







This guide was prepared by Arjan Dyrmishi for the Southeast Europe Coalition on Whistleblower Protection with support from the National Endowment for Democracy.

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PREFACE







are are those days when Albanians do not learn from the media how public

finances, assets or interests are misappropriated, the environment and health are jeopardized, or justice is violated or distorted through various forms of corruption.

People who work in public institutions or private companies are often the first ones to identify and encounter violations of the law and the harm to the public interest but most of them remain oftentimes silent, are unconcerned, or simply think they are powerless to prevent these problems.

Yet, there are some people that think otherwise and that want to give their contribution to prevent the occurrence of such things or, in case of violations, to make

sure perpetrators are punished according to the law.

Adopted by the Parliament of Albania in June 2016, the Law on Whistleblowing and Whistleblower Protection is an important anti-corruption instrument that helps all employees and all those who have specific contractual relationships with a public institution or company private to report on corrupt acts they encounter. Citizens need to understand the law in a simplified way and apply it so that it will be able to achieve the purpose for which it was intended. Lack of a clear understanding the law will both affect achieving its goal and will harm the employee or his/ her interests.

Any person who decides to whistle blow should be very clear about the positive and negative challenges they are likely to face and be psychologically and emotionally prepared to overcome these challenges. It is also important that whistleblowers are aware of the types of assistance and support they can receive from the responsible institutions under the law in order to easily overcome the challenges they may encounter.

This guide is developed to introduce the Law on Whistleblowing and Whistleblower Protection in the simplest and most understandable manner seeking to answer questions that whistleblowers can ask themselves before, during or after whistleblowing.

The guide provides an opportunity for citizens to better understand the ways and means provided by the Law for reporting corrupt acts and helps whistleblowers to use the Law as effectively as possible for their protection.

<u>INTRODUC</u>TION







orruption is the abuse of trust for private gain by persons in whom trust is vested. Corruption manifests itself in various forms and ways and involves people holding public office or others working in the private sector.

A common form of corruption is the payment of bribes by business people in order to obtain contracts for the supply of goods, services or public works. In addition, public officers in order to secure employment, gain school admission for children, or to quickly obtain a service that is being provided slowly. On the other hand, there are politicians induce citizens with "gifts" of cash, food, clothing and other items in order to obtain their votes. Public officials also unfairly increase the cost of various building projects in order to pocket the difference. In the course of their regular duties, many professionals in various fields such as administrators, accountants, architects, bankers, insurers, lawyers, manufacturers, pharmacists, etc., engage in illegal practices to enrich themselves personally thus causing incalculable damages to their country and economy.

But corruption goes beyond giving and taking bribes. In addition to economic crimes, many other forms of corruption that negatively affect the country's economic and social development are failing to obey the laws, waste or mismanagement of public resources or their use for purposes other than what they were intended for, destruction of the environment, engagement in actions that threaten or endanger the safety of individuals and the public, undermining the administration of justice, etc.

Although Albania has many laws to address corruption and its various forms, these laws are not always effective. The main reason lies in the fact that most corrupt practices take place in secret and those who engage in corruption take steps to cover up their tracks and avoid prosecution and justice.

People working in public institutions

or private companies often find or encounter violations of the law and harm to the public interest. Yet, most of these people remain unconcerned as they think they are powerless to do anything to prevent these actions or fear retaliation. And rightly so, they know of instances where those who disclosed or spoke out

against corruption and other forms of

wrongdoing, instead of being praised

and rewarded, were rather demoted.

dismissed, transferred, intimidated,

harassed or even put on trial.

In order to break this vicious circle and encourage employees and all those who have certain contractual relations with a public institution or private entity to report on corrupt acts they identify or encounter, the Albanian Parliament adopted the Law on Whistleblowing and Protection of Whistleblowers. In addition to providing its contribution to the drafting and

adoption of this law, the Southeast European Coalition on Whistleblower Protection developed this guideline in an effort to make the law as easy to understand as possible for citizens and with the contemplation that every employee has the right to raise concerns about violations and illegitimacy in the workplace without fear of retaliation. The guide is aimed primarily at employees who face corruption and are willing to report on it. Employees have an active role in detecting corruption and they need to know as simply and practically as possible how to make this contribution by whistleblowing and how to use the Law to seek protection from any retaliatory or punitive action that may result from whistleblowing.

In addition to citizens, the guide will be a useful tool to other users, such as officials of responsible units, journalists, and members of civil society.



he Parliament of Albania adopted the Law on Whistleblowing and Whistleblower Protection as an important anti-corruption instrument. The purpose of this law is to improve the country's ability to fight corruption and other forms of unlawful conduct that negatively affect our development. The law builds on the idea that if ordinary citizens are empowered to disclose, without fear of retaliation, the corrupt and other unlawful acts of other persons, millions of euros will be saved each year, respect for decent behavior and integrity will increase, the quality of services will be improved, and the integrity of public institutions and private sector will be strengthened. Taken together, these will contribute to the faster development of the country.

In reliance of the Criminal Code, the Law on Whistleblowing and Whistleblower Protection considers as reportable criminal offenses of corruption all illegal actions or inactions, as per the criminal legislation in force, related with any and all forms of active and passive corruption, abuse of office or power, exer-



cising illegal influence in the performance of duties or decision-making, misuse of state budget revenues, illegal profits, bribery or grafts, as well as any other acts similar to above.

The law provides three key elements of a comprehensive law on whistleblowing:

- Mechanisms for reporting on corrupt acts
- Mechanisms for investigating reported whistleblowing
- Mechanisms for protecting whistleblower from retaliation.

The law applies to all people working in the public and private sector and includes some of the best international practices on whistleblower protection, such as:

- Credible protection of confidentiality
- Protection from harassment that aim to create an aggravated environment for the whistleblower
- Prohibition of contractual agreements on the basis of which the whistleblower's rights and protection are ruled out or limited
- The option of transfer in case the whistleblower chooses to not return to the same workplace and to relocate to another place in order to protect himself from hostile reactions
- Charging with personal responsibility for retaliation against the whistleblower.

This guide seeks to serve as a didactic instrument to help the public understand the Law on Whistleblowing and Whistleblower Protection better and ensure a more efficient implementation of it.

Using a question and answer format, the guide answers 50 questions that whistleblowers may most frequently have in the course of implementing the law.

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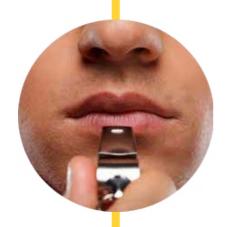
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Frequently-Asked Questions

1 What is whistleblowing?

Whistleblowing is the act of revealing or disclosing information about a usually-employed person's impropriety and corruption acts, mismanagement or wrongdoing. The Law on Whistleblowing and Whistleblower Protection limits whistleblowing to acts or practices suspected to be corrupt.



2 What is a whistleblower?

The Council of Europe defines as whistleblower any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship. The Law on Whistleblowing and Whistleblower Protection defines as whistleblower an individual who reports on a suspected corruption conduct or practice.

The whistleblower blows the whistle in the conditions of good faith and is not motivated by personal interest or harm somebody else.



3 Can I blow the whistle about anyone?

Yes. You can blow the whistle about any person or institution as long as you have good reason to believe that you have reliable information that indicates a corruption-related act. No person is above the law, and you can blow the whistle on any person or institution.



4 Am I obligated to blow the whistle?

Whistleblowing is a voluntary act and no one is obliged to blow the whistle.



Can I blow the whistle if I am working for the private sector?

The Law on Whistleblowing and Whistleblower Protection applies to both the public and private sectors. Corruption that harms the public interest may occur in the public sector as well as in the private sector.



Can I blow the whistle if I am not a permanent employee?

In addition to fulltime employees, other people, such as applicants, or former private or public employees, regardless of the type or duration of their employment, whether paid or not, can blow the whistle about a suspected corrupt conduct or practice.



7 Who can I blow the whistle to?

If you become aware of corruption actions or practices while working, you can blow the whistle to the responsible unit within the public institution or private enterprise where you work or to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest. Whistleblowing to the responsible unit within a public institution or private enterprise is called internal whistleblowing.

Whistleblowing to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest is called external whistleblowing



Do all public institutions and private enterprises have a whistleblowing unit?

Responsible units are established in public institutions with more than 80 employees and in private entities with more than 100 employees



To whom can I blow the whistle if the public institution or private enterprise does not have a whistleblowing unit?

The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest serves as a responsible unit for whistleblowing about public institutions or private entities, which do not have a whistleblowing unit.



Can I blow the whistle about a corrupt act in a public institution or enterprise other than the one I work for?

Yes. You have the right to blow the whistle for a corrupt act of a public institution or private enterprise other than the one you work for. It is the duty of the responsible units and the High Inspectorate of Declaration and Control of Assets and Conflict of Interest to consider the case when the whistleblower works in another institution or private enterprise.



11 Is internal whistleblowing mandatory?

If deemed reasonable, the whistleblower may blow the whistle to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, regardless of the existence of the unit for internal whistleblowing in the public institution or private enterprise.

If you opt for blowing the whistle to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, you are required to present the causes and circumstances for this choice.



What are the obligations of the whistleblowing responsible unit?

The responsible unit within the public institution or private enterprise, which may consist of one or more employees, has the duty to examine whether an administrative investigation will be initiated upon a whistleblowing and review the request of the whistleblower for protection, if the whistleblower requests it



In what form can I make a disclosure of impropriety?

You can disclose an impropriety in writing or orally to an office of the responsible unit within the public institution or private entity or to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest.

In reliance of the law, whistleblowing is valid when it contains:

- Whistleblower ID data and contact information;
- Description of facts and circumstances on the suspected corrupt conduct or practice.



Can I disclose an impropriety by using the telephone or e-mail?

The Law on Whistleblowing and Whistleblower Protection stipulates that whistleblowing is made by any means of communication. This also presupposes electronic communication. However, for the whistleblowing to be considered valid, the whistleblower needs to physically contact the employees of the internal whistleblowing unit or the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest.



15 Can I blow the whistle anonymously?

You can choose to whistle-blow anonymously and the whistle-blowing shall be admitted, if the anonymity grounds are justified for it and that the information reported provide sufficient grounds for the administrative investigation of the suspected corrupt conduct or practice.



16 Can I blow the whistle to a journalist?

Blowing the whistle to journalists is not in compliance with the law and, for this reason, if you choose to disclose impropriety to a journalist or another entity, you will not be entitled to protection from retaliation, as set forth in the law.

IWhat are the benefits of whistleblowing compared with reporting the information to a journalist

Blowing the whistle in accordance with the law has many advantages. At minimum, whistleblowing guarantees that:

- the information you provide will be honestly investigated by competent people or institutions
- the responsible unit or the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest inform the whistleblower on any measures taken in response to the whistleblowing
- the whistleblower takes part in the administrative investigation
- the whistleblower will be protected from victimization or retaliation
- the investigation may lead to the criminal prosecution of people involved incorruption and to the recovery or restitution of monies lost as a consequence of corruption



Once I blow the whistle, can I disclose the case to a journalist?

No. According to the law, the whistleblower is required to maintain confidentiality of his/her whistleblowing and should not make it public.

Likewise, the whistleblower should not discuss the whistleblowing with other people that make leak it to the public. In case the whistleblower discloses his/her whistleblowing to the public or is responsible for making it public, s/he will then lose the right of protection under the law.

How should I treat media's request for interviews and comments during the time my whistleblowing is under investigation?

Despite the procedures and measures to keep the disclosure confidential, the information you disclosed may become public because other people assigned to process the information and investigate the whistleblowing may not be so careful in handling the information, or may even leak it to the media

If a situation like that happens and you are contacted by the media, you should avoid releasing data or information on the whistleblowing to the until the whistleblowing investigation is complete.



Can I report the case to a police officer rather than blow the whistle?

Whistleblowing is basically the same thing as reporting information on a corrupt conduct to a police officer or a journalist. There is, however, a distinction between the two. If you blow the whistle in conformity with the Law on Whistleblowing and Whistleblower Protection, the responsible where you made the reporting is bound by law to conduct an administrative investigation on the whistleblowing as soon as possible but not later than 60 days from the investigation start date. Otherwise, if you report the information to the police, the latter will act right away on the given tip.



Can I instruct my lawyer to make a disclosure on my behalf?

Among others, the Law on Whistleblowing and Whistleblower Protection is based on the principle of confidentiality and quick administrative investigation of the whistleblowing thus avoiding the judicial system. Consequently, the whistleblower's relationship with the whistleblowing responsible unit is individual and there is no provision on whistleblower's representation by a lawyer to the extent neither party or affected people have filed the case with a court of law.







Does the Whistleblowing Law prevent me from filing the case with the court?

No. In case, upon completion of the administrative investigation, it results that retaliatory acts against the whistleblower have been instigated by the institution or the responsible people do not enforce the order of the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest on rectification of violation, the whistleblower is entitled to file to a court of law a litigation for the rectification of harm caused by the retaliatory conduct or for compensation for the damage suffered.



23 What is the spirit of the Law?

The law upholds democratic values of human dignity, freedom of expression and equality before the law.

The law seeks to ensure that employees can speak up about corrupt practices but do so responsibly by setting rules for whistleblowing.

The law states that corruption is unacceptable in both the public and private sectors and that every employer must make sure that employees who blow the whistle about acts of corruption are protected from retaliation and victimization.



What are the benefits of the Law?

The law protects from revenge and victimization all employees who challenge the corrupt practices encountered in their workplace, in both the public and private sectors.

It specifies what you can blow the whistle for, how you can report, and who you can blow the whistle to. The law also defines how you can seek and get protection from retaliation and victimization.

The law helps to create in work premises a culture that encourages employees to speak up against any corrupt or illegal act. Overall, the law encourages prevention of and crackdown on corruption.

25 When is whistleblowing protected?

A whistleblowing is protected when the violation is reported by employing the appropriate procedure. To be entitled for protection, the whistleblower will have to disclose an impropriety to the people and institutions defined in the Law on Whistleblowing and Whistleblower Protection

Are there conditions that a whistleblower should meet for protection by the Whistleblowing Law?

Yes. In making a disclosure of corruption or other impropriety, the whistleblower must have a clean and honest motive and a good reason to believe that the information being disclosed is truthful.





What is meant by the requirement of "reasonable cause" as a condition for making disclosure?

A person who intends to make a disclosure of impropriety must have "reasonable cause" for doing so. This means that before blowing the whistle, a person must be sure of two things. First, that an act of impropriety has occurred, is occurring, or is likely to occur. Thus, mere suspicion is not enough. Whistleblowers must have evidence to support the disclosures they make, given that investigation will use valuable time and human and material resources that will be wasted in case of ungrounded suspicion. Second, the whistleblower must be sure that s/he is triggered by public interest rather than personal intentions or disgruntlement.

How can I tell the public interest from personal disgruntlement?

It may happen that you believe you are disclosing a corrupt or illegal act when it actually is all about a personal complaint or disgruntlement. This means that the law on whistleblowing and whistleblower protection does not cover personal disgruntlement. When you decide to make a whistleblowing, you need to make sure that you are acting in the public interest

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When is a whistleblowing not in good faith?

Cases of whistleblowing not in good faith include those with motivation for personal gain, media and public spotlight or the desire for revenge against an institution or enterprise.



31 What is the appropriate procedure of whistleblowing?

- The whistleblower reports in good faith on an act of corruption to the responsible unit in the public institution or private enterprise in the proper form or to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest. (See question 13: In what form can I make a disclosure of impropriety?)
- The whistleblower submits to the responsible unit or to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest a request for protection in case he/she deems that he/she is subject of a retaliatory act.
- The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest undertakes an administrative investigation and determines that there are reasonable causes to believe that a retaliatory act has taken place, is taking place or is expected to take place against the whistleblower.

32 What are the forms of protection?

If you disclose an impropriety pursuant to the procedures specified in the law, you are protected from any retaliatory measures instigated by the public institution or private entity, including:

- Dismissal from office;
- Suspension form office or from one or more tasks;
- Transfer within or outside the organization;
- Demotion;
- Cuts on salary and/or financial benefits:

- Loss of status and privileges;
- Deprival of promotion;
- Depriving the right to participate in trainings;
- Negative performance evaluation in employment relations;
- Other forms of retaliation regarding employment



33 Can I be sued for blowing the whistle?

In case a preliminary examination of the whistleblowing by the responsible unit or the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest concludes that the whistleblower did not act in good faith or that the whistleblowing was

not filed according to the required procedure, then they decide to not initiate an administrative investigation. This decision will not produce

consequences on the whistleblower.

A whistleblower can be sued if the whistleblowing contains classified information and the whistleblower is responsible for disclosing the secret. The whistleblower may also risk being sued by the person reported on in the whistleblowing if the latter was abusive or defamatory and if the affected person becomes aware of the whistleblowing. Although the responsible units are obliged to maintain confidentiality, such occurrences are not ruled out.

Can my employer force me to sign an act that prohibits whistleblowing?

According to the law, signing any agreement that excludes or restricts the rights and protection of the whistleblower is invalid. Whistleblower's rights prevail over confidentiality agreements entered into between the employer and employees.





What happens if the responsible unit or person to whom I blow the whistle fails to keep the information confidential?

The ability to keep the reported information confidential is important for the successful implementation of the law. For this reason, the law provides for administrative measures and fines in case the responsible unit or persons violate the obligation to maintain confidentiality.

What should I take into account when I decide to blow the whistle about a corruption act?

A whistleblower should keep in mind that despite the legal obligation to file whistleblowing, the persons responsible for this assignment may not take appropriate action. There may be several reasons for this: the persons responsible for receiving the whistleblowing may not be interested as they may have personal interests in the matter or with the person(s) against whom the whistleblowing is made. The person responsible for receiving the whistleblowing may notify the persons against whom the whistleblowing has been reported or may destroy the evidence. Therefore, when deciding to blow the whistle, several factors must be taken into account:

- The reasonable belief or fear that the whistleblowing may be dismissed, suspended, discriminated or intimidated;
- The reasonable belief or fear that somebody may conceal or destroy evidence that prove a corrupt practice;
- The reasonable belief that the person receiving whistleblowing will not hinder the achievement of the whistleblowing goal;
- The severity of the committed corrupt act and the promptness of actions to be undertaken thereon;
- The possibility of keeping a copy of the evidence of the whistleblown corrupt act;.

What will the person to whom I blow the whistle do?

After whistleblowing, the responsible persons file the whistleblowing in a special protocol register and in an electronic register. Whistleblowing record in the electronic register is mandatory and cannot be refused regardless of the reason or cause.

Am I obliged to disclose my sources of information on whistleblowingy?

If he/she deems it reasonable, a whistleblower is not obligated to disclose his/her sources of information both during the whistleblowing process as well as during the administrative investigation.

Who is responsible for investigating a whistleblowing?

An investigation of whistleblowing may be conducted by the responsible unit where impropriety was disclosed to, and this may be the responsible unit of the public institution or private enterprise or the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest. The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest investigates whistleblowing for those public institutions or private enterprises that do not have a responsible unit for whistleblowing.





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What happens when the investigation proves that the whistleblowing on corruption act is grounded?

If the investigation concludes that the whistleblowing about a suspected corrupt conduct or practice is grounded, the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest shall file the case with the Prosecutor Office or State Police immediately.



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What can I do if I feel I am being victimized?

The whistleblower alleging that he is subject to an act of retaliation submits a request for protection with the responsible unit. The responsible unit shall immediately take measures, and in each case, no later than 10 day of submission of the request, it shall decide through an intermediate reasoned act to rectify the unlawful consequences of the retaliation act. In case of violation of this deadline, the request is submitted to High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, which shall decide within 10 days of receiving the request



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How long does it take to process a request for protection?

The procedure of enquiring into the protection request concludes as soon as possible but, in any case, not later than 60 days from the date of filing the request with the unit.



What happens if the investigation finds that I am being victimized?

If an administrative investigation concludes that an act of revenge has been committed against the whistleblower, then the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest orders the public institution or private entity to take measures to rectifying the committed offence.

What happens if the public institution or private entity does not enforce the decision on rectification of violation?

In case the public institution or private entity do not take the measures ordered by the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, then the whistleblower or High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest shall be entitled to file with a court of law for renumeration of harm from the retaliation act.





45 Can I change the workplace if I am being victimized?

Yes. to protect the whistleblower from hostile feedback in the adjacent workplace, the public institution, private enterprise or High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest shall take measures to relocate the whistleblower in another workplace.

Who can advise me confidentially if I have doubts on my whistleblowing?

The Law on Whistleblowing and Whistleblower Protection and its sublegal acts seek to create conditions that individuals will accept and endorse whistleblowing about corrupt acts that harm the public interest. Yet, regardless of how exhaustive they may be, these laws and rules of procedures cannot envisage all specific cases and circumstances. Hence, it goes without saying that whistleblowers will have questions, concerns and insecurities about what they would like to blow the whistle for.

To this end, the law stipulates an obligation for the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest to offer confidential counseling and support to whistleblowers on any aspect related with the whistleblowing, investigation and protection.



What are the employer's responsibilities regarding whistleblowing?

The spirit of the law demands from the employers to create an open, transparent, and safe work environment where employers feel motivated and safe to blow the whistle when they encounter a corrupt practice or conduct.

To render whistleblowing easy, the law stipulates that public institutions and private enterprise adopt specific internal regulations on the procedure of examination of administrative investigation of whistleblowing and the mechanisms for protecting the confidentiality.



48 What can I expect after making a disclosure?

In general, you can expect two forms of reactions when it becomes public knowledge that you have blown the whistle in a particular case. First, some people will respect you for your courage for whistleblowing a harmful act, shower you with praise, and treat you like a real hero.

Second, you may be victimized in your workplace. You may be rejected or disregarded by your friends and colleagues. Someone may even attack you verbally or physically. Others may retaliate by trying to harm you or a member of your family, or try to destroy your property.

If you believe you are being victimized, or that you are at risk of being victimized in any way because of your whistleblowing, you should report it to the responsible unit or to High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest.

Can I blow the whistle if I work in an institution that deals with classified/secret information?

Yes. Corruption occurs in security institutions as well. To this end, the Whistleblowing Law does not exempt them from the obligation of establishing a unit for obtaining and investigating whistleblowing. To protect the classified information, the law provides for the obligation of whistleblowers and responsible units to safeguard the state secret both during the reporting of an impropriety as well as during the investigation or the protection of the whistleblower.



How long are the personal whistleblowing data saved for?

The responsible units and the High Inspectorate

for the Declaration and Audit of Assets and Conflicts of Interest enforce the requirements of the Law on Personal Data Protection in their activity. Personal data in the documentation administered by these institutions are saved for a period of 60 days after the decision on the completion the administrative

In those cases where an administrative investigation is not initiated, the personal data is destroyed immediately after a decision for not initiating an investigation is taken.

investigation is made.



This guide was prepared by Arjan Dyrmishi for the Southeast Europe Coalition on Whistleblower Protection with support from the National Endowment for Democracy.

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A Guide to Whistleblowing and Whistleblower Protection in Albania

