179/2023 dated 19.09.2023, pg. 15.

19 Article 11 of Law no. 06/L -085 On the Protection of Whistleblowers

20 Article 7 of Regulation no. 03/2021 On determining the procedure for receiving and handling whistleblowing cases





IV. Whistleblowing officers have received only basic training

The complexity of the tasks delegated to the officials responsible for handling whistle-blowing cases requires that they first be equipped with adequate legal and practical knowledge on this issue. The regulation in force defines the legal obligation for the relevant institutions to provide training for whistle-blowing officials, while it mandates the APC to prepare the training program for officials responsible for handling whistle-blowing cases at the request of public institutions.²¹

Whistleblowing itself is a new concept, while LPW is considered to be a legal paradigm not explored enough in the anti-corruption field. As such, its efficient implementation requires a multidimensional will and commitment and presents 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 whistleblowing cases in a professional and adequate manner. Therefore, qualitative and sufficient trainings for officials responsible for whistleblowing should be in the foreground in order to ensure the applicability of this law.

The interviews conducted with the officials responsible for whistle-blowing at the executive level have shown that all these officials have undergone at least a basic training on whistle-blowing from the moment they received this task. However, all the officials interviewed have stated that they need additional training, this taking into account that the legal framework for the protection of whistleblowers has changed and has been further detailed with the entry into force of two (2) guidelines. Moreover, most of the officials responsible for whistleblowing interviewed, consider that the training they have held about the new task are inadequate, have the same content and are focused only on explaining the legal framework, without practical examples for managing a whistleblowing case.

One of the whistleblower responsible officials has stated that "...only the explanation of legal concepts should not be translated into good implementation of the law on our part. We also need practical examples and situations from real life to understand exactly how we should receive and investigate a case of whistleblowing".

KDI considers that the training offered to the officials responsible for whistleblowing should coincide with the legal amendments and additions and should be adapted to the requirements and needs of the officials responsible for whistleblowing. Furthermore, these trainings should not overlook the practical part of the implementation of the LPW since the inclusion of practical cases in the training affects the improvement of good practices regarding the adequate implementation of this law.

21 Ibid., Article 5, par. 12, of Regulation no. 03/2021 on determining the procedure for receiving and handling whistleblowing cases





V. Lack of institutional support for responsible officers for whistleblowing

The KDI research found that all whistle-blowing officials at the executive level were appointed by their superiors without any prior consultation and consent. Most of them have stated that they took the decision to appoint them as officials responsible for whistleblowing only through email, without offering them the opportunity to discuss a possible refusal of the task. Furthermore, it has been observed that these tasks have been delegated to officials of different profiles and with different professional backgrounds. Although the applicable legislation does not define clear criteria regarding the profile of the official responsible for whistleblowing, it is recommended that if the institution has a designated official for ethics, anti-corruption policies or related matters, the same official can be designated as the official responsible.²²

All the interviewed officials declare that at the moment when they were notified of the new task, they did not receive instructions or materials, either the law or the regulation or any other orientation material regarding this new task.

Many of the officials responsible for whistleblowing interviewed have stated that in addition to the primary position, they also exercise other positions within the same institution. An officer responsible for whistleblowing, interviewed by KDI, stated that in addition to the primary position he holds in the institution, he was also assigned the position of responsible official for whistleblowing, the position of officer for access to public documents and the position of personal data protection officer. So there are not a few cases when the officials designated for whistleblowing have 2-3 additional tasks, which according to the officials has created difficulties in fulfilling the obligations they have according to their primary position. One of the whistleblowing responsible officials stated to KDI that "at certain moments I thought of leaving my job because of the pressure and workload".

From the interviews with the officials responsible for whistleblowing at the executive level, it was understood that these officials often face challenges in the exercise of this duty, due to the very fact that they hold this position. One of the officials has stated that due to a case of whistle-blowing that he received in the institution where he works and that resulted in the elimination of favoritism in a selection procedure within the institution, he suffered damage to his reputation while he heard that a court case against him

was also initiated.

So, the employee against whom measures were taken because he favored certain colleagues during the selection in the commissions within the institution, harassed and intimidated the official for whistleblowing as a sign of retaliation for the measures that were imposed on him as a result of the official's recommendation to eliminate irregularities. The whistleblowing responsible official states that "several complaints have been sent to the secretary of the ministry about my work and I have also heard words from other colleagues that this person has spread about me". The official interviewed by the KDI declares that there was no support from the institution in relation to this case, while he still continues to face the consequences of this case, which undoubtedly affected his reputation as an official, but also caused him legal costs in relation to complaints and other judicial actions that have been taken by his colleague.

KDI, from the interviews conducted in the institutions at the executive level, found that the institutions did not take into account the needs and the volume of work of the officials when appointing them to the position of whistleblowers, and they do not have mechanisms to provide them with support either legal or other to these officials, in cases where they face challenges in the performance of their duties.

22 Ibid., Article 5, par. 2, of Regulation no. 03/2021 on determining the procedure for receiving and handling whistleblowing cases





VI. Extra work without payment

The existing legal framework, LPW, regulations and guidelines regarding the protection of whistleblowers do not include provisions for compensating officials responsible for whistleblowing. However, in the interviews with these officials within the executive level institutions, a common concern has emerged regarding the lack of compensation for this role.

As identified by KDI through these interviews, a prevailing feeling among officials is that the role of a whistleblowing officer requires considerable commitment. Those officials who have direct experience in dealing with whistleblowing cases have emphasized the time and commitment required to deal with a case, including administrative investigation, communication with relevant parties, examination of documents, examination of the legal framework and preparation of reports. Whistleblowing officials emphasize that this commitment can be several days, even for a single case. The increased workload becomes particularly heavy when officials receive a larger number of alerts within a period, taking into account their existing responsibilities within the institutions.

KDI interviews reveal a widespread demand for compensation from officials responsible for whistleblowing. Even during the trainings conducted by entities such as APC or other institutions, these officials constantly express the need for compensation in recognition of the additional task assigned to them. An official interviewed emphasized that the duty of the officer responsible for whistleblowing is not a personal favor and stressed the importance of recognizing the challenges and stigma associated with this role by enabling some form of compensation or benefit for the officers who perform this duty.

Additionally, the interviews shed light on a specific suggestion for compensation. While financial compensation may be challenging, officials propose that an alternative may be to provide an additional day or two of paid leave as compensation for voluntarily performing this additional duty for the institution. This proposal stems from the understanding that compensating officers for their whistleblowing efforts is essential, given the unique challenges they face in the execution of their duties.





VII. Lack of cases of whistle-blowing in institutions although the irregularities are obvious

The legal framework for the protection and handling of whistleblowing cases has defined legal obligations for institutions in order to strengthen and promote the fight against corruption through reporting in the public interest.

However, KDI, through interviews with the officials responsible for whistleblowing, has found that the number of whistleblowing in institutions at the executive level still remains very low. Thus, 8 of the 14 whistleblowing responsible officials interviewed by KDI, or 60% of them, stated that they did not receive any reports from their colleagues. While other officials who have had the opportunity to deal with cases of whistleblowing within their institutions say that despite the presence of irregularities that are evident because they are rumored in circles within public institutions in the country or even in the media, the number of reports they receive is relatively low.

Even one of the whistleblower officials speaks openly about the presence of corruption in the institution he represents, while declaring that "There is corruption, especially in procurement, but whistleblowers are missing". As the main factor why the number of whistleblowers in institutions at the executive level remains limited is the lack of promotion and awareness among potential whistleblowers. Employees within these institutions seem uninformed about the concept of whistleblowing and the available reporting channels. This lack of knowledge acts as a significant barrier, preventing the effective use of whistleblowing as a tool to expose and combat corruption within internal processes in institutions. In essence, the underuse of whistleblowing can be attributed, at least in part, to a gap in awareness and promotion within executive-level organizations. Addressing this information deficit appears as a crucial step in fostering a culture of transparency and accountability through whistleblowing in institutions.

Other additional factors that whistleblowing officials consider to have influenced the low number of reports are the lack of technical conditions for whistleblowing, i.e. the fear of revealing the identity of the whistleblower, then the lack of confidence in the effectiveness of the system, respectively in dealing with an irregularity in an adequate way as well as the lack of legal protection and other support mechanisms for potential whistleblowers.





RECOMMENDATIONS

- Institutions at the executive level must publish on their official websites the data of the officials responsible for whistleblowing, the name and the contact of the official, so that the employees and the public have access to these contacts.
- The regulation should define minimum criteria on the profiles or adequate positions that the persons appointed to exercise the position of official responsible for whistleblowing should have.
- Institutions at the executive level should provide appropriate physical and technical conditions for whistleblowing within their premises so that the whistleblowers' identity and confidentiality are protected, in accordance with the law, but also the officials responsible for whistleblowing are enabled decent working conditions for proper handling of whistleblowing cases.
- APC to organize continuous training programs for officials responsible for whistle-blowing in accordance with legal changes, requirements and training needs of officials while not overlooking the practical part of handling whistle-blowing cases from real life.
- Institutions at the executive level should promote the culture of reporting abuses in the public interest as a value in protecting the integrity of the institutions, as well as work towards proper information of their staff on whistleblowing, the rights of whistleblowers and how to report either through brochures or informative posters, or holding informal meetings with staff to discuss the concept of whistleblowing.
- The Agency for the Prevention of Corruption should be more proactive in monitoring legal requirements stemming from the Whistleblower Protection Law, as well as in promoting whistleblowing as a tool to fight corruption within public institutions in the country.





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

1 When did you take over the duty as whistleblower case handler?

2 Do you feel professionally prepared to carry out these tasks assigned to you?

1 sufficient 2 insufficient 3 not at all

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

4 What materials have they made available to you (Law, Regulation, Commentary, etc.)?

5 How much information is spread in the institution where you work about your role?

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 been approached 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 work duties?



KDI is a Non-Governmental Organization (NGO) committed to supporting the development of democracy through the involvement of citizens in making public policies and strengthening the civil society sector with the aim of influencing the increase of transparency and accountability on the part of public institutions.

For more information about KDI, please visit: www.kdi-kosova.org

With financial support from the Federal Ministry of Foreign Affairs of Germany



RAPORTO KORRUPSIONIN

THIRR

0800
77 777

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

**KORRUPSIONI
PAMUNDËSOHET
KUR RAPORTOHET**