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**REPUBLIC OF ALBANIA  
OFFICE OF HIGH INSPECTOR OF JUSTICE  
INSPECTORS' UNIT**

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No. 3409 prot.

Tirana, 29.12.2022

**REPORT**

"ON THEMATIC INSPECTION CONDUCTED IN THE PROSECUTION OFFICES OF GENERAL JURISDICTION, WITH OBJECTIVE: "ON TAKING ADMINISTRATIVE AND PROCEDURAL MEASURES WITHIN THE FRAMEWORK OF THE IMPLEMENTATION OF GENERAL INSTRUCTION NO. 12, DATED 20.07.2020, OF THE PROSECUTOR GENERAL "ON REGULATION OF RELATIONS BETWEEN PROSECUTORS AND HEADS OF PROSECUTION OFFICES, INFORMATION, TRANSPARENCY AND GUARANTEE OF INDEPENDENCE IN PROSECUTION OFFICES OF GENERAL JURISDICTION" AS AMENDED.

Pursuant to

DECISION NO. 37, DATE 01.06.2021 OF THE HIGH INSPECTOR OF JUSTICE

Tirana, 29.12.2022

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

General Information

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Title Report of the thematic inspection "On taking administrative and procedural measures within the framework of the implementation of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General *“On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction”* as amended.

Date 29.12.2022

Prepared by Mr. Julian Zonja (signature)  
Ms. Lindita Ziguri (signature)  
Ms. Elena Pelushi (signature)  
Ms. Alma Tafani (signature)  
Ms. Joana Asimi (signature)  
Mr. Besnik Maho (signature)  
Mr. Saimir Hoxha (signature)  
Inspectors at the HIJ Office

Review and consideration by Mr. Artur Metani  
High Inspector of Justice  
(seal and signature)

Approved / Amended / Returned

Date 29/12/2022

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

### **1. Introduction**

- 1.1. Reasons for initiating the inspection
- 1.2. Purpose of the inspection
- 1.3. Object of the inspection
- 1.4. Subject of the inspection
- 1.5. Inspection objectives
- 1.6. Importance of inspection
- 1.7. Inspection methodology
  - 1.7.1. Inspectors in charge
  - 1.7.2. Method of conducting the inspection
- 1.8. Inspection time
- 1.9. Period of time covered by inspection
- 1.10. Inspection directions
- 1.11. Evaluation criteria (standards)

### **2. Description of administered information**

- 2.1 Information obtained from the Prosecution Offices attached to the Courts of First Instance in Tirana, Durrës, Elbasan, Fier, Korça, Shkodra, Vlora
- 2.2 Information obtained from the Prosecution Office attached to the court of Appeal Vlorë, Prosecution Office attached to the court of Appeal Tiranë, Prosecution Office attached to the court of Appeal Shkodër, Prosecution Office attached to the court of Appeal Korçë, Prosecution Office attached to the court of Appeal Gjirokastrë, Prosecution Office attached to the court of Appeal Durrës
- 2.3 Information obtained from the General Prosecution Office

### **3. Findings**

- 3.1 Assessment base
- 3.2 The manner and procedure followed in issuing general binding instructions by the highest prosecutors as well as overseeing their implementation
- 3.3 The manner and procedure followed in issuing non-binding instructions by the Head of Prosecution Office as well as overseeing their implementation
- 3.4 The way of informing the Head of Prosecution Office by the prosecutor, as well as informing and reporting to the Prosecutor General by the Head of Prosecution Office

### **4. Conclusions**

### **5. Recommendations**

## 1. Introduction

### 1.1. Reasons for initiating the inspection

Pursuant to Article 194, paragraph 4 of Law no. 115/2016 "On the governing bodies of justice system", as amended, the High Inspector of Justice conducts institutional and thematic inspections on every aspect of the work of courts, judicial administration, prosecution offices and the administration of prosecution offices.

Pursuant to Article 38, paragraph 2, letter "i" and Article 106 of Law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended, the Prosecutor General requests the High Inspector of Justice to conduct thematic inspections or investigations on individual violations, and he also has the obligation to cooperate with the High Inspector of Justice on matters in his jurisdiction and to inform about disciplinary violations and problems encountered while performing the activities.

In this context, with letter no. 2361/1 prot., dated 12.05.2021, of the High Inspector of Justice, in addition to the High Judicial Council and High Prosecutorial Council, the Prosecutor General has also been requested to submit requests related to topics or issues, which may be subject to thematic or institutional inspection by the Office of High Inspector of Justice.

In response to letter no. 2361/1 prot.. date 12.05.2021, of the High Inspector of Justice, the Prosecutor General with letter no. 783/1 prot., dated 24.05.2021 has proposed, among other things, the need to conduct a thematic inspection on General Instruction no. 12, dated 20.07.2020, of the General Prosecutor "*On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*" as amended (referred to below as Instruction no. 12/2020)<sup>1</sup>.

Pursuant to Article 148, paragraph 1 of the Constitution, the Prosecution Office exercises criminal prosecution and represents accusation in court on behalf of the state. The Constitution states that the Prosecution Office is an **independent body, which shall ensure the coordination and control of its actions as well as respects the internal independence of prosecutors to investigate and prosecute, in accordance with the law**. Also, a number of legal acts guarantee the external and internal independence of prosecutors, such as law no. 96/2016, as amended; law no. 97/2016, as amended and the Code of Criminal Procedure. The Constitution also stipulates that one of the powers of Prosecutor General is to issue general written instructions for prosecutors and to exercise other powers defined by law.

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<sup>1</sup>Amended by General Instruction no. 16/2020 "On some changes in General Instruction No. 12. dated 20.07.2020 "On the regulation of relations between prosecutors and heads of prosecution offices, information transparency and guarantee of independence, in prosecution offices of general jurisdiction".

The competence of the Prosecutor General to issue general instructions in writing, is also provided in law no. 97/2016 "*On the organization and functioning of the prosecution office in the Republic of Albania*", as amended (Article 38, paragraph 2, letter "b"), competence which is also provided for the Heads of Prosecution Offices as higher prosecutors in article 46, paragraph 4 of the same law. The Prosecutor General is responsible for the work performance of the General Prosecution Office and of the prosecution offices attached to the courts of appeal and courts of first instance of general jurisdiction; issues general written instructions for the prosecutors of the prosecution offices of general jurisdiction and oversees their implementation, as well as takes care that the legal and constitutional powers of the prosecution are fully exercised.

Pursuant to law no. 97/2016 "*On the organization and functioning of the prosecution office in the Republic of Albania* " as amended, the management and representation of the prosecution is done at three levels of its organization, respectively by the Prosecutor General for the General Prosecution Office, the heads of Prosecution Offices attached to courts of appeal and courts of first instance of general jurisdiction, with the exception of the Special Prosecution Office according to the special law. The law has decentralized the prosecution system of general jurisdiction in these three levels, according to which the Heads of Prosecution Offices have no more powers to intervene in the investigation or decisions on specific cases made by prosecutors, whose activity and every decision making is controlled by the judge.

As mentioned before regarding prosecution, understanding in this case each prosecution office of general jurisdiction which is represented by the Heads of Prosecution Office and respecting the independence of the prosecutors, we believe it is crucial that they act in a unified manner to represent the public prosecution on behalf of the state. The Heads of Prosecution Offices guarantee the exercise of the Prosecutor General competences, such as reporting to the Assembly on the crime situation in the country; informing on the effectiveness of the criminal prosecution; guaranteeing the quality of representation of prosecution in court; other essential elements in the activities of the prosecution office, as well as informing on the implementation of the priority recommendations of the Council of Ministers in the fight against crime<sup>2</sup>. The Head of Prosecution Office role is related to his/her management competencies and the ones regarding criminal prosecution. Through these competences the Head of Prosecution Office facilitates the implementation of the Prosecutor General instructions<sup>3</sup>.

Among other types of administrative acts present in the activity of the prosecution office, which are used for the fulfillment of its functions, it is the general instruction, which is the by-law of the Prosecutor General or the Head of Prosecution Office, with a normative, administrative and/or procedural character, mandatory for implementation according to the level of instruction.

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<sup>2</sup>Article 104 of law no. 97/2016, as amended

<sup>3</sup>Articles 42, letter g) and 43, letter dh) of law no. 97/2016, as amended

It should be mentioned here that the approval of general instruction no. 12/2020, as amended was preceded by the issuance on 04.12.2019, of the general instruction no. 8 “*On Guaranteeing the independence of the prosecutor, the relations between the prosecutor and the heads of the prosecution office and the information in the prosecution offices of general jurisdiction*”, whose implementation was suspended with letter no. 3173/ Prot., dated 10.12.2019. The Prosecutor General started afterwards a consultation process with all prosecution offices, in order to become familiar with the problems that may have been encountered during the implementation of the legal framework on the prosecution office, focusing on the relation between the prosecutor and the head of prosecution office, issuing non-binding instructions for specific cases, according to the provisions of instruction no. 8/2019, and every issue that was assessed as important by the prosecutors. The non-binding instruction for a specific case is the bylaw of a higher prosecutor (Prosecutor General, Head of the Prosecution Office or Head of Section) for the prosecutors of the respective prosecution office, with an explanatory character that gives certain orders regarding the progress of the specific case, not mandatory for implementation.

General non-binding instructions are given in writing (but for the case when non-binding instructions can also be given orally due to urgency and confirmed with a letter), and they shall contain the necessary elements of an act such as a) the authority that issues the act; b) the parties to which they are addressed; c) presentation of facts; ç;) the legal basis to which it applies; d) date of entry into force; dh) signature.

At the same time, in the analysis of the report of the Prosecutor General "On the crime situation for 2020"<sup>4</sup>, it was found that: (i) in some prosecution offices, the Heads of Prosecution Offices have taken both administrative measures to issue general instructions and/or draft action plans to facilitate the implementation of the instructions as well as action plans of the Prosecutor General, and procedural measures to issue non-binding instructions and/or request information from prosecutors about the progress of specific cases, guaranteeing their independence; (ii) in some other prosecution offices, the Heads of these Offices have not taken full administrative and procedural measures for the implementation of the instructions and action plans of the Prosecutor General, issued in implementation of the Resolution of the Parliament and the priority recommendations of the Council of Ministers, or for the issuance of non-binding instructions for specific issues, applying them partially or with serious deficiencies; (iii) it was also found that there have been cases of repeated failure to inform or report on the implementation of the instructions and the establishment of the relevant administrative infrastructure to facilitate the conditions for their implementation.

Due to the fact that the problems found in the report of the Prosecutor General "On the state of

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<sup>4</sup>Report of Prosecutor General Office "On the state of criminality in 2020". page 48.

crime in 2020" have a general administrative, functional and procedural character, these problems are present in several prosecution offices, and according to the findings of Prosecutor General, these problems have resulted from the lack of institutional cohesion, lack of administrative or organizational measures, and because of the legislative provisions, it has been assessed that the right tool for addressing them is the conduct of a thematic inspection with the object: "On taking administrative and procedural measures in the framework of the implementation of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General " *On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction* " as amended, at prosecution offices of general jurisdiction.

As mentioned above, based on the High Inspector of Justice Office authority, with decision no. 37, dated 01.06.2021 of the High Inspector of Justice, it was decided: " On conducting thematic inspection of the Prosecution Offices of General Jurisdiction", with object: "*On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*" as amended.

## **1.2. Purpose of inspection**

The purpose of this inspection is to:

- Become familiar with the practices of the prosecution offices of general jurisdiction regarding the administrative measures taken by the Heads of Prosecution Office for issuing general instructions with a binding character and overseeing their implementation.
- Become familiar with the practices of the prosecution offices in taking procedural measures for the issuance of non-binding instructions for prosecutors and overseeing their implementation as well as informing of the progress of specific cases or reporting on the implementation of the instructions for facilitating the conditions for their implementation.
- Identify possible problems in relation to the implementation of General Instruction no. 12/2020 of the Prosecutor General, and possible proposals in terms of regulating the relations between the prosecutors and Heads of Prosecution Offices, between the Heads of Prosecution Offices and the Prosecutor General, the organization and the operation of the prosecution office, the unification of practices, continuous training and legal changes.

## **1.3. Object of inspection**

This inspection has evaluated the activity of the prosecution offices attached to the courts of first instance and the courts of appeal of general jurisdiction in taking administrative and procedural measures in the framework of the implementation of General Instruction no. 12/2020, of the Prosecutor General, as amended.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Not only has this inspection evaluated the quantitative aspect of the acts issued by the Heads of the Prosecution Offices while exercising their powers as well as the answers of the prosecutors while exercising their rights and obligations according to general instruction no. 12/2020, of the Prosecutor General as amended, but it has also placed emphasis on their compliance and harmonization with general instruction no. 12/2020, as amended and other general instructions of the Prosecutor General as well as the law, which are their legal basis .

The implementation of general instruction no. 12, dated 20.07.2020 as amended, of the Prosecutor General, referring to the directions of thematic inspection, is facilitated and guaranteed by issuing general instructions for this purpose, issuing other general instructions, issuing non-binding instructions, overseeing their implementation, requesting information by the Heads of Prosecution Offices and prosecutors informing them, reporting to the Prosecutor General, as well as keeping regular record of these acts in the register of internal procedural correspondence.

#### **1.4. Subject of inspection**

The thematic inspection was conducted at the prosecution offices of general jurisdiction: the Prosecution Office attached to the Court of First Instance in Tirana; Prosecution Office attached to the Court of First Instance in Durrës; Prosecution Office attached to the Court of First Instance in Elbasan; Prosecution Office attached to the Court of First Instance in Fier; Prosecution Office attached to the Court of First Instance in Korça; Prosecution Office attached to the Court of First Instance in Shkodra; Prosecution Office attached to the Court of First Instance in Vlora.

Prosecution Office attached to court of Appeal in Vlora, Prosecution Office attached to court of Appeal in Tirana, Prosecution Office attached to court of Appeal in Shkodra, Prosecution Office attached to court of Appeal in Korça, Prosecution Office attached to court of Appeal in Gjirokastra, Prosecution Office attached to court of Appeal in Durrës and the General Prosecution Office.

#### **1.5. Inspection objectives**

- Thematic inspection is of informative and detective nature of the effectiveness of the activity of prosecution offices attached to courts of first instance and courts of appeal of general jurisdiction in taking administrative and procedural measures related to the implementation of General Instruction no. 12/2020 as amended, of the Prosecutor General.
- Depending on the inspection results, making recommendations of a legislative, administrative, organizational or functional nature regarding the regulation of relations between prosecutors and Heads of Prosecution Offices, between prosecutors and Prosecutor General, information, transparency and the guarantee of independence in prosecution offices of general jurisdiction.
- This inspection should also serve as a tool to identify actions/omissions or behaviors of

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



magistrates, which based on a sensible allegation justify the initiation of a disciplinary investigation according to the procedures and rules provided for in law no. 96/2016 "On the status of judges and prosecutors in Republic of Albania", as amended.

## **1.6. Importance of inspection**

Thematic inspection is important:

- To raise the standards of the activity of prosecution offices of general jurisdiction in order to unify the rights and obligations of the prosecutors in relations with the Heads of the Prosecution Offices, the latter with the Prosecutor General, inform and coordinate the activities of the prosecution office to ensure the independence of the prosecutors while exercising their functions, as well as supervision, legality and transparency in the prosecution office.
- The High Inspector of Justice, in compliance with the Constitution and the current legal framework, emphasizes the independence of the prosecutor in terms of the quality of investigation, decision-making and representation of the public prosecution in court, making sure that without infringing this independence, it can work in these directions. Issues related to the functioning of the justice system are of public interest and in this aspect prosecutors, as an important link in the chain of the judicial system have the duty to contribute to the proper administration of justice. The activity and personal integrity of prosecutors is a matter that may be of legitimate interest to the general public, yet it is necessary to protect prosecutors from interference, which may affect their duty performance and damage the public trust in them and the prosecution office. Creating an independent and impartial criminal prosecution body is one of the main principles of an effective justice system and an essential principle of the criminal process. The justice system reform guarantees the prosecutor's independence during his/her duty performance, yet in addition to strengthening the independence of the prosecutor, it has also provided for the creation of disciplinary control mechanisms. The prosecution now functions as a decentralized body, whereas the role of the Prosecutor General remains necessary to guarantee the continuation of the activity of the prosecution office while respecting the internal independence of prosecutors in criminal prosecution, in representing the prosecution in court and fulfilling other functions provided by law. The legal framework guarantees the independence and autonomy necessary for the prosecutors' decision-making when exercising their constitutional and legal function, as well as controlling these functions to avoid any conduct that is against the role of the prosecutor.
- On the one hand, the law provides the instruments to enforce and control the prosecution actions through general written instructions by the highest prosecutor as well as overseeing and guaranteeing their implementation by the Heads of Prosecution Offices, their powers in conducting criminal prosecution to issue non-binding instructions, to replace the

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

prosecutor in cases provided by law and to inform and report periodically. On the other hand, the law also guarantees the independence of the prosecutors to prosecute, by allowing them to oppose the general instructions, request explanations regarding the non-binding instructions on specific cases or oppose the decision to replace the prosecutor.

- General instruction no. 12/2020, of the Prosecutor General has established rules to limit the authority of higher prosecutors in relation to the case prosecutors, complying with the principles of the rule of law and the independence of prosecutors. The prosecutor is responsible for the case assigned to him and he is independent while exercising his functions, yet he has the obligation in any case to follow the general instructions of higher prosecutors. The aim is to unify the position of prosecution offices on certain problems, based also on the priority recommendations of the Council of Ministers in the fight against criminality and the resolutions of the Albanian Parliament. The implementation of the law and the general instruction ensures the stability of each prosecution office of general jurisdiction. This stability shall be ensured through the authority of the Heads of Prosecution Offices according to the acts provided for in the instructions of the Prosecutor General, through requests for information/information by the prosecutor, through the issuance of non-binding instructions to help the progress of the criminal proceedings, the quality and effectiveness of the criminal prosecution and by making sure that the relations established between the prosecutors of the cases and the heads of the Prosecution Offices are such as to avoid mistakes. The matter of decision-making and procedural independence of the case prosecutor, even though it is emphasized and it seems that it may cause cases of incorrect application of material and procedural law, failure to file charges or charges based on not enough facts and evidence, or it may cause a prosecutor to lose a trial deliberately or due to his negligence/interest, actions or omissions of the prosecutors during the trial or his/her failure to file an appeal when a higher prosecutor finds the decision of the court of first instance against the law, this independence must be perceived as an issue of liability and accountability if the prosecutor's actions/omissions have consequences in terms of rule of law, human rights and freedoms and affect the objectivity and impartiality of the proceeding . Independence of the prosecutors on the one hand and their professional and personal responsibility on the other, are two basic principles for a well-functioning prosecution body. In this consideration, the prosecutor's responsibility in his/her duty performance, the avoidance of any objective or subjective influences that can question prosecutor's independence, the right application of the rule of law, constitute the purpose of general instruction no. 12/2020, of the Prosecutor General. The instruction provides that the violation of legal provisions referring to this general instruction and/or non-implementation of the norms defined in this instruction, may constitute, according to the law, a disciplinary violation which can be reported to the Heads of Prosecution Offices or to the Monitoring Sector in the General Prosecution Office while monitoring its implementation. On the other hand, the General Prosecution Office, in the framework of

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

strengthening the control and accountability of the prosecutors, with we aim to increase cooperation with the institution of the High Inspector of Justice (HIJ) has signed Cooperation Agreement no. 248, dated 5.2.2021, "On conducting institutional and thematic inspections and on individual violations of magistrates in the prosecution offices of general jurisdiction".

## **1.7 Inspection methodology**

### **1.7.1 Inspectors in charge**

The inspectors engaged to conduct the inspection, according to decision no. 37, dated 01.06.2021, were initially divided to work in groups, as follows:

- a) Ms. Lindita Ziguri and Mr. Besnik Maho, for the Prosecution Office attached to the Courts of first instance of Vlora and Shkodra as well as the Prosecution Office attached to the Courts of Appeal of Vlora and Shkodra.
- b) Ms. Daniela Sulaj and Ms. Alma Tafani, for the Prosecution Office attached to the Courts of first instance of Durrës and Elbasan, Prosecution Office attached to the Court of Appeal of Durrës as well as General Prosecution Office.
- c) Ms. Elena Pelushi and Ms. Joana Asimi, for the Prosecution Office attached to the Court of first instance of Tirana and Prosecution Office attached to the Court of Appeal of Tirana.
- d) Mr. Julian Zonja and Mr. Saimir Hoxha, for the Prosecution Office attached to the Court of first instance of Fieri and Korça, as well as the Prosecution Office attached to the Court of Appeal of Korça and Gjirokastra.

With decision no. 37, dated 16.09.2021 of the High Inspector of Justice, due to the resignation of an inspector, the group of inspectors related to the inspection in the Prosecution Office attached to the Courts of First Instance of Durrës and Elbasan, the Prosecution Office attached to the Court of appeal in Durrës as well as the Prosecutor General Office, as follows:

- a) Mr. Julian Zonja and Ms. Alma Tafani.

Furthermore, with the aim of increasing the efficiency of the inspection group and the standard of good administration of the process, with the same decision, inspector Julian Zonja was appointed group leader.

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

### **1.7.2 Method of conducting the inspection**

The inspection is based on the inspection decision, for conducting it in 4 stages:

1. Stage one: "Preparation of the work plan, drafting requests for information and documents, as well as doing verifications or visiting the prosecution offices of the general jurisdiction with the purpose of administering documentation that is object of inspection". This phase included the following steps:
  - a) The work plan was drawn up and agreed by all inspectors, on 07.06.2021;
  - b) Letters addressed to the prosecution offices subject of inspection were drawn up, according to a model agreed by all the inspectors and were submitted to all the prosecution offices on 16.06.2021;
  - c) It was administered and done the preliminary processing of the information and documentation of each prosecution office.
  
2. Stage two: "Processing the collected data and information". This stage has included the following steps:
  - a) Processing the collected data and information and studying them;
  - b) Assessing that other data, information and documentation must be obtained, according to what groups of inspectors have decided, by sending letters, communicating by phone or visiting the offices.
  
3. Stage three: "Drafting the Inspection Report", which included these steps:
  - a) Drafting separate reports on the prosecution offices included in the inspection by each group of inspectors according to the same model/structure;
  - b) Drafting the final report, which will be sent for review and consideration to the High Inspector of Justice.

After the review by the High Inspector of Justice, comes the last stage:

4. Stage four: "Following the implementation of the inspection recommendations and results".

## **1.8 Inspection Time**

These are some of the problems found during the inspection time<sup>5</sup>:

- The late submission of information and data requested, regarding this inspection;
- The incomplete submission of information and data, as well as the request for further explanation from the prosecution office to fulfil the requirements of the High Inspector of Justice, in the case of the Prosecution Office attached to the Court of First Instance Fier, The Prosecution Office attached to the Court of First Instance of Elbasan, as well as the Prosecution Office attached to the Court of Appeal in Vlora;
- Resending requests with a view to completing this information, in the case of the Prosecution Office attached to the Court of First Instance of Tirana, and the Prosecution Office attached to the Court of Appeal in Tirana;
- The need to send inspectors to the prosecution offices of general jurisdiction in order to collect information, in the case of the Prosecution Office at the Court of First Instance of Fier, Prosecution Office at the Court of First Instance of Tirana, as well as the Prosecution Office at the Court of Appeal in Vlora;
- Failing to presenting information according to the format requested - in written correspondence and also on CD.

## **1.9 Period of time covered by inspection**

The thematic inspection included the activity of the prosecution offices subject of this inspection, for the period from 01.10.2020 to 31.03.2021.

## **1.10 Inspection directions**

The purpose of the thematic inspection was mainly focused on three main directions:

- (i) The way and procedure followed in issuing general binding instructions by the highest prosecutor and overseeing their implementation;
- (ii) The way and procedure followed in issuing non-binding instructions for prosecutors by the Head of Prosecution Office as well as overseeing their implementation;
- (iii) The way of informing the Head of prosecution office by the prosecutor, as well as informing and reporting to the Prosecutor General by the Head of the Prosecution Office.

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<sup>5</sup>More specifically, from a questionnaire completed to identify of problems during the thematic inspection in question. Find attached the corresponding tables for each group and summary tables.

### **1.11 Evaluation criteria (standards)**

The following documents are the main basis, which the work of the inspectors was based on, during the evaluation of the performance and activities of the prosecutors and Heads of prosecution offices related to the object of inspection:

- Constitution of the Republic of Albania;
- Code of Criminal Procedure of the Republic of Albania;
- Law on the organization and functioning of the Prosecution in the Republic of Albania;
- General Instruction no. 12, dated 20.07.2020, of the Prosecutor General " *On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices with general jurisdiction*" as amended;
- Report of the Prosecutor General on the Situation of Criminality in Albania during 2020-2021;
- Annual reports of the Prosecution Offices at the Court of First Instance and the Court of Appeal.

## **2. Description of administered information**

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Thematic inspection began with the first stage, drafting the requests for information and acts addressed to the prosecution offices. In order to conduct the inspection, the inspectors administered data and information from:

The Prosecution Office at the Court of First Instance of Tirana, whose information and relevant documentation were collected by the inspectors in charge visiting the office twice, as well as through the letters sent by this office, letter no. 10521/1 prot., date 13.09.2022<sup>6</sup>, letter no. 13171/1 prot., date 05.10.2022<sup>7</sup> and letter no. 14135/1 prot. date 11.11.2022<sup>8</sup>.

The Prosecution Office at the Court of First Instance Durrës sent the relevant information and documentation, according to letter no. 2708/1 prot., date 07.05.2021<sup>9</sup>.

The Prosecution Office at the Court of First Instance Elbasan, sent the relevant information and documentation, according to letter no. 5925, dated 18.06.2021<sup>10</sup>.

The Prosecution Office at the Court of First Instance Fier sent the relevant information and documentation, according to letter no. 5628/1 prot., date 28.06.2021. Upon receiving this information, the inspectors in charge visited in person the Prosecution office at the Court of First Instance Fier, on 19.07.2021, to collect additional documentation, and asked for internal registers to be put at their disposal. The inspectors obtained copies of the papers from the registers, specifically, according to the minutes dated 19.07.2021, they collected photocopies from the 2020 register starting with no.1, photocopy of the "Register of internal circulation of procedural correspondence" with no. 1, no. 2 and no. 3.

The Prosecution Office at the Court of First Instance of Korça sent the relevant information and documentation, according to letter no. 2666 prot., date 30.06.2021<sup>11</sup>.

The Prosecution Office at the Court of First Instance in Shkodra sent the relevant information and documentation, according to letter no. 4693/1 prot., date 28.06.2021<sup>12</sup>.

The Prosecution Office at the Court of First Instance of Vlora, sent the relevant information and documentation, according to letter no. 7455 prot P.H., date 28.06.2021<sup>13</sup>.

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<sup>6</sup>registered in HIJ with no. 2055/1 prot., date 14.09.2022

<sup>7</sup>registered in HIJ with no. 2055/3 prot., date 06.10.2022

<sup>8</sup>registered in HIJ with no. 2055/5 prot., date 11.11.2022

<sup>9</sup>registered in HIJ with no. 2806/1 prot., date 07.07.2021

<sup>10</sup>registered in HIJ with no. 2808/1 prot., date 21.06.2021

<sup>11</sup>registered in HIJ with no. 2796/1 prot., date 07.02.2021

<sup>12</sup>registered in HIJ with no. 2809/1 prot., date 07.02.2021

<sup>13</sup>registered in HIJ with no. 2812/1 prot.. date 07.02.2021

The Prosecution Office at the Court of Appeal in Vlora, sent the information according to letter no. 663 prot., date 02.07.2021<sup>14</sup>.

The Prosecution Office at the Court of Appeal in Tirana sent the relevant information and documentation according to letter no. 528/1 prot., date 30.06.2021<sup>15</sup>, letter no. 528/3 prot., date 10.09.2021<sup>16</sup> and letter no.774/1 prot., date 08.10.2021<sup>17</sup>.

The Prosecution Office at the Court of Appeal in Shkodra, sent the relevant information and documentation, according to letter no. 751 prot., date 28.06.2021<sup>18</sup>

The Prosecution Office at the Court of Appeal in Korça sent the relevant information and documentation, according to letter no. 336 prot., date 01.07.2021<sup>19</sup>

The Prosecution Office at the Court of Appeal in Gjirokastra sent the relevant information and documentation, according to letter no. 200/1 prot., date 01/07/2021 and no. 969 prot., date 02.07.2021<sup>20</sup>.

The Prosecution Office at the Court of Appeal in Durrës sent the relevant information and documentation, according to letter no. 738 prot., date 28.06.2021<sup>21</sup>.

The Prosecutor General Office, sent the relevant information and documentation with letter no. 969/1 prot., date 07.02.2021<sup>22</sup>.

The data received from the above prosecution offices are related to the following information and documentation during the period of time object of inspection – from 1.10.2020 to 31.03.2021:

- (i) The general instructions with a binding character issued by the Prosecutor General on 01.07.2020, which have been in force during the period of time object of inspection, as well as all the documents which justify the issuance of instructions by The Prosecutor General.
- (ii) General instructions of a binding character issued by higher prosecutors.
- (iii) Non-binding instructions issued by the highest prosecutor, the replies of the prosecutors to non-binding instructions, requests for information from the Head of Prosecution Office, as well as the information provided by the prosecutor.

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<sup>14</sup>registered in HIJ with no. 2810/1 prot., date 07.07.2021

<sup>15</sup>registered in HIJ with no. 2794/1 prot., date 01.07.2021

<sup>16</sup>registered in HIJ with no. 2794/4 prot., date 13.09.2021

<sup>17</sup>registered in HIJ with no. 2794/6 prot., date 11.10.2021

<sup>18</sup>registered in HIJ with no. 2811/1 prot., date 30.06.2021

<sup>19</sup>registered in HIJ with no. 2796/2 prot., date 05.07.2021

<sup>20</sup>registered in HIJ with no. 2798/2 prot., date 05.07.2021

<sup>21</sup>registered in HIJ with no. 2805/1 prot., date 29.06.2021

<sup>22</sup>registered in HIJ with no. 2807/1 prot.. date 05.07.2021



- (iv) Documents related to informing and reporting to the Prosecutor General from the Heads of Prosecution Offices according to the provisions of Article 42, letter "g" and Article 50 of law no. 97/2016 "On the organization and functioning of the prosecution in the Republic of Albania", as amended.
- (v) Photocopies from the Register of Internal Communications between the Head of the Prosecution Office and prosecutors according to the provisions of Article 20 of the General Instruction no. 12/2020, as amended.
- (vi) Documents of the Monitoring Sector at the Prosecutor General Office related to the supervision of the implementation of the General Instruction no. 12/2020, as amended.
- (vii) Information accompanied with statistical data, separated for each prosecution office in accordance with the data and information administered from the written documentation.

### **3. Findings**

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#### **3.1 Assessment base.**

Referring to the purpose and objective of the inspection, the analysis of the data and information received from the prosecution offices, is focused on (i) the way and procedure followed to issue general binding instruction and oversee their implementation, (ii) the way and procedure followed to issue non-binding instructions for prosecutors and oversee their implementation, (iii) the way of informing the Heads of prosecution offices by prosecutors, as well as the informing and reporting to the Prosecutor General by Heads of Prosecution Offices.

The analysis of this information and data is based on the analysis and interpretation of the provisions of the Constitution, of law no. 97/2016 "On the organization and functioning of the Prosecution in the Republic of Albania", as amended, General Instruction No. 12/2020, of the Prosecutor General, as amended, standard regulations of prosecution offices of general jurisdiction and Prosecutor General Office, which provide the relevant provisions and rules of procedure for issuing general instructions and non-binding instructions, as well as the way of informing in the Prosecution Office.

The constitutional changes of 2016, made by law no. 76/2016, dated 22.07.2016 "On some additions and changes in the law no. 8417, dated 21.10.1998 "Constitution of the Republic of Albania", as amended, the prosecution body is not a centralized body and deeply hierarchical. In accordance with the provisions of the Constitution of the Republic of Albania and those of Law no. 97/2016 "On the organization and functioning of the Prosecution in the Republic of Albania", as amended, it results that the new legal provisions aim to guarantee the smooth running of the prosecution body and respect the internal independence of prosecutors, both while exercising criminal prosecution and representing the accusation in court.

Law no. 97/2016 "On the organization and functioning of the Prosecution in the Republic of Albania", as amended, revised and updated the internal organization of the prosecution system, aiming to guarantee the prosecutor's functional independence in decision-making on specific cases, while simultaneously maintaining the integrity of the prosecution body and the uniformity of its activity. These can be guaranteed through the possibility of issuing general instructions by the Prosecutor General and the Heads of Prosecution Offices, who are legally responsible for the work performance of the prosecution, as well as giving non-binding instructions, related to concrete cases<sup>23</sup>.

Pursuant to Article 6, paragraph 2 and Article 46, paragraph 1 and 2 of Law no. 97/2016

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<sup>23</sup>Article 48 of Law no. 97/2016 "On the organization and functioning of the prosecution in the Republic of Albania", amended.

"On the organization and functioning of the Prosecution in the Republic of Albania", as amended, higher prosecutors<sup>24</sup> can issue general instructions which shall be reasoned and in writing, and mandatory for lower prosecutors. The general written instructions of a higher prosecutor shall be binding on lower prosecutors. General instructions, can be of administrative or procedural nature.

Pursuant to Article 38, paragraph 2, letter b", as well as Article 46, paragraph 3 of Law No. 97/2016 "On the organization and functioning of the Prosecution the Republic of Albania", as amended, the Prosecutor General issues general instructions in writing for prosecutors in prosecution offices of general jurisdiction: (i) for the coordination of work different between prosecution offices or between them and the judicial police, involved in common investigations, in compliance with the provisions of the Criminal Procedure Code; (ii) for ensuring the uniform application of the law and criminal prosecution, based on judicial decisions; (iii) for ensuring implementation of the recommendations of the Council of Ministers on the fight against crime; (iv) for other issues not related to concrete cases.

Pursuant to Article 42, letter "g", Article 43, letters "b", "c" and "dh" as well as Article 46, paragraph 4 of law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, the Head of Prosecution Office may issue general instructions for matters of organization and operation of the prosecution office headed by them, as well as to facilitate the implementation of the instructions of the Prosecutor General. The head of prosecution office: (i) ensures the implementation of the High Prosecutorial Council decisions and instructions of the Prosecutor General; (ii) requires information on the progress of proceedings and, if needed, issue instructions in writing; (iii) verifies the progress and completion of cases, and, where needed, shall give instructions in writing to carry out further procedural actions before making a decision on the way the of concluding the preliminary investigations; (iv) ensures the correct implementation of the Prosecutor General instructions.

Pursuant to Article 42, letter "I" and Article 50 of Law no. 97/2016 "On the organization and functioning of the Prosecution in the Republic of Albania", as amended, the head of the prosecution office informs the Prosecutor General on the situation of crime every three months. In addition to that, the Prosecutor General can periodically take data and information from the prosecution offices on the progress of their activities.

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<sup>24</sup>Pursuant to Article 2, letter "c" of Law no. 97/2016 "On the organization and operation of the prosecution in the Republic of Albania", as amended: "c) "The highest Prosecutor" is: (i) the Prosecutor General for the prosecutors of the Prosecutor General Office and for the prosecutors of the prosecution offices attached to the courts of appeal and courts of first instance. according to the provisions of this law; (ii) the head of the prosecution office attached to the court of appeal for the prosecutors of this prosecution office; (iii) the head of the prosecution office attached to the court of first instance for the prosecutors of this prosecution office,"

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Heads of the prosecution offices attached to the courts of first instance and courts of appeal of general jurisdiction shall within February of each year, prepare the annual report on the progress of work in the relevant prosecution office during the preceding year and shall submit it to the Prosecutor General.

Pursuant to articles 148, 148/b, letters "b", "d" and "dh" of the Constitution of the Republic of Albania, article 38, paragraphs 1 and 2, letters "b", "d" and "f", article 2, letters "b" and "c", articles 4, 5, 6, 42, letters "a", "c" and "g", articles 43, 46, 47, 48, 50 et seq. of the law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, articles 24, 25, paragraph 2 et seq. of the Code of Criminal Procedure, article 52 et seq. of law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", as amended, article 159 et seq. of Law no. 115/2016 "On the governing bodies of the justice system", as amended, the Prosecutor General issued Instruction No. 12, dated 20.07.2020, as amended by General Instruction no. 16, date 14.12.2020.

The purpose of this instruction is the unification of the rights and obligations of the prosecutors while exercising their functions, their relations with the Heads of the prosecution offices as higher prosecutors, informing and coordinating the activities of the prosecution to ensure prosecutors' independence and autonomy while exercising their functions as well as the progress, supervision, efficiency, legality and transparency in the prosecution activity as an independent constitutional body. Other objectives of instruction no. 12/2020, as amended, are: (i) to ensure the prosecutors' independence and autonomy while exercising their procedural functions in relation to the obligation of criminal prosecution; (ii) to defining the prosecutor-higher prosecutor relation; as well as (iii) the way of information/reporting in all links and levels of prosecution offices of general jurisdiction,"

### **3.2 The way and procedure followed in issuing general binding instructions by the highest prosecutor and overseeing their implementation.**

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Article 46 of Law No. 97/2017 "On the Organization and Functioning of the Prosecution in the Republic of Albania", provides for the issuing of general binding instructions by the Prosecutor General and Heads of prosecution offices. Paragraph 4 provides that: "*heads of prosecution offices can issue general instructions on matters of organizing and functioning of the prosecution offices headed by them, as well as to facilitate the implementation of the instructions of the Prosecutor General, in accordance with article 43, the letter "dh", of this law.*"

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<sup>25</sup>article I and 2 of the general instruction no. 12, dated 20.07.2020, of the Prosecutor General "On the regulation of relations between prosecutors and heads of prosecution offices information, transparency as well as guaranteeing independence in the prosecution offices with general jurisdiction", amended.

In the procedural relations with the heads of prosecution offices, article 8, paragraph 2, letter "b" of General Instruction no. 12/2020, of the Prosecutor General as amended, provides that *"The prosecutor, while being independent in exercising his functions, has the obligation to respect the Constitution, the legal framework, the general instructions of the Prosecutor General and/or the heads of prosecution office where he is assigned or exercises his functions"*.

Also, article 10, paragraph 2 of the General Instruction no. 12/2020, as amended, provides that: *"The heads of the prosecution offices at the courts of appeal and courts of first instance ensure and facilitate the implementation of the instructions of the Prosecutor General, by issuing general instructions, and the relevant structure in the General Prosecution Office oversees their implementation"*. Article 22, paragraph 4 of the General Instruction no. 12/2020, as amended, provides that the Heads of prosecution offices can issue general instructions to facilitate the implementation of this general instruction.

In reference to the above legal basis, Article 46 of Law no. 97/2016 "For the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, and the implementation of articles 7, paragraph 2, letter "a" and 10, paragraph 2 of General Instruction no. 12, date 20.07.2020 of the Prosecutor General, as amended, regarding the relationship between the preservation of functionality independence of the prosecutor in concrete matters and the integrity and uniformity of the prosecutor's office, which are related to the way and procedure followed in issuing general binding instructions for prosecutors and the supervision of their implementation, during the inspection period of time 01.10.2020-31.03.2021, it results that:

- **The Prosecution Office attached to the Court of First Instance in Tirana**

The Head of Prosecution Office at the Court of First Instance in Tirana has issued general binding instructions which have a procedural and administrative character. It results that there is an instruction of that kind during the period of time covered by inspection. Meanwhile, it results other two general instructions to have been issued before the time object of inspection, but their implementation includes the inspection period of time.

During the inspection period of time, it results to have been issued the **instruction no. 34, date 05.01.2021** "On the implementation of order no. 164, dated 18.12.2020 of the Prosecutor General "On the approval of the standard regulations for the organization and operation of the prosecution offices attached to the courts of first instance with General Jurisdiction".

The instruction in question has been defined by the Head of Prosecution Office as having a general binding character, and it also includes the time when it enters into force, the extent of its effect, as well as the method of distribution and the competent person. The instruction consists of 6 paragraphs which instruct the prosecutors and officers of the judicial police section of the Prosecution Office attached to the Court of First Instance in Tirana as well as the administrative support staff during the performance of their functional duties, to implement the standard regulation in question, by taking relevant stated measures; to continue with the entry into force of the regulation approved by the instruction in question; the assignment of the responsible person, the chancellor for distributing and sharing the approved regulation; the procedure on the submission of the approved regulation to the General Prosecution Office and in the end the entry into force of the instruction.

From the documentation made available by letter from the Prosecution Office at the Court of First Instance in Tirana, it turns out that the Heads of Prosecution Office have issued two more acts, in connection with the instruction of the Prosecutor General no. 12/2020, as amended, in order to facilitate the implementation of the instruction in question. The relevant acts which the Head of Prosecution Office has used are: the general binding instruction and the order "*On the creation of the internal record of the Prosecution Office at the Court of Tirana Judicial District*", and more specifically:

**General instruction no. 26, date 30.07.2020** "*On work relations in the prosecution office and the way of informing the heads of the Prosecution Office*. This instruction turns out to have been issued based on Article 148 of the Constitution of the Republic of Albania, Articles 42 and 48 of Law no. 97/2016 "On the organization and functioning of the Prosecution in the Republic of Albania", as amended, and the instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended. The instruction consists of 13 articles, starting by describing the purpose of the instruction; the object of the instruction; ensuring the independence and autonomy of the prosecutor; attitude towards illegal interventions; attitude of the prosecution office related to the prosecutor's functional independence; work relations between the prosecutor and the Head of the Prosecution office; the way the Head of Prosecution office is informed by the prosecutor during both the criminal prosecution and the representative of the prosecution in court; informing the Head of the Section; to continue with the organization of documents circulation on the investigative acts between the prosecutor and the Head of the Prosecution Office, specifying them to be put into the official records of internal communication administered by the secretariat of the Head of Prosecution Office, as well as specifies the kind of specific acts that will be put into this record; their implementation and

supervision, as well as the provisions for the monitoring sector in the of General Prosecution Office to start the verifications or the disciplinary investigation against the prosecutor according to the law, in case of violating legal provisions referring to the instruction in question; to end with the immediate entry into force of this instruction.

It results from the administered data that before the time object of inspection, the Head of Prosecution Office in Tirana has also issued the **general instruction no. 25, date 28.07.2020** "On implementing the instruction no. 11, dated 20.07.2020 and order no. 983/3, dated 27.07.2020 of the Prosecutor General. This instruction turns out to have been issued according to provisions of law no. 97/2016, as amended, instruction no. 11, date 20.07.2020 and order no. 112, dated 27.07.2020 "On the approval of the action plan for the implementation of "Recommendations of the Council of Ministers in the fight against crime for 2020", with a view to ensuring work coordination, the well-functioning, as well as the in implementation of the action plan for implementing the Council of Ministers Recommendations. The instruction consists of 6 paragraphs which instruct the prosecutors and officers of the judicial police section of the Prosecution Office attached to the Court of First Instance in Tirana that during the performance of their functional duties to implement instruction no. 11, dated 20.07.2020 and order no. 112, dated 27.07.2020 of the Prosecutor General; to continue with the priorities according to relevant directions to be taken into consideration, as well as the relevant measures to be taken on the information and implementation; the assignment of the responsible person, the chancellor for distributing the approved instruction the procedure regarding the submission of the approved instruction to the General Prosecution Office and in the end the entry into force of the instruction.

In the framework of the competences of the Head of Prosecution Office, referring to law no. 97/2019 "On the organization and functioning of the Prosecution in the Republic of Albania", the Head of the Prosecution Office at the Court of First Instance in Tirana, has issued a number of orders, which focus on matters of organization and functioning of the prosecution office. These orders can be grouped into the ones addressed specifically to the prosecutors, concerning the organization and allocation of cases, and orders addressed mainly to the administrative personnel of the prosecution office, in terms of its compliance and well-functioning related to the staff structure, relevant procedures for making purchases, etc.

- Referring to the above legal provisions and the information received from the Prosecution Office at the Court of First Instance in Tirana, it results that **three (3) general binding instructions** were issued during the period of time covered by inspection, two of which aiming to facilitate the implementation of the general instructions of the Prosecutor General, specifically instruction no. 12, dated

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

20.07.2020, as amended and no.11, date 20.07.2020, to ensure the implementation of the Council of Ministers Recommendations in the fight against criminality for 2020. The other general instruction was issued for the implementation of the Prosecutor General order for the approval of the standard regulation of the prosecution offices at the courts of first instance with general jurisdiction.

- The instructions in question, issued according to the implementation of the general instructions of the Prosecutor General with the view to facilitating its implementation, comply with the legal procedure for issuing reasoned general binding instructions in writing, provided by article 7, paragraph 2, letter "a" and subdivision (ii), as well as Article 10, paragraph 2 of General Instruction no. 12/2020, as amended.
- These instructions, state the fact that they are of general binding character and they also state their entry into force, but there is no other information related to the supervision of their implementation. The annual report on the prosecution office work for 2020<sup>26</sup>, regarding their supervision by the Head of Prosecution Office at the Court of First Instance in Tirana, points out the fact that prosecutors of this office did not implement these instructions justifying this fact with their workload. Specifically, the Head of the Prosecution Office states that: *"It appears that prosecutors of this prosecution office do not always implement the instructions and those instructions which have mainly not been implemented are related to the report of statistical data. This can also result from their workload in performing their duties according to the Criminal Procedure Code and the Constitution."*
- In particular, there is no information related to the implementation and supervision of the implementation of the general instruction no. 25, date 28.07.2020 of the Head of Prosecution Office on the implementation of the priority recommendations of the Council of Ministers, pursuant to Article 10, paragraph 4 of the General Instruction no. 12/2020, as amended, according to which the prosecutors and Heads of Prosecution Offices report how these recommendations have influenced the situation of crime and the prosecution performance in the recommended areas, related to the effectiveness of criminal prosecution, the quality of representing prosecution in court, as well as other key elements or indicators crucial for the prosecution performance. However, in the 2020 annual report of the Head of Prosecution Office, it can be found that: *"there have been taken necessary organizational measures for the implementation of requests/recommendations of the Resolution of the Albanian Parliament and Priority Recommendations of the Council of Ministers for 2020. The Head of Prosecution Office*

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<sup>26</sup>Submitted to the General Prosecution Office with letter no. Extra prot., date 24.05.2021.



*at the Court of first instance in Tirana have issued different orders and instructions to enable the implementation of the Resolution of the Albanian Parliament and the Recommendations of the Council of Ministers".*

➤ **Prosecution Office attached to the Court of First Instance Durrës**

The head of Prosecution Office at the Court of First Instance of Durrës, informed that related to the general binding instructions, in the framework of the implementation of General Instructions no. 12, dated 20.07.2020, as amended, immediately upon receiving it, there were taken measures for its distribution so that prosecutors could be informed via their official emails as well as the distribution of photocopies of the instruction, and later the discussion regarding its implementation, in the general meeting of the prosecutors.

From the official email of 24.07.2020, of the Head of Prosecution Office sent together with the documentation of the Prosecution Office at the Court of First Instance in Durrës, it results that the General Instruction no. 12, date 20.07.2020 and the register of internal procedural correspondence has been sent to all prosecutors.

According to reply of the Prosecution Office at the Court of First Instance Durrës, it turns out that the Head of Prosecution Office attached to the Court of First Instance Durrës has not issued any general instructions, since it has been estimated that the instruction of the Prosecutor General was detailed and directly applicable. The first step in the function of implementing the instruction no. 12/2020, as amended, was to administer the internal register and appoint the secretary in charge of keeping it. The activity of the Prosecution Office at the Court of First Instance Durrës, during the period of time from 01.01.2020 to 31.03.2021, was limited at times due to the absence of prosecutors, judicial police officers and administrative staff because of COVID-19. For these reasons, there have not been many instructions, requests for information, or other acts according to the provisions of instruction no. 12/2020, as amended.

The Head of Prosecution Office attached to the Court of First Instance Durrës, results to have issued **one (1) instruction no. 3, date 19.02.2021** "*On the preparation of the annual report of the Head of Prosecution Office for 2020*". The instruction contains the necessary elements of the normative act, providing its legal basis, law no. 97/2016, as amended, law no. 96/2016, as amended, instruction no. 02, date 29.12.2016 "On the work organization and coordination in the prosecution office", instruction no. 03, dated 29.12.2016 of the prosecutor General "On the distribution of cases in the Prosecution Office" and the by-laws issued by the Head of prosecution office, law no. 9180, dated 05.02.2004 "On the official statistics". The above instruction was issued to inform the Prosecutor General on the situation of criminality, compliance with the legal obligation to keep statistics, measures for preventing crime, establishing the workload of each prosecutor or judicial police officer.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

The instruction is addressed to the registry office for the reconciliation of the data with prosecutors and Heads of Sections for criminal offenses in the field of the respective section and provides its immediate entry into force.

The Head of Prosecution Office, during his office, issued the order no. 2, dated 15.01.2021 "On the approval of the standard rules for the organization and operation of the Prosecution Office at the Court of First Instance in Durrës ". whose provisions provide: the structure of the Prosecution Office at the Court of First Instance of Durrës; the administrative authority and the one in the criminal prosecution of the Head of Prosecution Office; provisions on types of registers and on the internal circulation of acts in the prosecution office, as well as other provisions.

- Regarding the way and procedure followed by the Head of the Prosecution Office at the Court of First Instance Durrës to issue general instructions and oversee their implementation, it turns out that apart from informing the prosecutors about the Prosecutor General Instruction no. 12/2020, as amended, **no general instructions have been issued** to facilitate its implementation, because according to the head of this prosecution office, the instruction of the Prosecutor General was directly applicable. The Head of Prosecution Office issued another general instruction no. 3, date 19.02.2021 "*On the preparation of the annual report of the head of prosecution office for 2020*". This instruction was issued based on the legal procedure for issuing reasoning general binding instructions in writing, provided for article 10, paragraph 2 of General Instruction no. 12/20, as amended.
- Regarding the supervision of the implementation of the general instructions of the Prosecutor General, the Head of Prosecution Office informed that in order to guarantee the correct implementation of the general instructions of the Prosecutor General by all the prosecutors and the staff of this prosecution office, immediately upon receiving it, the instruction was distributed to all prosecutors, judicial police officers and according to the circumstances, to the personnel of the prosecution office. Each instruction was analyzed and discussed at the general meeting of the prosecutors. According to the information forwarded by the Head of Prosecution Office pursuant to the general instruction no. 12/2020 as amended, when it was deemed necessary, there have been issued non-binding instructions, and it was requested information from the prosecutors regarding pending cases or proceedings with arrested people.

#### ➤ **Prosecution at the Court of First Instance Elbasan**

The Head of Prosecution Office at the Court of First Instance in Elbasan, results to have issued some general instructions:

- 1) General instruction no. 39 PBD, date 07.09.2020 "*According to and on the*

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

*implementation of the General Instruction no. 12, dated 20.07.2020 of the Prosecutor General "On the regulation of work relationships between prosecutors and heads of the prosecution office, information, transparency and guarantee of independence, in the Prosecution Office of General Jurisdiction, as amended".*

- In view of the provisions of this general instruction of the Head of Prosecution Office in Elbasan, it turns out that it was issued to facilitate the implementation of the general Instruction no. 12/2020, as amended, and contains similar provisions in compliance with this instruction, with changes mainly in terms of wording and terminology used. The general instructions of the Head of Prosecution Office are based on law no. 97/2016, as amended, law no. 96/2016, as amended and General Instruction no. 12/2020, of the Prosecutor General, as amended as well as the Criminal Procedure Code, and provides its entry into force on 09.07.2020.
- Paragraphs 1, 2, 3 of the instruction of the Head of Prosecution Office contain provisions that are related to the procedures of the registry office for notifying the head of prosecution office on each criminal and property proceeding registered by the prosecutors, as well as for every case when the court turns the acts back to the prosecutor according to articles 329/3, 329/b/3, 332/9, 332-dh/9 and 402/4 of the Code of Criminal Procedure. These paragraphs are drawn up in reference to the provisions in Article 12, paragraph 1 and 3 of the General Instruction no.12, dated 20.07.2020 of the Prosecutor General, as amended.
- Paragraph 4, which refers to article 13, paragraph 1 of the general instruction no. 12/2020, as amended, provides that "*... the prosecutor is ordered to inform the head of prosecution office in advance ... the information should contain data on criminal proceedings*", while instruction no. 12/2020, article 13, paragraph 1<sup>27</sup>, provides that "*... prosecutors shall inform in advance the head of prosecution office...*".
- Paragraph 5 of the general instruction of the Head of Prosecution Office, which provides that "*about all criminal proceedings, which the Head of Prosecution Office has issued non-binding instructions for, prosecutors inform the Head of Prosecution Office no later than 20 days before the final decision ...*", should have been amended in accordance with Article 14, paragraph 1, amended with the general instruction no. 16, dated 14.12.2020 "On some changes in General Instruction No. 12, dated 20.07.2020", article 2, according to which "*prosecutors inform the head of the prosecution office, at the request of the latter...*".

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<sup>27</sup>Prosecutors, with a view to enabling the head of prosecution office to issue non-binding instructions in accordance with the provisions of Article 48 of Law no. 97/2016, exceptionally, when emergencies do not permit, shall inform in advance the head of prosecution office, in accordance with the internal organization of the prosecution office, on the criminal proceedings for which the security measure of restriction of liberty will be imposed, or requests will be made to the court to issue a prison arrest warrant, a house arrest warrant, to order preventive, conservative seizures or for assets investigation to order the confiscation or freezing of assets within the framework of law no. 10192/2009.

However, at the time of issuing instruction no. 39, date 07.09.2020, by the Head of Prosecution Office in Elbasan, this provision was in accordance with article 14, paragraph 1 of instruction no. 20/2020. The same thing for paragraph 6 of the instruction of the Head of Prosecution Office, "*the prosecutor informs the head of prosecution office in writing, 3 days before the final decision...*", amended by article 3 of the general instruction no. 16, date 14.12.2020 "*... the prosecutor informs the head of the prosecution within 3 (three) days of the latter's request*".

- Paragraph 8 of the general instruction of the Head of Prosecution Office, which refers to article 12, paragraph 4<sup>28</sup> of the general instruction no. 12/2020, as amended, provides that "*at the end of each work day, the deputy head of the prosecution office or the head of the section, when acting in the absence of the head of prosecution office, informs the head of prosecution office on that day proceedings of persons deprived of their liberty, on prosecutors requests of that day addressed to the court with the object ...*," detailing it in comparison with the above provision of the instructions no. 12/2020, as amended and adding "*the information contains general information on the criminal proceeding, criminal offense, the arrested/detained person, the prosecutor's request and the court's decision on this request*" Regarding this paragraph, it is not ascertained if it has ever been implemented, or if there are difficulties, since there are no acts to show its implementation or to facilitate the implementation of the General Instruction no.12/2020, as amended, since according to the provisions of the latter "*the deputy head of prosecution office or the head of section notifies*" the head of prosecution office on the acts signed in the absence of the head of prosecution office while being on call", which are mentioned in the instruction. Meanwhile the information requested according to the instructions of the Head of Prosecution Office, apart from different materials regarding the arrested/detained persons and the requests addressed to the court/place of detention/Police, shall contain a large amount of data.
- The provision that "*when the prosecutor in the court hearing maintains a position different from what has been submitted in the request to the court on imposing the precautionary measure, type and length of sentence, on the guilt of the defendant, the legal qualification of the criminal offense, assets seizure or confiscation, he/she informs the head of prosecution office in writing on this fact*" has been added to paragraph 9 of the general instruction of the Head of Prosecution Office. Even regarding this paragraph, it is not ascertained if it has ever been implemented, or if there are difficulties, since there are no acts to show its implementation.

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<sup>28</sup>4. The deputy head of the prosecution office or the head of section, who are on call according to the chart, must notify the head of prosecution office on any requests to the court, related to flagrante delicto arrests, temporary arrest, restriction of liberty and/or asset confiscation, tools to seek evidence, provide evidence, for acts addressed to detention institutions, health measures or police services, which are signed by the deputy head of prosecution or the head of section, in the absence of the head of prosecution office.

- However, regarding this type the information requested by the Head of Prosecution Office in his general instructions, once again we are dealing with the position of the prosecutor before the decision is given by the court, more specifically why the prosecutor has changed his position. While according to article 15, paragraph 1<sup>29</sup> of the general instruction no. 12/2020, as amended, the purpose of the information is related to the conclusion of the trial, regarding the reasons why the court decision-making was different from the request of the prosecutor and based on these reasons to decide whether to appeal the court verdict or not. It seems that the prosecutor's information according to this paragraph makes sense only if the prosecutor changes his position during the hearings when security measures or assets seizures are imposed, acts which the Head of prosecution office was informed when submitting the requests to the court, while in the case of the conclusions, the Head of the prosecution office will be informed after they were submitted by the prosecutor and will thus constitute his position at the end of the trial. If the court's decision would be different from the prosecutor's request, the latter would have to provide two pieces of information, on both his different position and the court's decision. Even in the cases of the precautionary measures, it has not been clarified whether the information requested in these cases is on to the cases of application of, replace/revoke, the precautionary measure in accordance with Article 246/6 of the Code of Criminal Procedure or questioning the arrested person according to Article 248 of the Criminal Code, since the request for application of a precautionary measures according to article 244 of the Code of Criminal Procedure, is considered in the counseling room.
- Also, paragraph 11 of the general instruction of the Head of Prosecution Office, has added the provision that "The prosecutor informs the head of prosecution office in writing, on his position in the hearing and the decision of the court in cases where he participates in the adjudication of requests on replacement/extinguishment/revocation of personal or assets precautionary measures previously imposed by the court according to articles 237 (with and without time limit) and 238 of the Code of Criminal Procedure". It is not ascertained whether this paragraph has been implemented, since no acts have been made available even though there is no provision for such information in General Instruction no. 12/2020, as amended. The purpose of the Prosecutor General instruction on the form of information is that the Heads of Prosecution Offices shall be informed on the initiation and progress of the criminal prosecution aiming at the unification of work in the prosecution office and its decision-making in similar cases by issuing non-binding instructions, as well as for the criminal policy implemented by the prosecution office and the court. The instruction of the Head of Prosecution Office has been issued to facilitate the implementation of the General Instruction no. 12/2020, as amended and not to add obligations to the prosecutor beyond

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<sup>29</sup>1. In case when the court has not accepted the prosecutor's requests regarding the declaration of guilt, the legal qualification of the offense, the type of sentence and confiscation based on Article 36 of the Criminal Code or Law no. 10 192/2009, the prosecutor informs the head of prosecution office within 3 (three) days from his last request, on the decision and whether to apply or not.

the ones provided by the latter. It seems that for these reasons this instruction has exceeded the provisions of the Prosecutor General instructions, where the Head of Prosecution Office in the concrete case provides the obligation of the prosecutor to inform without his request, since even before the amendments of article 13, paragraph 2 of the instructions of the Prosecutor General, the prosecutor informs the head of Prosecution Office upon his request.

- Paragraph 13 of the general instruction of the Head of Prosecution Office in Elbasan, provides for the creation of the internal communications register according to the model defined in chapter 1, of the General Instruction no. 12/2020 of the Prosecutor General, as amended while paragraph 14, the fact that any action or inaction in contradiction with the above constitutes grounds for disciplinary responsibility.
- 2. General instruction no. 44 PBD, date 09.10.2020 "In accordance with and on the implementation of the general instruction no. 10, date 17.07.2020, of the Prosecutor General "On administrative and procedural measures for increasing effectiveness in the fight against money laundering, terrorist financing, financial crimes and the sequestration and confiscation of criminal assets in the Prosecution Offices of General Jurisdiction ", which refers to specific sections in the prosecution office against money laundering, terrorist financing, financial crimes and assets investigation. The legal basis of this instruction is also based on law no. 97/2016, as amended, law no. 96/2016, as amended, the general instruction no. 10, date 17.07.2020, of the Prosecutor General and the Code of Criminal Procedure and enters into force on 09.10.2020.
- Article 17 of the general instruction no. 10, dated 17.07.2020 of the Prosecutor General, on its implementation and supervision, provides that the Heads of Prosecution Offices can issue general instructions to facilitate the implementation of this general instruction. Under these circumstances, the general instruction of the Head of Prosecution Office in Elbasan pursuant to law no. 97/2016, as amended and the general instruction no.10, dated 17.07.2020, of the Prosecutor General, has been issued in accordance with the object of this instruction, on establishing administrative and procedural measures, on the organization of the special section by the Head of Prosecution Office, according to the standard regulation of the organization and functioning of the prosecution offices, the appointment of contact points, in this case the Head of Section, his role and duties in the prosecution office of general jurisdiction, based on article 5 of the Prosecutor General instruction, information and reporting provided for in the instruction of the Head of Prosecution Office, in accordance with article 6 of the general instruction of the Prosecutor General.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- Also, the instruction of the Head of Prosecution Office, provides for sharing inter-institutional information in accordance with article 8 of the instruction of the Prosecutor General, as well as the well-functioning and coordination in the exercise of functions of the prosecutors of this section, with the judicial police officers in the relevant investigative structures, according to the provisions of Article 10 of the General Prosecutor's instruction.

The general instruction of the head of prosecution office provides in paragraph 8 for the issuance of non-binding instructions by the Head of prosecution office or the Head of section, for the prosecutors of the section that he heads in the moment of assigning the case to the respective prosecutor, according to the provisions of article 11 of instruction no. 10, dated 17.07.2020, of the Prosecutor General.

3. General instruction no. 55 PBD, dated 11.12.2020 "*On the performance of toxicological-clinical-addictology expert examinations*". The instruction refers, as a legal basis, to law no. 97/2016 as amended, law no. 96/2016 as amended, as well as the Code of Criminal Procedure, providing its entry into force on 14.12.2020.
  - The instruction has to do with the fact that for the performance of toxicological-clinical addictology examinations in order to determine if the amount of the substance seized from persons under investigation, consists of a small dose for one personal use, the prosecutors of this prosecution office, assign private experts and/or experts employed at different hospitals of the country.
  - Paragraph 1 of the general instruction of the Head of Prosecution Office, instructs prosecutors and judicial police officers to appoint experts from the Institute of Forensic Medicine in Tirana, to perform the toxicological-clinical-addictology examinations, in order to avoid doubts about the integrity and quality of expertise if carried out by private experts; the uncertainty of the fact whether or not the assigned expert has the necessary knowledge to perform the expert examination; the fact whether this kind of examination can be performed at the hospital where the expert works etc. On the other hand, conducting private expertise places an additional and unnecessary financial burden on the prosecution body.
  - Paragraph 2 of the general instruction of the Head of Prosecution Office, states that any action or inaction contrary to the above, constitutes grounds for disciplinary liability. This seems to contradict the fact that according to the instruction, experts can be assigned at the discretion of the prosecutor, which is provided in paragraph 4: "*Under these circumstances, it is necessary that the prosecutors of this prosecution office consider to the maximum extent the possibility of conducting clinical-addictology expert examinations and in criminal proceedings in which it is deemed necessary to carry out such expertise, they appoint experts of Forensic Medicine in Tirana*", as well as in the provisions of the Code

of Criminal Procedure, regarding the appointment of the expert, article 179, paragraph 1. *“The expert is designated among persons registered in the register kept for this purpose or among those who have special knowledge on a relevant topic, paragraph 4 “The expert shall be obliged to perform the entrusted task, except for the cases where grounds which exclude him from being an expert exists, or when he claims not to be competent or not to be able to carry out the expert examination and his/her request is accepted by the proceeding authority. Also, general instruction no. 08, dated 19.05.2020, of the General Prosecutor, as amended, in Article 12 provides:*

*“1. In the preliminary investigations phase of a criminal proceeding, the prosecutor or judicial police officer assigns experts based on the data of the Electronic Register of Experts, which is administered and made available by the Ministry of Justice, according to the criteria defined by the respective normative act. 2. The prosecutor or judicial police officer assigns experts from outside the Electronic Register of Experts, in specific cases when the process requires experts from special areas of expertise, for which the law does not provide for their licensing”. Based on the above, the prosecutor, when he/she decides on the expert examination, shall be sure about the identity of the expert, about the existence of reasons that exclude him/her from being an expert, about his/her conflicts of duty, his/her competence based on special knowledge certified by relevant certifications and the license when provided for in the law/bylaws.*

4. General instruction no. 19 PBD, dated 03.03.2021 *"On the application, implementation and supervision of precautionary measures "house arrest", as well as on the rules for notifying and accompanying the persons under investigation/defendant in "house arrest" with the view to conducting investigative actions".* The legal basis of this general instruction are articles 43 and 46 of law no. 97/2016, as amended, law no. 96/2016, as amended, as well as the Criminal Procedure Code. This instruction gives instructions on:
  - i) in cases of applying personal precautionary measures "house arrest" provided by article 237 of the Code of Criminal Procedure, enforced by court decision, prosecutors shall also designate the competent body that would oversee the implementation of this type of precautionary measure, which in this particular case must be the judicial police of the police stations that cover the place of residence/location of the person under investigation/the defendant. They must send to the police stations that cover the place of residence/location of the person under investigation/the defendant, a copy of order for the execution of the precautionary measure and the court decision for the enforcement of this type of personal measure.
  - ii) In cases when persons under investigation/defendant in house arrest have to be notified to appear (invitation to appear) for the needs investigation of the criminal proceedings provided by article 237 of the Criminal Code, prosecutors shall: notify

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



(invitation to appear) the persons under investigation/defendant through the judicial police of the police stations that cover the place of residence/location of the person under investigation/the defendant, or through the judicial police who are in charge of investigating the concrete case; to specify the obligations of judicial police (in the accompanying letter) of the police stations that cover the place of residence/location of the person under investigation/the defendant or other judicial police, which are in charge of investigating the concrete criminal case, to accompany the person under investigation/the defendant under house arrest to the prosecution office or the place where the investigative action will be carried out and after completing the relevant investigative actions, to accompany the defendant back to his/her relevant address of the specified premises. The acts that announce or invite the person under investigation/the defendant under "house arrest" to participate in investigative/procedural actions, shall clearly define the date and time when the person under investigation/the defendant must participate, as well as his/her movement from the residence he/she is confined to the destination and back.

- iii) Every notification according to points no. 1 and no. 2 above, does not exclude the obligation of the prosecutor to notify the judicial police officer who refers the material and/or is in charged of the investigation of the criminal case for which the person under investigation/defendants is placed under "house arrest".
  
- In accordance with the provisions of this general instruction of the Head of Prosecution Office on Article 237 of the Code of Criminal Procedure, the defendant is implied to remain confined in his/her residence, a certain location where he is domiciled, is being cured or taken care of, which can be different from the scene of crime. When ordering this measure, the court establishes also the procedure for its execution and supervision, while the prosecutor and the judicial police shall supervise the observance of the orders issued to the defendant. It is an easier procedure when the place of residence of the person under investigation is covered by the judicial police of the police station which is also in charge of the investigation of the criminal case than when these two are different or when the case is being investigated by the section of judicial police in the prosecution office. However, if the copy of the execution order and court decision for establishing the precautionary measure "house arrest", will be sent, according to the rule, to the judicial police officers of the police station that covers the residence/location of the defendant, as provided in the instructions, the invitation will necessarily be sent to these services. So, the notification shall be sent in two directions, to the judicial police that covers the place of residence of the person under investigation, and to the judicial police in charge of the investigation.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- The provisions of the instruction also provide for the residence, which is outside the territory covered by the Prosecution Office at the Court of First Instance of Elbasan, implying in this regard the notification of the persons under investigation/the defendants through the judicial police services of another district, different from the one covered by the Elbasan Police Station; or if the person under investigation wants to change residence within the same territory; or when he wants to move for his own needs, as well as in case of accompanying the person under investigation after completing the actions for which he was summoned back to the relevant address where he is confined; or if the judicial police has to keep a minute similar to the one of the first execution of the precautionary measure, in order to confirm, as the instruction provides, that the person was sent to the residence. There is no regulation for these issues, and the instructions could have focused on these areas as well, rather than on the obligation of the police services to accompany the person when he is summoned to the prosecution office, which would be an excessive cost of resources, apart from the case of accompanying the person under arrest to a designated place for the purpose of the investigation, or to obtain evidence from him, or where/when his presence is required.
  
- The invitation to appear refers to the prosecutor's investigative activity and as such shall not contain provisions outside the ones defined by law. Article 308 of Code of Criminal Procedure provides that the prosecutor's invitation to appear shall contain: a summary of the facts resulting from the investigations carried out up to that moment; the personal data or any other personal information suitable for his identification; the day, hour and venue for appearing; the type of action for she/he is being invited; the warning that the prosecutor may order his forced accompaniment in case of non-appearance without lawful impediment; the written letter of rights, according to Article 34/a of the Code. Article 134 provides the notification of the prosecutor's documents according to which "Notification of the prosecutor's documents, during preliminary investigations shall be served by the judicial police or through the postal service as provided by Article 133".
  
- Although the warning that the prosecutor may order the forced accompaniment seems to have to do with the invitation to appear for the person under investigation but not under the precautionary "detention in prison", in accordance with the general instruction of the Head of Prosecution Office, the obligation to accompany the person under investigation/defendant under "house arrest", can be applied equally, in case of non-appearance of the person under investigation without lawful impediment. The precautionary measure "house arrest" does not mean that it prevents the person under investigation from appearing voluntarily and that he/she shall definitely be accompanied by the police, since a copy of the invitation to

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

to appear justifies his movement only for this purpose. On the contrary, any abuse of this purpose is subject to criminal liability for the person under investigation/the defendant for leaving the specified premises depending on the circumstances of the concrete case.

- The Head of Prosecution Office at the Court of First Instance Elbasan, results to have implemented the general instruction no. 12/2020 of the Prosecutor of General, as amended, by **issuing 4 (four) general instructions**, two of which in order to facilitate the implementation of the general instructions of the Prosecutor General, namely instruction no. 12/2020, as amended and instruction no. 10, date 17.07.2020, and the other two so as to standardize the daily work practice in the Prosecution Office of General Jurisdiction attached to the Court of First Instance Elbasan, with the above mentioned assessment for each of them.
- The instructions issued based on and in order to implement the general instructions of the Prosecutor General, aiming to facilitate their implementation, as well as those on the implementation of the procedural law in relation to the performance of toxicological-clinical-addictology expert examinations and the procedures for implementing and notifying the persons under "house arrest" were issued in accordance with the written reasoned legal procedure, pursuant to article 7, paragraph 2, letter "a" and article 10, paragraph 2 of the General Instruction no. 12/2020, as amended. However, when issuing these general instructions, it should be taken into account their harmonization with the law of criminal procedure and the instructions of the Prosecutor General, in order to ensure the correct application of the law of criminal procedure in conducting criminal prosecution, the initiation and representation of prosecution in court.
- There is no implementation, or at least it is not documented, of different paragraphs of the general instructions of the Heads of Prosecution Office, issued to facilitate the implementation of the general instructions of the Prosecutor General, as well as the implementation and supervision of the implementation of the other two instructions of the Head Elbasan Prosecution Office.

➤ **The Prosecution Office attached to the Court of First Instance Fier**

In accordance with the acts and information of the Prosecution Office attached to the Court of First Instance Fier, it results that in reference to the supervision and implementation of the General Instruction no. 12/2020 as amended, the Head of Prosecution Office has issued:

- 1) General instruction no. 65, dated 04.09.2020 "On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of  
**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

independence in Prosecution Office attached to Court of First Instance Fier”, which provides its entry in force on 04.09.2020, on the same date as the general instruction no. 12/2020, as amended. The general instruction of the Head with the letter no. 6515, dated 04.09.2020, has been notified to the General Prosecution Office. This general instruction legal basis are: article 38, paragraphs 1 and 3, letters "b", "d", "f", article 42, letter "a", "c", "g", article 43 et seq of the law no. 97/2016, as amended, articles 24, 25, paragraph 2 of the Code of Criminal Procedure and Article 52 of Law no. 96/2016, as amended, as well as the General Instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended.

- The purpose of the general instruction of the Head of Prosecution Office Fier, according to its article 1, is to facilitate the implementation of the General Instruction no. 12, date 20.07.2020, as amended, regarding the unification of rights and obligations of prosecutors in exercising their functions in the Prosecution Office at the Court of First Instance Fier, their relations with the Head of Prosecution Office, as a higher prosecutor, informing and coordinating the prosecution activities to ensure the independence and autonomy of the prosecutor in exercising his/her functions as well as the well-function, supervision, efficiency, legality and transparency in the activities of the Prosecution Office at the Court of First Instance Fier, according to articles 10, paragraph 2 and 22, paragraph 3 of this instruction and Article 42, letter "g", Article 43, letter "dh" of Law No. 97/2016 "On the organization and the functioning of the prosecution office in the Republic of Albania", as amended.
- The provisions of the general instruction of the Head of Prosecution Office are noted to have been drawn up in accordance with the provisions of General Instruction no. 12/2020, as amended. The Instruction of the Head of Prosecution Office Fier, article 4, provides for the rights and obligations of prosecutors in their administrative relations with the Head of Prosecution Office, adding provisions on the procedures of notifying prosecutors for meetings and requests for accurate and complete statistical information by the Head of Prosecution Office, Deputy Head or Head of the Section.
- Article 6 of the instruction of the Head of Fier Prosecution Office, regarding the periodic information and the preparation of the annual report, as well as the report on the implementation of the general instructions of the Prosecutor General, on the implementation of the priority recommendations of the Council of Ministers and the resolutions of the Assembly of Albania, provides that during the preparation of these reports, information will be requested from prosecutors, judicial police officers and the administration, so as to report accurate and detailed data regarding the effectiveness of the criminal prosecution, the quality of the representation of prosecution in court , as well as other key elements or indicators in the activity of the prosecution, obligations provided for in article 10, paragraphs 3 and 4 of the

general instruction no. 12/20, as amended.

- Article 8 of the instructions of the Head of Prosecution Office, contains the same provisions as article 12 of the general instruction no. 12/2020 in relation to informing the Head of the Prosecution Office, from the prosecutor and the register office of the prosecution. The register office in this case informs the Head of Prosecution Office by handing him/her copies of the registration orders of the criminal proceedings assigned to the prosecutors who sign these orders to confirm their notification and order the register office to archive them.
- Paragraphs 2 and 3, of article 12<sup>30</sup> of the general instruction no. 12/2020, provide that both the Head's request and the prosecutor's information are made in writing. Regarding paragraph 4 of the General Instruction no. 12/2020, the Head of Prosecution Office Fier, has added in his/her instruction the provision that according to this article, prosecutors shall print in three copies all the acts signed in absence of the Head of Prosecution Office and shall deliver one copy to the Head of Prosecution Office, deputy head or the head of section in case of being authorized by the Head of Prosecution Office, during his/her absence. The deputy head and the head of section shall deliver these acts to the Head of Prosecution the moment he/she is present in the prosecution office.
- The Head of Prosecution Office Fier, in relation to article 13 of the General Instruction no. 12/2020, has provided in his instruction that in the case of preliminary information on restraining orders or requests for precautionary "detention in prison", "house arrest", the notification can be made verbally, or briefly by email, while for cases of imposing bail conditions or implementing preventive measures against the assets according to law no. 10192/2009, the notification should be made in writing. The Head of Fier Prosecution Office, related to paragraph 3, article 13 of the General Instruction no. 12/2020, has provided that the Head's request is made in writing. In relation to the data that the prosecutor's information should contain, the part "*as well as the investigative actions that are expected to be carried out*" has been removed with the amendments made by instruction no. 16, date 14.12.2020, but not added later to article 9, paragraph 3 of the instruction of the Head of Prosecution Office Fier.

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<sup>302</sup>. The prosecutor informs the head of prosecution office, at his request, on the progress and problems of the first pre-investigation actions in cases of events occurred during the oncall position and/or on the progress of the criminal procedure, before its completion.

3. When the court returns the acts to the prosecutor, the prosecutor, at the head of prosecution's request, shall inform the head of the prosecution about the causes and further progress of the investigation within 5 (five) days from the request.

- Even article 10, paragraph 1 of the general instruction of the Head of Prosecution Office Fier, which provides that "*Prosecutors inform mainly the Head of Prosecution Office of the progress of criminal proceedings or assets investigation no later than 20 (twenty) days before deciding the completion of the investigation...*". does not reflect the amendments in paragraph 1, of article 14 of the general instruction no. 12/2020, which was amended by general instruction no. 16, dated 14.12.2020 that "*1. Prosecutors inform the Head of prosecution office, at the request of the later, of the progress of the criminal proceedings or the assets investigation, not later than 20 days before deciding to conclude the investigations...*". Also, in relation to the information according to article 15 of the General Instruction no. 12/2020, the Head of Prosecution Office Fier has added in Article 11 of his/her instruction, the provision that the information is made briefly in writing by the prosecutor, but it is not adapted to the amendments made with instruction no. 16, dated 14.12.2020 according to which "*... the prosecutor informs the head of the prosecution office within 3 (three) days from the request of the later, of the decision and whether he will appeal it*".
- 2) Instruction no. 15, dated 18.03.2021 "*On the verification of the progress of criminal cases investigation*" aiming at verifying the prosecutorial caseloads and criminal charges, whose legal basis is instruction no. 02, dated 29.12.2016 "On the organization and coordination of work in the prosecution office", does not refer to the general instruction no. 12/2020, as amended. This instruction is recorded with no. 858, dated 18.03.2021 in the internal correspondence circulation register.
- The Head of Prosecution Office at Court of First Instance Fier, through this instruction, has requested the verification of the progress of criminal cases under investigation carried over in 2021, as well as the materials related to the criminal charges whose deadline of 15 (fifteen) days has expired. Pursuant to article 43, letter "b" and article 48 of law no. 97/2016, dated 06.10.2016 "On the organization and functioning of the prosecution in the Republic of Albania", as amended, through this instruction, it is required written information on the progress of criminal proceedings under investigation signed by each prosecutor, which have been carried over, submitting this information to the secretary of the Head of prosecution office, within 25.03.2021. Having received the information, the Head of Prosecution Office, if he deems necessary, makes an analysis with the prosecutor in charge on the investigative actions carried out and the need to extend the investigations time, and case after case may be concluded with the issuance of written instructions, according to the legal provisions of the law "On the organization and functioning of the Prosecution in the Republic of Albania" and the Criminal Procedure Code.
- During the period of time covered by inspection, regarding the procedures followed in the issuance of general instructions and the supervision of their implementation, the Head of

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Prosecution Office Fier, results to have issued **two (2) general instructions**, the first to facilitate the implementation of the general instruction no. 12/2020, as amended and the other general instruction, to verify the progress of the investigations of criminal proceedings carried over as well as all materials related to criminal charges in the Prosecution Office attached to the Court of First Instance Fier, respecting the procedure of issuing them in writing with relevant reasoning.

- The general instructions of the Head of Prosecution Office result to have been in accordance with General Instruction no. 12, dated 20.07.2020 of the Prosecutor General at the time of their issuance, yet these instructions have not been adapted to the amendments made to this instruction by general instruction no. 16, dated 14.12.2020.
- On the other hand, there is no supervision, or at least it is not documented, of the implementation of the general instructions of the Head of Prosecution Office Fier.

➤ **Prosecution Office attached to Court of First Instance Korça**

The Head of Prosecution Office attached to the Court of First Instance of Korça, pursuant to the letter "dh", of articles 43 and 46, paragraph 4 of the law "On the organization and functioning of the Prosecution in the Republic of Albania", in the framework of the implementation of the General Instruction no. 12, dated 20.07.2020, of the Prosecutor General, as amended, has issued one (1) general instruction, "On the regulation of relations between prosecutors and the head of prosecution office", dated 07.09.2020, which should also be the date of its entry into force (as the instruction itself does not specifically provide for it). The instruction was issued based on Article 148/b of the Constitution, Articles 38, paragraph 2, letter "b", 46, paragraphs 1, 2, 3 letters "a" and "c" of Law no. 97/2016, as amended, articles 24, 25 of the Code of Criminal Procedure, Article 52 of Law no. 96/2016, as amended, Article 159 of Law no. 115/2016 and Article 132 et seq. of the Code of Administrative Procedures.

- The purpose of the instruction of the Head of Prosecution Office attached to the Court of First Instance in Korça is to unify the implementation of the instruction of Prosecutor General and guarantee the correct understanding of the instruction content, with a view to facilitating and establishing the essential elements that guarantee the effective implementation of instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended.
- The general instruction of the Head of Prosecution Office in Korça "*On the regulation of relations between prosecutors and the head of the prosecution office*", dated 07.09.2020, contains provisions whose content is identical to articles of chapter III "*On the relations between the prosecutor and the head of prosecution office*" and chapter IV "*On the method and procedure of informing the heads of the prosecution offices*", of the General Instruction no. 12/2020, as amended, as well as its article 20 "*On the circulation of documents, acts and investigative materials*".

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- Article 1 of this instruction provides for the rights and obligations of the prosecutor in his/her administrative and procedural relations with the Head of Prosecution Office, fully referring to article 8 of the General Instruction no. 12/2020, as amended. It continues this way with article 2, which reflects article 9 of the General Instruction no.12/2020, as amended.
- Also, articles 3 and 4 of the Instruction of the Head of Korça Prosecution Office are identical to articles 10 and 11 of the General Instruction no. 12/2020, as amended, on the method and procedure of issuing general non-binding instructions for prosecutors. The same thing is repeated with article 5 of the instruction of the Head of the Prosecution Office, on informing the Head of the Prosecution Office by prosecutor, the obligations according to Article 12 of the General Instruction no. 12/2020, as amended.
- Articles 6 and 7 of the instruction of the Head of Prosecution Office are again copies of articles 14 and 15 of the General Instruction no. 12/2020, as amended, on the information on the progress of the criminal prosecution and on the representation of prosecution in court, while there is no provision regarding the information on preventative personal and assets measures, provided by article 13 of the general instruction no. 12/2020, as amended. Also, article 10 included in the general instruction of the Head of Korça Prosecution Office is irrelevant, as it has to do with the information for the representation of the case in the Court of Appeal by the prosecutors of Appeal.
- During the period of time covered by inspection, the Head of Prosecution Office attached to the Court of First Instance in Korça, has implemented the General Instruction no. 12/2020, of the Prosecutor General, as amended, by issuing **one (1) general instruction in order to facilitate its implementation**, respecting also the procedure of its issuance. However, there is no information from this prosecution office, regarding the supervision of its implementation.
- The general instruction of the Head of Prosecution Office does not contain other details, apart from the identical repetition of the provisions of general instruction no. 12/2020, of the Prosecutor General, as amended

➤ **Prosecution Office attached to the Court of First Instance Shkodër**

With reference to the information and documentation forwarded by the Prosecution Office attached to the Court of First Instance Shkoder, it results that pursuant to the general instruction no. 12, dated 20.07.2020 of the Prosecutor General "*On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*" as amended, the Head of Prosecution Office at the Court of First Instance Shkodër, has issued two (2) general binding instructions concerning the two types of procedural/administrative relations.



There have been two meetings of the prosecutors on the implementation of the general instruction no. 12/2020, as amended and the two general instructions of the Head of Prosecution Office, as well as an informing document addressed to the General Prosecution Office.

According to the information from the Head of Prosecution Office, it results that after receiving the general instruction no. 12, dated 20.07.2020 as amended, there were taken measures to share it and inform all the prosecutors and at the same time discuss it in the meeting of prosecutors according to the order dated 08.09.2020 "Call for Prosecutors Meeting", where there was discussed the ways of its implementation. It also started its implementation in practice by issuing non-binding instructions and requests for information addressed to prosecutors regarding concrete issues or certain criminal proceedings.

Following the implementation of this instruction and with a view to facilitating its implementation, the Head of Prosecution Office issued general instruction no. 33, date 04.09.2020 "*On the regulation of relations between the head of the prosecution office and prosecutors regarding information, transparency and the guarantee of independence in the Prosecution Office attached to the Court of First Instance Shkodër*". The Prosecutor General was informed, with letter no. 295 prot., dated 01.08.2021 "On measures taken for the implementation of order and instruction of Prosecutor General, which also includes instruction no. 12/2020", about the fact that all prosecutors in the Prosecution Office at the Court of First Instance Shkodër were informed about the General Instruction no. 12/2020, as amended, and based on it, the Head of Prosecution Office issued the general instruction no. 33, dated 04.09.2020, which was distributed to the respective prosecutors.

**1- General instruction no. 33 prot., dated 04.09.2020** "On the regulation of relations between the head of the prosecution office and prosecutors, regarding information, transparency and guaranteeing the independence in the Prosecution Office attached to the Court of First Instance Shkodër", establishes norms of communication between the Head of Prosecution Office and the prosecutors, as well as records acts in the respective register.

**2- General instruction no. 1, dated 06.01.2021** "*On handling information from the victim and crime reports that obviously do not contain elements of a criminal offense*", issued based, among other things, on General Instruction no. 15, dated 30.10.2020 "*On handling information from the victim and crime reports that obviously do not contain elements of a criminal offense*", of Prosecutor General as well as the Memorandum of Understanding between the General Prosecution Office and the General Directorate of State Police, no. 1460 prot., dated 30.09.2020.

The main paragraphs of general instruction no. 33 prot., date 04.09.2020 of the Head of Prosecution Office attached to Court of First Instance Shkodër "*On the regulation of relations between the head of prosecution office and the prosecutors regarding information, transparency and the guarantee of independence*" state that:

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- Paragraph 8 <sup>[31]</sup> of instruction no. 33 prot., dated 04.09.2020 of the Head of Shkodra Prosecution Office, has added a provision regarding the motivated decision in writing of the Head of Prosecution Office within three days, on the acceptance/rejection of the prosecutor's statement to abstain from further investigation of a specific case, pursuant to article 7, paragraph 2, letter "c" of general instruction no. 12/2020, as amended, considering the rules that govern the authority of the Heads of Prosecution Offices, as higher prosecutors in respect of the principles of legality and independence in the exercise of functions of the prosecutors, in accordance with "*Respecting the right a prosecutor has according to the law, to withdraw a specific case he is investigating and the procedure followed for his substitution*", which means that the procedure for the replacement of the prosecutor must to be carried out for the legal reasons provided for in Article 49 of Law no. 97/2016, as amended and articles 26 and 27 of the Code of Criminal Procedure.
- Paragraph 9 <sup>[32]</sup> of instruction no. 33 prot., dated 04.09.2020 regarding the prosecutors' written responses in due time, to the requests from the subjects of criminal proceedings, has been added to this instruction with a view to protecting the citizens' legitimate rights and interests in the criminal process, in spite of being out of scope of instruction no. 12/2020, of the Prosecutor General, as amended, and also taking into account that the instruction of the Head of Prosecution Office was issued to facilitate the implementation of its provisions, as well as such an obligation is provided for in the procedural criminal law (articles 105 and 110 of the Criminal Code). For these reasons, aiming at uniformizing instruction no. 33 prot, dated 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Shkodër with instruction no. 12/2020 of Prosecutor General as amended, it is estimated that paragraph 9 of the Head of Prosecution Office instruction should be revised/changed.
- Paragraph 10 <sup>[33]</sup> of instruction no. 33 prot., dated 04.09.2020 of the Head of Prosecution Office Shkodër, regarding the obligation of the prosecutor to inform about the investigation progress of specific cases, complies with article 8, paragraph 2, article "c" and article 13 of General Instruction no. 12/2020, to the Prosecutor General, as amended, which states: "*The prosecutor has the obligation to inform the head of prosecution office each time it is requested by the latter, regarding the progress of certain proceedings/cases*".

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<sup>31</sup>Paragraph 8. The head of prosecution office or another authorized head of office within three days from receiving the request decides in writing on the rejection/acceptance of the request, following the procedure for the replacement of the prosecutor and the appointment of a new prosecutor in that case.

<sup>32</sup>Paragraph 9. Prosecutors have the obligation to respond in writing, in due time, to the requests from the subject(s) of the criminal proceedings, according to the provisions of articles 105, 110 and 11 of the Code of Criminal Procedure.

<sup>33</sup>Paragraph 10. Prosecutors have the obligation to inform the Head of Prosecution Office, as often as required by him, regarding the investigations progress of certain cases. In particular, he shall inform the Head of Prosecution in cases of proceedings for serious offences, with extension of time limit or the ones at the end of investigation or the end of detention time.

- Paragraph 11 <sup>(34)</sup> of instruction no. 33 prot., dated 04.09.2020 of the Head of Prosecution Office Shkodër, provides for the obligation of the prosecutor to inform the Head of Prosecution Office in cases when the investigation time limit expires. Article 14 of instruction no. 12/2020, as amended, which stipulates the information on the progress of criminal prosecution, provides for the obligation of the prosecutor to inform the Head of Prosecution Office no later than 20 (twenty) days before deciding the end of the investigation only in two cases: 1) when the Head of Prosecution Office has issued a non-binding instruction for the criminal proceedings, or 2) when the Head of Prosecution Office has required information the moment the criminal proceedings or asset investigation has been recorded, due to its importance. If it is considered in accordance with article 12, paragraph 2 or 14 of the General Instruction no. 12/2020, as amended, this type of information may be included in the information that the Head of Prosecution Office may require on the case, as part of the information about the verification of the progress of criminal proceedings or before its completion. Therefore, if the purpose is taken into consideration, it does not appear to be any discrepancy between the General Directive no. 12/2020, as amended and Instruction no. 33 prot., dated 04.09.2020 of the Head of Prosecution Office. However, the discrepancy seems to be in the way this information is provided to be received from the Head of Prosecution Office. The time the Instruction of the Head of Prosecution Office was issued, the information on the progress of the criminal proceedings according to Article 12, paragraph 2 was made upon request, while according to Article 14 it was made without the request of the Head of Prosecution Office, fulfilling the above conditions. After the amendments of General Instruction no. 12/2020 and also according to this provision, the prosecutor informs the Head of Prosecution Office at his request. Also, the Head of Prosecution Office, in his instruction, provides for the issuance of non-binding instructions as his/her own obligation, or the obligation of the Head of section, while instruction no. 12/2020, as amended, provides that the Head of Prosecution Office **can** issue non-binding instructions after receiving the information. The 3-day deadline for the prosecutor to respond to the non-binding instruction is not in accordance with the 5-day deadline set in article 11 of instruction no. 12/2020, as amended.
- Paragraph 12 <sup>[35]</sup> of instruction no. 33/2020, which sets a deadline of no less than 15 days for the prosecutor of the case to notify the Head of Prosecution Office when the period of

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<sup>34</sup>Paragraph 11. Prosecutor has the obligation to inform the head of prosecution office in cases when the investigation time limit expires, no later than one month before the end of the time limit. The head of prosecution office or the head of section within 3 days from receiving the information issues instructions on concrete issues regarding the actions that must be carried out or the procedure to complete the investigations of the case, or on the contrary, instructs the prosecutor of the case to continue the investigations. After administering the instruction, the prosecutor of the case decides within three days to consider or not the instruction and notifies the head of prosecution office in writing.

<sup>35</sup>Paragraph 12. The prosecutor has the obligation to inform the head of prosecution office when the period of detention ends, at least 15 days before its end.

detention ends, even though it has reduced the time limit for the Head of Prosecution Office to administer this information, does not result to be in conflict with Article 13, paragraph 3 of instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended, which in these cases provides for a deadline no later than 1 month before the end of time limit (detention, sequestration or assets measures...), as well as with Article 46/4 of law no. 97/2016 "On the organization and functioning of the prosecution in the Republic of Albania", as amended, which states that: "*Instructions, shall be motivated and in writing. Exceptionally when the circumstances do not permit, the instructions may be given verbally and within a reasonable time be confirmed in writing*". The instruction of Prosecutor General states the maximum time limit, while The Head of Prosecution Office has shortened this time limit according to his instruction. Pursuant to article 13, paragraph 3 of instruction no. 12/2020, even before the general instruction no. 12/2020 was amended, the prosecutor has the obligation to inform the Head of Prosecution Office in writing, only at the request of the latter.

- Paragraph 13 [<sup>36</sup>] of instruction no. 33/2020 of the Head of Shkodra Prosecution Office has added provisions that are not found in instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended, which provides for the cases and procedures followed to inform the Head of Prosecution Office and specifically concerning the obligation of the prosecutor of the case to inform the Head of Prosecution Office at least one week before making the decision when he decides to change the precautionary measure or dismiss the charges in cases of proceedings with arrested or detained persons. Upon receiving the request for changing the precautionary measure, the Head of Prosecution Office has the possibility to require information or require to be informed in advance based on article 13, paragraph 2 of the general instruction no. 12/2020, as amended, while the case of dismissing charges is provided in article 14, paragraph 1 of the instruction. Even in this case, the instruction of the Head of Prosecution Office should have been adapted to the General Instruction no. 12/2020 and with the amendments made by instruction no. 16, date 14.12.2020, which provides that the Head of Prosecution Office shall be informed by the prosecutor at the request of the former. The 3-day time limit for the prosecutor to respond to the non-binding instruction is not in accordance with the 5-day (five) time limit specified in the General Instruction no. 12/2020, as amended.

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<sup>36</sup>Paragraph 13. The prosecutor has the obligation to inform the head of the prosecution office in cases of proceedings with arrested or detained persons, when he decides to change the precautionary measure or dismiss the charges, at least one week before making the decision. The head of prosecution office or the head of section within 3 days from receiving the information issues instructions on the concrete case regarding the actions that must be carried out or the manner of ending the case or, on the contrary, instructs the prosecutor of the case to continue the investigations. After receiving the instruction, the prosecutor of the case decides within 3 days whether to follow it or not and notifies the head of prosecution in writing.

- Paragraph 14 [<sup>37</sup>] of instruction no. 33/2020 of the Head of Shkodra Prosecution Office concerning the information on requests for seizure/confiscation, even though it is in accordance with articles 13 and 14 of the general instruction no. 12, dated 20.07.2020 as amended of the Prosecutor General, contains some discrepancies with these provisions, specifically: Paragraph 1- "Prosecutors, in order to enable the head of prosecution office to issue non-binding instructions, pursuant to Article 48 of Law No. 97/2016, exceptionally, when circumstances do not permit, shall inform the head of prosecution office in advance, according to the internal organization in the prosecution office, about the criminal proceedings where ...will be addressed to the court ..., the request for the application of preventive seizures, conservative seizures or in assets investigation the application of measures against assets in accordance with law no. 10192/2009", while paragraph 3: ""The Head of prosecution office for criminal proceedings where preventive, conservative seizure were applied or for assets investigations where measures against assets were applied pursuant to law no. 10192/2009, with a view to issuing non-binding instructions, can request, the moment the criminal proceedings is registered, that the prosecutor conduct assets investigation, or during criminal or assets investigation, to be informed in advance, but no later than 1 (one) month before the time limits expires..... the information is made in writing....." Also, according to article 14, paragraph 1 "Prosecutors inform the head of prosecution office about the progress of .... the assets investigation no later than 20 (twenty) days, before .... requesting confiscation or closing any assets investigation, which the head of prosecution office has issued non-binding instructions for, or has requested the prosecutor to do so the moment the assets investigation was registered due to its importance". As mentioned above, paragraph 14 of the general instruction of the Head of Prosecution Office has included the provisions of articles 13 and 14 of the General Instruction no. 12/2020, as amended. The 5-day (five) time limit specified in instruction no. 33/2020, for the prosecutor to inform the Head of Prosecution Office before submitting the request to the court, even though it is mentioned in instruction no. 12, dated 20.07.2020, does not conflict with the purpose of this instruction provided in article 13, paragraph 1 thereof, concerning the requests for assets seizure; while article 14 of the general instruction no. 12/2020, as amended, provides for the request for confiscation and closing assets investigation, which unlike the instructions of the Head of Prosecution Office, stipulates that the prosecutor informs the Head of Prosecution Office at least 20 days before requesting the confiscation or closing any assets investigation even when the Head of Prosecution Office has issued non-binding instructions, or has requested this information the moment the assets investigation was registered due to its importance.

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<sup>37</sup>Paragraph 14. In cases of assets investigations, the Prosecutor informs the Head of Prosecution Office in writing 5 days before submitting the request for seizure and confiscation of assets and one month before removing seizure or dismissing the case, in cases where he decides to remove the seizure or close the assets investigation. The information contains ..... The Head of Prosecution or the Head of Section within 3 days of receiving information issues instructions on the specific case...After receiving the instruction, the prosecutor of the case within 3 days, decides whether or not to follow the instruction and informs the Head of Prosecution Office in writing.

As far as information before submitting requests for seizure is concerned, the deadline for issuing a non-binding instruction by the Head of Prosecution Office or Head of Section is 1 (one) day and not 3 (three) days as provided for in the instruction by the Head of Shkodra Prosecution Office, this includes both cases provided in article 13, paragraph 4 and article 14, paragraph 3 of the General Instruction no. 12/2020, as amended; also according to Article 11 of this instruction, the deadline for the prosecutor to respond to the non-binding instruction is 5 (five) days and not 3 (three) days as provided for in the instruction of the Head of Prosecution Office.

- Paragraph 15 [<sup>38</sup>] of instruction no. 33/2020 of the Head of Shkodra Prosecution Office, concerning the obligation of the case prosecutor to inform the Head of Prosecution Office in cases when the court orders further investigations, results not to be it in accordance with article 12, paragraph 3 of the instruction no. 12, date 20.07.2020, as amended, of the Prosecutor General. Instruction no. 12/2020, as amended, states that: "In cases when the court orders further investigation, the prosecutor, upon the request of the Head of Prosecution Office, informs the head of prosecution office about the causes and further progress of the investigation within 5 (five) days from the request". According to this instruction, the prosecutor has the obligation to inform only if requested by the Head of Prosecution Office and not in every case as provided in instruction no. 33/2020, of the Head of Shkodra Prosecution Office. Regarding the deadline provided for in the instruction no. 33/2020, concerning the issuance of non-binding instructions, it results to be in accordance with instruction no. 12/2020, of the Prosecutor General, while, as mentioned above, the deadline for the prosecutor to request explanations or to notify the Head of Prosecution Office in writing, when he will not follow the given instructions, is 5 (five) days. In fact, the above provision of the general instruction no. 12/2020, as amended, only provides for the prosecutor's information but not for the issuance of non-binding instructions, which means that the investigative actions to be carried out are determined by the court, while the non-binding instruction of the Head of Prosecution Office, as provided in the instruction of the Head of Shkodra Prosecution Office, only overlaps with the court decision. The non-binding instruction on investigative actions and their completion within the period of time specified in the court decision, seems to be unnecessary in the conditions where these actions have been determined by the court as the competent body to control the case and in principle, the Head of Prosecution Office cannot intervene here, as otherwise it would exceed his powers, referring to the Code of Criminal Procedure and law no. 97/2016, as amended.

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<sup>38</sup>Paragraph 15. The prosecutor has the obligation to inform the head of prosecution office regarding the criminal proceedings sent to court for which the court has ordered further investigation, within 5 (five) days from the court order or from being notified about the decision in cases the decision was given in the absence of the prosecutor ... The head of prosecution office or the head of section within 3 (three) days from receiving the information, issues the instruction for the specific issue regarding the court order, actions needed to be taken or the way of completing the investigation or on the contrary to instruct the prosecutor of the case to continue the investigations. After administrating the instruction, the prosecutor of the case within 3 (three) days decides whether to follow the instruction or not and notifies the head of prosecution in writing.

Under these circumstances, the prosecutor informs the Head of Prosecution Office within 5 (five) days from the request of the latter, who has been informed of the court order and requires information on the reasons for the return of the case for further investigation and its progress. However, under these conditions, the information that we presume is important to be required by the Head of Prosecution Office, would be the one regarding the progress of the duties left by the court so that the prosecutor could finish them within the deadline.

- Paragraph 16 [<sup>39</sup>] of instruction no. 33/2020, of the Head of Shkodra Prosecution Office, which provides for the obligation of the prosecutor to inform the Head of the Prosecutor Office in cases when the court finds the defendant innocent or partially guilty or change the legal quality of the act, when it was issued, was in accordance with article 15, paragraph 1, of instruction no. 12, dated 20.07.2020, as amended, of Prosecutor General which provides that: "*In cases where the court has not accepted the requests of the prosecutor regarding the guilt of the defendant, the legal quality of the offense, the type of sentence and confiscation based on Article 36 of Code of Criminal Procedure or Law No. 10192/2009, the prosecutor, within 3 (three) days from the decision, informs the head of the prosecution office about the decision and whether he will appeal.*" Instruction no. 33/2020, of the Head of Prosecution Office, gives more access to the Head of Prosecution Office to have information on the progress of criminal proceedings during the trial phase, yet after the amendments of general instruction no. 12/2020, this becomes possible only upon his request to the prosecutor of the case. Paragraph 16 of the general instruction of the Head of Shkodra Prosecution Office does not provide for the prosecutor's obligation to inform the head of prosecution office even when the court changes the sentence or does not accept the request for confiscation.
- The Head of Prosecution Office attached to the Court of First Instance Shkodër has taken measures of an internal organizational nature, informing all the prosecutors of instruction no. 12/2020, of the Prosecutor General. For a correct implementation, in full compliance with the binding provisions of law no. 97/2016 "*On the organization and functioning of the prosecution in the Republic of Albania*", as amended, the Head of Prosecution at the Court of First Instance Shkodër, issued general instruction no. 33, date 04.09.2020 "*On the regulation of relations between the Head of Prosecution Office and prosecutors regarding information, transparency and guarantee of independence in the Prosecution Office attached to the Court of First Instance Shkodër*".

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<sup>39</sup>Paragraph 16. The prosecutor has the obligation to inform the head of prosecution office about the proceedings sent to the court, when the court finds the defendant innocent or partially guilty or change the legal quality of the act, within 5 (five) days from the court decision or from receiving notification on the decision if it was given in the absence of the prosecutor.

- Regarding the above, the Head of Prosecution Office attached to the Court of First Instance Shkodër results to have issued **2 (two) general instructions**, in order to facilitate the implementation of general instruction no. 12/2020, of the Prosecutor General, as amended, as well the implementation of the general instruction no. 15, date 30.10.2020 " On handling information from the victim and crime reports that obviously do not contain elements of a criminal offense" of the Prosecutor General. However, there is no evidence regarding the supervision of the implementation of these general instructions of the Head of Prosecution Office.
- The provisions of General instruction no. 33/2020 of the Head of Prosecution Office attached to the Court of First Instance Shkodër, which had discrepancies with the instruction of the Prosecutor General, should have been harmonized with this instruction, by following the procedure for obtaining information and issuing non-binding instructions. Furthermore, they should have reflected the amendments made to the General Instruction no. 12/2020, of the General Prosecutor General, with instruction no. 16, dated 14.12.2020, on the preparation of information by the prosecutor upon the request of the Head of Prosecution Office.

➤ **Prosecution Office attached to the Court of First Instance Vlorë**

According to the information and documentation forwarded by the Prosecution Office attached to the Court of First Instance Vlorë, the Head of Prosecution Office results to have issued **general instruction no. 04, dated 04.09.2020**, pursuant to instruction no. 12, dated 20.07.2020, of the Prosecutor General "On regulation of relations between prosecutors and the head of the Prosecution Office, information, transparency and guarantee of independence in the Prosecution Office of General Jurisdiction", as amended.

- The content of instruction no. 4, dated 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Vlorë, (*a total of 16 (sixteen) provisions of an internal regulatory nature in the activity of this prosecution*) results to have provisions which are mainly in harmony with the general instruction no. 12/2020, of the Prosecutor General, as amended, issued according to the authority of the Heads of Prosecution Offices, pursuant to law no. 97/2017 "On the organization and functioning of the Prosecution in the Republic of Albania". In relation to the general instruction no. 12, dated 20.07.2020, of the General Prosecutor "On the regulation of relations between prosecutors and heads of the Prosecution Offices, information, transparency and guarantee of independence in the Prosecution Office of General Jurisdiction", as amended, it results that:
- General instruction no. 4, dated 04.09.2020 of the Head of Prosecution Office at the Court of First Instance of Vlore, is in harmony and compatibility with the general instruction



no. 12, date 20.07.2020, thus respecting the binding force of Article 46/6 of Law no. 97/2017 "On the organization and functioning of the prosecution in the Republic of Albania". Its provisions, like article 4, paragraph 1, letters "a" and "f" of the general instruction no. 4, date 04.09.2020, of the Head of Prosecution Office attached to the Court of First Instance Vlorë, are more inclusive than article 8, paragraph 1, letters "a" and "dh" of the general instruction no. 12, dated 20.07.2020, of the Prosecutor General, as amended, by providing for the notification of the prosecutors regarding the meetings called by a higher prosecutor.

- Also, article 8 of general instruction no. 4, dated 04.09.2020, of the Head of Prosecution Office attached to the Court of First Instance Vlorë, contains extended paragraphs, while paragraph 3 of this instruction is organized in alphabetical order. This provision also contains a paragraph which provides for the Head of Prosecution Office to be informed of the arrests in flagrante delicto, assets measure, means to gather evidence, obtaining evidence, etc., with a copy from the protocol office of the procedural act prepared by the respective prosecutors, a paragraph not found in the content of article 12, of the general instruction no. 12, date 20.07.2020.
- Article 9 of the general instruction no. 4, date 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Vlorë, contains one more paragraph which provides that the Head of Prosecution Office shall be notified verbally by the prosecutor of the case of restraining orders and precautionary measures "house arrest" and "arrest in prison", and notified in writing of preventive and conservative seizure. Despite the fact that the Head of Prosecution Office, in order to facilitate the implementation of the general instruction no. 12/2020, as amended, may decide on the way to receive information in this case, basically pursuant to instruction of the Prosecutor General, the internal communication considering information between the prosecutor and the Head of Prosecution Office must be in writing. Therefore, this paragraph could have been the same regarding the information provided by the prosecutors, who must submit it in writing also in accordance with article 9 of the general instruction no. 4, date 04.09.2020 of Head of Prosecution Office attached to the Court of First Instance Vlorë.
- Article 11, paragraph 2 of the general instruction no. 4, dated 04.09.2020, contains one provision that is not found in article 15 of the general instruction no. 12, date 20.07.2020, as amended, which stipulates that "*the prosecutor has the obligation to give verbal information using any form of communication and to confirm it in writing, if requested by the head of prosecution office*". This provision even though it aims to increase transparency and accountability in the activity between the Head of Prosecution Office and the prosecutors of general jurisdiction, is suggested to be changed in the general instruction no, 4, date 04.09.2020 and be provided as in general instruction no. 12, date 20.07.2020,

as amended, where the information provided by the prosecutors must be in writing to increase as much as possible the guarantee of the transmitted information. Also, it results that the manner and procedure followed for the circulation of documents, acts and investigative materials is organized in alphabetical order.

- The main part of article 14 of general instruction no. 4, dated 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Vlorë, is in harmony with article 21 of general instruction no. 12, dated 20.07.2020, as amended. However, this provision does not reflect the amendments made with instruction no. 16, date 14.12.2020 "On some additions and amendments in instruction no. 12, dated 20.07.2020, of Prosecutor General *"On the regulation of relations between prosecutors and Heads of Prosecution Offices, information, transparency and the guarantee of independence in the Prosecution Office of General Jurisdiction"*, where the word "may" (constitute a disciplinary violation) has been added and the phrase "and/or disciplinary investigation" was removed, since initiating a disciplinary investigation for prosecutors of all levels is a competence of the High Inspector of Justice pursuant to Law No. 96/2016.
- According to the information forwarded by the Prosecution Office at the Court of First Instance Vlorë, there are no statistical data related to the period of time covered by inspection to fully identify the results achieved in the implementation of these acts of general binding character. According to the information there is no evidence of the supervision of the implementation of general instruction of the Head of Prosecution Office attached to the Court of First Instance Vlorë,
- Regarding the aforementioned evidence of the approved procedural acts, the Head of Prosecution Office results to have taken measures in the formal aspect to inform prosecutors about the content of instruction no. 12/2020 of the Prosecutor General, as amended, issue another by-law for the implementation of the provisions of this act, which is general instruction no. 4, date 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance of Vlorë.
- Most provisions of general instruction no. 4, date 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Vlorë, are in harmony with general instructions no. 12, dated 20.07.2020 of Prosecutor General, as amended. No provision appears to be in conflict with the instruction issued by Prosecutor General. However, it results that general instruction no. 4, date 04.09.2020 of the Head of Prosecution Office attached to the Court of First Instance Vlorë does not reflect the amendments made with the general instruction no. 16, dated 14.12.2020 "On some additions and amendments in instruction no. 12, dated 20.07.2020, of Prosecutor General *"On the regulation of relations between prosecutors and heads of Prosecution Offices, information, transparency and the guarantee of independence in the Prosecution Office of General Jurisdiction"*", respectively to Article 13, paragraph 3, letter "a"; article 14, paragraph 1; article 15, paragraph 1; article 17, paragraph 1; article 18, paragraphs 1 and 2, as well as article 21, paragraph 1.

➤ **Prosecution Office attached to the Court of Appeal Vlorë**

According to the information and documentation forwarded by the Head of Prosecution Office attached to the Court of Appeal Vlorë related to general instruction no. 12, dated 20.07.2020 of Prosecutor General "*On the regulation of relations between prosecutors and heads of the Prosecution Offices, information, transparency and guarantee of independence in the Prosecution Office of General Jurisdiction*", as amended, it results that no general instruction has been issued during the period of time covered by inspection. Under these circumstances, there is no evidence of the procedure followed to issue instructions and oversee their implementation.

➤ **Prosecution Office attached to the Court of Appeal Tiranë**

During the period of time covered by inspection from 01.10.2020 to 31.03.2021, the Prosecution Office attached to the Court of Appeal Tiranë was headed by two prosecutors, one of them until 22.10.2020, and after he/she was dismissed by the Special Appeal Chamber, in the framework of the transitional re-evaluation process, which upheld the decision no. 225, date 27.10.2020 of the High Prosecutorial Council, the Prosecution Office was headed by another prosecutor assigned to this position.

During the period of time covered by inspection, Tirana Appeal Prosecution Office was composed of 9 prosecutors. However, according to the information of the Head of Prosecution Office, only three prosecutors were exercising their functions in Tirana Prosecution Office during that period of time. The Head of Prosecution Office has described the workload of the three prosecutors as a rather large burden in dealing with criminal cases.

According to the register and the information from the Head of Tirana Prosecution Office at the Court of Appeal, **no general instructions were issued** during the period of time covered by inspection, and no specific reason was provided to justify this fact. Under these circumstances, there is no evidence of the procedure followed to issue instructions and oversee their implementation.

➤ **Prosecution Office attached to the Court of Appeal Shkodër**

The head of Shkodra Prosecution Office at Court of Appeal has informed that during the period of time covered by inspection, only two prosecutors from four of the staff, have exercised their functions in this prosecution office, one of whom was also the Head of Prosecution Office. The prosecutor, who was in the position of the previous head of this prosecution, was dismissed by the

Independent Commission of Qualification, on 15.11.2020 and on 16.11.2020, the current Head of Prosecution Office was temporarily appointed to the position. The previous Head of Prosecution Office was dismissed by the Special Appeal Chamber on 15.11.2020 and on 16.11.2020 the current Head of Prosecution Office was appointed temporarily.

According to this information, the previous Head of Prosecution Office results to have issued no general instructions related to the implementation of general instruction no. 12/2020, of the Prosecutor General, as amended "*On the regulation of relations between prosecutors and the Heads of the Prosecution Offices, information, transparency and guarantee of independence in the Prosecution Office of General Jurisdiction*", as amended, yet the appointed Head of Prosecution issued **general instruction no. 50, date 21.12.2020** "*On the regulation of relations between prosecutors and the Heads of the Prosecution Offices, information, transparency and guarantee of independence in the Prosecution Office attached to Court of Appel Shkodër.*"

- Instruction no. 50, dated 21.12.2020 of the Head of Shkodra Prosecution Office attached to the Court of Appel, focuses on the provisions of article 8, paragraph 1, from letters "a" to "dh" of the general instruction no. 12/2020, of the Prosecutor General, as amended, mainly on the prosecutor's obligations in administrative matters "the rights and obligations of prosecutors in the exercise of their functions in the prosecution office" such as: *attendance of meetings called by a higher prosecutor; the implementation of legal/sublegal conditions and criteria for participating in the allocation of cases by drawing lots; the participation in professional discussions; the respect for the office hours and discipline at work; participation in activities outside their functions; providing assistance to administrative bodies*, all of which were specified in paragraph 7 of instruction no. 50/2020, to the Head of Prosecution Office at the Court of Appel Shkodër. Some of the prosecutor's obligations stated in paragraph 7 of instruction no. 50/2020, of the Head of Prosecution Office at the Court of Appel Shkodër, are restated in paragraph 8 of this instruction.
- Also pursuant to paragraph 7 of instruction no. 50/2020, the prosecutor's obligations go beyond the provisions of instructions no. 12/2020, of Prosecutor General, as amended, such as the obligation to receive information and coordinate the work, when needed, with district Prosecution Offices, Heads of these Prosecution Offices, prosecutors of the cases, Local Office of Probation Service and notification on every Court of Appeal decision, including the summary of the decision sent on/off office hours by mail and e-mail accompanied by the problems during the trial in the court of appeal.

## INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE

- Regarding the final provision in paragraph 7 of instruction no. 50/2020, of the Head of Shkodra Prosecution Office attached to the Court of Appeal, referring to the provisions of article 18 of instruction no. 12/2020, of the Prosecutor General, as amended, regarding the obligation of the prosecutor of the case to inform the Head of Prosecution Office at his request no later than 10 days before the detention time limit expires (for the defendants under arrest) it appears that The Head of Prosecution Office has also added the obligation of the prosecutor to notify the Heads of District Prosecution Offices and the Head of Prosecution Office attached to Court of Appeal on the expiration of detention time limit which has resulted in changing/removing the precautionary measure, by accompanying this notification with the relevant information.
- The end of paragraph 9 of instruction no. 50/2020, of the Head of Shkodra Prosecution Office attached to the Court of Appeals, unlike the provisions of article 8, paragraph 2, letter "dh" of instruction no. 12/2020, as amended of Prosecutor General, regarding the prosecutor's conflict of interest, provides for the motivated decision-making on accepting/rejecting the prosecutor's request to withdraw from further investigation of the concrete case within 3 (three) days.
- Paragraph 10 of instruction no. 50/2020, of the Head of Shkodra Prosecution Office, which provides for the obligation of the prosecutor of the case to respond in writing within the deadline, to the subjects to criminal proceedings according to provisions of articles 105, 110 of the Code of Criminal Procedure, goes beyond the provisions of instruction no. 12/2020, of the Prosecutor General, as amended. As mentioned above in the case of general instruction no. 33, dated 04.09.2020 of the Head of Prosecution Office at the Court of First Instance Shkodër, the general instruction of the Head of Shkodra Prosecution Office was issued to facilitate the implementation of general instruction no. 12/2020, as amended, and the above obligation is neither the purpose nor the scope of this instruction as this is an obligation provided for in Article 105 and Article 110 of the Code of Criminal Procedure, therefore there is no need to add provisions beyond the context and nature of the relations regulated by instruction no. 12/2020, of the Prosecutor General, as amended.
- The Head of Prosecution Office attached to the Court of Appeal Shkodër has fulfilled his obligation pursuant to article 10, paragraph 2 of general instruction no. 12/2020, of Prosecutor General, as amended, to guarantee and facilitate the implementation of this instruction, **by issuing 1 (one) reasoned general instruction**. Nevertheless, there is no evidence of the supervision of the implementation of general instruction of the Head of Prosecution Office according to its relevant provisions regarding the activity of Appeal Prosecution Office, even though the staff structure includes a prosecutor of appeal, in the relationship between this and the Head of Prosecution Office at Court of Appeal Shkodër.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

➤ **Prosecution Office attached to Court of Appeal Korçë.**

According to the information from the Prosecution Office attached to Court of Appeal Korçë related to general binding instructions, the Head of Prosecution Office attached to Court of Appeal Korçë results to have issued **general instruction no. 1 dated 10.09.2020**, which has entered into force the same day, on 10.09.2020. The legal basis of this instruction is Article 42 of Law no. 97/2016, as amended; law no. 96/2016, as amended; general instruction of Prosecutor General no. 12, dated 20.07.2020, as amended and the Code of Criminal Procedure.

- The purpose of the instruction, issued pursuant to article 22 of general instruction no. 12, dated 20.07.2020, as amended, is to inform the prosecutors and the staff of Prosecution Office at Korça Court of Appeal about this instruction and to facilitate its implementation, especially the regulations related to the activity of the appeal prosecution office. This act has also been also sent to the General Prosecution Office.
- Paragraph 3 of general instruction of the Head of Prosecution Office attached to Court of Appeal Korçë, contains provisions, regarding the rights and obligations of the prosecutors in their administrative relations with the Head of Prosecution Office, based on article 8, paragraph 1, letters "a" , "b", "c" of General Instruction no. 12/2020, as amended, in relation to the participation in meetings, professional discussions concerning problems and difficulties during trials, discussions if the appeal prosecutor has a a conflict of interest while representing prosecution, or when he decides not to appeal a lower court decision, or when contrary to the court decision he requests in the appeal trial, a lighter measure, dismissing the case or even the innocence of the accused. The latter after the discussion with the Head of Prosecution Office.
- The instruction contains provisions which also refer to article 11, "*On non-binding instructions on the performance of procedural acts*" and article 18, "*On information on the representation of prosecution in appellate court*" of the general instruction no. 12/2020, as amended.
- Paragraph 4 of general instruction of the Head of Prosecution Office attached to Court of Appeal Korçë, provides that the prosecutor applies the conditions and criteria stipulated in law and/or in general instruction that require their presence when drawing lots or receiving a case assigned to represented in the appeal trial.
- Paragraph 5 of general instruction no.1, dated 10.09.2020 of the Head of Prosecution Office attached to Court of Appeal Korçë, states that communication between the Head and prosecutors of this Prosecution Office is done in writing, being recorded in the internal protocol book kept at the head secretary office. This includes the case of issuing non-binding instructions from the Head of Prosecution Office attached to Court of Appeal Korçë, as well as the obligation to inform the Head of Prosecution Office pursuant to Article 18 of general instruction no. 12/2020, as amended.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- Paragraph 7 of general instructions of the Head of Prosecution Office attached to Court of Appeal Korçë, provides for the fact that the prosecutor of the case takes measures for the execution of the appeal court decisions with immediate execution. In other cases, summary of decisions is sent to the office of executions in the district prosecution office, and the prosecutor of the case must notify in time, the Ministry of Justice, The General Prosecution Office and the District Prosecution Office of the extraditions and recognitions of foreign criminal decisions.
- Paragraph 12 of general instruction of the Head of Prosecution Office is in accordance with article 20 of general instruction no. 12/2020, as amended, providing that the circulation of documents, acts and investigative materials, between the Head of Prosecution Office and the prosecutors provided for in article 20, paragraph 2 of general instruction no. 12/2020, as amended, will be carried out through their recording in the internal communication register.
- The Head of Prosecution Office attached to Court of Appeal Korçë **has issued 1(one) motivated general instruction in writing**, in order to guarantee and facilitate the implementation of general instruction no. 12/2020, as amended, while there is no evidence regarding the supervision of the implementation of general instruction no. 12/2020 and the general instructions of the Head of Prosecution Office attached to Court of Appeal Korçë. Apart from the paragraphs that adapt the provisions of articles 11 and 18 of the general instruction no. 12/2020, as amended, the instruction of the Head of Prosecution Office attached to Court of Appeal Korçë appears to have added provisions outside the purpose of the relations that regulates this instruction or should be facilitated by the above instruction of the Head of Appeal Prosecution Office. Although the general instruction of the Head of Prosecution Office attached to Court of Appeal Korçë, at the time it was issued, results to have been in agreement with the provisions of general instruction no. 12/2020, as amended, regarding the appeal prosecution office, it was not updated afterwards with the amendments made to Article 18, paragraphs 1 and 2 of the general instruction no. 16, date 14.12.2020.

➤ **Prosecution Office attached to Court of Appeal Gjirokastrë**

According to the information received from the Prosecution Office attached to Court of Appeal Gjirokastrë, it results that since July, 2019, this prosecution office has been represented by only prosecutor who is also the Head of Prosecution Office.

For the period of time covered by inspection, in relation to the provisions of article 18, paragraph 1 and 2 of general instruction no. 12, dated 20.07.2020 of Prosecutor General, as amended, the

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Head of Prosecution Office attached to Court of Appeal Gjirokastrë was informed in time, with general instruction no. 12, dated 20.07.2020, of the Prosecutor General, "*On the regulation of relations between the prosecutors and the heads of prosecution offices, information, transparency and guaranteeing the independence of the prosecutor in the Prosecution Office of General Jurisdiction*", as amended and with the obligation to implement it. But, since he is the only prosecutor to exercise the function in the Prosecution Office attached to Court of Appeal Gjirokastrë, the obligation to issue general binding instructions is not applicable.

➤ **Prosecution Office attached to Court of Appeal Durrës**

According to the information received from the Prosecution Office attached to Court of Appeal Durrës, pursuant to general instruction no. 12, dated 20.07.2020, as amended, of Prosecutor General, the Head of Prosecution Office attached to Court of Appeal Durrës results to have issued **general instruction no. 1, date 07.09.2020**, which entered in force on 07.09.2020, "*In accordance with and on the implementation of General Instruction no. 12, dated 20.07.2020 of Prosecutor General "On the regulation of relations between prosecutors and heads of the prosecution offices, information, transparency and the guarantee of independence, in the Public Prosecution Office of General Jurisdiction" as amended*". The legal basis of this general instruction, is article 42 of law no. 97/2016, as amended; law no. 96/2016 as amended; general instruction no. 12, date 20.07.2020, of Prosecutor General, as amended and Code of Criminal Procedure.

The purpose of the instruction issued pursuant to Article 22 of general instruction no. 12, date 20.07.2020, as amended, is to inform the prosecutors and the staff of Prosecution Office attached to Court of Appeal Durrës and to facilitate the implementation of this instruction in general and particularly the regulations related to the activity of the appeal prosecution office. This act has also been sent to the General Prosecution Office via e-mail on 07.09.2021.

- The General Instruction of the Head of Prosecution Office attached to Court of Appeal Durrës, contains provisions such as those referring to the rights and obligations of prosecutors in their administrative relations with the Head of Prosecution Office, based on Article 8, paragraph 1, letters "a", "b", "c", of General Instruction no. 12/2020 as amended, regarding their participation in meetings; professional discussions concerning problems and difficulties during trials, as well as provisions referring to Article 11, "*On non-binding instructions on performing procedural acts*" and Article 18, "*On information on the representation of prosecution in appellate court*", of general instruction no. 12/2020, as amended.
- As in the above general instruction, the instruction of the Head of Prosecution Office attached to Court of Appeal Durrës, contains provisions that also refer to Article 11,



*"On non-binding instructions on performing procedural acts"* and Article 18, *" On information on the representation of prosecution in appellate court"*, of general instruction no. 12/2020, as amended.

- Paragraph 3 of the general instruction of the Head of Prosecution Office attached to Court of Appeal Durrës provides that the prosecutor applies the conditions and criteria stipulated in law and/or in general instruction that require their presence when drawing lots or receiving a case assigned to him.
- Paragraph 5 of general instruction no. 1, dated 10.09.2020 of the Head of Prosecution Office attached to Court of Appeal Durrës states that communication between the Head and prosecutors of this Prosecution Office is done in writing, being recorded in the internal protocol book kept at the head secretary office. This includes the case of issuing non-binding instructions from the Head of Prosecution Office attached to Court of Appeal Durrës, as well as the obligation to inform the Head of Prosecution Office pursuant to Article 18 of general instruction no. 12/2020, as amended.
- Paragraph 7 of general instructions of the Head of Prosecution Office attached to Court of Appeal Durrës, provides for the fact that the prosecutor of the case takes measures for the execution of the appeal court decisions with immediate execution. In other cases, summary of decisions is sent to the office of executions in the district prosecution office, and the prosecutor of the case must notify in time, the Ministry of Justice, The General Prosecution Office and the District Prosecution Office of the extraditions and recognitions of foreign criminal decisions.
- Paragraph 12 of general instruction of the Head of Prosecution Office is in accordance with article 20 of general instruction no. 12/2020, as amended, providing that the circulation of documents, acts and investigative materials, between the Head of Prosecution Office and the prosecutors provided for in article 20, paragraph 2 of general instruction no. 12/2020, as amended, will be carried out through their recording in the internal communication register
- Regarding the procedure followed in issuing general instructions, their supervision and implementation, the Head of Prosecution Office attached to Court of Appeal Durrës results to **have issued 1(one) motivated general instruction in writing** in order to facilitate the implementation of general instruction no. 12/2020, as amended.
- Regarding the supervision of the implementation of general instruction no. 12/2020 and the general instructions of the Head of Prosecution Office attached to Court of Appeal Durrës, apart from informing prosecutors about it, there is no other evidence.

- The instruction of the Head of Prosecution Office, apart from the adaptations to article 11 and 18 of general instruction no. 12/2020, appears to have added to these articles, provisions outside the purpose of the relations that regulate this instruction or should be facilitated by the above instruction of the Head of Prosecution Office attached to Court of Appeal Durrës. Although the general instruction of the Head of Prosecution Office attached to Court of Appeal Durrës, at the time it was issued, results to have been in agreement with the provisions of the general instruction no. 12/2020, as amended, regarding the appeal prosecution office, it was not updated afterwards with the amendments made to Article 18, paragraphs 1 and 2 of the general instruction no.16, date 14.12.2020.

➤ **General Prosecution Office**

General Prosecution Office sent the requested acts/documents on CD, as follows:

- a) General instructions from 01.07.2020 to 31.03.2021, which have been in force from 01.10.2020 to 31.03.2021 and the documentation dealing with the need to issue them:
  - i) General Instruction no. 14, date 21.09.2020 "On the right to access the databases of third parties". The purpose of this instruction is to determine the rules and procedures on the right to access the databases of third parties for the needs of criminal prosecution and investigations.
  - ii) General Instruction no. 18, date 31.12.2020 "On administrative and procedural measures for the verification of data in the self-declaration form, from the special structure pursuant to law no. 138/2015 and decision no. 17/2016 of the Parliament of Albania". The purpose of this general instruction is to unify administrative and procedural measures for verifying the data in the self-declaration form upon the request of the competent body addressed to the General Prosecution Office, pursuant to law no. 138/2015 and decision no. 17, dated 04.03.2016 of the Parliament of Albania, guaranteeing the due process of law, and the principles of rule of law, transparency, information, justice, impartiality, protection of personal data, confidentiality and state secrets.
  - iii) General instruction no. 17, date 23.12.2020 "On the effective investigation and criminal prosecution response to violence against women, domestic violence and hate crime." The purpose of this general instruction is to unify the procedural measures in the prosecution office of general jurisdiction so that investigations and criminal prosecution response to violence against women and hate crime can be within optimal deadline (quickly), can be efficient and with requests for effective, proportionate and dissuasive penalty measures that contribute to the general and special deterrence in

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- order to prevent these sensitive crimes against women. The purpose of this instruction is also to complete the unifying legal framework for protecting the victim and the human rights, following general instructions no. 5/2018 "On guaranteeing support for victims and witnesses of criminal offences", in force, on the activity of the prosecution offices of general jurisdiction.
- iv) General instruction no. 12, dated 20.07.2020, of Prosecutor General "On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence, in the prosecution offices of general jurisdiction ", as amended. The purpose of this general instruction is to unify the rights and obligations of the prosecutor when exercising his/her functions, his/her relation with the Head of Prosecution Office as a higher prosecutor as well as the information and coordination in the activity of prosecution office in order to ensure the independence and autonomy of the prosecutor in the exercise of his/her functions as well as the compliance, supervision, efficiency, legality and transparency in the activity of the prosecution office as an independent constitutional body. The purpose of this instruction is also to clarify the meaning and practical application of some legal issues related to the respect for principles of rule of law, enforcement of criminal prosecution and independence in relations between the prosecutor with the Head of Prosecution Office of general jurisdiction at all levels, in accordance with good European standards and practices for the unification and improvement of the organizational, functional or procedural activity in the prosecution office.
  - v) General instruction no. 16, date 14.12.2020 "On some amendments in general instruction no. 12, date 20.07.2020".

Pursuant to article 47, paragraph 1 of law no. 97/2016, as amended, which stipulates that: "Prosecutors may oppose the illegality or groundlessness of general instructions, making complaints to the High Prosecutorial Council", it results that one prosecutor of the Prosecution Office attached to the Court of First Instance of Vlorë, has complained to the HPC against general instructions no. 12, date 20.07.2020 and no. 16, dated 14.12.2020.

The Appellant through his complaint has requested to the High Prosecutorial Council: "The establishment of the absolute invalidity of General Instructions no. 16, dated 14.12.2020 and no. 12, dated 20.07.2020 of the Prosecutor General ", presenting in his complaint the fact that general instruction no. 16, dated 14.12.2020 "On some amendments in General Instruction No. 12, dated 20.07.2020 "On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence, in the prosecution offices of general jurisdiction", of Prosecutor General, was issued in flagrant contradiction with the law and by the competent body and as such, it is an absolutely invalid act.

The High Prosecutorial Council, after reviewing the appeal, with decision no. 59, date 18.03.2021, decided: To reject both complaints of the prosecutor as unfounded in law...., reasoning that

"... this instruction... is in accordance with the Constitutional and legal provisions ...".

- VI. General instruction no. 10, date 17.07.2020 "On administrative and procedural measures for the increase of effectiveness in the fight against money laundering, financial crimes, terrorist financing, and assets investigation in the Prosecution Office of General Jurisdiction". The purpose of this general instruction is to standardize and unify the administrative and procedural penal measures in the prosecution office attached to the courts of general jurisdiction in order to increase the effectiveness of the war against money laundering, terrorist financing, financial crimes and in the assets investigation for the sequestration and confiscation of criminal assets, in accordance with the principles of rule of law, the obligation of criminal prosecution and the independence/autonomy of the prosecutor in the exercise of criminal prosecution, as well as in accordance with the recommendations and European standards. The purpose of this instruction is also to improve the quality and completeness according to the typologies of crime, types of criminal charges or crime reports and investigations carried out by the judicial police in the respective investigative structures and the evaluations by the prosecution of the evidence/indications that prove the circumstances of the fact and the applicable law for the registration of proceedings, conducting investigations, criminal prosecution and representation of prosecution in court, increasing thus the effectiveness in investigations related to money laundering, including the recommended typologies, financial crimes, terrorist financing including the recommended parallel investigations, assets investigations for the sequestration and confiscation of criminal assets, especially the recommended typology (third party money laundering, special/professional subjects and self-reporting subjects (gatekeeper) as well as assets representing indirect income and/or equivalent value).
- vii) General instruction no. 11, date 20.07.2020 "On the priority recommendations of the Council of Ministers in the fight against crime for 2020 in the Prosecution Offices of General Jurisdiction". The purpose of this general instruction is to unify the implementation of the priority recommendations of the Council of Ministers in the fight against criminality for 2020 as a subject-matter competence of prosecution offices of general jurisdiction, without infringing the independence of the prosecution as a body that guarantees compliance, control of its activities and respects the internal independence of the prosecutors in conducting investigation and criminal prosecution according to the law.
- viii) General instruction no. 15, dated 30.10.2020 "On handling information from

victims and crime reports that apparently do not contain elements of criminal offence". The purpose of this instruction is to increase the efficiency of investigative activity by improving the performance of the judicial police and the institutional cooperation, guaranteeing thus the respect for the principle of access to justice, pursuant to Article 59 of the Code of Criminal Procedure and handling other crime reports that apparently do not contain elements of any criminal offense provided in law.

- ix) General instruction no. 02, date 31.03.2021 "On some amendments and additions to general instruction no. 03, date 21.06.2019 "On administrative and procedural measures in the Prosecution Office of General Jurisdiction in the pre- and post-election period". This purpose of this general instruction is to unify the measures in prosecution offices of general jurisdiction, for both evaluating the integrity of persons/candidates to be elected, and increasing the effectiveness of investigations and criminal prosecution against crime and criminal misdemeanors that affect free elections, the democratic system of elections and the electoral process in the pre- and post-election period, as well as for the general prevention of criminal activity in this field.

### **3.3 The way and procedure followed in issuing non-binding instructions by the Head of Prosecution Office as well as overseeing their implementation.**

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Article 43 of the law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended, provides that, letter b) *"The head of prosecution office requires information on the progress of proceedings and, if needed, issue instructions in writing in accordance with this law."* and letter ç) *"The head of prosecution office verifies the progress and completion of cases and, where needed, gives instructions in writing, according to Article 18 of this law, to carry out further procedural actions before the decision on the way of concluding the preliminary investigations is made"*.

Article 48 of the above law, articles 7, paragraph 2, letter "b" and article 11 of general instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, provide for the way and procedure for issuing instructions for concrete cases by a higher prosecutor, which are not mandatory. Non-binding instructions for concrete cases, can be given by the Prosecutor General to prosecutors of the General Prosecution Office; Head of the prosecution office of appeal attached to the courts of appeal of general jurisdiction to prosecutors of the relevant prosecution office; Head of the prosecution office attached to the courts of first instance of general jurisdiction to prosecutors of the relevant prosecution office; Head of section to prosecutors assigned to the respective sector.

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

In compliance with the legal procedure for issuing non-binding instructions for concrete cases by the heads of Prosecution Offices to the prosecutors of relevant prosecution offices, the non-binding instructions shall be given in writing and shall be reasoned. Exceptionally, when circumstances do not permit, instructions may be given verbally and within a reasonable time (48 hours) be confirmed in writing. When the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations in writing related to them (within 5 days). When the prosecutor asks further explanations on the non-binding instruction, the head of prosecution office or the head of section is obliged to provide explanations on the instructions and to repeat them in the same way (within 5 days), otherwise the instruction is deemed withdrawn. In case the prosecutor to whom the instruction has been repeated in writing decides not to follow it, he/she shall notify in writing the head of the prosecution office or the head of the section, as appropriate, giving reasons why he/she refuses to follow the instruction (within 5 days). The instructions in writing and the prosecutor's eventual answers in writing shall be attached to the acts of the proceedings.

Non-binding instructions related to concrete cases may be given ex officio at the moment of assigning the case to the prosecutor or later during the verification of the progress of the proceedings, mainly on the initiative of the Head of Prosecution Office, upon his request for information or not, when deemed necessary for the progress of the proceedings or even for the way of concluding the preliminary investigations. Non-binding instructions for performing further procedural actions shall be issued before the prosecutor makes a decision on way of concluding the preliminary investigations.

In accordance with the above legal and by-law provisions on the relations between the prosecutor and the Head of Prosecution Office considering the way and procedure followed in issuing non-binding instructions for prosecutors and the overseeing their implementation, it results that:

➤ **Prosecution Office attached to the Court of First Instance Tiranë**

According to the information made available from Prosecution Office attached to the Court of First Instance Tiranë, it **does not result any non-binding instruction** during the period of time covered by inspection. Even the corresponding register does not provide clear evidence on this fact due to the ambiguities of its data. It is noteworthy that during our visit to this prosecution office, we were informed about the existence of such instructions, but because the Head of Prosecution Office in question was dismissed, losing thus his/her status of prosecutor, it cannot be concluded if there has been any instruction or not.

➤ **Prosecution Office attached to the Court of First Instance Durrës**

According to the information submitted by the Prosecution Office attached to the Court of First Instance Durrës, the Head of this prosecution office results to have issued non-binding instructions:

1. *"Instruction to carry out further procedural actions in criminal proceedings no. 2474, year 2020"*, date 05.03.2021, based on article 43/ç: and article 48 of law no. 97/2016, as amended, as well as articles 24, 25 et seq. of the Code of Criminal Procedure. According to the non-binding instruction, it turns out that the cause for issuing the non-binding instruction by the Head of Prosecution Office is the fact that: *"The prosecutor of this case, has made the request to change the precautionary measure against R. G., as there was no need for this measure any more, since the injury that E. K. suffered was not life threatening the moment it was caused "*. Having been informed of the acts of the proceeding the Head of Prosecution Office, through this instruction, instructed the prosecutor of the case to carry out necessary actions for the criminal proceedings in which the court had decided for the precautionary detention in prison by decision no. 562/1, dated 30.12.2020, from Durrës Judicial District Court. The prosecutor was instructed to confiscate the clinical card of the citizen E. K., to perform a forensic re-examination; to request Institute of Forensic Medicine to send the results of the forensic examination; as well as to carry out other actions that may arise from the dynamics of the case. After the reasoning part, as well as the instructions, the other part states the fact that this instruction is not mandatory, if the prosecutor does not agree with or has uncertainties regarding the instructions, he/she is entitled to request further explanations. In case the prosecutor decides not to follow this instruction, he shall notify in writing the Head of Prosecution Office or the Head of the Section and the written instructions as well possible written responses of the prosecutor shall be attached to the proceedings.
- Since we are dealing with a proceeding in which the court has ordered the precautionary detention in prison, Article 13, paragraph 2 of general instruction no. 12/2020 as amended, provides that: **"3. The Head of prosecution office, for criminal proceedings where the precautionary measures have been ordered, pursuant to articles 237 and 238 of the Code of Criminal Procedures, .... with a view to issuing non-binding instructions, can require to be informed in advance by the prosecutor the moment the criminal proceedings is registered, .... or during the criminal investigation ...., but no later than 1 (one) month before the period of detention expires, .... on the progress of criminal proceedings .... Information is done in writing and shall contain: a) Investigative actions carried out, evidence administered, the progress of criminal proceedings or asset investigation, the questioning of the defendant or the person under**

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

investigation as well as other persons, the description of the obtained information. 4. The Head of prosecution Office can issue non-binding instructions within 3(three) days from receiving the information".

- In this case, the Head of Prosecution Office has issued a non-binding instruction so that the prosecutor can perform other actions before addressing to the court the request for changing the precautionary measure. However, the prosecutor had proceeded with his/her procedural request to the court for changing the precautionary measure and has presented this request to the Head of Prosecution Office to sign it. Consequently, the issuance of the non-binding instruction, even though may be considered to have been issued for the verification of the proceeding progress, results to be irrelevant and out of the scope of general instruction which stipulates that non-binding instructions are effective when given before the request of the prosecutor is presented. Regarding the proceeding in which the court has ordered the precautionary detention in prison, it is necessary that the Head of Prosecution Office is informed at the right time so that, if needed, he/she can proceed with the issuance of non-binding instructions which can assist the investigation.
2. *"Instruction to carry out further investigative and procedural actions in the investigative material no.3827/2020"*, date 08.10.2020, based on article 43/ç: and article 48 of law no. 97/2016, as amended, as well as articles 24, 25 et seq. of the Code of Criminal Procedure. The Head of Prosecution Office issued this instruction the moment the criminal offence was reported, and after he became familiar with the investigative material no. 3827/2020, he/she instructed the prosecutor to whom this investigation was assigned by lot, to perform investigative actions. In this instruction, apart from the investigative actions to be carried out, there is no other evidence regarding the procedure of the non-binding instruction as in the above instructions.
  3. *"Instruction for carrying out investigative actions"*. date 02.03.2021, based on article 48 of law no. 97/2016, as amended, issued by the Head of Prosecution Office. By decision no. 225, dated 03.02.2021, Durrës District Court has ordered to return the acts of this proceeding to the prosecution for further investigation after the Prosecution Office at the Court of First Instance Durrës, had sent the request for dismissal of criminal case no. 2264, of year 2019. The Head of Prosecution Office issued the non-binding instruction for the performance of investigative actions ordered by the court within the 3-month deadline set by it, if no appeal is made. Even in this instruction, apart from the investigative operations established by the court, there is no other evidence regarding the procedure of the non-binding instruction as in the above instructions.

### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



- The non-binding instruction was issued one month after the court decision to return the acts to the prosecutor for further investigation was given, as it seems, after the moment the Head of Prosecution Office was notified of this the decision, pursuant to the provisions of article 329, paragraph 3 and 4 of the Code of Criminal Procedure which provide that the Head of Prosecution Office is notified of the decision of the judge of preliminary hearing in cases of request for dismissing charges, when the court orders to return the acts to the prosecutor to continue with investigations, when it deems that investigations are incomplete, or when it orders the prosecutor to formulate the charges and file a request for the case to be sent to trial.
4. "Instruction for carrying out investigative actions". date 01.03.2021, based on article 48 of law no. 97/2016, as amended, issued by the Head of Prosecution Office. The Head of Prosecution Office issued this instruction after he was notified of the decision no. 14/1027, date 26.01.2021 of Durrës Judicial District Court, which had decided the invalidity of the request for sending to trial the criminal proceedings no. 1017, of 2018 and to return the acts of this criminal proceeding to the prosecutor. This instruction, apart from the actions to be carried out, states the fact that the instruction is not mandatory, if the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations in writing, in case the prosecutor decides not to follow this instruction, he/she shall notify in writing the head of the prosecution office or the head of the section, The instructions in writing and the prosecutor's eventual answers in writing shall be attached to the acts of the proceedings. This instruction, instructs the prosecutor of the case to carry out additional investigative actions ordered by the court within two months.
- In this specific case, as in the above-mentioned one, article 12, paragraph 3 of general instruction no. 12/2020, as amended, provides that "3. *In cases where the court returns the acts to the prosecutor, the prosecutor, shall inform the Head of Prosecution Office, upon his request, of the causes and further progress of the investigation within 5 (five) days from the request* ". It results that the decision of the Durrës Judicial District Court was given on 26.01.2021, while the non-binding instruction was issued on 01.03.2021, meanwhile the correct implementation of the provision requires that the administration of information by the prosecutor is done within 5 (five) days at the request of the Head of Prosecution. Even in the case of request to send the case to trial, the decision of the judge of the preliminary session is notified to the Head of Prosecution Office, pursuant to Article 332/ç of the Code of Criminal Procedure, according to which, apart from ordering the completeness of the investigations "... *when finding out invalid acts or non-usable evidence, the court shall declare them by means of a decision and, when possible,*

*shall order their repetition. The court determines the time limit within which investigations must be completed and the date of the new hearing.*

- As mentioned in the case of the general instruction of the Head of Shkodra Prosecution Office, the above provision of general instruction no. 12/2020, as amended, provides that the prosecutor only receives information because the investigative actions are ordered by the court, whereas the non-binding instruction of the Head of Prosecution Office results to be an exact copy of it, issued after the Head of Prosecution Office was notified of the court decision. Therefore, the non-binding instruction on the performance of investigative actions and their completion within the time limit ordered by the court is unnecessary under the conditions when these actions are determined by the court as the competent body for controlling the case. In addition, pursuant to article 332/ç of the Code of Criminal Procedure mentioned in this case, the investigative actions have started in accordance with the court decision, which is not appealable, so that the investigations can be completed within the time limit and be presented at the new hearing.
  - However, article 12, paragraph 3 of general instruction no.12/2020, as amended, does not clearly define the time when The Head of Prosecution Office shall be notified, when the acts shall be returned to the prosecutor and when to make the request on why they were returned as well as how to proceed, or whether this moment should be before the court decision is sent to the Head of Prosecution Office. In case of delay to send this decision, which also contains the reasons why the acts were returned to the prosecutor, the non-binding instruction, as in the second case, may happen to be issued at the end of the two-month time limit, by making it unnecessary. Under these circumstances it is important that the Head of Prosecution Office, after being notified of the court decision, even without issuing non-binding instructions, requires information regarding the progress of the tasks order by the court, so that the prosecutor completes them within the time limit.
- 5) *"Instruction on the performance of further procedural actions in criminal proceeding no.429/2019"*, date 12.03.2021, based on Articles 43/ç and 48 of Law No. 97/2016, as amended, as well as articles 24, 25 et seq. of the Code of Criminal Procedure, issued by the Head of Prosecution Office during the process of verifying the progress of the proceeding/case, in which the Head of Prosecution Office, having been informed of the acts of this criminal proceeding, gave instructions on the performance of some investigative actions. However, there is no evidence of the way how the Head of Prosecution Office was informed of the acts of the proceedings in order to issue this instruction. Even this instruction, as the other ones, apart from this provision concerning the actions ordered by the court, contains no other provision on the non-binding instruction procedures.

- 6) "*Instruction for conducting investigative actions*", date 18.03.2021, related to criminal proceedings no. 359/2021, based on Article 48 of Law no. 97/2016, as amended, issued by the Head of Prosecution Office during the process of verifying the progress of the proceeding/case, in which the Head of Prosecution Office, having been informed of the acts of this criminal proceeding, gave instructions on the performance of some investigative actions. However, there is no evidence of the way how the Head of Prosecution Office was informed of the acts of the proceedings in order to issue this instruction. Even this instruction, as the other ones, apart from this provision concerning the actions ordered by the court, contains no other provision on the non-binding instruction procedures. This instruction, apart from the actions to be carried out, states the fact that the instruction is not mandatory, if the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations in writing, in case the prosecutor decides not to follow this instruction, he/she shall notify in writing the head of the prosecution office or the head of the section, The instructions in writing and the prosecutor's eventual answers in writing shall be attached to the acts of the proceedings.
- 7) "*Instruction of a non-binding character for criminal proceeding no.... /2021*", date 18.03.2021, based on Articles 43/ç and 48 of Law No. 97/2016, as amended, as well as articles 24, 25 et seq. of the Code of Criminal Procedure, issued by the Head of Prosecution Office the moment the criminal proceeding was assigned to the prosecutor, after he/she was informed of the acts of the criminal material no. 700, date 18.03.2021, which advises the performance of some investigative actions. gave instructions on the performance of some investigative actions. This instruction, apart from the actions to be carried out, states the fact that the instruction is not mandatory, if the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations in writing, in case the prosecutor decides not to follow this instruction, he/she shall notify in writing the head of the prosecution office or the head of the section, The instructions in writing and the prosecutor's eventual answers in writing shall be attached to the acts of the proceedings.
- 8) "*Instruction of a non-binding character for criminal proceeding no.1456/2021*", date 02.10.2020, based on Articles 43/ç and 48 of Law No. 97/2016, as amended, as well as articles 24, 25 et seq. of the Code of Criminal Procedure, issued by the Head of Prosecution Office during the process of verifying the progress of the proceeding/case, in which the Head of Prosecution Office, having been informed of the acts of the criminal proceeding no.1456, date 30.07.2020, gave instructions on the performance of some investigative actions. However, there is no evidence of the way how the Head of Prosecution Office was informed of the acts of the proceedings in order to issue this

instruction. This instruction, apart from the actions to be carried out, states the fact that the instruction is not mandatory, if the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations in writing, in case the prosecutor decides not to implement this instruction, he/she shall notify in writing the head of the prosecution office or the head of the section, The instructions in writing and the prosecutor's eventual answers in writing shall be attached to the acts of the proceedings.

- 9) "*Instruction*" date 22.10.2020, based on Article 48/ç of Law no. 97/2016, as amended, issued by the Head of Section for the Investigation of General Crimes, the moment the criminal offense was assigned to the prosecutor. The instruction was issued based on the information of date 22.10.2020, to the prosecutor who was assigned the criminal offense, related to the criminal material no. 3831/2020. The Head of Section gives instructions on registering the criminal proceedings for the criminal offense "Murder", provided for by Article 76 of the Criminal Procedure Code and the performance of investigative actions. The instruction, in addition to the actions instructed, provides only the fact that the prosecutor of the case is informed of the instruction, a copy of which is attached to the prosecutor's file.
- 10) "*General Non-binding Instruction*", date 07.10.2020, by the Head of Section of Traffic and Narcotics and Abuse of Duty, based on the law no. 97/2016, as amended and general instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, issued by the Head of the Section the moment the criminal offense was referred and the criminal charge no. 3834/2020 was registered. The Head of Section, after the reasoning part, instructs the registration of the criminal case for the criminal offense provided by article 250 of the Criminal Code and the performance of investigative actions. In the other part, in addition to the instructed actions, is advised the fact that the prosecutor of the case is informed of the instruction, through signing the instruction.
- Regarding the procedure followed in issuing non-binding instructions and the supervision of their implementation, the Prosecution Office attached to the Court of First Instance Durrës, in accordance with general instructions no. 12/2020, as amended, results to have issued 10 (ten) non-binding instructions for specific issues during the period of time covered by inspection. For the non-binding instructions of the Prosecution Office attached to the Court of First Instance Durrës, it results that:
  - Generally, the instructions are issued in accordance with the procedure provided by article 11, of general instruction no. 12/2020, of Prosecutor General, as amended, where 8 (eight) non-binding instructions belong to the competence of the Head of Prosecution Office

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

(Article 11/1-c of the General Instruction, Article 48/1-c, Article 43/ç of the law) and 2 (two) non-binding instructions belong to the competences of the Head of Section for the prosecutors of the section that he heads (Article 11/1-ç of the General Instruction, Article 48/1-d of the law).

- In 4 (four) cases, the non-binding instructions were issued by the Heads of Prosecution Office, the moment the criminal charges were registered or the case was signed to the prosecutor (Article 11/2 of general instruction, article 48/3 of the law); 3 (three) cases during the verification process of the proceedings/case progress (Article 11/2 of General Instruction , Article 48/3 of law); (a) non-binding instruction was issued for the criminal proceedings in which the court had decided for the precautionary detention in prison (Article 11/2 of General Instruction, article 48/3 of the law); 2 (two) cases are non-binding instructions, instructing the performance of further of investigative actions ordered by the court within the time limit set by it, after returning the acts to the prosecutor for conducting additional investigations (Article 12, paragraph 3 of General Instruction)
- The non-binding instructions are given in writing with the relevant reasoning (Article 11/2-a of the General Instruction, article 48/4 of the law);
- The non-binding instructions are not registered in the internal register of the procedural correspondence pursuant to article 20, paragraph 2 of General Instruction no. 12/2020, as amended;
- In one case, the instruction was sent by email to the prosecutor and the prosecutor replied by email on the implementation of the non-binding instruction; 9 other instructions were notified to the respective prosecutor by signing the instruction and there is one notification from the prosecutor, which was noted down on the instruction on the implementation of the instruction, whereas there are no other notifications from the prosecutors for disagreements or uncertainties regarding the implementation of the given instructions.
- Regarding the implementation and supervision of the implementation of non-binding instructions it is simply mentioned that they were implemented by the prosecutors and they are related to the way of solving cases, but there are no conclusions on how or to what extent they were implemented and what impact their implementation has had on the progress of the investigations and the way of solving the case. The criminal proceedings in 6 (six) of these cases, were still under investigation, in 1 (one) case, the proceeding was sent for trial, while in 1 (one) another case, the court was sent the request to dismiss the charges. So there is no supervision according to article 8/2, paragraph "c" and article 14 of General Instruction no. 12/2020, as amended, "*Prosecutors inform the head of prosecution office, upon the latter request, on the progress of the criminal proceedings .... no later than 20 (twenty) days before they decide to conclude the investigations, declare the material or territorial incompetence in a criminal proceeding .... for which the head of prosecution*

*office has issued non-binding instructions, or has required the above information, at the time criminal proceeding or assets investigation was registered due to its importance".*

➤ **Prosecution Office attached to the Court of First Instance Elbasan**

According to the information sent by the Prosecution Office attached to the Court of First Instance Elbasan, the Head of this Prosecution Office results to have issued non-binding instructions:

1. *"Instruction no. 42 PBD, date 09.10.2020 "On concrete cases", pursuant to articles 41,42, 43 and 48 of the law no. 97/2016, as amended, General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, and general instruction no. 39 PBD, date 07.09.2020 of the Head of Prosecution Office, regarding investigative material no. 2316, of 2020. The prosecutor to whom the material is assigned is instructed to register the criminal proceedings and carry out some investigative actions. After the reasoning part and instructed actions, the instruction states, among other things, that one copy of the instruction is given to the prosecutor, who shall sign it, one copy is administered in the case file and the other in the file of acts of the Head of Prosecution Office. Also, the prosecutor of the case shall notify in writing the Head of Prosecution Office if he decides not to follow the instruction and he shall notify the Head of Prosecution Office in writing no later than 20 (twenty) days before concluding the investigations for this criminal proceeding. The instruction is registered in the book of internal communications of the Head of Prosecution Office. This instruction results to have been registered in the register of internal communications with no. 860 on 09.10.2020.*
2. *"Instruction no. 43 PBD, date 09.10.2020 "On concrete cases", with the same legal basis as the above instruction, in relation to the investigative material no. 2317, of 2020 for the prosecutor of the case. The prosecutor to whom the material is assigned is instructed to register the criminal proceedings and carry out some investigative actions. After the reasoning part and instructed actions, the instruction states the same procedure as in the above instruction. This instruction results to have been registered in the register of internal communications with no. 861, on 09.10.2020.*
3. *"Instruction no. 46 PBD, dated 13.10.2020 "On concrete cases" with the same legal basis as in the other instructions, in relation to the criminal proceedings no. 1151, of 2019. The prosecutor of the case results to have concluded the investigation for this criminal proceeding on 09/09/2020, and for this reason has compiled and notified the act to the persons under investigation regarding the completion of the investigations. This instruction*

was issued based on the request of the Head of Prosecution Office, where the prosecutor of the case submitted the acts of this criminal proceeding.

Also, the prosecutor of the case has declared his/her withdrawal from the investigation of criminal case no. 1151, of 2019, with request (abstention statement) date 13.10.2020, while the Head of Prosecution Office approved his/her withdrawal and decided his/her substitution with decision of 14.10.2021. In his/her request of 13. 10.2020 , the prosecutor states the reason for abstention: "*Given that at the conclusion of the investigations of the criminal proceedings no. 1151, of 2019, I have stated my opinion and if you decide that further investigations should be conducted, I withdraw from the further investigation of criminal proceedings no. 1151, of 2019*".

After reviewing the acts, the Head of Prosecution Office has instructed the performance of further investigative actions. After the reasoning part and the instructed actions, the instruction stipulates the same procedure as in the above instructions.

- It results that the prosecutor statement of abstention (made as a request), which includes only the above-mentioned reason, as well as the approval of this request by the Head of Prosecution Office, are not in accordance with articles 17, 26 and 27 of the Code of Criminal Procedure regarding the important grounds of partiality. Specifically, even in the decision for reviewing the request for abstention date 14.10.2020, the Head of Prosecution has motivated "*From the above, I believe that in this particular case, even though there are no reasons for the withdrawal of prosecutor B. N, from the investigation of criminal case no. 1151/2019, the request shall be approved and the prosecutor shall be replaced with another prosecutor. The approval of the request for the replacement of the prosecutor shall be done only for the reason that when delivering justice, it is important not only to do it according to the law, but also to create the perception for the parts in the process and the general public that justice will be done*".
- Law no. 97/2016, as amended, as well as the relevant instruction provide that if the prosecutor of the case does not agree with the non-binding instructions, he can refuse to follow them by giving the relevant reasoning and the Head of the Prosecution Office cannot proceed any further. But what is noteworthy is that in this case there are no grounds of partiality which will oblige the prosecutor to withdraw from the prosecution of the case and therefore the prosecutor has the obligation to exercise his/her functions and give relevant solution to the case. In addition to this obligation of the prosecutor of the case, there is also the obligation of the Head of Prosecution Office to respect the Code of Criminal Procedures for the acceptance and/or replacement of the prosecutor, since through

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

the implementation and compliance with these obligations it is also guaranteed the principle of independence of the prosecutor. If the abstention statement of the prosecutor and the approval of the Head of Prosecution Office were to be accepted as in accordance with the provisions of the Code of Criminal Procedure, this could lead to clear cases of authority abuse by the Head of Prosecution Office.

- In this case, since the prosecutor had no reason to withdraw from the investigations of the criminal proceedings, he should have implemented the provisions of article 11, paragraph 3 of General Instruction no. 12/2020, as amended, according to which if he did not agree or was unclear about the given instruction, he had the right to request within 5 (five) days, detailed explanations in writing for the instructions given or for their specific parts and the Head of Prosecution Office was obliged to give explanations. Even if the prosecutor would not have agreed with the repeated instruction and would not have implemented it, he should have notified within 5 (five) days in writing the Head of Prosecution Office on the reasons for non-implementation.
4. *"Instruction no. 13, date 24.02.2021 "On concrete cases", based on articles 41, 42, 43 and 48 of law no. 97/2016, as amended, for criminal proceedings no. 248, of 2021, regarding the establishment of the type of precautionary measure, where the prosecutor is instructed to decided for the precautionary "detention in prison" against two persons arrested in flagrante delicto, suspected of the criminal offense of manufacturing and selling narcotics, pursuant to article 283 of the Criminal Code. Even in this case, after the reasoning part and instructed actions, the instruction states the same procedure for the notification of the instruction and for the fact that the prosecutor of the case shall notify in writing the Head of Prosecution Office if he decides not to implement this instruction. It results that on 25.02.2021, the prosecutor of the case acted according to the instructions of the Head of Prosecution Office.*

From the prosecutor's explanations, of 25.02.2021, regarding this instruction, it results that *"In response to your non-binding instruction No. 13 date 24.02.2021, I inform you that: Firstly, you are not giving instructions on concrete investigative actions, but on the attitude of the prosecutor, which in my opinion goes beyond the concept of the law for non-binding instructions issued by the Head of Prosecution Office, according to Article 48 of Law no. 97/2016. Non-binding instructions are issued for the performance of procedural actions (investigative actions or requests) and not for the prosecutor attitude and position in relation to them. Secondly, in respect of the exercise of my function as a prosecutor, based on the Code of Criminal Procedure, I will request to the court the validity of the arrest as well as to decide the precautionary detention in prison against citizens E. P. and A. M,*

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



*based on the Constitution, law and in the evidence administered up to this procedural moment".*

- Based on Article 43 of Law no. 97/2016, as amended, among others, the Head of Prosecution Office has the following authority in connection with the exercise of criminal prosecution: b) Requires information on the progress of proceedings and, if needed, issue instructions in writing in accordance with this law; c) Verifies the progress and completion of cases and, where needed, in accordance with Article 48 of this law, shall give instructions in writing to carry out further procedural actions before the decision on the way of concluding the preliminary investigation is made;
- Article 48 of Law no. 97/2016, as amended "Non-binding instructions on concrete cases", paragraph 3, provides that "Instructions regarding concrete proceedings, according to paragraphs 1 and 2, of this article, can be given mainly at the time the case is assigned to the prosecutor, or later, when it is deemed necessary for the progress of the proceedings".
- Article 11, paragraph 1 of General Instruction no. 12/2020, as amended, provides "*Non-binding instructions for performing procedural actions before deciding on the way of completing the concrete proceeding/case....*"
- Article 13, paragraph 1 of General Instruction no. 12/2020, as amended, provides that "*Prosecutors aiming at enabling the head of prosecution office to issue non-binding instructions, ....., shall inform the head of prosecution office in advance, ....., of the criminal proceedings where restraining orders will be established or when they will be send to trial, request for deciding the precautionary detention in prison, house arrest, ... 2. The Head of Prosecution office can issue non-binding instructions within 1 (one) day from receiving the information*".
- Based on these legal acts and by-laws, the instruction in this case results to exceed the concept that the law and General Instruction no. 12/2020, as amended, has given to the non-binding instructions of the Head of Prosecution Office, since by instructing on the decision-making of the prosecutor it interferes with the prosecutor's independence to evaluate the acts and evidence. Therefore, it results that the response, dated 25.02.2021, of the prosecutor of the case is in accordance with article 48, paragraph 5 of law no. 97/2016, as amended and article 11, paragraphs 3 and 4 of general instruction no. 12/2020, as amended: "*When the prosecutor does not agree with or has uncertainties regarding the instructions given, he/she is entitled to request further explanations related to them. The head of the prosecution office or the head of section is obliged to provide explanations on the instructions and to repeat them in the same way, otherwise the*

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

*instruction is deemed withdrawn. In case the prosecutor to whom the instruction has been repeated in writing decides not to pursue it, he/she shall notify in writing the head of the prosecution office or the head of the section, as appropriate.”*

- The prosecutor's response to this instruction is within 5 (five) days provided by article 11, paragraph 3 of General Instruction no. 12/2020, as amended, as well as the instructions and the response of the prosecutor pursuant to article 11, paragraph 5 of General Instructions no. 12/2020, as amended, are attached to the acts of the criminal proceedings.
- With regard to the procedures followed in issuing non-binding instructions and the supervision of their implementation, the Head of Prosecution Office attached to the Court of First Instance Elbasan, results to have implemented General Instruction no. 12/2020, as amended, with the issuance of 4 (four) non-binding instructions on concrete cases. For the non-binding instructions of the Head of Prosecution Office it results that:
  - They are issued in compliance with the procedure provided by article 11 of General Instructions no. 12/2020, as amended, of the Prosecutor General while there are no non-binding instructions issued by the Heads of Sections.
  - Three (3) of the non-binding instructions were issued mainly by the Head of Prosecution Office at the time the criminal offense was reported and it was assigned by drawing lots to the prosecutor (Article 11, paragraph 2 of the General Instruction, Article 48, paragraph 3 of the law) and one (1) instruction is issued upon request during the verification process the progress of the proceedings (article 11, paragraph 2 of the General Instruction, article 48 paragraph 3 of the law).
  - The non-binding instructions are given in writing and with the relevant reasoning (Article 11/2-a of the General Instruction, article 48/4 of the law), which have been notified to the prosecutors through their registration in the internal register of procedural correspondence pursuant to article 20, paragraph 2 of General Instruction no. 12/2020, as amended;
  - Regarding the implementation and supervision of the implementation of non-binding instructions it results that in two cases the instruction was taken into account, after the criminal proceedings were registered. It also results that in two of them the prosecutor did not agree with the implementation of the instructions given by the Head of Prosecution Office, specifically, instruction no. 13, date 24.02.2021, which was followed by the relevant response of the prosecutor and instruction no. 46 PBD, date 13.10.2020, where the prosecutor declared his withdrawal from the criminal proceedings. In the cases where the prosecutor did not agree by giving the relevant response in accordance with Article 48, paragraph 5, of law no. 97/2016, as amended, the instruction in this case is considered withdrawn, as long as the Head of Prosecution Office did not repeat it in the same way. In the other two cases there is no response from the prosecutor for non-implementation or

ambiguity. Regarding the implementation of the instructions it is not possible to conclude how or to what extent they were implemented and what impact their implementation has had on the progress of the investigations and the way of solving the case as it is simply mentioned that considering the way of solving cases, the Head of Prosecution Office has issued non-binding instructions, one case was sent for trial and the others were still under investigation.

- It results that according to the provision in non-binding instructions that the prosecutor shall notify the Head of Prosecution Office in writing no later than 20 (twenty) days before concluding the investigations, the request for supervision is completed, according to article 8/2 paragraph "c" and article 14 of General Instruction no. 12/2020, as amended, "*Prosecutors inform the head of prosecution office, upon the latter request, on the progress of the criminal proceedings .... no later than 20 (twenty) days before they decide to conclude the investigations, declare the material or territorial incompetence in a criminal proceeding .... for which the head of prosecution office has issued non-binding instructions, or has required the above information, at the time criminal proceeding or assets investigation was registered due to its importance*".

➤ **Prosecution Office attached to the Court of First Instance Fier**

According to the information sent by the Prosecution Office attached to the Court of First Instance Fier, the Head of Prosecution Office results to have issued non-binding instructions:

- 1) "*Instruction No. 79, date 11.12.2020 on criminal proceedings No. 1097, of 2019*", with legal base article 48, paragraph 1, letter "d" of law no. 97/2016, as amended, where the Head of Prosecution Office and the Head of Section gave instructions to the prosecutor of the case to carry out further investigative actions. However, there is no information how the Head of Prosecution/Head of Section were informed on the acts of the proceeding in order to issue this instruction.
- The instruction is reasoned and in the instruction part it contains only one paragraph, the one regarding the performance of the instructed actions. The instruction does not result to have been recorded in the internal register of procedural correspondence according to Article 20, paragraph 2 of general instruction no. 12/2020, as amended, but it turns out that this instruction along with the case file, was handed over to the Judicial Police Officer in charge of the investigations, on 11.12.2020; there is no response from the prosecutor for non-implementation or ambiguity regarding this instruction.
- 2) "*Instruction No. 20, date 29.03.2021 on the performance of further procedural actions, in the criminal proceedings no. 1344, of 2020*", with legal base article 6, paragraphs 2, article 43, letters "b" and "c", article 48 of law no. 97/2016, as amended, law no. 96/2016 as

amended, the Code of Criminal Procedure, based on instruction no. 02, date 29.12.2016 "On the organization and coordination of work in the prosecution office", General Instruction no. 12/2020, of the Prosecutor General, as amended, general instruction no. 65, of 2020 of the Head of Prosecution Office. After receiving the information from the prosecutor of the case, in relation to the investigations of criminal proceedings no. 1344, of 2020, the Head of Prosecution Office gave instruction on carrying out further investigative actions.

- The instruction is reasoned and the part where concrete actions are instructed also provides for the fact that when the prosecutor in charge of the investigation decides not to implement the instructions he/she shall notify in writing the head of Prosecution Office, and the instructions and prosecutor's answers in writing shall be attached to the acts of the criminal proceedings. The instruction is recorded in the internal register with no. 963, date 31.03.2021, in the section on the transfer of acts to the Head of Prosecution Office and it was received by the prosecutor on 31.03.2021, according to article 20, paragraph 2 of General Instructions no. 12/2020, as amended; there is no response from the prosecutor for non-implementation or ambiguity.
- 3) *"Instruction No. 08, date 03.02.2021, on the performance of further procedural actions in criminal proceedings no. 1150, of 2020"*, with the same legal basis as in the above instruction, where after being notified of the decision of the Fier Judicial District Court, with object: changing the precautionary "detention in prison" to bail for the citizen R. B., suspected of the criminal offense provided for by articles 283/1, 284/1, 278 of the Criminal Code, the Head of Prosecution Office instructed: *"Pursuant to Article 249/2 of Code of Criminal Procedure, the prosecutor is instructed to appeal against the decision of Fier Judicial District Court and to request to the Court of Appeal Vlorë: "To change the decision of the Court of Fier, date 01.02.2021, which imposed bail on defendant R. B.; to leave in force the preventive measure "detention in prison" for R. B., ordered with decision no. 62-2020-3865 (1290), date 16.10.2020 of the Judicial District Court; Pursuant to article 34/l of the Code of Criminal Procedure, to inform on the charges citizen R. B., for the criminal offenses provided by articles 283/2, 284/2 and 278/2, 3 of the Criminal Code; Based on Article 34/1 of the Code of Criminal Procedure, the citizen ..... is entitled to be informed on the charges for criminal offenses 283/2 and 284/2 of the Criminal Code. Pursuant to Article 327, paragraph 6, letter "b", after all the provisions and time limits stipulated in the article, are respected legal of this article, the prosecutor is instructed to request the judge of the preliminary investigations to send the criminal case for trial".*

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- The instruction is reasoned and the part where concrete actions are instructed also provides for the fact that when the prosecutor in charge of the investigation decides not to implement the instructions he/she shall notify in writing the head of Prosecution Office, and the instructions and prosecutor's answers in writing shall be attached to the acts of the criminal proceedings. The instruction, in accordance with article 20, paragraph 2 of General Instruction No. 12/2020, as amended, was recorded with no. 349. It was handed over to the Head of Prosecution Office on 04.02.2021 and on the same date, it was sent to the prosecutor of the case; there is no response from the prosecutor for non-implementation or ambiguity.
  - The non-binding instruction as above, even in this case, is considered to have exceeded the concept of instruction by the Head of Prosecution Office, provided by law no. 97/2016, as amended. The Head of Prosecution Office, in this specific case has not given instructions on the performance of investigative or procedural actions, but on the attitude and position of the prosecutor by imposing his conviction on the prosecutor, therefore interfering with the prosecutor's independence as a principle guaranteed by law.
- 4) "*Instruction no. 294, date 01.02.2021 on criminal proceeding no. 895 of 2020*", with legal base article 6, paragraph 2, article 43, letters "b" and "ç", article 48 of law no. 97/2016 as amended, law no. 96/2016, as amended, Code of Criminal Procedure and in accordance with instruction no. 02, date 29.12.2016 "On the organization and coordination of work in the prosecution office". After being notified of the prosecutor abstention statement from criminal proceedings no. 895 of 2020, the Head of the Prosecution Office issued the instruction on the performance of other investigative actions.
- The instruction is reasoned and in the instruction part it contains only one paragraph related to the instructed actions. The non-binding instruction of the Head of Prosecution Office Fier results to have been registered with no. 294, date 01.02.2021 in the register of internal procedural correspondence and it was sent to the prosecutor on the same date, according to article 20, paragraph 2 of General Instruction no. 12/2020, as amended, there is no response from the prosecutor for non-implementation or ambiguity.

Regarding the procedure followed in issuing non-binding instructions and supervising their implementation, the Head of Prosecution Office results to have issued 4 (four) non-binding instructions on concrete cases during the period of time covered by inspection in the Prosecution Office attached to the Court of First Instance Fier, pursuant to General Instructions no. 12/2020, as amended. Considering the non-binding instructions of the Prosecution Office attached to the Court of First Instance Fier, it results that:

- They are issued in compliance with the procedure provided by Article 11 of General Instruction no. 12/2020, as amended, of the Prosecutor General. 3 (three) of these non-binding instructions belong to the authority of the Head of Prosecution Office (Article 11/1-c of the general instruction, Article 48/1-c, Article 43/ç of the law), while the other instruction is issued by both the Head of Prosecution office and the Head of Section for the prosecutors of the section he heads (Article 11/1-ç of the general instruction, Article 48/1-d of the law);
- Four (4) non-binding instructions were issued during the verification process the progress of the proceeding/case (article 11/2 of the general instruction, article 48/3 of the law) 1 (one) of which issued for the criminal proceeding, with the precautionary "detention in prison" (article 11/2 of the general instruction, article 48/3 of the law).
- The non-binding instructions were issued in writing with the relevant reasoning (Article 11/2-a of the general instruction, article 48/4 of the law);
- One (1) of the non-binding instructions is not recorded in the internal registry of the procedural correspondence, while the other 3 (three) have been notified to the prosecutors and recorded in the internal register in accordance with Article 20, paragraph 2 of General Instruction no. 12/2020, as amended.
- Regarding the implementation and supervision of the implementation of non-binding instructions for all cases, there is no response from the prosecutor for non-implementation or ambiguity. According to the acts, it is not possible to conclude how or to what extent the instructed actions were implemented and what impact their implementation has had on the progress of the investigations and the way of solving the case as it is simply mentioned that, considering the way of solving the cases for which the Head of Prosecution Office issued non-binding instructions, 4 criminal proceedings were still under investigation, in one case the prosecutor decided to drop charges for two persons under investigation, and send three defendants for trial, so there is no request for supervision according to article 8/2, paragraph c) and article 14 of General Instruction no.12/2020, as amended.

➤ **Prosecution Office attached to Court of First Instance Korçë**

The Head of Prosecution Office attached to the Court of First Instance Korçë, according to the information, results to have issued non-binding instructions on concrete cases for different prosecutors of this prosecution office during the period of time from 01.10.2020-31.03.202. It results that the prosecutor did not contradict or have any uncertainties related to the given instructions, but considered them helpful in their assigned cases and therefore, the prosecutors have agreed with the given instructions.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

From the register of internal circulation of the procedural correspondence, regarding the non-binding instructions, it results that:

- 1) "*Non-binding instruction for criminal proceedings no. 962/2020*", which was recorded in the register of internal communications with no. 28/9, date 28.09.2020 and according to the information recorded in this register, its date/month was set as a protocol number. It results that it was issued at the time the case was assigned to the prosecutor by drawing lots. The instruction was not sent attached to the prosecutor.
- 2) "*Non-binding instruction for criminal proceedings no. 146/2021* », which results to have been recorded in the register of internal communications with no. 9/3, date 09.03.2021, as it was not sent attached to the prosecutor. Even in this case, the instruction was recorded in the same way, yet there is no information whether it was issued at the time the case was assigned to the prosecutor by drawing lots or during the verification of the progress of the case.
- 3) "*Non-binding instruction for criminal procedure no. 24/2021*", which was recorded in the register of internal communications, with no. 10/3, date 10.03.2021, but was not sent attached to the prosecutor. Its date/month was set as a protocol number and, yet there is no evidence whether this instruction was issued at the time of assigning the case to the prosecutor by drawing lots or during the verification of the progress of the case.
- 4) "*Non-binding instruction for criminal proceedings no. 365/2020*", which was recorded in the register of internal communications with no. 17/3, date 17.03.2021. The instruction was not sent attached to the prosecutor and there is no evidence from the register whether it was issued during the verification of the progress of the case.
- 5) "*Non-binding instruction for criminal proceedings no. 72/2021*", which was recorded in the register of internal communication with no. 18/3, dated 18.03.2021. The instruction was not sent attached. Its date/month was set as a protocol number, yet there is no evidence whether it was issued at the time of assigning the case to the prosecutor by drawing lots or during the verification of the progress of the case.
- 6) "*Non-binding instruction for criminal proceedings no. 562/2020*", which results to have been recorded with no. 31/3, date 31.03.2021, in the register of the internal communications. The instruction was not sent attached to the prosecutor. Even in this case, the instruction date/month was set as the protocol number and it results to have been issued during the verification of the case progress.

- With regard to the procedure followed in issuing non-binding instructions and supervising

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

their implementation in this prosecution office, it results that they are in accordance with the provisions of article 11 of General Instruction no. 12/2020, as amended, regarding the competences of the Head of Prosecution Office to issue such instructions for the prosecutors of the prosecution office he heads. As long as the concrete instructions were not made available and as far as the rubrics of the register were not completed correctly, even though such information results to have been recorded in the register of internal circulation of procedural correspondence in reference to Article 20, paragraph 2 of General Instruction no. 12/2020, as amended which result to have been notified to the prosecutor who signed the register after being notified, it is still unclear the time when the Head of Prosecution Office issued these instructions, whether they were issued during the verification of the case progress or when the case was registered. It also cannot be drawn any conclusion in relation to their reasoning or any uncertainties by the prosecutor for their implementation.

- Regarding the implementation and supervision of the implementation of the given instructions, it is referred to that they were taken into account by the prosecutors, but no information is provided as to how these guided actions were implemented, at what extend has the implementation of non-binding instructions influenced the investigation and the way the case was solved, pursuant to article 8/2, paragraph c) and article 14 of General Instructions no. 12/2020, as amended.

➤ **The Prosecution Office attached to the Court of First Instance Shkodër**

According to the information from the Prosecution Office attached to the Court of First Instance Shkoder, the Head of this Prosecution Office results to have issued 10 (ten) non-binding instructions by formally respecting the legal obligations pursuant to General Instruction no. 12/2020, as amended of the Prosecutor General.

- 1) Instruction no. 76/2018, date 09.10.2020, for the criminal proceedings no. 76, the of 2018, date 07.10.2020 **during trial phase**. The instruction was issued based on the request of the parties for the replacement of the prosecutor who represented prosecution in court and based on information date 07.10.2020 of the prosecutor. The prosecutor was instructed through this act, to continue the representation of the prosecution in court.
- 2) Instruction no. 480/2020, dated 09.10.2020, for the criminal proceedings no. 480/2018 date 07.10.2020, **during trial phase**. The instruction was issued based on the request of the parties for the replacement of the prosecutor who represented prosecution in court and based on information date 07.10.2020 of the prosecutor. Through this act, the prosecutor was instructed to continue the investigation and the representation of the prosecution in court.



- 3) Instruction no. 1124/2013, date 16.10.2020, related to the information and simultaneously to the request date 09.10.2020 of the prosecutor of the case, for his replacement in the investigations of criminal proceedings no. 1124/2013 on the criminal offense provided by article 287 of the Penal Code, etc. Through this act, the prosecutor was instructed to continue with the investigation and represent prosecution in court. It was recorded in the register of internal circulation with no. 11 prot, date 19.10.2020.
- 4) Instruction no. 1144/2020, date 19.10.2020, related to the information and simultaneously to the request date 18.10.2020 of the prosecutor of the case, for his replacement in the investigations of criminal proceedings no. 1144/2020, date 18.10.2020 on the criminal offenses provided by articles 178 and 179 of the Penal Code. Through this act, the prosecutor is instructed to continue with the investigation and representation of the prosecution in court. It was recorded in the register of internal circulation with no. 14/1 prot, date 19.10.2020.
- 5) Instruction no. 24/4, date 02.11.2020, related to the information date 02.11.2020 of the prosecutor of the case for criminal proceedings no. 751 /2020, date 11.06.2020, in which the prosecutor states that there is no need for establishing an investigation group. This act, gives instructions to two prosecutors to continue the investigations and represent the prosecution in court as an investigative group for the three criminal cases, no. 751/2020, no. 988/2020 and no. 1301/2020, together. This communication between the prosecutor and the Head of Prosecution Office was recorded in the register of internal communication with no.24/41 prot., date 03.11.2020.
- 6) Instruction no. 34/2, date 04.12.2020, related to the request of the Head of Prosecution Office date 23.11.2020 on the progress of some criminal proceedings under investigation carried over from 2017 and 2018, related to which the prosecutor of the case has provided information with no. \_prot (no number), date 26.11.2020. This act gives instruction on removing and archiving the criminal proceedings no. 146/2018, (which turns out to have been sent to court with the request to dismiss the charges and the court decided to accept the request and dismiss the case); as well as on conducting investigative actions and if the prosecutor decides, to dismiss the criminal proceedings of 2018. The communication between the prosecutor and the Head of Prosecution Office was recorded in the register of internal circulation with no. 34/2 prot., date 04.12.2020.
- 7) Instruction no. 42/1, date 07.12.2020, related to the information date 11.11.2020 of the prosecutor of the case on criminal proceedings no. 1749 of 2018, for the criminal offenses provided by article 248 of the Criminal Code, case tried, where the defendant was sentenced to community service pursuant to Article 63 of the Criminal Code. The prosecutor requests whether the decision will be executed immediately and who is responsible for issuing the execution order (prosecutor of the case or that of the execution orders). The Head of Prosecution Office through his non-binding instruction, instructs the prosecutor to archive the criminal proceedings no. 1749/2018, together with the summary

of the decision and states that the order will be executed by the prosecutor of the order executions when the decision becomes final.

- 8) Instruction no. 9/1, date 15.01.2021, related to information no. 9, date 14.01.2021 of the prosecutor of the case, who after reviewing annual statistics, requests to withdraw from a criminal proceeding of 2019, under investigation, and some cases of serious criminal offences of 2020 of persons under arrest, and be replaced with another prosecutor due to her poor health conditions. This act instructs the prosecutor to continue the investigations of the above criminal proceedings. The communication between the Head of Prosecution Office and the prosecutor of the cases was recorded in the register of internal circulation with no. 9/1 prot., date 04.12.2020.
  - 9) Instruction no. 24/1, date 20.02.2021, which is related to the information date 18.02.2021 of the prosecutor of the case on the criminal charges no. 221, of 2021 for the criminal offenses provided by articles 130/1 and 247 of the Criminal Code. The act of the Head of Prosecution Office instructs the prosecutor to continue the investigations, with the performance of actions by the judicial police officer in charge of the case, or another judicial police officer assigned by the prosecutor. The communication was registered in the registry of internal circulation with no. 24/1 prot., date 22.02.2021.
  - 10) Instruction no. 28/1, date 24.02.2021, which is related to information no. 27, date 24.02.2021, from the prosecutor of the case for criminal proceedings no. 186/2021 for the criminal offense provided for by Article 130/a of the Criminal Code, where the prosecutor evaluates the need to join this proceeding with another proceeding, according to him, returned from court for further investigation. This act, instructs the prosecutor to continue the investigation of the criminal proceeding no. 186, of 2021, as there is no room for joinder the proceedings. The communication was recorded in the register of internal circulation with no. 28/1 prot., date 24.02.2021.
- Given the above, the non-binding instructions of the Head of Prosecution Office attached to the Court of First Instance Shkodër, apart from about 5 cases when the instructions were issued after the information from the prosecutor of the cases under investigation, result not to be in compliance with the nature of non-binding instructions provided by law and by General Instruction no. 12/2020, as amended, of the Prosecutor General even though they result to have been given in writing and reasoned <sup>[40]</sup> as well as to have included the instruction in the acts of the criminal proceedings, according to the provisions of article 11, paragraph 1, letter "c", paragraph 2, letter "a" and paragraph 5 <sup>[41]</sup> of instruction no. 12 of 2020, of the Prosecutor General, as amended. Some of the cases have been in trial phase and there have been request from the prosecutor or the parties in the lawsuit for the replacement of the prosecutor, meanwhile, the Head of Prosecution Office has issued instructions for the continuation of representation of prosecution in trial or the investigations and not for the replacement of the prosecutor or acceptance of abstention

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<sup>40</sup>2. Article 11. paragraph 2 letter "a" Instructions must be given in writing and reasoned.

<sup>41</sup>5. The written instruction and the of response of the prosecutor are attached to the criminal proceedings

statement pursuant to law, since when the case is in trial, it is not appropriate to entitle the act "instruction". It seems more as an act for non-acceptance of the request for the replacement of the prosecutor pursuant to Article 27 of Criminal Procedure Code. Also, after the end of trial, the act instructs on archiving the case and on the time the decision will be executed. In this case, although it seems impossible for the Head of Prosecution Office to respond to the request of the prosecutor of the case, he could have issued a decision or order on the concrete case. In the case of the prosecutor's request for the joinder of charges, the Head of Prosecution Office could have given instructions on specific actions for the concrete case, while for the other proceeding he could have instructed the establishment of the investigation group, in addition to the non-binding instructions on investigative actions. Regarding the representative of prosecution in trial, the prosecutor informs the Head of Prosecution Office for the cases provided for in Article 15, paragraph 1 of General Instruction no. 12/2020, of Prosecutor General, as amended.

- In terms of the aforementioned non-binding instruction contents, only one of them <sup>[42]</sup> is related to the request for information of the Head of Prosecution Office on the progress of the proceeding addressed to the prosecutor of the case - a non-binding instruction issued by the Head of Prosecution Office on the information of the prosecutor, during the stage of verification of the progress of the criminal cases in accordance with article 11, paragraph 2 of General Instruction no. 12/2020. In other cases, the prosecutors have sent information to the Head of Prosecution Office at their own initiative without any request from the Head of Prosecution Office, while instruction no. 12/2020, of the Prosecutor General, as amended, recognizes and guarantees the cases when the prosecutor is obliged to inform and not when he/she does so voluntarily with the view to requesting to withdraw from some guarantees given to him by law <sup>[43]</sup>.
- Non-binding instructions issued/given by the Head of Prosecution Office during the period of time covered by inspection are mainly related to the information from the prosecutors on the progress of criminal prosecution and the representation of prosecution in court, that is, for criminal proceedings under investigation or in the trial phase and in no case for personal preventive measures. It is evident that four out of ten non-binding instructions are related to the information from the prosecutor for representing prosecution in trial (*Instruction no. 76/2018, date 09.10.2020; Instruction no. 480/2020, date 09.10.2020; Instruction no. 1144/2020, date 19.10.2020; Instruction no. 42/1, date 07.12.2020*),

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<sup>42</sup>Instruction no. 34/2. date 04.12.2020, issued on the basis of information date 26.11.2020 of the prosecutor of the case given by the latter based on the request of the prosecutor of the case date 23.11.2020.

<sup>43</sup>Article 8, paragraph 2, letter "c" The prosecutor has the obligation to inform the head of prosecution office, when required from the latter regarding the progress of the proceedings/cases assigned

while 6 (six) others are related to the information on the progress of the criminal prosecution (*Instruction no. 1124/2013, date 16.10.2013; Instruction no. 24/4, date 02.11.2020; Instruction no. 34/2, date 04.12.2020; Instruction no. 9/1, date 15.01.2021; Instruction no.24/1, date 20.02.2021 and Instruction no. 28/1, date 24.02.2021*). The time limit for issuing/giving these non-binding instructions, which in the case of issuing non-binding instruction is within 3 (three) days from receiving the information on the progress of the criminal prosecution or on precautionary/assets measures, in accordance with articles 13, paragraph 2 and 14, [44] paragraph 3 of instruction no. 12/2020, as amended, results not to have been mentioned in the non-binding instructions related to the information from the prosecutor on the progress of criminal proceedings.

- As for reflecting the instructions of the Head of Prosecution Office in the register of the internal circulation, it results that in one case that corresponds to ordinal number 1066, date 09.12.2020, there is a note in the register regarding an instruction on some information given by the prosecutor, but there is no other evidence which criminal proceeding the information and instruction are about. This instruction results to have been passed to the prosecutor on 09.12.2020 and there is the prosecutor signing under his name, in the relevant column of the registry entitled "Passing signed acts to the prosecutor, date/time"
- According to the information sent by the Prosecution Office attached to the Court of First Instance Shkoder, it results that the prosecutors carry out the duties required in the non-binding instructions and provide the information requested, but not it is not specified their response time regarding requests for information in order to determine whether this internal communication is in accordance with instruction no. 12/2020, of the Prosecutor General and general instruction no. 33, date 04.09.2020 of the Head of Shkodra Prosecution Office.

➤ **Prosecution Office attached to Court of First Instance Vlorë**

According to the information and documentation forwarded by the Head of Prosecution Office attached to the Court of First Instance Vlorë, the Head of Prosecution Office, during the period of time covered by inspection 01.10.2020 - 31.03.2021, pursuant to General Instruction no. 12, date 20.07.2020, results to have issued the following non-binding instructions:

1. Non-binding instruction no. 1168, date 16.02.2021, where the Head of Prosecution Office instructs the prosecutor of the case on the progress of the criminal charges no. 87, date 20.1.2021, as in paragraph 1 (one) of this instruction for the registration of the criminal proceeding. This instruction results to have been recorded in the register of internal communications on 16.02.2021, at 2:30 p.m. and the prosecutor was notified of this instruction and signed the register on the same date.

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<sup>443</sup>. The head of prosecution office may issue instructions no later than 3 (three) days from receiving the information.

From the contents of the non-binding instruction, it results to have been given at the discretion of the Head of Prosecution Office at the time the proceeding was assigned to the prosecutor. Attached to the documents forwarded by the Prosecution Office at the Court of First Instance Vlorë, can also be found the decision of the prosecutor of the case date 05.02.2021, for not starting the criminal prosecution for the criminal charges no. 87, date 20.1.2021. However, there is no sign of recording the date in the register of correspondence circulation, when the file with the decision for not prosecuting was sent to the Head of Prosecution Office.

- Regarding the procedure for issuing this instruction, it results that the reported material was registered in the prosecution office on 20.01.2021, while the non-binding instruction was issued by the Head of Prosecution after the 15-day time limit, on 16.02.2021, which means that, according to this information, the Head of Prosecution Office has not implemented correctly the provisions of article 48, paragraph 3 of law no. 97/2016, as amended, which stipulates that "*Instructions on concrete cases, according to paragraphs 1 and 2 of this article, can be given at the moment of assigning the case to the prosecutor, or afterwards, when it is deemed necessary for the progress of the proceedings*" and Article 11, paragraph 2 of General Instruction no. 12/2020, as amended. "*Instructions can be issued by the respective Head of Prosecution Office, at the time of assigning the criminal charges or criminal offense and/or proceeding/case to the prosecutor, when the Head of Prosecution Office deems it necessary for the progress or the conclusion of the proceeding/case.*"
- Pursuant to article 43, letter "ç"<sup>45</sup>, article 48, paragraph 1 of law no. 97/2016, as amended and Article 11, paragraph 1, letter "c"<sup>46</sup> of General Instruction no. 12/2020, as amended, the non-binding instructions of the Head of Prosecution Office on the performance of the procedural acts, are issued prior to the prosecutor's decision on the way to conclude the investigation/concrete case. In this concrete case, the non-binding instruction was issued by the Head of Prosecution Office after the prosecutor of the case decided not to start prosecution, on 05.02.2021, yet it is not documented in the register if the Head of Prosecution Office received the file and became acquainted with prosecutor decision before issuing his non-binding instruction, which under the conditions would make it unenforceable for the prosecutor.

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<sup>45</sup>ç) verifies the progress and completion of the cases and, when necessary, gives written instructions, according to article 48 of this law, on the performance of needed procedural acts prior to the prosecutor's decision on the way of concluding preliminary investigations:

<sup>46</sup>Non-binding instructions on performing procedural acts prior to the prosecutor's decision on the way of concluding investigations/concrete case can be given by: c) The head of prosecution office attached to the court of first instance for the prosecutors of the prosecution office he heads;

- According to instruction no. 12/2020, of the Prosecutor General, as amended and instruction no. 4, date 04.09.2020, on facilitating its implementation, the Head of Prosecution Office has exercised his authority by issuing 1 (one) non-binding instruction. Law no. 97/2016, as amended and the instruction issued for its implementation, clearly define when to issue non-binding instructions, which are not mandatory for the Head of Prosecution Office.
- It is suggested that prosecutors inform the Head of Prosecution Office in writing or electronically (official email), of all cases provided for in instruction no. 12/2020, of the Prosecutor General, as amended, so that the Head of Prosecution Office has a detailed information on the situation and progress of criminal investigations/proceedings, precautionary measures, custody time limit, court decisions, etc. Only if such information becomes available in real time, will it be possible to issue non-binding instructions for cases provided, supporting in this way the investigative operations of each prosecutor, with a view to having a just prosecution process within the framework of a regular fair trial, to protect the public interest, the legal interests of the victims of criminal offenses, the legal rights of detained/arrested or convicted persons.

➤ **Prosecution Office attached to Court of Appeal Vlorë**

According to the information and documentation forwarded by the Head of Prosecution Office attached to Court of Appeal Vlorë related to General Instruction no. 12, date 20.07.2020, of the Prosecutor General “*On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*” as amended, it results that there **have not been issued non-binding instructions** for the requested period of time covered by inspection.

➤ **Prosecution Office attached to Court of Appeal Tiranë**

According to the information sent from the Head of Prosecution Office, there have been only three full time prosecutors in this office during the inspection period 01.10.2020-31.03.2021. The Head of Prosecution Office, based on the register and the information sent for the inspection period, **results not to have issued any non-binding instruction** for the acts of the two prosecutors of this office (like information, conclusions or statement for not filing notice of appeal), which is justified by the fact that the legal position and performance of the prosecutors assigned by drawing lots to represent prosecution in criminal cases (whether filing charges, cases on merits or precautionary measure) included in these acts, have been in agreement with that of the Head of Prosecution Office. This very same position was held by the Head of Prosecution Office when specifically requested by the High Inspector of Justice on the practice followed by the Head of Prosecution Office in documenting his position regarding the information sent by the appeal prosecutor who

**INSPECTORS’ UNIT – HIGH INSPECTOR OF JUSTICE**

represented the case, by specifically stating that: *"In absence of cases of disagreement or different opinion with the prosecutors of the hearings, there was no reason for issuing non-binding instructions"*. In this regard, the Head of Prosecution Office continues with the explanation of how he/she understands the completion of the internal circulation register, stating that: *"Even if we refer to the register of internal circulation, the rubric of documenting the Head of Prosecution Office position is designed to be completed only when the Head of Prosecution Office, after being informed, issues the relevant non-binding instruction in the event of disagreement with the prosecutor of the case. Moreover, both General Instruction no. 12, date 20.07.2020 of the Prosecutor General and the acts issued for its implementation, have the sole purpose to enable the Head of Prosecution Office to be informed and only react when the legal positions of the prosecutors of the hearings is considered not correct. The Head of Prosecution Office, in cases where he/she has considered the prosecutors' position and performance in accordance with the law, has not issued acts, but he/she has simply administered the information, considering sufficient the fact that he/she was informed."*

- The Prosecution Office attached to the court of Appeal Tiranë, has not issued any non-binding instructions during the inspection period. The current Head of Prosecution Office, who has held this position during almost all the inspection time, has not issued non-binding instructions due to the lack of opposition between him/her and the prosecutors of the cases, not presenting in this way issues that would compel the Head of Appeal Office to issue a concrete instruction. Regarding the way and procedure followed to evaluate the issuance of non-binding instruction, according to the Head of Prosecution Office, under the circumstances of the heavy workload and the fact of having only three prosecutors out of nine to cover all the cases, it has often been proceeded verbally when there was no contradiction between the legal position of the Head and the prosecutor of the case, agreement which was reflected in the acts compiled by the prosecutors and signed by the Head of Prosecution Office. From the received data on the acts prepared by prosecutors of the hearings, where they express their position which is different from the appeal of the prosecutor of first instance prosecution office or the decision of the first instance court itself, it turns out that these acts have been signed by the Head of Appeal Prosecution Office, who totally agrees with the prosecutors' position.
- The Head of Prosecution Office, justifies his/her attitude towards the non-binding instructions, even with the fact how he perceives and interprets the general instruction of the Prosecutor General, object of this inspection, focusing on the purpose of informing the Head of Prosecution Office and his/her reaction when he deems that the prosecutor's position and performance are not in accordance with the law.

➤ **Prosecution Office attached to Court of Appeal Shkodër**

According to the information from the Head of Prosecution Office attached to the Court of Appeal Shkodër, only two prosecutors (out of four in the staff structure) have exercised their functions in this prosecution office. Regarding the non-binding instructions issued by the Head of Prosecution Office, as well as the possible responses of the prosecutors of the cases on these non-binding instructions, it results that **there have been no cases when it was necessary to issue non-binding instructions.**

Considering the non-binding instructions in the Prosecution Office attached to the Court of Appeal Shkodër, it turns out that apart from general instruction no. 50, date 21.12.2020, of the Head of this Prosecution Office and the creation of the register of internal procedural correspondence, no instruction of a non-binding character has been approved by the Head of this Prosecution Office.

➤ **Prosecution Office attached to Court of Appeal Korçë**

According to the information from the Head of Prosecution Office attached to the Court of Appeal Korçë, **there have been no cases when it was necessary to issue non-binding instructions.**

➤ **Prosecution Office attached to Court of Appeal Gjirokastrë**

From the information received from the Prosecution Office attached to Court of Appeal Gjirokastrë, it results that since July 2019 this prosecution office has been represented by one prosecutor, who has also held the temporary position of the Head of Prosecution Office. During the inspection period, in relation to the provisions of Article 18, paragraphs 1 and 2 of General Instruction no. 12, date 20.07.2020, of the Prosecutor General as amended, the Head of Appeal Prosecution Office Gjirokastrë, according to his information, has become acquainted with General Instruction no. 12, date 20.07.2020 of the Prosecutor General “*On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*” as amended, and with the obligation to implement it. But, since he is the only prosecutor to exercise his functions in the Appeal Prosecution Office Gjirokastrë, **the obligation to issue non-binding instructions has not been implemented.**

➤ **Prosecution Office attached to Court of Appeal Durrës**

From the data made available by the Prosecution Office attached to Court of Appeal Durrës and the information from the Head of Prosecution Office, it results that for the period of time object of inspection, **there were no cases in which the Head of Prosecution Office deemed necessary to issue non-binding instructions.**

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



The Head of Prosecution Office explained, in relation to this fact, that at the end of May, 2021, the vacancies in the office were filled with two new prosecutors, a fact which helped to handle the heavy workload and make the Head of Prosecution Office represent less cases in trial and therefore focus on paragraph 11 of the instruction of Prosecutor General as well as paragraph 5 of instruction no. 1, date 07.09.2020, of the Head of Appeal Prosecution Office Durrës, regarding the information from the prosecutors of the cases that have problems and different legal positions.

➤ **General Prosecution Office**

- **There are not any non-binding instructions.**

**3.4.The way and procedure followed by the prosecutor to inform the Head of Prosecution Office, as well as informing and reporting to the Prosecutor General by the Head of Prosecution Office.**

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The authority of the Head of Prosecution Office in conducting criminal prosecution according to Article 43, letter "b" of the law "*On the organization and functioning of the prosecution in the Republic of Albania*", as amended, includes his right to request information on the progress of the proceedings, to verify the progress and conclusion of investigations, and if necessary, to issue instructions in writing, according to this law.

Article 52, paragraph 2 of the aforementioned law, provides that prosecutors have the obligation to inform the Head of Prosecution Office, whenever requested by the latter, regarding the work on concrete cases and decision-making, as well as, in specific cases, the problems that may arise during the progress of the proceeding. The same provision is also included in article 8, paragraph 2, letter "c" of General Instruction No. 12, date 20.07.2020, as amended, which provides that the prosecutor has the obligation to inform the Head of Prosecution Office, whenever requested by the latter, related to the progress of certain proceedings/cases. The provisions of articles 12 to 19 of this instruction, provide for the cases of informing the Heads of the Prosecution Offices by the prosecutors and the Prosecutor General by the prosecutors of the General Prosecution Office, in connection with:

- the progress and problems of the first investigative actions in the event of cases occurring while the prosecutor is on call, and/or on the progress of the criminal proceedings before concluding investigations;
- the cases when the court returns the acts to the prosecutor regarding the causes and further investigation;
- requests addressed to the court, signed by the deputy Head of Prosecution Office,

the Head of Section in the absence of the Head of Prosecution Office, when they are on-call according to the on-call schedule, related to arrests in flagrante delicto, detentions, precautionary measures and/or assets measures, tools for searching evidence, obtaining evidence, for the acts addressed to correctional institutions, measures related to health concerns or police services;

- criminal proceedings where the prosecutor will issue restraining orders or will request the court to order detention in prison, house arrest, request for the application of preventive, conservative seizures or for assets measure pursuant to law no. 10192/2009;
- criminal proceedings where the prosecutor has imposed precautionary measures provided by articles 237 and 238 of the Code of Criminal Procedure, or has applied preventive conservative seizure, or assets measures pursuant to law no. 10192/2009, on the progress of criminal proceedings or assets investigation:
- the progress of the criminal proceedings or assets investigation 20 (twenty) days before the prosecutors decide to conclude the investigations, declare the material or territorial incompetence in a criminal proceeding, ask for confiscation or terminate every assets investigation for which the Head of Prosecution Office has issued non-binding instructions or has requested the above information at the time the criminal proceeding or assets investigation was registered, due to its importance;
- when the court did not accept the requests of the prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and confiscation based on Article 36 of Criminal Code or law no. 10192/2009, regarding the decision and whether to appeal it or not;
- cases where after the appeal by the prosecutor, the discovery of new evidence or circumstances can lead to retrial of the appealed case, and as the case may be, to prepare additional appeal;
- in the absence of the Head of Prosecution Office, the prosecutor is obliged to respond to the requests for information of the deputy Head of Prosecution Office provided for in articles 12, 13, 14 and 15 of general instruction;
- informing the Head of Section within the powers assigned to him by the Head of Prosecution Office, in accordance with the provisions of this instruction, in cases where powers for information have been delegated by the latter;
- informing the Head of Appeal Prosecution Office by the prosecutor representing the case or the prosecution in trial of appeal against the defendant under the precautionary “detention in prison”, no later than 10 (ten) days before the end of period of detention pending trial;
- cases where the court of appeal did not accept the requests of the appeal prosecutor regarding the guilt, the legal quality of the offence, the type and/or nature of the sentence

## **INSPECTORS’ UNIT – HIGH INSPECTOR OF JUSTICE**

in relation to the decision and whether he/she would exercise recourse and appeal the decision of the court of appeal.

- informing the Prosecutor General by the prosecutors of the General Prosecution Office in relation to the nature and problems of the cases tried in the Supreme Court or the Constitutional Court, upon request of Prosecutor General and for violations of criminal law and/or criminal procedural law identified in bringing charges and representing prosecution in trial by prosecutors of Prosecution Offices attached to the court of first instance and court of appeal of general jurisdiction.

According to the law and General Instruction no. 12, date 20.07.2020, as amended, the provision of information is the prosecutor's obligation based on the request of the Head of Prosecution Office, yet in specific cases, it can even be done in advance without being requested by the Head of Office.

- In Prosecution Offices attached to Courts of First Instance:

Information without the Head of Prosecution Office request can be provided in cases when:

- the prosecutor will issue restraining orders or will request the court to order “detention in prison”, “house arrest”, request for the application of preventive, conservative seizures or for assets measure pursuant to law no. 10192/2009, he/she informs the Head in advance, with a view to enabling the latter to exercise his authority to issue the non-binding instruction in these criminal proceedings. In this case, the non-binding instruction **may** be issued within 1 (one) day of the information, that is, before the prosecutor sends restraining orders or requests for measures to the Head of Prosecution Office. (The instruction could have included as an exception, cases of emergency to detain a person or to take and execute a precautionary measure, which cannot wait for the Head of Prosecution Office to be informed and then issue non-binding instructions.);
- the prosecutor has appealed the court's decision and when after the court review, there have been discovered new evidence or circumstances which can lead to retrial of the appealed case, the prosecutor must notify the Head of Prosecution Office and as the case may be, to prepare additional appeal as well as notifying the prosecutor and/or the Head of Prosecution Office attached to the court where the appeal is made.

Information is provided only upon request of the Head of Prosecution Office in cases when:

- in cases where the above measures have been decided, he/she has the right to ask the prosecutor of the case to inform him/her in advance, but not later than 1 (one) month before the end of period of detention pending trial, in relation to the investigative actions carried out, administered evidence, the state of the criminal proceedings or the assets investigation

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

and trial, the questioning of the defendant or the person under investigation and other persons, as well as the description of the obtained evidence. The non-binding instruction **can** be issued no later than 3 (three) days from receiving the information;

- for the progress of the criminal proceedings or the assets investigation, when the Head of Prosecution Office has previously issued a non-binding instruction or has requested information at the time the case was assigned to the prosecutor, information which must be given no later than 20 (twenty) days before the prosecutors decide to conclude the preliminary investigations, declare the material or territorial incompetence or ask for confiscation or terminate every assets investigation due to its importance. Non-binding instruction **may** be issued no later than three (3) days from receiving the information;
  - by court order the prosecutor's requests regarding the declaration of guilt, the legal nature of the offence, the type of punishment and confiscation based on Article 36 of Criminal Code or law no. 10192/2009 were not accepted, the prosecutor informs the Head of Prosecution Office whether he will file an appeal or not;
  - the progress and problems of the first investigative actions in the event of cases occurring while the prosecutor is on call;
  - the cases when the court returns the acts to the prosecutor, he/she must inform the Head of Prosecution Office regarding the reasons why the acts were returned and the progress of the investigative actions ordered by the court, within 5 (five) days from the Head's request.
- In the Prosecution Office attached to court of appeal, the prosecutors inform the Head of the Appeal Prosecution Office upon the latter request, in cases when:
    - the Appellate court does not accept the request of the appellate prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and/or the penal measure, the prosecutor informs the Head of Prosecution Office within 5 (five) days from the latter's request, of the decision and whether he/she will file a recourse against the decision of the appellate court;
    - the prosecutor informs the Head of Prosecution Office of cases where the defendant is under the precautionary "detention in prison", no later than 10 (ten) days before the end of period of detention pending appeal trial;

The appellate prosecutors inform the Head of Appeal Prosecution Office without the request of the latter when after filing the recourse against the court's decision, the appellate prosecutor is mainly notified by the prosecutor of the first instance prosecution office on new circumstances and must notify the Head of Appeal Prosecution Office and, as the case may be, may prepare additional recourse. He/she shall also notify the prosecutor and/or the Head of Supreme Court (prosecutor of the General Prosecution Office who represents prosecution of the case in the Supreme Court or the Prosecutor General).

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Regarding the information of the General Prosecutor, article 38, paragraph 2, letter "f" of the law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, provides: "2. *The General Prosecutor exercises the following competences:* f) *Ensures the exercise of legal and constitutional powers of the Prosecution Office*".

Regarding the relations between the Heads of prosecution offices of general jurisdiction and the Prosecutor General, article 42, letter 1) of law no. 97/2016 "On the organization and functioning of Prosecution Office in the Republic of Albania", as amended, among the powers of the head in direction of the prosecution, provides that: "*The Head of Prosecution Office informs the Prosecutor General on the situation of crime every 3 (three) months.*"

Article 50 of law no. 97/2016 "*For the organization and functioning of the prosecution office in the Republic of Albania*", as amended, provides that: "*1. The Prosecutor General can periodically take data and information from the prosecution offices on the progress of their activities. 2. Heads of prosecution offices attached to the courts of general jurisdiction of appeal and first instance shall, within February of each year, prepare the annual report on the progress of work in the relevant prosecution office during the preceding year and shall submit it to the Prosecutor General. The report shall be published on the website of the General Prosecution Office.*"

These provisions of the law are found in article 10, paragraph 3 of General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, regarding periodic information, where it provides that: "*Heads of prosecution offices periodically inform the Prosecutor General, on the situation of crime and/or the progress of the activities of the prosecution offices they head as well as prepare and submit the Annual Report according to the form and the determined indicators, a report which is approved by his order*".

In reference to articles 42, 43, 50 and 52 of law no. 97/2016, as amended and pursuant to articles 8, paragraph 2, letter "c" and 10, paragraph 3 of general instruction no. 12/2020, as amended, in the relations between the prosecutor and the Heads of prosecution office, between these ones and the Prosecutor General, regarding the way of information/reporting, for the inspection period, it results that:

- **Prosecution Office attached to the Court of First Instance Tiranë**
  - **Request for information from the prosecutors by the Head of Prosecution Office**

Regarding this type of act, according to the information submitted by the Prosecution Office attached to the Court of First Instance Tiranë, (two) requests are identified during the period of time covered by inspection. 2. Actually, one request dates before the date of inspection period, but

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

since the deadline set by prosecutors for sending the information was up to 05.10.2020, it is regarded as an act within the inspection period. More specifically, we are referring to the request for information with no. 11550 prot., by the Head of Prosecution Office to all prosecutors, and then, the request date 21.09.2020, which was addressed separately to each prosecutor.

The request includes firstly the legal base for information, which is Article 43, letters "b", "c" and "ç" of law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended and then the purpose and objective to be achieved. It is also noted that before issuing the act in question, the Head of Prosecution Office was careful to record the fact that he was informed in advance of the specific prosecutor workload, at the registry office.

Requests for information have been for cases under investigation for a period of time over 6 months, requesting from the prosecutors to inform of the criminal fact of the proceeding, the registration date of the name to whom the criminal offense was attributed to, if there is any, the date when the precautionary measure was established, if there is any, the progress of the investigations, the orders for the prosecutor's investigative actions and the follow-up control, the officer in charge of carrying out investigative actions and if these actions were carried out, the reason for not completing the investigative actions, what is expected at the end and the conclusion with decision-making.

It results that the head of secretary office was ordered to notify all prosecutors, who had to sign the document after receiving the notification, about these requests as well as the respective deadline to provide the information. As ordered above, it results that there is no documented evidence of the way the prosecutors were informed, while it turns out that there is data from the secretary office, regarding the responses to the requests in question, on 06.10.2020 at 13:00.

Regardless the way of informing, from the data submitted by the prosecution office, it results that regarding the above requests by the Head of Prosecution Office, some prosecutors have provided information. Specifically, out of the 57 requests by the Head of Prosecution Office addressed to the prosecutors, only 34 prosecutors responded by giving information within the deadline.

In addition to the above, from the data submitted by the Prosecution Office attached to the Court of First Instance Tiranë, it turns out that the Head of Prosecution Office has made previous requests for information from the prosecutors, which resulted in no. 01 prot., et. Seq. date 15.05.2019; no. 776 prot., date 10.02.2020; no. 12811 prot., et seq. date 05.10.2021.

According to the data from the relevant register of internal circulation of correspondence, it also results that a prosecutor informed the Head of Prosecution Office, on 10.11.2020 and the Head responded to it by signed the register, on 23.11.2020. Such information was not mentioned in the

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

documents forwarded by the Prosecution Office attached to the Court of First Instance Tiranë, within the function of this inspection.

Regarding the request for information by the Head of Prosecution Office Tiranë, according to the report of the Head of Prosecution Office on this prosecution office work during 2021, it results that information has been periodically requested. Specifically, the Head of Prosecution Office states that: *“The Head of Prosecution Office has periodically requested information on the workload of each prosecutor and the progress of the cases related to priority criminal offenses recommended. Periodic information is also requested on the workload of judicial police officers”*.

- **Information/reporting of the Head of Prosecution Office for the Prosecutor General**

According to the data obtained from the official website of the Prosecutor General, it results that referring to the obligation pursuant to law no. 97/2016, as amended, Article 50 and the general instruction of Prosecutor General, object of this inspection, article 10, paragraph 3, the Head of Prosecution Office Tiranë prepared the annual report for 2020. This annual report results to have been sent to the General Prosecution Office, with letter no. Extra prot., date 25.05.2021.

The Head of Prosecution Office has identified in this report, a series of problems regarding the information/reporting that is to be sent to the Prosecutor General. Thus, more specifically, the Head of Prosecution Office states that:

*“... In the Prosecution Office attached to the Court of First Instance Tiranë, referring to laws and by-laws in force, general instructions of the Prosecutor General, instructions of the head of prosecution office, there have been found different problems in the daily work during 2020:*

*It results that the prosecutors of this prosecution office do not always apply the instructions, especially the ones related to the report of statistical data. This also comes as a result of their workload in exercising their functions according to the Code of Criminal Procedure and the Constitution. For this reason, in this report, we have tried to make present, in the most comprehensive way, all the data gathered after a consultation with all prosecutors.*

*Also, regarding the statistical data reported in the General Prosecution Office it is necessary to revise and improve the statistical tables, so that we can find in them the changes made”*.

There is no other evidence related to the 3 (three)- month report according to the provisions of Article 42, letter "1" of law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania"<sup>47</sup>, as amended. According to the documentation submitted by

the Prosecution Office attached to Tirana Judicial District Court within the inspection, and the relevant accompanying documents it is not specifically defined if there is data related to the 3 (three) monthly reporting during the inspection period and not only.

Regarding the register of internal circulation of procedural correspondence, it is established the existence of such register. Keeping records of internal correspondence, was regulated by general instruction no. 26, date 30.07.2020 of the Head of Prosecution Office, "*On relations in the prosecution office and the way of informing the head of prosecution office*" and with special order no. 5311, date 11.09.2020 "On the creation of the internal register in the Prosecution Office attached to Tirana Judicial District Court", by also assigning the person responsible for the respective preparation and printing as well as the respective deadline. According to the instruction of the Head of Prosecution Office, the relevant acts that would be reflected in this instruction are the internal communications between the Head of Prosecution Office and the prosecutors including: a) request for information by the Head of Prosecution Office, the response from the prosecutor, the issuance of non-binding instructions, the ongoing communication between the prosecutor and the Head of Prosecution Office on certain cases. b) letters to be signed by the Head of Prosecution Office on acts or materials addressed to the court, c) letters to be signed by the Head of Prosecution Office on the acts or attached materials related to the suspension of proceedings, declaration of incompetence, decisions not to start a case.

By reading the register made available, it is found that not all the rubrics have been reflected based on the respective model for completing the data according to the column titles. More specifically, it is found that the register has 27 columns but the only columns completed are column no.7 "proceeding no. in the rubric", no. 24 "date/time" in the rubric "*Correspondence for third parties/sending acts from the prosecutor to be signed by the Head of Prosecution Office*"; no. 26 "date/time "; in the column "*Correspondence for third parties/sending signed acts to the prosecutor*" and no. 27 in the column "*Signature of the recipient (date/time, first name, last name)*". The completion of these columns turns out not to have been done completely according to their titles. For instance, column no. 7, where the number of the criminal proceedings was registered, results to have been completed according to the title, column no. 24 where it was written the name of the prosecutor [<sup>48</sup>] turns out not to have been completed according to its title date/time, column no. 26 where the date is registered, results to have been partially completed according to the title as it misses the time the acts were passed, and column no. 27, where the signature is,

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<sup>47</sup>Information was specifically requested on this, but there has been no answer.

<sup>48</sup>Only in two register pages, the name of the prosecutor is placed in column no. 25. Specifically, the first one in the 2020 register, with page no. 52, according to the number of the office that sent it, which starts on 06.11.2020 and ends on 19.11.2020, all lines; and with page no. 170, according to the numbering of the office it was sent, which starts on 22.02.2021 and the last line is on 12.01.2021, all lines. as well as partially on a register page, column no. 25, page no. 86, according to the number of the office that sent it, which are related to the names of the prosecutors in the first two lines.



results not to have been completed totally according to the title, since it requires the date/time, the name and last name. It is also found that this register mainly includes the relevant subject of the act registered by the prosecutor and in some cases accompanied by the criminal offence, but they were written in the columns under the wrong title, according to the general data from the prosecution office.

Thus, according to the reflected subject, it results that the acts recorded in the register are mainly requests of prosecutors for precautionary measures, terminating investigation, trials, which were written at column: "Non-binding instructions by the Head of Prosecution Office or Section". And as such, it seems that they include the data of the accompanying letters acts/materials addressed to the court, which should have been written in column no. 25.

Only in one case it results to have been registered the act "provision of information by the prosecutor", in the "information" section, column no. 22, on 10.11.2020, which belongs to the respective prosecutor, corresponding to date 23.11.2020 of passing signed acts to the prosecutor.

The relevant dates which are registered according to the above description in column no. 26, begin from 01.10.2020 up to 31.03.2021. This date, as previously mentioned in the column of the register, reflects the date of passing acts to the prosecutor after being signed by the Head of Prosecution Office. Meanwhile, regarding the date of submitting the act by the prosecutor to the Head of Prosecution office for signature, according to column 24, the information for 2020 results to be missing and in 2021 the date has been recorded in some cases (73 cases), but under the title "subjects", column no. 25 and there is no date in column no. 26. It should also be emphasized that even in these last cases of recording the date of passing acts from the prosecutor to the Head of Prosecution Office which belong to the register of 2021, it results that these dates belong to 2020, which creates confusion in the way of reading it.

There is a note in the form of instruction, below the format, for completing the register (the model from the General Prosecution Office) "*When registering a practice, it is written the whole number the document receives in the protocol register. Under the whole number, it is written the fractions of the whole number (mixed number) the documents of a practice receive up to the end. Under the whole number, empty rows are left to register documents with fraction of the given practice. Practices are separated from each other by thick lines. When the need arises, the practice can be transferred into another page of the register, adding the note: "goes to page ... "*".

- Given the above, regarding the way of informing the Heads of Prosecution offices by the prosecutor, as well as the information and report of the Head of Prosecution Office to the Prosecutor General, it results that according to the information sent, in the Prosecution

Office attached to the Court of First Instance Tiranë, it was proceeded with the information from the prosecutors of the cases addressed to the Heads of Prosecution Offices as well as with the information of the latter to the Prosecutor General.

- The information from the prosecutors was provided following the written request of the Head of Prosecution Office, who has determined the relevant reason and the deadline for fulfilling the request. The focus of the requests has been obtaining information related to criminal proceedings whose investigations had lasted over 6 months. These requests are fully supported by article 43, letter "b" and article 50, paragraph 2 of law no. 97/2016, as amended, which provides for the competences of the Head of Prosecution Office in exercising his competences as the Head of Prosecution Office both in the procedural and the administrative aspect. Through requests related to the progress of investigations for this category of cases, the Head of Prosecution Office after receiving the relevant information, will be able to evaluate the performance of the prosecutor of the case in terms of the criminal proceeding progress, problems encountered (meeting procedural deadlines but also respecting the subjects right to a criminal proceeding), to continue with the possibility for issuing general procedural and administrative binding instructions, as well as non-binding ones for concrete cases.
- For the period of time covered by inspection, it turns out that there is information provided by prosecutors in response to the request of the Head of Prosecution Office, which dates before the period of inspection. The request for information was addressed to each prosecutor of the prosecution office and it results that less than half of the prosecutors have responded to it.
- Requests for information with the same focus has been made by the Head of Prosecution Office before and after the period of time covered by inspection, for which there was no response from the prosecutor to whom it was addressed. According to the relevant data based on the documents of the prosecution office, it results there is no evidence of the prosecutors' responses to requests made by the Head of Prosecution Office in 2019, while for the other requests in 2021, there have been only 3 responses out of 20.
- To conclude, regarding these requests for information, there is not an appropriate implementation of the legal obligation of the prosecutors of the cases to inform the Head of Prosecution Office in time, whenever requested by him/her.
- It also results that the requests in question are not reflected in the register of internal correspondence pursuant to the provision of General Instruction no. 12/2020, of the Prosecutor General, as amended, article 20, as well as the instruction issued by the Head of Prosecution Office attached to the Court of First Instance Tiranë, no. 26, date 30.07.2020.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- The registry in question was created referring to the aforementioned provisions of general instruction, yet the requests for information and a number of prosecutors' relevant responses, which result to have been compiled as acts, are not recorded in it. Only in one case, it was registered the provision of information from the respective prosecutor on 10.11.2020 (for the criminal proceeding no. 7166/1/2020).
- In terms of keeping the register, it is also worth noting that it has not been kept in the right way in terms of recording the data according to the column titles. As it was also noted above, regarding the data recorded in the register in question, it is not clearly readable the data related to the type of communication – non-binding instruction, information or correspondence with third parties, the time of submission by the prosecutor and the time of issuance by the Head of Prosecution Office.
- Considering the report of the Head of Prosecution Office to the Prosecutor General, the Head of Prosecution Office results to have sent the Prosecutor General the Annual Report for 2020, as an obligation provided for by article 50, paragraph 2 of law no. 97/2016, as amended. This obligation, referring to letter no. Extra prot., date 24.05.2021, by which the report was submitted, results to have been fulfilled exceeding the deadline provided for in this provision.
- There is no recorded data referring to the documents brought by the Prosecution Office attached to the Court of First Instance Tiranë, regarding the 3 (three) monthly report on the crime situation pursuant to article 42, letter "I" of law no. 97/2016, as amended, and within the period of time covered by inspection there have been two of them – one in December 2020 and the other in March 2021.
- One problem presented in the annual report for 2020, by the Head of Prosecution Office was the obtention of data from the prosecutors.

➤ **Prosecution Office attached to the Court of First Instance Durrës**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

Having been informed on the number of criminal proceedings under investigation for each prosecutor, the Head of Prosecution Office attached to the Court of First Instance Durrës, compiled the "Request for information" date 22.09.2020, related to the criminal proceedings under investigation for a long period of time, even since 2018, or to cases under investigation for more than three months with the precautionary “detention in prison”, requesting: - information on the date of registration and the criminal offence under investigation; - a case brief; - investigative actions ordered and carried out in these criminal proceedings; - what investigative actions are expected to be carried out for the completion of the investigations and the possible deadline for their completion.

The request is based on the legal provisions of articles 43, letters "b", "c", "ç" and 52/2 of law no. 97/2016 "On the organization and functioning of Prosecution Office in the Republic of Albania", as amended, as well as General Instruction no. 12, date 20.07.2020, as amended of the Prosecutor General. Upon request, the requested information must be available to the Head of Prosecution Office until 02.10.2020 and after receiving the information, the Head of Office and Heads of Sections issue non-binding instructions for criminal proceedings that present problems. The request does not have a protocol number according to the registry of internal circulation of the procedural correspondence, whose page has not been made available to ascertain whether or not it has a recording of it and the prosecutors who have received notification on the relevant date. According to the Annual Report for 2020 of the Prosecution Office attached to the Court of First Instance Durrës, the request was addressed to the 24 prosecutors who were part of the staff structure in 2020, including the Head of Prosecution Office, deputy Head and the 22 prosecutors. Regarding these requests, only one prosecutor results to have responded by providing the requested information on criminal proceedings under investigation for a long period of time and sending it to the Head of Prosecution Office via the official email on 02.10. 2020. This does not include prosecutors who may not have had proceedings under investigation for a long period of time or cases under investigation for more than three months with the precautionary "detention in prison".

According to the information of the Head of Durrës Prosecution Office, it results that under the unusual circumstances of COVID19, where throughout this period prosecutors and the staff were constantly affected by the virus, the exercise of powers was in accordance with the conditions created and that the information was continuously provided verbally by other prosecutors.

The Head of Prosecution Office compiled a "Request for information" on 01.10.2020 for the criminal proceedings no. 1466/2019, registered for criminal offenses provided for by articles 85, 199/a 248, 186 of the Criminal Code, the earthquake case. The request legal basis is article 42, letter "gj", article 43, letters "b" and "ç" et seq of law no. 97/2016, as amended, as well as articles 24, 25 et seq of Code of Criminal Procedure. The object of the request was obtaining information to verify the progress of the investigations, since it was one of the work priorities of the prosecution office in 2020, in relation to the criminal fact being investigated, the delegation orders for investigative actions by the prosecutors and their ongoing control, the performance of the duties by the judicial police officers, the duration of the investigation and the reasons for the extension of time, the actions that were not performed. The request does not have a protocol number according to the registry of internal circulation of the procedural correspondence, whose page has not been made available to ascertain whether or not it has a recording of it and the prosecutors who have received notification on the relevant date. Prosecutors are requested to provide information for the Head of Prosecution Office within 15.10.2020. The three prosecutors responsible for investigating the case sent by email the request to set this criminal proceeding for trial on

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

10.11.2020, in function of information for the Head of Prosecution Office.

According to the Head of Prosecution Office based on the information requested for the preparation of the 9-monthly and annual analysis regarding the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020, it was requested according to the email of 07.10.2020, information regarding successful cases within 10.10.2020, and only one prosecutor sent information on dates 07-08.10.2020. The Head of Section sent the requested information via the official email, where related to this request the information was prepared by two prosecutors, and it was forwarded to the Head of Prosecution Office via email on 13.10.2020.

Pursuant to article 16 of general instruction no. 12/2020, as amended, by order no. 86, date 02.12.2020 for the delegation of powers and authority due to COVID 19 infections, the Head of Prosecution Office delegated his competences to the Deputy Head of Prosecution Office, to responsibly exercise the duties and powers of the Head of Prosecution Office until 12.12.2020, pursuant to Article 42 of Law no. 97/2016, as amended, as well as in the Code of Criminal Procedures.

- **Information/reporting of the Head of Prosecution Office to the Prosecutor General**

Regarding the provisions of article 10, paragraph 3 [49] of general instruction no. 12, date 20.07.2020 of the Prosecutor General, as amended, considering the obligation to inform and report to the Prosecutor General, pursuant to article 42, letter "1" and Article 50 of Law no. 97/2016 "*On the organization and functioning of the prosecution office in the Republic of Albania*" as amended, it turns out that the Annual Report has been prepared and it reflects the required data according to the instructions specified in this letter. The report was sent to the Prosecutor General, with letter no. 378, date 12.03.2021 (confirmed on the official website of the General Prosecution Office), while the report was sent electronically on 02.03.2021 according to the official email made available by the Prosecution Office attached to the Court of First Instance Durrës.

During the period of time covered by inspection, the Head of Prosecution Office results to have prepared information for the Prosecutor General, as the one requested by letter no. 968/5, dated 02.10.2020, where "Information is requested on the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020" for the 9-month period in 2020. The Prosecutor General in response to this letter was informed in details with letter no. no number, date 19.10.2020 of the Head of Durrës Prosecution Office, in relation to the

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<sup>49</sup>"Heads of prosecution offices periodically inform the Prosecutor General with precise data on crime situation and/or the progress of the performance of the prosecution offices they head. They also prepare and submit the annual report according to form and the determined indicators. report which is approved by his/her order. "

implementation of the Priority Recommendations of the Council of Ministers in the Fight against Criminality for 2020, according to the points of the Prosecutor General request, related to the criminal offenses mainly abuse of power, money laundering, trafficking, assets investigation or any important criminal offense. According to the information of the Head of Prosecution Office, there were implemented the general instruction no. 11/2020, and the action plan approved by order no. 112/2020 of the Prosecutor General for implementing these recommendations. It was organized of a general meeting of prosecutors who became acquainted with the priority recommendations, and after the discussions, the action plan no. 79, date 23.09.2020 was issued to facilitate the implementation of the Priority Recommendations. During the 9-month period, in accordance with instruction no. 10/2020 of the Prosecutor General, order no. 6, date 30.07.2020 for the internal organization results to have been issued by creating four sections in the Prosecution Office attached to the Court of First Instance of Durrës.

The Head of Prosecution Office attached to Court of First Instance Durrës results to have responded to the request for information by Prosecutor General regarding the requests of the Assembly Resolution and the action plan, through letter no. no number, date 21.10.2020 and the official email on 22.10.2020. The Prosecutor General was informed that in response to letter no. 943/6, dated 05/10/2020, regarding the implementation of the Albanian Assembly Resolution date 18.06.2020, it was implemented general instruction no. 5/2018 and the action plan approved by order no. 103, date 17.07.2020.

Also, with letter no. 68, dated 14.01.2021 within the framework of the preparation for the Annual Report, the Prosecutor General has requested information from the prosecution offices of general jurisdiction attached to courts of first instance and appeal, regarding the requests of the Assembly of Albania Resolution "On the evaluation of the prosecution body performance for 2019", dated 18.06.2019. Based on letter no. 68, date 14.01.2021, on the presentation of the Annual Report 2020 by the prosecution offices of general jurisdiction and appeals, the Head of Prosecution Office issued instruction no. 3, dated 19.02.2021, with a view to preparing statistical data by the registry office and the secretary of statistics.

There are no other data related to the 3-monthly reporting according to the provisions of Article 42, letter "I" of law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", [50] as amended. From the documentation sent by the Prosecution Office attached to the Court of First Instance Durrës in the function of inspection, and the relevant accompanying documents, it is not specifically determined if there is data related to the 3-monthly reporting for the period of time covered by inspection.

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<sup>50</sup>information was requested specifically on it, but there was no answer

- In the Prosecution Office attached to the Court of First Instance of Durrës, it results that the Head of Prosecution Office has requested information related to pending cases under investigation for a long time or cases under investigation for more than three months with the precautionary “detention in prison”, with the aim of verifying the progress and concluding investigation for pending cases as well as increasing the efficiency and speed of the investigation of criminal cases.
- Regarding the way of informing the Head of Prosecution Office by the prosecutor, the Head of Prosecution Office results to have been implemented general instruction no. 12/2020, as amended, by issuing 26 (twenty-six) requests, 24 (twenty-four) of which with a general character for criminal proceedings of each prosecutor, 1 (one) special request for a certain proceeding due to its importance and 1(one) request regarding the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020.
- In relation to these requests for information, it is deemed that the acts of the Head of Prosecution Office and the prosecutors’ responses must be in accordance with articles 8, paragraph 2, letter "c" and article 14, paragraph 1 of general instruction no. 12/2020, as amended, and reflected in the register of internal communications, to guarantee the transparency of relations between the Head of Prosecution Office and the prosecutors as well as the rights and obligations that arise under law no. 97 /2016, as amended and the instructions issued for its implementation.
- Also, there are no other cases of requests from the Head of Prosecution Office that are included in chapter IV of general instruction no. 12/2020, as amended, in relation to the progress and problems of the first investigative actions in the event of cases occurring while the prosecutor is on call, cases when the court returns the documents, cases regarding the information on representing prosecution in trial, the progress of criminal prosecution or assets investigation after the Head of Prosecution Office has issued non-binding instructions for these proceedings and except for one case, there are no requests from the Head of Prosecution Office at the time of registration of the criminal proceeding and during the progress of the investigation for cases that are deemed important or in criminal proceedings with personal precautionary measures provided by articles 238, 237 and assets measures.
- Regarding requests for information, it is found that there is mainly a proper implementation of the legal obligation to provide information for the Head of Prosecution Office whenever requested by him/her and within the time limit, yet by a small number of prosecutors of the cases. For example, only one prosecutor results to have responded to the request of the Head of Prosecution Office dated 22.09.2020 with a deadline for preparing the information until 02.10.2020, which was addressed to 24 prosecutors; the prosecutor sent the information on 02.10.2020 by meeting the deadline. Regarding the request dated 07.10.2020, whose deadline to submit the information was 10.10.2020, the Head of Section sent the information of the two prosecutors on 13.10.2020. As far as the other prosecutors

are concerned, there is no evidence, even from the register of internal communications, if the investigations they were leading had nothing to do with object of the request or they simply did not respond to the request of the Head of Prosecution Office. Regarding the request dated 01.10.2020, whose deadline to submit the information was 15.10.2020, prosecutors sent the information (request for trial) on 10.11.2020.

- Regarding the information and reporting of the Head of Prosecution Office to the Prosecutor General, it appears to have been implemented general instruction no. 12/2020, as amended, pursuant to article 10, paragraph 3, by sending the Annual Report for 2020, as well as the requested information by the Prosecutor General in accordance with the priority recommendations of the Council of Ministers for 2020 and the Resolution of Assembly date 18.06.2020.
- There is no evidence, based on the documentation sent by the Prosecution Office attached to the Court of First Instance Durrës, for the 3-monthly report on the crime situation, according to the provisions of article 42, letter "I" of law no. 97/2016, as amended, which corresponds to the end of 2020 (for the period of time covered by inspection) and another report in March 2021, while within February 2021 is expected the preparation and submission of the Annual Report for 2020.

➤ **Prosecution Office attached to the Court of First Instance Elbasan**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

Considering this direction of inspection, the Head of Prosecution Office attached to the Court of First Instance Elbasan results to have made a request for information and submission of acts with no.45 PBD, dated 13.10.2020, which requests the prosecutor of the case to send the head of Prosecution Office, the acts of criminal proceedings no. 1151/2019 and information within 17.10.2020, with the aim of "*Exercising the legal powers of the head of prosecution office and the need to preserve constitutionality and legality in criminal prosecution*".

The request of the Head of Prosecution Office no. 45 PBD, dated 13.10.2020, results to be in compliance with article 12, paragraph 2 of general instruction no. 12/2020 as amended, on the basis of which the prosecutor informs the Head of Office upon his/her request, on the progress of the criminal proceedings before completing investigations. On the other hand, the prosecutor has the obligation to inform the Head of Prosecution Office, whenever requested by the latter, regarding the progress of certain proceedings/cases.

The prosecutor did not send information about the specific case, but as it was analyzed above, on 13.10.2020 with the submission of acts for the criminal proceedings, the prosecutor of the case has also submitted his/her request to withdraw from the investigation of the criminal proceeding no. 1151, of 2019. Having reviewed the acts, the Head of Prosecution Office issued the non-binding



instruction on the performance of other actions, as well as with decision dated 14.10.2021 the Head of Prosecution Office has accepted the prosecutor's request to withdraw from the case and has decided to replace him/her with another prosecutor.

The Head of Elbasan Prosecution Office requested information from the prosecutor of the case and the prosecutor provided the requested information on 28.12.2020, regarding the criminal proceeding no. 1562, of 2018. The Head of Prosecution Office request for information was made after the administration of practice no. 868/1 prot., dated 10.12.2020 of the Institutional Coordination Directorate in the General Prosecution Office as well as the request of the citizen S. Xh., date 24.11.2020, recorded in the accompanying file of practice dated 14.12.2021.

The rights and obligations of the prosecutor in the procedural relations with the Heads of Prosecution Office according to article 8, paragraph 2-c of the general instruction no. 12/2020, as amended, also include the prosecutor's obligation to inform the Head of Prosecution Office whenever requested by him/her related to the progress of certain proceedings/cases. This obligation has been fulfilled by the prosecutor of the case, although it is not based on the request for information of the Head of Prosecution Office, pursuant to the above provisions of general instruction no. 12/2020, as amended, but on a note in the file.

Also, the Head of Prosecution, has drawn up the act "Drawing attention", no. 47 PBD, date 20.10.2020, for the prosecutor of the cases related to handling and giving solutions to materials and criminal cases in the verification/preliminary investigation phase, by giving priority to pending criminal proceedings under investigation from previous years. The purpose of the aforementioned act is *"The exercise of legal powers by the head of prosecution office and diligence for the preservation of constitutionality and legality in criminal prosecution."* The Head of Prosecution Office has then compiled letter no. 1455 prot., date 23.11.2020, with subject *"On the way of handling criminal cases"*, sent to the prosecutor's residential address, requesting information in writing regarding his representation of criminal cases under investigation and under trial, due to his temporary incapacity of performing his/her duties on the grounds of ill health. Given the above, the prosecutor is requested, in accordance with Article 27 of the Code of Criminal Procedure to enable his/her replacement with another prosecutor, upon his/her consent; on the contrary, again in accordance with Article 27 of the Code of Criminal Procedure, when there are serious reasons related to his/her duty, according to the law, with the aim of respecting the rights of the parties in the process, as well the respect for legality, the prosecutor shall be substituted without his/her consent.

The prosecutor of these cases responded to the request on 01.12.2020, by informing that on 01.12.2020, he reassumed work and interrupted the sick leave, but because of his health condition and the workload accumulated, despite the fact that he/she returned to work, he requested to be excluded from the electronic draw lots.

- **Information/reporting of the Head of Prosecution Office for the Prosecutor General**

According to the acts sent by the Prosecution Office attached to the Court of First Instance Elbasan, it appears that the Head of Prosecution Office, has prepared and sent the information no. 10125 prot., date 19.10.2020 in response to the request no. 943/6 prot., of the General Prosecutor date 05.10.2020 "*On the implementation of the Resolution of the Assembly of Albania dated 18.06.2020*" and no. 968/5 prot., date 02.10.2020 "*On the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020*".

With letter no. 35 prot., dated 06.01.2021 with subject "Sending information regarding your practice no. 1914 prot.", date 30.12.2020 "Request for information", addressed to the Institutional Coordination Directory in the General Prosecution Office by the Head of Prosecution Office Elbasan, the Prosecutor General has been informed, among others, about:

- i. The measures taken for the implementation of General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended and specifically:
  - general instruction no. 39 PBD, date 07.09.2020 "According to and on the implementation of general instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended.
  - from July 2020 until the end of 2020, other acts were issued in the implementation of law and specifically 3 non-binding instructions for concrete cases, one act of ascertainment on concrete cases, as well as one request for information on specific cases.
  - internal circulation register dated 21.09.2020 until 31.12.2020; notes were made in this register for 2424 circulated materials. It is suggested that due to the large number of different entries in this register, it should be considered the possibility of some changes in general instruction no. 12, dated 20.07.2020, as amended, so as to record in this register only the orders and instructions of the Head of Prosecution Office, his/her requests for information and the prosecutors' information on concrete cases, as well as the decision-making of the Head of Prosecution Office for the joinder of charges and the substitution of prosecutors or judicial police officers.
- ii. The measures taken for the implementation of general order no. 120, date 08.09.2020 "On the approval of some additions to the "Standard Regulation of the organization and functioning of the Prosecution Office of general jurisdiction".
- iii. Measures taken for the implementation of instruction no. 3 of Prosecutor General, date 29.12.2016, "On the allocation of cases in the prosecution office", by the Head of Prosecution Office attached to the Court of First Instance Elbasan during January-December 2020.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Regarding the obligation to inform and report to the Prosecutor General, according to provisions of article 42, letter "I" and article 50 of law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended, Article 10, paragraph 3 of General instruction no. 12/2020, as amended, the period of time covered by inspection coincides with the period of drafting the Annual Report on the progress of work in the Prosecution Office attached to the Court of First Instance Elbasan, for 2020. From the verification on the official website of the General Prosecution Office, the Annual Report on the work and crime situation in the Prosecution Office attached to the Court of First Instance Elbasan, for the year 2020, results to have been sent and it was recorded in the General Prosecution Office with no. 68/3 prot., date 23.02.2021.

Pursuant to Article 20 of general instruction no. 12/2020, as amended, it results that the internal circulation register of acts in the Prosecution Office attached to the Court of First Instance Elbasan, had its first entry on 21.09.2020. There have been recorded all the acts issued by the Head of Prosecution Office, various orders and instructions, requests for information on concrete cases, prosecutors' information on concrete cases, decision-making by the Head of Prosecution Office for the joinder of charges and substitution of prosecutors, or judicial police officers, criminal files completed by prosecutors for which it is recorded the way of completing the investigation as well as the court decisions on concrete cases.

For the period of time from 01.10.2020 to 31.03.2021 it results that these data were recorded in a total of 5 registers, where:

- In one register there are recorded entries starting with Register no. 283, date 01.10.2020 up to entries with registration no. on 04.11.2020. This register first entry results to have been on 21.09.2020;
- In one register there are recorded entries starting with Register no.1384, date 04.11.2020 up to entries with registration no.2078, date 14.12.2020;
- In one register there are recorded entries starting with Register date 2079, on 14.12.2020 up to entries with registration no. 2424, date 05.01.2021;
- In one register there are recorded entries starting with Register no 1, date 05.01.2021 up to entries with registration no.791, dated 18.02.2021;
- In one register there are recorded entries starting with Register no. 792, dated 18.02.2021 up to entries with registration no.1390, date 31.03.2021. The last entry in this register has Register no. 1534, date 13.04.2021.

- Regarding the way of informing the Heads in the prosecution office, the prosecutor results to have implemented general instruction no. 12/2020, as amended, in three cases with requests for information by the Head of Prosecution Office addressed to the prosecutors of the case. However, the acts of the Head of Prosecution Office and the prosecutor' responses shall be in accordance with the articles 12, paragraph 2 and 14, paragraph 1 of general instruction no. 12/2020, as amended, and recorded in the register of internal

communications, to guarantee transparency in the relations between the Head of Prosecution Office and the prosecutors as well as the rights and obligations pursuant to law no. 97/2016, as amended and the instructions issued in accordance with it, and not acts that are not provided for in the relevant law and by-laws, without titling them properly, which seems more like disciplinary measures. The request for information would serve the purpose of exercising legal powers by the head of prosecution office and due diligence for the preservation of constitutionality and legality in criminal prosecution.

- Also, for the period of time covered by inspection, there were no other cases of requests for information by the Head of Prosecution Office according to chapter IV of General Instruction no. 12/2020, as amended, provided by articles 12, paragraphs 2 and 3, articles 13 and 14 of this instruction.
- Regarding the information and reporting of the Head of Prosecution Office to the Prosecutor General, it turns out that there is an implementation of General Instruction no. 12/2020, as amended, according to article 10, paragraph 3, by sending the Annual Report, the information on the implementation of the Resolution of the Albanian Assembly dated 18.06.2020 and on the "Implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020", as well as the requested information, among other things, regarding the measures taken for the implementation of general instruction no. 12, date 20.07.2020, as amended, regarding the measures taken for the implementation of general order no. 120, dated 08.09.2020 "On the approval of some additions to the "Standard Regulation of the organization and functioning of prosecution offices of general jurisdiction" and for the implementation instruction no. 3 of Prosecutor General, date 29.12.2016 "On the allocation of cases in the prosecution office".

➤ **Prosecution Office attached to the Court of First Instance Fier**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

Pursuant to article 43 of law no. 97/2016, as amended and articles 8, paragraph 2-c and 14, paragraph 1 of general instruction no. 12/2020 as amended, there results to have been made request for information by the Head of Prosecution Office and information provided by the prosecutor:

- i) Request for information no. 463, date 10.02.2021, addressed to the prosecutor of the case, requesting information regarding his/her request for changing the precautionary measure and the prosecutor's decision in the hearing for citizen V. T. The request is recorded in the internal register with no. 463, dated 10.02.2021. The prosecutor's response was in writing on 10.02.2021, stating that "the trial has not been conducted, in the hearing we are in favor of dismissing the charges ".

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- ii) Request for information no. 73, dated 12.01.2021, addressed to the prosecutor of the case, regarding the prosecutor's decision in the hearing for the request of the convicted B. K., convicted according to Article 79/dh of the Criminal Code, before the decision is taken by the court. The information was submitted by the prosecutor in writing, without the date, after the trial ended on 16.04.2021, where the court declared inadmissible the request of the convict B. K. The request was recorded in the internal register with no. 73, date 12.01.2021, whereas the information of the prosecutor was not recorded in the register but archived on 28.04.2021.
- iii) Request for information no. 609, dated 15.12.2020, addressed to the prosecutor of the case in relation to criminal proceedings no. 861/2019, registered for the criminal offense of causing suicide. The written information of the prosecutor has no date and is not registered in the internal register.
- iv) Information of the prosecutor of the case on criminal proceedings no. 1123, of 2018, dated 10.12.2020, recorded in the internal register with no. 522/1, dated 10.12.2020. The written request of the Head of Prosecution Office was not made available to us, but it is recorded in the register with no. 522, date 07.12.2020, as "Official information for LLI."
- v) Information dated 06.01.2021 of the prosecutor, on pending proceedings under investigation in the framework of order no. 80, dated 11.12.2020 of the Head of Prosecution Office 'On taking measures for closing the registers, collecting information and completing statistical tables, gathering data and preparing information for the 2020 Annual Report. The information is registered in the internal circulation register with no. 15/1, date 06.01.2021.
- vi) Request for information by the Head of Prosecution Office on the implementation of the priority recommendations of the Council of Ministers in the fight against organized crime for 2020, recorded with no. 193, date 13.10.2020.
- vii) Information of the prosecutor of the case dated 28.12.2020 for criminal proceedings no. 1347, of 2020, regarding the request for information of the Head of Prosecution Office. The request was not made available to us, but it is recorded in the register with no. 753, dated 23.12.2020, "Request for information"; the prosecutor's information is recorded with no. 753/1, dated 28.12.2020.
- viii) Information of the prosecutor of the case on criminal proceedings no. 571/2017 and no. 863/2017 dated 15.02.2021. The request of the Head of Prosecution Office is registered with no. 494, date 12.02.2021, but it was not made available. The prosecutor's response is recorded with no. 494/1, dated 15.02.2021.
- ix) Request for information by the Head of Prosecution Office no. 390, dated 05.02.2021 addressed to the prosecutor of the case, in relation to his/her decision about the defender's request for changing the preventive measure for citizen E. R., in the criminal proceeding no. 85/2021. The prosecutor has given the information recorded with no.

- 390/1, dated 08.02.2021., on the preventive measure and information no. 390/2, dated 08.02.2021 on the conclusion of the investigation. The prosecutor's information results undated.
- x) Request for information by the Head of Prosecution Office with no. 797, dated 10.03.2021, addressed to the prosecutor of the case for proceeding no. 1486/2020. The prosecutor has prepared information dated 11.03.2021. The request of the Head of Prosecution Office was recorded in the register, with no. 797, date 10.03.2021.
  - xi) Request for information no. 168, dated 15.01.2021 addressed to the prosecutor of the case, in relation to criminal proceedings no. 890/2020. The information of the prosecutor is dated 18.01.2021, which results to have been recorded in the register with no. 168/1, dated 18.01.2021.
  - xii) Request for information no. 812/1, dated 12.03.2021 addressed to the prosecutor of the case, on changing the measure "detention in prison" for the citizen E. B, to "house arrest" by the court on 12.3.2021, for the criminal offense provided by article 283/1 of the Criminal Code for criminal proceedings no. 40/2021. The prosecutor's information is dated 12.3.2021, while it is recorded in the register with no. 812/2, date 12.03.2021, the appeal of the prosecutor against the court's decision.
  - xiii) Request for information no. 493, dated 11.02.2021 addressed to the prosecutor of the case the investigation phase of criminal proceedings no. 1300, of 2020. The undated information is compiled in the prosecution office regarding the procedure no. 1300, of 2020, recorded in the internal register with no. 493/1, date 16.02.2021.
  - xiv) Request for information no. 570, dated 12.02.2021 addressed to the prosecutor of the case, in connection with the request presented by E. S. and V. S., for the removing the seizure established in the function of criminal proceedings no. 506/2012. On 17.02.2021, it was recorded the response of the Head of Prosecution Office to the interested citizens.
  - xv) Request for information no. 810/1, dated 12.03.2021 addressed to the prosecutor of the case in relation to criminal proceedings no. 1344, of 2020, registered based on articles 123 and 164 of Criminal Code, regarding the stage of the investigative actions carried out, etc. The prosecutor's information is undated, with the note "*return response dated 12.03.2021*" and results to have been recorded in the internal circulation register dated 12.03.2021.
  - xvi) Request for information no. 394, dated 08.02.2021 addressed to the prosecutor of the case, in connection to the requests for parole of the convicts who were represented by him/her in trial in January 2020. What was the number of requests? What was the prosecutor's request and what was the court's decision? There is no response from the prosecutor.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

xvii) Request for information no. 645, dated 17.12.2020 addressed to the prosecutor of the case on the progress of preliminary investigations of criminal procedure no. 1182, date 19.10.2020, registered for the criminal offense of "Theft" provided by article 134 of the Criminal Code, where the information requested shall be submitted by 23.12.2020, together with the criminal proceeding file no. 1182, of 2020. The prosecutor's information results with no. 645/1, date 18.12.2020.

xviii) Request for information no. 307, dated 22.10.2020, addressed to the two prosecutors of the section of order executions, as the prosecutors responsible for requests related to Article 59 of the Criminal Code "Suspension of the execution of an imprisonment sentence and placing the convict on probation", in connection with the convicts sentenced to imprisonment, cases with direct appeal to the court (Article 59 of the Code of Criminal Procedure), civil cases (requests in accordance with the Family Code, Removal/Restriction of capacity to act, Declaration of presumed death/missing person, Wrongful conviction compensation) and cases for which the prosecutors file lawsuits in court and also have to provide information on requests regarding court decisions, no later than 30<sup>th</sup> of each month.

One of the prosecutors of order executions, prepared the information on 30.10.2020, for the period of time from 01.10.2020 to 31.10.2020, informing of the conclusion of trial for 8 (eight) applications for early release on parole, according to Article 64 of the Criminal Code, 7 (seven) of which were refused or declared inadmissible, while 1 (one) application was accepted by the court, specifically the request of convict F. H., for which the prosecutor had requested its refusal and filed an appeal against the court order. The trial has not ended for other requests according to the object of request for information.

Also, the same prosecutor, prepared the information registered with no.555, date 10.12.2020, for the period of time from 01.11.2020 to 30.11.2020, informing of the conclusion of trial for 11 (eleven) applications for early releases on parole, according to article 64 of the Criminal Code. Home confinement, according to article 59/a of the Criminal Code, as well as for the time benefited on an amnesty or pardon, 10 (ten) of which were declared inadmissible, while 1 (one) application was accepted by the court, specifically the request of the convict K. Xh., for home confinement, in accordance with article 59/a/ç of the Criminal Code, for which the prosecutor had requested its refusal and filed an appeal against the court order. The trial has not ended for other requests according to the object of request for information. No information results to have been submitted by the other prosecutor regarding the request by the Head of Prosecution Office.

xix) Request for information no. 222, dated 15.10.2020 addressed to the prosecutor of the case for the criminal case against citizen T.T., where in addition to the information given on 14.10.2020, there are also required the court orders of the preliminary hearing and the request for information of the judge of preliminary hearing. No respond results

- to have been given for this request, yet the prosecutor results to have provided information dated 14.10.2020, recorded with no. 222/1, dated 15.10.2020.
- xx) Request no. 627/1, dated 16.04.2020, addressed to the prosecutor of the case, regarding the criminal case against citizen O. K., There is no written information from the prosecutor, but there is a note in the request in handwriting, "the object of calculating as pre-trial detention the time abroad", entered in the register for date 17.12.2020 in the column "information from the prosecutor". The request for information of the Head of Prosecution Office is written in the rubric of non-binding instructions and the prosecutor's response is written in the same number and row with the request of the Head of Prosecution Office.
- xxi) Request no. 628, dated 16.12.2020 addressed to the prosecutor of the case, regarding the criminal case against citizen L. F. The prosecutor has provided no written information on the case, but it was presented the Interpol Office letter no. 15109, dated 14.12.2020 and there is a note in the request in handwriting "request to the court by the applicant L. F., with object "pre-trial detention time calculation". The request for information of the Head of Prosecution Office is entered in the rubric of non-binding instructions.
- xxii) Request for information no. 464, date 10.02.2020, addressed to the prosecutor of the case, in connection with the criminal procedure no. 1215/2016. The prosecutor's information is dated 11.02.2020, recorded in the internal register on 11.02.2020. Subject "Request for information" is entered in the correspondence column for third parties.
- xxiii) Request for information signed by the Head of Prosecution Office in the letter of the Ministry of Justice no. E-175/4, dated 13.11.2020. The prosecutor's information results to have been recorded in the internal register with no. 465, dated 17.11.2020.
- xxiv) Request for information no. 754, dated 23.12.2020 addressed to the prosecutor of the case, in relation to criminal proceedings no. 1838/2018, returned by the court. The prosecutor's information on 23.12.2020, which is not recorded in the register. Subject "Request for information" is entered in the column of correspondence for third parties.
- xxv) Request for information no. 215, dated 14.10.2020 addressed to the prosecutor of the case regarding the "Request of the Court of First Instance Fier, the judge of the preliminary hearing, in relation to the criminal case against defendant T. T, etc. The prosecutor compiled the information dated 14.10.2020, recorded with no. 215/1, dated 14.10.2020. The subject "Information to the Head of Prosecution Office" which is entered in the column of correspondence for third parties.
- xxvi) Request for information no. 385, dated 5.2.2021, addressed to the prosecutor of the case, in connection with the criminal proceedings for citizen E. D. The prosecutor's information is with no. 385/1, date 08.02.2021. Both the request for information and the prosecutor's information is entered in the rubric of correspondence for the third parties.



- xxvii) Request for information no. 569, dated 14.12.2020 addressed to all prosecutors, requiring information on the criminal proceedings returned by the court in 2020 that are currently under investigation: No. of the proceeding, date of registration, article, person under investigation or defendant, preventive measure. Regarding this request, it results the information of a prosecutor dated 15.12.2020, recorded with no. 615, dated 16.12.2020 for the return for further investigations of criminal proceedings no. 528, of 2019. The prosecutor's information is entered in the column of correspondence for third parties. There is also the information from another prosecutor, without date, which informs that there is no proceeding under investigations returned by the court for 2020.
- xxviii) Request for information no. 569/1, dated 4.12.2020, addressed to all prosecutors, requesting information on criminal proceedings the prosecutors has resumed investigation in 2020 and which are currently under investigation: no. of the proceedings, date of registration, article, date of resumption, person under investigation or defendant (if any), preventive measure. Regarding this request, it results that one prosecutor gave information no. 569/1, on 20.12.2020, on criminal proceedings resumed in 2020, which was recorded with, date 21.12.2020; the information dated 20.12.2020 of another prosecutor on proceedings resumed in 2020, not recorded in the register, but with the act no. 569/1, dated 21.12.2020.
- xxix) Request for information no. 353, dated 04.02.2021 addressed to the prosecutors of order execution section, who should have provided information on requests regarding court decisions, no later than 30<sup>th</sup> of each month. Based on the above, given that these prosecutors do not enter notes in the register, the Head of Prosecution Office has requested them to provide information and record it in the register. Regarding this request no. 353/2, dated 05.02.2021, one prosecutor results to have responded by stating that as a prosecutor of section for executing final criminal behavior orders, he has not had any case related to requests for the “suspension of the execution of an imprisonment sentence and placing the convict on probation” in accordance with article 59 of the Criminal Code; no case related to civil cases and wrongful conviction compensation. On 04.02.2020 the information of another prosecutor, results to have been registered with no. 353/1, dated 04.02.2021, according to which for the period of time from 01.01.2021 to 31.01.2021, the trial was concluded for 10 (ten) applications, 3 (three) of which for early releases on parole, according to article 64 of the Criminal Code, were refused or declared inadmissible; one request, for which the prosecutor had requested its refusal, was accepted by the court and therefore the prosecutor filed an appeal against the court order; one request for order to set aside, which was declared inadmissible. Both the request for information and the prosecutor's information is entered in the rubric of correspondence for the third parties.

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

Pursuant to article 10, paragraph 3 [<sup>51</sup>] of General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, regarding the obligation to inform and report to the Prosecutor General, according to the provisions of Article 42, letter "1" and Article 50 of Law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended, the inspection period of time, from 01.10.2020 to 31.03.2021, for which it is requested information, coincides with the period of drafting the Annual Report on the progress of work in the Prosecution Office attached to the Court of First Instance Fier for 2020 and it results that the Head of Prosecution Office issued order no. 80, dated 11.12.2020 "*On taking measures for closing the registers, collecting information and completing the statistical tables and preparing information for the 2020 Annual Report*".

The information on the implementation of priority recommendations of the Council of Ministers in the fight against crime for 2020 was sent with letter no. 7767, dated 16.10.2020. The information on the implementation of the resolution of the Assembly of Albania in the fight against crime for 2020 was sent with letter no. 7893, dated 21.10.2020 and the Annual Report for 2020 for Fier Prosecution Office was sent with letter no. 1580, dated 21.02.2021.

Pursuant to Article 20 of general instruction no. 12/2020, it results that the Prosecution Office attached to the Court of First Instance Fier has created its register of internal circulation of procedural correspondence according to the format approved by general instruction no. 12/2020, as amended. The first entry in the register has number 1, date 09.09.2020 and the last entry has no. 842, dated 31.12.2020. 2 new registries result to have been used for 2021, which is included in the period of time covered by inspection, register no. 1, which begins with no. 1, date 05.01.2021 and closes with no. 587, dated 15.02.2021; register no. 2 continues with number 588, dated 16.02.2021 and closes with no. 1151, dated 28.04.2021.

Given the above, regarding the way of informing the Head of Prosecution Office by the prosecutor, it results that in accordance with general instruction no. 12/2020, as amended, the Head of prosecution office has issued about 28 requests for information addressed to the prosecutors, who have prepared the requested information in response to requests, except for 5 cases where prosecutors did not provide information. It is deemed that the acts of the Head of Prosecution Office and the prosecutor's responses must be in accordance with article 12, paragraphs 2-3, articles 13, 14 and 15, paragraph 1 of general instruction no. 12/2020 as amended, reflected in the register of internal communications.

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<sup>51</sup>"Heads of prosecution offices periodically inform the Prosecutor General with accurate data on the crime situation and/or the progress of the activity in the prosecution office they head, as well as prepare and send the annual report in the form and according to the specified indicators, a report which is approved by his order."

Also, there are not found any other cases of informing the Head of Prosecution Office according to chapter IV of general instruction no. 12/2020, as amended.

- Regarding the information and report of the Head of the Prosecution Office to the Prosecutor General, it results to have been implemented general instruction no. 12/2020, as amended, pursuant to article 10, paragraph 3, by sending the Annual Report for 2020, as well as informing the Prosecutor General on the basis of his requests for the implementation of Priority Recommendations and Resolutions of the Assembly.
- Irregularities and deficiencies, as mentioned above, are found in recording the prosecutors' requests/information and non-binding instructions in the register of internal circulation of procedural correspondence.

➤ **Prosecution Office attached to the Court of First Instance Korçë**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

In reference to Article 43 of Law no. 97/2016, as amended and pursuant to article 8, paragraph 2- c and article 14, paragraph 1 of General Instruction no. 12/2020 as amended, the Head of Prosecution Office results to have issued:

- a) Request for information dated 12.10.2020 addressed to the prosecutor of the case for the proceeding no. 948/2020. There is no record in the register, for the prosecutor's information on this request (at least until 31.03.2021, which is the end of inspection period).
- b) Request for information dated 29.10.2020 addressed to the prosecutor of the case, for the criminal proceedings in 2017. The information from the prosecutor results to have been recorded in the register on 30.11.2020 and on 14.11 2020.
- c) Request for information dated 29.10.2020, addressed to the prosecutor of the case, for the criminal proceedings no. 1282/2017. The prosecutor's information results to have been recorded in the register on 29.10.2020.
- d) Request for information dated 29.10.2020, addressed to the prosecutor of the case, for the criminal proceedings of 2016 and 2017. There is no information from the prosecutor recorded in the register regarding this request (at least not until 31.03.2021, which is the end of inspection period).
- e) Request for information dated 29.10.2020 addressed to the prosecutor of the case for the criminal proceedings of 2015-2017. There is no information from the prosecutor recorded in the register regarding this request (at least not until 31.03.2021, which is the end of the inspection period).
- f) Request for information dated 22.2.2021 addressed to the prosecutor of the case, for the criminal proceedings of 2018. The prosecutor's information results to have been recorded in the register on 29.10.2020. For some other criminal proceedings in 2018, there is no

information from the prosecutor recorded in the register (at least not until 31.03.2021, which is the end of the inspection period).

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

Regarding the provisions of article 10, paragraph 3<sup>[52]</sup> of General Instruction no. 12, date 20.07.2020, of Prosecutor General, as amended, regarding the obligation to inform and report to the Prosecutor General, according to the provisions of Article 42, letter "l" and Article 50 of Law no. 97/2016 *"On the organization and functioning of the prosecution office in the Republic of Albania"*, as amended, the Head of prosecution Office has sent a copy of the report on the progress of the work in the Prosecution Office attached to the Court of First Instance Korçë for 2020. According to the data from the Head of Prosecution Office, in addition to this report, this prosecution office also reports periodically in relation to certain categories of criminal offenses related to money laundering, financial crime, law cases involving minors, etc. This information is sent by email to the relevant sector in the General Prosecution Office.

Pursuant to Article 20, paragraph 2, from letter "a" to letter "dh" of general instruction no. 12/2020, in accordance with model 1 attached to the instruction, the head of Prosecution Office Korçë, has created the special register that documents and records exactly all the data related to requests for information by the Head of Prosecution Office addressed to prosecutors, the prosecutor's information for each case, the issuance of non-binding instructions, or refusal to follow the instructions. This register, which started to be completed on 07.09.2020, includes the documented evidence provided for in article 20/2, letters "a", "b", "c", "d", "dh", of general instruction no. 12/2020, as amended. The secretary of the Head of Prosecution Office is specifically tasked with keeping the entire practice of official communications between the Head of the Prosecution Office and the prosecutors. A copy of the register of internal communications between the Head of Prosecution Office and the prosecutors was made available, in accordance with Article 20 of the above-mentioned instruction, and it results to have been correctly completed.

- **Prosecution Office attached to the Court of First Instance Shkodër**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

For the period of time object of inspection, the Head of Prosecution Office Shkodër results to have addressed 42 different types requests to the prosecutors of cases, mainly on the progress of criminal proceedings under investigation, criminal charges, etc., specifically: 4 (four) requests in October;

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<sup>51</sup>“Heads of prosecution offices periodically inform the Prosecutor General with accurate data on the crime situation and/or the progress of the activity in the prosecution office they head, as well as prepare and send the annual report in the form and according to the specified indicators, a report which is approved by his order.”

11 (eleven) requests in November (23 and 24 November); 10(ten) requests in January, (13 and 18 January) and 17 (seventeen) requests in March, (18 and 24 March).

From the requests for information addressed to four prosecutors in October, which were sent on the same day, 23.10.2020, only one prosecutor turns out to have responded in writing to the Head of Prosecution Office on 26.10.2020, which results to have been within two days.

From the requests for information addressed to 10 prosecutors in November, 9 of which were sent on the same day, 23.11.2020, and one was sent on 24.11.2020, only one prosecutor has responded in writing with information no. 34, date 23.11.2020, which results to have been within the day.

From the requests for information addressed to 8 prosecutors in January, which result to have been sent on the same day on 13.01.2021, and to one prosecutor it was also sent another request on 18.01.2021, two prosecutors turn out to have responded to the Head of Prosecution Office, response no. 12/1, date 18.01.2021 and response no. 18/1, date 18.01.2021), which result to have been sent within the day.

From the requests for information addressed to 10 prosecutors in March, which turn out to have been sent on the same day, 18.03.2021 and 24.03.2021, it results that written responses were sent to the Head of Prosecution Office only for the request of March 18, 2021. 4 prosecutors result to have responded - response no. 40 prot, no date, response no. 41/1, date 19.03.2021, response no. 42/1, date 23.03.2021 and response no. dated 19.03.2021. The requests for information/information of the prosecutors are presented more specifically:

- Request for information no. 18 prot., date 23.10.2020, for which the prosecutor informed with information no. 18/1 prot., date 26.10.2020 and request for information no. (no number) prot., date 23.10.2020, regarding the stages of criminal cases.
- Request for information no. (no number) prot., date 23.11.2020 of the Head of Prosecution Office, addressed to the prosecutors of cases regarding the progress of criminal proceedings under investigation (for 2016, 2017, 2018).
- Information dated 26.11.2020 of the prosecutor of the case addressed to the Head of Prosecution Office for the request no. 34 prot, date 23.11.2020.
- Information no. 12/1 prot (G. S) date 18.01.2021 of the prosecutor of the case addressed to the Head of Prosecution Office "On the request for information no. 12, date 18.01.2021 of the Head of Prosecution Office.
- Information no. (no number), date 18.01.2021 of the prosecutor of the case addressed to the Head of Prosecution Office "On the request for information No. 15 Prot., date 18.01.2021 of the Head of Prosecution Office.
- Request for information from no. 4 to no. 8 (no. prot. – no number), date 13.01.2021 of the Head of the Prosecution Office addressed to the prosecutors of the cases, for the state of

criminal charges in 2020, (neither registered as criminal proceedings nor decided not to initiate criminal proceedings).

- Request for information from no. 36 to 45 (no. prot. – no number), date 18.03.2021 of the Head of Prosecution Office, addressed to the prosecutors of the cases, on the progress of criminal proceedings under investigation of 2016, 2017 and 2018.
- Information of the prosecutor of the case registered with no. 41/1, date 19.03.2021, addressed to the Head of Prosecution Office regarding the request for information on criminal proceedings no. 1075/2017.
- Information of the prosecutor of the case registered with no. 45/1, dated 19.03.2021, addressed to the Head of Prosecution Office regarding the request for information of the Head of Prosecution Office for criminal proceedings no. 878/2017.
- Information of the prosecutor of the case, recorded with no. 42/1, dated 23.03.2021, addressed to the Head of Prosecution Office regarding his/her request for information on criminal proceedings no. 1630/2018,
- The return response (without prot. and date) from the prosecutor of the case, to the Head of Prosecution Office for request with letter no. 40, dated 18.03.2021, in relation to criminal proceedings no.1755/2017.
- Request for information from no. 46 to no. 52 prot, date 24.03.2021, on the state of all criminal charges of 2019, 2020, 2021, neither registered as criminal proceedings, nor decided to initiate criminal proceedings.

Three pieces information addressed to the Head of Prosecution Office by the prosecutors of the case are also part of the documentation sent by the Prosecution Office attached to the Court of First Instance Shkodër, within the framework of thematic inspection. One prosecutor sent the information respectively on 18.02.2021 and on 24.02.2021 and the other information was sent by the other prosecutor; the three pieces of information are related to the same criminal proceeding (no. 1052/2019) and they result to have been done by these prosecutors.

From the requests of the Head of Prosecution Office, addressed to the prosecutors of the case, it results that those which belong to 2020 are not recorded in the register, with the exception of one of them (request no.18 prot, date 23.10.2020). The request dated November 13.11. 2020, is recorded in the register of internal circulation, but it does not exist physically.

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

For the inspection period, in relation to the provisions of Article 10, paragraph 3 of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General, regarding the obligation of the Head of Prosecution Office to inform and report to the Prosecutor General, according to provisions of article 42, letter "I" and article 50 of law no. 97/2016 "*On the organization and functioning of the prosecution office in the Republic of Albania*", as amended, it results that the Head of this Prosecution Office has sent no information regarding the implementation of this legal obligation.

The period for which it is requested information, coincides with the period of drafting the Annual Report on the progress of work in the Prosecution Office attached to the Court of First Instance Shkodër for 2020, a report which was forwarded to the Prosecutor General with letter no. 1942 prot, date 01.03.2021, recorded in the General Prosecution Office with no. 68/19 prot., date 04.03.2021.

The Prosecutor General was informed of a document from the General Prosecution Office for the measures taken on the implementation of the two instructions issued by the Prosecutor General, including instruction no. 12/2020, of the Prosecutor General and order no. 120/2020.

According to the information and documentation sent by the Head of Prosecution Office attached to the Court of First Instance Shkodër, it is found that the Register of Internal Correspondence Circulation, provided for in Instruction of the Prosecutor General no. 12, date 20.07.2020, article 20/2 from letter "a" to "dh" which contains all the data related to requests for information by the Head of Prosecution Office to the prosecutors, the prosecutors' information on each case requested by the Head of Prosecution Office, the non-binding instructions issued by the latter for the prosecutors, or the refusal to follow instructions, etc., was kept during the period of inspection. The register started to be completed on 14.09.2020 by the secretary specifically tasked by the Head of Prosecution Office, with keeping the entire practice of official communications between the Head of the Prosecution Office and the prosecutors.

- Pursuant to Article 20 of General Instruction no. 12/2020, of Prosecutor General, in accordance with model 1 attached to the instruction, the Head of Prosecution Office attached to the Court of First Instance Shkodër, has created the special register that documents and records all the data related to requests for information by the Head of Prosecution Office addressed to prosecutors, the prosecutor's information for each case, the issuance of non-binding instructions. The register, of the internal circulation of acts started to be completed on 14.08.2020 and the secretary assigned to keep the register has agreed with the prosecutors to write the protocol number of the recorded acts.
- These registers reflect various requests for obtaining information, non-binding instructions issued pursuant to instruction no. 12/2020, of the Prosecutor General, as well as the general instructions issued by the Head of Prosecution Office attached to Shkodra Judicial District Court. From the inspection of the pages of the internal communications register sent by Shkodra Prosecution Office, the data entered in the "Subject" column results according to the requirements of instruction no. 12/2020, of the Prosecutor General, regarding the type of documents that are sent to be signed by the Head of Prosecution Office. The Head of Prosecution Office has requested information from the prosecutors on the state of criminal charges they are dealing with, whether they will decide to register a criminal proceeding or not to start one.

- During September-December 2020, a total of 51 requests were registered, requests for information, non-binding instructions, information from prosecutors. Nine of these acts are non-binding instructions on concrete cases, 26 are information on cases under investigation, unregistered charges, pending criminal proceedings etc., and 23 cases of requests and information on joinder of charges, requests to withdraw from a case, substitutions, etc.

➤ **Prosecution Office attached to the Court of First Instance Vlorë**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

The Head of Prosecution Office attached to the Court of First Instance Vlorë sent information that based on article 43, paragraph "b" of law no. 97/2017 "*On the organization and functioning of the Prosecution Office in the Republic of Albania*" and article 12 et seq. of General Instruction no. 12/2020, of the Prosecutor General, as amended, has requested information from prosecutors on criminal proceedings, which are recorded in the register of internal communications and has received the relevant information from them.

One case is request for information that the Head of Vlora Prosecution Office addressed to the prosecutor of the case, related to the progress of criminal proceedings no. 903/2020. The request is recorded in the register of internal communications with no. 1358, dated 08.03.2021. The prosecutor results to have given information on 09.03.2021, by fully responding to all the requests of the Head of Prosecution Office in relation with the progress of the criminal proceedings (9 pages in total). Also, attached to this practice regarding the information on the progress of criminal proceedings no. 903/2020, it can be found:

- Request dated 03.03.2021, recorded in the register, of the citizen K. P., father of victim A.P., motion to remove the prosecutor of criminal proceedings no. 903/2020, this request which is registered with no. 503, dated 05.03.2021 in the Head of Secretary Office of the Prosecution Office;
- The same request, regarding the causes and claims to remove the prosecutor results to have been filed to Vlora Judicial District Court on 04.03.2021.

The other case is the request for information that the Head of Vlora Prosecution Office has addressed to the prosecutor of the case, to provide information in writing regarding the progress of criminal proceedings no. 1604/2014. This request has been recorded in the internal communications register with no. 1160, dated 16.02.2021 and the prosecutor of the case results to have been notified of the request on 22.02.2021. The prosecutor of the case results to have fully responded to all the requests submitted by the Head of Prosecution Office in relation to criminal proceedings no. 1604. of 2014. regarding the coercive measure. procedural actions carried out and

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



planned to be carried out by the respective prosecutor and the judicial police officers with delegation (6 pages in total).

Another case is the request for information that the Director of the Vlora Prosecutor's Office has addressed to the prosecutor of the case, to give information in writing on the progress of criminal proceedings no. 2268/2016, the request which is registered in the register of internal communications with no. 1759, dated 06.04.2021. Based on this request, the prosecutor has informed the Head of Prosecution Office within the same day, on 06.04.2021, that the investigation of criminal proceedings no. 2268/2016, has ended and that on 01.04.2021 he addressed to the Court of Judicial District of Vlorë, the request to dismiss the case (8 pages in total). By comparing the communication data between the Head of Prosecution Office and the prosecutors of the case with the data reflected in the register of internal communications, it results that the date of request in the register is 14.04.2021, 13:30 and not 06.04.2021, as shown in the physical documentation (*which could also be an error or a later registration of this information in the Internal Register*).

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

For the inspection period, in relation to the provisions of Article 10, paragraph 3 of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General, as amended, regarding the obligation of the Head of Prosecution Office to inform and report to the Prosecutor General, according to provisions of article 42, letter "I" and article 50 of law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended, it results that the Head of Prosecution Office has sent no information regarding the implementation of this legal obligation for the periodic information. The period of inspection, coincides with the period of drafting the Annual Report on the progress of work in the Prosecution Office attached to the Court of First Instance Vlorë for 2020, a report which was sent to the Prosecutor General by email on 17.03.2021 "On the Annual Analysis for 2020"

Pursuant to Article 20 of General Instruction no. 12/2020, of Prosecutor General, as amended, it has been created the register of internal communication, which documents and records various requests for obtaining information, the issuance of non-binding instructions in accordance with the register model in the provision. The register of the internal communication between the Head of Prosecution Office and prosecutors, pursuant to instruction no. 12/2020, as amended, was created on September 2<sup>nd</sup>, 2020. The first entry in the register of internal communications, in the administrative actions carried out, with no. 1, date 02.09.2020, is the order of the Head of Prosecution Office addressed to the chancellery for making available a copy of instruction no. 12/2020, of the Prosecutor General, as amended, for information to all prosecutors. Even though there was not held a meeting to discuss the importance of becoming familiar with and implementing instruction no. 12/2020, as amended, the notification was made through its circular, as a bylaw.

From the inspection of the pages of the internal communications register sent by the Prosecution Office attached to the Court of First Instance Vlorë, the data entered in the "Subject" column results according to the requirements of instruction no. 12/2020, of the Prosecutor General, as amended regarding the type of documents that are sent to be signed by the Head of Prosecution Office. From the physical inspection of the register pages for the internal circulation of the documents, the columns result to have a deficiency in the explanatory data regarding the prosecutor who provides information or requests explanations from the Head of Prosecution Office, the relevant case, or the final handling of information.

- For the inspection period, regarding the obligation of the Head of Prosecution Office to inform and report to the Prosecutor General, it results that the Head of Prosecution Office has sent no information regarding the implementation of this legal obligation for the periodic information. Regarding this issue, it should be emphasized that even though there were approved a series of procedural acts of a general character with the aim of taking measures, within the framework of the action plan on the priorities of the Council of Ministers in the fight against crime for 2020 in the Prosecution Office attached to the Court of First Instance Vlorë, there is no report or information to the Prosecutor General, every three months regarding the results achieved. The Annual Report on the progress of the work in the Prosecution Office has been drawn up and sent to the Court of First Instance Vlorë for 2020.
- The lack of periodic information every month or every few months, is related to the fact that providing information every three months, which is provided for in article 42, paragraph 1 of law no. 97/2016 "*On the organization and functioning of the prosecution office in the Republic of Albania*", as amended, should also be reflected in Article 6 of general instructions no. 4, dated 04.09.2020 of the Head of this prosecution office, because these provisions provide for the obligation that the Head of Prosecution Office has to inform periodically. Article 10 of general instruction no. 12/2020, as amended, with reference to article 50 of the law related to the annual reporting, has a specific deadline; even the other periodic reports are specifically detailed in article 42, letter l and as such the deadlines are clear referring to the information of the Head of Prosecution Office to the Prosecutor General.

➤ **Prosecution Office attached to the Court of Appeal Vlorë**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

According to the information and documentation forwarded by the Head of Appeal Prosecution Office regarding General Instruction no. 12, date 20.07.2020 of the Prosecutor General "*On the regulation of relations between prosecutors and Heads of Prosecution Office, information,*

*transparency and guarantee of independence in the Prosecution Office of General Jurisdiction*", as amended, it results that for the requested period object of inspection, there are no requests for information by the Head of Prosecution Office or the person delegated by him, as well as no information of the prosecutors of this prosecution office, according to the provisions of General Instruction no. 12/2020, as amended of the Prosecutor General.

After contacting the Head of Prosecution Office attached to the Court of Appeal Vlorë, he responded electronically<sup>[53]</sup> regarding the implementation of the Prosecutor General Instruction no. 12/2020, as amended. The current Head of Prosecution Office informed that his predecessor<sup>[54]</sup> due to the workload in the institution he headed, did not have the possibility to create the register of the internal circulation of procedural acts, as required by instruction no. 12/2020, as amended. He explains that from the end of 2020 until the beginning of 2021, there was only one full time prosecutor out of four prosecutors defined in staff structure. From January 2021 to September 2021, this Prosecution Office was headed by the first appointed Head of Prosecution Office, who did not create the register of internal communications due to the situation created. At the end of September 2021, when it was appointed the current Head of Prosecution Office, the situation was the same, except for the fact that this prosecution office now had one more prosecutor who came from the Prosecution Office attached to the Court of First Instance Fier. Regardless of the fact that the register of internal communications still was not created, the new appointed Head of Office expressed his responsibility and obligation that as the head of the institution, he would take as soon as possible, all the measures to fulfill the obligations pursuant to instruction no. 12/2020, of the Prosecutor General.

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

For the inspection period, in relation to the provisions of article 10, paragraph 3 of general instruction no. 12, dated 20.07.2020, of the Prosecutor General, as amended, regarding the obligation of the Head of Prosecution Office to inform and report to the Prosecutor General, according to the provisions of Article 42, letter "I" and Article 50 of Law no. 97/2016 "*On the organization and functioning of the Prosecution Office in the Republic of Albania*", as amended, it results that the Head of this Prosecution Office did not provide any information according to the implementation of the legal obligation of periodic reporting. In compliance with Article 50, paragraph 2 of Law no. 97/2016, as amended, the annual report on the progress of the work in the Prosecution Office attached to the Court of Appeal Vlorë for 2020, was drawn up and sent to the Prosecutor General, with letter no. 664 prot., dated 02.07.2021, recorded in the General Prosecution Office with no. 68/59 prot., date 05.07.2021 "*On the activity of Prosecution Office attached to the Court of Appeal Vlorë for 2020*".

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<sup>53</sup> email dated 01.02.2022 of the Head of the Prosecution Office of Apel in Vlorë,

<sup>54</sup> dismissed with decision no. 448. date 21.09.2021 of IQC (KPK)

According to the information related to the inspection period, sent by the Head of Prosecution Office attached to the Court of Appeal Vlorë, due to the workload in this institution there was no possibility to create the register of the internal circulation of procedural acts as required by instruction no. 12/2020 of the Prosecutor General, as amended (*this information was administered in February 2022 by the High Inspector of Justice Office*). In this way, it is estimated that regardless of the reasons mentioned from the Head of Prosecution Office, he has had enough time to fulfill the obligations related to the implementation of general instruction no. 12/2020, as amended, of the Prosecutor General. However, from September 2021 until the time of the response, despite the new prosecutor being added, the Head of Prosecution Office had not created the register of internal procedural correspondence yet. Creating the register and keeping records of internal circulation, as an obligation established in the general instruction of the Prosecutor General, serves the work performance and the respect for the correct relationships between the Head of Prosecution Office and the prosecutors of the Appeal Prosecution Office Vlorë.

➤ **Prosecution Office attached to the Court of Appeal Tiranë**

• **Request for information by the Head of Prosecution Office addressed to prosecutors**

During the inspection period, the staff structure of Tirana Appeal Prosecution Office included 9 prosecutors, while according to the information of the Head of Prosecution Office, there were only three full time prosecutors exercising their functions in this office at that time. The Head of Prosecution Office has described the workload as a heavy burden carried by the three prosecutors in covering all the criminal cases.

In accordance with Article 18, paragraph 1 and 2 of General Instruction no. 12, dated 20.07.2020, of Prosecutor General, as amended, for the inspection period, the prosecutors of the Appeal Prosecution Office Tiranë sent the Head of Prosecution Office 50 pieces of information and 54 written conclusions/statements (statements related to the prosecutor's decision to waive the right to file an appeal against the decision of the judicial district court) when the discretion of the prosecutor assigned to represent the criminal cases in the Court of Appeal (whether criminal claims, fundamental cases or coercive measure) was different from the prosecutor's request to the court of first instance or the decision of the first instance court itself.

According to the data made available for the inspection period, the prosecutors of the Appeal Prosecution Office Tiranë Appeal, result to have made six recourses, two for each prosecutor that were exercising their duty in this prosecution office at that time.

In 2021, it results that the same prosecutor has sent information/conclusions/statements to withdraw the case, recorded with number 1, dated 08.01.2021 until no. 34, on 25.03.2021, which

is the last date referred to the inspection period. All in all, even according to the information sent, it turns out that the aforementioned prosecutor have sent 50 pieces of information (in 2020 and 2021), 1 conclusion and 1 decision not to file an appeal against the decision of the judicial district court in 2021.

From the information made available by the prosecutor of the Appeal Prosecution Office Tiranë, it results that 49 of them are related to the prosecutor's decision not to file the recourse, and 1 decision to file a recourse. The time period between the date of the Court of Appeal decision and the date of the appeal prosecutor's information varies from 1 to 24 days

From the cases in question, it turns out that there were also appeals from the first instance prosecutors, which result to have been supported by the appeal prosecutor in the appeal hearing. For other cases, where the appeals were filed by the person under investigation/the defendant/lawyer, it results that the prosecutor of the appeal hearing has affirmed the decision of the Judicial District Court. The appeal prosecutor has compiled the information expressing his decision not to file a recourse due to the lack of legal conditions provided by article 432 of the Criminal Code.

According to the above data, it results that from one of the prosecutor's pieces of information addressed to the Head of Appeal Prosecution Office, up to 14.12.2020, referring to the instruction issued before the amendments dated 14.12.2020, 11 of these pieces of information are provided within the 5-day deadline.<sup>[55]</sup>

Regarding the conclusion and the withdrawal decision, the appeal prosecutor has decided in two cases, to withdraw and not support the appeal of the first instance prosecutor against the decision of the judicial district court, to change the court sentence.

Two acts of one prosecutor, result to have been entered in the register of internal circulation of procedural correspondence entitled "*declaration to withdraw the appeal of the prosecutor...*" and "*conclusions on the appeal of the court decision...*", while it does not result such thing for the other prosecutor; the Head of Prosecution Office explained that the prosecutor of the case has chosen this form of information for these two cases due to the heavy workload and has deposited the copy of the act submitted to the court as a way of information.

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<sup>55</sup>Article 18, paragraph 2 before Instruction no. 12, dated 20.07.2020, provided that: "in cases when the Appellate court does not accept the request of the appellate prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and/or the penal measure, the prosecutor informs the Head of Prosecution Office no later than 5 (five) days, whether he will file a recourse against the decision of the appellate court;

This provision was changed with Instruction no.16, date 14.12.220, by providing: "in cases when the Appellate court does not accept the request of the appellate prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and/or the penal measure, the prosecutor informs the Head of Prosecution Office within 5 (five) days from the latter's request, of his/her decision and whether he/she would file a recourse against the decision of the appellate court;

Meanwhile, the other prosecutor, did not follow the form of the informative act, but presented to the Head of Prosecution Office the copy of the document that he would submit to the court, where his decision and reasoning are reflected, and did not consider the possibility of registering them in this register.

In the conclusions of the second prosecutor, the person under investigation results to be the appellant in these cases and the prosecutor's discretion has been against the decision of the judicial district court, which results in 41 cases. Declaration to withdraw the appeal of the first instance prosecutor against the decision of the Judicial District Court, is evidenced in 9 cases.

The Head of Prosecution Office expressed himself regarding the communication between the Head of Prosecution Office and the prosecutor assigned to represent the case, seeing it also from the point of view of the heavy workload created in the office of the Appeal Prosecution Office, where out of nine prosecutors included in the staff structure, only three full time prosecutors covered all the cases on the office. Therefore, regarding this, the Head of Prosecution Office states that:

*"Due to this situation, even the discussion of cases between prosecutors and the Head of Prosecution Office (especially regarding the precautionary measures where the deadlines for the hearing are within three days from the receipt of notification for it) are often done verbally (always for cases where the appeal prosecutor's legal position differs from the one of the first instance prosecutor). and in each case the legal position and opinion on the case has been agreed upon and this agreement is also reflected in the acts compiled by the prosecutors and consentingly signed by the Head of Prosecution Office".*

Regarding the practice followed by the Court of Appeal, and the type of procedural correspondence, the Head of Prosecution Office has explained that: *"... every criminal file that comes from this court, based on drawing lots, is entered in two respective registers, that of the criminal cases with the object of coercive measures and that of fundamental cases. Then, after the cases are allocated to the prosecutors based on drawing lots, they familiarizing themselves with the acts, make photocopies of the material/s they consider necessary, return the court files, which after being recorded with a protocol number, are sent back to the court. In addition to these registers, there is also the correspondence register, where various letters with each institution including the court of appeal, are recorded".*

Regarding the request on the number of cases for which recourse has not been filed, during the inspection period, the Head of Prosecution Office, has informed that *"one of the prosecutors has sent 52 pieces of information were presented to one of the prosecutors; no recourse was filed for 49 cases, 17 of which belong to fundamental judgment and the rest for coercive measures. While the other prosecutor, with the act dated 06.10.2021, informed that no recourse has been filed in 18 cases of coercive measures and 4 fundamental cases.*

*The Head of Prosecution Office, has had 9 (nine) fundamental cases (where the difference is in the amount or type of punishment and only one case with a difference in the legal nature of the offence and in one case the decision-making by the judge of the preliminary investigations for the sending case for trial) 1 (one) case whose object was to change the decision of not starting a criminal proceeding and 18 cases of preventive measures where the court decision-making has been different from our requests in the court hearing.*

*After the changes in the Code of Criminal Procedure, with the amendments of law no. 35/2017, date 30.03.2017, the object of the recourse against decisions of the appellate court, became limited, highlighting the possibility of recourse only in cases where it is evident: 1. Non-compliance or incorrect implementation of the procedural law, resulting in the nullity of the decision, the absolute nullity of acts or the uselessness of evidence; 2. Non-compliance or incorrect implementation of material or procedural law, important for the unification and development of judicial practices; 3. The appeal of the decision is against the practice of the Penal College or the United Colleges of the Supreme Court.*

*This legal change led to a now consolidated process of decision-making of the Supreme Court, which resulted in non-acceptance of appeals made by both the prosecution body and the other parties in the criminal process, in cases where the debate was related to the probative value of acts in the trial, the amount of punishment as well as preventive measures, where it was analyzed the suitability of the preventive measure with the need to establish the measure and the circumstances of the fact. Under these conditions, objects of discussion are considered the cases when the procedural law enables filing the recourse and not any case when the decision-making by the Appellate Court is different from the prosecutorial discretion. This change does not make recourses formal, an element which not only reduces the effectiveness of resources, but it also the fictitious burden, which directly affects the Supreme Court performance."*

In the information dated 06.10.2021 of the prosecutor of the appellate prosecution office, on non-filing recourses by giving reason for cases under trial related to personal preventive measures and fundamental cases, referring to the inspection period, clarifications were given on cases in which the prosecutor's conclusion was different from the decision-making of the Appellate Court and specifically for 18 cases related to personal preventive measures and 4 fundamental cases. For cases under trial for the personal preventive measure, the prosecutor informed that the reason for waiving the right to file a recourse was the lack of conditions stipulated by Article 432 of the Code of Criminal Procedure, also taking also into consider the practice of the Supreme Court in similar cases, the practice of the appellate prosecution dictated by the practice of the Supreme Court. And further, under these circumstances, no information was provided for these cases, stating that: "*since I have evaluated that being cases where no legal violation was discussed, there was no need for providing information in writing. I must inform you that in no case are we talking about serious*

*criminal offenses, with serious consequences and in no case is it about persons previously convicted for any criminal offense. These have been cases that are directly related to the evaluation of the court, which of course is not always the same as the prosecutor's one."* Regarding the fundamental cases for which no recourse was filed, there are 4 cases, and after giving the reasons why waiving the right to recourse for each case related to the offense, the amount of the penalty, the defendant's age, he/she stated that: *"I have considered that even for these cases there was no need for providing information in writing, as it is beyond any discussion that there was a legal violation, yet they are related to the evaluation of the evidence and circumstances by the court, so we are out of scope of article 432 of the Code of Criminal Procedure".*

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

For the inspection period, in relation to the provisions of article 10, paragraph 3 of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General, the Head of Prosecution Office has informed the General Prosecutor by providing data on the crime state and/or the work progress in the Prosecution Office attached to Court of Appeal Tiranë, in three cases, and more specifically:

1. The list of indicators for cases tried in the first instance courts, according to the criminal offenses in Tirana Appeal Prosecution Office from January to December 2020, according to letter no. 116 prot., date 09.02.2021.
2. The annual analysis of the activity of the Appeal Prosecution Office Tiranë, from January to December 2020, sent with letter no. 67 prot., date 26.02.2021 to the General Prosecution Office.
3. The list of indicators for cases tried in the first instance courts, according to the criminal offenses in Tirana Appeal Prosecution Office from January to March 2021, sent with letter no. 496 prot., date 07.06.2021 to the Prosecution Office.

During the inspection period, it results that the internal circulation register of procedural correspondence, provided for in instruction no. 12, date 20.07.2020 of the Prosecutor General, as amended, where it is recorded relevant information of the prosecutors on concrete cases addressed to the Head of the Appeal Prosecution Office, as well as non-binding instructions issued by the latter for the prosecutors, has been kept since 29.07.2020. The first entry in the register, with number 1, is the information of a prosecutor sent to the Head of Prosecution Office, which was later returned to the prosecutor on 31.07.2020, then the second entry, recorded with number 2, is on 23.10.2020 from the same prosecutor, and the last entry for 2020 is the information with number 19, from the same prosecutor.

The above acts and information, as well as other acts, conclusions/statements of withdrawal, result to be recorded in the register by noting for each of them a protocol number, corresponding to the number in the register, the prosecutor's name without the corresponding signature; the date when



the prosecutor sends acts/information for signature to the Head of Prosecution Office; the date of when the prosecutor passes the acts for signature to the Head of Prosecution Office which in all cases is the same as the date of sending acts; the date of passing the signed acts to the prosecutor, which results to be from 24-48 hours, not counting Saturdays and Sundays (there is only some information for which the date of transferring the acts to the prosecutor is not marked and specifically with register numbers 2-27); and finally the signature of the recipient who is the relevant employee the prosecution office.

The above-described acts of the prosecutor of the Appeal Prosecution Office, which result to have been recorded in the register, are not all signed by the Head of Prosecution Office. It is found from these acts, that only the conclusion and declarations of withdrawal are signed by the head of Prosecution Office, with the note "*agree with the prosecutor's legal position*".

According to the data in the register in question, no information/conclusions/statements of withdrawal or any other procedural act results to have been recorded on behalf of any prosecutor but one. Meanwhile, from the documentation sent, it appears that during the inspection period, another prosecutor of this prosecution office has prepared conclusions/ statements of withdrawal, which result to have been signed by the Head of Prosecution Office, with the note "*agree*", "*agree with the prosecutor*" and "*agree with the legal position of the prosecutor*". It is also found that there are three acts "*declaration on waiving the right to appeal against the decision of the judicial district court Tirana*" from the prosecutor in question, for 2020 and 6 for 2021; there are 15 acts "*final conclusions*" in 2020 and 28 in 2021.

The information forwarded by the Head of Appeal Prosecution Office Tiranë, also includes the issuance, pursuant to instruction no. 12, dated 20.07.2020 of the Prosecutor General, of the regulation "On the organization and functioning of the Appeal Prosecution Office Tiranë" which regulates and norms the relations between the Head of Prosecution Office and the prosecutors as well as the recording of acts in the respective register. This regulation results to have been issued on 16.04.2021 and as it is not within the inspection period, it will not be analyzed here.

- Regarding the way of informing the Head of Prosecution Office by the prosecutor, as well as information and report of the Head of Prosecution Office to the Prosecutor General", it is established that:
- Pursuant to the general instruction of the Prosecutor General, the Appeal Prosecution Office Tiranë has started keeping the relevant register of the internal procedural correspondence since 29.07.2020, which is the date of recording entry number 1 in the register, but only the information of one prosecutor, out of three full-time prosecutors in this office, was recorded in it. The information was mainly related to waiving the right to file the recourse according to the provisions of Article 18 of the instruction and there was a piece of information for filing the recourse. There have been other cases of not filing

recourses in this Prosecution Office, which the Head of Prosecution Office has justified as a way of proceeding by the prosecutor under the circumstances of the verbal communication conditioned by the small number of prosecutors in this office – only three prosecutors, one of whom is the Head of Prosecution Office.

- It is also established that in the Appeal Prosecution Office Tiranë, the Head of Prosecution Office is informed of the statements of withdrawal the appeal of the first instance prosecutor and the final conclusions of the prosecutor of the hearing, when his legal position is different from the one of the first instance prosecutor or the decision of the judicial district court. This information has not always been recorded in the register of internal procedural correspondence, and according to the Head of Prosecution Office this depends on the way each prosecutor has chosen to inform.
- Regarding the relevant information from the prosecutors of the hearings to the Head of Prosecution Office, it results no request for information from the Head of Prosecution Office.
- The Head of Appeal Prosecution Office Tiranë results to have informed the Prosecutor General, and specifically information about the crime situation in accordance with the provisions of article 42, letter "I" of law no. 97/2016, as amended, as well as to have prepared the annual report in compliance with article 50 of law no. 97/2016, as amended. It is established that the list of indicators of the cases tried in the court of first instance according to the criminal offenses, was submitted in February and June 2021. And the annual report, pursuant to law no. 97/2016, as amended, was submitted to the General Prosecution Office in February.

➤ **Prosecution Office attached to the Court of Appeal Shkodër**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

The Head of the Appeal Prosecution Office Shkodër has informed that during the inspection period only two prosecutors out of four included in the staff structure, have exercised their functions in this prosecution office, including the Head of Prosecution Office, who was temporarily appointed on 16.11.2020 in the position of the current Head of Prosecution Office. He explained that regarding the requests for information by the Head of Prosecution Office, as well as possible responses from the prosecutors of cases, he/she has not identified cases for which it was necessary to address requests for information.

The Head of the Appeal Prosecution Office Shkodër, by order no. 40/1, date 25.11.2020 "On creating the register for the internal circulation of acts in the Prosecution Office attached to the Court of Appeal Shkodër" has created the register for the internal circulation of acts, which has started to be completed and function normally for the documentation and circulation of documents,

acts and other procedural materials in this prosecution office, in compliance with the established procedure in article 20, paragraph 2 of General Instruction no. 12/2020, of the Prosecutor General, as amended. Regarding the communication between the Head of Prosecution Office and the prosecutors, a copy of the register of internal communications between the Head of the Prosecution and prosecutors was made available.

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

As far as this type of information is concerned, the Prosecutor General results to have been informed by the Head of Appeal Prosecution Office Shkodër with letter no. 21, date 11.01.2021. Based on his request, the Prosecutor General was informed of the functions of the Appeal Prosecution Office, the instructions and acts issued, pursuant to General Instruction no. 12, date 20.07.2020 as amended.

Also, the Appeal Prosecution Office Shkodër, with letter no. 41, dated 15.01.2021, informed the General Prosecution Office of the problems at trial, as well as the draft instruction on the way of creating trial bundles, uniting practices, standardization and coordination of work pursuant to General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended.

In compliance with the provisions of article 10, paragraph 3 of General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, regarding the obligation of the Head of Prosecution Office to inform periodically the Prosecutor General of the crime state and to send the Annual Report according to the provisions of Article 42, letter "I" and Article 50 of the law no. 97/2016 *"On the organization and functioning of the Prosecution Office in the Republic of Albania"*, as amended, it results that the Head of this prosecution did not send any periodic information to the Prosecutor General, while the Annual Report on the work progress in the Appeal Prosecution Office Shkodër for 2020, was sent to the Prosecutor General with letter no. 231 prot., dated 24.02.2021, recorded in the General Prosecution Office with No. 68/5 prot., date 26.02.2021.

Regarding the way the prosecutors inform the Head of Prosecution Office, as well as informing and reporting the Prosecutor General by the Head of Prosecution Office, it is found that:

- In the Appeal Prosecution Office Shkodër, even though the general instruction no. 50, dated 21.12.2020, of the Head of Prosecution Office was approved, it results that there are no requests for information according to the general instruction, addressed to the prosecutor who exercises his/her functions this prosecutor's office; also there is no evidence if the Head of Prosecution Office is informed through the statements of withdrawal of the appeal of the first instance prosecutor and the final conclusions of the hearing prosecutor, when his legal position is different from the one of the first instance the prosecutor or even the decision of the judicial district court.

- Pursuant to general instruction no. 12/2020, as amended, it was created and the relevant register of internal procedural correspondence started to be kept.
- The Head of the Appeal Prosecution Office Shkodër, results to have informed the Prosecutor General, of the implementation of the general instructions of the Prosecutor General and of the internal regulations on the organization and functioning of the prosecution office, while no periodic information on the crime state was found in accordance with the provisions of article 42, letter "1" of law no. 97/2016, as amended. The Annual Report was prepared and sent to the General Prosecution Office, in accordance with the obligation according to article 50 of the law no. 97/2016, as amended.

➤ **. Prosecution Office attached to the Court of Appeal Korçë**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

The Prosecution Office attached to the Court of Appeal Korçë, submitted the information regarding the requests for information by the Head of Prosecution Office or the person delegated by him, for the inspection period 01.10.2020-31.03.2021, the appeal prosecutor results to have informed the Head of the Appeal Prosecution Office Korçë on 09.10.2020, of his/her decision to withdraw from the prosecutor's appeal for the criminal case "*Appeal against decision no. 286, dated 17.09.2020 of the Judicial District Court Korçë, with object "Validating the arrest in flagrante delicto and imposing the precautionary measure against the citizen R. H under investigation"*". Having been informed of the information, the Head of Prosecution Office agreed with the prosecutor's request for withdrawing from the prosecutor's appeal. The note dated 9.10.2020 of the Head of Prosecution Office was made in handwriting in the prosecutor's act "*Information on withdrawing from the prosecutor's appeal*", while it was entered in the register on 09.10.2020. This information from the appeal prosecutor in Korçë, recorded with no. 3, date 09.10.2020 results to have been protocolled in the internal communications protocol book (ICPB).<sup>[56]</sup>

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<sup>56</sup>According to the standard format of the register "*In evidence of a practice, it is written the number the document receives in the protocol register. The fractions of the number, which receive all documents of a practice until its closer, are written under the full number. There are left some empty lines below the full number, for recording these documents with fractions, of the given practice. Practices are separated from each other by a thick line. When it is necessary, the practice can be transferred to another page of the register by noting: "Passes to page ... "*".

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

The Head of Prosecution Office, regarding the practices of informing and reporting to the Prosecutor General, according to the provisions of Article 42, letter "I" and Article 50, has reported to the Prosecutor General on the activity of this institution through the "*Report on the activity of the Appeal Prosecution Office Korçë for the period of time from 01.01.2020 to 31.12.2020*".

Pursuant to Article 20 of general instruction no. 12/2020, as amended, it results that with general instruction no. 1, dated 10.09.2020 of the Head of Prosecution Office, it is created the internal communications protocol book (ICPB) according to the model defined in annex no.1 of instruction no. 12/2020, as amended of the Prosecutor General, and its completion and administration has begun according to the procedure defined in article 20 of instruction no. 12/2020, as amended of the Prosecutor General. Considering the communication between the Head of Prosecution Office and the prosecutors, it was made available a copy of the register of internal communications between the Head of Prosecution Office and the prosecutors, which is completed according to the provisions of article 20 of general instruction no.12/2020, as amended.

Regarding the way the Head of Prosecution Office is informed by the prosecutor, it results that there are no cases in accordance with articles 8, paragraph 2, letter "c" and 18 of general instruction no. 12/2020, as amended. One case is about the information of the appellate prosecutor on his/her decision to withdraw the appeal of the first instance prosecutor, which the Head of Prosecution Office has agreed with, making a note in handwriting on the prosecutor's act. This information of the appellate prosecutor Korçë results to have been recorded with protocol no. 3, dated 09.10.2020 in the ICPB<sup>57</sup>. General Instruction no.12/2020 of the Prosecutor General, as amended, Article 18 "Information on representing the case in the court of appeal", according to which the prosecutor informs the Head of Appeal Prosecution Office of the progress of the case tried in the court of appeal for cases where the defendant is under arrest, cases where the Appellate court does not accept the request of the appellate prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and/or the penal measure, whether he/she will file a recourse against the decision of the appellate court as well as the cases where after filing the recourse, the prosecutor has become familiar with new circumstances which serve the trial of the case.

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<sup>57</sup>According to the standard format of the register "In evidence of a practice, it is written the number the document receives in the protocol register. The fractions of the number, which receive all documents of a practice until its closer, are written under the full number. There are left some empty lines below the full number, for recording these documents with fractions, of the given practice. Practices are separated from each other by a thick line. When it is necessary, the practice can be transferred to another page of the register by noting: "Passes to page ...".

- According to paragraph 2, article 20 of instruction no. 12/2020, as amended of the Prosecutor General, it turns out that the Internal Communications Protocol Book (ICPB) was created and kept in compliance with the model defined in attachment no. 1, of general instruction no. 12/2020, as amended.
  - The information and reporting of the Head of Prosecution Office to the Prosecutor General, results to have been done in accordance with general instruction no. 12/2020, as amended, article 10, paragraph 3, regarding the submission of the Annual Report for 2020.
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➤ **Prosecution Office attached to the Court of Appeal Gjirokastër**

- **Request for information by the Head of Prosecution Office addressed to prosecutors**

According to the data received from the Appeals Prosecution Office Gjirokastër, it results that for the inspection period 01.10.2020-31.03.2021, this prosecution office has been represented by a single prosecutor since July 2019, who also performs the duty of the temporary Head of this prosecution office.

For the inspection period, in relation to the provisions of article 18, paragraphs 1 and 2 of general instruction no. 12, dated 20.07.2020 of the Prosecutor General, as amended, the Head of Appeal Prosecution Office, has informed that he/she was informed in due time of general instruction no. 12, dated 20.07.2020, as amended of the Prosecutor General and with the obligation for its implementation. However, since he was the only prosecutor in the Appel Prosecution Office Gjirokastër, also holding the position of the Head of this Prosecution Office, he has explained that the requests for information by the Head of Prosecution Office, as well as the information provided by the prosecutor, according to the provisions of general instruction no. 12/2020, as amended as well as the creation of the register of internal communications between the Head of Prosecution Office and the prosecutors, according to the provisions of Article 20 of general instruction no. 12/2020, as amended, cannot not be implemented.

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

The Head of Prosecution Office, has submitted the information that for the inspection period, in relation to the provisions of article 10, paragraph 3 of General Instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, regarding the obligation to inform and report to the Prosecutor General, according to the provisions of Article 42, letter "l" and Article 50 of Law No. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, this obligation has been implemented according to the law as far as the annual reporting is concerned. The period of time within which the inspection takes place, from 01.10.2020 until 31.03.2021, coincides also with the preparation of the Annual Report on the work

progress in the Appeals Prosecution Office Gjirokaštër for 2020, report which was sent to the General Prosecution Office by email on 09.03.2021 "On the annual analysis2020".

- Regarding the Appeal Prosecution Office Gjirokaštër, under the circumstances where only one prosecutor, who was also the Head of this Prosecution Office, has exercised his function during the inspection period, it is found that it was impossible to implement the requirements related to the requests by the Head of Prosecution Office/prosecutor's information as well as the creation of the register of the internal circulation of procedural correspondence, provided for in Article 20 of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General, as amended, since the purpose of this register is to record all the internal communications between the Head of Prosecution Office and the prosecutors, documents, acts or related materials, among them even requests/information mentioned above, as well as the non-binding instructions that the Head of Prosecution Office could have issued for the prosecutors.

➤ **Prosecution Office attached to the Court of Appeal Durrës**

**Request for information by the Head of Prosecution Office addressed to prosecutors**

According to the information sent by the Head of Appeal Prosecution Office Durrës, regarding the information on representing the case in the Court of Appeal, according to the provisions of Article 18 of general instruction no. 12, dated 20.07.2020, as amended, the Head of the Appeal Prosecution Office Durrës, has repeatedly requested from the prosecutors (not documented), that in the assigned files by drawing lots, they should pay special attention to the expiration of the time limit of precautionary measures before the trial date in the Court of First Instance as well as informing the Head of Prosecution Office of such cases and the procedure to be followed, by sending the Court of Appeal Durrës the requests for removing the measures. The request of the Head of Prosecution Office for keeping in mind and identifying these cases has been constantly present in the meetings held with the prosecutors, being recorded in the written minutes of these meetings (for illustration, the attached minutes). Regarding this fact, the Head of Prosecution Office has explained that due to understaffing (not enough prosecutors) as well as the workload of the Head of Prosecution Office – almost the same with the prosecutors' workload, it was followed the methodology of the preliminary discussions of cases; no case was deemed necessary for the prosecution of these cases that prosecutors with a different legal position, inform in writing the Head of Prosecution Office according to instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended. Meanwhile, for other cases of minor offenses, the Head of Prosecution Office did not intervene with the prosecutor's legal position regarding alternative sentencing, lesser punishments, or in any case regarding preventive measures where the prosecutor has withdrawn from the appeal of the first instance prosecutor.

Regarding the obligation of the prosecutor of the case to inform the Head of Prosecution Office if he decides to file a recourse against the decision of the court of appeal in cases when this court has not accepted the request of the appellate prosecutor regarding the declaration of guilt, the legal nature of the offence, the type of punishment and/or the penal measure, it is informed that the Appeal Prosecution Office Durrës, the prosecutor immediately after concluding the case, closes the trial bundle of the prosecutor, with the informative card on the progress of the case, which, among other things, also contains a column on the prosecutor's decision to file a recourse. This card is presented to the Head of Prosecution Office, who in some cases, when he finds out that the prosecutor of the case would not file a recourse, asks them to record in the card the reasons for non-filing the recourse (as an example, the attached card model).

- **Information/report of the Head of Prosecution Office for the Prosecutor General**

Regarding information and reporting to the Prosecutor General, pursuant to Article 42, letter "I" of law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, to guarantee the implementation of the instruction of the Prosecutor's General, the Head of Appeal Prosecution Office Durrës has issued internal acts such as:

-Instruction no. 1, dated 07.09.2020 "On the implementation of General Instruction No. 12, dated 20.07.2020, of the Prosecutor General, as amended, communicated and forwarded to the Monitoring Office in the General Prosecution Office.

- The regulation on functioning of the Appeal Prosecution Office Durrës was drafted, and approved by order no. 4, dated 27.01.2021 of the Head of Appeal Prosecution Office. This act was communicated for information and implementation, to prosecutors and the administration of the Appeal Prosecution Office Durrës, as well as being forwarded to the General Prosecution Office, with letter no. 84 prot., date 27.01.2021.

- The Head of Prosecution Office results to have issued internal orders, on the progress and functioning of the Appeal Prosecution Office Durrës, to assign duties and responsibilities to the prosecutors and staff, such as the appointment of the deputy prosecutor, the appointment of the prosecutor for accessing the database, the appointment of the prosecutor and the coordinating officer in relation to the public and media, the appointment of the office clerk responsible for the transparency program, orders for the performance and allocation of functional tasks of the administration, as well as other orders for a good administrative management of the institution.

-Pursuant to Article 50, paragraph 2 of Law no. 97/2016 "*On the organization and functioning of the Prosecution Office in the Republic of Albania*", as amended, the Head of Prosecution Office submitted within the legal deadline, the Annual Report on the activity of the Appeal Prosecution



Office Durrës for 2020. This report was sent to the General Prosecution Office with letter no. 218 prot., date 25.02.2021.

Regarding the register of internal communications, according to paragraph 2, article 20 of General Instruction no. 12/2020, as amended of the Prosecutor General, and paragraph 12 of instruction no. 1, dated 07.09.2020 of the Head of Appeal Prosecution Office Durrës, the circulation of documents, acts and investigative materials, between the Head of Prosecution Office and the prosecutors, is carried out by recording the protocol numbers in the register of internal communications. In function of this communication, the head secretary, in addition to the protocol book of incoming and outgoing written correspondence has created the Internal Communications Protocol Book (ICPB), according to the model defined in attachment no. 1 of General Instruction no. 12/2020, as amended, of the Prosecutor General, and continues with its administration and keeping it according to the procedure provided in article 20 of instruction no. 12/2020, of the Prosecutor General, as amended, (attached, photocopy of the ICPB book).

- Considering the way the prosecutors inform the Head of Prosecution Office, it turns out that there are no documented cases, in accordance with articles 8, paragraph 2, letter "c" and 18 of general instruction no. 12/2020, as amended, which means no information from the prosecutors, based on the requests of the Head of Appeal Prosecution Office. Consequently, according to the legal position of the Head of Prosecution Office, it is followed the old procedure of keeping a card at the end of trial in the court of appeal, as well maintaining the position of the preliminary case discussion with the prosecutors, while it is necessary to respect the provisions of the procedure of article 18, paragraphs 1 and 2 of general instruction, recording the cases of information according to this provision in the register.
- Regarding the information and reporting of the Head of Prosecution Office to the Prosecutor General, the general instruction no. 12/2020, as amended, results to have been implemented according to articles 10, paragraph 3, by sending the Annual Report, drafting and approving the regulation on the functioning of the Appeal Prosecution Office and also by issuing internal orders.
- According to paragraph 2, article 20 of instruction no. 12/2020, of the Prosecutor General, as amended, the Internal Communications Protocol Book (ICPB) results to have been created according to the model defined in attachment no. 1 of general instruction no. 12/2020, as amended.
- According to the annual report for 2020 of the Prosecution Office attached to the Court of Appeal Durrës, it turns out that regarding the appeals, the prosecutors of this Prosecution Office in most cases have maintained the same legal position with the prosecutors of the Prosecution Office attached to the Court of First Instance Durrës, both in the Court of Appeal Durrës and in filing the recourse to the Supreme Court. It results that only in some

cases the appellate prosecutors of this office have withdrawn the appeal made by the first instance prosecutor.

➤ **General Prosecution Office**

The General Prosecution Office has submitted the practices related to information and reporting to the Prosecutor General by the Heads of Prosecution Offices, according to the provisions of Article 42, letters "g" and "l" and Article 50 of Law No. 97/20 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended, as well as the documented practice of the Monitoring Office in the framework of the supervision of implementation of general instruction no. 12/2020, as amended.

- A) Considering the information of the Prosecutor General, it was found that during the inspection period, through letter no. 968/5, date 01.10.2020 the Prosecutor General, requested the prosecution offices attached to courts of first instance of general jurisdiction and courts of appeal, **information on the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020**. In the framework of the implementation of the Priority Recommendations "*On... the fight against crime for 2020*" approved with decision no. 501, dated 24.06.2020, of the Council of Ministers, general instruction no. 11, dated 20.07.2020 "*On the priority recommendations of the Council of Ministers in the fight against criminality for 2020 in the prosecution offices of general jurisdiction*" and order no. 112, dated 27.07.2020 "*On the approval of the action plan for the implementation of the "Recommendations of the Council of Ministers in the fight against crime for 2020"*", which were sent to the prosecution offices with letter no. 968/4, dated 27.07.2020, of the Prosecutor General, as the authority that oversees the implementation of general instruction and takes care of the exercise of constitutional and legal powers of the prosecution, with the aim of monitoring their implementation, the Prosecutor General has requested information on the progress of the implementation of these recommendations, of general instruction no. 11/2020 and the action plan approved by order no. 112/2020, on the implementation of the recommendations, accompanied by the statistical indicators for the 9th month period of 2020, and with clear explanations on the prosecution office commitments, achievements and problems, as well as the legislative or budgetary needs that are deemed to affect their implementation.

**The Prosecution Offices of general jurisdiction attached to the courts of first instance and courts of appeal**, were requested to inform of the administrative measures taken according to the law on issuing the general instruction as well as drafting and approving an action plan to ensure the implementation of priority

recommendations, in accordance with the specifics and condition of the prosecution office; measures taken on the internal reorganization; of procedural measures on investigations progress, criminal prosecution and representation of prosecution in trial, of the directions and legal issues treated in the recommendations, as well as to facilitate and guarantee the implementation of the general instructions and the action plan for the implementation of the recommendations, regarding: issuance of non-binding instructions on concrete cases in the preliminary stage of investigations for criminal offenses according to subject competence and in the recommended priority directions; the verification of the progress and conclusions of cases for priority criminal offenses recommended; the procedural measures taken by the prosecutors regarding the priority recommendations on the fight against criminality and the implementation of general instruction no.11/2020, or the instructions issued by the Head of Prosecution Office to guarantee its implementation, to increase the efficiency in the fight against criminality and the implementation of new institutes of criminal proceedings, according to the recommended priorities, while maintaining independence from any illegal influence on their decision-making, in the specified directions, the implementation of the general instructions of the Prosecutor General, including general instruction no. 5/2018 "On guaranteeing assistance to victims and witnesses of criminal offences" according to the priority areas/directions recommended.

Considering the above, the Heads of Prosecution Offices have been requested to send the information within 18.10.2020 to the General Prosecution Office, (officially also in electronic form), accompanied by issued acts (general instructions and/or plans of action) pursuant to general instruction no. 11/2020, on the priority recommendations in the fight against criminality for 2020.

Also, during the inspection period, according to letter no. 943/6, date 05.10.2020, the Prosecutor General has requested, from the prosecution offices of general jurisdiction of first instance and appeal, **information within the framework of the implementation of Resolution of the Assembly of Albania** "*On the assessment of the prosecution office activity for 2019*" dated 18.06.2020 and order no. 103, dated 17.07.2020 "*On the approval of the action plan for the implementation of the Resolution of the Assembly dated 18.06.2020*", which were sent for information and implementation to the prosecution offices of general jurisdiction with letter no. 943/3 prot., date 17.07.2020 of the General Prosecution Office. In the framework of monitoring their implementation, the Prosecutor General has requested information on the implementation progress of the requests/recommendations of the Resolution of the Assembly for 2020 and the action plan approved by order no. 103/2020, for its implementation, accompanied by statistical indicators for the 9th

month period of 2020, and with explanations on the commitments of the prosecution offices, achievements and problems, as well as legislative or budgetary needs that are deemed to affect their implementation.

**The Prosecution Offices attached to the Courts of First Instance** have been requested to give information on the administrative measures taken according to the law, on issuing the general instruction and drafting and approving an action plan to ensure the implementation of the requests/recommendations of the Resolution, as well as various data related to conducting in-depth investigations to discover collaborations in committing criminal activity; strengthening the transnational cooperation in the war against crime; increasing the inter-institutional cooperation to improve the performance of criminal justice system and especially the increase of professional capacities in the fight against money laundering and the products of criminal activity, financial crime and assets investigations, for the seizure and confiscation of criminal assets/products, the number of parallel investigations for the criminal offense of money laundering according to typologies, in the implementation of general instructions no. 10/2020, financial investigations and asset investigations according to typologies and the seizure of assets/products of criminal offense, as well as on implementation of instruction no. 5/2018 "*On guaranteeing assistance to the victims and witnesses of criminal offenses*" related to the treatment of victims and their protection during the criminal proceedings under investigation and trial, as well as the training of victim coordinators.

**The Prosecution Office attached to the Courts of Appeal** of general jurisdiction have been requested to provide information on the progress of the cases as mentioned above, during the appeal review process in the court of appeal, the legal positions of the prosecutors with their requests and the court decision related to them, the achievements and problems found during their review and suggestions for taking the necessary measures for their solution.

The Heads of Prosecution Offices have been asked to prepare the information and send it within 21.10.2020 to the General Prosecution Office, (officially also electronically), accompanied by issued acts (general instruction and/or action plan) in the implementation of the action plan approved by order no. 103/2020, for the implementation of requests/recommendations of the Resolution of the Assembly of Albania dated 18.06.2020.

As a response to the requests of the Prosecutor General, the Heads of Prosecution

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Offices result to have sent on time, but also after the deadline had closed [<sup>58</sup>], the information requested by the Prosecutor General. Also, in the material submitted the General Prosecution Office with letter no. 969/1 prot., date 02.07.2021, no response with information results to have been sent by the Prosecution Office attached to the Court of First Instance Tiranë, the Appeal Prosecution Office Tiranë, the Appeal Prosecution Office Shkodër, the Appeal Prosecution Office Gjirokastër.

**The Head of Prosecution Office attached to the Court of First Instance Durrës** in response to letter no. 968/5 prot., dated 02.10.2020, of the Prosecutor General, regarding the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020, has provided informed with letter no. 4139/1, dated 19.10.2020, on the progress of the implementation of these recommendations and the instructions of the Prosecutor General no. 11 /2020, as well as the action plan approved by order no. 112/2020, for the implementation of the recommendations. In response to letter no. 943/6 prot., date 05/10/2020 of the Prosecutor General, the Head of Prosecution Office attached to the Court of First Instance Durrës, with letter no. 4137/1, dated 21.10.2020, sent information regarding the implementation of the Resolution of the Assembly of Albania dated 18.06.2020 and order no. 103, dated 17.07.2020, *"On the approval of the action plan for the implementation of the Resolution of the Assembly dated 18.06.2020"*.

According to the information sent, the aforementioned instructions and orders result to have been implemented, regarding the organization of the general meetings of the prosecutor, who have been notified of the priority recommendations and the Resolution of the Assembly, and after discussions, the action plan no. 79, dated 23.09.2020 was issued to ensure the implementation of the priority recommendations/requests of the Assembly Resolution. Considering the internal reorganization during the 9th month period of 2020, pursuant to instruction no. 10/2020, of the Prosecutor General, it was issued order no. 69, date 30.07.2020, on the internal organization by creating four sections. Concrete measures have been provided for each priority, the entities that will implement them, the budget of the prosecution office which covers each of these measures. Also, there have been information on data related to the criminal offences subject to priority recommendations, the number of registered and concluded proceedings, their typologies and problems, international cooperation and the particular forms of

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<sup>58</sup>Prosecution Office attached to the Court of First Instance Durrës  
Prosecution Office attached to the Court of First Instance Korçë,  
Prosecution Office attached to the Court of First Instance Shkodër  
Prosecution Office attached to the Court of Appeal Durrës,

cooperation. In compliance with instruction no. 5/2018 "Rules on guaranteeing assistance to victims and witnesses of criminal offenses" in the Prosecution Office attached to the Court of First Instance Durrës, the role of coordinator is exercised for subjects with specific status. Regarding the procedural measures during the investigative phase, the criminal prosecution, representation of accusations/cases in court, the Head of Prosecution Office attached to the Court of First Instance Durrës has informed that prosecutors have been instructed to use penal orders and plea agreements; in special cases, when it was deemed necessary, non-binding instructions have been compiled; it has been requested information related to backlog of criminal proceedings or cases with persons under arrest.

**The Head of Prosecution Office attached to the Court of First Instance Elbasan** with letter no. 10125, dated 19.10.2020, informed the Prosecutor General as requested by the latter, with letter no. 943/6, dated 05. 10.2020 "On the implementation of Resolution of the Assembly of Albania dated 18.06.2020" and letter no. 968/5, dated 02.10.2020 "On the implementation of Priority Recommendations of the Council of Ministers in the fight against crime for 2020".

According to the information provided by the Head of Prosecution Office attached to the Court of First Instance Elbasan, this Office has taken the necessary organizational measures for the implementation of requests/recommendations of the Resolution of the Assembly of Albania and Priority Recommendations of the Council of Ministers for 2020. The Head of Prosecution Office attached to the Court of First Instance of Elbasan has issued various orders and instructions to facilitate the implementation of the Resolution of the Assembly of Albania dated 18.06.2020, on the functioning of the judicial police, the organization of sections, on the standards of using the verification materials and the investigation of criminal cases related to money laundering and assets investigations; it was issued the action plan dated 27.07.2020 "On the implementation of priority recommendations of the Council of Ministers in the war against the criminality for 2020 in the Prosecution Office attached to the Court of First Instance Elbasan"; it was issued general instruction no. 39, dated 07.09.2020 "Based on and for the implementation of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General " *"On the regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in the prosecution office of general jurisdiction"*; it was issued general instruction no. 44, dated 09.10.2020 " Based on and for the implementation of General Instruction no.10 dated

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

17.07.2020, "On administrative and procedural measures for increasing the effectiveness in the fight against money laundering, financial crimes, financing terrorism and in assets investigations in the Prosecution Office of General Jurisdiction"; there were issued non-binding instructions on specific cases. After creating the special section against money laundering, financial crimes, financing of terrorism and assets investigation, the Head of Prosecution Office has organized meeting with the prosecutors and the Head of this section to inform them of the recommendations of the Resolution of the Assembly and the Priority Recommendations of the Council of Ministers for 2020 with a view to increasing effectiveness in the fight against laundering the proceeds of criminal offence or criminal activity, appropriation of money or goods resulting from criminal offence or criminal activity, criminal offenses in the field of customs, in the field of taxes and duties, property investigation, corruption, domestic violence, etc. Pursuant to instruction no. 5/2018 "Rules on guaranteeing assistance to victims and witnesses of criminal offenses" in the Prosecution Office attached to the Court of First Instance Elbasan, the role of coordinator is exercised for subjects with special status.

**The Head of Prosecution Office attached to the Court of First Instance Fier** has sent information with letter no. 7893, dated 21.10.2020, regarding the implementation of the Resolution of the Assembly and with letter no. 7767, dated 16.10.2020 on the implementation of priority recommendations of the Council of Ministers in the fight against crime for 2020, approved by DCM no. 501, dated 24.06.2020, informing that it was issued the general instruction *"On facilitating the implementation of General Instruction No. 11, date 20. 07.2020, of the Prosecutor General "On the priority recommendations of the Council of Ministers in the fight against crime for 2020 in the Prosecution Office of General Jurisdiction", as well as the order "On approving the action plan in the Prosecution Office attached to the Court of First Instance Fier for the implementation of the "Recommendations to the Council of Ministers in the fight against crime for 2020".* In the general meeting of the prosecutors in Fier Prosecution Office, there have been an ongoing process of informing the prosecutors of these recommendations with the aim of implementing them efficiently.

The information regarding the implementation of the requirements of the Resolution of the Assembly also includes the number of criminal proceedings submitted to the jurisdiction of Special Prosecution Office, measures taken for the internal reorganization, regarding which it was issued order no. 62, date 25.07.2020

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

*"On the organization of sections in the Prosecution Office attached to the Court of First Instance Fier", pursuant to general instruction no. 10, date 17.07.2020 of the Prosecutor General " On administrative and procedural measures for increasing the effectiveness in the fight against money laundering, financial crimes, financing terrorism and in assets investigations in the Prosecution Office of General Jurisdiction."* The information continues with the number of registered and concluded proceedings, requests and criminal offences subject to the resolution, such as international cooperation, the criminal offences of laundering the proceeds of criminal offence or criminal activity, appropriation of money or goods resulting from criminal offence or criminal activity, criminal offenses in the field of taxes and duties, property investigation, corruption, domestic violence, Juvenile Delinquency cases etc., as well as the implementation of instruction no. 5/2018 "Rules on guaranteeing assistance for victims and witnesses of criminal offenses" choosing from the coordinator at this prosecution office since June, 2019.

The information on the implementation of the Priority Recommendations includes data on Juvenile Delinquency cases, mainly registered cases, on jurisdictional relations with foreign authorities, criminal offenses in the field of taxation and tariffs, sexual crimes, human trafficking, domestic violence, theft through abuse of office and abuse of office, corruption, criminal acts against environment, criminal acts in the field of narcotics, laundering the proceeds of criminal offence or criminal activity, investigative material or criminal charges submitted to the jurisdiction of Special Prosecution Office, cooperation with other state institutions and law enforcement agencies with a special role in the fight against the priority criminal offenses, implementation of the penal order, plea agreement for priority criminal offenses recommended. Pursuant to General Instruction no. 12, date 20.07.2020, as amended, of the Prosecutor General, of Prosecuti the Head of Prosecution Office attached to the Court of First Instance Fier, issued general instruction no. 65, date 04.09.2020 *"On the regulation of relations between prosecutors and the head of the prosecution offices, information, transparency and guarantee of independence in the Prosecution Office attached to the Court of First Instance Fier "*

Regarding the issuance of non-binding instructions on specific cases, the Head of Prosecution Office has informed to have issued instruction no. 42, dated 20.05.2020 on performing further procedural actions in the criminal proceedings no. 492, of 2020. Regarding the measures taken by the Head of Prosecution Office in the framework of measures that facilitate the implementation of the priority

## **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



recommendations, it is clarified that the verification of the progress and conclusion of cases for the recommended criminal offenses, has been the focus of the Head of Prosecution Office at every general meeting held with the prosecutors, as well as in the meetings with the heads of sections. Considering the general instructions of the Prosecutor General in force, the Head of Fier Prosecution Office has issued general instructions with the aim of facilitating the implementation of the instructions of the Prosecutor General, which have been communicated to all prosecutors, judicial police officers and administration, and other interested institutions. Both the instructions of the Prosecutor General, as well the instructions of the Head of Prosecution Office have become the object of the meetings with the prosecutors, aiming at their efficient understanding and implementation.

**The Head of Prosecution Office attached to the Court of First Instance Korçë** has sent information with letter no. 5790, dated 20.10.2020, following the request no. 943/6, date 05.10.2020 of the Prosecutor General, on the implementation of requests/recommendations of the Resolution of the Assembly for 2020 and the action plan approved by order no.103/2020, for its implementation. He has also has sent information with letter no. 5799, dated 20.10.2020, in response to the request no. 968/5 prot., date 02.10.2020 of the Prosecutor General, on the progress of the implementation of general instruction no. 11/2020 and the action plan approved by order no. 112/2020, on the implementation of Priority Recommendations of the Council of Ministers in the fight against crime for 2020.

This information includes data on the administrative measures taken according to the law on issuing the general instruction and on drafting and approving an action plan for facilitating the implementation of the requests/recommendations of the Resolution. Considering the Resolution, the Prosecution Office attached to the Court of First Instance Korçë, has brought to all prosecutors' attention, the requests of the Resolution, during the meetings with the prosecutors, where they have discussed the problems and the achievement of results; the data that indicate and show the conduct of in-depth investigations to discover the forms of specific collaboration in criminal activity; increasing inter-institutional cooperation to increase the efficiency of the criminal justice system and especially to increase the professional capacities in the fight against money laundering and proceeds of criminal activity, financial crime and assets investigations, for the seizure and confiscation of criminal assets/proceeds; data that indicate the strengthening of international cooperation in the fight against crime; data (statistical and analytical) on the number of parallel investigations for the criminal offense of money laundering according to typologies, pursuant to general instruction no. 10/2020,

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

property proceedings during 2020, needs for human resources, as well as assessing the situation and addressing the needs for training prosecutors and judicial police officers, also on the implementation of instruction no. 5/2018 "On guaranteeing assistance to the victims and witnesses of criminal offenses" related to the treatment of victims and their protection during the criminal proceedings under investigation and trial, as well as the training of victim coordinators.

According to the information sent, on the progress of the implementation of the recommendations, general instruction no. 11/2020 and the action plan approved by order no. 112/2020, on the implementation of Priority Recommendations of the Council of Ministers in the fight against crime for 2020, regarding the administrative measures taken, pursuant to the law on issuing general instructions and on drafting and approving an action plan to facilitate the implementation of priority recommendations, in accordance with the specifications and the situation of the Prosecution Office attached to the Court of First Instance Korçë, in this specific case it was deemed necessary to issue the general instruction, in compliance with the summary of recommendations with a view to giving a clearer orientation to the government priorities. The focus of the Prosecution Office attached to the Court of First Instance Korçë, has been the independence of the prosecutor who efficiently leads the investigation of a criminal case, since, on the other hand, it is the activity of the court that constitutes also the main mechanism of control and accountability of the prosecutor. The Head of Prosecution Office, has issued instructions in order to facilitate the implementation of the general instructions of the Prosecutor General. He has issued non-binding instructions on concrete cases. At the same time, information on the progress of certain cases has been requested, with the aim of emphasizing the investigative actions which are considered important for the successful completion of the investigation of a certain criminal case. The information includes data on criminal offenses against corruption and financial crime, against organized crime, laundering the proceeds of criminal offenses, the application during 2020, of the new institutes of the Code of Criminal Procedure, as amended, the penalty order, the plea agreement, criminal trial, institutional cooperation and other criminal offenses subject to recommendations.

**The Prosecution Office attached to the Court of First Instance Shkodër** in response to letter no. 985/5, dated 02.10.2020, of the Prosecutor General, sent information with letter no. 7700/1, dated 20.10.2020, regarding the measures taken for the implementation of the recommendations of the Council of Ministers in the

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

fight against crime for 2020, as well as in implementation of general instruction no. 11, date 20. 07.2020 "On the Priorities Recommendations of the Council of Ministers in the fight against crime for 2020 in the Prosecution Office of General Jurisdiction", and order no. 112, dated 27.07.2020 "On the approval of action plan for the implementation of the Recommendations of the Council of Ministers in the fight against crime for 2020". The Head of Prosecution Office attached to the Court of First Instance Shkodër, with letter no. 7699/1, dated 23.10.2020, in response to letter no. 943/6, dated 05.10.2020, of the Prosecutor General, has sent information on the measures taken for the implementation of the Resolution of the Assembly of Albania " On the evaluation of the prosecution office performance for 2019", dated 18.06.2020 and order no. 103, dated 17.07.2020 "On the approval of action plan for the implementation of the Assembly Resolution, dated 18.06.2020".

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the fight against crime for 2020, as well as general instruction no. 11, date 20.07.2020 "On the priority recommendations of the Council of Ministers in the fight against crime for 2020 in the prosecution office of general jurisdiction", and order no. 112, dated 27.07.2020, "On the approval of the action plan for the implementation of the Recommendations of the Council of Ministers in the fight against crime for 2020", considering the sufficient details of these by-laws and the time when they were issued. On the other hand, the Head of Prosecution Office has issued specific orders and instructions on specific cases and has required information regarding the concrete cases subject to the Priority Recommendations, in relation to criminal offenses in the field of corruption, criminal offenses in the field of narcotics, laundering of the proceeds of the criminal offences or criminal activities, property investigations, criminal proceedings that have been investigated with the special investigation methods, in relation to the punishment measures for criminal offenses in the corruption field and abuse of powers, in the field of narcotics, or crimes against the person, juvenile delinquency cases, in relation to strengthening of inter-institutional cooperation, etc. Regarding instruction no. 5/2018 "On guaranteeing the assistance to victims and witnesses of criminal offenses", a satisfying job is informed to have been done. Not only was the instruction sent and brought to the attention of the prosecutors, but it was also implemented in practice by providing assistance and support to the victims of the crime as well as to the witnesses.

**The Head of Prosecution Office attached to the Court of Appeal Durrës**, in response to letter no. 943/6, dated 05.10.2020, sent the information requested by

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

the Prosecutor General with letter no. 1050, dated 26.10.2020 on the implementation of the recommendations of the Resolution of the Albanian Assembly. With letter no. 1027, date 21. 10.2020 it has been sent information on the implementation of the priority recommendations of the Council of Ministers in the fight against crime for 2020, requested with letter no. 968/5, date 2.10.2020 of the Prosecutor General.

This information includes in a summarized way, the general work performance indicators of the Durrës Appeal Prosecution Office from January to September, 2020, for criminal offenses in the fight against: corruption, organized crime, money laundering, trafficking, narcotics, terrorism, incitement to hatred, family and environment, according to the recommendations of the Resolution and the Council of Ministers.

**The Head of Prosecution Office attached to the Court of Appeal Korçë,** informed the Prosecutor General of the implementation of the resolution of the Assembly of Albania dated 18.06.2020, with letter no.548, dated 21.10.2020, and with letter no. 540, dated 16.10.2020, gave information on the implementation of the priority recommendations of the Council of Ministers in the fight against crime for 2020.

The information of this prosecution office includes data related to the trial of criminal offenses against corruption, narcotics, organized crime, criminal offenses against children, marriage and family, preventive measures, etc. The main objective of 2020, is to increase the effectiveness of the appeal prosecution and give priority to the cases against crime, within the framework of the implementation of the priority recommendations of the Council of Ministers, the Resolution of the Assembly and the Action Plan, as well as the orders and instructions of the Prosecutor General.

**The Head of Prosecution Office attached to the Court of Appeal Vlorë** in response to letter no. 943/6, dated 05.10.2020, of the General Prosecution Office, informed with letter no. 793, date 20.10.2020, of the implementation of the resolution of the Assembly of Albania, as well as order no.103, dated 17.07.2020, of the Prosecutor General "On the approval of the action plan for the implementation of the Resolution of the Assembly dated 18.06.2020".

According to the information of this Prosecution Office, the Resolution of the Assembly of Albania and order no. 103, dated 17.07.2020, of the Prosecutor

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

General as well as the attached materials were sent to all the prosecutors of this office, so that they could be informed and discuss them in the periodic meeting of the prosecutors of this office. These materials were discussed at the prosecutors meeting on 20.07.2020. After the discussions, the prosecutors came to the conclusion that, due to the nature of the appeal prosecution, where there is no preliminary investigation and no section of the judicial police, it was not necessary for the Head of Prosecution Office to issue a specific general instruction, since the provisions of order no. 103, date 17.07.2020, of the Prosecutor General and the Action Plan accompanying the material are sufficient to lead the activity of the appeal prosecutor in the cases included in the Resolution of the Assembly focusing on criminal offenses in the field of laundering proceeds of criminal offenses or criminal activity. Also, another conclusion of the same meeting was the agreement of the prosecutors to give information on the issues included in Resolution of the Assembly and order no. 103, date 17.07.2020 of the Prosecutor General, the during regular periodic meetings.

**The Head of Prosecution Office attached to the Court of Appeal Vlorë**, in response to letter no. 985/5, dated 02.10.2020 of the Prosecutor General, sent information, with letter no. 785, date 16.10.2020, on the implementation of the Priority Recommendations of the Council of Ministers in the fight against crime for 2020.

According to the information, it results that the general instruction no. 11, date 20.07.2020, together with order no. 112, dated 27.07.2020 of the Prosecutor General and the materials attached to them, have been sent to all the prosecutors of this office, so that they could be informed and discuss them in the periodic meeting of the prosecutors of this office. On 07.09.2020, a special meeting on this topic was held in the prosecution office, where, regarding the internal administrative measures, it was reached the conclusion by the prosecutors that After the discussions, the prosecutors came to the conclusion that, due to the nature of the appeal prosecution, it was not necessary for the Head of Prosecution Office to issue a specific general instruction, since even in this case, the provisions of order no. 103, date 17.07.2020, of the Prosecutor General and the Action Plan accompanying the material are sufficient to lead the activity of the appeal prosecutor in the priority cases. Regarding the procedural measures in the stage of representing prosecution in trial, the prosecutors agreed, in the joint meeting of the prosecutors, to affirm, in compliance with the law, the legal position or the appeals of the first instance prosecutors in all cases included in the priority recommendations, regarding

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

elements such as declaration of guilt, determination of the type and measures of punishments against the perpetrators of the criminal offenses that are included in the priority recommendations. Finally, regarding the representation of prosecution in cases of juvenile delinquency or cases involving child victims, the Head of Appeal Prosecution Office Vlorë has informed that with the relevant order of the head of office it has been created a section for minors, with the aim of applying all the guarantees of the Juvenile Justice Code and the specific legislation to these subjects.

B) With letter no. 1914, date 30.12.2020 of the Prosecutor General, the prosecution offices attached to the Courts of First Instance and Appeal, in the framework of the implementation of law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania - Article 38, paragraph 2, letter "b" on the supervision of the implementation of the general instructions, - Article 38, paragraph 2, letter "i", on asking the High Inspector of Justice for thematic inspections or investigations for individual violations in relation to the implementation of these instructions by the Head of Prosecution office or the prosecutors, - Article 38, paragraph 2, letters "c" and "f", on facilitating the work performance in the prosecution office through the exercise of functions by the Head of Prosecution Office, who also acts in the capacity of the authority that takes care of the exercise of constitutional and legal powers in the prosecution office, within the framework of the annual report on the situation of crime in The Assembly of Albania has been asked to give information on the measures taken in the implementation of general instruction no. 12, dated 20.07.2020, as amended by the Head of Prosecution Office:

a) for issuing the general instruction to facilitate its implementation; b) for issuing other acts according to the law, (the total number of non-binding instructions, requests for information, etc.), as well as c) data related to the register of internal circulation of acts. It was also requested information on the measures taken to implement order no. 120, dated 08.09.2020 "On the approval of some additions to the *"Standard Rules on the organization and operation of prosecution offices of general jurisdiction "* approved by order no. 32/2017" and on the measures taken to implement instruction no. 3, dated 29.12.2016 "On the allocation of cases in the prosecution office", by the Head of Prosecution Office on drawing electronic lots, from January to December, 2020.

The Heads of Prosecution Offices have been asked to prepare the information and submit it within 12.01.2021 to the General Prosecution Office (officially also electronically), accompanied by acts issued (general instructions and/or

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

orders) in fulfilling the legal obligations of this request for information. In connection with this request of the Prosecutor General, in the material submitted by the General Prosecution Office with letter no. 969/1 prot, date 02.07.2021, no responses with information result to have been sent by the Prosecution Office attached to the Court of First Instance Tiranë and the Prosecution Office attached to the Court of Appeal Gjirokastër.

**The Head of Prosecution Office attached to the Court of Appeal Durrës**, in response to the above letter has informed the Prosecutor General, with letter no. 30, dated 11.01.2021, related to the measures taken for the implementation of general instruction no. 12, date 20.07.2020 of the Prosecutor General, as amended, that the Head of Appeal Prosecution Office Durrës has issued instruction no. 1, dated 07.09.2020, for the issuance of which he has also informed the General Prosecution Office by sending a copy of this instruction. There have been no cases for which it was necessary to issue other acts, such as non-binding instructions, request for information etc. Under instruction no. 1, date 07.09.2020, of the Head of Prosecution Office, the internal communications protocol book (ICPB) was also created according to the model specified in attachment no. 1 of instruction no. 12/2020 of the Prosecutor General, as amended, and in the meantime, its maintenance and administration has also started according to the procedure defined in article 20 of Instruction no. 12/2020 of the Prosecutor General, as amended.

**The Head of Prosecution Office attached to the Court of Appeal Korçë**, with letter no. 10, date 12.01.2021, has responded that the Head of the Appeal Prosecution Office has issued instruction no. 1, date 10.09.2020 and there were no cases for which it was necessary to issue others acts, such as non-binding instructions, requests for information, etc. Under instruction no. 1, date 10.09.2020, the internal communications protocol book (ICPB) was also created according to the model specified in attachment no. 1 of instruction no. 12/2020 of the Prosecutor General, as amended, and in the meantime, its maintenance and administration has also started.

**The Head of Prosecution Office attached to the Court of Appeal Shkodër** has informed with letter no. 21, date 11.01.2021, that being informed of general instruction no. 12, date 20.07.2020, of the Prosecutor General, as amended, the Head of this Prosecution Office has issued a general instruction to facilitate the implementation of this instruction, as well as other acts, such as the one for the

management of cases in the Appel Prosecution Office Shkodër, the one for creating the register of internal circulation of acts in the Prosecution Office attached to the Court of Appeal Shkodër, etc.

**The Head of Prosecution Office attached to the Court of Appeal Tiranë**, with letter no. 2/1, date 12.01.2021 informed the Prosecutor General of the measures taken to implement general instruction no. 12, date 20.07.2020 "*On the regulation of relations between the prosecutors and heads of prosecution offices, information, transparency and guaranteeing independence in prosecution offices of general jurisdiction*", as amended, by stating that there were no general instructions, acts or requests for information issued in relation with this instruction.

**The Head of Prosecution Office attached to the Court of First Instance Durrës** has informed with letter no. 105, dated 11.01.2021, regarding the measures taken for the implementation of general instruction no. 12, dated 20.07.2020, as amended, according to which it was immediately procured the relevant register, and it was held the meeting to inform all the prosecutors of the instruction, pursuant to which there were also issued 8 (eight) non-binding instructions, and it was requested information from all prosecutors regarding the backlog of case under investigation since 2018 and even before, as well as criminal proceedings under investigation for over 3 months which involve persons under arrest.

**The Head of Prosecution Office attached to the Court of First Instance Elbasan** has informed with letter no. 35, dated 06.01.2021, regarding the measures taken to implement instruction no. 12, dated 20.07.2020, as amended, of the Prosecutor General. According to this information, it was issued the general instruction no. 39 PBD, date 07.09.2020 of the Head of Prosecution Office "Based on and for the implementation of General Instruction no. 12, date 20.07.2020 of the Prosecutor General". After July 2020, until the end of 2020, other acts were issued in compliance with the law and specifically 3 (three) non-binding instruct on concrete cases, an ascertainment act for concrete cases, as well as a request for information on specific cases.

**The Head of Prosecution Office attached to the Court of First Instance Fier** has informed with letter no. 9956/1, dated 08.01.2021, regarding the measures taken in implementation of general instruction no. 12, dated 20.07.2020, as

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



amended, that on 04.09.2020 it was issued instruction no. 65 "On the regulation of relations between prosecutors and the heads of the Prosecution Offices, information, transparency and guarantee of independence in the Prosecution Office attached to the Court of First Instance Fier". As for other acts, the Head of Prosecution Office has issued a non-binding instruction for the prosecutor of the case, 16 (sixteen) requests for information, and the rest are communication with third parties. Regarding the internal protocol for the circulation of acts, it has been informed that this register started on 09.09.2020, with entry number 1 and ends with entry number 981.

**The Head of Prosecution Office attached to the Court of First Instance Shkodër**, with letter no. 295, dated 08.01.2021, informed the Prosecutor General about the measures taken for the implementation of general instruction no. 12, dated 20.07.2020, as amended. According to the information, the Head of Prosecution Office after administering general instruction no. 12, date 20.07.2020, sent it to all the prosecutors of this prosecution office so as to be informed of it. Also, the instruction in question has been a topic of the prosecutors meeting, where the ways of its implementation were discussed. Then the Head of Prosecution Office, with the aim of facilitating its implementation, issued general instruction no. 33, date 04.09.2020 "*On the regulation of relations between the heads of prosecution offices and the prosecutors, regarding information, transparency and guarantee of independence in the Prosecution Office of the Court of First Instance Shkodër*". The Head of Prosecution Office also started to put it in practice by issuing non-binding instructions and requests for information addressed to prosecutors in relation to concrete cases or certain criminal proceedings. Afterwards, on 14.09.2020, pursuant to the provisions of the general instruction, it was approved and then created the register of internal circulation of acts, which during September-December 2020, recorded requests for information, non-binding instructions, information from prosecutors, as well as other information, a total of 51 (fifty-one) requests, 9 (nine) of which are non-binding instructions on concrete cases, 26 (twenty-six) are requests for information for cases under investigation, unregistered criminal complaints, backlog of criminal proceedings, etc.

**The Head of Prosecution Office attached to the Court of First Instance Vlorë** with letter no. 13839/1, dated 14.01.2021, informed about the measures taken for the implementation of instruction no. 12, dated 20.07.2020, as

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

amended. Pursuant to the above instruction, it was issued, a binding order specifying every detail for the implementation of the general instruction; there were also issued non-binding instructions and request for information.

#### **4. Conclusions:**

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The inspection was conducted and it included the activity of the prosecution offices of general jurisdiction of all levels, focusing specifically on 7 (seven) prosecution offices attached to the courts of first instance of general jurisdiction, which also represent the biggest prosecution offices in the country, on all prosecution offices attached to the courts of appeal of general jurisdiction and on the General Prosecution Office.

The information provided by the aforementioned prosecution offices for the inspection period, gave us an insight into the effectiveness of their activity on taking administrative and procedural measures in the framework of the implementation of General Instruction No. 12/2020 of the Prosecutor General, as amended.

According to this information, all prosecution offices, subject to inspection, result to have been informed of General Instruction No. 12/2020, but it does not result a full implementation in order to fulfill its purpose, related to the regulation of relations between prosecutors and the heads of prosecution offices, between the prosecutors and the Prosecutor General, information, transparency and guarantee of independence in prosecution offices of general jurisdiction.

The findings in each inspected office evidenced the commitment to the implementation of the Prosecutor General Instruction, within the framework of the implementation of law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", passed after the constitutional changes of 2016, which consisted of a partial functional decentralization of the prosecution office, unlike the previous system where the prosecution office functioned as a centralized body. These changes were dictated by the problems<sup>59</sup> observed in the organization and functioning of the prosecution office as a centralized body and fully-hierarchical, including the lack of functional independence of prosecutors during the preliminary investigations, as a result of the deep centralization of the system, which gave broad authority to higher prosecutors and the Prosecutor General, particularly during the investigations led by lower prosecutors.

Referred to above, the Prosecutor General Instruction, object of this inspection, would reflect a greater guarantee in regulating the higher prosecutors' hierarchical powers in relationship with the prosecutors of the case, in respect of the principles of legality and independence of their activity on the one hand and to ensure the uniformity of the prosecution office activity as a criminal prosecution body.

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<sup>59</sup> see Analysis of the justice system in Albania drawn up and approved by decision no. 14, dated 30.07.2015, by the Special Parliamentary Commission "For Reform in the Justice System", set up by decision no. 96/2014. date 27.11.2014; The report on the draft law "On the prosecution office in the Republic of Albania", approved by law no. 97/2016.

However, findings at the prosecution offices of general jurisdiction of all levels, evidenced a limited and inefficient implementation of the instruction in several directions, analyzed for each office in this report, and which will be summarized below. At the same time, such issues related to the implementation of the General Instruction of the Prosecutor General, were not followed by other findings before and during this inspect, which in their overall assessment based on the meaning of a disciplinary violation, pursuant to article 101 of the law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", as amended, would make us able to identify actions/omissions or behavior of magistrates, which constitute sufficient evidence to justify the initiation of the disciplinary investigation according to the procedures and rules provided for in law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania", as amended. It is noteworthy that, from the data obtained during the inspection period, it results no case where the Head of Prosecution Office as the higher prosecutor, in exercising his/her powers according to article 5, paragraph 5 of general instruction no. 12 dated 20.07.2020, as amended of the Prosecutor General, has requested the beginning of verifications for prosecutors by the monitoring sector in the General Prosecution Office regarding the implementation of general instructions. Also, there was no data related to such requests by the prosecutors for the Head of Prosecution Office, the deputy Head, pursuant to article 5, paragraph 6 of the same instruction. In this evaluation, it was also taken into consideration the handling and the decision no. 31, dated 24.02.2022 of the High Prosecutorial Council, related to the fact of not keeping the register of internal communications in a prosecution office attached to the court of first instance, thus making it impossible to record the communications between the head of prosecution office and the prosecutor of the case, in terms of the time when an investigative file was sent for signature before being sent to court, an obligation provided for in article 20 of General Instruction no. 12/2020 of the Prosecutor General. This decision, among others, reasons that: *"According to article 20, paragraph 1 of the above-mentioned instruction, it results that the purpose of keeping the register is entirely administrative, to guarantee transparency in the relations between the head of prosecution office and the prosecutor in order to guarantee the respect for the rights and obligations arising from the Law on Status. The register does not provide for obligations or deadlines when the acts or requests should be sent to the head of prosecution office, as these obligations and deadlines are provided for in the criminal procedural law, other laws or other articles of Instruction no. 12/2020, but serves only to document the date and time of sending as well as the date and time of coming out from the head of prosecution office.*

*... Going back to the reasoning at the beginning, it results that the failure to keep the register of internal communications on the circulation of letters/acts/investigative materials between the head of prosecution office and the prosecutors of the cases, has not brought any consequences, for both the prosecution office and for the parties in process. Regarding the Inspector's reasoning, that the magistrate behavior ... "consists failure to fulfill the duty of the prosecutor, by affecting the position and image of the head of prosecution office who, due to the fact that he is the highest prosecutor for all the prosecutors of the office he heads, must be the first to implement the*

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

*instructions of a higher prosecutor in order to request the implementation of his/her instructions given to them, which is a right and competence given to him precisely by the law which he/she as a magistrate does not fully implement” we deem that such reasoning is not based, on the concrete case. Pursuant to decision no. 75/2002, of the Constitutional Court, to evaluate whether the actions or omissions of the magistrate are such as to discredit the position and image of the magistrate, they will be evaluated case by case and this is related to the circumstances and the subjective moment. The magistrate ... has clarified before the Council as well as during the hearing, that: “The register was not kept for technical and infrastructure reasons as well .... “. Also, under the conditions when this register is completely administrative and its purpose is to record internal communications on the circulation of letters/acts/investigative materials between the heads of prosecution offices and the prosecutors of the cases, it cannot be said that the fact of not keeping this register has damaged the public's trust in the justice system. Referring to Article 134, paragraph 1 of the Law on Status, which provides that: " ... Referring to Article 82 of the Law on the Status, where, among other things, it is provided that: The evaluation of the chairperson's performance is based on the following sources: a) the chairperson's personal file; ... g) final decisions regarding disciplinary measures, due to the position of the chairperson ... i) any other source that shows the professional activity of the chairperson. ", we assess that the behavior of the magistrate ... should be taken into consideration during the ethical and professional evaluation process as chairman"*

More specifically, from the data administered by the prosecution offices subject to this inspection, it was found that:

- In the case of general instructions of the Heads of Prosecution Offices, according to the provisions of Article 42, paragraph g); Article 43, paragraph dh); article 46, paragraphs 1, 2 and 4 of law no. 97/2016, as amended which state that: “*Heads of prosecution offices can issue general instructions on matters of organization and functioning of the prosecution offices they head, as well as on facilitating the implementation of the instructions of the Prosecutor General*“, and articles 5, paragraph 1 and 10, paragraph 2 of general instruction no. 12, dated 20.07.2020, as amended, referring to the topic object of inspection and its focus on three main directions, higher prosecutors, Heads of the Prosecution Offices attached to the Courts of First Instance and Appeal result to have issued general instructions, mainly in the direction of facilitating the implementation of general instructions no. 12, dated 20.07.2020 of the Prosecutor General, as amended and others, whereas some Heads of Prosecution Offices, have not taken such measures. Out of thirteen (13) prosecution offices of general jurisdiction studied for a 6 months period of time, from 01.10.2020 to 31.03.2021, it results that nine (9) Heads of Prosecution Offices in Tiranë, Elbasan, Fier, Korçë, Shkodër, Vlorë and of the Appeal Prosecution Offices in Shkodër,

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Korçë and Durrës, have each issued one (1) general instruction of this character, while the Head of Prosecution Office in Elbasan have issued three (3) other general instructions (where one is also to facilitate the implementation of general instruction of the Prosecutor General); the Heads of Prosecution Offices in Fier, Tiranë and Shkodër, have each issued one (1) more general instruction on other matters of functioning of the prosecution office. Other Heads of Prosecution Offices, generally Appeal Prosecution Offices result to have issued less or no general instructions, like the Appeal Prosecution Office Vlorë, Tiranë and Gjirokastër (in the latter because the head of prosecution office was the only prosecutor). Out of seven (7) prosecution offices inspected only in three (3) appeal prosecution offices in Durrës, Shkodër and Korçë are issued these instructions, while there is a total absence of non-binding instructions, requests for information/ information from prosecutors.

- The Heads of Appeal Prosecution Offices result not to have implemented general instruction no.12/2020, as amended, for the 6-month inspection period, while the Court of Appeal tries a high number of important cases based on the annual reports of the appellate prosecution offices. Only the Heads of Prosecution Offices in Durrës, Shkodër and Korçë, have issued one general instruction to facilitate the implementation of general instruction no. 12/2020, as amended, while the other Appeal Prosecution Offices in Vlorë, Tiranë and Gjirokastër, result to have issued no general instructions. Also, there are not any non-binding instructions, requests for information/information from the prosecutors representing prosecution in the appeal trial, according to the provisions of the general instruction for the appellate court.
- The Heads of Prosecution Offices appear to have taken measures of an internal organizational nature, by notifying all prosecutors of the content of instruction no. 12/2020 as amended, of the Prosecutor General. In cases where there were not issued instructions to facilitate the implementation of general instruction no.12/2020, as amended, it is mentioned that they were not issued because the general instruction is directly applicable. However, the instruction is said to have been discussed in a meeting whose minutes regarding this fact, are missing, yet it turns out that the prosecutors have been notified of the instruction, which was sent to them by e-mail. Even when it is not mentioned that a meeting was held, but the general instructions have been sent to the prosecutors so as to be informed of it, the issuance of general instructions should be discussed in the meetings of prosecutors in relation to the problems of their implementation.
- No prosecutor results to have filed any appeal against the general instructions of the Heads of the relevant Prosecution Offices with the High Prosecutorial Council, pursuant to

article 47, paragraph 1 of law no. 97/2016, as amended and Article 5, paragraph 2 of general instructions no. 12, dated 20.07.2020, as amended, when the prosecutor deems that the general instruction of the Head of Prosecution Office is not based on law, or it is obviously against the law. No general instruction in its preambular part, provides for the right to appeal as the formal part of the act.

- General instructions, with some exceptions, are generally in harmony with instruction no. 12/2020 as amended, of the Prosecutor General, mandatory provisions of law No. 97/2016 "On the Organization and Functioning of the Prosecution Office in the Republic of Albania", as amended and the Code of Criminal Procedure, related to the role and activity of the Head of Prosecution Office in the framework of administration, information, transparency and accountability of investigative activity and criminal prosecution in the relevant Prosecution office.
- Particularly, some general instructions issued by Heads of Prosecution Offices contain some provisions, which do not seem to be in accordance with / or exceed the provisions of the Prosecutor General Instruction, as in the case of General Instruction no. 39 PBD, dated 07.09.2020 of the Head of Elbasan Prosecution Office "*Based on and for the implementation of General Instruction no. 12, dated 20.07.2020 of the Prosecutor General*"; General instruction no. 33 prot, date 04.09.2020 of the Head of Shkodra Prosecution Office "*On the regulation of relations between the heads of prosecution Office and prosecutors regarding information, transparency and the guarantee of independence*"; General instruction no. 50, dated 21.12.2020 of the Head of Shkodra Appeal Prosecution Office "*On the regulation of relations between the heads of prosecution Office and prosecutors regarding information, transparency and the guarantee of independence in the Prosecution Office attached to the Court of Appeal Shkodër*"; General Instruction no. 1, dated 10.09.2020 of the Head of Appeal Prosecution Office Korçë and General Instruction no.1, dated 07.09.2020 of the Head of Appeal Prosecution Office Durrës "Based on and for the implementation of General Instruction no. 12, date 20.07.2020 of the Prosecutor General", which did not reflect the amendments that occurred according to General Instruction no. 16/2020 of the Prosecutor General with, as the case of General Instruction no. 39 PBD, dated 07.09.2020 of the Head of Prosecution Office Elbasan "*Based on and for implementation of the General Instruction no. 12, date 20. 07.2020 of the Prosecutor General*"; General Instruction no. 65, dated 04.09.2020 of the Head of Prosecution Office Fier "*On the regulation of relations between the prosecutors and the Heads of Prosecution Office, regarding information, transparency and the guarantee of independence in the Prosecution Office attached to the Court of First Instance Fier*"; General instructions

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

no. 33 prot, date 04.09.2020 of the Head of Prosecution Office Shkodër “On the regulation of relations between the head of prosecution office and the prosecutors regarding information, transparency and the guarantee of independence”; General Instruction No. 04, dated 04.09.2020 of the Head of Prosecution Office Vlorë; General instruction no. 1, date 10.09.2020 of the Head of Appeal Prosecution Office Korçë and General Instruction no. 1, date 07.09.2020 of the Head of Appeal Prosecution Office Durrës “*Based on and for the implementation of General Instruction No. 12, date 20. 07. 2020 of the Prosecutor General "On the regulation of relations between prosecutors and heads of prosecution office, information, transparency and the guarantee of independence, in prosecution offices of general jurisdiction"*”, which do not seem to be in compliance with / or where it is required the harmonization with the Code of Criminal Procedure and the Instruction of Prosecutor General that support the issuance of instructions by the Head of Prosecution Office. There were also found inconsistencies between the provisions of the instruction in question, respectively in the cases of Instruction no. 55 PBD, dated 11.12.2020 "On performing the toxicological-clinical-addictology expert examinations" and General Instruction no. 19 PBD, dated 03.03.2021 "On the execution, implementation and supervision of the measures "house arrest", as well as on the rules for notifying and accompanying persons under investigation/defendant under "house arrest" with a view to committing investigative actions" of the Head of Prosecution Office attached to the Court of First Instance Elbasan.

- Regarding the issuance of general instructions, Article 46 of Law no. 97/2016, as amended, paragraphs 3 and 4, results to separate higher prosecutors who according to paragraph 1 issue reasoned general instructions in writing, of an administrative or procedural nature. Paragraph 3 stipulates in a specific way that the Prosecutor General can issue general instructions on the coordination of work between different prosecution offices or between them and the Judicial Police included in joint investigations, in accordance with the provisions of the Code of Criminal Procedure; Paragraph 4 of Article 46, in order to ensure the same application of law and criminal prosecution based on court decisions; to ensure the implementation of the recommendations of the Council of Ministers on the fight against criminality; and for other cases that are not related to concrete issues, determines that: The Heads of Prosecution Offices can issue general instructions on matters of organization and operation of the prosecution office they head, as well as on facilitating the implementation of the instructions of the Prosecutor General. So, according to the legal provision, it results that the law provides specifically for the cases where the Prosecutor General can issue general instructions and the cases where the Heads of Prosecution Offices can issue general instructions.



- Article 7, paragraph 2, letter "a" of general instruction no. 12/2020 of the Prosecutor General, as amended, stipulates that the rules that regulate the authority of the Heads of Prosecution Offices as higher prosecutors, in respect of the principles of rule of law and independence in exercising the functions of the prosecutor are:
  - a) compliance with the legal procedure by **higher prosecutors** for issuing reasoned general binding instructions in writing:
    - i) to ensure the implementation of the material law and procedural law in exercising criminal prosecution, pressing charges and representing prosecution in trial, the exercise of the prosecutor's right to appeal and the execution of criminal court decisions, based on unifying judicial decisions of the Criminal Chamber and Joint Chambers of the Supreme Court; (referring in this case to article 438 of the Code of Criminal Procedure as amended, the judicial practice based on the decisions of the Criminal Chamber and the Joint Chamber of the Supreme Court).
    - ii) to ensure the implementation of the recommendations of the Council of Ministers and resolutions of the Assembly of Albania in the fight against crime, which determine the priorities for the implementation of the criminal policy and/or the methods of following them;
    - iii) to set the criteria in the implementation of law and to unify the decision-making for a case or group of the same legal cases, which are handled or qualified differently by the prosecutors in the same prosecution office or in different prosecution offices of general jurisdiction.
  
- According to these legal and by-law provisions, it seems that Article 7, paragraph 2 of general instruction no. 12/2020, as amended, provides for the issuance of general binding instructions by the Heads of Prosecution Office as higher prosecutors as well as for issues that belong to the Prosecutor General according to Article 46 of Law no. 97/2016, as amended, although none of the Heads of Prosecution Offices has issued any general instruction in these fields. Article 7 of the general instruction determines the directions where general instructions can be given, and from paragraphs i), ii), iii) of this article, it can be understood that they belong to the Prosecutor General. Article 10 of general instruction no. 12/2020, as amended, provides for the cases where the Heads of Prosecution Offices can issue general instructions on facilitating the implementation of the instructions of the Prosecutor General, unlike article 46, paragraph 4 of the law according to which Heads of Prosecution Offices can issue general non-binding instructions not only to facilitate, but also directly of an administrative or procedural nature.
  
- During the inspection period, when the law and the instruction allows the issuance of non-binding instructions, there were found cases of issuing non-binding instructions after the

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

request for information by the Head of Prosecution Office, as well as cases where the Head of Prosecution Office was informed without issuing any instruction according to his/her evaluation, which means that the competence to issue non-binding instructions is not much exercised. This is in the case when the information requested was taken by the prosecutor or even mainly by the Head of Prosecution Office (simultaneously general instruction no. 12/2020, as amended, also provides for simply informing the Head of Prosecution Office without issuing non-binding instructions). In fact, for this it should be taken into account the time and the workload, as well as the fact that even in the cases provided, the issuance of non-binding instructions for higher prosecutors, is something they can do but not an obligation. Specifically, in the analysis of requests for information and non-binding instructions, all prosecution offices result to have issued a total of 35 (thirty-five) non-binding instructions during a six-month period of time, while the number of the Heads of Prosecution Offices requests can be estimated over 165 (one hundred and sixty-five), which give the opportunity to the Heads of the Prosecution Offices to issue non-binding instructions.

- The understanding and implementation of the Heads of Prosecution Offices do not result in harmony with the provisions of Article 48, paragraph 3 of law 97/2016, as amended, regarding mainly the issuance of non-binding instructions, which must be given at the time the criminal offence is referred or the criminal complaint is registered and the appointment by drawing lots of the respective prosecutor. For this moment, the Heads of Prosecution Offices are informed by the registry office in the prosecution office, which notifies the Head of Prosecution Office of every decision for the registration of the criminal proceedings appointed to the prosecutors, according to article 12, paragraph 1 of general instruction no. 12, dated 20.07.2020, as amended or based on the standard regulation on the use of registers, where it is determined that each material regarding criminal complaints after it is registered in the secretariat, it is verified by the Head Of Prosecution Office, who orders to enter it in the respective register.
- There were also found cases of issuing non-binding instructions, in the event of requests from the parties to replace the prosecutor or the prosecutor himself to withdraw the case, through which the prosecutor was instructed to continue the investigation or the representation of prosecution in trial. These instructions do not result in compliance with the nature of the non-binding instruction provided for in law and in general instruction no. 12/2020, as amended of the Prosecutor General even though they appear to have been given in writing and justified, but with reference to the element of initiation and the goal that is sought to be achieved, they seem as acts for rejecting the request for the replacement of the prosecutor pursuant to Article 27 of the Code of Criminal Procedure, for which the Head of Prosecution Office proceeds with a decision.

#### **INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

- Not in all cases of issuing non-binding instructions it is made clear the way the Head of Prosecution Office was informed of the materials for which the instruction will be issued. This has to do it with the way and procedure for issuing the non-binding instruction based on the request of the Head of Prosecution Office and the information from the prosecutor or mainly from the latter. As it was mention, it is evident that in the case when the head of prosecution office received information from the prosecutors, upon his/her request, this information was not followed by the issuance of any non-binding instruction, just as there are cases when the non-binding instruction does not follow the procedure provided for in the special provisions of general instruction no. 12/2020 of the Prosecutor General. This is important to be emphasized, by taking into consideration the purpose for requiring information, as a competence of the Head of Prosecution Office during the exercise of criminal prosecution. Also, it is noted that a good part of non-binding instructions do not respond to the nature and purpose of this type of instruction, or are used in cases where only information is provided. Only in one case it results to have been a contradiction with the non-binding instruction or the prosecutor did not agree with the instruction and requested written explanations, but even in this case, the Head of Prosecution Office did not repeat the instructions according to the provisions of general instruction no. 12/2020, as amended, of the Prosecutor General; also, it is hard to draw a precise conclusion whether the prosecutors have followed the non-binding instructions issued. Another finding regards the procedure with cases where the Head of Prosecution Office in his/her general instruction, provides for shorter deadlines (3 days) to respond to the non-binding instructions issued by the Head of Prosecution Office, unlike the provisions of article 11 of general instruction no. 12/2020, as amended, according to which this deadline is 5 (five) days.
- The instructions, "Non-binding instruction" or "General instruction", issued by the prosecutions offices subject of inspection, do not result to have a unification in their direction of the format they follow, starting from the title, content, legal basis and disposition, showing the purpose, the introductory part, the reasoning part and the dispositive with the instructive part. The ascertained fact regarding the non-binding instructions is also found within a prosecution office, as in the case of the Prosecution Office attached to the Court of First Instance Durrës.
- During the inspection period, except for 2 (two) cases in the Prosecution Office attached to the Court of First Instance Durrës and 1 (one) case in cooperation with the Head of Prosecution Office Fier, it is noted that the Heads of Sections are not included in the issuance of non-binding instructions, depending also on the seriousness of criminal offenses.

- General instruction no. 12, date 20.07.2020, as amended, of the Prosecutor General among other things, stipulates the procedural relationship between the Head of Prosecution Office and the prosecutors, which is one of the areas where the thematic inspection was focused, according to which the Head of Prosecution Office, upon his/her request, has the right to be informed of specific cases and he/she can issue written instructions for the prosecutor of the case, which are not mandatory for him/her. The ways of informing the Head of Prosecution Office are divided according to the levels of the prosecution offices of general jurisdiction, where according to the law and general instruction no. 12, dated 20.07.2020 as amended, the prosecutor has the obligation to give information upon the request of the Head of Prosecution Office, but in specific cases even without the request of the Head of Prosecution Office. During the inspection period, it was found no case where the prosecutor had informed in advance the Head of Prosecution Office without the latter's request even though it can be presumed that during a 6 – month period of time there are cases in which the prosecutors issue restraining orders or request precautionary measures. However, it is understood that the expectation in practice is that there is no written information of such nature from the prosecutors and this can be also due to the fact that the such measures may have been discussed in advance or the information could have been verbal. Also, in relation to article 13 of general instruction no. 12/2020, as amended, it is deemed important to show due care in supervising criminal proceedings under personal/assets preventive measures or assets investigations where preventive measures against assets have been implemented, regarding the deadlines of these preventive measures or measures against assets and the progress of these criminal/property proceedings, stimulating prosecutors to be careful about respecting the deadlines of the proceedings, as well as implementing the instructions issued by the Prosecutor General.
- It results that in most cases, prosecutors do not inform in due time after requests for information by the Heads of Prosecution Offices. As quoted even by some Heads of Prosecution Offices in their statistical reports, this has happened due to the prosecutors' complaints about their workload regarding investigations and the representation of criminal cases in trial. Regarding the requests for information by the Heads of Prosecution Offices, it was said that the information of the prosecutors can be verbal as well, which can be applied in advance, because the communication between the Heads of Prosecution Offices and the prosecutor can also be done verbally. This communication also includes information which is normal to be provided orally, referring to the on-call time according to the provisions of article 12, paragraph 2 of the instruction of the Prosecutor General, as well as during the period of requests of an urgent nature such as for warrants of arrest, preventive measures, etc. In these cases, it is obvious that every communication within the framework of the criminal prosecution, in which, according to the hierarchical organization, the Head of Prosecution Office is also the person representing the prosecution

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

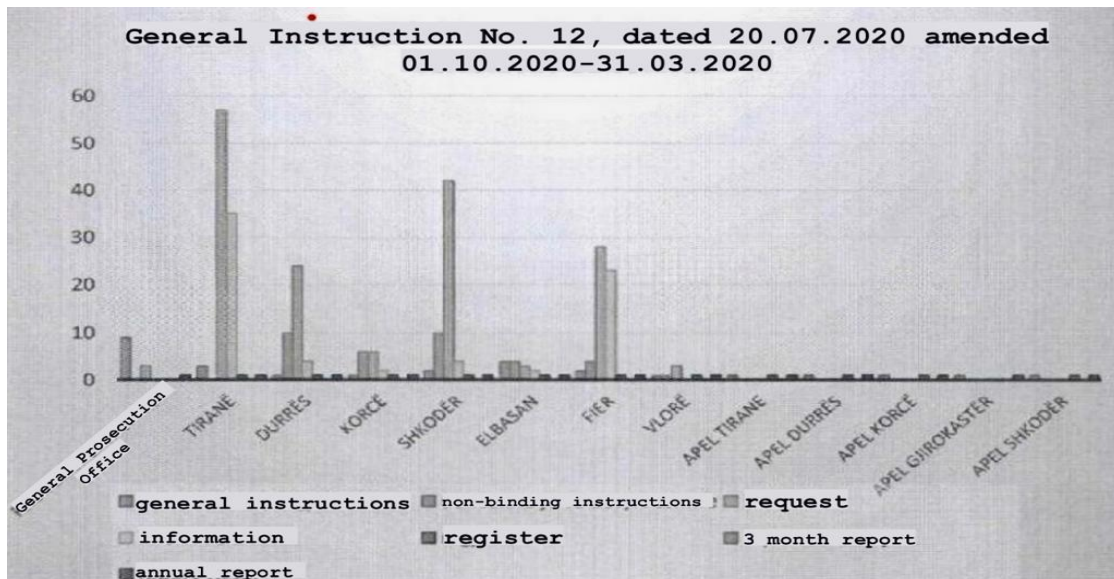
office, cannot wait until the prosecutor of the case prepares the information in writing.

- The fact is evident that, even though a series of procedural acts of general nature have been approved with a view to taking measures, there was no data regarding periodic reporting to the Prosecutor General.
- During the 6-month inspection period there was no evidence found, in the General Prosecution Office, for any case where the prosecutors of this prosecution office inform the Prosecutor General of the cases they represent in the High Court or in the Constitutional Court and how this information is provided, pursuant to article 19 of general instruction no. 12/2020, as amended, according to which "*The Prosecutor, in the General Prosecution Office, who represents the accusation and/or the case on recourse in the Criminal Chamber of the Supreme Court or represents the General Prosecution Office in trial in the Joint Chambers of the Supreme Court or in the Constitutional Court under authorization of the Prosecutor General, informs the Prosecutor General of each case in continuation, about the nature and the problematics of the cases tried in the Supreme Court or the Constitutional Court as well as the violations of criminal law and/or procedural law in pressing charges and representing prosecution in trial, evidenced in the representation of cases by the prosecutors of the prosecution offices attached to the court of first instance and the courts of appeal of general jurisdiction*".
- During the inspection period, the Prosecutor General results to have issued a number of general instructions for the prosecutors of the prosecution offices of jurisdictional jurisdiction, mentioned in section 3.2 of this report, as well as the supervision of their implementation through requests for information. Regarding the requests of the Prosecutor General for the implementation of general instruction no. 12/2020 as amended, the Resolutions of the Assembly and for the implementation of the Priority Recommendations of the Council of Ministers, it was found that during this period, some prosecution offices did not send the requested information, such as the Prosecution Office attached to the Court of First Instance Tiranë and the Prosecution Office attached to the Court of Appeal Gjirokastër (the Prosecution Office attached to the Court of Appeal Tiranë and the Prosecution Office attached to the Court Shkodër, result to have responded only to the request on the implementation of general instruction no. 12/2020 as amended) and some other prosecution offices result to have delayed information sending, such as the Prosecution Office attached to the Court of First Instance Durrës, the Prosecution Office attached to the Court of First Instance Korçë, the Prosecution Office attached to the Court of First Instance Shkodër and the Prosecution Office attached to the Court of Appeal Durrës. Regarding the submission of the annual reports so as to report to the Assembly on

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

the crime situation and the implementation of Priority Recommendations of the Council of Ministers in the fight against crime in 2020, all prosecution offices have sent to the Prosecutor General their annual reports on their activity and performance for 2020, thus fulfilling the obligation stipulated in article 50 of law no. 97/2016 as amended, although one office, the Prosecution Office attached to the Court of First Instance Tiranë, sent its report when the deadline was overdue.

- Pursuant to article 20 of general instruction no. 12/2020 of the Prosecutor General, the Register of Internal Procedural Correspondence was created, according to the model specified by the Prosecutor General, in the Prosecution Offices attached to the Courts of First Instance and Courts of Appeal of General Jurisdiction (apart from the Prosecution Offices attached to the Court of Appeal Vlorë<sup>60</sup>), while with regard to the data and entries in this register, in some prosecution offices, they are not reflected in accordance with the relevant sections. These registers contain acts according to the above provisions such as different requests for information, non-binding instructions issued in implementation of instruction no. 12/2020 as amended, of the Prosecutor General, as well as general instructions of respective Heads. The data obtained for the inspection period in relation to general instructions, non-binding instructions, requests for information, information from prosecutors, periodic and annual reporting, as well as their reflection in the register of internal procedural correspondence is also presented graphically below.



<sup>60</sup>Response by e-mail dated 01.02.2022 of the Head of Appeal Prosecution Office Vlorë. The Appel Prosecution Office Shkodër created the register about 2 months after the entry into force of general instruction no. 12/2020 as amended, by order no. 40/1. Dated 25.11.2020 "On the creation of the register for the internal circulation of acts in the Prosecution Office attached to the Court of Appeal Shkodër",

According to the data obtained for the inspection period, it does not result any case where the Head of Prosecution Office as a higher prosecutor, in the framework of exercising his/her authority according to article 5, paragraph 5 of general instruction no. 12 date 20.07.2020, as amended of the Prosecutor General, have requested the beginning of verifications from the monitoring sector in the General Prosecution Office against the prosecutor, regarding the implementation of general instructions. Also, there were no data related to such requests by the prosecutors against the Head of Prosecution Office, the deputy head of prosecution office, according to provisions of article 5, paragraph 6 of the same instruction.

## 5. Recommendations

### 1. For the Prosecution Offices attached to the Courts of First Instance and Courts of Appeal:

- Taking into consideration that the general instructions of the Heads of Prosecution Offices, which were issued in order to implement and facilitate the implementation of general instruction no. 12, date 20.07.2020 as amended, of the Prosecutor General, were issued immediately after this instruction entered into force, it is recommended to renew them according to the amendments made by general instruction no. 16, dated 14.12.2020 of the Prosecutor General, specifically the provisions of articles 14, 15, 17 and 18. Also in order not to violate the independence and respect the prosecutor's obligation to provide information upon the request of the Head of Prosecution Office, it is recommended the harmonization of a number of provisions of these instructions and other general instructions of the Heads of Prosecution Offices, pursuant to Law No. 97/2016 *"On the Organization and Functioning of the Prosecution Office in the Republic of Albania"*, as amended and the Code of Criminal Procedure.
- We recommend to the Prosecution Office attached to the Court of First Instance Elbasan, to review General instructions no. 39 PBD, dated 07.09.2020 *"Based on and on the implementation of General Instruction no. 12, dated 20.07.2020 of the Prosecutor General "On regulation of relations between prosecutors and heads of the prosecution offices, information, transparency and guarantee of independence, in prosecution offices of general jurisdiction"* regarding paragraphs 9, 11 and 13 according to the relevant findings for this instruction, part of this inspection report; to review general instruction no. 55 PBD, dated 11.12.2020 *"On the performance of toxicological-clinical-adictological expert examinations"* of the Head of Prosecution Office Elbasan, regarding paragraphs 1 and 2 according to the relevant findings for this instruction, part of this inspection report; to review General instructions no. 19 PBD, dated 03.03.2021 *"On the execution, implementation and supervision of the "house arrest" preventive measures, as well as the rules for notifying and accompanying persons under investigation/defendant under "house arrest" with the view to carrying out investigative actions"*, regarding the amendments/additions that are considered necessary, according also to the relevant findings for this instruction.
- We recommend to the Prosecution Office attached to the Court of First Instance Shkodër to review General Instruction no. 33 prot, date 04.09.2020 *"On the regulation of relations between the head of prosecution office and prosecutors, in relation to the information, transparency and guarantee of independence in the Prosecution Office attached to the*

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**



*Court of First Instance Shkodër*”, related to paragraphs 9, 11, 13, 14, 15 and 16, according to the relevant findings for this instruction, part of this inspection report.

- We recommend to the Prosecution Office attached to the Court of First Instance Korçë, to review General instruction (no number), dated 07.09.2020 "*On the regulation of relations between prosecutors and the head of prosecution office*", regarding also paragraphs 6, 7 and 10 of this instruction, according to the relevant findings for this instruction, part of this inspection report.
- Based on the fact that the number and importance of requests for information aiming at enabling Heads of Prosecution Offices to issue non-binding instructions or even only to be informed, based on general instruction no. 12/2020 as amended, is currently conditioned by the administrative burden/human resources, the volume of work, as well as the dedication and responsibility of the Heads of Prosecution Offices for heading and managing prosecution offices, for this reason, we suggest a reorganization of the internal structures of the prosecution offices of general jurisdiction, so that they could be informed as much as possible of the functional activity of the prosecution offices that they head.
- It is recommended that non-binding instructions be given as a structured formal document and respond to the purpose of this type of instruction issued mainly by the Head of Prosecution Office at the time the criminal complaint/referral/criminal proceeding is registered or to verify their progress pursuant to the procedure of article 11 of general instruction no. 12/2020, as amended and most important, if the prosecutor agrees to follow the actions instructed, to monitor the implementation in the following stages of the criminal proceedings.
- The Heads of Prosecution Offices attached to the Courts of First Instance and Courts of Appeal, pursuant to article 10, paragraph 3 of general instruction no. 12, dated 20.07.2020 as amended, of the Prosecutor General, take measures to inform periodically the Prosecutor General of the crime state, according to provisions of Article 42, letter "I" of Law No. 97/2016 "*On the Organization and Functioning of the Prosecution Office in the Republic of Albania*", as amended.
- It is recommended that all the prosecutors of the prosecution offices included in the inspection, be informed of the problems created when they do not provide information for the Head of Prosecution Office and not record the data in the register, so that they can take them into consideration in the future, because violating the reference legal provisions according to article 21 of general instruction no. 12/2020 as amended, of the Prosecutor

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

General, may constitute a cause for disciplinary violation according to the law and/or a cause for the initiation of verifications by the monitoring section in the General Prosecution Office against the prosecutor and/or the Head of Prosecution Office of general jurisdiction, according to the law.

## 2. **For the Prosecution Offices attached to the Courts of Appeal:**

- We recommend to the Prosecution Office attached to the Shkoder Court of Appeal Shkodër, to review general Instruction no. 50, dated 21.12.2020 "*On the regulation of relations between the head of prosecution office and prosecutors regarding information, transparency and guarantee of independence in the Prosecution Office attached to the Court of Appeal of Shkodër*", related also to paragraphs 7 and 10, according to the relevant findings for this instruction, part of this inspection report.
- We recommend to the Prosecution Office attached to the Court of Appeal Korçë, to review General Instruction no. 1, date 10.09.2020 "*Based on and on the implementation of the general instruction no. 12, date 20. 07.2020 of the Prosecutor General "On the regulation of relations between prosecutors and heads of prosecution offices, information, transparency and the guarantee of independence, in the prosecution office of general jurisdiction "*", of the Head of this Prosecution Office regarding paragraph 7, according to the relevant findings for this instruction, part of this inspection report.
- We recommend to the Prosecution Office attached to the Court of Appeal Durrës, to review Instruction no. 1, dated 07.09.2020 "*Based on and on the implementation of the general instruction no. 12, date 20. 07.2020 of the Prosecutor General "On the regulation of relations between prosecutors and heads of prosecution offices, information, transparency and the guarantee of independence, in the prosecution office of general jurisdiction" "*", of the Head of this Prosecution Office regarding paragraph 7, according to the relevant findings for this instruction, part of this inspection report.
- We recommend to the Prosecution Offices of Appeal which were found not to have applied requests for information/ non-binding instructions by their Heads of Office/ information from prosecutors, that their Heads of Offices exercise their authority according to general instruction no. 12, dated 20.07.2020, as amended, when they deem that cases represent the importance of the criminal fact, represent vulnerable interests or the public interests, so that even at this level of prosecution, these measures can serve the effective implementation of general instruction no. 12/2020 as amended, of the Prosecutor General, within the framework of information, transparency and accountability of the representative activity and the exercise of criminal prosecution by the prosecutors of appeal. In this direction, the Heads of Prosecution Offices attached to the Courts of Appeal or Courts of First

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

Instance can establish a set of criteria, or based on the information they receive as Heads of Offices, to assess when it is important to require information on a case as well as when they deem necessary to proceed with the issuance of non-binding instructions.

- Taking into consideration the different ways of being informed, ascertained by the prosecutors at the court of appeal, we recommend that the Heads of Prosecution Offices attached to the Court of Appeal unify this practice by issuing a general instruction, pursuant to law no. 97/2016 "On the organization and functioning of the prosecution office in the Republic of Albania", as amended and more specifically in compliance with instruction no. 12, 20.07.2020, as amended, of the Prosecutor General. This is important as it serves the purpose of guaranteeing the rights and obligations of prosecutors in exercising their functions within the framework of their relations with the Heads of Prosecution Offices as higher prosecutors, as well as the progress, efficiency, legality and transparency in the activity of the prosecution office as an independent constitutional body. It should also be emphasized with the unification of this practice, even the fact that despite the workload of the prosecution office under the current circumstances, according to the instructions of the Prosecutor General, the information must be in writing and the communication of the prosecutors with the Heads of Prosecution Offices attached to the Courts of Appeal, must be recorded in the register of internal communications, pursuant to paragraph 2, article 20 of general instruction no. 12/2020 as amended, of the Prosecutor General, for the cases provided for in Article 18 of this instruction.

### 3. **For the General Prosecution Office:**

- We recommend to the General Prosecution Office, where in no case did the Prosecutor General proceed with the issuance of non-binding instructions or the prosecutors of this office with their information, to exercise its authority according to general instruction no. 12, dated 20.07.2020, as amended, when it is deemed that cases represent the importance of the criminal fact, represent vulnerable interests or the public interests, so that even at this level of prosecution, these measures can serve the effective implementation of general instruction no. 12/2020 as amended, of the Prosecutor General, within the framework of information, transparency and accountability of the activity of the prosecutors of the General Prosecution Office, pursuant to the legal provisions of the Code of Criminal Procedure and law no. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania", as amended.
- We recommend that the wording of Article 7, paragraph 2, of General instruction no. 12, date 20.07.2020 as amended, of the Prosecutor General, be clarified in a similar way with article 46, paragraph 2 of law no. 97/2016, as amended, in order not to confuse the authority of the Heads of Prosecution Offices in issuing general instructions for problems and areas which belong to the authority of Prosecutor General; the Heads of Prosecution Offices can issue general instructions

**INSPECTORS' UNIT – HIGH INSPECTOR OF JUSTICE**

only to facilitate their implementation. This is due to the fact that article 7, paragraph 2 of the general instruction includes the term "higher prosecutor", which also means that the Heads of Prosecution Offices can also issue general instructions according to subdivisions i), ii) and iii). However, article 46, paragraphs 1 and 2 of law no. 97/2016, as amended, uses this term accordingly by expressly stating the Prosecutor General as the authority to issue these general instructions.

- Considering that general instructions and non-binding instructions issued by the prosecution offices subject of inspection do not have a unified format to follow, we recommend the creation of a model for these acts to be implemented by all prosecution offices.
- Taking into account the way of keeping the register of internal procedural correspondence, we recommend to the Prosecutor General to review the model of the register with a view to entering the prosecutors' signature when handing and receiving the acts recorded in the register. The register of internal communication of the Prosecution Offices must reflect the approval date of the non-binding instruction and the date of the response from the prosecutor of the case. Also, the addition of a column in the register of internal communications, where to enter data on the criminal offense which the respective proceeding was registered for, would serve the purpose of instruction no. 12/2020, to increase the transparency and efficiency of the control.

It is also recommended the improvement of the coordination and monitoring of the implementation progress of general instruction no. 12/2020 as amended, aiming at increasing the independence of the prosecution office and helping prosecutors to a better understanding of their responsibilities, with a view to increasing the efficiency of the prosecution office and the effectiveness in investigations and criminal prosecution, encouraging prosecutors through effective observation in their work performance according to the instruments of the instruction. as well as identifying cases that may be proceeded in a disciplinary way during the implementation of the general instruction.

We recommend the continuation of the cooperation between the Heads of Prosecution Offices and the General Prosecution Office, with the aim of improving the functioning of the statistical system, analysis, digitization of the information and the registers in the prosecution office, as well as increasing the contribution of the prosecution office in drafting unified statistics in the field of justice, which will serve as a basis for analyzing criminality, implementing criminal policy and its effectiveness.

#### **4. For the School of Magistracy and the High Prosecutorial Council**

- We recommend that you take measures for the professional growth of prosecutors, as well as the continuation of the prosecutors training on topics related to the new legal framework

of the functioning of the prosecution office and some basic elements such as responsibility, professionalism, integrity and reliability for guaranteeing the independence and impartiality of the prosecutors and avoiding any kind of influence or impact on them during the conduct of investigations, as well as strengthening the control and accountable mechanisms for prosecutors.

## **Proposals**

Based on article 147/d, paragraph 2 of the Constitution of the Republic of Albania; article 194, paragraph 4 and article 214 of law no. 115/2016 "On the governing bodies of the justice system", as amended,

### **WE PROPOSE:**

1. To end the thematic inspection dated 01.06.2021 of the Prosecution Offices of General Jurisdiction with object: "On taking administrative and procedural measures in the framework of the implementation of General Instruction no. 12, dated 20.07.2020, of the Prosecutor General " *On regulation of relations between prosecutors and heads of prosecution offices, information, transparency and guarantee of independence in Prosecution Offices of general jurisdiction*", as amended".

2. To appoint the period of time, from 01.01.2023 to 01.07.2023, as a period of time to follow the implementation of the recommendations.

3. To notify the Prosecutions Offices attached to the Courts of First Instance in Tiranë, Durrës, Elbasan, Fier, Korçë, Shkodër, Vlorë; the Prosecution Office attached to the Court of Appeal Vlorë; the Prosecution Office attached to the Court of Appeal Tiranë; the Prosecution Office attached to the Court of Appeal Shkodër; the Prosecution Office attached to the Court of Appeal Korçë; the Prosecution Office attached to the Court of Appeal Gjirokastër; the Prosecution Office attached to the Court of Appeal Durrës; the General Prosecution Office of the end of the thematic inspection, by also sending a copy of the Inspection Report.

To notify the School of Magistracy, the High Prosecutorial Council, of the Inspection Report by sending a copy of this report

### **INSPECTORS**

Julian Zonja

Lindita Ziguri

Elena Pelushi

Alma Tafani

Joana Asimi

Besnik Maho

Saimir Hoxha

(signatures)

