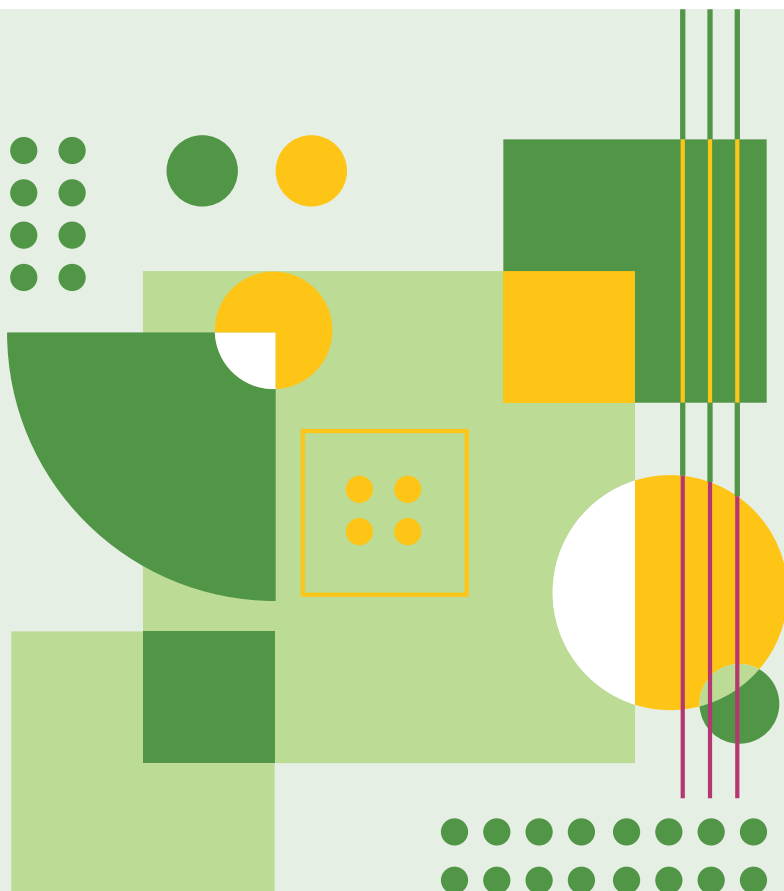




ALBANIAN HELSINKI COMMITTEE
KOMITETI SHQIPTAR I HELSINKIT

REFERRING TO THE FINDINGS FROM MONITORING
DURING JANUARY 2020 – JANUARY 2021

WHISTLEBLOWING CORRUPTION IN MUNICIPALITIES: CHALLENGES AND DIFFICULTIES IN THE IMPLEMENTATION OF LEGISLATION IN 10 OF THE COUNTRY'S MUNICIPALITIES



Tirana, February 2021



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“WHISTLEBLOWING CORRUPTION IN MUNICIPALITIES: CHALLENGES AND DIFFICULTIES IN THE IMPLEMENTATION OF LEGISLATION IN LOCAL GOVERNMENT UNITS”

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■ ABBREVIATIONS

AHC	Albanian Helsinki Committee
HIDAACI	High Inspectorate of Declaration and Audit of Assets and Conflict of Interest
RU	Responsible Unit
RA	Republic of Albania
DCM	Decision of Council of Ministers
APC	Administrative Procedures Code
EU	European Union
DIRECTIVE	EU DIRECTIVE 2019/1937 “On the protection of persons who report breaches of Union law” (Whistleblowers’ Protection Directive)

■ TERMINOLOGY

“Whistleblowing” is the reporting of information by the whistleblower to the responsible unit or the HIDAACI about suspected actions or practices of corruption, committed in the workplace in the public authority or private subject.

“Whistleblower” is the individual who applies or is in labor relations, or used to work in the public authority or private subject, independently from the nature of the labor relationship or its length, whether paid or not, who blows the whistle about a suspected action or practice of corruption.

“Whistleblowered” is one or more persons toward whom there is a whistleblowing, according to this law, with regard to a suspected action or practice of corruption.

“Suspected action or practice of corruption” is an action or inaction, facts or circumstances committed in an organization, which the whistleblower suspects in good faith, according to this law, that it may represent corruption.

“Internal whistleblowing” is the reporting by the whistleblower inside the organization’s responsible unit.

“External whistleblowing” is the reporting by the whistleblower at the HIDAACI.

“Responsible unit” is the special body, assigned within the public authority or private subject, comprised of one or more employees of the organization and tasked with the duty of reviewing the administrative investigation of whistleblowing and the review of the requirement to protect the whistleblower according to the prescriptions of this law.

“Law no. 60/2016” is Law no. 60/2016 “On whistleblowing and the protection of whistleblowers”

“Law no. 139/2015” is the Law on “Local self-government.”

■ INTRODUCTION

The Albanian Helsinki Committee (AHC), pursuant to its mission for the promotion and respect for human rights and strengthening of the rule of law, has undertaken through the years various initiatives to monitor the implementation of legislation and has contributed consistently to giving relevant recommendations for the improvement of their effective implementation.

Through the approval of Law no. 60/2016 “On whistleblowing and the protection of whistleblowers” and relevant by-laws, Albania has increased its efforts to report and punish corruption in the country, in accordance also with recommendations of international bodies such as the European Union, in order to increase the responsibility and transparency of institutions and increase citizens’ trust in these institutions.

Since January 2020, pursuant to the implementation of the project “Empowering local government to implement the Law on Whistleblowers,” a grant supported by the ‘Civil Society programme for Albania and Kosovo’, financed by the Norwegian Ministry of Foreign Affairs and managed by Kosovar Civil Society Foundation (KCSF) in partnership with Partners Albania for Change and Development (PA), AHC monitored the implementation of law no. 60/2016 “On whistleblowing and the protection of whistleblowers” in 10 municipalities of the country.

The target of monitoring of this initiative has been the activity of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI), and 10 Municipalities, namely:

- | | |
|-----------------------------|-------------------------|
| 1. Durrës Municipality | 6. Kukës Municipality |
| 2. Dibër Municipality | 7. Lezhë Municipality |
| 3. Elbasan Municipality | 8. Shkodër Municipality |
| 4. Gjirokastër Municipality | 9. Tirana Municipality |
| 5. Korçë Municipality | 10. Vlorë Municipality |

Referring to the findings from monitoring
during January 2020 – January 2021

AHC's initiative follows the evaluation of implementation of law no. 60/2016 first conducted in the central government, namely in 11 Ministries during the period November 2018 – November 2019. Alongside monitoring the implementation of legislation on whistleblowing, AHC has had as its goal also to raise awareness and knowledge of 163 employees in local government units, contributing somewhat to the fight against corruption in local government in Albania.

When still a draft, this report was part of written consultations with the 10 monitored municipalities and the HIDAACI, as well as during a special consulting online session on January 14, 2021. Responding to the request to submit comments and suggestions in writing about the contents of the report, HIDAACI and 4 municipalities responded positively (namely the Municipalities of Tirana, Shkodra, Lezha, and Korça). As a function of mutual constructive cooperation with the monitored institutions, but also in keeping with the internal and external principle of AHC's independence, the report reflects that feedback that the project implementation staff has deemed as valid. Every view, position or opinion different from them is the full responsibility of the implementing organization, AHC.

AHC takes this opportunity to thank all stakeholders who contributed to the compilation of this research report, especially the chief Inspector of HIDAACI and the responsible staff of this independent institution, the mayors and responsible staff of the 10 municipalities mentioned above, the local coordinators/ correspondents of AHC, and the Ministry of Foreign Affairs of Norway, the Kosovar Civil Society Foundation (KCSF) and Partners Albania for Change and Development (PA), who made it possible to carry out this important initiative to address the main challenges and problems in this area and to contribute as much as possible to improving the rule of law in Albania.

CHAPTER I

■ EXECUTIVE SUMMARY OF THE MAIN FINDINGS

The legal framework on whistleblowing and the protection of whistleblowers is an important novelty both from a cultural standpoint but also in terms of legislation in our country. However, the implementation of this law in practice highlights an almost missing impact because the number of whistleblowing for corruption in the workplace remains very low and even those few instances of whistleblowing have not led to criminal convictions of the suspected persons after they have been referred by responsible mechanisms to the competent justice bodies.

In the context of the fight against corruption, getting acquainted with this piece of legislation is still a challenge for employees of the public administration, but also for employees of the private sector.

Law no. 60/2016 "On whistleblowing and the protection of whistleblowers" entered into force on June 23, 2016, while its legal effects began on October 1, 2016 for the state administration and on July 1, 2017, for private subjects. This law establishes the rules for whistleblowing a suspected corruption action or practice by whistleblowers in the public and private sector, mechanisms for the protection of whistleblowers, and obligations deriving for public authorities and private entities with regard to whistleblowing. In February 2020, AHC published a monitoring report on the effectiveness of the implementation of this law at the central level, by 11 ministries that are part of the executive.¹

Local government units, like all other links in the chain of the governance system, have a high risk of being affected by corruption. Aside from the mentality and cultural phenomenon at the local level, one inciting indicator is the continued access of citizens to these units.

Considering the familiarization with and effective implementation of law no. 60/2016 a very important component in the fight against corruption, about 1 year

1 [Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf \(ahc.org.al\)](#)

ago, AHC decided to expand this initiative to include 10 of the country's largest Municipalities.

Some of the main findings resulting from the one-year monitoring are as follows:

AHC finds that the implementation of law no. 60/2016 has been accompanied by delays in terms of the establishment of the RUs and the approval of special regulations in the 10 monitored municipalities. The approval of by-laws, such as CMD no. 816 of 16/11/2016, took place after two months of delay, creating a domino effect in the establishment and therefore the functioning of RUs.

Also, we have noticed delays in terms of the approval of regulations by the RUs, according to provisions of articles 13 paragraph 10 and 19 paragraph 8 of law no. 60/2016. Municipalities of Shkodra, Dibra, and Vlora have yet to approve the regulations, while at least one of them said that one of the causes is the lack of instructions from HIDAACI.

In 2017, Tirana Municipality appears to have seen the first and only case of whistleblowing in these 4 years since the approval of law no. 60/2016. This case was whistleblown through the internal mechanism, which was subjected to the process of administrative investigation by the RU established in this Municipality. In respect of the principle of confidentiality, AHC notes that it found procedural irregularities in the treatment of this case, which have been analyzed fully in the rest of this report.

No whistleblowing cases were found in the other 9 Municipalities, while the level of information and awareness of employees about the provisions and guarantees offered by law no. 60/2016 remains at low levels.

The entry into force of Directive 2019/1937 "On the protection of persons who report breaches of Union law," approved by the European Parliament and the Council of Europe, dictates in the future the taking of measures for the revision of law no. 60/2016 and its rapprochement with the prescriptions of this Directive with regard to defining concrete terminologies, subjects and scope of the implementation of the law, mechanisms and channels of reporting, the establishment and composition of the RUs and guaranteeing protection against retaliation.

Unlike our domestic legislation, the Directive envisages that anonymous whistleblowers, through internal, external channels or publicly, will enjoy the same protection as other whistleblowers, if at some time they are identified and they may be retaliated against. On the other hand, article 8 of law no. 60/2016

makes an opposite prescription than the Directive, envisaging that in case the whistleblower makes a public denunciation of the suspected corruption practice, he/she shall enjoy the right to protection according to law, until the moment when the whistleblowing becomes public. Failure to guarantee protection depending on reporting in public particularly harms employees of the media sector who, in not so few cases, have publicly whistleblown acts of a corruptive nature or violations of public interest, and have felt threatened due to the exercise of their profession.

Based on correspondence with the monitored Municipalities, AHC notices that the establishment of RUs in their subordinate institutions that have over 80 employees, has not been carried out in most of them. Concretely, the Municipalities of Durrës, Shkodër and Lezha, Lezhë have functional RUs in some of the subordinate institutions while the other 7 Municipalities do not have a RU at the subordinate institutions that have more than 80 employees.

The difficulties and challenges of RU members in the 10 monitored Municipalities with regard to implementation of legislation on whistleblowers appear to be similar as those reflected earlier by AHC in the monitoring of the 11 Ministries, or more concretely:

- a) the need to have higher levels of awareness and strengthening of their capacities with regard to familiarization with and better implementation of law no.60/2016;
- b) the need to have instruction manuals/policies that could assist RU member in order to understand and effectively implement the legal framework in force;
- c) the considerable workload in playing their role as auditors and the lack of additional financial training to match the new tasks they have been entrusted in the context of implementation of this law;
- d) raising the awareness of employees on this law and its instruments should not be based on short-term and sporadic campaigns (or limited in time), but in our opinion should be realized in a sustainable and dynamic manner;
- e) the need to further strengthen mutual and interagency cooperation between the RUs and HIDAACI and to create sustainable instruments that enable HIDAACI to carry out systematic oversight of the RUs.

The causes for the lack of whistleblowing by the RUs at Municipalities remain the same as those encountered earlier by AHC in the monitoring of the 11 Ministries. Among these, we may mention:

- a) the relatively low level of awareness of Municipality employees and the lack of trust they have in whistleblowing mechanisms (efficiency and impartiality);
- b) whistleblowing is a new cultural phenomenon in the Albanian context that protects public interest and democracy in the country, but is often mistaken by employees with phenomena that have taken place during the totalitarian regime;
- c) fear of retaliation among employees in case they blow the whistle, independent from legal guarantees that protect employees from these acts according to law no. 60/2016.

As one of the key independent institutions created by law, HIDAACI has the obligation to submit to the Assembly of the Republic of Albania the annual reports on its activity, with a special section dedicated to the implementation of law no. 60/2016. In response to that report, the Assembly of Albania approves a resolution on the annual activity of HIDAACI, which reflects its evaluation and relevant recommendations.

In the resolution “On the Evaluation of the Activity of HIDAACI for 2019,”² the Assembly of Albania highlights progress of HIDAACI in carrying out training and informative activities to increase the capacities of the responsible units for the implementation of the law as well as the fulfillment of previous recommendations of the Assembly for carrying out an inclusive evaluation on necessary interventions into law no. 60/2016.

On the other hand, the Assembly of Albania, following the first monitoring conducted by AHC in 11 Ministries on the implementation of law no. 60/2016, has reflected in the resolution the AHC recommendations on the increase of HIDAACI’s engagement with regard to implementation of the law, requesting it to present in annual activity reports as much processed data as possible on whistleblowing, to include the number of reported cases, results of cases, the level of awareness and trust that the public has in this mechanism, as well as data on the procedure for the review of cases and the implementation of mechanisms for protection against retaliation. AHC considers that the processing of data in a more complete manner in these annual reports would make it possible to provide a clearer overview on the results of the law and the encouragement of potential whistleblowers.³

2 <http://www.ildkpi.al/wp-content/uploads/2020/06/Rezoluta-e-Kuvendit-Viti-2019.pdf>

3 https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf

Aside from recommendations that AHC has reflected at the conclusion of this monitoring report, AHC recognizes and appreciates the engagement, achievements, and workload of HIDAACI as an institution that has been tasked with important competences that carry a heavy load for the implementation of several laws at the same time.

However, AHC further encourages HIDAACI that, in parallel with the implementation of competences envisaged in law no. 60/2016, it also enhance cooperation (and establish new bridges of cooperation) with civil society actors, professionals of law, representatives of academia, of international organizations accredited to our country, in initiatives that seek to increase the impact of knowing and effectively implementing law no. 60/2016 “On whistleblowing and the protection of whistleblowers” and the by-laws issued pursuant to it.



CHAPTER II

■ METHODOLOGY

2.1 Pursued methods and used instruments

Monitoring of the implementation of law no. 60/2016 was conducted by taking into consideration all legal acts and by-laws, as well as international standards (using the EU Directive as reference). The methodology of AHC's monitoring was conceived by seeking access to qualitative and quantitative data possessed by HIDAACI and the 10 Municipalities, based on guarantees envisaged in law no. 119/2014 "On the right to information."

AHC's primary focus for access to such data has been the one-year period during January 2020 and January 2021. However, the nature of data made available by monitored Municipalities and HIDAACI reflects the situation of prior years, since the approval of the law in June 2016. The period of data collection corresponds with the start and spread of the COVID-19 pandemic. Therefore, the means used to collect data has been mainly online, in keeping with the situation created by this pandemic and in accordance with government instructions on preventive measures in force.

To obtain and process such data, we used a series of quantitative and qualitative instruments, combined, as follows:

First, for drafting this monitoring report, we took into consideration data from official correspondence exchanged with the monitored institutions on the implementation of Law no. 60/2016. The "requests for information" that AHC submitted to these institutions sought mainly statistical information, respecting the principle of confidentiality, and not violating the personal data of potentially involved individuals.

Second, AHC conducted online meetings with representatives of Responsible Units and, through a questionnaire, was able to obtain data similar to those sought through official correspondence with the monitored institutions. The data

sought in these meetings have mainly to do with the fulfillment of legal obligations by the RUs as well as the difficulties and challenges they have encountered in understanding and implementing the law "On whistleblowing and the protection of whistleblowers."

Third, a very important source of qualitative data used in this report was the informative sessions conducted by AHC in collaboration with HIDAACI ONLINE. About 203 employees of different offices in each of the Municipalities that were monitored. Discussions and issues raised during these sessions contributed to employees' evaluation and understanding of the law and to the identification of some of the reasons that lead to a low level of use of the whistleblowing instrument in addressing suspected corrupt actions or practices in their workplaces.

Aiming to increase sensitization broadly to all employees of the respective Municipalities and encouraging potential whistleblowing cases among them, AHC conveyed electronically to RU members the informative brochure drafted in an online format as well as the legal framework and the file holding the relevant registers and forms.

Fourth, appreciating the increase of online communications between institutions and citizens, especially in view of the situation dictated by the COVID-19 pandemic, AHC has monitored also the official websites of 10 Municipalities, to highlight steps taken by these institutions in the context of transparency and accountability to employees and citizens in general, especially with regard to whistleblowing.

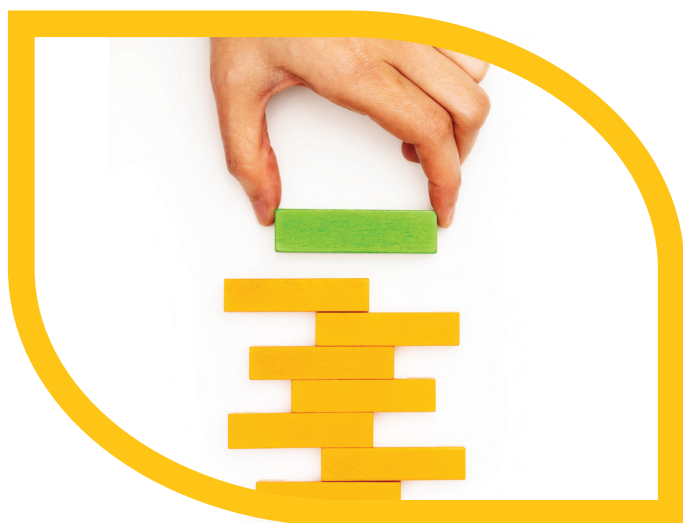
Lastly, data collected and processed by AHC were analyzed carefully in view of the monitoring that AHC conducted earlier in the 11 Ministries and taking into consideration a series of acts and official documents related to law no. 60/2016, as follows:

- DCM no. 816, dated 16.11.2016 "On the structure, criteria of selection and labor relations of employees of the Responsible Units in Public Authorities, pursuant to Law no. 60/2016";
- Instruction no. 1, dated 23.9.2016 "On the approval/determination of the structure, selection criteria, and training of employees of Responsible Units in private subjects;"
- Regulations "On administrative investigation of whistleblowing and protection of confidentiality at HIDAACI;"
- Regulations "On the administrative investigation of the whistleblower's request for protection from retaliation at HIDAACI;"

Referring to the findings from monitoring during January 2020 – January 2021

- Instruction no. 44, dated 31.08.2016 “On the conditions, criteria for processing and time of holding personal data.”
- Resolution of the Assembly of Albania “On the evaluation of the activity of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest;”
- EU Directive 2019/1937 of the European Parliament and Council on the protection of persons reporting breaches of Union law (Directive for Protection of Whistleblowers);
- Recommendation CM/Rec (2014)7 of the Committee of Ministers of the member states of the Council of Europe.

Also, data analysis included documents made available mainly by institutions that were the subject of monitoring, such as: internal regulations approved by municipalities pursuant to the law, as well as annual reports submitted to HIDAACI. HIDAACI’s activity was monitored continuously also by the analysis of annual reports submitted by it to the Assembly of Albania, mainly on the special section related to whistleblowing.



CHAPTER III

■ HARMONIZATION OF DOMESTIC LEGISLATION WITH EUROPEAN UNION LEGISLATION (EU ACQUIS COMMUNITAIRE)

3.1 Comparative overview of the harmonization of the legal framework on whistleblowing with EU Directive 2019/1937⁴

The approval of law no. 60/2016 “On whistleblowing and the protection of whistleblowers” came as a need for addressing measures envisaged in the recommendation for the fight against corruption and organized crime in the country, which is one of the 5 key priorities of the European Commission for opening negotiations for EU accession.⁵ This issue drew the attention of the European Commission on the country where Albania’s progress in this regard is often mentioned and, from the start, the approval of the legal mechanism of whistleblowing has been viewed as one more guarantee for the efficiency of the fight against corruption in Albania.⁶

On December 16, 2019, the European Union approved a Directive on the “Protection of persons reporting breaches of Union law” (Directive for the Protection of Whistleblowers). EU Member States have two years after the approval of the Directive to implement it in their domestic laws. Until this time, EU countries have had different levels of protection for whistleblowers, with countries such as Ireland having relatively strong laws and other countries, such as Cyprus, having no special law on whistleblowing.

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=en>

5 https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf

6 Progress Report of the European Commission, 2016 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

The Directive for the Protection of Whistleblowers reflects EU policies that seek to protect individuals who want to report suspected or wrong acts, both in the public sector and the private one. The Directive sets minimal requirements that Member States should envisage in their domestic systems with regard to the protection of whistleblowers. Furthermore, the Directive envisages that Member States should: envisage that all forms of retaliation against whistleblowers are stopped; the obligation for all legal persons with over 50 employees, both in the private sector and the public one, to approve and introduce reporting channels that preserve the confidentiality of the identity of whistleblowers; and lastly, establish competent responsible authorities for external whistleblowing and the follow-up of cases. EU Member States are obliged to transpose the Directive provisions in their national legislation by December 17, 2021.

Given that our country aspires to become a member of the European Union and in the context of the harmonization of our national legislation with the *EU acquis communautaire*, the need arises that in the near future, an assessment is conducted on the compatibility of law no. 60/2016 with European legislation, namely Directive 2019/1937 that sets the minimum standards that each of the Member States should fulfill to regulate whistleblowing in their national systems.

3.1.1 Scope of implementation

The peculiarity of Albanian law no. 60/2016 lies in the fact that it envisages very broadly the area of implementation of the law, seeking only “whistleblowing of **a suspected corruption act or practice**” and not envisaging concretely any wrongdoing or penal offense that may be considered as such. On the other hand, the scope of implementation of the Albanian law is seen as more limited compared to the scope of the Directive, which provides minimum definitions of the concrete areas it covers, envisaging that the whistleblowing may be done for violations of European law, with regard to public procurement, financial services, environmental protection, etc., as well as violations that affect the financial interests or common European market.

Per the above, AHC suggests the possibility of revising the law under the light of the scope of work of the Directive and to determine a list, non-exhaustive, of the penal offenses and wrongdoings that may be considered suspected corruptive acts or practices, in order to clarify the broad public as to what whistleblown offenses they get protection in the context of the law. Such a definition would also serve the members of responsible units or the HIDAACI in the administration and investigation of whistleblown cases.

3.1.2 The Concept of the “whistleblower”

The EU Directive envisages that the “whistleblower or reporting person” will be considered any person who reports or publicly denounces information about violations that occurred in the context of activity related to their work and who: **(i) has obtained information about a violation of EU legislation during his employment relationship; (ii) has reasonable causes to believe that the reported violation is true and falls under one of the policies covered by the Directive; (iii) reports the case through internal or external mechanisms or discloses it publicly.**

In this provision, as in our legislation, the Directive emphasizes the employment relationship that the reporting person or whistleblower should have. Nevertheless, compared to our law no. 60/2016, which envisages that the whistleblower may be an applicant for a job, in current employment relationship or in a previous employment relationship (paid or not), the Directive envisages a broader list of subjects that it applies to. Thus, aside from those envisaged in our legislation, a whistleblower may be even a person who holds the status of the self-employed, shareholder, and any other person who works under the supervision and direction of contractors, sub-contractors, or suppliers. Furthermore, the Directive provides broader protection to the categories of persons who enjoy protection from any form of retaliation. In Albanian legislation, protection from retaliation is limited and only offered to the whistleblower (Article 2, paragraph 7), while the Directive envisages measures for protection from retaliation apply, on a case by case basis, also to:

- A) facilitators (individuals who assist whistleblowers in the reporting process in a work-related context, and whose assistance should be confidential);
- B) third persons who are connected with the whistleblower and who could suffer retaliation in a work-related context, such as colleagues or relatives of the whistleblower;
- C) legal entities that the reporting persons own, work for, or are otherwise connected with in a work-related context.

Regarding the above, considering that the amendment of law no. 60/2016 comes as a need to precede harmonization with European legislation in the context of EU accession, AHC suggests that in the future, it is considered to expand the subjects benefiting protection from retaliation, aside from whistleblowers.⁷

⁷ Including facilitators, which in this case may be even the members of the responsible units assisting the person during the reporting process, as well as third persons connected with him, such as his/her colleagues, would lead to boosting a supportive and motivating spirit for reporting a higher number of suspected corruptive acts or practices

3.1.3 Anonymous whistleblowing and public whistleblowing

During the monitoring conducted earlier in the 11 Ministries, during the period 2018-2019, AHC highlighted problems encountered in practice with regard to the interpretation of legal provisions on anonymous whistleblowing. AHC considered that the anonymity mechanism, envisaged in the law, takes into consideration that the lack of knowledge of the identity of the whistleblower would encourage public officials to report suspected corrupt actions or practices in their workplace. A different interpretation of provisions for anonymous whistleblowing might discourage potential whistleblowers. Thus, AHC suggested that the HIDAACI and the responsible units should decide to accept anonymous reporting if *“it clearly states and argues the causes for the anonymity and the reported information secure a sufficient basis for the administrative investigation.”*⁸

During the monitoring of the implementation of law no. 60/2016 by local government units one year later, AHC notices a positive reflection that the interpretation of responsible institutions on anonymous whistleblowing coincides with AHC’s position on the concept of anonymous whistleblowing.

With regard to this important aspect, the Directive leaves it to the discretion of the Member States to regulate anonymous whistleblowing. Thus, Member States have the power to determine themselves whether entities in the public and private sector should accept and administer anonymous whistleblowing for the areas the Directive envisages. However, unlike our national legislation, the Directive *envisages that persons who make anonymous disclosures, through internal, external, or public channels shall enjoy the same protections as other whistleblowers, if they are subsequently identified and retaliated.* On the other hand, article 8 of law no. 60/2016 makes an opposite stipulation than the Directive, envisaging that if the whistleblower makes a public reporting of the suspected corrupt practice, he shall enjoy the right of protection according to law, *until the moment when the whistleblowing is made public.* Lastly, the EU Directive envisages that the public whistleblower qualifies for protection if the following conditions are met: (i) if he/she reported the violation through internal or external channels but no effective action was undertaken on the reporting; and (ii) he/she has reasonable confidence that the violation may represent a threat to public interest or that the external reporting may cause retaliation or has little probability of being effectively addressed due to the peculiarities of the case (e.g., in case of involvement or complicity in violation).

8 https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf

Public whistleblowing and the protection of whistleblowers who choose this path of reporting is also envisaged in Recommendation CM/REC (2014)7 of the Committee of Ministers of the Council of Europe. However, this document too highlights the criteria for benefiting protection. Concretely, paragraph 24 of the Recommendation envisages that *“if there is an internal reporting system and the whistleblower carries out the whistleblowing publicly, this fact is taken into consideration in the decision regarding the means or level of protection rendered to this whistleblower.”*

As may be seen, the EU Directive and the Recommendation of the Committee of Ministers, unlike our national legislation, envisage protection for the whistleblower even if he/she chooses to blow the whistle publicly. Not guaranteeing protection depending on public reporting has an adverse impact particularly on media workers who, in not so few cases, have reported precisely acts of a corruptive nature and have felt threatened due to their profession. **AHC suggests that in the spirit of these important international documents, a review is done on provisions on public whistleblowing, namely article 8 of law no. 60/2016, envisaging protection also in case of public whistleblowing, whether accompanied by conditions in keeping with the EU Directive⁹ or not.**

3.1.4 Channels of whistleblowing

Regarding the channels or mechanisms available to whistleblowers to report suspected corruptive acts or practices, our domestic legislation in principle is aligned with the EU Directive. As in law no. 60/2016, the Directive envisages 3 channels of reporting: (i) internal reporting, (ii) external and (iii) public disclosure, encouraging Member States of the European Union to promote more internal reporting, as a regulatory tool within the entity, as it would be more effective, faster, and preventive for similar practices in the future.

However, the table below presents the points of similarity and difference between channels for whistleblowing in our domestic legislation compared to the EU Directive.

9 Conditions such as: exhaustion of other channels of reporting, existence of the belief that reporting in other ways would not be efficient due to the involvement of the institution itself in the reported act, etc.

	Law no. 60/2016 and by-laws	EU Directive 2019/1937
No. of employees for creation of internal reporting structures	=<80 employees – public entities =<100 employees – private entities	Same standard for both entities = 50 employees
Responsible Unit (RU)	Part of the existing structure of the organization (two persons from the Auditing department or the HR department)	a) 1 (one) person or certain department for this purpose b) It may be realized by a third external party (unlike external whistleblowing)

The stipulation of the EU Directive to have a third party outside the organizational structure that may receive and address internal whistleblowing was suggested also by employees of the 11 Ministries and 10 Municipalities monitored by AHC. Such a structure is seen as more credible and more independent than existing structures for purposes of more impartial administrative investigations of whistleblown cases. Furthermore, problems resulting in the establishment of this structure within the internal auditing department create favorable grounds for addressing the other reporting channel proposed by the Directive, a certain person or department only for purposes of receiving and investigating whistleblowing cases. However, this would dictate the need for additional costs to cover the salaries of new employees or external structures that would address and investigate reported cases.

On the other hand, the Directive has envisaged some facilitating measures, specifically for Municipalities. Article 8 of the Directive gives the possibility to Member States to exempt from the obligation to establish responsible structures smaller Municipalities with less than 10,000 inhabitants or than 50 employees. Furthermore, it also leaves it at the discretion of Member States for the internal reporting mechanism to be divided among several Municipalities,¹⁰ or to be realized by joint authorities of Municipalities,¹¹ on the condition that this reporting channel is different and is not mistaken for external reporting mechanisms.

Considering that the solutions proposed in the EU Directive would contribute to effective implementation of the law and an increase in the number of reported case, AHC suggests that before harmonizing legislation in this regard,

¹⁰ That is, some or all Municipalities should have only one structure for reporting suspected corrupt actions.

¹¹ For instance, the Union of Municipalities or similar bodies.

responsible authorities¹² conduct an analysis of risks and needs for the adapting such structures according to standards proposed in the EU Directive to the Albanian context.

3.1.5 Protection from retaliation

The law no. 60/2016 envisages in article 8 the retaliating acts that a whistleblower is protected from. Compared to the Directive, our domestic law has a high level of compatibility with its provisions. However, our law has an advantage as it is not exhaustive of the types of retaliating acts, envisaging in letter g) of article 8 that *“the whistleblower is protected from other work-related forms of retaliation.”* Meanwhile, article 19 of the Directive envisages 15 retaliatory measures that should contain regulations that Member States should envisage. However, the EU Directive contains better minimum standards while it envisages the obligation of Member States for whistleblowers to have access to information on the procedures and protection they enjoy, have effective assistance before competent institutions involved during the provision of protection from retaliation, as well as legal assistance. Member States may envisage also financial assistance or psychological support for whistleblowers.

Based on paragraph 8 of article 19, law no. 60/2016 envisages: *“HIDAACI and responsible units, in keeping with instructions issued by HIDAACI, approve regulations on the procedure for the review of the whistleblower’s request for protection from retaliation.”* HIDAACI has approved Regulations on Protection from Retaliation. However, AHC encourages HIDAACI to guide the RUs and supervise them in the drafting of their regulations, envisaged in this provision. These Regulations should be similar to that approved and published by HIDAACI, or should adhere to some concrete principles and procedures that could have been reflected in an instructing manual.

¹² HIDAACI, Assembly of Albania, etc.

CHAPTER IV

■ IMPLEMENTATION OF LAW NO. 60/2016 BY LOCAL GOVERNMENT UNITS

4.1 The role of HIDAACI as a key institution for external whistleblowing, monitoring the implementation of the law, and sensitizing employees of the 10 Municipalities in the country

Monitoring of the implementation of the law and sensitization of the public on whistleblowing has been entrusted to HIDAACI, based on article 21, letters a) and e) of law no. 60/2016.

The RUs have the obligation to report on an annual basis to HIDAACI, based on article 22 of law no. 60/2016, which are submitted no later than January 15 of the following year. By letter no. 2262/1 prot., dated 25.06.2020 of HIDAACI, AHC was informed that *“based on the reports submitted by the 10 municipalities, it results that the annual reports were submitted to HIDAACI, but for the period 2017-2019, they were submitted after the deadline envisaged by article 22 of law no. 60/2016 by the Municipalities of Lezha, Vlora, Dibra, Shkodra, and Tirana.”*

The role of HIDAACI for the treatment and investigation of cases of external whistleblowing has been envisaged in articles 7, paragraph 3, and 11 of law no. 60/2016. Based on the monitoring conducted in the 10 Municipalities where the initiative was implemented, we found that HIDAACI has not been set into motion in any instance by potential whistleblowers, whether current employees or former employees of these Municipalities. Also, during this period, there was only 1 case of internal whistleblowing addressed by the Responsible Unit established at Tirana Municipality.¹³

13 Referring to letters no. prot. 22348, dated 07.07.2020 by the RU at Tirana Municipality and no. prot. 2262/1, dated 25.06.2020 issued by HIDAACI, it appears that the only case of whistleblowing was administered and investigated administratively by the RU, while it was reported to the HIDAACI in accordance with article 22, paragraph 1 of law no. 60/2016.

These statistics highlight the need to further strengthen the taking of initiatives proactively to sensitize employees, to strengthen their confidence in the independence, impartiality, and professionalism of the two channels of whistleblowing, both the RU and the HIDAACI.

RUs established at the 10 Municipalities under monitoring referred unanimously that the bridges of cooperation and interaction with HIDAACI need to be strengthened, without being limited to addressing the annual report. Communication by letters between these institutions, according to AHC, did not enable the exchange of ideas or brainstorming about the difficulties they may encounter in the identification, receipt, and treatment of whistleblowing cases and particularly on how to increase the trust of potential whistleblowers in referring concrete cases to them.

AHC encourages the further strengthening of HIDAACI's engagement, in a proactive manner, toward the evaluation and issuance of recommendations to RUs of all Municipalities in the country, for the implementation of law no. 60/2016, within reasonable legal deadlines.

Based on information from HIDAACI in letter no. 2262/1 prot., dated 25.06.2020, AHC was informed that Responsible Units at the 10 Municipalities under monitoring were established in accordance with the requirements of CMD no. 816, dated 16.11.2016 “On the structure, selection criteria, and employment relations of employees of responsible unit in public authorities, pursuant to law no. 60/2016.”

Referring to the involvement of RU members in trainings/informative sessions, based on official correspondence we had, it results that in the most part of Municipalities, there was a lack of consistency in providing accurate information on the year of engagement and the institution involved in conducting the session/training.¹⁴ **Based on information provided electronically, AHC notices with concern the lack of participation of RU members at Gjirakastra Municipality in**

14 E.g.: The RU at Shkodra Municipality, by letters no. 7190/1 prot., dated 15.06.2020 and 7190/2 prot., dated 08.07.2020, informs that it took part in only 1 1-day training conducted by HIDAACI in 2018, at the Albanian School for Public Administration, while the RU at Elbasan Municipality informed through letter no. 3040/1 prot. Dated 30.06.2020 that there were several training sessions without specifying a concrete date. Based on information conveyed by letter no. 2262/1 prot., dated 25.06.2020 of HIDAACI, we find that RU members participated and were informed about the legal framework on whistleblowing and protection of whistleblowers in the context of implementation of two projects funded by domestic and international donors (the Project “Implementation of legislation on whistleblowing and the protection of whistleblowers,” in collaboration with Partners Albania, and in the context of the implementation of the twinning ProJet, “Support for drafting, coordinating, and implementing policies against corruption,” a project between Austria, Germany, and Albania, funded by the EUO).

informative sessions/trainings, aside from the one realized by AHC.¹⁵

AHC recommends the HIDAACI to increase the number of trainings/informative sessions more periodically and more frequently, based also on the request conveyed by members of the RUs at the 10 monitored Municipalities. AHC views as insufficient 2 rounds of trainings 2 years apart from one another for achieving the sensitizing mission prescribed by law, which needs more pushes for familiarization, awareness, and encouragement among potential whistleblowers. This suggestion is also addressed taking into consideration the lack of whistleblowing, frequent changes in RU memberships and the changes affecting Municipality employees.

4.2 Implementation in practices of the law in 10 Municipalities of the country

4.2.1 Approval of by-laws for the implementation of the law in practice

A series of by-laws were planned for approval pursuant to the law “On whistleblowing and the protection of whistleblowers.” Article 24 of law no. 60/2016 envisages concretely the legal obligations of every institution in drafting and approving the necessary by-laws. During the evaluation, AHC found some delays in the approval of by-laws by central institutions, such as the Council of Ministers, HIDAACI, and 11 Ministries. What is the situation like in local government units?

Although 4 years have passed since the approval of the law, the situation in local self-government units with regard to the approval of by-laws indicates some problems that will be addressed hereafter. Of the 10 largest Municipalities of the country monitored by AHC, it results that none of them respected the legal deadline of 6 months since the entry into force of the law for approving special internal regulations on the procedure for reviewing administrative investigations of the whistleblowing and the mechanisms for protection of confidentiality. Even more problematic is the fact that some Municipalities are yet to approve the regulations in question. Correspondence with municipalities indicates that only 7 of them, namely the municipalities of Korçë, Durrës, Tiranë, Gjirokastër, Lezhë, and Kukës, fulfilled the legal obligation to approve relevant by-laws although more than two years after the prescribed deadline. Meanwhile, in three other

municipalities – Shkodra, Dibra, and Vlora – are yet to approve these by-laws. According to information in letter no. 10020 prot., dated 11.12.2020 by Elbasan Municipality, the regulations “On the administrative investigation of whistleblowing and protection of confidentiality in the Municipality of Elbasan,” there is no date and it has not been protocolled.

Regarding this issue, AHC possesses the information reflected above directly from the 10 monitored Municipalities. In spite of referrals by HIDAACI about discrepancies in some of the data that the Institution possesses, which may not be a responsibility of AHC but of the Municipalities that reported it, we believe that there is a need for systematic monitoring by HIDAACI not only on drafting regulations, but also document them and their quality in terms of compatibility with law no. 60/2016 and by-laws.

In order to guarantee the substantial principle of protection from retaliation for whistleblowers, the lawmaker envisaged in article 19, paragraph 8 of law no. 60/2016, the legal obligation of HIDAACI and the RUs to approve regulations for the procedure of reviewing whistleblower’s request for protection from retaliation. As mentioned earlier, delays were noticed in municipalities’ approval of these regulations. **Of the 10 monitored Municipalities, only Elbasan Municipality approved on 27.01.2020 the Regulations “On the procedure for reviewing requests of whistleblowers for protection from retaliation.”** The regulations made available to us appear to rely partially on the sample format approved and published by HIDAACI and presents unnecessary borrowing of provisions in the regulations on administrative investigation and protection of confidentiality. Its contents feature deficiencies regarding non-exhaustive measures of retaliation; the procedure of administrative investigation pursued in case of claims for retaliation; the burden of proof; the tools to search for evidence and the notification of the whistleblower.

The Municipalities of Korçë and Gjirokastër chose to incorporate the Regulations “On the procedure of review of administrative investigation of whistleblowing and the mechanisms for protection of confidentiality” 1 to 2 general provisions on protection from retaliation. AHC considers that this practice is insufficient for guaranteeing respect for the legal obligation envisaged in paragraph 8 of article 19 of law no. 60/2016.

¹⁵ This concern is also highlighted in letter no. 2262/1 prot., dated 25.06.2020 of HIDAACI.

4.2.2 Establishment of the Responsible Units

In keeping with articles 10, paragraph 3, 24 paragraph 2 of law no. 60/2016 and CMD no. 816, dated 16.11.2016, a Responsible Unit is established at every public authority that has more than 80 employees and it registers, administratively investigates, and reviews whistleblowing.

Based on monitoring conducted at 10 Municipalities of our country, AHC found the establishment of RUs according to the following orders;

Municipality	Order to establish RU	Date of establishment of RU
Tiranë	No. 4986/1, dated 06.02.2017 invalidated by Order no. 43768, dated 22.11.2018	06.02.2017
Shkodër	No. 840, dated 30.11.2016	30.11.2016
Durrës	No. 22, dated 02.02.2017	02.02.2017
Lezhë	No. 14, dated 27.01.2017	27.01.2017
Elbasan	No. 1200, dated 14.12.2016	14.12.2016
Kukës	No. 594, dated 05.12.2016	05.12.2016
Dibër	No. 13, dated 01.02.2019	01.02.2019
Gjirokastër	No. 555	30.01.2016
Korçë	No. 654, dated 07.12.2016	07.12.2016
Vlorë	Decision no. 9809/1 prot., dated 23.01.2017	23.01.2017

Referring to article 24, paragraph 2, of law no. 60/2016, which establishes the issuance of by-laws by the Council of Ministers within 2 months from entry into force of the law, and paragraph 11 of CMD no. 816/2016, it is clearly stipulated that the establishment of the RU is carried out within 3 months from entry into force of the law (July 8, 2016). Per the above, AHC notices that none of the monitored Municipalities respected that deadline for establishing the RU. It is our opinion that the delay of 2 months and 8 days in the approval of CMD no. 816/2016 had a domino effect on this delay.

Based on the analysis of data mentioned above, AHC finds that mayors of the Municipalities of Korçë, Kukës, Elbasan, Shkodër and Gjirokastër ordered the establishment of the RUs in the respective municipalities within reasonable deadlines while Dibra Municipality is the only one that established the RU 3 years after law no. 60/2016 went into effect.

4.2.3 Replacement of members of the Responsible Units

CMD no. 816, dated 16.11.2016, establishes that the responsible unit consists of 2 employees, namely the head and/or members of the internal auditing structure. In the absence of an internal auditing structure, the RU consists of employees of the structure of human resources. AHC finds that only the RU established at Tirana Municipality consists of 3 employees; the RUs in the other 9 Municipalities monitored consist of 2 employees.

Based on documentation made available officially by the institutions, we find that 3 Municipalities – Tirana, Lezha, and Kukës – have seen continued reshuffling in RU membership. The RU established at Kukës Municipality saw reshuffling in its membership 2 times from the establishment until the publication of this report. AHC finds that order no. 521, dated 20.12.2019 “On the replacement of a member of the responsible structure for whistleblowing and the protection of whistleblowers in the public authority – Kukës Municipality” is elaborated clearly as it reflects the moment of replacement of the structure member due to resignation. Meanwhile, order no. 25, dated 25.01.2018 “On an amendment in order no. 594, dated 05.12.2016 “On the establishment of the responsible unit for whistleblowing and the protection of whistleblowers in the public authority – Kukës Municipality,” it remains unclear whether the assignment of the member of the responsible unit Ms. Nerguti followed the replacement of any of the previous members of the RU.

Through official correspondence, AHC was informed by the RU established at Lezha Municipality that since the establishment of the RU through order no. 14, dated 27.01.2017, until the end of the period of monitoring by AHC, its membership underwent changes 3 times. Based on orders made available, AHC finds an incorrect use of the term “establishment of the RU,” while ensuing orders issued by the Mayor only sought to replace the RU member/-s.

AHC suggests to Municipalities to take measures to avoid as much as possible the practice of reshuffling that eventually harm the stability of the RUs. At every moment, AHC encourages Municipalities to undertake a proactive role in communicating with HIDAACI, addressing this institution to consult on different issues or instructions, with the goal being the effective implementation of law no. 60/2016.

Referring to the findings from monitoring during January 2020 – January 2021

4.2.4 Establishment of RUs at institutions subordinate to Municipalities

In keeping with articles 9 onwards of law no. 139/2015 “On local self-government,” local government units enjoy the right to create economic units and subordinate institutions, with the goal being the good administration of public services by these instruments.

Article 10 of law no. 60/2016 and based on CMD no. 816/2016, establishes the legal obligation of public institutions with more than 80 employees to establish a respective RU. **AHC considers that no legal provision envisages exemption from this legal obligation of subordinate institutions, in case one such was established at the local government unit (i.e. the Municipality). The fact of approval of budget items by the Municipality that coincide in the final budget with that of subordinate institutions; the appointment and dismissal of the head of subordinate institutions, according to AHC’s evaluation, does not indicate in any instance the failure to establish RUs at these institutions and therefore the internal whistleblowing of their employees in the RU established at the mother Municipality.**

The monitoring conducted by AHC in 10 Municipalities indicates:

- **Tirana Municipality:** It oversees 28 institutions and 5 shareholding companies. At present, the Municipality says it is in the process of assigning coordinators for each subordinate institution, falling within the scope of article 10 of law no. 60/2016.
- **Durrës Municipality:** It oversees 14 subjects, while only the Communal Service Enterprise has a RU established on 27.01.2017.
- **Gjirokastrë Municipality:** Through letter no. 13359 prot., dated 23.12.2020, it informs us that there are no subordinate institutions and agencies and therefore no RUs have been established.
- **Kukës Municipality:** Through letter no. 6428/1 prot., dated 28.12.2020, it informs us that the RU established at this Municipality in December 2016 is the only functional one for its subordinate directories.
- **Lezhë Municipality:** The RU established in this municipality covers the implementation of law no. 60/2016 and the protection of whistleblowers in some of the subordinate institutions. Meanwhile, the “Water Supply and Sanitation” shareholding company has established one special RU.
- **Shkodër Municipality:** One RU has been established with 1 employee at the Water Supply and Sanitation Enterprise.

- **Korçë Municipality:** This municipality oversees 11 institutions and none of them has established a RU.
- **Vlorë Municipality:** It oversees 7 institutions, but none of them has established a RU dedicated to implementation of law no. 60/2016.
- **Elbasan Municipality:** Although it has 7 subordinate institutions, none of them meets the legal condition of having over 80 employees and therefore none has a RU established.
- **Dibër Municipality:** It has 3 subordinate institutions/associations, but none of them appear to have established dedicated Responsible Units.

The above-mentioned data indicates that local government units did not follow the same practice for the establishment of RUs in the subordinate institutions with over 80 employees. AHC encourages HIDAACI, pursuant to its competences envisaged in law no. 60/2016, to oversee the continued implementation of this legal obligation by subordinate institutions and undertake administrative measures in keeping with article 23 paragraph 1, letter a) of law no. 60/2016.

AHC suggests to all Municipalities with over 80 employees in subordinate institutions to establish immediately and without delay the respective RUs, with the goal being to make internal whistleblowing mechanisms functional. In the process of establishing these RUs, the RUs established at mother Municipalities may provide assistance and support.

4.2.5 One internal whistleblower in four years of implementation of law no. 60/2016

Since the entry into force of law no. 60/2016, AHC finds that only 1 whistleblowing case has been administered and handled by the RU established at Tirana Municipality. Meanwhile, it is stated and broadly admitted that there is a lack of knowledge of Municipality employees regarding the existence of the law and the RUs themselves. **In view of the lack of systematic information for Municipality employees about this law, as one of the main reasons for the very low number and lack of (internal and external) whistleblowing, AHC recommends to responsible units that, with HIDAACI support, they increase their engagement in this regard and undertake concrete steps to organize consultations and awareness sessions in a continued manner with employees or groups of employees in their relevant institutions. In this regard, it is worth mentioning that the official websites of these Municipalities advertise on their home pages awareness materials about law no. 60/2016 and its guarantees for the Protection of Whistleblowers.**

Based on information made available by HIDAACI, it results that this institution received a notification by a former employee for a suspected corruption case at Tirana Municipality. In its letter no. 2262/1 prot., dated 25.06.2020, HIDAACI notes, *“The RU, after conducting procedures for verification, evaluation of the submissions of the whistleblower, at the conclusion of the administrative investigation, reached the conclusion that the claims of the whistleblower were unfounded to notify competent bodies for further proceedings according to law.”*

While respecting the principle of confidentiality of the whistleblower, during the online interview with the head of the Responsible Unit at Tirana Municipality, we were informed that the whistleblowing submitted by an identified whistleblower was first addressed to the information office, which initially forwarded it to the Human Resources Directory. The latter forwarded it to the RU. On 18/09/2017, a decision was made for the RU to start an administrative investigation while the whistleblower participated in the hearing session, which was documented through a process-verbal. On 25/09/2017, the whistleblower was summoned again by the RU and he communicated to it that he wished to submit some documents as additional evidence, which were not effectively submitted by him. On 29/09/2017, the RU established at Tirana Municipality conducted a verification in the field at the Director this whistleblowing case was attributed to. The conducted verifications did not highlight suspicions of corrupt acts and therefore the whistleblowing procedure appears concluded.

Regarding this case, AHC became familiar with the response by the RU at Tirana Municipality, by letter no. prot. 22348/2, dated 23.12.2020, which informs us: *“With regard to the whistleblowing submitted to the Responsible Unit at Tirana Municipality, we make it known that we reviewed it within the legal deadlines and decided to not start and conclude the administrative investigation because the whistleblower was in circumstances of good faith, established in article 6 of law no. 60/2016, but there was no concrete decision-making on this case.”* **AHC deems that this decision making has procedural legal deficiencies because in this case, it was decided to not initiate and conclude the administrative investigation, but what provision 14, paragraph 2, letter b) of law no. 60/2016 stipulates was not done.**

Per the above, AHC finds that the procedure of the administrative investigation on the case in question by the RU at Tirana Municipality is counter articles 42, paragraph 4, and 90 of the Administrative Procedure Code (APC), article 14, paragraph 3, of law no. 60/2016, and article 7 of the Regulations “On the administrative investigation of whistleblowing and protection of confidentiality in the institution of Tirana Municipality,” approved by Order no. 7622, dated 21.02.2018, of the Mayor of Tirana.

Per the above, AHC suggests the undertaking of a proactive role by HIDAACI, pursuant to fulfilling its competences envisaged in letters b) and c) of article 21 and letter “d” of article 23 of law no. 60/2016.¹⁶

4.2.6 Guaranteeing the principle of confidentiality by the RUs of the monitored Municipalities

By means of Regulations “On administrative investigation of whistleblowing and the protection of confidentiality at the HIDAACI,” in September 2016, the key institution for monitoring and implementation of the law, HIDAACI established clearly in articles 6 and 9 of these regulations, the way to address whistleblowing and record it. one of the key aspects of the whistleblowing administration process is the protection of the confidentiality of the whistleblower, as one more guarantee for the protection of whistleblowers from retaliatory actions of employers.

AHC has been told that it is very difficult to effectively guarantee in practice the protection of confidentiality of the whistleblower for some reasons that mainly have to do with lack of knowledge of the law, both by whistleblowers and Municipality employees who may become aware of such cases. Another factor is the lack of regulations in some of the monitored Municipalities as mentioned earlier in this report.

Concretely, in the case of whistleblowing at Tirana Municipality, the whistleblowing was administered and protocolled in advance by the protocol office, at the information office or citizen reception office. Also, this practice is similar in other Municipalities. Based on information obtained through online interviews, AHC finds that the delegation to. address a request/complaint according to internal Regulations on the functioning of Municipalities is a competence of the General Secretary of the Directory of Human Resources.

There are also positive practices such as that of the RU at the Kukës Municipality, which for cases of whistleblowing (should there be any) has envisaged the closing, sealing, and writing on the envelope ‘confidential,’ a form that could guarantee the confidentiality of the whistleblower.

Per the above, AHC is of the opinion that current mechanisms for the administration and registration of potential whistleblowing at Municipalities (except for Kukës

¹⁶ HIDAACI could have undertaken administrative measures in this case, as a form of reinstating the violated right of the whistleblower and guaranteeing due legal process in keeping with principles envisaged in the APC.

Municipality)), do not offer adequate guarantees for protecting the principle of confidentiality of a potential whistleblower.

AHC recommends the taking of concrete measures by the Municipality RUs for the administration and documentation of a whistleblowing case, in keeping with legal provisions and by-laws issued pursuant to the law no. 60/2016, in order to guarantee effectively the confidentiality of the whistleblower for the whistleblown case.

AHC recommends that with support of HIDAACI and in view of the EU Directive that is still not binding for the country, all Municipalities are guided to envisage different alternatives for reporting channels that enable safe reporting and protection of confidentiality for whistleblowers. For instance, some of these channels may be through reporting in the physical complaints' boxes dedicated to whistleblowers and administered by Municipality RUs or through an online platform or electronic email address also administered by the RU, or report verbally, by phone, or audio message, through a safe telephone line, administered by RU members. Upon request of the reporting person, such channels should also enable reporting through physical meetings, within a reasonable timeframe from the moment the whistleblowing case is registered.

4.2.7 Protection of personal data connected to whistleblowers and whistleblowing

In keeping with paragraph 3 of article 16 of law no. 60/2016, the Commissioner for Access to Information and Data Protection has been given the competence to draft the instruction that contains the conditions and criteria for processing and the time of keeping personal data in the field of protection of whistleblowers,, as long as the RU and the HIDAACI are reflected as controlling subjects.

The Commissioner for Access to Information and Protection of Personal Data has approved Instruction no. 44, dated 31/08/2016, but none of the official websites of the 11 Municipalities monitored has not published it in the section of the legal basis. In keeping with paragraph 6, Chapter II of this Instruction, HIDAACI and 7 of the Municipalities that approved the special regulations "On administrative investigation of whistleblowing and protection of the confidentiality of whistleblowers," have envisaged specific provisions for the protection of personal data.

The 2019 annual report, published by the office of the Commissioner for Access to Information and Protection of Personal Data, indicates that the institution

admits the fulfillment of the legal obligation deriving from law no. 60/2016, but its contents do not refer to any analysis that reflects the current state of implementation of Instruction no. 44/2016, and the challenges the HIDAACI or RU may have encountered in the role of controllers of personal data.

Per the above, AHC encourages the Commissioner for Access to Information and Protection of Personal Data to undertake a proactive role in order to effectively guarantee the implementation of the instruction issued by HIDAACI and the RU established at the public authorities and private entities.

4.3 Challenges and difficulties of RUs at the local level

Based on information made available through official correspondence exchange, the opinions and views reflected during information sessions and online interviews, it appears that challenges and difficulties, especially for the 9 Municipalities that are yet to encounter 1 whistleblowing case, remain ambiguous to be identified fully or clearly.

As in the 11 Ministries monitored earlier by AHC, some of the employees of the RUs of Municipalities mentioned as a main challenge the workload and overlap of competences with their primary duties as auditors. The lack of systematic training, instructions, or manuals for being informed and to understand the law, were mentioned also as difficulties for the implementation of the law.

Based on interviews with members of the RUs, AHC was also told about the issue of the lack of a motivating additional pay for members of these units. **Given that this situation is the same as in the RUs monitored at the 11 line Ministries, AHC recalls the suggestion to take concrete measures to review current positions, highlighting in the job descriptions also the current competences as members of the RUs and the reclassification of the concrete salary in keeping with their workload.**¹⁷

CMD no. 816/2016 has established that part of the RU at public authorities may be the head and/or employees of the internal auditing unit. In case of absence of such a unit, it has been determined that the RU should consist of members of the human resources structure or special units established for the fight against corruption. This by-law does not establish additional criteria or conditions for RU members. Members of the RUs monitored in the 10 Municipalities, who did not

¹⁷ https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf

have higher education in law or did not include a jurist specialist, mentioned as essential the possibility of including as a member a lawyer by profession who has graduated in “law,” due to good knowledge of the legal framework needed in cases of administrative investigations. AHC notes that the most part of RU members, being employees of the internal audit unit of the public authority, graduated from higher education in “economy,” while only RUs established in 5 Municipalities include a member graduating in law.

The engagement of employees of internal audit directories at the same time in the RUs is criticized by most of the RUs established in the 10 Municipalities monitored. The exercise of auditing competences creates premises for prejudice, at the moment of investigation of documentation practices, which may be the subject of potential whistleblowing in the future. During online interviews, RU members referred the directories of Human Resources and the Legal one as more appropriate. Interviewed members of the RUs in the 10 monitored Municipalities state that there is overlapping of tasks too, because as auditors, they have the obligation to identify *a priori* suspected corruptive actions or practices, without having any leads through whistleblowing.

Based on Directive no. 2019/1937 and to guarantee the independence and efficiency of the RUs established at public authorities as well as the independence of their members, AHC suggests the revision of CMD no. 816/2016 to determine clearly the ways for internal reporting and the form of reporting to the head of the public authority, protecting the principle of confidentiality, which has only been entrusted to the members of the RU.

4.4 Municipalities and transparency: Promotion of whistleblowing and informing the public

The fight against corruption and any form of it that harms public interest is one of the main goals of legislation on whistleblowing and the protection of whistleblowers. Therefore, the lawmaker has envisaged as an internal mechanism the establishment of RUs in the public and private sector while the external mechanism of whistleblowing is the HIDAACI. In keeping with Directive no. 2019/1937, the whistleblower’s access to the RU should be without obstacles and the form of communication between the RU and the whistleblower should be undertaken within reasonable timeframes.

4.4.1 Location of RUs (indications for potential whistleblowers)

During informative sessions, the authorized representative of the HIDAACI recommended continuously the taking of measures by RUs to post the RU memberships and make public the location thereof. **Re-stressing the recommendation issued by HIDAACI, AHC suggests the taking of concrete measures for the publication of guiding information on the location of the RU office in order for every potential whistleblower to be guaranteed as much accessibility as possible.**

One of the positive practices enabled in the context of the implementation of the initiative by AHC is the reflection of the RU on the official website of Shkodra Municipality.¹⁸ In the special section on whistleblowing, this Municipality published identifying data and contact info on RU members, categorizing clearly the functional role of each member in the Unit. **AHC encourages other Municipalities to make public data about RU members, their tasks regarding administration and treatment of whistleblowing cases and the way of contacting them.**

4.4.2 Adoption of innovative forms of administering whistleblowing, guaranteeing confidentiality

AHC monitored continuously the official websites of 10 Municipalities while obtaining information from Coordinators on Access to Information and Protection of Personal Data, who exercise their functions at these Municipalities. The official websites of the 10 Municipalities are easily accessible.¹⁹ However, **none of the websites of the Municipalities did not have a special section for addressing online whistleblowing and the administration of that whistleblowing pursuant to the implementation of the principle of confidentiality, only by the RUs. A positive practice in this regard was noticed in Kukës Municipality, which has a section “Contact us” at the top of the front page, with one of the possible channels of for categorizing contact is through denunciations.**²⁰ However, even in this case, this manner of online reporting enabled by the website of this Municipality needs to be adjusted to enable the protection of data of the “whistleblower” and to guarantee that the whistleblowing will only go to the RU’s address.

18 http://www.bashkiashkoder.gov.al/web/Struktura_dhe_kontaktet_1770_1.php

19 <https://www.tirana.al>; <https://www.durres.gov.al>; <http://www.bashkiashkoder.gov.al>; <https://elbasani.gov.al/sq-al/Pages/default.aspx>; <http://vlora.gov.al>; <https://www.bashkiakorce.gov.al>; <http://dibra.gov.al>; <http://www.lezha.gov.al>; <https://kukesi.gov.al>; <http://bashkiagjirokaster.gov.al>.

20 <https://kukesi.gov.al/na-kontaktoni/>

In order to guarantee the principle of confidentiality and rapprochement with the EU Directive, AHC recommends that RUs take measures to clearly define in the approved regulations on administrative investigations and protection of confidentiality the mechanism pursued for the administration of a whistleblowing case that is submitted electronically. We also recommend to all Municipalities to create the necessary IT infrastructure that enables RU's administration of online whistleblowing (e.g.: with a special section on the official website) or by telephone, fully guaranteeing confidentiality.

4.4.3 Public visibility on important “anti-corruption” policies and documents and sample forms for “whistleblowers”

AHC's focus of observation has also been on the publication at the local level by the 10 Municipalities of policies, strategies, action plans, or other mechanisms for preventing and fighting against corruption.

AHC notes that Durrës Municipality has approved a special typology of the Regulations “On internal procedures for Anti-corruption and whistleblowing irregularities in Durrës Municipality.”²¹ The official website of Shkodër Municipality includes a link that lists all approved regulations, but it does not contain any document related to anti-corruption practices.²² However, the initiative implemented by AHC has had a positive impact on this Municipality, which has been the only one to publish sample forms to be filled out by potential whistleblowers during the implementation of this project. Also, the Municipalities of Shkodra and Dibra have published an instruction on “Procedures for filing requests, complaints, and reservations” specifically addressed to whistleblowers.²³ Elbasan Municipality has not published any regulations aside from the Integrity Plan, which appears to have been published recently.²⁴ The same is true of Vlora Municipality, which has not published any regulations.

21 <https://drive.google.com/file/d/0B6sèLLer5y9zbmVva3VkVEloUjg/view>

22 http://www.bashkiashkoder.gov.al/web/Legjislacioni_dhe_aktet_e_brendshme_rregullatore_1099_1.php

23 http://www.bashkiashkoder.gov.al/web/Procedurat_e_berjes_se_kerkesave_ankesave_dhe_veretjeve_1178_1.php
<http://dibra.gov.al/organizimi-dhe-funksionimi-i-bashkise/procedurat-e-berjes-se-kerkesave-ankesave-dhe-veretjeve/>

24 <https://elbasani.gov.al/sq-al/Services/programitransparences/Pages/Plani-i-Integritetit.aspx>

Considering the positive practice of Shkodra Municipality, AHC encourages all Municipalities to publish on their official websites the sample forms that help potential whistleblowers report acts of a corruptive nature.

Just as AHC had found earlier in the monitoring of the 11 Ministries, the delay of 1 year for the approval by HIDAACI of regulatory acts for internal and external whistleblowing, pursuant to law no. 60/2016 has had a domino effect in terms of RU's familiarization, possession, and publication of them.

4.4.4 Importance of transparency programs

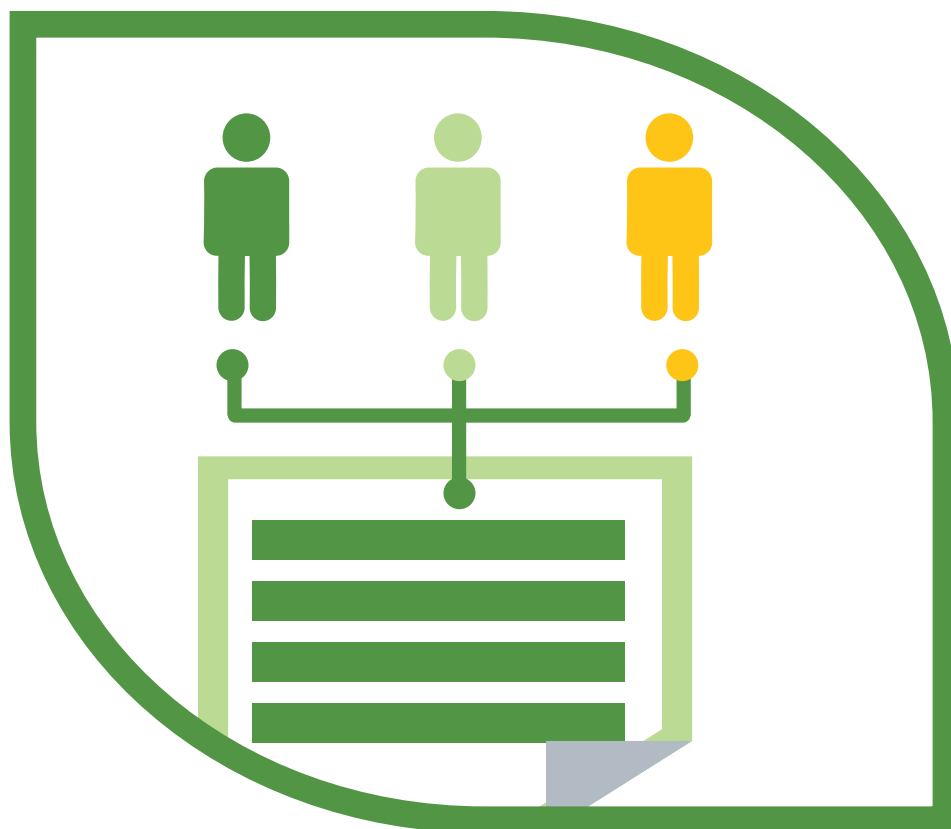
Pursuant to articles 4, 5, 6 and 20 of law no. 119/2014 “On access to information,” the institution of the Commissioner for Access to Information and Protection of Personal Data engaged in reviewing the sample Program on Transparency for Public Authorities. This task appears to have been assigned to this institution also in the context of the Assembly Resolution “On the evaluation of the activity of the Commissioner for Access to Information and Protection of Personal Data” for 2019, while we emphasize that article 20 of law no. 119/2014 envisages that the Commissioner's report submitted to the Assembly contains data and explanations about transparency programs.

In July 2020, the program was subjected to public consultation, during which AHC recommended among others: *“In the context of bridges of cooperation established between the Commissioner for Access to Information and the Protection of Personal Data with HIDAACI, we think that it is the moment, through the this sample Program, to provide information about Responsible Units in the session “On authority.”* More concretely, AHC recommended that the section on providing data about the institutional staff also reflects their position as head/member of the RU. AHC thinks that this obligation is according to article 7, paragraph 1, letter a) of law no. 119/2014 “On access to information,” because one of the important duties of the public authority, from the moment when law no. 60/2016 entered into force, consists in facilitating and guaranteeing access for citizens for the purpose of effectiveness of the fight against corruption.

Through Order no. 187, dated 18.12.2020, the Commissioner on Access to Information and Protection of Personal Data appears to have approved the revised Transparency Program.²⁵ After looking at this program, it is unclear whether AHC's suggestion/recommendation during the consultation phase was

25 OG no. 224, dated 22.12.2020, p. 17648.

taken into consideration. Referring to paragraph 2 of this order, local government units are exempted from its implementation and, as a result, it remains to be seen in practice what approach the Commissioner for Access to Information and Protection of Personal Data will undertake and the mechanisms that will be used to expand the revised Transparency Program also to the Responsible Units.



CHAPTER V

■ COMPARATIVE OVERVIEW OF IMPLEMENTATION OF THE LAW NO. 60/2016 AND ADDRESSING CORRUPTION BY CENTRAL AND LOCAL INSTITUTIONS

5.1 Implementation of law no. 60//2016 by the 11 Ministries compared to the 10 monitored Municipalities

The evaluation by AHC in the past two years on the level of implementation of law no. 60/2016 both at the central and local level is the only one of this kind, which has made possible the identification of many challenges and problems in the lack of results it has generated in the fight against corruption. Similarities between institutions are reflected in almost every monitored element, concluding however that the situation at the local level appears even more critical at the central level.

First, the will for the approval of by-laws for the implementation of the law has been lacking at the local level, as it was seen earlier at the central level for Ministries. Based on monitoring of the activity of Ministries, we find that they did not respect the six-month deadline envisaged in article 24, paragraph 4 of law no. 60/2016, regarding the approval of special internal regulations for the procedure of administrative investigations of whistleblowing and protection mechanisms for confidentiality. There have been cases when regulations in question were approved up to 1 year later in certain Ministries, such as the Ministry of Justice. On the other hand, the failure of Municipalities to respect this deadline appears more problematic because it appears that they mostly fulfilled the legal obligation to approve relevant by-laws with more than two years of delay. The situation appears most problematic in 3 Municipalities – namely Shkodra, Dibra, and Vlora – which are yet to approve these by-laws, although four years have passed since the expiry of the legal deadline.²⁶

²⁶ This data result from continued official communication with both Municipalities. AHC has become familiar with the referral of HIDAACI that data were not accurate and therefore conducted another verification at these Municipalities. The other verification showed that the statement made in this report about the lack of approval of these acts is true.

Second, as seen in the monitoring that AHC conducted on the activity of RUs established in the 11 Ministries, the 10 Municipalities also show that the number of whistleblowing cases is almost inexistent, with only one case of internal whistleblowing in one Municipality and an external one in a Ministry. The lack of whistleblowing cases has to do with a series of factors, which explain the current situation of the lack of impact of implementation of the law, and more concretely from the lack of awareness at a satisfactory level among employees, suspicions they have about the lack of impartiality and efficiency of mechanisms where they may report, to the fear of retaliations that might be undertaken against whistleblowers due to whistleblowing.

Third, problems related to RUs and their functionality appears the same, reflecting the same problems both at the central and the local level. RU members in both levels share the same concern about the overlap of their primary duties as auditors²⁷ with their new duties assigned by law no. 60/2016, which are not accompanied by a differentiated financial compensation or the reclassification of their positions in the institution's organizational structure. Furthermore, the lack of continued training and instructions for the effective implementation of the law, influences the level of understanding of the law and the obligations deriving from it by RU members. AHC notes that the level of information and awareness about the implementation of the law and by-laws among RU members at local government units remains low compared to employees of the Ministries that were monitored.

Fourth, the situation caused by the global COVID-19 pandemic made technology and the use of online platforms play a special role, which in our opinion may be "exploited better" by RU members at the local and central level, for the purpose of informing and sensitizing employees in Municipalities about the mechanisms and protections envisaged by law no. 60/2016.

Fifth, one important element that remains the same for both levels is the engagement of HIDAACI, both with Ministries and Municipalities. AHC appreciates the engagement to date of HIDAACI and the initiatives undertaken in partnership with international and domestic organizations for the implementation of law no. 60/2016. However, monitoring data indicate the need for strengthening the proactive role of HIDAACI to monitor the activity of RUs and raise awareness among the general public and increase the cultural acceptance of whistleblowing. With

27 During the process of public consultation, members of the RU at Korça Municipality suggested that the obligation envisaged in CMD no. 816/2016, on the composition of the RU of internal audit specialists, is in violation of articles 5 and 17, letter a) of law no. 114/2015 "On internal auditing in the public sector."

strengthened oversight by HIDAACI over RUs both in the public and private sector, AHC considers that it is possible to improve the level of effectiveness and impact of the implementation of such an important law in the fight against corruption in the country.

5.2 Main causes for the lack of whistleblowing cases: differences and similarities at both levels

The very low number of whistleblowing cases is seen as the "Achille's heel" with regard to the lack of impact of the implementation of law no. 60/2016, during the past 4 years since its approval. The main reasons for the lack of whistleblowing cases were mentioned by both members of the RUs and employees during informative sessions held earlier at 11 Ministries and then at 10 Municipalities. AHC notes that these causes are of an objective and subjective nature.

Thus, with regard to causes of an objective nature for the lack of whistleblowing in 10 Municipalities of the country, we may mention:

- a) **Training and awareness activities on this law have been more in the context of sporadic initiatives and not built on a methodology that guarantees their sustainability in time and consistency** – As a result, AHC has noticed among RU members a lack of knowledge about the concepts or principles of law no. 60/2016. Aside from lacking legal training, there have been cases when RU members have reflected lack of awareness about their important role. In most interviews, it resulted that RU members viewed their role as a structure of internal whistleblowing, which should be of a "secret" nature due to the competences entrusted to this structure in undertaking administrative investigations.
- b) **The need to empower interagency interaction and cooperation between RUs and HIDAACI** – AHC notes that it is essential that HIDAACI provides "oversight" and publication of instructing policies/manuals for RUs established at Municipalities with the goal being the effective implementation of law no. 60/2016 and the approval of envisaged by-laws. Such a recommendation remains valid also for RUs at 11 Ministries. The increase of the number of HIDAACI employees for the whistleblowing sector should bring about the first results in terms of overseeing and addressing problems of RUs.

- c) **The overlapping of competences between the auditing role and the function of members of RUs for whistleblowing and protection of whistleblowers** – AHC has found that this overlapping of competences, raised by RU members, has made them focus on their primary role as auditors, while they have devoted less attention to implementation of law no. 60/2016, mainly at the moment of annual reporting to HIDAACI. Their role as auditors has caused hesitation among current Municipality employees who, at the moment when the RU undertakes administrative investigation, may turn easily from whistleblowers to public functionaries involved in corruption due to the mechanism and the commission of this offense in the public administration.
- d) **Continued reshuffling in the composition of RUs lead to lack of functional stability** – This cause, which is inextricably linked with the lack of proper information about the efficient implementation of the law, appears in Municipalities that have constantly undertaken actions to replace RU members.
- e) **Lack of knowledge about the internal whistleblowing mechanism (RUs)** – During the informative sessions, AHC presented an online survey for Municipality employees. The survey, which contained 2 questions, sought to “test” their knowledge about the existence of RUs and the number of members working in them. The results of this survey are highlighted in Annex II of this report. Based on the analysis of these results, the majority of participating employees do not have knowledge about the existence of the RUs or their membership.

Among the subjective causes mentioned by RU members and participants in information sessions, AHC highlights an almost identical overview as at the central level of Ministries, which present the following:

- f) **“News” cultural phenomenon and novelty legislation:** As in the analysis conducted earlier on the 11 Ministries, AHC has become aware of direct claims conveyed by RU members in 10 Municipalities, which, in the context of the exercise of their organizational duties to notify employees about participation in planned information sessions, encountered prejudicial opinions or stances by employees, being called “spies.” AHC notes that such prejudice toward whistleblowing mechanisms are at a higher level in the 10 monitored Municipalities.
- g) **Fear and lack of trust by employees/officials of Municipalities:** The direct line of reporting of RU members to the public authority’s head has

created among officials the idea that there is no efficient guarantee about impartial investigation, in keeping with legal provisions, of a whistleblowing case. Meanwhile, the role of RU members as part of internal audit sections of the public authority has created the spirit of control/investigation conducted within closed procedures.

- h) **Fear of retaliation:** Based on the conducted interviews, AHC has found that in spite of legal guarantees offered by law no. 60/2016, in practice, it is noticed that there is a fear of retaliation among employees, not only from the supervisor or head of the institution, but also other functionaries of the same level, who may be a subject involved in the whistleblown corruptive act.



CHAPTER VI

■ RECOMMENDATIONS

AHC, in order to address some problems encountered during the monitoring and awareness activities, as well as to contribute to the improved implementation of law no. 60/2016, has drafted a series of recommendations to the following responsible bodies. AHC appreciates maximally the addressing of some previous recommendations realized for the same purpose, by relevant institutions, and hopes that there will be the same collaborative approach in addressing the following recommendations resulting from a broad and concrete evaluation that AHC has conducted in the past two years.

Recommendations for HIDAACI:

- 1) AHC recommends to HIDAACI to create stable instruments in its activity that enable its empowerment of a proactive role for systematic oversight of RUs, for the purpose of effective implementation of law no. 60/2016.
- 2) We recommend a further increase of HIDAACI's engagement in instructing Responsible Units on the form and necessary data that should be submitted in the annual report, the need to respect legal deadlines, etc., in order to guide toward better quality reporting with a unified standard.
- 3) AHC encourages the HIDAACI that, in cooperation with the Responsible Units of Municipalities, it strengthens the engagement for the sensitization and familiarization of a larger number of employees about law no. 60/2016 (through information sessions, trainings, online meetings, etc.). In this regard, AHC further encourages the HIDAACI to create as stable mechanisms as possible that do not focus only in the context of sporadic initiatives (or limited/fragmented ones) and further strengthen cooperation with civil society actors, professors of law, representatives of academia, and representatives of international organizations accredited to the country.

- 4) Pursuant to recommendations for adapting law no. 60/2016 to the *acquis communautaire*, AHC recommends to HIDAACI that, in coordination with the Ministry of Justice, the latter as the National Coordinator Against Corruption, but also as a body with legal initiatives, further strengthen the bridges of cooperation between them, with regard to implementation of this law in practice and its compatibility with the EU Directive for the Protection of Whistleblowers.

Recommendations for the monitored Municipalities:

- 1) AHC recommends to heads of Municipalities to take measures, to the extent possible, to avoid practices of replacing and changing members of responsible units.
- 2) AHC encourages the strengthening of bridges of cooperation between Municipalities and HIDAACI and encourages them to address HIDAACI on their own initiative for consultations regarding unclear issues, instructions, challenges, and difficulties they may encounter, with the goal being as effective implementation of law no. 60/2016 as possible.
- 3) AHC suggests the taking of urgent measures for the establishment of RUs at subordinate institutions of Municipalities if article 10, paragraph 1 of law no. 60/2016 applies (having over 80 employees).
- 4) AHC stresses the need and recommends to RUs in Municipalities to respect the legal deadline for annual reporting to HIDAACI, so that they are not an obstacle to the completeness and quality of HIDAACI's annual report.
- 5) Taking into consideration the issues reported with regard to confidentiality, AHC recommends the taking of concrete measures by RUs of Municipalities for administration and documentation of whistleblowing cases, in keeping with legal stipulations but also in light of the EU Directive (to the extent possible) regarding the protection of confidentiality and personal data.
- 6) Based on the similar situation of RUs at the Ministries, AHC reiterates the suggestion of taking concrete measures to review current positions of their members, highlighting in the job descriptions even the competences as RU members and reclassification of compensation in accordance with potential workload. AHC encourages Municipalities to make public data about RU members, their duties regarding administration and treatment of whistleblowing cases and ways of contacting them.

- 7) AHC suggests the taking of concrete measures by Municipalities for the publication of guiding information on the location of RU offices, so that every potential whistleblower (among employees or former employees) is guaranteed highest accessibility possible.
- 8) To guarantee the principle of confidentiality and rapprochement with the EU Directive, AHC recommends that RUs take measures for the clear definition in the approved regulations for administrative investigation and protection of confidentiality, of mechanisms pursued to administer a whistleblowing case submitted electronically. We also recommend to all Municipalities to create the necessary IT infrastructure that enables administration by RUs of online whistleblowing (e.g. with a special section in the official website) or by phone, fully guaranteeing the principle of confidentiality. Appreciating the positive practice of Shkodra Municipality, we encourage all Municipalities to publish on their official websites the sample forms that help potential whistleblowers report acts of a corruptive nature.

Recommendations for the Assembly of Albania/Council of Ministers:

During the first monitoring conducted on the implementation of the law in 11 Ministries, AHC submitted to the Assembly of Albania some recommendations, which, due to the similarity noticed in the activity of Municipalities as local government institutions, remain valid also for the period in question.

However, based on developments in international law and as a result of the approval of the EU Directive 2019/1937 on “Protection of persons reporting breaches of Union law” (Directive on Protection of Whistleblowers), AHC addresses these recommendations that precede the essential process of a country aspiring to become part of the European family, to harmonize domestic legislation with the EU’s *acquis communautaire*. Concretely, we suggest to the Assembly or Council of Ministers that through a legislative initiative, they:

- 1) Expand the circle of subjects that benefit protection from retaliation, aside from whistleblowers, in keeping with the prescriptions of the Directive. Including facilitators as well as third persons connected with the whistleblower (his/her colleagues) would lead to an increased supportive and motivating spirit for reporting a higher number of suspected corruptive acts.
- 2) Establish a non-exhaustive list of actions that may be considered suspected corruptive acts or practices, in order to clarify the broader public on which

whistleblown cases could provide protection in the context of the law. Such a stipulation would serve RU members or HIDAACI for the administration and investigation of whistleblown cases.

- 3) AHC suggests that in light of this important international document, which set minimal standards, limitations are reviewed for the protection of whistleblowers in public, namely article 8 of law no. 60/2016, enabling/ guaranteeing protection even in cases of whistleblowing in public, whether accompanied by conditions or not.



ANNEX I

1st correspondence with HIDAACI and 10 Municipalities:

[illegible]

2nd correspondence with HIDAACI and 10 Municipalities:

KOMITETI SHQIPTAR I HELSINKIT ALBANIAN HELSINKI COMMITTEE

Tirana, më _____ Qershor 2020

Drejtuar: Zaj. Kryesia Shqiptare
Solatërisë e Përgjithshme
Inspektoratit i Lartë i Dëshmive dhe Pavarësisë dhe Konfliktit të Interesit

Nga: Zaj. Erida Shindaj
Drejtore Ekzekutive
Komiteti Shqiptar i Helsinkit

Llenda: *Kërkesë për informacion lidhur me çështjen e ligjit nr. 60/2018 "Për shpalljen dhe zbatimin e shpalljeve ose akteve shpalljeje të dala në zbatim që qn, në nivel vendor"*

N drejtuar Zaj. Shuar:

Jam 1. Jemi në hapësirën tu të bërë dhe çështjen të Marrëveshjes së Bashkëpunimit nr. 1778, datë 11.02.2020 në mbledhjen mbledhje Inspektoratit të Lartë të Dëshmive dhe Konfliktit të Pasurisë dhe Konfliktit të Interesit (LLDKP) dhe Komitetit Shqiptar të Helsinkit (KSH), jemi caktuar në cilësinë e personave të kontaktit për informacion të shtesë "Pajtimet i përbërë lokal për të cilin ligji për Shpalljen". Duke marrë parasysh konsideratet e rrethit dhe rëndësishmërisë dhe theksuar të shprehur për informacionin për paratë të cilin ju punoni për çështjen e ligjit nr. 60/2018 "Për shpalljen dhe zbatimin e shpalljeve ose akteve shpalljeje të dala në zbatim që qn, KSHM kërkon të informohen të vijoni.

1. Jam njësoj në Bashkëni të vendit (Tiranë, Durrës, Korçë, Shkodër, Lezhë, Elbasan, Kukës, Vlorë, Dibrë dhe Gjirokastrë), Njësitë Përgjegjëse të paratit lokal dhe kësaj jemi ngjyrë m'u. A jemi marrim personat e caktuar në Njësitë Përgjegjëse të këtyre Bashkive lidhur me përmbajtjen e këtyre ligjeve?"

2. A ka punë përdoruesit të shpalljeve të vendit të Njësitë Përgjegjëse në Bashkëni e shpalljeve?"

3. A ka punë rastet kur Njësitë Përgjegjëse të këtyre Bashkive të marrë e kanë përmbajtjen detyrues ligjor për raportimin vijues prapa ILDKP-së? E Njësi jo, ka funksionin specifik të cilin Bashkëni të kësaj përshirë me detyrë përmbajtjeje të detyrues.

4. A është bërë e njohur për pastruesit e këtyre Bashkive përmbajtjen e kësaj ligjeje për shpalljen?"

5. Njësoj kësaj të bërë në fuqi të ligjit, qershor 2020, në detyrë tuja, sa shpalljeve ka punë në secilin nga 10 Bashkëni e shpalljeve? Sa shpalljeve kanë zgjedhur të marrin informacion?"

6. A është informuar kush qëndruesit dhe të shpalljeve (përvojë) të nivelit të shtet, të marrë informacion nga kësaj detyrë?"

7. Në analizën të Konfliktit "Për çështjen e vëprimit të Inspektoratit të Lartë të Dëshmive dhe Konfliktit të Pasurisë dhe Konfliktit të Interesit" për ligjin nr. 60/2018, është konstatuar se vetëm 3 Njësitë Përgjegjëse kanë shpalljeve dhe raportet rastet sipa ligjit. A jemi kësaj Njësi prapë e 10 Bashkive, prapë si cilësi çështjes aktivitetit të informimit nga KSH?"

7. Gjithashtu, në funksion të përmendjes së mekanizmit të pajtimit raportues, në Rrëmbjeve e shpalljeve konstatohet se keni regjistruar dhe trajtuar 14 rastet shpalljeve dhe 1 kërkues për

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mbrojtje. Në rastet e trajtuara, 1 përkasin ato ndodhjet në 10 Bashkëni e shpalljeve? E Njësi jo, cilin Bashkëni dhe kësaj kësaj objekte i shpalljeve mbledhje për mbrojtje (informacioni) që ju kërkohet për këtë pyetje kësaj të cilin objekt konfidencialitetin e shpalljeve."

8. Çfarë është vendosur në përmbajtjen të procedurës administrative të shpalljeve? Cilka nga kësaj vendimtarja e Njësitë Përgjegjëse të Bashkëve? Po në rastet e udhëzimit të kompetencave të individit të shpalljeve, cilka ka qenë vendimtarja e ILDKP-së?"

9. Që nga kësaj haptë në fuqi e Ligjit dhe detyrë tuje, sa gjendje shpalljeve ka bërë administratën e ILDKP-së? Në cilin kësaj objekte 1797? Në sa rastet është vendosur mbledhje nga përmbajtjen të bërë mbledhje të cilin vijues? Si është vegjër në kësaj rast? A ka punë ndodhur rast shpalljeve që i shpreh detyrë. Përkohësisht për shpallje prapë? Njësi jo, a jemi të detyrë që ka përmbajtjen objektive e detyrë dhe të cilin vegjër për raportin e konfidencialitetit të shpalljeve."

10. A ka monitoruar ILDKP-së zhvillimin e ligjit nga Njësitë Përgjegjëse të kryqve në 10 Bashkëni e shpalljeve? Në cilin shpalljeve lokalitë lidhur me funksionimin e vyer?"

11. Njësoj konstatohet e udhëzimit dhe trajtimit që jemi detyrë, si është shprehur në 10 Bashkëni të ligjit, datë 14.02.2020, KSH për strukturën, kërkesë e përgjegjësitë të marrë me punë në përmbajtjen të shpalljeve përkohësisht në administratën lokale, në zbatim të ligjit Nr. 60/2018.

12. "Për shpalljen dhe zbatimin e shpalljeve?"

13. Cilin jemi shprehur që Inspektoratit juaj ka mbledhur të informacionit të shpalljeve?" Cilin jemi vërtetuar që në çështjen tuaj si Inspektorat monitorues kanë mbledhur Njësitë Përgjegjëse prapë Bashkëve për informacionin të shpalljeve të ligjit?"

Më nderoj,

Erida Shindaj
Drejtore Ekzekutive


Adresa: Bp. "Shqipëri e Vjetër", P.O. Box 150/150
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3rd correspondence with 10 Municipalities:



KOMITETI SHQIPTAR I HELSINKIT
ALBANIAN HESINKI COMMITTEE

Nr. Prot. _____ **Tiraz,** _____ **Qershor 2020**

Drejtori: _____

Nga: **Zej, Erida Shkëmbaj**
Drejtorja Ekzekutive
Komiteti Shqiptar i Helsinkit

Linda: *Kërkohet për informacion lidhur me zbatimin e ligjit nr. 66/2016 "Për sigurimin dhe mbrojtjen e sinqerizave" dhe shpreh nënshkrimin e dala në shkrimin e tij.*

Inderuar Z.Zej,

Nga shkrimi të Marrëveshjes së Bashkëpunimit nr. _____ Prot. de _____ të nënshkruar ndërmjet Bashkisë ku Ju punoni dhe Komitetit Shqiptar të Helsinkit (KSHM), Ju jeni kërkuar në cilësinë e personit të kontaktit për zbatimin e kësaj marrëveshjeje. Përfaqësimi lokal për të cilin Ju punoni për Sinqerizimin. Dales marrësi në konsideratë vullti e rëndësishme dhe dëshirës të Bashkisë për të cilën Ju punoni për zbatimin e ligjit nr. 66/2016 "Për sigurimin dhe mbrojtjen e sinqerizave" dhe shpreh nënshkrimin e tij. KSHM kërkoi të informohet në vijim:

1. A është agjenti Njësisë Përgjegjëse dhe Bashkia Tuzi? Nëse jo, kush është agjenti dhe me cilën përfaqësimi (kërkohet të shprehet me kopjen e vendimit përfundimtar).
2. Sa është numri aktual i punonjësve të kësaj Njësie dhe cilat janë funksionet që ata mbajna ?
3. Që nga krijimi i Njësisë Përgjegjëse dhe deri në sot, a ka pasur raste të shprehura të shprehura të anësimeve të tyre?
4. A është zhvilluar ndoshtë trajnim për agjentin e punonjësve të Njësisë me legjislacionin që vlen për agjentin e Njësisë Përgjegjëse dhe deri në sot, a ka pasur rastet sinqerizimit për veprimet apo praktika të dyshues korruptive?
5. Që nga krijimi i Njësisë Përgjegjëse dhe deri në sot, a ka pasur rastet sinqerizimit për veprimet apo praktika të dyshues korruptive?
6. Cilat janë veprimet që ka nënshkruar Bashkia për zbatimin e kësaj legjislacioni?
7. A ka monitoruar ILDPKPI zbatimin e legjislacionit për sigurimin nga Bashkia? Nëse jo, në cilën formë?
8. A ka keni parqarur ILDPKPI-rë raportet lidhur me veprimtaritë treg për zbatimin e legjislacionit për sigurimin? KSHM kërkoi të shprehet me kopjen e kësaj raporti.

Nga vijim, bazuar në ligjin nr. 119/2014, "Për të drejtën e informimit", do të vlerësojmë nëse përgjigja e juara nga ju është:

Më konsiderat,
Erda Shkëmbaj
Drejtorja Ekzekutive

Adresa nr. "Shkallë 5" Pj. Pëllumbatit
 Ap. K1, K1 Pj. Tuzi, Albania
 P.O. Box, Krah. Rrethi nr. 1752

Tel. Nr. +355 (0)46 235031
 e-mail: office@shc.al
 web-site: www.shc.al

KOMITETI SHQIPTAR I HELSINKIT ALBANIAN HELSINKI COMMITTEE

Nr. Prot. _____ Tiranë, më _____, Dhjetor 2020

Drejtuar: Zefi
Përgjegjësitë
Saktori i Auditit të Brevëdhim
Bankë

Nga: Zefi, Drejta Shkëdh
Drejtore Ekzakutive
Komiteti Shqiptar i Helsinkit

Lënda: *Kërkesë për informacion lidhur me ngjarjen dhe funksionimin e Njësisë
Përgjegjëse në zbatim të ligjit nr. 60/2016 "Për sinjalizimin dhe mbrojtjen
e sinjalizuesve"*

E nderuar Zefi _____,

Në zbatim të Marrëveshjes së Bashkëpunimit nr. 1816 Prot., dt. 27.02.2020 të nënshkruar ndërmjet Bankës ku Ju punoni dhe Komitetit Shqiptar të Helsinkit (KSHH), si dhe në vijim të informacionit të përcjellur sipërmjet shkëmbies kërkim përgjigje nr. 3169 prot., dt. 28.05.2020, KSHH-i e vlerëson bashkëpunimin e frytshëm dhe produktiv me qllim mbështetjen e zbatimit të mirës së "Fuqizimi i pushtetit lokal për të zbatuar Ligjin për Sinjalizuesit".

Hazuar në ligjin nr. 119/2014 "Për të drejtën e informimit", me yrimin reflektimim e gjetjeve objektive dhe të përditësuar mbi situatën e zbatimit të ligjit të sipërmjetur gjatë periudhës past dërgimit të informacionit shtet sipërmjet shkëmbies kërkim përgjigje nr. 3560 prot., dt. 28.05.2020, KSHH-i kërkoi të informohet në vijim:

1. A është shkëmbi ndërmjet zotit të sinjalizimit, për të cilin Njësia Përgjegjëse pranoi Bankësin ka ndërmarrë procedurën e hetimit administrativ?
2. A ka pësuar ndryshime Njësia Përgjegjëse, pra numërimi me urdhrin nr. 634, datë 07.12.2016? Nëse po, ka llojin vitet në funksion të urdhrin me ndryshim respektive.
3. Sa institucione të varësia dhe agjencitë (ndërmarrje-shërbime) shërbimeve shtet varësinë e Bankësin? A janë agjencitë shtet përgjegjëse për sinjalizimin dhe mbrojtjen e sinjalizuesve prani këtyre institucioneve/agjencitë (që mund të jenë Policia Bankësin, Ushtria, Shërbimi e të moshuarve etj)? Nëse jo, ka llojin vitet në dispozicion të urdhërave të kësaj të ngjarjes në këto agjencitë.
4. Si mundet në mund të parashikoj funksionalitetin e sinjalizimit në rast të dështimit të një sinjalizimit në rastet portat prani shtet përgjegjëse për sinjalizimin dhe mbrojtjen e sinjalizuesve?
5. A është miratuar nga ana e Njësisë Përgjegjëse për sinjalizimin dhe mbrojtjen e sinjalizuesve prani Bankësin, rregulloren e postave për procedurën e shërbimit të hetimit administrativ dhe mekanizmat të miratuar të funksionalitetit, sipërmjetur në shtet 19 të ligjit nr. 60/2016? Nëse po, ka llojin vitet në

KOMITETI SHQIPTAR I HELSINKIT ALBANIAN HELSINKI COMMITTEE

dispozicion të një kësaj të ngjarjes? Rregulloren dhe urdhrin të kësaj të ngjarjes miratim e shtet.

6. A është miratuar rregulloren për procedurën e shërbimit të kësaj të ngjarjes për mbrojtjen nga hakmarrja, sipërmjet parashikuar në shtet 19 të ligjit nr. 60/2016? Nëse po, ka llojin vitet në dispozicion të një kësaj të ngjarjes të kësaj Rregulloren dhe urdhrin të kësaj të ngjarjes për miratimim e shtet.

Duke ju falënderuar për bashkëpunimin e dëshmimim, mbetemi në pritje të një përgjigje shtet nga ana juaj!

Me konsideratë,

Drejta Shkëdh
Drejtore Ekzakutive

Adresa: Nr. "Shkëlqim Vll" PAF Tiranë-Pogradec
qk. Kati 3 Tiranë-Albania
P. O. Box 44444 Tiranë-Pogradec, PO 1702

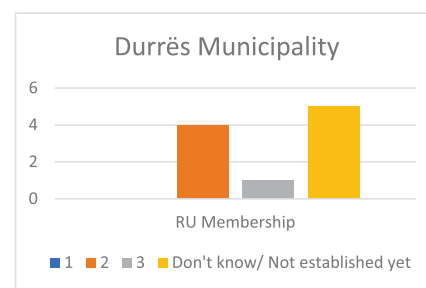
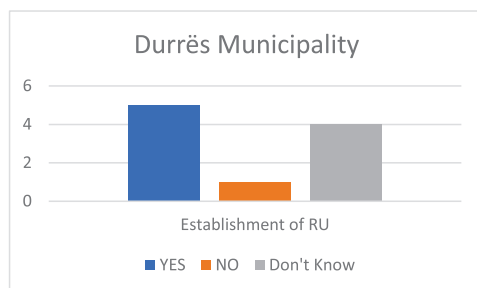
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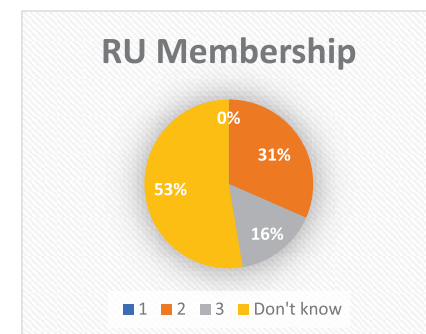
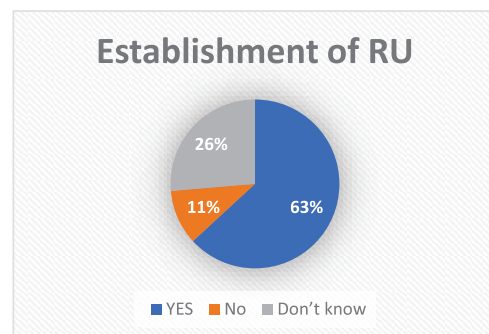
Tel & Fax: +355 (0)41 210451
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ANNEX II²⁸

Results of online survey conducted during informative sessions with 9 Municipalities:²⁹



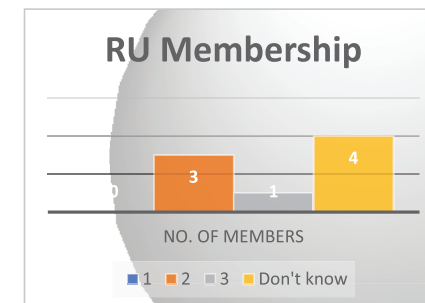
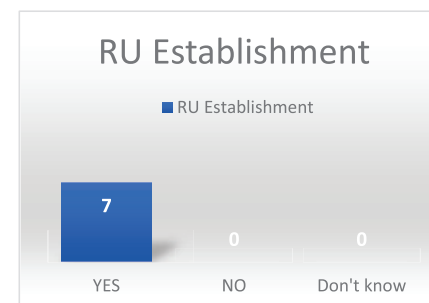
During the online informative session, 29 employees/officials of Durrës Municipality participated. Of them, only 10 participated in the online survey and responded to the two questions of AHC personnel.



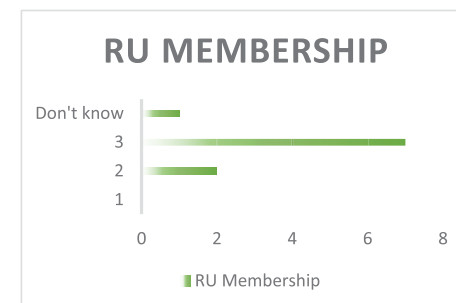
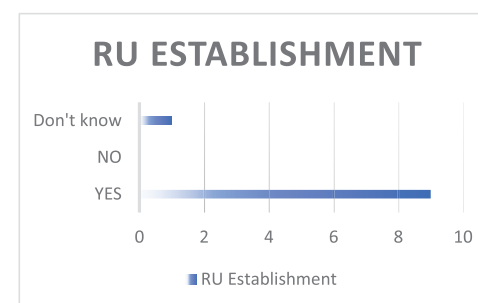
During the informative session with Shkodra Municipality, 25 employees/officials of this Municipality participated. The online survey registered responses from 19 employees.

²⁸ **Note*:** Despite the high number of employees registered with their email addresses on the Zoom platform, due to the logistical impossibility and lack of equipment of all employees with computers and with functional cameras, AHC has objectively referred to the data of employees / participants that have actively attended the informative session online.

²⁹ Vlorë Municipality is not included by organizers in the survey.

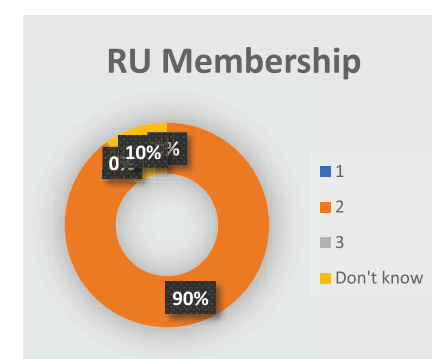
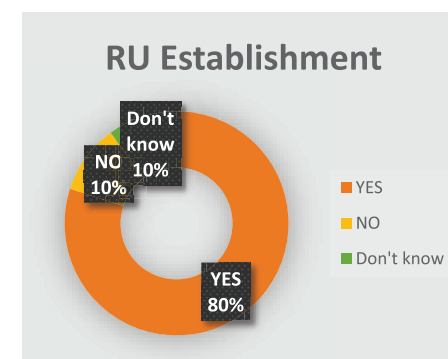


During the online information session organized by AHC in collaboration with HIDAACI, 20 employees/officials of Lezha Municipality participated and only 7 employees became part of the conducted online survey.

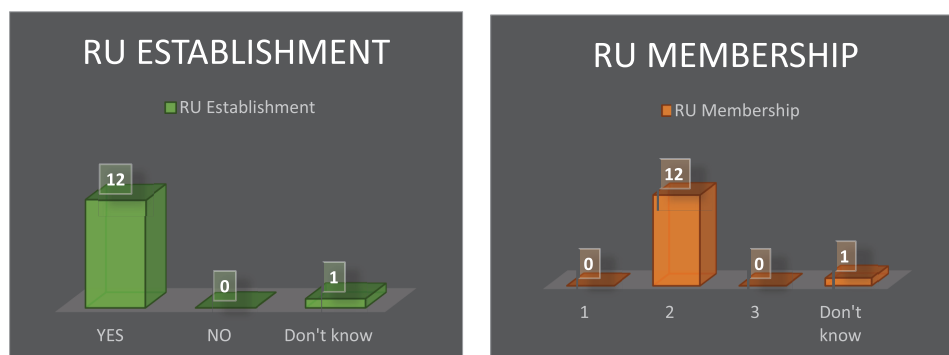


During the information session with Tirana Municipality, 17 persons participated and only 10 of them were part of the online survey and responded to the two questions.

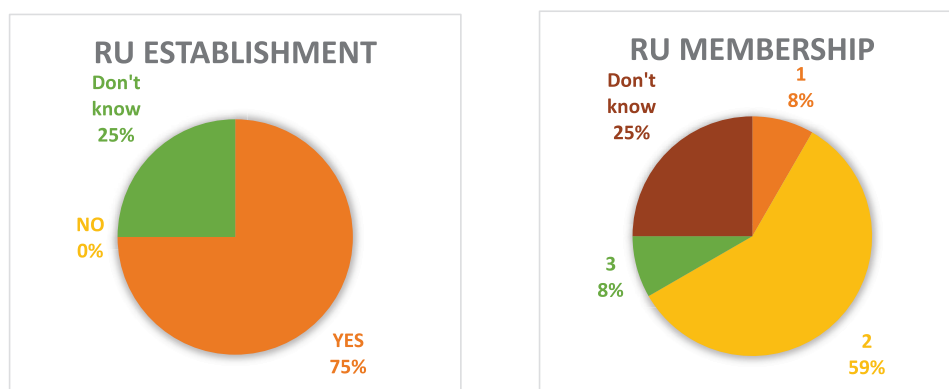
During the information session with Gjirokastra Municipality, 16 employees participated and 10 employees participated in the online survey:



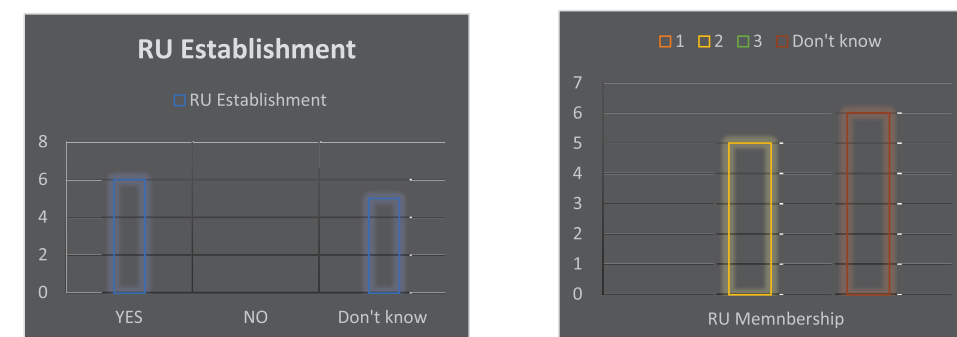
During the online information session with Korça Municipality, 25 employees participated and 13 officials participated in the online survey.



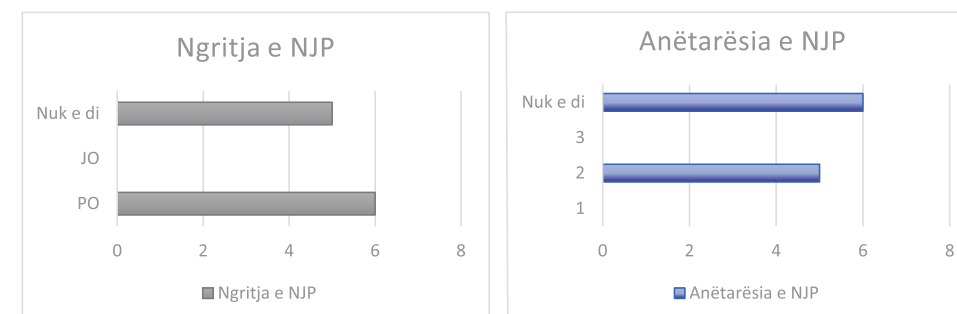
During the information session with Elbasan Municipality, 17 employees/officials of this institution participated. All of them participated in the online survey.



13 employees of Dibra Municipality attended proactively the information session conducted at the context of sensitizing and raising awareness on law no. 60/2016 "On whistleblowing and protection of whistleblowers." 11 employees were involved in the online survey of two questions.



20 employees of Kukës Municipality participated in the information session organized online. Of these, only 11 officials were involved in the conducted survey, giving responses to the 2 questions.



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