

Table of Contents - Albania

<i>How to report corruption and obtain legal protection?</i>	2
<i>Key information about whistleblowing</i>	3
What is whistleblowing?	3
Who can report wrongdoing?	3
Who is entitled to protection for reporting wrongdoing?.....	3
Can wrongdoing be reported anonymously?	3
Is whistleblowing confidential?.....	4
Which wrongdoing can be reported?	4
Is evidence necessary, or does reasonable suspicion that information about a wrongdoing is accurate suffice?	4
Is whistleblowers' motivation put on trial in terms of good faith?	5
What kind of protection for whistleblowers is afforded by the Law?.....	5
What constitutes abuse of whistleblowing and what are the consequences?	5
Are whistleblowers immune from disciplinary, civil and criminal liability in connection with reporting of wrongdoing?	6
<i>Whistleblowing procedures</i>	7
How can wrongdoing be reported?	7
What is the procedure for internal reporting?	7
Which is the procedure following receipt of internal report?	8
What is the procedure for external reporting?	8
What is the procedure following receipt of external report?.....	9
<i>Protection of whistleblowers from retaliation</i>	11
Against what type of retaliation does a whistleblower enjoy protection?	11
Which are the conditions for protection from retaliation?	11
From whom can protection be sought?	11
<i>Legal support for whistleblowers</i>	13
Which legal support is available for whistleblowers?.....	13
Which information materials on whistleblower system are available?	13
<i>Further information and resources</i>	15

How to report corruption and obtain legal protection?

This content aims to provide the public with information on the possibilities of protected reporting of corruption in Albania. Here you can find out what protected reporting means, who can report corruption, and which wrongdoing can be reported. You can also find out about how to report wrongdoing and to whom. The following content provides information on the possibilities of protection against harmful actions that may be taken to deter reporting of wrongdoing or retaliation as a result of reporting.

Based on the following information, you can assess the information available to you that may indicate corruption, and decide whether your information provides a basis for protected reporting of corruption and what are the possible consequences of reporting corruption and the abuse of reporting corruption.

This content has been prepared on the basis of applicable regulation, primarily the Law on Whistleblowing and Whistleblower Protection. The information provided does not serve as legal advice and it is therefore recommended consulting the regulation in detail and addressing the competent authorities for specific instruction. This content provides information regarding relevant institutions which provide legal aid for the whistleblowers.

Key information about whistleblowing

What is whistleblowing?

According to the Law No. 60/2016 on Whistleblowing and Whistleblower Protection (hereinafter: the Law), any person who becomes aware of suspected corruption act or practice in the context of their work-based relationship is entitled to blow the whistle on this fact.

Whistleblowing is the reporting of information to the responsible unit of public authority or private entity where whistleblower works, or to the High Inspectorate for Declaration and Audit of Assets and Conflict of Interest (HIDAACI), regarding suspected corruption act or practice, performed at his/her workplace in the public authority or private entity.

Who can report wrongdoing?

The individual who has entered a labour relationship, regardless of the nature of employment or its duration, whether paid or not, and who reports or discloses information on a suspected corruption act or practice is considered a whistleblower in the context of the Law.

Employees in the public and private sectors can blow a whistle. This includes not-paid workers, applicants, and former public or private sector employees. Even though the Law states that it applies to individuals regardless of the nature of their employment relationship, it does not state if it applies to contractors, trainees, or members of management bodies.

The Law applies to both public authority and private entities. The Law defines “public authority” in accordance with the Law on the Right to Information. Therefore, public authority includes the legislature, judiciary, prosecution service, local authority, and other public entities defined by the law.

According to the Law, “private entity” is a private legal person, in accordance with the Civil Code of the Republic of Albania, including the trader, under commercial law.

Who is entitled to protection for reporting wrongdoing?

Whistleblowing is protected when the violation is reported in line with the prescribed procedure. To be entitled to protection, employees in the public authorities and private entities have to disclose wrongdoing in compliance with the Law and to the individuals and institutions defined by the Law.

The Law does not explicitly protect those who assist the whistleblower to make the report, nor those who are perceived as about to blow the whistle or are mistakenly perceived to have blown the whistle.

Can wrongdoing be reported anonymously?

The Law recognizes the right of anonymous whistleblowing of suspected corruption acts or practices under legitimate circumstances. Anonymous whistleblowing shall be admitted if the anonymity grounds are justified and if the information reported provides sufficient grounds for the administrative investigation of the suspected corrupt act or practice. This implies that the person should explain the reasons for remaining anonymous and that the responsible unit or HIDAACI can refuse to proceed with the investigation if the person did not have a legitimate reason to remain anonymous.

Is whistleblowing confidential?

Confidentiality of whistleblower's identifying information is guaranteed by the Law. The Law demands that responsible units in public authorities or private entities, or HIDAACI, maintain the confidentiality of identity and of the source of information of the whistleblower during the administrative investigation. The necessary information can be communicated only to the persons appointed for the administrative investigation, and any person receiving confidential information is obliged to honour that restriction.

Whistleblower's identity must not be made known to any third person without a written consent of the whistleblower, or this can be done only for the purpose of abiding by the law. The appointed person who receives the confidential information throughout the administrative investigation must process it with confidentiality.

In case of breach of confidentiality of whistleblower's identity or personal data, the case should be reported to the Information and Data Protection Commissioner (<https://www.idp.al/>). In accordance with the Law, the violation of the obligation to preserve confidentiality shall be punished by a fine from 150 000 AL to 300 000 AL.

Which wrongdoing can be reported?

The Law restricts the possibility of whistleblowing to corruption-related misconducts in the workplace, whether it be in the public or private sector. The Law cites as reportable criminal offenses of corruption all illegal actions or inactions, related to any form of active and passive corruption, including active and/or passive corruption during elections, abuse of office or powers, exercising illegal influence in the performance of duties or decision-making, misuse of state budget revenues, illegal profits, bribery, or grafts, as well as any other acts similar to above.

Is evidence necessary, or does reasonable suspicion that information about a wrongdoing is accurate suffice?

Reporting will be done in writing and shall contain among other things a description of the facts and circumstances known by the whistleblower on the suspected corruption act or practice, supported by relevant evidence to the possible extent.

A person who intends to make a disclosure of a suspected corruption act or conduct must have reasonable belief for taking the action. This means that the whistleblower must be sure that misconduct has occurred or is occurring. Thus, mere suspicion is not enough.

The whistleblower shall be granted protection under this Law regarding the whistleblowing of a suspected corruption act or conduct, carried out under the circumstances of good faith. The whistleblower shall be considered to have acted in good faith, if there are reasonable grounds to believe that he is reporting a suspected corruption act or conduct, and that:

- a) he/she did not know or there was no objective possibility for him/her to know that the reported information was not true or accurate,
- b) the whistleblowing is not motivated by abuse, defamation, or deception.

The whistleblower is considered to have acted in good faith, unless the contrary is proved by the responsible unit or HIDAACI.

The responsible unit in the public authority or private entity, or HIDAACI has the right not to initiate an administrative investigation:

- if the report has not been filed in form and content in accordance with the provision of the Law, and the whistleblower fails to correct the deficiencies within 7 (seven) days of receiving the notification for the correction,
- if the report includes facts and circumstances other than a suspected corruption act or conduct,
- if there is sufficient evidence that there are no elements of administrative malpractice or crime.

Is whistleblowers' motivation put on trial in terms of good faith?

It is necessary that whistleblowing is done in good faith, as regulated by the Law. In this regard, personal complaints do not constitute whistleblowing.

According to the Law, the whistleblower is entitled to protection if the reporting is carried out under circumstances of good faith until proven otherwise. The Law defines good faith as a report not filed for abusive or defamation reasons or for deception purposes. This means that whistleblower's motivation will be put on trial.

Whistleblower does not lose the right to protection if he/she did not know or had no objective possibility to know that the report made was not true and accurate, or that the investigation did not result in identification of criminal offenses. Whistleblower is presumed to have acted in good faith until proven otherwise.

What kind of protection for whistleblowers is afforded by the Law?

Protection can be afforded to anyone who reports a suspected corruption act or practice in line with the Law. The responsible unit in public authority or private entity is obliged to provide administrative protection and take immediate measures to remedy the retaliation.

If the responsible unit does not take immediate measures, the request for protection can be submitted to High Inspectorate for Declaration and Audit of Assets and Conflict of Interest (HIDAACI, <https://www.ildkpkj.al/>). If HIDAACI's administrative procedure results in verification that an act of retaliation was made against the whistleblower, HIDAACI shall order the public authority or private entity to take all the necessary measures to remedy the violation committed.

If the retaliation is not remedied, the whistleblower may approach the court and seek damages.

What constitutes abuse of whistleblowing and what are the consequences?

The Law does not address straightforwardly what constitutes abuse of whistleblowing and its consequences. The whistleblower shall act in circumstances of good faith. The whistleblowing shall not be conducted for abusive or defamation motives and the whistleblower shall not deceive regarding the reported information. The responsible unit or HIDAACI shall be entitled to terminate the administrative investigation if the whistleblower has not acted in good faith in compliance with the Law.

Are whistleblowers immune from disciplinary, civil and criminal liability in connection with reporting of wrongdoing?

The whistleblower reporting on a suspicious corruption act or conduct in compliance with the provisions of the Law shall be protected against any retaliation taken against him/her by the organization.

Protection includes, but not limited to, protection from dismissal, suspension, transfer, demotion, salary reduction, loss of status and privileges, withholding promotions and training, and negative performance assessment in relation to whistleblowing. The Law does not regulate the immunity of whistleblower from disciplinary, civil and criminal liability in connection with the reporting of wrongdoing.

Whistleblowing procedures

How can wrongdoing be reported?

The Law envisages internal and external reporting. Internal reporting is made to the responsible unit of public authority or private entity.

External reporting is done by filing a report directly to HIDAACI. The whistleblower is encouraged to file the report first internally, but the report can be filled directly to HIDAACI too.

Under the Law, if the whistleblower chooses to disclose the information publicly, he/she will not be entitled to protection from retaliation.

What is the procedure for internal reporting?

The whistleblower can disclose misconduct by any means of communication, in writing or orally to the responsible unit within the public authority or private entity. This also presupposes electronic communication. However, for whistleblowing to be considered valid, the whistleblower needs to physically contact the employees of responsible unit and the reporting must be documented in writing by the respective employee.

HIDAACI has issued a form for internal reporting, which is available at

<https://www.ildkpkj.al/formulare/>.

Reporting will be done in writing and shall contain at least:

- Whistleblower ID data and contact information;
- Description of the facts and circumstances on the suspected corruption act or practice, supported by relevant evidence to the possible extent;
- Relevant reference to the Criminal Code to the possible extent;
- Legal grounds for the use of external whistleblowing if in case.

The Law requires each public authority with more than 80 employees to establish a responsible unit to record, administratively investigate and examine reports. The Law requires each private entity with more than 100 employees to establish a responsible unit to record, administratively investigate and examine reports.

All public authorities and private entities are obliged to adopt internal acts regulating procedures of administrative investigation of the report and protection against retaliation. Each public authority is obliged to publish this act on its web page.

In line with the structure of the entity, the responsible units can consist of one or more trained persons. People within the responsible units received special training in whistleblowing mechanisms and whistleblower protection, in line with the regulation of the Council of Ministers, for public authorities, and HIDAACI, for the private sector.

During the administrative investigation, the responsible unit shall avoid any conflict of interest and declare immediately within the organization the conflict of interest before the investigation of the suspected corruption act or conduct has started.

Which is the procedure following receipt of internal report?

The body in charge of receipt, investigation, and examination of the report is the responsible unit of public authority or private entity. The responsible unit is obliged to record, administratively investigate, and examine the whistleblowing as regulated by the Law.

The responsible unit shall operate in accordance with the procedures prescribed by the Law and unless otherwise provided, the unit shall implement the provisions of the Code of Administrative Procedures. The administrative investigation shall be completed as soon as possible, however, not later than 60 days since the date of instituting the investigation, unless the circumstances require a longer period.

During the administrative investigation, the responsible unit can require additional information, order inspection, collect testimonies or consult experts. Any parties participating in the administrative investigation may consult the file and make statements, arguments, or opinions in writing, and shall be entitled to be heard on their allegations.

The responsible unit shall notify the whistleblower of any measure taken in response to the whistleblowing not later than 30 days from completion of the investigation. The responsible unit is obliged to respond within 30 days to a request for information submitted in writing by the whistleblower regarding the matter he/she reported on.

After the completion of the investigation, the responsible unit can inform the competent body if any administrative violations under the law were found, and take immediate measures to prevent or stop the consequences of the suspected corruption act or practice reported by the whistleblower.

HIDAACI has created the "Register of Internal Whistleblowing Within the Responsible Unit of the Organization." The record of internal whistleblowing shall be kept in specific protocols and electronic registers. Furthermore, the responsible units shall submit reports on investigations to HIDAACI, annually, no later than January 15 of the following year.

The responsible unit has the right not to initiate an administrative investigation if:

- report was not filed appropriately in terms of the form and content and the whistleblower did not correct any deficiencies of the report within seven days;
- the report contains information not included in the scope of the law (corruption);
- there is no evidence of the administrative violation or criminal offense.

What is the procedure for external reporting?

According to the Law, external reporting is the whistleblowing made by the whistleblower before High Inspectorate for Declaration and Audit of Assets and Conflict of Interest (HIDAACI, <https://www.ildkpkj.al/>). HIDAACI has issued a form for external reporting, which is available at <https://www.ildkpkj.al/formulare/>.

Reporting will be done in writing and its form and content is similar as internal reporting. In addition, in case of external reporting, the report shall contain the provision of the legal reasons and circumstances for the use of external reporting mechanism.

External report to HIDAACI can be filed under the following conditions:

- the authority or private entity does not have a responsible unit;

- the public authority or private entity responsible unit fails to start an investigation or it improperly dismisses the investigation;
- individuals within the responsible unit are directly or indirectly involved in the suspected misconduct;
- there are other grounded reasons to doubt the integrity and impartiality of the responsible unit;
- evidence may be erased or destroyed by the organization.

What is the procedure following receipt of external report?

While carrying out an administrative investigation HIDAACI shall:

- Act with fairness, impartiality, and efficiency; and independently of political conviction;
- Avoid conflict of interest and take appropriate measures for protecting the evidence against extinction, hiding, changing, forging, and other acts aiming their destruction;
- Maintain confidentiality and protect data, and protect any state secrets contained in the whistleblower report.

According to the Law, during the administrative investigation, HIDAACI shall avoid any conflict of interest and declare immediately within HIDAACI the conflict of interest before the investigation of the suspected corruption act or conduct has started.

HIDAACI will conduct an administrative investigation in line with the Code of Administrative Procedure unless otherwise specified. The procedure of the administrative investigation must be completed as soon as possible, but not longer than 60 days since the date of initiation of an investigation, unless more time is necessary.

During the administrative investigation, HIDAACI can require additional information, order inspection, collect testimonies or consult experts. Any parties participating in the administrative investigation may consult the file and make statements, arguments, or opinions in writing, and shall be entitled to be heard on their allegations.

HIDAACI shall notify the whistleblower of any measure taken in response to the whistleblowing not later than 30 days from completion of the investigation. HIDAACI is obliged to respond within 30 days to the request for information submitted in writing by the whistleblower regarding the matter he/she reported on.

After the completion of the investigation, HIDAACI can inform the competent body if any administrative violations under the law were found, and take immediate measures to prevent or cease the consequences of the suspected corruption act or practice reported by the whistleblower. If during the course of investigation the responsible unit or HIDAACI concludes that the reported suspected corruption act of practice is grounded, it immediately notifies the prosecutor's office or police.

In compliance with the law, HIDAACI has created the "External Whistleblowing Register at HIDAACI" The record shall be kept in specific protocols and electronic registers.

HIDAACI has the right not to initiate an administrative investigation if:

- report was not filed appropriately in terms of the form and content and the whistleblower did not correct any deficiencies of the report within seven days;
- the report contains information not included in the scope of the law (corruption);

- there is no evidence of the administrative violation or criminal offense.

The failure to initiate an investigation or termination of an administrative investigation by the employee, contrary to the provisions of the Law, when not constituting a criminal offence, constitutes a minor offence and is punished with a fine from 100 000 to 300 000 All.

Protection of whistleblowers from retaliation

Against what type of retaliation does a whistleblower enjoy protection?

The Law protects whistleblowers from any retaliation measure taken by public authority or private entity against him, including but not limited to:

- Dismissal or suspension from office or from tasks;
- Transfer within or outside the organization;
- Demotion;
- Salary reduction or loss of status and privileges;
- Withholding of promotion or training;
- Negative performance assessment;
- Other forms of retaliation in the context of employment.

Any retaliation act against the whistleblower committed by the public authority or private entity in the infringement of the provisions of the Law is punishable by fine from 300 000 ALL to 500 000 ALL.

Which are the conditions for protection from retaliation?

Protection can be afforded to anyone who reports a suspected corruption act or practice in line with the Law. The whistleblower shall be granted protection if whistleblowing is done under the circumstances of good faith. The whistleblower is considered to have acted in good faith if he has reasonable belief that the information reported is true or accurate.

From whom can protection be sought?

The whistleblower claiming retaliation against him/her submits a request for protection within the responsible unit of public authority or private entity. The responsible unit is obliged to provide administrative protection and take immediate measures to remedy the retaliation. HIDAACI has issued a Retaliation Protection Application Form, which is applicable both for internal and external requests and is available at <https://www.ildkpkj.al/formulare/>.

If the responsible unit does not take immediate measures, the request for protection can be submitted to HIDAACI (<https://www.ildkpkj.al/>). If HIDAACI's administrative procedure results in verification that an act of retaliation was made against the whistleblower, HIDAACI shall order the public authority or private entity to take all the necessary measures to remedy the violation committed.

If the retaliation is not remedied, the whistleblower may approach the court and seek damages.

The responsible unit in public authority or private entity is obliged to take immediate protection measures, and in any case no later than 10 days from the submission of the request.

In case of a violation of the deadline for internal protection, the request for protection can be submitted to HIDAACI, which is obliged to decide within 10 days of receiving the request.

HIDAACI investigates and notifies the whistleblower in writing within 5 days of receiving the request for protection against retaliation about the registration of the allegation and the name of the HIDAACI employee who is to pursue the matter.

HIDAACI must notify the whistleblower within 10 days of the receipt of request about the status of the investigation of the request for protection against retaliation and any procedural actions taken. The procedure of administrative investigation regarding the request for protection against retaliation must be completed as soon as possible and not later than 60 days since the receipt of the request.

If the whistleblower applies to HIDAACI for protection against retaliation, the relevant public authority or private entity must prove in administrative procedure that any action taken against the whistleblower was not directly or indirectly related to the whistleblowing report.

Legal support for whistleblowers

Which legal support is available for whistleblowers?

HIDAACI provides information in relation to the implementation of the law at all stages of the whistleblowing procedure. Other legal support is not regulated by the Law.

Law Nr.111/2017 on State Guaranteed Legal Aid, establishes the forms, the conditions, the procedures and the rules for the organization and administration of state guaranteed legal aid, with the aim the protection of fundamental rights of the individual and his legitimate interest. Legal aid is the free-of-charge legal service and other services provided for persons meeting the requirements of this Law which are guaranteed and financed by the state.

Legal aid shall be granted in case of insufficient income and property and to special categories, regardless of their income and their property as bellow:

- a) victims of domestic violence;
- b) sexually abused victims and human trafficking victims;
- c) minor victims and minors in conflict with the law;
- d) children living in social care institutions;
- e) children under guardianship who request to initiate a proceeding without the approval of their legal guardian or against their legal guardian;
- f) persons that benefit from the payment for disability;
- g) persons undergoing voluntary treatment in mental health service institutions for serious mental diseases;
- h) persons against whom the removal or restriction of the capacity to act is requested;
- i) persons with removed or restricted capacity to act who request to initiate a proceeding against their legal guardian, for regaining the capacity to act without the approval of the legal guardian.
- j) persons who are beneficiaries of social protections programs;
- k) persons to whom the right has been infringed through an action or inaction that constitutes discrimination on the basis of the decision of the competent organ, according to the legislation in force for protection from discrimination.

The Law does not specify if whistleblowers qualify for legal aid. If a person reporting a suspected corruption act or conduct, has insufficient income or property or falls under any of the above mention categories, legal aid shall be granted.

Legal aid shall be delivered from specially trained officers, not-for-profit organizations and legal clinics attached to higher education institutions. More information can be found at the Directorate for Free-of-Charge Legal Aid webpage (<https://ndihmajuridike.gov.al/>) and at the Ministry of Justice webpage (<https://www.drejtesia.gov.al/ndihma-juridike-falas/>).

Which information materials on whistleblower system are available?

Partners Albania, an independent Albanian NGO, organized a wide public information media campaign in 2016 featuring informational videos broadcasted in the main national media, online information platforms, and social media, as well as city lights billboards raising awareness of the importance but also the understanding of the Law and its measures in the fight against corruption. Information is available at

<https://partnersalbania.org/News/zbatimi-ligjit-per-sinjalizimin-dhe-mbrojtjen-e-sinjalizuesve/>.

Further information and resources

Centre for the Study of Democracy and Governance, “A Guide to Whistleblowing and Whistleblower Protection in Albania”, prepared by Arjan Dyrmishi for the Southeast Europe Coalition on Whistleblower Protection with support from the National Endowment for democracy available at <http://csdgalbania.org/wp-content/uploads/2017/08/A-Guide-to-Whistleblowing-in-Albania-Eng.pdf>

Centre for the Study of Democracy and Governance, “A Guide for Whistleblowing and Whistleblowers in the Security Institutions in Albania, 101 Questions and Answers on Whistleblowing and Whistleblower Protection in the Security Sector in Albania”, prepared by Arjan Dyrmishi and Mirsada Hallunaj, available at <http://csdgalbania.org/wp-content/uploads/2019/10/udherrefyes02.pdf>

HIDAACI Annual Reports can be found at <https://www.parlament.al/Kerkese?tipId=3>.

Albanian Helsinki Committee, Monitoring Report “Whistleblowing of Corruption in Albania: Challenges of Implementing the Regulatory Framework”, prepared by Rovena Vuksani, available at https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-n%C3%AB-Shqip%C3%ABri_Sfidat-e-zbatimit-t%C3%AB-kuadrit-t%C3%AB-ri-ligjor.pdf

Centre for the Study of Democracy and Governance, “Media Reporting on Whistleblowing, For a More Engaged Role of Journalists in the Improvement of Reporting on Whistleblowing”, prepared by Ben Andoni, available at <http://csdgalbania.org/sq/wp-content/uploads/2020/04/Raportimi-mpi-Sinjalizimin-ne%CC%88-Mediat-Shqiptare.pdf>