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ASSEMBLY OF THE REPUBLIC OF MACEDONIA

Based on Article 75 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue

A DECREE ON THE PROCLAMATION OF THE LAW FOR POINTER PROTECTION

The Whistleblower Protection Law was promulgated, which the Assembly of the Republic of Macedonia adopted at the session held on November 9, 2015.

No. 08-5273/1
November 9, 2015
President of the Republic of Macedonia, Skopje
dr **Gjorge Ivanov**, m.h.

President
of the Assembly of the Republic
Macedonia,
Trajko Veljanoski, m.h.

LAW ON WHISTLEBLOWER PROTECTION

Purpose of the law

Article 1

This law regulates protected reporting, the rights of whistleblowers, as well as the actions and duties of institutions, that is, legal entities in connection with protected reporting and the provision of whistleblower protection.

Meaning of expressions

Article 2

(1) A protected report in the sense of this law is a report which, in accordance with this law, conveys a reasonable suspicion or knowledge that a criminal or other illegal or impermissible action has been committed, is being committed or is likely to be committed, which injures or threatens the public interest.

(2) A whistleblower in the sense of this law is a person from the categories determined by paragraph (3) of this article who, with good intentions, makes a protected report in accordance with this law. (3) Categories of persons who, in accordance with this law, can come forward as whistleblowers are:

- a person who has an employment relationship based on an indefinite or fixed time in the institution, that is, the legal entity for which he reports;

- a candidate for employment, a candidate for a volunteer or an intern at the institution, that is, the legal entity for which he applies;
- a person who is or has been a volunteer or an intern at the institution, that is, the legal entity for which he reports;
- a person who, on any basis, is or has been hired to perform work by the institution, that is, the legal entity for which he reports;
- a person who, on any basis, is or was in a business relationship or other relationship of cooperation with the institution, that is, the legal entity for which he reports;
- a person who uses or has used services in the institution, that is, the legal entity in the public and private sector for which he reports.

(4) Public interest in the sense of this law denotes the protection of the basic freedoms and rights of man and citizen recognized by international law and determined by the Constitution of the Republic of Macedonia, prevention of risks to health, defence and security, protection of the environment and nature, protection of property and freedom of the market and entrepreneurship, rule of law and prevention of crime and corruption.

(5) The term "close person" means spouse and common-law partner, direct blood relatives, lateral relatives up to the third degree, as well as relatives up to the second degree, adoptive parents and adoptive parents, and other persons whom the protected person considered a close person and for whom it is requested to be protected in accordance with the provisions of articles 8 and 9 of this law.

Protected login

Article 3

(1) Protected reporting is carried out as protected internal reporting, protected external reporting or protected public reporting, in accordance with Articles 4, 5 and 6 of this law, with good intentions and with reasonable doubt as to the veracity of the information in the content of the report at the time of the application.

(2) The indicator is not obliged to prove the good intention and truthfulness of the report from paragraph (1) of this article.

(3) The whistleblower is provided with protection in accordance with the law and is guaranteed anonymity and confidentiality to the extent and until the moment he requests it. (4) The whistleblower's right to anonymity can be limited by a court decision, about which the whistleblower is notified without delay.

Protected internal login

Article 4

(1) The whistleblower makes a protected report in the institution, i.e. the legal entity, where he has suspicions or knowledge that a criminal offence has been committed, is being committed or will be committed, or other illegal or impermissible conduct that injures or threatens the public interest (hereinafter text: protected internal login).

(2) The whistleblower shall make a protected internal report orally on a record or in writing to a person authorized by the head of the institution, i.e. the legal entity for which he is reporting (hereinafter: authorized person for receiving reports from whistleblowers).

(3) In the institution, i.e. the legal entity where there is no authorized person for receiving reports from whistleblowers, the protected internal reporting is done to the head of the institution, i.e. the legal entity in the manner or in the form determined by paragraph (2) of this article.

(4) The person authorized to receive reports from whistleblowers, i.e. the managing person in the institution, i.e. the legal entity from paragraph (3) of this article, is obliged to: - act upon the report from paragraph (1) of this article in compliance with the procedures determined by the internal reporting act;

- to protect the whistleblower's personal data, that is, the data that can reveal the identity of the whistleblower who requests to be anonymous or reports confidentially, in accordance with the regulations for the protection of personal data;

- to inform the whistleblower who is known about the measures taken in relation to the report without delay, and at the latest within 15 days from the day of receipt of the report. (5) Protected internal reporting in institutions in the public sector is regulated by an act adopted by the Minister of Justice on the proposal of the State Commission for the Prevention of Corruption.

(6) Protected internal reporting in the private sector is governed by an internal act of the legal entity with at least 10 employees.

(7) The internal acts from paragraphs (5) and (6) of this article are published and otherwise made publicly available to all employees of the institution, that is, the legal entity. (8) Guidelines for the adoption of the internal acts from paragraph (6) of this article shall be adopted by the Minister of Justice.

Protected external login

Article 5

(1) The whistleblower can also make a protected report by reporting to the Ministry of Internal Affairs, the competent public prosecutor's office, the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia or other competent institutions, i.e. legal entities, if:

- the report referred to in Article 4 of this law is directly or indirectly directed against the head of the institution, that is, the legal entity where the report is made, or - the whistleblower in connection with the report does not receive information about the measures taken within the period established in Article 4 paragraph (4) paragraph 3 of this law or

- no measures have been taken or the whistleblower is not satisfied with the action or suspects that no measures will be taken or that reporting from Article 4 paragraph (1) of this law will cause harmful consequences for him or for his close person (hereinafter: protected external login).

(2) The whistleblower makes a protected external report orally on a record or in writing to an authorized person, i.e. a managing person in the institution, i.e. the legal entity where he reports.

(3) The authorities, institutions, i.e. legal entities to which the whistleblower has made a protected external report, are obliged within their powers to act on the report from paragraph (1) of this article, to protect the whistleblower's personal data, i.e. the data that can reveal the identity of the whistleblower who requests to be anonymous or reports confidentially, in accordance with the regulations for the protection of personal data, and inform the whistleblower of the measures taken without delay, and at the latest within 15 days from the day of receipt of the report.

(4) Protected external reporting is governed by an act adopted by the Minister of Justice.

(5) If the authority to which the information was delivered is not competent to act in relation to the application, it will forward the information to the competent authority within eight days from the day of receipt and will notify the applicant at the same time.

(6) The competent authority from paragraph (5) of this article is obliged to apply the protection measures provided to the declarant by the authority to which the notification was assigned.

(7) The authorized body is obliged, at the request of the declarant, to give notice of the progress and actions taken in the procedure, as well as to enable the declarant to inspect the files of the cases, in accordance with the law.

(8) The authorized body is obliged, after the completion of the procedure, to inform the declarant about the outcome of the procedure from paragraph (1) of this article, in accordance with the law.

Protected public reporting

Article 6

(1) A protected public report can be made by the whistleblower by making publicly available information regarding knowledge that a criminal offense has been committed, is being committed, or is likely to be committed, which injures or threatens the life of the whistleblower and a person close to him, the health of people, safety, the environment, damages on a large scale, that is, if there is an immediate danger of destruction of evidence.

(2) A whistleblower who reports by making publicly available information contrary to this article and without prior reporting to an authorized person for receiving reports from whistleblowers, i.e. to a competent institution in accordance with Articles 4, 5 and 6 paragraph (1) of this law, is not entitled to the protection provided in accordance with Articles 8, 9 and 10 of this law.

(3) A whistleblower who makes a protected public report in accordance with this law by making publicly available information is obliged to respect the presumption of innocence of the reported, the right to protection of personal data of the reported, as well as not to endanger the conduct of the court proceedings.

Data and identity protection of the whistleblower

Article 7

(1) It is prohibited to reveal or enable the identity of a whistleblower to be revealed, except when it is required by a court decision.

(2) The person authorized to receive reports from whistleblowers is obliged to protect the data about the reporting party, i.e. the data on the basis of which the identity of the reporting party can be revealed, unless the reporting party agrees to the disclosure of such data, and in accordance with the law which regulates the protection of personal data.

(3) Any person who learns the data from paragraph (1) of this article is obliged to protect that data.

(4) The person authorized to receive reports from whistleblowers is obliged to inform the reporting person during the reception of the information that his identity may be revealed to the competent authority, if without revealing the identity it would not be possible to act before those authorities, as well as to inform him about the measures for the protection of the participant in the criminal procedure.

(5) If during the procedure it is necessary to reveal the identity of the declarant, the person authorized to receive reports from whistleblowers is obliged to notify the declarant before the identity is revealed.

(6) The data from paragraph (1) of this article must not be disclosed to the person indicated in the information.

Ensuring whistleblower protection

Article 8

(1) The whistleblower and a person close to him are provided with protection from any type of violation of rights or harmful action or risk of harmful actions due to the performed protected internal and external reporting or protected public reporting.

(2) The protection from paragraph (1) of this article is provided by the institution, i.e. the legal entity where the report was made, by taking action to prevent the violation of the rights from the employment relationship or any right and refraining from actions that violate or threatens any right of the whistleblower as a result of the report made.

(3) If the protection from paragraph (2) of this article is not ensured, the whistleblower reports this to the State Commission for the Prevention of Corruption, the Ombudsman of the Republic of Macedonia, the Inspection Council, the Ministry of Internal Affairs and the Public

Prosecutor's Office of the Republic of Macedonia, who, after the report, act without delay in accordance with their competences.

(4) The right to protection from this article is extended to include the persons who will make it probable that the person who has been reported may suspect that they have made a report against him.

Article 9

(1) After receiving the report from Article 8 paragraph (3) of this law, the institutions from Article 8 paragraph (3) of this law, without delay from the institution, i.e. the legal entity where the report was made, request notification of the existence of any type of violation of the right of the whistleblower and his family members, due to the reported report.

(2) The legal entity, i.e. the institution, is obliged to act on the requests from paragraph (1) of this article without delay and to submit a notification for this without delay, and within eight days at the latest.

(3) If it is determined that the institution, i.e. the legal entity where the report was made, violated the right of the whistleblower, a member of his family or a person close to him, the institutions from paragraph (1) of this article without delay address the competent institutions and authorities with a written request for immediate measures to be taken to protect the whistleblower by stopping the actions, i.e. removing the omissions that violate the rights of the whistleblower.

(4) The institutions referred to in paragraph (1) of this article shall notify the whistleblower without delay of the actions taken and the established findings from paragraphs (1), (2) and (3) of this article. (5) If, despite the undertaken activity of the institutions from paragraphs (1), (2) and (3) of this article, the violation of the right of the whistleblower, a member of his family or a person close to him continues, the institutions without delay, and at the latest in within a period of eight days initiate an initiative to initiate a procedure for a criminal prosecution, i.e. an initiative to initiate a procedure before the competent authorities for the dismissal, deployment, replacement, or application of other measures of responsibility to elected or appointed persons, officials or responsible persons in public enterprises and other legal entities that have state capital.

(6) If a crime has been reported against the state, against humanity and international law, in the field of organized crime and for which the Criminal Code prescribes a prison sentence of at least four years, the proof of which is followed by disproportionate difficulties or cannot be carried out without the testimony of the whistleblower who, due to the possible danger of being exposed to intimidation, the threat of retaliation or danger to life, health, freedom, physical integrity or property of a larger scale, does not agree to state a witness, the institutions, with written consent obtained from the whistleblower, submit:

- to the Ministry of Internal Affairs or a competent public prosecutor, an initiative for submitting a written request for a Proposal for inclusion in the Protection Program under the Law on Witness Protection or

- to the Public Prosecutor of the Republic of Macedonia, an initiative to submit a Proposal for inclusion in the Protection Program in accordance with the Law on Witness Protection.

Court protection

Article 10

(1) The whistleblower has the right to judicial protection before a competent court in accordance with the law. (2) The whistleblower can claim before the competent court with a lawsuit:

- determining that a harmful action has been taken or a right has been violated for the sake of indication;

- prohibition of performing a harmful action or violation of a right and repetition of a harmful action or violation of a right;

- annulment of an act by which the harmful act or violation of a right was committed;
 - removing the consequences of a harmful action or violation of a right;
 - compensation for material and non-material damage.
- (3) The procedure following the lawsuit from paragraph (2) of this article is urgent.
- (4) In the procedure for judicial protection in connection with the application, revision is allowed.

Burden of proof

Article 11

In the event of a dispute regarding the existence of a violation of the rights of the whistleblower and his close person for the purpose of reporting, the burden of proof is on the side of the institution, that is, the legal entity that violated the rights of the whistleblower and his family members.

Nullity of provisions in contracts and acts

Article 12

The provisions in the contracts and acts that are concluded, i.e. regulate labour relations and work engagements, which prohibit the reporting of suspicion or knowledge of a criminal offence or other illegal or impermissible conduct that injures or threatens the public interest, security and defence or otherwise such reporting is defined as a breach of confidentiality, loyalty and professionalism provisions are considered null and void.

Compensation

Article 13

(1) The whistleblower has the right to compensation for damage that he or persons close to him may suffer due to protected reporting.

(2) The request for compensation from paragraph (1) of this article is made by submitting a lawsuit to the competent court.

Abuse of reporting of the whistleblower

Article 14

(1) Abuse of whistleblower reporting is knowingly reporting false information about a natural or legal person with the aim of causing harmful consequences for the same.

(2) Abuse of reporting by the whistleblower is also if, with due care and conscientiousness, to the extent that the circumstances allow, he did not check whether they are correct and reliable.

(3) By determining the abuse from paragraphs (1) and (2) of this article, the protection provided in accordance with Article 8 of this law is lost.

(4) The misuse of the reporting of the whistleblower, which resulted in harmful consequences for the natural or legal person, is the basis for initiating a procedure to determine his responsibility in accordance with the law.

Notification of reports received from whistleblowers

Article 15

(1) The authorized persons, i.e. the managers of the institutions, i.e. the legal persons in the

public sector to whom reports are made in accordance with Articles 4 and 5 of this law, are obliged to submit to the State Commission for the Prevention of Corruption semi-annual reports on reports received from whistleblowers.

(2) The State Commission for the Prevention of Corruption and the Ministry of Justice are obliged to submit to the Assembly of the Republic of Macedonia separate Annual Reports on reports received from whistleblowers.

(3) The form and content of the half-yearly reports from paragraph (1) of this article are governed by the internal acts from articles 4 and 5 of this law.

Offense provisions

Article 16

A fine in the amount of 3,000 to 6,000 euros in denars will be imposed on the person authorized to receive reports from whistleblowers, i.e. the head of the institution, i.e. the legal person if he acts contrary to Article 4 paragraph (4) of this law.

Article 17

(1) A fine in the amount of 2,000 to 4,000 Euros in denars will be imposed on the institution, that is, the legal entity if it acts contrary to Article 4 paragraph (7) of this law.

(2) A fine in the amount of 30% of the assessed fine for the institution, that is, the legal entity, will also be imposed on the responsible person in the institution, that is, the legal entity for the violation from paragraph (1) of this article.

Article 18

A fine in the amount of 6,000 Euros in Denars will be imposed on the institution, that is, the legal entity if it acts contrary to Article 5 paragraph (3) of this law.

Article 19

A fine in the amount of 3,000 to 6,000 Euros in Denars will be imposed on any person who acts contrary to Article 7 paragraph (2) of this law.

Article 20

(1) A fine in the amount of 6,000 Euros in Denars will be imposed on the institution, ie the legal entity, if it acts contrary to Article 9 paragraph (2) of this law.

(2) A fine in the amount of 30% of the assessed fine for the institution, that is, the legal entity, will also be imposed on the responsible person in the institution, that is, the legal entity for the violation from paragraph (1) of this article.

Article 21

(1) A fine in the amount of 4,000 euros in Denar equivalent will be imposed on the institution, that is, the legal entity if it acts contrary to Article 15 paragraph (1) of this law.

(2) A fine in the amount of 30% of the assessed fine for the institution, that is, the legal entity, will also be imposed on the responsible person in the institution, that is, the legal entity, for the violation from paragraph (1) of this article.

Article 22

Before initiating a request for initiation of misdemeanour proceedings, a settlement procedure will be conducted in accordance with the Law on Misdemeanors.

Article 23

For the misdemeanors provided for in this law, a misdemeanor procedure will be conducted and a misdemeanor sanction will be imposed by a competent court.

Transitional and final provisions

Article 24

(1) It is not allowed for the content of the report from Article 3 paragraph (1) of this law to use materials resulting from illegal monitoring of communications from the period from 2008 to 2015.

(2) For a person whose report contains content that is not allowed according to paragraph (1) of this article, the protection according to articles 8, 9 and 10 of this law is not provided and the provisions of this law do not apply.

Article 25

The Minister of Justice will adopt the acts from Articles 4 paragraph (5) and 5 paragraph (4) of this law within 60 days from the date of entry into force of this law.

Article 26

The Minister of Justice will adopt the guidelines from Article 4 paragraph (8) of this law within 60 days from the date of entry into force of this law.

Article 27

The Minister of Justice will adopt the acts from Article 5 paragraph (4) of this law within 60 days from the date of entry into force of this law.

Article 28

The Minister of Justice will adopt the guidelines from Article 5 paragraph (7) of this law within 60 days from the date of entry into force of this law.

Article 29

Laws regulating rights and obligations from employment in the public and private sectors will be harmonized with this law no later than three months from the date of entry into force of this law.

Article 30

This law enters into force on the eighth day from the day of its publication in the "Official Gazette of the Republic of Macedonia", and it will begin to be applied after four months from the day this law enters into force.

