

# (NON) IMPLEMENTATION OF THE LAW ON PROTECTION OF WHISTLEBLOWERS IN CENTRAL PUBLIC ENTERPRISES OF KOSOVO





Kosovo Democratic Institute is a branch of  
Transparency International for Kosovo

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

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# List of Abbreviations

<b>APC</b>	Agency for Prevention of Corruption
<b>LI</b>	Labor Inspectorate
<b>KDI</b>	Kosovo Democratic Institute
<b>LPI</b>	Law on Protection of Informants
<b>LPW</b>	Law on Protection of Whistleblowers
<b>MoD</b>	Ministry of Justice
<b>MoE</b>	Ministry of Economy
<b>POEPMU</b>	Publicly-Owned Enterprise Policy and Monitoring Unit
<b>HPOE</b>	Hydroeconomic Publicly Owned Enterprise
<b>REGULATION</b>	Regulation No. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing
<b>GUIDANCE</b>	Guidance for the Manner of Conducting the Administrative Investigation, adopted by the Ministry of Justice, with the Decision No. 158/2023 dated 18.07.2023
<b>J.S.C</b>	Joint Stock Company



# Methodology

This study was developed in light of the KDI research series on the implementation of the Law on the Protection of Whistleblowers and follows the previous KDI research on the implementation of the law in the justice institutions and the executive level.

KDI has reviewed 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, and two guidelines approved by the Ministry of Justice (MOJ) regarding the way of conducting administrative investigations as well as protection of persons who report in the public interest.

The focus of this research is internal whistleblowing as form of whistleblowing and reporting irregularities within Kosovo's central public enterprises. Therefore, in order to carry out this research and with the purpose of providing a more thorough overview, KDI used the interview method, sending requests for interviews to the following central public enterprises: KEC (Kosovo Energy Corporate), KOSTT (System, Transmission and Market Operator), Post of Kosovo, Telecom of Kosovo, Railways of Kosovo - TrainKos, Railways of Kosovo - InfraKos, KLMC (Kosovo Landfills Management Company), NPH Iber Lepenc J.S.C and Trepça J.S.C

A total of eight (8) interviews with representatives in charge of managing whistleblower cases have been conducted from nine (9) central public companies, to which KDI has submitted an interview request. The majority of interviews, i.e. a total of seven (7) interviews were done in person, while one (1) interview was done via postal address - email. Officials responsible for handling whistleblowing cases responded positively to the interview invitation and were ready to state their responsibilities in the company, while only in one (1) case, the official insisted that the questions and the arrangement of the interview to be done through the communication office of the respective enterprise. All interviews were conducted during the month of August 2024





# 1. Introduction

The current legislation in Kosovo defines a series of obligations for public institutions to guarantee whistleblowing as a preventive mechanism against corruption and for the effective handling of reports that protect public interest. The implementation of these obligations by central public enterprises is the main object of this research.

The Law on Protection of Whistleblower (LPW) is a key component in the fight against corruption and the promotion of transparency in the public sector in Kosovo. Central public enterprises, as important stakeholders in providing public services and managing public funds, play an essential role in this regard. Vital services are provided to citizens through public enterprises, such as: electricity, water supply, public transport, telephone services, postal services and others. Due to their strategic importance and the wide impact these enterprises have on the Kosovar economy and society, and the fact that they manage a significant part of public money, monitoring the implementation of LPW in these institutions is vital. This is to provide an assessment of the effectiveness and sustainability of measures taken to protect whistleblowers, guaranteeing that enterprises act in accordance with the law and protect the public interest.

This focus is made for several key reasons. First, public central enterprises manage significant public funds and make important economic decisions, which makes them particularly vulnerable to the risk of corruption and irregularities. The presence of effective whistleblowing mechanisms within these institutions is vital for early detection and addressing of potential violations, thus protecting the public interest.

Secondly, public enterprises in Kosovo are already facing numerous management problems, loss-making operations, staff overloads and poor performance. Due to these structural problems, this sector is more prone to internal irregularities and requires strong mechanisms for reporting and dealing with them.

Precisely due to the irregularities to which this sector turns out to be more prone, one of the central public enterprises has turned out to have the largest number of alerts (information) from all public institutions in the country.<sup>1</sup> For this reason, monitoring the implementation of the LPW in this sector is important to provide a deeper and clearer understanding of the effectiveness of law enforcement in practice and to identify areas that can help further improve the existing legal framework and procedures.

The statute, ownership and organization of central public enterprises in Kosovo is regulated by law.<sup>2</sup> The list of central public enterprises published in the official gazette has undergone changes due to the dissolution and establishment of new enterprises and the change of their management policies. Given that these changes have not been reflected in the Law on Public Enterprises, whereas the last amendment-supplement of the law published in the official gazette is that of 2015, and Public Enterprises Policy and Monitoring Unit (PEPMU), as the unit in charge of central public enterprises has confirmed to KDI,<sup>3</sup> the list of central public enterprises that are subjected to this analysis.

“  
Signaling is the  
mechanism to  
deliver the “right  
information” to the  
“right people”

1 Award ceremony for public institutions with the largest number of whistleblowing held on 2 March 2023 by the Agency for Prevention of Corruption (APC).

2 Law No. 03/L-087 on public enterprises, applicable since 15.06.2008

3 Request by the Kosovo Democratic Institute for access to public documents, dated 2 August, 2024.





## 2. About whistleblowing

Whistleblowing is an important tool in preventing and fighting corruption as it encourages citizens to contribute to the general public good by denouncing abuses that may occur in public and private institutions, but also in society. Through whistleblowing, an individual has the opportunity to report or disclose information related to actions occurring in his workplace, which affect the public interest.

The concept of whistleblowing originated in XII-century England, where the king rewarded those who reported wrongdoing.<sup>4</sup> This system, which spread to many countries, promoted the reporting of lawbreakers. Whistleblowing developed in America,<sup>5</sup> as well, where a culture of civic responsibility was embraced. Benjamin Franklin became one of the first American whistleblowers when in 1773, he exposed confidential papers showing that the governor of Massachusetts had deliberately misled the parliament to promote a military buildup in the American colonies. In recent years, the EU has taken important steps in this area by adopting in 2019 a directive aimed at protecting whistleblowers and creating safe channels for reporting, which member states must transpose into their national legislations.

In Kosovo, whistleblowing is protected and regulated under the Law on Protection of Whistleblowers, which defines a whistleblower as 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.<sup>6</sup> This law, which has been in force since 2019, follows the Law on the Protection of Informers (LPI)<sup>7</sup> of 2011, a law that contained 11 articles and aimed to determine the procedure for reporting, handling and protecting whistleblowers. The provisions and scope of LPI were considered too general and as such hardly applicable for those reporting as well as for the authorities that receive such information.

For that reason, due to the many shortcomings of the LPI, on 2 January 2019, the Law on the Protection of Whistleblowers (LPW) entered into force, which marks the first step towards the establishment of a consolidated legal framework in harmony with the European Directive regarding the protection of whistleblowers.

The legal framework for the protection of persons reporting in the public interest in Kosovo is expanded and further supplemented with the relevant regulation that defines the procedure for receiving and handling whistleblowing cases and with two guidelines on the administrative investigation of whistleblowing cases and the protection of persons who report in the public interest. (For more, Annex I: Protection of Whistleblowers in Kosovo).

<sup>4</sup> Whistleblowers History Overview, Whistleblowers International, e accessible at: <https://www.whistleblowersinternational.com/what-is-whistleblowing/history/>

<sup>5</sup> Ibidem

<sup>6</sup> Article 3, par.1.1, of Law no. 06/L-085 for protection of whistleblowers

<sup>7</sup> Law no. 04/L-043 for the protection of informers



## 3. IMPLEMENTATION OF THE LAW ON WHISTLEBLOWING IN CENTRAL PUBLIC ENTERPRISES

Main findings:



I. Whistleblowing is proving effectful - it is helping the prosecution and enterprises in the fight against corruption



II. Officials responsible for whistleblowing have been appointed, but employees "have no information"



III. Whistleblowing officers are not motivated to perform the duties arising from this position



IV. Superficial and little training for officials responsible for whistleblowing



V. Law on Protection of Whistleblowers good in paper but lacking in practice



VI. Corruption is present, but the number of reports remains small



# I. Whistleblowing is proving effectful – it is helping the prosecution and enterprises in the fight against corruption

The establishment of whistleblowing mechanisms in public enterprises has not only helped some of these enterprises detect internal irregularities, but has also proven to be a valuable tool for investigative authorities in Kosovo in the fight against corruption and the prosecution of related criminal offences. A notable example comes from one of the central public enterprises in the country, i.e. from “Kosovo Energy Corporation” J.S.C (KEC), which has received 85 whistleblowing reports in four years since the appointment of an official responsible for handling whistleblowing cases. Some of these cases have also ended up in the prosecutor’s office, positioning this enterprise as a leader among public institutions, both in terms of the number of complaints received and for their impact on fighting corruption and preserving public funds.

One case that went beyond internal irregularities to uncover a corruption scandal, and is still being investigated by prosecutors, involves a whistleblower who reported that a contract for securing an enterprises company’s buildings had not been fulfilled, despite the enterprise having paid for such services. The whistleblowing official, after receiving the information, visited the sites and came to realize that out of 90 buildings that should have been secured, guards were never present in 26 of buildings. In this case, the whistleblowing official, in addition to field inspections, also interviewed witnesses and examined the contract and other documents that resulted in numerous violations by the contract manager, who was dismissed from the job, while disciplinary procedures have been initiated against several other employees. Therefore, as a result of the whistleblowing, the mismanagement was addressed and a financial loss of 3 million euros, which was the value of the contract, was avoided.

Another case that ended up in the prosecutor’s office was related to a competition announced by Kosovo Energy Cooperation Kosova J.S.C (KEC), in which 35 employees who lacked necessary professional training were hired. The whistleblower uncovered that at the time of the announcement of the competition, the acceptance criteria for the position in question were intentionally changed, and the persons hired in those positions did not have the qualifications defined by the labour regulations for the position in question.

This information (whistleblowing), in addition to holding persons involved in this recruitment process responsible due to criminal

elements, with a referral by the whistleblowing official, the case has been sent to the prosecution office, whereas within the enterprise, disciplinary procedures have been initiated against some employees.

These cases show the direct impact that whistleblowing can have in the fight against corruption. However, even when whistleblowing information do not contain criminal elements or do not reach the prosecutor’s office, they still play an important role in addressing and solving irregularities within the enterprise. More than 100 disciplinary actions have been initiated in the central public enterprise - Kosovo Energy Corporation J.S.C (KEK) in response to various reports of internal irregularities.

Another illustrative example is the mismanagement of a procurement contract in the Kosovo Electricity Corporation (KEC) with regard to staff training. Therefore, this contract had foreseen for the purchase of a device and staff training on how to operate and use the new device. A whistleblower reported that, despite the purchase of new equipment, the required staff training was never completed. This information prompted corrective action, ensuring that the contract is fully executed and that all employees receive the necessary training as originally planned.

These examples highlight the critical role that whistleblowing plays in enhancing accountability, ensuring the proper use of public resources and strengthening the integrity of public enterprises, but at the same time provide insight about the effect that reporting mechanisms create in practice.



# II. The officials responsible for whistleblowing have been appointed, but employees “have no information”

The LPW and the relevant regulation define the employers’ obligations 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 responsible for handling cases of whistleblowing as well as notify all employees in writing about the whistleblowing procedures and other rights provided for in the LPW.

Central public enterprises in Kosovo have appointed officials responsible for handling whistle-blowing cases as required by the LPW that entered into force in 2019. However, most of these appointments were done only after 2020, and some of them even later. Despite these delays in appointing whistle-blowing officials, central public enterprises have demonstrated a higher level of compliance with LPW requirements compared to executive level institutions (ministries) and justice institutions (courts and prosecutors’ offices).

Central public enterprises, in addition to the appointment of officials responsible for whistle-blowing, have also published their data on the enterprises’ web-pages, as determined by the LPW<sup>8</sup>. Therefore, from the nine (9) webpages of central public enterprises, only two (2) do not have information about the official responsible for handling whistle-blowing cases, while in seven (7) other, the information on official responsible for whistleblowing are accessible. However, out of these seven (7), in two (2) of them, this information has been difficult to find despite being technically available. In these two (2) cases, the webpages of the enterprises did not contain any special page for access to the data and the contact of the official responsible for the handling of whistleblowing cases, or such data are not available at the top of the webpage.

**Therefore, only two(2) out of nine (9) central public enterprise websites do not have information about the official in charge of managing whistleblower cases, whereas the websites of seven (7) other enterprises have the information of the responsible official accessible**

**However, even out of these seven (7) cases, in two (2) cases, this information was difficult to find despite being technically available.**

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





Despite these initial efforts, it has been observed that the central public enterprises have not done enough to comprehensively inform their employees about the right to report irregularities as well as the procedures for how this can be reported, despite the LPW obliging institutions to inform the staff about whistleblowing and whistleblowing procedures.<sup>9</sup> Only in four (4) cases did the enterprises send informational e-mails notifying the staff about the appointment of this official responsible for whistle-blowing, while there were no other attempts or methods of informing employees regarding whistleblowing

mechanisms. This has also resulted in a lack of complete information and awareness about whistleblowing among the staff of central public enterprises.<sup>10</sup>

One of the reasons for this lack of information and effective communication is the complex organizational structure of central public enterprises, which often operate at regional level with employees spread in different areas of the country. Many of the officials interviewed claimed that central enterprises have a large number of employees and effective and timely -



communication of information is challenging. Furthermore, a significant proportion of central public enterprises' employees are "field workers" who lack official work e-mail addresses, making it more difficult to include them in internal announcements and communications.<sup>11</sup>

Consequently, central public enterprises differ from other public institutions due to such communication and awareness challenges, emphasizing the importance of targeted information campaigns to increase employees' understanding of whistleblowing mechanisms and their significance. These campaigns may include specific training, dissemination of information in various ways, and the establishment of appropriate channels for information and whistleblowing, all of which can help overcome existing barriers and improve the LPW effectiveness.

Central Public Enterprise<sup>12</sup>

Number of Employees

Enterprise units

**Kosovo Electricity Corporation J.S.C (KEK)**

**3,467**

Management  
PP Kosova A  
PP Kosova B  
DPQ Mirash and  
DPQ Bardh i madh

**System, Transmission and Market Operator, J.S.C (KOSTT)**

**350**

- Regional Units (Prishtina, Gjilan, Ferizaj, Prizreni, Gjakova, Peja and Mitrovica) with a total me of 144 postal offices (throughout the territory of Kosovo)  
- Administrative Units (Central Building and Postal Transit Centre)

**Posta e Kosoves**

**903**

**Kosovo Telecom**

**1,728**

**Kosovo Railway -TrainKos sh.A**

**179**

Central Public Enterprise<sup>12</sup>

Number of Employees

Enterprise units

**Kosovo Railways -InfraKos sh.A**

**230**

**Landfill Management Company J.S.C**

**90**

Management  
PP Kosova A  
PP Kosova B  
DPQ Mirash and  
DPQ Bardh i madh

**NPH Iber Lepenc sh.A**

**238**

1. Working Unit Vushtrri;  
2. Working Unit Shkabaj;  
3. Working Unit Komoran, and  
4. Working Unit Ujman.

**Trepça sh.A**

**1710**

1. Flotation Mines Trepça – Stan Tërg;  
2. Flotation Mines Kishnicë and Artanë;  
3. Metallurgy of Zinc;  
4. Chemical Industry;  
5. Factory of Batteries;  
6. Process Equipment Factory;  
7. Energy Establishments (Energy).  
8. Mines Kopaonik – Leposaviç- North Unit

<sup>9</sup> Article 28, of the Law no. 06/L -085 on Protection of Whistleblowers

<sup>10</sup> Interviews conducted by KDI with officials responsible for handling whistleblowing cases in central public enterprise

<sup>11</sup> Article 14 , par.3, of the Regulation no. 03/2021 on determining the procedure for receiving and handling the cases of whistleblowing

<sup>12</sup> Ibid.





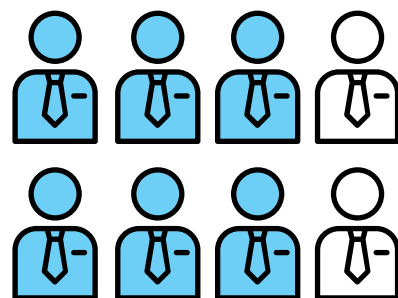
# I. Whistleblowing officers not motivated to perform the duties arising from this position

**In central public enterprises, as in other sectors, officials responsible for whistleblowing do not have adequate conditions to perform their duties. According to the regulation, the responsible official must be provided with sufficient resources to fulfil his or her duties, including space and equipment for work, as well as suitable conditions for archiving documents.<sup>13</sup>Therefore, 6 out of 8 interviewed officials share the work environment with their colleagues. Interviewed officials themselves affirmed that the lack of special work premises is one of the reasons why their colleagues hesitate to report irregularities they face at the workplace.**

While officials who dealt with whistleblowing cases have indicated that because they share office spaces with their colleagues, they were forced to meet with whistleblowers outside of the enterprises premises. This situation has resulted in cases where officials are forced to use their personal numbers to communicate and schedule meetings with whistleblowers. In addition to meeting outside the premises of the enterprise, whistleblowing officers have often been forced to transfer their work to their home due to the lack of separate offices. Whistleblowing officials, aware of their obligation to protect the anonymity of whistleblowers, have been forced to take paperwork, documents and work related to reviewing whistleblowing to their houses for fear that their colleagues may have access to whistleblower files and may reveal their identity.

Although the applicable regulation stipulates that the employer must provide a separate and secure drawer for archiving whistleblowing files<sup>14</sup>, not all officials have access to one. Again, 6 out of 8 officials interviewed do not have adequate conditions to perform this function, including the lack of a separate office, printers and other necessary tools.

One of the whistleblowing officials has mentioned the fact that "he is not a police officer nor an investigator" so it is very difficult for him to prove the receipt of bribes from his colleagues or the authenticity of any other whistleblowing if he does not have even the minimum conditions to exercise this role.



**6 out of 8 officials interviewed do not have adequate conditions to perform this function, including the lack of a separate office, printers and other necessary equipment.**

<sup>13</sup> Ibid, Article 29

<sup>14</sup> Article 5, par. 9, The Regulation no. 03/2021 on Determination of Proced



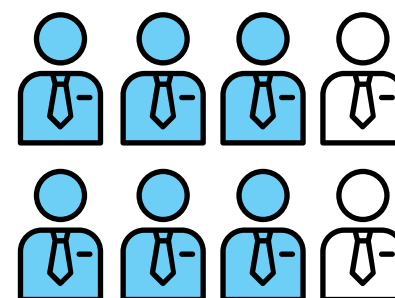
The lack of technical conditions to exercise this duty is not the only reason why officials feel unmotivated for this task. Officials also report great psychological and social challenges that are present with the exercise of this duty. Some of them face stigmatization from colleagues, including being labeled as "enterprise spies" and verbal threats such as "leave this job because it won't turn out well". Some of the officials tell their personal experiences with colleagues, emphasizing how their colleagues' approaches have changed since they were appointed to this position, while one of the officials claims to have become the enterprise's "non-grata" person.

Interactions with colleagues have become more difficult, and whistleblower officials frequently feel vulnerable and insecure. They express dissatisfaction that, despite their important and challenging responsibilities, they do not receive remuneration or financial compensation for their extra work. All of the officials interviewed described the lack of payment as a major issue and a barrier to fulfilling their responsibilities.

In addition to the payment, 6 of the 8 officials interviewed said that their assignment as a whistleblower official impacted their ability to perform their primary function in the enterprise. Officials told that even when they did not receive any cases of whistleblowing, this new task has taken time to adapt, either in reviewing and understanding the relevant legal framework for the protection of whistleblowers or even in fulfilling the obligation to report to APC.

Some officials openly expressed that they do not have the will to exercise this duty, as they were assigned to this role without any prior consultation from management and the decision was taken without discussion. Furthermore, they emphasize that the new task is negatively affecting their performance on core duties and preventing them from effectively fulfilling their primary responsibilities.

In conclusion, the position of whistleblower official in central public enterprises but also in other monitored institutions is associated with numerous responsibilities, but also with many risks and challenges, such as the lack of working conditions, stigmatization by colleagues, and the lack of financial compensation for additional work. These factors contribute to officials' demotivation and failure to carry out their duties properly.



**In addition to the payment, 6 of the 8 officials interviewed stated that their assignment as a whistleblower officials had an impact on their ability to perform their primary function in the enterprise. Officials have indicated that even when they have not received whistleblower cases, this new task has taken time to adapt, whether in reviewing and understanding the relevant legal framework for whistleblower protection or even in fulfilling the obligation to report to APC.**





## IV. Superficial and few trainings for whistleblower officials

As of year 2019, the legal framework in Kosovo related to the protection of whistleblowers suffered several changes including also approval of new by-laws that further specify the area of protection of the persons who report in the public interest, whereas in year 2023, MJ has also approved standardized forms for reporting and investigation of the cases of whistleblowing.

Despite these legal developments and the adoption of additional acts that strengthen the protection of whistleblowers, officials responsible for handling whistleblower cases are not sufficiently informed and have not received the necessary training regarding these changes.

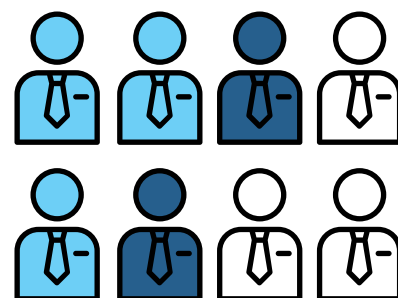
Out of eight (8) officials responsible for treatment of whistleblowing cases, three (3) of them did not attend any additional training related to the new approved acts, whereas two (2) officials claimed that they have held only one training since their appointment in this position. However, all the officials interviewed have expressed their opinion that additional trainings are essential and will help in fulfilling of their duties more effectively.

Beyond the lack of frequent and continuous training for legal changes in the field of whistleblowing, officials have also raised concerns about the quality and content of the training received. According to them, the current trainings are mainly limited to a general presentation of the legal framework, without a detailed explanation of legal concepts or a practical demonstration of case handling. Most of the officials who have not yet had cases of whistleblowing have admitted that they feel uncertain about the way of handling a whistleblower or an administrative inquiry to verify the authenticity of the whistleblowing.

The regulation in force determines the legal obligation of the respective institutions to provide trainings to officials responsible for whistleblowing, as well as mandates the Agency for Prevention of Corruption that according to the requirements of the public institutions prepare training

programs for officials that handle whistleblowing cases.<sup>15</sup>

However, according to officials, the training provided so far has been minimal and insufficient, leaving a considerable gap in their preparation for the implementation of their responsibilities in this area.



**Out of eight (8) officials responsible for handling of whistleblowing cases interviewed, three HREE (3) of them did not attend any additional training related to the newly approved, while two (2) officials claimed that they have held only one training since assigned in this position.**

<sup>15</sup> Yes there, ARTICLE 5, par. 12



## V. Law on Protection of Whistleblowers good on paper but deficient in practice

Law on Protection of Whistleblowers (LPW) and by-laws that regulate this matter in Kosovo are generally considered to be in compliance with the European Directive for protection of whistleblowers, meeting in this way the standards for creation of conducive environment for whistleblowing. However, monitoring of the implementation of this law from KDI showed that, in practice, the Law is deficient in ensuring a truly conducive environment for whistleblowing.

This is also affirmed by the officials responsible for signaling interviewed, while among the main criticisms of the officials is that the Law leaves a lot of room for interpretation and is unclear in some of its requirements.. This uncertainty is problematic, especially when considering the fact that many of the officials responsible for whistleblowing have no special legal training. This lack of expertise makes them feel uncertain confused about the procedures stipulated by the Law and their obligations in handling the whistleblowing cases. Out of eight (8) officials responsible for handling of whistleblowing cases interviewed, three (3) of them have identified the issue of qualification of whistleblowing as a public interest. According to officials, the Law is not clear and does not define what we mean by public interest or matters of public interest, thus even when they receive reports, they are often confused whether the report is a whistleblower and affects the public interest or is another report and should be rejected.

Claims of officials responsible for handling of cases of reporting on ambiguities in the legal framework in relation to the scope of the Law on Protection of Whistleblowers and issues affecting the public interest are well-founded. In this way, the issue of the public interest is not defined with the relevant Law in force despite that it constitutes a main condition for differentiation of a reporting of any kind from whistleblowing. Thus, according to LPW, whistleblowing constitutes a reporting or disclosure of information about a threat or violation of public interest in the context of one's employment relationship in the public or private.<sup>16</sup> So, the Law in force stipulates that a whistleblowing must necessarily constitute a threat or infringement of the public

interest, but does not further define the issue as to what constitutes jeopardizing or threatening the public interest. At this point, the Law leaves a lot of room for interpretation and creates possibility for different implementation in the same situation. Unlike the Kosovo legislation, the EU Directive on protection of whistleblowers is much clearer and defines the domain of infringement of the public interest by counting taxatively<sup>17</sup> what is considered a whistleblowing and what area it covers, like: public procurement, financial services, prevention of money laundering and terrorism, transport security, environmental protection, food safety, public health, consumer protection, privacy protection and other violations. This clarity in definition of fields makes it easier for the officials classification of reports as whistleblowing or not. In the context of Kosovo, this is particularly important, considering that many whistleblower officials have different professional training, and would enabled more uniform application of the Law.

The responsible officials have also expressed other concerns about legal ambiguities which have created confusion among officials about how they should act, during the exercise of their duty. This comes out to be well-based since in the current legal provisions it is unclear whether the official responsible for handling whistleblowing cases after receiving a report should notify the whistleblower of acceptance or rejection of whistleblowing or this is competence of his employer/ superior. This is because the law contains the definition that "The employer notifies the whistleblower of the acceptance or rejection of whistleblowing within fifteen (15) days from the day of admission of whistleblowing"<sup>18</sup>.

<sup>16</sup> ARTICLE 3, The law no. 06/L -085 ABOUT PROTECT e whistleblowers

<sup>17</sup> ARTICLE 2, Directive e Union EUROPEAN 2019/1937 e

<sup>18</sup> ARTICLE 16, par. 2, The law no. 06/L -085 ABOUT PROTECT e

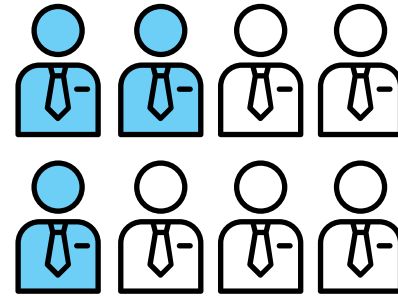




While this legal formulation is rightly considered by the officials to create confusion and as such does not stand since it should be the official responsible for whistleblowing instead of the term employer.

This problem is one of the issues that the current legal framework does not address, while practice is showing that we can face cases like these.

Such lack of legal clarity has influenced that officials responsible for handling whistleblowing cases often turn to APK for clarifications regarding the nature of a report, whether we are dealing with a whistleblowing or another reporting.. Situations like these are affecting motivation of officials but also in the effectiveness of the protection of whistleblowers, preventing the fulfillment of the purpose of the Law in creation of safe and protective environment for reporting of violations. Except the space for legal interpretation, the current framework is considered not to provide adequate instructions regarding the practical implementation of the Law for the protection of whistleblowers.



**Out of eight (8) officials responsible for dealing with the whistleblowing cases interviewed, three (3) of them identified as problem the issue of qualifying the whistleblowing as a matter of public interest.**

Another issue identified by monitoring of KDI is also the issue of legal regulation of the transfer of the work of whistleblowing officer in case of change or departure of the officer from this position. Currently, legal framework in Kosovo does not address this problem and does not provide clear guidance on how files should be handled and duties of whistleblowers officers in event of their replacement.

Such a situation was encountered in one of the public central enterprises, respectively in Post of Kosovo, where the whistleblowing officer, assigned in 2020, leaves the position after two years and is replaced by another officials employed in the enterprise. Despite the fact that in this company there were no whistleblower cases, but only reports that were further rejected because they were not qualified as issues that harm the public interest, the newly appointed official has raised as a problem the issue of carrying the files of the whistleblowers and their cases, if in the future he will leave this duty and there will be cases of whistleblowing.

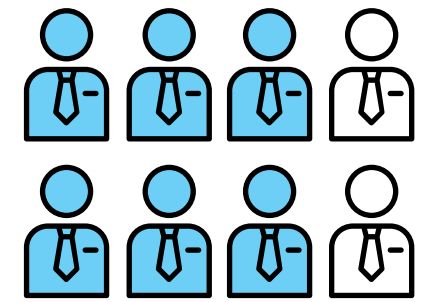
Recognizing the sensitivity of whistleblowing cases as well as the whistleblowing officer's legal obligation to protect whistleblowers' anonymity, the legal framework does not provide any solution or modality regarding the actions to be taken by the whistleblowing officer after its departure from the position.. So, it is unclear whether registered whistleblowers and reporting files must be transferred to the new official and violate the obligation to protect whistleblower's anonymity, if they should be submitted to the superior of the institution or if they should be sent to the APK.



## VI. Corruption is present but number of whistleblowing remains small

**Public central companies in Kosovo do not have good a reputation when it comes to their management, or transparency and accountability in relation to the citizens. Frequent corruption scandals<sup>19</sup> where officials of this enterprise end up with indictment for corruption as a consequence of the misuse of the official duty<sup>20</sup> or the conflict of interest give us a gloomy overview about their management and the level of corruption in these enterprises.**

This is also reflected in the Annual Audit Report of the National Auditor's Office, which assesses that the reports of central public enterprises reflect the poor quality of information, non-compliance with laws and deficiencies in the field of reporting, therefore they have room for improvement.<sup>21</sup>



**six (6) by eight (8) companies public central, this officials not have received any event the signaling that by assignment the their in this position**

Despite the cases of corruption that appear in the media and the irregularities that are evident in the management of public enterprises, some of them did not receive any case of whistleblowing. Thus, KDI, by interviews carried out with the officials responsible for handling whistleblowing cases, has found that in six (6) out of eight (8) central public companies, these officials did not receive any whistleblowing case as of their assignment in this position.

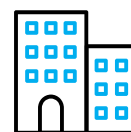
Whereas in 2023, we have only one central public enterprise that has reported cases of whistleblowing, while all other enterprises have not had any cases.<sup>22</sup> According to the officials interviewed, the lack of whistleblowing does not translate as absence of irregularities in these companies, but rather it has to do with the lack of trust among the employees in the reporting mechanisms and the fear of punishments and revenge. In fact «unofficial» whistleblowing to the officials responsible for whistleblowing by public central company employees are not missing, however when these employees are invited to present an official whistleblowing report, they hesitate from fear that they will suffer as a result of the reporting done.<sup>23</sup>

19 One of the corruption scandals related to the central public enterprise Infrakos sh.A. <https://betimiperdrejtesi.com/gjykimi-per-korrupcion-ndaj-the-head-of-infrakos-and-former-officials-of-prizren-are-given-clarifications-related-to-the-bull-caused-by-the-accused/>  
20 An official of the public enterprise Koosovo Energy Corporation J.S.C., accused of corruption. <https://betimiperdrejtesi.com/zyrtari-i-kek-ut-i-accused-of-corruption-says-that-in-his-case-all-the-procedures-according-to-the-procurement-rules/>  
21 Annual Audit Report for 2023, published in August 2024 by the National Audit Office. [https://zka-rks.org/cms/ReportFiles/2024\\_f5b880fe-6445-4b8b-8eeb-3d19f6554b99.pdf](https://zka-rks.org/cms/ReportFiles/2024_f5b880fe-6445-4b8b-8eeb-3d19f6554b99.pdf)  
22 Annual Report on whistleblowing January – December 2023, Agency for Prevention of Corruption.  
23 Interviews of KDI with officials responsible for handling of whistleblowing





Another fact mentioned by officials has also to do THERE THE DO ALSO with the absence of information on whistleblowing mechanism.. All officials interviewed affirm that whether the enterprise will develop campaign information for their employees will also reflect in increase of reporting they receive.



**In year 2023 we have only one public central enterprise that reported whistleblowing cases, Whereas all other enterprises did not have any reported case.**

Despite the enterprises, where the lack of courage of the whistleblowers to report irregularities is evident, Kosovo Energy Corporation J.S.C. (KEK) has managed to change this dynamic, receiving over 19 alerts only in the period January-August 2024. The official for whistleblowing of this enterprise, interviewed within the framework of this research, provides a positive example that how with dedicated work and proactive approach, the whistleblowing mechanism can be effective and produce visible results.

In this enterprise, unlike many others, have been developed sustainable informative campaigns to educate and encourage employees on the importance and operation of the whistleblowing mechanism T. The whistleblowing officer played a key role in direct communication with colleagues, informing them about the procedures and the protection offered by the Law. In addition, the management policies of the enterprise have significantly contributed to the creation of an open and supportive environment, where employees feel safe and encouraged to report irregularities they encounter. This approach helped in building a culture of trust and security, where employees feel comfortable and protected for reporting violations. This has made that the whistleblowing mechanism be not only functional, but also effective in promoting transparency and fighting corruption within the enterprise.



# Recommendations

- MoJ and APC to make an ex-post evaluation of the Law on the Protection of Whistleblower. This assessment should address the technical and legal deficiencies and to harmonize the Law with standards and European Directives for protection of whistleblowers. The process should include clear definition of the scope of the Law, based in best international practices, in order to ensure effective protection and to improve its implementation.
- MoJ and APC to carry out an ex-post assessment of the Law on the Protection of Whistleblowers in relation to its practical deficiencies. This assessment must include remarks and challenges identified by the officials responsible for whistleblowing, in order to integrate their experiences and recommendations in the improvement of the existing framework.
- The Law and by-laws should define clearer criteria regarding the selection of the official responsible for whistleblowing in order to enable efficient whistleblowing within an institution as well as avoid the opportunity of interference of this extra task with the primary task of the official.
- Public central enterprises (which have not made public data of the officials for whistleblowing) to publish names and contacts of officials for whistleblowing on the official web pages of the enterprise, so that employees but also audience have access to their data and contacts..
- Public central enterprises contributing in raising awareness and anti-corruption culture, taking all measures to inform all employees and leading information campaigns on whistleblower rights and whistleblowing procedures, but also encouraging reporting as a value in the public interest.
- Central public enterprises provide suitable physical and technical conditions for whistleblowing within their premises, so that whistleblowers' identity and confidentiality are protected, as well as enable signaling officials to fulfill their obligations in accordance with the Law.
- APC to host continuing training for officials responsible to handle with efficiency and professionalism whistleblowing cases, including the training curriculum and the practical part of handling and investigation of whistleblowers.





# Annex 1: Protection of whistleblowers in Kosovo

Whistleblowing for the first time in Kosovo has been regulated with the Law on the Protection of Informers (LPI) of the year 2011, which contained 11 Articles and aimed to determine the procedure of reporting, treatment and protection of informants.<sup>24</sup> But provisions and the scope of this Law was very general and as such hardly applicable both to the reporting subjects and to the authorities receiving this information. Even though this Law was welcomed by civil society and innovations it brought in the field of protection of freedom of expression and disclosure of information of public interest, was criticized as it did not encourage "informants" on whistleblowing and it was also inconsistent with European and international standards for the protection of whistleblowers. Thus, due to many deficiencies the LPI had, on January 2 of the year 2019 enters into force the Law on Protection of Whistleblowers (LPW), that marks the first step towards creating a consolidated legal framework in harmony with the European Directive regarding the protection of whistleblowers. This Law, unlike

the previous Law (LPI) defines that whistleblowers who report or disclose information are not obliged to prove the good faith and truthfulness of their reporting as well as enables reporting of violations both in the public and private sector.<sup>25</sup> LPW moreover also includes legal provisions that regulate the whistleblowing procedure, the rights and protection of whistleblowers, including judicial protection. LPW has foreseen that the competent bodies for external whistleblowing are the Agency for Prevention of Corruption (APC) for the public sector, and the Labor Inspectorate (IP) for the private sector by fields of the responsibility. LPW also foresees that APC monitors implementation of this Law and is also responsible for the promotion of whistleblowing and conducting of trainings. Another obligation of APC according to LPW, is compiling of the annual report for whistleblowing that every year should be published until January 31 for the preliminary year<sup>26</sup> on the basis of reports that public or private entities have submitted to APC.<sup>27</sup>

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

- I. INTERNAL**  
means reporting within the public institution or the private ty;
- II. EXTERNAL**  
means reporting to the competent authority.
- III. PUBLIC**  
means disclosing of information in the media, to NGOs, via the internet, in a public gathering, or in any other way makes the information public.

24 Law no. 04/L-043 for the Protection of Informers

25 Article 1, The law no. 06/L -085 on the Protection of Whistleblowers

26 Ibid.

27 Ibid, Article 29



The legal framework on whistleblower protection has been further expanded in year 2021, with approval of Regulation No. 03/2021 for Determination of Procedure on Admission and Handling of Whistleblowing Cases (Regulation) which defines the rules and procedures for accepting and handling the whistleblowing cases and the rights and responsibilities of the responsible officials. This Regulation has specified more in details of the institution's obligations for the appointment of officials responsible for handling of the whistleblowing cases, as well as the obligations related

to provision of sufficient resources for officials in fulfilling of their duties such as: work space and equipment, adequate conditions for storage of documents and other issues.<sup>28</sup> According to this Regulation, the protection of reporting must be done and officials responsible for handling of whistleblowing cases are tasked to receive and handle reports, to carry out the related administrative investigation with reporting, prepare reports on annual basis related to the whistleblowing cases received, which are afterwards sent to APC.<sup>29</sup>

## Updating the legal framework for protection of whistleblowers during year 2023

During the summer 2023, the legal framework that regulates the protection of persons who report in the public interest is expanded with two new guidelines that regulate in detail the issue of administrative investigation and protection of the persons who report in the public interest. The approval of these guidelines is coming with almost two years of delay, despite the need and pressure from MoJ and APC to complete the work around these guidelines.

is to explain the requirements of LPW and Regulation in a practical way, as well as facilitate the practical implementation of legal requirements related to protection of whistleblowers and reporting in public interest, employers' obligations for The first guideline refers to establishing and maintaining a confidential and secure internal whistleblowing management This guideline consists of three parts, where the Signaling administrative<sup>30</sup> is adopted by md in July this of the whistleblowers by operations e harmful, keeping including first part refers creation and maintenance of an internal, confidential and safe system of management of whistleblowing, the second part refers to creation and maintenance of a safe mechanism to Whereas the second guideline on protection of persons who report in public interest, duties of the employers for protection of whistleblowers from harmful acts and rights of whistleblowers for judicial protection<sup>31</sup> approved in September this year, contains instructions on protection of whistleblowers from harmful acts and further defines the rights of the whistleblowers when denouncing a wrongdoing.

This guideline contains instructions about the procedures that must be followed and the tools that the official responsible for handling whistleblowing cases has at his disposal on the occasion of conducting of the administrative investigation, including the principles on which the administrative investigation is conducted, the steps for handling of whistleblowing cases, registration of reporting, record keeping, conducting administrative investigation, rights of participating parties, actions after administrative investigation and also establishes forms of documents that must be used by the responsible official during the administrative investigation. purpose of these guidelines

28 Article 5, par. 9, The Regulation no. 03/2021 on Determination of Procedure for Admission and Handling of Whistleblowing Cases

29 Article 16, The Regulation no. 03/2021 on Determination of Procedure for Admission and Handling of Whistleblowing Cases

30 Guideline on the way of conducting administrative investigation is approved by the Ministry of Justice, with decision No. 158/2023 dated 18.07.2023

31 Guideline on protection of persons who report in public interest, obligations of employers' to protect the whistleblowers from harmful acts and the right of whistleblowers to judicial protection approved by the Ministry of Justice with Decision No. 179/2023 dated 19.09.2023.





Another important legal change that has directly affected the implementation of whistleblower protection legislation has been the adoption of the new Law on the Agency for the Prevention of Corruption (APC). This law has brought a reformation of the agency's structure and mandate, defining new powers for APC in the field of corruption prevention. However, this reorganization has removed one of the agency's key powers related to whistleblower protection.<sup>32</sup> Under the current Law on Protection of Whistleblowers (LPW), whistleblowers can make external reports to APC,<sup>33</sup> under certain conditions, as a second form of whistleblowing. This power to receive and investigate these reporting was clearly defined in the previous Law.<sup>34</sup> However, with the changes in the mandate and powers of the APK, the agency has been stripped of the power to conduct preliminary investigations on whistleblowing cases. This change has had direct consequences on the practical implementation of the whistleblower protection law, creating a gap in the whistleblowing mechanism.. In fact, the reformation of the agency has paralyzed the external reporting process, making it impossible for the APC to investigate these cases. This situation constitutes a serious challenge for effective law enforcement and protection of the rights of whistleblowers in Kosovo and requires immediate action for the unification of the relevant legislation.

KDI, in accordance with its mission to prevent and fight corruption, has contributed to the drafting of the LWP and Regulation but also in facilitating 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 assisting private/public authorities in the implementation of this Law by defining the meaning of each provision and the procedure necessary 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 certainty regarding the notification procedure as well as their protection from the possible consequences that may come as a result of the whistleblowing. But at the same time, this Commentary will serve as a useful instrument for responsible officials, public institutions, and private entities that are related to the implementation of this Law.

<sup>32</sup> Article 5, the law on the Agency for Prevention of Corruption, in force from 05/08/2022.

<sup>33</sup> Article 18, The Law no. 06/L -085 on Protection of Whistleblowers

<sup>34</sup> Article 5, par. 1, UNDER par 1.1., The Law No. 03/L-159 on Prevention of Corruption, abolished.



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KDI është Organizatë Joqeveritare (OJQ) e angazhuar të mbështesë zhvillimin e demokracisë përmes përfshirjes së qytetarëve në bërjen e politikave publike dhe fuqizimin e sektorit të shoqërisë civile me synimin për të ndikuar në rritjen e transparencës dhe llogaridhënies nga ana e institucioneve publike.

Për më shumë informata rreth KDI-së, ju lutem vizitoni:  
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