

STUDY REPORT

ON THE CHALLENGES OF INVESTIGATING CRIMINAL OFFENSES IN THE FIELD OF ELECTIONS IN ALBANIA

October 2024



ALBANIAN HELSINKI COMMITTEE



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from the British people

STUDY REPORT

**ON THE CHALLENGES OF INVESTIGATING ELECTORAL OFFENSES IN THE
FIELD OF ELECTIONS IN ALBANIA**

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Introduction

Since its founding, one of the main pillars of the mission of the Albanian Helsinki Committee (AHC) is the guaranteeing of free and fair elections. Since 1996, AHC has monitored systematically the electoral processes that have been conducted in our country.

In keeping with the mission of AHC, this study report looks at an analysis of the practice of prosecution offices of some judicial districts (general jurisdiction), as well as the special prosecution office against corruption and organized crime, with regard to the prosecution of “crimes or criminal offenses in the field of elections.”¹

The study focuses on some main aspects, which indicate not only the quantitative aspect of data, as one of the tools for analysis, but also allows the drawing of qualitative conclusions on the activity of prosecution offices, based on their decision-making. In general, this report was built on two periods: 2016-2022 and the May 14, 2023 elections. This division also serves to establish a progression of “continuity” in the limited analysis from the nature of documentation of the activity of prosecution offices, which helps conduct a partial comparison of the main directions, achievements, and challenges in the practice of the body responsible for prosecution in the field of electoral crimes.

The need for proactive investigation is essential for preserving the integrity of the electoral process, the prevention of influencing voters, preserving public trust in the public and justice institutions, the prevention of the repetition of criminal conduct and the protection of the rule of law in general. Every criminal activity (act) that is linked with the electoral process infringes upon the foundations of democracy itself while the latest OSCE/ODIHR report for the 2023 local elections underscores,² “...cases of misuse of state resources at the central and local level, claims pressure on public sector employees and voters, and claims of vote-buying were disturbing.”

On March 27, 2024, AHC presented for discussion the preliminary drafts of the two study reports (now integrated into a single document). These drafts were debated at a consultation working round table with all stakeholders involved in the study. The purpose of organizing it was to have an open and principled discussion, through the representatives of the prosecution bodies, civil society activists, and other institutional stakeholders.

The General Prosecutor of the Republic of Albania Mr. Olsian Çela and other representatives of the prosecution and judiciary greeted the round table. Appreciating the cooperation and the open approach of the prosecution body, AHC views it as valuable to highlight at the start of this study report part of the important contribution by the General Prosecutor in his remarks at the AHC round table:

¹ A simple phrase to refer to the “rigorous” label of these types of criminal acts: Chapter X of the Criminal Code refers to them as “Criminal acts that affect free elections and the democratic system of elections.”

² Final Report of the ODIHR Election Observation Mission, 2023 Local Elections, p. 1 (Executive Summary) https://kqz.gov.al/ep-content/uploads/2023/11/2023_raporti_osbe_odihr_shqip.pdf

“I had maximal appreciation for participation in this meeting for two reasons. First, because of the important role that the prosecution office has in the electoral process, serving the protection of public interest and the need to evaluate responsibly every contribution that serves our activity; and, secondly, because of the very characteristics of the product presented to this round table, a report with findings and recommendations for a 7-year period in this aspect.

The General Prosecution Office has engaged in guaranteeing the legal and penal guaranteeing of free elections and the democratic system of elections, taking institutional legal measures to increase the effectiveness of investigation and the exercise of prosecution toward perpetrators of criminal acts infringing upon free elections. In this regard, institutional measures have aimed at:

- Issuing normative acts to unify the organization and functioning of prosecution offices during the electoral period;

- Cooperation for the training of prosecutors and judicial police officers in the field of elections and the engagement and inclusion of prosecutors in training criminal police personnel, in response to the request for cooperation by the General Directory of the State Police.”

Regarding the investigation of electoral crimes in recent years, the General Prosecutor stressed: *“Data regarding criminal acts infringing upon free elections and the democratic system of elections indicate that during 2023, there were 25 prosecutions registered and 19 indicted individuals, while in 2022, there were 26 registered criminal proceedings and 16 indicted individuals. Two criminal proceedings with 14 indicted individuals were sent for adjudication and two indicted individuals were convicted, while in 2022, three criminal proceedings were sent for adjudication with 16 indicted individuals and 14 indicted individuals were convicted.”*

Meanwhile, regarding the possibility that the findings and recommendations presented by AHC in the round table, the General Prosecutor stressed: *“At this point, I will go back to the reports that I have read with attention and I take advantage of this opportunity to congratulate the authors for the conducted work. The reports, although there may be some statistical inaccuracy, there are very interesting and valuable findings, while they also address and take positions on disputable issues that deserve debate, which are inevitable given the very nature of the process. The reports have addressed generally the cases not initiated or dropped, focusing on encountered problems that deserve maximal attention by us in addressing them. An added value of the reports would have been a more complete reflection of the positive experiences that are not lacking; that is why I mentioned above some statistical data from 2022 and 2023.*

Nevertheless, beyond the different perceptions that may exist toward the findings and recommendations, the initiative and the professional courage of the authors it is to be appreciated as it serves not only transparency regarding the investigation of electoral crimes, but at the same time, it has secured data of analytical value at all levels of the organization of work, especially toward the performance of prosecutors, leaders, and prosecution offices where they exercise their functions. Based on the above, ensuring accountability through professional evaluation or disciplinary process to increase effectiveness and efficiency represents one of the current

challenges in the prosecution system, just as there is a need to find auxiliary mechanisms that would further encourage proper functioning and institutional cohesion.”³

The Albanian Helsinki Committee (AHC), as a non-profit, independent and impartial organization, believes that thanks to transparency, constructive, real, and open dialogue with the prosecution body, it is possible to improve problematic aspects and overcome challenges encountered to date, in the prosecution and investigation of criminal acts in the field of elections in our country. We wish to reiterate that the punishment of these acts is directly linked with the integrity of the electoral process and the strengthening of the rule of law.

Executive Summary

AHC notes that the activity of the prosecution body during the period under review, especially during the period 2016-2022, is not characterized by the approach of proactive investigations and a unified standard of starting or not criminal proceedings and the investigation of criminal acts in the field of elections.

During the period 2016-2022, the prosecution office has been set into motion mostly for prosecuting and investigating criminal acts of “Active corruption in elections,” “Use of public functions for political or electoral activity,” “Falsification of electoral materials and election results.” Two of these acts, namely “Active corruption in elections” and “Violation of the secrecy of vote” appear the most followed in the latest elections for local government bodies of 2023. As a result, AHC notes that active corruption in elections for about one decade represents one of the most sensitive criminal acts in terms of the violation of the integrity of elections in our country.

Overall, AHC notes that the number of proceedings has been very low, also vis-à-vis the perception of citizens for electoral crimes. In particular, this appears to be the case for criminal acts such as vote buying and selling, otherwise known as active corruption or passive corruption, and the criminal act of “Use of public function for political or electoral activity.” Based on a survey of 2023 by AHC in the field, it appears disturbing that about 209 people surveyed or 19.2% of them stated that they received offers such as money, food, or promises in exchange of votes, while 44.71% of those surveyed or 486 of them stated that they are aware of vote buying or selling in their family and social circles. About 9.5% of those surveyed stated that they were forced to participate in campaign for these elections during working hours, while 17.8% stated that they were forced to participate after working hours. About 35.2% of those surveyed stated that they are aware of employment during the one or several months ahead of the May 14, 2023 elections, as one of the forms of abuse of public resources for electoral purposes.⁴

During the period 2016-2022, the main denouncers of electoral crime have represented electoral subjects, political parties, or their activists, followed by structures of the State Police, senior public

³ Full remarks by Prosecutor General, Mr. Olsian Çela may be accessed at [Fjala e Prokurorit të Përgjithshëm, Z. Olsian Çela në Tryezën mbi Çështjet Zgjedhore: Angazhim serioz institucional dhe transparencë për hetimin e veprave penale që cënojnë zgjedhjet \(pp.gov.al\)](https://www.pp.gov.al/fjala-e-prokurorit-te-pergjithshem-z-olsian-çela-ne-tryezen-mbi-çeshtjet-zgjedhore-angazhim-serioz-institucional-dhe-transparencë-për-hetimin-e-veprave-penale-që-cënojnë-zgjedhjet)

⁴ <https://ahc.org.al/wp-content/uploads/2024/03/Raporti-i-Perceptimit-te-Publikut-per-Influencat-ne-Procesin-Zgjedhor.pdf>

officials or other state institutions.⁵ Lastly, though in lower numbers, referring bodies have been those of the electoral administration, such as the CEC, VCC, and CEAZ, as well as citizens. As will be noted later in this report, there is further lack of information that does not allow reaching more profound conclusions on the category of denouncers, during this given period. In the latest elections for local government in 2023, the majority of electoral crimes were referred by the State Police and other law enforcement agencies, followed by the denunciations of political subjects. Comparatively speaking, the number of citizens is almost insignificant. The cases of initiation of criminal cases upon the initiative of the prosecution body (ex officio) are also almost insignificant.

Considering that the organization of electoral subjects for the process begins many months ago, it is important that the initiative of law enforcement bodies and the prosecution office for the prosecution ex officio of these cases begins earlier in time and does not concentrate on the last month or days before the elections, as has been the practice to date. To realize this, the prosecution office seeks the assistance of state police employees who conduct operational work in the field, as prosecution offices have shared that they do not have the adequate number and capacities of employees necessary to realize operational work in the field. Furthermore, for the purpose of an objective and impartial investigation, it is necessary that in the future, judicial police officers placed with the state police structures, be under the direction and oversight of the prosecution office, for operational work they carry out in the field, on criminal acts in the field of elections.

In both electoral periods that have been taken as reference for this report, it results that the investigation of electoral crimes by prosecuting offices of general jurisdiction has been delayed in time. One of the factors that has affected these delays are the vacancies that have been created in the prosecution system in the context of the vetting process. Based on meetings in the field that AHC has held with some of them, it appears that they are functioning with a reduced number of prosecutors, about or less than 50% of the approved staffing. Earlier, these vacancies were even more considerable.

During the period 2016-2022, the number of decisions to not start criminal proceedings compared to other decisions appears at 37.15%. In a considerable number of cases, it appears that the prosecution offices have found that the fact does not constitute a criminal act. Further on, there has been a large number of cases where the legal deadline for making a decision to not start criminal proceedings has not been respected. In some of the decisions to not start proceedings, AHC has noticed that prosecution offices have not pursued all methods of preliminary investigation/verification, which, in our assessment, has weakened their effectiveness for clarifying the existence of a criminal fact. In this regard, we note that the lack of full preliminary verifications by members of the responsible police structures has also had an impact.

AHC notes with concern that for the period 2016-2022, except for one case investigated by the Special Prosecution Office (SPAK), in all other cases, there was no real asset investigation by the competent prosecution offices. In no case were measures envisaged in the anti-mafia law or measures of a coercive nature used, such as preventive sequestration, envisaged in article 274 of the Criminal Procedure Code and article 36 of the Criminal Code. It is our assessment that these measures would help a full and comprehensive investigation, especially against individuals

⁵ Such as: President of the Republic, Prime Minister, Deputy Prime Minister, Ministry of Education and Sports, Ministry of Social Welfare and Youth, Ministry of Health, Ministry of Finance, and mayors.

suspected of active or passive corruption in elections, who have an unjustified economic level as a result of suspected criminal activity.

For the period 2016-2022, we find that there has been a “ping-pong” effect of transfers of cases from one prosecution office to another, while the lack of material competence and transfer between prosecution offices is noticed also in the latest local government elections of May 14, 2023. The report has studied the mutual transfers between the Dibra Judicial District Prosecution Office and the Prosecution Office of the First Instance Serious Crimes Court, and later SPAK, which have taken about 4 years and 3 months. This period has led to an expiration of the statute of limitations as the criminal act, according to article 328/1 of the Criminal Code of the time, was an offense.

Regarding the local government elections of May 14, 2023, it appears that until 16.10.2023, the Special Prosecution Office registered 23 proceedings for the criminal acts of “Active corruption in elections” and “Passive corruption in elections.” For six criminal referrals, it was decided to not start criminal proceedings; three proceedings were sent to court for adjudication; and 20 other criminal proceedings remain under investigation. Based on the evaluation of official data submitted by the 12 first instance prosecution offices of general jurisdiction under analyses, until September 29, 2023, 44 referrals were addressed, on which 30 criminal proceedings in the field of elections were registered. Until that date, there are still under investigation 21 criminal proceedings in general jurisdiction prosecution offices. It is evidenced that in 10 cases, these prosecution offices declared lack of material competence and sent the acts to the Special Prosecution Office, where this prosecution office for one criminal proceeding, sent the acts back to the Kukës First Instance Prosecution Office. Based on an analysis of official information, we appreciate the fact that the Special Prosecution Office has demonstrated a faster pace in concluding preliminary investigations on criminal acts in the field of elections that it has under material competence compared to the general jurisdiction prosecution offices. Furthermore, AHC notes that the Special Prosecution Office undertakes a higher number of procedural acts for preliminary verification of referred materials before it decides to not start criminal proceedings.

During the period 2016-2022, the prosecution offices used special investigation methods in only 11.9% of the cases or for 26 criminal cases. The most used method of special investigation is the wiretapping of the individual’s telephone communications. The prosecution offices that investigated the most with special investigation methods were the Special Prosecution Office (with about half of its decision) and the Elbasan First Instance Court Prosecution Office (in about 1/3 of its decisions). For the other prosecution offices, the implementation of special investigation methods appears at low levels. However, with regard to this finding of AHC, it is worth underscoring that the concern shared by some heads of prosecution offices, conveyed during official meetings held with them, that the criminal acts investigated by the general jurisdiction prosecution offices in the field of elections do not meet the legal criteria of conviction required as a condition for the application of these special investigation methods (referring to paragraph 1 and 2 of article 221 of the Criminal Procedure Code).

Based on information we have received through meetings with the heads of some General Jurisdiction Prosecution Offices, AHC applauds the initiative to draft a joint instruction by the General Prosecutor and the head of the Special Prosecution Office that might facilitated cooperation and the practice of transferring cases by competence, between the general prosecution offices and the special prosecution office.

1. Methodology

The methodology of this study report relies on the concrete and comparative analysis of official information regarding criminal proceedings registered for electoral criminal acts and decisions thereon, secured through requests for information, sent to the Special Prosecution Office and the twelve First Instance Prosecution Offices in Berat, Dibër, Durrës, Elbasan, Fier, Gjirokastër, Korçë, Kukës, Lezhë, Shkodër, Tiranë, Vlorë.⁶

The monitoring was conducted by obtaining detailed information from the respective prosecution office in accordance with law no. 119/2014 “On the right to information,” amended. As a result, the raw material for the analysis was only obtained through written responses by the prosecution offices themselves. In the absence of an official website that is easily accessible and that gives the opportunity to obtain information in that way as well, addressing this through requests according to legislation on the right to information has been the most effective tool for monitoring the progress of the investigation of criminal acts related to electoral processes as well. In this case, the accuracy of figures and the manner of reporting by the institutions themselves assumes special significance for the purpose of analysis in this Report.

In some cases, AHC has had some difficulties and delays in obtaining information according to the law on the right to information. Thus, we noticed lack of transparency by the Fier Judicial District Prosecution Office, which only provided general information and not the relevant decisions; the Tirana Judicial District Prosecution Office as well did not make available full copies of these decisions but only a short summary of decisions. In some cases, AHC addressed the Commissioner on the Right to Information and Personal Data Protection. the lack of about half of the decision-making for not starting criminal proceedings is noticed in the Judicial District Prosecution Offices in Tirana, Gjirokastër and Kukës.

Nevertheless, this lacking transparency for the period 2016-2022 changes for the better compared to data made available by prosecution offices for electoral crimes, for the local government elections of May 14, 2023. We may say that overall, AHC appreciates the collaborative approach and transparency of other prosecution offices that have been the subject of our monitoring activity. This is an important model of cooperation on access that public bodies should create for civil society organizations and citizens interested in official documents, with an impact on increasing public trust in the justice system.

In order to preserve investigative secrets on procedural acts during preliminary investigations, part of the research analysis were the following acts, for criminal acts envisaged in Chapter X of the Criminal Code “Criminal acts affecting free elections and the democratic system of elections,” for the elections held during the years 2016-2022 and separately for the local government elections of May 14, 2023, namely:

- a. Copies of requests to not start criminal investigations during this period;

⁶ With regard to the Vlora Judicial District Prosecution Office, the period covered by the study only covers the Local Government Elections of May 14, 2023.

- b. Copies of requests for dropping criminal cases;
- c. Copies of requests for sending cases to court for adjudication;
- d. Copies of the decisions by the preliminary hearing judge on the requests above (if possessed);
- e. Subjects that filed these denunciations and how they are categorized (political subjects, public institutions, whistleblowers, organizations, institutions, etc.);
- f. Whether the prosecution office conducted on its own initiative ex officio investigations to evidence violations of electoral legislation and what were the data used for investigations based on their initiative.

For the local government elections of May 14, 2023, the Albanian Helsinki Committee also addressed the SCCOC, seeking the number of cases sent for adjudication in this court by the Special Prosecution Office against Corruption and Organized Crime for the period October 2023 – March 2024, for criminal acts in the field of elections, for which it bears competence according to article 75/a of the Criminal Procedure Code, the phase of review these cases are at, and, if there was any decision-making regarding them, seeking copies of such decisions.

During 2016 – 2022, AHC obtained information from 11 general jurisdiction prosecution offices and the special prosecution office that they had 218 referred/denounced or prosecuted cases, of which for only about 21%, sending them to court was sought (or sent to court), while about 1/3 of the decisions or for 81 cases, there appear to be decisions to not start criminal proceedings (i.e. no investigation was conducted) and the rest appears to have dropping of the case or charges, at the conclusion of investigations. Only 39 decisions for not starting criminal investigations were made available to AHC.

In total, for the local government elections of May 14, 2023, the Albanian Helsinki Committee analyzed 31 decisions, of which 16 decisions by general jurisdiction prosecution offices, 9 decisions by SPAK, and 6 by the SCCOC.⁷

The completeness of this information represents the limitation in drafting this report. In the circumstances where not all prosecution offices responded in a detailed manner, with accurate data, and not having in focus of the study the other acts of the investigation, due to the need to preserve investigation secrecy for criminal cases in process, or even due to barriers created in accessing the investigative files for cases when the criminal investigation has been concluded, it may be said that the authors of this report encountered a methodological limitation. Such an element has been kept in mind by them, in the study of administered procedural acts and in the formulation of findings and conclusions. In spite of this limitation, the Helsinki Committee took care to elaborate these data, by evaluating them in their own context.

It is worth emphasizing that part of this Report is not comparing data reported in the Annual Report of SPAK or the General Prosecutor to the data made available by the prosecution offices themselves. The purpose of this Report is to create a more real (direct) view on decisions to not

⁷ Tirana Prosecution Office – 8 decisions to not start criminal proceedings; Fier Prosecution Office – 1 decision to not start criminal proceedings; Elbasan Prosecution Office – 2 decisions to not start criminal proceedings; Durrës Prosecution Office – 2 decisions to not start criminal proceedings; Dibra Prosecution Office – 3 decisions to not start criminal proceedings; SPAK – 3 requests to send cases to court and 6 decisions to not start criminal proceedings; SCCOC – 6 decisions.

start proceedings, proceedings, and the progress of investigations into criminal acts linked with elections held in our country during the period 2016-2022 and the local government elections of 2023, to the extent data was available.

2. Statistics on the investigation of electoral crimes

2.1 Categories of denounced criminal acts

a. For the period 2016-2022

During this period, the prosecution offices were set into motion for cases linked with article 328 “Active corruption in elections”⁸ in 54 cases (26.7% of cases), followed by 41 cases for article 328/a “Use of public functions for political or electoral activity” (20.2%),⁹ 26 cases for article 326 “Falsification of electoral materials and election results” (18.8%).¹⁰ During this period, there were no referrals or investigations upon initiative for the criminal acts envisaged by articles 330/a “Abandonment of duties by members of election commissions”¹¹ and article 332 “Abuse of military authority,”¹² envisaged in the Criminal Code. Comparing this trend to the data on criminal acts sent to court the most, we notice the same trend for three criminal acts, namely “Active corruption in elections,” “Falsification of electoral materials and election results,” and “Violation of secrecy of vote;” meanwhile, for the criminal act of using the public function for political or electoral activity, the trend is different as it ranks among the criminal acts least sent to court.

b. For the local government elections of May 14, 2023

A similar trend for the category of referred criminal acts is noticed for the local government elections of May 14, 2023. Concretely, the general jurisdiction prosecution offices received 11 cases of electoral corruption and use of public functions for political or electoral activity. Unlike the previous trend, 4 cases refer to article 330 of the Criminal Code “Abandonment of duty by members of election commission,” 2 of which are cases referred together with other acts of electoral crimes, 3 cases for “Voting more than once or without being identified” article 327/a of the Criminal Code, while 1 case was referred each for article 329 “Threatening or violation of participants in elections,” 326 “Intentional damage to electoral materials.” For more information on this data, please see Annex 1 of this report.

2.2 Categories of denouncers

⁸ Amended by law no. 89/2017, dated 22.5.2017 and words removed by law no. 146/2020, dated 17.12.2020.

⁹ Amended by law no. 89/2017, dated 22.5.2017 and words removed in the last paragraph by law no. 146/2020, dated 17.12.2020.

¹⁰ 18 cases for article 329 “Threatening or violation of participants in elections,” 15 cases for article 327 “Violation of privacy of voting,” 12 cases for article 328/b “Passive corruption in elections,” 11 cases for article 326 “Obstruction of electoral subjects,” 10 cases for article 327/a “Voting more than once or without being identified,” 9 cases for article 326/a “Intentional damage to electoral materials,” 3 cases for article 330 “Obstruction of voters,” 1 case each for article 331 “Violation of the right to election,” article 331/a “Unlawful taking or use of identification documents,”¹⁰ and article 332/a “Abuse of police authority.”¹⁰

¹¹ Amended words by law no. 89/2017, dated 22.5.2017.

¹² Amended words by law no. 89/2017, dated 22.5.2017.

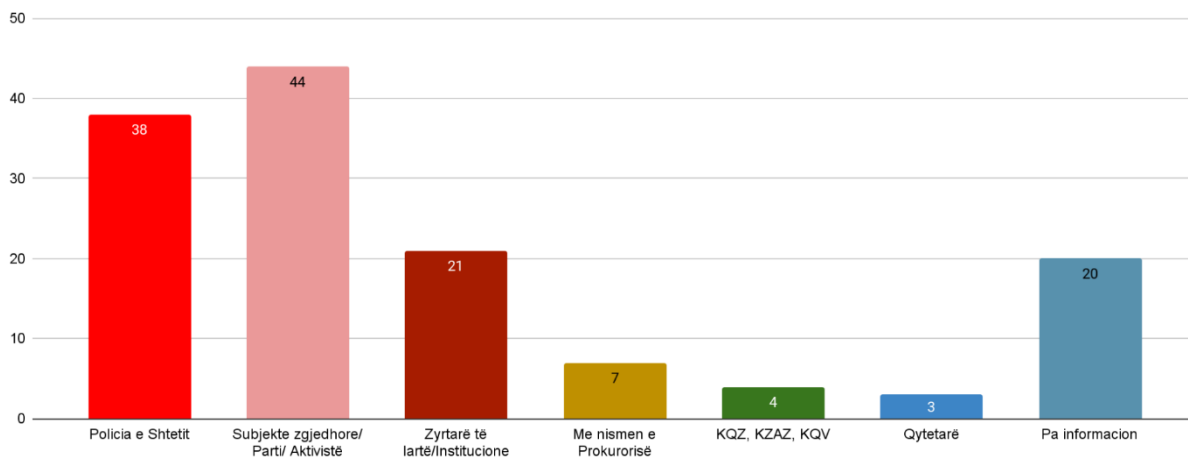
a. For the period 2016-2022

During this period, the prosecution offices were set into motion by these referring or denouncing subjects:

- In 44 cases, by representatives of electoral subjects or political parties or their activists;
- In 38 cases by State Police structures.
- In 21 cases by senior public officials or other state institutions, such as: President of the Republic, Prime Minister, Deputy Prime Minister, Ministers, Mayors.
- In 7 cases, it results that the investigation began upon the initiative of the general jurisdiction prosecution offices.
- Only in 4 cases, the referring body is the election administration body (CEC, CEAZ, and VCC).
- Only in 3 cases, citizens were those filing criminal referrals.

For the remainder of cases that there were criminal proceedings for (20 cases), information is lacking in the decisions regarding those making the denunciations or referrals to the prosecution offices.

Denoncues të krimeve zgjedhore 2016-2022



Përkthimi i tabelës:

Denouncers of electoral crimes 2016-2022

State Police

Electoral Subjects/ Parties/ Activists

Senior officials/institutions

Upon initiative of prosecution office

CEC, CEAZ, VCC

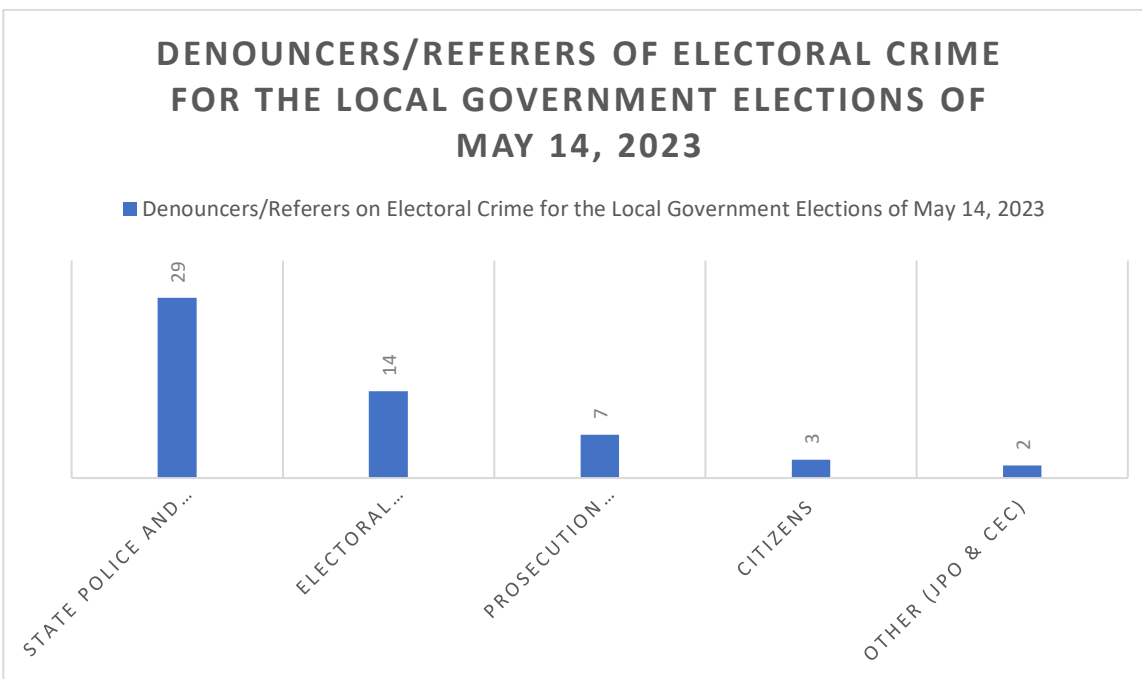
Citizens

No information

b. For the local government elections of May 14, 2023

Unlike the study on the years 2016-2022, the most frequent category of those filing referrals is that of structures of law enforcement agencies (state police, police oversight agency, internal control,

prison system), with 29 referrals, followed by representatives of electoral subjects or political parties or their activists with 14 cases, transfers between prosecution offices in 7 cases, denunciations by citizens in only three cases, and other institutions such as the CEC or judicial police service officers in two cases. For more information on this data, please see Annex 2 of this report. Below is a graphic presentation of the mentioned data:



The number highlighted may be different (more or less) but the information on the cases provided by the prosecution offices themselves does not allow for accurate evidencing and categorization. For instance, the Prosecution Office at the Tirana Judicial District has not provided statistical data categorized according to the type of denouncer/referrers.

3. Decisions to not start criminal proceedings

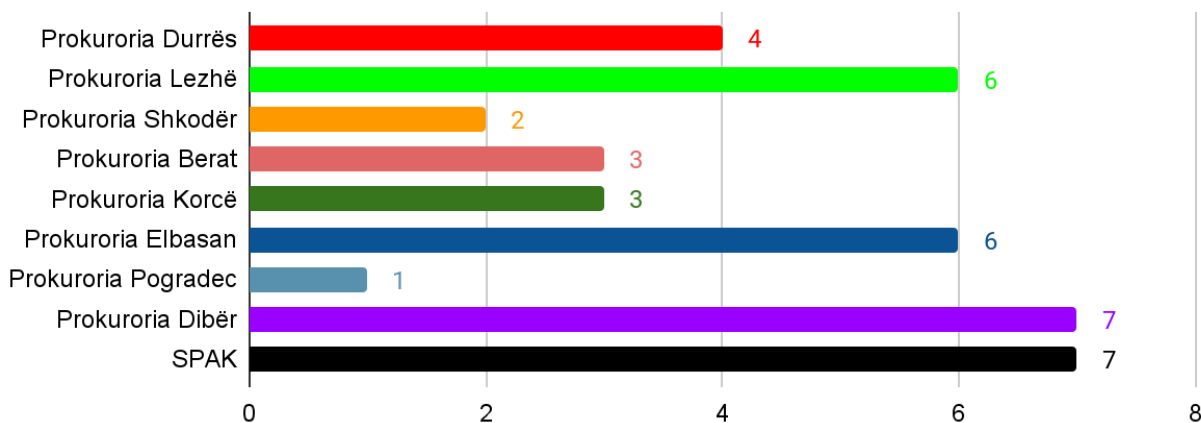
3.1 For the period 2016-2022

Out of the 218 cases referred or prosecuted in total by the prosecution offices, which have been taken under analysis in this study report for this period of time (2016-2022), it results that in about 37.15% or 81 cases, it was decided to not start criminal proceedings according to articles 290¹³ and 291¹⁴ of the Criminal Procedure Code. the subject of quality analysis is 39 of these decisions due to the failure of prosecution offices to send us the rest, such as the Prosecution Offices of the Judicial Districts in Tirana, Gjirokastër, and Kukës.

¹³ Words removed and amended in letter “c” paragraph 1 by law no. 35/2017, dated 30.3.2017.

¹⁴ Added paragraphs 3, 4, 5 and words in paragraph 1, amended paragraph 2, by law no. 35/2017, dated 30.3.2017; added paragraph pika 2/1, amended paragraph 3 and 5 by law no. 41/2021, dated 23.3.2021.

Vendosja në dispozicion e vendimeve të mosfillimit për KShH-në



Përkthimi i tabelës:

Provision to AHC of decisions to not start proceedings

Durrës Prosecution Office

Lezha Prosecution Office

Shkodër Prosecution Office

Berat Prosecution Office

Korça Prosecution Office

Elbasan Prosecution Office

Pogradec Prosecution Office

Dibër Prosecution Office

SPAK

The causes for which the Prosecution Offices decided to not start criminal proceedings are summarized into the following cases:

- a. In 30 cases, it results that the fact is not envisaged by the law as a criminal act or it has come out clearly that the fact does not exist according to article 290/1/ç of the Criminal Procedure Code;
- a. In 4 cases, there is no complaint by the victim or the victim withdrew the complaint according to article 290/1/c of the Civil Procedure Code;
- b. In 4 decisions, according to all other cases that the law envisages according to article 290/1/e of the Criminal Procedure Code;
- c. In 1 decision of the Prosecution Office at the Elbasan Judicial District Court it is not specified in the arguments what the legal cause for not starting criminal proceedings was.¹⁵

Further on, respect for the procedural deadline for the decision to not start criminal proceedings, until 15 days from the logging of the criminal referral, is of essential importance for the smooth conduct, efficacy, and speed of the investigation.

¹⁵ Decision of the Prosecution Office at the Elbasan Judicial District Court no. 1367/2017.

In concrete terms, it results that in 19 cases, the prosecution offices respected the procedural deadline for making the decisions to not start proceedings. Meanwhile, in 18 cases, this deadline was not respected and in 2 cases¹⁶ there is lack of information in order to conclude on respect for this deadline due to the lack of the determination in the decision of the full date of registration (only the year is included in the information).

Referring to cases of not started criminal proceedings for which the procedural legal deadline was not implemented, 2 decisions are from 2017 by the Lezha Judicial District Court Prosecution Office, linked with the parliamentary elections of the same year. In the first case,¹⁷ the decision to not start criminal proceedings was made two days late. This case was referred by a citizen who declared that he received a threatening phone call due to his participation in the electoral campaign. The prosecution office conducted verifications at telephony companies to identify the referred individual. Based on obtained statements, it results that the referred and the referrer are close to one another and the phone call was a kind of “joke” between them. In the second case,¹⁸ the decision to not start criminal proceedings was made 15 days late. This case was referred by the Ministry of Education and Sports against the Director of the Lezha Education Directory and his spouse for abuse of office and engagement in the electoral campaign during working hours. The referred individuals were questioned and stated that they did not participate in political rallies or electoral campaign events, within the hours of the lessons or outside it. AHC notes that preliminary verifications are not complete, because the entry and exit of the referred individuals in the relevant institutions could have been verified and also whether the hours and days of exist (if they existed) coincided with the dates of the rallies.

The Prosecution Office at the Berat Judicial District First Instance Court appears to have issued 3 decisions for not starting criminal proceedings in considerable surpassing of the legal procedural deadline from 2017. In the first case,¹⁹ the decision was made 5 months late. This case was referred by the Ministry of Justice against a former registrar of the Cadaster Office, who was suspected that in cooperation with a Member of Parliament of the Republic of Albania committed together the criminal act of “Use of public functions for political or electoral events.” The referral denounced that the MP, during an event of a religious and political character, handed out a certificate of ownership for the Muslim Community. AHC considers that a real criminal investigation should have begun on the case. We base this evaluation on the complexity of the case, the nature and time that preliminary verifications took for about 5 months, which is not justified in the conditions of a decision to not start proceedings that should be made within 2 weeks. In the second case,²⁰ the decision was made 22 days later. The referral was by a citizen who together with some friends of her disseminated leaflets promoting an electoral subject. She claimed that she was threatened by another citizen who is an activist of an opposition electoral subject. The decision was made by the Prosecution Office, based on the statements of individuals present at the site. There does not appear to have been other verifications such as the examination of cameras (if there were any) at the site of the incident. In the third case,²¹ the decision was made again with considerable delay, 5 months

¹⁶ One case by the Prosecution office at the Lezha First Instance Court and one case by SPAK.

¹⁷ Decision of the Prosecution office at the Lezha First Instance Court no. 647/2017.

¹⁸ Decision of the Prosecution office at the Lezha First Instance Court no. 644/2017.

¹⁹ Decision of the Prosecution office at the Berat First Instance Court no.1407/2017

²⁰ Decision of the Prosecution office at the Berat First Instance Court no. 1504/2017.

²¹ Decision of the Prosecution office at the Berat First Instance Court no. 1475/2017.

beyond the procedural deadline. This case was referred by the political subject, Socialist Party, against the administrator of the Kozare Administrative Unit, with the claim that he committed the criminal acts of “Laundering of the proceeds of criminal acts or of criminal activity” and “Active corruption in elections,” committed in collaboration with others. It was claimed that the referred citizen bought votes in exchange of the provision of cash, in favor of the electoral subject Socialist Movement for Integration. In this case as well, the decision-making to not start criminal proceedings was based solely on conducted verifications, obtaining statements by the individual aware of the circumstances of the commission of the criminal acts and individuals in their capacity as collaborators in the commission of the referred criminal acts.

Also, during 2017, which coincides with the parliamentary elections, the Prosecution Office at the Elbasan First Instance Court appears to have issued 6 decisions for not starting criminal proceedings, surpassing the 15-day deadline. In the first case,²² the decision was made almost one month late. The denunciation was referred by the Ministry of Health, conveying suspicions on the involvement of the Director of the Librazhd Hospital Service in the electoral campaign. the prosecution office sought additional information from the Ministry of Health and, after administering the materials received from it, concluded that the circumstances do not exist for starting criminal proceedings. AHC deems that the conducted verifications were not complete and comprehensive. The second²³ and third²⁴ cases were also referred respectively by the Ministry of Social Welfare and Youth and the Ministry of Education and Sports, on the involvement in the electoral campaign of officials working in their subordinate institutions. The decision-making to not start criminal proceedings regarding these cases were made with 22 days and one month of delay respectively. In these cases, too, we notice that there are no complete and comprehensive verifications. In the fourth case,²⁵ the decision to not start criminal proceedings was made with a delay of five days. This case was referred by the Chair of the Democratic Party, Cërrik Branch, against unidentified individuals for the commission of the criminal act “Active corruption in elections,” claiming that food items were disseminated and various promises were made to voters. the prosecution office conducted some verifications. Upon identification of the suspected perpetrators of the criminal act, the prosecution office based its decision to not start criminal proceedings mostly on the statements obtained from the witnesses and the referred individuals. If the criminal proceedings on this case would have begun, the prosecution office could have conducted complete and comprehensive investigations by making use of various sources of evidence, such as by sequestering CCTV footage, examining the items described in the referral, identifying and questioning other individuals who were or should have been aware of the incident. On the fifth case,²⁶ although we do not possess the full decision, we notice a delay of about one month. For the sixth case,²⁷ it results that the decision to not start the criminal proceedings was issued with a delay of ten days. The case was referred by the deputy chairperson of the CEAZ, after a debate with harsh tones had begun in a voting center between herself and a citizen, escalating to insults, name-calling and threats by the citizen. According to the referring individual, the criminal act of “obstruction of electoral subjects” was committed. The prosecution office was

²² Decision of the Prosecution office at the Elbasan First Instance Court no. 1502/2017.

²³ Decision of the Prosecution office at the Elbasan First Instance Court no. 1445/2017.

²⁴ Decision of the Prosecution office at the Elbasan First Instance Court no. 1366/2017.

²⁵ Decision of the Prosecution office at the Elbasan First Instance Court no. 1561/2017.

²⁶ Decision of the Prosecution office at the Elbasan First Instance Court no. 1367/2017.

²⁷ Decision of the Prosecution office at the Elbasan First Instance Court no. 1560/2017.

only able to secure the statements of some of the individuals who were present while the analyzed act does not indicate the conduct of any further verifications, such as sequestering the video footage of the voting center, or obtaining statements from the police officers present.

The Prosecution office at the Pogradec First Instance Court appears to only have made one decision to not start criminal proceedings, issued with a delay of three months from the legal deadline.²⁸ This case was referred by a citizen for the commission of the criminal act “Threatening or violation of participants in elections.” The decision does not coherently present the facts denounced and the verifications conducted by this prosecution office. The decision presents unclear phrases. It is important that, for the sake of transparency and credibility from the public in the prosecution body, these decisions contain arguments in a clear, understandable, and coherent manner, based on the law and on evidence (verifications in cases of not starting criminal proceedings).

The prosecution office at the Dibra First Instance Court issued six decisions for not starting criminal proceedings, beyond the 15-day deadline, most of which belong to the year 2017. In the first case,²⁹ the decision was made with a delay of one month. In the other five decisions,³⁰ delays varied from nine up to 20 days. The decisions were issued based on information provided in the referral, the verifications conducted in the verification phase of the referral, and the evaluation of the prosecutor and the resolution of the case.

In all of the above cases, when the decision was made to not start criminal proceedings, based on the letters provided by both the general jurisdiction prosecution offices and by the Special Prosecution Office, it does not appear that the right to file a complaint was exercised.

In conclusion, it is worth emphasizing that based on the analysis of these cases, in the overwhelming majority of them, there was no proactive verification conducted. Before concluding in the fairest way possible, the foundations for starting criminal proceedings or not, complete, comprehensive, and quick verifications are useful for preserving the integrity of the process, preventing influence on voters, preserving public trust in the electoral process, and in the justice institutions.

3.2 On the local government elections of May 14, 2023

Until October 16, 2023, it resulted that the Special Prosecution Office, on 6 referrals it received, decided to not start criminal proceedings. Based on the decisions to not start criminal proceedings that were analyzed, AHC deems that there could have been more complete verifications of all the data that result from the criminal referrals, before making a decision to not start the criminal proceedings. Nevertheless, based on an analysis of the procedural acts that AHC analyzed, compared to the practice of the prosecution offices of general jurisdiction, it results that the Special Prosecution Office undertakes a much higher number of procedural acts for the preliminary verification of referred materials, before deciding to not start criminal proceedings. We also judge that the quality of arguments in the decisions to not start criminal proceedings by the Special

²⁸ Decision of the Prosecution office at the Pogradec First Instance Court no. 157/2021.

²⁹ Decision of the Prosecution office at the Dibra First Instance Court no. 377/2017

³⁰ Decisions of the Prosecution office at the Dibra First Instance Court no. 436/2017, no. 441/2027, no. 443/2017, 444/2017 and no. 524/2019.

Prosecution Office is of much higher quality compared to a considerable part of the decision-making by prosecution offices of general jurisdiction, considering also the lack of more enhanced methods of preliminary investigations.

Further on, we are looking at the concrete analysis of some decisions of prosecution offices of general jurisdiction to not start criminal proceedings on cases related to the local government elections of May 14, 2023, which confirm the findings encountered earlier, in the analysis of decision-making of not starting such proceedings for the period 2016-2022. In these decisions too, AHC notes that the verifications conducted by the prosecution body are not complete, vis-à-vis the criminal fact that has been referred in the prosecution office. More concretely, the following cases were studied:

The Prosecution Office of the Tirana Judicial District decided to not start criminal proceedings for referral no. 5810 of 2023, by one of the candidates for mayor of Vora Municipality. Among other things, he claimed that certain vehicles, with license plates that he had identified and made available to the prosecution office, followed him all the time in all his moves in the context of the electoral campaign. The decision on not starting criminal proceedings argues that *“based on the verification of the vehicle license plate... it was not possible to identify the owner of this vehicle.”* Also, the referrer claimed about another vehicle, which was being used to conduct criminal activity in the field of elections, pointing to the place where it is parked, but the prosecution office, based on the contents of the examined act, does not appear to have conducted the minimal necessary verifications, such as for instance, the sequestration of security cameras that may be placed near businesses or other buildings, along the way (itinerary) covered by this candidate, to see whether such a fact was true, in order to then investigate the resulting facts. According to provisions in the Traffic Code as well as other by-laws,³¹ the registration of vehicles is a mandatory legal requirement for their owners and a condition for their free use. If the identification of the owner of the vehicle through the registration of data in public records were impossible, the prosecution body should *“conduct investigations and collect everything that serves the implementation of the criminal law,”* such as *“seeking and questioning individuals who are able to talk about the circumstances of the fact,”* pursuant to the duties assigned by the Criminal Procedure Code in article 30 and 94 of it. In AHC’s assessment, the conclusion reached by the Tirana Prosecution Office, relying on article 290/1 “ç” to not start the criminal proceedings,³² does not reflect the implementation of all procedural duties that the law assigns upon the prosecution office. In the conditions when after preliminary actions on the license plate of the vehicle, it was not possible to identify the owner of the vehicle, the prosecution office could not come out with the decision of not starting proceedings arguing that *“the fact does not exist.”*

In another instance, the Prosecution Office of the Tirana Judicial District Court decided to not start the criminal proceedings on the criminal referral of members of CEAZ no. 29, who reported that at VC 1537/06, there were suspicions of vote photographing, as a “click” was heard. The denounced citizen said that she pushed her phone by mistake. The prosecution office, after

³¹ Council of Ministers Decision no. 153, dated 07.04.2000 “On the approval of the Regulations for the Implementation of the Traffic Code of the Republic of Albania.”

³² Article 290 of the Criminal Procedure Code envisages that: Criminal proceedings may not begin when: ç) when the fact is not envisaged by the law as a criminal act or when it clearly comes out that the fact does not exist;

reviewing the referral material did not find elements of the criminal act “*Violation of the secrecy of voting*,” envisaged by article 327, paragraph one of the Criminal Code. In the context of verification actions, the prosecution body enabled the examination of the citizens phone, which indicated no such photo. Referring to the contents of the decision to not start criminal proceedings, we share the view that the “*Examination*” as a tool for seeking evidence is not effective in the manner applied in this case. Photos may be easily deleted from a mobile phone and therefore, it would be appropriate, considering the provisions of article 192, paragraph 2 of the Criminal Procedure Code,³³ that the prosecution office verify whether changes were made to the mobile phone, or deletion of film materials. Also, the prosecution body could have acted by conducting research or obtaining data through the engagement of an expert with special technical knowledge, depending on the possibilities allowed by article 178 of the Criminal Procedure Code on “*Expertise*.”³⁴ In order to verify in a complete manner whether elements of the criminal act “*Violation of the secrecy of voting*” in article 327 were committed, AHC is of the opinion that members of the VC at the time of the incident should have been questioned. Furthermore, in the context of the organization of the electoral process, every VC is equipped with a camera, which do not violate the secrecy of the voting, but keep a record of its organization. We think that the examination of camera footage could have helped a quality verification of the circumstances of the event.

4. Additional investigation of assets

4.1 For the period 2016 – 2021

For the period 2016-2022, with regard to the contents of the decisions/requests when there was criminal proceeding (which have been analyzed), except for one case investigated by SPAK, it results that in no other case did competent prosecution offices conduct real investigations into assets and implement measures envisaged in law no. 10192, dated 3.12.2009 “On the prevention and striking of organized crime, trafficking, corruption, and other crimes through preventive measures against assets” (amended), otherwise known as the “Anti-mafia” law. Furthermore, it does not appear that there were any measures of a coercive nature in the context of a criminal proceeding, such as preventive sequestration envisaged by article 274 of the Criminal Procedure Code and article 36 of the Criminal Code. These measures would a more complete and comprehensive investigation on individuals suspected of committing active or passive electoral corruption, which have an unjustified economic level as a result of suspected criminal activity.

5. Length and quality of investigations

5.1 For the period 2016-2022

Referring to the contents of the 137 decisions on which criminal proceedings were begun on citizens suspected of committing the criminal act, it was noticed that in 51 decisions, this deadline

³³ Article 198, paragraph 2 of the Criminal Procedure Code envisages that: “When the criminal act has not left traces or material consequences or when these have disappeared, have been lost, have been changed or moved, the prosecution body describes the situation and, when possible, verifies how they were before the changes, and takes measures in order to specify the manner, time, and causes of changes that may have occurred.”

³⁴ Article 178, paragraph 1 of the Criminal Procedure Code envisages that: “Expertise is allowed when it is necessary to develop research or obtain data or evaluations that require special technical, scientific, or cultural knowledge.”

varies from 2 days up to 4 years and 3 months. In the rest of the decisions, no conclusions may be drawn about the deadlines of investigations because the necessary information is missing. It is noticeable that in 17.5% of the cases, there are criminal proceedings without perpetrators, i.e., when the prosecution office has not been able to carry out the identification of the perpetrator during the investigations that it has conducted.

The prosecution offices have used special investigation methods only in 11.9% of the cases or for 26 criminal cases. The most used method of special investigation is the use of wiretapping the individual's telephone communications. The least used methods of special investigation are envisaged by article 221, paragraph 2 of the Criminal Procedure Code, which envisages the secret photographic, filming, or video recording of individuals, in public places as well as the use of geolocation tracking equipment.

The prosecution offices that investigated the most by using special investigation methods are the Special Prosecution Office against Corruption and Organized Crime (in about half the decisions that it made available) and the Prosecution Office of the Elbasan First Instance Court, in 1/3 of the decisions that it made available. For the other prosecution offices, the use of special technique investigation methods appears to be at low levels, which indicates failure to implement the instruction of the General Prosecutor from 2019 (updated) for the investigation of electoral crimes. However, with regard to this finding of AHC, it is worth emphasizing that criminal offenses investigated by prosecution offices of general jurisdiction in the field of elections, in general, do not meet the legal criteria of the level of punishment required as a condition for the application of these special methods during their investigation, according to paragraph 1 and 2 of article 222 of the Criminal Procedure Code.

Typical evidence secured by the prosecution body (during preliminary verifications or preliminary investigations) are the statements of individuals under investigation or those who have knowledge about the event and the material evidence sequestered by police or during the criminal proceedings,³⁵ secured ambient wiretaps. AHC notes that in some of the cases taken under review, there has been no request for expertise by experts of the field although, in our assessment, it has been necessary to conduct research or obtain data or evaluations that require special technical and scientific knowledge, which would help toward the process of proving the criminal fact. Especially for two of the criminal acts that have received a high number of denunciations or referrals, such as active corruption in elections and the use of public functions for political or electoral activity, we notice poor investigative dynamics, which leads to questions about respect for the standard of a complete, effective, and objective investigation.

Furthermore, in general, it is disturbing to see the lack of a proactive role of the prosecution office in the exercise of its duties in accordance with article 24/1 onwards of the Criminal Procedure Code, because based on the information reflected in the decisions that are the subject of this study that the prosecution office has guided and controlled preliminary investigations and the activity of judicial police. A considerable part of investigative actions has been delegated to judicial police.

In the period 2016-2022, we notice the “ping-pong” effect of the transfer of cases from one prosecution office to another, often leading also to unjustifiable delays in the process of criminal

³⁵ Documents secured from correspondence with institutions, amounts of cash, mobile phones, vehicles.

prosecution. This finding is stark in the case study of the Prosecution Office of the Dibra Judicial District. Concretely, on 09.09.2016, the Prosecution Office at the First Instance Serious Crimes Court registered the criminal proceeding,³⁶ on the basis of a denunciation by the Chairman of the Parliamentary Group of the Democratic Party of Albania.³⁷ The denounced citizens at the time held leading public positions in local institutions, central institutions of the Executive or their subordinate institutions, or political ones. This prosecution office, after two years of preliminary investigations, registered only in September of 2018 in the register for the announcement of criminal acts the criminal proceedings and the names of 7 individuals under investigation, from the 19 names of citizens who had been denounced. One year later, in July of 2019, this Prosecution Office changed the legal qualification of the criminal act from “structured criminal group” to “simple cooperation,” thus declaring material lack of competence for the further investigation of the criminal proceedings and the passing of acts for material competence to the Prosecution Office at the Dibra First Instance Court. In total, the Serious Crimes Prosecution Office needed about three years since the time of the criminal referral to conclude that we are not in front of one of the forms of organized crime, but in the context of simple cooperation. As is known, the deadline of investigations is long for cases of a complex nature, especially when there is an investigation into organized crime. The investigation of ordinary forms of cooperation in such deadlines is objectively unjustified.

Following the administration of the acts of this criminal proceeding, the Prosecution Office at the Dibra First Instance Court, not agreeing with the decision of the Serious Crimes Prosecution Office, presented to the General Prosecution Office in Tirana a request to resolve the disagreement over material competences. On July 31, 2019, the General Prosecutor tasked the Prosecution Office at the Dibra First Instance Court as the prosecution office with competence for the preliminary investigation of the criminal proceedings. This prosecution office, after initially registering a criminal referral, continued further with the registration of criminal proceedings on 04.09.2019, against 7 citizens. Furthermore, this prosecution office, in the process of investigations, about six months since the start of the proceedings, upon order of 13.01.2020, once again changed the legal qualification regarding the form of the commission of the criminal acts, attributed to the individuals under investigation, from “simple cooperation” to “structured criminal group.” Following the attribution of this criminal act to the individuals under investigation, this prosecution office decided to declare material lack of competence and the transfer of the acts to the Special Prosecution Office for material competence. Within five days from the transfer of the acts, the Special Prosecution Office decided to resend the acts for material and territorial competence to the Dibra Prosecution Office. The Special Prosecution Office adhered to the same interpretation and arguments provided by the Prosecution Office at the Serious Crimes Court of First Instance, and the General Prosecutor. It is worth stressing that unlike the Serious Crimes Prosecution Office, the Special Prosecution Office has the material competence for the investigation of high-level officials (article 75/a, letters “c” and “ç” of the Criminal Code), including part of the citizens who had been denounced or wiretapped. After the case was resent for competence by the Special Prosecution Office to the Prosecution Office of the Dibra Judicial

³⁶ No.184, for the criminal acts “Structured criminal group,” “Provision of rewards and promises” and “Threatening of violation of participants in elections,” sanctioned in the criminal legislation of the time (before punishment was harshened and new actions and inaction were criminalized for electoral crimes in 2017)

³⁷ Some criminal acts have been committed that have deformed the will of voters and the election results, in favor of the candidate running on the Socialist Party ticket, in the mayoral by-elections of Dibra Municipality in September 11, 2016.

District, it is notable that the case prosecutor recused herself from further investigation of the criminal proceedings and the case continued to be investigated by one of her colleagues. After this change, the case prosecutor ordered the judicial police of the Dibra Prosecution Office to conduct further investigative actions, but none of these actions and the data obtained by them do not appear reflected in the request for sending the case to court. It results that the only data mentioned as a result of investigative actions in the request for sending the case to court are the wiretaps for a 15-day period (during September 9 – 24, 2016) of telephone communications that were realized immediately after the possession of the criminal referral, by the Serious Crimes Prosecution Office, authorized by this Prosecution Office, and approved by the court. there appear to have been no ambient wiretaps that could also contribute to completing the investigations and the provability of the facts.

At the end of a long investigation ordeal of about four years and three months, the Prosecution Office of the Dibra Judicial District concluded that the criminal act envisaged in article 328/1 of the Criminal Code of the time,³⁸ that was committed in collaboration with others, given that it is a criminal offense, has had an expiry of the statute of limitations due to the passing of the deadlines. The maximal deadline for exercising prosecution related to that criminal act has passed, reaching the 3-year deadline. this conclusion is one of the most problematic aspects of the impunity of electoral crimes, as a result of the surpassing and dragging out of deadlines, due to the failure to exercise prosecution on time.³⁹

5.2 For the election of local government bodies on May 14, 2023

Based on the study of the procedural acts of the Special Prosecution Office and the General Jurisdiction Prosecution Offices, some quality cases of investigations of electoral crimes that are analyzed in the following section are also identified. Nevertheless, based on the study of acts for sending to court the case on electoral crimes linked with the local government elections of May 2023, AHC has noticed that the prosecution offices of general jurisdiction and the Special Prosecution Office, did not have a harmonized standard for starting criminal proceedings and investigations. Also, the report has stressed that the prosecution offices have not always pursued the standard of “proactive” investigations for these criminal acts.

Compared to the prosecution offices of general jurisdiction, based on an analysis of official information and the procedural acts that have been analyzed, we appreciate the fact that the Special Prosecution Office has demonstrated a faster pace in concluding preliminary investigations on criminal acts in the field of elections that are within its scope of material competence⁴⁰ or due to the characteristics of the special

³⁸ Article 328 of the Criminal Code, “Provision of rewards and promises” (Amended by law no. 23/2012, dated 1.3.2012, article 50), envisaged in its first paragraph that the offering or giving of cash or material goods, making promises for jobs or other favors in any form, in order to obtain the signature for the presentation of the candidate, in order to vote in a certain way or to participate or not in elections, represents a criminal offense and is punishable by imprisonment from six months up to two years.

³⁹ Furthermore, this Prosecution Office has decided to send to cour the case of citizen R.A. (chief of the Dibra police commissariat), citizen D.Gj. (Director of the Dibra Education Office), and citizen N.M. (Administrator of the Tomin Administrative Unit, in Dibra, accused of removing citizens from the economic aid scheme list as they did not support the candidate of the subject ASHE with the charge of committing the criminal act envisaged by article 248 (abuse of office) of the Criminal Code, and citizen H.H., accused of the the criminal act of “Threatening or violation of participants in elections,” envisaged by article 329/3 of the Criminal Code, in force at the time.

⁴⁰ Concretely, article 328, “*Active corruption in elections*” and article 328/b “*Passive corruption in elections.*”

subject. Unlike them, the Special Prosecution Office has concluded investigations for several proceedings and has sought the sending of the case to court.

On the other hand, AHC notices a different pace of SPAK in the conduct of preliminary investigations, in different criminal proceedings. In one case, the criminal proceedings of the Special Prosecution Office for the criminal act “*Active corruption in elections*” were conducted within a period of two months and 23 days,⁴¹ while in similar cases, for the same offense (the local by-election of 2022), it took about one year and seven months to conclude the investigations.⁴² In both cases, aside from the fact that the criminal act for which the proceeding is being conducted is the same, the defendants too have the same features, as they were candidates for mayors at the time when it is suspected that the criminal act was committed. However, based on methodological limitations that were mentioned earlier, this finding by AHC is interdependent on the documentation (acts) that are the subject of the study.

AHC notes that there have been delays in the passing of procedural acts within a fast time by the prosecution offices of general jurisdiction toward the Special Prosecution Office, as the competent body for investigating articles 328 and 328/b of the Criminal Code. Regarding one of the case studies under analysis,⁴³ studied with a comparative approach with other similar practices, when the passing of acts toward the Special Prosecution Office or from it to the prosecution offices of general jurisdiction, has occurred before a decision was made to start the criminal proceeding, AHC considers that due to the material competence envisaged by article 75/a of the Criminal Procedure Code, the Prosecution Office of the Dibra Judicial District should have passed the acts to the Special Prosecution Office as the sole specialized body for investigating electoral corruption before it passed a decision to not start the criminal proceeding. This conclusion is also based on the interpretation of the provision made in article 83 of the Criminal Procedure Code.

6. Some Positive Practices

6.1 For the period 2016 – 2022

The Prosecution Office at the Dibra Court of First Instance, in a decision of 2017 to not start criminal proceedings,⁴⁴ in a case referred by the Ministry of Education and Sports on the Responsible Official of the Bulqizë Education Office suspected of involvement in political activity during the working hours, appears to have conducted a series of verifications, after administering

⁴¹ The proceeding was initially registered by the Prosecution Office at the First Instance Court of General Jurisdiction in Vlora, on 08.05.2023 and the request to send the case to the Special Prosecution Office is dated 31.07.2023.

⁴² For criminal proceeding no. 57 of 2022, the Special Prosecution Office notified officially on 02.11.2023 that it had asked to send the case to court.

⁴³ The Dibra Prosecution Office decided to not start criminal proceedings on criminal referral no. 207, dated 13.05.2023.

⁴⁴ Decision of the Prosecution Office at the Dibra First Instance Court no. 377/2017.

photographs, taking statements, asking individuals with knowledge of the circumstances of the case, obtained information from local police structures, etc.

The Prosecution Office of the Durrës First Instance Court, in its request to send the case to court in 2020⁴⁵ reflects diverse resources of evidence⁴⁶ that have resulted from investigations as well as the facts emerging from them. This request represents a positive example toward clarity, structure, and respect for their composing elements, according to article 331/3 of the Criminal Procedure Code. The case was sent to this prosecution office due to lack of material competence by SPAK, for the criminal act “Voting more than once or without being identified,” against suspected individuals, 22 citizens, 19 of which are commission members and are suspected of allowing voting more than once. A considerable part of the investigations regarding this case was carried out by SPAK, before it was concluded that this body did not have the material competence for it.

6.2 For the elections for local government bodies of May 14, 2023

Regarding the elections for local government bodies of May 14, 2023, it results that the Local Tirana Police Directory and then the Special Prosecution Office were set into motion and registered a criminal proceeding after the publication of the above case in the portal of Tema newspaper. This is a positive model of reacting ex officio by the law enforcement bodies, concretely the State Police and then the Special Prosecution Office, an indicator of fast reaction on violations of criminal legislation in the field of elections, which have been made public in the media. In another case, which is viewed by AHC as having some similar elements to this positive practice, is linked with publications in the media that the Mayor of Roskovec Municipality threatened to expel from work the cleaning maid of Suk village because she participated in an opposition rally. Although the case was reported in the media, law enforcement bodies did not act upon their own initiative to register a criminal proceeding.⁴⁷

The Prosecution Office of the Gjirokastra Judicial District informed AHC that it had registered criminal proceeding no. 119, dated 17.05.2023, on the criminal offenses of “*Active corruption in elections*” and “*Use of public functions for political or electoral activity.*” Referring to accompanying documentation that was sent by this prosecution office, it results that it sent within two days, for competence in this proceeding, to the Special Prosecution Office against Corruption and Organized Crime. AHC appreciates the passing of procedural acts toward the Special Prosecution Office within a fast time, as an essential standard that serves effective and specialized investigations by this prosecution office, as the competent body.

⁴⁵ Decision no. 1505/2020

⁴⁶ Based on material evidence, the statements of indicted citizens, ensured through questioning, the examination of documents and data on the TIMS system, the wiretapping of telephone calls, ambient wiretaps, and observations in public premises and sequestration of the voter lists.

⁴⁷ See paragraph 3 of article 328/a “Use of public function for political or electoral activity:” “*The forcing or asking of citizens, by an employee that carries out a state duty, against their will or under the threat of the use of administrative or disciplinary measures, to participate in electoral events of an electoral subject, to participate or not in elections, to support or not a political party or a candidate in elections, or to delay in a certain way, represents a criminal act and is punishable by imprisonment of one up to three years.*”

The Prosecution Office of the Tirana Judicial District decided to not start criminal proceedings for the referral registered on 11.05.2023, referring to article 329 of the Criminal Code, *“Threatening or violation of participants in elections.”* Citizen E.Z. filed a referral that the candidate for Mayor of Vora Municipality called and told him: *“Why do you give out money to buy votes..., I’ll take you to SPAK and to prison.”* We consider that the Tirana Prosecution Office analyzed correctly the circumstances provided in the criminal referral, arguing that: *“The warning to make a criminal referral to a public institution does not contain elements of threats.”*

AHC considers cases of quality verifications and correct qualification of criminal acts such as the decision to not start criminal proceedings by the Elbasan Prosecution Office on the referral on 11.05.2023. Citizen D.A filed a referral against citizens S.A and K.A. for the criminal act *“Threats,”* envisaged by article 84 of the Criminal Code. All the above citizens, involved in the conflict, said that they were engaged in support of the same electoral subject. The motive for the emergence of the conflict among them was the disagreement regarding volunteer tasks that they carried out in the context of political engagement. The Elbasan Prosecution Office, at the conclusion of the preliminary evaluation of the referral concluded correctly, deciding to not start criminal proceedings for the criminal act of *“Threats,”* envisaged by article 84 of the Criminal Code. With a correct evaluation of the circumstances in which the referred incident occurred, the case prosecutor found elements of the criminal offense *“Insults,”* envisaged by article 119 of the Criminal Code.

7. Recommendations

a. Given that citizens are not yet sufficiently sensitized about the importance of denouncing criminal acts in the field of elections and, as a result, the number of their denunciations is almost insignificant, there needs to be continued awareness raising for them to boost civic responsibility and reaction regarding these criminal acts. A series of stakeholders may be engaged to sensitize them, separately or jointly, such as the Central Election Commission that takes care of voter education, civil society organizations, law enforcement bodies (police), and the prosecution office. part of encouraging citizens to denounce such acts is the sharing of positive examples of the investigation and adjudication of these criminal acts, in respect of the anonymity of the punished citizens.

b. AHC suggests to the Special Prosecution Office and the Prosecution Offices of general jurisdiction to devote added attention to facts made public in the media about incidents that contain elements of violations of a criminal nature in the field of elections, before, during, and after the electoral process, in order to immediately start verification and, if necessary, investigations ex officio.

c. AHC suggests to State Police structures and other law enforcement bodies to be more active in identifying criminal offenses in the field of elections, acting upon their own initiative. It is suggested that these structures devote increased attention to the process of obtaining knowledge without distinction, for all criminal acts in the field of elections, avoiding to be set into motion for special cases that create the perception of actions of a selective nature among the public.

d. AHC recommends to the Special Prosecution Office, the Prosecution Offices of general jurisdiction, the structures of judicial police and State Police, that for the sake of the process of obtaining knowledge about criminal acts upon their own initiative, to extend their activity also to the period before the official start of the electoral campaign. Although according to provisions in article 77 of the Electoral Code, “The electoral campaign begins 30 days before the date of elections and ends 24 hours before the date of elections,” *de facto*, it is known that it starts much earlier.

e. We recommend to the Central Election Commission that in the context of exercising its competences and the administrative investigations it conducts for violations of electoral legislation, to make referrals immediately when it finds elements of criminal acts in the field of elections to the prosecution offices of general jurisdiction (when they are within their material and territorial competences). The passing of acts by the CEC to these prosecution offices, in faster forms such as electronically helps the competent prosecution offices of general jurisdiction, to conduct a fast and effective investigation.

f. The prosecution offices, in keeping with their field of material competence, should make serious efforts (those of general jurisdiction) and further efforts (the Special Prosecution Office) to conduct complete, effective investigations within a reasonable time, for criminal acts in the field of elections. In this regard, AHC considers that further efforts are needed so that the suspected perpetrators of electoral crimes, in cases that have similarities, to be investigated by reflecting the best practices and standards of respecting the law and equality before it.

g. AHC considers that the instruction of 2005 (amended in 2006 and 2012) of the General Prosecutor to establish norms for the registration and announcement of the criminal act and the registration of the name of the person that the criminal act is attributed to, needs to be reviewed and harmonized with the changes that the Criminal Procedure Code has undergone (the most important in 2017). AHC considers that the verifications that the prosecution office should carry out before it makes decision to not start criminal proceedings should not be minimal, but necessary, complete, and sufficient and we need to suggest that this should be reflected in the contents of the instructions.

h. Appreciating the role of the General Prosecutor, AHC suggests that he monitor in an increased manner the instruction of 2019 (updated in 2021) on the administrative and procedural measures in Prosecution Offices of General Jurisdiction in the period before and after the elections. If disrespect of this instruction is found, for disciplinary violations, we suggest that the High Justice Inspector be informed in order to consider whether the circumstances for the start of criminal proceedings exist.

i. AHC recommends the approval of instructions to establish norms for the process of registration of the announcement of the criminal act and the registration of the individual that the criminal act is attributed to also by the head of the Special Prosecution Office, seeing it interconnected with the regulatory aspects of the exercise of the functions of the prosecution office (article 15, paragraph 2, law no. 95/2016 “On the organization and functioning of institutions to fight corruption and organized crime”).

j. AHC recommends to prosecution offices to not create “artificial” delays in the registration of the announcement of the criminal act and the name of the person that the criminal act is attributed to.

k. AHC suggests to the Assembly of the Republic of Albania to review article 221, paragraph 1 and 2 of the Criminal Procedure Code, to allow the use of special techniques of investigation envisaged in these two provisions, for all criminal acts that affect free elections and the democratic system of elections, envisaged in chapter X of the Criminal Code, despite the minimum of maximum of their sentence and the subjective aspects of the commission of these criminal acts in concrete cases.

l. AHC suggests to the Assembly of the Republic of Albania to allocate adequate financial resources for the prosecution system in order to ensure adequate human resources (mainly judicial police officers or other support employees) as well as logistical resources, to fulfill their functional needs to respond to the dynamics and specifics of the investigation of criminal acts in the field of elections. AHC also considers that there needs to be an allocation of necessary human and logistical resources for the prosecution body so that they can follow and oversee social networks regarding public officials or any other individual using social networks for the commission of criminal acts in the field of elections.

m. AHC suggests the quality implementation of the law on the right to information by the prosecution offices, demonstrating a high level of interaction with stakeholders of the media and civil society. Such an approach, within the space allowed by “investigative secrets,” is viewed by AHC as an opportunity for an open approach also to the broader public.

n. AHC considers that it is necessary that the General Prosecution Office and the Special Prosecution Office to maintain and update in a unified manner the data on electoral crimes and related criminal acts, during recent years, separately for each electoral year, making it possible to provide information in real time on the number of criminal proceedings that have not been started, those that have been started, decision-making/requests to drop the case/charges, decision-making to send the cases to court, continued decision-making to complete investigations, when they are ordered by the relevant body (judge of the preliminary hearing, etc.).

AHC suggests the increase of the level of transparency during the phase of preliminary investigations by prosecution bodies, without violating the secrecy of investigations, for important cases linked with the investigation of criminal acts for which there is increased public interest.

o. AHC suggests for the Prosecution Offices of general jurisdiction that the decisions to not start criminal proceedings be argued and in full support of articles 290 and 291 of the Criminal Procedure Code. The same recommendation applies to arguing in a clear and understandable manner the requests for dropping the case or for sending the case to court.

In the sense of the transparency that these decisions should provide for the public and the victim, they should also contain information about their number and date, the way in which the prosecution offices were set into motion in the context of such decision-making. If there is a request to drop the case or send the case to court, they also need to reflect among other things the date of

registration of the announcement of the criminal act and the name of the person the criminal act is attributed to in the register, a clear summary of all verifications and investigations conducted and the facts resulting from them.

Furthermore, we consider that it is necessary that the descriptive and arguments part of these decisions is improved for the sake of coherence, clarity, the most complete possible reflection of the dynamics of the verification and investigation and conclusions regarding the decision-making according to its subject.

p. AHC appreciates the positive practice that the prosecution offices of general jurisdiction have created for the training they conduct with judicial police officers (at state police structures) that they have in the territory they exercise their competences in. Nevertheless, we consider that such training should be realized earlier in time, at least a few months before the elections. Furthermore, we recommend the creation of positive practices for the conduct of regular meetings between prosecution offices and state police structures that are tasked with cases of criminal acts in the field of elections, in order to ensure better and systematic coordination among them.

q. At the same time, AHC suggests for the General Directory of State Police and the regional directories to organize continued training for State Police officers who have the competences of judicial police and who engage in operational activity for criminal acts in the field of elections. This would guarantee the increased performance of State Police officers in fulfilling their functional duties, guaranteed by the law. AHC considers that such training may be organized by the Security Academy.

r. Based on the specifics demonstrated by criminal acts in the field of elections, AHC suggests that the special sections at the Prosecution Offices of general jurisdiction are established earlier (e.g., at least six months before the day of elections). Furthermore, it is necessary that judicial police officers who carry out operational activity in the field and are placed with state police structures be under the direct guidance of case prosecutors assigned at these sections established in the prosecution offices.

s. AHC recommends to the Special Prosecution Office, the Prosecution Offices of general jurisdiction, and State Police Structures to strengthen disciplinary and accountability mechanisms for their employees, as a condition to enable higher effectiveness in realizing verifications and relevant investigations for criminal acts in the field of elections.

ANNEX I

Table of data categorized by criminal acts and prosecution offices, on cases referred for electoral crimes for the local government elections of May 14, 2023

	Prosecution Office	Article 329	Articles 328 and 328/a of the Criminal Code	Article 327/327a of the Criminal Code	Article 326 of the Criminal Code⁴⁸	Article 330 of the Criminal Code	Articles 311, 312a of the Criminal Code
1	Durrës		2+ 2	1 + 2		2	
2	Elbasan	1 (and 326/a, 22 of the Criminal Code)	1 (and 248 and 329 of the Criminal Code)			1 (and 331/a of the Criminal Code) 1 (and 331/a and 328/b of the Criminal Code)	1
3	Shkodër		2				
4	Kukës		2 (while 3 others are for other criminal acts)				
5	Vlorë		1				
6	Korçë				1		
7	Gjirokastër		1				
	Total	1	11	3	1	4	1

⁴⁸ Falsification of electoral materials

ANNEX II

Table of data categorized by denouncers/referrers for electoral crimes for the local government elections of May 14, 2023

	Denunciations at Prosecution Offices of General Jurisdiction	Referred by State Police or other law enforcement authorities	Criminal referrals by citizens (article 283 of the Criminal Procedure Code)	SPAK	Political Subjects	Other
1	Tiranë					
2	Durrës	2 Kavajë Police Commissariat, 2 Durrës Police Commissariat			4 (not specified)	1 (CEC)
3	Elbasan	1 POA, 2 Local Police Directory 2 Police Commissariat 1 ICS in prisons		1		
4	Berat	2 Local Police Directory 1 Police Commissariat				1 (JPO of Prosecution Office)
5	Dibër		2		1 (Together We Win)	
6	Kukës				1 (DP) 4 referrals of individuals linked with political forces	
7	Vlorë	1 Vlora Police Directory	1		1 (DP)	
8	Korçë				1 (unspecified)	
Total	35	14	3	1	12	2

Prosecution Office	Referred by Police	Referred by Prosecution Office of Judicial Districts	Referrals by citizens (article 283 of the Criminal Procedure Code)	Political Subjects
SPAK	15 Local Police Directories	6	None	2 (DP)