

LAW No. 571 of 14 December 2004

regarding the protection of personnel within public authorities, public institutions and other establishments, who report infringements

ISSUER: PARLIAMENT

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The Parliament of Romania adopts the law herein.

CHAPTER. I

General Provisions

ART. 1

The law herein regulates measures for the protection of persons who expose or report law infringements within public authorities, public institutions and other establishments, perpetrated by persons in leading or operational positions within public authorities and institutions and within the other budgetary institutions stipulated by art 2.

ART. 2

(1) The provisions of this law apply to public authorities and institutions of the central public administration, local public administration, the Parliament, the Presidential Administration Apparatus, the Government apparatus, autonomous administrative authorities, cultural, educational, health and social assistance public institutions, national companies, autonomous administrations ['regies'] of national and local interest, as well as to national state capital companies.

(2) This law shall also apply to persons appointed to scientific and consultative councils, specialized commissions and other collegial bodies organised within the structure of, or attached to, public authorities or institutions.

ART. 3

For the purposes of the law herein the following words and phrases shall have the following meanings:

a) 'public interest whistleblowing' means a notification made in good faith of any deed entailing any infringement of the law, of the professional ethics or of the principles of good administration, efficiency, effectiveness, economy and transparency;

b) 'whistleblower' means the person making a notification according to subsection a) and who is employed by one of the public authorities or institutions or by the other establishments stipulated by art. 2;

c) 'disciplinary committee' means any body tasked with disciplinary investigation responsibilities, stipulated by the law or by the organizational and operating regulations of the public authorities, public institutions or of the other establishments stipulated by art. 2.

CHAPTER. II

General Principles

ART. 4

The principles governing the protection of public interest whistleblowing

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are the following:

a) the principle of legality, according to which public authorities, public institutions and the other establishments stipulated by art. 2 have the obligation to observe the rights and liberties of the citizen, the procedural norms and requirements of fair competition and equal treatment offered to public service beneficiaries, according to the law;

b) the principle of public interest supremacy, according to which, pursuant to the law herein, the social order, the integrity, impartiality and efficiency of public authorities and public institutions, as well as of the other establishments stipulated by art. 2 are protected and promoted by the law;

c) the principle of responsibility, according to which any person reporting law infringements has to support their reporting with data or facts regarding the deed;

d) the principle of non-abusive sanctioning, according to which persons reporting or notifying law infringements cannot be sanctioned directly or indirectly by the application of an inequitable and more severe sanction for other disciplinary offences. In a case of public interest whistleblowing, ethical or professional norms that might hinder public interest whistleblowing are not applicable;

e) the principle of good administration, according to which public authorities, public institutions and the other establishments stipulated by art. 2 should carry out their activity for the general interest, with a high degree of professionalism, and with an efficient, effective and economical use of resources;

f) the principle of good conduct, which protects and encourages public interest whistleblowing related to public integrity and good administration principles, with a view to increasing the administrative capacity and prestige of the public authority, public institutions and other establishments stipulated by art 2;

g) the principle of balance, according to which no person can avail himself of the stipulations of this law in order to diminish the administrative or disciplinary sanction received for a more serious offence.

h) the principle of good faith, which protects any person employed by a public authority, public institution or by another budgetary establishment stipulated by art. 2, who makes a notification, fully convinced of the reality of the situation or that the reported deed represents an infringement of the law.

CHAPTER. III

Whistleblowing regarding law infringements

ART. 5

The reporting of law infringements perpetrated by the persons mentioned in art. 1 and 2, stipulated by the law as disciplinary misconduct, offences or criminal offences constitutes public interest whistleblowing and refers to:

a) corruption offences, offences assimilated to corruption offences; offences directly connected with corruption offences, counterfeiting, offences involving misuse of office or work related offences;

b) offences against the financial interests of the European Communities;

c) preferential or discriminatory practices or treatment within the activity of establishments stipulated by art. 2;

d) breach of stipulations regarding incompatibility and conflict of interests;

e) abusive use of material or human resources;

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- f) political bias in exercising job responsibilities, with the exception of persons that are elected or politically appointed;
- g) infringements of the law regarding access to information and decisional transparency;
- h) breach of legal provisions regarding public procurement and non-reimbursable funds;
- i) professional incompetence or negligence;
- j) non-objective personnel evaluation in the recruitment, selection, promotion, demotion and dismissal processes;
- k) breaches of administrative procedures or establishment of internal procedures by breaching the law;
- l) issuing of administrative or other papers serving special or clientelist interests;
- m) faulty or fraudulent administration of the public and private patrimony of public authorities, public institutions and of the other establishments stipulated by art. 2;
- n) breach of other legal provisions involving the principle of good administration and of the protection of public interest.

ART. 6

The law infringement or breach of the ethical and professional norms, as stipulated by art.4, subsection h), can be reported alternatively or cumulatively to:

- a) the superior of the person in breach of the legal stipulations, according to art. 5;
- b) the leader of the public authority, public institution or budgetary establishment employing the persons in breach of legal stipulations, according to art. 5, or within which illegal deeds are reported, even if the perpetrator cannot be identified exactly;
- c) the disciplinary committees or other similar bodies within the public authority, public institution or other establishment stipulated by art. 2 that employs the person breaching the law, according to art.5;
- d) legal bodies;
- e) bodies tasked with establishing and investigating conflicts of interests and incompatibilities;
- f) parliamentary commissions;
- g) the mass media;
- h) professional, trade union or employers' associations;
- i) non-governmental organisations.

CHAPTER. IV

Protection of civil servants, contractual personnel and other categories of personnel

ART. 7

- (1) Before the disciplinary committee or other similar bodies, whistleblowers benefit from protection as follows:
- a) public interest whistleblowers benefit from the presumption of good-faith, under the conditions of art. 4 subsection h), until proven otherwise;
 - b) upon the request of the whistleblower under disciplinary investigation following a whistleblowing act, disciplinary committees or other similar bodies within the public authorities, public institutions or other establishments stipulated by art. 2, shall invite the press and a representative of the trade union or of the professional association. The announcement shall be made in the form of a release on the webpage of the public authority, public institution or budgetary establishment, at least 3

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working days before the date of the meeting, otherwise the report and the disciplinary sanction applied can be declared null.

(2) In case the person incriminated by the public interest whistleblowing is the direct or indirect superior, has control or inspection and evaluation responsibilities over the whistleblower, the disciplinary committee or other similar body shall ensure the protection of the whistleblower by hiding his/her identity.

ART. 8

In case of public interest whistleblowing stipulated by art 5 subsections a) and b) the provisions of art. 12 par.(2) subsection a) of Law 682/2002 regarding witness protection shall be applied by default.

ART. 9

(1) In job-related litigation or litigation regarding work relationships, the court can decide on the annulment of the disciplinary or administrative sanction applied to a whistleblower, if the sanction was applied following a public interest whistleblowing made in good faith.

(2) The court shall check the weight and appropriateness of the sanction applied to the whistleblower for a disciplinary offence by comparing it with the sanctioning practice or with other similar cases within the same public authority, public institution and budgetary establishment, in order to eliminate the possibility of subsequent and indirect sanctioning/punishment of public interest whistleblowing acts, protected by the law herein.

CHAPTER. V

Transitory and final provisions

ART. 10

This law regarding the protection of public interest whistleblowers shall be completed with the provisions of the Labour Code as well as with the provisions of Law 188/1999 regarding the statute of civil servants, republished with subsequent amendments.

ART. 11

Within 30 days of this law coming into force, public authorities, public institutions and the other budgetary establishments stipulated by art. 2 shall harmonise their interior regulations with the provisions of this law.

This law has been adopted by the Parliament of Romania in compliance with the stipulations of art. 75 and art. 76 par. (2) of the republished Romanian Constitution.

PRESIDENT OF THE CHAMBER OF DEPUTIES
VALER DORNEANU

PRESIDENT OF THE SENATE
NICOLAE VACAROIU

Bucharest, 14 December 2004.
No. 571.