EXPERTS' ANALYSIS

The violations of the legal procedure evidence the politically rigged process against the leader of the Albanian opposition Sali Berisha.

PREPARED BY :

Sokol Mëngjesi

Genc Gjokutaj

www.sali-berisha.com

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Sokol Mëngjesi[1], Genc Gjokutaj[2]
Defense Attorneys of Sali Berisha

I. Background.

1. A political process is mounted against the opposition leader Sali Berisha, based on the case of Partizani Sports Club. The case relates to a land which was restituted, in accordance with the law, to its former owners, expropriated by the communist regime 60 years ago, and the privatization in compliance with the law of some dilapidated buildings, that had lost their function. Amongst the hundreds of heirs of the original families who benefited was Jamarbër Malltezi, the son in law of Mr.Berisha, who inherited 410m2 from his family. The case file is a pyramid of fraud, based on the concealment and falsification of hundreds of official documents, manipulation of evidence and refusal to accept evidence in the file.

2. The investigation in the case was opened pursuant to a lawsuit containing false claims, filed by the head of the Socialist Party parliamentary group, today Minister of Interior, Taulant Balla. Official stamps show that The Special Prosecutor For Corruption and Organized Crime (SPAK) registered an investigation the same day in which the lawsuit was officially registered, demonstrating that the opening of investigation was not done based on the assessment of the case file, but following political orders. The three years long investigation yielded no proof or document that the process of recognition and restitution of the land, which took almost 15 years to complete (1994 – 2007) and the process of privatization, initiated by the Socialist Party (SP) government and concluded by the Democratic Party (DP) government (2005-2008), were marred by any violations. On the contrary, the false depositions of Taulant Balla became evident, but SPAK refused to charge him for false reporting, pursuant to Article 305 and 305/a of the Criminal Code. This investigation process, which was conducted almost exclusively regarding Berisha and Malltezi was registered regarding the case, not under a particular name, hence denying them the procedural rights that are granted to the persons under investigation. Berisha and Malltezi were never summoned by SPAK to be interrogated on the case, because this would immediately expose the pyramid of political fraud that SPAK was mounting on political orders. Following Edi Rama's repeated public appeals on May and April 2022[i], ordering SPAK to investigate Berisha, SPAK intensified the procedural actions against Berisha and his son in law, Malltezi and filed the same investigation, now registering them officially as persons under investigation. At the same time, SPAK and GJKKO imposed against Berisha the coercive measures of prohibition to leave the country and obligation in front of a police officer and against Malltezi arrest in a detention facility.

[1] Prof.Dr.Sokol Mëngjesi is former dean of the Faculty of Law, University of Tirana, lecturer of Criminal Law and member of the Albanian Bar Association.
[2] Genc Gjokutaj si a former deputy district public prosecutor and member of the Albanian Bar Association.

3. From hundreds of officials, appointed by the SP or DP governments, who, in compliance with the law, have conducted the process of recognition and restitution of the property title to hundreds of legitimate owners, one of whom was Mr.Malltezi, and the privatization of objects erected on their land, none of them is under investigation, because they have strictly applied the law. The state has incurred no financial loss in this process, whilst the legitimate owners were restituted their property.

4. The decision to put the chairman of the DP Sali Berisha under the coercive measures of the prohibition to travel abroad and obligation to appear in front of a police officer, without the prior authorization of the Parliament, contrary to the law and previous precedents, and the replacement of these measures with house arrest, without providing any evidence to the Parliament not only demonstrates the double standards applied towards the opposition, but are also flagrant violations of the Constitution and the criminal Codes. Likewise, the approval of authorization for putting Berisha under house arrest without respecting the basic legal guarantees, the adoption of a communication ban with anyone but his immediate family members in absence of a legal provision, the restriction of attending the parliamentary sessions without a court verdict, are all marred by manifest violations of the country's Constitution and laws, the basic human rights and freedoms of the European Convention on Human Rights (ECHR), of the principles of due process, fair trial, and legal certainty.

5. These patent violations were carried out by the Special Prosecutor (SPAK), Special Court (GJKKO) and the Parliament controlled by Edi Rama and under the public dictate of Edi Rama over these institutions, for the purpose of weakening the country's opposition and removing Sali Berisha from contending in the upcoming political elections. They were executed in a series of legal violations, which are evidenced in this report, by prosecutors and judges who, according to the law had the obligation to recluse themselves from the case or be removed, due to being previously dismissed from duty by Berisha, or based accused by Berisha for ties to organized crime.

* **For further details** on the absence of any breaches of law and criminal evidence in the file of Partizani club, as well as on the concealment of evidence by the SPAK please see https://www.sali-berisha.com/english-the-political-arrest

II. Violations committed by the Special Prosecutor on Corruption and Organized Crime (SPAK), the Special Court on Corruption and Organized Crime (GJKKO) and the Parliament controlled by Edi Rama.

6. As of 30.12.2023 Mr. Sali Berisha**,** former President and former Prime Minister of Albania, current MP and the leader of the Democratic Party of Albania, is under house arrest and under an order of communication ban with anyone, but his immediate family members who live with him; the communication ban is imposed in breach of the Constitution and in absence of a legal provision. Also, in violation of the constitution and the law, in absence of a court order, he is also banned from attending parliamentary sessions. The coercive measures were imposed whilst in the investigation phase, and in a series of serious violations of the Constitution, The European

Convention of Human Rights (ECHR) and the country's codes, with no charges being brought against him and before ever questioning him on any wrong doings.

7. On 20.10.2023, the Special Court on Corruption and Organized Crime (GJKKO, first instance) adopted decision no. 112 date 20.10.2023, by which it imposed two measures of restriction of liberty against Sali Berisha, namely, prohibition to leave the country and obligation to appear twice a month in front of the prosecutors. A detention measure, following a brutal act of arrest, broadcasted in the media for political vendetta, was also applied against his son in law, Prof. Dr. Jamarbër Malltezi, without ever summoning him for questioning before the arrest. The decision on Mr. Berisha was confirmed by the same court, by means of decision no. 117 date 26.10.2023.

8. Following a lawsuit based on false deposition, by the head of the SP parliamentary group, currently interior minister, Taulant Balla, the Special Prosecutors for Corruption and Organized Crime (SPAK) opened an investigation on the same day, in violation of the law, which continued for three years. This investigation, registered on the subject matter (not on any particular person), was in fact targeted completely on Berisha and Malltezi, while denying the latter any procedural rights, since formally they were not under investigation.

9. These three years yielded no proof of any wrongdoing. Yet, in October 2023, SPAK commenced investigation on this matter against Berisha and Malltezi and immediately imposed coercive measures against them, without filing criminal charges. While they accuse Berisha and Malltezi of corruption, committed in collaboration, in breach of the principle of legal certainty and violation of the legal criteria imposed by the CCP, they have not even indicated what were the illegal acts that the two have committed. None of the acts described in the court decision is illegal and no violation of the law has been found in the process of recognition and restitution of the land to the legitimate owners, and the privatization of the dilapidated buildings of the Partizani sport club. Berisha had no signature, no role whatsoever in any of the processes of the recognition and restitution of the property, nor in the process of privatization of the dilapidated buildings. None of the officials who have conducted these processes are under investigation because no wrongdoing was committed.

10. The well-established doctrinal and jurisprudential criteria of the legal classification of corruption are completely ignored by SPAK and GJKKO, who provide no such analyses at all. The detention measures are imposed in defiance of the legal criteria for their imposition and the precedents of obtaining authorization prior to imposing coercive measures. The *sui generis* interpretation of the law and the setting aside of the established precedents, hence hindering the principle of legal certainty, are used as a weapon against the opposition and to remove what Edi Rama sees as an obstacle in the upcoming general elections.

11. The coercive measures were imposed, during the investigation phase, in flagrant violation of the Code of Criminal Procedure (CCP), Article 245§1(ç)[ii], without ever summoning Berisha and Malltezi for questioning on any wrongdoing, and without ever hearing any argument from them.

12. The criteria required by in Articles 228 and 229 of the Code of Criminal Procedure[iii] (CCP) for imposing coercive measures were not met either (the criteria is discussed further below).

13. The measures against Berisha were also in flagrant violation of the Constitutional warranties, which provide immunity for members of the parliament (MP). Measures which restrict the liberties of MP-es, search of the premises, as well as other constitutional freedoms, like freedom of expression and of exercising the core functions of an MP, require that parliamentary authorization is granted ex-ante (Art.73 of the Constitution of Albania[iv], Articles 13§5[v] and 118 of the Regulation of the Parliament of Albania[vi], Article 288§1, §2 of the CCP).

14. The coercive measures against Berisha were taken in defiance of these warranties and the established precedents, without ever asking the Parliament to grant authorization. These measures have never been taken against an MP without authorization of the Parliament. For instance, an authorization was sought from the Parliament before imposing exactly the same restrictions on an MP from the ruling Socialist Party (the case of Saimir Tahiri, a socialist MP, decision of the Parliament no. 104/2017, date 25.10.2017[vii]).

15. The decision no. 112 date 20.10.2023 and no. 117 date 26.10.2023, were never announced to Mr. Berisha personally, as required by Article 246 of the CCP[viii], hence legally speaking, they never came into effect. However, the courts ignored this aspect and other flagrant violation of human rights and procedural warranties.

16. The Special Court of Appeal on Corruption and Organized Crime upheld these measures, despite the manifest violations.

17. Judge Maneku Gjoka did not respect even the minimal legal warranties of a fair process that the law mandates. Contrary to the Constitution, and the well-established precedents, she rejected the defense attorneys' request for the proceedings to be suspended and the case be sent to the Constitutional Court, for a decision pursuant to Article 145 of the Constitution[ix], on whether the parliamentary authorization was necessary before imposing the coercive measures.

18. She rejected the defense attorneys' request for her resignation, based on information that the judge had been reportedly dismissed from judiciary in 1996, by the High Council of Justice, at the time when this body was chaired by Sali Berisha, as President of the Republic. According to Article 17 of the CCP, she had the duty to resign on grounds of former disputes with the party and reasons that question the judge's impartiality, whilst Article 18 warrants the disqualification from the case of a judge that does not abstain voluntarily[x]. These legal provisions are aligned with the obligations stemming from Article 6 of the European Convention of Human Rights (ECHR), to guarantee anyone the right to a fair process, by an independent and impartial tribunal, established by law.

19. Contrary to Article 31(b) of the Constitution and Article 34/a of the CCP which guarantees anyone time and facilities to prepare an effective defense, as well as Article 248§1 of the CCP[xi], which provided the defense attorneys with a five days' time period to prepare, read the file and even make copies of it, the judge refused the defense attorneys' request to allow for time to read the casefile.

20. Judge Maneku Gjoka gave the defense attorneys appointed by Mr.Berisha only a couple of hours to read 20,000 pages case file, during which they were not even allowed to take picture of

documents. When they refused to carry out their task without getting to know the 40 volumes casefile, they were dismissed by the court.

21. Judge Maneku Gjoka continued the process with lawyers she appointed ex officio. Media articles revealed that the first lawyer who was appointed ex office had issued public statements in his Facebook, attacking Sali Berisha and was dismissed from the case. Two of the other lawyers requested that they were given two days to read the case file. Judge Maneku Gjoka refused the request and threatened in court, to remove the attorneys license if they did not proceed immediately. The attorneys refused and were dismissed by the judge.

22. She went on to appoint a different attorney, Ms. Valentina Teodoresku. Facebook posts of Ms. Teodoresku, which were publicized by the media, showed that she is an active supporter of Prime Minister Edi Rama and a staunch admirer of Enver Hoxha. More strikingly, she has called repeatedly for Sali Berisha's arrest. On 21.12.2021 her post reads: "Sali Berisha's hour of arrest coming; (*US ambassador*) Yuri Kim publicly requests Arben Kraja: SPAK should act now!". Likewise, she has shared Mr. Edi Rama's call for SPAK to arrest Mr. Berisha and Mr. Taulant Balla's post about the commencement of this very same criminal investigation following his lawsuit. The appointment of Ms. Teodoresku was contrary not only to the provisions of the Constitution and the CCP that guarantee the right to an effective defense, quoted in paragraph 19, but also to Articles 3 and 8 of the law no.55/2018, "On the profession of defense attorneys in the Republic of Albania[xii]". Not surprisingly, her role as defense attorney was fictious. She was ready in 60 minutes to carry on with the process, time which was insufficient to prepare, since only the court decision no.112 was 200 pages. The audio records of the session prove that Ms. Teodoresku has raised no arguments regarding the absence of legal conditions for imposing the coercive measures against Mr. Berisha. The latter was therefore denied of his right to an effective defense, provided for also in Article 6 of the CCP[xiii].

23. These arguments, were presented with other grounds of appeal, at the Special Court of Appeal, but were dismissed by judge Ilirjana Olldashi, who upheld the first instance court decision.

24. Berisha refused to obey to these anti-constitutional measures, because acting otherwise would mean accepting the forfeit of the parliament's powers from the judiciary, and would grant a license to any judge or prosecutor to write a constitution according to the orders of the government. The constitutional immunities are not granted to the MPs as individuals, but to the parliament, to ensure that its activity is conducted smoothly, shielded from political pressures. These guarantees are in line with the jurisprudence of the European Court of Human Rights (ECtHR) (*Kart v. Turkey, 8917/05*).

25. Following Berisha's stand, the prosecutors of SPAK addressed the Parliament and requested authorization to impose detention measures. This request was ungrounded in law, because it was not a request to impose coercive measures based on the evidence, but a request for the replacement of some coercive measures with harsher ones, without providing any evidence, but as a form of punishment for non-obedience of the previous measures. The parliamentary regulation does not foresee such rules. The only procedure provided is the procedure to grant authorization for coercive measures based on evidence (see section III).

26. The Socialist Party controlled majority granted the authorization, in violation of the Parliament Regulation (Articles 13§5 and 118) and precedents.

27. Following the SP parliamentary majority's decision, the prosecutors requested the court to impose against Berisha the measures of house arrest, under police guard, and the prohibition of communication with anyone besides members of his immediate family who live with him.

28. By means of decision no. 520, date 30.12.2023 of the GJKKO, judge Irena Maneku Gjoka, hasted to accept the Prosecutors' request, in breach of the Code of Criminal Procedure (CCP) and in fundamental breach of the country's Constitution, mentioned in the ensuing paragraphs.

28.1. These measures were again taken without ever summoning Mr. Berisha for questioning, contrary to Article 245§1(ç) which considers a court decision establishing a precautionary measure invalid if it does not present the reasons for not accepting defense claims and the reasons for which other lesser precautionary measures are deemed inadequate. Mr. Berisha was never interrogated before imposing the measures, the court never heard his defense arguments and the decision does not reason why the arguments of the defense are not taken into account. The decision also did not provide any mentioning as to why lesser measure, such as bail and obligation to remain in one location were not deemed appropriate.

28.2. They were taken in absence of reasonable doubts, based on evidence, on the existence of the criminal act and of any of the criteria set forth in Article 228§3, CCP. None of the facts that are vested on Mr. Berisha constitute a legal violation, hence there is no grounded suspicion that he has committed a criminal act. The alleged acts have occurred 15-25 years prior to the investigation and the evidence are public acts, hence there is no possibility of tampering with the evidence and the court has not substantiated which are the factual circumstance that indicate the risk of tampering with the evidence. There is no risk that Mr. Berisha could abscond, which is also admitted by SPAK during the Parliamentary Council's hearing. There is no circumstance under which the same criminal offense can be committed because Mr. Berisha is in opposition and has no administrative power.

28.3. The procedural condition for the replacement of the coercive measures by the court did not exist, because the decision taken by the Parliament was unconstitutional. The SPAK's request to the Parliament was unprecedented and unfounded in law, because, contrary to the legal regime, the intervention of the Parliament was not sought for imposing coercive measures based on evidence, but as a punishment - to harden the measures imposed by decision no. 112 date 20.10.2023 and no. 117 date 26.10.2023 of GJKKO, which Berisha did not obey because they were unconstitutional. Hence, the decision of the Parliamentary Council on Mandates Council on the Regulation, was taken in absence of a procedure established by law. Decisions no.112 and no.117 were never presented to Berisha in person, as the law requires. They never came into effect, hence Berisha cannot be held responsible for ignoring decisions of the law enforcement agencies.

28.4. The decision no.520, date 30.12.2023, runs against the legal conditions for replacing the coercive measures, set forth in Articles 231 and 260 of the Criminal Procedural Court (CCP). Article 231 of the CCP[xiv], warrants the replacement of coercive measures only if the established legal criteria are met cumulatively. According to the provision a coercive measure cannot be toughened only because of formal non-compliance, but instead the prosecutor **may** seek a

tougher measure based on three criteria: the importance of noncompliance, the motifs and the circumstances of noncompliance.

28.4.1. Regarding the first criteria – the importance of the breach of the first measure, there is a solid jurisprudential standing (also quoted by the court) that not any non-compliance can warrant the hardening of the coercive measures, but only those which put in risk the investigation or increase the risk of flight. Mr. Berisha has been on TV every day during this period and SPAK does not even mention that he is at risk of fleeing. The evidence in this case are public acts of 15-20 years ago, hence the risk of tampering with evidence in non-existent.

28.4.2. Mr. Berisha's motif for refusing to obey the first measures was his determination to respect the fundamental law of the country – the Constitution.

28.4.3. The criteria of the circumstances also does not warrant the hardening of the measures, because whilst Mr. Berisha defied the unconstitutional measures imposed by the court, he continued his political activity intensively and under the public eye, and has not engaged in any unlawful activity.

28.4.4. Contrary to the law, Article 260 of the Code of Criminal Procedure, the coercive measures were not escalated for the reasons stipulated in the law, but as a punishment for non-obedience and with the aim at restricting Mr. Berisha's political liberties. In requesting house arrest measures, SPAK prosecutors overlooked two other less restrictive measures they could have applied, namely bail and restriction from movement from a certain place (Article 232 of the CCP[xv]). It is clear that the leapfrog at Article 232(d), whilst overlooking two other coercive measures (Article 232c&ç), serves the political interest of Prime Minister Edi Rama in weakening the Albanian opposition.

28.5. The alleged offence, i.e. the allegation that Mr. Berisha did not comply with the first coercive measures, does not exist, because Mr. Berisha was never formally informed in one of the manners prescribed by the CCP about these decisions.

28.6. The court decision imposing the coercive measure was null and void in terms of Article 128/a[xvi] of the CCP for failure to observe the requirements for the assignment of the judge of the case and those pertaining to the obligatory summoning of the person under investigation.

28.7. The decision no.520, date 30.12.2023, was given by a court which was not established by law, was not impartial and independent.

28.7.1 Mr. Berisha's attorneys requested that the judge of the case be dismissed from this proceeding for bias. By this time. they had obtained official evidence proving that judge Maneku Gjoka had been dismissed for incompetence by the High Judicial Council in 1996, when Berisha was President and Chairman of the Council.

28.7.2. Contrary to the law, judge Maneku Gjoka, who also chairs the GJKKO, did not put this request for adjudication to the roster judge, and did not assign it to another judge through a random draw, as it is the rule in any court in Albania. Instead, looked for a judge who would accept to dismiss the motion. This procedure violates the principle of adjudication in a court established by the law, which is inherent in the Albanian legislation,

as well as in Article 6 of the ECHR, to which Albania is a party. As expected, the selected judge dismissed the motion to exclude judge Maneku Gjoka from the case.

28.7.3. Mr. Berisha's attorneys requested again that the judge be dismissed pursuant to Article 17§1(ë) of the CCP and listed repeated serious violations of the law as rationale for the request. Namely, 1) all requests of the defense attorneys were dismissed, while all the request of the prosecution were accepted; 2) the evidence presented by the defense were rejected; 3) the court's decisions were not based on law 4) the decisions were not reasoned with regard to the arguments of the defense; in fact, many of the defense arguments were not mentioned in the court decision.

28.7.4. The CCP, in Article 18, establishes that pursuant to a motion for dismissal, the proceedings should be in place until a decision is rendered[xvii]. In defiance of the law, the judge immediately decided to continue with accepting SPAK's request. It remanded Mr. Berisha under house arrest, and imposed a communication ban between him and anyone else, except his immediate family members that live with him.

28.8 The house arrest is in contravention of the legal criteria imposed by the CCP for imposition of such coercive measure, as described above.

28.9. The decision imposed unsubstantiated restriction of the constitutional rights and freedoms (freedom of expression), which were disproportionate and unsupported by an existing legal ground of the Albanian legislation.

28.9.1. The communication ban in itself is a flagrant violation of the country's Constitution, which in Article 17[xviii] establishes that restrictions of the constitutional rights can be done only based on law. The provision of the Code of Criminal Procedure of Albania, which allowed courts to restrict a person's freedom of communication (article 237) has been amended in 2017 and the prohibition of communication was abolished as it was considered uncompliant with the ECHR. Therefore, contrary to what the Constitution mandates, this punishment is not based on law.

28.9.2. The ban of communicating with people other than his immediate family members who live with him, is more stringent than the regime imposed on persons in detention centers, who can meet with a broader range of family members and can meet with journalists and MPs. The law no. 81/2020 "On the rights and training of those sentenced to imprisonment and pre-trial detention", Article 49, establishes the prisoner's right to meet with family members. The notion of family members, as per article 3, encompasses a broader range of people than the people living under the same roof, as the court had established for Mr. Berisha. Likewise, prisoners, according to article 49 point 3 of this law, have the right to communicate with the media, a right which is denied to Mr. Berisha. Prisoners have the right to have confidential meetings, among others, with MPs (Article 49 point 5). Prisoners have the right to telephone conversations with relatives and third parties (Article 49 point 9).

28.9.3. These restrictions aim at preventing Mr. Berisha meeting with his party members and to lead the opposition. Their consequences hence impact not only the political liberties of Mr. Berisha, but the political and assembly rights of the party and the people it represents.

29. In order to extend Mr. Berisha's detention period beyond the legal deadline with extra-legal means, judge Maneku Gjoka has breached the legal requirement of presenting Mr. Berisha with the complete confirmation decision within 48 hours, as prescribed by Article 248§2 of the CCP[xix]. Instead, judge Gjoka handed over her decision on the house arrest order only on 9 January 2024, i.e. 10 days after it was announced. This not only means that Mr. Berisha was put under house arrest without a proper court decision for at least eight (8) days, but it also caused delays in the appeal and the further proceedings, as the Court of Appeal timeline is dependent on the timely delivery of the first instance court decision.

30. This is a repeated pattern which occurred also with regard to the decision no.117, date 26.10.2023, which was handed down to Mr. Berisha's attorneys on 13.11.2023, or sixteen 16 days after the legal forty-eight hours deadline, which is established by Article 248§2 of the CCP.

31. In a similar fashion, the decision of the Special Court of Appeal, no.56, date 21.11.2023, of judge Iliriana Olldashi, which upheld decisions no.112 and 117, was delivered to Mr. Berisha's defense attorneys on 14.12.2023, or 13 days later than the 10 days deadline, established by Article 249§6 of the CCP[xx], hence hindering Mr. Berisha's right of appeal at the High Court.

32. Mr. Berisha was interrogated for the first time on 23.01.2024.

33. During this period of investigation, the SPAK has rejected all the evidence presented by the defense attorneys on several motions. Despite this being a case of investigation of an alleged financial crime, SPAK and GJKKO have imposed house arrest and other coercive measures without having made a basic financial analysis by financial experts. Berisha and Malltezi presented an expertise performed by independent licensed financial auditors, which confirms beyond doubts that all financial transparency, reporting and fiscal laws have been complied with, that all earnings are legitimate and that there is no money laundering. The SPAK refused to admit this expertise as evidence in the file.

III. Procedural violations of the parliamentary procedures and other violations affecting the exercise of the parliamentary mandate.

34. Contrary to the standards of a due process, the Socialist Party (SP) members of the Parliamentary Council on the Regulation, Mandates, and Immunity did not hesitate to exhibit their bias publicly before reading the file and assess the SPAK's request for authorization to impose coercive measures against Mr. Berisha.

35. The approval of this political decision was announced in the media on 14.12.2023, before any discussion in the pertinent council or the plenary session, by the member of this Council and chairman of the SP parliamentary group Bledar Çuçi, who stated that the SP group would approve the required measures against Berisha without any doubts.

36. A group of thirty MPs of the DP parliamentary group endorsed a motion to the Constitutional Court, requesting the interpretation of the Constitution on whether an ex-ante authorization from the Parliament was necessary for imposing on an MP the coercive measures of prohibition to travel abroad and obligation to appear in front of the police. Article 134 of the Constitution[xxi] stipulates

clearly that one fifth 1/5 of the MPs of the Parliament can seek the Constitutional Court on any matter, regardless of the topic of interest. Yet, the Constitutional Judges, many of whom controversially appointed by the SP following a much-disputed justice reform, ruled contrary to this norm, which has always been a cornerstone of the opposition rights in Albania. The Court's panel decided on an eight to one 8-1 vote that 1/5 of the MP 's did not have e legitimate right to seize the court because they are not a party to the specific dispute and no competence has been taken from them[xxii].

37. The Council on the Regulation, Mandates and Immunity was composed only of SP majority members and their allies because the opposition members were (still are) contesting the usurping of the opposition powers by the ruling SP, and did not participate. Different from what is established in Article 288§2 of the CCP[xxiii], by which the prosecutor is obliged to provide evidence to the Parliament to substantiate its request for authorization, and other precedents in which thousands of pages of evidence were handed over, in Berisha's case, SPAK's request was not accompanied by any evidence. Instead, the Parliament was only provided with the unconstitutional lower court decisions as a rationale for the request[xxiv].

38. During the meeting of the Council on the Regulation, Mandates, and Immunity Mr. Berisha's attorneys highlighted publicly and provided proof that SPAK has hidden evidence which plainly ascertains the absence of any criminal act or damage to public finances. They presented these evidences at the Council.

39. Contrary to the principles of a due process and Article 118 of the Parliament's Regulation, the prosecutors refused to answer questions put forth by the defense, hence evading the adversarial principle and denying Mr. Berisha his right to defense. The defense attorneys' attempts to exercise their rights were constantly shunned away by the Parliament Speaker Nikolla, who repeatedly exhibited her bias, before the defense had presented their arguments, by saying "*Mr. Berisha should go there, like any other citizen*"[xxv] and interrupting the defense arguments[xxvi].

40. The Vice Speaker of the Parliament, a Socialist Party MP, and member of the Council, Ermonela Felaj, stated during the Council's meeting that the coercive measures were necessary because Berisha was not staying passive, but was rallying people in front of the Parliament, hence exposing the fact that the real rationale behind Mr. Berisha's arrest was to prevent the opposition from exercising its legitimate rights[xxvii].

41. Likewise, Mr. Alibeaj, an MP elected by the DP list, but today aligned with the SP policy, member of the Council of Mandates, whose partner is a member of the Constitutional Court that endorsed the decision of the majority on this matter, suggested to the defense attorneys to advise their client to waive the immunity, hence confirming his bias without hearing the defense. It should be stressed that an authorization is not necessary (and was not sought in this case either) to conduct an investigation against MP-es, because the immunity regarding the investigation was removed from the Albanian Constitution, following Mr. Berisha proposal in 2012, when he was Prime-Minister. The authorization was sought only on the imposition of coercive measures.

42. It is worth mentioning that in the case of Saimir Tahiri, a former MP of the ruling SP and former Minister of Interior, the Parliament gave authorization, by means of decision no. 104/2017, date

25.10.2017, exactly for the same measures – prohibition to leave the country and obligation to appear at the police station.

43. The procedure for granting authorization, as established by Article 118 of the Parliamentary Regulation on Rules and Procedure was also infringed during the Parliament's plenary session. The article provides that the affected MP should be given the right to speak in the plenary session so that the other MP-es can make an informed decision. The Socialist Party Speaker of the Parliament. Mrs. Nikolla, brought in over fifty 50 police officers from the National Guard in the plenary hall. Mr. Berisha asked for the guard to leave the hall so that he could speak freely. The Speaker, Ms. Nikolla did not even answer to this request, but instead claimed that Mr. Berisha did not wish to speak and proceeded with the approval of the decision to grant authorization.

44. The aim of the coercive measure of house arrest and the communication ban is to restrict Mr. Berisha's political liberties, his mandate as MP and hinder the main opposition party – the Democratic Party of Albania in the coming electoral year.

45. The Albanian Constitution, Article 71§2[xxviii] establishes that the mandate of an MP is terminated if "(d) he does not appear in parliament for 6 consecutive months, without a due reason; dh) when he is found guilty of a crime, by means of a final court decision".

46. On 15.1.2024, Mr. Berisha's attorney informed the SPAK of Mr. Berisha's intention to participate on the parliamentary plenary sessions, which usually take place once a week. In its response dated 18.1.2024, no.1001/2, SPAK decided to prohibit Mr. Berisha's to attend these sessions, despite this not being part of SPAK's prerogatives.

47. On the contrary, the Code of Criminal Procedure, Article 242, establishes that a) a person can be prohibited from exercising a public duty, only upon a court order, and b) that such measures cannot be imposed on a person elected by the electorate[xxix]. The Constitution, Article 71§2(dh) put a higher standard for restricting an MP to attend parliamentary sessions. It determines that the mandate of an MP is terminated (amongst other causes) when he is found guilty of a crime, by means of a final court verdict.

48. Mr. Berisha contested the SPAK's decision in the Special Court (GJKKO), highlighting the urgency of the matter and requesting the court to act expeditiously. Judge Maneku Gjoka scheduled the session after 8 days, during which Mr.Berisha lost the possibility of attending Parliamentary procedures. Mr. Berisha had duly authorized his attorneys to represent him in the session. The notice of the court inviting him to participate in the court session was duly signed by a family member who live with him, as required by Article 140 of the CCP.

49. Judge Maneku Gjoka pretended that she was not convinced that Mr. Berisha had knowledge about the court session and that his intention not to participate in the session was unclear. Mr. Berisha's defense attorneys confirmed that the proxies signed by Mr. Berisha for them bear clear instructions for the session, and that together with the note and signature of Mr. Berisha's family member, there was no doubt left as to Mr. Berisha's knowledge. The attorneys drew judge Maneku Gjoka's attention to the double standards she applied. Whereas she took for granted that Berisha was legally informed of the decision no.112, date 20.10.2023, only because he held a press conference, despite this not being a legal means established by the CCP, she was now rejecting duly signed documents by Mr.Berisha, with the sole purpose of delaying the process. The judge

also refused to accept the attorneys request for excluding her from the case and postponed the session with another week.

50. The intention of such approach is clear: to extend as long as possible, with extra legal means, and in absence of a final court verdict on the substance as required by the Constitution, the prohibition of Mr. Berisha to participate in the parliament. This approach runs against the ECHR, Protocol 1, Article 3 and the jurisprudence of the ECHR (*Selahattin Demirtaş v. Turkey (no. 2) [GC], 2020*)[xxx].

51. On 8 February 2024. judge Maneku Gjoka announced that it had decided not to allow Mr. Berisha to participate in Parliament's plenary sessions, in violation of article 242§2 of the CPC and article 71 of the constitution. Until the moment of publication of this report, Mr. Berisha has not received a copy of the said decision and has not been able to launch an appeal.

Conclusions.

The examination of the procedures followed to impose the coercive measures of house arrest and prohibition of communications against the chairman of the DP Sali Berisha, whilst in the phase of investigation, and the placement of his son in law, Jamarbër Malltezi, under detention and then under house arrest, without ever questioning them, reveal a series of manifest violations of the fundamental human rights and freedoms, legal certainty, the due principle of due and fair legal process, embodied in the provisions of the Albanian Constitution and codes, and the European Convention of Human Rights.
They are a patent demonstration of the control of the judiciary with extra legal means, for the purpose of weakening the opposition and removing Edi Rama's political rival, Sali Berisha from the political domain, before the upcoming elections.

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[i] https://www.youtube.com/watch?v=yDGnTwkhw0Y
https://www.youtube.com/watch?v=Kvy4FpSNAeE

[ii] CCP, **Article 245 - Court decision** *(Amended by Law No. 35/2017 of 30.03.2017, article 129):*
1. The decision establishing a precautionary measure shall contain, under penalty of invalidity:
a) the personal data of the person subject to the precautionary measure or anything else suitableto identify him and, where possible, indication of the place where he is;
b) a summary description of the facts, indicating the legal provisions considered as violated;
c) presentation of the specific reasons and data legitimating the precautionary measure;
ç) presentation of the reasons for not accepting defense claims and, in case any of the coercive precautionary measures referred to in Articles 237, 238 and 239 of this Code has been adopted, presentation of the reasons for deeming inadequate the other precautionary measures;
d) determination of the measure duration, when it has been ordered to ensure the collection or the securing of evidence;
dh) the date and signature of the presiding judge, those of the assisting secretary and the seal of the court.
2. Where the criminal offence has been committed by two or more persons, the court shall rule by the same decision, providing reasons for the conditions and criteria for each of them.

[iii] CCP, **Article 228 - Requirements for the application of personal precautionary measures** *(Amended by Law No. 35/2017 of 30.03.2017, article 121): "*1. No one may be subjected to personal precautionary measures unless there exists a reasonable suspect against him, based on evidence. 2. No measure can be applied if there are reasons for impunity or extinction of the criminal offence or of the penalty. 3. Personal precautionary measures shall be adopted: a) when important reasons exist that put in danger the obtainment or the authenticity of evidence, based on factual circumstances that must be expressly set out in the reasoning of the decision; b) when the defendant has fled or there is a risk that he might do so; c) when, by reason of the particular circumstances of the fact and of the defendant's character, there exists the risk that he would commit serious criminal offences similar to the one he is being prosecuted for."
Article 229 - Criteria for establishing personal precautionary measures *(Amended by Law No. 35/2017 of 30.03.2017, article 122) – "*1. In establishing any precautionary measures, the court shall consider the suitability of each of them with the level of precautionary needs in the actual case. 2. Each measure must be proportionate to the seriousness of the facts and to the sanction foreseen for the concrete criminal offence. The continuity, repetition and as well as mitigating or aggravating circumstances provided for by the Criminal Code shall also be considered. A pre-trial detention measure cannot be ordered if the court deems that, for the crime committed, a conditional sentence could be issued. 3. If the defendant is a minor, the court shall consider his/her highest interest and the request for an uninterrupted concrete educational process."

[iv] The **Constitution, Article 73** (amended by Law no. 88, dated 18.09.2012, Article 1) (paragraph 3 amended by Law no. 76, 22.07.2016, Article 2): " 1. The deputy is not held responsible for opinions expressed in the Assembly and votes cast by him/her in the exercise of the function. This provision is not applicable in the case of defamation. 2. A deputy may not be arrested or have his/her liberty deprived in any form or have a personal search of his/her house carried out, without the authorisation of the Assembly. 3. A deputy may be detained or arrested without authorisation when caught during or immediately after the commission of a crime. The General Prosecutor or the Chief Special Prosecutor immediately notifies the Assembly, which, when it finds that there is no ground for proceedings, orders the lifting of the measure. 4. For the cases foreseen in paragraphs 2 and 3 of this Article, the Assembly may hold discussions in closed sessions, for reasons of data protection. The decision is taken by open voting."
[v] Regulation of the Albanian Parliament, Article 13§5: "5. The Council examines the prosecution's request for authorization from the Assembly for the arrest, or the deprivation of liberty in any form, or the exercise of control over the MP's residence in accordance with Article 73 of the Constitution. The review of the request is done according to the procedure of provided for in articles 118 and 119 of this Regulation."

[vi] Regulation of the Albanian Parliament, Article 118 -Granting the authorization for the determination of the coercive measure of prison or house arrest, or the deprivation of freedom in any form, for personal or residence control: "1. The request and the accompanying documents for granting the authorization for the determination of the coercive measure providing for prison or house arrest, or deprivation of liberty in any form, for control personal or residential property is presented to the Speaker of the Assembly by the prosecutor. The chairman sends the request and accompanying documents immediately for consideration to the Council for Regulation, Immunity and Mandates and informs the deputy.
2. The MP, for whom authorization is requested, is notified of the request made and the documents that accompany it, as well as the time in which the Committee on the Regulation, Mandates and Immunity will begin reviewing the request. The deputy has the right to submit his opinion in written or oral, with explanations and remarks about the case, to be represented by legal attorneys, to put direct questions and seek clarifications regarding the request in order to exercising the right of defense.
3. At the end of the examination, the Committee, within 2 weeks, prepares a report for the plenary session, in which it recommends overturning or approving the granting of the authorization for setting the measure of ensuring prison or house arrest, or deprivation of liberty in any form, or control personal or apartment. The report of the Council is distributed to the deputies.
4. Examination of the request for imposing the coercive measure of arrest in prison or at home, the deprivation of freedom in any form, or of personal control or of the residence of a deputy is decided as the first item on the agenda of the next session, after the submission of the report of the Committee on Regulation, Mandates and Immunity. In the plenary session, the floor is first given to the deputy, to whom the request has been submitted,

to give explanations or to answer the questions of the deputies. The Committee's report is not subject to discussion. The Assembly decides by open vote on granting or failure to grant authorization for setting the coercive measure of arrest in prison or at home, or deprivation of liberty in any form, or personal or apartment control of the deputy."

[vii] https://kuvendiwebfiles.blob.core.windows.net/webfiles/K--shilli-p--r-Rregulloren-dhe-Mandatet-dat---20-10-2017.pdf
https://kuvendiwebfiles.blob.core.windows.net/webfiles/Keshilli-i-Rregullores-Mandateve-dhe-Imunitetin-date-21.10.2017.pdf

[viii] CCP, **Article 246 - Enforcement of the precautionary measures** *(Amended by Law No. 35/2017 of 30.03.2017, article 130):*
1. The police officer or agent entrusted with the execution of an arrest decision shall deliver copy of the relevant decision to the person subject to such measure and shall promptly inform him on the letter of rights, pursuant to paragraph 2, of Article 34/b of this Code. The judicial police shall keep minutes for all actions performed. Such minutes shall be then sent to the court which has issued the decision and to the prosecutor.
2. In case there is a doubt on the authenticity of the decision ordering the precautionary measure or the real identity of the person subject to such measure, the responsible judicial police officers and agents shall not execute it.
3. Decisions on other precautionary measures are notified to the defendant by the court.
4. After their notification or execution, decisions are filed with the secretary of the court, which has issued them. defense lawyers are also notified on the filing.
5. A copy of the decision establishing a coercive measure is sent to the authority that is competent to decide on the establishment of such a measure in the regular cases.
6. Every two months starting from the execution of an arrest decision, the prosecutor shall inform in writing the court establishing the precautionary measure on the conducted investigation activity and the coercive needs. The information shall contain data on the status of the proceedings, on the questioning of the defendant and other persons, a description of the information obtained and shall be accompanied by copies of the file's acts. If the prosecutor fails to provide information in due time, the court shall verify the coercive needs upon request of the defendant or *ex officio*. The court, after hearing the parties, decides to continue the application of, or to replace or revoke the precautionary measure. Provisions of Articles 248 and 249 of this Code shall apply.

[ix] **The Constitution, Article 145** – "1. Judges are independent and subject only to the Constitution and the laws. 2. When judges find that a law comes into conflict with the Constitution, they do not apply it. Inthis case, they suspend the proceedings and send the case to the Constitutional Court. Decisions of the Constitutional Court are obligatory for all courts. 3. Interference in the activity of the courts or the judges entails liability according to law. "

[x] **CCP, Article 17 - Abstention** (Amended by Law No. 35/2017 of 30.03.2017, article 13): "1. A judge has the duty to abstain from the judgment of an actual case:
a) if he has a private interest in the proceedings or if any of the private parties or lawyers is a debtor or creditor to himself or to his spouse, cohabitant or his children;
b) if he is a legal guardian, a representative or employer of the defendant or of any of the private parties or if the lawyer or the representative of any of these parties is his own or his spouse's close kindred;
c) if he has given advice or expressed his opinion on the object of the proceedings;
ç) if there are disputes between him, his spouse or any of his close relatives with the defendant or any of the private parties;
d) if any of his own or his spouse's relatives has been harmed or damaged by the criminal offence;
dh) if any of his relatives or of his spouse's relatives performs or has carried out prosecutor's role in the same proceeding;
e) if any of the conditions of incompatibility referred to in Articles 15 and 16 exist;
ë) if any other important reasons for judge's partiality exist.

2. The abstention statement is submitted to the chairman of the court, who shall approve or reject it by reasoned decision.
3. Chairpersons of the hierarchically superior courts shall decide on the abstention statement of any courts' chairperson. A panel of the High Court composed of three judges shall decide on the abstention statement of the chairperson of the High Court.

CCP, Article 18 - Disqualification of the judge: "1. Parties may request the disqualification of a judge:
a) in the cases referred to in articles 15, 16 and 17 of this Code;
b) if, in the exercise of his functions and prior to the issuance of the decision, he has expressed his opinion on the facts or circumstances object of the proceedings.
2. A judge may not issue or take part in the issuance of a decision until the decision declaring the inadmissibility or rejection of his disqualification request has been issued.".

[xi] **The Constitution, Article 31**: "During the criminal proceeding everyone has the right: …
b) to have sufficient time and facilities to prepare his/her defence;"

The CCP, Article 34/a – The rights of the defendant (Added by Law No. 35/2017 of 30.03.2017, article 26):
"1. The person under investigation or the defendant shall be entitled to: …
e) have adequate time and facilities for the preparation of his defence;
ë) right to access to the material of the case pursuant to the provisions of this Code;"

CCP, Article 248 - Questioning of the arrested person (*Amended by Law No. 35/2017 of 30.03.2017, article 132*) – "1. Not later than three days of the execution of the measure, the court shall question the person held in house arrest or pre-trial detention. The court shall proceed with the questioning within five days of the execution of the measure in case of other coercive or interdicted precautionary measures. The defence is entitled to be informed on the acts and obtain copies thereof. 2. The court shall, by way of questioning, verify the requirements and criteria for the application".

[xii] **Law 55/2018 "On the profession of lawyer in the Republic of Albania"**
Article 3 - Principles: "1. The legal profession is guided by the basic principles of professionalism, ethics, loyalty, integrity and confidentiality. 2. The lawyer, during the exercise of the profession, is primarily guided by the interests of the client he represents."
Article 8 "Duties of the lawyer" - "The lawyer, during the exercise of the profession, performs the following duties: a) provides every client he represents with professional, fair and effective in the function of the faithful realization of his interests; b) offers every client an equal legal service, guaranteeing protection without any discrimination of any kind, according to the meaning given by the legislation in force on protection against discrimination; c) acts with professionalism, loyalty, honesty and dignity, as well as being guided by the client's interests, in compliance with the legislation in force, the Statute of the Bar Association of Albania, as well as the rules of the Lawyer's Code of Ethics; ç) guarantees protection or transparent representation, in the best interest of the client it represents, by preventing conflict of interest; d) provides services to beneficiaries of legal aid, in accordance with the legislation in force on legal aid guaranteed by the state; dh) provides legal services in any case on the basis of a written agreement concluded between him and the client, in accordance with the relevant provisions of the Civil Code. If the client decides to terminate the agreement at any stage of its implementation, the lawyer is obliged to respect the client's decision and request remuneration for the work performed up to the moment of termination of the agreement. When the reward is not determined by mutual agreement between the parties, the matter can be resolved in court; e) is obliged to return any documentation provided by the client for the purpose of representation or defense upon termination of the agreement between the lawyer and the client; ë) declares to the Chamber of Advocates of Albania any changes to the personal data deposited, other changes related to the judicial situation, as well as the beginning of the exercise of public or private duties or functions; f) takes the necessary measures regarding professional liability insurance, according to the rules defined in the Statute of the Chamber of Advocates of Albania; g) reports on any doubts arising in relation to vigilance measures, in accordance with the legislation in force for the prevention of money laundering and terrorist financing; gj) informs the client about the possibility of resolving the dispute through mediation, when he

considers it reasonable and in the interest of the client; h) informs the victim of the criminal offense about the rights and guarantees provided for in the Code of Criminal Procedure.

[xiii] **CCP, Article 6 - Right to defense** (Amended by Law No. 35/2017 of 30.03.2017, article 3): "1. The defendant has the right to defend himself in person or through the legal assistance of a lawyer. If he has no sufficient means, he shall be guaranteed legal defence by lawyer, free of charge, in the cases provided for by this Code. 2. The lawyer shall assist the defendant to have his procedural rights guaranteed and his legitimate interests protected."

[xiv] **Article 231 of the CCP** - Replacement or joining of personal precautionary measures: - **"**1. In case of breach of the obligations concerning a precautionary measure, the court may order its replacement or joining with another more severe precautionary measure, considering the importance, motifs and circumstances of the breach. For the breach of obligations related to an interdicted measure, the court may decide its replacement or joining with a coercive measure.".

[xv] **CCP, Article 232 - Types of coercive measures:** "1. Coercive measures are: a) prohibition to expatriate; b) duty to appear at the judicial police; c) prohibition and duty to reside in a certain place ç) bail; d) house arrest; dh) precautionary detention in prison; e) temporary hospitalisation in a psychiatric hospital.".

[xvi] **CCP, Article 128/a - Absolute invalidity** (Added by Law No. 35/2017 of 30.03.2017, article 71): "1. The procedural acts shall be absolutely invalid (null and void) when the provisions concerning the following are not observed:

a) requirements to be a judge in an actual case and the minimum number of judges to establish judicial panels pursuant to the provisions of this Code;

b) the prosecutor's prerogative to conduct the criminal prosecution and to participate in the proceeding;

c) summoning the defendant, victim or the presence of the defense lawyer when it is mandatory.

2. A procedural act qualified by law as absolutely invalid (null and void) cannot become valid.".

[xvii] **CCP, Article 18 - Disqualification of the judge: "**1. Parties may request the disqualification of a judge:

a) in the cases referred to in articles 15, 16 and 17 of this Code;

b) if, in the exercise of his functions and prior to the issuance of the decision, he has expressed his opinion on the facts or circumstances object of the proceedings.

2. A judge may not issue or take part in the issuance of a decision until the decision declaring the inadmissibility or rejection of his disqualification request has been issued. ".

[xviii] **Albanian Constitution, Article 17**: "1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."

[xix] **CCP, Article 248 - Questioning of the arrested person: "**2. The court shall, by way of questioning, verify the requirements and criteria for the application of the measure and the coercive needs provided for in Articles 228, 229 and 230 of this Code. If these conditions do not exist, the court decides to revoke or replace the measure. Otherwise, the court decides the continuation of its application. The court shall deposit its reasoned decision within 48 hours."

[xx] **CCP, Article 249 - Appeals against precautionary measures** *(Amended by Law No. 35/2017 of 30.03.2017, article 133): "*6. The court decides, as appropriate, the annulment, amendment or approval of the decision, even on different grounds from those presented or indicated in the reasoning part of the decision. The court shall deposit its reasoned decision within 10 days."

[xxi] **Albanian Constitution, Article 134**, (*amended by Law no. 76, dated 22.07.2016, Article 12*): "1. Recourse to the Constitutional Court is sought upon the request of the: a) President of the Republic; b) Prime Minister; c) Not less than one-fifth of the members of Assembly; ç) Peoples Advocate; d) Head of High State Audit; dh) Any court, as per the provisions of Article 145, paragraph 2, of this Constitution; e) Any commissioner established by law for the protection of the fundamental rights and freedoms guaranteed by the Constitution; ë) High Judicial Council and High Prosecutorial Council; f) Local governance units; g) Organs of religious

communities; gj) Political parties; h) Organizations; i) Individuals. 2. The entities provided for in subparagraphs "d", "dh", "e", "ë", "f", "g", "gj", "h", and "i" of paragraph 1 of this Article may file a request only regarding the issues connected to their interests.". "

[xxii] file:///C:/Users/HP/Downloads/vend.mosk.27323%20Gjykata%20kushtetuese.pdf

[xxiii] CCP, **Article 288** *(Amended by Law No. 35/2017 of 30.03.2017, article 149):* - 1. The prosecutor shall file a request for authorisation with the Parliament if any of the precautionary measures of pre-trial detention or house arrest, any restriction of personal freedom in any form, or a personal or house search, must be established against a member of Parliament. 2. The request for authorisation shall be filed when the legal requirements provided for in the Criminal Procedure Code are met, for carrying out the actions foreseen in paragraph 1 of this Article. The request shall be supported by a reasoned report, accompanied by the evidence supporting his request. 3. If a member of the Parliament has been arrested in flagrante delicto, the Chief of the Special Prosecution Office shall immediately notify the Parliament. If the Parliament decides to revoke the order of arrest in flagrante delicto, the member of the Parliament shall be immediately released.

[xxiv] https://kuvendiwebfiles.blob.core.windows.net/webfiles/20231220153204144 2Keshilli%20i%20mandateve%20-%2018.12.2023.pdf
[xxv] https://kuvendiwebfiles.blob.core.windows.net/webfiles/20231220153204144 2Keshilli%20i%20mandateve%20-%2018.12.2023.pdf Pages 46-47
[xxvi] Idem, page 49.
[xxvii] https://kuvendiwebfiles.blob.core.windows.net/webfiles/20231220153204144 2Keshilli%20i%20mandateve%20-%2018.12.2023.pdf Pages 70-71

[xxviii] **The Constutution, Article 71: "**1. The mandate of deputy commences on the day when he/she is declared elected by the respective electoral commission. 2. The mandate of deputy ends or is invalid, as the case may be: a) when he/she does not take the oath; b) when he/she resigns from the mandate; c) when is ascertained one of the conditions of ineluctability foreseen in articles 69, and 70 paragraphs 2 and 3; ç) when the mandate of the Assembly ends; d) when he/she is absent for more than six consecutive months in the Assembly without reason; dh) when he/she is convicted by a final court decision for commitment of a crime.
[xxix] **CCP, Article 242 - Suspension from carrying out a public duty or service: "**1. By a decision ruling the suspension from carrying out a public duty or service, the court shall impose to the defendant the total or partial prohibition to conduct activities related to such duties or services.
2. Such precautionary measure shall not apply to persons elected pursuant to the electoral law."
[xxx] "In *Selahattin Demirtaş v. Turkey (no. 2) [GC], 2020*, the Court ruled for the first time on a complaint under Article 3 of Protocol No. 1 about the effects of pre-trial detention of elected MPs on their performance of parliamentary duties. Stressing that the imposition of a measure depriving an MP of liberty did not automatically constitute a violation of Article 3 of Protocol No. 1, the Court held that a procedural obligation under that provision required the domestic courts to show that, in ordering an MP's initial or continued pre-trial detention, they had weighed up all the relevant interests, in particular those safeguarded by Article 3 of Protocol No. 1. As part of this balancing exercise, they must protect the expression of political opinions by the MP concerned, since the importance of the freedom of expression of MPs (especially of the opposition) was such that, where the detention of an MP was incompatible with Article 10, it would also be considered to breach Article 3 of Protocol No. 1. Another important element was whether the charges were directly linked to an MP's political activity. Moreover, a remedy had to be offered by which MPs could effectively challenge their detention and have their complaints examined on the merits. Furthermore, the duration of an MP's pre-trial detention must be as short as possible, and the domestic courts should genuinely consider alternative measures to detention and provide reasons if less severe measures were considered insufficient. In this context, whether there was a reasonable suspicion that the applicant had committed an offence, as required by Article 5 § 1, was equally relevant for the purposes of Article 3 of Protocol No. 1. The domestic courts had failed to duly consider all of these elements and to effectively take into account the fact that the applicant was not only an MP but also a leader of the

opposition, the performance of whose parliamentary duties called for a high level of protection. Although the applicant retained his seat throughout his term of office, it was effectively impossible for him to take part in parliamentary activities. His unjustified pre-trial detention was therefore incompatible with the very essence of his right under Article 3 of Protocol No. 1 to be elected and to sit in Parliament."
https://www.echr.coe.int/documents/d/echr/Guide_Art_3_Protocol_1_ENG, pg 26.