

THE LAW OF GEORGIA ON THE PROTECTION OF WHISTLEBLOWER

Article 1. The purpose of this law and the scope of the regulation

1. The purpose of this law is to encourage accountability and honesty in administrative agencies and companies in which the Government holds more than 50% of the shares. The law promotes disclosure and suppression of a wrongdoing and violation of the code of conduct, made by employees of above mentioned institutions. Moreover, it establishes rules of complaint examination in a proper and timely manner, decision making, appellation and protection of a whistleblower from excessive influence.
2. Disclosure issues at the Ministry of Defence of Georgia and the Ministry of Internal Affairs of Georgia are regulated by special legislation.

Article 2. Definition of basic terms

1. For the purpose of this law, the terms used herein have the following meanings:
 - a) Disclosure – the report of information by a person (whistleblower) to an appeals body, police or ombudsman, regarding a violation of a code of conduct by an employee (respondent) of an administrative agency or company in which the Government holds more than 50% of the shares, made in a good faith and with the understanding that the disclosure will contribute to the revelation and prevention of occurred or potential damage;
 - b) Anonymous disclosure – disclosure, when a whistleblower is not personally identified;

c) Whistleblower – a person who makes a disclosure and is an employee of an administrative agency or company in which the Government holds more than 50% of the shares;

d) Close Relative – a whistleblower’s family member, or anyone close to the whistleblower;

e) Wrongdoing - includes corruption, money laundering, maladministration by a public official, breach of public trusts, mismanagement of public resources, threats to public health and/or safety, environmental damage, official misconduct and violation of the rules that are an employee’s official obligation;

f) Administrative Agency - any state or local self-government agency or institution, or legal entity of public law (except religious legal entities of public law), also, any person that exercises public authority in accordance with the law;

g) Appeals body – a structural subdivision for implementation of internal control, auditing or official inspection of a relevant institution, the immediate supervisor of a state institution, his or her supervisor or external control authority, the Civil Service Bureau.

Article 3. Disclosure criteria

1. Disclosure should take the form of written or oral communication; it should be made electronically, by phone, fax or by other technical means.
2. Any disclosure is considered to be made in a good faith, until the opposite is proven.
3. Disclosure is not limited by remoteness until the purpose of the disclosure is lost.

Article 4. Protection of the whistleblower

1. Any kind of intimidation, oppression, pressure or discriminatory treatment, the initiation of disciplinary or administrative action, civil proceedings, or criminal prosecution, physical, moral or financial damage against a whistleblower and his/her close relatives, on disclosure basis are prohibited.
2. Any behaviour determined in paragraph 1 of this article is punishable under Georgian legislation.

3. A whistleblower or their close relatives have the right to address the court at any stage of the proceedings with a motion to use special protective measures, under article 68 of the Criminal Procedure Code of Georgia, if their participation in the proceedings imposes a threat to their life or health.
4. Close relatives have the right to request the court for special protective measures, if the whistleblower is unable to do so.
5. The whistleblower is entitled to ask an appeals body for relocation within or outside the department.
6. After protection measures are imposed on the whistleblower, the appeals body shall process its monitoring and/or correction.
7. The whistleblower is protected, regardless of whether the disclosed information turned out to be true or false.
8. The disclosure is not protected by this law, when the revealed information is substantially incorrect, and it was apparent to the whistleblower in advance, or when the whistleblower is motivated by personal gain.

Article 5. Impartiality and objectivity during complaint examination

A person should not examine a disclosure complaint if this complaint is filed against him/her, either he/she is personally, directly or indirectly interested in the outcome of the case, or if other significant objective circumstances exist, that place his/her impartiality under doubt.

Article 6. Notification of the respondent

1. The respondent shall be notified of a disclosure complaint filed against him/her and the available evidence shall also be provided with an opportunity to respond to the disclosure complaint prior to a final decision. The position of a respondent shall be reflected in the decision of the appeals body.

2. In order to protect the legitimate rights and interests of the whistleblower, also to avoid unlawful retaliation, their identities may not be revealed to the respondent, unless under the decision of the whistleblower.
3. The respondent shall be notified about the decision, within 10 working days after the decision is made.

Article 7. Anonymity

1. The appeals body shall examine anonymous disclosures.
2. A whistleblower can request to stay anonymous, during the proceedings, if his/her life, health, freedom or other legitimate interest is under danger.
3. If needed, anonymous measures consider the use of covering the face, voice altering, using computer software or other means.

Article 8. Procedures for complaint examination

1. A structural subdivision for the implementation of internal control, auditing, or official inspection of an administrative agency considers a complaint and makes a decision within the period of one month, in accordance with relevant legislation and regulations established within its own statute. In the case of the absence of corresponding rules, the decision is made in accordance with formal administrative procedures stipulated in the General Administrative Code of Georgia.
2. The companies in which the Government holds more than 50% of the shares examine complaints under their internal regulations, within one month period.
3. Due to the complexity of a case, the one-month period determined in the first and second paragraph of this Article may be extended by an additional month, under the decision of the appeals body.
4. Following the completion of the consideration of a disclosure complaint, it is found that the infringement in question may become grounds for civil, administrative, or criminal liability for the respondent, and then the appeals body is under the obligation to address relevant authorised institutions.

5. The Civil Service Bureau shall be informed about all disclosure complaints, from administrative agencies and companies in which the Government holds more than 50% of the shares.

Article 9. The decision of the structural subdivision for the implementation of internal control, auditing or official inspection

1. The decision of the structural subdivision for the implementation of internal control, auditing or official inspection, shall be given in written form and shall include the following:

- a) A description of the factual circumstances of a disclosure;
- b) A list and description of examined evidence;
- c) Justification of the decision.

2. A decision on a complaint constitutes an administrative-legal act, the entry into force, execution and appeal procedures of which is determined by Georgian legislation.

3. The appeals body shall not base its decision on the circumstances, facts, evidence or arguments, which have not been properly examined or explored during the process of the consideration of the disclosure complaint.

Article 10. Procedures for complaint examination by the Immediate Supervisor or Superior Officer

1. If a disclosure complaint is filed against an official of a structural subdivision for the implementation of internal control, auditing, or official inspection, a whistleblower has the right to address the immediate supervisor with a disclosure complaint. This disclosure shall be examined by the head of the relevant institution or by an independent person, appointed for these cases.

2. If a disclosure is filed against a head of an institution, the whistleblower has the right to address the disclosure complaint to the superior officer of the institution.

Article 11. The appeal of the decision made by the Immediate Supervisor or Superior Officer

A person has the right to appellate the decision, made by the immediate head of the institution or his or her superior officer (relevant institution), to the Head of the Civil Service Bureau within 10 working days after the introduction of the decision.

Article 12. The complaint at the Civil Service Bureau

1. The Civil Service Bureau has the authority to:
 - a) Examine the decisions regarding the disclosure made by the administrative agencies and the companies in which the Government holds more than 50% of the shares;
 - b) Accept external disclosure, to examine, and if needed, to address them to competent authorities;
 - c) Examine the decisions about the protection mechanism, made by the competent authorities of the relevant institution;
 - d) Obtain all the results and reports regarding the disclosure;
 - e) Provide special protection to whistleblowers and his/her close relatives.
2. Unless otherwise prescribed, in case of lodging a complaint at the Civil Service Bureau, under the first paragraph of this law, the complaint is examined by the Head of the Civil Service Bureau.

Article 13. The authority of the Head of the Civil Service Bureau in handling complaints

1. During the consideration of a complaint defined in Article 12 of the Law, the Head of the Civil Service Bureau has the authority to:
 - a) Request the submission of case materials and other information related to the complaint from the relevant institution;
 - b) Request a written explanation from the relevant institution and its employees;
 - c) To interview the whistleblower and other individuals involved in the case, in order to obtain detailed information;

d) Address the court with a petition to use special protection measures, defined by the criminal procedural legislation, which can be applied to the whistleblower or his/her close relatives;

e) Address a subdivision of the internal control with a petition to review the decision regarding reprisals against the whistleblower;

f) Execute other powers stipulated by the Georgian legislation.

2. If, due to the complexity of the case, it becomes necessary to involve competent authorities in order to make a decision regarding a complaint, the Head of the Civil Service Bureau sends the complaint and case materials to the relevant state institutions for consideration. These institutions are then under obligation to submit a report on the results of the consideration and the ensuing decision to the Civil Service Bureau.

Article 14. The decision of the Head of the Civil Service Bureau

1. Following the examination of the complaint and case materials, the Head of the Civil Service Bureau, makes one of the following decisions:

a) Recognises the complaint as unfounded and terminates the administrative proceedings;

b) Assigns the investigation of the case to the structural subdivision for the implementation of internal control, auditing, or official inspection of the relevant institution, the head of the institution, or their superior officer (institution) and provides them with pertinent recommendations;

c) Wholly or partially recognises the complaint, in order to eliminate the effects of the violation, issues recommendations to relevant institutions.

2. The decision outlined in subparagraph “b” of this article may be taken by the Head of the Civil Service Bureau even in the case when the complaint has already been considered by the structural subdivision for the implementation of internal control, auditing, or official inspection of a relevant institution, the immediate supervisor of an institution, or their superior officers.

3. If, following the completion of the consideration of a disclosure complaint, it is found that the infringement in question may become grounds for civil, administrative, or criminal liability for the

respondent, then the Head of the Civil Service Bureau is under obligation to address relevant authorised institutions.

Article 15. The appeal of the decision made by the Head of the Civil Service Bureau, Immediate Supervisor or Superior Officer

The decision, taken by the Head of the Civil Service Bureau, Immediate Supervisor or Superior Officer can be appealed by the whistleblower in court in accordance with Georgian legislation.

Article 16. The execution of the request, instruction and recommendation of the Head of the Civil Service Bureau

1. A request, instruction or recommendation issued by the Head of the Civil Service Bureau within the framework of this law is binding for those institutions, officials, and employees of institutions to whom they are related.
2. The Head of the Civil Service Bureau is empowered to assign the oversight of fulfilment of a request, instructions and recommendations and/or control of implementation to the supervising authority (relevant institution).
3. In case of issue of a recommendation and instruction by the Head of the Civil Service Bureau, the addressed institutions are obliged to submit a report on their performance to the Civil Service Bureau within 10 working days.
4. Non-fulfilment of the recommendations and instructions issued by the Head of the Civil Service Bureau is punishable under the Georgian legislation.

Article 17. The conditions necessary for the enforcement of this law

1. The Civil Service Bureau shall be charged to ensure the conformity of the Decree of the President “On the Approval of the Statue of the Legal Entity of Public Law – Civil Service Bureau”

N463, issued on July 31, 2009, with the present law and shall submit it to the President of Georgia for approval.

2. The Civil Service Bureau will establish guidelines for the handling and examination of complaints for administrative agencies and companies in which the Government holds more than 50% of the shares, within 6 month after the law will enter into force.
3. The Civil Service Bureau shall be charged to organise training and seminars on whistleblower protection issue, for administrative agencies and companies in which the Government holds more than 50% of the shares.
4. The Civil Service Bureau will prepare annual reports concerning whistleblower protection.
5. Administrative Agencies are to enact their regulations in accordance with this law and to establish internal norms related to the procedure of disclosures.

Article 18. The entry into force of this law

This Law shall enter into force on ...

President of Georgia