

**Law on the protection of public officials complaining about
violations of the law
(Short name: Romanian Whistleblower's Law)**

Law 571/2004, Published in the Official Gazette on 14 December 14, 2004

CHAPTER I: General provisions

Article 1: Purpose of Law

This law regulates certain actions regarding the protection of persons who claimed or notified violations of the law within the public authorities, public institutions and other units, committed by persons holding management or execution positions within the public authorities and institutions and within other budgetary units set forth at art. 2.

Article 2: Field of Application.

(1) The provisions of this law shall be enforceable to the public authorities and institutions within the central public administration, local public administration, to the apparatus of the Parliament, work apparatus of the Presidential Administration, work apparatus of the Government, autonomous administrative authorities, cultural public institutions, education, health and social assistance fields, national companies, national and local interest public corporations, as well as to national state capital companies.

(2) This law shall be enforceable also to the persons assigned in scientific and consultative committees, specialty commissions and other collegial bodies organized in the structure or attached to the public authorities or institutions.

Article 3: Definitions.

For the purpose of this law, the words and expressions below have the following meaning:

a) public interest warning – shall mean the notification made in good faith concerning any fact involving a violation of law, of professional deontology or of principles of a good administration, of efficiency, effectiveness, economic efficiency and transparency;

b) whistleblower shall mean the person making a notice according to letter a) and which is classified in one of the public authorities, public institutions or other units set forth at art.2;

c) discipline committee shall mean any body in charge with disciplinary research tasks, set forth by law or by the organization and operation regulations of the public authorities, public institutions or of other units set forth at art.2.

CHAPTER II: General principles

Article 4: General Principles.

The principles governing the protection of public interest warning shall be as follows:

a) the principle of *legality*, according to which the public authorities, public institutions and the other units set forth at art.2 shall be obliged to observe the citizens' rights and freedoms, the procedural norms, the free competition and the equal treatment granted to the beneficiaries of public services, according to law;

b) the principle of *public interest supremacy*, according to which, for the purpose of this law, de jure order, the integrity, impartiality and efficiency of public authorities and institutions, as well as of the other units set forth at art.2 shall be protected and promoted by law;

c) the principle of responsibility, according to which any person notifying violations of law shall be obliged to *support the complaint by data* or signs concerning the action committed;

d) the principle of abusive non-punishment [*proportionality*], according to which the persons claiming or notifying the violations of law in a direct or indirect way, cannot be punished by applying an inequitable and more severe sanction for other misbehaviors. In case of public interest warning the deontological or professional norms which might prevent the public interest warning shall not be enforceable;

e) the principle of good administration, according to which the public authorities, the public institutions and the other units set forth at art.2 shall be obliged to carry on their activity in the general interest, with a high degree of professionalism, in terms of *efficiency, effectiveness and economic efficiency* of using the resources;

f) principle of good behavior, according to which the public interest warning shall be protected and encouraged in relation to the aspects of public integrity and good administration, for the purpose of increasing the administrative capacity and the *high reputation of public authorities*, public institutions and of the other units set forth at art.2;

g) the principle of balance [*mitigation*], according to which no person can take advantage of the provisions of this law for diminishing the administrative or disciplinary sanctions for a more serious action committed;

h) the principle of good faith, according to which the person employed within a public authority, public institution or other budgetary unit of those set forth at art.2 who made a notification is protected, being convinced of the reality of the state of order or that the respective action shall be a violation of law.

CHAPTER III: Warning regarding the actions of violation of law

Article 5: Definition of Offences Covered by the Law

The notification of certain actions of violation of law by the persons set forth at art.1 and art.2, provided by law as being misbehaviors, contraventions or offences, shall represent a public interest warning and includes:

a) corruption offences, infringements assimilated to corruption offences, infringements directly connected to the corruption offences, offence of fraud and workplace offences or related to the workplace;

b) offences against financial interests of the European Communities;

c) practices or preferential or discriminating treatments in exercising the duties of the units set forth at art.2;

d) the breach of the provisions concerning the incompatibilities and conflicts of interest;

e) the abusive use of the material or human resources;

- f) the political bias in exercising the job prerogatives, except the persons elected or assigned on a political basis;
- g) violations of law concerning the access to information and of the decisional transparency;
- h) breach of the legal provisions concerning public procurements and the non-returnable financing;
- i) incompetence or on-the-job negligence;
- j) non-objective assessments of the staff in the process of recruitment, selection, promotion, demoting and dismissal from the position;
- k) breaches of the administrative procedures or establishing certain internal procedures by non-observing the law;
- l) issuance of administrative or other type of documents serving to group interests or to clients;
- m) faulty or fraudulent administration of the public and private patrimony of the public authorities, public institutions and of the other units set forth at art.2;
- n) breach of other legal provisions, requiring the observance of the principle of a good administration and that of the protection of public interest.

Article 6: Contactable Authorities

The notification concerning the violation of law or of the deontological and professional norms, according to art.4 letter h), may be made alternatively or cumulatively:

- a) to the hierarchical superior of the person having breached the legal provisions, according to article 5;
- b) to the manager of the public authority, of the public institution or budgetary unit within which the person having breached the legal provisions according to article 5 is employed, or within which the illegal practice is notified, even if the author cannot be identified;
- c) to the discipline committees or to other similar bodies within the public authorities, public institution or unit set forth at art.2 within which the person having violated the law according to art.5 is employed;
- d) to the judicial bodies;
- e) to the bodies in charge with finding and researching the conflicts of interests and of incompatibilities;
- f) to the parliamentary commissions;
- g) to mass-media;
- h) to the professional, trade union or employers' organizations;

i) to non-government organizations.

CHAPTER IV: Protection of public servants, of contracting staff and of other categories of staff

Article 7: Whistleblowers' Protections.

(1) Before the discipline committee or before other similar bodies, the warning persons shall benefit from protection as follows:

a) the warning persons for the public interest shall benefit from the good faith presumption, under the terms of art.4 letter h), until evidence to the contrary;

b) upon the request of the warning person investigated for disciplinary reasons as a result of a warning action, the discipline committees or other similar bodies within the public authorities, public institutions or other units set forth at art.2 shall be obliged to invite the press and one representative of the trade union or of the professional association. The announcement shall be made by a communication posted on the web site of the authority, public institution or of the budgetary unit at least 3 business days before the meeting, under the pains and penalties of the invalidity of the report and of the disciplinary sanction enforced.

(2) In case the person denounced by the warning in public interest is a hierarchical direct or indirect superior, or has duties of control, inspection and assessment of the warning person, the discipline committee or other similar body shall ensure the protection of the warning person, by keeping secret his/her identity.

Article 8: Right of Witness Protection.

In case of public interest warnings set forth at art.5 letters a) and b), the provisions of art. 12 paragraph (2) letter a) of Law no.682/2002 regarding the witness protection shall be enforced ex officio.

Article 9: Appellate Protection of Whistleblowers

1) In relation to the work disputes or those concerning the work relationships, the court may decide the annulment of the disciplinary or administrative sanction enforced to a warning person, if the sanction was enforced as a result of a public interest warning made in good faith.

2) The court shall verify the proportionality of the sanction enforced to the warning person for misbehavior, by comparing it to the sanctioning practice or to other similar cases within the same authority, public institution or budgetary unit, in order to eliminate the possibility of the subsequent and indirect sanctioning of the public interest warnings, protected by this law.

CHAPTER V: Temporary and final provisions

Article 10: Supremacy Clause. This law, in relation to the protection of warning persons for public interest, shall be supplemented by the provisions of the Labor Code, as well as by the provisions of Law no.188/1999 regarding the Statute of public servants, as republished and subsequently amended.

Article 11: Deadline for Regulatory Harmonisation

Within 30 days following the effective date of this law, the authorities, the public institutions and the other budgetary units set forth at art.2 shall comply their internal regulations with its provisions.

This law was adopted by the Parliament of Romania by observing the provisions of article 75 and of article 76 paragraph (2) of the Constitution of Romania, as republished.