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STUDY REPORT

2023

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# CEC'S ADMINISTRATIVE INVESTIGATIONS AND SANCTIONS

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**STUDY REPORT ON CEC'S ADMINISTRATIVE INVESTIGATIONS AND  
SANCTIONS**

*During the process of the local elections of May 14, 2023*

*Published in June 2024*

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*This report is drafted within the framework of the initiative "Building Electoral Integrity and the Sustainability of Political Parties: Enhancing Citizen Oversight and Demands through the Support of CSOs, Media, and Academia", implemented by the Albanian Helsinki Committee, in partnership with the Institute of Political Studies, Civic Resistance, and BIRN Albania, financially supported by the British Embassy in Tirana.*

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## **INTRODUCTION**

The Albanian Helsinki Committee (hereinafter "AHC"), as a non-governmental and non-profit organization, has been monitoring the electoral processes held in our country since 1996. Modestly, AHC has contributed to ensuring the conduct of free and fair elections, in accordance with the Constitution and applicable international acts in the Republic of Albania. Raising citizens' awareness about the right to vote and important electoral issues is one of the prerequisites for free and fair elections. AHC observes that from one electoral process to another, the dialogue between civil society actors and institutions has increased, aiming to reduce the monopolization of electoral reform by political factors.

Through this Special Study Report, AHC has partially analyzed around 46 decisions of the State Election Commissioner, 121 decisions of the Appeals and Sanctions Commission (ASC), and 2 decisions of the Regulator, available during the period from the decree of the local governance elections on May 14 by the President of the Republic of Albania, specifically from October 2022 to June 2023.

With the findings and recommendations addressed by AHC, the aim is to analyze the decisions of the Central Election Commission (CEC) on complaints and administrative appeals submitted by electoral subjects and third parties.

A special focus of this study report is AHC's analysis of the observance of fundamental standards of the right to due process by the leading bodies of the CEC, such as independence, impartiality, and the right to be heard.

The draft version of this Study Report was consulted at a joint roundtable organized on March 27, 2024, with representatives from the Appeals and Sanctions Commission, the Regulatory Commission, the Electoral College, field experts, and civil society and media actors. The comments and suggestions addressed were objectively assessed in accordance with AHC's organizational freedom and its internal and external independence.

## EXECUTIVE SUMMARY

The drafting of this study report is based on the analysis of decisions, meeting minutes, announcements published on the official website, and audiovisual recordings on the dedicated YouTube channel of the Central Election Commission (CEC), as the highest electoral management body that reflects the activities and functioning of its leading bodies during the pre-election, election day, and post-election periods for the local governance elections of May 14, 2023.

The analysis in this study report has been conducted in accordance with the methodology and dedicated monitoring questionnaire of the CEC, which guided the experts in the working group to objectively and comprehensively analyze the practices and decisions of the CEC regarding requests/appeals submitted by electoral subjects, third parties, and cases of administrative investigations initiated *ex officio*.

In the Final Monitoring Report of the Electoral Process for local governance bodies,<sup>1</sup> the OSCE/ODIHR emphasized the overall transparency and efficiency of the CEC's work. According to this report, the narrow formal interpretation of the provision's applicability, which set protective measures against the misuse of state resources only for parliamentary elections and not local ones,<sup>2</sup> drew the attention of AHC. Additionally, this mission found that the issuance of contradictory decisions by the Appeals and Sanctions Commission (ASC), which do not serve the stability and legal certainty of the legal norm, impacted the legal effectiveness of the issues raised by the subjects.<sup>3</sup>

From the monitoring conducted by AHC through its network of correspondents and field observers, it was found that the electoral campaign started before the legal deadline stipulated in Article 77 of the Electoral Code, specifically before April 14, 2023, which coincides with the 30-day period before the election date. Specifically, AHC reported the occurrence of electoral meetings by representatives of the electoral subjects, as well as various posts on social media used as communication channels by line ministries and other institutions. Despite some sporadic cases of early campaign activities being made public in the media, a tolerant and non-punitive approach by the CEC was observed. In AHC's assessment, such flagrant and repeated cases could have been sanctioned in the spirit and application of Article 172, paragraph 1 of the Electoral Code.<sup>4</sup> It is clearly evident that campaigning in the approximately three-month period before the date specified in Article 77 of the Electoral Code is accompanied by

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<sup>1</sup> <https://ahc.org.al/wp-content/uploads/2023/09/Raporti-Perfundimtar-per-Monitorimin-e-Zgjedhjeve-19-Shtator-2023.pdf>

<sup>2</sup> Pg. 2 of the Final Report of the ODIHR Election Observation Mission, <https://www.osce.org/files/f/documents/0/a/557277.pdf>

<sup>3</sup> A similar finding is evidenced by the Election Observation Mission of ODIHR. Pg. 3 of the report, *idem*.

<sup>4</sup> Article 72/1 of the Electoral Code stipulates that:

"1. Electoral subjects commit an administrative offense in cases when violations of the prohibitions defined in the provisions of this law are carried out in their favor and the electoral subjects, after becoming aware, do not take immediate measures to stop the violation. The administrative offense according to this point is punished with a fine ranging from 100,000 to 500,000 ALL."

significant expenses, creating an inequality in the competition that should be fair among electoral subjects.

Violations of the Electoral Code and the regulatory acts of the CEC have also been observed during the electoral campaign. Through three of its decisions, the State Commissioner assessed the reports of electoral campaign monitors during the periods March 7 – May 2<sup>5</sup>, May 2 – May, 8<sup>6</sup>, and May 9 – May 10<sup>7</sup>, of 2023. The data reflected in these reports revealed the display of propaganda materials by electoral subjects in contradiction to these provisions, following which representatives of law enforcement agencies were ordered to remove them immediately and to close electoral offices opened within 300 meters of local electoral administration headquarters. Such violations are repeated from one electoral process to another, reflecting, in AHC's assessment, a lack of awareness and culture for competing fairly and equally.

Regarding civil society organizations, which in many cases have proactively played the role of a third party by addressing various administrative complaints and denunciations, the State Commissioner has shown a cooperative and open approach. AHC appreciates the number of complaints and denunciations presented by these independent and impartial civil society actors, as well as the approach shown by the CEC in respecting their rights as parties in the administrative review process and their participation in the hearings regarding these complaints. It is noteworthy that some of the decisions made following the investigation of these denunciations have contributed to the creation of positive practices and further unification of case handling. Despite the dynamics and workload faced by the CEC administration in preparation for and during the electoral process, AHC believes that the complaint/denunciation handling system should be strengthened to guarantee the best standards for effective investigations within reasonable, objective, and comprehensive timeframes. This recommendation is particularly driven by the fact that AHC has not yet received an official response from the CEC on the handling of three administrative denunciations it submitted, such as the complaint of the secretary of CEAZ No. 24 in Durrës,<sup>8</sup> the inaugural activity of the Pyramid of Tirana as a prohibited activity<sup>9</sup>, and the misuse of state resources during the electoral campaign organized near Lezha Municipality.<sup>10</sup>

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<sup>5</sup> Decision no. 452, dated 6.5.2023, "On the evaluation of the reports of the election campaign monitors for the monitoring period from March 7 to May 2, 2023". Link: <https://kqz.gov.al/akte-te-kqz-2/>

<sup>6</sup> Decision no. 482, dated 10.5.2023 "On the evaluation of the reports of the election campaign monitors for the monitoring period from May 2 to May 8, 2023". Link: <https://kqz.gov.al/akte-te-kqz-2/>

<sup>7</sup> Decision no. 496, dated 11.5.2023 "On the evaluation of the reports of the election campaign monitors for the monitoring period May 9 to May 10, 2023". Link: <https://kqz.gov.al/akte-te-kqz-2/>

<sup>8</sup> Letter no. prot. 354, dated May 13, 2023 (sent electronically): "The alert notified by the Secretary of CEAZ No. 24 (Durrës) is submitted"

<sup>9</sup> Letter no. prot. 357, dated May 13, 2023: "An alert is sent for a prohibited public activity in the Municipality of Tirana".

<sup>10</sup> Alert sent electronically via email on May 10, 2023, at 8:53 AM

In terms of the importance of transparency and public oversight, which includes the realization of these study reports by civil society organizations, the lack of timely publication of the minutes of the meetings held by the CEC represents an objective obstacle.

AHC assesses that in the next elections, it is necessary to increase the proactivity of the CEC in initiating administrative investigations on its own initiative, in accordance with the legal provisions of Articles 77, 78, 80, and 88 of the Appeal Chamber. These provisions are also worth harmonizing and finding special legal regulation in the Electoral Code of the Republic of Albania.

An increase in the proactive role of the CEC is necessary in the referral or criminal denunciation of facts that can be investigated by the prosecutor's office, such as the results of audits of financial expenses and finances of political parties.

During this election process, it is positive that there have been more administrative investigations by the CEC, as a result of alerts related to prohibited activities and the misuse of state assets and resources, contrary to the legal provisions of the Electoral Code and regulatory acts of the CEC. However, AHC assesses that, pursuant to Article 281/3 of the Code of Criminal Procedure, the CEC should have referred to the Prosecutor's Office the cases that contained elements of criminal liability related to the misuse of public assets. In no case has this legal obligation been fulfilled.

The CEC has informed the AHC that during the period from January 2023 to March 10, 2023, a considerable number of denunciations were filed by civil society actors, particularly by organizations such as KRIIK and Civic Resistance, followed by denunciations from political subjects. Additionally, two cases were reported anonymously by whistleblowers. The number of complaints increased significantly during the period from May 10, 2023, to June 30, 2023, with a total of 294 complaints filed. From March 10 to June 30, 2023, it is evident that the State Commissioner initiated *ex officio* investigations in 8 cases identified by monitors contracted by the CEC, and 7 cases were reported by whistleblowers.<sup>11</sup>

Regarding the subject of the addressed denunciations, most were related to the "failure to report activity before the reporting date," followed by denunciations concerning the "misuse of public resources and human resources." To a lesser extent, there were denunciations about "misinformation by media entities."<sup>12</sup> In the analysis of some reviewed decisions, there is a need for better justification of the decisions related to these denunciations, especially in cases where appeal requests are accepted by ASC, but particularly when they are rejected.

In accordance with the provisions of the Electoral Code, the administrative investigation is carried out by the administration of the CEC, while the proposal for sanctions remains the responsibility of the Commissioner. It is the ASC that has the authority to make decisions on the issues forwarded by it. In general, from the sample of decision-making analyzed in this

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<sup>11</sup> Letter no. 6057/1 prot., dt. 30.06.2023 of the State Election Commissioner

<sup>12</sup> Articles 84 and 85 of EC and decision no. 2, dt. 30.01.2021



report, the CEC has concluded that the administrative investigation undertaken by the CEC was thorough and conducted in accordance with the standards of due process. Furthermore, it is worth emphasizing that the claims raised by the denouncing entities should be investigated thoroughly and comprehensively and reflected in the reasoning part of the decision-making. This practice will also serve to further strengthen the independence and impartiality of the governing bodies of the CEC, as well as enhance and sustain the decision-making practice of ASC.

To conduct a proactive, transparent, and efficient administrative investigation in terms of quality and timeliness, it is advisable to establish a specialized structure within the CEC, equipped with sufficient and specialized human resources. Consequently, this would enhance the credibility of the subjects and the public towards the CEC, the most important institution representing the highest electoral administration body.

In some cases, the Commissioner has decided to extend the deadline for administrative review, making it impossible to conclude the administrative investigations within the 60-day deadline defined in the relevant decision of the Regulatory Commission. This was particularly evident during periods when the volume of procedures and other election administration issues handled by the CEC increased. However, referring to the deadlines for appeal requests in ASC, it appears that the 10-day review deadline has been respected, according to the relevant decision of the Regulatory Commission.

During the consultation of this report, ASC expressed the view that its discretion, as part of the CEC, for conducting administrative investigations is limited. However, according to AHC's assessment, and in accordance with Articles 136, point 2, and 137, point 1, of the Administrative Procedure Code, ASC, in its capacity as the decision-making body for reviewing complaints or issues addressed by the Commissioner, may conduct additional investigations if it finds that the proposing body has not carried them out fully. Overall, AHC assesses that the questions and requests of ASC members have positively contributed to obtaining the necessary information for the administrative investigation and gathering evidence that aids its further deepening.

Regarding the need for impartiality and objectivity throughout the examination procedure in ASC, discussions between its members and the General Secretary of the CEC about the administrative measures to be imposed on the Municipal Police were noted to have had the nature of "instruction" in special cases. While the CEC administration's representative initially requested the postponement of the administrative review period, the process ultimately operated with the "suggestion" of ASC to suspend administrative decision-making.<sup>13</sup>

During the post-election period, from May 15 to the end of June 2023, ASC made decisions on 68 appeal requests primarily filed by electoral subjects.<sup>14</sup> Among these, only one case saw ASC

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<sup>13</sup> Minutes dated May 15, 2023, corresponding to decision no. 112 of ASC.

<sup>14</sup> Mostly (specifically In 24 cases), ASC decided to accept the request for further administrative review. In 9 cases, ASC decided not to accept the appeal request for consideration. In 11 cases, it was decided to suspend the

accepting the request and imposing an administrative sanction on the denounced entity, while in two cases, it partially accepted the request to sanction representatives of the Municipality with a fine.

In significant matters, it's notable that KAS maintained unified positions, demonstrated through unanimous decision-making. However, in certain instances, minority members or those with dissenting views published their opinions, which became part of the final announced decision. In one such decision, attention is drawn to the minority opinion, highlighting that the rejection of the request for recognition or obtaining additional evidence did not facilitate a comprehensive and objective investigation aimed at promoting transparency in the electoral process.<sup>15</sup>

AHC positively evaluates the proactive monitoring conducted by the CEC administration on the public activity reporting interface by responsible authorities. The State Election Commissioner's stance on prohibiting these activities constitutes a positive practice that serves to increase awareness among responsible individuals regarding compliance with legal provisions and regulatory acts of the CEC for this purpose.

Despite the significant "precedent" decision-making of the CEC regarding the prohibition of posts or reposts on the social networks of a public institution, particularly activities reflected in the personal profile of the head of the institution, the AHC expressed concern that this standard did not effectively prevent similar violations from occurring subsequently. In light of this, there is a pressing need to enhance the CEC's capacities for effectively monitoring the technological space and social networks of electoral subjects, responsible candidates, and institutional actors.

During the monitoring period, instances of lack of cooperation by public bodies involved in administrative investigations were observed, which did not align with the principles protected by the Code of Administrative Procedures, such as the principles of legality, transparency, justice, and impartiality. In these cases, the AHC deems that the CEC should have rather enforced Article 169 of the EC, imposing fines on officials of local and central government bodies who fail to cooperate. On the other hand, in some instances, complainants or whistleblowers demonstrated a non-cooperative approach towards the CEC, such as by not attending judicial administrative reviews or failing to submit evidence to support their claims within the designated deadline, or by withdrawing their appeal requests.

From the monitoring of available decision-making, AHC notes the challenge in consolidating and harmonizing practice, particularly in ASC's decision-making, concerning the determination of fine amounts for administrative violations. This inconsistency results in fines that may not always be fair and proportionate relative to the nature and consequences of the violation. Articles 171 and 172 of the EC provide for administrative sanctions ranging from a

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review of the appeal request. Regarding the 10 complaints, ASC decided to overturn them and uphold the decision-making of the CEAZ for the approval of the summary tables of the results.

<sup>15</sup> Decision no. 148, dated May 26, 2023: "For the examination of appeal request no. 82, dated May 23, 2023, filed by the coalition 'Bashkë Fitojmë'".

minimum of 1,000 ALL to a maximum of 500,000 ALL, particularly for electoral subjects violating legal provisions. Given the lack of fair and proportional sanction determination, AHC sees a need to revisit these Electoral Code provisions.

Regarding cases of sanctioning for misuse of public assets or human resources for election purposes, ambiguity arises in defining the terms "use" and "abuse" as outlined in Article 91 of the EC. This provision only elaborates on the concept of "use of public resources" without addressing "abuse." Following Article 118 of the Constitution, the concept of legal provision is related to the clarity of the law. Referring to the jurisprudence of the Constitutional Court, the act should not fill a legal vacuum but be issued for the purpose of implementation of the law. Therefore, AHC recommends that the Assembly analyze the legal framework and international best practices to amend Article 91 of the EC for clarity.

The exhaustive definition of administrative offenses in the Electoral Code can pose challenges due to the evolving nature of violations. Thus, a balance between clarity and flexibility is crucial to accommodate developments.

In the case of the Media and Information Agency (MIA), an institution under the direct control of the prime minister, publishing a poster with political slogans of an electoral activity on social networks, the Commissioner decided not to establish a violation and suspended the administrative review, attributing it to human error<sup>16</sup>. From AHC's perspective, more comprehensive and in-depth verifications should precede such conclusions.

In the context of the amendments made to the Electoral Code in 2020, one notable addition was the provision for the protection of whistleblowers in line with existing legislation on whistleblowing and whistleblower protection. This allows individuals to directly inform the CEC when they become aware of facts or circumstances that may constitute a violation of legal provisions, whether administrative or criminal, within the electoral sphere (Article 123/3 of the EC). Despite this protective measure, however, as indicated above, the number of public alerts remains very low. Notably, two decisions of the Commissioner discussed in this report were published with varying degrees of anonymization, full<sup>17</sup> or partial<sup>18</sup>, reflecting differing standards in this regard.

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<sup>16</sup> The poster was not reported on the CEC interface, but during the administrative investigation, the whistleblower provided photographic evidence of its existence.

<sup>17</sup> Decision No. 470, dated May 9, 2023, regarding the administrative review of denunciations numbered 182 ID, 183 ID, 180 ID, 172 ID, 173 ID, 219 ID by the Coalition for Reforms, Integration, and Consolidated Institutions, and numbers 226 ID, 227 ID by the whistleblower, concerning administrative violations during the local government elections on May 14, 2023, cannot be published in accordance with Article 123/3 of the Electoral Code.

<sup>18</sup> Decision No. 685, dated July 6, 2023, on the administrative review of denunciations numbered 436 ID, 438 ID, 439 ID by the alert requester, 385 ID, 414 ID, 410 ID, 424 ID by Mr. Ivi Kaso, 360 ID, 346 ID, 375 ID by petitioner MP Ms. Albana Vokshi and Mr. Ivi Kaso, 394 ID by petitioner MP Ms. Albana Vokshi and the "Bashkë Fitojmë" Coalition, 328 ID, 330 ID, 331 ID by petitioner MP Mr. Flamur Noka for administrative violations during the local government elections on May 14, 2023".

Regarding the analysis of reported activities, AHC has observed discrepancies between ASC and the Commissioner, particularly concerning activities classified as 'inspections/controls'<sup>19</sup>. It appears that ASC, in its decision-making, has often deferred to the positions of the Electoral College, referencing them in numerous cases. Representatives of ASC expressed during the consultation of this report that they expect the Commissioner to adhere to the standards set forth in their decisions as well.

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<sup>19</sup> Complaint requests No. 05 and No. 08, reviewed through ASC decision-making No. 16, dated February 28, 2023.

## 1 CEC ADMINISTRATIVE INVESTIGATIONS

### 1.1 THE PROCEDURE FOLLOWED DURING THE ADMINISTRATIVE INVESTIGATION BY THE CEC

The administration of the CEC, in compliance with Article 123/2<sup>20</sup> of the Electoral Code, is generally responsible for carrying out administrative investigations. The legislator has provided an exception only in cases where special expertise is required for investigating complex cases. According to the information provided by the CEC, during the administrative investigations undertaken from March 10 to June 30, 2023, no special expertise outside the administration was requested.<sup>21</sup>

In general, based on the decision object of this study, the AHC has concluded that the administrative investigation by the CEC was thorough and in accordance with the standards of the due legal process. The administration of the CEC is mainly represented in most public sessions by the General Secretary. The parties participating in the hearings are guaranteed the right to present their requests and arguments, and in some cases, these parties have been represented by legal defenders of their choosing.<sup>22</sup> Due to the complexity of the issues, in several cases, the Commissioner has decided to extend the deadline for administrative review.<sup>23</sup> Generally, administrative investigations that were not closed within the 60-day deadline defined in Article 7, point 3, of Decision No. 9, dated April 9, 2021, of the Regulatory Commission, have been reviewed by the Commissioner within an additional 2-3 month period.<sup>24</sup>

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<sup>20</sup> Article 123/2 of EC

<sup>21</sup> Letter no. 6057/1 prot., dt. 30.06.2023 'Reply' issued by the State Election Commissioner

<sup>22</sup> Example: Meeting of the State Election Commissioner, dt. 14.03.2023: <https://www.youtube.com/live/g2h1rWtuUYQ?si=2ORhz-umT4zNfYQ2>

<sup>23</sup> Some of the decisions of the State Election Commissioner include:

- Decision No. 674, dated 26.06.2023: "On the extension of the deadline of the administrative investigation for the denunciations No. 374, 375, 385, 390, 436, and 439 ID." - Decision No. 673, dated 26.06.2023: "On the extension of the administrative investigation deadline for denunciations No. 334 ID and 348 ID." - Decision No. 667, dated 21.06.2023: "On the extension of the administrative investigation deadline for denunciations No. 328 ID, 330 ID, 331 ID, 336 ID, 346 ID, 360 ID." - Decision No. 416, dated 26.04.2023: "For the extension of the deadline for the denunciation of Mr. Flamur Noka, Deputy of the Assembly of Albania, to the Socialist Party of Albania for administrative violations for the elections for local government bodies on May 14, 2023." - Decision No. 182, dated 20.03.2023: "For the extension of the deadline for the administrative review of the denunciation of the Chairman of the Branch of the Elbasan Democratic Party against Mr. Gledian Llatja, Mayor of Elbasan, for administrative violations in the framework of the elections for local government bodies on May 14, 2023." - Decision No. 176, dated 17.03.2023: "For the extension of the deadline for the administrative review of the denunciation of the Chairman of the Branch of the Elbasan Democratic Party against Mr. Gledian Llatja, Mayor of Elbasan, for administrative violations in the framework of the elections for local government bodies on May 14, 2023."

<sup>24</sup> For instance: - Decision No. 691, dated 12.07.2023: "On the extension of the deadline for denunciations registered with No. 417 ID, 421 ID, 429 ID, and 431 ID for administrative violations in the elections for local government bodies on May 14, 2023." - The administrative investigation for denunciation No. 417 ID concluded with Decision No. 795, dated 06.10.2023: "For the administrative review of the denunciation No. 417 ID by Mr.

Meanwhile, regarding the extension of the administrative investigation period from March to June 2023—a period marked by increased and dynamic procedural intensity for the governing bodies of the CEC—the State Commissioner decided to extend the administrative investigation for 10 complaints. Referring to the time limits for considering appeal requests in ASC, the 10-day time limit has been adhered to, as stipulated in point 3 of Decision No. 3/2020 of the Regulatory Commission.<sup>25</sup>

In two of the analyzed cases, the Commissioner decided to extend the deadline for denunciations No. 444 ID and No. 449 ID, filed by the AHC. These denunciations concerned 'breaking the electoral silence, referring to the participation of political representatives at the conclusion of the election campaign in the premises of the Pyramid of Tirana' and 'displaying propaganda materials in 9 Municipalities of the country.' The CEC justified the extension with the complexity of these issues. However, until May 2024, when this study report is published, the CEC has not provided an update on the procedures followed for the administrative investigation of these denunciations and their results.

AHC welcomes the recommendation from ASC representatives for the CEC to take concrete measures in creating a specialized investigative body. This body should be equipped with appropriate and qualified human resources, as well as financial resources, to conduct comprehensive, objective, and effective investigations within a reasonable timeframe.

Proactivity was also observed in the public meetings held by ASC, where representatives of the CEC administration played an important role in further deepening the administrative investigation. In many cases, the complaining party has shown a non-cooperative approach by not appearing during the judicial review and not providing evidence to support their claims,<sup>26</sup> The complaining party has frequently failed to complete and correct the appeal request according to the legal provisions in force<sup>27</sup>. There have been many instances where the complaining party has not submitted additional evidence, within the given deadline<sup>28</sup> or has abandoned the appeal request altogether.<sup>29</sup> Recent cases have overloaded the governing bodies and the election administration of the CEC, especially given the high volume and dynamic nature of the election administration process.

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Edmond Spaho against Mr. Gëzim Topçiu, Mayor of Maliq, for the conducting of public activity prohibited by the Central Election Commission, in the elections for local government bodies on May 14, 2023." - The administrative investigation for denunciation No. 421 ID concluded with Decision No. 739, dated 28.08.2023: "On the administrative review of the denunciation No. 421 ID by the 'Civic Resistance' Center against Ms. Anila Kala, Director of the Regional Hospital, Berat, for administrative violations in the elections for local government bodies on May 14, 2023."

<sup>25</sup> Letter no. 6057/1 prot., dated 30.06.2023, from the State Election Commissioner

<sup>26</sup> For example: Minutes of the meeting dated 02.06.2023 of ASC, corresponding with decision no. 171.

<sup>27</sup> For example: Minutes of the meeting dated 29.05.2023 of ASC, corresponding with decision no. 161. Minutes of the meeting dated 30.05.2023 of ASC, corresponding with decision no. 162 and no. 163.

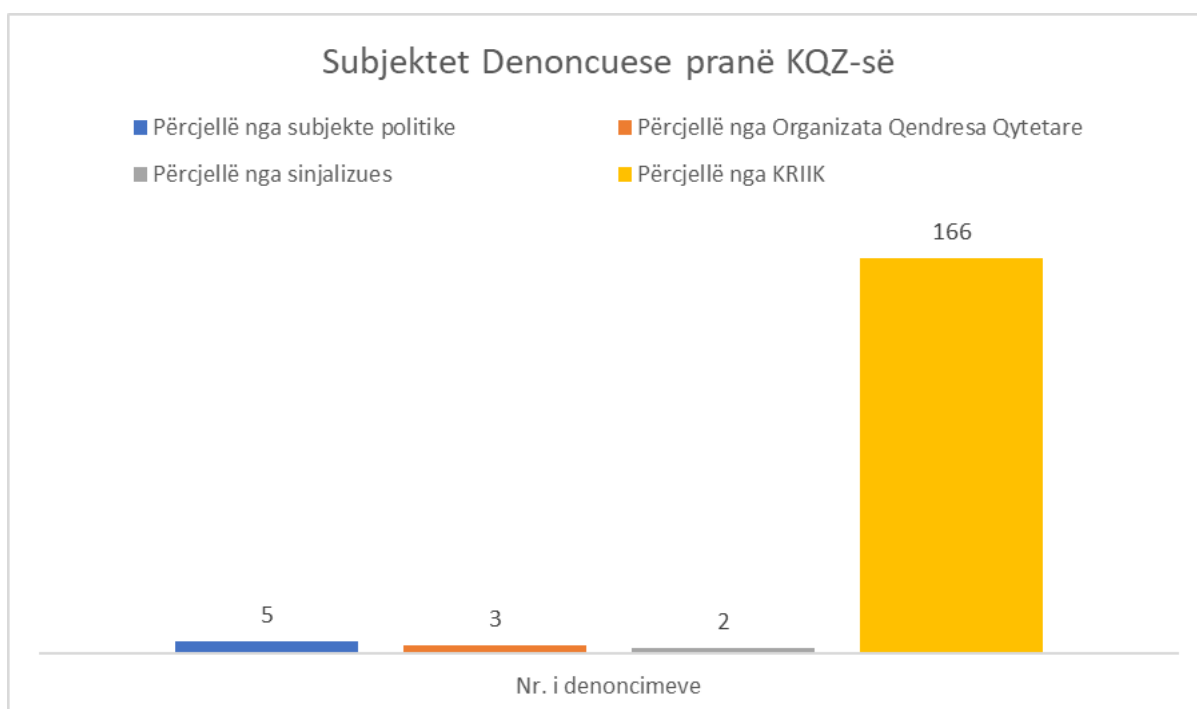
<sup>28</sup> For example: Minutes of the meeting dated 02.06.2023 of ASC, corresponding with decision no. 172. Minutes of the meeting dated 30.05.2023 of ASC, corresponding with decision no. 169.

<sup>29</sup> Decision no. 173, dated 02.06.2023, "For the termination of the examination of the appeal request no. 92, dated 27.05.2023, filed by the 'Justice, Integration and Unity Party'".

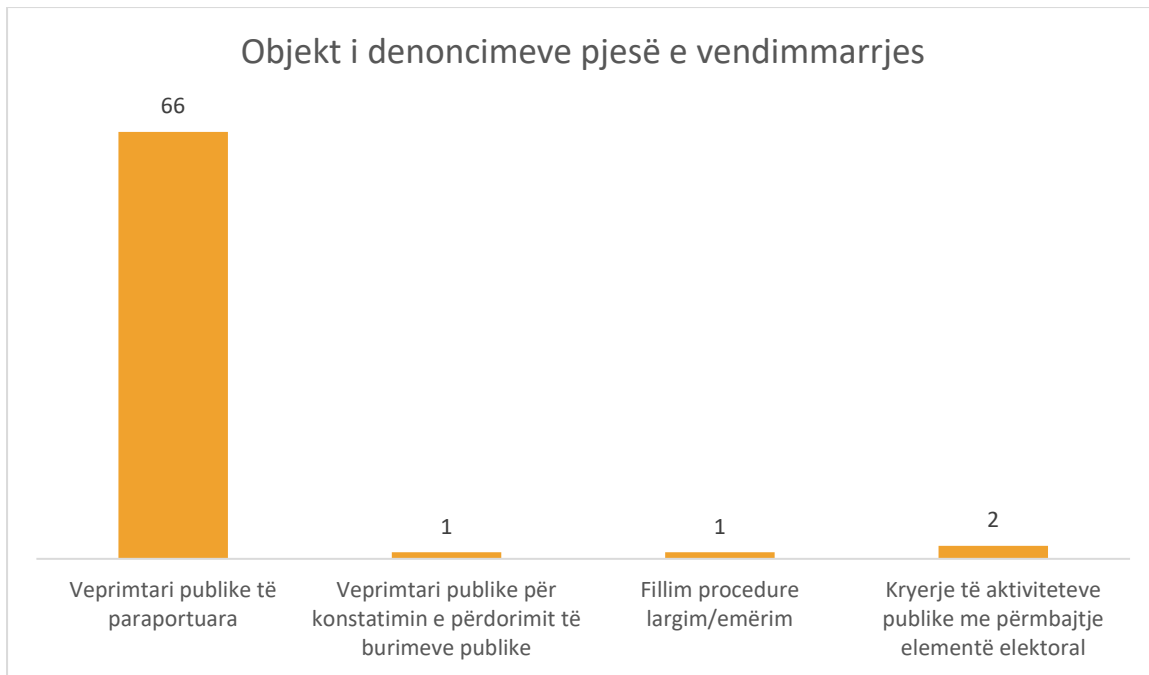
## 1.2 CATEGORIES OF "WHISTLEBLOWERS" AND "OBJECT OF DENUNCIATIONS" AT THE CEC

Pursuant to Article 123\1<sup>30</sup> Regarding the Electoral Code and the entities that initiate action by the CEC, the legislator has stipulated that: *"The CEC is primarily initiated at the request of electoral subjects, in exercise of the rights recognized by this law, as well as at the request of third parties, in defense of their legitimate interests and for issues that fall within the competencies of the CEC."* The State Commissioner of Elections has the authority to initiate investigations primarily according to the procedure defined in the Code of Administrative Procedure, based on facts or data made public, provided by CEC monitors, or obtained during the performance of the administrative control function of the CEC.

The CEC has informed the AHC that during the period from January 2023 to March 10, 2023, a significant number of denunciations were filed by civil society actors. Leading this list were KRIIK organizations with 166 denunciations, followed by Civic Resistance with 3 denunciations, political entities with 5 denunciations, and 2 cases reported by anonymous whistleblowers.



<sup>30</sup> Article 123\1 of the EC, the CEC is set in motion mainly, at the request of electoral subjects, in implementation of the rights recognized by this law, as well as at the request of third parties, in defense of their legitimate interests and for issues that are part of the competencies of the CEC, <https://qbz.gov.al/preview/75122d2e-9ebc-45de-b0ea-b5efde2f6836>

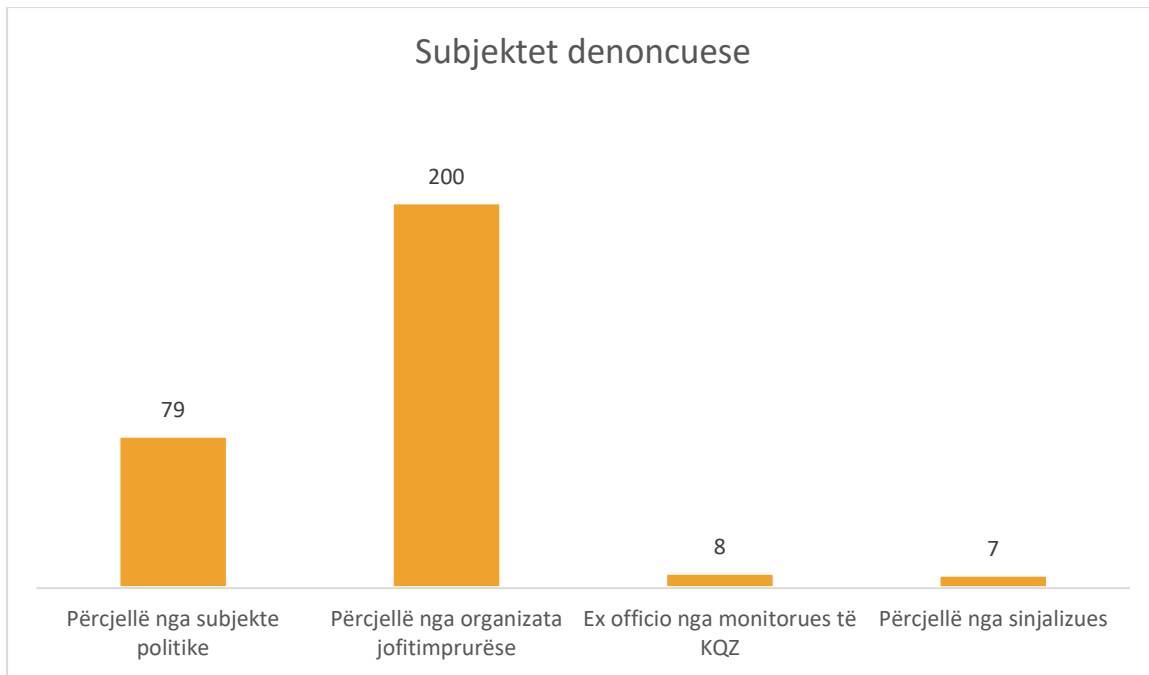


From the data analyzed, it's evident that third parties, particularly non-profit organizations, have played a pivotal role in reporting violations to the State Election Commissioner, as seen from the decisions published on the official CEC website. Several decisions resulting from the investigation of these complaints have led to the establishment of positive practices and a more uniform approach to handling cases. Among these positive instances is the investigation into complaints filed by two CSOs, the Civic Resistance and AHC, as well as a CEC monitor, concerning the prohibited activity at the Korça Sports Center, where the misuse of public resources was observed. The CEC had previously deemed this activity as an administrative violation and prohibited it, as it should not have been reported as an institutional activity by a public authority. Consequently, it was recommended to ASC to impose administrative measures, including fines, against the Mayor and the responsible employee for organizing an event that was already announced as prohibited.

During the period of May to June 2023, non-profit organizations ranked highest in reporting violations of the Electoral Code, accounting for 200 cases, followed by electoral subjects with 79 cases. Authorized monitors appointed by the CEC to oversee specific aspects of the election process on the ground reported 8 cases, while anonymous whistleblowers filed 7 cases.

These findings align with the information provided by the CEC for the May-June 2023 period:

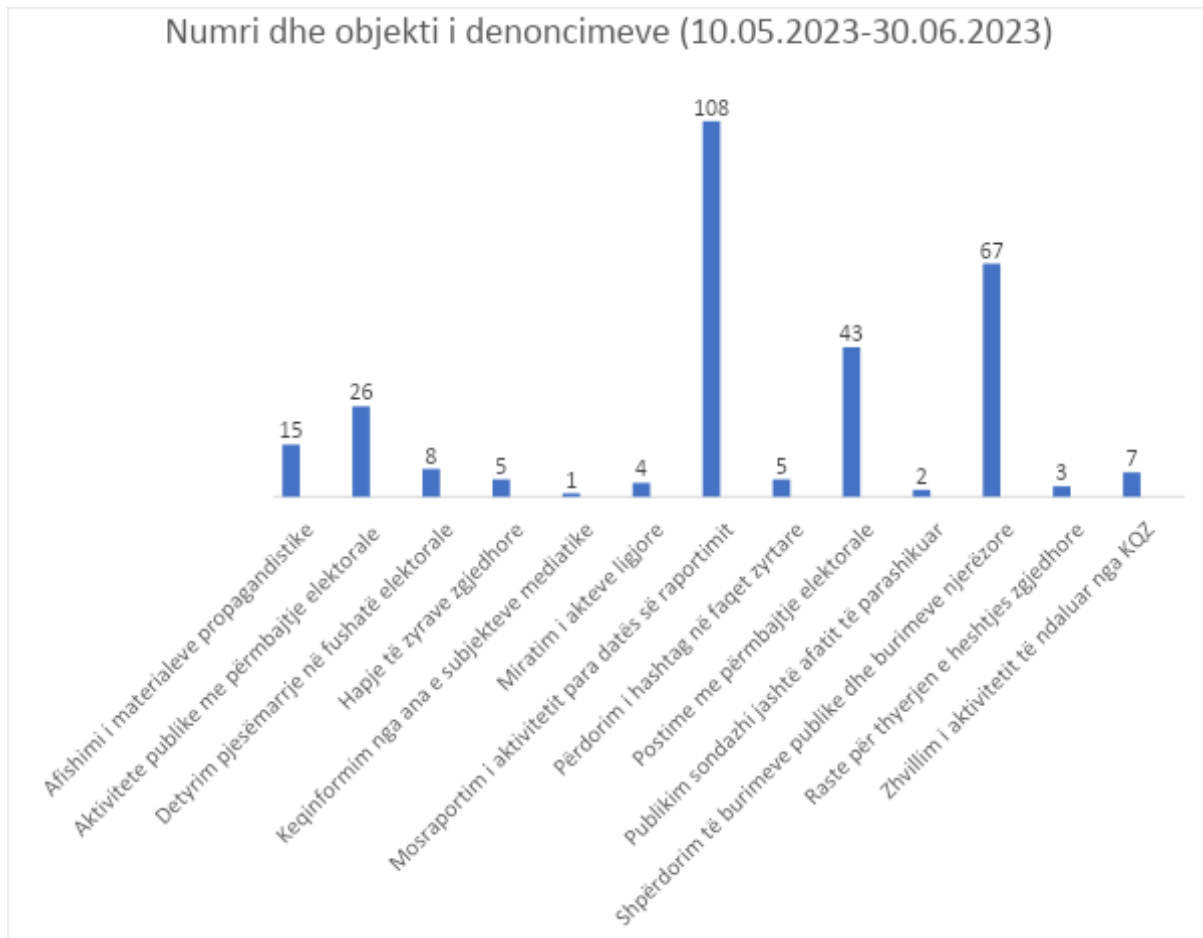




According to the information provided by the CEC<sup>31</sup>, between May 10, 2023, and June 30, 2023 (encompassing the period before, during, and after the election), a total of 294 complaints were lodged for violations outlined in articles 91 and 92 of the Electoral Code, as well as decision no. 9, dated December 24, 2020, of the Regulatory Commission. The majority of these complaints pertained to the "non-reporting of activity before the reporting date" (as per Article 92 of the Electoral Code), followed by complaints related to the "misuse of public resources and human resources" (as per Article 91 of the Electoral Code). A minimal number of complaints, only one in total, were made regarding "misinformation by media entities" (as outlined in articles 84 and 85 of the Electoral Code).

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<sup>31</sup> Letter no. 6057/1 prot., dated 30.06.2023, of the State Election Commissioner



### 1.2.1 REQUEST\COMPLAINTS FILED BY ELECTORAL SUBJECTS

From the data analysis conducted during the period from March to June 2023, it is evident that the majority of complaints filed by electoral subjects primarily focus on alleged violations of articles 91 and 92 of the Electoral Code<sup>32</sup> These complaints mainly revolve around the misuse of public resources and the involvement of public institutions in supporting electoral subjects, particularly concerning failure to adhere to reporting requirements or the squandering of public funds. Additionally, there have been fewer complaints related to technological infringements, such as the inappropriate use of hashtags from official candidate websites by affiliated institutions or the sharing of electoral content featuring district political leaders in various events or meetings involving public officials.

Complainants have raised concerns regarding the improper display of propaganda materials, alleging breaches of both the Electoral Code and directives issued by the State Election Commissioner. Specifically, complaints highlight instances where propaganda materials have

<sup>32</sup> Article 91 and 92 of the EC <https://qbz.gov.al/preview/75122d2e-9ebc-45de-b0ea-b5efde2f6836>

been affixed to building facades without displaying the requisite legal disclaimers<sup>33 34</sup>, or positioned in close proximity to electoral offices without proper authorization<sup>35</sup>. Notably, civil society organizations like KRIIK have urged the Commissioner to promptly remove propaganda materials unlawfully placed along the national road axis from Tirana to Lushnja. Subsequently, following the Commissioner's administrative investigation, requests were made for the State and Municipal Police in the four municipalities concerned to promptly remove these propaganda materials.<sup>36</sup>

During the monitoring period, it was observed that electoral subjects not only showed carelessness in adhering to legal requirements regarding the posting of propaganda materials but also that 13 Municipalities failed to take concrete measures to submit their decisions to the CEC on the designation of public spaces for such postings as required by Article 79 of the Electoral Code.<sup>37</sup> As a result, upon the Commissioner's proposal, ASC imposed administrative sanctions on the mayors of these municipalities. The AHC noted that during the May 15, 2023, ASC meeting, there were significant discussions among ASC members regarding the measures needed to be imposed on the Municipal Police. These discussions included dictating elements directed at the CEC administration<sup>38</sup>. The decision to suspend administrative actions, which originated as a suggestion to the CEC's General Secretary, should have been independently made by this high-level CEC official in accordance with the principles of due process, rather than influenced by external suggestions.

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### 1.2.2 CLAIM\COMPLAINTS FILED BY THIRD PARTIES

From the beginning, it has been evident that civil society organizations (CSOs), acting as third-party whistleblowers, have played a proactive role in submitting complaints to the CEC, ranking first in the number of complaints filed.

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<sup>33</sup> Decision No. 495, dated 11.05.2023: Subject: Administrative review of Denunciation No. 406 from the electoral entity "Socialist Party of Albania" regarding the posting of propaganda materials by the "Bashkë Fitojmë" Coalition in Himara Municipality for the local government elections on May 14, 2023

<sup>34</sup> Decision No. 453, dated 06.05.2023: Subject: Administrative review of Denunciation No. 369 by Mr. Ivi Kaso concerning the display of propaganda materials in illuminated advertisement spaces in the public premises of Kukës Municipality by the electoral subject "Socialist Party of Albania" for the local government elections on May 14, 2023.

<sup>35</sup> Decision No. 493, dated 11.05.2023: Subject: Administrative review of Denunciation No. 397 by Mr. Ivi Kaso for posting propaganda materials by the "Socialist Party of Albania" in Dibër Municipality for the local government elections on May 14, 2023

<sup>36</sup> Decision No. 455, dated 06.05.2023: Subject: Administrative review of Denunciation No. 386 by KRIIK for the posting of propaganda materials in violation of the law by the electoral entity "Socialist Party of Albania" on the national road axis Tirana-Lushnja.

<sup>37</sup> Decision No. 466, dated 08.05.2023: Subject: Proposal of administrative sanctions against several mayors for failing to submit decisions on the designation of public places within their municipalities for the posting of propaganda materials by electoral subjects.

<sup>38</sup> Minutes of the Meeting, dated 15.05.2023, of ASC: [https://kqz.gov.al/wp-content/uploads/2023/05/230515\\_KAS-seancat-e-dt.15.05.2023.pdf](https://kqz.gov.al/wp-content/uploads/2023/05/230515_KAS-seancat-e-dt.15.05.2023.pdf)

CSOs are actively engaged in providing recommendations and suggestions for the improvement of various draft acts, as well as challenging the decision-making of the State Commissioner at the Administrative Sanctions Committee (ASC).

Not all denunciations by Civil Society Organizations (CSOs) have been accompanied by full and comprehensive administrative investigations, which are necessary to conclude fairly and objectively whether there was a violation or not.

Although the case discussed in this paragraph does not fall within the monitoring period's sample of decisions, the manner of its examination by the State Commissioner has drawn the attention of the Albanian Helsinki Committee (AHC). Through a denunciation by the organization Civic Resistance, measures were requested to stop the activities of a candidate for the partial elections for Mayor of Kuka Municipality. Following disputes from the electoral subject (candidate), the organization's field monitors provided data showing that the propaganda poster for the event was deleted from social media just a few hours before the hearing at the Central Election Commission (CEC). Despite this, the event itself was still organized. Upon reviewing the decision, the data presented both by the CEC monitors and those collected within the administrative investigation did not create a reasonable belief as to whether the final activity organized by the candidate constituted a prohibited activity under Article 3, nor if the participants were identified as representatives of the election administration under Article 3 of Decision No. 9, dated 24.12.2020, of the Civic Resistance. In the case of the appeal request filed by Civic Resistance against this decision, the Appeals and Sanctions Commission (ASC) decided not to participate in its review due to the filing beyond the deadline for the right to exercise the appeal provided by Article 130, point c) of the Electoral Code.<sup>39</sup>

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### **1.2.3 ADMINISTRATIVE INVESTIGATION *EX OFFICIO* BY THE CEC**

Based on Article 123, paragraph 1 of the Electoral Code, the State Election Commissioner has the authority to initiate investigations *ex officio* (on their own initiative), following procedures defined in the Code of Administrative Procedures. This applies to facts or data made public by CEC monitors or obtained during the CEC's administrative control functions.

During the period from March 10 to June 30, 2023, the State Commissioner conducted only eight *ex officio* investigations based on data provided by CEC-contracted monitors. The number of self-initiated investigations by the CEC, as well as the number of alerts from citizens (analyzed in the subsequent subsection), remains extremely low.

In compliance with Article 92, point 1 of the Electoral Code, and Decision No. 9, dated 24.12.2020, of the Regulatory Commission, the CEC conducted weekly *ex officio* monitoring to address late reporting of public activities by public institutions. For the period from January to March 2023, the Commissioner reported issuing six decisions to "suspend the administrative

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<sup>39</sup> Decision no. 194, dated 18.12.2023, concerns the non-acceptance for review of appeal request no. 96, dated 04.12.2023, filed by the "Civic Resistance" Center Organization.

procedure for the administrative review of reports of public activities by some public institutions." In addition, the Commissioner proposed to ASC administrative fines to be imposed, ranging from 10,000 to 20,000 ALL in six other decisions. After reviewing these proposals, the Appeals and Sanctions Commission (KAS) issued four decisions: in three cases, ASC accepted the Commissioner's request and imposed the proposed administrative sanction, while in one case, ASC decided to partially accept the request and imposed a reduced administrative fine of 10,000 ALL, specifically 50% less than the proposed amount.<sup>40</sup>

After collecting the information, it was found that 13 municipalities had not adhered to the written notice from the Commissioner regarding the designation of public spaces for the posting of campaign propaganda materials. This issue has been addressed in more detail earlier in this report.<sup>41</sup>

Additionally, in some instances, the Commissioner decided to ban public activities planned by Local Government Units<sup>42</sup>, the Water and Sewerage authority<sup>43</sup> and the Ministry of Health and Social Protection<sup>44</sup> or the Ministry of Culture<sup>45</sup>, These bans were due to non-compliance with the requirement to report such events at least 5 days prior to their planned occurrence, or because party representatives were reported as participants in the campaign activities.

The AHC appreciates the proactive monitoring that CEC's administration has made on the reporting interface for public activities by the incumbent authorities. However, the stance taken by the State Election Commissioner to prohibit these activities has only partially mitigated the misuse of public resources.

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#### 1.2.4 REQUESTS/COMPLAINTS FROM WHISTLEBLOWERS

Any person who becomes aware of facts or circumstances that may constitute a violation of legal provisions of an administrative nature in the domain of elections has the right to directly

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<sup>40</sup> Letter no. 1618/1 prot., dt. 23.03.2023: Issued by the State Election Commissioner

<sup>41</sup> Decision no. 466, dated 08.05.2023: On proposed imposition of administrative sanctions on certain mayors for failing to submit decisions regarding designated public places for campaign materials.

<sup>42</sup> Decision no. 413, dated 25.04.2023: On prohibition of public activities by the Municipality of Maliq.

Decision no. 367, dated 15.04.2023: On prohibition of public activities by the Municipality of Tirana.

Decision no. 356, dated 14.04.2023: On prohibition of public activities by the Municipality of Belsh.

Decision no. 231, dated 31.03.2023: On prohibition of public activities by the Municipality of Korça.

Decision no. 212, dated 28.03.2023: On prohibition of public activities by the Municipality of Lushnja.

Decision no. 204, dated 24.03.2023: On prohibition of public activities by the Municipality of Memaliaj.

Decision no. 190, dated 21.03.2023: On prohibition of public activities by the Municipality of Gjirokastra.

Decision no. 184, dated 20.03.2023: On prohibition of public activities by the Municipality of Kavaja.

<sup>43</sup> Decision no. 213, dated 28.03.2023: On prohibition of public activities by the Municipality of Cërrik, including Cërrik Water and Sewerage.

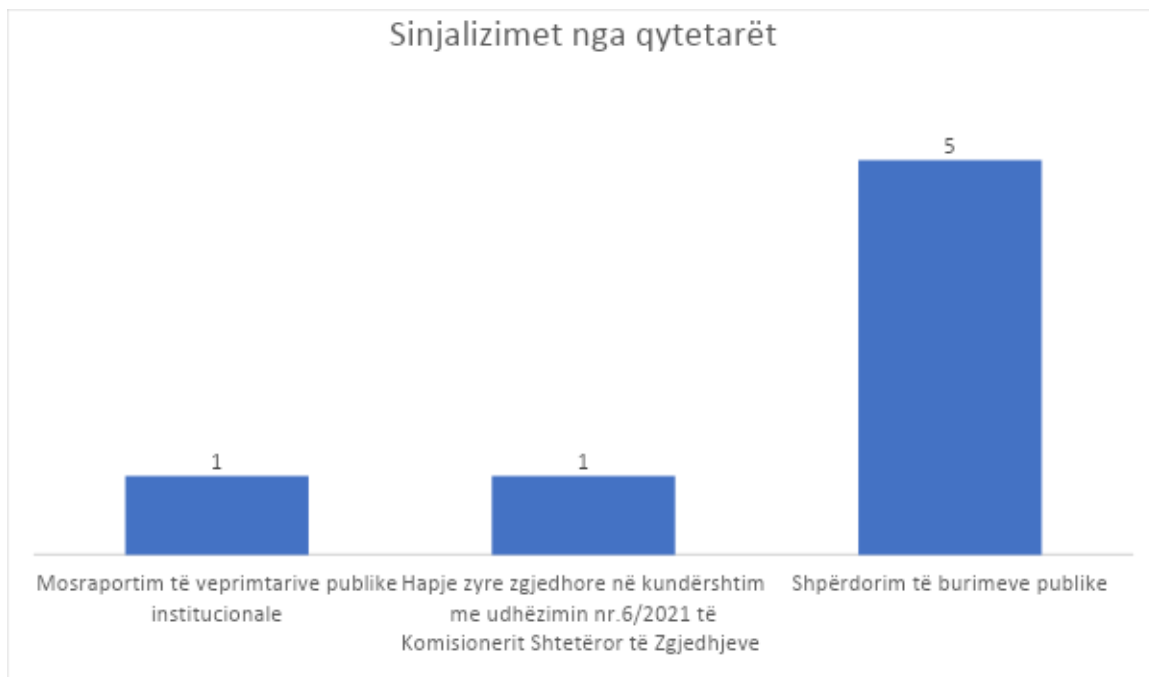
<sup>44</sup> Decision no. 197, dated 23.03.2023: On prohibition of public activities by the Ministry of Health and Social Protection.

<sup>45</sup> Decision no. 191, dated 21.03.2023: On prohibition of public activities by the Ministry of Culture.

inform the CEC, pursuant to Article 123, point 3 of the Electoral Code. According to special legislation no. 60/2016 "On whistleblowing and protection of whistleblowers," the rights and interests of whistleblowers are protected in a reliable, effective, and appropriate manner.

From the data provided by the CEC, it was reported that during the period from January to March 10, 2023, there were two cases reported by whistleblowers.<sup>46</sup> Meanwhile, referring to the same data, for the period from May 10 to June 30, 2023, seven alerts addressed by citizens have been identified. These alerts primarily concern claims of 'misuse of public resources', followed by denunciations related to 'non-reporting of public institutional activities' and 'opening of election offices contrary to instruction no. 6/2021 of the Commissioner'. All these cases chose to remain anonymous.

Despite being few in number, these data reflect a promising perspective regarding the proactivity of citizens in monitoring the election campaign. This involvement by citizens highlights the impact of their vigilance on representatives of the public administration and the management of public funds.



The level of public engagement in reporting violations remained relatively low. While some complaints from whistleblowers received full confidentiality protection, the Commissioner ensured partial<sup>47</sup> or complete<sup>48</sup> anonymization of the decision-making process. Interestingly,

<sup>46</sup> Letter no. 1618/1 prot., dt. 23.03.2023 of the State Election Commissioner

<sup>47</sup> Decision no. 685, dated July 6, 2023, "On the administrative scrutiny of denunciation no. 436 ID, 438 ID, 439 ID with whistleblower petitioner, 385 ID, 414 ID, 410 ID, 424 ID with petitioner Mr. Ivi Kaso, 360 ID, 346 ID, 375 ID with petitioner MP Ms. Albana Vokshi and Mr. Ivi Kaso, 394 ID with petitioner MP Ms. Albana Vokshi and the Bashkë Fitojmë Coalition, 328 ID, 330 ID, 331 ID with petitioner MP Mr. Flamur Noka, regarding administrative violations during the May 14, 2023, local government elections.

<sup>48</sup> Decision no. 470, dated May 9, 2023, "On the administrative review of denunciation no 182 ID, 183 ID, 180 ID, 172 ID, 173 ID, 219 ID, lodged by the Coalition for Reforms, Integration and Consolidated Institutions, as

these reviews often involved complaints from non-governmental organizations or members of the Assembly of the Republic of Albania, alongside those of whistleblowers. However, without clear details on these additional complaints, the rationale for anonymizing data beyond that of whistleblowers remains unclear. The AHC asserts that whistleblower legislation aims to shield individuals from retaliation and other harmful actions, specifically those that may be taken against whistleblowers. When non-governmental organizations, not acting as whistleblowers, are involved in administrative proceedings alongside whistleblowers, their requests and arguments should be disclosed to ensure transparency for the public.

### 1.3 INTERESTED THIRD PARTIES IN THE CAPACITY OF WHISTLEBLOWER

During the administrative inquiry, the Central Election Commission (CEC) has relied on factual information provided by third-party whistleblowers, particularly Civil Society Organizations (CSOs) like KRIIK<sup>49</sup> and Civic Resistance<sup>50</sup>. This underscores the proactive role CSOs have played in preventing and addressing violations of the Electoral Code.

In certain instances, despite originating from different complainants or whistleblowers, requests or complaints have revolved around the same set of facts. Consequently, the Commissioner opted to consolidate these cases for joint examination, leading to collective decisions.

One such case involved the combined review of complaints from Civic Resistance and AHC, both targeting activities allegedly contravening public activity regulations set by the Korça Municipality. The Commissioner recommended to the ASC that administrative measures be taken against the Mayor of Korça and the individual responsible for organizing an event already announced prohibited by the CEC.<sup>51</sup> In another instance, the complaint filed by AHC was

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well as denunciation no 226 ID, 227 ID from a whistleblower, regarding administrative violations during the May 14, 2023, local government elections. However, publication of this decision is withheld in accordance with Article 123/3 of the Electoral Code.

<sup>49</sup> Decision 115 dated 18.05.2023, <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-115-date-18.05.2023-Kerkesa-nr.-31-KSHZ.pdf>;

Decision 115 dated 15.05.2023, <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-114-date-15.05.2023-Shqyrtimi-i-kerkeses-nr.-30-Lako.pdf>;

Decision 87 dated 10.05.2023, <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-87-date-10.05.2023-Shqyrtim-23-KSHZ.pdf>,

Decision 84 dated 08.05.2023

<https://kqz.gov.al/wp-content/uploads/2023/05/vendim-nr.-84-date-08.05.2023-Shqyrtim-K.-21-e-KSHZ-V.441.pdf>

Decision 86 dated 10.05.2023, <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-86-date-10.05.2023-Shqyrtim-22-KSHZ.pdf>

<sup>50</sup> Decision 85 dated 08.05.2023, <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-85-date-08.05.2023-Shqyrtim-19-20-KSHZ.pdf>

<sup>51</sup> Decision no. 412, dated April 25, 2023, addresses the administrative investigation of complaints no. 246 ID, 284 ID, 285 ID lodged by the monitor, the Civic Resistance Center, and the Albanian Helsinki Committee organization against the mayor of Korça and the individual responsible for the Korça municipality. These

combined with one submitted by a member of the Assembly of the Republic of Albania. AHC provided information indicating breaches of Electoral Code provisions and Regulatory Commission decisions, as the Korça Local Office of Pre-University Education repeatedly requested pedagogical staff for data on the number of followers of their page, the quantity of posts related to school activities, and the number of reposts made on social media accounts of the General Directorate of Pre-University Education, as well as the Ministry of Education and Sports. Following the administrative investigation conducted by the Commissioner, a prohibition was imposed on posting or reposting activities on social media networks of a public institution, unless such activities directly reflect the personal profile of the institution's director, considering these profiles as their personal accounts.<sup>52</sup>

Despite the landmark decision, AHC has expressed concern over the repetition of similar behaviors by public authorities. Consequently, the decision-making process of the Central Election Commission (CEC) did not effectively deter these violations. Hence, from AHC's perspective it is imperative to enhance the capacities of the CEC and its monitors to thoroughly scrutinize the technological landscape of electoral subjects, respective candidates, and institutional actors on social media platforms.

Moreover, AHC has brought to the attention of the Commissioner allegations regarding the misuse of human resources within institutions under the jurisdiction of the Vlora Municipality for electoral purposes. Following the administrative inquiry conducted by the Commissioner, it was concluded that the two essential conditions outlined in Article 91, point 2 of the Electoral Code, regarding the "forced use of administration resources during working hours for election purposes," could not be substantiated due to the absence of candidates for mayor or municipal council.<sup>53</sup> Despite the findings of the administrative investigation confirming that the activity occurred during official working hours, on a date not designated as an official holiday, this decision was made. This decision is significant as the invitation to the activity was logged under the emblem of a political party. Although this party had not yet been officially registered as an electoral subject on that respective date, it represents one of the largest political forces with a ruling majority. Consequently, this activity is deemed a precursor to the legal election campaign, constituting a misuse of public resources.

The complaints filed by the Civic Resistance against senior and middle management officials, including the Mayor of Kukës, the General Director of ASHK, and the Directors of two 9-year

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complaints pertain to alleged violations of the prohibition on public activity by the Central Election Commission and misuse of public resources during the local government elections on May 14, 2023.

<sup>52</sup> Decision no. 421, dated May 3, 2023, On review of denunciation (ID: 222) from the Albanian Helsinki Committee organization and a denunciation (ID: 228) from Member of Parliament Ms. Albana Vokshi against the General Directorate of Pre-University Education, as well as the Ministry of Education and Sports. These complaints allege administrative violations during the local government elections on May 14, 2023.

<sup>53</sup> Decision no. 432, dated May 3, 2023, On the administrative review of denunciation no. 338 ID from the Albanian Helsinki Committee, involving Ms. Anita Shehu, a debt inspector in Vlorë municipality, Mrs. Kozeta Halili, a tourism specialist in the Directorate of Economic Development and Tourism in the Vlora municipality, and the electoral subject "Socialist Party of Albania" for administrative violations in the local government elections on May 14, 2023.



schools in Kukës, yielded positive results.<sup>54</sup> In both denunciations investigated administratively by the CEC, it was established that the organized activities violated Article 92 of the Electoral Code. The use of public facilities, specifically school yards, contravened Article 91, point 1 of the Criminal Code. As a result, ASC imposed an administrative fine on the Mayor that was ten times higher than the measure requested by the Commissioner,<sup>55</sup> while also charging the head of the ASHK with administrative responsibility by fining him with a reduced and non-proportional administrative measure in the amount of 2,500 Lek.<sup>56</sup>

The decision-making of ASC, resulting from the appeal by the Civic Resistance Center to change the Commissioner's decision and impose a fine on the Minister of Health and Social Protection, has been accompanied by a minority opinion. Both the Commissioner and ASC share the same view regarding the concept of prohibited activity, which they believe does not apply in this specific case (a visit to the premises of the Lezha regional hospital by the candidate for Mayor, the political leader of the district, and the Minister of the line), as the activity was not organized after the start of the election campaign.<sup>57</sup>

From the analysis of the opinion of the two minority members, it is objectively argued that *"The activity had a promotional purpose, not only showcasing an investment made but also highlighting government policies in the health sector, specifically for health in the Lezha District. It was conducted as part of the political-electoral activities of the Socialist Party, clearly for its benefit. Otherwise, there is no explanation or justification for the participation of the political leader of the Lezha District in the activity."* The Albanian Helsinki Committee assesses that Article 91, point 1 of the Electoral Code should be interpreted to emphasize its binding nature, namely the ban on the use of public resources during the entire four-month period before the election date.

KRIIK, another proactive civil society actor, has addressed several complaints to the State Commissioner. The object of these complaints relates primarily to the request for the removal of propaganda materials displayed on some road axes. Although these materials were clearly

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<sup>54</sup> Decision no. 440, dated May 5, 2023, On the administrative review of denunciation no. 336 ID from the "Civic Center" Organization against the Mayor of Kukës, the General Director of the State Cadastre Agency, the Director of the 9-year-old School "Shaban Murati" in Kukës, and the person responsible for reporting public activities, for administrative violations within the local elections on May 14, 2023.

Decision no. 439, dated May 5, 2023, On the administrative review of denunciation no. 335 ID from the "Civic Resistance" Organization against the Mayor of Kukës, the General Director of the State Cadastre Agency, the Director of the 9-year-old school "Isuf Seferi" in Kukës, and the person responsible for reporting public activities, for administrative violations within the local elections on May 14, 2023.

<sup>55</sup> Decision no. 100, dated May 11, 2023, On the non-acceptance for review of appeal request no. 58, dated May 11, 2023, filed by the Mayor of Kukës, Mr. Safet Gjici.

Decision no. 96, dated May 11, 2023, On the non-acceptance for review of appeal request no. 59, dated May 11, 2023, filed by the Mayor of Kukës, Mr. Safet Gjici.

<sup>56</sup> Decision No. 85, dated 08.05.2023

"On consideration of requests No. 19 and No. 20, dated 06.05.2023, of the State Election Commissioner."

<sup>57</sup> Decision No. 45, dated 04.04.2023

"On the examination of the appeal request No. 38, dated 27.03.2023, filed by the 'Civic Resistance' Center."

visible to users (drivers) of public roads, the administrative investigation concluded that the display stands are considered private property, and special permission was obtained from private entities.<sup>58</sup> Secondly, KRIIK's denunciations address the organization of public activities by public institutions without reporting them on the designated interface, a violation that the Central Election Commission found partially valid against some institutions. Thirdly, denunciations have been filed regarding the posting of electoral content by various public institutions, as well as mayors or mayoral candidates who have posted or reposted publications with party content on their personal pages. Public authorities and agencies have also made publications to promote political slogans<sup>59</sup>. Specifically, in the case of a social media post by the Media and Information Agency (MIA), an institution directly under the Prime Minister, which included a poster with political slogans for an electoral activity not reported on the CEC interface, the Commissioner decided there was no violation and dismissed the administrative review, attributing the posting to human error.<sup>60</sup> The AHC assessed that, despite the poster not being published during the administrative investigation, the photographic evidence presented by the whistleblower warranted a more thorough investigation. The AHC suggested that the CEC could have sought expert assistance to conduct more comprehensive investigative verifications in order to reach objective conclusions.

After alerts from AHC regarding misinformation and pressure exerted on some citizens of Elbasan Municipality about the reading of votes by third parties using the electronic voting and counting system, the Commissioner informed the public through an official statement<sup>61</sup>. The statement was intended to reassure the electorate about the security and reliability of the data provided by the electronic devices used for this purpose.

#### 1.4 COOPERATION BETWEEN CEC AND PUBLIC BODIES

The conduct of the administrative investigation is also linked to the cooperation of public bodies with the CEC, which contributes positively to a qualitative, complete, and comprehensive investigation. During the review process, when the reporting entity claims violations by public institutions, the CEC bodies invite these institutions to participate in the

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<sup>58</sup> Decision No. 483, dated 10.05.2023

"On denunciation No. 326 ID, of the Coalition for Reform, Integration, and Consolidated Institutions (KRIIK), against the Socialist Party of Albania."

<sup>59</sup> Decision No. 490, dated 11.05.2023

"On the administrative review of denunciation No. 368 ID, from the Coalition for Reform, Integration, and Consolidated Institutions, against Ministers and responsible persons in some ministries, for administrative violations in the elections for local government bodies on May 14, 2023."

<sup>60</sup> Decision No. 489, dated 11.05.2023

"On the administrative review of denunciation No. 365 ID, from the Coalition for Reform, Integration, and Consolidated Institutions, against the Deputy General Director of the Media and Information Agency, for administrative violations in the elections for local government bodies on May 14, 2023."

<sup>61</sup> [Testohet pajisja për votim elektronik, Celibashi: Garanton 100% fshehtësinë e votës! Në Elbasan, Vorë e Kamëz rezultati del brenda 30 minutave - Shqiptarja.com](#)

process and the CEC requests that public administration bodies provide information, documents, or any other evidence deemed necessary for the administrative investigation. According to the Electoral Code, public administration bodies are obliged to provide the requested evidence upon receiving the CEC's request and within the set deadline.

In some cases, when the CEC has requested evidence from these bodies, feedback has been received, but in other instances, public institutions have not participated in the process and have not cooperated with the CEC in providing the requested evidence.

Specifically, after examining the complaint filed by a member of the Assembly of the Republic of Albania, which claimed that the 9-year-old school "Todi Koçeli" had published a public activity on its official Facebook page that coincided with the statuses of candidates in the race for the May 14 local elections, the Commissioner requested explanatory information from the involved parties. This request went unanswered, and the responsible parties did not appear at the public hearing. Consequently, the Commissioner proposed to ASC that an administrative fine of ALL 4,000 be imposed on the school's director.<sup>62</sup>

However, there have been other instances where positive cooperation between public bodies and the CEC has been observed, notably with institutions like the Ministry of the Interior and Berat Municipality<sup>63</sup>, Korça Municipality,<sup>64</sup> Patos Municipality, Dibra and Roskovec Municipalities,<sup>65</sup> which have provided information regarding the denunciations addressed to them for the misuse of public resources and for the development of activities with electoral content in violation of the legal provisions in force.

## 1.5 THE LEVEL OF RESPECT FOR THE RIGHT TO DUE PROCESS DURING THE PUBLIC HEARING

In cases when the whistleblower or third party requests the right to be heard by the CEC in a hearing, in compliance with Article 88 of the Code of Administrative Procedure, the CEC is obliged to respect this right by setting a relevant deadline. If the whistleblower or third party does not participate in the hearing despite the set deadline, this does not constitute a reason for the CEC to postpone its decision-making process.

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<sup>62</sup> Decision No. 436, dated 03.05.2023 "On the administrative review of denunciation No. 283 ID, filed by Mrs. Albana Vokshi, Member of the Parliament of Albania, against the Director of the 9-year-old school "Todi Koçeli" in Selenica, for administrative violations in the elections for local government bodies on May 14, 2023."

<sup>63</sup> Decision 409 dated 25.04.2023,

[https://kqz.gov.al/wp-content/uploads/2023/05/Vendim\\_nr.-409-date-25.04.2023\\_Per-pushim-procedimi-administrativ-bashkia-BERAT.pdf](https://kqz.gov.al/wp-content/uploads/2023/05/Vendim_nr.-409-date-25.04.2023_Per-pushim-procedimi-administrativ-bashkia-BERAT.pdf)

<sup>64</sup> Decision 409 dated 25.04.2023,

[https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-412-date-25.04.2023\\_Per-sanksion-bashkia-Korce.pdf](https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-412-date-25.04.2023_Per-sanksion-bashkia-Korce.pdf)

<sup>65</sup> Decision 409 dated 22.04.2023

<https://kqz.gov.al/wp-content/uploads/2023/04/Vendim-396-date-22.04.2023Per-pushim-procedimi-administrativ-burime-publike.pdf>

The public hearings conducted by the CEC are also broadcast in real-time through live streaming on the dedicated YouTube channel. According to the online monitoring by CEC observers, there have been very sporadic cases where it was impossible to listen to the discussions exchanged between the CEC administration or other litigants<sup>66</sup>.

In general, the representatives of CSOs, whose denunciations are analyzed in this report, have attended the hearing sessions held to examine their complaints. A different approach has been observed from the electoral subjects during the review of issues concerning violations of their legal interests at ASC. The legal representatives of these entities participate in the hearing only when they are the ones filing complaints to ASC against the decisions of the Commissioner. When violations are addressed against these political subjects by the Commissioner, who turns to ASC with a request for sanctions, they have mostly not participated in the process.

The CEC has guaranteed the right of the parties to be heard and defended by their representatives in the administrative review process. The parties' lack of knowledge about the administrative procedure has sometimes led to the withdrawal of the appeal request from the review process by the General Secretary of the CEC. In such a case, ASC decided to suspend the review of appeal request No. 28, dated 12.05.2023, from the State Commissioner of Elections, because the 57 heads of the Municipal Police, against whom the Commissioner requested the imposition of an administrative sanction with a fine, were not informed about the administrative investigation procedure undertaken by the Commissioner.<sup>67</sup>

## **1.6 THE INTERACTION OF THE CEC DURING THE ADMINISTRATIVE PROCEEDING IN FUNCTION OF THE TRIAL PROCESS**

The State Election Commissioner, as a monocratic body, conducts the public hearings independently. On the other hand, ASC is a collegial body composed of 5 members. During some of the monitored public sessions, ASC operated with 4 members<sup>68</sup>, making decisions in accordance with the Regulation "On the manner of operation and development of the sessions of the Appeals and Sanctions Commission."

The interaction and discussions during meetings and hearings between ASC members, CEC administration members, and the parties participating in the process have been proactive. Questions were asked that helped further complete the administrative investigation, gathering essential data and information. Additionally, ASC members have generally addressed requests to the CEC administration to provide necessary evidence and materials for the process. The CEC has taken the position that the interaction and information provided to interested parties regarding the legal framework and procedures for examining complaints and denunciations

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<sup>66</sup> Audio disconnection in the meeting held on 01.03.2023, by ASC.

<sup>67</sup> Decision no. 112, dated 15.05.2023 "On the termination of consideration of request no. 28, dated 12.05.2023 of the State Election Commissioner".

<sup>68</sup> Decision no. 71, dt. 02.05.2023; Decision no. 72, dt. 02.05.2023;

have been successful, thanks to established precedents and increased awareness among the parties.<sup>69</sup>

However, based on the data from the monitoring of public hearings and the analysis of the minutes and reasoned decisions, the AHC notes that in most cases, the evidence was provided by the reporting entity. There have been no requests from whistleblowers to ASC for obtaining evidence from the CEC administration itself, due to the availability of protocol or election materials from them. As previously analyzed, public bodies have not always shown a cooperative approach in making the required evidence available to the CEC.

## 1.7 WAIVER OF APPEAL

Article 142 of the Electoral Code recognizes the complainant's right to completely or partially waive the object of the complaint at any stage of its review. In such cases, the CEC decides to dismiss the case in its entirety or for the part that was waived. After dismissal, the appellant cannot file an appeal again for the cases that have been dismissed.

During the monitoring period, it was found that ASC decided to suspend the administrative review for eight cases<sup>70</sup>, These suspensions occurred when the "whistleblower" withdrew the appeal or when the informant did not complete the formal elements of the appeal request within the given deadline, showing no interest in the continuation of the administrative review.

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<sup>69</sup> Letter no. 6057/1 prot., dt. 30.06.2023

<sup>70</sup> <https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-99-date-11.05.2023-Pushim-K.A-57.pdf>

<https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-112-date-15.05.2023-Kerkesa-28-pushim-shqyrtimi.pdf>

<https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-118-date-19.05.2023-Pushimi-K.A-62-PUK-Lezhe.pdf>

<https://kqz.gov.al/wp-content/uploads/2023/06/Vendim-nr.-119-date-22.05.2023-Pushimi-shqyrtim-ka-61-PLL-Tirane.pdf>

<https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-133-date-24.05.2023-Pushimi-K.A-69-naci-lato-1.pdf>

<https://kqz.gov.al/wp-content/uploads/2023/05/Vendim-nr.-134-date-24.05.2023-Pushimi-K.A-72-Lame-Jaupaj.pdf>

Decision no. 167, dated 30.05.2023 "On the termination of the examination of the appeal request no. 89, dated 25.05.2023, filed by the Drejtësi, Integrim dhe Unitet Party".

Decision no. 173, dated 02.06.2023 "On the termination of the examination of the appeal request no. 92, dated 27.05.2023, filed by the 'Drejtësi, Integrim dhe Unitet Party'".

## RECOMMENDATIONS

1. The AHC recommends that in future elections, it is necessary to increase the proactivity of the CEC in initiating administrative investigations on its own initiative. This would require clearer and more comprehensive regulations in the provisions of the Electoral Code. We recommend revising the Electoral Code to include special provisions related to the deadlines for administrative investigations, which should be expedited, and to clearly define the methods for gathering evidence during the administrative investigation of specific administrative violations.
2. The AHC recommends that the system for handling complaints and denunciations by the CEC be strengthened to guarantee the highest standards for effective investigations in reasonable, objective, and comprehensive terms. It is particularly necessary to increase public confidence in the whistleblower process within the CEC. Additionally, we suggest that the Assembly should provide budgetary support for the establishment of a specialized investigative structure within the CEC to handle these denunciations.
3. Considering the early start of the election campaign before the deadline set in Article 77 of the Electoral Code, we recommend revising Article 91 of the EC to extend the ban on the use of public resources from the date of the decree of the elections by the President of the Republic of Albania, and not limit it based on whether or not a political party is registered as an electoral subject.
4. It is recommended to increase the proactive role of the CEC in implementing administrative measures when electoral subjects start the election campaign before the deadline provided in Article 77, point 1 of the Electoral Code.
5. To develop a complete, comprehensive, and objective investigation, it is necessary to strengthen the cooperation between the CEC and public bodies, administratively sanctioning the latter when they do not provide information or data required for the administrative investigation process. The CEC is also encouraged to use external expertise to deepen the administrative investigation by appointing technical experts in the field.
6. We recommend that the CEC adopt concrete measures to guarantee full and real-time transparency, including the transcription of meeting minutes and decision-making processes.
7. We recommend that the CEC take measures to inform and raise awareness among electoral subjects and candidates about the strict compliance with Articles 91 and 92 of the Electoral Code, as well as the relevant acts of the Regulatory Commission related to them.
8. We recommend that the State Commissioner of Elections and ASC, during the handling of complaints or denunciations about the misuse of public funds or human resources, make well-motivated decisions, whether the denunciations are accepted or especially when they are rejected.

- 9.** We recommend that the CEC adopt regulatory measures that positively serve the administrative investigation process, with the aim of identifying the person responsible for reporting public activity in the created interface, and assigning legal responsibility to the electoral subject on whose behalf the publication is carried out.
- 10.** We recommend that the CEC, as far as possible, harmonize the practice of imposing certain administrative measures against persons responsible for reporting public activities. In this perspective, it is important to emphasize that the responsible persons should be included in the administrative investigation process, in compliance with the principle of due process.
- 11.** We recommend that the CEC establish fair practices to guarantee the confidentiality of cases reported by whistleblowers who choose to remain anonymous, ensuring that other data serving the transparency of the case and its object do not violate the whistleblowers' anonymity.
- 12.** In cases where elements related to criminal liability are found, based on Article 281/3 of the Criminal Code, the CEC should increase its proactive role in referring cases to the Prosecutor's Office. This should be based on audits of financial expenses, political party finances, or the misuse of public assets.
- 13.** To guarantee the principle of proportional punishment in relation to the offense committed, and in the absence of a unified practice due to the legal vacuum determining the guiding indicators of the amount of the fine, we recommend that the Assembly of the Republic of Albania take measures to review Articles 171 and 172 of the Electoral Code. This review should aim to make a clearer distinction between serious violations, which must be sanctioned with fair and proportional penalties that effectively serve to prevent and punish their authors, and minor or light violations.
- 14.** It is recommended that the Assembly review point 5 of Article 171 of the Electoral Code in relation to part 2 of the Code. This should include measures to avoid the repetition of violations committed specifically by Election Commissioners and the secretaries of the VCC and EAZC, as well as addressing ambiguities regarding violations committed individually by members of the governing bodies of the CEC, who are currently mandated by the Assembly.
- 15.** It is recommended that the Assembly revise Article 171 of the Electoral Code to clarify the term "after receiving knowledge" in order to account for the complex organization of political parties. Additionally, it is recommended to expand the circle of subjects responsible for committing violations to include those not registered as political parties but who misuse public assets for electoral purposes.
- 16.** Considering that Article 91 of the Electoral Code elaborates only on the concept of "use of public resources" and not "misuse of them," it is recommended that the Assembly of the Republic of Albania take measures to amend the Electoral Code to address these gaps. This should include precise definitions of the terms "use," "misuse," and "abuse."
- 17.** Despite the fact that representatives of the governing bodies of the CEC recommend that violations of the Electoral Code be clearly articulated in its provisions, the AHC

believes that defining the range of violations exhaustively could be an obstacle due to the continuous sophistication of electoral legislation violations. The AHC recommends that the Assembly, within the framework of electoral reform, make careful, researched, and consulted amendments to foresee provisions that balance clarity with non-exhaustive definitions of violations that are sanctioned administratively.

- 18.** To guarantee the principle of legal certainty and effective solutions, we suggest that the governing bodies of the CEC consider the establishment of decision-making practices that positively serve uniformity of standards, and respect the standards or precedents established by final decisions of higher instances (ASC in the case of the Commissioner and the Judicial Electoral College in the case of ASC).