

Information on Whistleblower protection and assistance under the Legal Aid Act - for reporting abuses

I. The protection of Whistleblowers

Act XXV of 2023 on Complaints, Whistleblowing and the Rules for Reporting Abuses (the “Whistleblowing Act”) prohibits any retaliation against the Whistleblower for the Whistleblowing.

The Whistleblower is protected against discrimination or unfair treatment for the Whistleblowing. The Whistleblower cannot be held liable for lawfully making a Whistleblowing if he/she had reasonable grounds to believe that the Whistleblowing was necessary to disclose the circumstances to which it relates.

Articles 41-44 of the Whistleblowing Act contain the following safeguards to protect the Whistleblower.

Pursuant to the Whistleblowing Act, any action that is detrimental to the Whistleblower:

- a./ made against the Whistleblower for making a lawful Whistleblowing and
 - b./ which is related to the employment relationship
- is unlawful, even if it would otherwise be lawful.

An adverse action is an act or omission that is detrimental to the Whistleblower, in particular the following:

- a./ a suspension from the position, collective redundancy, dismissal or equivalent
- b./ measures,
- c./ a demotion or refusal to promote,
- d./ the transfer of work duties to others, changes to the place of work,
- e./ pay cuts, changes to the working hours,
- f./ refusal to provide training,
- g./ negative performance appraisal or job reference,
- h./ the application of any adverse legal consequence—in particular disciplinary measures, reprimands, financial sanctions—under the law applicable to the employment relationship,
- i./ coercion, intimidation, harassment or ostracism,
- j./ discrimination, unfavourable or unfair treatment,
- k./ failure to convert a fixed-term employment relationship into an employment relationship of indefinite duration, if the employee had a legitimate expectation that his/her employment relationship would be converted into an employment relationship of indefinite duration,
- l./ failure to renew or early termination of a fixed-term employment contract,
- m./ any damage, which includes damage to the person’s reputation or financial loss, including loss of business opportunity and loss of income,
- n./ a measure as a result of which it is reasonable to conclude that the person concerned will not be able to take up future employment in the sector in which he/she is employed,
- o./ the requirement to undergo a medical fitness test,
- p./ early termination or cancellation of a contract for goods or services, and

q./ the withdrawal of a licence.

Any adverse action (listed above) taken against an entity owned by or having an employment or other contractual relationship with the Whistleblower, which is taken due to a lawful Whistleblowing, is unlawful even if it would otherwise be lawful.

The protection under this section shall not apply to the Whistleblower in the following cases:

- a./ if, by the Whistleblowing, he/she breaks the rules on the protection of classified information,
- b./ if, by the Whistleblowing, he/she fails to comply with his/her legal obligations of confidentiality regarding medical confidentiality or attorney secret,
- c./ if he/she is a church person or a member of a religious association, a member of a religious community performing religious rites, and he/she does not comply with the obligation of professional secrecy in the Whistleblowing,
- d./ if he/she breaches the rules on the protection of confidential information protected by law in connection with a court judgement, in the Whistleblowing,
- e./ if he/she breaches the rules on data processing under the rules of criminal procedure by the Whistleblowing, or
- f./ if he/she is a member of the law enforcement agencies, the Military National Security Service or the National Tax and Customs Administration, and by the Whistleblowing, violates the rules governing the activities of these agencies as laid down by law.

If the Whistleblowing is lawfully made, the Whistleblower shall not be deemed to have breached any restriction on disclosure of business, economic or other confidential information under the Whistleblowing Act or any other legal restriction on the disclosure of information, and shall not be liable in respect of such Whistleblowing if he/she had reasonable grounds to believe that the Whistleblowing was necessary to disclose the circumstances to which it relates.

Where a Whistleblowing has been lawfully made, the Whistleblower shall not be liable for obtaining or accessing the information contained in the Whistleblowing, unless the Whistleblower has committed a criminal offence by obtaining or accessing the information.

The Whistleblower cannot be held liable for lawfully making a Whistleblowing if he/she had reasonable grounds to believe that the Whistleblowing was necessary to disclose the circumstances to which it relates.

The Whistleblower may invoke the provisions of the preceding three paragraphs in all official or judicial proceedings, while proving the legality of the Whistleblowing.

The Whistleblowing is lawful, if:

- (a) the Whistleblower has made the Whistleblowing through one of the whistleblowing systems described in this Chapter in accordance with the rules set out in the Whistleblowing Act,
- (b) the Whistleblower has obtained the reported information concerning the circumstances to which the Whistleblowing relates in the context of his/her work-related activities; and

(c) the Whistleblower had reasonable grounds to believe that the information reported concerning the circumstances to which the Whistleblowing relates was true at the time of the Whistleblowing.

A notification shall be deemed to have been lawfully made if the Whistleblower makes its Whistleblowing public and, in addition to the conditions set out in points (b) and (c) of the previous paragraph, one of the following conditions is met:

(a) the Whistleblower

(aa) first used the internal abuse reporting system, and then

used the separate abuse reporting system set up by the various public bodies, or

(ab) directly used the separate whistleblowing system set up by the public bodies, and the operator of the abuse reporting system or the body responsible for the procedure has not taken the measures provided for in the Whistleblowing Act within the time limit,

(b) the Whistleblower has reasonable grounds to believe that the circumstances of which the Whistleblowing relates present a clear risk of harm to the public interest—in particular where there is a risk of irreparable harm—; or

(c) the Whistleblower had reasonable grounds to believe that, where the separate abuse reporting system established by the various state agencies is used, there is a clear possibility that, because of the particular characteristics of the circumstances of the case to which the Whistleblowing relates, there is a clear possibility that:

(ca) an adverse action will be taken against the Whistleblower,

or

(cb) no substantive action will be taken on the merits of the Whistleblowing.

The preceding paragraph shall not apply to a person providing information pursuant to Article 6 of Act CIV of 2010 on Freedom of the Press and Fundamental Rules on Media Content.

A Whistleblowing is considered to have been lawfully made if the Whistleblower makes the Whistleblowing at the European Union institutions, bodies, offices or agencies with competence and responsibility, and the Whistleblower obtained the reported information about the circumstances covered by the Whistleblowing in the context of his/her work-related activities, and the Whistleblower had reasonable grounds to believe that the reported information about the circumstances covered by the Whistleblowing was true at the time of the Whistleblowing.

The protection is only available to the Whistleblower, if:

(a) the reported information relating to the circumstances covered by the Whistleblowing falls within the scope of the legal acts of the European Union listed in Annex 1 or in Annex 2 or of the legal provisions implementing or ensuring compliance with those acts; or

(b) the Whistleblower has reasonable grounds to believe that the circumstance referred to in point (a) exists.

The protection is not available to the Whistleblower in the following cases:

(a) if, by the Whistleblowing, he/she breaks the rules on the protection of classified information,

- (b) if, by the Whistleblowing, he/she fails to comply with his/her legal obligations of confidentiality regarding medical confidentiality or attorney secret,
- (c) if he/she is a church person or a member of a religious association, a member of a religious community performing religious rites, and he/she does not comply with the obligation of professional secrecy in the Whistleblowing,
- (d) if he/she breaches the rules on the protection of confidential information protected by law in connection with a court judgement, in the Whistleblowing,
- (e) if he/she breaches the rules on data processing under the rules of criminal procedure by the Whistleblowing, or
- (f) if he/she is a member of the law enforcement agencies, the Military National Security Service or the National Tax and Customs Administration, and by the Whistleblowing, violates the rules governing the activities of these agencies as laid down by law.

The rules on the protection of Whistleblowers apply to a Whistleblower who makes a lawful Whistleblowing without revealing his/her identity—in particular without providing his/her name and personal data necessary for identification—and who, following his/her subsequent identification, is subject to adverse action or prosecution.

The protection afforded to Whistleblowers shall apply to a person who:

- (a) assists a lawful Whistleblower in making the Whistleblowing,
- (b) any person related to the lawful Whistleblower—in particular a co-worker or family member of the Whistleblower—who may be subject to adverse action.

II. Information necessary in accordance with the Legal Aid Act:

The State shall provide the Whistleblower with the assistance provided for in Act LXXX of 2003 on Legal Aid under the conditions set out therein.

Out of court aid

The State shall provide the right to use legal assistance under the Legal Aid Act to the assisted person out of court. The legal adviser shall provide the party with legal advice or prepare a pleading or other document and, on the basis of a power of attorney, consult the documents in the case (hereinafter together referred to as “legal service”), the fees and expenses of which, to the extent provided by law (hereinafter together referred to as “legal service fee”), shall be paid or advanced by the State to the legal adviser on behalf of the party.

If a party’s income and assets entitle him/her to have the State pay for the legal services instead of him/her, there is no cost to the party for using the legal services.

If the party becomes entitled, on the basis of his/her income and assets, to an advance payment of the legal service fee by the State instead of him/her, he/she must reimburse the State within the time limit laid down in the decision authorising the aid. The maximum period for reimbursement is one year, within which payment in instalments may be authorised.

Aid civil and administrative proceedings

In the framework of legal aid, the State shall provide and advance or bear the costs of legal representation for the plaintiff, the defendant, the intervener (summoned), the

interested party, the applicant and the defendant in civil proceedings and—with the exception of enforcement proceedings—in non-litigious proceedings, as well as in administrative proceedings, other administrative court proceedings and non-administrative non-litigious proceedings (hereinafter together referred to as the “proceedings”) as defined by the Legal Aid Act.

Aid in criminal proceedings

The State provides the following assistance in the form of legal aid in criminal proceedings:

(a) the advance payment by the State and, where provided by law, the payment of the fees and expenses of the legal aid lawyer (hereinafter referred to as “legal aid lawyer's fees”) to the victim, the civil accuser, the surrogate accuser, the private party, the person with a financial interest and other interested parties,

(b) the advance payment and payment by the State of the fees and expenses of the public defender.