

## **INTERIM REPORT ON ELECTION CRIME, 25 APRIL 2021**

### **I. Introduction**

On April 25<sup>th</sup>, 2021, General Parliamentary Elections were held in Albania. Albania entered the electoral process with an amended legal framework. The political parties running in these elections agreed on June 5<sup>th</sup>, 2021 to adopt a series of amendments to the Electoral Code. The Parliament passed the agreed amendments on October 5<sup>th</sup>, 2020 (law no. 118/2020). The Electoral Code of the Republic of Albania was changed in 24 articles.

On 30<sup>th</sup> of July 2020, the Parliament passed the Socialist Party's initiative to amend the Constitution. The constitutional amendments were adopted with 106 votes in favor out of 116 members of parliament present in the session. These amendments were done within a short time, without significant consultations and without the consensus of the extra-parliamentary opposition<sup>1</sup>.

The Criminal Code provisions of Chapter X concerning criminal offenses affecting free elections and the democratic electoral system remained unchanged. The latest amendments to the Criminal Code date back to May 2017. They were made following the Rama-Basha agreement of 17<sup>th</sup> of May and significantly harshened the penalties for electoral corruption.

Chapter X of the Criminal Code consists of 15 articles. All criminal offenses affecting the integrity of elections provide for prison sentences. The minimum sentence is 6 months of imprisonment (articles 236 / a, 327 / a, etc.) and the maximum is 7 years of imprisonment (art. 326, 330, 330 / a)

Manipulation of election processes has been and still remains a major concern in Albania. In the 2017 elections, election crimes remained effectively uninvestigated and unpunished. In June 2020, the European Parliament adopted 15 conditions for Albania, in exchange for the opening of formal membership talks. One of these conditions was the punishment of election crime. According to Amendment No. 42<sup>2</sup>, the commencement and termination of criminal proceeding against those involved in vote buying and selling is a condition for the start of talks with Albania.

In order to respond to the new challenges, INFOCIP activated the Election Crimes Monitoring Program concerning the Election of April 25<sup>th</sup> 2021 Elections. This program is supported by the American Democratic Institute, NDI, under the title "*Promotion of Electoral Integrity in Albania.*" **The views expressed in this report by INFOCIP do not necessarily reflect those of NDI.**

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<sup>1</sup> As a result of the constitutional changes, the voter was able to exercise the right of preferential choice in a part of the list of names submitted by the parties. The electoral subjects themselves retained the right to determine the winning ranking in 1/3 of the nominal list of candidates. The new constitutional changes affect the formula of coalitions, allowing only pre-election coalitions, with a unique list of names, under one electoral logo.

<sup>2</sup> Submitted on behalf of EPP from Kinga Gál

## II. Presentation of the findings/ Executive summary

*The subject of this thematic monitoring is to assess the election incidence and then the efficiency of the investigation of the cases reported to the Prosecution. The efficient prosecution of suspected electoral crimes, the transparency provided on the progress of criminal proceedings and the conviction of the persons found guilty ensure credibility to the electoral process. Therefore, SPAK and 21 district prosecution offices play an important role in protecting the integrity of the elections of April 25, 2021. This independent monitoring program, the data it collects and analyzes, provide an opportunity for the public, media and institutional actors to assess Albania's readiness and willingness to progress towards fulfillment EU integration conditions.*

INFOÇIP has observed electoral incidents of April 25<sup>th</sup> 2021 elections. INFOÇIP has also been following and recording the criminal charges reported to the prosecution office during the campaign. For the first time, subject to such monitoring are the cases reported or requests for investigations made with the Special Anti-Corruption Structure, SPAK.

This preliminary report covers the period from 1 to 25 April 2021. The last reconciliation of figures was made on 30 April 2021. The margin of error in reporting is 3%.

The official sources used for the purposes of the monitoring are the election subjects, State Police, district prosecution offices, SPAK, as well as other state institutions. The data have been recorded and published on the website dedicated to this monitoring activity [www.krimizgjedhor.com](http://www.krimizgjedhor.com).

The findings of the preliminary report on the incidence of the suspected election offences are organized based on two types of offences:

- 1. Cases reported by the sender, which may be electoral subjects (political parties), police or citizens who have been aware of the circumstances of a suspected criminal offence and they reported that to the prosecution office for further specialized investigation by the law enforcement body.*
- 2. Cases/denouncements officially reported by the receiver, which in this cases are the district prosecution office and/or SPAK;*

The number of the cases reported by the senders is higher compared with the number of cases reported by the prosecution offices, due to the window period (18) for the purpose of registration or not as criminal proceedings

According to the observation carried out by INFOÇIP, until 28 April 2021 (the most recent reconciliation) there were reported in the form of criminal denouncement, request for investigation or referral by the State Police **190** cases, the majority of which claiming violation of the provisions of Chapter X of Penal Code. This is a dynamic figure which tends to increase. Until now the highest number of criminal denouncement was made by the Democratic Party. There are in total 50 cases reported to the SPAK and another 73 reported to the district prosecutor's offices.

The denouncement which involves the largest number of offenders claimed for committing election crimes is the case reported by DP. The direct complainant is the General Secretary of the Democratic Party, Gazment Bardhi. A total of **48** people have been accused for election crime, for whom the launch of an investigation is requested. Based on the information that INFOCIP has, SPAK has deferred this criminal denouncement submitted by DP on 7<sup>th</sup> of April 2021, for competence to the Elbasan Prosecution Office.

Another denouncement filed with SPAK involving a large number of offenders claimed for committing election crimes and for whom launch of investigations is requested, is the one filed by the DP, Durrës branch, on April 14, 2021. A total of 44 persons claimed to have been involved in criminal offenses violating Chapter X of the Criminal Code.

From the information processed so far, it results that in SPAK have been filed denouncements or requests for investigation which involve a number of 340 persons. Within this total number, it is found that a person's name is referred to more than in one case, some of them even more than in 8 cases.

At a national level, the highest number of cases reported and requests for further investigation against persons involved in suspected electoral crime was field with Lushnje District Prosecution Office. According to INFOCIP sources, a total of 17 reported cases were registered. All of them refer to the violation of article 328 CC. 10 out of these cases were deferred to SPAK due to the special subject matter and 7 cases reported are undergoing verification carried out by Lushnja District Prosecution Office. From the analysis conducted by INFOCIP staff, the largest number of reports refers to the incidents committed in the administrative territory of Divjaka Municipality.

The second prosecution office with the largest number of denouncements is that of Fier. 12 reported cases were registered. It was decided to not initiate criminal proceedings for 5 reported cases, while the other 7 cases are; 1 is being verified and 6 are in the preliminary investigation phase.

### **III. Criminal Cases reported to SPAK- Special Anti-Corruption Structure**

Denouncements filed with SPAK – Special Anti-Corruption Structure

It was found that the majority of cases which infringe free elections and electoral democratic system were reported in SPAK. The number of requests to start investigations for the suspected criminal offences was 91 until 23rd of April 2021. Such number has been increasing and it might have reached more than 100 so far.

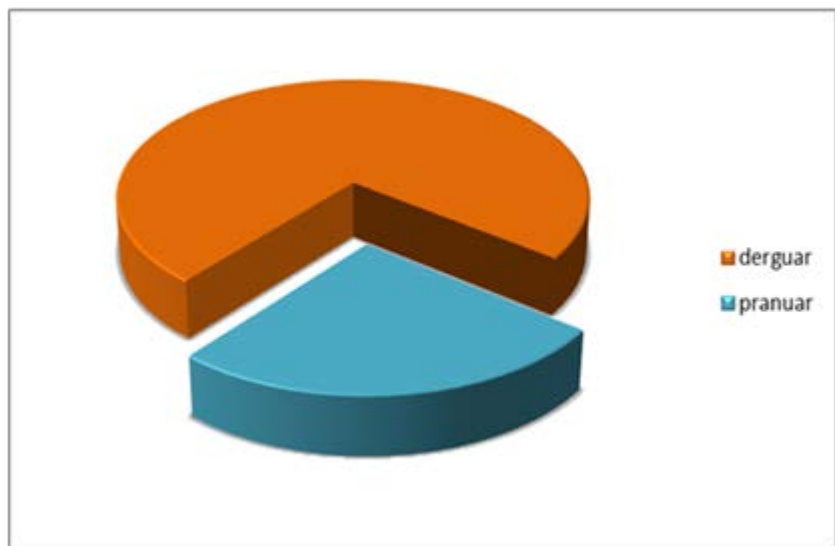
Until 27th of April 2021, 33 cases were registered for criminal prosecution by SPAK.

- *27 cases to be prosecuted for the offence of “Active corruption in elections” provided by article 328 of the Criminal Code.*

- 2 cases to be prosecuted for offence of “Active corruption in elections” and “Passive corruption in elections”, provided by articles 328 and 328/b of the Criminal Code.
- 2 cases to be prosecuted for offence of “Using the public function for political or electoral activities”, provided by article 328/a of the Criminal Code. (Related to entities under the competence of the Special Prosecution Office)
- 1 case to be prosecuted for the offences of “Abuse of office” and “Active corruption in elections”, provided by articles 248 and 328 of the Criminal Code.
- 1 case to be prosecuted for the offence of “Active corruption in elections” and “Dissemination of private secrets”, provided by articles 328 and 122 Criminal Code.

The last case registered, after repeated requests made by the President of the Republic, was to investigate on the leakage of the personal data of more than 900 thousand citizens used for elections purposes by the political parties in the electoral campaigns.

The President of the Republic filed 18 “requests for investigation” with SPAK over incidents reported to him through an online fact-finding tool. This online reporting tool was activated by the President at the beginning of the election campaign. The procedural position in such case is not that of the direct complainant but of a “signalman” who is informed on the elements of the suspected criminal offense.



In contrast to the President of the Republic, the electoral subject the Democratic Party filed criminal charges with the SPAK. In most of them, the complainant is the secretary general of this party Mr. Gazmend Bardhi. Until 23rd of April 2021 there were 50 cases reported. The electoral subject SMI submitted 3 requests to start criminal prosecution, followed by SP and NDS with one request each.

The judicial police have 10 denouncements on suspected criminal offences which are subject matter of SPAK. While, 4 cases were reported by citizens.

## **IV. Criminal Charges filed with District Prosecution Offices / Official Data**

Based on the data officially collected and received by the qualified observers of INFOÇIP, it was found that **82** criminal charges were filed and registered with the district prosecution offices. Such reports were concerning suspected criminal offences violating the provisions of Chapter X of the Criminal Code, amended. On majority of them is expected the preliminary assessment and then initiation (or not initiate) criminal prosecution.

Because of the new competences SPAK has acquired in the subject matter of election corruption investigation, some of the denouncements filed with the district prosecution offices were forwarded to SPAK for further action. At the same time, some of the cases filed directly with SPAK, were deferred to district prosecution office. *Below it is presented the factual situation of the criminal cases reported with the 21 prosecution offices:*

### **1- Tirana Prosecution Office**

There were registered 7 reported cases, 6 of which were reported by political parties and 1 case from a citizen. The criminal offence alleged in all 7 cases is: Using the public function for political or electoral activities.

On the 25th of April there was a reported the case of vote photographing, the perpetrator was arrested in flagrante.

### **2-Fier Prosecution Office**

There were registered 12 reported cases. For 5 of them it was decided to not commence criminal prosecution, whereas the 7 others are: 1 in verification and 6 in the preliminary investigation phase.

### **3-Vlora Prosecution Office**

There were registered 3 reported cases, out of which 1 reported by a political party, 1 reported by two defence lawyers and 1 reported for vote photographing.

### **4-Elbasan Prosecution Office**

There were registered 2 criminal denouncements. The first one is submitted by a political party and it refers to the articles 325/ 328/ 331/ 332/ of the Criminal Code.

The second case was reported on 22.04.2021 by the Judicial Police of the Elbasan Local Police Directorate, in the frame of the investigation of criminal case no. 477 of 2021.

### **5- Korçë Prosecution Office**

There were registered 2 denouncements. One was submitted by a political party and deferred to SPAK. This is concerning the violation of article 328/a of the CC.

The second one is under verification process.

### **6-Shkoder Prosecution Office**

There were registered 2 reported cases. One of them is concerning the violation of article 328/b of CC, which was deferred to SPAK due to its competence.

The second case is concerning the violation of article 327 of CC.

### **7-Gjirokastrë Prosecution Office**

There were registered 9 reported cases, out of which 8 were filed from political parties and 1 from a citizen. Regarding the cases reported by the political parties, 7 were concerning 'abuse of duty', article 248, while the case reported by the citizen refers to article 330 CC.

Out of these 9 cases reported, 1 case is in the stage of preliminary verification, 6 cases have been deferred to SPAK, while two cases have been registered based on the denouncement with the prosecution office.

### **8- Lushnjë Prosecution Office**

There registered 17 reported cases. All of them concerning the violation of article 328 CC. 10 of them were deferred to SPAK due to the special subject matter and 7 are under the verification stage performed by Lushnje Prosecution Office.

### **9-Durrës Prosecution Office**

There were registered 11 reported cases regarding criminal offences committed in the area of elections, 4 of which registered as criminal cases and 7 others are denouncements undergoing verification.

### **10-Kukës Prosecution Office**

One case was reported. The incident occurred in the municipality of Has and it is claimed it infringes article 328 of the CC.

### **11-Berat Prosecution Office**

There were registered 2 denouncements, both by political parties. The first one concerns article 328 while the second one refers to article 329.

### **12-Dibra Prosecution Office**

There were registered 2 reported cases. The first one is referring to the Maçellara case and the legal ground is breach of article 328 of CC. Whereas the second case is undergoing verification.

### **13-Kavajë Prosecution Office**

There were recorded 2 denouncements. The first case concerns a report received from a political party in which the mayor has been sued. The lawsuit claims the violation of article 248 of the CC. On this case it was decided to not launch any investigation.

The second case is a report against a candidate for member of parliament and it is claimed article 328 was violated.

### **14-Prokuroria Përmet**

There were registered 2 reported cases. The two cases concern a report received from a political party in which two mayors, of Permet and Kelcyre respectively have been sued. The infringed article claimed is 328/a.

Two days later these reported cases were deferred to SPAK.

### **15-Pukë Prosecution Office**

One case was reported. The State Police referred the case of an individual caught in flagrante and is charged with violation of article 328 of the Criminal Code. The individual has been detained and is under custodial arrest.

### **16- Tropojë Prosecution Office**

There were two cases reported by the State Police. They were made concerning article 331/a of the Criminal Code.

#### 17- **Kurbin Prosecution Office**

Only one case was reported. It was submitted by State Police referring the violation of article 326 of CC.

#### 18 - **Sarandë Prosecution Office**

There were registered 3 reported cases. Two of them were requests made by the President of the Republic; one concerning violation of article 328/a on the use of the local official to hand over ownership certificates. The second request of the President, registered as denouncement, refers to the accusing SHISH officials for threatening a candidate for member of parliament. It claims article 329 of CC was violated.

Whereas the third case is reported by a citizen who claims that he was in a property conflict with another citizen. He learned that the local immovable property office issued the ownership certificate for the conflicting land to the opponent. The certificate was issued on the 24<sup>th</sup> of April 2021.

#### 19-**Lezhë Prosecution Office**

No cases reported

#### 20-**Mat Prosecution Office**

No cases reported

#### 21- **Krujë Prosecution Office**

No cases reported

