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## 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 Republika Srpska. Presented below is the information on what protected reporting involves, who can report corruption, and which irregularities can be reported. Information on how and where one can file a report will also be included herein. The following content provides information on the possibilities for protection against detrimental actions that may be taken in retaliation for the filed report.

Based on the information provided below, it is possible to assess information at one's disposal that 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 it.

This content has been prepared on the basis of applicable regulations, primarily the Law on the Protection of Persons who Report Corruption. The information provided here do not constitute legal advice; for this purpose it is recommended 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 made possible to persons who report corruption in line with the Law on the Protection of Persons who Report Corruption (RS Official Gazette, 62/2017, hereinafter: the Law).

### Who can report corruption?

Any person has the right to report, in good faith, any form of corruption in public or private sector that he/she becomes directly aware of.

The Law provides for protected reporting to persons employed in the public or private sector. Employment also refers to work beyond the employment relationship, exercising of a function, volunteering, as well as any other actual work for the employer.

### Who has the right to protection for reporting the corruption?

The Law extends protection primarily to the whistleblowers who are employed in the public or private sector. The persons who are no longer employed are not provided protection under this Law.

The protection is also provided to persons related to the whistleblower (e.g. family members, colleagues, friends), persons mistakenly considered to have reported corruption and persons who forwarded data on corruption in the course of performing their official duties, if they are likely to suffer harmful consequences.

The whistleblower is protected under the Law and must not suffer harmful consequences for reporting corruption even if it is determined that allegations made in good faith are not true.

### What protection does the Law provide to whistleblowers?

Whistleblowers have the right to internal and external protection. The whistleblower exercises the rights set forth by the Law if the report was made in good faith, and if there is a causal link between the harmful consequence and corruption or reporting of corruption.

### Is anonymous reporting allowed?

Anonymous reporting is not regulated by the Law. The reporting of corruption needs to include information about the whistleblower, and thus cannot be anonymous.

### Is reporting of corruption treated as confidential?

The whistleblower has the right to provision and protection of confidentiality, as well as to protection of personal data both by the responsible person to whom the corruption was internally reported and by the competent bodies to whom the corruption was reported. The whistleblowers can explicitly request and allow disclosure of their identity.

Responsible persons in public and private sector who are in charge of receiving reports of corruption are obligated to immediately and without delay, provide protection of whistleblowers' personal data and confidentiality of the data. In case of violation of this duty, the responsible person from the public or private sector where the whistleblower is employed, can be imposed a fine of BAM 5,000 to 15,000.

Provisions of the Law on the Protection of Persons who Report Corruption do not diminish the rights and obligations of responsible persons and competent authorities set forth by provisions of other regulations that regulate prevention, suppression and sanctioning of misdemeanours, criminal offences and misconduct. Protection of persons who report corruption under this law and have the witness status in a criminal proceeding is stipulated by the RS Law on Protection of Witnesses in Criminal Proceedings (RS Official Gazette, 48/03).

### What kind of irregularities can be reported?

Protected reporting is provided to persons who report corruption, but not other violations of the law, irregularities and undermining of public interest. The protection is afforded to a whistleblower who reported, in good faith, corruption that was attempted or committed.

According to the Law, corruption is any action or omission, by abuse of authority or office for private purposes aimed at obtaining illicit proceeds for oneself or others, undertaken by the responsible person or a person employed in public or private sector.

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

To report corruption, it is necessary for the whistleblower to suspect that corruption has been attempted or committed, i.e. to have personal knowledge about the facts of corruption, which he/she believes are true.

Reporting corruption has to include facts and circumstances based on which the whistleblower suspects that corruption was committed. The Law does not stipulate that evidence must be enclosed with the report, but the whistleblower should provide material evidence with the report, if such evidence is in his/her possession.

### Is whistleblower subjected to "good faith" or "motivation" tests in the process of being granted protection?

Protected reporting relates to protection of the rights of persons reporting corruption in good faith. Reporting in good faith represents an indispensable condition for protected reporting.

A report made in good faith contains the facts based on which the whistleblower suspects that corruption was either attempted or committed, about which he/she has personal knowledge and which he/she believes are true, with the obligation to refrain from abusing the reporting.

### What is abuse of reporting and what are its consequences?

Abuse of the corruption reporting is related to situations when the whistleblower is aware at the time of reporting corruption that the reported information (facts and circumstances) is not true. The report made in order to look for personal gain as a reward or compensation for submitting information and

evidence on corruption is also deemed as abuse of the report. According to the Law, the whistleblower is obligated to refrain from abusing the report.

The court can impose a fine of BAM 5,000 to 15,000 for abuse of the corruption reporting. The fine for abuse of corruption reporting can be imposed in cases when the defendant (against whom a lawsuit was filed due to harmful consequences) files a request with the court through a counter-claim or a separate lawsuit.

#### Are whistleblowers exempt from disciplinary, civil or criminal liability?

The Law protects whistleblowers from harmful consequences related to reporting of corruption, which also include disciplinary measures and sanctions. The Law does not regulate the issue of exemption from civil or criminal liability with regards to reporting of corruption.

Furthermore, harmful consequences also involve any other form of undermining or violating whistleblowers' rights, freedoms and interests guaranteed under the Constitution or laws, in a causal link with the corruption or report of corruption, or putting the whistleblower in any unfavourable position due to reporting of corruption.

## Procedure for reporting corruption

### Which types of corruption reporting exist?

The Law provides for two types of corruption reporting: internal (to the responsible person) and external reporting (the internal affairs bodies, prosecutor's office or civil society organisations engaged in human rights protection and fight against corruption).

Reporting corruption entails providing a written or oral information with data on actions or omissions undertaken by the responsible person or an employee, through abuse of authority or office for private purposes, aimed at obtaining illicit proceeds for themselves or others.

### How is internal report of corruption submitted and to whom?

Internal reporting relates to informing the responsible person about the facts based on which it is suspected that corruption was attempted or committed at work or related to employment within the entity that is managed by the responsible person.

Responsible person is the head of a RS body or a unit of local self-government, holder of public authority, responsible person in the business entity (enterprise, entrepreneur, etc.) where corruption was attempted or committed, i.e. where the whistleblower's rights were violated or undermined.

Responsible person is required to enable filing of reports in a visible place accessible to all employees and citizens, clearly marked: "for reporting of corruption", receive reports, as well as to return the report to the whistleblower requesting additional information, if it is determined that the report does not contain all prescribed elements.

Responsible persons who manage 15 or more employees are required to issue instructions on how to deal with corruption reports and ensure protection of the whistleblowers. This instruction regulates the manner in which the reports of corruption are dealt with, manner in which whistleblowers can exercise their rights and obligations of the responsible person, in particular regarding the safeguarding and protection of the whistleblower's personal data and confidentiality of the data.

A model instruction on how to deal with corruption reports and ensure protection to whistleblowers, adopted by the RS Ministry of Justice ([https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Documents/Модел Упутства о поступању са пријавом корупције и обезбеђењу заштите лица која пријављују корупцију\\_042768296.pdf](https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Documents/Модел Упутства о поступању са пријавом корупције и обезбеђењу заштите лица која пријављују корупцију_042768296.pdf)) envisages for the corruption report to be filed with the responsible person in charge of a body/institution/organisation/business entity or the person who has been authorised by the responsible person to receive reports of corruption.

In line with model instruction, the report can be filed directly, by mail and with the note saying: "Report of corruption – do not open", by leaving it in the mailbox for corruption reporting, electronically, verbally to the responsible person or person authorised by him/her, on the record, or by phone on the record.

According to the model instruction, if corruption reporting refers to the responsible person, it is to be submitted to the supervising management body.

Neither the Law nor the model instruction, prescribe the report form, but the Law does prescribe its contents. According to the Law, each report must contain: description of actions or omissions that represent corruption, facts and circumstances based on which the whistleblower suspects that corruption was attempted or committed, and information about the whistleblower. Furthermore, the report must contain information about the person suspected of having committed corruption, if the whistleblower has such information at the time of making the report. Additionally, the whistleblower needs to submit material evidence based on which it is suspected that corruption was attempted or committed, if he/she is in possession of such evidence.

### What procedure is conducted after receiving internal report?

Responsible person is obligated to act upon the reports, i.e. detect, prevent, suppress and sanction all forms of corruption and undertake measures to protect persons who report corruption in good faith. Responsible person or authorised person designated by the responsible person to act upon corruption reports will act in line with the Law and the instruction that each responsible person managing 15 employees or more, is required to adopt.

Responsible person is obligated to inform whistleblowers of measures and activities taken in response to their report within 15 days from the date when request for delivery of information was submitted; to deliver to the whistleblowers decision or information on outcome of the procedure within eight days from the date on which procedure was completed. The model instruction stipulates those allegations from the report are forwarded to the employee suspected of committing corruption to provide a response, leaving them a deadline of seven days to do that.

The deadline for procedure completion has not been prescribed, but it is stipulated that the responsible person is obliged to act upon the report, i.e. to start working on detection, prevention, suppression and sanctioning of the harmful actions or omissions that are considered to be corruption, within seven days from receiving the report.

Responsible person is committing a misdemeanour if he/she refuses to receive the report, i.e. fails to act upon the report in a timely fashion or fails to inform the whistleblower on the outcome of the submitted report in a timely fashion. Responsible person can be imposed a fine of BAM 5,000 to 15,000 for this misdemeanour.

Model instruction requires each corruption report to be recorded, used, kept and archived in a way that ensures protection of the whistleblower's identity and contents of the report, keeping the information about whistleblower separate from the report.

According to the Law, responsible persons and competent courts are obligated to submit a report to the RS Ministry of Justice by the end of January of the current year on the number and outcome of the reports received and procedures for protection of whistleblowers, which are in process or finalised over the past year. Public and private sector entities are thus obliged to keep records of the reports.

### What is external reporting?

Whistleblower uses external reporting to inform law enforcement bodies, prosecutor's office or civil society organisations engaged in human rights protection and fight against corruption about the facts based on which he/she suspects that corruption has been either attempted or committed. The actions to be taken by these institutions upon receiving the report are not prescribed by the Law.

## Protection of whistleblowers from detrimental actions

### Against which detrimental actions and consequences is protection provided?

The Law defines a wide range of detrimental actions in relation to the whistleblower, which are prohibited. Firstly, the Law in the first place recognises the following harmful consequences:

- mobbing, harassing or threatening the whistleblower by the responsible person or other persons employed by the same employer;
- creating bad interpersonal relations in the workplace or conditions in which the whistleblower is put at a disadvantage relative to other persons employed by the same employer, in retaliation for the report he/she filed;

Furthermore, the Law recognises the following consequences as harmful:

- bringing the whistleblower into an unlawful, unfavourable, unequal or unfair position in terms of exercising his/her rights, and
- any other type of threatening or violating the rights, freedoms and interests guaranteed under the Constitution and by the law, that is in a causal link with corruption or reporting of the corruption or placing the whistleblower in any more unfavourable position due to the corruption report.

Bringing the whistleblower into an unfavourable, unequal or unfair position in terms of exercising his/her rights is recognised as a harmful consequence in the following areas:

- education - enrolment into preschool, school and higher education institutions, awarding of scholarships, accommodation in the student dormitories, grading, completion of classes, taking exams, defending high school graduation thesis, bachelor, master's and doctoral theses, other rights related to education, in accordance with the law,
- health care - inclusion or information about the waiting lists, information related to one's health status, examination, admission and stay in a health facility, surgery, treatment, rehabilitation, insight into treatment costs, other rights related to health care, in accordance with the law,
- pension and disability insurance - old-age pension, reassignment to other jobs, reskilling or upskilling, cash benefits related to reduced working capacity, disability pension, survivor's pension, other rights related to pension and disability insurance, in line with the law,
- social protection - financial benefits, carer's allowance, committal to an institution, one-off financial assistance, other rights related to social protection, in line with the law,
- use of services provided by the RS bodies, public institutions and other legal entities when exercising and protecting his/her rights, obligations and interests - priority resolution of requests, positive resolution of requests, obtaining any type of material assistance, subsidies and incentives, imposing or executing obligations, issuing permits, approvals or consents, construction of infrastructure (water supply, asphaltting of streets, construction of sidewalks, street lighting, etc.),
- employment - participation and success in public job vacancies, other types of employment, acquiring status of a trainee or volunteer, work beyond the employment relationship, training or professional development, promotion or work performance evaluation, acquisition or loss of title, disciplinary measures and sanctions, working conditions, termination of employment, wages and other employment-related remunerations, payment of jubilee or severance pay, reassignment or transfer to another post or place of work, other rights related to employment in line with the law,



- public procurement - participation in the public procurement procedures, selection for the best bidder, other rights related to public procurement, in line with the law,
- sports, science and culture - organising competitions or events, engagement of athletes, scientists or professionals, artists and other persons in these fields, results in competitions, awarding prizes or recognitions, awarding scholarships, material aid, subsidies or incentives, other rights related to sports, science or culture, in line with the law.

### What kind of protection is available for whistleblowers exposed to harmful consequences?

The whistleblower is entitled to receive either internal or external protection, depending on the person/institution to which request for protection was submitted. The internal protection procedure is initiated by the person experiencing the harmful consequences through submitting a request to the responsible person. The external protection procedure is initiated by the person experiencing the harmful consequences by filing a lawsuit to the competent court.

### What is the procedure for being afforded internal protection?

The request for internal protection is to be submitted within 30 days from the day of learning about the harmful consequence, and no later than one year from the day of the harmful consequence occurring. The responsible person is obliged to decide on the request within 30 days from the day of its receipt.

The law stipulates that the whistleblower must make it probable that the act, action or omission, which he/she deems as a harmful consequence, and which threatens or violates his/her right, or by which he/she was put in a more unfavourable position, is causally linked to corruption or report of corruption.

It is the duty of the responsible person to immediately undertake measures, as part of the internal protection, to ensure that the act, action or omission, identified as the harmful consequence that jeopardises or violates the rights of the whistleblower is eliminated and to ensure protection and exercising of the whistleblower's rights.

The responsible person is also obliged to undertake measures to determine disciplinary and material liability of the person who committed corruption, and to forward the report without any delay to the competent authority if he/she suspects that the reported act or omission has characteristics of a criminal offense.

If the responsible person does not take measures to ensure protection of the rights of the whistleblower, under his/her authority, and if he/she does not take measures to determine the disciplinary and material liability of the person who committed corruption, a fine ranging between BAM 5,000 to 15,000 is imposed.

### What is the procedure for receiving external protection?

The person facing harmful consequences initiates the procedure of external protection by filing a lawsuit to the competent court. The basic court has territorial jurisdiction according to the place where the harmful consequence occurred or according to the permanent/temporary place of residence of the plaintiff. The lawsuit is to be filed within 30 days from the day of learning about the harmful

consequence, and no later than within one year from the day of occurrence of the harmful consequence.

By filing a lawsuit for protection of rights concerning corruption or report of corruption, the whistleblower requests the court to establish that his/her right have been threatened or violated or that he/she was put in an unfavourable position, i.e. that the harmful consequence has occurred, in relation to corruption or reporting of corruption, and places one or more of the following requests before the court:

- for the court to annul the act in question, to prohibit execution or repetition of the act or to order other specific measures and actions to be undertaken as to eliminate harmful consequences, including *restitutio in integrum*,
- for compensation of material and non-pecuniary loss by the defendant,
- for publication of the decision from that proceeding in the media, at the defendant's expense.

The burden of proof is on the defendant, who has to prove lawfulness, purposefulness and objective justification or absence of the act, activity or omission, that was described as harmful consequence in the lawsuit.

The whistleblower is exempt from paying the court fee and costs of proceedings when filing a lawsuit to request external protection, except in case he/she loses the dispute.

The Law stipulates that the whistleblower may file a request for external protection if he/she is not satisfied with the decision or notification issued by the responsible person in the internal protection procedure or if the responsible person does not make a decision or issues notification within 30 days from the request. The applicant may file a lawsuit even if he/she has not initiated internal protection procedure. However, the lawsuit is not allowed if the internal protection procedure is underway.

The lawsuit with attachments is to be delivered to the defendant to respond to it within 15 days from the day of receiving the correct and complete lawsuit; he/she is obliged to submit a written response to the court within 15 days. The Law stipulates that the court protection procedure is urgent and that first instance court is obliged to take a decision within 90 days from the day on which the lawsuit was filed. Provisions of the Law on Civil Procedure apply to issues of judicial protection procedure that are not regulated by this Law.

### What are the security measures?

Prior to initiating the procedure of external protection of rights or during that procedure, the plaintiff may submit to the court a motion to impose security measures. Even before issuing the first instance ruling, the court may impose measures, such as postponing the execution of the act of the responsible person, may issue an order to the responsible person to prohibit and ensure prohibition of harmful actions and issue a mandatory order to the responsible person to undertake action to eliminate harmful consequences, including *restitutio in integrum*.

A security measure may be imposed if the court deems it justified, in particular if proponent of the security measure makes existence of the harmful consequences probable and makes it probable that:

- due to that, existence of the security measure proponent or members of his/her family is endangered or that

- there is danger that without such a measure the opponent of the security measure could prevent or significantly impede the exercise of the rights of the security measure proponent or otherwise harm him/her.

The security measure proponent is exempt from the preliminary bearing of costs in the proceedings for securing and providing a guarantee, as a condition for imposing and enforcing the security measure.

The court is to decide on the motion to impose a security measure within eight days from the day of receiving the motion. An appeal against this decision is allowed within eight days from the day on which the decision was delivered. The appeal does not delay execution of the decision.

If the security measure was imposed prior to filing the lawsuit, the decision sets a deadline of no more than 30 days, within which the proponent is obliged to initiate external protection procedure by filing a lawsuit and submitting evidence about this to the court within 30 days of imposing the measure.

According to the Law, the responsible person will be sanctioned if he/she fails to act in accordance with the court decision on the temporary security measure and fails to take measures to eliminate harmful consequences established by the court ruling granting the claim. Fines ranging from BAM 5,000 to 15,000 are imposed for these misdemeanours.

#### What legal remedies are available in the external protection procedure?

An appeal against the first-instance court decision is allowed within 15 days from the day of delivery of the court decision. The second instance court is obliged to make a decision within 45 days from the day of receiving the file. Revision is always allowed against the second instance court decision.

## Legal aid/assistance

What legal aid is available to the whistleblowers?

The Law stipulates that whistleblower is entitled to free legal aid from the body responsible for providing such assistance. In Republika Srpska, it is the Centre for Free Legal Aid, which is an entity administrative organisation within the RS Ministry of Justice.

(<https://mpr-centar.org/index.php/sr-YU/ocentru>).

Vaša prava (<https://pravnapomoc.app/ba/about>) is a CSO that provides free legal aid, including information on the rights and obligations of the service beneficiaries, legal advice, drafting different motions, representing service beneficiaries in proceedings before courts, institutions, bodies and authorities in line with relevant laws and international human rights instruments. The CSO provides free legal aid in the legal areas of labour law, property relations, family law, social rights, status rights, pension and disability insurance, among others.

Transparency International BiH also provides assistance to those who report corruption through its Centre for Legal Aid in the Fight against Corruption. Information on available assistance can be found at <https://ti-bih.org/projekat/alac-centar-za-pruzanje-besplatne-pravne-pomoci-gradjanima/>

and <https://ti-bih.org/oblast/pravna-pomoc/>.

## Additional sources of information

Anti-Corruption Network of Civil Society Organisations in Bosnia and Herzegovina - ACCOUNT has organised a campaign to promote the Law on Protection of Persons Reporting Corruption in Republika Srpska, to draw attention to the rights and protection of whistleblowers in bodies of local self-government and users of their services (citizens), employees of public administration bodies in Republika Srpska, employees of public institutions and public enterprises in RS, and citizens. The campaign was implemented in cooperation with the RS Ministry of Justice. Information material available at

[https://infohouse.ba/wp-content/uploads/2021/03/NEWSLETTER\\_mart\\_SMALL\\_SIZE\\_compressed.pdf?x19325](https://infohouse.ba/wp-content/uploads/2021/03/NEWSLETTER_mart_SMALL_SIZE_compressed.pdf?x19325).