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**Government Accountability Initiative**

# RECOMMENDATIONS FOR RULEBOOKS ON INTERNAL WHISTLEBLOWING PROCEDURES FOR LOCAL SELF- GOVERNMENTS

**ASSOCIATION EUTOPIJA, IN COOPERATION WITH INTERNATIONAL EXPERT,  
MR. THOMAS DIVINE**

## **ABOUT GOVERNMENT ACCOUNTABILITY INITIATIVE**

The USAID Government Accountability Initiative (GAI) is four-year initiative that works with the Serbian State Audit Institution (SAI) and the Anti-Corruption Agency (ACA) as part of the overall USAID objective to strengthen individual capacities and the connections of key Serbian stakeholders with the goal of increased government accountability in Serbia at the national and local levels. The GAI project is structured around three components: Local Government Accountability, Independent Oversight Institutions, and the Adjudication of Corruption Cases. GAI's counterparts include the State Audit Institution (SAI), the Anti-Corruption Agency (ACA), local governments, specialized anti-corruption courts, and civil society organizations.

## **TASK AND OBJECTIVES**

GAI subcontractor Eutopia Association, together with international expert, Mr. Tomas Divine, was engaged to deliver recommendations **for improving internal system of whistleblowing in local self-governments (LSG)** and propose a model for organization of whistleblower protection systems at the local level in Serbia. The model relies on international best practices as well as concrete legal and organizational characteristics of local governments in Serbia.

In line with the Whistleblower Protection Law from December 2014, LSGs are obliged to establish systems for whistleblowing that will ensure secure receipt of reports and taking of appropriate follow up actions. Given that the regulatory framework relating to whistleblowing is relatively new, there is a significant need to support LSGs in implementation of the legal requirements as well as for educating local administration staff and management about the rules and procedures for whistleblowing. Besides developing recommendations for rulebooks on internal whistleblowing procedures, GAI also works on capacity building of local self-governments in Serbia and on providing direct technical assistance to LSGs in introducing functional model for whistleblower protection.

## **LEGAL FRAMEWORK**

The Law on Whistleblower Protection (RS Official Gazette 128/2014,) and the Rulebook on the Manner of Internal Whistleblowing, Manner of Designating the Authorized Person with the Employer, and other Issues of Significance for Internal Whistleblowing with the Employer with more than ten employees (RS Official Gazette 49/2015) represent the legal framework.

The Law on Whistleblower Protection provides protection to whistleblowers and obligates employers to protect the whistleblowers from damaging actions, to take all necessary measures to suspend damaging actions and remove consequences of damaging actions. The failure of the employer to do so implies misdemeanor responsibility of the employer and of the responsible person of the employer as prescribed by the Law on Whistleblower Protection.

In addition, Article 14, paragraph 4 of the Law on Protection of Whistleblowers prescribes that **the employer is obliged to submit written notice of the rights under this law to all employees. Failure by an employer to perform this duty represents a misdemeanor.**

The Law on Whistleblower Protection in Article 16 **provides that the provisions of the general act of the employer on the internal whistleblowing procedure must be in accordance with the Law and the by-law - the Minister's Rulebook, and that the provisions of the general act of the employer cannot reduce the scope of the rights or deny a right to the whistleblower defined under this law.**

It is recommended that the rulebooks on internal whistleblowing **provide clear and simple instructions to whistleblowers, and to instruct the persons in charge of receiving the whistleblowers' reports on conducting the procedures.**

## **RESPONSIBILITIES OF LOCAL SELF-GOVERNMENT**

- Each local government should conduct mandatory training by the Authorized Person of all public employees and managers on the provisions of the Whistleblower Protection Law and associated Rulebooks.
- The Mayor and all heads of organizational units in local self-government have a duty to prevent violations of the Whistleblower Protection Law or associated Rulebooks.
- The Mayor or municipal assembly provides non-financial award annually to whistleblowing that had positive impact on society and protection of public interest.

## **RECOMMENDED ELEMENTS OF THE RULEBOOK**

### **I. PERSONS AUTHORIZED FOR RECEIVING INFORMATION CONCERNING INTERNAL WHISTLEBLOWING**

#### **I.1. Duties**

An Authorized Person or Commission should be responsible to implement Rulebook procedures, conduct training and employee outreach to implement the provisions of the Act, conduct and coordinate investigations to follow through and issue reports with findings and recommendations on whistleblowing disclosures, maintain a whistleblower website, and lead public outreach and education efforts on the results of disclosures.



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The Authorized Person reports directly to the head of administration or Mayor and prepare a public Annual Report for the Mayor and City Council on the number, nature and impact of whistleblowing disclosures, as well as data on the number of whistleblower retaliation complaints and their outcome.

### **1.2. Number of persons authorized to receive information (one person or the Commission)**

Appointment as a person authorized to receive information regarding internal whistleblowing often presents an uncomfortable position for authorized person because investigation of reported information may lead to confrontation with superiors.

Working with more people in a Commission could contribute to the reduction of the pressure that these individuals may face individually. Therefore, the work of these persons would be more easily performed in a group, the resistance of employees who are potential candidates for this function would be reduced, and the work of appointed persons would be more efficient especially if the members of the Commission come from different organizational parts of the municipal / city administration.

The Commission that receives and checks information regarding internal whistleblowing can review and check information in more detail than one person. In case the Commission is established, rulebook on internal whistleblowing should contain provisions that regulates its work, at least on general level (number of members, procedures for appointing and dismissal, procedures for receiving information, procedures for adopting decisions) and prescribe obligation to adopt legal act (rules of procedures) that will regulate work of Commission more detailed.

### **1.3. Qualifications, credibility and work status of a person authorized to receive information concerning internal whistleblowing**

Graduate lawyers are better acquainted with the general legal acts, so they can more quickly and reliably check the received information. A local ombudsman (where appointed) has analogous duties and is appropriate for this position. As a condition of office, any authorized person or commission member should be certified as having completed training on the Law and responsibilities to implement it.

### **1.4. Procedure for selecting a person authorized to receive information, term of office, manner of termination of office**

#### **Selection procedure:**

- The head of the administration may appoint person/persons, or they may be elected by direct and secret ballot by employees / hired staff. Formal appointment in both cases is done by the head of administration, but the difference is whether he/she decides on this by own or is the process of appointing participatory. By voting the employees can choose people whom they consider as the best and the most honorable.

- It is desirable to appoint a person who is a full-time employee to perform this job without fear.

**Term of office:**

- It is possible to limit the time period a person(s) are appointed to receive information on internal whistleblowing, as well as to provide a possibility of reappointment / reelection.

**Termination:**

- Provide a way of termination of appointment (on a personal request, due to the suspension of employment, termination of employment with the employer, dismissal).

**1.5. Reasons for exemption, appointment of deputy:**

Rulebook should provide the possible reasons for the exclusion of the person(s) authorized to receive information and conducting the procedure relating to internal whistleblowing that would prevent biased conduct of the procedure (blood relation with the whistleblower, related person or the person to whom the information pertains, marital / extramarital relation, kinship with these persons, relation of the guardian, the adopter, adoptees or foster parents, as well as when there are other circumstances that put impartiality into question).

It is desirable to appoint / elect deputies who will act in the event of a person / member of the Commission being prevented, due to conflict of interest or other reasons (holiday, sick leave).

**1.6. Protection of the self-reliance and independence of the person authorized to receive information:**

Prescribing the guarantees of self-reliance and independence contributes to the greater safety of the whistleblowers, as well as the responsibility of the authorized person and the employer in the event that they are not adhered to. The guarantees should include that the person authorized to receive information and conduct the procedure is self-reliant and independent in the performance of duties within his / her competence, not to seek, receive orders and instructions from other persons; that a person authorized to receive information and conduct a procedure cannot be held liable for the opinion or proposal given in the performance of tasks within their competence. As a person associated with all whistleblowers who make disclosures, unless the Authorized Person violates the law all activities to carry out responsibilities of the position are protected activity under the Act against retaliation.

**1.7. Criteria of conduct and actions of a person authorized to receive information and conduct the procedure and sanctioning this person**

It is important to prescribe dismissal of the authorized person due to incompetent or negligent performance of tasks, violation of work obligation or work discipline, if (s)he causes greater substantive damage to the employer, by his/her own guilt, - due to criminal proceedings initiated against him/her for the criminal offense committed at work or in connection with work, or if the whistleblowing procedure based on information relating to the person authorized to receive information and conduct the procedure determines their responsibility.



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## **2. RECEIVING INFORMATION FROM WHISTLEBLOWERS**

### **2.1 Ways of providing information**

#### ***Preliminary duties***

After initial contact with the whistleblower and prior to receiving the actual information, if the disclosure is verbal, the Authorized Person must inform the whistleblower of rights under the Law, including the alternative option to contact external authorities directly and to make public disclosures without delay after an internal or external report. Initial communication also must explain to the whistleblower the right to identity protection, including the whistleblower's right to protect information that could be traced back and expose the identity. The Authorized Person should obtain the whistleblower's decision on whether and how the identity will be protected.

#### ***Information provided in writing***

- Provide the instructions for submitting written information through an ordinary or registered mail, with the note "Do not open" and with addressing instructions to ensure the information is directly provided to the person authorized to receive information
- Open a special e-mail account of the person authorized to receive information with no access by other employees, outside the employer's information system.
- Prescribe the handling of information provided by mail, where the envelope does not point to internal whistleblowing, or it is not indicated that it is sent to the person authorized to receive information, so that the person receiving the information is obliged to deliver it to the person authorized to receive it without delay with a list of all persons who have had access to the report.

#### ***Information provided verbally***

- Determine dedicated space where the person authorized to receive information will receive information orally. The person authorized to receive information should make minutes based on the provided information.
- Protect whistleblower's identity

### **2.2 Confirmation of receipt of information**

- The authorized person should be obligated to prepare a confirmation of the receipt of information and its delivery to the whistleblower by registered mail, if the information is received by mail, by e-mail or by personal delivery, and to inform the whistleblower of the right to have an in-person meeting for discussion of the disclosure.

- Prescribe data that has to be included into the confirmation of the receipt, such as the date and location of the receipt of information, the method of receipt of information, the content of the information, the information on the person who submitted the information, the signature of the person receiving the information, and whether the whistleblower wishes his identity to be disclosed. It is important to include who else was present during the providing information.

### **2.3 Recordkeeping of the information and documents in the internal whistleblowing procedure**

- Prescribe keeping of a special register, a log, or special records for the received information
- Require establishment of individual files as soon as the information is received, containing information and evidence obtained - documents, records of the hearing, etc.
- Regulate recordkeeping practices, and determine persons that will have access to files

## **3. PROCEDURE OF VERIFICATION OF INFORMATION**

### **3.1. Prior information check**

- The information does not have to contain a detailed factual description, or evidence, and the person authorized to receive the information does not need to analyze the reasons why someone is blowing a whistle
- The person authorized to receive information is obliged to act on the information without delay the latest within 15 days from the date of receipt of the information. Upon receipt of information, it is first necessary to determine whether the information provided has the character of the information based on which whistleblowing is done, i.e. it reveals to the employer a violation of regulations, a violation of human rights, the exercise of public authority contrary to the purpose for which it is entrusted, a danger to life, public health, safety, the environment, and whether the information is revealed to prevent large-scale damage.
- An authorized person may, if the information is incomplete, invite the whistleblower to provide further explanations and evidence if he has them.

### **3.2 Access to information**

The Authorized Person must have access to any information necessary to investigate the whistleblower's report.

### **3.3 Actions in the verification procedure**

Further actions normally performed by the person authorized to receive information are to interrogate other persons indicated by the whistleblower or who are found in the process to have certain knowledge of the harmful activity, then to verify the credibility of the documentation provided by the whistleblower, obtain the other necessary documentation,



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insight into all documents, databases kept by the employer and official communication, ask for the position and opinion of the person of appropriate expertise in relation to the information obtained or documentation, as well as undertake other necessary actions for the correct and complete determination of the factual situation. The employer is obliged to allow the authorized person to check the received information in relation to internal whistleblowing

In some cases, the authorized persons may not be able to investigate the information of the whistleblower by themselves alone, and they will have to involve other persons with specialized knowledge or persons who manage the sectors the information pertains to. It is necessary to foresee that when acting on the request of the person authorized to receive information in the procedure, all staff are obliged to immediately, or within certain shorter deadlines, allow access to all documents, databases and official communication and enable the collection of evidence. Besides this, in this phase it is necessary to:

- Prescribe the possibility of direct communication of the authorized person with the organizational parts of the employer, in order to protect the person authorized to receive information from violation of internal rules and threats by sanction, as well as to protect the identity of the whistleblower, according to the law that regulates personal data protection
- In the case of authorized person acting contrary to the legal provisions, provide for a sanction for dismissal due to incompetent and unconscientious work
- Define the following actions as a serious violation of the work-related obligations: harmful actions against the whistleblower, the undue influence on the authorized person during the investigation, as well as preventing the authorized person to inspect documents and obtain evidence

### **3.4 The rights of the whistleblower during the proceedings**

Local self-government is obliged, upon request of whistleblower, to provide information on the course and actions taken in the investigation procedure, as well as to allow the whistleblower to review case files and to attend specific verification activities. The Authorized Person shall give the whistleblower the right to respond and rebut any denials or other answers to alleged misconduct that an office submits in response to a whistleblowing report.

### **3.5 Acting on anonymous reports**

- An employer is obliged to act regardless of whether the report is signed or not
- The employer must not take any measures to detect the identity of the whistleblower
- Due to unknown identity of the whistleblower, the person authorized to receive information does not allow the insight into case files, the presence during specific verification activities, nor informs the whistleblower about the undertaken actions based on the submitted information and does not submit the report to the whistleblower

## **4. FINALIZING THE PROCEDURE**

### **4.1 Report**

- Prescribe mandatory elements of the report, such as date, time and method of receipt of information, content of information, evidence produced, established factual situation
- Prescribe the method of submitting the report to the whistleblower and the time for objection, as well as the objection procedure.
- It would be desirable that objection of whistleblowers is part of the report of Authorized Person. This means that report should be first submitted to the whistleblowers, with deadline for response (for example, 8 days) and after that the report should be submitted to the representative of LGS (as main report and whistleblowers objection as annex).

### **4.2 Proposed measures**

Proposed measures may consist of:

- Filing for a commercial offense or misdemeanor charges against an employee
- Conducting a procedure for determining a violation of a work obligation and / or work discipline against an employee
- Conducting a procedure for determining the substantive responsibility for the damage caused to an employee
- Proposing to heads of organizational units and employees undertaking certain actions to prevent further maladministration and the elimination of harmful consequences.
- Proposing changes and improvement of general legal acts in order to eliminate risks for repeating their violation and similar.

Proposed measures may consist informing other institutions for undertaking activities from their competences.

## **5. PUBLIC PARTICIPATION**

### **5.1 Public debate**

The LSG is obliged to publish the draft Rulebook and provide an opportunity to employees, institutions and citizens to provide comments before finalizing it.

### **5.2 Outreach**

The LSG should inform citizens, employees and public officials about the whistleblowing procedures, about the Authorized Person with contact information, website address to view reports and instructions how to blow the whistle anonymously. Informing can be organized through posters and leaflets visibly placed in all local government facilities and other service providers.





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### **5.3 Annual report**

The Authorized Person is obliged to prepare and publish an annual report on how the law is working, including number of disclosures and their impact, as well as number of retaliation complaints and summary outcomes. At a minimum, report should include how many whistleblowers received a formal ruling that their rights were violated, how many received relief through a judicial ruling or informal relief through a settlement, and how many cases are pending. The LSG is obliged to publish the report of the Authorized Person on the Information Bulletin.

### **5.4 Annual meeting**

It is possible to organize an annual meeting presided by the Mayor and the Authorized Person, to release the annual report, summarize and answer questions about its findings, present public servant awards recognizing contributions by whistleblowers, and receive any public input on how to improve the program.