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# **DECriminalIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS**

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ISSUES, AND EXPECTATIONS

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# I. DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

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## I.1 INTRODUCTION

The Albanian Assembly approved in December of 2015 the Law No. 138/2015 “On ensuring the integrity of persons elected, appointed, or holding public functions”, also known as the decriminalization law. The Albanian law is a unique model in the continent and is related to the political context of the 2011-2015 period. In efforts to promote the political rotation of the main political parties or to break down well-known strongholds of the right wing, the former opposition of the 2011-2013 period, promoted candidates with unclear criminal records during the local and parliamentary elections of the time. They were considered as the only opportunities to ensure number of votes and to affect the new political rotation.

As a result, a number of members of parliament and of local political officials with past criminal records, mainly amongst the new majority after the 2013 elections, ran and won leading posts in municipalities, regions, government, high and mid-level positions in the public administration and institutions, and even parliament. These individuals secured their political mandates mainly through undemocratic competition methods, such as threats, blackmail, scare tactics, vote buying, conflict of interest, and

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other negative practices. Their presence in the political and public life damaged the election and representation system and led to many incidents, including physical altercations in parliament and harsher language towards political critics and the media.

The introduction and political promotion of individuals with criminal records in institutions and in the administration considerably impacted the fall of public trust in the representing institutions and functional democracy, the rise of corruption and public disappointment, the loss of confidence that the country could undertake fundamental reforms and that it could make progress in the integration process. The political parties were also impacted by the phenomenon, which led to the weakening of inner functional and decision-making bodies, the threatening of internal democracy statute principles, and the increasing of individuals treating politics as their own, while having no political identity and using politics and the representation mandate as a personal protection tool and economic profit resource.

These were the reasons that turned the political attention and brought the political elite to face the decriminalization debate.

### **1.2 ORIGINS OF CRIMINALIZATION AND CONSTITUTIONAL PRACTICES**

In the history of post-communist Albania, there are cases of politicians with unclear records being promoted to senior leadership positions. In a country with a limited democratic tradition, coming from an era of iron dictatorship with a dominating principle of career making based on party loyalty, unconditional service to the leader and incrimination as a recruitment quality, representation issues during the phases of transitioning to a functional democracy were anticipated.

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At the start of the transition period, these negative phenomena were countered by the will of the citizen majority to establish a new political decision-making model based on public prestige of the candidates and public support for the political parties. The first pluralist legislatures suffered from a lack of democratic political training, though they fared much better in terms of representation than the last two or three legislatures. The switch from the career politician model to the “tough guy” model in politics is a critical transition feature, and an indicator of democracy detouring from its representation principles and of parties detouring from their constitutional and legal mission.

This report analyzes representation issues, focusing mainly on decriminalization cases and the behavior of parties, their constituents, and constitutional and legal institutions toward these representation issues. The report feeds on and includes detailed data from the legislation, based on developments within and outside political parties, names and the most relevant cases, and the stocktaking of the implementation of the decriminalization process, a few two years after entry into force of the law.

### **1.3 SPREAD OF THE PHENOMENON BETWEEN 2011 AND 2015**

The mechanism system for administration and security institution appointments and for political promotion was mainly based on party merit and political trust. Prior to 2011, cases of individuals with criminal records being involved in decision-making were few and sporadically clustered.

Thus, the only case dated back to 1997, during the special general elections, when some of the leaders of the Rescue Committees or “tough” local groups ran for office mainly in Vlora, Saranda, Berat, etc., while they were known for illegal activities or for being supported by criminal

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groups. The careers for these individuals were short-lived and in the new 2001 legislature, many of them were not able to survive in central level politics. They maintained some presence at the local level, but without impact on the important political decision-making.

The 2001 general election noted the rise of current or former police chiefs and some notorious individuals for unethical behavior and problems caused in their constituencies. These features were also noted during the 2000, 2003, and 2007 local elections, mainly in smaller remote areas and remote communes with public order issues.

Some individuals with careers in the police and armed forces, but having since moved into business, including chiefs of special police or military forces, former police precinct chiefs, many of whom without political identity or background, entered the political scene in 2005. They were mainly promoted because of the new majority system and because of the need to secure support in certain constituencies “at any cost”. Some of them won parliamentary mandates. This mainly happened when they ran in harsh battlegrounds, i.e. in constituencies that their party considered nearly impossible to win. Furthermore, their entry into the political scene was coupled with the exit of some career politicians and the end of the “politician with a political conviction and vision” model, as was the case with the former Speaker of Parliament, Pjeter Arbënorë, who had suffered about 28 years of political imprisonment during dictatorship. The new “winners” and “resources” did not have criminal pasts and most of them do not currently have negative legal backgrounds. However, their entry into politics was mostly based on their ability to rake in local votes and not due to their political ideology, beliefs, program, or vision.

The lesson learned from the 2005 general elections and the increase of the number of “business people” and



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“tough guys” in politics convinced the two main parties, DP and SP, to amend the Election Code in 2008, going from a mixed system to a closed list proportional system. The main promise driving this change was the stimulation of career politicians and avoidance of influxes from the business world and the local “tough guys”. Ironically, the complete opposite happened in the 2009 and especially 2013 general elections.

The 2009 general elections yielded many more new names in parliament, who came from the business world and were the main sponsors of political parties and supporters of the main political leaders. Their number was many times higher than in the 2005 elections and the result was the complete opposite of the expectations of the new regional closed list proportional system. These individuals were mainly included in the lists because of the need political parties had for campaign financing, while the parties also benefited from the support that these business people enjoyed in specific constituencies. There were indicators of a criminal past for many of these business people and for this reason, the process was criticized for the new interdependence being established between business and politics and not for other elements that would later lead to the criminalization of politics.

The influx from business (2009) grew even more in the local elections of 2011. In contrast with 2009, there was political promotion to senior posts of individual with past criminal records, mainly in other areas. The most textbook example was that of some municipalities or local units (communes) in Kavaja, Tepelena, Vlora, Elbasan, Kukës, Shkodra, etc. Some of these elected individuals were later dismissed in the framework of the decriminalization law or arrested for various criminal acts committed prior to taking office. In the case of the Municipality of Kavaja (right wing stronghold) the election of such a candidate led to a change in voting tradition and created a model through which

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these types of candidates could bring down strongholds and secure wins at any time and under any circumstances.

In 2013, the phenomenon of involving individuals with criminal records, found guilty of or charged with serious criminal acts in politics, grew drastically. Some of them were able to secure guaranteed mandates in parliament (they were listed in guaranteed positions in the multi-name lists of political parties, mainly the Socialist Party) and they became part of the new majority that emerged from the elections. Some of the members of parliament hailing from this category were involved in a series of incidents in parliament, mainly threats towards critical opposition members of parliament, which more than anything led to a critical and protesting public climate against them.

In addition to the problematic individuals in parliament, the phenomenon of recruiting individuals with criminal pasts bled down to other leadership positions, especially in the security, police and customs services sectors, regional directorates, local services, etc. Such names continuously attracted the attention of the media and the public and became poster boys of the clientelism models, also followed by those in leadership positions. The meritocratic and quality indicators candidacy appointment system was abandoned in favor of the appointment system based on campaign services, personal acquaintances, or other obligations.

Reasonable doubts that the new parallel promotion system was based on clientelism and informal personal relations and on illegal campaign financing, and that it could be followed by privileged access to public funds and decision-making policy access, dominated the political and public debate of the second half of 2014 and the period prior to the local elections of 2015.

During the second session of parliament in 2014, the parliamentary opposition used some flagrant cases of incidents in parliament to boycott the session and start

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*2013 campaign in Lezha, former MPs Prenga and Ndoka*

the political action for decriminalization. Initially, its initiative was only sporadically supported by the media, the public, and the international community, which mainly considered it as an alibi of the opposition's refusal of the new institutions of the majority. At the height of the debate, a series of serious incidents occurred in and outside parliament, mainly caused by charged members of the majority and this was the development that marked the rise of decriminalization as a dominating topic in the political agenda.

The opposition requested the support of the international community in its initiative for a harsher law against inclusion of individuals with criminal records in politics and public administration, in exchange for its return to parliament. The opposition received the support it asked for and under the increasing media and political pressure from within the country and the international community

pressure, the ruling Socialist Party and the opposition Democratic Party agreed on a political agreement for a harsher legal framework against individuals with criminal records in politics and decision-making positions.

Even though the parties reached consensus and the political crisis was overcome, they had fundamental differences and engaged in long political debates on the concrete elements that would feed into the development of the new legislation. The opposition continued its accusations of specific members of the ruling majority, while the left wing majority, continued to defend accused central or local level politicians at every turn, using as alibis their records, which were easily attainable from Albanian state institutions. The accusations of the opposition and the media were related to the fact that many of the individuals named in their denouncements had criminal records and had been found guilty by judicial institutions in other European countries and not in Albania. Securing the proper paperwork to back these accusations required time, which led to a lack of trust and alibis from political sides. For these reasons, the development of the law took much more time than expected.



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## 2.

## LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION

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### 2.1 LAW NO. 138/2015 “ON DECRIMINALIZATION” AND ITS INNOVATIONS

A long debate ensued on whether the introduction of the decriminalization clauses would threaten constitutional freedoms. The final solution was provided by the Venice Commission, according to which<sup>1</sup>, *“not having the right to be elected is a restriction of the right to free elections, thus this restriction should be based on clear law norms, should have a legitimate aim, and it should respect the principle of proportionality. Avoiding an active role of law breakers in political decision making is in the general public interest”*.

With the new law, the parliamentary opposition aimed at avoiding influence from the crime world in the policy-making process and political decision-making, considering these to be of high public interest. According to the opposition<sup>2</sup>, *“the seizure of public power by the crime through the involvement of individuals with serious criminal records in political parties and their election in the Assembly or local government units, and through their appointment in senior or key positions in the public administration or law enforcement*

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1 Preliminary Venice Commission Report, 30 June 2015, pg. 34

2 Report, Initiative of the members of the DP Parliamentary Group, 23.02.2016

*bodies, is a serious threat to the integrity and functioning of democracy and democratic institutions”.*

The ruling Socialist Party initially refused the request of the opposition and its political discourse during the 2014 to 2015 period was contradictory to any accusation that it could have individuals with criminal records among its ranks. According to the majority, the initiative would damage the image of the country and was only an alibi of the opposition to justify the loss of popular support. However, in the context of the events and facts that became public regarding a number of its representatives in the central and local governments, the SP changed its position and endorsed the agreement and later the law, at the last moment. Finally, the two main political parties were on the same page that the adoption of this law would be the highest note of success for the Assembly in 2015, and the key reform widely supported by the international partners to cleanse public bodies from the impact of individuals with criminal records.

After the long debate, the political parties negotiate for one year and approved the constitutional changes in December 2015 (Law No. 137/2015) and later also approved the organizational law (138/2015). A series of special articles were included in the Constitution. According to the article 1<sup>3</sup> *“the election, appointment of, or exercise of a public function in one of the bodies prescribed by the Constitution, or established by law, regardless of the provisions elsewhere in this Constitution shall be forbidden, should any circumstances threatening the integrity of the public official be verified, pursuant to the conditions and rules set forth by law adopted with a three fifth qualified majority of all members of the Assembly.”* According to the article 2 *“the citizens sentenced to imprisonment with a final decision for a crime, pursuant to the rules set forth by law approved with the three fifths qualified majority of all members*

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<sup>3</sup> LAW No. 137/2015 “On some changes and additions to the law No. 8417, dated 21.10.1998 “The Constitution of the Republic of Albania”, as amended, Official Journal No. 219, 2015.



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*of the Assembly, shall be excluded from the right to be elected. In exceptional and legal justified cases, the law may provide for restrictions of the right to elect for citizens currently suffering an imprisonment sentence, or the right to be elected prior to the making of a final decision, or when the individual has been exiled for a crime or for a very serious and grave threat to public safety”.*

Furthermore, the Constitutional Court was also recognized the right to interpret cases of senior officials being dismissed in contradiction with Law No. 138/2015, while another article was added, according to which, *“the mandate of the elected officials or those appointed to constitutional and other institutions established by law, which entered into effect prior to the entry into force of this law, shall be concluded or rendered invalid when verified that the elected or appointed official is included in the group of subjects excluded from the right to be elected”.*

The Law No. 138/2015 was approved with political consensus and was strongly endorsed by the international community. The objectives, goals, and principles for its implementation are included in the accompanying report and the introduction of the law. According to these provisions, the main objective was to *“realize the decriminalization of elected bodies, independent institutions, and the public administration, and the future protection of their democratic and legal functioning by removing from public function or impeding the election or appointment of individuals with criminal records and/or users of narcotic substances”.* In addition, the law also focused on *“the protection of the democratic integrity and functioning of the Assembly, other local governance bodies, constitutional or institutions established by law, public administration, armed forces, public order and national security institutions, and any other institution or state economic entity from the impact of or participation in policy and/or decision-making of individuals who have attempted or committed criminal acts and/or are users of narcotics.* Expressed in such form and relevance, the law was politically and

publicly supported and gave momentum to an intensive denouncement and political debate phase, during which a number of other cases at the central and local levels were uncovered and denounced, especially in the activities of specific bodies where profits were possible (polices, customs, tax administration, property registration, etc.) and in representative political institutions.

The new legislation established new legal practices for addressing cases of decriminalization and noncompliance with attaining/retaining a political leadership civil status. More concretely, the individual subject to the law cannot be *“appointed or elected to one of the following public functions: a) constitutional institutions or institutions established by law; b) as judges or prosecutors; c) as deputy ministers or equal level position; ç) as prefects; d) political officials in the leading cabinets of any constitutional institution or institutions established by law; dh) in the State Informative Service or other information services; e) in the civil service or diplomatic service and as leaders in any level of the central or local public administration not included in the civil service; ë) in the State Police; f) as armed forces officers; and g) in any other leadership position in companies where the state has complete or majority stake or which are managed by the state”*.

The law brought about many innovations in a series of contexts. Since the new law and the political reality that followed had a wide goal and an ever-wider scope, the political and constitutional institutions faced challenges in its implementation. Its consequences affected the political events, the intra-party election system, the political discourse, and the political decision-making and electoral selection processes. At the same time, during its implementation the law gave way to many contradictions, gaps, and debate resulting from the lack of referral model and the haste in adopting it. A series of mechanisms and responsibilities provided for in the law would need to be established, which required additional budget, specific competencies, other regulations and administrative acts that would have been possible only in a context of complete



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political will and coordination among the institutions. In cases of conflict or rivalry between institutions, or lack of political will, the legal interpretation room or norms in the law were used to delay the process or enforce the law based on different standards.

### **2.2 THE ALBANIAN CASE AND PRACTICE IN OTHER COUNTRIES**

The extraordinary intervention in the Constitution and the elections legislation, and other components of the Albanian legal framework, which developed new assessment norms and practices for elected or appointed individuals in public and political positions seemed to usher in a unique experimental phase. Actually, Albania was not the only country to apply such austere measures. This practice can be found in other countries in the world. When considering the European practice, there are various existing constitutional models, restrictive laws, and various requirements that allow or impede candidacies for public and political positions.

As the data below cited from the reports of the Venice Commission show, some countries employ various penalizing norms and degrees, especially with regard to the right to run in political elections.

In particular:

- in Estonia and Armenia, an individual loses the right to vote and run for office if sentenced to imprisonment for specific crimes;
- in Lithuania, an individual that has not served the sentence handed down by a court does not have the right to run in an election;
- in Turkey, a person sentenced to more than one year in prison for serious crimes does not have the right to run for office;

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- in Kyrgyzstan, an individual in remand or that has committed crimes cannot run in an election;
- in Moldova, individuals sentenced to imprisonment or sentenced by a court decision or individuals with active criminal records do not have the right to run in an election;
- in Macedonia, individuals sentenced for more than 6 months imprisonment or that have served sentences for serious crimes do not have the right to run for elections;
- in Greece, some criminal acts are a cause of impeding someone from running, while in Ireland there are restrictions for individuals sentenced to more than 4 years of imprisonment; while
- other countries have temporary, partial, or specific measures in place, such as neighboring countries Kosovo, Macedonia, Bosnia e Herzegovina, even though they do not have constitutional norms in place.

Furthermore, there is a universal principle for democratic European constitutions and practices, according to which, individuals may be penalized and restricted from running only in specific cases and in connection to sentences related to the moment of running, while the Albanian legislation of 2015 remains unique in the continent because of its effect over a longer period of time, inclusion of a large number of criminal acts, and loss of right to vote and to run for elections.

### **2.3 INTEGRAL IMPLEMENTATION OR NEED TO IMPROVE THE LAW?**

One of the most stable features of the Albanian state and political behavior is the fragile relation between legislation and its actual implementation. When issues and challenges arise concerning the implementation of a law, the solution is not sought in the integral language of the law and the sense of responsibility, but in restricting clauses that lead to proposals for amendments that in addition to taking time

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weaken the functionality of the law. The same practice was noted with the decriminalization law.

As soon as its implementation started, a series of issues and institutional conflicts became evident. The lack of standard rules for all institutions, of experience, of financial resources available, and in general the dependence of data provided by justice institutions in EU countries, led to delays in the implementation of the law.

Some of these issues grew into political conflict and influenced the progress of the political agenda. The greatest success of the law was the removal from political life of some politicians, especially members of parliament, but this success was identified by the CEC and the Assembly as a product of an irregular legal process. Thus, while reporting to the Parliamentary Law Committee in 2017, CEC Chair D. Biba declared<sup>4</sup> that, *“The General Prosecutor has submitted requests for three mandates, namely Mr. Dashmir Tahiri, Mr. Elvis Rroshi, and Mr. Shkëlqim Selami, who have been convicted of certain acts abroad. We have requested to review these decisions, and the relevant sessions were public. The relevant decisions were not provided to this day and our decision was made in good faith of the Prosecution Office. As a result, the responsibility rests with them”*. This position, according to which the decision has been made in good faith without verifiable evidence, was contested by the members of the committee. Some of them (from the majority) considered such assessment practices an infringement of constitutional principles, some others, including members of the SMI, SP’s main ally, stressed that, *“there is a need to better indicate the positions and authority of institutions in the law as well, even though these are laws developed recently and under time pressure with the good will to resolve a problem that was raised as a political cause, as decriminalization was. The law is unclear and creates confusion regarding the role and authority of institutions.”*<sup>5</sup>

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4 Hearing of the Parliamentary Law Committee, CEC Chair Biba, 13.04.2017

5 Luan Rama, SMI Members of Parliament, discussion during the Law Committee Hearing, 13.04.2017.

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In another occasion, the Chair of the Parliamentary National Security Committee, Spartak Braho, in a letter<sup>6</sup> addressed to CEC claimed that he was convicted of libel, which he had not included in the member of parliament declaration form. He noted that this sentence is not included in the restriction articles of Law No. 138/2015 and that the decriminalization law does not penalize individuals that have been fined or have been given alternative sentences, but only those given a final decision imprisonment sentences. Other technical claims were also raised by other individuals with immunity and political and public senior officials, and in some cases the claims were to submit the law to the Constitutional Court, which happened on two cases of dismissal and in the case of the debate in restricting the right to vote for specific categories.

On the other hand, only a few weeks after the adoption of the law and its entry into force, the political parties proposed various initiatives for its amendment. The proposals were mainly related to the new political developments and the issues created, which were not covered by the legal provisions, and to the gaps in the technical language of the articles and provisions of the law. Thus, a series of amendments were developed, mainly in the form of clarifying competences and responsibilities of the law enforcement agencies. On April 14, the Assembly approved some of these amendments; according to which<sup>7</sup> restrictions for a certain number of years were prescribed for individuals sentenced for certain criminal acts of the Law No. 138/2015 and the responsibilities of some law enforcement agencies were specified.

In the meantime, in February 2016, the parliamentary opposition (DP) proposed additional amendments to law 138/2015. Its initiative was related to the current political developments of the time, during which an SP member of parliament (A. Prenga) was arrested in flagrante by the

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<sup>6</sup> Spartak Braho, letter addressed to CEC, 31.05.2016

<sup>7</sup> Law No. 38/2016 "On some additions and amendments to Law No. 138/2015 "On ensuring the integrity of individuals elected or appointed to or exercising public functions", Official Journal, No. 77, 2016.

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police, but later continued to participate in parliament while awaiting adjudication by the court. According to this initiative<sup>8</sup>, *“Law No. 138/2015 does not provide for the possibility to suspend public officials when arrested in flagrante for premeditated crimes against life, or premeditated crimes against health. Being arrested in flagrante for premeditated crimes against life or health, implies that the official may not continue to exercise the function until the case has been adjudicated with a final decision, because this contradicts the principles governing the exercise of a public function and functions related to provision of services to the public, representation and protection of the interests. If a public official is arrested in flagrante for premeditated criminal acts against life or health of the citizens, they should be suspended from exercising their function”*. This was the basis for the addition of a restriction in the law, according to which the official is not dismissed from office for reason of the presumption of innocence, but is suspended until the case has been adjudicated with a final court decision. The DP initiative was not supported by the SP and therefore was not approved in parliament.

In May 2016, DP again declared another political and parliamentary initiative known as the *“de-robbery”* initiative. According to it, the law will forbid *“persons having their Member of Parliament mandate stripped from running again or being appointed anew to public functions, because they have infringed the Constitution, by robbing the public money and property of Albanians”*<sup>9</sup>. This initiative was also based on the current development and the decision of the Constitutional Court to strip the mandate of SP Member of Parliament, Koço Kokëdhima.

In October 2016, three members of parliament (Vokshi, and Bregu from DP and Doda from PDIU) proposed additional amendments to Law No. 138/2015, asking for the verification to extend to teachers and individuals providing care to seniors. The members of parliament

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<sup>8</sup> Initiative of the members of the DP Parliamentary Group, 23.02.2016

<sup>9</sup> Mr. Basha's statement on his Facebook profile on 13.05.2016.

noted in the rationale of the proposal that *“no one would want their children or other relatives educated or being cared for by someone under investigation or convicted of criminal acts”*. According to them, *“the innovation of the draft law, in addition to increasing the number of self-declaring subjects, is that it has increased the number of criminal acts that would exclude an individual from being elected or appointed to public functions, such as “pornography, maltreatment of minors”, “coercion of minors into crime”, “domestic violence”*.

### 2.4 2015-2016 INCREASING PUBLIC PRESSURE AGAINST INCRIMINATED CANDIDATES

2015 was an election year and for this reason, the first test for decriminalization would have to be the June 21<sup>st</sup> elections. The main political parties promised that their candidates would be completely above board and well within the standards of the law, but they did not establish control mechanisms and were not keen on sacrificing candidates for the sake of decriminalization.

The hollow space created by the apathetic reaction of the political parties was filled by other public stakeholders, mainly Western diplomats in Albania, the media, civil society and other non-political institutions. The US Ambassador to Tirana, Donal Lu, was very active in his public calls for parties to distance themselves from incriminated candidates, while at the end of the campaign he also called not to vote for such candidates. On 26 January 2016, at a conference where the three main political leaders were present, Ambassador Lu addressed them<sup>10</sup> saying *“party leaders also need to do more to remove corrupt and criminally linked politicians from their ranks and not put them on the ballots in the first place. The passage of the decriminalization law was an important first step, but now the full implementation of this law is equally as important”* and that *“Albanian voters need to take responsibility as well — the*

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<sup>10</sup> Remarks from Ambassador Donald Lu <https://al.usembassy.gov/ambassador-donald-lus-remarks-electoral-corruption-necessity-depth-inclusive-electoral-reform-conference-january-26-201/>

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*responsibility not to accept money for their vote and not to vote for criminals*". The same line was also kept by the most senior diplomats of the European Union in Albania.

An active role in getting the decriminalization law passed through positive pressure for its development and adoption was played by German politics and diplomacy. In the 2015-2016 period, at least five interviews were broadcasted on German media (Deutsche Welle radio) on Albania, during which members of the German Bundestag from both sides of the aisle voiced the same message for Albanian politics, on the need of the law and then the critical need to implement it. One of the most active was Gunther Krichbaum, Chair of the European Affairs Committee in the Bundestag, who warned<sup>11</sup> back in 2015 that, *"the decriminalization of Albanian politics is for us an non-negotiable conditions for the start of the membership talks"*. A year later, in November of 2016, during an official visit to Albania, Mr. Kirchbaum presented some conditions for supporting the political majority in the German Bundestag in the framework of the integration process of Albania, noting among them the importance of the integral implementation of the decriminalization law. According to Kirchbaum's remarks to the media, *"the decriminalization law must be implemented in a sustainable and comprehensive manner. There are still incriminated individuals holding public functions. For us as a parliamentary group and for me personally, this is unacceptable"*. The Konrad Adenauer Stiftung, which also supported the development of this study, played an active and assisting role during the development and monitoring process for the adoption of the law and monitored the political developments in the country in this context.

In the country, other civil and public stakeholders increased pressure against the parties to achieve and then adopt the decriminalization law. The Institute for Political Studies developed in 2015 and 2017 the election risk map,

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<sup>11</sup> Interview with Gunther Krichbaum, Chair of the European Affairs Committee of the Bundestag, Deutsche Welle Radio, 2.10.2015.



feeding in also candidate data for each constituency and flagging constituencies at risk of incriminated candidates. The IPS political statements before the elections in 2015 and 2017 publicly named specific constituencies and individuals with criminal records that were still running. Other civil society organizations and media outlets also joined the process providing data on specific candidates or by monitoring the process.

In April 2015, The Catholic Church Episcopal Conference, the highest representative body of this religious institution, appealed to political parties in an unusual political statement to show<sup>12</sup> *“unwavering will for the decriminalization of politics in general. For this reason, in selecting candidates, the parties should consider choosing those who have not been involved in criminal activities and corruption in the past”*. The statement also called on the *“conscience of citizens not to vote for candidates known for their criminal or corruption past. Even absenting or leaving an empty ballot is an option, and a voice that should be heard and a right that should be exercised in specific conditions. If no one of the candidates meets the requirements, then absenting becomes a moral duty”*. The Church also launched an appeal against vote trafficking. According to it, *“as we have noted in the statement about the 2013 elections, which unfortunately was abundantly clear in those elections, we condemn and call upon everyone not to get involved in vote trafficking. Whoever sells their vote, regardless of price, he/she sells their own and their family’s dignity and honor. Whoever buys a vote is unscrupulous and defames other’s and their own dignity. Vote trafficking strips citizens from the possibility to hold elected officials accountable. In this regard, even promising a vote under oath after money has exchanged hands, is an insult to God and the sound human and religious moral”*.

*On the eve of the 2015 local elections, there were some developments with the candidate lists of the parties. Based on the request and information provided by a western embassy, the DP decided to withdraw their candidate for mayor in Këlcyra, Gentian Muhameti. In addition, after the*

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12 Statement of the Catholic Church Episcopal Conference, 14.04.2015.



## 2. LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION

resignation of its candidate in Kurbin and the introduction of another candidate (I. Pjetraj), DP de facto supported the CEC in refusing his registration and entered the campaign for this municipality without a running candidate. The position of the DP received Western praise and support, while the SP insistently refused the withdrawal of its candidates for mayor in Kavaja, Kurbin, Poliçan, and two other municipalities, even though the same practices had been followed, and critical information had been provided by international partners on their criminal past. The goal of the SP to achieve positive results in these municipalities led to the missed opportunity to make way with the decriminalization process in 2015, which would happen later, but at a much higher political cost for the country.



*Gentian Muhameti*

It is also interesting to note that none of the ODHIR/OSCE reports for the 2011 and 2015 local elections or the 2013 and 2017 general elections makes concrete and direct mention of candidates with criminal records. For example, with regard to the 2015 local elections, during which there were many critical issues with these candidates that have now been proven with the dismissal of a number of them, the ODHIR report only stresses that, *“The Election Code excludes the possibility to change candidate lists after their final approval, but does not foresee rules for the resignation of candidates running*

*for mayor. On 1 June, after a long complaints and appeals process, the CEC refused the resignation of the DP candidate for mayor in Kurbin, referring to the lack of such a possibility in the law and to the insufficient argument of the candidate. Furthermore, the CEC refused the requests for resignation of the candidates for mayor in Dropull, Korça and Kuçova, but accepted the resignation requests in Këlcyra, Memaliaj, and Saranda<sup>13</sup>. The CEC later justified its decisions with the argument that it was endeavoring to remove from the running candidates with alleged criminal pasts, even though there is no legal basis for the exclusion of candidates from the race for this reason”.*

In its report on the 2017 general elections, ODIHR stresses<sup>14</sup> only that, “Some OSCE/ODIHR EMM interlocutors expressed concerns that individuals with a criminal past were still playing a considerable role in the campaign as candidates, or as supporters” and in the end recommends that, “a public refusal from politicians of the financial support of individuals with a criminal past would help in establishing public trust in the election integrity”.

### **2.5 INCRIMINATION? FLAGRANT CASES THAT LED TO “DECRIMINALIZATION”**

During the 2013 elections rumors about incriminated candidates were minimal, mainly because the names of the individuals thought to have criminal pasts were ranked in unfavorable positions in the candidate lists. The debate heated up mainly because of the multi-name list of the Socialist Party in the Lezha region and SP’s application of the mandate allocation principle between members of parliament and the new ministers. At the start of 2014, a place was opened in the SP multi-name list for the Lezha region, because the Minister of Defense, Mimi Kodheli, relinquished her mandate. According to the Election Code, her mandate should have gone to the following name of the same sex, namely candidate Mejreme

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13 ODIHR/OSCE: *Final Report on local elections, Warsaw 8 September 2015, pg. 12.*

14 ODIHR/OSCE: *Final Report on general elections, Warsaw 28 September 2017, pg. 13.*

## 2. LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION



*MPs Doshi and Frroku with Mr. Rama during the 2013 campaign.*

Delishi (SP). She refused the mandate for undisclosed reasons. The mandate should then have again gone to the following name of the same gender Mirela Neli (SP), but she also refused and the reasoning was not convincing. This led to the exhaustion of all women in the list, with the mandate going to the first name in line of the opposite sex, Member of Parliament, Arben Ndoka. The media and a series of other public sources reported that the two women candidates were obligated to withdraw unwillingly to achieve this goal. The issue was debated in the Assembly and political accusations escalated to accusations about the resume of the Member of Parliament that benefited from these moves.

On 20 January 2014, the same situation occurred in Durrës, this time with the Socialist Movement for Integration proportional list. After Minister Koka (SMI) relinquished his mandate in the region, the following name was Silvana Maksuti (SMI). She withdrew and the following name after hers was Merita Kuçi (SMI). She also withdrew. The mandate then went to the following female name, Klodjana Pashkaj (SMI) who withdrew, just as did the following woman after her, Ermira Koçi. After four quick succession withdrawals, the mandate went to the next male in line Bujar Derveni. Just as in the case of

Lezha, it was reported that the withdrawals were made under party pressure and by deforming the election and replacement process for the party multi-name list.

Another issue arose in the Region of Lezha with the other proportional lists. For example, even the right wing list underwent changes. Member of Parliament, Vasil Bici, who had just won, resigned immediately after the election without any convincing reason and the mandate went to next name in line, Mhill Fufi. The new Member of Parliament was known for the media, because he was involved in an armed altercation on the day of the 23 June during 2013 elections, in which a person was killed. This case was also the topic of a heated debate, especially when on 2 November 2016, Member of Parliament Fufi was expelled from the DP Parliamentary Group for not obeying the political decision to boycott parliament. He concluded his mandate in parliament (2017) on the side of the governing coalition, against which he had run and won in 2013.

Political rhetoric on decriminalization gained great momentum especially during 2014. In May 2014 after a debate in the Parliamentary Legal Affairs Committee, Member of Parliament A. Prenga (SP) physically violated on the premises of the Assembly opposition Member of Parliament, G. Strazimiri. The Assembly took no penalizing measures against the incident and the Prosecution did not initiate an investigation. Little less than two months later, in July 2014, members of parliament, ArbenNoka (SP) and Pjerin Ndreu (SP) attacked and physically hit opposition members of parliament Gent Straz imiri (DP) during the works of the parliamentary committees. The Bureau of the Assembly issued a day later the minimum measures of suspension for 7 and 3 days respectively for the socialist members of parliament, while also issuing a warning for the opposition member. The footage of the violent incident in September were made public by the media and led to public anger. The violent incident in the Assembly was followed by a criminal case in the prosecution office and the court.

## 2. LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION

The case was also submitted to the High Court, which a year later made it reasoned decision. The General Prosecution Office had sought jail time for the members of parliament with sentences of 12 and 8 months respectively. The prosecutor requested also that the sentence could be commuted to public service working hours, into 150 and 100 hours respectively. According to the decision of the Court<sup>15</sup>, Member of Parliament, Ndoka, accepted to *“have committed violent acts by hitting the victim, Member of Parliament, Gent Strazimiri, and had even expressed his regret for the action”*. The other Member of Parliament, Mr. Ndreu, denied having hit his peer. Strazimiri, the damaged deputy, is quoted by the Court as stating that, *“I spoke after the Minister of Interior about the crime and weapon use phenomenon. I stressed that after the political rotation, the administration has been stuffed with criminals, who have been put there with the will of the Prime Minister. I have said that there are 19 members in the Assembly with criminal records, but I mentioned no names. After concluding my remarks, I went to the hall and was making a phone call, when the defendant, ArbenNdoka approached me and pulled me by my jacket and punched me twice in the forehead area”*.

It is interesting to note that the court considers as final facts such alibis as *“motivated by deep disagreement with what was said and the opinions expressed by the damaged party, Gent Strazimiri, addressed to the group of members of parliament in which he was included, and feeling insulted and threatened, in his position as a Member of Parliament, from being considered a politician and Member of Parliament linked to crime or originating from the crime world, the defendant, Arben Ndoka, reacted by leaving the plenary session of the Assembly and reaching the area where the damaged party, Gent Strazimiri, was and perpetrating violent acts against him, which was immediately stopped due to the intervention of the parliamentary service and other members of parliament”*, or *“the damaged member of parliament, Gent Strazimiri, has not suffered any health consequences from the violent actions of defendants, Arben Ndoka and Pjerin Ndreu”*. Based on the above, the Court made the decision that

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<sup>15</sup> Decision of the Penal College of the High Court , 10.6.2015, No. 3/4

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*“the events were not perpetrated for private motives related to the circumstances, personal interests or qualities of the damaged party or the defendants” and that, “the criminal case brought for adjudication by the General Prosecution Office is not in the criminal law jurisdiction. The case was within the exclusive jurisdiction of the Assembly, and the Assembly had reviewed the case and qualified it as a threat to the parliamentary freedom and functioning of the Assembly, consequently having punished the responsible members of parliament, present in court as defendants, with the relevant disciplinary measures”.* The college decided to dismiss the case against the two members of parliament. The College was composed of Medi Bici, Ardian Dvorani, Artan Zeneli, Tom Ndreca and Admir Thanza, and only the latter filed an alternative opinion to the majority decision of the College.

It should be noted that the reaction of the opposition to the May 2014 events was political and extreme, with parliamentary boycott in sign of protest against the incriminated members of the Assembly and referral of a series of SP members of parliament with criminal records in the past. The Boycott lasted more than four months and greatly affected the agreement on the decriminalization law.

### 2.6 THE CONSTITUTIONAL COURT AND THE DECriminalIZATION LEGISLATION

The Constitutional Court has been involved in a series of instances with issues related to decriminalization, making decisions that in their core have given constitutional legitimacy to the decriminalization process itself. Various international reports and statements of the main foreign institutions in Tirana (EU and the USA) have recognized the case of an MP mandate being stripped by the Constitutional Court. However, the case in point is not directly related to decriminalization and is not considered as a product of this process by the wider Albanian public opinion. The same logic applies for two other cases.



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During the 2013 to 2017 period, the Constitutional Court has reviewed three cases requesting the stripping of majority MP mandates, on charges of incompatibility between their mandate and their private activities. In May 2016, the Constitutional Court decided to strip the mandate of Koço Kokëdhima (SP) on charges that he benefited public procurement money while holding a Member of Parliament mandate. The “Kokëdhima” case is not provided for in the penalizing decriminalization articles; however, his name has been often quoted as a success in the implementation of the decriminalization law, especially by US Ambassador to Tirana Donald Lu. This contrast in assessment becomes even more noticeable in the case of another MP, whose mandate was also stripped by the Constitutional Court under the same charges, Ilir Bejta (SP), and who during the 2009-2013 legislature continued to be Minister of health at the same time Kokëdhima was an MP and after he lost his mandate. Bejta was also reelected as MP in the following 2017-2021 legislature.

One of the most debated cases during the 2015 to 2017 period was the “Doshi” case. He was not accused of any crimes. In March 2015, MP Doshi (SP) publicly stated that there had been an assassination attempt against him and another MP in the summer of 2014. The Member of Parliament publicly accused Assembly Speaker, I. Meta, as the person responsible and later accused the General Prosecutor as his accomplice. Some two weeks later, the General Prosecutor criminally charged Mr. Doshi for *“the criminal act of false charges, threat to make statements or testify, false expertise or translations, and false statement given to a prosecutor (provided for in articles 305, 305/a, and 312 respectively of the Penal Code)”*. The same charges were also filed for another MP, Mr. Mark Frroku (CDP), who had been elected due to the endorsement of the SP in the 2013 general elections. On March 26, the Assembly decided to authorize the arrest or remand of the member of the Assembly of the Republic of Albania, Mr. Tom Doshi and on the same day,

the Prosecution Office ordered his arrest. On March 28, the High Court decided *“the confinement to house arrest for Mr. Doshi”* and *“the restriction of communication between him and other individuals except those cohabiting with him”*<sup>16</sup>. In December 2015, the Constitutional Court decided to reject the request of the Member of Parliament to revoke decision No. 39, dated 26.03.2015 of the Assembly of the Republic of Albania and Decision No. 15, dated 28.03.2015 of the Criminal College of the High Court as unconstitutional<sup>17</sup>. However, within a short period of time, the High Court suspended the home arrest sentence and left Mr. Doshi free, allowing him to return to the Assembly.

The “Doshi” and later “Frroku” cases shed light on a problem with our institutions, especially the General Prosecution Office. In both cases, the MPs were charged with bringing false charges, but after this charge was dismissed, the Prosecution Office continued the process and brought a series of other charges with the goal of convicting the MPs. For example, after the inability to prove the first charge related to false statements, the General Prosecution Office on 9 June 2015 brought charges of *“refusal to make a statement, lack of declaration, concealment or false declaration of assets by elected individuals and public servants, or any other individual that has a legal obligation to declare”*, provided for in article 257/a, paragraph 2 of the Penal Code. Based on these charges, the prosecution requested the extension of the preliminary investigation with 3 months. After Mr. M. Frroku resigned his mandate, the High Court made the decision that the cases should be tried separately and referred this to the Constitutional Court, which with its Decision No. 62, dated 04.11.2016 rejected the request. After the changes made in the framework of the justice reform, in October 2017 the High Court declared non-competence in adjudicating the Mr. Tom Doshi and Mr. Mark Frroku cases, and referred to case to the new serious crimes investigation structure.

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<sup>16</sup> Decision No. 15, dated 28.03.2015, Penal College of the High Court

<sup>17</sup> Decision of the Constitutional Court No. 75 dated 22.12.2015 (V-75/15)



## 2. LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION

Even in the case of MP Frroku, the Prosecution Office changed the charges from false statement, to illegal construction of a structure, to irregular assessment declaration, to even an extradition request in the frame of a sentence handed down by Belgian courts years ago. The last charges fell and as a result he was sentenced to prison for the first two counts, which were not what he had been arrested for. In contrast with the Doshi case, in the second case, the MP has not been granted his freedom and continues to remain on remand, while he has also resigned his mandate and has retired from politics. In the 2017 general elections, Mr. Doshi ran with the Social Democratic Party and won his fourth mandate since 2005.

In May 2016, the Constitutional Court College decided not to review in the Court plenary session the request on the non-compliance of the mandate for the Member of Parliament, Mrs. Valentina Leskaj (SP)<sup>18</sup>. Mrs. Leskaj was accused by the right wing opposition that while she was a voting member of parliament she had exercised her mandate in infringement of the law on cases of conflict of interest. In addition, in December 2016, the Constitutional Court rejected the request of the right wing opposition MP on the non-compliance of the mandate of Member of Parliament, RakipSuli, accused of the same practices as in the “Kokëdhima” case. In this case, the Decision of the Constitutional Court was made by a simple four to three majority, even though Justice S. Berberi who voted fourth in line in favor of the decision thus becoming the deciding vote, expressed an alternative opinion to the other justices<sup>19</sup>.

The mandates of the first politicians penalized by the decriminalization law were also submitted to the Constitutional Court. The Constitutional Court was also mobilized by the request of former Member of Parliament, D. Tahiri, to revoke CEC Decision No. 176 of December 2016 on stripping his mandate, and to suspend the decision

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<sup>18</sup> Full Decision of the Constitutional Court No. 93, dated 17.05.2016

<sup>19</sup> Full Decision of the Constitutional Court No. 72, dated 14.09.2016

until entry into effect of the decision of the Constitutional Court. The Constitutional Court decided: *“to not address the case in plenary session”*. According to the Court<sup>20</sup>, CEC decisions are individual administrative acts and as such *“may be subject to judicial consideration in common jurisdiction courts. In the case in question, the petitioner has submitted the case to the Tirana First Instance Administrative Court with a request to revoke CEC Decision No. 176, dated 29.12.2016. The Tirana First Instance Administrative Court has decided to dismiss the case with Decision No. 410 (80-2017-422), dated 10.02.2017. The petitioner has the right to appeal this decision at the Appellate Administrative Court.*

Furthermore, on 23 March 2017, the Constitutional Court rejected the lawsuit of former Kavaja Mayor, Elvis Roshi, which requested the abrogation of some articles and paragraphs of law 138/2015 as unconstitutional, the revocation of the Council of Ministers Decision for his dismissal, and the revocation of the CEC decision again for his dismissal. The Court decided to dismiss the request and to end Roshi’s mandate as mayor. The reasoning of the Court in relation to the CEC decision was that<sup>21</sup>, *“pursuant to articles 131/f and 134/1/i of the Constitution, an individual may only address this Court with an individual complaint, only when claiming that during a judicial process his fundamental rights stemming from the Constitution have been infringed and only after these means have been exhausted. For the purposes of articles 131/f, 134/1/i and 134/2 of the Constitution, the individual may mobilize this Court for issues related to his interests when claiming that his constitutional rights of due legal process have been infringed, after having exhausted all other legal means, which means that the petitioner should use all common available and efficient means for a certain case. The Court finds that the petitioner has not exhausted all available legal means and for this reason he is not legitimated in addressing this Court”*.

The last instance of Constitutional Court involvement

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20 Full Decision of the Constitutional Court, Decision No. 50 dated 15.03.2017

21 Full Decision of the Constitutional Court, Decision No. 24 dated 23.03.2017

## 2. LEGAL BASIS, MODELS AND REALIZATION OF DECRIMINALIZATION

in decriminalization issues is related to the right to vote for specific categories provided for in the law. Namely, in April 2017, the Constitutional Court decided to reject the request of the Helsinki Committee, a human rights NGO, seeking to revoke as anti-constitutional the articles of law 138/2015 related to the restriction of the right to vote for convicted persons, provided for in the decriminalization law. The decision of the Court notes<sup>22</sup> that, *“The Court is of the opinion that the provision made in article 2, paragraph 4, of Law No. 138/2015 to restrict the right to vote for persons serving jail sentences respects the principle of proportionality of restriction. Thus, the Court has reached the conclusion that the restriction measure provided for in the law serves public interest and is proportional to the situation dictating it... The above analysis and position of this Court are also supported by the relevant ECHR jurisprudence”*. The Helsinki Committee has decided to submit the complaint to the European Human Rights Court in Strasbourg, which is a procedural right that if upheld would have direct effect also on the real impact of the decriminalization process and the authority of the Constitutional Court in this process.

### 2.7 CHALLENGES WITH THE INTEGRAL IMPLEMENTATION OF THE LEGISLATION

The decriminalization law encountered challenges and obstacles with its implementation. These were not only noted in individual and technical cases (irregularities or delays in declaration), but also in institutional relations. For example, the implementation phase was accompanied by heated debate between the Central Election Commission, and the General Prosecution Office, regarding competences and responsibilities. Each party had a different interpretation of the same articles of the law and their responsibilities. According to the Prosecution, any review beyond the official declaration deadline was basis

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<sup>22</sup> Full Decision of the Constitutional Court, Decision No. 43 dated 05.06.2017.

for falsification and irregular declaration, while according to the CEC, technical adjustments were of no concern and should not be considered as a basis for investigation.

A series of issues also arose during the documentation verification by the CEC, giving rise to a debate on whether the verification would be exhaustive or only formal, and the role of other involved institutions, such as the Civil Registry Office, Police Structures, High Inspectorate for Asset Declaration, organized crime or Interpol structures, etc.

The third issue was related to the debate on whether the Prosecution Office should submit to the CEC the requests for stripping the mandates of elected officials or the enter personal file of the individual, the mandate of which the Prosecution wanted stripped. During its reporting in the Assembly (April 2017), CEC raised the concern that in the case of the requests to strip the mandates of MPs Selami and Tahiri, (December 2016) the Prosecution Office submitted no document backing their charges, but only the fact that they had been convicted in the past. As a result, the CEC made a decision based on the supposition that the Prosecution had evidence. The CEC requested the development of a more comprehensive practice for the collection and presentation of evidence in official correspondence.

On its part, the Prosecution was critical of the CEC in relation to its decision-making in some cases, such as the way the institution had managed the submission of subject declarations under the law. According to the Prosecution Office,<sup>23</sup> *“the deadline for filing the forms was within two months from entry into force of the decision of 17.02.2016. The deadline for all subjects was 4.05.2016. The documentation submitted shows that the CEC has accepted a second form with additional data for these three subjects in June 2016, in contradiction with the law”*. Having considered the “Prenga” case, who did not declare a final decision within the territory of the RoA, the Prosecution Office blames the CEC for not filing *“penal charges immediately upon becoming aware of this in May 2016, because the subject has committed a criminal act provided for in article 190 of the Penal*

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<sup>23</sup> Prosecution Office’s statement regarding the criminal lawsuit against the CEC, 16.02.2017.

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*Code*". According to the Prosecution Office, "even the CEC letter of 14.02.2017, submitted to the General Prosecution Office for in depth verification, does not specify that the subject has answered "NO" to the question whether there is a final criminal decision against him/her. For these and other infringements found, the Central Elections Commission has not complied with the obligation and has not observed the punishment provided for in article 9 of Law No. 138/2015".

The CEC applies different standards for the same review cases. For example, having in front of them the same charges that led to MP Tahiri's mandate being stripped, the CEC has made decisions to reject or has requested additional information from the Prosecution Office, thus creating a double standard and threatening the uniform implementation of the decriminalization process.

The most flagrant case of debate over decriminalization was the letter of the General Prosecutor addressed to the President of the Republic against US Ambassador Donald Lu, accusing the latter for blackmail against the members of parliament. The letter of the Prosecutor, written in a language unbecoming official communication, it is stressed that "towards the very important 'Decriminalization' process, which has started to yield concrete results with the expulsion of a number of Members of Parliament from the Assembly of Albania, and other officials of the state administration, who have been found to be involved in organized crime activities in the Republic of Albania and abroad. This structure is continuing its activities and the results will impact other Members of Parliament of the Assembly of Albania, mainly persons that the US Ambassador to Tirana has publicly and privately blackmailed to ensure votes to adopt the Justice Reform project endorsed by him, while telephone messages sent by this Embassy have been made public by the media, as well". The Prosecutor did not get a public reply from the President or the Embassy in question, but in general, the letter was seen as a hasty step taken by the Prosecution Office and inclusion of some of its leaders in the list of potential individuals impacted by the vetting process in the judiciary.

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### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

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#### 3.1 DECRIMINALIZATION: STOCKTAKING TO DATE AT THE POLITICAL LEVEL

Two years after the adoption of the decriminalization law and after the 2015 local elections and 2017 general elections, public expectations are higher than the results to date. The public expects a new standard and high level of implementation of this law in the new political reality. The questions whether the law has worked, whether it has met the expectations set for it, whether the practice has been more focused on rhetoric and the international lobbying rather than reflecting on the public life and the representation standards, continue to be part of the public discussion.

2016-2017 Balance Sheet	TOTAL
Other officials dismissed	110
Managing officials dismissed	45
Dismissed council members	35
Resigned council members	21
Candidates for parliament	18
MPs under investigation	12
Resigned judges	5

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

Dismissed MPs	6
Resigned MPs	3
Mayors under investigation	3
Dismissed mayors	1
Ministers under investigation/dismissed	0
Heads of Region/Prefects	0

In the course of 2017, the Institute of Political Studies communicated with all public institutions to identify decriminalization law implementation cases. The following table reflects the figures to date. The goal of the law was to expel individuals with criminal records from political decision-making, but the table shows that the number of ministers, MPs, and mayors is minimal. The success of the



*MPs Tahiri and Selami*

law is based mainly on the expulsion of the most debated public names (MPs and mayors) and the expulsions at the second and third levels of the administration. The table shows that there is an increasing number of senior and mid-levels administration officials who were dismissed in the framework of the decriminalization law. In addition, a number of judges have resigned their positions that were mainly individuals accused in the media for involvement



## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

in various scandals, and a number of council members have either been dismissed or have resigned. The issue with council members continues, because the replacement and verification process continues throughout the local governance mandate between 2015 and 2019, mainly because of the opening of vacancies in the relevant municipality councils.

<b>MUNICIPALITY OFFICIALS DISMISSED BY THE DECRIMINALIZATION LAW<sup>1</sup></b>			
Tirana	10	Peqin	3
Durrës	7	Përmet	3
Shkodra	6	Kavaja	3
Korça	5	Gjirokastra	2
Vlora	5	Kamza	2
Fier	4	Saranda	2
Lezha	4	Kukes	2
Lushnja	4	Kurbin	2
Tropoja	4	Divjaka	1
Berat	3	Klos	1
Dibra	3	Kuçova	1
Elbasan	3	Maliq	1
M. Madhe	3	Patos	1
Mat	3	Selenica	1

The IPS addressed the Department of Public Administration to collect the names of employees with civil servant status that have been punished in the framework of the decriminalization law. According to the list provided by the DPA, the highest number of dismissals in the framework of decriminalization was at the Municipality of Tirana

<sup>1</sup> DPA Note: The positions have been declared by the subjects in the accompanying document developed by DPA for the self declaration forms, because there is no section for the position of the self declaration subjects in Law no. 138/2015 as amended, and Decision No. 17/2016 "On setting detailed rules on the enforcement of foreseen restrictions in Law No. 138/2015", of the Assembly of Albania.



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(municipality, administrative units, and subordinate structures), followed by the Municipalities of Durrës, Shkodra, Korça, Vlora, Fier, etc. Large municipalities leading the problematic lists shed light on a concerning issue with the civil staff recruitment practices in central and local state structures. These municipalities have larger administrations, but also more access to undertake necessary verifications, and more competition for relevant vacancies.

It should be noted that there have been dismissals in a total of 28 municipalities, with Lushnja, Lezha, and Tropoja having the same number of dismissed individuals (4), Dibra, Elbasan, Malësi e Madhe, Mat, Përmet, and Kavaja with 3 individuals dismissed, five other municipalities, including Gjirokastra and Kamza with 2 individuals dismissed, and six smaller municipalities with one person dismissed. A verification of the data from the smaller municipalities, found that the number of individuals that should have been dismissed according to the local media, NGOs, various monitoring groups, etc. should have been many times higher than the actual number of individuals dismissed or resigned. In this case, the conclusion was that the individuals included in the list were those with the most infringements in the decriminalization statement and that a number of them were harshly attacked by the media or the political parties local structures. Another concerning fact was that some of them (more than 30%) were in a leadership position and had previously passed all competition and assessment competition phases, and some of them had more than 5 to 7 year work experience in their current leadership position. The testing and competition mechanism for recruitment and promotion was clearly defective and even though there are consequences, no appointing body is responsible pursuant to our legislation.

During the 2016-2017 period, more than 200 cases of individuals with past criminal records and penalized by

## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

being dismissed or that have benefited from the technical clause of the law or change of post, were reported by the national media (press and social media). There have been many reports, especially for senior level police officials at the local and central level, managers of transport directorates, prisons, customs, tax administration, education, health, etc.



*From Mr. Balili's hotel inauguration ceremony*

The most flagrant case was the appointment of Mr. Klement Balili, one of the most infamous and wanted persons by the Albanian police for criminal activities, as the Director of Transport in Saranda. Mr. Balili had great public support prior to his appointment, with minister and MPs, including former Speaker and current President, Ilir Meta, participating to the promotion events for his private business, while a family member was also able, through personal lobbying, to get elected as Mayor of Delvina under the SMI banner, but with the support of all the ruling coalition parties. The "Balili" case became problematic not only because he continued to hold the official positions even after his criminal records were made public by the media, but also because a special meeting of the National Security Council chaired by the President of the Republic was held in

### **3. BACKGROUND OF THE DECRIMINALIZATION PROCESS**

relation to his arrest. After one year as a fugitive, he is still to be arrested, while no official of those that appointed and promoted him in public positions has accepted responsibility or been held accountable.

In April 2017, a television investigative show provided facts of how a senior-level official convicted of corruption and dismissed from his position at a regional directorate, had been appointed to another relevant position in the Municipality of Përrenjas, after having been dismissed in the framework of the decriminalization law. The person in question claimed that the previous dismissal was not legal and that the decriminalization law did not impede him from taking a new position. In 2017, the media reported that the same procedural issue had been used in dozens of other cases of dismissals and appointments of individuals with past criminal records. Similar cases have been reported several times by the media and political stakeholders, reflecting a critical indicator that the appointment system continues to function independently from the decriminalization law filters and that some of the abovementioned individuals, dismissed in the framework of the law, have not been restricted from competing or securing political backing for appointment in other positions of the central and local administration. This shows that attention to and high standards for the preliminary checks are not in place.

#### **3.2 THE POLICE AND DECRIMINALIZATION**

In the period between 2013 and 2016, the State Police was presented by the government as the product of a deep-cutting reform, as a professional, independent structure, publicly termed as “the police we want”. A series of awards, including titles and medals were given to high-ranking police officials for their skills and professionalism in the fight against organized crime and the upholding of the rule of law. There were also international reports and



*MPs Prenga, Ndreu and Tahiri*

public events attended by international officials, including the main western diplomats, who elevated the work and the achievements of the police.

After the dismissal of Minister Tahiri in the Spring of 2017 and especially after the “Tahiri” scandal in 2017, there was official recognition that the leadership elite of the State Police had criminal and negative work ethics records and also had relations with organized crime, especially concerning the cannabis growing campaign of 2016 and 2017. By the end of 2017, the majority of the most senior State Police officials had either been dismissed from their position or completely from the police force, while some of them became the subject to Prosecution Office led investigations for criminal acts of corruption or trafficking.

The following SP Minister of Interior, Fatmir Xhafaj, publicly declared more than once that a large number of police officers were involved in cannabis trafficking and other criminal acts. In November 2017, he and the Prime Minister initiated a deep rooted vetting process in the Police, through the vetting mechanism, reviewing detailed

### **3. BACKGROUND OF THE DECRIMINALIZATION PROCESS**

information from police officer CVs, assets, connections, and careers. During the end of 2017 and the beginning of 2018, a special task force was put into action to investigate within the police and an announcement was made that all police staff will be subject to vetting by the end of the current year.

Such critical reporting on the Police sheds light on the negative role of the political factor regarding police appointments and promotions, and the fragility of the institution in relation to political pressure and organized crime. The damage to the police reputation casts a shadow even on the last successful campaigns of the first years of the government mandate against cannabis cultivation areas (Lazarat), and weakened the trust of the public in the institution, which only a year ago was considered a model to be emulated.

### **3.3 MEMBERS OF PARLIAMENT INVOLVED IN THE DECRIMINALIZATION PROCESS**

The spirit of the discussion on decriminalization and the later approval of the law transformed the decriminalization process into an absolute priority of the political agenda. The first results are known, especially at the representation level in parliament.

- In September 2015, MP Mr. Arben Ndoka (SP) resigned the mandate he had won in 2013. Mr. Ndoka was one of the most contested and talked about names by both the opposition and the media, even though during the right wing rule he had also held executive leadership positions in his constituency. Mr. Ndoka was accused of having been convicted in Italy in the beginning of the 90s for charges of promoting prostitution and some other offenses.
- In November 2015, MP Mark Frroku (CDP) also resigned. Since April 2015, he had been in remand

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and was awaiting extradition, for murder charges in Belgium related to a crime perpetrated in the beginning of the 90s. Two years later, the extradition case was closed, the charges have changed a number of times to other criminal acts, however the former Member of Parliament is currently serving a 6 year sentence for false asset declaration and fiscal evasion.

- On 25 February 2017, MP Armando Prenga (SP) also resigned after being involved in a violent scandal in September 2015, which resulted in him being remanded. He did not resign in relation to this case, but because information from abroad proved that he had previously been convicted of misdemeanor criminal acts.
- The name that followed Mr. Prenga in the proportional list and who took the mandate left vacant by him, Kastriot Piroli, also resigned his mandate on March 2017, because he had been convicted by the Albanian judicial system. This led to the exhaustion of the SP proportional list in Lezha giving the mandate to the main ally party (SMI) based on the binding practices provided for in the Election Code.
- In December 2016, upon request of the Prosecution Office, the CEC stripped the mandate of MPs Shkëlqim Selami (SMI) and Dashamir Tahiri (PDIU), accused of concealing information related to the decriminalization process and various criminal acts in Italy. The US and EU declared that this was a historic decision and that *“today’s decision is a victory for the Albanian people and a warning for criminals considering whether to become candidates in the June 18 parliamentary elections. Elected or appointed officials filing false declarations should be fully punished by the law. Persons with criminal records should have no place representing the Albanian people”*<sup>24</sup>.

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<sup>24</sup> Statement of the United States Embassy and the EU. <https://al.usembassy.gov/press-statement-united-states-embassy-tirana/>



### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

- In March 2015, MP Tom Doshi (SP) was arrested and charged with false testimony, in relation to his accusations that there were assassination attempts against him, which also implicated the Speaker of the Assembly, Ilir Meta. In the course of 2017, the Prosecution Office requested that the CEC strip his mandate in light of a conviction before 1990, but the CEC refused this request. Mr. Doshi, is the only person mentioned here that continues to be a member of parliament. He remained a supporter of the left wing government and ran successfully in Shkodra (2017) under the banner of the Social Democratic Party.
- In May 2017, the Prosecution Office requested the mandate of SP MP Vladimir Kosta stripped, on charges of infringements of the decriminalization law. The CEC refused the request, while Mr. Kosta was not included in the election lists for 2017 by his party and he did not seek to run with other parties.
- In the course of 2017 the Prosecution requested in depth investigations for a number of members of parliament, such as Artan Gaçi (SP), Gledion Rehovica (SMI), Aqif Rakipi (PDIU), Omer Mamo (PDIU) and Mhill Fufi (independent), and for the mayors of Tepelena, Tërmet Peçi (SP), Poliçan, Adriatik Zotkaj (SP) and Pogradec, Eduart Kapri (DP). In December 2017, the CEC received a request from the Prosecution to strip the mandates of MPs Rakipi (PDIU) and Rehovica (SMI) in relation to their false statements and non compliance with the decriminalization law requirements. In January 2018, the CEC decided for both MPs to lose their mandates. The Prosecution Office announced the closing of the investigations for MPs Fufi and Mamo and the Mayor of Pogradec, reaching the conclusion that none of them are in non-compliance with their respective political and leadership mandates. One of the others withdrew from rerunning prior to the announcement of the lists, a sign this of an invitation



## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

to retire from public engagement and to thus close the investigation of the prosecution. The Prosecution Office has not made its final decisions regarding the three-abovementioned mayors, but none of them are currently part of the political or judicial discussion.

- The Prosecution Office also filed requests for investigation for administrative delays or declaration irregularities in the framework of the decriminalization process for members of parliament Blendi Klosi and Pjerin Ndreu (SP); Asllan Dogjani and Florion Mima (DP); Luan Rama (SMI); and mayors Ndrec Dedaj (SP), Xhelal Mziu (DP), and Zef Hila (DP). CEC found them all not guilty based on court decisions or dismissed cases. Based on this, the CEC justly decided that they were not subject to the decriminalization law.
- In addition, the list of officials with errors in the initial self-declaration form, but then corrected, included MPs Arben Ristani and Sali Berisha (DP), Artan Gaçi, Vladimir Kosta and Xhemal Qefalia (SP), Spartak Braho and Ylli Shehu (SMI), and 5 mayors: Artur Bardhi (SP), Adriatik Zotkaj (SP), Edmond Themelko (PMIE), Ndrec Dedaj (SP) and Tërmet Peçi (SP). The CEC accepted the corrections in their declarations and rejected the request of the prosecution for penalization in the framework of the decriminalization practice.
- In October 2017, the main parliamentary opposition party (DP), filed a request at the General Prosecution Office to check decriminalization data for Member of Parliament Aqif Rakipi (PDIU) and Gjetan Gjetani (SP) in connection to suspicions of concealment of criminal activity information, which in accordance with the decriminalization law should have impeded them from being appointed to or elected in public positions. The request was based on denouncement “by the public and partners within DP”, and were considered sufficient to verify, “whether these two members of parliament have

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

concealed past criminal records of illegal activities in Italy”<sup>25</sup>. The General Prosecutor stated in the media that Prime Minister had summoned him in relation to this case. The Prosecutor declared<sup>26</sup> that, “*The General Prosecution Office has started an in depth verification of MP Aqif Rakipi a few months ago. The verification procedure for this subject is still ongoing, because the Special Sector on “Decriminalization” in the General Prosecution Office is still waiting for replies on the information requested from a number of foreign authorities*”. In December, the Prosecution confirmed the claims of the DP and requested that the mandate be stripped, which was approved by the CEC in January 2018.

#### 3.4 THE “ROSHI” CASE AND DECRIMINALIZATION CHALLENGES IN KAVAJA

On 13 June 2016, the Prosecution requested the arrest of Kavaja Mayor Elvis Rroshi, on charges of falsification of CEC declaration documentation. The police arrested him and the court remanded him to house arrest for a number of months. At the start of the process, Rroshi publicly resigned from his position as mayor, but after consultation with the main leaders of the majority (SP), he withdrew his resignation 24 hours later and continued to exercise his functions as a mayor after being remanded to house arrest. The Council of Ministers did not intervene with his dismissal, even though in accordance with the decriminalization law, it could have initiated the process.

In December 2016, the CEC decided to strip the Mayor of Kavaja of his mandate. He appealed the decision at the Constitutional Court, which confirmed his dismissal and the relevant CEC act on March 23. As a result, the Municipality

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<sup>25</sup> Statement of the Democratic Party, 4 October 2017.

<sup>26</sup> Announcement of the General Prosecution Office: [www.pp.gov.al/web/Prokurori\\_i\\_Pergjithshem\\_takim\\_me\\_Kryeministrin\\_per\\_ligjin\\_Per\\_Dekriminalizimin\\_1111\\_1.php#.Wh88TFWnGpo](http://www.pp.gov.al/web/Prokurori_i_Pergjithshem_takim_me_Kryeministrin_per_ligjin_Per_Dekriminalizimin_1111_1.php#.Wh88TFWnGpo)

## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

of Kavaja announced extraordinary elections (May 6), which were not held in light of the political crisis and were decreed to be held on 25 June on the same day as the general elections. SP distanced itself from Rroshi after the decision of the Constitutional Court, but during the suspension period, he was seen in SP election campaign activities alongside Finance Minister, Arben Ahmetaj. In a report on the situation in Albania, KAS found<sup>27</sup> that, “it has been continuously stressed that the government is protecting the mayors and Members of Parliament that should be dismissed from duty in accordance with the decriminalization law. For example, reference is often made to the situation of former Kavaja Mayor Elvis Rroshi, who was dismissed as a result of his proven criminal activity, but yet remains a member of the SP National Assembly.



*Prime Minister Rama and Kavaja Mayor Rroshi*

In April 2016, the Prime Minister and Chairperson of the SP, Edi Rama, regardless of the information provided by

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<sup>27</sup> Walter Glos. *Länderberichte. Der protest: legitimes mittelfür mehrdemokratie in Albanien?* Tirana, 13 April 2017

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

international partners, the media, and other serious sources, publicly stated that, “there is a mayor in Albania that should be taken as an example by all. I am referring to Elvis Rroshi, the Mayor of Kavaja. He has not only implemented in time all the projects of the “Urban Renaissance” program, but has also been able to save 40% of the foreseen budget. This means that the work has been done well and that the funds have been managed well. We need to promote this spirit in all other mayors, so that they do not come to us to complain, but go ahead and get the work done”. The situation has changed and his model is no longer of reference point, but by the end of 2017 Rroshi had still to be expelled from the SP and the other SP representing structures; what is more, no SP political official, including his main supporter Prime Minister Rama, has apologized for supporting and rerunning him in the 2015 local elections.

On 25 March 2017, after the announcement of the extraordinary elections in Kavaja and the introduction by the SP of the wife of SP Chairperson for Kavaja, Gentian Daja, as a potential candidate, the latter resigned as SP Chair in Kavaja. Mr. Daja, who was one of the closest persons to Mayor Rroshi, was one of the most accused persons by the opposition and the media for criminal activities in the past and non-compliance with the requirements of the decriminalization law. He eluded the requirements of the law by resigning the leadership position in the administration, which obligated him to fill out the decriminalization form and maintained the Kavaja SP Chairmanship. A few days after the resignation, the wife of Mr. Daja withdrew from the running under the pressure of the media and the international community, and her place was taken by another person, who also later withdrew, leaving the running to a third person. By December 2017, some 6 months after the resignation of the SP local chairperson and the dismissal of Mayor Rroshi,

## **DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS**

Daja continues to be head of branch and the majority of the former mayor staff continues to retain their public posts.

In November, the Prosecution Office announced the arrest of a large number of local government and local directorate officials in Kavaja on charges of corruption, abuse of post and falsification of official documents. Among the individuals arrested were family members of the former mayor, local leaders of the SP branch and other local party officials. This investigation proven by the Prosecution Office helped in showing the consequences of a local government run by individuals with criminal records, and that only their dismissal makes possible the realistic undertaking of investigations.

The “Rroshi” case was one of the 5 or 6 most flagrant cases at the local governance level; however other former or current mayors have also been protagonists of such cases between 2011 and 2017. Rroshi became main news for the media and politics because in 2011 he was able to win in a DP stronghold and because his leadership style and how Prime Minister Rama continuously protected him as a model of governance, created the impression that the union of individuals with criminal records, considerable financial resources, and political support for the top can become a real threat to democracy and the rule of law standards.

### **3.5 THE “TAHIRI” AND “PEZA” CASE AND THE POLITICAL SCANDALS INITIATIVE**

When the decriminalization law was approved, the aim was not to consider other politicians, who had not committed criminal acts in the past for which they would have had to be punished by the law enforcement agencies, as subjects to the investigations and infringements of parliamentary mandates. A series of political scandals occurred in the beginning of 2017, which switched focus from incriminated politicians to a number of other politicians accused of

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

“new” criminal acts, especially related to corruption and abuse of power.

By October 2017, the best-known case was that of SP Member of Parliament Alfred Peza, a journalist by training with a long career, who had made the jump to politics, was recently elected an MP and was an important functional secretary of the party. In publishing his annual income for the recent past, the media reported discrepancies between his accumulated assets and the opportunities to accumulate them through his profession, especially when it came to the purchasing of a stake in one of the second tier banks. The accusation was denied, but the review process is ongoing, even though Mr. Peza was not included in the electoral lists for the 2017 general elections.

In 2017, the Prosecution announced the start of its investigation into the revenue of the Member of Parliament on charges of concealment of assets, money laundering, refusal to make a declaration, concealment or false declaration, etc. The investigation led the Prosecution file a request for the seizure of Peza’s shares in the “Credins” bank with the Serious Crime Court. According to the prosecution, the MP owns 1% of the shares in the bank, at a total amount of ALL 113,000,000, purchased in March 2015, while he was a Member of Parliament. The Prosecution Office claimed that the revenue used for the purchase of these shares was not reflected and recorded in public ledgers, thus establishing a suspicion related to its legality.

The investigation is still ongoing because of the changes to the penal legislation and the fact that the subject of the investigation is no longer a Member of Parliament, which transfers the case away from the jurisdiction of the Serious Crimes Court where it was initiated. Currently, Mr. Peza is an SP functional secretary, but he is not a de facto active participant in SP structures or a competitive actor in Albanian politics. He has returned to the media making professional comments and analyses, while the

## **DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS**

investigation against him will continue in the following months.

Another famous case was that related to the request of the Prosecution Office addressed to the Assembly to strip the parliamentary immunity of MP Saimir Tahiri, the second most active political figure of the 2013-2017 period, and allow it to arrest him. Mr. Tahiri was charged with a series of criminal acts after the media reported on the arrest of a criminal group and the wire tapping information that the Italian police has collected from cannabis trafficking groups during the last four years.

In October, after a harsh political debate, the Assembly stripped Tahiri's immunity, but refused the request of the Prosecution Office to grant permission for a potential arrest. The publication of the "Tahiri" scandal put the majority and the Prime Minister into a difficult position, which led to the expulsion of Tahiri from the Parliamentary Group and suspension from party functions until a decision is rendered by the justice bodies on one hand, and taking him under political protection on the other, refusing the requests of the Prosecution Office and even threatening its representatives with dismissals at the earliest opportunity.

### **3.6 DECRIMINALIZATION AND CHALLENGES DURING THE 2017 ELECTIONS**

The first integral test that would see the implementation of the decriminalization law in form and content was the 2017 general elections campaign. The CEC would need to check the information of the candidates, each of the candidates would need to fill in the declaration forms and the Prosecution Office could intervene in the cases provided for by law. The test was not related only with the election, but also their product - the new Assembly, the new government and the new governing structure resulting from the elections.



### **3. BACKGROUND OF THE DECRIMINALIZATION PROCESS**

The IPS engaged in this campaign to analyze the election high-risk zones and to monitor the implementation of the decriminalization law and its issues. According to the report of the IPS, the main risk areas were no longer the areas of considerable political rivalry, but areas where “tough guy” or rich candidates were running directly or indirectly, which were mainly individuals with informal connection to crime or politicians known from massive campaign financing. This type of situation occurred in specific constituencies in Elbasan, Durrës, Dibra, Shkodra, Lezha, etc. According to the data gathered by the IPS, even the political parties’ lists show critical problems in relation to the high standards required by the decriminalization law.

#### **3.7 ISSUES WITH CANDIDATE LISTS IN 2017**

The 2017 election campaign was held in a context of emergency, because half of the political parties filed their lists at the close of the deadline after a political agreement, while the rest had filed them much earlier. This specific circumstance made it impossible to keep the legal and normal practice deadlines for complete registration of candidates and their verification. The opposition candidates were registered after the legal deadline and their information was provided even later, based on a political consensus between the SP and DP.

The CEC obligated the parties for the first time to make public the decriminalization form of each of their candidates and the general information provided in their resumes. The collected data is available online and this helped in getting to know the candidates and their records better. The online system was also impacted by technical issues (some candidates did not publish their declarations online, there were discrepancies between the name of the candidate and the published declaration, there were incomplete declarations and data, etc.).

## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

Based on public information, the political parties' lists included far less problematic candidates with criminal records than in the previous parliament. This was a positive, but expected development because of the adoption of the decriminalization law. The media, monitoring groups and the international factor were active in investigating any cases of problematic names. However, the presence of some such individuals in some of the candidate lists indicates the concern that the law has not yet been implemented in its entirety.



*DP's 2017 campaign and former Minister Ksera*

During the election campaign, the CEC announced that some candidates (18) were identified in the multi-name lists of the political parties, who have problems with their declarations at the CEC and that serious doubts had been raised on their ability to pass the decriminalization test. The list published by the CEC did not include any of the names from the proportional lists of the two large parties, DP and SP, even though the DP has included in its list an MP, whose previous mandate had been stripped in the framework of the decriminalization law (candidate D. Tahiri, Vlora), and the SP had included an MP whose mandate had been stripped by the Constitutional Court (I. Beqja, Dibra). The list of 18

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

names published by the CEC included candidates from the proportional lists of LIBRA (2), SMI (3), MEGA (2), PDIU (4), PDS (3) and CDP (4). Considering the names in question in detail, two of them can be noted - SMI candidate in Tirana Y. Shehu, who just concluded the parliamentary legislature as Member of Parliament, and the main PDIU candidate of Shkodra, S. Fishta, who in 2013 ran in Shkodra as part of the left wing coalition.

The verifications of the IPS found that the Socialist Party list included a number of names with past issues. During the meeting of the SP leadership that approved the candidate list, there were critical and contradictory voices for at least two names in the list, one in Elbasan and one in Vlora. The first one was accused of an altercation with the law in Italy during his stay there years ago, while the second was accused in relation to his commercial activities during the transition period. The criticism was not taken into consideration and the list was approved. The second candidate was elected, while the candidate in Elbasan was not able to win a mandate. The SP list also includes candidates that have been mentioned in the media as individuals directly or indirectly implicated in active investigations for connection with famous individuals in the crime world. For example, in Durrës, the file of the main criminal group in the area includes a conversation with and the support provided by the official leading the property registration office of the region and this individual is ranked in the list of candidates that have won mandates with SP in Durrës. A candidate continuously accused by the media and political actors of criminal activities in the past won another mandate in Shkodra. Part of the SP list were also officials that had been dismissed on accusations of corruption from customs, health, education, property registration, and other services, who were promoted onto the lists due to political support or impact on the relevant constituencies.

A large number of business people were also part of the SP list, some of whom did not have any political

background, but were very active in the local management of elections and votes. The majority of the constituencies they ran in, such as in Dibra, Tirana, Durrës, Elbasan, Fier, Berat, Shkodra, etc. were the subject of accusations and contestations for vote buying. On the other hand, the SP stayed loyal to problematic candidates, who officially ran under the banners of other ally political parties, but with the public support of the SP. Such was the case of the SDP candidate in Shkodra, the PDIU candidate in Shkodra, Dibra and Elbasan, a number of PDS candidates and other SP ally parties to the south of the country, etc.

The opposition to the international monitoring mission denounced the PDIU case in Dibra many times, because not the candidate leading the list, but her family members were the ones actually running the campaign and the opposition for their past issues with the law accused them. The opposition made also claims in relation to other PDIU candidates, especially in Elbasan and Peqin and some candidates in Shkodra. Actually, the election showed that in specific constituencies, individuals accused by politics and the media did not run in the elections themselves, but backed and promoted members of their close families or members of their business staff. The problematic core of the representation is evident in this legislature, as well; regardless of the fact, that such cases are considered to be “politically correct”.

There were two critical cases among the ranks of opposition candidates: the rerunning of Mr. Tahiri in Vlora, who was one of the two Members of Parliament that had their mandates stripped in the framework of the decriminalization law in 2016, and the participation of former minister Ksera in the campaign in Gjirokastra, who is the only high level official sentenced to prison in the last four months.

The same issue - participation in the campaign of former local or central political leaders with problematic or criminal

### 3. BACKGROUND OF THE DECRIMINALIZATION PROCESS

records in the past - was also noted in the SP campaigns in Lezha, Vlora, Saranda, Berat, Shkodra, Kukës, etc., the SMI campaigns in Lezha, Kurbin, Elbasan and Vlora, and the campaigns of other parties in other constituencies.

Finally, the multi-name lists of SP, DP, SMI, PDIU, etc. including the lists of election winners, have a large number of politicians and senior officials at various times, who still have open investigations against them in the Prosecution Office, and have been or currently are the subject of accusations for corruption and criminal acts, but officially no conviction decisions against them have been given by the Albanian courts, so de jure they are innocent. In addition, the lists include candidates who have had a number of identities during the transition period, who have lived in various European countries without providing detailed information, and whose accurate information verification requires much more time than the current period available.



*MPs Rehocia and Rakipi*

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## **4. | FUTURE CHALLENGES FOR DECRIMINALIZATION**

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### **4.1 THE ISSUE AT ITS CORE: DECRIMINALIZATION IS NOT REFLECTED WITHIN PARTIES**

The complex analysis of the decriminalization issues and the integral implementation of the law shed light on the great difference between the attention paid to and the implementation in the case of public and political positions and the lack of implementation within the political parties themselves. Two years after the adoption of the law, no central or local political official, impacted in the framework of the decriminalization law, has been expelled from the respective parties, has been punished according to their internal statutory norms, or has been excluded from active engagement in election campaigns.

- Since 2016, the main political parties have announced that they would include the decriminalization principles in their statutory bylaws and that relevant review structures would be established. SP, DP, and SMI have announced that high standards in the framework of decriminalization will be part of the requirements when running in elections, but the practical implementation of these standards is still to be seen. Furthermore, no parties have filed statutory changes to date with the First

#### 4. FUTURE CHALLENGES FOR DECRIMINALIZATION

Instance Court in Tirana (where changes in legislation are respected and no review party structure has been convened or has functioned).

- Political parties have established structures for the preliminary assessment of candidates for leadership positions, based on ethical and legal criteria. The establishment of these structures is considered a positive step stimulated by the decriminalization law. These structures come in various formats, such as ad hoc committees only for elections or permanent and long-term institutions, however the information collected by the IPS during its communication and official information exchange with the main parties, shows that these have not been operational, especially when candidates have been announced or decisions have been made in this regard.
- The National Assembly/Leadership or other decision-making structures of the SP, DP, SMI, etc. have also publicly announced ethical assessment criteria for potential candidates, including instances of elections within the party. They have approved regulations and directives for party branches, especially regarding the criteria to be met by potential candidates for leadership positions in the party and government. In both these cases, observation of these requirements was not effective. None of the political parties has undertaken decision making on candidates by these structures, and thus there has been no intra-party verification of the candidate data.
- The parties did not use the decriminalization law to verify their lists prior to announcing it publicly and registering it with the CEC. The only party that did this was the Socialist Party. A statement of the General Prosecutor confirmed that some individuals



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with criminal records in the SP preliminary lists were not allowed to run after an affirmative reply on these records by the Prosecution Office. However, neither the SP nor the Prosecution Office have made public the names of the candidates in question, while many of the individuals not included in the lists, especially former Members of Parliament, have been appointed to senior public positions after the elections.

- During the campaign, there was much information that party members, who had lost their parliamentary mandates or executive positions in the framework of the decriminalization law, were active and even leading the election campaign. They remained a point of reference for the media, while their respective parties did not react. In the Albanian case, the local party immunity is much more important than being an MP or holding an executive position, because the parties have great power in the political and economic administration of the country. The fact that this immunity is allowed, promoted, and not addressed with the same standard as in the case of political and public posts, shows a shortcoming of the decriminalization law and a practice of avoiding the standards of the law by the parties.
- Even the known names who were penalized by the law (in Kavaja, Lezha, etc.) continue to actively participate in local events and party conferences, or publicly accompany main political leaders, including the Prime Minister or leaders of the opposition, in open challenge to the decriminalization law.
- Other more specific cases have shown the lack of will by political parties, especially their leaders, to establish an effective and trusting climate against individuals involved in criminal acts in the past. The opposition has used a series of documents and judicial paperwork

#### 4. FUTURE CHALLENGES FOR DECRIMINALIZATION

from Italy and other countries to bring accusations against important local leaders, such as the instance of the former Head of the Vlora Region (SP representative), the Head of the Kukës Region (SP-PDIU), the mayors of Kruja, Kurbin, Poliçan, Tepelena, etc, while the majority has brought accusations against the opposition mayors of Mallakastra or Kamza. Both parties have also accused a large number of SMI officials, especially directors of regional directorates and public entities. However, every one of them continues to hold their positions unscathed by the calls of internal and external public stakeholders for their dismissal in the framework of the decriminalization law.

- In October 2013, Prime Minister, Rama, publicly distanced himself from the former longstanding socialist Mayor of Vlora, saying<sup>28</sup> that *“we have obligation towards 1 million Albanians that elected us to fight corruption at all levels, and today we ask the justice system to do its job without any type of impediment... We will not be the political shield of any person being charged, not now, not ever”*. In mid-2017, on the eve of the general elections, the former mayor in question (Sh. Gj) was sentenced to prison by the Appellate Court, while also converting the sentence to two years of probation and forbidding him to exercise any public functions for three years. Prior to sentencing Gjika had been appointed as Socialist Party electoral coordinator in a Vlora constituency and during the 2017 elections, he was part of the election staff of this party. Neither the SP, nor Rama reacted after the court made its decision, did not even suspend him from party functions, and did not take any measures in relation to the decision and the ethical rules put in place by this party in the framework of the decriminalization law.

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28 Statement of Prime Minister Rama <http://www.gazetadita.al/akuzat-ndaj-gjikes-rama-inkura-joj-drejtisine-te-hetoje-deri-ne-fund/>

## DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS

- The case of the Vlora Region Head is the model case of applying a double standard. Former Head Danaj, accused a number of times by the opposition during his first mandate, was reelected with the maximum and insistent support of the senior team in the SP (the Prime Minister is an MP and as a result, political leader of the region). The situation changed considerably in the previous year, for unrelated reasons - the head of the region joined and kept the side of those criticizing the political leadership in the party. This was enough for an extraordinary meeting of the SP advisors and the allies to dismiss him immediately in April 2017 and for pro-government media to accuse him of criminal activities in the past, using the same accusations made previously by the opposition and refuted with force by the SP and the government. In addition, it should be stressed that during the meeting that decided his dismissal was actively attended, in infringement of the local governance legislation, by Minister Gjikhuri and his bodyguard, both of whom had no status and right to participate.
- The same rationale - maximum protection when accused by the opposition and extreme measures against an individual when they criticize the leader and the party line - was also used in the case of Member of Parliament Kokëdhima. In April 2016, a month before the decision of the Constitutional Court, Mr. Kokëdhima was elected Secretary for the Structural Reform and Emigration. The decision of the Constitutional Court to strip his mandate in May 2016 resulted in SP's reaction against the Court. A few months later, when the MP publicly criticized Party leader Rama and the official SP line, he was dismissed from his functions, including the National Assembly, to which he had been elected by the Party Congress. Harsh political attacks were mounted against him with plenty of accusations and statements that the Decision of the Constitutional Court was adequate.

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- On the other hand, even the opposition, which initiated the procedure for stripping his mandate, changed its position because of the new approach that the MP chose and included him in the opposition coalition against the government, which again showed a double standard and affected the public trust of the decriminalization cause. The same situation was repeated by the DP when it engaged in its campaign a former MP dismissed by the decriminalization law, or a former minister recently released from prison, and when its representatives in the CEC protected and voted against the stripping of the mandates of a number of opposition politicians, MPs, mayors, or advisors, who are subject to the decriminalization law.
- The third largest party in the country (SMI) has chosen the same double standard approach regarding decriminalization. It was in favor of having the mandate of its MP Selami stripped, mainly because he had *de facto* switched sides and was part of the Socialist Party. However, the SMI and its rhetoric on decriminalization were hurt when its engaged former Members of Parliament in the 2017 election campaign, who had been dismissed in the framework of this law, or other central and local level politicians who were subjects to this law. Furthermore, a number of former SMI local leaders and local officials, including Balili, were supported by the party and were not expelled by the party, even after the official acts and public facts were against them.

#### 4.2 CORRUPTION VS DECRIMINALIZATION, OR BOTH?

The public perceives the decriminalization action as important, especially when related to Members of Parliament and senior political leaders, but flagrant cases of corruption and abuse of public power attract far more attention than the resumes of the past. In the context of a high level of corruption,

the public rightly expects individuals involved in corruption and abuse scandals to be removed from running in elections and not to be promoted in senior political positions.

During the debate on the adoption of the decriminalization law, a series of expert opinions and public surveys have shown that cases of financial scandals and corruption initiated against active politicians or those aspiring to senior positions, are as problematic as criminal cases of the past. Even more, for certain communities currently corrupted individuals are far more dangerous than those who have committed crimes long ago during their emigration to other countries. However, this message from the public was not taken under consideration by the political parties themselves, including here the instance of the publication of candidate lists for the 2017 general elections.

The official correspondence with the General Prosecution Office, the SAI, and the CEC did not identify any cases of senior and political officials being withdrawn from engagement in public life when accused of corruption. Quite the contrary is true. Referring to candidate lists for the 2017 elections, a large number of political officials accused of corruption by Albanian and international reports, by reports of the SAI, HIDACI, etc., have been politically promoted and have played leadership roles in the election campaigns.

- The most flagrant cases among the majority is that of the former Minister of Internal Affairs, continuously accused of abuse of the law and corruption, with some accusations being investigated for involvement in many scandals, who was promoted and appointed at the head of the SP campaign in Tirana and Dibra. In addition, senior administration officials, accused in SAI audit reports and other investigation institution reports were publicly promoted, mainly due to the political support of their party of affiliation. The following Minister of Health was the subject to such an accusation in SAI audit reports only a few weeks prior to her appointment, and

#### 4. FUTURE CHALLENGES FOR DECRIMINALIZATION

there are some 10 other similar cases in the SP candidate lists of accused individuals who were promoted before the files and processes involving them were concluded.

- The candidate and party leadership promotion lists of other political parties, including DP, SMI, PDIU, SDP, PAA, etc. also have individuals who were the subject to investigations and public corruption scandals. For example, DP lists included two former commune heads in Kashar and Farka of Tirana, and some other local level candidates, PDIU lists include cases, such as that of the businessman running in Shkodra, even though accused of and under investigation for smuggling, and SMI lists included a number of directors and other political figures, and former MPs under investigation in Berat and Korça.
- The data provided by the High Inspectorate for the Declaration of Audits and Assets, and Conflict of Interest (HIDAACI) in their correspondence with the IPS shows that in the 2013 to 2017 period, this institution has brought criminal charges to the prosecution for asset concealment, money laundering, or false financial declaration for a total of 245 individuals. This list includes some individuals with strong political ties that were also included in the 2017 election candidate lists. Namely, the HIDAACI has filed criminal charges for the criminal acts provided for in articles 237/a ½ of the Penal Code of the Republic of Albania for a winning candidate in Shkodra, a winning SDP candidate in Shkodra, a losing DP candidate in Shkodra, a losing PDIU candidate in Elbasan, etc. In addition, this list also includes a series of influential political figures in political parties or the National Assemblies of the parties, mayors, local unit administrators, etc. For example, the list includes the name of the current mayor in Poliçan, part of the governing majority.

## **DECRIMINALIZATION: CURRENT SITUATION, ISSUES, AND EXPECTATIONS**

The data show that political parties, especially those in power, use different practices and standards from those stemming from the best practice of party democratic functioning and the decriminalization law principles.

The difference between the principles and the concrete implementation of the spirit of the law are indicators showing that the decriminalization process will require another legislative mandate, time, and other complimentary reforms in order to be completely implemented and functional.



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# MAIN CONCLUSIONS

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- The decriminalization law is one of the most effective legal instruments to exclude individuals with past criminal records from politics and senior state posts. Two years after its adoption, the public impact of the law is still minimal, and not at the expectation level of the public and international partners.
- The political parties have used the decriminalization law to accuse each other and rivals with criminal records, but the parties have done little or nothing to exclude individuals with such records from their own ranks.
- Political parties have not reflected the decriminalization law principles in their party statutes and other regulation. This intentional action, gives individuals with criminal records the right to maintain their post in the National Assemblies, local branches, and in the party leadership, thus indirectly influencing politics in the country.
- The new Assembly will have fewer individuals with criminal records, but because of the incomplete process and the interpretation of the legislation, we will continue to have MPs that are accused of having records, but who are not directly penalized by the decriminalization law. In addition, we will continue

to have individuals with pending charges or under investigation for various criminal acts, including money laundering, corruption, abuse of power, etc.

- The new Assembly may have in this legislature two of the four MPs penalized in the framework of the decriminalization law (one stripped of the mandate and the other sentenced to jail), which is a signal that the political parties did not take the law seriously and that electoral interest continue to dominate over election principles and standards.
- A number of individuals with criminal records were removed from candidate lists, but they continue to be active in leading election and campaign staff in their areas of influence. This means that the parties removed them from the Assembly or the municipalities to avoid public reaction, but protected and engaged them in the campaigns to secure the highest number of votes possible from them, especially through the influence of criminal groups, intimidation, pressure, and other illegal forms of securing votes.
- The decriminalization law has not been able to establish functional and long-term verification mechanisms and the Prosecution Office and the CEC have failed to apply unified standards for the same criminal acts and for the same cases in different parties.
- The delays in the election organization and the pre-election political crisis made the verification of candidates impossible, forecasting that the new Assembly will include other cases of accusations and other cases of Members of Parliament being stripped of their mandates because of the past criminal records.