

# Law on the Protection of Whistleblowers Act, No. 128/2014

(adopted 25 November 2014)

## CHAPTER 1 INTRODUCTORY PROVISIONS

### Scope of Law

#### Article 1

This Law governs whistleblowing; the whistleblowing procedure; the rights of whistleblowers; the obligations of state authorities and other bodies and organizations and legal entities and other natural persons in relation to whistleblowing; as well as other issues of importance for whistleblowing and the protection of whistleblowers.

### Definitions

#### Article 2

For the purposes of this Law, the following terms have the following meanings:

1. **“Whistleblowing” shall** mean the disclosure of information regarding an infringement of legislation; violation of human rights; exercise of public authority in contravention of the purpose it was granted; or danger to life, public health, safety, and the environment; or with the aim to prevent large-scale damage;
2. **“Whistleblower” shall** mean any natural person who performs whistleblowing in connection with his employment; hiring procedure; use of services rendered by public and other authorities, holders of public authority or public services; business dealings; and ownership in a business entity;
3. **“Employer” shall** mean any authority of the Republic of Serbia, provincial or local self-government unit, holder of public authorities or public services, legal entity or entrepreneur employing one or more persons;
4. **“Responsible person” shall** mean any person who is entrusted, in a legal entity, with certain tasks related to management, business operations or business processes, or any person in the state, provincial or local self-government unit engaged in certain activities;
5. **“Employment” shall** mean full-time employment, work outside of employment, volunteering, exercise of official duty, or any other factual work performed for an employer;
6. **“Competent authority” shall** mean any national, provincial or local self-government authority or holder of public authority competent to act upon information disclosed in accordance with this Law;
7. **“Damaging action” shall** mean any action or omission in relation to whistleblowers which violates or infringes the right of a whistleblower or persons entitled to protection as a whistleblower, or which puts such persons at a disadvantage.

## CHAPTER II

### GENERAL PROVISIONS ON WHISTLEBLOWING AND THE RIGHT TO PROTECTION

#### Prevention of Whistleblowing Prohibited

##### Article 3

Prevention of whistleblowing shall be prohibited.

Any provision of a general or particular enactment that prevents whistleblowing shall be null and void.

## **Damaging Actions Prohibited**

### **Article 4**

Undertaking any damaging action shall be prohibited.

## **Entitlement to Protection of Whistleblowers**

### **Article 5**

A whistleblower shall be entitled to protection in accordance with this Law where:

1. He performs whistleblowing by disclosing information to his employer, competent authority, or the public as provided for herein;
2. He discloses information referred to in Article 2, item 1 hereof (hereinafter referred to as: the disclosure) within one year of having learned of the performance of the action he blows the information for, and at the latest within ten years from the date of the performance of such action;
3. At the time of whistleblowing, the truthfulness of the information disclosed would be credible to a person possessing the same average level of knowledge and experience as the whistleblower.

## **Protection of Associated Persons**

### **Article 6**

An associated person shall enjoy the same protection as a whistleblower if such person makes probable that a damaging action has been undertaken against him due to his connection to a whistleblower.

## **Entitlement to Protection due to Wrongful Identification as Whistleblower**

### **Article 7**

A person who makes probable that a damaging action has been undertaken against him, due to the fact that the person performing the damaging action wrongly believed that person to be the whistleblower or an associated person, shall enjoy the same entitlement to protection as the whistleblower.

## **Protection of a Person Performing Official Duty**

### **Article 8**

A person who has discharged the information while performing his official duty shall enjoy the same protection as a whistleblower, if he makes probable that a damaging action has been undertaken due to discharging his official duties.

## **Entitlement to Protection for Requesting Information**

### **Article 9**

A person requesting data in relation to the information shall enjoy the same protection as a whistleblower, if such person makes probable that a damaging action has been undertaken against him due to requesting such data.

## **Protection of Whistleblower's Personal Data**

### **Article 10**

A person authorized to receive the information shall be required to protect the whistleblower's personal data and any data that may be used to discover the identity of the whistleblower, unless the whistleblower agrees to reveal such personal data in accordance with the law regulating personal data protection.

Any person who learns about the data referred to in paragraph 1 of this Article shall be required to protect such data.

A person authorized to receive the information shall be required to, at the time of receiving such disclosure, notify the whistleblower that his identity may be revealed to a competent authority if actions of that authority cannot be undertaken without revealing the identity of the whistleblower, and notify the whistleblower of the safeguards available to participants in criminal proceedings.

Where it is necessary to reveal the identity of a whistleblower in the course of proceedings, the person authorized to receive the information shall be required to notify the whistleblower of this fact before revealing the whistleblower's identity.

Data referred to in paragraph 1 hereof may not be revealed to any person named in the information, unless otherwise provided by other law.

### **Abuse of Whistleblowing Prohibited**

#### **Article 11**

Abuse of whistleblowing shall be prohibited.

Abuse of whistleblowing shall be deemed present where a person:

1. Discloses information he knows to be false;
2. Seeks illegal gain for himself in addition to seeking action to be taken with respect to the information disclosed.

### **CHAPTER III PROCEDURE**

#### **a) General Provisions**

#### **Types of Whistleblowing**

##### **Article 12**

Whistleblowing may be internal, external, or public.

Disclosing information to an employer shall be deemed internal whistleblowing.

Disclosing information to a competent authority shall be deemed external whistleblowing.

Disclosing information to the media, by means of the Internet, at a public gathering, or in any other manner that information may be made public shall be deemed public whistleblowing.

#### **Content of Disclosure**

##### **Article 13**

The disclosure shall include information regarding any infringement of legislation; violation of human rights; exercise of public authority in contravention of its intended purpose; danger to life, public health, safety, and the environment; or information intended to prevent large-scale damage.

The disclosure may include the whistleblower's signature and data on the whistleblower.

The employer and competent authority shall be required to act, within their respective remits, upon anonymous disclosures.

## **b) Internal Whistleblowing**

### **Obligations of Employer**

#### **Article 14**

Each employer shall be required to undertake all measures necessary to correct determined irregularities in relation to the disclosure.

The employer shall be required to protect the whistleblower from any damaging action, and undertake any and all measures necessary to terminate a damaging action and remove any consequences of a damaging action.

The employer may not undertake any measures to reveal the identity of the whistleblower.

The employer shall be required to notify, in writing, all persons employed of their entitlements hereunder.

The employer shall be required to designate an officer authorized to receive disclosures and be tasked with pursuing proceedings related to whistleblowing.

### **Procedure**

#### **Article 15**

An internal whistleblowing procedure shall be initiated by the disclosure of information to an employer.

The employer shall be required to immediately act upon any whistleblowing disclosure and at the latest within 15 days of receiving such disclosure.

The employer shall be required to notify the whistleblower of the outcome of the procedure within 15 days of the conclusion of the procedure referred to in paragraph 1 of this Article.

The employer shall, upon the whistleblower's request, provide him with information about the progress of any and all actions undertaken in the course of the procedure, and enable him to have access to the case files and participate in actions in the course of the procedure.

### **General Enactment of Employer**

#### **Article 16**

Each employer with more than ten employees shall be required to adopt an internal enactment governing internal whistleblowing procedure.

The employer shall be required to post the general enactment referred to in paragraph 1 of this Article in a visible location that is accessible to each employee, as well as on its web provided that there are technical conditions to do so.

Provisions of the general enactment governing internal whistleblowing procedure must be consistent with the provisions hereof and the bylaw referred to in Article 17 hereof.

Provisions of the general enactment referred to in paragraph 1 of this Article may not reduce the scope of rights or deny any right to a whistleblower within the meaning of this Law.

Provisions of the general enactment referred to in paragraph 1 herein that are not consistent with this Law or bylaws adopted in accordance with this Law shall be null and void.

## **Enactment of Minister**

### **Article 17**

The Minister in charge of judicial affairs shall adopt an enactment to closely regulate the manner of internal whistleblowing, the manner of appointment of an authorized person within an employer, and any other issue relevant for internal whistleblowing applicable to employers with more than ten employees.

## **c) External Whistleblowing**

### **Article 18**

An external whistleblowing procedure shall be initiated by the disclosure of information to a competent authority.

Where whistleblowing pertains to employees of the competent authority, the whistleblower shall make the disclosure to the head of such authority; where whistleblowing pertains to the head of a competent authority, the whistleblower shall make the disclosure to the head of the authority directly superior to such competent authority.

The competent authority shall be required to act upon any disclosure referred to in paragraph 1 of this Article within 15 days of receiving such disclosure.

Where the competent authority to which the disclosure was made does not have jurisdiction to act in connection with such whistleblowing, it shall forward the information to the authority vested with such jurisdiction within 15 days of receiving such information, and shall notify the whistleblower of this action.

The authority referred to in paragraph 4 of this Article shall be bound by the safeguards provided to the whistleblower by the forwarding authority.

Where the whistleblower has not approved that his identity be revealed, and the competent authority to which the disclosure was made by the whistleblower does not have jurisdiction to act, it shall, prior to forwarding the disclosure to the competent authority, request approval for doing so from the whistleblower, unless otherwise stipulated by the law.

The competent authority shall, upon the whistleblower's request, provide him with information about the progress of any and all actions undertaken in the course of the procedure, and enable him to have access to the case files and participate in actions in the course of the procedure.

The competent authority shall be required to notify the whistleblower of the outcome of the procedure referred to in Paragraph 1 hereof after the conclusion of the procedure, in accordance with this Law.

## **d) Public Whistleblowing**

### **Article 19**

A whistleblower may disclose information to the public at large without having previously disclosed it to an employer or competent authority in the event of an immediate threat to life, public health, and safety, the environment, to causing large-scale damage, or if there is an immediate threat to destroying the evidence.

When blowing the whistle to the public at large, a whistleblower shall be required to comply with the principle of presumption of innocence of an accused, the right to personal data protection, as well as not to hinder the conduct of the court proceedings.

## **e) Handling Classified Information**

### **Whistleblowing where Disclosure Contains Classified Information Article 20**

A disclosure may contain classified information.

Any information classified within the meaning of legislation governing the confidentiality of information shall be deemed classified information referred to in paragraph 1 of this Article.

Where a disclosure contains classified information, the whistleblower shall be required to first make such disclosure to the employer; where a disclosure pertains to a person authorized to act upon such disclosure, the disclosure shall be made to the chief officer of the employer.

Where the employer has failed to act upon a disclosure made by the whistleblower that contains classified information within 15 days, or failed to take appropriate action from within its remit, the whistleblower may contact a competent authority.

Notwithstanding paragraph 3 of this Article, where a disclosure pertains to the chief officer of the employer, such disclosure shall be made to a competent authority.

Where a disclosure contains classified information, the whistleblower may not disclose it to the public at large unless otherwise regulated.

Where a disclosure contains classified information, the whistleblower and other persons shall be required to comply with general and specific measures for the protection of classified information stipulated by the law governing the confidentiality of information.

## **CHAPTER IV PROTECTION OF WHISTLEBLOWERS AND COMPENSATION FOR DAMAGE**

### **Putting Whistleblowers at a Disadvantage Prohibited Article 21**

The employer of a whistleblower must not perform an action or omit to perform an action that would place a whistleblower at a disadvantage, in particular in relation to:

1. Hiring procedure;
2. Obtaining the status of an intern or volunteer;
3. Work outside of formal employment;
4. Education, training, or professional development;
5. Promotion at work, being evaluated, obtaining or losing a professional title;
6. Disciplinary measures and penalties;
7. Working conditions;
8. Termination of employment;
9. Salary and other forms of remuneration;
10. Share in the profits of the employer;
11. Disbursement of bonuses or incentivizing severance payments;
12. Allocation of duties or transfer to other positions;

13. Failing to take measures to provide protection from harassment by other persons;

14. Mandatory medical examinations or examinations to establish fitness for work;

Provisions of a general enactment denying or infringing upon the right of any whistleblower or placing such persons at a disadvantage shall be null and void.

### **Compensation for Damage Incurred due to Whistleblowing**

#### **Article 22**

In cases where damage is incurred due to whistleblowing, the whistleblower shall be entitled to compensation for damage in accordance with legislation governing contracts and torts.

### **Judicial Relief of Whistleblower**

#### **Article 23**

A whistleblower who has suffered a damaging action in relation to whistleblowing shall be entitled to judicial relief.

Judicial relief shall be exercised by lodging a lawsuit seeking protection in relation to whistleblowing with a competent court within six months of learning of a damaging action that has been undertaken, or three years from such time as the damaging action was undertaken.

The court competent to provide judicial relief shall be the high court with territorial jurisdiction over the location where the damaging action was undertaken, or in accordance with the domicile of the plaintiff.

Judicial relief proceedings in connection with whistleblowing shall be urgent.

Appellate review shall always be permitted in proceedings for judicial relief initiated in connection with whistleblowing.

The provisions of the Civil Procedure Code applicable to labor disputes shall apply as appropriate to judicial relief proceedings in connection with whistleblowing, except where otherwise provided for herein.

### **Composition of the Court**

#### **Article 24**

A single judge shall always try in the first-instance litigation proceedings initiated upon lodged lawsuit in connection with whistleblowing, and the three-judge panel in the second-instance proceedings.

### **Possession of Special Knowledge in Whistleblowing**

#### **Article 25**

A judge acting upon a lawsuit in connection with whistleblowing or acting in special circumstances referred to in Article 27 hereof shall be a person who possesses special knowledge in protection of whistleblowers.

Acquiring special knowledge and personal development of persons acting in cases in connection with protection of whistleblowers shall be conducted by the Judicial Academy in cooperation with the Ministry competent for judicial affairs.

Curricula and other related issues of importance for acquiring special knowledge in protection of whistleblowers shall be regulated by an enactment of a minister in charge of judicial affairs.

## **Content of Lawsuit**

### **Article 26**

The following can be sought in a lawsuit for relief in connection with whistleblowing:

1. Establishment of the fact that a damaging action has been undertaken against a whistleblower;
2. Prohibition of engagement in or repetition of a damaging action;
3. Remediation of the consequences of a damaging action;
4. Compensation for tangible and intangible damage;
5. Publication of the judgment rendered upon a lawsuit filed for reasons referred to in items 1) to 4) above in the media, at the expense of the defendant.

The lawsuit referred to in paragraph 1 of this Article may not contest the legality of an employer's individual enactment adopted to decide on an employee's employment-related rights, obligations and responsibilities.

### **Rights of Whistleblowers in Specific Proceedings**

#### **Article 27**

When lodging a lawsuit to contest the legality of an employer's individual enactment adopted to decide on an employee's employment-related rights, obligations and responsibilities of a whistleblower in accordance with specific legislation, the whistleblower may allege that the employer's individual enactment constitutes a damaging action in relation to whistleblowing.

The allegation referred to in paragraph 1 may be made in the lawsuit or at the preliminary hearing, and may be made at any subsequent point in time only in the event that the alleging party makes it probable that he was unable to make such allegation at an earlier point in time without inculpating himself.

The court shall pursue separate proceedings to decide upon the merit of any allegation whereby the employer's enactment constitutes a damaging action in connection with whistleblowing.

### **Notice to Parties of the Right to Resolve Dispute through Mediation**

#### **Article 28**

The court providing relief due to whistleblowing shall, at the preliminary hearing or the first individual session of the main hearing, notify the parties of the option of out-of-court settlement through mediation or in any other amicable manner.

### **Burden of Proof**

#### **Article 29**

In case the plaintiff has, in the course of proceedings, established the probability of having suffered damaging consequences in connection with whistleblowing, the burden of proving that the damaging consequences are not the result of whistleblowing shall lie with the employer.

### **Principle of Investigation**

#### **Article 30**

In proceedings for judicial relief in connection with whistleblowing, the court may establish the facts even when these are not disputed by the parties, and may also independently investigate facts not presented by either party in the proceedings, if the court deems this to be important for the outcome of the proceedings.

## **Absence of Defendant**

### **Article 31**

In case a duly summoned defendant fails to appear at the main hearing, the court may hold the hearing in the absence of the defendant, and may also rule on the basis of the facts established at the hearing.

## **Interim Relief and Jurisdiction**

### **Article 32**

The court hearing the case pertaining to relief in connection with whistleblowing or a case referred to in Article 27 hereof may institute interim relief pursuant to legislation governing enforcement and security.

A motion to institute interim relief may be made before the initiation of proceedings for judicial relief in connection with whistleblowing, in the course of such proceedings, or until such time as the court ruling has been enforced.

During the course of the proceedings, the court may also institute interim relief *ex officio*.

## **Interim Relief Prior to Initiation of Court Proceedings**

### **Article 33**

The court with jurisdiction to hear lawsuits for relief in connection with whistleblowing shall be competent to rule on a motion to institute interim relief prior to the initiation of court proceedings.

When instituting interim relief referred to in paragraph 1 of this Article, the court shall also set a deadline by which a lawsuit must be lodged with the competent court, taking into account of the deadlines for lodging lawsuits set under specific legislation.

## **Motion to Grant Interim Relief**

### **Article 34**

A motion to grant interim relief may petition the court to defer the entry of an enactment into legal force, prohibit the performance of a damaging action, and remedy the consequences of a damaging action.

The court shall rule upon any motion to institute temporary relief within eight days from the day the motion is filed.

## **Appeal against Order Granting Interim Relief**

### **Article 35**

A separate appeal shall not be permitted against a ruling granting interim relief.

## **Monitoring the Implementation of the Law**

### **Article 37**

The Labor Inspection shall be in charge of monitoring the implementation of the Law, or Administrative Inspection, in accordance with the law governing their authorities.

## **CHAPTER V PENAL PROVISIONS**

### **MISDEMEANORS ARTICLE 37**

A fine ranging from RSD 50,000 to RSD 500,000 shall be imposed against an employer incorporated as a legal entity with more than ten employees:

1. Failing to adopt a general enactment on internal whistleblowing procedure (Article 16, paragraph 1);
2. Failing to post the enactment regulating internal whistleblowing procedure in a location visible and accessible to all employees (Article 16, paragraph 2);

A fine ranging from RSD 10,000 to RSD 100,000 shall be imposed on the authorized officer of a legal entity or national, provincial, or local authority for the misdemeanor referred to in paragraph 1 of this Article.

A fine ranging from RSD 20,000 to RSD 200,000 shall be imposed on an entrepreneur for the misdemeanor referred to in paragraph 1 of this Article.

### **Article 38**

A fine ranging from RSD 50,000 to RSD 500,000 shall be imposed against an employer incorporated as a legal entity:

1. Failing to protect a whistleblower from a damaging action or failing to undertake all measures necessary to terminate a damaging action and remove any consequences of a damaging action, within its purviews (Article 14, paragraph 2);
2. Failing to provide every employee with the written notification on the right stemming from this Law (Article 14, paragraph 4);
3. Failing to appoint an authorized person to receive and conduct procedure in connection with whistleblowing (Article 14, paragraph 5);
4. Failing to act upon disclosure within the stipulated deadline (Article 15, paragraph 2);
5. Failing to inform a whistleblower about the outcome of the procedure within the stipulated deadline (Article 15, paragraph 3);
6. Failing to provide information to a whistleblower, upon his request, about the progress and actions undertaken in the procedure, or failing to enable a whistleblower to have access to case files and to participate in actions taken in the course of the procedure (Article 15, paragraph 4);

A fine ranging from RSD 10,000 to RSD 100,000 shall be imposed against a responsible person within the legal entity, state, provincial or local government authority for the misdemeanor referred to in paragraph 1 hereof.

A fine ranging from RSD 20,000 to RSD 200,000 shall be imposed against an entrepreneur for the misdemeanor referred to in paragraph 1 hereof.

## **CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS**

### **Deadline for Adoption of Bylaws**

#### **Article 39**

The enactment referred to in Article 17 and Article 25, paragraph 3 of this Law shall be adopted within three months of the entry into force hereof.

Employers shall be required to adopt the general enactment referred to in Article 16, paragraph 1 hereof within one year of the entry into force hereof.

### **Entry into Force**

#### **Article 40**

This Law shall enter into force on the eighth day from the date of its publication in *the Official Gazette of the Republic of Serbia*, and shall enter into effect six months from the date of its entry into force.