

Manual for Protecting and Motivating Whistleblowers



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“Whistleblowers is another aspect that needs to be addressed. We have to restore the protections of whistleblowers and also the encouragement and rewards. It shouldn’t just be that they don’t get crucified; it should be that they are again folk heroes, or celebrated for bringing critical matters to public attention, as opposed to traitors”.

(Ted Gup)

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Introduction

Corruption poses a serious threat to the stability and security of society, the values of democracy and justice, and the regularity of the work of institutions. Combating it, as a preliminary step, requires providing evidence of its occurrence and identifying suspects, with the aim of pursuing and sentencing them in case what is attributed to them is proven¹.

In order to encourage citizens to disclose the information they have about corruption to the competent authorities, Article 33 of the United Nations Convention against Corruption² obliges each State Party to consider “ incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.”

In line with Lebanon’s accession to the aforementioned Convention³, a *Law on the Protection of Whistleblowers*⁴ has been issued on 10/10/2018. Its compelling reasons state that the Lebanese State shall be committed under the article referred to above, “to practically incorporate the principles and rules stipulated in the aforesaid treaty (the United Nations Convention Against Corruption) into the Lebanese Legislation and enact laws that embody its international obligations and commitments, especially in terms of fighting corruption and punishing the perpetrators of corrupt acts. The reasons also include that, “Exposing corruption shall be a duty in both the public and private sectors, and combating it shall require proving its occurrence first, and then obtaining evidence that enables the arrest and sentence of the corrupt individuals. However, the risks of whistleblowing obstruct citizens from taking such initiative. Therefore, individuals shall be encouraged to take action and disclose information about corruption, and whistleblowers shall be protected and motivated to detect corruption.”

It is clear from the foregoing that the legislator aims from this law to encourage citizens to disclose information about corruption by providing them with the necessary protection from any harm that may occur, including to their personal safety or job, as well as allocating them rewards and assistance.

In this regard, Law No. 182⁵ dated 12/06/2020 added a paragraph to article 9 of Law No.

¹Ziad Mekanna, “Corruption Whistleblowers: Protection and Incentives in Texts and Problems in Implementation,” Journal of Law and Political Science, Lebanese University, No. 2, 2022, p. 233.

²Adopted by the General Assembly of the United Nations in its resolution No. 58/4 dated 31/10/2003.

³Law No. 33, dated 16/10/2008, authorizing the government to join the United Nations Convention Against Corruption approved by the General Assembly in its resolution No. 58/4 dated 31/10/2003, Official Gazette No. 44, dated 23/10/2008, p. 4389.

⁴Law No. 83, dated 10/10/2018, Official Gazette No. 45 dated 10/18/2018, p. 4580.

⁵Law No. 182 dated 12/06/2020, published in the Official Gazette No. 25 dated 12/06/2020, adding a paragraph to article 9 of the Law No. 83 dated 10/10/2018 relating to the protection of whistleblowers.

83/2018. Its compelling reasons state that the purpose of the amendment is to “Emphasize the powers of public prosecutions, in accordance with the laws in force, to receive and investigate information in addition to the National Anti-Corruption Commission”, and to provide protection for whistleblowers in accordance with the “protective provisions of Article 370 of the Code of Criminal Procedures by virtue of the Law No. 164/2011 on the Punishment for the Crime of Trafficking in Persons”.

After the issuance of the aforementioned legal amendment, and in order to support the implementation of the Whistleblower Protection Act, the Minister of State for Administrative Development formed a working group that included representatives from the Ministry of Justice, the Ministry of Finance, the Ministry of State for Administrative Development, the Discriminatory Public Prosecution, and lawyer Ghassan Moukheiber as a jurist and a contributor to drafting and discussing laws proposals related to combating corruption⁶, in order to study the necessary ways to encourage individuals who have information on corruption to submit it to the Public Prosecution without waiting for the formation of the National Anti-Corruption Commission, while ensuring their legal protection and preserving their rights to financial incentives, by virtue of the amendment.

Pursuant to the recommendations of the working group, the Minister of Justice issued a decision to establish a specialized office tasked with receiving whistleblowers to assist the Discriminatory Public Prosecution in receiving corruption disclosures, study the files of the employees in the Ministry of Justice who are qualified to receive corruption reports, provided that they shall be holding University Degrees, familiar with Informatics, and have previous experience working in Offices of the criminal authorities, create a hotline to receive calls, and open an electronic account in order to receive disclosures electronically⁷.

On 28/1/2022, and after a delay in the deadline agreed upon, Decree No. 8742 has been issued to form the National Anti-Corruption Committee⁸ that Law 83/2018 entrusts with essential tasks in protecting and motivating whistleblowers.

The herein manual aims to shed light on the conditions for whistleblowers to benefit from protection and incentives (Chapter 1), the provisions for applying protection (Chapter 2) and incentives (Chapter 3), and the ways to encourage disclosure of corruption (Chapter 4).

⁶Decision of the Minister of State for Administrative Development, No. 33, dated 30/6/2020.

⁷Decision of the Minister of Justice, No. 1/65, dated 09/10/2020.

⁸The Committee was founded under Law No. 175, dated 8/5/2020, Combating Corruption in the Public Sector and Establishing the National Anti-Corruption Commission, Official Gazette, No. 20, dated 14/5/2020, p. 1203; As stated in Article 5, it is an “administrative independent committee and an independent legal person/entity which enjoys both financial and administrative autonomy.”

Chapter 1: Conditions for Benefiting from Protection and Incentives

To benefit from protection and incentives, the whistleblower shall submit a disclosure that includes specific information related to corruption (Part 1), to the authority designated by law (Part 2).

Part 1: Disclosure Submittal

The law requires that disclosure of corruption should include a specific type of information (Section 1) and stipulates the rules for its submission (Section 2).

Section 1: Information that must be included in the disclosure

To benefit from the protection and incentives stipulated in Law No. 83/2018, Article 2 requires that a person denounces any act or omission, which happened or may happen, and it is believed that it relates to, evidence, or helps to prove corruption.

“Corruption” is “the employee’s exploitation of the authority, position, or work with the goal of achieving undue legal gains or benefits” (Article 1/a).

Noting that Article 1/e specified the “employee” as “Any person holding a legislative, judicial, executive, administrative, military, security or advisory position, whether appointed or elected, permanent or temporary, paid or unpaid, and any person performing a public function, including any position of constitutional powers or in any public office or service or work performed for the benefit of a public property, a public facility, a public utility, a public institution, or a public service, for the benefit of a public entity or public utility, whether legally or de facto undertaken”.

Furthermore, Article 5 of Law No. 83/2018 specifies the information that shall be included in the disclosure, as follows:

- “The whistleblower’s full name, professional activity, address, work address, and telephone number.” The foregoing condition is consistent with the requirements of the Code of Criminal Procedure for accepting a denunciation submitted by an informant who knew of the offence or heard about it. (Article 27/2). The obligation to include the name of the whistleblower in the disclosure aims to avoid the possibility of submitting slanderous disclosures⁹. In this regard, it shall be noted that Article 6/2 of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 does not prevent countries from allowing in their national legislations

⁹ P. Adam, « Droit d’expression des salariés », Encyclopédie numérique Dalloz, Répertoire de droit du travail, juin, 2021, actualisation : février 2022, n° 250.

the submittal of disclosures without mentioning the whistleblower's name¹⁰.

- "The nature of the corruption that is being disclosed". This refers to the nature of acts that can be described as corruption.

- "The name of the individual(s) concerned with the disclosure", meaning the individual(s) whom the whistleblower considers having committed acts of corruption.

- "The place and time in which the corruption act happened or may happen ". This condition complements the two preceding conditions with the aim of precisely identifying the acts that are the subject of disclosure and the individuals who are believed to be involved in them, which gives the disclosure seriousness and enables the competent body to conduct investigations and inquisitions about its content.

In addition to the aforementioned information that shall be included in the disclosure, any means that the whistleblower possesses, such as documents or recordings, may be attached thereto and would reinforce its content. Further, the whistleblower may also mention the names of witnesses who have information on the subject of his disclosure.

Section 2: Rules of Submitting Disclosures

By virtue of Article 1/c of Law No. 83/2018, a "Whistleblower" can be a normal or a moral person¹¹, and Article 1/d states that "Disclosure" is "any record or document regardless of its description and title defined by the whistleblower (such as: disclosure, notification, complaint, letter), that includes information related to corruption in accordance with the provisions of the herein law.

As for the principles for submitting the disclosure, Article 4 of the same law stipulates that "the whistleblower shall submit his disclosure by any means considered legal." It is clear from the aforementioned statement that the disclosure shall be made by means of a "letter or document". In the past, letters, and documents used to be submitted in writing as a hard copy, however, electronic writing as soft copies can also be approved in accordance with the Law of Electronic Transactions and Personal Data¹².

¹⁰ Art. 6.2 of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of individuals who report breaches of Union law: " Without prejudice to existing obligations to provide for anonymous reporting by virtue of Union law, this Directive does not affect the power of Member States to decide whether legal entities in the private or public sector and competent authorities are required to accept and follow up on anonymous reports of breaches.

¹¹ Refer to the debate in France about limiting the definition of a whistleblower to a natural person rather than a moral person:

¹² Law No. 81, dated 10/10/2018, Official Gazette, Issue 45, dated 10/18/2018, p. 4546. According to Article 1 of this law, "writing" is considered "the process of writing or recording letters, numbers, characters, symbols, or data, provided that they are comprehensible, regardless of the format used (paper or electronic) and the medium through which the information is transferred." The same article also defines the "electronic document" as "the ordinary or official document, as defined by the Code of Civil Procedure, which is issued in an electronic form."

In view of the foregoing, the disclosure can be submitted, for instance, by the whistleblower via an e-mail sent to the address designated for this purpose by the body legally authorized to receive disclosures of corruption.

In this regard, it is crucial to note that the legislator's requirement that the disclosure is submitted by means of a "letter or document" leads to the consideration of telephone communication as an unacceptable legal means in this field. Noting that this latter means is also not acceptable when submitting a denunciation, by virtue of Article 27/1 of the Code of Criminal Procedure.

In this regard, the Best Practices Guide for Whistleblowing Legislation recommends making available a wide range of detection methods to address all situations potential whistleblowers may face. Legislation should not go into too much detail, as the pace of legislation is slower than developments in the field, but it should require multiple channels and tools that are accessible and reliable and guarantee confidentiality or anonymity, provided that more detailed standards are set in the guidelines¹³.

Part 2: The Authority to Whom the Statement Must be Submitted

To benefit from the protection and incentives, Article 2 of Law No. 83/2018 stipulates that the disclosure shall be submitted to the National Anti-Corruption Commission exclusively in accordance with the procedures specified in the herein law. However, this exclusivity no longer exists after the amendment made by Law No. 182/2020 to Article 9 of Law No. 83/2018. By virtue of the herein amendment, "whistleblowers shall benefit from all the provisions of the aforementioned law if they submit their disclosure to the competent Public Prosecution and the Commission.

Section 1: The National Anti-Corruption Commission

Law No. 175/2020 established and organized the National Anti-Corruption Commission. By virtue of its fifth article, it is an "independent administrative body enjoying legal personality and financial and administrative independence", and by virtue of its sixth article, the herein body is composed of "six members, including the president and vice president, who are appointed via a Council of Ministers decree for a six-year nonrenewable term." The members are distributed as follows:

¹³ Transparency International, A Best Practice Guide for Whistleblowing Legislation, 2018, p. 35.

- Two retired judges with honorary status elected according to the due process that regulates the election of the Supreme Judicial Council's members, provided that the electoral body is composed of all the judges in the judicial, administrative, and financial judiciary. The highest-ranking judge, upon retirement, shall be the ruling head of the commission. If the ranks of the two elected judges are equal, the oldest judge shall be the president.
- A lawyer or jurist appointed from among four nominations, two made by the Beirut Bar Association's Council and two made by the Tripoli Bar Association's Council.
- An accounting expert appointed from among three nominations made by the Lebanese Association of Certified Public Accountants.
- A banking and economics expert appointed from among three nominations made by the Banking Control Commission of Lebanon (BCCL).
- An expert in public administration, public finance, or combating corruption appointed from among three nominations made by the Minister of State for Administrative Reform.

By virtue of Article 6 of Law No. 175/2020, the interested bodies shall complete their election or nomination within a three-month period from the publication of the law in the official gazette, and the appointment process shall be done within a maximum of one month following the aforementioned period, which means that the National Anti-Corruption Commission should have been established on 14/09/2020 by maximum, however, it was founded on 28/01/2022.

Section 2: The Public Prosecution

The amendment added by Law No. 182/2020 to Law No. 83/2018 resolved the issue of the whistleblower's benefit from all the provisions of the latter law when submitting the disclosure to the competent Public Prosecution, which was one of the reasons for this amendment.

Following the issuance of the herein amendment and based on the recommendations of the Working Group supporting the implementation of the Whistleblower Protection Act, which was formed by a decision of the Minister of State for Administrative Reform, the Minister of Justice issued the Decision No. 65/1, dated 9/10/2020¹⁴ to establish a specialized office tasked with receiving whistleblowers in order to assist the Discriminatory Public Prosecution in receiving corruption disclosures.

¹⁴ Referred to in footnote 7.

The “Whistleblowers Reception Office” is not included in the units of the Ministry of Justice, but is a “registry” following the Discriminatory Public Prosecution, and is primarily intended for receiving corruption disclosures, in a way that achieves the purpose of the amendment made to the Whistleblower Protection Act in 2020 and preserves the privacy of whistleblowers, especially in terms of not appearing at the Palaces of Justice, and receiving them in a manner that protects their confidentiality, by judicial assistants trained to receive and follow up disclosures under the supervision of the Public Prosecution judge.

It shall be noted that the “Competent Public Prosecution” mentioned in the amendment made in 2020, refers to the specialized Public Prosecution according to the Code of Criminal Procedure, with regard to the judiciary, and it may be the Appellate Public Prosecution, the Financial Public Prosecution¹⁵, and the Military Public Prosecution in accordance with the Military Judiciary Law¹⁶, in the issues related to the specialization of this judiciary. Noting that the Public Prosecution of Cassation is competent in all cases since Article 14/2 CCP gave the Public Prosecutor at the Cassation Court “the right to conduct an investigation directly or through his assistants from the Public Prosecution judges appended to him or the members of the judicial police affiliated with him without having the right to prosecute.” The herein article, nor any other article, did not specify the scope of the aforementioned right, which leads to considering that he has the right to investigate crimes within the jurisdiction of all public prosecutions, and this is reinforced by his authority, which, according to Article 13/2 of the same law, involves “all judges of the Public Prosecution, including the Government’s Commissioner at the Military Court.”

¹⁵ Refer to jurisdiction of the Financial Public Prosecution: Article 19CCP.

¹⁶ Law No. 24 dated 13/04/1968, Military Judiciary Law, Official Gazette, No. 34, dated 25/04/1968, p. 534.

Chapter 2: Protection

Law No. 83/2018 approved measures to protect whistleblowers (Part 1) and specified procedures for its consideration (Part 2). It also stipulated several means that in themselves, and with their legal effect, constitute protection for the whistleblower (Part 3).

Part 1: Protection Measures

The herein protection measures are divided into physical and job protection measures. Each of the two categories will be addressed in a separate section.

Section 1: Physical Protection Measures

Paragraph 1: Explanation of Physical Protection Measures

Law No. 83/2018 did not include a detailed definition of the physical protection measures. Article 9 merely referred to “taking the appropriate security measures”, and responding to the physical protection request, if issued by the National Anti-Corruption Commission, from the Public Prosecution and the security forces, “by the available means”.

This lack of defining the aforementioned measures can create several problems in the implementation process, especially since the law linked them to “the available means”. The latter expression allows a wide scope for interpretation by the authority that shall actually provide the protection. In fact, the foregoing authority may consider that its priorities shall be limited to tasks other than the whistleblowers protection measures. Therefore, it allocates its capabilities in such a way that it has no room to implement any protection measures. Furthermore, the herein authority can invoke the lack of the “available means” for this purpose, based on Article 9/2 of law No. 83/2018. Hence, it becomes difficult to assess the case, legally and de facto, especially in the absence of any legal mechanism for this body.

In order to avoid such issues, the Discriminatory Public Prosecution shall draw up a list of the most prominent “security measures” that can be taken in order to ensure physical protection and report it by the public prosecutions and the security bodies responsible for their implementation. To ensure the execution of the aforementioned process, the competent bodies shall agree on determining the appropriate “means” for this purpose.

Furthermore, it shall be noted that the physical protection measures are not limited to the whistleblower, but also include his family members, his employees, experts, and witnesses, by virtue of the same Article 9. The herein individuals themselves can ask for protection, as the article states that “any interested party” can submit this request. Noting that “any interested party” includes every person who has the right to protection, for his interest. The process is not limited to

the whistleblower only, otherwise, the legislator would have used the expression “at the request of the whistleblower”.

Paragraph 2: Principles of Considering Physical Protection

According to Article 9 of Law. No. 83/2018, the National Anti-Corruption Commission may, spontaneously or at the request of the interested party, request the competent Public Prosecution or the competent security forces to provide personal protection for the whistleblower, his family members, employees, experts, and witnesses, if they feel that they need personal protection from any pressures or reprisals that have occurred or may occur to them. Noting that the Public Prosecution and the security forces shall respond to the request as soon as it is received by the available means.

The aforesaid shows that the role of the National Anti-Corruption Commission, within the framework of personal protection, is to request the competent Public Prosecution or the competent security forces to take the necessary measures to ensure the protection. Therefore, after submitting the request, it is up to the aforementioned bodies to assess the appropriate protective measures to be taken.

It is crucial to note that this type of protection was applicable by the Public Prosecution before the establishment of the National Anti-Corruption Commission, especially since the amendment made in 2020 gave the whistleblowers the right to benefit from protection when submitting disclosures before the herein body, and the latter shall basically take the appropriate personal protection measures, even if the aforementioned Commission is the one who asked to provide the physical protection to the whistleblower.

It shall also be noted that Article 9 left to the National Anti-Corruption Commission the choice to request protection from the competent Public Prosecution or the competent security forces and did not set any criterion for choosing between the two bodies. However, this would lead to problems in the implementation process, especially in light of the multiplicity of security bodies to which requests can be directed, which necessitates a standardization of procedures in this case. To achieve this standardization, the Commission shall request protection from the competent Public Prosecution, which is more informed and in contact with these bodies due to its daily work with its members, and it can better assess which one of them can be the most appropriate body for protection in each case.

Section 2: Job Protection Measures

Paragraph 1: Explanation of Job Protection Measures

The National Anti-Corruption Commission shall take the decision on job protection spontaneously or at the request of the whistleblower, noting that the measures vary if the whistleblower works in the private or the public sector.

A - Employee in Private Sector:

Article 8/d of Law No. 83/2018 states that "If the applicant for protection works in the private sector and the authority finds that the job protection application is justified, the latter shall issue a decision based on the request of the affected party showing the causal link between the job damage and the complainant's corruption exposure. The authority shall also propose compensation for the damage, to be estimated in cases of arbitrary dismissal, equal to the value of twelve to twenty-four months' wages. The Labor Arbitration Council¹⁷ shall rely on the report in the lawsuit filed by the affected party to consider his dismissal from work or any other measure taken against him as arbitrary acts.

It is clear from the abovementioned text that the minimum compensation for arbitrary dismissal if caused by exposing corruption, is equal to the maximum limit for the compensation provided in other cases of arbitrary dismissal. Furthermore, the maximum of this compensation is double its maximum in other cases, as Article 50 of the Labor Law specifies compensation for arbitrary dismissal between a minimum wage of two months and a maximum wage of twelve months. Noting that this compensation shall be added to the other legal compensations that the worker may be entitled to as a result of his dismissal from work.

It is crucial to add that Law No. 83/2018 helps the worker, who exposed corruption, to prove the reason for his dismissal before the Labor Arbitration Council since he is responsible for providing the proof to this authority. For this purpose, Article 8/d allowed the aforementioned worker to get help from the National Anti-Corruption Commission which can issue a report showing the causal link between job damage and corruption exposure. The same article adds that the Labor Arbitration Council shall rely on this report in the lawsuit filed by the affected party, to consider his dismissal from work or any other measure taken against him as arbitrary acts.

¹⁷Labor Arbitration Council is, according to Article 79 of the Labor Law (date 23/9/1946, Official Gazette, No. 40, dated 10/2/1946, p. 1) the competent authority in considering all disputes arising between employers and employees from the application of the provisions of this law, including those arising from the dismissal of the service. This council consists of a judge, the chairman, and of two members, one representing the employers and the other representing the employees. Articles 77 and 78 of the aforementioned law specify the conditions that must be met to assume the tasks of chairing and membership in this council and the method of appointment.

The herein article not only stipulated the necessity of writing a report showing the causal link between the damage and disclosure, but also allowed the National Anti-Corruption Commission to propose to the Arbitral Labor Council to grant the worker compensation according to the amount specified in the text.

It shall also be noted that the French Labor Law requires the employer, in the event of a dispute, to prove the availability of objective reasons that led him to take measures considered harmful to the worker who submitted a corruption disclosure and that the reasons are in no sense connected with, or motivated by, a whistleblower's disclosure¹⁸.

This approach is consistent with the eighth principle of the "International Principles for Whistleblower Legislation" developed by Transparency International¹⁹.

B- Public Sector Employee:

Article 8/e of Law No. 83/2018 states the following: "If the applicant for protection is a public employee, the authority shall direct its request to correct the situation and restore the former status to the Civil Service Board or to the Competent Body. The concerned body shall consider the request on a priority basis and inform the Authority of the request's result within one month from the date of its submission, in a reasoned letter subject to confidentiality rules".

It is clear from the aforementioned text that the law mandates the National Anti-Corruption Commission to refer to the Civil Service Board or the competent body in order to correct the job status of the whistleblower. Therefore, the Commission has the option to resort to any of the two previously mentioned bodies without specifying any criterion in this regard.

In this case, the authority shall send the requests to the Civil Service Board, in view of its legal powers in terms of appointing, promoting, compensating, transferring, disciplining, dismissal, and other personal affairs of the employees, to undertake the necessary action, in accordance with the legal provisions, in order to fix the employee's situation within the department to which he belongs.

Paragraph 2: Principles of Considering Job Protection

Job protection, like physical protection, can be granted spontaneously or at the request of the whistleblower. However, each type of the two protections differs from the other in terms of the

¹⁸F. Chopin, "Defender of rights", Dalloz digital encyclopedia, Directory of Criminal Law and Criminal Procedure, June 2021, n° 105.

¹⁹Transparency International, International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, Berlin, 2013, p. 5: ' 8. Burden of proof on the employer – in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure'.

authority that can take the protection decision. Whereas the Public Prosecution is the authorized body that can study the measures of personal protection, and therefore can take the decision of this protection upon receiving the disclosure, the matter is different with regard to job protection, as the nature of this protection, as defined in Law No. 83 / 2018, makes the National Anti-Corruption Commission, according to Article 8 of the same law, the only authorized body that can approve it and follow up its implementation.

Therefore, the National Anti-Corruption Commission undertakes the necessary investigations to verify the existence of a causal link between the job damage and the disclosure. It is also important to mention in this regard that by virtue of Article 8/b of Law No. 83/2018, “a presumption in favor of the whistleblower shall arise before the commission that the job damage has resulted from the disclosure he made, and then the task of proving the opposite is transferred to the administration where the whistleblower works.” This presumption, which effect is related to the request for protection before the commission, enhances job protection and encourages the whistleblower to submit corruption disclosures. Noting that without it, he would be very reluctant to disclose the corruption act for the fear of not being able to prove that the damage is linked to the disclosure, in case this task falls upon him.

Furthermore, Article 7/A of the aforementioned law defines “job damage as any of the actions that cause a functional damage to the whistleblower, if taken as a result of the disclosure,” and the herein article gives examples of such damage:

- Explicit and Implicit disciplinary measures: Examples of implicit disciplinary measures include the unjustified transfer of an employee from his workplace to another one far from his place of residence, or unjustified change of his job duties.
- Dismissal from service, termination, temporary suspension, suspension of exercise, demotion of rank or salary, intimidation, discrimination, refusal to promote, refusal to give a work statement, or giving the whistleblower a statement that harms him, or imposing conditions that modify the conditions of work to the detriment of his interest, or termination of his contract or failure to renew it, or layoff from service.
- Any act, omission, or threat of the aforementioned measures, which negatively affects the whistleblower’s job or work, including everything related to employment opportunities and work safety.

In the aforementioned field of investigation, Article 8/c of the same law allows the National Anti-Corruption Commission to summon the relevant persons and listen to them and impose on these individuals to appear before the Commission and respond to its demands. To ensure the

implementation of the aforesaid, Article 12 punishes any person who refuses to respond to the Commission's demands within the framework of the investigations and inquisitions stipulated in this law with a fine ranging from seven million Lebanese pounds to fifteen million Lebanese pounds.

In the event that the National Anti-Corruption Commission issues a decision regarding job protection and later no causal link between the job damage and the disclosure is proved, the Commission can retract the protection decision, while maintaining the confidentiality of the whistleblower's identity as required by Article 6 of Law No. 83/2018. However, if in this case the protection request was done in a slandered and fraudulent way, or by fabricating incidents and documents, the right to confidentiality shall be forfeited and the protection decision shall be dropped (Article 8/g).

Part 3: Protection Means

Law No. 83/2018 not only stipulated the measures to be taken by the relevant authorities in order to provide protection for corruption whistleblowers, but also stated several protective means to be addressed separately in the following section.

Section 1: Confidentiality of the Whistleblower's Name and Identity

Article 6 of Law No. 83/2018 prohibits the National Anti-Corruption Commission, its members or workers, or any other individual, from disclosing the name and identity of a whistleblower without his prior consent.

The secrecy imposed by the herein article aims to spare the whistleblower from any possible danger that he might be exposed to in case the corrupters found out that he exposed their corruption. However, revealing the identity shall be allowed whenever its purpose is to take measures that lead to the protection of the whistleblower, within the limits required by this act.

It is a normal procedure as the protection inevitably requires knowing the identity of the whistleblower that needs to be protected by the bodies that legally take charge of applying the protective measures. The identity disclosure, in this case, remains limited to the scope of protection and its procedures and measures. This case is not, in fact, a disclosure of identity, in its legal sense, because knowing the identity remains confined only to those who are responsible for providing protection to the whistleblower; while revealing the identity means that the identity of the whistleblower becomes known within the procedures of investigation and prosecution of the suspicion of corruption that he revealed.

The foregoing confidentiality rules remain in effect, by virtue of the same article, even after filing the case to competent judicial or disciplinary authorities. However, the National Anti-Corruption Commission may include the name of the whistleblower as a witness in the list of witnesses submitted to the competent bodies, upon the whistleblower's consent.

In this context, the amendment made under Law No. 182/2020 stipulated that "the whistleblowers, witnesses, experts, and victims shall benefit from the protections listed in all the paragraphs of Chapter VII bis of the Code of Criminal Procedures by virtue of Law No. 164/2011 on Punishment for the Crime of Trafficking in Persons".

The amendment stated that the confidentiality of the witness's identity shall remain in effect when heard by the investigative judge in the event that he may be exposed to a threat to his life, safety, family, or one of his relatives (Article 370(2) CCP). Noting that the witness reserves the right to keep his identity confidential as long as he does not consent to its disclosure (Article 370(3) CCP).

Therefore, it is crucial to stress that the confidentiality of the whistleblower's identity is an essential means of protecting him. However, the content of the disclosure must be reinforced with other evidence in order to prove the corruption act. Relying on the disclosure only, while maintaining the confidentiality of the whistleblower's identity remains insufficient, in accordance with Article 370 (5) CCP which stipulates that "the criminalization shall not be limited to the statement of the hearing person", by virtue of the provisions of Article 370(2), referring herein to the anonymous witness.

In order to ensure maintaining the confidentiality of the witness's identity, Article 6/2 of Law No. 83/2018 states that every individual who violates its provisions shall be punished with the penalty stipulated in Article 579 of the Penal Code. By referring to the latter article, it can be noticed that it falls under the excerpt entitled "Disclosure of Secrets", whose penalty is 6 months imprisonment and a fine not exceeding four hundred thousand Lebanese pounds.

Section 2: Punishment of Individuals Causing Damage Due to Exposing Corruption

Law No. 83/2018 introduced a new crime to punish individuals causing job damage, according to its concept specified in Article 7/a, which was presented in the foregoing, to the whistleblower, his family members, his employees, experts, and witnesses. It also tightened the penalties for crimes stated in the Penal Code and other applicable laws if the damage is outside the job framework.

Paragraph 1- Punishment for Causing Job Damage

Article 11/a of the aforementioned law states that “every individual who inflicts a job damage to the whistleblower or to one of the individuals mentioned in Article 10 (It should have been Article 9 since it mentioned the whistleblower’s family members, employees, experts, and witnesses, while Article 10 did not imply any individuals other than the whistleblower) shall be punished with a fine varying between ten million Lebanese pounds and one hundred million Lebanese pounds”.

The legislator considered the herein new crime to impose penal protection on the whistleblower and the abovementioned individuals to spare them from any damage that they may suffer within the job framework, and to compensate them for being harmed by this crime, in accordance with the general principles of compensation stipulated in the Code of Criminal Procedures, in addition to the other compensations that they are entitled to according to the special provisions that govern their employment relationship with the Administration, in case they work in the public sector, and those that govern their relationship with the employer when their relationship is subject to the Labor Law provisions.

Paragraph 2 - Punishment for Causing Damage Outside the Job Framework

Article 11/b of Law No. 83/2018 states that “if the damage is outside the job framework, the penal provisions related to the specific acts stipulated in the laws in force shall be applied, provided that they shall be tightened from one third to one half because of their connection to corruption exposure.”

By virtue of the aforementioned text which includes an aggravating reason for the penalty, if a crime is committed against the whistleblower, or the abovementioned individuals, outside the job framework, such as being beaten or threatened due to the corruption exposure, the perpetrator shall be prosecuted for the offense of beating or threatening in accordance with the Penal Code and the penalties stipulated in the criminal text of each act shall be tightened from one third to one half.

Section 3: The Whistleblower's Benefit from Exculpating and Mitigating Excuses

The Exculpating Excuses (les excuses absolutoires) are determined by the law exclusively and lead to an exemption from punishment despite the fact that all the elements of the crime and the conditions for responsibility remain available, whereas the Mitigating Excuses (les excuses atténuantes) are cases determined by the legislator also exclusively, in which the judge is committed to reduce the penalty stipulated in the criminal text in accordance with the rules specified by the law²⁰.

Paragraph 1- Conditions for Benefiting from the Exculpating Excuse

By virtue of Article 10/A of Law No. 83/2018, the whistleblower who commits a criminal act of corruption or other illegal practices can benefit from the exculpating excuse if the following conditions are met collectively:

- The whistleblower initiates by himself to submit the disclosure.
- The initiative is taken before the National Anti-Corruption Commission begins any investigations or inquisitions, before the judicial authorities begin any investigations or inquisitions or prosecutions, and before the administrative authorities conduct any administrative or behavioral investigations.
- The disclosure leads to corruption exposure.
- The State regains the rights accrued as a result of the disclosed corruption acts.

It is necessary to note that if the aforementioned conditions are met, the whistleblower shall benefit from exemption from both penal punishment and disciplinary punishment, in accordance with Article 10/A.

Paragraph 2: Conditions for Benefiting from the Mitigating Excuse

By virtue of Article 10/b of the herein law, the whistleblower can benefit from the mitigating excuse if he "submits the disclosure post the start of the investigations or inquisitions or prosecutions and prior to the issuance of any judicial or disciplinary judgment or decision."

In this regard, the following question arises: What if the disclosure is submitted after the

²⁰Mahmoud Najib Hosni, Explanation of the Penal Code, General Section, Volume Two, Third Edition, El Halabi Right Publications, Beirut, year of publication not mentioned, p. 1089, No. 782, and p. 1092, No. 787. Ph. Nasr, General criminal law: comparative study between the two Lebanese and French Codes, Imprimerie St Paul, Jounieh, Lebanon, 1997, p. 56.

issuance of a presumptive or accusative decision and before the issuance of the judgement by the Court of First Instance?

To answer the herein question, the foregoing article stipulated that the disclosure shall be done prior to the issuance of any judgement or judicial decision, noting that the “judicial decision” term includes presumptive decision and indictment. Therefore, presenting the disclosure post the issuance of such decisions, even if it was done prior to the issuance of any sentence by the Court of First Instance, prevents the whistleblower from benefiting from the mitigating excuse.

In order to determine the extent of mitigation in case the conditions for benefiting from the mitigating excuse are met, Law No. 83/2018 refers to Article 251 of the Penal Code²¹.

Section 4: Inapplicability and Nullity of What Hampers the Application of Law No. 83/2018

Paragraph 1- Inapplicability

Article 17/A of Law No. 83/2018 states that “all legal and organizational provisions and administrative decisions that conflict with the provisions of this law or are not inconsistent with it shall not be applied.”

The herein text enhances the protection of whistleblowers and encourages them to submit their disclosures without the fear of being confronted with violations that may result from the application of inconsistent legal provisions or administrative decisions, especially those issued by their sequential superiors.

Paragraph 2: Nullity of Contractual Clauses Inconsistent with Law No. 83/2018

By virtue of Article 17/b of Law No. 83/2018, every clause in the employment contract or any other contract, which is inconsistent with the provisions of the herein law or is likely to impede its application shall be considered void.

The foregoing text spares the whistleblowers from the fear of the breach of the contract that binds them with the employer and the contractual responsibility that results from this breach. If the employment contract contains a clause according to which the employer requires the worker

²¹ Article 251 of the Penal Code: “When the law stipulates a mitigating excuse:

- If the act is a felony requiring death penalty, life imprisonment with hard labor, or life imprisonment, the penalty shall be converted to imprisonment for at least one year and seven years at most.
- If the act is one of the other felonies, the imprisonment shall be from six months to five years.
- If the act is a misdemeanor, the penalty shall not exceed six months.
- If the act is a violation, the judge may reduce the penalty to half of the offensive fine.

It is possible for the beneficiary to be given a mitigating excuse for the precautionary measures he would have been subjected to, except for isolation, had he been sentenced to the penalty stipulated by the law.”

not to provide information about corruption to any authority, the clause shall be void under the provisions of the aforementioned text. Therefore, the worker shall consider it as an inexistent clause, and shall disclose the corruption without being liable for any responsibility due to the violation of the contract's provisions.

The above-stated is consistent with the twelfth principle of the "International Principles for Whistleblower Legislation" which stipulates that any private ruling or agreement shall be invalid if it obstructs the whistleblower's rights or protection. For instance, the whistleblowers' rights override the oath of loyalty to the employer and the confidentiality and nondisclosure agreements²².

Section 5: Applying the Provisions of Article 387 of the Penal Code to the Slander Crime

Article 16 of Law No. 83/2018 states that "the suspect shall be acquitted in accordance with the provisions of Article 387 of the Penal Code, if the subject of slander is an act of corruption committed by an employee, according to its concept defined in Article 1 of the herein law and if its occurrence is proven to be true."

It is necessary to refer at the outset to the inaccuracy of the expression "the suspect shall be acquitted" contained in the text since the concept of "acquittal" does not apply to this case. The sentence of acquittal shall result from the lack of evidence that the defendant committed the crime or contributed to its commission, according to Article 197 CCP, whereas the case herein is not related to the evidence, but to a reason that justifies the defendant's act of slandering the public employee when the facts are proven to be true. The availability of such a reason leads to decriminalize an occurring act and not to remove the evidence for its occurrence. Therefore, as a result, the proceedings should be declared null against the defendant and not that he is acquitted, by virtue of Article 198 of the same law.

As for determining what is meant by proving that a public sector employee has committed a corruption act as a condition to discontinue proceedings for the slander crime, it is necessary to refer to the explanation given by the Criminal Court of Cassation for this "proof" in the course of its researching Article 387 of the Penal Code, since Article 16 of Law 83/ 2018 refers to it; that is to establish evidence that the facts, which are alleged to be defamatory, "are not mere lies or fabrication."²³

This interpretation adopted by the Court of Cassation leads to the expansion of the freedom of criticizing the work of the public sector employee, which is consistent with the purpose for which the text of Article 387 of the Penal Code was legislated and activates the means of its implementation. Noting

²² Transparency International, International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest: "12. Preservation of rights – any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights shall override employee "loyalty" oaths and confidentiality/nondisclosure agreements ("gag orders")."

²³Criminal Court of Cassation, Chamber 3, No. 87, dated 3/24/2010, issued in Cassation, Penal Decisions, 2010, p. 75, No. 5.

that contradicting the aforementioned interpretation and requiring the decisive evidence of facts, as a condition for the defendant to benefit from the result of this text, can put the defendant in a position of litigation with the public sector employee since the rules of evidence require the presentation of decisive facts in order for the plaintiff to prove the allegations he made against his opponent, which does not apply to the present case where there is no litigation between the defendant and the public employee, but a benefit of the first party from a constitutionally enshrined right to shed light and criticize the work of the second party in relation to his work in the public sector.²⁴

This approach is also reinforced by the fact that Article 33 of the United Nations Convention against Corruption requires protection of any individual who reports corruption “in good faith and on reasonable grounds”, which means that protection is not conditional on decisive evidence of the whistleblower’s statement, but rather on having good faith, not fabricating the facts, and possessing primary data indicating that the disclosure may be valid.

In this regard, Article 6/1/a of the EU Directive No. 1937/2019 uses the following wording: “reasonable grounds” to believe that the information on breaches reported was true at the time of reporting.

It shall be noted that Transparency International considers in the fifth principle of the “International Principles for Whistleblower Legislation” that Protection extends to those who make inaccurate disclosures made in honest error and should be in effect while the accuracy of disclosure is being assessed.²⁵

The Urgent Matters Judge in Beirut in one of his decisions tackled the link between the public interest that benefits from shedding the light on any aspect of corruption in the public sector on the one hand, and the preservation of reputation and the sanctity of personal life on the other hand. The decision prioritizes corruption exposure over the right to preserve reputation when it comes to corruption disclosure and misuse of public power²⁶. Therefore, it meets with the discriminatory decision referred to above that states the following: “ In cases of public affairs and the preservation of public finances and integrity in the management of public utilities, the employee shall not invoke his reputation and the damage that he may suffer upon disclosure for valid reasons related to the job without the aim of undermining the employee on a personal level.

This approach coincides with the orientation of the Council of Europe which considers whistleblowing a fundamental aspect of freedom of expression and freedom of conscience and

²⁴Ziad Mekanna, “Freedom of Expression in Protection of the Criminal Court,” Al-Adl, Issue 1, 2019, p. 13.

²⁵International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, p. 5: ‘5. Threshold for whistleblower protection: “reasonable belief of wrongdoing” – protection shall be granted for disclosures made with a reasonable belief that the information is true at the time it is disclosed. Protection extends to those who make inaccurate disclosures made in honest error and should be in effect while the accuracy of a disclosure is being assessed’.

²⁶Urgent Matters Judge in Beirut (Jad Maalouf), dated 26/11/2014, referred to in Nizar Saghih’s article entitled: “Freedom of Expression in Lebanon Exposing Corruption in Recent Judicial Decisions or: When the Judiciary Prioritized the Public Interest Over Considerations of Personal Dignity.” Website of The Legal Agenda, 13/1/2015.

is important in the fight against corruption and tackling gross mismanagement in the public and private sectors²⁷. It also complies with the jurisprudence of the European Court of Human Rights that considers freedom of expression, including the dissemination of information, as one of the main pillars of a democratic society, and it must enjoy an advanced level of protection in matters of public interest, such as public health and the environment²⁸.

²⁷Council of Europe, Protection of whistleblowers, Recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum, p. 13, n° 1: “The Council of Europe recognizes the value of whistleblowing in deterring and preventing wrongdoing and strengthening democratic accountability and transparency. Whistleblowing is a fundamental aspect of freedom of expression and freedom of conscience and is important in the fight against corruption and tackling gross mismanagement in the public and private sectors”.

²⁸ECHR, 4th section, 15 Feb. 2005, application no. 68416/01, Steel and Morris v. United Kingdom, <https://hudoc.echr.coe.int/fre?i=001-68228>. ECHR 25 August 1998, case no. 59/1997/843/1049, Hertel c. Switzerland, <https://hudoc.echr.coe.int/eng?i=001-62778>.

Chapter 3 : Incentives

Law No. 83/2018 singled out whistleblowers with incentives to encourage them to reveal the information they possess. In the following, we will discuss what these incentives are (Part 1 paragraph) and the principles for considering them (Part 2).

Part 1: Explanation of Incentives

The foregoing incentives are rewards and assistance that the National Anti-Corruption Commission has been entrusted with the decision to grant them.

The reward is an amount of money that shall be allocated to the whistleblower in return for exposing corruption, and the assistance is an amount of money that shall be given to the whistleblower in exchange for the material and physical damage caused to him as a result of the exposure.

According to Article 15/c, in order to deserve the reward and assistance, the whistleblower shall not be involved in any way in the corruption subject of the disclosure. Furthermore, according to Article 14/a/1, the disclosure shall lead to the administration obtaining sums or material gains, such as collecting taxes or recovering embezzled money. Finally, the disclosure shall spare the administration a material loss or damage, such as when detecting corruption while studying a tax file to calculate the tax on one of the taxpayers.

Article 14/b sets the maximum value of the reward or assistance at five percent of the value of the amounts collected or the material gains achieved by the administration, or the loss or damage that the disclosure led to the avoidance of their occurrence. In the event that it is not possible to evaluate the value of the disclosure's financial return, the Authority shall rely on its importance to evaluate the reward and assistance, provided that the value of each of them shall not exceed fifty times the minimum wage.

In the event that the authority decides to assist the whistleblower as a result of the damage caused to him, the state may, after paying the value of the assistance, refer to the cause of the damage to recover what was paid and can also sue the guarantor of the cause of the damage for this purpose whenever the conditions for this claim are met.

In this regard, it shall be noted that the "International Principles for Whistleblower Legislation" do not limit rewards to monetary sums, but rather consider in the twenty-third principle that the rewards systems also include employment promotion²⁹.

²⁹ Transparency International, International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest, p. 9.

Part 2: Principles of Considering Incentives

The National Anti-Corruption Commission is exclusively concerned with granting whistleblowers rewards and assistance. However, if the whistleblower submits his disclosure before the competent Public Prosecution pursuant to the amendment made in 2020, his rights related to incentives remain reserved provided that he shall request its approval before the mentioned Commission.

The value of rewards and financial aid is paid from a special account for the balance of the Ministry of Finance, which Article 13 of Law No. 83/2018 required to open for this purpose. Noting that the decisions of the National Anti-Corruption Commission that allocate rewards or assistance to whistleblowers shall be enforced and conveyed to the Minister of Finance with the aim of disbursing the prescribed amounts for the benefit of the interested parties.

Despite the importance of this account for the applicability of the provisions related to rewards and assistance, it had not been opened yet until the date of preparing this manual, which practically leads to impeding the implementation of the aforementioned provisions and therefore negatively reflects on an essential aspect of the herein law.

Chapter 4: Encouragement to Exposing Corruption

It is crucial to emphasize at the outset that exposing corruption is a high-risk activity³⁰ (une activité à haut risque) and therefore, expectations on citizens' spontaneous disclosure of information on corruption cases to the concerned authorities shall not be high.

In addition, it shall not always be assumed that someone who has information on corruption knows how to submit it or the legal consequences that may result from the exposure. Furthermore, in the case of knowledge, there is a fear that the procedures of disclosure will be difficult to conduct.

It shall also be kept in mind that the trust of the information holder in the authorities he will provide the information to plays a major role in taking his decision to disclose.

From this point of view, the authorities concerned with receiving corruption disclosures shall enhance citizens' trust in them (Part 1), inform them of the legal provisions related to exposing corruption (Part 2), and facilitate the disclosure process (Part 3).

Part 1: Enhancing Citizens' Trust in the Bodies Concerned with Receiving Corruption Disclosures

Citizens' trust in the bodies concerned with receiving corruption disclosures is the cornerstone of the success of any legislation related to corruption disclosure, noting that the responsibility to foster this trust falls upon the herein bodies.

The most important factor in building this trust is transparency, meaning that the whistleblower shall be allowed to check the procedures related to his disclosure and to be provided with any subsequent clarifications related to it. It is not logical to ask citizens to be partners in the anti-corruption process with the risks that this may entail, and then consider them not concerned with what their disclosures will lead to.

In this regard, Article 13/1 of the United Nations Convention Against Corruption requires each State party to take appropriate measures to encourage the involvement of the society members in fighting against corruption, and among these measures is "encouraging transparency in decision-making processes and encouraging people's contribution to it."

In its "International Principles for Whistleblower Legislation", Transparency International drew attention to the importance of maintaining transparency in the relationship between

³⁰P. Adam, art. cit., n° 237.

the relevant bodies and citizens and involving them in the procedures and considers that whistleblowers also have the right to be informed of the outcome of any investigation or finding and to review and comment on any results³¹.

Transparency International also requires the concerned authorities to publish easily accessible reports that include the number of disclosures they have received, the processing time, and the results they ended up with³².

In addition, the procedures of the concerned bodies shall be effective, otherwise, the citizens' trust in them will be undermined, which will negatively affect their desire to disclose the information they have before them.

The main element for the effectiveness of the herein bodies is their independence, which shall be enshrined in the first place in legal texts because it is a right and a guarantee for citizens, and then in practice. As long as corruption is a criminal act, regardless of the criminal description that it may take in each case, disclosure is supposed to lead to criminal prosecution. Therefore, the independence of the judicial authority that will undertake this prosecution is crucial to earn the citizens' trust, so that they become interested or even committed to participate in its anti-corruption duties.

Part 2: Informing Citizens of the Legal Provisions Related to Corruption Exposure

It is reasonable to assume that citizens are not familiar with the legal details related to corruption exposure, and a person shall not be considered exaggerating if he says that many professional jurists are not sufficiently familiar with some private laws that are not directly related to their daily work, including the Whistleblower Protection Act.

From this standpoint, the role of the bodies concerned with receiving corruption disclosures emerges in informing citizens of the legal provisions related to corruption exposure, especially in terms of the protection and incentives they are provided with, as well as raising their awareness about the dangers of corruption, and the positive results achieved in the public interest after combating it.

Nowadays, the ease of communication provided by social media without any significant cost greatly facilitates the tasks of the bodies concerned in this regard. The herein bodies shall be

³¹ Principle 22 of the "International Principles of Whistleblower Protection Law", referred to earlier.

³² Principle 25 of the aforementioned principles. Also see on the importance of informing citizens about anti-corruption measures: Article 27/4 of the EU Guidelines, referred to earlier.

fully convinced that to achieve success in their work, they must seek people's attention instead of waiting for them to come.

It is also possible to seek the assistance of specialized associations and volunteers wishing to participate in such works. They are usually university students who have advanced ideas in this field and a desire to implement them to improve their societies. Therefore, their activity can be integrated with the relevant official bodies' activity under their supervision, which saves them the trouble of handling these matters on their own, knowing that they do not have the specialized means for communicating with citizens in most cases, and also saves them from bearing the cost of contracting with specialists for this purpose.

Part 3: Facilitating the Corruption Disclosure Process

Facilitating the process of corruption disclosure plays a key role in encouraging citizens to disclose their information and complements the purpose of introducing them to the bodies concerned with receiving disclosures.

Article 13/2 of the United Nations Convention Against Corruption requires Member States to provide means of communication with the aforementioned bodies in order to inform them of corruption cases. In this regard, principle 18 of the International Principles for Whistleblower Legislation also stipulates that a wide range of communication channels and means shall be available for the submission of disclosures. Also included in this framework is the third article of the Minister of Justice Decision No. 65/1 dated 9/10/2020, according to which a mobile hotline has been allocated to the office tasked with receiving the whistleblowers' calls.

For instance, disclosure forms can be sent to the addresses of citizens, upon their request, in a confidential manner, making it easier for them to fill them out with the information they have according to the imposed rules, and to return them free of charge in the same way to the concerned authority. A form can also be placed on the website of the relevant authorities, where citizens can access it and fill it with their information along with other legally necessary details.

It shall be noted that communication with the herein bodies shall also be available on a permanent basis using modern means of communication, and not be limited to the personal presence only during the official working hours in public administrations.

Despite the facilities that official bodies can adopt, the citizen may refrain from resorting to them for several personal reasons, while he does not mind going to civil society associations or a media outlet and providing them with the information he has.

In this regard, principles 17 and 19 of the “International Principles for Whistleblower Legislation” enshrine the right of whistleblowers to protection in certain cases in which they present their disclosures to “external parties” such as the media and civil society organizations.

It is crucial to note that in the field of international criminal justice, the cooperation between the relevant bodies and civil society organizations has been clearly mentioned. For instance, by virtue of Article 15, The Rome Statute of the International Criminal Court³³ allows the Prosecutor to seek information from non-governmental organizations³⁴. Furthermore, he may rely on the reports of civil society organizations concerned with defending human rights and on press reports to request an arrest warrant for a person, based on Article 58 (1) of the aforementioned Statute³⁵. In addition, Article 54(3)(d) gives the Public Prosecutor wide options in terms of the parties with whom he can conclude cooperation agreements, and lists among them “a person”, which has been interpreted to include moral persons, such as non-governmental organizations (NGOs)³⁶.

The foregoing shows the essential role that civil society organizations and the media play, at the level of international justice, in supporting the prosecution of grave human rights violations.

This shall be emulated at the national level, specifically in our current subject, as it is very useful in the process of gathering information related to corruption. Noting that the legal framework that regulates the work of the National Anti-Corruption Commission permits the creation of a kind of cooperation in the mentioned field, as Article 17/1 of the Law on Combating Corruption in the Public Sector and Establishing a National Anti-Corruption Commission states that the herein Commission “ can request from any Lebanese or foreign body to provide it with documents or information that it deems useful for the proper exercise of its duties”, provided that the expression “ any party” includes civil society organizations and media. Furthermore, Article 18/d of the same law also states that the herein Commission “shall exercise its functions within the framework of the principles of good governance and can cooperate with several bodies, including civil society bodies, private sector, and media.”

With regard to Public Prosecutions, they can find the legal basis for cooperation referred to in their mission stipulated in Article 24/CCP for investigating crimes, as well as in the means of inspecting crimes specified in Article 25 of the same law, especially clause (e), which includes “any lawful means that allows them to obtain information about the crime.”

³³ Adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998 and entered into force on July 1, 2002. Lebanon has not acceded to this Statute yet. This court specializes in prosecuting “the most serious crimes of concern to the international community as a whole”, namely genocide, crimes against humanity, war crimes and the crime of aggression (Article 5 of the aforementioned Statute).

³⁴ W. A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd ed., Oxford University Press, 2016, p. 402.

³⁵ S. Sana, “Article 58. Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear”, in *Rome Statute of the International Criminal Court: Commentary article by article*, edited by J Fernandez X. Pacreau and M. Ubéda-Saillard, 2nd ed., A. Pedone, 2019, p. 1614.

³⁶ Ziad Mekanna, “Article 54: Duties and Powers of the Prosecutor in Relation to Investigations,” in *Dolly Hamad and Ziad Mekanna, International Criminal Court: Explanation of the Rome Statute in Order of Articles, Part One, First Edition*, Modern Book Foundation, Lebanon, 2022, p. 884, No. 22.C. Safferling, *International Criminal Procedure*, Oxford University Press, 2012, p. 268.

Conclusion

Since citizens' corruption exposure constitutes the last line of defense for the rule of law when official bodies are unable to monitor, and a vital source for the public treasury by avoiding its losses and enabling it to get the illegally obtained funds back³⁷, the effective protection of whistleblowers has become one of the devoted constants at the international level.

In this regard, Law No. 83/2018 enshrines protection for whistleblowers in different means, whether inside or outside the job framework and motivates them to submit disclosures by allocating rewards and assistance, which conforms, in theory, with the requirements of the United Nations Convention against Corruption.

However, the issue lies in the application process where the actual evaluation of any law in general and of the aforementioned law, in particular, can be assessed, as laws are intended to combat a scourge that has struck the foundations of society on more than one level.

It is no secret to the objective observer that nearly four years after the issuance of the herein law, no significant progress has been made in encouraging information holders to disclose it before the competent authorities. Even the amendment that was made in 2020 with the aim of avoiding the problems resulting from the failure to form the National Anti-Corruption Commission, at the time, did not achieve any significant results.

Now, after the formation of the National Anti-Corruption Commission, it is expected to start exercising its legal functions, including its powers under Law No. 83/2018. In conjunction with that, the launch of the "Whistleblowers Reception Office" following the Discriminatory Public Prosecution, shall activate the amendment of 2020. Furthermore, the experience of the herein office should be later extended to all the public prosecutions as they are all specialized in implementing the provisions of the aforementioned law. Eventually, this will lead to easing the citizens' burden of heading to Beirut, as well as relieving the pressure of working with only one office.

On the other hand, the aforementioned Commission and Office must disseminate the culture of disclosing corruption and inform citizens of their rights in case of disclosure. They are not supposed to be familiar with the details of these rights, however, they shall be briefed about them in a simplified manner and allowed to inquire about them by contacting the relevant authorities if they wish to do so. They shall also be informed of the dangers of false disclosures in terms of the criminal and civil liability that they owe to maintain the purpose of disclosures so that they do not become a source of slander against people, and to avoid exhausting the concerned authorities in following them up to no avail.

³⁷N.M. Meyer, "The right to alert in perspective: 50 years of debates in the world", AJDA, n° 39, 24/11/2014, p. 2242, digital Dalloz.

In addition, the official bodies concerned in the aforementioned law should communicate with each other to agree on the best means of cooperation among them to implement the provisions of the law. They should conclude understandings with non-official bodies, within the frameworks permitted by the laws in force, to benefit from the activity and expertise of these latter bodies.

It is also necessary to expedite the opening of the account allocated for rewards and aids in the balance of the Ministry of Finance, as required by Article 13 of Law No. 83/2018, in order to implement the decisions of the National Anti-Corruption Commission on granting rewards and aids.

On the level of legislation, the law on the independence of the judiciary shall be enforced quickly because of its impact on enhancing citizens' trust in the judicial authority handling the prosecution process based on their disclosures.

As a subsequent step, the amendment of Law No. 83/2018 shall be studied to expand the circle of protection and avoid any loopholes that may result from its application. For example, protection can be extended to unpaid volunteers³⁸, persons wishing to apply for employment, and retired employees, and a reason can be created to justify the whistleblower's act when it constitutes a violation of criminal texts punishable for divulging secrets. It is also possible to discuss enshrining a right for whistleblowers to get free specialized legal assistance, as revenge against them may take the form of arbitrary legal prosecutions, which means they would incur the expenses of defense that they may be unable to bear. In all cases, they shall not be charged with any such expenses as they result from the whistleblower's contribution to achieving public interest represented in fighting corruption.

The study of the legal amendment should also focus on striking a balance between the provisions on the confidentiality of the whistleblower's identity and the principles of fair procedures. The amendment of 2020 was hastily drafted to address the problem of implementing Law No. 83/2021 in light of the failure to form the National Anti-Corruption Commission. Therefore, it appended the protection as added by the Law on the Punishment for the Crime of Trafficking in Persons³⁹, in this regard, to the Code of Criminal Procedure. Noting that, in a previous study, the many initial problems raised by the provisions related to witness protection under the aforementioned law have been explained in detail, in addition to the failure of these provisions to practically achieve any results after more than eleven years of their approval⁴⁰.

³⁸Directive (UE), n° 40.

³⁹Law No. 164 of 24/08/2011, the Punishment for the Crime of Trafficking in Persons, Official Gazette, Issue No. 40, dated 1/9/2011, p. 3267.

⁴⁰Review in detail about the problems of witness protection in the Law on the Punishment for the Crime of Trafficking in Persons: Ziad Mekanna, "The confidentiality of the identity of witnesses in Law No. 164/2011 between protection and justice," Justice, No. 3, 2020, pp. 1044-1052.

Furthermore, legislative amendments shall be studied with a scientific methodology with the participation of all the parties concerned with their application, in addition to civil society organizations and specialized academics⁴¹.

Finally, the most important remains to convince citizens that their disclosures will be studied seriously and followed up within a reasonable period in order to convict those who are proven to be involved in corruption and oblige them to compensate for their acts. Despite that, a citizen shall not be blamed for his refusal to provide information to any official body as this may pose a danger to his safety and the safety of his family members and his job status if he is convinced beforehand that his disclosure will not achieve any result⁴².

⁴¹Principle 26 of the International Principles of Whistleblower Protection Law.

⁴²Ziad Mekanna, "Whistleblowers: A story and Incentives in Texts, and Problems in Application", the previous study, p. 259

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