

REPUBLIC OF SERBIA

**LAW  
ON PROTECTION OF  
WHISTLEBLOWERS**

Belgrade, 2016

## LAW ON PROTECTION OF WHISTLEBLOWERS

*Note:* This is a true translation of the original Law,  
but it is not legally binding.

Original title:

*ZAKON O ZAŠTITI UZBUNJIVAČA*

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# LAW ON PROTECTION OF WHISTLEBLOWERS\*

## Chapter I

### BASIC PROVISIONS

#### Scope of the Law

##### Article 1

This Law shall regulate whistleblowing, whistleblowing procedure, and rights of whistleblowers, obligations of the state authorities and other authorities and organisations, legal entities and natural persons in relation to whistleblowing, as well as other issues of importance for whistleblowing and protection of whistleblowers.

#### Meaning of Expressions

##### Article 2

For the purpose of this Law, certain expressions shall have the following meaning:

1) **“whistleblowing”** shall mean the disclosure of information regarding violation of regulations, violation of human rights, violation of public powers contrary to the purpose for which they were entrusted, danger to life, public health, safety, and environment, as well as for the purpose of preventing damage of greater scope;

2) **“a whistleblower”** shall mean a natural person who performs whistleblowing in terms of his/her work engagement, employment procedure, use of services rendered by public and other authorities, holders of public powers or public services, business cooperation and right of ownership in a company;

3) **“an employer”** shall mean an authority of the Republic of Serbia, territorial autonomy or local self-government unit, holder of public powers or a public service, a legal entity or entrepreneur who employs one or more persons;

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4) **“a responsible person”** shall mean the person in a legal entity that has been entrusted with certain tasks which refer to management, operation or operating process, as well as the person in a state authority, body of the territorial autonomy and local self-government unit, performing certain responsibilities;

5) **“work engagement”** shall mean a labour relation, work outside labour relationship, volunteering, holding office, as well as any other actual work carried out for the employer;

6) **“an authorized authority”** shall mean an authority of the Republic of Serbia, territorial autonomy or local self-government unit or holder of public powers competent to act upon the information which is subject of whistleblowing, disclosed in accordance with the Law;

7) **“tortious action”** shall mean any action or omission in terms of whistleblowing, which jeopardizes or violates the right of the whistleblower or the person entitled to protection as a whistleblower, i.e. which places such persons in an unfavorable position.

## Chapter II

### GENERAL PROVISIONS ON WHISTLEBLOWING AND RIGHT TO PROTECTION

#### **Prohibition against Prevention of Whistleblowing**

##### Article 3

Prevention of whistleblowing shall be prohibited.

The provision of a general act or an individual act, preventing whistleblowing, shall be null and void.

#### **Prohibition against Undertaking Tortious Action**

##### Article 4

Undertaking a tortious action shall be prohibited.

#### **Right to Protection of Whistleblowers**

##### Article 5

A whistleblower shall have the right to protection, in accordance with this Law, if:

1) he/she performs whistleblowing at an employer, authorized authority or in public, in the manner prescribed by the law;

2) he/she discloses a piece of information referred to in Article 2, item 1) of this Law (hereinafter referred to as: information) within one year from the date of discovering the committed action due to which whistleblowing is being performed, but not later than ten years from the date of performance of such action;

3) at the moment of whistleblowing, and based on the available data, a person of average knowledge and experience, similar to that of whistleblower's, would believe in the accuracy of such information.

### **Protection of Associated Persons**

#### Article 6

An associated person shall have the right to protection as a whistleblower, should he/she make it probable that a tortious action has been undertaken against him/her, due to his/her connection to the whistleblower.

### **Right to Protection due to Mistaken Identity of a Whistleblower**

#### Article 7

The right to protection as a whistleblower shall have the person who makes it probable that a tortious action has been undertaken against him/her, if the person undertaking such a tortious action, has wrongly deemed such a person to be a whistleblower, i.e. an associated person.

### **Protection of Persons Acting in Official Capacity**

#### Article 8

A person who, while acting in official capacity, has provided information, shall have the right to protection as a whistleblower, if he/she makes it probable that a tortious action has been undertaken against him/her due to his/her provision of such information.

### **Right to Protection for Requesting Information**

#### Article 9

A person requesting data in relation to information shall have the right to protection as a whistleblower, should he/she make it probable that a tortious action has been undertaken against him/her for having requested such data.

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

#### Article 10

A person authorized to receive information shall be obliged to protect the whistleblower's personal data, i.e. data based on which the identity of a whistleblower may be revealed, unless the whistleblower consents to the disclosure of such data, in line with the law governing the protection of personal data.

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

A person authorized to receive information shall be obliged, at the moment of receipt of such information, to inform the whistleblower that his/her identity may be revealed to the competent authority, in case when without the disclosure of identity of

the whistleblower the action of such authority would not be possible, as well as to inform him/her of the measures for the protection of participants in criminal proceedings.

If it is necessary to disclose the identity of the whistleblower in the course of the proceedings, the person authorized to receive information shall be obliged to inform the whistleblower thereof, prior to disclosure of his/her identity.

The data referred to in paragraph 1 of this Article must not be communicated to the person referred to in such information, unless otherwise prescribed by a special law.

### **Prohibition against Abuse of Whistleblowing**

#### Article 11

Abuse of whistleblowing shall be prohibited.

Abuse of whistleblowing shall be performed by a person:

- 1) providing information for which he/she knew was untrue;
- 2) seeking unlawful profit in addition to the request for action in regard to the information subject to whistleblowing.

### Chapter III

#### PROCEDURE

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

##### *Types of Whistleblowing*

#### Article 12

Whistleblowing may be internal, external or whistleblowing to the public.

Internal whistleblowing shall mean the disclosure of information to the employer.

External whistleblowing shall mean the disclosure of information to an authorized authority.

Whistleblowing to the public shall mean the disclosure of information by means of public information services, through the Internet, at public gatherings or in other manner through which the notification may be made publicly available.

##### *Contents of Information*

#### Article 13

The information shall contain the data on violation of regulations, violation of human rights, violation of public powers, contrary to the purpose for which they were entrusted, danger to life, public health, safety, and environment, as well as the data intended for the purpose of preventing damage of greater scope.



The information may contain the signature of the whistleblower and the whistleblower data.

The employer and the authorized authority shall be obliged to act upon anonymous notifications in relation to information, within their authorizations.

## **b) Internal Whistleblowing**

### *Obligations of Employer*

#### Article 14

The employer shall be obliged, within his/her authorizations, to undertake measures for the purpose of removing the determined irregularities related to the information.

The employer shall be obliged, within his/her authorizations, to protect the whistleblower against the tortious action, as well as to undertake necessary measures for the purpose of suspending such tortious action and removing consequences of tortious action.

The employer must not undertake measures with the aim of disclosing the identity of the anonymous whistleblower.

The employer shall be obliged to send a written notification regarding the rights stemming from this Law to all work-engaged persons.

The employer shall be obliged to appoint a person authorized for the receipt of information and administering procedures regarding whistleblowing.

### *Procedure*

#### Article 15

The procedure of internal whistleblowing shall commence by submitting information to the employer.

The employer shall be obliged to act upon such information without delay, at the latest within 15 days from the date of receipt of such information.

The employer shall be obliged to inform the whistleblower of the outcome of the procedure, upon its finalization, within 15 days from the date of finalization of the procedure referred to in paragraph 1 of this Article.

Upon the request of the whistleblower, the employer shall be obliged to provide the whistleblower with the notifications regarding the course of the procedure and the actions undertaken within the procedure, as well as to enable the whistleblower to have insight into the case file and to be present at the actions of the procedure.

### *General Act of the Employer*

#### Article 16

The employer having more than ten employees shall be obliged to govern the procedure of internal whistleblowing by means of a general act.

The employer shall be obliged to display the general act referred to in paragraph 1 of this Article in a visible place, accessible to each and every work-engaged person, as well as on the website of the employer, if the technical capacities provide so.

The provisions of the general act regarding the procedure of internal whistleblowing must be in accordance with this Law and the by-law referred to in Article 17 of this Law.

The provisions of the general act referred to in paragraph 1 of this Article cannot diminish the scope of rights and deprive the whistleblower of some right referred to in this Law.

The provisions of the general act referred to in paragraph 1 of this Article, which are not in compliance with this Law and the regulations adopted based on this Law, shall be null and void.

### *By-Law of the Minister*

#### Article 17

The minister competent for judiciary tasks shall adopt the act which more closely defines the manner of internal whistleblowing, the manner of appointing an authorized person of the employer, as well as other issues significant for internal whistleblowing with the employer who has more than ten employees.

### **c) External Whistleblowing**

#### Article 18

The procedure of external whistleblowing shall commence upon submission of information to an authorized authority.

In case whistleblowing refers to work-engaged persons within an authorized authority, the whistleblower shall address the manager of such authority, and in case whistleblowing refers to the manager of the authorized authority, the whistleblower shall address the manager of the immediate superior authority.

The authorized authority shall be obliged to act upon information referred to in paragraph 1 of this Article, within 15 days from the date of receipt of such information.

In case the authority, to which the information has been submitted, is not competent to act in terms of whistleblowing, it shall forward the information to the competent authority within 15 days from the date of receipt and it shall, at the same time, inform the whistleblower thereof.

The competent authority referred to in paragraph 4 of this Article shall be obliged to apply the measures of protection which have been provided for the whistleblower by the authority ceding the notification to it.

In case the whistleblower has not given approval for the disclosure of his/her identity, the authorized authority which has received the notification from the whistleblower, and which is not competent to act, shall be obliged to request approval from the whistleblower, prior to forwarding such notification to the authorized authority, unless otherwise prescribed by the law.

The authorized authority shall be obliged, upon the request of the whistleblower, to provide notification to the whistleblower of the course and the actions undertaken during the procedure, as well as to enable the whistleblower to have insight into the case file and to attend the actions within the procedure, and in line with the law.

The authorized authority shall be obliged to inform the whistleblower of the outcome of the procedure referred to in paragraph 1 of this Article, upon its finalization, and in line with the law.

#### **d) Whistleblowing to the Public**

##### Article 19

The public may be alarmed, without prior notification of the employer or an authorized authority, in case of imminent danger to life, public health, safety, environment, possible occurrence of damage of large scope, i.e. in case of imminent danger of destruction of evidence.

During the procedure of whistleblowing to the public, the whistleblower shall be obliged to respect the assumption of innocence of the accused, the right to protection of personal data, as well as not to jeopardize the administering of the court proceedings.

#### **e) Handling Classified Data**

##### *Whistleblowing in Case the Information Contains Classified Data*

##### Article 20

Information may contain classified data.

Classified data referred to in paragraph 1 of this Article shall refer to the data which have been previously marked as classified in compliance with the regulations on data classification.

In case the information contains classified data, the whistleblower shall be obliged to first address the employer, and in case the information refers to the person who has been authorized to act upon such information, the information shall be submitted to the manager of the employer.

In case the employer has failed to act within 15 days upon the information containing classified data, i.e. in case he/she has failed to respond or to take appropriate measures within its competence, the whistleblower may address the authorized authority.

Notwithstanding paragraph 3 of this Article, in case the information refers to the manager of the employer, such information shall be submitted to an authorized authority.

In case the information contains classified data, the whistleblower cannot alarm the public, unless otherwise specified by the law.

In case the information contains classified data, the whistleblower and other persons shall be obliged to abide by the general and special measures of protection of classified data, prescribed by the law governing the classification of data.

## Chapter IV

### PROTECTION OF WHISTLEBLOWERS AND COMPENSATION FOR DAMAGE

#### **Prohibition against Placing the Whistleblower in an Unfavorable Position**

##### Article 21

The employer must not, by action or omission, place the whistleblower in an unfavorable position in relation to whistleblowing, and in particular, if such an unfavorable position refers to:

- 1) employment;
- 2) obtaining the capacity of a trainee or a volunteer;
- 3) work outside employment;
- 4) education, training or professional development;
- 5) promotion at work, appraisal, obtaining or loss of title;
- 6) disciplinary measures and penalties;
- 7) working conditions;
- 8) termination of employment;
- 9) wages and other emoluments stemming from employment;
- 10) share in employer's profit;
- 11) disbursement of fee and severance pay;
- 12) allocation and transfer to another work place;
- 13) failure to take measures of protection against harassment by other persons;
- 14) referral to mandatory health examinations and referral to examinations for the purpose of assessing one's work abilities.

The provisions of the general act depriving the whistleblowers of the right or violating such right, i.e. based on which these persons are placed in an unfavorable position in terms of whistleblowing, shall be null and void.

#### **Compensation for Damages Caused by Whistleblowing**

##### Article 22

In case of inflicting damage caused by whistleblowing, the whistleblower shall be entitled to compensation for damages, in line with the law governing contracts and torts.

## **Court Protection of Whistleblowers**

### *Article 23*

The whistleblower, against whom a tortious action has been committed in terms of whistleblowing, shall have the right to court protection.

Court protection shall be exercised by filing a lawsuit for protection, in terms of whistleblowing, to a competent court, within six months from the date of learning about the undertaken tortious action, i.e. three years from the date when such tortious action has been undertaken.

Within the court protection proceedings, the higher court shall be competent, depending on the place of undertaking the subject tortious action or the place of residence of the plaintiff.

The court protection proceedings, in terms of whistleblowing, shall be urgent.

Revision shall be allowed within the court protection proceedings, related to whistleblowing.

The provisions of the Law on Civil Procedure, governing the labour disputes proceedings, shall apply accordingly during the court protection proceedings, in terms of whistleblowing, unless otherwise defined by the law.

## **Composition of Court**

### *Article 24*

The civil proceedings administered upon the lawsuit relating to whistleblowing, shall be tried, at first degree, by a single judge, whereas at second degree, by a council comprising of three judges.

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

### *Article 25*

The judge acting upon the lawsuit in regard to whistleblowing or in special proceedings referred to in Article 27 of this Law must be a person who has acquired special knowledge in terms of protection of whistleblowers.

Acquiring special knowledge and professional development of persons acting in relation to the protection of whistleblowers shall be carried out by the Judicial Academy, in cooperation with the ministry competent for judiciary tasks.

The program for mastering special knowledge in terms of protection of whistleblowers shall be prescribed by the act of the minister competent for judiciary tasks.

## **Contents of Lawsuit**

### *Article 26*

Pursuant to the lawsuit for protection, in relation to whistleblowing, the following may be requested:

- 1) determining whether a tortious action has been undertaken against the whistleblower;
- 2) prohibition of performance and repetition of a tortious action;
- 3) removal of consequences of the tortious action;
- 4) compensation for material and non-material damages;
- 5) publication of judgment rendered upon a lawsuit filed for the reasons stipulated in items 1) through 4) of this paragraph, by means of public information services, and at the cost of the accused.

Based on the lawsuit referred to in paragraph 1 of this Article, the legality of the employer's individual act used to resolve the rights, obligations and responsibilities of the employee, stemming from employment, cannot be contested.

### **Rights of Whistleblowers in Special Proceedings**

#### Article 27

In the lawsuit for the assessment of legality of an individual act of the employer, used to resolve the rights, obligations and responsibilities of the whistleblower, stemming from employment, in line with special provisions, the whistleblower may state that the individual act of the employer poses a tortious action in relation to whistleblowing.

The statement referred to in paragraph 1 of this Article may be stated in the lawsuit or the preparatory hearing, and after that, only if the applicant of such statement makes it probable that without his/her guilt, he/she could not have put forward such a statement.

Within special proceedings, the court shall assess the merits of the statement that the individual act of the employer poses a tortious action in relation to whistleblowing, and in line with this Law.

### **Introducing Parties to the Right to Resolve a Dispute through Mediation**

#### Article 28

The court administering the proceedings for protection, in relation to whistleblowing, shall be obliged to instruct the parties of the possibility of out-of-court settlement of a dispute through mediation or in any other amicable manner, either at the preparatory hearing or the first session of the main hearing.

### **Burden of Proof**

#### Article 29

If, during the proceedings, the plaintiff has made it probable that a tortious action has been undertaken against him/her, in relation to whistleblowing, the accused shall be under the burden to prove that the tortious action is not in a causal relation to whistleblowing.

## **Investigative Principle**

### Article 30

In the proceedings for protection, in relation to whistleblowing, the court may determine facts even when they are not disputed by the parties, and may also independently investigate the facts which neither party has presented in the proceedings, if the court deems it significant for the outcome of the proceedings.

## **Absence of the Accused**

### Article 31

Should the accused fail to appear at the session of the main hearing, despite being duly summoned, the court may hold a hearing without the presence of the accused, and may decide based on the determined factual state at that hearing.

## **Temporary Measures and Competence**

### Article 32

In the proceedings for protection, in relation to whistleblowing or the proceedings referred to in Article 27 of this Law, the court administering the proceedings may impose a temporary measure in line with the law governing enforcement and security.

The motion for imposing a temporary measure may be filed prior to initiation of the court proceedings, during the court proceedings or upon finalization of the court proceedings, until enforcement has been carried out.

During the proceedings, the court may, *ex officio*, impose a temporary measure.

## **Temporary Measure Prior to Initiation of Court Proceedings**

### Article 33

The court competent to act upon the lawsuit for protection, in relation to whistleblowing, shall be competent to decide upon the motion for imposing a temporary measure as well, which has been filed prior to initiation of the court proceedings.

When imposing the temporary measure referred to in paragraph 1 of this Article, the court shall set a deadline within which the lawsuit must be filed before the competent court, taking into consideration the deadlines set by special regulations for filing a lawsuit.

## **Motion for Imposing a Temporary Measure**

### Article 34

The motion for imposing a temporary measure may request from the court to postpone the legal effect of the act, to prohibit the performance of a tortious action, as well as to order the removal of the consequences caused by such tortious action.

The court shall render a decision within eight days from the date of receipt of the motion for imposing a temporary measure.

## **An Appeal against the Decision on Imposing a Temporary Measure**

### Article 35

A special appeal against the decision on imposing a temporary measure shall not be allowed.

## **Supervision over Law Enforcement**

### Article 36

Supervision over the enforcement of this Law shall be performed by the labour inspection, i.e. administrative inspection, in line with the laws governing their powers.

## Chapter V

### PENAL PROVISIONS

#### **Offences**

### Article 37

A fine in the amount of RSD 50,000 to RSD 500,000 shall be levied for the offence of the employer – legal entity that has more than ten employees, in case:

1) they fail to adopt a general act on the procedure of internal whistleblowing (Article 16, paragraph 1);

2) the general act governing the procedure of internal whistleblowing is not displayed in a visible place, accessible to each and every work-engaged person (Article 16, paragraph 2).

For the offence referred to in paragraph 1 of this Article, a fine in the amount of RSD 10,000 to RSD 100,000 shall be levied against a responsible person within a legal entity, state authority, authority of the territorial autonomy or local self-government unit.

For the offence referred to in paragraph 1 of this Article, a fine of RSD 20,000 to RSD 200,000 shall be levied against the entrepreneur who engages more than ten employees.

### Article 38

A fine of RSD 50,000 to RSD 500,000 shall be levied for the offence of an employer – legal entity, if they:

1) fail to protect the whistleblower against the tortious action or fail to take the required measures for suspension of tortious action and removal of consequences of tortious actions, within its authorities (Article 14, paragraph 2);



2) fail to deliver a written notification to all work-engaged persons, regarding the rights stemming from this Law (Article 14, paragraph 4);

3) fail to appoint an authorized person for the receipt of information and administering the procedure related to whistleblowing (Article 14, paragraph 5);

4) fail to act upon information within a prescribed deadline (Article 15, paragraph 2);

5) fail to inform the whistleblower of the outcome of the proceedings, in line with this Law, and within the prescribed deadline (Article 15, paragraph 3);

6) upon the request of the whistleblower, fail to provide him/her, with the notifications on the progress and the measures undertaken within the proceedings or if fail to enable the whistleblower to have insight into the case file and to be present at the actions within the proceedings, in line with the law (Article 15, paragraph 4).

For the offence referred to in paragraph 1 of this Article, a fine in the amount of RSD 10,000 to RSD 100,000 shall be levied against a responsible person within a legal entity, state authority, authority of territorial autonomy or local self-government unit.

For the offence referred to in paragraph 1 of this Article, a fine in the amount of RSD 20,000 to RSD 200,000 shall be levied against an entrepreneur.

## Chapter VI

### TRANSITIONAL AND FINAL PROVISIONS

#### **Time Limit for the Adoption of By-law**

##### Article 39

The by-law referred to in Article 17 and Article 25, paragraph 3 of this Law shall be adopted within three months from the date of entry into force of this Law.

The employers shall be obliged to adopt a general act referred to in Article 16, paragraph 1 of this Law, within one year from the date of entry into force of this Law.

#### **Entry into Force**

##### Article 40

This Law shall enter into force on the eighth day from the date of its publication in the Službeni glasnik Republike Srbije, and shall be applied upon the expiry of six months from its effective date.