

FINAL MONITORING REPORT

on the provision
of use of state
resources in the
elections of 25
April 2021

Reporting period:

December 26, 2020

September 20, 2021

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*Project
"Strengthening
Election
Transparency in
Albania (SETA)"*

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In the context of the 25th April elections, the **Academy of Political Studies** implemented the project “Strengthening the Transparency of Elections in Albania (SETA), focused on fostering the capacities and participation of civil society organisations and media in monitoring the implementation of the revised electoral legislation on electoral campaign finance and (mis)use of state resources.

The monitoring reports were conducted in the period December 26, 2020 – September 26, 2021, in respect of:

- Legal and institutional practice for implementing the restrictions on state resources during the election campaign;
- The process of reporting and controlling the activities prohibited to the central and local officials;
- Legal acts adopted in violation of the prohibitions provided in the 4-month period before the elections;
- The conduct of the state administration during the election campaign;
- Use of public assets for electoral purposes;
- Expenditures and propaganda materials of electoral subjects;
- Functioning of the denunciation mechanism and decisions of CEC.

The SETA project monitored also on-site the implementation of these restrictions in seven major regions of the country (Shkodra, Durrës, Tirana, Elbasan, Vlora, Gjirokastra and Korça) thanks to the cooperation of 54 lecturers and students using a monitoring methodology drafted by the international expertise supported by the EU/CoE “Action against Economic Crime in Albania” and approved by the Central Election Commission.

At the same time, the cooperation with local journalists trained in the framework of the project SETA according to the fact-checking methodology by the media organization “Faktoje”, further expanded the network of monitoring the use of state resources and other re-

strictions during the election campaign.

Thanks to the signing of a Memorandum of Understanding with the Department of Public Administration, it was possible to efficiently and rapidly exchange the required information on the appointments and movements of civil servants in public and local institutions.

The project SETA is implemented by the ASP in collaboration with the Central Election Commission under the support of the joint program of the European Union and Council of Europe “Action against Economic Crime in Albania” and the Embassy of the Kingdom of the Netherlands in Tirana.

FINDINGS OF MONITORING

Prohibition of public activities of officials – Electoral Code - Article 92 (1)

Prohibitions shall be imposed on:

- support and promotion of investments, having national or local interest or territorial extension;*
- support and promotion of reconstructed facilities or of facilities under the reconstruction process due to natural disasters;*
- distribution of legalization permits or any kind of property title during public activities.*

ENFORCEMENT

- 1,229 activities in total were reported to the CEC by public officials – less than the electoral activities carried out for promotional purposes and many more unnecessary reports made. No reported activity was hindered.
- Based on the denunciations, the State

Commissioner imposed 2 administrative fines for violation of this restriction (to the Mayor of Tirana, the Director of Lushnja Cadastre) and issued a notification for taking of measures against the Municipality of Tropoja.

ISSUES

- The inability to verify the reports in due time, as well as the interpretations of the Decision no. 9/2020 of the Regulatory Commission, including the decision-making of the Complaints and Sanctions Commission on public activities, turned the reporting of activities into a process that ‘lost its way’.
- The regulation on the reporting of public activities of officials was approved only 2 days before this measure became effective. There was needed many more clarity on regulations and adequate prior information for officials subject to restrictions or prohibitions.

Legal acts that shall provide for benefits – Electoral Code - Article 91 (1)

2021 Proposal, adoption or issuance of legal acts or sub-legal acts, which provide for the provision of benefits to certain categories of the population, shall be prohibited...

Period: 26 December 2020 - 18 September 2021

ENFORCEMENT

- 33 legal acts and decisions, as seen from the Official Journal monitoring and decision-making in seven Municipal Councils, which were in focus of the SETA project, considered to have brought ben-

efits or mitigation measures for certain categories of the population;

- The majority of cases reported to CEC were closed as they did not result in non-compliance and no further appeal was made by political reporting entities, not providing the opportunity to obtain a further assessment of the argument behind their decision-making.

ISSUES

- Uncertainty over CEC’s powers to control and impose sanctions on the Parliament, the Council of Ministers and municipal councils for their decision-making.
- It remains to be further clarified by the legislators whether the decision-making of municipal councils is part of the targeted restrictions in the Electoral Code.

Recruitments, Dismissals – Electoral Code - Article 91 (3)

- *Promises or provision of benefits to public employees or students to participate in election campaign-related activities outside working or school hours, as well as pressure exercised on them for this purpose, shall be prohibited. [Article 91 (2)]*
- *The recruitment, dismissal, release, movement or transfer from duty in public institutions or entities shall be prohibited, except for justified cases. [Article 91 (3)]*

ENFORCEMENT

- Department of Public Administration reported 63 new appointments in the civil service during the election campaign period, carried out following the procedures published before the entry into

force of the prohibition in question.

- INSTAT identified an increase in public sector employees during the period four months before the elections (185,392 employees - 1,382 more than the end of 2020).
- The Council of Ministers approved 2,472 employees under temporary contract during 2021 (a lower number compared to 2020).

ISSUES

- The current management structure of the state administration, beyond the civil service, makes it difficult to fully control appointments and changes that may occur in the run-up to elections.
- The current prohibitions in the Electoral Code, which are focused on the campaign period (only 1 month), are ineffective in case the structuring of electoral organisational chart having electoral effect commences in advance.

Participation of state administration employees in the electoral campaign - Article 91 (2) & Article 64 of the Electoral Code

- *Obligatory use for electoral purposes of the institution's administration within the working hours shall be prohibited [Article 91 (2)]*
- The Commissioner for the Oversight of the Civil Service (COCS) did not find any violations to be noted in the reports of monitoring groups set up at public institutions to verify the behavior of officials during the campaign.

ISSUE

- The CEC administrative investigation into the cases of local administration employees participating in electoral activities during office hours was not effective. Information from the chairpersons of these denounced employees, who are also elected or politically appointed, raised doubts about the provision of alibis.

Use of public assets during the campaign - Article 91 (1) of Electoral Code

- *Electoral campaigning in public institutions shall be prohibited. [Article 78 (6)]*
- *Making available the resources of central or local public bodies or entities, or of any other type of entity in which the state holds capital or shares shall be prohibited [Article 91 (1)]*
- *Obligatory use and organized use of students of the pre-university system within the school hours, in the electoral campaign shall be prohibited. [Article 91 (2)]*

ENFORCEMENT

- Candidate ministers did not make a distinction between their function and public assets in use during the campaign (cars, fuel, cabinet staff, etc.).
- No cases of pressure on students of the pre-university system to participate in electoral activities have been reported.
- CEC denunciations and investigations proved the organization of some candidate meetings in school premises after the classes were over, as well as in public libraries.

ISSUES

- CEC's inability to verify the usage level of offices, office equipment, phones or many other resources of candidates who are were senior officials.
- Prohibitions on the use of institutional resources by ministers and officials running are not accompanied by secondary acts and internal institutional regulations to better determine the division between office holding and political engagement.

RECOMMENDATIONS

- Use of state resources in elections requires much more investigation and audits to the relevant institutions. The necessary growth of the CEC's professional capacities and competencies in this regard can also be supplemented with the engagement of other independent bodies (e.g. Supreme State Audit) for verifying expenditures during the election campaign by officials running.
- Prohibitions on ministers and officials running should be accompanied by secondary acts and internal institutional regulations to better determine the division between office holding and political engagement. Code of conduct and drafting good practices may serve as a further incentive to not use public assets by officials running.
- The Electoral Code and amendments to the law "On whistleblowing and protection of whistleblowers" aimed at the involvement of the CEC as an investigative body in the field of election crimes. Exercise of investigative powers requires the establishment of a superstructure with expertise in investigative practices and in the electoral legislative framework. The redesigning of the administrative review of CEC would be more efficient, based on the principle of contradictoriness (the denouncer is charged with the burden of proof for claims).

- The current management structure of the state administration, beyond the civil service, makes it difficult to fully control appointments and changes that may occur in the run-up to elections. The current prohibitions in the Electoral Code, which are focused on the campaign period (only 1 month), are ineffective in case the structuring of electoral organizational chart having electoral effect commences several months in advance.
- As regards prohibitions on the adoption of legal acts during the election period, CEC powers should be clarified to control the decision-making of legislative and regulatory institutions in the country's institutional hierarchy, such as the Parliament, the Council of Ministers or Municipal Councils.
- Timely and clear information of officials subject to prohibitions, as well as information of the public, is needed to raise awareness and to build the trust of electoral subjects and citizens to cooperate in denouncing violations.