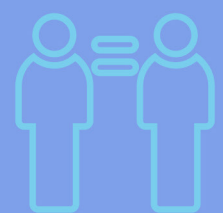
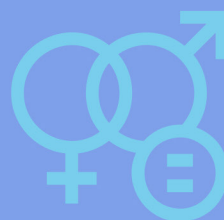
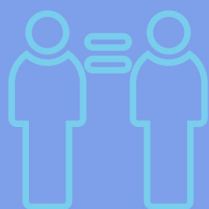
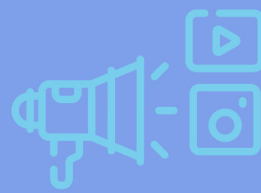
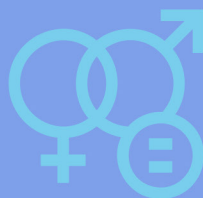
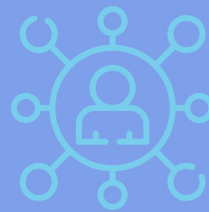


Evaluation of Human Rights and Rule of Law during the Albanian Presidency of OSCE

JANUARY, 2021





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January, 2021

This report was prepared by a group of civil society organizations in the country, namely the Albanian Helsinki Committee (AHC), Civil Rights Defenders (CRD), the Institute for Political Studies (IPS), Balkan Investigative Reporting Network in Albania (BIRN Albania), Center for Legal Civic Initiatives, Civic Initiatives (CLCI), and the Tirana Legal Aid Society (TLAS) in the framework of the initiative “Evaluation of human rights and the rule of law during Albania’s Chairmanship of the OSCE”, under the coordination of the international network “Civic Solidarity Platform”, with the financial support of SIDA and the Swedish OSCE Network.

The content of the initiative is fully the responsibility of the organizers and not necessary represent the views of SIDA and the Swedish OSCE Network.

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ABBREVIATIONS

AHC	ALBANIAN HELSINKI COMMITTEE
SAC	SPECIAL APPEAL COLLEAGUE
HC	HIGH COURT
HPC	HIGH PROSECUTORIAL COUNCIL
HJC	HIGH JUDICIAL COUNCIL (HJC)
HJI	HIGH JUSTICE INSPECTOR
GRECO	GROUP OF STATES AGAINST CORRUPTION IN THE COUNCIL OF EUROPE
AIS	ALBANIAN INSTITUTE OF SCIENCE
SPAK	SPECIAL PROSECUTION OFFICE AGAINST CORRUPTION AND ORGANIZED CRIME
ECHR	EUROPEAN CONVENTION OF HUMAN RIGHTS
CC	CONSTITUTIONAL COURT
CRM	COORDINATED REFERRAL MECHANISM FOR DOMESTIC VIOLENCE CASES
LCADV	LOCAL COORDINATOR AGAINST DOMESTIC VIOLENCE
OPMIP	ORDER FOR PRELIMINARY MEASURES OF IMMEDIATE PROTECTION
IPO	IMMEDIATE PROTECTION ORDER
PO	PROTECTION ORDER
CMD	COUNCIL OF MINISTERS’ DECISION
MHSP	MINISTRY OF HEALTH AND SOCIAL PROTECTION
MOJ	MINISTRY OF JUSTICE
CPU	CHILD PROTECTION UNIT
CPW	CHILD PROTECTION WORKER
CPD	COMMISSIONER FOR PROTECTION AGAINST DISCRIMINATION
NPO	NON PROFIT ORGANIZATIONS

Introduction

This year marked Albania's assumption of the OSCE Chairmanship-in-office and, as a result, aside from its engagements at the national level, the state also kept in focus engagements at the regional and international level.

A group of civil society organizations in the country, namely the Albanian Helsinki Committee (AHC), Civil Rights Defenders (CRD), the Institute for Political Studies (IPS), Balkan Investigative Reporting Network Albania (BIRN Albania), the Center for Legal Civic Initiatives (CLCI), and Tirana Legal Aid Society (TLAS) implemented the initiative "Evaluating human rights and the rule of law during Albania's chairmanship in office of the OSCE." The initiative comes in the context of Albania's chairmanship of the Organization for Security and Cooperation in Europe (OSCE), under the coordination of the international network "Civic Solidarity Platform" (CSP) and with the financial support of SIDA and the Swedish OSCE Network.

Thanks to their experience and expertise, these organizations reflected with objectivity, professionalism, and impartiality Albania's performance while holding the OSCE chairmanship with regard to respect for human rights in the following areas:

1. Progress of justice reform
2. Fight against corruption and impunity
3. Free and fair elections
4. Freedom of the media
5. Human rights in the Covid-19 conditions
6. Gender equality

For each of the above areas, we have drafted a report with the main findings and recommendations, based on methodology agreed upon among experts of the civil society organizations and with the guidance of the Civic Solidarity Platform. The reports are the responsibility of the experts and organizations that worked on them and do not necessarily reflect the views of the SSP, SIDA, or the Swedish OSCE Network.

The six reports were subjected initially to a process of public consultation with local actors of Albanian institutions and civil society (including international organizations operating in Albania), in three sessions conducted on November 16, 17 and 18, 2020. The comments and suggestions of the parties interested in these reports were reviewed under the approach of respect for the internal and external independence of the experts of the six organizations that contributed to preparing them.

The Civic Solidarity Platform and the six civil society organizations in the country held the concluding round table to present the main findings and recommendations in the areas that were monitored and evaluated. Participating in the round table were representatives from the OSCE and member states of the Organization, Albanian domestic institutions (legislative, executive, judicial, and independent ones), other international institutions (Council of Europe, United Nations European Union, etc.), members of the CSP, civil society actors, and the media.

(i) Progress of implementation of Justice Reform

The new legal framework of the justice system in Albania has been conceived under the spirit of international standards and best practices that aim at strengthening the independence and impartiality of the judiciary and justice in general. However, as a result of the political climate in the country, its implementation in practice remains a challenge, also due to difficulties for finding candidates for the new justice institutions that meet the criteria and enjoy high moral and professional integrity, but also due to difficulties to have specialized human resources that facilitate the work of the new justice system officials, etc.

The vetting process is one of the most important pillars of justice reform, which became reality initially with the approval of constitutional amendments four years ago. The balance sheet of the vetting process in these past three years of implementation is positive, in terms of cleansing the justice system of judges and prosecutors who were found to have problems, mostly with the criterion of assets and less with the criterion of integrity or ties with organized crime and the criterion of professional capabilities. The vetting process broke the myth of 'impunity' starting from the very highest levels of justice instances, although in the administrative rather than the criminal aspect. However, in order to fulfill the public's trust, the pace of this process needs to be accelerated and decision-making in this process needs to be unified further. Decisions of dismissal and confirmation in the 10 first months of this year are at almost similar percentages; however, if we take into consideration the cases of interruptions/terminations due to resignations, retirements, etc., the number of prosecutors and judges remaining in the system after the vetting process is a minority.

After almost 2 years of delay, in December 2018, two new constitutional and independent justice institutions were established, the HPC and HJC, responsible for governing the prosecutorial and justice systems respectively. In spite of results of the work that these two Councils have achieved to date, the not so few challenges and difficulties they have encountered in the first two years of their work, there is a need to improve the level of transparency to the public, to increase trust in the responsibility and accountability of these institutions, and to accelerate the pace of work in order to respond to the vacancies in the prosecutorial and judicial systems. At present, the judicial and/or prosecutorial system face (i) a lack of human resources due to the transitory re-evaluation process; (ii) an increase in the number of cases from year to year; (iii) a caseload per judge that is several times higher than the European norm per year; and (iv) an increase in the backlog of cases.

The foundations of the new justice system institutions, although about four years and a half have passed since the approval of the constitutional amendments, are not yet complete. The country does not have a functional Constitutional Court since 2018; the National Bureau of Investigation, which is expected to fight corruption and organized crime, is not yet complete with investigators (in process); the High Court (the highest institution exercising judicial power in the Republic of Albania) cannot fully exercise its functions because it has 3 of 17 needed members which, among other things, creates delays in access to and delivery of justice.

The High Justice Inspector, the newest justice institution created with a delay of three years in January this year, is in the process of administration and initial review of a considerable number of complaints (1339) regarding the activity of judges/prosecutors that have been carried over through the years. The HJI functions with limited capacities due to vacancies of inspectors and difficulties of an objective character encountered in recruiting inspectors from among judges and prosecutors but also from outside the system.

(ii) The fight against corruption and impunity

During these three decades of democracy, the implementation in practice of international conventions in the field of anti-corruption and relevant domestic legislation, particularly the fight against impunity, especially among the ranks of high-level public officials, remains a challenge for Albania.

The Group of States against Corruption in the Council of Europe (GRECO) published its periodical report on Albania, on December 3, 2020, and it highlights that "success stories" in the fight against corruption, which would increase the public's trust in the system, are lacking. As a participating country in the OSCE and the holder of its Chairmanship for 2020, it is deemed that Albania should strengthen its efforts in the fight against corruption, particularly high-level corruption. According to the report, the country should boost efforts to increase competitiveness, reduce losses in public procurement, and make a more accurate and enhanced monitoring of concessionary contracts.

The analysis of a variety of data (reports by international and domestic organizations and data obtained officially from relevant authorities) indicate that Albania lacks competition in the field of public procurement while economic damage due to the violation of equality among operators participating in tenders is high. According to the HSA's annual Performance Report for 2019, the negative impact on the state budget in the field of procurement reach about 50.5 billion leks or 408 million euros. According to the public procurement database, published by the Albanian Institute of Science (AIS), institutions such as the health care sector, state institutions, the Agency of Centralized Acquisitions, and the Albanian Development Fund, between January 1, 2020, and August 31, 2020, conducted 2,598 public procurement procedures worth a total of 32.4 billion leks. Of the 520 procedures that AIS classified as red flags, 323 procurement procedures lacked competition as the procurement was conducted with a single participating operator. However, frequent denunciations in the media or the public for cases of violations of equality in public tenders and corruption with public procurement, data from the General Prosecution Office indicate that the number of criminal proceedings for the criminal offense envisaged in article 248 of the Criminal Code: "Violation of equality in public tenders or auctions," is low.

Quantitative data on criminal proceedings related to corruption indicate that fighting this phenomenon focuses primarily on low and mid-level officials while proceedings against high-level officials could be counted with the fingers of one hand. Data from the Special Prosecution Office against Corruption and Organized Crime, SPAK, which effectively began to function in December 2019, indicate that in the first 8 months of 2020, there were 117 criminal proceedings for corruption-related offenses and 119 suspects have been placed under investigation. The SPAK has registered 3 criminal proceedings for articles 245 and 260 of the Criminal Code, related to active and passive corruption of high-level officials and local elected officials. The SPAK announced on April 30 that it is conducting intensive investigations for procurements conducted in the conditions of the Covid-19 pandemic by the Ministry of Defense and that it is verifying public denunciations about procurements by the Ministry of Health through procedures classified as "secret."

Since 2016, Albania has a special law for signaling corruption or illegal practices in the workplace, which offers guarantees and protection for whistleblowers against retaliation by employers. Signalers in many countries are known as whistleblowers. The implementation of this law in practice highlights a low number of signalizations of corruption in the workplace (public and private sectors), particularly in the internal whistleblowing mechanism. No signaled case that is administratively investigated and referred to the relevant prosecution office has contributed to the criminal conviction of persons such signaling was

reported against.

(iii) Free and Fair Elections

During the year of its OSCE Chairmanship in 2020, Albania did not take advantage of the opportunity to carry out a full, open, inclusive electoral reform in full compliance with all priority OSCE/ODIHR recommendations.

Overall, the processes for the constitutional amendments of July 30 and the amendment of the Electoral Code twice in the same year (July 23 and October 5) was accompanied by tension, mistrust, and contests among the main political forces in the country. They also went through a process that was not transparent or collaborative with civil society.

The new electoral legislation reflected partially the OSCE priority recommendations issued in the last two decades and has brought new experimental elements in the electoral system. Although the (partially) open lists are viewed as more democratic by part of civil society actors, the change of the electoral system that initially affected the fundamental act in the hierarchy of legislation, the Constitution of the RA, was not accompanied by an enhanced research or an inclusive debate, matured over time, regarding its advantages and disadvantages in the social, economic, and political context of the country. Non-depoliticization of election administration bodies at all three levels and the preservation of the political formula as in the previous Code for the appointment of commissioners for second and third-level levels and the lack of progress in reforming legislation on political parties remain concerns.

However, the practice of holding parliamentary or local government elections in past years in the country has highlighted that it has been primarily the lack of political will, the fragility of institutions, and tense situations between political forces and not **deficiencies in the law** that have been the main factors or reasons for not guaranteeing elections of international standards. Although the electoral campaign for the coming (2021) parliamentary elections has not started officially its effects are already being felt evidently in public in a premature manner. Especially since September onwards, parties have articulated mutual accusations in an escalated manner, with elements of hate and denigrating speech, reflecting the environment of profound mistrust by representatives of the main political forces in the country.

The three main recommendations regarding the report on free and fair elections include:

- a. For the parliamentary elections of 2021, electoral administration bodies and particularly the CEC, as well as any other public entity tasked with responsibilities for the smooth conduct of the electoral process, should demonstrate responsibility, accountability, and transparency toward the public, beyond any political influence, in order to accomplish in the proper and timely manner their relevant duties and competences.
- b. Political parties should demonstrate concrete acts of will to guarantee equality of competition inside them, for ethical standards and candidates with integrity, as well as to give priority to constitutional principles regarding elections and representation.
- c. We recommend to criminal justice bodies that they investigate objectively, impartially, comprehensively and fully, and when appropriate with their own initiative (according to relevant provisions of the Criminal Procedure Code) denounced or signaled cases of vote-buying.

(iv) Freedom of the Media

The analysis of qualitative and quantitative data indicates that freedom of the media, during Albania's chairmanship of the OSCE, has been under pressure from continued attacks – physical and verbal, toward journalists and online media, persecution by police with accusations for spreading panic, closing down of internet websites and online media outlets, government efforts to expand the competences of the Complaints Council and the Audiovisual Media Authority, as well as the decline of advertising incomes as a result of the health emergency situation created by the Covid-19 pandemic.

It is expected that the government will compile a new draft of the draft law on audiovisual media, but it is unclear and there is lack of transparency toward civil society actors, the media, and groups of interest as to when the new draft law will be submitted for public consultation. According to a decision of the European Union Council in March of this year, for the opening of accession negotiations with Albania and North Macedonia, before the first intergovernmental conference, the Government of Albania should implement a series of conditions, including "following the Venice Commission recommendations on controversial media legislation."¹

From the perspective of Albania's OSCE Chairmanship, we recommend to the Albanian Government to fulfill the spirit of commitments made as a member of the Council of Europe and the OSCE to ensure a favorable environment for freedom of expression and the media, stopping verbal attacks on journalists, and increasing efforts to resolve physical attacks toward them. Based on constitutional references on freedom of the media, which envisage that limitations on this right should be proportional and based on the jurisprudence of the European Court of Human Rights, the Government of Albania should withdraw from attempts to place online media content under the control of administrative entities, without guarantees for the latter's independence and impartiality.

Based on international best practices to fight fake news, propaganda, disinformation, and ethical violations on online media, it is recommended to civil society, media, and journalists to work to strengthen the independent self-regulatory entity that includes all interested parties from the media community.

(v) Human rights in the circumstances of the Covid-19 global pandemic

Due to the situation created by the Covid-19 pandemic, on March 24 (2020), the Government of Albania declared a state of natural disaster that lasted for three months. During this time, Albania officially derogated from some articles of the European Convention of Human Rights (ECHR), which affirm freedom of movement, freedom of assembly, the right to private and family life, the right to property, and the right to education.

In spite of legal obligations and the increased need for information, restrictive measures and the shift of communications and activity of institutions online had a negative impact on the exercise of the right to information. This affected particularly people in need belonging to marginalized groups (e.g. persons with disabilities, those in economic difficulties, without internet access), etc. Journalists and representatives

¹ Council Conclusions on enlargement and stabilization and association process – Albania and the Republic of North Macedonia, European Union Council, 2020, <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>, accessed on 04.0.2020.

of civil society organizations encountered difficulties in obtaining information and reported a decline of transparency. The number of complaints received by the office of the Information and Data Protection Commissioner during the pandemic, March – July 2020, is high at about 235 complaints and, in 65% of these complaints, institutions fulfilled their obligations only after complaints by the subjects that had difficulties in obtaining information. In only 6% of the cases, the Commissioner issued a decision and none of them included an administrative sanction/fine. However, it is positive that some institutions have adapted to the need to inform the public about their activity by employing innovative forms of the use of information technology, such as the Assembly of Albania, some of the country's Municipalities, etc.

During the pandemic, important amendments were approved to laws of special importance such as the Criminal Code, the Electoral Code, legislation on taxes, the budget, etc. A considerable part of these amendments did not comply with effective public consultation requirements, were criticized by civil society organizations and groups of interest, while the country lacks a functional Constitutional Court where these laws could be appealed regarding their compliance with the Constitution. In a completely inappropriate situation for the country, the government decided to demolish the building of the National Theater in spite of continued opposition by a group of artists and human rights activists.

The temporary suspension of judicial activity caused different reactions, starting from the violation of the right to due legal process, particularly in the component of access to justice and the impact it had on delays in judicial processes, to implications for the right to exercise one's profession, particularly lawyers. Data for 2020 indicate that the number of backlog cases awaiting trial in all of the country's courts is 92,602, while it was 77,853 during 2019, the previous year. In many countries, measures and new legislation were introduced regarding videoconferences, digital judicial cases, etc., while in Albania, none of the measures had to do with adjusting court services to digital methods.

Some of the restrictions imposed during the pandemic and controls to verify whether people were respecting the quarantine, the tracking of their contacts, the compulsory reporting of medical data, the publication of sensitive data regarding the health of patients, have raised questions about respect for the right to private and family life and the proportionality or necessity of imposed restrictions.

From March until July 2020, there were 48 organizations of rallies and 307 individuals were placed under criminal proceedings for organization of and participation in illegal rallies. Among these rallies, 9 were dispersed by police and violence was used in some of them. Some of these cases are under investigation by the People's Advocate,² which recommended the interruption of the police practice of disallowing rallies and the improvement of the legal framework in order to guarantee this constitutional right while respecting relevant health protocols during the pandemic. The Commissioner for Protection against Discrimination stressed that after the outbreak of the pandemic, the implementation of the order to prohibit rallies was problematic as it was not applied evenly. The dispersion of rallies and proceedings against participants continued during the following months, although after September 2020, electoral events of political parties took place normally after the announcement on September 6 of the election date by the President of the Republic. Recently, due to Covid-19, the Government has prohibited gatherings of more than 10 people, including those of political parties, and such provisions have been contested from the on the their unconstitutionality before Constitutional Court.³

² People's Advocate, Official request 27.8.2020

³ <https://www.oranews.tv/ndalimi-i-aktiviteteve-politike-mediu-con-ne-kushtetuese-vendimin-e-eksperteve/>

(vi) **Gender-based violence and discrimination toward women**

In spite of the continued improvement that our legal framework underwent in the country especially the one on the fight against domestic violence, its effective implementation in practice remains a challenge, particularly with regard to risk assessment and the issuance of the Order for Preliminary Measures of Immediate Protection.

The contribution of civil society organizations through support services and monitoring of institutional activity has taken up a special place in the fight against gender-based violence and the prevention and addressing of discrimination toward women. These organizations have found that the situation of the pandemic made more difficult domestic violence victims' access to the system and, in some cases, Coordinated Referral Mechanisms were found unprepared to respond to cases with immediate and adjusted measures in order to prevent and protect against gender-based violence, including domestic violence. Responsible institutions for gender equality at the central level and mechanisms against domestic violence suffer from deficiencies in human and financial resources. The systems generating data on domestic violence victims appear to be unsynchronized among them.

The increase of cooperation between responsible institutions, strengthening of structures for gender equality and against domestic violence, the expansion of services for domestic violence victims, and budgeting of services are some of the most important recommendations addressed in this report as essential for improving the implementation of legislation against domestic violence.

Data from State Police during the first eight months of this year, part of which coincides with the 3-month quarantine period as a result of the anti-Covid-19 measures, indicate that criminal proceedings were initiated for 1006 cases of domestic violence and 91 cases of violations of the protection order.

According to some resources analyzed in this report, violence toward women in elections and politics was present and was highlighted as violence toward women participants in elections to obstruct their free and secret vote, including many cases of family voting. Also, it has been highlighted that there is hate speech for gender reasons toward women in elections, women exercising functions in politics, etc. Civil society organization bring to attention the need to monitor violence toward women in elections and politics and have raised the issue of strengthening the gender quota mechanism in electoral legislation so that there are no backward steps in this regard.

Although women and girls face discrimination due to gender and/or multiple discrimination, the use of legal tools such as complaints to the Commissioner for Protection against Discrimination (including the start of investigations of cases upon its own initiative) or lawsuits to the court have been limited and scarcely used.

CHAPTER 1

PROGRESS OF REFORM IN THE JUSTICE SYSTEM

ALBANIAN HELSINKI COMMITTEE

Executive summary

Justice reform is seen as one of the most transformative processes in our country in these past 30 years of democracy. This is due to the fact not only that this reform would entail considerable amendments to the Constitution, but also amendments to material laws of key justice institutions that were drafted from scratch, and the vetting process or the cleansing of the justice system from judges and prosecutors who had problems with assets, inappropriate ties with organized crime, and serious professional incapability. All of these changes mainly sought to fight corruption in the justice system, strengthen the independence, transparency, and accountability of the new justice system, as well as improve citizens' access to justice.

The balance sheet of the vetting process in these past 3 years of its implementation is positive in terms of cleansing the justice system and breaking the myth of "impunity," although from an administrative and not criminal standpoint. Nevertheless, the pace of this process needs to be increased and decision-making in the process needs to be unified further. For the period January – October 2020, there are 88 announced decisions by the body that carries out the vetting process in the first instance, of which 25 consist in interruption of the re-evaluation process, 2 decisions for completion of the process, 31 decisions of confirmation, 29 decisions of dismissal from duty, and 1 suspension from duty. The dismissal and confirmation decisions are in almost identical percentages, taking as a reference also the cases of interruptions/termination due to resignations, retirement, etc., the number of prosecutors and judges remaining in the system after the vetting process is in minority. This dictates the need for new further additions with quality to the system, which are expected to come from the increase in admission quotas in the School of Magistrates.

The delayed establishment of the vetting institutions and difficulties/shortcomings they faced in the first few months of their work have directly or indirectly affected the establishment and functioning of several new institutions of the justice system, such as the Judicial Appointments Council, the High Prosecutorial Council (HPC) and the High Judicial Council (HJC).

After almost 2 years of delay, in December 2018, two new independent justice institutions were established, the HPC and the HJC, responsible for governing the system of the prosecution office and the judiciary. The composition of the councils with full-time members, within and outside the system (but not politics), guaranteeing the majority of members from the system itself (respectively prosecutors and judges), is one of the guarantees to ensure their independence and accountability.⁴ At present, the judicial system and/or prosecutorial system face (i) lack of human resources as a result of the transitory re-evaluation process; (ii) progressive increase of the number of cases from year to year; (iii) workload for judges several times higher than the European norm per year; and (iv) the increase of backlog cases.

In spite of results of work that these Councils have achieved to date, there is a need to improve the level of transparency toward the public and its trust in their work, their responsibility and accountability, and acceleration of the pace of work to respond to vacancies in the prosecutorial and judicial system, but also more proactivity in proposing solutions of how to overcome some impasses created in the implementation of legislation.

⁴ Judicial councils and national mechanisms for the election, appointment, promotion, transfer, suspension, or removal of judges or link: <https://ëëë.ohchr.org/Documents/Issues/JJudiciary/JudicialCouncils/InternationalCommissionJurists.pdf>

The institutional foundation of the justice system, although it has been four years and a half since the approval of constitutional amendments, is not yet complete. Nevertheless, the balance sheet is again positive as the majority of institutions have been established in spite of numerous difficulties of an objective and subjective nature that this reform was faced with. The country does not have a functional Constitutional Court since 2018, the National Bureau of Investigation that is expected to fight corruption and organized crime is not complete with investigators yet (in process), while the High Court (the highest institution exercising judicial power in the RA) cannot fully exercise its functions as it has 3 of 17 members, which creates, among others, delays in access to and its delivery of justice.

The High Justice Inspector, the newest justice institution created late in January this year, appears to be in the process of the initial administration and review of a considerable number of complaints regarding the activity of judges/prosecutors that have been carried over through the years. During the period February-July 2020, the institution received about 1339 complaints. The HJI operates with limited capacities due to vacancies in the institution. Until September of this year, it had 1 magistrate inspector, acting in that capacity after being assigned temporarily by the HJC.

1. International standards

The independence and impartiality of the justice system are foundation rocks of the rule of law and democracy. Numerous international documents and agreements, such as: UN Basic Principles on the Independence of the Judiciary, the European Charter on the Statute of Judges, the Bangalore Principles of Judicial Conduct, Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia, etc., cast light and elaborate the importance of these standards.

For the purpose of analysis, the focus of this work are OSCE standards as one of the earliest international organizations with valuable contribution to building peace, security, and democracy in the region. In this context, the Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia⁵ rebrining the concept of judicial independence through the administration of the judiciary, selection of judges, their responsibility, and independence in adjudication. When talking about judicial independence, this includes external and internal independence. External independence is the avoidance of the influence and impact of the executive and legislative powers on judicial system decision-making. Internal independence has to do with the individual independence of judges to not have interference from third parties in the adjudication of individual cases, whose resolution is entirely at the discretion of the judge.

Also, according to the opinion published by OSCE-ODIHR (Opinion-Nr.: JUD -KAZ/341/2018) on best international standards and practices regarding disciplinary procedures toward judges, some of the most important principles that should be a model to be followed by the bodies responsible for issuing disciplinary measures include guaranteeing the right to effective defense, the clarity and predictability of legislation determining violations, measures, and disciplinary procedures, distinguishment of disciplinary procedures from criminal ones, etc. Among others, this opinion makes a distinction between the Judicial Code of Conduct and rules of a disciplinary nature.

⁵ Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia <https://www.osce.org/files/f/documents/9/d/75490.pdf>

The new legal framework of the new justice system has been conceived precisely in the spirit of these international standards that aim at strengthening the independence and impartiality of the judiciary while its implementation in practice remains a challenge as a result also of the polarized political environment in the country, difficulties to find candidates that meet the criteria and enjoy high moral and professional integrity, difficulties to have specialized human resources to facilitate the work for the new officials of the justice system in fulfilling their responsibilities, etc.

2. The impasse in the “functionality of the Constitutional Court”

In spite of objectives of the new legal framework of the justice system, the Constitutional Court in the country is not functional since 2018 and the process of issuing final verdicts is blocked due to the lack of a necessary quorum for decision-making. At present, the Constitutional Court consists of 4 out of 9 judges it should have in total. With this composition, this court may review cases and approve colleges consisting of 3 judges, only for decisions on whether to pass or not cases to a plenary session.

After it was set into motion initially by the Speaker of the Assembly and then the President of the Republic of Albania, the Venice Commission issued the opinion “On the appointment of judges to the Constitutional Court,” no. 978/2020 CDL-AD(2020)010, on June 19, 2020.⁶ This opinion came after disagreements created between the Judicial Appointments Council (JAC) as the body that verifies, ranks, and proposes candidates for the Constitutional Court to the appointing bodies, namely the President of the Republic who appoints three judges to this Court and the Assembly that appoints three other members. Meanwhile, three members are appointed by a meeting of the judges of the High Court, a mechanism that is not yet functional because this Court too is faced with considerable vacancies since 2018, having 3 of 17 judges.

As the Venice Commission analyzes some of the causes that led to vacancies in the Constitutional Court and the delays created for the appointment of new judges, it notes that there is a vital need for Albania to re-establish the Constitutional Court and the High Court, as soon as possible. This is particularly dictated by the need to resolve constitutional disagreements that are highly complex and affect the country’s public life. In order to overcome this crisis, the Venice Commission proposes, among other things, constructive inter-institutional dialogue and cooperation between state institutions, necessary and essential to reach as broad a consensus as possible.

3. Vetting of judges and prosecutors (transitory re-evaluation)

The vetting of judges and prosecutors in our country is an extraordinary process, of a temporary nature, and deemed unique in the world.

The establishment and functioning of vetting institutions (IQC, IPC, and SAC)⁷ was made possible in June

⁶ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)010-e)

⁷ Independent Qualification Commission, Public Commissioners, and the Special Appeals College

2017⁸ and has been accompanied by several delays, which are analyzed in the very first monitoring reports conducted by the Albanian Helsinki Committee (AHC). These delays consist in the polarized political environment that the first material laws of the justice system were approved in, the opposition to the vetting law no. 84/2016 in the Constitutional Court and the temporary boycott of the parliamentary opposition at the time. Even after the establishment of these institutions, there were some delays in the accommodation of officials who were entrusted with the vetting process in buildings with the necessary infrastructure, the approval of their budgets, and equipping them with support personnel.⁹

3.1 Progress and dynamics of the process

The first decisions of the vetting process, namely the IQC that conducts the vetting process in the first instance, date back to February 16, 2018, when it decided to interrupt the vetting process for the 14 first subjects that withdrew from their functions in the highest justice levels (Constitutional Court, High Court, Prosecutor General, etc.).¹⁰ That was an indicator of the consequences that this process had in its first steps among judges/prosecutors who eventually avoided the process through resignations.

The vetting process had tangible effects starting from the first priority subjects that underwent it, positioned in the highest hierarchy of the justice system. Of a total of 26 judges of the Constitutional Court and the High Court, 11 of them resigned, and only 3 of them have been confirmed in their posts, while 12 others were dismissed.¹¹

In response to requests for information that AHC submitted to these bodies, it appears that from the moment of its creation until July 2020, the IQC has completed the re-evaluation process through decision-making for 286 subjects of 635 such and at present is reviewing 349 cases.¹² If we were to project the progress of IQC's activity for subjects currently under review, at this pace (approximately 10 decisions per month), the IQC will need almost three years to totally complete the re-evaluation process, having it impossible to complete the re-evaluation process for all subjects within its 5-year legal mandate. This finding has been highlighted also by the People's Advocate in its 2019 annual report. Meanwhile, if we refer to statistical data for the period January – October 2020, it appears that the IQC has made a total of 88 decisions, where indirectly, restrictions imposed due to the Covid-19 pandemic have had a considerable impact on the pace and dynamics of this process in the three months of the compulsory quarantine (March 23 – June 22, 2020). Concretely, for the 88 decisions announced until October of this year, 61 decisions are fundamental decisions, 25 consist in interruption of the re-evaluation process, and 2 decisions in completion of the vetting process. Of the 61 fundamental decisions, we find that 31 decisions are to confirm subjects of re-evaluation, 29 are to dismiss these subjects, and 1 is a suspension

⁸ Parliament approved on 17/6/2017 Decision no. "On the approval of the list en block of candidates elected to re-evaluation institutions, according to law no. 84/2016".

⁹ The Albanian Helsinki Committee, RESEARCH STUDY "Monitoring of the Vetting Process of Judges and Prosecutors in the period January 2017 – June 2018," accessible at <https://ahc.org.al/wp-content/uploads/2018/11/RAPORT-studimor-Monitorimi-i-procesit-te-vettingut-te-gjyqtareve-dhe-prokuroreve-Jan17-Qer18.pdf>

¹⁰ Research study: "Monitoring the vetting process of judges and prosecutors in the period January 2017 – June 2018," Albanian Helsinki Committee <http://www.osfa.al/sites/default/files/raport-studimor-monitorimi-i-procesit-te-vettingut-te-gjyqtareve-dhe-prokuroreve-jan17-qer18.pdf>

¹¹ 3 years since the creation of the IQC and SAC – Balance sheet of vetting to date, <https://exit.al/3-vite-nga-kr3ijimi-i-kpk-dhe-kpa-bilanci-i-vetingut-deri-tani/> (from the Constitutional Court, 5 members were dismissed, 3 resigned, and 1 member was confirmed. From the High Court, 7 members were dismissed, 2 were confirmed, and 8 resigned).

¹² Letter no. 5514/1 Prot., Dated 3.09.2020

from duty. The dismissal and confirmation decisions in the first instance of the vetting process are at almost identical percentages, but if we consider the cases of interruptions due to resignation, retirements, etc., the number of prosecutors and judges remaining in the system after the vetting process is the minority, which dictates the need for new further additions, which are expected from the increase in admission quotas in the School of Magistrates.¹³

With regard to SAC decisions, according to information from the institution itself, for the same period (December 2018 – July 2020), there were 132 cases of re-evaluation jurisdiction, of which 65¹⁴ cases concluded and 67 others are under review.¹⁵ To date, the SAC has concluded re-evaluation for 49% of the subjects, realizing an average of 3.8 decisions per month. If no circumstance were to change and lead to changes in this pace, the review of the current 67 cases of re-evaluation by the College would take place over the next 18 months or until mid-2022. During 2020, in the circumstances of the temporary suspension of activity as a result of Covid-19,¹⁶ the College continued work online for the preparation of cases of re-evaluation, the result of which was the conduct of 29 judicial sessions and the announcement of 14 decisions only during June-July 2020.¹⁷

Per the above, the pace of the vetting process is considered relatively slow, in disproportion with the legal mandate of these very bodies. However, in the circumstances of deficiencies encountered in filling the vacancies of the Constitutional Court, High Court, and now the Appeals Courts, this pace has contributed to some extent to the alleviation of even more considerable impact that a vetting process with faster pace would have had on delaying citizens' access to justice.

In general, the situation illustrated through the above statistics resonates also with the lack of sufficient human resources to realize this enhanced administrative investigation process. Increasing human resources would lead to an increased pace of the process. This is the main challenge particularly for the SAC, which besides the re-evaluation jurisdiction, the Constitution has also attributed to it disciplinary jurisdiction.¹⁸ According to information from the College, plans are that this structure, with the creation and functioning of the High Justice Inspectorate (HJI) during 2020, will have a an increased number of requests for disciplinary proceedings toward member of the Constitutional Court, the High Judicial Council, the High Prosecutorial Council, and the High Justice Inspector.

¹³ The IQC also reports that it has started procedures for the re-evaluation of 19 subjects running for vacant positions in the judicial system and has started the re-evaluation process for: 6 candidates for the High Court; 10 candidates for the general appeal jurisdiction and administrative appeals jurisdiction; 3 candidates for the Court against Corruption and Organized Crime.

¹⁴ If we were to refer to SAC's decisions, in 65 cases that have been completed, the College has decided to uphold IQC decisions in **46 cases**, to changing IQC decisions in **15 cases**, reversing IQC decisions in **2 cases**, dropping the review of the case due to the withdrawal of the complaint by the petitioner in **2 cases**.

¹⁵ Letter no. 551/1 Prot., dated 15.09.2020 "Response" from the SAC.

¹⁶ Normative Act no. 9, issued on 23.05.2020 'On the taking of special measures in the field of judicial activity, during the situation of the pandemic caused by Covid-19.'

¹⁷ According to self-evaluation of the Special Appeals College, conveyed by letter no. 551/1 Prot., dated 15.9.2020

¹⁸ The Constitution of the Republic of Albania, article 179, paragraph 7: 'During their 9 year mandate, the judges of the Appeal Chamber under Article 179/b shall have disciplinary jurisdiction over all Constitutional Court judges, the members of High Judicial Council, the High Prosecutorial Council, the Prosecutor General, and the High Justice Inspector. The Appeal Chamber shall also have jurisdiction on the appeals against decisions of the High Judicial Council, High Prosecutorial Council as well as High Justice Inspector, imposing disciplinary sanctions respectively against judges, prosecutors and other inspectors.'

3.2 Complexity of the process and the need to standardize it

The vetting process remains as an important process as it is difficult. This is due to the fact that during the enhanced administrative process, a large amount of information is sought and managed, requiring interaction and collaboration with several authorities at the same time.

Experience so far has shown that information obtained from support bodies such as the Directory for the Security of Classified Information (DSCI) on the criterion of the integrity and the Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) on the criterion of assets, have served as proof for the dismissal of the subjects of re-evaluation. The overwhelming majority of judges/prosecutors have been dismissed primarily for failing to justify their assets. However, there have also been cases when information offered in the annual declaration to HIDAACI and the vetting declaration, is contradictory and has been contradictory and is overturned by data from the enhanced administrative investigation of the IQC and other vetting bodies, depending on the phase of the case (IQC or SAC).

In the past, we have noticed in decision-making of the IQC that even the same judicial panel has had different interpretations as to what extent inaccuracies in the declaration of assets will be considered justifiable. Regarding this finding, the IQC clarifies that any case of re-evaluation presents its own specifics and each commissioner creates his/her conviction for the trial of each case, based on their findings and analysis. The Commission's trial panels have standardized the structure of financial analysis according to the investigated components that have to do with the re-evaluation of the assets criterion of subjects presenting it even in a table format.

We are increasingly seeing the positive role of the SAC's jurisprudence in the context of consolidating the practice of vetting bodies for a clear and unified implementation of the principle of proportionality, particularly regarding the evaluation of assets.

3.3 Transparency

Today, 3 years after the start of the vetting process, the elements of transparency in the activity and decision-making of the re-evaluation bodies have improved considerably. To that end, we notice that the IQC and the SAC have demonstrated care in the legal structuring or reasoning for their decision-making. Comparatively, SAC decisions continue to present a better standard with regard to the structure and quality of reasoning. Furthermore, some SAC decisions feature reference also to the jurisprudence of the European Court of Human Rights.¹⁹

In spite of achieved progress, the People's Advocate notes that a considerable part of decisions is reasoned and published beyond the set legal deadline. Of the total of 61 fundamental decisions issued by the IQC during this year (until October), it appears that only 13 decisions or 21.3% were argued within the 30-day legal deadline. Decisions argued beyond the legal deadline vary from several days up to 6 months of delay after the announcement of the decision. The reasoning of decisions is an important part not only in the context of guaranteeing transparency but also for ensuring due legal process.

¹⁹ Research study: Vetting of judges and prosecutors, November 2019 – July 2020, Albanian Helsinki Committee https://ahc.org.al/wp-content/uploads/2020/09/KSHH_Raport-studimor-Vettingu-dhe-dinamikat-e-tij-Nentor-2019-Korrik-2020.pdf

Also, another element that affects the transparency of the vetting process is the notification about the organization of hearing sessions, which offers the public the opportunity for direct access to the process. The practice indicates that the SAC is more careful with the timely publication of notices and the publication of argued decisions. The situation is different in the first instance of vetting, whereby the IQC, for reasons linked with the high volume of hearing sessions as well as the consultation/coordination of sessions with observers of the International Monitoring Operation (IMO) in some cases publishes notices even 24 hours ahead of time.

4. Governing Bodies of the Justice System (HPC, HJC, and HJI)

4.1 High Prosecutorial Council (HPC)

The impasse created in the establishment of the HPC was unblocked two and a half years after the approval of constitutional amendments of justice reform, precisely December 11, 2018. Among the reasons leading to these delays were the delays in the start of the vetting process, the slow pace of the transitory re-evaluation of prosecutor candidates, failure of some of these candidates to pass the vetting process, and difficulties in finding candidates who met the legal criteria, particularly among the civil society.²⁰

The lack of human resources and infrastructural difficulties on one hand, felt in the very first months of its activity, as well as the lack of a legal basis due to some articles invalidated by the Constitutional Court in the two laws of its work, as well as the need to draft the necessary by-laws, placed the Council in a challenging position for carrying out its functions, especially in the first year of its work.

4.2 Main achievements

During the first year of work, the Council faced issues of internal organization, ranging from the drafting and approval of acts of an internal regulating character, acts of an individual and collective character regarding the status of prosecutors, to the establishment of special structures. However, we find that acts that set norms for important processes for the proper administration of the system, such as promotions and parallel assignments are yet to be approved by the Council. In the absence of a strategic document during the first year of its operation, during 2020 the HPC began the process of drafting a strategic plan for the period 2021-2024, which is expected to be approved in the October plenary meetings.²¹

During the period of January – September 15, 2020, the HPC held a total of 26 plenary sessions, an average of about 3 sessions per month. The most intensive month was July, during which there were 6 plenary sessions. The months with more reduced activity, precisely 3 sessions, were February, March, and

²⁰ Albanian Helsinki Committee – report, Creation and Functioning of New Governing Bodies of the Justice System, available at: <https://ahc.org.al/wp-content/uploads/2019/08/RAPORT-E2%80%93KRIJIMI-DHE-FUNKSIONIMI-I-ORGANE-VE-T%C3%8B-REJA-T%C3%8B-QEVERISJES-S%C3%8B-DREJT%C3%8BSIS%C3%8B.pdf>

²¹ <https://klp.al/2020/10/02/keshilli-i-larte-i-prokuroris-harton-planin-strategjik-2021-2024/>

May, which also coincide with the months in which the activity of the Council took place online due to the Covid-19 pandemic. These 26 plenary sessions produced 189 decisions of the Council.

The official internet website indicates that the Council's decisions are published under the following categories: administrative decisions/acts and by-laws. However, such a publication appears to make it difficult to identify Council acts according to legal provisions in article 189 of law no. 115/ 2016, which categorizes Council acts into: individual administrative acts, collective administrative acts, normative by-laws, acts for the approval of internal procedural rules, and non-binding instructions. During the monitored period of January – September 2020, we find that the HPC approved 4 regulations,²² which were published in the official gazette but there is no information regarding non-binding instructions that the Council issued regarding the professional activity of prosecutors.

In general, we find that the HPC has established positive standards in the context of guaranteeing transparency over its activity and this may be seen in the audio recordings and minutes of every plenary session. The audio recordings indicate that HPC plenary meetings are characterized by professional discussions with the participation of almost all members. Minority opinions are in most cases published in the meeting minutes. However, the legal provision of making public the acts, decisions, accompanying reports, or proposals of Standing Committees that are passed for discussion, review, or evaluation in a plenary session, does not appear to have been consistently respected by the Council.

Pursuant to its competences, the HPC has focused particularly on **the establishment of the Special Prosecution Office**, as one of the most important obligations for the fight against corruption and organized crime.²³ This process, initiated since the start of 2019, was finalized on December 19, 2019, with the appointment of 8 prosecutors from the 15 candidates who successfully passed the transitory re-evaluation process (vetting) by final decision.²⁴ During the period January – July 2020, the HPC appointed 5 other prosecutors,²⁵ thus taking the total number of prosecutor to 13 of the 15 required by law.

The delayed establishment of the Special Prosecution Office also led to a delayed establishment of the **National Bureau of Investigation**, as a specialized unit for the investigation and prosecution of government officials and others suspected of involvement in criminal offenses that are linked with organized crime and corruption. Seven months after the establishment of the Special Prosecution Office, the HPC approved in its meeting of 10.07.2020 the decision to Appoint the Director of the National Bureau of Investigation, Ms. Aida Veizaj.²⁶

Procedures for the **selection of the Prosecutor General** saw delays due to legal technicalities linked with the process of transitory re-evaluation of candidates and that of appeals to the Administrative Court. The process for the selection of the Prosecutor General began in March 2019 and was finalized 9

²² Regulations "On the criteria and procedures for the promotion to head of general jurisdiction prosecution offices;" Decision no. 96, dated 15.04.2020 On the creation and administration at the High Prosecutorial Council of the personal files and register of prosecutors. Regulations "On the criteria and procedure of temporary transfer of prosecutors;" Regulations on the temporary assignment of prosecutors

²³ Annual Report 2019, High Prosecutorial Council
https://klp.al/wp-content/uploads/2020/05/RAPORTI_KUVENDI_VJETOR_WEB.pdf

²⁴ Letter no. 1332/1 Prot., dated 20.08.2020

²⁵ Letter no. 1332/1 Prot., dated 20.08.2020

²⁶ Ibid

months later (December), with the appointment by the Assembly of Albania²⁷ of the candidate that ranked first out of the HPC evaluation.

4.3 Challenges and main problems

Just like the judiciary, the prosecution office was also faced with the vacuum created by the vetting process as a result of the dismissal or resignations of prosecutors. The prosecution system currently has 27 (permanent) vacancies and 23 other temporary vacancies as a result of IQC dismissals, whereby the dismissals are not final due to appeals.²⁸ As the Council reports itself, this situation has led to an increase in the workload for those in the system.

In these circumstances, it is necessary to have a more proactive position and a more visionary and strategic approach by the Council toward reviewing the legal framework in order to find mechanisms for filling the created vacancies. Also, it is essential that the HPC carry out more dynamic procedures for the verification of assets and the integrity of candidates for magistrates who have graduated from the initial program of the School of Magistrates.²⁹

A challenge for the HPC was and remains the drafting of by-laws and the establishment of structures responsible for the review of the career of prosecutors (which includes from the running for magistrates in the School of Magistrates to running for prosecutors, or those who have come out of the prosecutorial system and seek to resume the prosecutor's career, as well as the procedure for promotion of the latter.³⁰

In spite of the achievements of the Council, some of the challenges or objectives in its activity are the completion with full capacities of the Special Prosecution Office, a process that is interdependent upon the vetting process, and the guaranteeing of the normal conduct of district prosecution offices with normal capacities. This fact shows the setting of non-realistic legal deadlines and the lack of clear and accurate forecasts as a result of the pace of the vetting process.

5. High Judicial Council (HJC)

As in the case of the HPC, the High Judicial Council (HJC) also underwent the impasse for its creation that was unblocked two and a half years after the approval of constitutional amendments for justice reform, namely on December 12, 2018. The reasons and causes for the delays are almost the same. The HJC too,

²⁷ Decision no. 138/2019 On the election of Mr. Olsian Çela as Prosecutor General <http://www.aksedrejtisi.al/dokumenta/1592411331Vendim%20i%20Kuvendit%20nr%20%20138%20dt%20%205%2012%202019.pdf>

²⁸ Letter no. 1332/1 Prot., dated 20.08.2020

²⁹ At present, the Council has initiated procedures for the verification of 2 candidates for magistrates, graduated from the initial program of the School of Magistrates, for the academic year 2019-2020. Also, by decision no. 167, dated 17.07.2020, the Council began procedures for verifying the assets and integrity of 28 candidates for admission to the initial training program of the School of Magistrates, for academic year 2020-2021. – Letter no. 1332/1 Prot., dated 20.08.2020

³⁰ Annual Report 2019, High Prosecutorial Council
https://klp.al/wp-content/uploads/2020/05/RAPORTI_KUVENDI_VJETOR_WEB.pdf

from the moment of its creation was faced with difficulties and deficiencies with regard to infrastructure, the budget, and necessary personnel.³¹

5.1 Main achievements

It is a positive fact that the HJC has established the priorities of its activity in the document “Strategic Plan” covering the period 2019-2020. The HJC states that the Strategic Plan is accompanied by the action plan and was drafted with the assistance of international partners, reflecting best international models and practices.

The period January – September 15, 2020, has been a busy one for the Council. During this period, it published **37** meeting minutes for plenary sessions, thus the number of meetings is set on the basis of meeting minutes made public on the official website. It appears that the HJC has held an average of about 4 meetings per month, considering that law no. 115/2016 “On the Governing Bodies of the Justice System,” article 66, paragraph 1 envisages the holding of no less than 1 meeting per month. The highest number of plenary sessions was during January 2020 with 7 such meetings, while for August and September, no meeting minutes have been published yet, although there were 7 decisions in August and 43 decisions for September. In total, it appears that the HJC has made 317 decisions during this period. Of these decisions, **5 are pure by-laws** published in the Official Gazette and 3 of which determined the establishment of **3 temporary commissions**. A priority issue addressed by the Council is the establishment of the Special Court against Corruption and Organized Crime, a process that was accompanied by the permanent assignment of 5 judges and temporary assignment of 13 judges, coming from the Serious Crimes Courts (already disestablished).³² In order to fill vacancies in these courts, the Council has announced calls for vacancies,³³ but a low number of applications were submitted at the end of the deadline. In this regard, there are problems with the unclear provisions of law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania,” whereby both the transfer and parallel movements are not possible for these courts. Another discouraging reason for judges is the fact that they would not benefit additional salary due to difficulties that they might encounter in exercising duties and responsibilities at this segment of the judiciary.³⁴

According to information from the institution itself, the HJC contributed to providing legal opinions on 7 different draft acts that affect the judicial system, based on article 93 of Law no. 115/2016. Paragraph 4 of this article clearly states that the Council proposes to the Minister of Justice the exercise of the initiative for legal amendments regarding every case under its responsibility.

Monitored plenary meetings of the HJC were characterized by discussions where almost all members were active and there was a spirit of cooperation and professional discussion among them. Also, the minority opinion in a series of decisions has been published.

³¹ <https://ahc.org.al/wp-content/uploads/2019/08/RAPORT-E2%80%93KRIJIMI-DHE-FUNKSIONIMI-I-ORGANEVE-T%C3%8B-REJA-T%C3%8B-QEVERISJES-S%C3%8B-DREJT%C3%8BSIS%C3%8B.pdf>

³² The current state of these court due to the transitory re-evaluation process is as follows: The Special Court of Appeals against Corruption and Organized Crime only has 5 judges appointed permanently of 11 in its staffing requirement; b) the Special Court of First Instance against Corruption and Organized Crime has 10 judges at present of the 16 in its staffing requirement. Of those 10 judges, 6 are temporarily assigned judges and 4 are permanently assigned judges.

³³ <http://klgj.al/vende-vakante-klgj>

³⁴ Report on the activity of the High Judicial Council 2019, submitted to the Assembly.

5.2 Challenges and main problems

The official website of the HJC features decisions that are ranked under sub-legal normative acts, a total of 22.³⁵ The law does not clearly specify what shall be considered a sub-legal normative act, but does envisage the legal power and effects of the law, as well as the obligation for the publication of these acts in the Official Gazette. Meanwhile, it appears that some sub-legal normative acts, classified as such on the official website of the HJC, were not published in the Official Gazette, according to provisions in article 98, paragraph 4, of law no. 115/2016.³⁶ Other sub-legal normative acts, according to the qualification that the HJC has provided for these acts on its official website, establish the immediate effect of the act, in contravention of this provision that envisages that sub-legal normative acts go into effect on the day they are published on the Official Gazette.³⁷³⁸ Regarding this matter, the HJC refers among others, e.g., that its decision no. 286, of 18.12.2019 “On the Start of Functioning of Special Courts against Corruption and Organized Crime” does not in itself represent a by-law (it does not set sub-legal regulations with general binding effects for all judges), and therefore, it is compulsory for publication in the Official Gazette. The HJC will reconsider the re-classification of the act in order to have it published under the chapter of collective administrative acts.

Regarding the above, it is worth highlighting the need to have better transparency in the methodology that the HJC uses to categorize acts in accordance with law no. 115/2016.

One of the main challenges of the HJC remains the proper management to enable guaranteeing effective citizens’ access to judicial services. At present, the system faces (i) a lack of human resources as a result of the transitory re-evaluation process; (ii) a progressive increase in the number of cases from year to year; (iii) a caseload for judges several times higher than the European norm per year, and (iv) the increase of the backlog of cases. Based on information provided by the HJC, in communication with the Assembly, the HJC has asked for additional administrative personnel. The judiciary has been allocated for 2019 20 more employees, for 2020 100 more employees, and for 2021 80 more. In total, the judicial administration has been completed with 200 additional employees.

One of the most important strategic priorities of the HJC remains the filling of vacancies in the High court as the highest institution that exercises judicial power in the Republic of Albania. During the start of 2020, the HJC made efforts to make the High Court active. Three non-judge members were appointed in March

³⁵ According to law no. 115/2016, article 34, paragraph 2/a, the Plenary Meeting of the High Judicial Council approves sub-legal normative acts of general binding impact for all judges, the judicial administration, private persons, and public bodies.

³⁶ The act envisages “This decision goes into effect immediately with its publication on the official internet website of the High Judicial Council.”

³⁷ Vendim-Nr.7-Datë-21.12.2018-Rregullore-për-Miratimin-e-Rregullave-për-Zgjedhjen-e-Zëvendëskryetarëve-të-Gjykatave, i Ndryshuar; Vendim-Nr.22-Datë-7.02.2019-Mbi-Miratimin-e-Rregullores-për-Kriteret-dhe-Procedurën-e-Funksionimit-të-Skemës-së-Delegimit-të-Gjyqtarit; Vendim-Nr.23-Datë-7.02.2019 Mbi Miratimin e Rregullores për Kriteret dhe Procedurën e Transferimit të Përkohshëm të Gjyqtarit, i Ndryshuar; Vendim-Nr.30-Datë-14.02.2019 Mbi Miratimin e Vendimit për Rregullat dhe Procedurën e Caktimit të Gjyqtarit për Gjykimin e një Çështjeje Gjyqësore të Veçantë në një Gjykatë tjetër, të ndryshme nga ajo ku ushtron Funksionin në Mënyrë të Përhershme, i Ndryshuar, etj.

³⁸ Decision no. 286, dated 18.12.2019 “On the Start of Functioning of the Special Courts against Corruption and Organized Crime.” <http://klgj.al/wp-content/uploads/2019/12/Vendim-Nr.286-date-18.12.2019-P%C3%ABr-fillimin-e-funksionimit-t%C3%AB-gjykatave-t%C3%AB-posa%C3%A7me-p%C3%ABr-korrupsionin-dhe-krimin-e-organizuar.pdf>

2020 by decree of the President of the RA. Meanwhile, the Council opened calls for all vacancies in this court from judges ranks and presently, after the conclusion of the application period, the Council has begun procedures for the verification of legal criteria of applicants. The pace of this process should have been faster, in the context of the very disturbing backlog of cases awaiting trial by this court.

Based on article 94 of law no. 115/2016, the HJC approves standard regulations for the internal functioning of the courts.³⁹ The HJC may conduct pilot research in collaboration with courts, in order to increase the quality and efficiency of the courts.⁴⁰ To date, work does not appear to have begun on these important tasks of the HJC.

The delayed establishment of the HJI has had a domino effect on delays for the exercise of HJC competences regarding disciplining of judges. Until July of this year, the HJI had approved 8 decisions to start disciplinary investigations, 5 of which are for starting disciplinary investigations toward judges. The first HJI request dates back to April 2nd of this year. Of these disciplinary investigations, 2 requests have been sent for disciplinary proceedings for a judge magistrate and one prosecutor magistrate to the HJC and HPC. During the same period, it appears that the HJC only made one decision for the disciplinary measure of suspension, decision no. 315, dated 14.09.2020.

5.3 Transparency of the HJC

Appreciating the high level of transparency of plenary meetings and decision-making in the Council, we find that efforts have been made to improve it. During this year, there are publications of additions to decisions or other integral parts. The HJC states that as a result of a high workload and the legal obligation to anonymize its decision-making, the process for transcribing and publishing meeting minutes and audio recordings, in some particular cases, goes beyond legal provisions.

Based on article 69/2 of law no. 115/2016, *“Audio registration of the plenary meeting shall be made public on the official website of the Council within 24 hours from the day of the meeting.”* Looking at September, which has a considerable number of acts, it appears the Council did not respect this norm to publish meeting minutes and audio recordings within the legal deadline.

In terms of transparency, we deem that the HJC should take further measures in the following directions:

- establish the reason for the absence of members in plenary meetings (article 61 and 88 of law no. 115/2016);
- publish all meeting minutes for meetings held and accompanied by audio recordings; during January 1, 2020 – July 2020, 33 audio recordings out of 37 meeting minutes of the HJC have been published;
- publish periodical reports of self-declaration for work carried out by the council, every three or six months, to show the administrative progress of judicial bodies and where anyone may obtain necessary information about the activity of each court (article 147/a, paragraph 1/3 of the

³⁹ Law no. 115/2016, Article 94, paragraph 1.

⁴⁰ Law no. 115/2016, Article 94, paragraph 6.

Constitution);⁴¹

- improvement of the official website, as the ranking of decisions has been done according to chronological order and categorization has been respected only for sub-legal normative acts;
- publication of statistical data regarding courts with case backlogs from past years, as well as steps undertaken to manage this workload pursuant to HJC competences.

6. High Justice Inspector (HJI)

The new justice reform legislation had set February 1st, 2017 as a compulsory deadline for the Judicial Appointments Council (JAC), which is the institution that carries out the procedure of evaluation and fulfillment of criteria as well as the ranking of candidates for the HJI. This deadline was not respected also because of the fact that JAC 2017 never met while JAC 2018 only met once and suspended its further activity; JAC 2019 ran into problems in terms of not reaching the necessary constitutional quorum to have at least 5 persons as candidates for the vacant position of the HJI as part of them did not meet the constitutional and legal criteria. With a delay of almost 3 years, Mr. Artur Metani was elected as HJI by the Assembly of Albania on 20.01.2020.⁴²

Delays in the establishment of the HJI created problematic impasses for the exercise of legal competences that this institution has with regard to verification of violations of a disciplinary nature, committed by judges and prosecutors as well as the start of disciplinary proceedings at the HJC and HPC.

6.1 Challenges after the establishment of the High Justice Inspector

Just as the other previous justice institutions, the pace of work of HJI activity is slow because the institution still suffers from lack of human resources, necessary infrastructure to carry out its work,⁴³ and financial budget.

In the 8 months of its activity, the HJI reports that it has started work to verify a considerable number of citizens' complaints, has approved regulatory acts, has drafted and approved the mid-term strategy and plan of measures, and has taken the necessary steps to establish the institution from scratch. The HJI views the lack of human resources and necessary infrastructure as a slowing factor.

⁴¹ According to this provision, *“The HJC informs the public and the Assembly about the state of the judicial system,”* while only one report was made public by the HJC about budget management, until September 15, 2020.

⁴² By decision no. 2/2020, dated 20.01.2020, of the Assembly of the Republic of Albania *“On the election of Mr. Artur Metani as High Justice Inspector.”*

⁴³ As a result of the Covid-19 global pandemic during this period, it was not possible to move to the building of the former Ministry of European Integration and procedures for the recruitment of civil servants, non-magistrate inspectors, and magistrate inspectors, have been suspended.

At present, the HJI has completed appointment procedures for only 1/3rd of its employees, according to the staffing pattern approved by the Assembly of Albania, (34 employees of 94 such). Regarding appointments for the position of inspector at the HJI, law no. 115/2016⁴⁴ envisages two categories of candidates for inspectors and these are **magistrate candidate for inspector and non-magistrate candidate for inspector**. The first category is appointed as acting to the post by the HJC or HPC, which have started application procedures. Based on the results of these procedures, we notice a general lack of interest from magistrates to be appointed as acting to the HJI office.⁴⁵ Regarding the second category, the HJI Office has opened procedures for the non-magistrate inspector position for 6 vacancies and is presently expecting information from other institutions in the process of verifying candidates' integrity, capability, and assets.

Regarding the budget approved for the High Justice Inspector for 2020, it is 100.2 million leks. This budget has been increased with an addition in the salaries item by 10 million leks, which reflects the financial impact of the increase in the number of employees. However, in the context of establishing the necessary infrastructure, the High Justice Inspector has asked the Council of Ministers to review financial support for the HJI.

6.2 Disciplinary investigations and the start of disciplinary proceedings

The HJI says that it is in the process of administration and initial review of a considerable number of complaints about the activity of magistrates that have been carried over through years. Namely, during the period February – July 2020, the Office of the High Justice Inspector received about 1339 complaints,⁴⁶ of which:

- 442 complaints from citizens;
- 757 complaints from the HJC as backlog complaints;
- 140 complaints submitted by other institutions.

In the context of these complaints that target allegations of disciplinary violations by judges or prosecutors of all levels, the HJI has done preliminary work toward confirming their receipt. Thus, over 6 months, the HJI has sent out 1275 confirmations or otherwise, after processing initial information, it has confirmed administration and handling for almost 95% of the total complaints it has received. Against this total, the number of cases for which the HJI has decided to start disciplinary investigation is very low. Thus, during this time, the HJI has approved 6 decisions for starting disciplinary investigation on 4 judges and 2 prosecutors.⁴⁷ From the conducted disciplinary investigations, the HJI has sent two requests for disciplinary proceedings for one judge and one prosecutor to the HJC and HPC, which do not appear to have made any decisions on the two requests.

⁴⁴ Law no. 115/2016 'On governing bodies of the justice system,' article 209

⁴⁵ Concretely, the HJC has opened two rounds of application procedures, which were closed without any candidates (HJI response letter no. 1878/1 Prot., dated 3.09.2020), while the HPC has accepted 6 candidates and is presently in the process of evaluating these candidates (response letter no. 1878/1 Prot., dated 3.09.2020)

⁴⁶ Report on the activity of the High Justice Inspector, January – July, 2020 <https://ild.al/wp-content/uploads/2020/08/RAPORTI-FINAL-ILD-NE-KUVEND-2020-1.pdf>

⁴⁷ Ibid

In this regard, one difficulty is the fact that at present, the HJI operates with 1 magistrate inspector,⁴⁸ appointed as temporarily acting by the HJC and who carries out procedures for the initial review of complaints and the preparation of relevant draft decisions that are submitted for approval to the High Inspector.

In closing, the existence of 1339 complaints carried over through the years and the need to investigate violations and start disciplinary procedures toward judges and prosecutors of all levels, members of the HJC, HPC, the Prosecutor General, etc., increases the need to accelerate procedures to recruit magistrate and non-magistrate inspectors at the Office of the High Justice Inspector and review legislation to see whether this represents the only structural problem for overcoming the created impasse.

7. RECOMMENDATIONS

Process of transitory re-evaluation

- Acceleration of the pace of the process of re-evaluation for judges and prosecutors in both instances, but especially in the first instance of re-evaluation, with special focus on subjects who have applied for new posts in the justice system. In this regard, it would be a positive contribution of the Assembly to review and increase the number of employees approved according to the staffing pattern for all three instances of the vetting process.
- Improvement of coherence in decision-making and further unification of the standards of the vetting process, creating a special database and its publication on the official websites of all three institutions (IQC, IPC, and SAC), with cases that have made a positive contribution in this regard and in what aspect.

High Prosecutorial Council

- Adopting a visionary and more strategic approach to the priorities that the Council should have in the short-term and mid-term.
- Conduct of more dynamic procedures for the verification of assets and integrity of candidates for magistrates.
- Finalization of the judicial system configuration through the compilation of the new judicial map would help the HPC for a more balanced and efficient distribution of prosecutors throughout the country.
- Clarify and provide transparency on the way in which the Council categorizes the acts it issues.
- Fill (two) vacancies in the SPAK Special Prosecution Office thanks to better coordination with the vetting institutions.
- Approve by-laws that have to do with the regulations for the promotion and parallel assignments of

⁴⁸ Letter no. 1878/1 Prot., dated 3.09.2020

prosecutors, which would enable the appointment of heads of district prosecution offices based on transparent evaluations, professionalism, and meritocracy.

High Judicial Council

- Accelerate the pace of filling vacancies, mainly in the High Court, according to article 47 of law no. 96/2016, also according to the surpassed deadlines of the Action Plan and Strategic Plan;
- Assume an even more active role in the process of improvement and clarification of disputable legislation that represents a structural problem for the progress and smooth conduct of its activity, as envisaged by article 93 of the law no. 115/2016 (e.g. the need to clarify and improve laws no. 115/2016, no. 96/2016 and no. 98/2016, including the filling of legal vacuums and addressing courts' needs in a timely manner);
- Continue to take further measures to increase personnel in all courts in the country and especially in those courts with a large backlog of cases according to article 90 of law no. 115/2016;
- Clarify and provide transparency on the way in which the High Judicial Council categorizes the acts it issues, ensuring proper juridical classification, both on the Council's website, and in the act itself.

High Justice Inspector

- Strengthen bridges of cooperation with responsible institutions with the aim of resolving the legal and institutional impasse that has led to delays in the recruitment of magistrate and non-magistrate inspectors at the Office of the High Justice Inspector. Look at the possibility that, in cooperation with independent justice institutions, impartial professionals of justice (judges, prosecutors, lawyers, lecturers of law), specialized organizations of the field, there is a revision in the law of the criteria for the recruitment of inspectors, in the circumstances when the HJC has opened four times the call for application and there have been no candidates.
- We recommend to the Assembly to support the HJI both in the financial and the infrastructural aspect, so that as an institution that is recently created, it possesses all the tools and conditions to increase public's trust through the responsible and professional verification of complaints, investigation of violations, and the start of disciplinary procedures.

CHAPTER 2

FIGHT AGAINST CORRUPTION AND IMPUNITY

BALKAN INVESTIGATIVE REPORTING NETWORK in Albania (BIRN Albania) AND ALBANIAN HELSINKI COMMITTEE (AHC)

During these past three decades of democracy, implementation in practice of international conventions in the field of anti-corruption, ratified by our country, and relevant domestic legislation, and especially the fight against impunity, particularly among high-level public officials, remains a challenge for Albania.

As a participating country in the OSCE and chair-in-office of the organization for 2020, Albania is urged to strengthen efforts in fighting corruption, particularly high-level corruption. The country also should increase efforts to fight competitiveness, reduce losses in the field of public procurement, and make more accurate and deeper monitoring of concessionary agreements.

This chapter was compiled by collecting and analyzing diverse open data and obtained through freedom of information requests from law enforcement bodies, national and international organizations that monitor corruption in the country or have different legal responsibilities in the fight against this phenomenon. The data analyzed in this chapter focus on four main directions regarding the implementation of the Cross-Sector Strategy against Corruption, implementation of legislation on whistleblowing and protection of whistleblowers of corruption, the situation of corruption with public procurement, and high-level corruption.

The analysis of data shows that Albania displays lack of competition in the field of public procurement while economic damage due to the violation of the equality of operators participating in tenders is high. According to the annual Performance Report of the HSA for 2019, the negative effects on the state budget in the field of procurement reach 50.5 billion leks or 408 million euros. According to the public procurement database published by the Albanian Institute of Science (AIS), institutions from the health care sector, state enterprises, the Agency of Centralized Acquisitions, and the Albanian Development Fund, between January 1, 2020 until August 31, 2020k conducted 2,598 public procurement procedures with a total value of 32.4 billion leks. Of the 520 procedures that AIS has red-flagged, 323 procurement procedures appear to have lack of competition, because the procurement was conducted with a single participating bidder. Nevertheless, frequent denunciations by the media or in public, cases of violations of equality in public tenders and corruption with public procurement, data from the General Prosecution Office indicate that the number of proceedings for the criminal offense prescribed in article 248 of the Criminal Code "Violation of equality in public tenders or auctions," is low.

Quantitative data on criminal proceedings on corruption-related offenses indicate that the fight against this phenomenon focuses mainly on low-level and mid-level officials, while proceedings against high-level officials may be counted with the fingers of one hand. Data from the Special Prosecution Office against Corruption and Organized Crime, SPAK, which effectively began to function in December 2019, indicate that in the first 8 months of 2020, there were 117 criminal proceedings for corruption-related offenses and 119 suspected individuals were placed under investigation. The SPAK registered 3 criminal proceedings for articles no. 245 and 260 of the Criminal Code, related with active and passive corruption of high-level officials and elected local officials. The SPAK announced on April 30 that it is conducting intensive investigations on procurements conducted in emergency conditions of the Covid-19 pandemic by the Ministry of Defense, and that it is verifying public denunciations on procurements conducted by the Ministry of Health through procedures classified as "secret."

The Special Court against Organized Crime and Corruption began work in December 2019. To date, the most important case related to high-level officials that it has tried is the appeal of former Minister of

Interior S.T., who had been convicted by the Serious Crimes Court of First Instance for abuse of office.

Since 2016, Albania has a special law on whistleblowing or illegal practices in the workplace, which offers guarantees and protection for whistleblowers against retaliation by their employers. Those signaling corruption are known in many countries of the world as whistleblowers. Based on the HSA report, annual reports of HIDAACI, the responses of 11 Ministries and 10 Municipalities monitored in the country, we notice a low number of corruption whistleblowing in the workplace, especially in the mechanism of internal whistleblowing. No signaled case that has been administratively investigated and has been sent to the responsible prosecution office has contributed to the criminal conviction of persons who were referred by whistleblowing.

Corruption perception in the country remains high, referring to international organizations' report. The fight against corruption and impunity requires inter-coordinated engagement of institutional actors and civil society actors, including the media, which should monitor progress by the government in the fight against corruption and hold it accountable for objectives declared in this regard.

1. Standards and best practices at the international level

Albania has approved a series of treaties and conventions as international "anti-corruption" instruments, drafted in the context of engagements of the United Nations, Council of Europe, and the Organization for Economic Cooperation and Development. In light of these international instruments, domestic legislation has undergone continued changes and improvements.

As an OSCE member country, Albania has undertaken a series of engagements for the prevention of and the fight against corruption. Since 1999, the OSCE approved a series of strategic documents that guide the institution's fight against corruption, including the 2003 Maastricht Strategic Document on the economic and environmental dimension, as well as decisions of the Ministerial Council in Sofia in 2003, in 2014 in Basel, in 2016 in Hamburg, and the Dublin declaration of 2012. These documents encourage the OSCE office for economic and environmental activities to work with member countries to increase transparency and accountability in the public sector. The OSCE also supports the efforts of member countries in the fight against corruption with programs for increasing capacities and awareness on this negative phenomenon.⁴⁹

The Declaration of the OSCE Ministerial in Dublin on "Strengthening Good Governance and the Fight Against Corruption, Money Laundering, and Terrorism Financing," recognizes the fact that good governance is a fundamental pillar for political security and stability and it encourages member countries to increase efforts to realize international and national commitments against corruption, involving civil society and the business community. According to the Dublin Declaration, the fight against corruption requires strong institutions, strategic and long-term approaches, and should be kept far from inappropriate influences. Due to the central role that justice institutions and law enforcement agencies have in the fight against corruption, the OSCE acknowledges the importance of preserving the independence of these

⁴⁹ Prevention of and the Fight Against Corruption, OSCE, <https://www.osce.org/occea/446212>, accessed on 04.09.2020.

institutions from political power and supporting them with the necessary resources.⁵⁰

The promotion of good governance and the principles of the fight against corruption is one of the objectives of the program of Albania's Chairmanship-in-office of the OSCE for 2020. According to this work program, corruption remains a serious obstacle to economic growth in member countries as it nourishes inequality, instability, and impunity. In its 2020 program, the Albanian OSCE Chairmanship recognizes that there is a connection between corruption, money laundering, terrorism, and environmental degradation, and it promises to try to encourage member states to use public digital services to strengthen good governance and the fight against corruption.⁵¹ In July 2020, under the care of the OSCE Chairmanship, an international conference called "Good governance and the fight against corruption in the digital era," was organized. About 200 high-level participants from OSCE participating countries, international organizations, and civil society participated in the conference.⁵²

2. General overview of reports by international bodies and domestic institutions on the situation of corruption in the country

According to the Corruption Perception Index for 2019, published by the Berlin-based organization 'Transparency International', Albania ranks 106th out of 182 countries in the index.⁵³ In 2019, Albania received 35 points out of 100 possible in the index, aligned among countries such as Algeria and Egypt and behind region's countries such as Kosovo, Serbia, and Bosnia-Herzegovina.

According to the European Commission Report published on October 6, 2020,⁵⁴ Albania saw several levels of preparation in the fight against corruption. Albanian authorities appear to have empowered operational, coordinating, and monitoring activities in the fight against corruption, fulfilling the first condition for the coming Inter-Governmental Conference. Albania also appears to have continued with efforts toward creating a sustainable track record of investigations, prosecutions, and convictions of corruption cases. While the number of cases under investigation remains high, until the date of this report, on the other hand, we find that final conviction for cases implicating high-level officials is limited. Specialized anti-corruption structures (SPAK and the Courts against Corruption and Organized Crime) are expected to empower considerable the overall capacities to investigate and prosecute corruption. Nevertheless, overall, the European Commission draws attention to the fact that corruption remains a widespread and serious concern.

⁵⁰ Statement on Strengthening Good Governance and the Fight against Corruption, Money Laundering, and Terrorism, OSCE, <https://www.osce.org/cio/97968>, accessed on 04.09.2020.

⁵¹ Albania's program during the OSCE Chairmanship, Ministry for Europe and Foreign Affairs https://puneteshashtme.gov.al/wp-content/uploads/2020/01/2020_osce_albanian_chair-programme_booklet-1219-web-r2.pdf, accessed on 04.09.2020.

⁵² Remarks by the OSCE Chairman in Office Prime Minister Edi Rama, at the High-Level Anti-Corruption Conference, Ministry for Europe and Foreign Affairs, 2020 <https://puneteshashtme.gov.al/6-july-2020-osce-chairperson-in-office-the-prime-minister-of-albania-h-e-edi-rama-addresses-the-high-level-conference-on-anti-corruption/>, accessed on 04.09.2020.

⁵³ Corruption Perception Index, Transparency International, 2019, <https://www.transparency.org/en/cpi/2019/results/alb#details>, accessed on 04.09.2020.

⁵⁴ European Commission Report on Albania, October 6, 2020, p.5-6, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

The Group of States against Corruption (GRECO), in its press statement of December 3, 2020,⁵⁵ published the periodical report on Albania, approved on October 29, 2020, where it is stressed that the country has a comprehensive legal framework regarding the prevention of corruption of ministers and their political advisors as well as the police, however this framework remains disjointed and overly complex. Some high-level state officials have been convicted of criminal offenses of corruption, GRECO notes (including judges, prosecutors, and former general secretary of the Ministry of Justice). However, there are no "success stories" in the fight against corruption that would increase public trust in the system. It noted that some cases involving politicians have hit headlines, for instance on corruption and drug-smuggling allegedly used for financing electoral campaigns, money laundering, and falsification of state documents and payment of lobbying contracts through offshore companies. A British journalist was targeted by a smear campaign in March 2019 following her articles about corruption, vote rigging, violence at protests, and the government's links to organized crime and money laundering. GRECO calls on Albania to focus on effective implementation of the legal framework, especially improving institutional capacities or mechanisms responsible for preventing corruption and through a proactive approach to investigations. GRECO calls for the approval of Integrity Plans for each ministry and for taking into consideration specific integrity risks that ministers and their political advisors may be faced with in the exercise of their duties.⁵⁶

The U.S. State Department annual report on human rights for the country in 2019 stresses that although prosecutors have made progress in investigating low and mid-level corruption cases, including corruption cases within the judiciary, the successful investigation of high-level corruption is rare due to fear of political retaliation, lack of resources, and corruption in the judiciary.⁵⁷ According to the annual report for World Freedom of Washington, D.C.-based organization "Freedom House," corruption in Albania is widespread and that the Prosecution office against Corruption and Organized Crime, established in 2016, has not yet increased operation capacities.

According to the Prosecutor General's report on the State of Criminality, there were 155 criminal proceedings registered in 2019, with 109 defendants for criminal offenses linked with corruption, while 58 cases have been sent to court with 91 defendants. Of these proceedings, 91 criminal cases have been the result of proactive investigations. During 2019, 68 defendants were convicted for corruption-related issues. However, only a fraction of these cases was linked with high-level corruption cases. The number of proceedings based on article no. 245 of the Criminal Code: "Active corruption of high-level state officials or local elected officials" was 3 with 4 defendants. During 2019, the number of defendants in courts for article no. 245 was 4 and 1 was convicted. Meanwhile, for article no. 260 of the Criminal Code, "Passive corruption of high-level state officials or local elected officials," the number of criminal proceedings registered in 2019 was 4 with 1 defendant. One proceeding has been sent to court with one defendant.⁵⁸

⁵⁵ GRECO press release, December 3, 2020, accessible at [Albania must implement the legal framework to prevent corruption of ministers, their advisers and the police - Newsroom \(coe.int\)](https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a0923d)

⁵⁶ GRECO report in English may be accessed at this link: <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a0923d> The GRECO report in Albanian may be accessed at [GRECO \(coe.int\)](https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a0923d)

⁵⁷ 2019 reports on Human Rights Practices: Albania, U.S. Department of State, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/albania/>, accessed on 04.09.2020.

⁵⁸ Report of the Prosecutor General on the state of criminality for 2019, General Prosecution Office, 2020, http://pp.gov.al/web/kuvendit_raporti_vjetor_2019_28_3_2020_pp_perf_1864.pdf, accessed on 04.09.2020.

3.1 On the implementation of the Inter-Sectoral Strategy Against Corruption 2015-2023 and Action Plan 2020-2023

Documents to be assessed in this chapter are the Inter-Sector Strategy against Corruption 2015-2020 and the Action Plan 2018-2020, amended by decision of the Council of Ministers no. 516, dated 01.07.2020 to the Inter-Sector Strategy Against Corruption (ISSC), extended to 2023 and, pursuant to that strategy, the Action Plan against Corruption 2020-2023.

The vision of the ISSC is, “Albanian institutions that are transparent and with high integrity, enjoying the trust of citizens and guaranteeing quality and uncorruptible service.”⁵⁹ The cross-sector strategy was built on the basis of three main approaches: *Prevention, Repression, and Awareness Raising*, which represent the 3 main pillars of the strategy. Based on these pillars, 18 objectives and 83 measures pursuant to these objectives were compiled.

Based on annual reports for the monitoring of the inter-sector strategy against corruption and the action plan, we notice a positive tendency in meeting objectives and measures which the Albanian state has engaged to realize within 2020, the year of Albania’s OSCE Chairmanship-in-office.

Referring to the annual report of 2019 of the National Anti-Corruption Coordinator, on the implementation of the ISSC, there is an increase of inspections and controls of public officials, increase of highlighting, addressing and prosecuting criminal offenses of corruption and crimes while in office. Also, there is an increased number of controls and verifications (administrative investigations) on lawfulness and/or abusive, corruptive, or arbitrary practices in all public administration institutions. Based on the 6-month report of the ISSC implementation, during the period January-June 2020, the electronic register has been installed in 21 public authorities. There is a greater number of complaints on the governance Platform and their address through concrete measures by competent authorities.⁶⁰

Regarding the repressive approach, the monitoring report for 2019 highlights an improved level of cooperation between law enforcement institutions at the national as well as international level for criminal prosecution and conviction of corruption, through the signing of several agreements.

Regarding the Awareness-Raising Approach, referring to the 2019 report, there have been training sessions on contact points at public institutions, and consultative meetings regarding measures of the action plan. During the first six months of 2020, there have been several activities focusing on raising the awareness of citizens on the fight against corruption (Integrity Week, Run Against Corruption).

However, in spite of progress reported by the National Anti-Corruption Coordinator for the implementation of the ISSC, Albania ranked 106th on the corruption scale out of 198 countries, losing 7 slots in the Corruption Perception Index 2019, reported by Transparency International.⁶¹ Albania received 35 points

regarding corruption. The highest points possible in corruption perception are 0 while 100 shows that no corruption is perceived in the respective country. Albania’s score increased from 33 in 2012 to 35 in 2019.⁶²

What are the reasons or factors that Albania, in spite of changes or progress mentioned above, is still classified as one of the countries with disturbing levels of corruption in Europe?

According to a research study by U4 Anti-Corruption Resource Center, the initiatives of the Albanian state to fight corruption are based on the “systemic” approach, which seeks to establish centralized measures against corruption. “Some distinctive elements of the systemic approach include interventions to support anti-corruption commissions, specialized courts, supreme audit agencies, and ombudspersons; awareness raising and training of public officials; and establishing beneficial ownership registers. The aim is to create or strengthen an overarching legal, institutional, and organizational framework for the prevention or reduction of corruption.”⁶³ In their fight against corruption, countries like Albania that are in development, according to this study, should choose and aim to undertake interventions with high impact and feasibility. This is not achieved by establishing a national legal institutional framework for anti-corruption, but targeting specific sectors where corruption is particularly damaging, by identifying specific corruption practices used to commit corruptive acts and the spaces that have favored the development of corruption, and identifying real measures that will fight these practices.

One important element is also the awareness of public officials, employees who address or have responsibilities for important processes, part of corrupt practices. These employees should really have high integrity, be aware of the importance of their positions in the fight against corruption. Institutions should have established mechanisms to evaluate the integrity of employees. The institution should train its employees periodically, obtain data on the challenges and problems encountered by specialists who are part of processes in which corruption finds most often space to develop. The positions of public officials or employees in agencies or structures where corruptive actions are identified or investigated should have long-term sustainability and therefore, there should not be reshuffling of human resources in the short-term or mid-term.

Among challenges highlighted by the ISSC monitoring report are:

- a) the need to increase the level of cooperation among institutions regarding timely reporting on set objectives, increase awareness of responsible institutions involved in the Action Plan on the importance of continued work for the proper and timely implementation of the Action Plan;
- b) ensuring an inclusive and transparent consultation process during the phases of reporting, monitoring and review of the Action Plan with responsible institutions and groups of interest.

It is also important to raise awareness of and educate the broad public on the negative consequences of corruption, the importance of the active use of mechanisms to prevent and denounce corruption, the conveying of accurate and complete information on how complaints and denunciations by the public are addressed, so that the taken measures, mechanisms, and instruments established for fighting corruption.

⁵⁹ ISSC 2015-2023

⁶⁰ 6-month report on ISSC (January-June 2020), p. 83.

⁶¹ www.transparency.org/en/cpi/2019/results/alb#details

⁶² <https://www.statista.com/statistics/872566/corruption-perception-index-albania/>

⁶³ (p. 1) <https://www.u4.no/publications/identifying-feasible-high-impact-anti-corruption-interventions>

3.2 On the implementation of legislation on whistleblowing and the protection of whistleblowers of corruption in the country

The country has approved since four years ago law no. 60/2016 “On whistleblowing and the protection of whistleblowers,” which seeks to prevent and strike corruption in the public and private sector, protect individuals who signal suspected corruption acts or practices in their workplaces, and encourage whistleblowing of suspected corruption acts or practices.

The law envisages two structures where to report a corrupt act, categorizing these structures into those for internal whistleblowing and those for external whistleblowing. Every public authority that has more than 80 employees, and private subject that has more than 100 employees, there is a unit responsible as an internal whistleblowing mechanism, responsible for administrative investigation and the review of whistleblowing cases. The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) represents the external mechanism of whistleblowing, which investigates directly whistleblowing or suspected corrupt practices in the workplace, in those institutions or subjects that do not have a unit responsible for this purpose and in other cases envisaged by article 11 of law no. 60/2016.

A monitoring report of the Albanian Helsinki Committee until November 2019 does not point to any internal whistleblowing in Line Ministries, except for one case signaled by an employee of the Ministry of Justice who chose the external whistleblowing mechanism at HIDAACI.⁶⁴ During the first 3 years of the implementation of the law, for 2017 – 2019, as an external whistleblowing mechanism, HIDAACI says there were 38 cases of whistleblowing and 5 requests for protection against retaliation. No corruption whistleblowing, after being referred to competent authorities, contributed to the criminal prosecution the persons who were reported upon.

In order to secure more updated and actual data in the context of the implementation of legislation on whistleblowing and the protection of whistleblowers, AHC submitted a request for information to several authorities at the central level, for the period January-August 2020. Based on official responses, it appears that in line ministries, there were only two cases of whistleblowing in internal units while other ministries had no registered cases of internal whistleblowing. At the local level, except one case, there was no other internal whistleblowing case. During this period, AHC collaborated closely with HIDAACI, realizing some awareness-raising sessions with municipal employees, in the context of the initiative implemented by AHC on “Empowering local government to implement the law on whistleblowing.”⁶⁵ During the three years of the implementation of the law, HIDAACI has devoted attention to training, raising awareness, and raising capacities of responsible units, both in the public and private sector, collaborating with domestic and international partners, such as the EU, OSCE, Dutch Embassy, ASPA, Albanian Helsinki Committee, etc. However, further efforts are needed for raising awareness among employees in the public and private sector, on the existence and importance of law no. 60/2016k, just as there is a need to empower and equip with the necessary human and financial capacities, in order for HIDAACI to realize systematic and effective monitoring of Responsible Units established in both sectors.

Referring to information obtained from the HIDAACI for the period January-August 2020, there were 8 cases of whistleblowing and 1 request for protection against retaliation. Due to the Covid-19 situation,

⁶⁴ MONITORING REPORT “WHISTLEBLOWING CORRUPTION IN ALBANIA: CHALLENGES OF IMPLEMENTATION OF THE NEW LEGAL FRAMEWORK,” Referring to findings of the monitoring conducted during November 2018 – November 2019, accessible at: https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-n%C3%AB-Shqip%C3%ABri_Sfidat-e-zbatimit-t%C3%AB-kuadrit-t%C3%AB-ri-ligjor.pdf

⁶⁵ HIDAACI letter No.2597/1, dated 04.09.2020, to AHC

a postponement of the deadline for the administrative investigation has been requested for one case. At HIDAACI, there is one case as administrative violation for which a fine has been issued.

Based on the AHC,⁶⁶ the HIDAACI report,⁶⁷ as well as the responses by authorities at the central and local level,⁶⁸ there is a very small number of whistleblowing on corruption in the workplace, especially in the internal signaling mechanism. No signaled case that has been administratively investigated and was then sent to the relevant prosecution office, *contributed to the criminal sentencing of persons* that were reported on.

The selection of auditing unit employees, also in their capacity as members of the responsible units (the internal whistleblowing mechanism) is foreseen in CMD no. 816, dated 16.11.2016 “On the Structure, Selection Criteria, and Labor Relations of Employees of the Responsible Unit in the Public Authorities,” pursuant to law no. 60/2016 “On Whistleblowing and the Protection of Whistleblowers,” and the Instruction of the General Inspector of HIDAACI no. 1, dated 23.9.2016. Auditing units have been deemed appropriate for carrying out the role of internal whistleblowing units after there has been broad consultation with domestic actors and international partners, due to their independence from other units of an organization and their skills and competencies to conduct internal investigations and audits. However, the AHC’s monitoring has highlighted that the proposed structure is not the most optimal. Concretely, during meetings with representatives of the responsible units of 11 Line Ministries monitored by AHC, but also from discussions in informative sessions organized by AHC with ministry employees, it was stated that the perception may be created among potential whistleblowers that their whistleblowing may be subject to review by auditing employees who, in the future, check documentation and pursued practices, including those of whistleblowers. Also, members of the responsible unit may be seen as being in a conflict of interest with their auditing duties because, if there was an act or practice suspected as corruption in the institution, the first people responsible for stating this would be precisely them, the internal auditors.⁶⁹

Sessions conducted jointly by AHC and HIDAACI on informing and building the capacities of employees and members of the Responsible Units in 11 Ministries and 8 Municipalities of the country until November this year (2020 highlight the need for continued intensive training programs with responsible units that have been created in the public and private sector.

The reporting by responsible structures on the implementation of the law on whistleblowing is very general and *no detailed information is provided on the type of whistleblowing, conducted investigations, undertaken administrative measures, the manner of handling, and conclusion of reported cases.*

HIDAACI monitoring of Responsible Units for the implementation of law no. 60/2016 remains only in the context of the annual report that the latter submit officially in writing, reporting on whether there have been whistleblowing cases. There is *no form of reporting at the central or local level, on measures undertaken to ensure enforceability of this law or the functioning of these internal mechanisms to fight*

⁶⁶ Monitoring Report “Monitoring Whistleblowing in Albania: Challenges of the Implementation of the New Legal Framework,” https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-n%C3%AB-Shqip%C3%ABri_Sfidat-e-zbatimit-t%C3%AB-kuadrit-t%C3%AB-ri-ligjor.pdf

⁶⁷ HIDAACI Annual Report 2019 <http://eëë.ildkpi.al/ëp-content/uploads/2020/06/Raport-Vjetor-Viti-2019.pdf>

⁶⁸ Data published by the Albanian Helsinki Committee in the context of the initiative “Empowering local government to implement the law on whistleblowers,” supported by the “Civil Society Program of Albania and Kosovo,” funded by the Ministry of Foreign Affairs of Norway, KSCF, in partnership with Partners Albania for Change and Development.

⁶⁹ For more, see p. 22 of the AHC report published at this link [Raport-Monitorimi_Sinjalizimi-i-korrupsionit-në-Shqipëri_Sfidat-e-zbatimit-të-kuadrit-të-ri-ligjor.pdf](https://ahc.org.al/wp-content/uploads/2020/03/Raport-Monitorimi_Sinjalizimi-i-korrupsionit-n%C3%AB-Shqip%C3%ABri_Sfidat-e-zbatimit-t%C3%AB-kuadrit-t%C3%AB-ri-ligjor.pdf) (ahc.org.al)

corruption (reporting on their activity and challenges or issues encountered).

3.3 Corruption with public procurement

Public institutions and state companies have a need to procure goods, services, and labor, as part of their duties and responsibilities. According to data from the annual report of the Public Procurement Agency for 2019, the total procured fund takes up 6.5% of the Gross Domestic Product (GDP).⁷⁰ In total, during this year, there were procurement procedures worth 90.3 billion leks and the total worth of procured procedures was 82.4 billion leks, with savings of 8.7%. According to the PPA, the percentage of procedures by negotiation without public announcement to the total number of procedures procured for 2019 is 3.2 percent or 2.6% of the total procured funds available.

Data analyzed for the purposes of this report highlight that not all operators agreed with tender documents or the evaluation of their bidding documents by contracting authorities. For 2019, 1052 complaints were filed to the Public Procurement Commissioner (PPC) on public procurement procedures, for oversight and analysis of lawfulness, with a decrease of 10% toward those of 2018. During 2019, of 7384 procedures published in the public procurement system, (not including auctions and concession agreements), for 715 of them (9.6%) there were complaints to the Public Procurement Commission. These complaints were addressed to 739 contracting authorities, of 1337 such. The PPC made decisions on the complaints submitted for procedures worth about 30.5 billion leks from the total of 110.6 billion leks published for procurement, i.e. 27% of the ceiling fund published for procurement, accompanied by complaints about respective procedures.⁷¹ During the period January-December 2019, 47 decisions of the PPC or 5.9% of the total were appealed in court.

According to the annual Performance Report for 2019,⁷² drafted by the High State Audit, the negative effects on the state budget in the field of procurement amount to 50.5 billion leks or 408 million euros. In its Budget Implementation Report for 2019, submitted to the Assembly of Albania, the High State Audit stresses that with regard to public procurement, a concern remains about “the degree of competition in procured procedures and namely, the conduct of procedures with one bidder.” **According to the HSA, during 2019, single-bid procurements reach about 14.8 billion leks or 16% of the total available fund.** During 2019, the HSA filed 28 criminal referrals and indications (7 criminal referrals and 21 criminal indications) for 40 mid and high-level officials as a result of violations in the field of public procurement.

Aside from the HSA report, civil society organizations have also raised concerns about public procurement procedures. According to the public procurement database published by the Albanian Institute of Science (AIS), which contains data on procurements by some institutions, including local government units, institutions from the health care sector, and state enterprises, the Centralized Procurement Agency and the Albanian Development Fund, from January 1, 2020 until August 31, 2020 conducted 2,598 public

⁷⁰ Public Procurement Agency, Annual Report 2019 <http://www.app.gov.al/GetData/DownloadDoc?documentId=2a69a5ce-d232-47ef-b290-0cfa79f97b15>, accessed on 04.09.2020.

⁷¹ 2019 Annual Report, Public Procurement Commission, 2020 http://www.kpp.gov.al/ppadv/DF_DocumentViewer.aspx?id=9dff47e6-d697-4b15-8f3b-b76e34a5127a, accessed on 21.11.2020.

⁷² 2019 Annual Performance Report, High State Audit, 2020 http://www.klsh.org.al/web/raporti_vjetor_i_performances_2019_30_04_2020_5671.pdf, accessed on 21.11.2020

procurement procedures worth a total of 32.4 billion leks. Of these, 520 procedures or 20% of the total have been classified by AIS as ‘red flags.’ Of the 520 procedures classified as ‘red flags,’ 323 procurement procedures contained lack of competition as the procurement was conducted with a single participating bidder. In 2 cases, there was lack of competition because the procurement was done by direct negotiation and with a higher value than 5 billion leks. In 196 cases, procurement was classified with ‘red flags’ because the procuring authority disqualified all participating bidders in the competition who had a lower offer than the winning bid, while in 2 other cases, the ‘red flag’ is because of the fact that the tender was annulled more than two or more times by the contracting authority.⁷³

During 2020, the public procurement procedure for public works, concessionary contracts, and Public Private Partnerships, as well as procurements for goods and services during the Covid-19 pandemic, have been part of public debate after denunciations by the opposition as corrupt cases, cases suspected of violation of equality of bidders in public procurements or conflict of interest. However, attention has focused on procurements by the government during the Covid-19 pandemic for medical equipment and food packages to help poor families. The Special Prosecution Office against Corruption and Organized Crime, SPAK, announced on April 30 that it is conducting intensive investigations on procurements in emergency circumstances of the Covid-19 pandemic by the Ministry of Defense and that it is verifying public denunciations on procurements conducted by the Ministry of Health by procedures classified as “secret.”⁷⁴

In August 2020, SPAK registered criminal proceedings for money laundering and document fraud even for the beneficiaries of the concession agreements of incinerators in Elbasan, Fier, and Tirana.⁷⁵ The opposition and civil society organizations have filed criminal referrals against beneficiaries of concessionary agreements in the field of health.⁷⁶

3.4 High-level corruption

Corruption in Albania is widespread and almost endemic but the fight against it has had limited efficiency because it reaches the highest levels of governance. The fight against high-level corruption remains a major challenge for Albania.

Data from the Special Prosecution Office against Corruption and Organized Crime, SPAK, which effectively has started to function in December 2019, indicate that in the first 8 months of 2020, there are 117 criminal proceedings for offenses related to corruption and 119 people are suspected. Meanwhile, in the same period, 33 requests for trial with 49 defendants have been sent to court for corruption-related

⁷³ Open Procurement Albania, <http://openprocurement.al/>, accessed on 04.09.2020.

⁷⁴ SPAK investigates “secret” tenders of the government during the pandemic, Reporter.al, 2020, <https://www.reporter.al/spak-heton-tenderat-sekrete-te-qeverise-gjate-pandemise/>, accessed on 19.09.2020.

⁷⁵ SPAK places under investigation officials and beneficiaries of incinerator concessions, Tema Newspaper, 2020, <http://www.gazetatema.net/2020/08/27/spak-ve-nen-hetim-zyrtare-e-perfitues-te-koncesioneve-te-inceneratorave-akuza-per-pastrim-parash-e-falsifikim-dokumentesh/>, accessed on 19.09.2020.

⁷⁶ Sterilization concession/ Full lawsuit submitted to court published, Faxnews, 2019 <https://www.faxweb.al/koncesioni-i-sterilizimit-zbardhet-padia-e-plote-e-dorezuar-ne-spak/>, accessed on 19.09.2020.

cases. Of these 33 criminal cases, SPAK seeks trial of the case for 21 requests with 39 defendants and the dropping of cases in 12 cases with 11 defendants. Until August 31, 2020, SPAK has registered 3 criminal proceedings based on articles 245 and 260 of the Criminal Code, related to active and passive corruption of high-level officials and local elected officials.⁷⁷

Like the prosecution office, the Special Court against Organized Crime and Corruption began work in December 2019. So far, the most important case it has tried that is related to high-level officials is the appeal of former Mol Saimir Tahiri, whom the Serious Crimes Court of First Instance had convicted for abuse of office. On June 26, the Special Appeals Court ruled to send the case against the former Mol back for retrial to the first instance.⁷⁸

4. RECOMMENDATIONS

Recommendations on the enforceability of the Inter-Sector Strategy Against Corruption and the Action Plan:

- Pursuant to the ISSC, we consider that there is a need for added attention to the real identification of sectors, practices, methods used to realize actions that favor corruption;
- Drafting and effective implementation of integrity plans in Ministries, in accordance with latest GRECO recommendations for Albania;
- Coordination of ISSC measures with public administration reform in order to guarantee long-term sustainability of public servants, especially with agencies or structures that identify or investigate corruption actions;
- Further awareness-raising of the public in using instruments created by the state to fight corruption and guaranteeing mechanisms for effective accountability for every suspected corruption case denounced by citizens.

Recommendations on the enforceability of legislation on whistleblowing and the protection of whistleblowers in the country:

- Further efforts are needed with regard to raising the awareness of employees in the public and private sector and continued training of members of responsible units, on the existence and importance of law no. 60/2016;
- We recommend the empowerment and equipment with necessary human and financial resources for the HIDAACI to realize systematic and effective monitoring of Responsible Units established in both sectors;
- We recommend the taking of measures by national and local authorities on the review of the job descriptions of members of the Responsible Units, for improving their financial reward and strengthening mechanisms that ensure their effective internal independence and preservation of confidentiality in exercising their duties as members of the Unit;

⁷⁷ SPAK, 2020, response to request for information

⁷⁸ Appeals Court sends "Tahiri" case back for retrial, Reporter.al, 2020, <https://www.reporter.al/gjyka-ta-e-apelit-kthen-per-rigjykim-ceshtjen-tahiri/>, accessed on 19.09.2020.

- Annual reports of Responsible Units should include in a detailed manner the progress of the implementation of the law, cases that have been reported, measures taken during administrative investigations, reflection of obstacles and difficulties encountered in the implementation of the law. Timely submission of reports to HIDAACI;
- With a goal to increasing public trust in the mechanisms of whistleblowing corruption, we recommend to HIDAACI to enable a more complete overview in annual reports on the nature of whistleblowing cases, concrete measures taken, enforceability of the law by whistleblowing mechanisms, etc.

Recommendations on the fight against corruption in the field of public procurement:

- We recommend to the Government to increase competitiveness in public procurement procedures for goods and services;
- We recommend to the Government to publish end beneficiaries of public private partnership and concessionary contracts;
- We recommend to the Ministry of Finance to conduct monitoring of concessionary and PPP contracts;
- We suggest to the media and civil society organizations to monitor progress made in the fight against corruption and increase demands for accountability by the government.

Recommendation on the fight against corruption at high levels

- Based on engagements of the Albanian government as an OSCE country, we recommend the strengthening of the fight against corruption at all levels, particularly against corruption at high levels of governance.
- The establishment of the National Bureau of Investigation and the consolidation of SPAK should lead to an increase of proactive (including ex-officio) criminal proceedings that are enhanced, objective, and comprehensive for offenses related to corruption and high-level official corruption. The activity of these institutions should convey to the public the perception that the fight against corruption is carried out without selectivity, in accordance with the law, and for public interest.

CHAPTER 3

FREE AND FAIR ELECTIONS

INSTITUTE FOR POLITICAL STUDIES (ISP) AND ALBANIAN HELSINKI COMMITTEE (AHC)

Executive summary

Albania's assumption of the OSCE Chairmanship in office for 2020 found Albania in a unique political situation that, according to the Freedom House report, was accompanied by a decline in the level of functional and representative democracy.⁷⁹ The political decision of the opposition (DP and LSI) to relinquish (collective resignation) their mandates in parliament in February 2019 was accompanied by political protests and then even with its boycott of local government elections of June 30, 2019. In the absence of political competition, the Socialist Party won the elections 100%, the same party that holds the majority in parliament since 2013. The new replacing MPs were not organized into political parties, thus being unable to create a functional opposition. All these factors led to the weakening of parliament's role in the governing system and of the principle of checks and balances of powers vis-à-vis the parliament's constitutional competences.⁸⁰

The practice of conducting parliamentary or local government elections in the country has highlighted that the main factors or reasons that they have not guaranteed elections according to international standards has been the lack of political will, the fragility of institutions, and tense situations and **not deficiencies in the law**. Although the electoral campaign for the next parliamentary elections in 2021 has not begun officially, its effects are being felt evidently in public prematurely. Especially since September and onward, parties articulate mutual accusations, containing elements of hate and denigrating speech, in an escalated manner. These reflect the environment of profound mutual mistrust and polarization among representatives of the main political forces in the country.

In January 2020, with the mediation of the international factor, the three main political parties (SP, DP, and SMI) together with the parliamentary opposition agreed to initiate political dialogue in the context of electoral reform. They created the **Political Council** and announced a political pact for dialogue (see further in the report), supported strongly by the international factors.⁸¹ The main result of the compromise was the halt of a worsening of the political crisis and its inclusion in electoral reform. Based on this positive development, on **March 25, 2020**, the European Union decided to open negotiations for Albania's accession to the EU.⁸² With this decision, Albania was given 6 preliminary tasks before the first Albania-EU conference. At the top of the conditions was the demand that, *"Albania should approve electoral reform in full accordance with OSCE/ODIHR recommendations, ensuring transparent funding of political parties and electoral campaigns."*⁸³ The same demand, accompanied by the need for investigations into cases of vote trafficking was also approved by the German parliament, the Bundestag.⁸⁴ The demands match the priority OSCE/ODIHR recommendation 2019, according to which, *"political parties and other electoral actors should engage in open and inclusive dialogue and facilitate electoral*

⁷⁹ Report of Freedom House <https://freedomhouse.org/country/albania/freedom-world/2020> and reference to Reporter.al <https://www.reporter.al/raporti-i-freedom-house-demokracia-ne-shqiperi-shenon-renie/>

⁸⁰ For more info see: Report of BTI, https://www.bti-project.org/content/en/downloads/reports/country_report_2020_ALB.pdf; Progress report on Albania 2020 https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_20_1794, Freedom House Report <https://freedomhouse.org/country/albania/nations-transit/2020> and the report on monitoring of the Assembly 2020 <http://isp.com.al/index.php/2020/09/05/parlamenti-ne-kohen-e-pandemise-bilanci-dhe-problematika/>

⁸¹ U.S., United Kingdom, and the European Union

⁸² EU 2020. Opening of accession talks with Albania and North Macedonia, full report https://ec.europa.eu/commission/presscorner/detail/en/IP_20_519.

⁸³ EU, Enlargement and stabilization and association process, 7002/20, <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>, p.5.

⁸⁴ Antrag der Fraktionen der CDU/CSU und SPD, 19/13509, <https://dip21.bundestag.de/dip21/btd/19/135/1913509.pdf>

reform to address recommendations contained in this report and previous ODIHR reports.”

On September 6, 2020, the President of the Republic decreed the election date on April 25 of the coming year (2021).⁸⁵ According to best practices of the Venice Commission, “The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election.” However, practice in Albania, as a result of the crisis and the delay for political consensus disallowed respect for this deadline. The electoral reform was agreed upon in June 2020, through the mechanism of the political council, and was voted on July 23, that is outside the 1-year deadline before elections. In its entirety, electoral reform was accompanied by a polarized political environment, which violated the standards of transparency and inclusivity.

One day after their approval in the plenary session of July 23, 2020, the amendments were criticized by civil society organizations as addressing only part of the key or priority OSCE/ODIHR recommendations and some of the provisions raised questions about important constitutional principles such as the principle of respect for the hierarchy of normative acts, the principle of the separation and balance of powers, or the principle of disciplinary responsibility of judges before the law, etc.⁸⁶ The priority OSCE/ODIHR recommendation for the depoliticization of election administration at all levels was not enacted in the agreed amendments of the Electoral Code.

One week after the approval of amendments to the Electoral Code, the parliament voted constitutional amendments initiated by the new parliamentary opposition, which represent the sole constitutional amendments after 1998 that did not pass through political consensus or a prior opinion of the Venice Commission. The new constitutional package changed considerably essential elements of the electoral system and the translation of votes into mandates. The main argument of the majority for the constitutional amendments was the need for compromise with the parliamentary opposition in order to have its supporting votes and therefore the necessary legal quorum of at least 3/5th of MPs for the amendments that had been agreed and proposed in the pact of June 5 on the Electoral Code. In the opinion of politologists, this argument remains relative. The constitutional amendments were not discussed in the Political Council ins spite of the consensual determination of the January 14, 2020, political pact. On October 5, in the same year, the Electoral Code underwent more changes, which served to make concrete the constitutional amendments on the electoral system. These amendments were conducted without public consultation and inclusivity.

1. International standards

International standards for elections and universal principles and guidelines that promote democratic electoral processes. These standards have evolved from protocols, statements, treaties, and other international instruments that guarantee democracy and human rights. International standards for democratic elections do not have a character of compulsory or binding norms. They do not impose a certain electoral system or the approval of certain laws. On the contrary, they are principles that guide the development and implementation of electoral systems, legislation, policies, and procedures that have to do with electoral democratic processes. All international election standards have a common starting point

⁸⁵ Official website of the President <https://president.al/presidenti-meta-dekreton-daten-e-zgjedhjeve-per-kuvendin-2/>

⁸⁶ Institute for Political Studies, Albanian Helsinki Committee and Civil Rights Defenders, Joint Press Statement, July 24, 2020, accessible at http://isp.com.al/ep-content/uploads/2020/07/Deklarate-e-perbashket_ISP_CRD_KSHH-final.pdf

the fundamental principle that citizens have the right to participate in governance and the public matters of their countries. Article 21, paragraph 3, of the UN Universal Declaration of Human Rights (1948) summarizes this fundamental principle: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁸⁷

This fundamental principle is embodied in the accession criteria for the European Union, otherwise known as the Copenhagen criteria, approved in 1998 by the European Council, which are essential conditions that should be met by all candidate countries for accession (including Albania). Under the political criterion of Copenhagen lies “democracy,” which includes the principle of functional democratic governance that requires that all citizens should have the possibility to participate, on an equal basis, in political decision-making at every level of governance, from the local (municipal) level to the highest national level. Among other things, this requires free elections that guarantee the secrecy of vote and the right to freely create political parties, without hindrance by the state.⁸⁸

2. Electoral Reform 2020

In both OSCE/ODIHR reports for election monitoring, namely the parliamentary elections of 2017 and the local government elections of 2019, the top recommendation is the one for electoral reform that seeks to address recommendations by these reports and previous ones. Open and inclusive dialogue was called for to carry out this reform.⁸⁹ Pursuant to that recommendation, on September 25, 2019, the OSCE Presence in Albania and the Ad Hoc Committee on Electoral Reform invited the extra-parliamentary opposition to participate in a conference on electoral reform.⁹⁰ At that conference, the extra-parliamentary opposition represented by the DP proposed the establishment of a special structure for drafting electoral reform, consisting of representatives at the international level, OSCE/ODIHR, EU, U.S. a representative of the Assembly and a representative of the united opposition. Afterwards, the DP and allied parties in opposition created a working group for compiling parallel drafts on electoral reform.

The main political forces agreed on January 14 of this year to establish the Political Council.⁹¹ Part of the Council were the SP as the holder of the governing majority, the new parliamentary opposition, and two opposition parties outside parliament, DP and SMI. The main purpose of the Council was the return and indirect involvement of opposition parties outside parliament and then finalization of consensual electoral reform within March 15, based on ODIHR/OSCE recommendations. The penultimate paragraph of the pact,⁹² dictated the Assembly that the final project agreed upon by the sides be approved by the Assembly in keeping with parliamentary procedures and that the parliamentary majority engages to not make amendments in the Electoral Reform Committee and in the plenary session on the text approved and agreed between the sides, according to this pact. The pact entirely “bypassed” the ad hoc parliamentary Committee on Electoral Reform. That committee ended its mandate without productive meetings during

⁸⁷ Applying International Election Standards – A Field Guide for Election Monitoring Groups <https://ëëë.ndi.org/sites/default/files/Applying-International-Standards-ENG.pdf>

⁸⁸ https://en.wikipedia.org/wiki/Copenhagen_criteria

⁸⁹ OSCE/ODIHR Final Election Observation Mission Report 2017, p. 26, and OSCE/ODIHR Final Election Observation Mission Report 2019, p. 29.

⁹⁰ <https://shqiptarja.com/lajm/opozita-theu-bojkotin-sot-ne-tryezen-e-osbese-per-reformen-zgjedhore-me-eksperte>

⁹¹ Reporter.al Three main political parties agree on electoral reform <https://www.reporter.al/tre-partite-kryesore-politike-bien-da-kord-per-reforme-zgjedhore/>

⁹² Source, A2CNN (media) - [Firmoset marrëveshja, Reforma Zgjedhore përfundon brenda 15 marsit – A2 CNN \(a2news.com\)](#)

2020 and naturally, without official results or decision-making. The activity of the Political Council was characterized by non-public negotiations, decision-making without transparency, and acts of political good faith without public or institutional consultation.

Upon international encouragement and mediation, on June 5, 2020, the Political Council agreed on a consensual draft of electoral reform.⁹³ The agreement on this draft was lauded by the EU and U.S., being appreciated as an important starting point toward political maturity, the 2021 electoral process, with higher standards, and the return of political normality in the country.⁹⁴ The amendments to the Electoral Code based on the June 5 pact were voted on July 23 in parliament.⁹⁵ These amendments included among others the creation of a new CEC in terms of its organization, composition, formula of election of members of the leading bodies, as well as the additional tasks assigned compared to the previous CEC, improvements in legislation for electoral financing and advertising, prevention of the use of state resources in electoral campaigns, strengthening of provisions on gender quotas, use of technology in elections, voting by emigrants of the diaspora, etc.

The amendments agreed in the June 5 pact, from the standpoint of the civil society, did not address essential problems, such as reform of legislation on political parties, electoral financing, and decriminalization, and did not take into consideration numerous recommendations of recent years by civil society organizations that have monitored the process. Earlier, in its press statement of June 1, 2020, the Albanian Helsinki Committee said that in spite of the need for dialogue and broad consensus among different political forces, amendments to the Electoral Code should not be a monopoly of political parties. The AHC called for listening effectively to the views of groups of interest and civil society organizations, a request that was not taken into consideration.⁹⁶

3. Constitutional amendments of July 30 on the electoral system

The change of the electoral system has never been recommended by OSCE/ODIHR, but the issue was brought to the attention of the parliamentary agenda the last year by opposition replacement MPs (after the boycott of parliament by DP and SMI MPs). The first institutional debate on the change of the electoral system in the country dates back to September 25, 2019, at the conference held jointly by the OSCE Presence and the ad hoc parliamentary Committee on Electoral Reform,⁹⁷ called *“Denied by the system: building an inclusive system to protect democracy.”* Aside from political actors, civil society representatives from the AHC,⁹⁸ IPS, AIESD, and other experts of electoral legislation were invited to give their contribution to the panel on the need to change or not the electoral system.

⁹³ Top Channel. <https://top-channel.tv/2020/07/21/firmoset-marveshja-mes-ps-se-dhe-opozites-parlamentare-me-23-korrik-votohet-pakti-i-5-gershorit-me-30-korrik-hapja-e-listave/>

⁹⁴ EU statement https://ec.europa.eu/neighbourhood-enlargement/nees_corner/nees/albania-joint-statement-high-representative-vice-president-josep-borrell-and-en and U.S. statement <https://al.usembassy.gov/sq/deklarate-e-ambasades-se-shba-37/>.

⁹⁵ Approval of the Electoral Code, Assembly of Albania <http://parlament.al/Nees/Index/10286>

⁹⁶ Albanian Helsinki Committee, Press Statement, June 1, 2020 accessible at <https://www.facebook.com/KomitetiShqiptarIHelsinki/>

⁹⁷ Remarks by the Head of Presence of the OSCE in the Conference on Electoral Systems, September 25, 2019 <https://www.osce.org/files/f/documents/b/0/433031.pdf>

⁹⁸ On the need to change the electoral system for the protection of democracy, Remarks by Ms. Erida Skëndaj, Executive Director of the Albanian Helsinki Committee during the conference of September 25, 2019, organized by the OSCE Presence in Albania in collaboration with the Assembly <https://www.facebook.com/KomitetiShqiptarIHelsinki/posts/2187637001359818>

On October 8, 2019, four civil society organizations wrote publicly to political parties to request the start of an inclusive process on the electoral system,⁹⁹ stressing that political decision-making should be a continuation of the contribution of expertise and not vice-versa. Regarding the change of the electoral system, the signatory organizations propose two alternatives based on prior experiences in the country. On November 5, 2019 the ad hoc parliamentary Committee on Electoral Reform conducted a hearing with representatives of political subjects and civil society to discuss about the draft compiled by experts of this committee to address OSCE/ODIHR recommendations.¹⁰⁰ During this hearing, at the urge of MPs of the parliamentary opposition, civil society actors were asked on the need to change the electoral system in the country. On January 7 of this year, the “Hashtag” (Thurje) initiative submitted to the Assembly a petition signed by 50,000 citizens, for the change of the electoral system, from the regional proportional one with closed lists to a national proportional one with open lists.¹⁰¹

The political pact of January 14 excluded the debate on the electoral system from the priority agenda. The new parliamentary opposition warned that it would not vote in a plenary session the amendments to the Electoral Code agreed by the Political Council, on the condition that an electoral system of open lists be approved in exchange for their favorable vote on the agreement.¹⁰² On June 15, 28 parliamentary opposition MPs submitted a request to revise the Constitution. They proposed amendments to articles 64 and 68 of the Constitution for the change of the electoral system (proposing the proportional electoral system by regional competition), the establishment of a 5% minimal threshold for the distribution of mandates, and the removal of electoral coalitions. For consultations on this important package, the Assembly only made available four days for civil society representatives. In the hearing session of July 3, in a joint meeting of the Council on Legislation and the Committee on Legal Affairs, Public Administration, and Human Rights, some of the representatives of these organizations, based on previous precedents, criticized the amendments to the Constitution in circumstances of urgency, on tight deadlines dictated by interests of political parties. They suggested that particularly on the debate on the electoral system, amendments should be preceded by a full and inclusive research that shows the advantages and disadvantages of the existing and the proposed systems, and should be subjected to a broad debate among professional experts of the field, political forces, and public debate with citizens and civil society organizations.¹⁰³

Within less than one and a half months from the start of the constitutional initiative procedure, namely July 30, 2020, the Assembly approved by 106 votes in favor and 10 against, the amendment of articles 64 and 68 of the RA, which in the approved variant featured essential changes compared to the initial variant proposed by the sponsoring MPs. With the constitutional amendments, the Assembly changed the electoral system from a regional proportional one with closed lists to a regional proportional one with a national threshold, with preferable voting of no less than two thirds of the multi-name list. This constitutional formulation was publicly presented as opening of lists. Responding to criticism for failure to open lists 100%, in the plenary session of July 30, one of the rapporteurs of the governing majority said, *“The constitution sets a level under which one cannot go. Two thirds of the list must be open by all means”*¹⁰⁴ The other important change in article 68 of the Constitution was that of removing pre-

⁹⁹ <https://a2news.com/video/reforma-zgjedhore-shoqeria-civile-leter-partive-dy-propozime-per-sistemin/>

¹⁰⁰ <http://parlament.al/Files/Procesverbale/20200129135842Komisioni%20i%20Reformes%20Zgjedhore%20dat%C3%AB%20205.11.2019.pdf>

¹⁰¹ <https://citizens-channel.com/2020/01/07/sistemi-zgjedhor-nisma-thurje-dergon-ne-kuvend-propozimet-ligjore/>

¹⁰² <https://a2news.com/2020/06/06/opozita-parlamentare-takon-ambasadoret-pa-lista-te-hapura-dhe-voten-e-emigranteve-nuk-votojme-reformen/>

¹⁰³ <https://www.parlament.al/Files/Procesverbale/20200728134615Kl%20dhe%20Kligj%202003.07.2020.pdf>

¹⁰⁴ Assembly of the RA, minutes of the plenary session, July 30, 2020, during which amendments to the constitution were approved, taken from remarks by SP MP Klotilda Bushka, p.5 <https://www.parlament.al/Files/Procesverbale/20200908085448Proc.%20dt%2030.07.2020.pdf>

electoral coalitions (allowed in the previous constitutional provision) to present candidates for MP at the constituency level.¹⁰⁵ This right is still allowed expressly only for political parties or voters. However, majority representatives defended the change with the argument, *"The constitution does not expressly prohibit pre-electoral coalitions, but the open-list system does not accept coalition formats, according to those applied today."*¹⁰⁶

Pursuant to the mentioned constitutional amendments, on 5.10.2020, the Assembly reviewed some legal initiatives proposed by a group of MPs and approved the second package of amendments to the Electoral Code, whose provisions detail the amendments made to articles 64 and 68 of the Constitution. This legal package was not subjected even formally to any consultation with the public or civil society organizations, which criticized the fact that for a few days after its approval, the public and those interested were not able to become familiar with the official text of amendments passed in the Committee of Laws and then in the plenary session.¹⁰⁷ According to new information of the Electoral Code, which was published in the Official Gazette only on November 3, 2020, among others, article 67 recognizes the right of the party chair or the chair of the leading coalition party, the right to run for MP in up to four electoral constituencies. This provision is in contravention with the principles of equality and non-discrimination envisaged in article 18 of our Constitution, article 14 of the European Convention of Human Rights (ECHR), article 26 of the International Convention for Civil and Political Rights, article 7 of the Universal Declaration of Human Rights, and circumvents the OSCE/ODIHR Report of September 14, 2009 regarding the parliamentary elections of June 28, 2009.¹⁰⁸

Amendments to the Electoral Code on October 5 are in several directions. For the first time, the regional proportional system with open lists is applied in no less than two thirds. The second change has to do with the establishment of the national threshold of 1% from the 3% in previous elections. The third change has to do with the formula of ranking of candidates in the lists of political parties/ coalitions, which in practice may disable a candidate to get the necessary number of votes in order to be victorious in the final ranking of the list of candidates of the electoral subject.

On October 23, the President of the Republic announced that he was not decreeing the October 5 amendments to the Electoral Code and the initiative to address the discussed issues to the Venice Commission. The main arguments of the President had to do with the violation of the consensual tradition of electoral reform, the unilateral intervention in the Constitution, the violation of the equality of vote, etc.¹⁰⁹ The Venice Commission announced that it received the request of the President for an opinion¹¹⁰ and the review of the case in December 2020. While that request is in process for review at the Venice Commission, it appears that in the plenary session of October 29, 2020, the Assembly voted by 96 votes against the presidential decree no 11.797, dated 22.10.2020¹¹¹ and the amended Electoral Code went into effect on 18.11.2020.

¹⁰⁵Article 68 (amended by law no. 9904, dated 21.4.2008, amended paragraph 1 by law no. 115/2020, dated 30.7.2020), first sentence, "1. Candidates for MP are presented at the level of electoral constituency by political parties or by voters."

¹⁰⁶ Assembly of the RA, minutes of the plenary session, July 30, 2020, during which amendments to the constitution were approved, taken from remarks by SP MP Klotilda Bushka, p.5 <https://ëëë.parlament.al/Files/Procesverbale/20200908085448Proc.%20dt%2030.07.2020.pdf>

¹⁰⁷ Open letter of AHC and IPS, October 8, 2020 <https://www.facebook.com/isp.com.al/posts/3423473871028941/>

¹⁰⁸ Press Statement, October 13, 2020, AHC <https://ahc.org.al/njoftim-per-shtyp-ndryshimet-ne-kodin-zgjedhor/>

¹⁰⁹ For more <https://president.al/presidenti-meta-dekreton-kthimin-per-rishqyrtim-ne-kuvend-te-ligjit-nr-118-2020-arsyet-e-kthimit-per-rishqyrtim-te-ligjit/>

¹¹⁰ Venice Commission: <https://www.venice.coe.int/ëebforms/events/?id=3021>

¹¹¹ <https://top-channel.tv/2020/10/29/kodi-zgjedhor-kuvendi-rrezon-dekretin-e-metes/> <https://ëëë.parlament.al/Neës/Index/11408>

4. Analysis on the addressing of some of the OSCE/ODIHR key recommendations

4.1 Serious efforts to address the continued issue of vote buying

OSCE/ODIHR reports on monitoring of elections in the country, especially in the last two decades, have addressed continuously the concern about the phenomenon of vote buying. OSCE/ODIHR recommends that, *"Robust efforts are needed to address the persistent issue of vote-buying, both through a civic awareness campaign and prosecutions, in order to promote confidence in the electoral process. A concrete and genuine commitment from political parties to combat vote-buying practices could be made. In addition, a public refusal by politicians to accept financial support from individuals with a criminal past would help build public trust in the integrity of the elections."*¹¹²....*"Law enforcement bodies should investigate fully, immediately, and transparently any accusation of electoral violations."*¹¹³

The amendments of article 64 of the Electoral Code on July 23 with law no. 101/2020 envisage that in order to register as an electoral subject for any type of election, a political party needs to submit to the CEC, among others, *the written statement signed by the chairperson of the political party that mentions the solemn engagement to refuse to participate in practices of vote-buying, obtaining unlawful funding or benefits, especially those from criminal activity, and the commitment to compete in elections in a fair manner and with integrity* (letter "e"). The solemn engagement proposed in this provision is of a declarative nature and does not limit or prohibit vote-buying as that is criminally punishable. If the party chairperson were to encourage or organize such activities, he/she would be held criminally responsible according to provisions of the Criminal Code. What assumes primary importance in the OSCE/ODIHR recommendation to prevent and strike this phenomenon is the full, immediate, and transparent investigation by the bodies of the criminal justice system.

In order to see the progress of investigations of criminal offenses in the field of elections, the AHC submitted a request for official information to the 21 main judicial district prosecution offices in the country, copying the Prosecutor General, about the number of cases investigated during January 2019 – July 2020. Of these prosecution offices, 15 responded, namely Tropoja, Berati, Dibra, Durresi, Elbasani, Fieri, Gjirokastra, Korca, Lezha, Lushnja, Permeti, Puka, Tirana, Mati and Vlora. The prosecution offices of Kavaja, Kruja, Kukësi, Kurbin, Pogradeci and Saranda did not respond.¹¹⁴

Based on information obtained from the prosecution offices that replied to the request for information, it appears that the total number of cases under investigation for these offenses is **549**, with the overwhelming majority linked with article 326 of the Criminal Code, "Falsification of electoral materials and election results." The number of these cases is categorized as follows:

- 581 cases attributed to article 326 of the Criminal Code, "Falsification of electoral materials and election results;"
- 8 cases to article 326/a of the Criminal Code, "Intentional damage to electoral materials;"
- 6 cases to article 236 of the Criminal Code, "Opposing the public order police officer;"
- 6 cases to article 325 of the Criminal Code, "Obstruction of electoral subjects;"

¹¹² OSCE/ODIHR Election Monitoring Mission Final Report, Parliamentary Elections 2017, p. 27.

¹¹³ OSCE/ODIHR Election Monitoring Mission Final Report, Local government elections 2019, p. 3.

¹¹⁴ Envelope sent to the Shkodra Prosecution Office was sent back on 19.10.2020 and therefore no response was received.

- e) 2 cases according to article 327 of the Criminal Code, "Violation of election secrecy;"
- f) 2 cases according to article 327/a, of the Criminal Code, "Voting more than once or without being identified;"
- g) 2 cases according to article 328 of the Criminal Code, "Active corruption in elections;"
- h) 2 cases according to article 329 of the Criminal Code, "Threatening or violating participants in elections;"
- i) 1 case according to article 328/a of the Criminal Code, "Use of public functions for political or electoral activity;"
- j) 1 case according to article 328/b of the Criminal Code, "Passive corruption in elections;"
- k) The code's provision was not specified in 2 cases.

Although the number of referred or denounced cases to the prosecution office is considerable, data provided by the contacted prosecution offices indicate that for the majority of cases it has been decided to not initiate criminal proceedings, namely for 523 cases, or in 95.9% of the cases. A smaller minority of cases, on which criminal proceedings did begin, ended up in court or were merged, while 6 cases are still under investigation or verification at the prosecution office. Specifically, for 9 of these cases, the prosecution office has concluded criminal proceedings and pressed charges in court against the defendants. Even such data shows that most of the cases sent by the prosecution office to court were dropped by judicial decision, namely 6 of them. The Tropoja prosecution office states that for 6 defendants, the Tropoja Judicial District Court has ruled to declare them guilty of the criminal offenses provided for in articles 326/a, 236 and 262 of the Criminal Code and these decisions are final. It also appears that for another defendant, the Tirana Judicial District Court ruled to sentence him to 4 years of imprisonment and, pursuant to article 59 of the Criminal Code, suspended the execution of the prison sentence and ruled to place the person under probation (as an alternative sentence).

4.2 Prevention and the fight against the misuse of state resources and pressure regarding voter's jobs

The issue of using state resources in the electoral campaign has been listed among the main OSCE/ODIHR recommendations. According to recommendation 3/2017, *"The government should analyze the effectiveness of previous attempts to counteract the abuse of state resources and employment-related pressures on voters. It should consider establishing a transparent, independent, and inclusive body with the task and competence to act and follow up if such matters are brought to its attention in the pre- and post-electoral period. Such a structure could be replicated on the regional level and be established in due time before the next elections."*¹¹⁵ And according to recommendation 2/2019, *"The government should establish a procedure by which current and prospective public administration employees may report any political pressures brought upon them in connection with obtaining or retaining a position or with work performance. Such persons should enjoy the protections currently guaranteed by law to whistle-blowers."*¹¹⁶

According to the new Electoral Code, article 91, there were clearer stipulations regarding the concept of state resources, the category of institutions included in the restrictions was expanded, and there was a prohibition up to 4 months after the creation of the new government after the election to propose, approve, or issue laws/by-laws that envisage the issuance of benefits for certain categories of the population, etc.

¹¹⁵ OSCE/ODIHR Election Observation Mission Final Report 2017, p. 27.

¹¹⁶ OSCE/ODIHR Election Observation Mission Final Report 2019, p. 30.

The second important change (article 92) was the expansion of competences and responsibilities of the CEC to inform and accept information from other sources, etc., about cases of the use of state resources in the campaign. The amendments also prohibit the broadcast in the media of news stories on CEC-prohibited activities that are related to the abuse of state resources in an electoral campaign.

The new amendments in the Electoral Code generally fulfilled the OSCE/ODIHR recommendations but there does not appear to have been addressed the recommendation for *creating a transparent, independent, and inclusive body tasked with the competence to act and follow up abuse of state resources*. Tasking the CEC with this duty may create a disproportionate burden on the basic duties that this body has with regard to the proper administration of the electoral process in all of its phases.

4.3 Depoliticization and independence of Electoral Administration Bodies

OSCE/ODIHR reports for the parliamentary elections of 2009 and the local government elections of 2011, when it came to the election administration, draw attention to the fact that it acted in a biased manner, under the influence of political parties. Looking at this as a recurring problem in every election, the report on the elections for local government bodies in 2015, OSCE/ODIHR openly said, *"The law could be amended to allow for non-partisan election commissioners at all levels to depoliticize the election administration."* This recommendation was reiterated also in elections that took place in 2017 and 2019. Recommendation 5 of the monitoring report on the local government elections of 2019 says, *"...The independence and the impartiality of the Central Election Commission and the judiciary should be ensured."*¹¹⁷ Not only the recommendations of OSCE/ODIHR but even the practice of monitoring by domestic observers create the conviction that the issue of depoliticization of election administration at all levels represents one of the key recommendations. The amendments to the Electoral Code on July 23, 2020, with law 101/2020, did not address fully this need and above all are not guarantees for the functional independence of the highest election administration body, the CEC. Nevertheless, the functioning of this body in practice remains to be observed in practice and may not be prejudiced a priori.

As mentioned in the beginning of this report, amendments to the Electoral Code envisaged an almost new CEC, in its organization and composition, manner of selection of its members, but also its competences because new responsibilities were added. Namely:

The Central Election Commission, from a collegial body composed of 7 members, with the new formula, consists of 3 leading bodies, namely The State Election Commissioner (monocratic body), the Regulatory Commission (approves acts of a normative character, etc.) and the Complaints and Sanctions Commission (reviews administrative complaints and imposition of sanctions). It is worth mentioning that no recommendation of the OSCE/ODIHR requested a new organization of the CEC. The amendments in composition, competences, and selection of members of the CEC leading bodies were not accompanied by convincing arguments for the need for these changes. Meanwhile, representatives of the Political Council admit that the body is not depoliticized but the agreed changes were conditioned by political consensus among the sides.¹¹⁸ With regard to the depoliticization of the second-level (Zonal Election Administration Commissions) and third-level (Voting Center Commissions and Vote Counting Groups) election administration commissions, law no. 101/2020 has not enabled changes to the composition

¹¹⁷ OSCE/ODIHR Election Monitoring Mission Final Report 2019, p. 31.

¹¹⁸ Statement for the media of the co-chair of the Political Council on Electoral Reform, Mr. Damian Gjinkuri <https://www.vizionplus.tv/gjinkuri-ne-quo-vadis-nuk-ju-permbajtem-rekomandimeve-te-osbe-odihr/>

and manner of appointment of their members, which shows the OSCE/ODIHR recommendation for their depoliticization was not addressed. During discussions in the Political Council, the extra-parliamentary opposition did not accept depoliticization of these bodies with the argument that candidates would be from the public administration, which is under the influence of the majority (candidates proposed were from among teachers, public administration, etc.).¹¹⁹

On October 5, 2020, the Assembly elected in a plenary session the leading bodies of the new CEC.¹²⁰ Earlier in time, on 17.09.2020, the Assembly approved decision no. 50/2020 *"On the creation and composition of the special ad hoc committee for the review and selection of candidates for the leading bodies of the Central Election Commission."* The entire procedure for the review and selection of candidates was done within a very short time period of 18 days and did not enable a competitive, meritocratic, and politically impartial process. A monitoring report of the Albanian Helsinki Committee noted that the ad hoc Parliamentary Committee did not sufficiently investigate whether the new members of the CEC are active members of any political party, in accordance with article 13, paragraph 5 and article 16, paragraph 5 of the Electoral Code,¹²¹ and it only relied on their self-declaration. It is therefore noted that the priority OSCE/ODIHR recommendation for the depoliticization of the CEC is not implemented in practice, which derives from the very formula that the Electoral Code envisages for the election of functionaries of this institution.

Regarding the role of courts in elections, the amendments in the Electoral Code did not touch upon the instrument of the special court, the Electoral College, but elements regarding to composition, legal guarantees, and its decision-making were amended. Specifically, the Political Council and then parliament agreed that the eight members of the Electoral Code be *"judges selected by lottery by the High Judicial Council, from among judges who have successfully passed, by final decision, the process of transitory re-evaluation of judges, according to law no. 84/2016, from the courts of first instance, courts of appeals, administrative courts of first instance, and the administrative court of appeals in Tirana. Judge of the Court against Organized Crime and Corruption are excluded from this lottery."*¹²² The HJC selected the Electoral College by lottery and the College took the oath of office on September 10.

4.4 Repealing criminal provisions on libel

In its report on the parliamentary elections of 2017, OSCE/ODIHR addressed in its recommendation 6 the request to repeal criminal provisions regarding libel. According to the OSCE, this should be done in order to *"give priority to civil remedies designed to restore the reputation harmed."*¹²³ This issue was not part of the agenda and was not discussed in the Political Council. Therefore, the new amendments to electoral legislation did not reflect this recommendation.

¹¹⁹ [Opozita bllokoi depolitizimin! Rama: Për fat të keq i pamundur! PD-së i lamë në dorë teknologjinë, presim ku do ta çojë topin Basha - Shqiptarja.com](https://www.parlament.al/News/Index/10400)

¹²⁰ <https://www.parlament.al/News/Index/10400>

¹²¹ AHC monitoring report, link: https://ahc.org.al/wp-content/uploads/2020/11/AHC_Permbledhje_KQZ.pdf

¹²² Electoral Code 2020, Official Gazette <https://qbz.gov.al/preview/75122d2e-9ebc-45de-b0ea-b5efde2f6836>

¹²³ OSCE/ODIHR Election Observation Mission Final Report 2017, p. 27.

4.5 Equality of the rights of observers

OSCE/ODIHR recommendations on the parliamentary elections of 2017 (no. 7) state that, *"In order to enhance transparency, the law should guarantee the same rights for all observers and clearly stipulate that all observers be entitled to receive copies of results protocols."*¹²⁴ The new amendments in the Electoral Code reflect some positive additional elements of observers' access to electoral documentation. Specifically, observers get copies of results protocols, the final result tabulation, tabulations of voting centers, etc. The Electoral Code recognizes these rights for parliamentary party observers and observers of competing electoral subjects (article 122).

4.6 Freedom and secrecy of vote

OSCE/ODIHR recommendations include concrete recommendations related to the secrecy of vote. Specifically, recommendation no. 8 for the 2017 elections noted, *"The state should guarantee the right to a free and secret choice. Any form of pressure to disclose how voters intend to vote or how they voted should be prevented. Any association between a voter and a specific vote should not be possible."*¹²⁵ Also, the report for the 2019 elections, recommendation 3, noted, *"Authorities should guarantee the voters' right to a free and secret choice. The voting procedures should be reviewed to ensure the secrecy of the vote and protection against undue influence on voters. The importance of ballot secrecy should be emphasized during the training of election commissions and in voter education materials."*¹²⁶ Law no. 101/2020 on amendments to the Electoral Code and relevant legislation on elections addressed this recommendation extensively, agreeing to strengthen penalizing provisions on proven cases of violation of voting procedures and secrecy of the vote.

5. RECOMMENDATIONS

- a. The electoral reform package remains incomplete without the comprehensive review of legislation on political parties and electoral campaign financing and, therefore, we suggest that in a not-so-distant future, an inclusive, transparent electoral reform is initiated, in accordance with international standards and key OSCE/ODIHR recommendations.
- b. Due to the problems that civil society organizations and OSCE/ODIHR have noticed in the past in the functioning of the highest electoral administration body, we recommend to the three leading bodies of the CEC to implement correctly, impartially, professionally, responsibly, with accountability to the public the duties and competences envisaged in the Electoral Code.
- c. We recommend to electoral subjects to guarantee equal opportunities between party chairs and other candidates within the party, demonstrating positive examples toward functional democracy and effective equality in a competition within the party and in elections.
- d. We suggest that political parties and competing subjects demonstrate concrete acts of will to realize the process of decriminalization, by applying Code of Ethics in their internal electoral processes, and by publishing the detailed CVs of candidates before the legal deadline of registration with the CEC.

¹²⁴ OSCE/ODIHR Election Observation Mission Final Report 2017, p. 27.

¹²⁵ OSCE/ODIHR Election Observation Mission Final Report 2017, p. 27.

¹²⁶ OSCE/ODIHR Election Observation Mission Final Report 2017, p. 30.

- e. Criminal justice system bodies in our opinion should demonstrate high efficiency and effective independence in objective, comprehensive, and complete investigation, within reasonable deadlines, of any reasonable suspicion based on leads or evidence, shedding light on the phenomenon of vote-buying.
- f. We recommend that the portal for reporting electoral violations and transparency of the use of state resources in the electoral campaign should be functional as soon as possible and should ensure maximal transparency and spirit of cooperation with civil society actors involved in monitoring the election process.
- g. We recommend that provisions on open lists and gender representation are accompanied by a reform of decision-making and the system of career promotion in political parties to ensure higher quality entries in the next parliament.

CHAPTER 4

MEDIA FREEDOM IN ALBANIA

BALKAN INVESTIGATIVE REPORTING NETWORK in Albania (BIRN Albania)

This chapter offers a summary and analyzes developments that affected media freedom in the country during Albania's OSCE Chairmanship in 2020, including attacks on journalists and media, legislation proposed by the government to regulate online media contents through the so-called anti-defamation package, and the impact on the media of the November 26, 2019 earthquake and the restrictive measures taken by the government to prevent COVID-19.

This report was compiled by collecting and analyzing data from the databases that report attacks on journalists and the media, reports of domestic and international organizations on media freedom in Albania, documents of the Assembly of Albania and the Venice Commission, and articles in the electronic media. The sources used to compile the report are cited in the respective footnotes.

The analysis of collected qualitative and quantitative data shows that media freedom during Albania's chairmanship of the OSCE was under pressure of continued attacks – physical and verbal – toward journalists and online media, police persecution through accusations of incitement of panic, the closing down of internet sites and online media, the attempts of the government to expand the competences of the Council of Ethics and the Audio-visual Media Authority to control online media content, as well as physical restrictions and the decline of advertising revenue due to the health emergency situation created by the COVID-19 pandemic.

This chapter analyzes how the efforts of the government to control online media content encountered forceful opposition by civil society, journalists, and local and international organizations of freedom of expression. The efforts of the civil society against the draft law that expanded the competences of AMA and the Council of Ethics also found the support of the political opposition and the President of the Republic, as well as international institutions such as the Council of Europe and the European Commission.

Under the perspective of Albania's OSCE Chairmanship, it is recommended to the Government of Albania to fulfill the spirit of engagements undertaken as a member of the Council of Europe and the OSCE to ensure an enabling environment for freedom of expression and the media, stopping verbal attacks on journalists, and increasing efforts to resolve physical attacks against them.

Based on constitutional references for freedom of the media, which envisage that restrictions of this right should be proportional and based on the jurisprudence of the European Court of Human Rights, the Government of Albania should withdraw from efforts to place online media content under the control of administrative entities, without guarantees for their independence and impartiality.

Also, based on the best international practices to fight fake news, propaganda, disinformation, and ethical violations in online media, it is recommended that civil society, the media, and journalists work to strengthen the independent self-regulatory entity that includes all interested parties from the media community.

1. Standards and good practices for freedom of expression and the media – a general overview of their implementation

Albanian legislation guarantees freedom of expression and freedom of the media. Chapter two of the Constitution, which establishes individual freedoms and rights, notes in article 22¹²⁷ that freedom of expression, the press, radio, and television is guaranteed. This article also establishes that prior censorship of mediums of communication is forbidden. The constitution recognizes the possibility of restricting these rights by law, but only if the restrictions are for public interest and proportional, aligned with the European Convention of Human Rights, which Albania approved in 1996. Aside from constitutional provisions, freedom of the media in Albania is also guaranteed by the laws on the print and audio-visual media. According to law no. 7756 of 1993 "On the press," amended, which has only one article, the press is free and its freedom is protected by law.¹²⁸ Likewise, law no. 97/2013 "On audio-visual media" establishes guarantees for freedom of expression in its fundamental principles.¹²⁹

According to article 10 of the European Convention of Human Rights, everyone has the right to freedom of expression and this right includes the freedom of thought, as well as the freedom to obtain or provide information and ideas without the interference of public authorities and without boundaries. However, this right is not absolute and the ECHR recognizes the right of states to restrict it by law.

Furthermore, the member countries of the Organization for Security and Cooperation in Europe (OSCE), have undertaken since 1975 a long list of commitments to freedom of expression and freedom of the media, starting from the so-called Final Helsinki Act, which recognizes the importance of spreading information among OSCE member countries and the essential role of the press, radio, and television, and of journalists working in this field.¹³⁰

Although the Constitution and the regulatory framework guarantee freedom of expression and of the media, in practice, these rights are limited by political and economic interests of media owners, market concentration in the hands of a few companies, physical and verbal attacks against journalists, self-censorship, lawsuits for libel and defamation, as well as poor implementation of legislation for labor rights. According to the World Media Freedom Index published by the organization Reporters without Borders (RSF), in 2019, Albania ranked 84th out of 180 countries that were part of the index, losing two spots in ranking compared to the previous year. RSF emphasizes that in 2019, the Albanian Government increased efforts to place the media under its control, often using the fight against fake news as a justification.¹³¹

The Penal Code and the Civil Code of the Republic of Albania envisage and regulate libel. According to article 120 of the Penal Code, "Intentional dissemination of statements, and any other pieces of information, with the knowledge that they are false, affect a person's honor and dignity, shall constitute criminal misdemeanor, and is punished by a fine of fifty thousand to one million five hundred thousand

¹²⁷ Constitution of the Republic of Albania, <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf>, accessed on 29.08.2020

¹²⁸ Law no. 7756, 1993 "On the press," amended, <http://80.78.70.231/pls/kuv/f?p=201:Ligji:8239:03.09.1997>, accessed on 29.08.2020

¹²⁹ Law no. 97/2013 "On audiovisual media," <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99706/119118/F-1658809941/ALB-99706.pdf>, accessed on 29.08.2020

¹³⁰ Main provisions since 1975 until 2001 that describe the countries' engagements of the OSCE regarding freedom of expression and free media, OSCE, 2001, <https://www.osce.org/fom/13881>, accessed on 03.09.2020.

¹³¹ World Media Freedom Index, RSF, 2020, <https://rsf.org/en/albania>, accessed on 29.08.2020

ALL.” Media and journalists are also held responsible for causing damages through the dissemination of fake information according to article 608 of the Civil Code. Data from the Tirana Judicial District Court indicate that since 2009 until 2020, there have been 238 civil lawsuits for causing damages as a result of the publication of fake information.¹³²

According to a report published by 9 international organizations in June 2019, after a fact-finding mission in Tirana, media freedom in Albania worsened in recent years. The mission pointed out that physical attacks on journalists remain unresolved while politicians use insulting language toward critical journalists. International organizations also underscored that Albanian institutions and the public administration are not transparent and often limit journalists’ access to information. They raised the concern that Albania was not fulfilling its obligations to guarantee freedom of expression as an EU candidate country, member of the Council of Europe and the OSCE – whose chairmanship Tirana assumed for the first time in 2020.¹³³

The report of international media freedom organizations raises concerns in particular about the amendments proposed by the government for the regulation of online media, through an amendment of the law “On audiovisual media” and the law “On electronic communications,” initiated in December 2018. These proposed amendments expand the competencies of the Complaints Council in the Audiovisual media Authority (AMA) to regulate online media content, by giving the latter the authority to establish administrative sanctions and fines that go up to 2 million ALL, in contravention of best international practices that aim at self-regulation.

During 2019, the Council of Europe Platform for the Protection of Journalism and the Safety of Journalists, there were 7 ‘alerts’ for violations of media freedom in Albania and during the first 9 months of 2020, there were 7 ‘alerts,’ including physical attacks against journalists during their carrying out of duties, verbal attacks by the PM on online media and portals, the smearing campaign against critical journalists, and concerns of political pressure for the closing down of TV shows critical toward the government in private broadcasters.¹³⁴

According to the progress report for 2020 drafted by the European Commission for Albania,¹³⁵ aside from the problems noted above, economic factors too have an impact on limiting media freedom in Albania, including the oversaturation of the media market and ambiguous regulations over ownership and financial transparency, which make it difficult for independent media organizations to compete in the market. As a result, according to the EC, this leads editorial policies of private media outlets to be subject to pressure from political and large business interests. These economic factors have created a precarious situation for journalists who often apply self-censorship while reporting news.

According to the report, “Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, and Turkey in the years 2018-2019,” during the past five years, online media has played an increasingly important role in the Albanian market, but that has not been necessarily translated into a more pluralistic market, because a group of television companies continue to

control most of the audience and incomes.¹³⁶

This report considers that with regard to the basic indicators for media pluralism, Albania has medium risk (53%), because it has a sustainable regulatory framework that guarantees freedom of expression, but that is often not implemented. Meanwhile, regarding the indicator of market plurality, the Albanian media environment is classified as having high risk (80%), due to the lack of transparency over ownership and the influence of owners’ political and economic interests on editorial lines. Regarding the indicator of dependence on politics, Albanian media ranks between medium and high risk (62%) and the indicator of social inclusivity as high-risk (69%), because minorities, women, and people with disabilities have little access to conventional media.

On the occasion of Albania’s assumption of the OSCE Chairmanship in 2020, freedom of expression and the media assume a new dimension. In the program of the chairmanship drafted by the Ministry for Europe and Foreign Affairs, the Albanian Government states that freedom of expression and the media are fundamental rights for a democratic society, threatened by disinformation campaigns. The program stresses that journalists, in their efforts to inform the public, have turned into targets of attacks and, for that reason, Albania supports the important role that the OSCE plays in monitoring the violation of media freedom and attacks against journalists.¹³⁷

2. The “anti-defamation” package

In December 2018, the Albanian Government introduced a series of amendments to law no 97/2013 “On audiovisual media” and law no. 9918 of 2008 “On electronic communications” – the so-called “anti-defamation package.” According to the report accompanying the draft law “On some amendments to law no. 97/2013,” the purpose of this legal initiative was to discipline media in general and online media in particular, due to the increase of their influence on different aspects of the country’s public life.

The drafters of the law said that online media are on a growing trend and that they are replacing traditional media, being used by an increasing number of people to obtain information. They also emphasize that the danger from fake news and disinformation dictates a legislative intervention with the aim of preventing the negative effects of fake news on online portals, thus expanding the scope of work for the Audiovisual Media Authority (AMA), to include online media.¹³⁸

Before they were voted in parliament in December 2019, the two draft laws of the so-called ‘anti-defamation’ package became a subject of debate between the government, civil society, international media freedom organizations, and the parliament. Upon request of AMA, the draft laws were evaluated by experts engaged from international bodies, such as the OSCE and the Council of Europe. Based on

¹³² Civil lawsuits for libel in the Tirana Court, BIRN Albania, 2020, <https://fb.watch/1U-YBxqQIF/>, accessed on 21.11.2020.

¹³³ Albania: Preliminary findings of the joint freedom of expression mission, RSF, 2019, <https://rsf.org/en/news/albania-preliminary-findings-joint-freedom-expression-mission>, accessed on 29.08.2019

¹³⁴ Platform for the Promotion and Protection of Journalism and the Safety of Journalists, 2019, CoE, <https://www.coe.int/en/web/media-freedom/albania>, accessed on 29.08.2020.

¹³⁵ Commission Staff Working Document: Albania 2020 Report, 2020, European Commission, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf, accessed on 20.11.2020.

¹³⁶ Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, and Turkey in 2018-2019, 2020, https://cadmus.eui.eu/bitstream/handle/1814/67816/albania_results_mpm_2020_cmpf.pdf?sequence=1&isAlloëd=y, accessed on 29.08.2020.

¹³⁷ Program of Albania’s OSCE Chairmanship 2020, Ministry for Europe and Foreign Affairs, 2020, https://punete-jashtme.gov.al/ep-content/uploads/2020/01/2020_osce_albanian_chair-programme_booklet-1219-ëeb-r2.pdf, accessed on 03.09.2020.

¹³⁸ Report on the draft law “on some amendments and additions to law no. 97, dated 4.3.2013, ‘on audiovisual media in the Republic of Albania,’ amended,” 2019, <https://www.parlament.al/Files/ProjektLigje/20190715110745RELACION%20-%20NDRYSHIME%2097-2013%20-%20AMA.pdf>, accessed on 30.08.2020

the recommendations of these experts, in particular recommendations from the office of the OSCE Special Representative for Freedom of the Media, the drafts were improved. However, the presented amendments did not change the essential goal of the draft law, the regulation of online media through an administrative entity. According to domestic and international media freedom organizations, the regulation of online media through an administrative entity – whose members are selected by political parties – is against best international practices, which emphasize that self-regulation is the best way to fight disinformation, propaganda, and fake news.

Human rights and media freedom civil society organizations reacted several times to the so-called 'anti-defamation' package, demanding the rejection of the drafts, in spite of the continued amendments it underwent during the legislative process that lasted throughout 2019.¹³⁹ Their position did not change in spite of improvements made to the draft, which have been deemed as cosmetic. The draft law has been opposed by international media rights organizations, the Council of Europe, and the European Commission,¹⁴⁰ which have stressed that the most appropriate approach in this regard should be materialized in the form of self-regulation.¹⁴¹ The OSCE Office of the Special Representative of Freedom of the Media had a more nuanced position, encouraging the government to keep making improvements to the draft.

In his report to the OSCE Permanent Council for the period November 21, 2019 – July 2, 2020, the Representative for Freedom of the Media Harlem Desir says that from the end of 2018, he had been working with the Government of Albania on the legal analysis of the amendments to the law "On audiovisual media" and the law "On electronic communications."¹⁴² Desir says that on November 2, 2019, he wrote to the Prime Minister of Albania about the draft amendments and on December 9, 2019, issued a press release to present a updated legal analysis of the proposed amendments. In particular, Desir asked for an appeals mechanism for fines imposed by the regulatory entity.

In his statement of December 9, Desir explains that he welcomed some improvements to the draft law "On audiovisual media," and meanwhile asked for some additional modifications regarding protective measures to freedom of expression, so that inappropriate sanctions on electronic publication service providers could be avoided. On December 2017, through a statement on his Twitter social network account, Desir reiterated that his office was working with the Government of Albania to improve the draft media laws in line with international standards and OSCE commitments. In this statement, the senior OSCE official underscored the improvements that the draft law had undergone with OSCE assistance and asked that the level of fines be reduced and regulated through by-laws. The OSCE Representative for Freedom of the Media stressed that his office would monitor the implementation of the law that should in no way infringe upon freedom of the media and freedom of expression.

Desir's statement of December 17 was interpreted by the government and the PM as consent for the approval of the law by the OSCE Representative for Media Freedom. In a press conference on January 17, 2020, in Vienna – upon assuming the OSCE Chairmanship – the Albanian PM declared that the law

¹³⁹ "Censorship Law"! Media organizations ask Rama to withdraw anti-defamation initiative, Reporter.al, 2019, <https://www.reporter.al/ligj-censure-shoqatat-e-medias-i-kerkojne-rames-te-terheqe-nismen-antishpifje/>, accessed on 30.08.2020.

¹⁴⁰ Soreca criticizes "Rama" draft laws on online media, Reporter.al, 2019, <https://www.reporter.al/soreca-kritikon-projektligjet-rama-per-mediat-online/>, accessed on 30.08.2020

¹⁴¹ International organizations reiterate calls to stop "anti-defamation package," Reporter.al, 2019, <https://www.reporter.al/organizatat-nderkombetare-perserisin-thirrjen-per-ndalimin-e-paketes-antishpifje/>, accessed on 30.08.2020.

¹⁴² Regular report for the Permanent Council, OSCE Representative for Freedom of the Media, Harlem Desir, 2020, <https://www.osce.org/files/f/documents/4/9/456130.pdf>, accessed on 03.09.2020

that had gone to parliament had "100% OSCE support."¹⁴³

Although parliament held consultations with representatives of the media, civil society, and academics of journalism before the vote of the draft laws in December 2019, civil society organizations considered the process non-transparent and stressed that they did not have access to the different drafts of the draft laws discussed before its voting in the plenary session.¹⁴⁴ As a result, the voting of the draft law in parliament on December 18, 2019, was done in an environment of mistrust. As the majority was voting for the draft law in the Assembly hall, journalists and civil society activists were protesting outside.¹⁴⁵ In spite of opposition by civil society, the journalists' community, international media organizations, the Council of Europe, and the European Commission – the executive branch of the EU where Albania aspires to join, the PM did not give in with regard to the approval of the 'anti-defamation' package. In fact, during his remarks in parliament, in the plenary session where the legal package was approved, Rama claimed that the EU and the Council of Europe 'had not read the law' and as a result, did not know what they were opposing.¹⁴⁶

The main changes that the latest draft of the law approved by the leftwing majority of PM Rama bring have to do with the expansion of the scope of work of the law to include online publications, regulating Electronic Publication Service Providers (EPSP). The imposition of new obligations on the contents of EPSP publications and the strengthening of the Complaints Council of the Audiovisual Media Authority, AMA, giving it legal power to apply the new procedures in addressing complaints toward online media, and the imposition of administrative measures and fines for violations of the law.

On January 11, 2020, the President of the Republic send back to parliament for revision the two draft laws that were part of the so-called 'anti-defamation' package, arguing that they were in contravention of the principles of democracy, proportionality, and freedom of expression. After the anti-defamation package was sent back to parliament by the President of the Republic, on January 13, OSCE Representative for Freedom of the Media Harlem Desir issued a statement to confirm his will to continue working with Albanian authorities to improve the media laws in line with international standards and OSCE commitments.¹⁴⁷

Following the decrees of the President of the Republic to send back the anti-defamation package to parliament for revision, on January 20, 2020, the Parliamentary Assembly of the Council of Europe asked the European Commission for Democracy through Law (Venice Commission) to draft a legal opinion on the draft law "On some amendments and additions to law no. 97/2013, 'On audiovisual media in the Republic of Albania.'"

On January 23, the parliament's Committee on Education and Means of Communication took under review the decree of the President to send back the la "On some amendments and additions to law no.

¹⁴³ Rama: The anti-defamation package we approved has 100% of OSCE support (VIDEO), Shqiptarja.com, 2020, <https://shqiptarja.com/lajm/rama-paketa-antishpifje-qe-miratuam-ka-100-mbeshtetje-e-osbese>, accessed on 03.09.2020.

¹⁴⁴ European Commission for Democracy through Law (Venice Commission), Opinion, Draft law on amendments to the audiovisual media, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>, accessed on 30.08.2020

¹⁴⁵ Albania, parliament approved the anti-defamation package, journalists in protest, Voice of America, 2019, <https://www.zeriamerikes.com/a/5210531.html>, accessed on 30.08.2020

¹⁴⁶ 'Censorship' laws raise questions about Albania's commitment to EU integration, Reporter.al, 2019, <https://www.reporter.al/ligjet-e-censures-ngrene-pikepyetje-per-angazhimin-e-shqiperise-per-integrim-ne-be/>, accessed on 30.08.2020.

¹⁴⁷ Report to the Permanent Council, OSCE Representative for Freedom of the Media, Harlem Desir, 2020, <https://www.osce.org/files/f/documents/4/9/456130.pdf>, accessed on 03.09.2020

97/2013," and after hearing the arguments of the Presidency and Minister of Justice Etilda Gjonaj, decided to reject it.¹⁴⁸ On January 30, while the majority was expected to vote down the president's decree and turn the anti-defamation package into law, it decided to withdraw at the last minute and only voted amendments to the law "On electronic communications." From the parliament's podium, the Socialist Party floor leader declared that the majority would wait for the Venice Commission opinion before approving the law on audiovisual media.¹⁴⁹

On February 11-12, 2020, representatives of the Venice Commission visited Albania and held meetings with the President of the Republic, the Deputy Speaker of Parliament, MPs from the majority and opposition, members of the Committee for Education and Media, and the Committee on Legal Affairs, the Public Administration and Human Rights in parliament, representatives of the Council of Ministers, Ministry of Justice, Ministry of Infrastructure and Energy, the temporary Chair of the Constitutional Court, the People's Advocate, judges of the administrative courts, members of the Audiovisual Media Authority, members of the Authority for Electronic and Postal Communications, and representatives of the civil society and media associations. During these meetings, representatives of the Venice Commission gathered views on the draft law "On some amendments and additions to law no. 97/2013, 'On audiovisual media in the Republic of Albania,'" and on the media situation in Albania.

Following the review of the draft law, on June 19, 2020, the Venice Commission approved and published its Opinion, which notes that media in Albania faces a series of challenges that have to do with the lack of ethics standards, growing self-censorship, lack of transparency on ownership and its finances, the influence of economic and political interests on editorial lines. In its analysis of the draft law "On some amendments and additions to law no. 97/2013, 'On audiovisual media in the Republic of Albania,'" the Venice Commission says that the scope of work of the law is unclear and that the notion of "electronic publications" is too ambiguous and defined too broadly.

In particular, the Commission remains concerned whether this broad definition will also include individual bloggers who publish through social networks such as Facebook, Twitter, or Instagram. The Opinion stresses that the notion that "electronic publication" refers to websites with "shaped editorial" content is amorphous because even an individual blogger may publish on an internet website that is "shaped" from an editorial viewpoint. Furthermore, the fact that the press is out of the scope of work of the application of the law except for cases when published online, for the Venice Commission does raise the question mark as to why the same published material would enjoy different legal protection when published in the newspaper.¹⁵⁰

The Venice Commission also notes that the draft approved by the Assembly envisions an expansion of the competencies of AMA and the Complaints Council. However, for the Commission, the manner of selection of members of the two institutions raises concerns about the independence of these two administrative entities. Although there is no common European model for the organization of media authorities, the inclusive principle is that authorities overseeing media should be independent and impartial. This principle should be respected particularly in the selection of members of these authorities. Meanwhile,

¹⁴⁸ Parliament, Report on the review of the decree of the President of the Republic HE Ilir Meta, no. 11413, dated 11.01.2020, "On sending back law no. 91/2019, 'On some amendments and additions to law no. 97/2013 'On audiovisual media in the Republic of Albania,' amended," 2020 <https://www.parlament.al/Files/LigjeRishqyrtim/KEMIPRaportiDekretinPresidentitligjinperMedian.pdf>, accessed on 30.08.2020.

¹⁴⁹ Waiting for the Venice Commission, Anti-defamation Package "On Freeze," Faktaje.al, 2020, <https://faktoje.al/ne-pritje-te-komisionit-te-venecias-ngrin-paketa-antishpifje/>, accessed on 30.08.2020,

¹⁵⁰ European Commission for Democracy through Law (Venice Commission), Opinion, Draft law on amendments to law on audiovisual media, <https://rm.coe.int/vc-opinion-albania-0620/16809ec9c9>, accessed on 30.08.2020

the widespread perception of media and civil society organizations in Albania is that AMA is not an institution independent from politics and the way its members are selected gives a slight advantage to the majority. Besides dependence from political parties, there are also concerns about the independence of members of AMA and the Complaints Council from the industry and major media outlets.

Furthermore, the Venice Commission raises the concern of whether members of the Complaints Council have the necessary education and training to carry out the duties they will be assigned to judge contents of online media, which in principle would be something within the competences of a judge. The Venice Commission says that, considering the expansion of competencies of AMA and the Complaints Council, their institutional model should change in order for these two administrative entities to be independent from politics and the industry while also and, at the same time, pluralistic.

The draft law reviewed by the Venice Commission sets a series of obligations to Electronic Publication Service Providers, including the obligation to make public the identity of the publisher, the obligation to publish appropriate warnings about the contents of publications, the obligation to allow the right to correction and response for published information, the obligation to not publish any content that incites or spreads hate speech or discrimination, and the obligation to protect minors. According to the Commission, some of the obligations that the law assigns to the EPSPs is the one for the protection of minors are not controversial, while some of the obligations are debatable. The obligation to make public the identity of the service provider raises the concern that it does not respect the balance of the right to anonymity on the internet, which is recognized by the European Court of Human Rights as important for the freedom of expression and the right to privacy.

According to the Commission, the most severe obligation to the EPSPs is the one to not publish hatred or discriminatory content on the basis of race, ethnic background, color of skin, gender, language, religion, national or social background, financial status, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity or sexual orientation. The Commission is concerned that this list of discrimination cases is too long and may be used to stop the publication of critical views of public interest, which may be perceived by some groups of people as discriminatory. In particular, the Commission stresses that discrimination due to "financial condition" may be used by the rich, multi-millionaires, and oligarchs to limit critical publications, considering them discriminatory. Also, with regard to the right to a response, the Commission suggests that such a right is not without limits for an individual and should be at the editorial discretion of the media outlet.

The procedure for the review of complaints by the Complaints Council and AMA has also been considered problematic by the Venice Commission, which notes that it is unclear whether the Council may undertake measures toward EPSPs for the removal of a publication, the inclusion of a pop-up, or the imposition of a fine for every received complaint or only in cases that have to do with national security, child pornography, and acts for terrorist purposes. The Commission also expresses concern about the complaint procedure as it does not envisage the right to hear the arguments of the accused EPSP, or the presentation of facts in cases of libel or discrimination complaints. Furthermore, the decisions of the Complaints Council, though appealable to the AMA board and the Administrative Court of First Instance in Tirana, may be executed immediately and there is no mechanism to suspend execution during the complaint process. According to the Commission, in its current form in the draft law, the administrative procedure does not provide sufficient guarantees for the protection of freedom of expression on the internet.

The Venice Commission views the number of fines that the Complaints Council may impose on EPSPs as

punitive and debilitating, while the draft law does not set criteria on the discretion to adjust fines to the size and economic capacity of the media outlet they are imposed upon. The Venice Commission considers that merely the threat of application of such heavy sanctions could have a chilling effect on journalists and media outlets. Considering that the average level of salary in Albania is much lower than in the European Union, high administrative sanctions might be unaffordable for some EPSPs, which might eventually be forced to cease activity if they are fined. Furthermore, the fact that these fines are enforced immediately makes them even more severe.

In the conclusion of its opinion, due to the problems encountered in the draft law "On some amendments and additions to law no. 97/2013, 'On audiovisual media in the Republic of Albania,'" the Venice Commission recommends to the Albanian parliament to not approve it in the current version. The Commission admits that some of the problems identified by Albanian authorities with regard to online media are serious and some administrative sanctions may be appropriate to fight abuse of online media. However, they may only be imposed by truly independent administrative entities, with clear procedures that only include one narrow category of online publications and not all internet publications. These administrative sanctions should not have the power of 'executive titles' that are immediately enforced, should be proportional, and subject to control by courts. Meanwhile, to respond to problems with abusive online media conduct, the Commission recommends the strengthening of an independent self-regulatory entity that includes all interested parties from the media community.

Civil society lauded the Venice Commission's opinion. In a statement, a group of media freedom and human rights organizations also called on the government to withdraw the draft law and change its approach to freedom of expression issues.¹⁵¹ On a positive note, in February 2020, with support from the European Union and the Council of Europe, 19 electronic and audiovisual media outlets founded the Alliance for Ethical Media, which seeks to establish a functional self-regulatory mechanism in order to increase ethical and professional reporting in the Albanian media.¹⁵²

It is expected that the government will compile a new draft law on audiovisual media, but it is unclear when a draft law will be presented for consultation with the interested parties and the public. Nevertheless, although a new draft regulating online media is expected to be drafted, the government may find it difficult to circumvent the Venice Commission opinion, not only due to the respect that this institution enjoys in the field of law, but also due to the fact that respect for the opinion on the anti-defamation package has been set as one of the EU conditions for the integration process. According to the decision of the European Union Council in March to open accession negotiations with Albania and North Macedonia, before the first intergovernmental conference, the Albanian Government should implement a number of conditions, including "following Venice Commission advice on the controversial legislation on the media."¹⁵³

Another direct consequence of the Venice Commission opinion in the field of media has been the suspension of the competition for the election of the new chairman of the Audiovisual Media Authority, where three government advisors and one information director in Tirana Municipality competed. There were question marks on whether they met the formal criterion of job seniority and independence from

¹⁵¹ Venice Commission Opinion on the "anti-defamation" package/ Civil society organizations: Government should reflect while on time, Politiko.al, 2020 <https://politiko.al/opinion-i-venecias-per-paketen-anti-shpifje-organizatat-e-shogerise-civile-qeveria-te-reflektuje-sa-eshte-ne-kohe/>, accessed on 30.08.2020.

¹⁵² Tirana: Alliance for Ethical Media founded, VOA, 2020, <https://www.zeramerikes.com/a/5285520.html>, Accessed on 21.11.2020.

¹⁵³ Conclusions of the Council on enlargement and the stabilization and association process – Albania and the Republic of North Macedonia, European Union Council, 2020 <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>, accessed on 04.0.2020.

political influences. This process raised concerns among civil society organizations not only because of the fictitiousness of the race but also the increase of the institution's political dependence.¹⁵⁴

3. Attacks toward media after the earthquake and during the COVID-19 pandemic

After the deadly earthquake of November 26, 2019, which caused 51 victims, injured hundreds of others, and left thousands of others homeless in Durrës, Tirana, Laç, and Lezha, the media and journalists have increasingly found themselves a target of verbal attacks by political leaders and investigations for causing panic by State Police. The critical media situation continued even after the outbreak of the COVID-19 pandemic, when restrictions due to social distancing measures, limitations to access to information, and the decline of revenue due to the reduction of advertising budgets by private companies affected by the economic crisis, were added to the attacks and intimidation from politics.

Attacks on the media and journalists in Albania during this period were reported on a number of online platforms for media freedom in the region and beyond. After the earthquake and during the pandemic, the Council of Europe Platform for the Promotion and Protection of Journalism and the Safety of Journalists saw six 'alerts' for violations of media freedom in Albania, including the blocking of internet websites and online critical media outlets, as well as verbal attacks by the PM toward portals and journalists.¹⁵⁵ A number of cases of violations of freedom of expression and attacks on the media have been reported also by the regional advocacy platform 'safejournalis.net,' maintained by a network of journalists' associations in the Western Balkans.¹⁵⁶ Only during the pandemic, the platform 'Mapping Media Freedom' reported 4 cases of attacks toward the media in Albania linked with COVID-19.¹⁵⁷

According to a research of the Balkan Investigative Reporting Network in Albania (BIRN Albania), during the period after the destructive November 26 earthquake and during the COVID-19 pandemic, State Police persecuted a number of journalists and media officials under the accusation that they spread panic through the publication of fake news.¹⁵⁸ State Police referred for prosecution 5 journalists and 3 online media administrators for articles linked with the September and December 2019 earthquakes.

A criminal referral submitted to the prosecution office by the State Police Anti-Terror Directory against News 24 television had to do directly with accusations against the media outlet by the PM. After the September 21, 2019 earthquake, 5.8 on the Richter scale, police started proceedings against 5 journalists of the online media outlet "Syri.net" because the day after the earthquake, they published a story warning of new 'powerful' seismological tremors, which caused concern among Tirana inhabitants. Even in this case, the police were accused as being inspired by the PM, who harshly attacked the post, considering it 'criminal fake news.'

¹⁵⁴ Race for chairman threatens to increase 'government tutelage' on AMA, Reporter.al, 2020, <https://www.reporter.al/gara-per-kryetarin-rrezikon-te-rrise-tutelen-e-qeverise-mbi-ama-n/>, accessed on 30.08.2020.

¹⁵⁵ Platform for the Promotion and Protection of Journalism and the Safety of Journalists, 2019, CoE, <https://www.coe.int/en/ëeb/media-freedom/albania>, accessed on 29.08.2020.

¹⁵⁶ Safejournalist.net, <https://safejournalists.net/neës-2/>, accessed on 29.08.2020.

¹⁵⁷ CoronaWatch, <https://ëëë.mappingmediafreedom.org/corona-ëatch-the-latest-violations-of-press-and-media-freedom-during-the-covid-19-crisis/>, accessed on 29.08.2020.

¹⁵⁸ 'Spreading of panic': Police persecuted journalists after the earthquake and COVID-19, Reporter.al, 2020, <https://www.reporter.al/shperndarje-paniku-policia-perndoqi-gazetaret-pas-termetit-dhe-covid-19/>, accessed on 29.08.2020.

Also, two days after the November 26 earthquake, the Directory of Anti-terror and Cybercrime at the State Police conducted criminal proceedings against Erald Dalliu and Gentian Çengeli, administrators of the online outlet “Jeta Osh Qef” and asked ISPs to block its website for spreading panic through fake news. On December 11, police referred to the prosecution office the administrator of online media outlet “Nova Media Albania”, who was accused of spreading information about an earthquake that was going to hit the country. Meanwhile, only during the two-month period of isolation due to the pandemic, police referred 4 cases and MPs of a parliamentary committee referred 1 case to the prosecution office – including one case against online publication ‘Nova Media Albania’.

Aside from verbal attacks by politicians, after the outbreak of the new coronavirus pandemic in March, Albanian media and journalists also faced added problems due to the restrictive measures imposed by the government due to the COVID-19 pandemic and a reduction of incomes due to the advertising budget cuts by many private companies. The COVID-19 pandemic forced newspapers to suspend printing for more than one month due to the closing down of sales points and the restrictions on movement of people. Audiovisual media were forced to close a dozen programs due to the normative act of the government restricting rallies and were also forced to work with reduced personnel and alternate schedules. However, the greatest hit to media in this period of crisis was the withdrawal of businesses from advertising expenses, which led some media outlets to reducing salaries for employees by up to 20%. Meanwhile, field reporters, being on the frontline of reporting on the COVID-19 pandemic were among professional categories that were most endangered by the SARS-CoV-2 infections.¹⁵⁹ In the third week of March, the Albanian Journalists Union issued a statement directed at the government, asking that the media be included in the financial aid packages.¹⁶⁰ Requests for assistance from the government also came from media outlets¹⁶¹ and journalists¹⁶² themselves.

During the pandemic, journalists were also the target of verbal attacks and media were sanctioned with administrative measures by the government for violations of the normative act for the prevention of COVID-19. The State Health Inspectorate fined twice and asked for the closing down of Ora News TV for violations of restrictions imposed in the context of the pandemic. In the first decision, Ora News was fined 1 million ALL because it had three persons in the “360 Degrees” TV show studio; in the second, it sought the closing down of its activity, aside from a second fine of 1 million ALL.¹⁶³ In a statement for the media on March 15, the Audiovisual Media Authority said it had received a notification about the decision of the State Health Inspectorate, but specified that there was no decision about the closing down of Ora News.¹⁶⁴ Two weeks earlier, the SHI had stated the same issue – presence of more than two persons in television studios in the shows “Open” on Top Channel TV and “Klanifornia” on TV Klan, but decided to

¹⁵⁹ Coronavirus crisis shakes media industry too in Albania, Reporter.al, 2020, <https://www.reporter.al/kriza-e-koronavirusit-trondit-edhe-industrine-e-medias-ne-shqiperi/>, accessed on 29.08.2020.

¹⁶⁰ COVID-19 and the consequences in the media industry, Albanian Journalists Union, 2020, <http://www.institutemedia.org/wp-content/uploads/2020/06/Covid-19-dhe-industria-e-medias-1-2-converted.pdf>, accessed on 29.08.2020.

¹⁶¹ EDITORIAL/ Don't let “darkness” come in the days of the quarantine. Journalists should be helped! Top Channel, 2020, <https://top-channel.tv/2020/03/23/editorial-mos-lejoni-te-vije-erresira-ne-ditet-e-karantines-gazetaret-duhen-ndihmuar/>, accessed on 29.08.2020.

¹⁶² “War” journalists seek help: We’re facing salary cuts and staff cuts, Top Channel, 2020 <https://top-channel.tv/2020/04/03/gazetaret-e-lufte-kerkojne-ndihme-po-perballemi-me-shkurtime-pagash-dhe-shkurtime-stafi/>, accessed on 31.08.2020.

¹⁶³ Health Inspectorate orders shutting down of Ora News TV, Reporter.al, 2020, <https://www.reporter.al/inspektorati-shendetesor-urdheron-mbylljen-e-televizionit-ora-nees/>, accessed on 31.08.2020.

¹⁶⁴ AMA: No decision or intent to close down any TV, ATA, 2020, <https://ata.gov.al/2020/05/15/ama-nuk-ka-asnje-vendim-apo-qellim-per-mbylljen-e-ndonje-televizioni/>, accessed on 03.09.2020.

not impose fines.¹⁶⁵

On May 16, the OSCE Representative for Freedom of the Media Harlem Desir wrote to Acting Minister for Europe and Foreign Affairs Gent Cakaj, stressing that other television stations where there had been similar violations of the Normative Act on measures against the spread of COVID-19 had only received warnings from the State Health Inspectorate. Desir asked the government to not close down the signal of Ora News television although he understood the government’s need to take measures to ensure public health.¹⁶⁶

On April 7, journalist and host Sonila Meço faced a flow of verbal attacks and intimidation on the internet after some outlets accused her of disrespect for the country’s doctors in a social media post. Meço, who leads the news and the show Tempora on RTV Ora posted a comment on Facebook, criticizing comments by a doctor for Albanian citizens stuck at the border with neighboring Greece and who were not being allowed to enter the country due to COVID-19.¹⁶⁷

On August 1, the Special Court against Corruption and Organized Crime decided to sequester the assets of Ylli Ndroqi, owner of televisions Ora News and Channel One, because it is suspected that his wealth is the proceed of criminal activity in the field of narcotics trafficking. The Agency for the Administration of Sequestered and Confiscated Assets has appointed an administrator for the station. Ndroqi has said that the request of the Special Anti-Corruption and Organized Crime Prosecution Office (SPAK) is politically motivated and is the result of critical reporting by Ora News television toward the government and the Tirana Mayor. The decision of the Special Court against Corruption and Organized Crime has been confirmed by the Appeals Court.¹⁶⁸

Due to the situation created by the COVID-19 pandemic, on June 29, the Audiovisual Media Authority, AMA, decided to postpone by 3 months, until September 30 2020, the process of digitalization for the districts of Elbasan, Shkodra, Lezha, and Vlora.¹⁶⁹ After September 30, the digitalization process of broadcasts for these districts has moved forward.

4. RECOMMENDATIONS

- i. Based on the commitments of Albania as a member of the Council of Europe, the OSCE, and the European Convention of Human Rights, the government should withdraw from approving legislation that imposes restrictions on freedom of expression and online media through

¹⁶⁵ They had more than two guests in the studio, AMA warns two national televisions: Thanks MoH for not imposing fines, Panorama, 2020, <http://www.panorama.com.al/kishin-me-shume-se-dy-te-ftuar-ne-studio-ama-paralajmeron-dy-televizionet-kombetare-falenderon-msh-qe-nuk-i-vendosi-gjoba/>, accessed on 03.09.2020.

¹⁶⁶ Report to Permanent Council, OSCE Representative for Freedom of the Media Harlem Desir, 2020 <https://www.osce.org/files/f/documents/4/9/456130.pdf>, accessed on 03.09.2020

¹⁶⁷ Albania: journalist Sonila Meço receives torrent of abuse after Facebook post, Mapping Media Freedom, 2020, <https://www.mappingmediafreedom.org/country-profiles/albania/>, accessed on 31.08.2020.

¹⁶⁸ SPAK sequesters Ylli Ndroqi’s assets under suspicion that they derive from drug trafficking, Reporter.al, 2020, <https://www.reporter.al/spak-sekuestron-pasurite-e-ylli-ndroqit-me-dyshimin-se-rjedhin-nga-trafiku-i-droges/>, accessed on 31.08.2020.

¹⁶⁹ Digitalization process postponed for 3 more months in districts of Elbasan, Shkodra, Lezha and Vlora, AMA, 2020 <http://ama.gov.al/2020/06/29/shytyhet-edhe-3-muaj-procesi-i-dijitalizimit-ne-qarqet-elbasan-shkoder-lezhe-dhe-vlore/>, accessed on 03.08.2020

administrative entities that report to it.

- ii. Any legislation on the media should be drafted transparently, in consultation with journalists, civil society, and other interested parties.
- iii. The PM and every other politician should stop insulting and smearing language toward journalists and online media.
- iv. State Police should stop referrals against journalists and media outlets for spreading panic inspired by political statements of the PM or any other politician.
- v. The government and the assembly should take into consideration the recommendation of the Venice Commission and not approve the draft law "On some amendments and additions to law no. 97/2013, 'On audiovisual media in the Republic of Albania,'" according to the draft voted in December 2019.
- vi. Based on the recommendation of the Venice Commission, civil society should work to strengthen a self-regulatory entity that includes all interested sides from the media community.
- vii. Civil society organizations in the country should continue to monitor violations of freedom of the media and attacks on journalists.
- viii. Journalists and civil society should boost efforts to strengthen solidarity with media workers who become targets of discriminating attacks.

CHAPTER 5

HUMAN RIGHTS IN the CIRCUMSTANCES OF THE COVID-19 GLOBAL PANDEMIC

CIVIL RIGHTS DEFENDERS (CRD) AND TIRANA LEGAL AID SOCIETY (TLAS)

This chapter addresses the situation of respect for human rights in the circumstances of the Covid-19 global pandemic in our country. The chapter analyzes the restrictions imposed by the Government of Albania on respect for four fundamental rights and freedoms, focusing on some of the rights most affected as a result of the pandemic and the measures against it, such as access to information with special focus on public consultation, the right to due legal process with a focus on the consequences of restrictions especially for the most marginalized groups, the right to private and family life, and the right of assembly.

Due to the situation created by the Covid-19 pandemic, on March 24 of this year (2020), the Government of Albania announced the state of natural disaster that lasted until 23.6.2020. As a result, restrictive measures taken to protect health had an impact on the rights and lives of all people and consequences are expected to be long-term.

During the state of natural disaster, Albania derogated several articles of the European Convention of Human Rights (ECHR), namely: freedom of movement, freedom of assembly, the right to private and family life, the right to property, and the right to education. On the other hand, the work of the public and judicial system administration was considerably affected and, as a result, right such as the right to due legal process, access to information, and the right to public consultation, though not officially restricted, saw cases of violations. The work of journalists and civil society organizations became harder due to the restriction of the possibility to monitor and check facts. For some groups, such as people with disabilities and those without access to internet/television, access to continued information was particularly difficult.

1. Access to information in Albania during the Covid-19 pandemic

The derogation by Albania from the ECHR did not include article 10 (Freedom of expression), which is linked with access to information. At the national level too, there were no formal restrictions with regard to rights and obligations deriving from the "Law no. 119/2014 on access to information." However, the implementation of this right in practice faced numerous challenges.

According to Council of Europe standards,¹⁷⁰ any restriction that member states impose on access to official information during the pandemic must be exclusive, proportional, and should aim at protecting public health.¹⁷¹ The right to access to official information should be managed according to principles established by the ECHR jurisprudence,¹⁷² which has found violations of freedom of expression when the supply of official information has been refused, when this right has been guaranteed by domestic law or a court ruling. To assess this, ECHR takes into consideration the fact that access to information is a key element of the exercise of the freedom of expression, is of public interest, and is sought for the purpose of publication and contribution to public debate. The importance of obliging governments to ensure access to information during the pandemic, especially for journalists, people with disabilities, or persons with limited access to the internet, was emphasized also by the Special Rapporteurs on Freedom of the

¹⁷⁰ Guide for Member States of the Council of Europe "Respecting democracy, rule of law, and human rights in the framework of the Covid-19 sanitary crisis," 7.4.2020, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

¹⁷¹ Ibid. <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

¹⁷² Kennedy vs. Hungary, 26.5.2009; Youth Initiative for Human Rights v. Serbia 25.6.2013; Ro ianu v. Rumania 24.6.2014; Guseva v. Bulgaria 14.2.2015.

Media in the OSCE,¹⁷³ UN,¹⁷⁴ and OAS. Furthermore, the Council of Europe guidelines¹⁷⁵ demand that member states are proactive at times of crisis and guarantee journalists' freedom of movement, access to information, and, when appropriate, accredit journalists to access crisis areas.

In spite of legal requirements and the added need for information, restrictive measures and the shift of communications and the activity of institutions online had a negative impact on the exercise of the right of access to information. This particularly affected people in need belonging to marginalized groups, those without access to the internet, and groups of interest such as journalists and civil society organizations. The main source of information during the pandemic was the internet and the majority of important decisions were communicated by the Government or the Prime Minister through social media, in some cases even before publication in the official gazette. Publication of acts in the official gazette is a constitutional requirement and a necessity for them to assume juridical power. The People's Advocate criticized the practice of implementation of CMDs that were not published in the official gazette¹⁷⁶ Constant changes of rules or penalties and the failure to publish them according to legal requirements created room for violation of the constitutional principle of legal certainty. Furthermore, the centralization of information regarding the pandemic has been criticized by communication and media experts, including the European Center for Freedom of the Media and the Press.¹⁷⁷ According to the Council of Europe guidelines,¹⁷⁸ official communications may not be the only channels of information for the pandemic as that would lead to censorship and the suppression of legitimate concerns. Journalists, the media, health professionals, civil society activists, and the public in general should be able to criticize authorities and oversee their reaction to the crisis.

Journalists and representatives of civil society organizations have faced difficulties in obtaining official information and have reported a decline in transparency. Civil society organizations and media¹⁷⁹ have had difficulties in accessing information from the Ministry of Health and the Institute of Public Health regarding very important issues for the public debate, such as: the number of respirators in the country at the start of the pandemic, capacities for conducting serological and molecular tests,¹⁸⁰ and the number of specialist doctors employed in regional and municipal hospitals.¹⁸¹ Other important institutions have pointed out the lack of transparency during this period. The People's Advocate has raised concerns with regard to the lack of transparency for the situation in prisons during Covid-19,¹⁸² while

¹⁷³ Statement by Special Rapporteurs of the OSCE, UN, and OSA, 19.3.2020 <https://www.osce.org/representative-on-freedom-of-media/448849>

¹⁷⁴ Report by the UN Special Rapporteur on the promotion and protection of freedom of opinion and expression, 23.4.2020 <https://www.undocs.org/A/HRC/44/49>

¹⁷⁵ Instruction by the Committee of Ministers of the Council of Europe for protection of freedom of speech and information at a time of crisis, 26.9.2007, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ae60e

¹⁷⁶ <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-472/>

¹⁷⁷ Osservatorio Balcani e Caucaso Transeuropa 11.6.2020 <https://www.balcanicaucaso.org/eng/Areas/Albania/Albania-public-information-becomes-a-casualty-of-COVID-19-202724>; Voice of America, 20.7.2020 <https://www.zeramerikes.com/a/5510015.html>

¹⁷⁸ Guidelines for Member States of the Council of Europe "Respecting democracy, the rule of law, and human rights in the framework of the Covid-19 sanitary crisis," 7.4.2020, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

¹⁷⁹ <https://faktoje.al/covid-19-pandemia-qe-po-rrit-infektimet-dhe-terr-in-informativ/>

¹⁸⁰ Faktoje.al, 3.7.2020 <https://faktoje.al/emergjence-nga-covid-19-dhe-mungesa-e-transparences-se-ishp/>; Local Gate 19.7.2020 <https://portavendore.al/2020/07/19/institucionet-ulen-transparencen-dhe-kufizuan-informacionet-pas-termetit-dhe-gjate-pandemise-se-covid-19/>

¹⁸¹ Decision no. 24/2020 of the Information Commissioner: https://www.idp.al/wp-content/uploads/2020/06/Vendim_nr_16_MSHMS.pdf

¹⁸² <https://a2news.com/2020/04/23/mungesa-e-informacionit-per-situaten-e-krijuar-ne-burgje-avokati-i-popullit-reagon-per-a2/>

the Commissioner for Protection against Discrimination, consulted for this report, said that it encountered difficulties in conducting investigations because institutions did not make requested information available. On the other hand, the President of the Republic addressed the Ministry of Health an official request¹⁸³ about measures taken in relation to the pandemic, technical capacities, the strategy, allocated budget, etc. The subjects¹⁸⁴ consulted for this report during the period March-August 2020, which coincides with the period of the pandemic, have received responses from institutions within the legal deadline for only 80 requests for information out of the 209 they submitted in total, or in 38% of the cases. In the majority of cases, they encountered delays and partial responses, due to which, information had often lost its relevance as the processes it had inquired about had concluded. In some cases, they did not receive a response even after complaints with the Information Commissioner. The majority of them reported that access to information during this period had been challenging because the majority of institutions worked from home and with reduced personnel.

The Office of the Commissioner reported an increase of the number of complaints received during the pandemic, explaining it with the fact that the restriction of movement has caused difficulties for access to information coordinators responding within legal deadlines. Nevertheless, in spite of the created situation, the Office of the Commissioner stated¹⁸⁵ *that it did not exempt any public authority from the obligation to carry out their activities to address requests for information and transparency. The number of complaints received by the Office of the Commissioner during the pandemic (March-July 2020) is high, reaching a total of 235 complaints*¹⁸⁶ and in 65% of these cases, institutions fulfilled their obligations only after complaints were filed. In only 6% of these cases, the Commissioner spoke through decisions and in none of them did it impose any administrative sanction/fine. Some of the institutions with the greatest number of complaints during this period included Tirana Municipality and the Ministry of Health and Social Protection and its subordinate institutions.

On the other hand, there was a very good practice implemented by several institutions, thus increasing the possibility for monitoring and information. Some municipalities¹⁸⁷ found effective ways to ensure transparency by using technology and aired live on local media and/or social media the meetings of Municipal Councils.¹⁸⁸ However, the country's largest municipality, that of Tirana, did not apply such a practice. The Assembly of Albania's practice to air live meetings of standing committees was positive, making it possible to follow it on different communication channels.

In this situation, when the importance of access to information was great, developments in the country were dynamic, and rules and sanctions changed frequently, some vulnerable groups – e.g. persons with disabilities – were left out for a long time. According to monitoring by Citizens Channel¹⁸⁹ in the daily conference of the Ministry of Health and the Institute of Public Health on the pandemic situation, translation into sign language was only done for the first time after 27 days, on April 4, and was discontinued after

¹⁸³ <https://www.newsbomb.al/rritja-i-rasteve-me-covid-19-meta-kerkese-manastirliut-ve-ne-dijeni-ramen-dhe-rucin-situata-po-perkeqesohet-shkelja-e-5-qershorit-do-e-coje-drejt-katastrofes-225462>

¹⁸⁴ List of consulted subjects: BIRN, Local Gate, European Center, Faktoje, Civic Resistance, TREJA Center, Center for Legal Civic Initiatives, Youth Egyptian and Roma Movement, Institute for Political Studies, Social Advocacy Center, Citizens Channel, Res Publica

¹⁸⁵ Website of the Information Commissioner: <https://www.idp.al/regjistri-i-kerkesave-dhe-pergjigjeve-2020/>

¹⁸⁶ Office of the Information Commissioner, official request for information 17.8.2020

¹⁸⁷ Shkodër, Vlorë, Fier, Kukës, Elbasan, Bulqizë, Mat, Dropull, Tepelenë, Maliq

¹⁸⁸ Report: For functional governance in response to the Covid-19 challenge in cooperation with local communities, Strong Municipalities, 2020 <http://bashkiteforta.al/wp-content/uploads/2020/06/Raporti-Javor-19Maj-3Qershor.pdf>

¹⁸⁹ Citizens Channel, 7.4.2020 <https://citizens-channel.com/2020/04/07/personat-qe-nuk-degjojne-te-perjashtuar-nga-aksesi-ne-informacionet-per-covid-19/>

that, being inconsistent and excluding the disabled from access to information.¹⁹⁰ Though visual materials translated into sign language were accessible on communication channels of the Ministry of Health, IPH, and UNDP, it is necessary for such information to be unified on a daily basis to reflect frequent changes and updated developments.

Access to information has been a challenge also for individuals with scarce incomes, especially those without access to internet and/or electricity. According to INSTAT, about 18% of Albanian families do not have access to the internet,¹⁹¹ while a survey¹⁹² of the TREJA Center indicates that Roma and Egyptian families are particularly in difficulty in this aspect. According to this survey, of 1200 families interviewed in April 2020, 62% did not have access to the internet, thus indicating the scarce access of these groups to the internet. On the other hand, a positive development regarding vulnerable groups' access to information, was that guidelines regarding Covid-19 in Albania were made available in all minority languages.¹⁹³

In conclusion, it may be said that access to official information during the pandemic was more difficult for some groups, such as the disabled or persons in economic difficulties, without access to the internet, etc. To facilitate that, institutions should have been proactive and more consistent in adjusting daily information for these groups. With regard to the overall transparency of institutions during this period, the practice of some municipalities and the Assembly to provide live broadcasting of meetings was praiseworthy, while on the other hand, some of the most important institutions for managing the pandemic situation were not transparent, worked with reduced personnel, and made it difficult for journalists/civil society organizations to monitor, check facts, or investigate.

2. The right to Public Consultation in Albania during the Covid-19 pandemic

Law no. 146/2014 "On public notification and consultation," which regulates the process of public announcement and consultation of draft laws, national and local strategic draft documents, and policies of high public interest, envisages the right to public consultation in Albania. However, the implementation of this law is restricted at times of civil emergencies.¹⁹⁴ For that and other reasons, it is not recommendable to make important legal or constitutional changes in the circumstances of emergencies and crises. The Council of Europe, in guidelines¹⁹⁵ related to respect for human rights, democracy, and the rule of law during the Covid-19 crisis, drew attention that in the circumstances of the emergency, it is advisable that essential reforms or legislative changes are stopped temporarily.¹³

Nevertheless, during the period March – July 2020, important amendments to the Criminal Code, Electoral

¹⁹⁰ Convention for the Rights of Persons with Disabilities; Law no. 10 221/2010 on protection against discrimination; Law no. 93/2014 on the inclusion and accessibility of persons with disabilities; National Action Plan for Persons with Disabilities, 2016 -2020

¹⁹¹ INSTAT <http://www.instat.gov.al/media/6435/anketa-mbi-p-C3%ABrdorimin-e-teknologjis-C3%AB-s-C3%AB-informacionit-dhe-komunikimit-tik-n-C3%AB-familje-dhe-nga-individ-C3%ABt-2018-2019.pdf>

¹⁹² Treja Center, 14.9.2020 <https://www.facebook.com/1630624913618299/posts/4045640228783410/>

¹⁹³ Council of Europe <https://www.coe.int/en/web/tirana/-/covid19-outbreak-information-in-minority-languag-1>

¹⁹⁴ Article 4, law no. 146/2014 On public consultation

¹⁹⁵ Guidelines for member states of the Council of Europe "Respect for democracy, the rule of law, and human rights in the framework of the Covid-19 sanitary crisis," 7.4.2020, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

Code, and the Constitution, as well as in legislation on taxes, the budget, property ownership, regional development and cohesion, and other important sectors were approved in Albania.

Amendments to the **Criminal Code** were approved on April 16 and included, among others, penalties for violating the quarantine order and the spread of infectious diseases. Although work and consultations for amendments to other articles in the Criminal Code had begun earlier, the proposals for the mentioned amendments to articles 242/1 and 242/2 of the Criminal Code, related to the pandemic, were submitted by the relevant MP in the Assembly on April 8, 2020, only one week before approval.¹⁹⁶ The approval of these amendments in such a short period of time is in contravention of the Constitution, which prohibits approval through this procedure of laws approved by a qualified majority, such as the Criminal Code. 31 civil society organizations¹⁹⁷ reacted against the approval of the harsh penalties and the violation of the constitution and it was positive that some of their recommendations were reflected in the draft that was approved. On the other hand, the People's Advocate¹⁹⁸ also criticized these amendments made in an extraordinary situation and considered the harshening of criminal policy in this case disproportionate.

The amendments of laws of special significance, such as the Criminal Code, without respecting the constitutional procedure and without being based on more enhanced research and consultation, represents a negative precedent for the rule of law, in a situation when the country still lacks a Constitutional Court as a control mechanism for such cases. In guidelines¹⁹⁹ regarding respect for human rights, democracy, and the rule of law during the Covid-19 crisis, the Council of Europe underscored that any legislation approved in emergency times should be in accordance with the Constitution and international standards, and on a case by case basis, subject to review by the Constitutional Court. It is worth mentioning that Constitutional Courts in the region and in Europe have rejected some decision-making during the pandemic meanwhile, in Albania, the constitutional control as an essential element for the functioning of the rule of law, is still missing.

Other important changes approved in July 2020 included the amendment of the **Electoral Code** and the **Constitution**, in the context of electoral reform. In this case too, the Assembly of Albania, in contravention of legislation in force on public announcement and consultation, did not hold public consultations about the amendments proposed and approved in the Electoral Code, but gave priority to the agreement reached between the sides in the Political Council, making the process closed and not inclusive.²⁰⁰ Even other amendments of October 2020 in the Electoral Code were approved through a closed, polarized process, in the circumstances of a health crisis, in the absence of a functional Constitutional Court, and at a moment that is six months away from the parliamentary elections. Furthermore, during the pandemic, the Assembly conducted **annual performance reviews of several independent institutions**, including the Information Commissioner. Civil society organizations and media²⁰¹ criticized the process, which though they continuously monitor the Commissioner's work, were not invited in consultations by the Assembly and their monitoring reports,²⁰² which identified regress in the implementation of the law on

¹⁹⁶ <https://www.parlament.al/Files/ProjektLigje/20200409112749amendament.pdf>

¹⁹⁷ Citizens Channel 10.4.2020 <https://citizens-channel.com/2020/04/10/30-organizata-kunder-ndryshimeve-ne-kodin-penal-cenojne-te-drejtat-dhe-lirite-themelore-te-njeriut/>

¹⁹⁸ https://www.avokatipopullit.gov.al/media/manager/website/reports/Mendim%20p%C3%ABr%20projektligjin_d40LwTY.pdf

¹⁹⁹ <https://rm.coe.int/sg-information-document-albanian/16809e2116>

²⁰⁰ Institute for Political Studies, 24.7.2020 <https://isp.com.al/index.php/2020/07/24/isp-ksh-cdr-deklarate-mbi-ndryshimet-ne-kodin-zgjedhor/>

²⁰¹ Reporter.al, 26.5.2020 <https://www.reporter.al/organizatat-kundershtojne-projekt-rezoluten-e-kuvendit-per-komisioner-in-per-te-drejtet-e-informimit/>

²⁰² Monitoring report, Access to information 2019, Res Publica <https://www.respublica.org.al/wp-content/uploads/2020/01/E-drejta-e-informimit-2019-Res-Publica-web.pdf>

access to information during 2019 were not taken into consideration during the drafting of the resolution.

Another extensively contested decision that was also taken by avoiding public consultations was that of the **demolition of the National Theater building**. The action, opposed through a 2-year protest, was carried out in the early hours of May 17, 2020, while restrictions on movement and rallies were still in force. The decision was made in less than one week, including the decision of the Council of Ministers to transfer ownership from the state to Tirana Municipality, the drafting of the experts' assessment report, and the holding of the online meeting of the Tirana Municipal Council to make a decision to demolish the building.²⁰³ The decision-making procedure was disputable also with regard to lack of transparency and respect for the right to information. This movement was seen with concern also by the international community, including the European Union Commission, which had continuously called for dialogue between the government, civil society, and stakeholders.²⁰⁴ Furthermore, the People's Advocate, in a special recommendation²⁰⁵ on the issue, among others found unlawfulness in the actions/inaction of police officers, underscoring that they jeopardized the health of citizens and violated the right to information by obstructing journalists' reporting. The decision to demolish the Theater also saw yet another negative precedent, given that it circumvented the dialogue and recommendations of international organizations and partners, spurred massive protests during a pandemic, and was made at a time when the Constitutional Court, though it had two pending complaints on the issue, could not express itself through decisions because it had no quorum of its members. Besides, during the pandemic, Tirana Municipality made **30 important decisions**, starting from the demolition of special significance objects such as the "Sami Frashëri" high school and the National Theater, to measures taken for sectors such as urban transport, disinfection of premises, and the suspension and postponement of local taxes. According to the monitoring²⁰⁶ conducted by Civic Resistance, these decisions were made without consultation with citizens and the draft decisions were not published before approval as the law on Local Self-governance envisages.

A positive development regarding the right to consultation was the **approval of the order**²⁰⁷ of the Ministry of Health and Social Protection in June 2020 for the inclusion of children, which aims at their involvement in consultation and decision-making processes that are related to children and for children. Another positive practice was the opportunity to use the Assembly's online platform to submit comments on various draft laws.²⁰⁸

Lastly, it may be said that the pandemic and the state of natural disaster did not obstruct the decision-making activity of many institutions or the progress of work of the Assembly which, during the period March-July 2020, approved a large number of laws, resolutions, and amendments, but they did have a negative impact on the possibility for effective consultations and the exclusion of stakeholders, the media, and civil society organizations from some processes.

²⁰³ Institute for Political Studies, 23.5.2020 <https://isp.com.al/index.php/2020/05/23/an-overview-of-facts-and-development-related-with-the-albanian-national-theatre2-deeply-related-with-the-rule-of-law-and-democracy/>

²⁰⁴ Response of the European Commission to a parliamentary inquiry on the National Theater https://www.europarl.europa.eu/doceo/document/E-9-2020-003104-ASW_EN.pdf

²⁰⁵ Recommendation of the People's Advocate, 17.11.2020 <https://shqiptarja.com/uploads/ckeditor/5fb652531498favokatit%20rekomandime%2019%20nendor.pdf>

²⁰⁶ Informing report: Decision-making of the Tirana Municipal Council during the Covid-19 situation, Civic Resistance https://portavendore.al/wp-content/uploads/2020/06/final_compressed.pdf

²⁰⁷ Order no. 367/2020 of the Minister of health and Social Protection <https://qbz.gov.al/eli/urdher/2020/06/09/367>

²⁰⁸ <http://konsultimi.parlament.al/>

3. The right to due legal process during the Covid-19 pandemic (focusing on access to justice for groups in need)

The restrictions imposed due to the pandemic also affected the activity of the entire public administration, including those in the justice field. After the announcement of the state of natural disaster by the Government, the High Judicial Council (HJC), by decision no. 127, dated 10.03.2020,²⁰⁹ decided to suspend judicial activity and services in all courts in the Republic of Albania. This suspension exempted the judicial activity and services related to cases of an immediate nature, deemed as such on a case by case basis by the judge, such as for instance, judicial hearings that had to do with security measures, pre-trial detention deadlines, etc.

The length of these measures extended over a 2-week period, until 24.03.2020. On March 12, the HJC decided to suspend also its own activity and all competences related to the administration of the judicial sector in general.²¹⁰ By decision no. 128, dated 24.03.2020, it decided again to suspend the activity of judicial activity and services in all courts in the Republic of Albania for a 2-week period, starting from 25.03.2020 until 07.04.2020.²¹¹ Even after that date, the HJC decided to once again postpone the resumption of judicial activity until 22.04.2020. Judges were instructed to conduct trials only for those cases that, in their judgment, were categorized as "immediate" or "urgent." On the other hand, the HJC advised the public and court goers to not appear in courts.

The effects of the suspension as a result stopped the presence of the public in court premises. During the suspension period, public communication with the courts was only realized through official mail, electronic mail, or online, through official websites, although not all courts in the Republic of Albania have websites. Concretely, the Tirana Judicial District Court, a court praised for transparency and communication with the public,²¹² published only some informational posters to guide citizens as to which trial hearings were being conducted and when appearing in court was allowed.²¹³ The HJC decided the resumption of judicial activity on April 27, 2020,²¹⁴ guiding courts about the approval of special regulations for the conduct of trial hearings.

Nevertheless, the extension of the suspended judicial activity caused various reactions, starting from concerns about the lawfulness of decision-making to obstruct a fundamental right such as the right to due legal process and access to justice as part of it, to implications on the right to exercise one's profession, particularly lawyers.²¹⁵ There were different considerations about the formality of the approval of restrictions. In concrete terms, the Government approved normative act no. 9, dated 25.3.2020 "On the undertaking of special measures in the field of judicial activity, during the situation of the epidemic caused by Covid-19,"²¹⁶ but this normative act was approved later by parliament with the power of a

law,²¹⁷ which caused yet another delay in the implementation of these measures, leading to a decline in the efficiency of justice institutions with a direct impact on the right to due legal process because the normative act addressed important aspects such as deadlines, filing of lawsuits, complaints, and a series of other procedural acts.²¹⁸

The prolongation of the suspended court activity implicated concerns over the over-dragging of judicial processes and the already known problem of the Albanian justice system with the length of judicial processes through the years.²¹⁹ Data for 2020 indicate that the number of backlog cases awaiting trial is 92,602.²²⁰

Suspension of judicial and administrative activity had an essential impact on vulnerable groups and the representation of their cases. Tirana Legal Aid Society (TLAS),²²¹ as a local organization specializing in providing legal aid to many marginalized individuals and communities in Albania, counted in March 2020 a total of 170 suspended judicial processes and 421 administrative cases that were dragged out due to bureaucracy and the lack of efficiency of the administration. Dates for judicial processes were postponed even more due to the annual holidays of the courts in August. Likewise, restrictive measures and the obligation to stay home did not minimize the need for legal representation and the complexity of cases that were presented and sought assistance during this time. This situation, faced also with the closing down of the courts, placed many victims of fundamental rights' violations in front of unprecedented risk.

Restrictions on movement, the quarantine, and the hours for isolation at home helped stop the spread of Covid-19, but in Albania (as in many other countries of the Western Balkans) it has been reported that they worsened the situation of many women already victims of domestic abuse because reported cases of domestic violence and accommodation in emergency centers increased.²²²

Faced with the restrictions, the courts needed greater access to digitalization. In many countries, there were measures and legislation on video-conferences, digital judicial cases, or electronic communications.²²³ On 12.05.2020, the Government approved a sample regulation "On the undertaking of organizational measures for the exercise of activity of state administration institutions during the pandemic caused by Covid-19."²²⁴ Likewise, the courts approved regulations pursuant to these measures but none of these

²⁰⁹ HJC Press release, March 10, 2020: <http://klgj.al/njoftim-per-shtyp-10-mars-2020/>

²¹⁰ HJC Press release, March 12, 2020: <http://klgj.al/njoftim-per-shtyp-12-mars-2020/>

²¹¹ HJC Press release, March 24, 2020: <http://klgj.al/njoftim-per-shtyp-24-mars-2020-per-pezuillim-veprimtarie/>

²¹² Tirana Judicial District Court – Transparency program: <http://www.gjykatatirana.gov.al>

²¹³ Tirana Judicial District Court – Public notices: <http://www.gjykatatirana.gov.al>

²¹⁴ HJC Press release, April 22, 2020: <http://klgj.al/njoftim-per-shtyp-22-prill-2020/>

²¹⁵ A2 News Jobless from Covid-19, lawyers: some of us should have benefited "war salary" - <https://a2news.com/2020/04/20/pa-pune-nga-covid-19-avokatet-disa-prej-nesh-duhet-ta-perfitonin-pagen-e-luftes/>

²¹⁶ Act available at: <https://qbz.gov.al/eli/akt-normativ/2020/03/25/9/ea9736ae-997b-4d4b-92d4-3e9c170552c6> and amended by Normative Act no. 21, dated 27.05.2020.

²¹⁷ Law no. 75/2020 on the approval of the normative act with the power of law, no. 21, dated 27.5.2020 "On some amendments to normative act no. 9, dated 25.3.2020, of the Council of Ministers, "On undertaking special measures in the field of judicial activity during the period of the epidemic situation caused by Covid-19," approved by law no. 30/2020 <http://www.parlament.al/Files/projektligje/20200702100916ligj%20nr.%2075%20,%20dt.%20%2025.6.2020.pdf>

²¹⁸ Albanian Helsinki Committee – "Partial report on the activity of the judiciary and some judicial government bodies during the Covid-19 pandemic," March 15 – June 15, 2020, p 13, available at: <https://ahc.org.al/wp-content/uploads/2020/07/Raport-i-pjesshem-mbi-veprimtarine-e-Gjyqesorit-dhe-Organave-te-Reja-Covid-19.pdf>

²¹⁹ Report on the State of the Judicial System and Activity of the High Judicial Council 2019: https://www.parlament.al/Files/Kerkese/20200514101551RAPORTI%20VJETOR%20%20KLJ%202019_compressed.pdf

²²⁰ Ibid. For 2019, the number of backlogged cases was 77,853. The highest number was in the Tirana Judicial District Court, Tirana Court of Appeals, the Administrative Court of Appeals, and the High Court, with 55,972 cases.

²²¹ Tirana Legal Aid Society (TLAS) – Information on the organization's activity is available on the website www.tlas.org.al

²²² Balkan insight – COVID-19 and domestic violence: When home is not the safest place: <https://balkaninsight.com/2020/04/21/covid-19-dhe-dhuna-ne-familje-kur-shtepia-seshte-vendi-me-i-sigurt/?lang=sq> as well as Exit.al: The Covid-19 pandemic increases domestic violence cases in Albania and Kosovo: <https://exit.al/pandemia-e-covid-19-rrit-rastet-e-dhunes-ne-familje-ne-shqiperi-dhe-kosove/>

²²³ Emma van Gelder, Xandra Kramer and Erlis Themeli - Access to justice in times of corona: <https://conflictoflaws.net/2020/access-to-justice-in-times-of-corona/>

²²⁴ Order no. 2049/5, prot., dated 12.05.2020 "On the undertaking of organizational measures for the exercise of activity by state administration institutions during the epidemic caused by Covid-19."

measures had to do with adjusting court services to digital methods.²²⁵ All lawsuits, judicial hearings, and access to judicial cases continued in the traditional way, meaning a physical presence in court premises.

Nevertheless, the restrictive measures did not essentially affect the work of prosecution offices and the criminal investigation process continued uninterrupted throughout the period when restrictive measures were in force, thus leading to the representation of investigations in courts to be affected²²⁶

4. The right to privacy and family life during the Covid-19 pandemic

Interests protected in the context of Article 8 of the ECHR include the protection of private and family life, (inviolability) of the residence and correspondence.²²⁷ As the ECtHR has consolidated in its dynamic practice in this context, if such a claim were raised, the proportionality of interference would be examined in detail in spite of the temporary derogation by the state for respect for this right.²²⁸

The right to respect for private and family life thus represents one of the most threatened rights during the pandemic. In light of the evolutive interpretation of the ECtHR, in the context of article 8, issues such as the following have also been addressed: health treatment and care, medical negligence, availability of health care and treatment, preservation of privacy and reputation, protection of personal data, protection of personal and family relations as well as issues that are linked with the inviolability of the residence, having to do with direct implications resulting from the pandemic.²²⁹

The situation dictated by the pandemic and the restrictions related to ordinary social activities, as well as family ceremonies such as wedding parties or funerals, as well as controls to ensure that people are respecting the quarantine, tracing their contacts, compulsory reporting of medical data, and even the measuring of temperature in closed centers represent interferences with this right. Compulsory examination for Covid-19 in the context of tracking the spread of the infection and isolation has implicated the right to private life and the right to privacy, as well as the aspect of the right to have health care and treatment, mainly due to the insufficiency to conduct tests and the failure of the health care system to effectively trace the pandemic.

Access to testing has not only been insufficient, but often the media has also raised suspicions of selective testing and not in accordance with the risk posed by exposition to the virus.²³⁰ Among others, the preservation and administration of personal data of persons tested for the virus has been disturbing. The media has published uncensored lists of tested persons containing the name, age, address, and

²²⁵ Tirana Judicial District Court, Regulations no. 47/5, prot., dated 24.04.2020: http://www.gjykatatirana.gov.al/previewdoc.php?file_id=791

²²⁶ High Prosecutorial Council – Impact of the Covid-19 pandemic on the conduct of work of the High Prosecutorial Council - http://www.gjykatatirana.gov.al/previeedoc.php?file_id=791

²²⁷ European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights, August 31, 2020, available at: https://echr.coe.int/Documents/Guide_Art_8_ENG.pdf

²²⁸ Council of Europe - Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis - A toolkit for member states, SG/Inf (2020)11, 7 April 2020 – page 6.

²²⁹ Supra at 1, p. 13, 18, 29, 32, 44, 47, 53.

²³⁰ Reporter.al – Lack of tests obstructs Albania's fight against Covid-19: <https://www.reporter.al/mungesa-e-testimeve-pengon-luften-e-shqiperise-ndaj-covid-19/?fbclid=IwAR1FQUKKCLak-A5Jd9N9zjvJraYCEclb-IFb2n6igxatoJCVKxAUHey0IO>

information on whether they were hospitalized.²³¹ The Information and Data Protection Commissioner reacted regarding growing concerns about the abuse of personal data and their misuse by institutions.²³² The People's Advocate has done the same.²³³ One of the most flagrant cases was the reporting by PM Edi Rama himself on June 19 when he published the names of two artists who, in his opinion, had tested positive for Covid-19.²³⁴ This was considered intentional due to the active participation of the artists in some protests against the government's decision to demolish the National Theater.²³⁵

Serious concerns that accompanied this situation have to do also with the fragility of the health care system with regard to capacities and possibilities to offer quality services. According to a research by the World Health Organization, Albania has only 12 doctors per 10,000 inhabitants, ranking behind countries such as Afghanistan, Kongo, Pakistan, and India.²³⁶ While such data comes from 2016, it is believed that the number of doctors during the pandemic was even lower as doctors and other health care professionals have emigrated massively in recent years, primarily to countries such as Germany.²³⁷ Earlier, the UN reported that Albania is one of the countries that spends less than other countries, only 2.3 percent of its GDP for health care. The UN considers that 'to fulfill the needs of primary health care, the government should have invested 25 percent of its budget.'²³⁸

Measures taken to cope with the pandemic have affected also other aspects of family life and aspects protected by article 8, especially of marginalized groups. In concrete terms, members of the Roma minority in Albania were affected disproportionately by isolation measures imposed by the government. For many Roma who work in the informal sector, their ability to go out and work to provide for their families was seriously restricted by emergency measures that restricted the freedom of movement and informal markets. Moreover, measures of the Albanian Government to fight the economic difficulties that low-income families face were not applicable to those working in the informal sector, a considerable number of whom are Roma, thus raising serious concerns about indirect discrimination of this community.²³⁹

On March 28, 2020, the government announced a financial package scheme as an additional payment for persons in economic need.²⁴⁰ They payment system was done through the general directory of taxes through the government's "E-filing" online platform. The system ensured that people who previously worked in the private sector but were left without jobs could benefit a minimal salary of 26,000 leks

²³¹ Exit. Al – Personal data of Covid-19 patients are leaking and disseminated on WhatsApp every day - <https://exit.al/te-dhenat-personale-te-pacienteve-covid-19-po-rjedhin-e-shperndahen-ne-whatsapp-cdo-dite/>

²³² Information and Personal Data Protection Commissioner, Instructions: <https://www.idp.al/udhezime-ne-kuader-te-covid-19/>

²³³ During the period until July 2020, the People's Advocate issued a total of 101 recommendations, of which about 15 or 15% of them had to do with the relevant measures in the context of the pandemic. Part of these recommendations are available here: <https://www.avokatipopullit.gov.al/sq/list/publications/rekomandimet-4/>

²³⁴ Euronews.al – Access to Information Office: The Covid-19 pandemic added further to abuse with citizens' data: <https://euronews.al/al/aktualitet/2020/08/12/zyra-per-te-drejte-e-informimit-pandemia-e-covid-19-shtoi-me-tej-abuzimet-me-te-dhenat-e-qytetareve>

²³⁵ Hashtag.al - Rama violates confidentiality of patients' data with the Budina brothers <https://hashtag.al/index.php/2020/06/19/rama-shkel-konfidencialitetin-e-te-dhenave-te-pacientit-me-vellezerit-budina/>

²³⁶ World Health Organization, The Global Health Observatory - [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population))

²³⁷ Ibid.

²³⁸ UN Albania - Covid-19 Socio-Economic Recovery & Response Plan, July 8, 2020, p. 17, available at: https://albania.un.org/sites/default/files/2020-08/Socio%20Economic%20Plan%20Albania_0.pdf

²³⁹ ERRC - Roma Rights in Time of Covid, September 2020, p. 5, available at: http://www.errc.org/uploads/upload_en/file/5265_file1_roma-rights-in-the-time-of-covid..pdf?fbclid=IwAR3YYyIV7uKETpqmz5d4paYrQdSq9yRa61vqCnFsT4xjNe-tPTNF96-LM

²⁴⁰ Center of Official Publications: <https://qbz.gov.al/news/33b00e4f-8efb-4c99-8c45-595cd9b84f1b>

(210 EUR). This scheme did not provide for those who worked in the informal sector and there were no measures to include this category in the emergency payment system.

In response to the lack of attention for the Roma working in the informal sector there were also protests against government institutions for their lack of support. On May 18, activists and Roma and Egyptian families submitted a signed petition seeking the legalization of special informal jobs that marginalized groups generally carry out. The Government of Albania responded by implementing support for employees engaged in informal employment, announcing that they would be included in what was called the “war salary.” In consultation with the Commissioner Against Discrimination and civil society organizations, the government invited self-employed informal workers to register as unemployed jobseekers so that they could get the payment.²⁴¹

The conditions imposed by the Covid-19 pandemic further aggravated the situation of families damaged by the September 21 and November 26, 2019 earthquakes, whose economic situation became even more difficult due to the lack of work and employment opportunities during the enactment of restrictive measures.²⁴² UNECE pointed out that the Covid-19 pandemic further narrowed budgetary resources for affordable shelter.²⁴³ According to the Ministry of Finance, restrictive measures cost the economy 16 million euros in tax incomes.²⁴⁴ Thousands of Albanians still live in tents, temporary housing, or unsafe structures even more than 9 months after the earthquake.²⁴⁵

The pandemic disproportionately affected persons with disabilities who have other health care needs and often represent high-risk groups for infections due to other accompanying illnesses that they may have.²⁴⁶ In April, the Ministry of Health decided the suspension of the functioning of disability and work invalidity evaluation commissions.²⁴⁷ This decision did not affect disability allowances for people who had been commissioned previously but kept all new disabled persons who had to appear for the first time before these commissions, whose activity is suspended indefinitely until the end of the pandemic, as decided in the Order.

The situation of ill persons with other pathologies that receive services from the infectious diseases hospital

²⁴¹ Ibid.

²⁴² Reportel.al ‘No support: Single mothers face added challenges during the pandemic:’ <https://www.reporter.al/pa-mbeshtetje-nenat-e-vetme-perballen-me-sfida-te-shtuara-gjate-pandemise/?fbclid=IeAR2ya4yK-XT-QnqemoZe1d2efChTHsI3ctkuTaKLeEUldFuRz1U54eM-M>

²⁴³ UNECE - Building back better in Albania: UNECE supports housing sector reforms and urban resilience : <https://www.unece.org/info/media/news/housing-and-land-management/2020/building-back-better-in-albania-unece-supports-housing-sector-reforms-and-urban-resilience/doc.html>

²⁴⁴ OECD - COVID-19 crisis response in South East European economies: <http://www.oecd.org/coronavirus/policy-responses/covid-19-crisis-response-in-south-east-european-economies-c1aacb5a/>

²⁴⁵ Ibid.

²⁴⁶ Citizens Channel – Impact of the Covid-19 pandemic on the lives of persons with disabilities <https://citizens-channel.com/2020/09/20/ndikimet-e-pandemise-covid-19-tek-jeta-e-personave-me-aftesi-te-kufizuar/?fbclid=IeAR12EëXiyd-s8ivcolqXNYJfsf05YlPbjYRr1bj-VF-7HST86EezEQVGQ>

²⁴⁷ Order of the Minister of Health and Social Protection no. 220, dated 01.04.2020.

was particularly difficult as the hospital turned into an exclusive Covid-19 treatment hospital.²⁴⁸ This was particularly complicated for patients with the HIV/AIDS virus and almost 300,000 other ill persons with chronic diseases, whose treatment became critically difficult at the start of the pandemic and even more during it.²⁴⁹

Restrictive distancing and social closing measures brought particularly harmful consequences in the LGBTI community, particularly those rejected by their families, have problems of mental health, or suffer from physical or psychological violence and represent one of the most discriminated communities in Albania.²⁵⁰ Organizations working to represent the community and the Commissioner for Protection against Discrimination found that restrictive measures considerably affected services and support that people of this community receive from friends, LGBTI centers, NGOs, and education institutions as well as their access to employment.²⁵¹

5. The right to assembly in Albania during the Covid-19 pandemic

The right to peaceful assembly in Albania is a constitutional right²⁵² regulated by specific law.²⁵³ On April 1, 2020, the Albanian Government derogated some articles of the ECHR, including article 11 (Freedom of assembly and organization). Pointing to the importance of respect for the freedom of assembly even during this period, the UN Special Rapporteur on freedom of assembly and organization called on all member states that measures taken for Covid-19 not infringe upon the freedom of assembly and organization.²⁵⁴

In Albania, the normative act of March 15, 2020²⁵⁵ envisaged that subjects or individuals organizing the conduct of public and non-public events, such as sports, cultural activities and conferences, or massive gatherings in closed or open premises, such as concerts, rallies and public hearings are punishable by a fine of 5 million leks for organizers and the prohibition of the activity. This fine is seen as disproportionate, considering that it is equal to 166 monthly salaries of an Albanian citizen getting a minimal wage.

²⁴⁸ The association Together for Life, in collaboration with the Association of Hepatitis Patients, submitted to the Ministry of Health and Social Protection and its subordinate institutions, through an open request/call, the concern of persons receiving chronic treatment who obtain information solely through specialists of the Mother Teresa University Hospital Center and pick up medicaments only there, such as: patients with hemophilia, those with transplants, those with HIV/AIDS, etc. After the reaction, the Health Care Insurance Fund instructed that the service for this category of patients be provided at regional hospitals. This solution was considered partial and ineffective for all categories of patients, such as those thalassemic ones who had to appear to take blood at the Hemoglobinopative center while payments for travel expenses and movement restrictions increased the costs even more. Many families left their children without blood due to unaffordable costs. Also, distancing due to the pandemic was entirely non-enforceable (still remains so) as 4-5 people get blood in rooms with a capacity for 1-2 people. No measures were taken to reduce the possibility of infections. For more information on the issue, please go to: <https://togetherforlife.org.al/sq/shendetesi/>

²⁴⁹ Faktoje.al - Covid-19 ‘penalizes’ 300,000 chronically ill persons - <https://faktoje.al/covid-19-penalizon-300-mije-te-semure-kronike/>

²⁵⁰ Commissioner for Protection against Discrimination – Statement of the “Alliance against hatred,” May 25, 2020: <https://www.kmd.al/deklarate-e-aleances-kunder-urrejtjes/>

²⁵¹ Historia-ime.com <https://ëëë.historia-ime.com/art-kulture/pro-lgbt-pjese-e-nates-se-diktatures/>

²⁵² Article 47 of the Constitution of the Republic of Albania

²⁵³ Law no. 8773/2001 On rallies

²⁵⁴ Statement of the UN Special Rapporteur on the right of assembly and organization <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25792&LangID=E>

²⁵⁵ Normative act 15.3.2020 <https://qbz.gov.al/eli/akt-normativ/2020/03/15/3>

According to data from the Tirana Local Police Directory,²⁵⁶ the measure was imposed three times during the period March-September 2020. Although on 7.10.2020 administrative measures imposed during the pandemic were pardoned,²⁵⁷ the intimidating effect they had on citizens is disturbing.

On the other hand, although the Government of Albania withdrew from the derogation of the ECHR after the conclusion of the state of natural disaster on June 24, 2020,²⁵⁸ the dispersion of rallies and criminal proceedings against participants continued even after that date.²⁵⁹ Between March and July 2020, there were 48 rallies and 307 individuals were prosecuted²⁶⁰ for organization and participation in illegal rallies. According to a monitoring conducted during this time, among these rallies, 9 were dispersed by police and violence was used in some of them.²⁶¹ Some of these cases are still under investigation by the People's Advocate,²⁶² who has recommended the interruption of the State Police practice of disallowing rallies and the improvement of normative acts in force that regulate the freedom of assembly in order to guarantee this constitutional right even during periods of pandemic, respecting relevant health protocols.²⁶³ Also, the Commissioner for Protection against Discrimination stressed that after the outbreak of the pandemic, there has been a deficit of reasonability and deficiency in the enforceability of the order to prohibit rallies, which is not enforced evenly.²⁶⁴ The dispersion of rallies and proceedings against participants continued in following months although, on the other hand, after September 2020, parties' electoral activities occurred normally after the President set the election date on September 6, 2020.

According to OSCE standards for freedom of assembly, protection of health may be a legitimate reason for restricting the freedom of assembly, but it may only be applied when such prohibition is applied also on other types of rallies of individuals, such as schools, concerts, sports events, etc.²⁶⁵ Given that activities that lead to gatherings of people have been organized or allowed, including concerts/festivals, electoral meetings, inaugurations, and other events, the application of penalties and prohibitions for rallies has been viewed as unfair.²⁶⁶ The application of double standards with regard to the freedom of assembly has been identified also by the People's Advocate, which has recommended a unification of the practice of criminal prosecution cases that are linked with organization/participation in illegal rallies.²⁶⁷

²⁵⁶ Tirana Local Police Directory through access to information request

²⁵⁷ Normative act no. 31, dated 7.10.2020-On the pardon of administrative punitive measures established during the Covid-19 situation

²⁵⁸ Verbal note of Albania for the derogation from ECHR <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>

²⁵⁹ Citizens Channel, 27.7.2020 <https://citizens-channel.com/2020/07/27/gjate-pandemise-policia-shperndau-nente-tubime-dhe-procedoi-penalisht-119-qytetare/#respond>

²⁶⁰ Genera Directory of Police, Official request for information, 2.9.2020

²⁶¹ Citizens Channel 27.7.2020 <https://citizens-channel.com/2020/07/27/gjate-pandemise-policia-shperndau-nente-tubime-dhe-procedoi-penalisht-119-qytetare/#respond>

²⁶² People's Advocate, Official request, 27.8.2020

²⁶³ Recommendation of the People's Advocate on the taking of measures necessary for respecting the constitutional right of assembly even during the state of emergency, 2020 <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrijen%20e%20masave%20f%C3%ABr%20nevojshme%20p%C3%ABr%20respektimin%20e%20liris%C3%ABr%20kushtetuese%20f%C3%ABr%20tubimit%20edhe%20gjat%C3%ABr%20gjendjes%20s%C3%ABr%20jasht%C3%ABr%20zakonshme.%20.pdf>

²⁶⁴ <https://www.reporter.al/e-drejta-e-tubimit-standardet-e-dyfishta-qe-fshihen-pas-luftes-ndaj-covid-19/>

²⁶⁵ OSCE Guidelines for freedom of peaceful assembly, 2010 <https://www.osce.org/files/f/documents/4/0/73405.pdf>

²⁶⁶ Citizens Channel, 10.7.2020 <https://citizens-channel.com/2020/07/10/standarde-te-dyfishta-protestat-shperndahen-me-dhune-politika-vijon-aktivitetin/>

²⁶⁷ Ibid. Recommendation of the People's Advocate on the taking of measures necessary for respecting the constitutional freedom of assembly also during the state of emergency, 2020

In November, 35 civil society organizations²⁶⁸ sent an open letter²⁶⁹ to relevant institutions to demand respect for the freedom of assembly during the pandemic and the drafting of a special anti-Covid protocol.

As a result, the prohibition of rallies, high fines, the exercise of violence, the application of double standards, accompanied by lack of legal clarity in the law on rallies have discouraged and infringed upon the right to assembly during the pandemic. Considering the practice of European democracies²⁷⁰ and the UN position,²⁷¹ it may be said that these restrictions should and could have been avoided, allowing the exercise of the right to assembly, with the obligation to respect health protection measures.

6. RECOMMENDATIONS

- i) Any legal act or by-law approved during the state of natural disaster of this kind should be in accordance with the Constitution and international standards so that the principle of lawfulness is respected.
- ii) The length of the regime of the state of emergency and emergency measures should be limited and their main purpose should be to restore normality as soon as possible. The prolongation of the state of emergency should be subjected to parliamentary oversight. In particular, it is not advisable to conduct profound legal reforms during the period of the crisis.
- iii) The essential function of the judiciary – particularly constitutional courts, during the situation of a pandemic or state of emergency – should be preserved. It is important that the court review restrictions on human rights presented by legislation under emergency regime measures and people in need are guaranteed effective access to courts.
- iv) Central and local government institutions should be proactive in the publication of draft-decisions before approval, the publication of important information without being asked, the involvement of citizens and stakeholders in decision-making through technology in all meetings in which the public would have access in a normal situation.
- v) All public administration institutions should take measures to ensure the functioning with normal capacity of human resources, using technology and ensuring infrastructure for personnel. In the first months of the pandemic, many institutions asked for more time and tolerance with requests for information by justifying themselves with limited capacities, but such a situation should not continue throughout the pandemic.
- vi) Institutions responsible for the management of the health crisis, such as the Ministry of Health and

²⁶⁸ <https://qq.com.al/index.php/2020/11/19/35-organizata-dhe-sindikata-leter-te-hapur-institucioneve-per-te-drejte-e-protestes-ne-kohe-pandemie-mungesa-e-protestes-vret-demokracine-e-per-pasoje-jeten-e-qytetareve-te-cilet-nese-qeverisen-nuk/>

²⁶⁹ Open letter <https://qq.com.al/wp-content/uploads/2020/11/Leter-e-Hapur-E-drejta-e-Protestes-ne-Kohe-Pandemie-1.pdf>

²⁷⁰ Decision of the German Constitutional Court, April 16, 2020, 2020 <https://www.reuters.com/article/us-health-coronavirus-germany-protests/germans-have-right-to-protest-during-coronavirus-pandemic-court-idUSKCN21Y220>

²⁷¹ Statement of the UN Special Rapporteur on the right to assembly and organization <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25792&LangID=E>

Social Protection and the Institute of Public Health should ensure full transparency of information regarding the pandemic, responding to the high level of public interest on the issue. Also, such information should be unified, adjusted and translated into sign language for persons with disabilities.

- vii) Monitoring, tracking, and prevention are essential in epidemic oversight, but they should not be left unchecked and unbalanced vis-à-vis the need to respect privacy. Actions should ensure that personal data is collected, analyzed, and maintained in a legitimate and responsible manner.
- viii) The Information Commissioner should make a decision on every complaint, avoiding mediated solutions, and apply administrative sanctions on institutions refusing information and violate the law repeatedly. The Information Commissioner should draft instructions on access to information, focusing on information on the pandemic, just as they drafted instructions on the protection of personal data during the pandemic.
- ix) The Assembly of Albania should consult effectively groups of interest, media, civil society organizations and their monitoring reports when drafting resolutions to evaluate the performance of independent institutions and when discussing important legal amendments included in the expertise and monitoring work of groups of interest.
- x) Central and local government bodies should conduct effective consultations using technology when unable to hold meetings.
- xi) The Council of Ministers, Ministry of Interior, and State Police should implement the recommendation of the People's Advocate and ensure respect for the freedom of peaceful assembly, as a constitutional right, avoiding the use of violence and disproportionate sanctions, and allowing rallies to take place in respect of health protection protocols.
- xii) The People's Advocate and the Commissioner for Protection against Discrimination should continue to monitor constantly the actions and activity of the government during the pandemic, and continue to investigate/react on their own initiative to violations occurring in their field of work.

CHAPTER 6

GENDER-BASED VIOLENCE AND DISCRIMINATION TOWARD WOMEN

CENTER FOR LEGAL CIVIC INITIATIVES

Albania has set the fight against domestic violence and discrimination toward women and girls as a priority, focusing on supporting violated women and those in need in the aftermath of the earthquake and during the pandemic, on strengthening state mechanisms for the protection of women against domestic violence and on preventing discrimination and increasing women's participation in representative and decision-making bodies.

Regarding the above, the most important tools have been the improvement of existing legislation through legal amendments and the undertaking of measures for its implementation. Thus, by law no. 47/2018, "On some additions and amendments to law no. 9669, dated 18.12.2006, 'On measures against domestic violence,'" amended, and law no. 125/2020, additions and amendments were approved that aim at a coordinated and effective reaction to domestic violence. A series of by-laws have been approved for better implementation of existing legislation. Thus, pursuant to the law on measures against domestic violence, a Joint Instruction was issued by the HJC and the Minister of Justice, no. 9, on 17.6.2020, "On the definition of regulations for the creation of a special database on domestic violence cases in courts and the unification of their records," as well as the joint instructions of the Ministry of Interior and the Ministry of Health and Social Affairs on risk assessment,²⁷² and the Order of the Albanian State Police for preliminary measures on immediate protection.²⁷³ A working group established at the Ministry of Health and Social Affairs is working to improve legislation for the domestic violence cases management mechanism. In spite of improvements to the legal framework, the implementation of legal amendments against domestic violence, especially those related to risk assessment and the issuance of the Order for Preliminary Measures of Immediate Protection, the strengthening of protection mechanisms and the increase of the effectiveness of implementing institutions, especially during the period of the pandemic, remain key issues.

For the implementation of the law "On legal protection guaranteed by the state," the Ministry of Justice is in the process of drafting policies and control for better implementation of by-laws, issued for the implementation of this law.

Law no. 124/2020, dated 15.10.2020, "On some additions and amendments to law no. 10221, dated 4.2.2010, 'On protection against discrimination,'" brought some novelties and improvements regarding severe forms of discrimination, the obligation of authorities to prevent discrimination in the exercise of functions, the burden of proof, enforcement of fines, etc.

The assistance of civil society organizations, through support and monitoring services on institutional activities, has taken up a special place. These organizations found that the pandemic situation worsened the access of domestic violence victims to the system and, in some cases, the Coordinated Referral Mechanisms were found unprepared to respond to cases with immediate and adapted measures, in order to prevent and protect against gender-based violence, including domestic violence. The increase of cooperation between responsible institutions, strengthening structures of gender equality and against domestic violence, expanding services for victims of domestic violence, and budgeting services are indispensable in order to improve the implementation of legislation against domestic violence. The gender

²⁷² Joint Instruction, no. 866, dated 20.12.2018, "On procedures and the model for risk assessment for domestic violence cases."

²⁷³ Joint Instruction, no. 912, dated 27.12.2018, "On procedures and the model of the order of preliminary measures for immediate protection."

equality machinery at the central level and mechanisms against domestic violence suffer from deficiencies in human and financial resources. Furthermore, the systems that generate data on domestic violence victims do not appear to be synchronized between.

Regarding the prohibition of discrimination and the increase of women's participation in elections, we emphasize that the constitutional amendments enacted in the context of Electoral Reform and those of the Electoral Code, brought about some changes to the system of distribution of mandates in elections, which place the regulations for the women's quota system in front of new challenges. In this context, the attention of civil society organizations is focused on guaranteeing the implementation of the gender quota, so that there is no slipping back. Albanian civil society organizations, with support from international organizations, have raised the issue of strengthening the gender quota mechanism in legislation and that of monitoring domestic violence in elections, in order to prevent it and to identify the impact of denying the right to elect and be elected for women. On the other hand, this year, these organizations brought to attention also the need for monitoring the fight against violence toward women in elections and politics.

According to some sources, violence toward women in elections and politics has been present and has been highlighted as violence exercised toward women participants in elections to obstruct their secret and free vote, including many cases of family voting; hate speech for gender reasons toward women in elections, women exercising functions in politics, exercised toward female supporters and activists in elections, toward election functionaries or those linked with election work (journalists, activists, volunteers), violence exercised toward youth in pre-university education in the form of pressure.

Although women and girls face gender and/or multiple discrimination, the use of legal tools such as complaints to the Commissioner for Protection against Discrimination or the court has been limited. Even the role of civil society organizations in support of individuals or groups of individuals and the Commissioner for Protection against Discrimination, has been weak.

Per the above, in this chapter, we will be pausing on these three fundamental issues:

- I. Gender-based violence, focusing on two aspects: Domestic violence & Violence toward women in elections.
- II. Discrimination toward women.

1. GENDER-BASED VIOLENCE

1.1 Domestic violence

1.1.1 Legal framework for the prevention of and protection against domestic violence

With regard to this issue, we have highlighted the initiatives undertaken for legal improvements and the problems deriving from the work carried out to prevent and protect against domestic violence. Below, we are listing the most important amendments of the legal framework in this field. **The legal framework for protection against domestic violence has been improved.** Law no. 47/2018, "On some additions and amendments to law no. 9669, dated 18.12.2006, 'On some measures on domestic violence,'" amended, has expanded the circle of subjects that enjoy protection from domestic violence; it envisages the Order for Preliminary Measures for Immediate Protection, which is issued by the State Police, when the conduct of a risk assessment indicates that the violence poses a threat to life; it outlines more detailed tasks for state institutions; improves judicial procedures; it envisages the taking of measures *by initiative*, by the court; and it contains a more attentive approach to groups in need and persons with disabilities.

Law no. 125/2020 "On some additions and amendments to law no. 9669, dated 18.12.2006 "On measures against domestic violence," amended," approved on 15.10.2020 has brought significant changes that are expected to increase effectiveness in addressing domestic violence cases. Some of these changes include: protection against domestic violence, pursuant to this law, shall be ensured by immediately removing the defendant (violateur) from the place of residence for a period of time determined by a court order; the measure of "removal of the violator from the place of residence until the court issues the immediate protection order or immediate order" in the OPMIP, rehabilitation of the violator by ordering that he/she participate in psychosocial programs and/or parenting programs, obliging the head of the relevant structure of State Police to issue the order for preliminary measures for immediate protection, in any case when finding that violence has been used, when in the country or parts of it there are extraordinary measures, as well as the provision that, throughout the period of extraordinary measures, the request to court to evaluate preliminary protection measures, obtained through the order for preliminary measures for immediate protection, the police should request the court to issue the protection order, without first requesting the issuance of the immediate protection order."²⁷⁴

CMD no. 334, dated 17.02.2011, "On the Mechanism for Coordination of Work to Refer domestic violence cases and its proceedings," is being revised through a broad process of consultations with civil society representatives, members of the domestic violence cases' referral mechanism in municipalities, representatives of the main authority responsible and other responsible line authorities.

By-laws of law no. 111/2017 "On legal aid guaranteed by the state" have been approved and they have opened the way to increasing the number of domestic violence victims that

²⁷⁴ <https://www.parlament.al/Files/Akte/20201020140600ligi%20nr.%20125%20dt.%2015.10.2020.pdf>

benefit legal aid.²⁷⁵ These acts realize special protection for **domestic violence victims** as special categories. They benefit free legal aid, in spite of their incomes or assets. Also, **sexually abused victims or human trafficking victims** are subjects that benefit from free legal aid guaranteed by the state, in spite of their incomes or assets. The law also provides special protection for minor victims of violence.

In February 2020, the Ministry of Health approved Standard Operating Procedures (SOPs) for health care employees and social care services for handling domestic violence and gender-based violence cases.²⁷⁶ **Necessary measures were also undertaken because of the Covid-19 pandemic.** Aside from the approval of the Protocol for the management of domestic violence cases through the CRM, the Protocol for the management of domestic violence cases in the Covid-19 situation was also approved. The LCADV in all the country's municipalities have been trained with regard to familiarization and implementation of these protocols through online training programs.

1.1.2 Institutional developments

We find that initiatives have been undertaken to strengthen structures for protection against domestic violence at the central and local levels. Strengthening the mechanisms for the fight against violence toward women, by securing the appropriate human and financial resources, both at the central level and the municipal level, increasing considerably the budget allocated to the authority responsible for preventing and fighting violence toward women and budget resources for other line ministries are identified by GREVIO as areas that need improvement in order for Albania to completely fulfill obligations of the Convention.

Regarding capacities of the gender equality mechanism at the central level, several steps have been pursued. "...Gender employees have been assigned in 11 ministries.²⁷⁷ A diversity employee has been assigned at the State Police and there is a contact point for these issues at INSTAT." However, the gender equality machinery at the central level needs to be strengthened with human and financial resources. The increase of the number of specialists at the Sector for Policies and Strategies for Social Inclusion and Gender Equality at the MHSP seeks to carry out duties that the MHSP tasks it with as the responsible authority.

We also find that the capacities of structures for protection against domestic violence at the local level have been empowered. "At the local level, Local Gender Equality Employees have been appointed in 58 municipalities out of 61 municipalities, most of which also play the role of the Local Coordinator for the management of domestic violence cases."²⁷⁸ Professional capacities of the LCADV have been enhanced through continued training on the legal amendments, effective management of domestic violence cases, and data recording in the REVALB system.

²⁷⁵ The following have been approved: Joint Instruction of the Ministry of Justice and the Chamber of Advocates of Albania, no. 17, dated 05.08.2020 "On the rules for implementing the principle of rotation in the assignment of lawyers who will provide secondary legal aid services in civil and administrative cases" and Joint Instruction of the Ministry of Justice and the Ministry of Finance and Economy no. 18, dated 05.08.2020 "On the approval of criteria for lawyers benefiting fees and tariffs for lawyers who provide secondary legal aid."

²⁷⁶ Ministry of Health and Social Protection, "Response," No. 4173/1.Prot, dated 22.09.2020.

²⁷⁷ Ministry of Health and Social Protection, "Response," No. 4173/1.Prot, dated 22.09.2020.

²⁷⁸ Ministry of Health and Social Protection, "Response," No. 4173/1.Prot, dated 22.09.2020.

It is a positive fact that the number of municipalities in the country that have established CRMs of domestic violence cases has increased.²⁷⁹ There are 55 CRMs for domestic violence cases in 55 of 61 municipalities, while the goal is to have them established in the other remaining municipalities within 2020.²⁸⁰

1.1.3 Implementation of the improved legal framework against domestic violence

In spite of the situation created by Covid-19 during 2020, the reduction of domestic violence represented an important priority for the Government of Albania. Institutions devoted special attention to implementing the legal package against domestic violence. Nevertheless, it is our opinion that there needs to be greater focus on improving the implementation of changes on risk assessment and the issuance of the OPMIP.²⁸¹ A key point in achieving such implementation is the coordination between State Police and local coordinators. In spite of strengthened cooperation between police officers and local domestic violence coordinators, "a concern remains the (non)participation of the local coordinator in the risk assessment and provision of services outside the official hours of 08.00-16.00."²⁸²

"Upon assessing risk to life as high, for the period 01.01-31.08.2020, police issued the Order for Preliminary Measures of Immediate Protection for 158 cases."²⁸³ If we compare the number of OPMIPs issued by State Police in only 158 cases, while the general number of domestic violence cases reported during the same period of time (01.01-31.08.2020) was 3087, we conclude that risk assessment and the issuance of the OPMIPs only occurred in few cases. In other words, there is a need to strengthen capacities at State Police and strengthen cooperation with the local coordinators on this issue. Civil society organizations have highlighted the need to strengthen capacities of the actors responsible for conducting risk assessment and taking coordinated measures for management in cases of sexual violence toward women and girls.

According to the Annual Statistic Book 2019, 540 guilty verdicts were issued for the offense of "Domestic violence."²⁸⁴ Data from the General Directory of Albanian State Police indicates that for the period of 01.01.2020-31.08.2020, criminal proceedings were initiated for 1006 cases for the criminal offense of domestic violence envisaged in article 130/a of the Criminal Code and for 91 cases of violation of the protection order. The practice of the Center for Legal Civic Initiatives has shown that violence incidents are being taken increasingly into consideration by courts while establishing custody and visitation rights. This practice needs to be strengthened in all judicial district courts, in accordance with the GREVIO recommendation.

²⁷⁹ During 2020, the UNDP supported the establishment of the CRM in several municipalities of the country, in the context of the Joint United Nations Program "Ending violence toward women in Albania," funded by the Government of Sweden and implemented by the UNDP, UN Women, and UNFPA.

²⁸⁰ Ministry of Health and Social Protection, "Response," no. 4173/1.Prot, dated 22.09.2020.

²⁸¹ This concern has been raised also by member organizations of the Monitoring Network Against Gender-Based Violence. <https://www.facebook.com/rjetimonotirimitkunderdhunesmebazegjinore/posts/863500997794064>

²⁸² Ministry of Interior, General Directory of State Police, "Response," no. 1104/1, dated 28.09.2020.

²⁸³ Ministry of Interior, General Directory of State Police, "Response," no. 1104/1, dated 28.09.2020.

²⁸⁴ <http://drejtesia.gov.al/wp-content/uploads/2020/07/VJETARI-STATISTIKOR-2019.pdf>

a) Challenges in CRM work at the local level for implementation of the law

The work of CRMs at the local level for the implementation of the law "On measures against domestic violence" has seen an increase, but at the same time, there have been deficiencies, challenges, and needs. Some of the achievements of the Coordinated Referral mechanisms were highlighted in the management of cases also during the pandemic, in raising the awareness of the community and youth in schools, the establishment of emergency shelters for domestic violence victims, handling of cases online by the TIT team during the pandemic, the continuation of social services provision, better coordination police-LCADV in conducting risk assessments, etc.²⁸⁵ During the pandemic, State Police structures devoted attention to calls from domestic violence victims, facilitated their movements, the accompaniment of victims to trial hearings, and taken under protection violated children.

The CRMs continued to manage domestic violence cases also during the Covid-19 pandemic. Thus, based on information obtained from some municipalities in the country, it appears that the CRMs handled many cases at the municipal level in 2020.²⁸⁶ The CRMs that have been established and are functional in the country's municipalities have adapted their work by organizing online the meetings of the Technical interdisciplinary teams and the CRM steering committees. However, in some of these, the management of domestic violence cases during the Covid-19 situation has been challenging for the CRMs with regard to a new approach adapted to the situation, the offering of psychosocial and legal services online, the use of online platforms, etc. Data about the number of cases managed during 2020 by the CRMs in different municipalities compared to the number of 3087 domestic violence cases highlighted by police during 2020 indicate that there are discrepancies between them. In our opinion, this is because the police do not refer every domestic violence case to the LCADV in the municipality. As a result, this has led to leaving victims without social services offered by CRM members or delays in benefiting these services, as well as shortcomings in the unification of data.

Analyzing the work of all municipalities,²⁸⁷ we notice that some of the gaps in CRM work include: lack of services for victims in some of the municipalities, particularly emergency shelters near places of residence, the need for a fund for emergency needs of domestic violence victims, deficiencies in human, financial, and infrastructural resources, uneven engagement of responsible institutions in the CRM, limited service budgets, the need for sustainable integration programs, monitoring of protection orders during the pandemic, the workload of LCADVs with high numbers of cases in large municipalities, lack of stability in CRM members, and the treatment of domestic violence victims with disabilities and from other marginalized groups,²⁸⁸ and making responsible institutions that do not carry out responsibilities assigned to them by law.²⁸⁹ With regard to the workload of LCADVs, the Albanian Women's Empowerment Network (AWEN) has raised the concern that in larger municipalities, such workload may be insurmountable by a single

²⁸⁵ Referring to responses from municipalities, September 2020.

²⁸⁶ E.g., Tirana- 490 cases (Tirana Municipality, "Response" no. 30885/1, dated 30.09.2020), Fier-61 cases (Fier Municipality, "Response" no. 6780/1, dated 25.09.2020) Shkodër-76 cases (Shkodra Municipality, "Response," no. 13028/1, dated 29.09.2020).

²⁸⁷ CLI consulted this finding with municipalities and LCADV.

²⁸⁸ Some of these challenges were identified also in the Statement of the Monitoring Network Against Domestic Violence, "Increase effectiveness of Coordinated Referral Mechanisms of domestic violence cases" <https://www.facebook.com/rjetimonotirimitkunderdhunesmebazegjinore/posts/863500997794064>

²⁸⁹ Reflections in the report "Monitoring the Referral Mechanism for domestic violence cases at the local level," 2018, recommended "The setting of sanctions for local institutions, part of the RM that do not carry out the tasks assigned by law," Gender Alliance for Development Center proposed amendments to Law no. 9669, dated 18.12.2006, "On measures against domestic violence" regarding the setting of sanctions for non-participation and non-engagement of institutions that are members of the Coordinated Referral Mechanism at the local level.

person and has suggested that there is a set target regarding the number of dedicated people that a municipality needs to address the DV phenomenon and effective management of DV and GBV cases.”²⁹⁰

There is a need to organize awareness campaigns for the prevention of domestic violence, fighting inequalities and patriarchal structures, with the active engagement of men and boys, throughout the year. Gender sensibility in all levels of decision-making needs to be enhanced.

1.1.4 Specialized services for domestic violence victim

It is a positive fact that there is an increase in the number of specialized support services for domestic violence victims

(i) Sheltering services.

“...there are 18 specialized sheltering support services, managed by the state, NGOs, or in collaboration, of which 7 are long-term shelters and 10 are emergency shelters (nine established during the period 2016-2020).”²⁹¹ Order no. 254/2020 of the Minister of the MHSP approved the protocol for the functioning of the shelters in the Covid-19 situation. 37 shelter employees and local coordinators against domestic violence in the municipalities where these services are functional received online training on this protocol (April 2020). “The national center for the treatment of domestic violence victims,” during the period January-September 2020, treated a total of 48 beneficiaries, of which 18 women and 30 children. Of these, four beneficiaries (1 woman and three children) were beneficiaries from the Roma community.

(ii) Support through counseling.

A necessary service for domestic violence victims is counseling through a dedicated 24-hour counseling hotline. “The Counseling Line functioned also during the shutdown/isolation period of the Covid-19 pandemic, when cases for the period March-April increased by 50% compared to the same period of the previous year and tripled during May.”²⁹²

(iii) Support through health assistance.

Pursuant to GREVIO recommendations for Albania, since December 2018, the LILIUM Crisis management center for sexual violence cases is functional and offers integrated and coordinated services for sexual violence cases, 24 hours a day, 7 days a week.²⁹³ During 2020, the number of beneficiaries of the LILIUM

²⁹⁰ AWEN Network, “Suggestions on improving CMD no. 334, dated 17.2.2011 on “The mechanism for coordinating work for the referral of domestic violence cases and its proceedings,”” to the Assembly of Albania, July 2, 2020.

²⁹¹ Ministry of Health and Social Protection, “Response,” no. 4173/1. Prot., dated 22.09.2020.

²⁹² Ministry of Health and Social Protection, “Response,” no. 4173/1. Prot., dated 22.09.2020.

²⁹³ The LILIUM Center has the support of UNDP Albania, under the leadership of the Ministry of Health and Social Protection, as part of the UN Joint Program “Ending violence toward women in Albania,” with funds from the Government of Sweden.

Center is 21, 20 women and girls and one boy. In spite of services offered for domestic violence victims, there is a need to continue the establishment and functioning of services as close to the places of residence of domestic violence victims as possible. This requires local government units to take measures to budget social services for domestic violence victims.

(iv) Legal aid support services.

A series of services have been established to provide free legal aid. At present, the functional services that offer primary legal aid are: the Primary Legal Aid Service Center, Tirana, the Primary Legal Aid Service Center, Lushnjë, the Primary Legal Aid Service Center, Fier, the Primary Legal Aid Service Center, Durrës, the Primary Legal Aid Service Center, Lezha, the Primary Legal Aid Service Center, Shkodra, and the Primary Legal Aid Service Center, Dibra.²⁹⁴

Domestic violence victims may get primary legal aid also from Legal Clinics functioning at Higher Education Institutions. At present, the Directory for Free Legal Aid has entered into agreements with the: School of Law, University of Tirana, Beder University, Wisdom University College, Aleksandër Moisiu University, Durrës, Ismail Qemali University, Vlora, and the European University of Tirana.

The Ministry of Justice (MoJ) has authorized 12 civil society organizations to provide free primary legal aid. The authorization of civil society organizations will create more opportunities to benefit primary legal aid in a sustainable manner for domestic violence victims.²⁹⁵ This Ministry, in collaboration with the Open Society Foundation Albania, has continued to offer online legal services through the juristionline.al platform. Concretely, 28 questions related to domestic violence cases and protection orders have been addressed.²⁹⁶

The undertaken steps are a contribution also in terms of the GREVIO recommendation to create and fund properly an efficient legal aid system for victims of all forms of violence toward women, which are covered by the Convention.

1.2 Violence toward women in elections and politics.

This issue has been particularly raised during 2020 and has been addressed in the Assembly by CSOs. Concerns were presented with regard to violence toward women in politics or state functions. The issue was raised due to the fact that civil society considers it an important fact in two aspects, the prevention of violence toward women and gender-based violence, as well as the increase of women’s activation in elections and in representative bodies or state duties. In its work experience, the Center for Legal Civic

²⁹⁴ Free Legal Aid Centers in Durrës, Fier, Lezhë, Shkodër, Dibër, and Pogradec are supported by UNDP, managed by the Ministry of Justice, with funds from the Government of Austria and the UNDP.

²⁹⁵ 1. Center for Integrated Legal Services and Practices; 2. Free Legal Aid “TLAS”; 3. Association “Protection of the Rights of Urban and Rural Women,” Berat; 4. Center “Counseling Line for Women and Girls;” 5. Association “Albanian Services for Refugees and Migrants;” 6. Association New Intellectuals Hope; 7. Center “A.L.T.R.I.”; 8. Center for Legal Civic Initiatives; 9. Center “Albanian Consumer;” 10. Association “Women’s Forum Elbasan;” 11. Association “For the protection of children’s rights in Albania;” 12. Center “Different and equal.”

²⁹⁶ MoJ, Directory of Free Legal Aid, Role of the Directory in offering services for domestic violence victims, September 16, 2020.

Initiatives has highlighted the issue in relation to the following aspects:

- Violence exercised toward women participants in elections, to obstruct their free and secret vote;
- Violence exercised toward female supporters and activists, in elections;
- Violence exercised toward election officials or election-related work (journalists, activists, volunteers), due to gender;
- Violence exercised toward youth in pre-university education, when violence occurs due to gender-based reasons;
- Gender-based hate speech toward women in elections and politics.

(i) The situation of VTWE.

Several forms of violence toward women in elections and politics have been encountered. Nevertheless, the forms most frequently encountered are pressure for family voting and hate speech used during electoral campaigns and in politics. These are particularly seen from media monitoring, but there is no real research on the issue. There is a need for a study and monitoring during election campaigns to highlight the forms in which such violence is exercised.

In practical terms, based on the large number of cases of family voting during elections, we raise the concern that we may find ourselves in front of forms of domestic violence toward women and girls of the same home, for the purpose of having someone else in the family or outside vote on their behalf. However, we do not have a real research study on this issue.

In order to look at the situation of criminal offenses related to VTWE, we reviewed the statistical yearbooks of the Ministry of Justice for five years, from 2013 until 2018. This review indicated that it is not possible to identify cases of criminal responsibility for exercising violence toward women in elections. Statistical yearbooks only provide general references, including all forms of criminal offenses *“Crimes against free elections,”* without making any distinctions in the offense and its elements. Moreover, criminal offenses envisaged in this chapter do not include any elements of the criminal offense in particular for the punishment of violence toward women in elections.²⁹⁷

The OSCE/ODIHR report on the parliamentary elections of 2017 raises this concern when it stresses that, *“Women candidates received less attention from the media; public and private television stations monitored by the OSCE/ODIHR EMM devoted women 13 percent of campaign coverage.”*²⁹⁸ In this report, OSCE/ODIHR recommends: *“Any instances and allegations of pressure should be thoroughly and effectively investigated and prosecuted by relevant authorities. All cases, including their outcomes, should be publicly reported.”*²⁹⁹

²⁹⁷ In election or post-election years 2014 and 2017, there were precisely 2 criminal offenses against free elections and in other years there were 0 such cases. For instance, in 2017, an electoral year, there were 2 cases against free elections prescribed in the Criminal Code. Also, for 2014, which followed the parliamentary election year of 2013, there were 2 resolved cases. For 2018, there were 0 cases. This review indicates that even the time of investigation and adjudication of these cases grew shorter. The two cases that occurred in 2013 concluded in 2014 and those that occurred in the 2017 elections concluded in the same year.

²⁹⁸ OSCE/ODIHR Election Observation Monitoring Mission Final Report, September 28, 2017, p. 13, at <https://www.osce.org/sq/odihr/elections/albania/351226?download=true>

²⁹⁹ Ibid, p. 28

Election monitoring reports, though in general terms they contain cases of violence, they have no data about the causes for exercising it or the subjects and consequences as a result of the use of such violence. Thus, one of the election monitoring reports prepared by the Albanian Helsinki Committee in 2013, stresses: *“Part of the campaign was built on the basis of denigrating elements toward political opponents, not excluding even anal insults that party leaders addressed during political rallies or conversations in the media, toward opposing colleagues. Such behavior caused indignation among a good part of the population, which spoke to this effect both in front of media and in meetings with our monitors.”*³⁰⁰ Family voting as such appeared on several election monitoring reports as a disturbing phenomenon. Yet, none of them analyzed any further the forms of violence toward women voters exercised to carry out this illegal phenomenon.

Women candidates or aspiring candidates face such type of violence. Thus, the analysis includes particularly activist women who seek to run, candidate women, as well as women voters; women supporters of different parties, observers, and other election workers, etc.

The media has reported different cases such as pressure on women to resign (this is a possibility noticed particularly during the process to replace removed MPs); there have been attacks of a disturbing nature on women during electoral campaigns (reporting of interference in campaign rallies). What is worse, there have also been cases when media undertake such attacks using gender reasons. However, these cases have not been subjected to judicial or institutional review.

Verbal violence and violation of the Code of Ethics toward women in Parliament is another form of violence toward women. The Assembly created mechanisms against hate speech toward women politicians. However, they remain to be enforced evenly for all MPs and not be used politically.

(ii) Activities to address VTWE.

- Addressing protection against gender-based violence in legislation.

The working group for women in decision-making, consisting of a series of Albanian and international organizations,³⁰¹ jointly submitted to the Assembly and bodies created for electoral reform in Albania a series of proposals seeking to improve the Electoral Code regarding guaranteeing gender equality in elections. These proposals were accompanied by a letter that the two parliamentary sub-committees, *“On Human Rights”* and the one *“For gender equality and the prevention of violence toward women,”* sent to the chairpersons of the *“Electoral Reform Committee.”*³⁰²

³⁰⁰ See: Final report on the parliamentary elections of June 23, 2013, AHC, Tirana, July 31, 2013, at: https://ahc.org.al/wpcontent/uploads/2016/12/Raporti_Perfundimtar_per_Zgjedhjet_e_Kuvendit_23_Qershor_2013_Komiteti_Shqiptar_i_Helsinkit.pdf

³⁰¹ Organizations of the Working Group are: OSCE Presence in Albania, UN Women, UNDP, AWEN, Women Democracy Network Albania, Women's Network “Equality in Decision-Making”, NDI, Olof Palme Center, GADC, CRCA/ECPAT Albania, Helvetas, U.S. Embassy, DLD, SDC, WDN, HRH, FES, BtF/Strong Municipalities, Embassy of Sweden, Embassy of the Netherlands, German Embassy, Partners Albania, Albanian Coalition of Domestic Observers, Assist Impact, Italian Cooperation, Observatory for Children's and Youth Rights, Together for the Future Association.

³⁰² See: *“Request for revision of special provisions for the prevention of gender-based violence in elections,”* No. 1634, Prot., Tirana on 23.06.2020.

The request of the two parliamentary sub-committees sought precisely to improve addressing violence toward women in elections. Concretely, it proposes amendments to general provisions that establish the principles of this Code, suggesting that besides equality in voting, there be also a provision to affirm the principle of gender equality. This regulation would better guarantee the contents of the Code regarding the system of gender quotas for women's representation and other guaranteeing articles.

The current Electoral Code contains provisions that build the gender quote through the establishment of percentages, rules for ranking and sanctions for non-compliance. All rules are integrated in the proportional system sanctioned currently in it. Yet, this Code was subjected to amendments during 2020. The Code also underwent amendments in the framework of detailing constitutional amendments of July this year, regarding open lists, which due to the narrow time of approval, could not find a professional analysis in this report. This requires careful regulations in order to not slip back in equal gender representation.

Civil society organizations asked that some articles be included for the prevention of gender-based violence in elections, particularly the elimination of hate speech, etc. Without the prevention of any form of violence toward women in elections, it is impossible to fulfill the system of gender quotas envisaged by this code, i.e. the balanced participation of women and girls in decision-making. This becomes even more essential in the context of current constitutional amendments, which envisage preferential voting on open lists.³⁰³

Provisions regarding the public's legal education and the training of professionals are an important aspect of the effective implementation of the Code itself. Thus, the Central Election Commission should ensure that professionals participating in different levels of election bodies are trained on these issues. Meanwhile, the parliamentary strategy for public education should include this area intensively.³⁰⁴

(iii) Harassment/sexual harassment.

One of the forms in which VTWE is exercised is gender-based harassment or harassment. In spite of the different nuances in meaning, these definitions are provided in a complementary manner in both laws: "On gender equality in society"³⁰⁵ and the one "On protection against discrimination."

Aside from the fundamental aspects of non-discrimination due to gender and gender quotas in decision-making, the law "On gender equality in society" envisages concrete definitions and measures against "gender-based harassment" and "sexual harassment." These definitions are further detailed in the law for the field of employment, services, and education. However, they are not fully elaborated with regard to women's participation in elections and politics. When it comes to politics, the law only sanctions gender quotas in representative bodies and does not engage in violence toward women in elections or in politics. These definitions may be elaborated and serve in the practice of implementation of this law also for cases of violence toward women in elections. Nevertheless, it would be better that this law includes a legal regulation to protect women and girls, as well as men and boys, from violence in elections and politics,

³⁰³ See: Law no. 115/2020 "On some amendments to law no. 8417, dated 21.10.1998, "Constitution of the Republic of Albania," amended, available at: <https://www.parlament.al/LibrariaAkteve/LibrariaAkteDetails/5152>

³⁰⁴ See: Decision of the Assembly, no. 47/2019 "On the approval of the strategy for the public's legal education 2019-2023," available at: <https://www.parlament.al/Files/Lajme/Dokument/selp/Vendim%20i%20Kuvendit.pdf>

³⁰⁵ Law no. 9970, dated 24.7.2008 "On gender equality in society," available at: <https://kmd.al/wp-content/uploads/2018/05/1306486003-Ligji-per-barazine-gjinore-ne-shoqeri.pdf>

for gender reasons.

Aside from the above, the law on protection against discrimination also envisages definitions closely related with protection against discrimination of women in elections, such as "sexual harassment" and "hate speech." Naturally, definitions in the law "On gender equality in society" may be implemented jointly with these of the law "On protection against discrimination." That way, cases of violence toward women in elections may be subjected to review by the Commission for protection against discrimination (CPD), independently from pursuant to what law they are identified.

(iv) Criminal offenses in elections.

Drafting a special chapter on criminal offenses that affecting free elections and the democratic system of elections came with the amendments of the Criminal Code done in 2012, 2015, and 2017.³⁰⁶ Chapter X, "Criminal offenses affecting free elections and the democratic system of elections" sanctions 15 elements of criminal offenses against criminal electoral violations. they have a general character and a neutral gender language, but may be implemented even in cases related to violence because of gender. Nevertheless, some of them are closely linked with gender harassment and violence in elections. Such may be: "Obstruction of electoral subjects" (article 325); "Use of public functions for political or electoral activities" (article 328/a); "Intimidation or violation of participants in elections" (article 329); "Obstructing of voters" (article 330); "Taking or illegally using identification documents" (article 331/a).

The Criminal Code does not include any provision that expressly condemns violence toward women or gender-based violence in elections. Its provisions are formulated using general and neutral language and have no special provisions to express the prohibition of violence used for gender reasons. However, there are no obstacles to these provisions being used fully for the protection of women and girls from gender-based violence, in any form it may be exercised. It is our opinion that it will be jurisprudence and practices pursued by the courts and the prosecution office that will highlight which the cases that identify gender-based violence in elections.

2. DISCRIMINATION TOWARD WOMEN

During 2020, cooperation of civil society organizations with state institutions continued. Amendments to law no. 10 221, dated 4.2.2010 "On protection against discrimination" were approved after broad consultation with different actors, including civil society organizations. Their approval by the Assembly³⁰⁷ is expected to increase citizens' access to legal remedies and the Commissioner for Protection against Discrimination.

This cooperation continued also for the identification and reporting of cases. However, we find that the number of complaints regarding gender discrimination, presented to the CPD during 2020, by organizations has been limited. Compared to previous years, the number has decreased considerably.

³⁰⁶ Criminal Code of the RA, available at: http://www.pp.gov.al/web/kodi_penal_2017_1200.pdf

³⁰⁷ LAW NO. 124/2020 "ON SOME ADDITIONS AND AMENDMENTS TO LAW NO. 10221, DATED 4.2.2010 'ON PROTECTION AGAINST DISCRIMINATION,'" <https://www.parlament.al/Files/Akte/20201020140743ligj%20nr.%20124%20dt.%2015.10.2020.pdf>

This is seen also when comparing complaints presented by organizations that protect children's interests, the Roma/Egyptian community, persons with disabilities, etc.

Hate speech reviewed by the Commissioner in these years is only directed toward sexual orientation and gender identity.³⁰⁸ The Directory for receiving complaints at the Commissioner saw 2 (two) complaints for gender discrimination for 2019 and 8 (eight) complaints for gender discrimination in the field of employment in 2020.

Data indicate that it is necessary to increase the role of NGOs in support of individuals, groups of individuals, or the presentation of information before the Commissioner for Protection against Discrimination. Furthermore, there is a need for a more active role of the institution of the CPD to pursue *ex officio* gender or multiple discrimination where one of the reasons is gender. This may also be realized pursuant to the Recommendation "Recommendation on the fight against discrimination and hate speech in electoral campaigns,"³⁰⁹ which the CPD approved together with the EQUINET (European network of equality bodies).

3. RECOMMENDATIONS

- i. In spite of improvement of the legal framework against domestic violence, it is recommended that efforts continue to bring legislation against domestic violence in line with recommendations of the Group of Experts of the Istanbul Convention GREVIO and recommendations of the Committee of the Parties. It is recommended that the legal administrative-civil protection against violence toward women and girls outside family relations should be improved. The implementation of recommendations should be monitored by civil society in a sustainable manner.
- ii. Empowering the institutional machinery of gender equality at the central level is a priority recommendation pursuant to the legal framework for gender equality and against domestic violence, as well as for the fulfilment of recommendations of international mechanisms such as the CEDAW committee, GREVIO, etc.
- iii. In spite of steps undertaken to empower the gender equality structure at the local level, we recommend to clearly separate in practice the role of the gender coordinator against domestic violence and the gender equality employee from other functions and duties.
- iv. We recommend that work continue to establish the Coordinated Referral Mechanisms in the all of the country's municipalities and to increase the effectiveness of existing CRMs. "There is a request for the full functioning of referral mechanisms at the municipal level and representation of every member institution in monthly meetings."³¹⁰ Inter-institutional cooperation between all members of referral mechanisms should be enhanced. We recommend "amendments to the

³⁰⁸ See: Commissioner for Protection against Discrimination, Annual Report, 2017, 2018, 2019, available at: <https://www.kmd.al/raporte-vjetore/>.

³⁰⁹ Recommendation on the fight against discrimination and hate speech in electoral campaigns, available at: <https://www.parlament.al/Files/Informacione/RekomandimiEQUINET.pdf>

³¹⁰ Monitoring the Work of Coordinated Referral Mechanisms during the Covid-19 pandemic, Municipalities of Durrës, Elbasan, Fier, Kamëz, Korçë, Lezhë, Pogradec, Sarandë, Shkodër, Vlorë, and Tiranë https://www.gadc.org.al/media/files/upload/Raporti%20Final%20i%20Perbashket_UnE_COVID-19.pdf

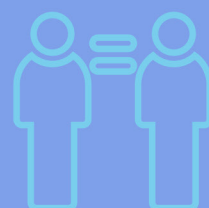
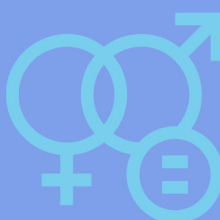
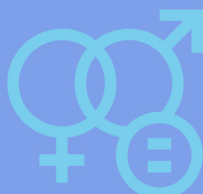
Law on Measures against domestic violence with regard to the imposition of sanctions for the participation and engagement of member institutions of the Coordinated Referral Mechanism at the local level."³¹¹

- v. We recommend that work continue with the organization of practical, combined, and on the job training for local coordinators against domestic violence and ITC members with regard to practical aspects of the implementation of the latest amendments to law no. 9669, dated 18.12.2006 "On measures against domestic violence," amended, the by-laws and protocols for case management. The division of good practices in the effective management of domestic violence cases through the LCADV is recommendable. Risk assessment and the issuance of the OPMIP is recommended to be at the focus of training for police, LCADV, and CPU/CPW. It is recommended to share good practices of municipal teams³¹² on alert to respond to police during the day and at night.
- vi. We recommend the empowerment of the process of budgeting of social services for domestic violence victims in all the country's municipalities. The work of UN Women in support of the Municipalities of Tiranë, Durrës, Elbasan, Korçë, Lezhë, etc., for budgeting social services for domestic violence victims should be expanded to all the country's municipalities. Empowerment of municipal staff capacities for application to the Social Fund is of special importance for municipalities to exploit this opportunity in order to support social services for domestic violence victims. The geographic spread of services in the most remote areas and their accessibility are challenges that should be addressed with regard to services for domestic violence victims.
- vii. The establishment of new primary legal aid service centers is recommendable in order for services to be available as close as possible to gender-based violence victims including domestic violence. We recommend the sharing of information regarding the online platform as that would lead to an increase in the number of cases seeking assistance at the platform, particularly at times of a pandemic.
- viii. We recommend to civil society organizations to enhance the monitoring of the phenomena of violence toward women in elections and raise the awareness of state authorities to react legally toward them. We would recommend this issue as a topic of monitoring during the March-April 2021 parliamentary elections.
- ix. There is a need for legal provisions against violence toward women in elections, in the law "On gender equality in society." It may envisage in a more detailed manner the violence toward women and girls in elections and politics, as well as measures for their protection. This is closely related to the system of gender quotas, which it sanctions.
- x. We recommend the elaboration with clear provisions and sanctions in the Electoral Code in future legal amendments that condemn Violence toward women in elections and hate speech toward them. In these cases, we think it would be difficult to use the provisions of the Labor Code by analogy as these are qualifying circumstances.
- xi. There is a need to increase the role of civil society organizations in support of individuals or groups of individuals to prepare complaints and present information on cases of gender discrimination and multiple discrimination, with gender being one of the reasons.

³¹¹ Monitoring the Work of Coordinated Referral Mechanisms during the Covid-19 pandemic, Municipalities of Durrës, Elbasan, Fier, Kamëz, Korçë, Lezhë, Pogradec, Sarandë, Shkodër, Vlorë, and Tiranë https://www.gadc.org.al/media/files/upload/Raporti%20Final%20i%20Perbashket_UnE_COVID-19.pdf

³¹² Elbasan Municipality

- xii. We recommend an empowerment of the role of NPOs, free legal aid centers, and legal clinics to inform the women's community of protection against discrimination, the law on protection against discrimination, and the remedies it offers.
- xiii. Lastly, we recommend the increase of the number of cases ex officio by the CPD regarding gender and multiple discrimination.



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JANUARY, 2021