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How to report corruption and receive legal protection?

This content aims to provide the public with information on the possibilities of protected reporting of corruption in Montenegro. Presented below is the information on what protected reporting involves, who can report corruption, and which irregularities can be reported. Information on how one can submit a report and where it can be submitted will also be included herein. The following content provides information on the possibilities for protection against detrimental actions that may be taken to deter someone from making the report or in retaliation for the filed report.

Based on the information provided below, it is possible to assess information at one's disposal, which may indicate corruption, and decide if it provides a basis for protected reporting of corruption, as well as possible consequences of both reporting corruption and abusing the reporting of corruption.

This content has been prepared on the basis of applicable regulations, primarily the Law on the Prevention of Corruption in Montenegro. The information provided here do not constitute legal advice; for this purpose it is recommended is to consult the law in more detail and address the competent authorities. The following content also provides information about institutions and organizations providing legal aid.

Basic information about protected reporting of corruption

What is protected reporting of corruption?

Protected reporting of corruption is regulated by a system law in the area of prevention of corruption, the Law on Prevention of Corruption (MNE Official Gazette, 53/2014 and 42/2017 - Decision of the CC MNE, available at: <https://www.gov.me/dokumenta/97446ae4-cb0f-4669-baed-2ce8e97759e5>, hereinafter: The Law).

The Law defines the whistleblower as any a natural or legal person filing a report on a threat to public interest that indicates the existence of corruption. In line with provisions of this Law, the right to protection is extended to any person having reasonable grounds to believe that there are threats to the public interest that indicate the existence of corruption and who reports this in good faith, if he/she has been inflicted damage, or if there is a possibility of damage due to submission of the report.

Who can report corruption?

Any natural or legal person can file a report on a threat to public interest that indicates the existence of corruption.

Who has the right to protection due to corruption reporting?

If the whistleblower was inflicted harm, i.e. if there is a possibility of damage due to submission of the report on threats to the public interest that indicate the existence of corruption, the whistleblower has the right to protection. To get protection, the whistleblower must submit the prescribed request to the Agency for prevention of corruption.

The protection is also provided in cases when the whistleblower or a person related to the whistleblower are inflicted damage, if the whistle-blower makes it probable that the action of a third party which caused damage is associated with the government body, company, entrepreneur, or other legal or natural person to which the report referred.

The Law defines “person related to the whistleblower” as a person that helps whistle-blowers by providing information or otherwise and any other person who can provide proof of suffering damage, because of the relation with the whistleblower. However, the Law is not explicit regarding protection of the persons related to the whistleblower, and suffer damage.

Is anonymous corruption reporting allowed?

In line with the Law, whistleblower can also submit an anonymous report.

Is corruption reporting by a whistleblower treated as confidential?

The Law stipulates that information on whistle-blowers will be handled in accordance with the law governing data confidentiality, unless the whistleblower explicitly requests such data to be made available to the public.

If the report filed by a whistleblower contains classified information, the government body, company, other legal person or entrepreneur to whom the report has been submitted are to handle this information in accordance with the law governing the confidentiality of data.

In case that classified information from the report is not handled in line with the law governing data confidentiality, a fine can be imposed for legal persons, responsible persons in the legal person, government bodies and entrepreneurs.

Which irregularities can be reported?

By using syntagma “threats to the public interest indicating the existence of corruption” the Law identifies a quite wide range of irregularities that can be reported.

In line with the Law, the threat to public interest implies violation of the regulations, ethical rules or the possibility of such a violation to occur that would cause, has caused or threatens to cause danger to life, health and safety of people and environment, violate human rights or cause material and non-material damage to the state or legal and natural person, as well as action aimed at preventing news of such violations to come out.

The Law defines corruption as any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another.

Is it necessary to have evidence in order to report corruption or it is sufficient to have reasonable grounds to believe?

The Law does not require evidence in order to be able to submit a report on the threat to public interest that indicates the existence of corruption. Any whistleblower who has reasonable grounds to believe that there are threats to the public interest that indicate the existence of corruption can submit a report.

Is whistleblower subjected to good faith test in the process of being granted protection?

The Law stipulates that the Agency will protect any whistleblower who has reasonable grounds to believe that there are threats to the public interest that indicate the existence of corruption and who reports this suspicion in good faith. In line with the Law, the Agency assesses intent of the whistleblower in submitting the report by taking into consideration the quality of information provided, the degree of threats and effect that can occur due to threats to the public interest that indicate the existence of corruption.

What protection does the Law provide to whistleblowers?

According to the Law, any whistleblower who was inflicted harm or if there is a possibility of damage due to submission of the report on threats to the public interest that indicate the existence of corruption has the right to protection. There is no special granting of the whistleblower status prescribed, to exercise the right to protection the whistleblower rather submits a request for protection to the Agency in writing or orally on the record. The request has to be submitted within six months from the day on which the damage occurred, i.e. learning about the possibility of damage due to report.

After looking into truthfulness of the allegations from the request for protection of the whistleblower, the Agency will deliver an opinion and recommendations as to measures to be taken to remove the damage, and the government body, company, other legal person or entrepreneur to whose work the

recommendation refers to is obliged to act upon it, as well as to submit a report on the undertaken activities to the Agency.

In line with the Law, if, as a result of the damage sustained, the whistleblower initiates a judicial process, the Agency is obliged, at his request, to provide the necessary expert assistance in proving the causal connection between the submission of the report and the caused damage.

The Law stipulates that the whistleblower is entitled to court protection against discrimination harassment at work based on reporting threats to the public interest that indicate the existence of corruption. This protection is exercised in line with relevant regulation that prescribe prohibition of discrimination and prohibition of harassment at work (Law of prohibition of harassment at work, Montenegro Official Gazette, 030/12 and 054/16).

What is abuse of reporting and what are its consequences?

The Law does not regulate the issue of abuse of reporting, not sets out sanctions for such abuse. The Agency makes an assessment to determine whether the report was submitted in good faith, but the Law does not explicitly regulate consequences if the assessment establishes that the report was not submitted in good faith.

Are whistleblowers exempt from disciplinary, civil or criminal liability related to the report?

The Law does not explicitly regulate exemption of the whistleblower from disciplinary, civil or criminal liability related to submission of the report, but initiation of the disciplinary procedure or issuing of disciplinary measure is identified as one of the detrimental actions due to which the whistleblower is to be provided protection.

Procedure for reporting corruption

Which types of corruption reporting exist?

The Law provides for two types of reporting of the threat to public interest that indicates the existence of corruption:

- Whistleblower submitting a report to the government body, company, other legal person or entrepreneur, in which the whistleblower believes that there exists a threat to the public interest that indicates the existence of corruption
- Whistleblower submitting a report on the threat to public interest that indicates the existence of corruption to the Agency.

According to the Law, the report contains description of the threat to public interest that indicates the existence of corruption, signature and personal data from the whistleblower, unless he/she does not want to remain anonymous, and, if needed, also other facts and circumstances.

How is internally reporting of corruption done?

Report of the whistleblower to government body, company, other legal person or entrepreneur is submitted in writing, in person as a transcript of a verbal statement, by mail or electronically.

What procedure is conducted after receiving internal report?

In line with the Law, government body, company, other legal person or entrepreneur is obliged to verify the allegations from the whistleblower's report and take measures within its jurisdiction in order to prevent the threat to public interest indicating the existence of corruption.

The Law prescribes that government body, company, other legal person or entrepreneur is obliged to designate a person for receiving whistleblower's reports and acting upon them. The Law provides for fines for legal persons, responsible person in the legal person and government bodies, in case this obligation is not fulfilled. This person conducts verification of the allegations from the report and proposes measures for the government body manager, that is the responsible person in the legal person or with the entrepreneur, if it establishes the threat to public interest indicating the existence of corruption.

Acting upon reports is regulated in more details by the Rulebook on a more detailed manner of acting upon the whistleblower's report, adopted by the Montenegro Ministry of Justice in 2015 (available at: https://www.antikorupcija.me/media/documents/Pravilnik_o_blizem_nacinu_postupanja_po_prijavi_zvzdaca_o_ugrozavanju_javnog_interesa.pdf).

This rulebook stipulates that procedure of verification of the allegations from the report must be initiated within eight days from submission of the report, at the latest. The verification of allegations from the report is done by directly looking into the official records, cases, acts and official premises of the government body, company, other legal person or entrepreneur, as well as by taking statements from the employees.

The Law stipulates obligation of the government bodies, company, other legal person and entrepreneur to inform the whistleblower within 45 days from the date of submission of the report about the measures taken related to his/her report, i.e. on the outcome of the undertaken measures.

The Law provides for fines for legal persons, responsible person in the legal persons, responsible persons in legal persons, government bodies and entrepreneurs, in case this obligation is not fulfilled.

When can external reporting be done?

If the whistleblower did not receive from the government body, company, other legal person or entrepreneur letter informing him/her about the measures taken regarding his/her report, within the prescribed deadline, or is not satisfied with the notification, he/she can submit a report to the Agency. The Law allows for whistleblowers to submit the report to the Agency even without prior submission to a government body, company, other legal person or entrepreneur to who the report refers to.

A report on a threat to the public interest that indicates the existence of corruption may be submitted to the Agency in writing, directly in the official premises of the Agency, verbally on the record, by mail or electronically; in specific cases this may be done outside the official premises, with approval of the Agency director in writing, with making an official record on this.

The whistleblower can also submit the report through the form - application, available at the Agency web page (<https://www.antikorupcija.me/me/korisnicki-servisi/prijava-korupcije/>); in addition, the Agency has set up a direct phone line for reporting corruption 020 - 44 77 44.

What procedure is conducted after receiving internal report?

In line with the Law, the Agency conducts a procedure based on the whistleblower report and drafts an opinion on the threat to public interest that indicates the existence of corruption. According to the Law, the Agency will request from the government body, company, other legal person or entrepreneur against who the proceedings were initiated to submit a written response to the allegations in the report. If they fail to respond within 15 days, the Agency will continue the proceedings with regards to the whistleblower report. In the proceedings conducted by the authorised officer of the Agency, data and information are obtained on the facts that are necessary for the conduct of the proceedings and decision-making process, the official records of which are kept by the competent government bodies, state administration bodies and municipalities, or public enterprises, companies, institutions or other legal and natural persons. The law stipulates for the obligation to deliver the requested data or make available the required documentation within the period and in the manner established by the Agency. Otherwise, the Agency will inform the body in charge of oversight of their work about this, and also may submit a special report to the Montenegro Parliament or inform the public about this. In order to determine the facts and circumstances that are relevant to decision-making process, examination procedure may be conducted, in line with discretionary assessment of the authorised officer. The Law also provides for the possibility to conduct a hearing, at the request of the participants in the proceedings, or when the authorised officer deems it necessary in order to establish a complete and accurate state of facts relevant to decision making.

If the Agency determines based on the conducted proceedings that threat to the public interest that indicates the existence of corruption did occur, its opinion will also include a recommendation about what measures should be taken to remove this threat to public interest, as well as the deadline for acting on the recommendation and notifying the Agency thereon. If the government body, company, other legal person or entrepreneur does not act on the recommendation within the set deadline or fails to inform the Agency on the implemented measures, the Agency will inform the body performing oversight over their work, as well as submit a special report to the Parliament and inform the public about this. For violation of the prescribed requirement, the Law prescribes fines for legal person (in the amount of EUR 1,000 to 20,000), and the responsible person within the legal person, government

body, public administration body, local administration body and local self-governance body (in the amount of EUR 500 to 2,000) and entrepreneurs (in the amount of EUR 500 to 6,000).

Actions of the Agency regarding the reports and requests for protection of the whistleblowers is regulated in detail by the Rules of operation of the Agency for prevention of corruption on acting upon the report on threats to public interest that indicate the existence of corruption and requests for whistleblower protection (available at:

https://www.antikorupcija.me/media/documents/Pravila_o_radu_-_zvi%C5%BEda%C4%8Di_FINAL1.pdf)

https://www.antikorupcija.me/media/documents/Pravila_o_radu_zvi%C5%BEda%C4%8Di_FINAL1.pdf).

If, in the process of verification of allegations on a threat to public interest that indicates the existence of corruption from the whistleblower report, the head or the responsible person in the government body, company, other legal person or entrepreneur, as well as the Agency, suspects that a criminal offense which is prosecuted ex officio has been committed, they are obliged to submit the report with the collected evidence to the competent state prosecutor without delay.

When is it possible to report corruption in public?

The Law does not provide for public reporting of the corruption as a special form of reporting of the threat to public interest that indicates the existence of corruption.

Protecting the whistleblower from detrimental actions

Against which detrimental actions is protection provided?

The Law does not separately identify “detrimental actions”. It is stipulated that the whistleblower is entitled to protection, in particular if:

- His/her life, health and assets are at risk;
- His/her employment has been terminated or his post at work has been abolished or changed, or if the description of duties and the conditions of the post at work where he/she used to work have been changed;
- His/her business cooperation has been terminated through a termination of service contract or contract on business cooperation;
- Disciplinary proceedings have been instituted against him/her and if a disciplinary measure has been imposed against him/her;
- He/she has been prohibited from accessing certain data required for the performance of his/her working duties;
- He/she has been deprived of the means for work that he/she used; or
- His/her promotion and professional development has been prevented.

What the whistleblower status and how to obtain it?

The Law does not provide for granting of the “whistleblower” status, but rather the right to protection is extended to any whistleblower who has reasonable grounds to believe that there are threats to the public interest that indicate the existence of corruption and who reports this suspicion in good faith, and who submit a request for protection to the Agency within the prescribed deadline, if he/she has been inflicted damage, or if there is a possibility of damage due to submission of the report.

Is there a possibility of receiving a reward for reporting irregularities?

In line with the Law, a whistleblower who, by filing report on the threats to public interest that indicate the existence of corruption, contributed to generating of the public revenue or income of a company, legal person or an entrepreneur, and if those revenues and income would not have been generated had the report not been filed, is entitled to a cash prize. The right to award also extends to the whistleblower if his/her submission of report initiated the launch criminal proceedings that ended with a final and enforceable decision on the basis of which property is permanently confiscated. The Law stipulates that award may not be less than 3% or more than 5% of the income generated, i.e. value of the permanently confiscated property. In order to exercise the right to award, the whistleblower has to submit a written request to the government body, company, legal person or entrepreneur who generated this income. This request has to be decided upon within 30 days from the date of submission, while deadline for the payment of award that may not be longer than six months. For failure to take a decision on the request for a reward within the prescribed deadline, as well as for failure to set a deadline for payment of the award in the decision, the Law prescribes fines in the amount of EUR 1,000 to 20,000 for the legal person, and EUR 500 to 2,000 for the responsible

person within the legal person, government body, public administration body, local administration body and local self-governance body in the amount of EUR 500 to 6,000 for entrepreneurs.

What kind of protection is available for whistleblowers who are experiencing harmful consequences?

Protection by the Agency is a model of administrative protection of the whistleblower. After receiving the request for protection, the Agency carries out procedure of checking truthfulness of the allegations, i.e. it establishes whether the harm has happened or there exists the possibility of harm occurring to the whistleblower; it drafts an opinion and within 15 days from the day of drafting the opinion it delivers it to the government body, company, entrepreneur or other legal or natural person, responsible for actions that have caused harm to the whistleblower or that could cause harm to him/her. If the Agency establishes that harm has occurred or that there is a possibility of harm for the whistleblower occurring, together with the opinion the Agency will also deliver a recommendation on the measures that need to be undertaken within the given deadline to remove detrimental consequences or prevent the harm.

In line with the Law, the government body, company, that have caused harm to the whistleblower with their actions, is obliged to act upon the Agency's recommendation and report back to the Agency about the undertaken measures within the prescribed deadline. Otherwise, the Agency informs the body in charge of oversight of their work about this and submits a special report to the Parliament, and informs the public about this. For violation of the prescribed requirement on reporting back to the Agency about the undertaken measures, i.e. acting in line with the Agency recommendations, the Law prescribes fines in the amount of EUR 1,000 to 20,000 for the legal person, and EUR 500 to 2,000 for the responsible person within the legal person, state body, public administration body, local administration body and local self-governance body in the amount of EUR 500 to 6,000 for entrepreneurs.

Who bears the burden of proof?

Pursuant to the Law, the burden of proof that damage inflicted to the whistleblower is not a result of submission of the report on threats to public interest that indicate the existence of corruption is on the government body, company, other legal person or entrepreneur on account of whose acts or actions damage is caused to the whistleblower.

Under which conditions is the protection suspended?

The Law does not explicitly stipulate conditions for suspending protection of the whistleblowers, but provisions of the Law that prescribe the right to protection is extended to those whistleblowers who submit reports in good faith, which is assessed by the Agency, indicate that protection could be withheld from a whistleblower if the Agency assesses that the report was not made in good faith.

Legal aid

What legal aid is available to the whistleblowers?

The Law on prevention of corruption does not regulate the right of the whistleblower to legal assistance.

The referring provision of the Law stipulates that the whistle-blower who initiates a judicial process, as a result of damage sustained, will receive expert assistance by the Agency in proving the causal connection between the submission of the report and the caused damage. Additionally, the system of free legal aid in Montenegro is regulated by the Law on free legal aid (Montenegro Official Gazette, 20/2011 and 20/2015, available at <https://media.cgo-cce.org/2013/06/19-Zakon-o-besplatnoj-pravnoj-pomoci.pdf>). In line with this Law, for the purpose of exercising the right to fair trial, an individual who is unable, given his/her financial situation, to exercise the right to judicial protection without damage to the minimum subsistence level for himself and his family shall be provided legal aid pursuant to this Law. However, this Law does not include provision of free legal aid in administrative and misdemeanour proceedings.

Network for affirmation of nongovernmental sector (MANS), a nongovernmental organisation that has been fighting against corruption and organised crime that affect Montenegro, provides free legal aid to citizens who report corruption and organised crime. Information on MANS, reporting corruption and free legal aid are available at <http://www.mans.co.me/prijavi-korupciju/> and <http://www.mans.co.me/besplatna-pravna-pomoc/>.

Within the Montenegro Alliance of the Trade Unions, offices for protection and provision of free legal aid to the employed members of the Alliance of the Trade Unions were established, due to violations of the employment related rights. Representing of the members of the Montenegro Alliance of the Trade Unions takes place exclusively based on the previously obtained authorisation made out to the name of the member who is being provided with the service, which is signed and stamped by the chair of the branch trade union or chair of the municipal trade union committee, i.e. office of the Alliance or upon the personal initiative of the employee. More information available at <http://www.sindikato.me/index.php/extensions/117-pravna-pomoc>.

Within the project of the Centre for monitoring and surveys (CeMI) titled “Free legal aid to marginalised groups”, supported by the European Union, via EU Delegation in Montenegro, a network of civil society organisations for provision of free legal aid to marginalised groups has been established. More information available at <https://cemi.org.me/wp-content/uploads/2017/01/LegalAidNet-Leaflet.pdf>.

What additional information is available about the procedure of protected reporting of corruption?

Web page of the Agency for prevention of corruption holds a brochure titled “Loud and clear against the corruption” that was developed within the project of support for implementation of the EU integrity measures (available at:

https://www.antikorupcija.me/media/documents/Bro%C5%A1ura_-_zvi%C5%BEda%C4%8Di.pdf).

The brochure highlights the importance of the mechanism for reporting of corruption and protection of persons reporting corruption, international standards, and procedure for reporting threats to the

public interest that indicate the existence of corruption and protection of whistleblowers in line with the Law.

Additional sources of information

- Integrity, transparency and fight against corruption must be a part of culture (available at: [https://www.antikorupcija.me/media/documents/Bro%C5%A1ura -
_prevencija_korupcije.pdf](https://www.antikorupcija.me/media/documents/Bro%C5%A1ura_-_prevencija_korupcije.pdf))
- Practice in application of legal solutions for protection of whistleblowers (available at: [https://crnvo.me/wp-content/uploads/2021/04/Praksa-u-primjeni-zakonskih-rjesenja-za-
zastitu-zvzdaca.pdf](https://crnvo.me/wp-content/uploads/2021/04/Praksa-u-primjeni-zakonskih-rjesenja-za-zastitu-zvzdaca.pdf))

