



KOMITETI SHQIPTAR I HELSINKIT

PARLIAMENTARY ELECTIONS
25 APRIL 2021

MONITORING REPORT

IMPLEMENTATION OF DECRIMINALIZATION LEGISLATION IN THE PARLIAMENTARY ELECTIONS



This thematic report was prepared in the context of the project “Toward better integrity of candidates, for Free and Fair Elections in 5 Municipalities of the country,” implemented by the Albanian Helsinki Committee and supported financially by Federal Republic of Germany

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Tirana, June 2021



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Regarding the decriminalization process, legislation¹ in the Republic of Albania aims to create prohibitive mechanisms for the election of citizens who are in circumstances that harm the integrity of the public official. The realization of this verifying process has involved important institutions such as the General prosecution Office, the CEC, General Directory of Prisons, General Directory of the Civil Registry, and their counterparts in neighboring countries.

Based on data made available by the General Prosecution Office, AHC notes overall that political parties are not interested in verifying the candidates in their multi-name lists in advance, thus not contributing to effective implementation of the decriminalization legislation. From monitoring the self-declaration forms of 584 candidates proposed by the registered political subjects and independent candidates, in 5 districts of the country, the indicia that triggered the CEC to seek enhanced verification from the General Prosecution Office have generally been the data documented by the subjects themselves in their decriminalization forms. Only in one case, for an independent candidate, the CEC requested verification based on indicia of its prior decision making on failure to respect gender quotas by this candidate. During the period of monitoring this process, it results that only in the case of 1 candidate who was part of the list in the 5 districts that are subject to this monitoring, the General Prosecution Office concluded its verification process and did not find violation of legislation on decriminalization. It also appears that the General Prosecution Office requested information from police authorities or Ministries of Justice about 9 candidates who were part of the multi-name lists of subjects in the districts that are subject to this monitoring.

1 Legal framework and the methodology for collecting data

In keeping with articles 6/1 and 45 of the Constitution and provisions established in law no. 138/2015 and decision no. 17/2016 of the Assembly of the Republic of Albania, pursuant to procedures and legal criteria, citizens convicted by final judicial decisions have been excluded from the constitutional right to elect and be elected.

This topic has been the subject of monitoring only in the 5 Municipalities of the country. the candidates of multi-name lists of registered electoral subjects filed their self-declaration forms, pursuant to paragraph 9 of Chapter II of Decision no. 17/2016 of the Assembly.

Through the decision making of 11/12/2020, the Regulatory Commission decided to approve the number of mandates for each electoral constituency. Based on the CEC public announcement, it appears that 12 electoral subjects respected the deadline, 08.03.2021 for submitting documentation for running for MP.²

AHC exchanged official correspondence with the General Prosecution Office³ and the CEC to

¹ Laws no. 137/2015 “On some amendments and additions to law no. 8417, dated 21.10.1998, “Constitution of the Republic of Albania,” amended” and no. 138/2015 “On guaranteeing the integrity of persons being elected, appointed, or exercise public functions,” approved in 2015

² <http://kqz.gov.al/2021/03/09/kqz-verifikimi-i-formulareve-te-vetedeklarimit-ne-bashkepunim-me-dpgjc-dhe-drejtorine-e-pergjithshme-te-burgjeve/>

³ Letter no. 688/1 prot., dated 29.04.2021

oversee the implementation of the law on decriminalization.⁴ It is with regret that we find that according to data from the General Prosecution Office, only the PD-AN political subject submitted a request for conducting preliminary verifications for the candidate for MP of this electoral subject. Due to failure to complete deficiencies/inaccuracies of the request, this request was not accepted by the General Prosecution Office. Based on this data, AHC finds that political parties are not interested in conducting advance verifications on the candidates of their multi-name lists, thus not contributing to effective implementation of legislation on decriminalization.

Based on data provided by these institutions, it appears that within a 3-day deadline, from 22.03.2021 until 25.03.2021, the CEC requested from the General Prosecution Office full verification on 30 candidates for MP in the parliamentary elections of April 25, 2021. Of these, for 4 candidates, the request for undertaking verification procedures was based on indicia found by the CEC in the process of its review of self-declaration forms, submitted by the candidates themselves. The General Prosecution Office, based on article 8 of the law no. 138/2015 conducted verification procedures on 4 self-declaring subjects, within the 30-day deadline. For these 4 subjects, the report finds that a decision was made to approve verification results, while none of the subjects appeared to be exempted from the right to be elected.

For 26 persons or 87%, the General Prosecution Office, through the General Directory of State Police requested information from foreign police authorities (Interpol/Europol). Interpol provided information only about 11 subjects while the procedure of jurisdictional relations with abroad continues through the Ministry of Justice. To date, the General Prosecution Office has not received any concrete information regarding the verifications conducted. Some of the difficulties referred during the phase of jurisdictional relations with abroad include: Interpol and Europol not providing information because the submitted request does not meet the conditions of international agreements ratified by the Republic of Albania, as well as failure to complete the verification process within legal deadlines (in some cases, it continued for years) due to requests submitted to foreign judicial authorities, which have not been sufficiently satisfied with the legal base of law no. 138/2015; “Second additional protocol of the CoE Convention on mutual juridical assistance in criminal matters” and the Convention “On mutual juridical assistance in criminal matters.” In these circumstances, the law on decriminalization does not guarantee full and accurate examination of the integrity of candidates running in elections (parliamentary or local government), thus creating situations whereby a candidate who may obtain the mandate of the elected official, later appears to have obstacles due to delayed responses from foreign authorities or, in a worst case scenario, there may be a lack of a response on them.

Also, another concern raised by the General Prosecution Office has to do with the failure of bodies responsible for administering the self-declaration form to inform about persons who they find to be in circumstances of prohibition or not, after the General Prosecution Office concludes its enhanced verification process.

2 Data verified manually from candidates’ self-declaration forms

AHC experts found that the CEC, pursuant to legal provisions in force, reflected on its official website the self-declaration forms of candidates for MP. Based on the manual verification of the

⁴ Letter no. 4545/1 prot., dated 17.05.2021

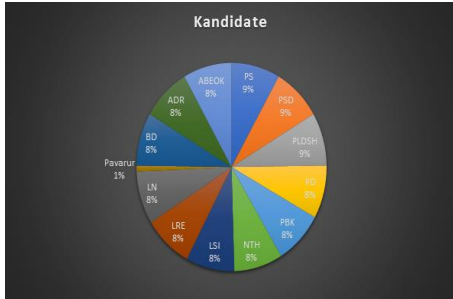
forms of candidates from the largest political subjects (SP, LSI, and PD-AN coalition), for the 5 districts of the country, of which the monitored municipalities are a part, it results that:

- a) **For the district of Shkodra** (which includes the Municipality of Malësi e Madhe) – the majority of candidates who filled out and signed the self-declaration forms included in these forms the expulsion decisions by neighboring countries, or penal security measures, undertaken by local prosecuting authorities. AHC found that in sporadic cases, candidates did not refer publicly to the criminal offense they are suspected of having committed. For instance, candidate F.GJ. stated that the personal security measure of “house arrest” was taken on him for the September 14, 1998 events. In 2002, it appears that the judicial system provided an innocence verdict on the candidate, but the self-declaration form does not include a date and identifying number of this court decision, nor the criminal offense that the citizen was suspected to have committed. For 3 other candidates, it appears that the General Prosecution Office requested information from the CEC and prosecution authorities, based on preliminary indicia. The multi-name list of candidates for the LSI subject, only candidate A.T. appears to have declared expulsion from Italy in 2007, for 5 years. A verification of the list of candidates for the district of Shkodra, it results that only candidate B.S. (political subject of PD-AN) was subjected to the security measure of “house arrest” issued by decision no. 09.11.2020, which was revoked by the Shkodra Judicial District Court. The criminal proceeding against him appears to have been registered for the criminal offenses envisaged by articles 242 “Disobedience to public order police officer” and 235/2 “Opposing employee carrying out a state duty or public service” of the Criminal Code, not part of the disqualifying criteria envisaged in article 2 of law no. 138/2015. Referring to data from the list of 12 candidates of the SP electoral subject for Shkodra Municipality, only candidate F.Gj. declared the security measure of “house arrest” for the events of September 14, 1998. In 2002, the candidate was declared innocent, but the form does not make any reference to the criminal offense he was suspected of having committed or other identifying information about the court decision. Based on data made public and verified through official correspondences with institutions, it results that candidates A.Gj. (ABEOK subject), who was expelled by German authorities in 2017; B.SH. (DC subject), convicted to about 1 month of imprisonment in 1998 for illegal emigration, and Z.H. (DP subject), who did not provide data in his self-declaration form. Also, for candidate S.H. (SDP), on 16.04.2021, it results that the Decriminalization Sector at the General Prosecution Office requested additional information from the CEC.⁵ Candidate T.D. who is on the multi-name list of the subject SDP for the districts of Shkodra and Tirana, stated in his self-declaration form that in 1990, he was convicted to 1 year of imprisonment for the criminal offense of 121 and 31/a of the Criminal Code. Meanwhile, in 2015, he was remanded to “house arrest” as a suspect for the commission of criminal offenses envisaged in articles 305, 305/a and 312 of the Criminal Code. This security measure, changed about 1 month later to an obligation to appear regularly before a judicial police officer, was dropped in 2018 through a final decision that declared him innocent. For this candidate, the General Prosecution Office requested additional information from the U.S. Embassy and other neighboring countries where the candidate spent time in the

⁵ <https://shqiptarja.com/lajm/prokuroria-perfundon-verifikimin-per-kandidatin-per-deputet-napolon-lasken-nuk-rezulton-i-denuar-per-kryerjen-e-ndonje-vepre-penale?r=pop5s>

past.⁶ For independent candidate P.Sh. in the district of Shkodra, a request for verification was submitted, although no data harming the person's integrity was reflected by the person in the self-declaration form.⁷

- b) For the **District of Lezha** (of which Lezha Municipality is part) has 1 case of candidate for MP S.K. stating that a personal security measure of “obligation to appear regularly before a judicial police officer” was imposed on him, which was revoked afterwards. However,

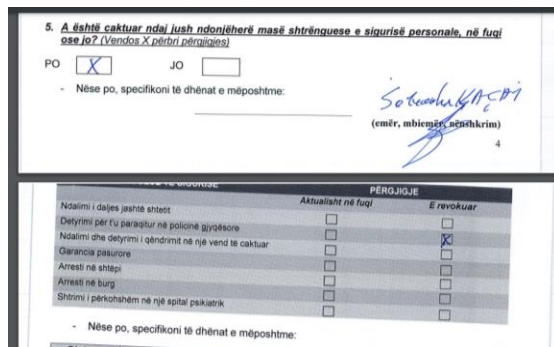


no evidence is provided in the self-declaration form about this referral. Although this decision is not final, we deem that in the context of transparency, the CEC should have requested detailed information from prosecution bodies on this decision. Compared to the Shkodra District, it appears that the CEC has sought general verification from the General Prosecution Office for subjects that declared in their self-declaration forms that they were expelled from neighboring countries, but not all candidates

documented the reasons for the expulsions. **In this context, AHC deems that CEC's approach should be unified.**

For the district of Lezha, AHC experts verified electronically the published decriminalization forms of 108 candidates proposed by the 12 electoral subjects registered as parties (9 candidates each) and 1 independent subject. Based on verification of candidates proposed by the SP, none of them documented being in circumstances that prohibit them from running for the 2021 parliamentary elections. For the electoral subject LSI, candidate D.N. stated he had been convicted by alternative sentence according to article 63 of the Criminal Code, under suspicion for the criminal offense of “Refusal to declare, non-declaration, hiding, or fake declaration of assets, private interests of elected

individuals, public officials, or any other person who has a legal obligation to declare” as envisaged by article 257/a/2 Criminal Code. The candidate was not convicted by final decision as the case on him was appealed at the Appeals Court and the criminal offense is not part of prohibitions to run of law no. 138/2015. After becoming familiar with the self-declaration form of DP candidate S.Kaçaj, experts noticed that he had stated a personal security measure of “obligation to appear before judicial police,” which was later revoked. However, the self-declaration form does not provide details on this



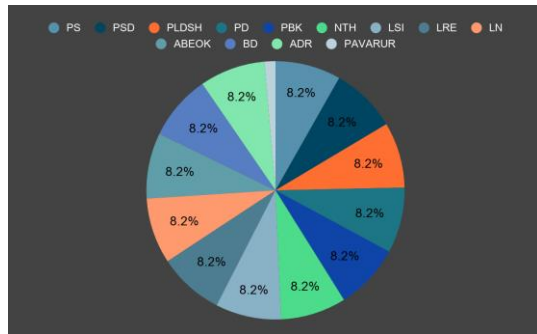
referral. Although such decision-making is not final, we consider that in the context of transparency, the CEC should have requested detailed information from prosecution bodies

⁶ <https://shqiptarja.com/lajm/kreu-i-dekriminalizimit-stojani-per-report-tv-per-tom-doshin-kemi-kerkuar-informacion-nga-shba-do-ti-kerkojme-kandidateve-per-deputete-gjurmimet-e-gishterinjve?r=dtr>

⁷ <https://abcnews.al/pas-kerkeses-se-kqz-se-njesia-e-dekriminalizimit-nis-verifikimin-per-bojken-abazin-e-pal-shkambin/>

on this decision. For the district of Lezha, experts noticed that the CEC sought verification for candidate I.K. (subject NM), who had been expelled from Greece in 2018 for lack of documentation.

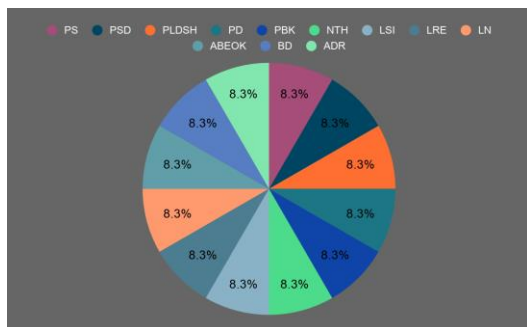
- c) The monitoring of candidates from the multi-name lists submitted by political subjects for the **District of Dibra** showed that only 2 candidates documented in their self-declaration forms the criminal measures issued on them. The criminal offenses that they are suspected of are not included



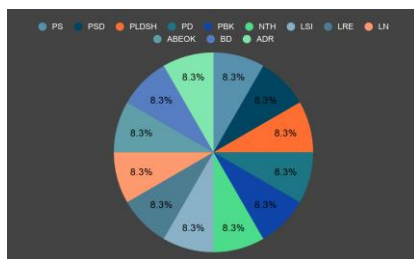
in the scope of law no. 138/2015. Based on the division of mandates by the CEC for the **District of Dibra**, decriminalization forms were verified for 69 candidates proposed by the 12 electoral subjects registered as parties (6 candidates each) and 1 independent subject.

For the electoral subject DP, candidates in the **District of Dibra** Xh.M. and L.H. both appear to have been detained by law enforcement bodies for committing criminal offenses. For L.H., there appears to be no criminal proceeding for opposing a police officer, but the citizen appears initially declared wanted by public order forces for organizing an opposition protest. The warrant issued against him was then revoked by State Police itself. Candidate Xh.M. was prosecuted by the Tirana Judicial District Prosecution Office for abuse of office in collaboration with others. He was remanded to arrest in prison and, after the appeal, the Appeals Court declared him innocent.⁸

- d) With regard to the **District of Korça**, experts found that only 1 candidate stated in his self-declaration form that the police accompanied him to police premises for participation in illegal protests/rallies. No administrative issue was issued on the candidate. The monitoring of 144 self-declaration forms of candidates proposed by 12 electoral subjects, it resulted that E.B., a candidate of the electoral subject LSI, stated in his self-declaration form that he was accompanied by police in the protest for the protection of the theater on 17.05.2020 and in other opposition protests.



- e) With regard to the **District of Berat**, experts found that only two candidates stated in their self-declaration forms actions of detention/accompaniment or arrest by police/prosecution office. The criminal offenses referring to these decisions do not appear to be included in the scope of prohibitions to run according to law no. 138/2015.



On this district, experts noticed that 12 electoral subjects proposed 9 candidates each, taking the number of candidates to

⁸ <https://www.zeriamerikes.com/a/xhelal-mziu-arrest/1814639.html>
<https://tvklan.al/gjykata-e-apelit-shpall-te-pafajshem-kryebashkiakun-e-kamzes-xhelal-mziu/>

108. AHC monitored their decriminalization forms and included the following findings:

For the SP, candidate B.K. declared that he had been arrested in 1994, but by decision of the court no. 819 of 11.10.1994, the case was dropped. Also, candidate K.Q. cites a conviction by fine for wrongdoing by decision no. 70, dated 24.03.2010 of the Berat Judicial District Court for the criminal offense of threat. This provision is not included in the offenses that prohibit running for office according to law no. 138/2015.

AHC notes that during this electoral process, special legislation on decriminalization had impact also on the candidates of electoral subjects created recently or the smaller parties. For instance, in the case of 5 candidates, proposed by small parties in the race, the General Prosecution Office requested from foreign police authorities or Ministries of Justice additional information on the criminal offenses reflected by the candidates in the self-declaration forms or on the basis of indicia presented by the CEC.

Concretely, for the electoral subject ABEOK, according to data made public by the CEC in March, candidate E.V. appears on the list of candidates that the CEC asked the General Prosecution Office to conduct enhanced verifications on.⁹ This candidate noted in the self-declaration form that she had been expelled by Germany. Also, candidate E.A. (of the National Front subject) declared in his form that he had been detained as a suspect for the criminal offense of opposing a police officer, but in 2006, the restrictive measure was replaced by the requirement to appear regularly before a judicial police officer. In November 2006, a decision was made to drop the charges against this candidate. With regard to the electoral subject LSI, candidate I.O. declared that he was exonerated. At a later point, he was prosecuted by the Tirana Judicial District Prosecution Office for opposing a public order police officer. The Judicial District Court, by decision no. 380, dated 17.02.2020, dropped the case against him arguing that the fact was not envisaged as a criminal offense in the law.

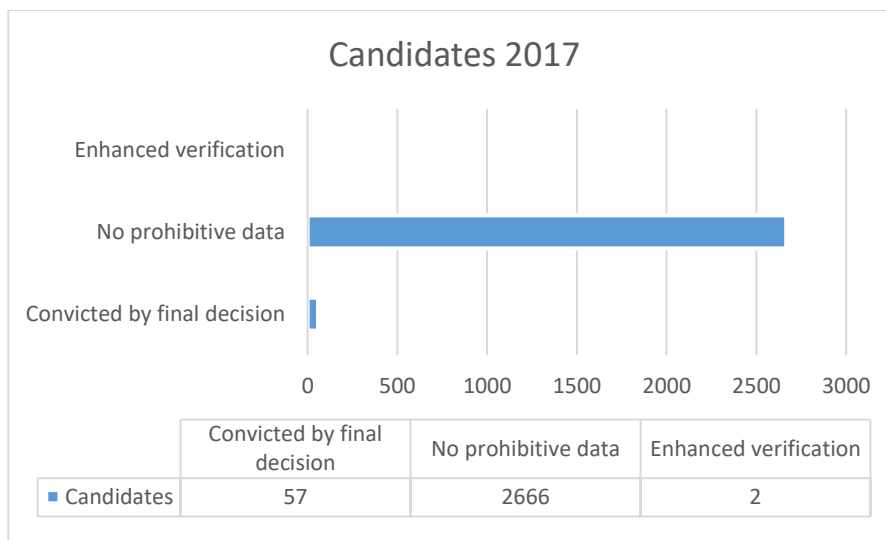
Per the above, the report finds that the role of the public in making contributions by setting into motion competent bodies for the decriminalization process remains minor. Although it is noticed that responsible institutions acted at a fast pace, also based on concerns expressed by the General Prosecution Office with regard to counterparts in neighboring countries, AHC considers that the 3-month deadline, possible to be extended, given to this institution to carry out enhanced verifications is tight and not reasonable. Given that the focus of the approval of this law is that of disallowing citizens with problems in the context of integrity to run for office, if the verification procedure based on responses to letters rogatory exchanged with foreign authorities provides prohibitive data, after the candidate has been given a mandate, the implementation of the law would lose its preventive role.

The dynamics of the electoral process and the volume of documentation required for verification for every candidate, within such a short period of time, in our opinion could have been avoided if registered electoral subjects had submitted requests for preliminary verification with the General Prosecution Office for their potential candidates.¹⁰ Also, based on data provided by the General

<https://euronews.al/al/vendi/politike/2021/03/26/kqz-con-per-verifikim-te-thelluar-28-kandidate-per-deputete/>
<https://top-channel.tv/2021/03/26/zgjerohet-lista-e-kandidateve-per-deputete-qe-do-kalojne-ne-siten-e-drejtises-emrat9/>

¹⁰ Paragraph 1, decision no. 17/2016 of the Assembly of the Republic of Albania.

Prosecution Office itself, it appears that the Judicial District Prosecution Offices and those of Appeals in the country carry out the verification procedure manually because there is no electronic system for administering data on criminal cases/proceedings, as a result, institutional coordination between these institutions, State Police, etc., with the General Prosecution Office is conducted officially.



A comparative analysis of the process for the 2017 elections for the Assembly of Albania, based on the Report published by the CEC, it results that from the verification of documentation for 2723 candidates, 57 of them (or about 2% of the total) had final imprisonment convictions. Also, it is noticed that 2,666 candidates had not declared any data included in the circumstances of article 2, paragraph 1 and 2, of law 138/2017, for disallowing running for office. The CEC only requested enhanced verification for only two MPs. Upon verification by the General Prosecution Office, it results that these candidates did not include the prohibitive data in their self-declaration forms, thus violating legislation in force.

Given that the final election result of the elections has not been announced, the CEC does not appear to have published a report on the implementation of legislation on decriminalization for the parliamentary elections of April 25, 2021. Based on preliminary data, it appears that the CEC asked for full verification by the General Prosecution Office for 30 candidates, a higher number of candidates compared to the parliamentary elections of 2017. Until now, given that the procedure of enhanced verification has only been completed for 4 subjects, none of them is found in violation of provisions of the law 138/2015. This result so far is positive compared to 2017, an element that indicates a higher level of caution by the subjects and information on the implementation of legislation on decriminalization. Nevertheless, AHC is of the opinion that these preliminary data remain to be evaluated at the moment of conclusion of the verification process by the General Prosecution Office and respective decisions on the approval of verifications by the CEC on the rest of the candidates for whom verification continues.

At the conclusion of this monitoring process:

1. With regard to the integrity of candidates, in the circumstances of the



implementation of special legislation for decriminalization, we recommend to electoral subjects, with the potential consent of candidates who are part of multi-name lists, outside the electoral period or immediately after their registration with the CEC, to request enhanced verification by the General Prosecution Office.

- 2. AHC recommends the realization of amendments to the Electoral Code regarding the registration deadlines for political parties as electoral subjects and the submission of multi-name lists (articles 65 and 67 of the EC). This would make it possible for the General Prosecution Office to verify the forms submitted by the CEC.**