

Law concerning the protection of personnel from public authorities, public institutions and from other establishments who signalize legal infractions

The Romanian Parliament adopts the present law.

Chapter I

General Provisions

Art. 1. – The present law regulates certain measures concerning the protection of persons who have complained against or disclosed legal infractions in the framework of the public authorities, public institutions, and other establishments, committed by persons with leadership or executive functions within the authorities, public institutions, and in the other budgetary establishments foreseen in art. 2.

Art. 2. – (1) The provisions of the present law apply to authorities and public institutions within the framework of the central public administration, local public administration, the institution of the Parliament, the institution of the work of the Presidential Administration, the institution of the work of the Government, autonomous administrative authorities, public institutions of culture, education, health and social assistance, national companies, autonomous administrations of national and local interest, as well as public companies.

(2) The present law applies to persons named to scientific and consultative counsels, special commissions, and other collegial organs organized in the structure or alongside public authorities and institutions.

Art. 3. – In the interest of the present law, the terms and expressions below have the following meanings:

a) *whistleblowing in the public interest* means signalizing done in good faith with a view that any action which presupposes a violation of the law, of professional ethical standards or of the principles of good administration, efficiency, efficacy, economy, and transparency;

b) *whistleblower* means the person who signalizes according to line a) and who is one of the public authorities, public institutions, or one of the other establishments foreseen in art.2;

c) *disciplinary commission* means any organ charged with the attributes of disciplinary investigation, foreseen by law or by regulation of organization and functioning of the public authorities, public institutions, or one of the other establishments foreseen in art.2.

CHAPTER II

General Principles

Art. 4. – The principles which govern the protection of whistleblowers in the public interest are the following:

- a) the principle of legality, according to which public authorities, public institutions and the other establishments foreseen in art.2 have an obligation to respect the rights and liberties of citizens, normative procedures, free competition, and the principle of equal treatment accorded to the beneficiaries of public services, according to the law;
- b) the principle of the supremacy of the public interest, according to which, in the understanding of the present law includes, the rule of law, the integrity, the impartiality and the efficiency of the public authorities and public institutions, as well as the other establishments foreseen in art.2 are protected and promoted by the law;
- c) the principle of responsibility, according to which any person who signalizes violations of the law must sustain that complaint with information or evidence concerning the act committed;
- d) the principle of non-abusive sanctioning, according to which persons who complain of or signalize violations of the law may not be directly or indirectly, through the application of inequitable sanctions or more severe sanctions for other disciplinary infractions. In the case of whistleblowers in the public interest, the ethical or professional standards of such a nature as to impede whistleblowing in the public interest are not applicable;

- e) the principle of good administration, according to which public authorities, public institutions, and the other establishments foreseen in art.2 must carry out their activity in the realization of the general interest, with a high grade of professionalism, in conditions of efficiency, efficacy, and economy in the use of resources;
- f) the principle of good leadership, according to which the act of whistleblowing in the public interest is encouraged with regard to the aspects of public integrity and good administration, with the scope of improving the administrative capacity and the prestige of the public authorities, of the public institutions, and of the other establishments foreseen in art.2;
- g) the principle of equilibrium, according to which no person may prevail upon the provisions of the present law in order to diminish the administrative or disciplinary sanctions for an act of a more serious character;
- h) the principle of good faith, according to which a person working in a public authority, a public institution or on of the other budgetary establishments foreseen in art.2 who has signaled a violation of the law, convinced of its reality in fact or that the act constitutes a violation of the law is protected.

CHAPTER III

Whistleblowing concerning violations of the law

Art. 5. – Signalization of violations of the law by the persons foreseen in art.1 and art.2, foreseen by law as being disciplinary aberrations, contraventions, or infractions, constitutes whistleblowing in the public interest and concerns:

- a) corruption infractions, infractions assimilated from corruption infractions, infractions in direct connection with infractions of corruption, infractions of falsification, and infractions on duty or in connection with duty;
- b) infractions against the financial interests of the European Community;
- c) preferential practices or treatment or discrimination in the exercise of the attributes of the establishments foreseen in art.2;
- d) violation of the provisions concerning incompatibilities and conflicts of interest;
- e) abusive use of material or human resources;

- f) partisan political activity in the exercise of the prerogatives of one's post, with the exception of persons chosen or named politically;
- g) violations of laws in the area of access to information and transparency of decision-making;
- h) violation of the legal provisions concerning public acquisitions and non-reimbursable financing;
- i) incompetence or negligence in duty;
- j) subjective evaluations of personnel in the process of recruitment, selection, promotion, demotion and dismissal from position;
- k) violations of administrative procedures or the establishment of internal procedures without respect to the law;
- l) emission of administrative acts or acts of other natures which serve the interests of a particular group or clientele;
- m) defective or fraudulent administration of the public or private patrimony of the public authorities, of the public institutions, or of the other establishments foreseen in art.2;
- n) the violation of other legal provisions, which impose on respect for the principle of good administration and that of the defense of the public interest.

Art. 6. – Whistleblowing concerning violations of laws or professional or ethical norms, according to art.4 line h), may be alternatively or cumulatively:

- a) to the hierarchical supervisor of the person who has violated the legal provisions, according to art.5;
- b) to the director of the public authority, of the public institution, or of the budgetary unit in which the person who violated the legal provisions works, according to art.5, or in which the illegal practice is signaled, even if it is not possible to identify the actual culprit;
- c) to the disciplinary commissions or other similar organizations within the framework of the public authorities, the public institutions, or the establishments foreseen in art.2 in which the person who violated the law according to art.5 works;
- d) to the judicial organs;

- e) to the organs charged with ascertaining and investigating conflicts of interest or incompatibilities;
- f) to parliamentary commissions;
- g) to the mass-media;
- h) to professional organizations, unions, or industry organizations;
- i) to nongovernmental organizations.

CHAPTER IV

The protection of civil servants, contractual personnel, and other categories of personnel

Art. 7. – (1) Before the disciplinary commission or any similar organ, whistleblowers benefit from protection as follows:

- a) whistleblowers in the public interest benefit from the presumption of good faith, in the conditions of art.4 line h), until demonstrated otherwise;
- b) at the request of the whistleblower investigated for disciplinary offenses as a result of signaling, the disciplinary commissions or other similar organisms within the framework of the public authorities, of the public institutions or of the other establishments foreseen in art.2 have the obligation to invite the press and a representative of the union or professional association. The announcement will be carried out through official communication on the website of the public authority, public institution, or budgetary unit at least three working days before the meeting, under the sanctioning of the nullity of the report and disciplinary sanctions applied.

(2) In the situation in which the one implicated by a whistleblower in the public interest is hierarchically, directly or indirectly, the supervisor of the person making the complaint, or if their position has attributes of control, inspection, or evaluation of the whistleblower, the disciplinary commission or other similar organism will ensure the protection of the whistleblower, hiding this person's identity.

Art. 8. – In the case of whistleblowers in the public interest, as foreseen in art.5 line a) and b), the official provisions of law nr. 682/2002¹ art.12 paragraph (2) concerning the protection of witnesses will apply.

Art. 9. – (1) In work-related litigation or litigation in relation to raporturile de serviciu, the court may order the disciplinary or administrative sanctions applied to a whistleblower annulled if these sanctions were applied as a result of an act of whistleblowing in the public interest, done in good faith.

(2) The court will verify the proportionality of the sanctions applied to the whistleblower for a disciplinary infraction, in comparison with the standard sanctioning practice or with other similar cases within the framework of the same public authority, public institution or budgetary unity, in order to remove the possibility of subsequent, indirect sanctions in retaliation for the act of whistleblowing in the public interest, protected through the present law.

CHAPTER V

Transitional and final provisions

Art. 10. – The present law, in the domain of the protection of whistleblowers in the public interest, is supplemented by the regulations of the labor code, as well as by the provisions of law nr. 188/1999² concerning the statute on civil servants, subsequently republished with modifications.

Art. 11. – Within a term of 30 dates following the entrance in force of the present law, the public authorities and institutions and the other establishments foreseen in art.2 will approve and apply internal regulations in accordance with these provisions.

¹ This law, passed in 2002, holds important provisions for the protection of witnesses in criminal cases which this law draws on to strengthen and ensure the legal protection afforded to whistleblowers in Romania.

² This law...