

# MONITORING REPORT

## No. 7

on restrictions of  
the use of admin-  
istrative resources  
during electoral  
campaign

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This report focuses mainly on monitoring the functioning of the denunciation mechanism regarding violations related to the use of public resources and the organization of the election campaign of April 25, 2021.

## Legal practice for reporting violations

Information technology and the opportunities provided for transparency and connection of citizens with institutions, were given an important place in the approved amendments to the Electoral Code. In addition to the piloting of voting and electronic counting, another technological innovation in the April 25 elections were even the denunciation platforms to the CEC regarding electoral crimes and violations of restrictions related to the election campaign.

Namely, 4 months before the elections, on December 26, 2020, the **interface / platform of prohibited activities** was set up at the CEC <https://aktivitete.kqz.gov.al>, which offered the political parties, NGOs and citizens the opportunity to denounce the violations of the restrictions provided for in the [Decision no.9/2020](#) on the use of state resources during the election period.

On March 9, the CEC Regulatory Commission approved even the draft decision “On the procedures for the operation and maintenance of the **denunciation portal**”, in the framework of the new mechanisms of the Electoral Code, which aim at strengthening the role of the CEC as a body that proactively investigates denunciations against electoral subjects, political parties and public administration bodies regarding the use of state resources and more. The platforme <http://kqz.gov.al/kallzo> became functional on the same day as the CEC website.

The involvement of the public in the denunciation of electoral breaches through these two platforms was formalized through the amendments approved by the Albanian Parliament on December 17, 2020, in Law No. 60/2016,

“On whistleblowing and protection of whistleblowers”. The legal amendments vested to the CEC the power of receiving and handling through administrative investigation, whistleblowing in the field of active and/or passive election corruption. At the end of the administrative investigation, the CEC was charged by this law to impose administrative measures / fines for violations that do not constitute a criminal offense.

In this course, the Institution of the President of the Republic provided on the official website an electronic platform for receiving complaints from citizens. The [Denunciate electoral crimes](#) section became functional on March 25, in parallel with the start of the election campaign and received various denunciations that were officially reported by the President to the CEC and to the Special Prosecution against Corruption and Organized Crime (SPAK).

## Decision-making on denunciations

The promotion of these digital platforms led to a satisfactory number of denunciations from various actors, mainly from political parties, which were also electoral entities in opposition, but also civil society organizations and various citizens.

According to the official CEC data, the functioning of the two portals, that of the CEC, as well as the platform of the Presidency, made possible the registration of **135 denunciations** regarding the use of state resources during the election period, as well as denunciations on other election-related violations. These data belong to the period December 26, 2020 - September 8, 2021.

**More specifically, these denunciations were made by:**

- 68** denunciations by political parties (36 by SMI - 32 by DP)
- 28** denunciations submitted by the website of the Institution of the President of the Republic
- 21** denunciations from NGOs
- 18** denunciations from citizens and anonymous whistleblowers
- 1** denunciation from one institution

**The object of these denonciations are mainly grouped in the following categories:**

DENUNCIATIONS	OBJECT
<b>22</b>	Use of electoral offices and propaganda materials
<b>21</b>	Promotion of investments/Prohibited activity
<b>14</b>	Appointments/dismissals /transfers of employees
<b>14</b>	Participation of public officials at the campaign
<b>14</b>	Distribution of property ownership documents and legalizations
<b>9</b>	Use of public resources/assets
<b>8</b>	Illegal electoral meetings
<b>7</b>	Vote buying-selling
<b>6</b>	Use of Public contracts/Assets for electoral purposes
<b>5</b>	Misuse of personal data
<b>5</b>	Failure of institutions to comply with the oblogations
<b>3</b>	Mandatory participation of students/teachers in the electoral campaign
<b>2</b>	Mandatory participation of public officials in the electoral campaign
<b>2</b>	Deprivation of immigrants' right to vote
<b>1</b>	Forced voting
<b>1</b>	Misuses of funds ( Earthquake funds at Durrës municipality)
<b>1</b>	Electoral fraud

Taking into consideration the official data of CEC, it results that the State Election Commissioner has examined and declared his decision **on almost all these denunciations (132 out of 135 cases)**, imposing:

- 4** administrative measures;
- 16** notifications for taking of measures;
- 59** administrative investigations, in which no violations were found;
- 28** cases of decisions not to initiate proceedings;
- 14** declarations of incompetence;
- 11** addressed by official correspondence.

It turns out that only 7 of these decisions have been appealed by their complainants to the Complaints and Sanctions Commission (CSC) for reconsideration, among which only 1 case was denounced by a political party (SMI). **The reasons for such a small number of complaints against the decisions of the State Election Commissioner need to be further investigated by political entities and denouncers.**

Regarding the main case pursued by the SMI in some bodies of the judiciary, that of the **administrative proceedings against the mayor of Tirana, Mr. Erion Veliaj** for the promotion of buildings that were rebuilt after the earthquake, a decision by the Administrative Court of Tirana on July 7, 2021 was taken. Although it was delayed, about 4 months after the registration of the case and over 2 months after the elections, this court decided to overturn the controversial decision of the CSC and maintain in force the two fines imposed by the State Commissioner for 10 cases denounced as promotions in the pre-election period.

At the time when this report was coming to an end, the CEC extended the investigation deadline for the denunciation of the Albanian Institute of Science (AIS) organization against the Council of Ministers for the misuse of public

resources in the Municipality of Durrës, related to the earthquake reconstruction funds. DP's denunciation against the director of the cabinet in the municipality of Kukës, regarding the accusation of using the public officials in the campaign, remains under administrative investigation for "incomplete evidences".

*The full list of denunciations and relevant decisions can be found at this link: <https://monitorimi.asp.al/raporte/denoncimet-vendimmarrja-kqz-2021.pdf>*

## Conclusions and Recommendations

The Electoral Code and amendments to the Law No. [Law No. 150/2020](#) regarding the law "On whistleblowing and protection of whistleblowers" aimed to include the CEC as an investigative body in the field of electoral crimes. The new competencies vested by the law provided for the establishment of a "unit responsible for receiving and addressing whistleblowing" as well as "conducting an administrative investigation of these incoming denunciations". After the completion of the administrative investigation, and in case elements of a criminal offense are found, the investigative unit at the CEC has the obligation to "*immediately notify the prosecution*".

To date, **CEC has not considered it necessary to include SPAK in any of the administratively reviewed denunciations, as it has not found elements of a criminal offense.** It should be mentioned that the majority of the denunciations of political parties as well as of the institution of the President of the Republic were sent simultaneously to the CEC and SPAK.

As it can be seen from the above statistics, the CEC has carried out a review of all complaints received based on [law no. 44/2015](#) "Code of Administrative Procedures of the Republic of Albania". The administrative procedure of the investigative unit at the CEC is based on written correspondence with the subjects of de-



nunciations and not on active investigations, which would result to a fair decision-making and increase public confidence. To better understand the limitations of the administrative investigation, we can mention as an example the denunciations registered regarding the participation of public officials in electoral activities during working hours, namely decisions no. [377](#), [379](#), [380](#), [381](#) for the participation of some public officials under the municipality of Dibër in the electoral meeting of Socialist Party candidates in the administrative unit Tomin, on April 13, 2021. The CEC administrative investigation has started by sending a formal request for information to the heads of these institutions. The received negative answers, based on proof for days off during the week for the denounced employees and on periodic monitoring, which prove the presence in the office at the time of the electoral rally, have served the CEC as evidence to refute the denunciations. Here we recall that the directors of public institutions in the districts are practically political appointees of the ruling party. Under these circumstances, the answers and evidence brought by them for accusations against an activity of their political party, inevitably raises doubts about the provision of intentional alibis.

Another problem encountered during the of examination of denunciations is the problem found in previous SETA reports, related to the mitigating adjustments of the të [Decision No. 9/2020](#) of the Regulatory Commission at the CEC. The inclusion in Article 3 of this Decision of the phrase ***“for which public funds have recently been made available or specially made available”*** ... has served to overturn all denunciations on concession contracts or PPP agreements for strategic investments such as ports and airports, which were adopted during the last weeks before the elections, which were argued by the relevant ministries as a result of the procedures initiated before the entry into force of the restrictions of the

Electoral Code and for which no special funds were made available.

This legal argument was used to overturn the following denunciations::

- Outsourcing the maintenance of the Durrës cemetery to the private sector ([Decision No. 201](#))
- Approval of DCM no. 1185, dated 24.12.2020 “On circulation monitoring procedures in the field of hydrocarbons” ([Decision No. 202](#))
- Concession in Spitalë, Durrës ([Decision No.292](#))
- Concession for the Port in Triport, Vlorë ([Decision no.274](#))

Also, the problem found in Article 2 of Decision no.9 / 2020, further reinforced by Decision no. 4, dated 22.1.2021 of CSC, that did not include social media in the definition of the “public media” in the Electoral Code, led to the overturn of a series of denunciations of electoral violations proven by posts on Facebook. One such example is the overturn of the denunciation of the DP and the Albanian Helsinki Committee against the candidate for MP, Mr. Dionis Imeraj, for the publication on his Facebook of the agreement between the municipality of Dibër (which was run buy him until before his candidacy) and the Albanian Development Fund.

In the [Decision No. 385](#), dated 8.06.2021, the State Election Commissioner is based on the above decision of the CSC to determine that: *The post on the Facebook account of the candidate for MP, Mr. Dionis Imeraj, does not constitute a public activity. Facebook or other social media do not belong to the category “media” required by paragraph 1 of Article 92 of the Electoral Code.* It should be highlighted that the majority of the denunciations made are based on photographs and videos taken from the social media profiles of political candidates or the entities themselves. This is also due to the fact that this election cam-

paign took place under the measures of the Covid-19 pandemic and mainly in meetings with a limited number of participants.

Based on these initial findings, the need to reconceptualize the position of the CEC in the future elections can be established, for reviewing complaints filed by political entities, but not only. Given the short time and the need for rapid decision-making, the exercise of investigative powers would require the establishment of a superstructure with expertise in investigative practices and in the electoral legislative framework. This body would require a substantial infrastructure and logistics available to enable a full and comprehensive investigation. However, this would not avoid prejudices about bias in the work of this investigative body. Under these circumstances,

referring to these findings, **it would be appropriate for the administrative review to be based on the adversarial principle.** According to this principle, the active parties to the proceeding, the plaintiff / complainant and the defendant, are charged with the burden of proof to prove their claims. The CEC, according to this principle, shall declare what the parties have requested and its decision-making will be based on the evidence presented by the active parties, without giving any of them a predetermined power. This would transform the CEC into a quasi-judicial body and, hence, would enable this institution to a rapid and accurate decision-making, stripped of the responsibilities of investigation and collection of evidence.

A further *status quo* or ambiguity in the expected electoral reform in this regard, puts at risk not only the credibility of the denunciation process by political actors and the public, but also the credibility of the CEC and its role in organizing a regular electoral process.

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