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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ALBANIA**

**DRAFT AMICUS CURIAE BRIEF**

**ON THE COMPETENCE OF THE CONSTITUTIONAL COURT  
REGARDING THE VALIDITY OF THE LOCAL ELECTIONS  
HELD ON 30 JUNE 2019**

on the basis of comments by

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**Mr Oliver KASK (Member, Estonia)**

**Mr Cesare PINELLI (Substitute Member, Italy)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

## I. Introduction

1. By letter dated 9 July 2021, Mr Vitore Tusha, President of the Constitutional Court of Albania, requested an *amicus curiae* opinion from the Venice Commission on three questions raised by the Court in the context of two lawsuits filed by the Association of Municipalities of Albania. The Association had filed a lawsuit challenging the constitutionality of the local elections which had taken place on 30 June 2019 and subsequently the validity of the election of the mayors and municipal councillors who were elected at these elections. The Association also filed a lawsuit challenging the procedures for the registration of the Bindja Demokratike party.

2. The questions submitted to the Venice Commission are the following:

*Question no. 1: Shall Article 131, point 1, letter “e” of the Constitution be interpreted as the Constitutional Court having jurisdiction to decide on the constitutionality of the election process?*

*Question no. 2: Given that the principles of periodicity of local elections and political pluralism are provided as fundamental principles, what would be the interrelation between them in a situation where there is a risk of violation of each of these principles? Which one could prevail over the other?*

*Question no. 3: In a situation of legal uncertainty climate, did the actions of public authorities and political parties violate the voters’ right to have meaningful choice? Should they have ensured voters’ highest interest?*

3. Mr Holmøyvik, Mr Kask and Mr Pinelli acted as rapporteurs for this brief.

4. *This brief was approved by the Council for Democratic Elections at its xxx meeting (Venice and online, xxx) and was adopted by the Venice Commission at its xxx plenary session (Venice and online, xxx).*

## II. Scope of the present brief

5. The Venice Commission will respond to the three questions submitted by proposing possible interpretations of the Constitution of Albania and related legislation based on relevant international norms and standards, including Venice Commission’s reference documents. The Venice Commission will therefore refrain from framing any firm and authoritative interpretation of the Constitution of Albania and of any related legislation. Only the Constitutional Court of Albania can pronounce on the final interpretation of the Constitution of Albania.

6. In order to put the present case into perspective, it is useful to note that the Venice Commission issued on 11-12 October 2019 an Opinion on the powers of the President of Albania to set the dates of elections (“the 2019 Opinion”).<sup>1</sup> It is also relevant to refer to the context of the present case as developed in the 2019 Opinion.<sup>2</sup> The Speaker of the Assembly of Albania had explained when making that opinion request that the Assembly was seeking advice in the context of a procedure of impeachment against the President of Albania because he had cancelled / postponed the local elections eventually held on 30 June 2019. The opinion had concluded *inter alia* that, “in the absence of a statutory provision on the issue, the

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<sup>1</sup> Venice Commission, Opinion on the powers of the President to set the dates of elections, adopted by the Venice Commission at its 120<sup>th</sup> Plenary Session (Venice, 11-12 October 2019) ([CDL-AD\(2019\)019](#)).

<sup>2</sup> On the chronology, see [CDL-AD\(2019\)019](#), and in particular the table in Section II, para. 7.

President can only cancel elections for local government bodies in a situation which meets the criteria for taking emergency measures. Even then the President needs a specific – *ad hoc* – legal basis to postpone elections.”<sup>3</sup>

7. The present Brief, like the 2019 opinion, refers to the 2019 local elections and touches upon the issue of their validity. The scope of the 2019 Opinion was however of a different nature, since it dealt with the issue of the powers of the President to set the dates of elections and concerned a procedure of impeachment, whereas the present Brief deals with the constitutional basis for the 2019 local elections.

### **III. Reply to question no. 1 related to the competence of the Constitutional Court**

*Question no. 1: Shall Article 131, point 1, letter “e” of the Constitution be interpreted as the Constitutional Court having jurisdiction to decide on the constitutionality of the election process?*

8. Article 13 of the Constitution stipulates that “[l]ocal government in the Republic of Albania is founded upon the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy.” Articles 108 to 115 of the Constitution deal with local government overall and define the local government bodies, their functioning and competencies. More specifically, Article 108 (1) of the Constitution stipulates that “[c]ommunes or municipalities and regions are the units of local government” and that “[o]ther units of local government are regulated by law”, underlining their independence from the central state institutions.

9. Article 109 of the Constitution defines municipal councils and mayors by stipulating that “[t]he representative organs of the basic units of local government are the councils, which are elected every four years by general direct elections and by secret ballot” and that “[t]he executive organ of a municipality or commune is the mayor, who is elected directly by the people in the manner contemplated in paragraph 1 of this article.”

10. According to Article 131 (1) e) of the Constitution, “[t]he Constitutional Court decides on: [...] e) the issues bearing a connection to the electability and compliance in assuming the functions of the President of the Republic, MPs, functionaries of bodies foreseen in the Constitution, as well as to the verification of their election. [...]”. The provision thus establishes the Constitutional Court’s competence to deal with the “verification of the election” and the “electability” (eligibility to be elected) of “functionaries of bodies foreseen in the Constitution”.

11. In order to assess whether the Constitutional Court has the competence over the constitutionality of the local elections of 2019, it is first necessary to clarify the meaning of this provision and primarily whether the expression “functionaries of bodies foreseen in the Constitution” might include local elected officials, such as those who were elected following the 2019 local elections for the municipalities of Albania.

12. In the context of the 2015 decriminalisation reform, Law no. 137/2015 introduced a new Article 6/1 in the Constitution: “[i]t is prohibited the election, appointment or exercising of public function in one of the organs provided for in this Constitution or established by law, regardless of the provisions made in other provisions of this Constitution, if are verified circumstances that undermine the integrity of public functionary, under the conditions and the rules set by law approved by three-fifths of all members of the Assembly”.

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<sup>3</sup> [CDL-AD\(2019\)019](#), para. 94.

13. The same reform led to an amendment to Article 131 (1) e) of the Constitution by adding the phrase “functionaries of bodies foreseen in the Constitution”.

14. The decriminalisation reform also led to the adoption of Law no. 138/2015 “On guaranteeing the integrity of persons elected, appointed or exercising public functions” pursuant to Article 6/1 of the Constitution.<sup>4</sup>

15. According to Article 2 of Law no. 138/2015, entitled “Prohibition of candidacy or election in high public functions”, “[p]ersons that have been convicted to imprisonment by a final court decision, inside or outside of the territory of the Republic of Albania, for the below listed actions, cannot run for or be elected as members of the Assembly of Albania, mayor or counsellor in the municipal council, and, in any case, cannot acquire a function through a vote by the Assembly, including the function of the Prime Minister or member of the Council of Ministers, or through a vote by municipal or district councils [...]”

16. On the basis of this provision and since Law no. 138/2015 implements Article 6/1 of the Constitution, the Venice Commission considers that municipal councillors and mayors are officials “exercising [...] public function in one of the organs provided for in this Constitution or established by law” in the sense of Article 6/1 of the Constitution.

17. Furthermore, due to the simultaneous adoption of Article 6/1 and amended Article 131 (1) e) of the Constitution through Law no. 137/2015, the Venice Commission considers the word “functionaries” in Article 131 (1) e) as having the same meaning as persons “exercising [...] public function” in Article 6/1.

18. The question now arises whether municipalities are “bodies foreseen in the Constitution” in the sense of Article 131 (1) e). Part Six of the Constitution is dedicated to local government and mentions municipal councillors and mayors on several occasions. If Article 131 (1) e) is to be understood congruent with Article 6/1 as proposed above, local government bodies are then organs “provided for in the Constitution” and not “established by law”.

19. Even assuming that local government bodies are covered by Article 131 (1) e) of the Constitution, this does not imply *ipso iure* that the Constitutional Court is competent to address electoral disputes in the field.

20. The sole constitutional provision regarding a Constitutional Court’s control over local government bodies is in Article 115,<sup>5</sup> whose scope is however alien to the election of local government bodies, and therefore does not help answering the question.

21. Article 6 of the Constitution provides that “[t]he organization and operation of the organs contemplated by this Constitution are regulated by their respective laws, except when this Constitution provides otherwise”. It is therefore doubtful that the Constitutional Court could have a competence on local elections if legislation does not provide for it.

22. The Venice Commission observes in this respect that the Law on the Constitutional Court – which was amended in 2016 after the amendment of Article 131 (1) e) of the Constitution, explicitly regulates the procedure concerning the control of the eligibility and compliance of

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<sup>4</sup> Law no. 138/2015 is mainly based on Article 6/1 of the Constitution.

<sup>5</sup> Constitution, Article 115:

1. A directly elected organ of a local government unit may be dissolved or discharged by the Council of Ministers for serious violations of the Constitution or the laws.

2. The dissolved or discharged organ may complain, within 15 days, to the Constitutional Court, in which case the decision of the Council of Ministers is suspended.

3. If the right to complain is not exercised within 15 days, or if the Constitutional Court upholds the decision of the Council of Ministers, the President of the Republic sets a date for elections of the respective local unit.

the President of the Republic (Article 64) and members of parliament (Article 66). These two competencies pre-existed the constitutional amendments of 2015. However, this law does not provide any similar procedure for “functionaries of bodies foreseen in the Constitution”, which were added in 2015.

23. Nor does the Electoral Code mention a competency of the Constitutional Court in the field of local elections. This does not mean that there is no remedy. The Electoral Code provides for the competence of the Electoral College of the Court of Appeals in Tirana (“the Electoral College”) to deal with electoral complaints against CEC decisions, or lack of decision,<sup>6</sup> thus overseeing the legality of electoral processes. Moreover, according to Article 158 (5) of the Electoral Code, “[t]he decision of the Electoral College is final. No appeal may be made against it”.<sup>7</sup>

24. Even assuming that the competence of the Constitutional Court on local elections could be directly inferred from Article 131 (1) e) of the Constitution, it is logical to deduce that it would correspond to the competence concerning the President and MPs, which stems from the same Article 131 (1) e). The said competence can be carefully ascertained by Articles 64 and 65 of the Law on the Constitutional Court, which relates to the subjective eligibility requirements for assuming the position of President or MP, and does not cover the validity of the presidential or parliamentary elections. Similarly, a possible competence of the Constitutional Court over locally elected officials would only concern the validity of the eligibility requirements for assuming those functions.

25. This interpretation appears to be supported by the purpose of the 2015 reform, which was to decriminalise the elected bodies by guaranteeing the integrity of their individual members. On the contrary, the issue brought before the Constitutional Court consists in ascertaining the conformity with the Constitution of a local election as such, namely the election that took place on 30 June 2019 notwithstanding the fact that the President of the Republic had decided to postpone the renewal of local government’s representatives due to alleged dangers for public security. This issue has nothing to do with the eligibility of single members of the bodies mentioned in Article 131 (1) e) of the Constitution. It concerns instead the legitimacy of all the bodies that were elected on 30 June 2019, namely an objective reason.

26. Even if there is no competence of the Constitutional Court on local elections, no rules should be completely exempt from the control of constitutionality. Article 124 of the Constitution, making the Constitutional Court the final and authoritative interpreter of the Constitution, can be interpreted as applying to the settlement of disputes on the constitutionality of the whole legislation, including in the electoral field. The Venice Commission has in previous opinions (concerning Georgia) cautioned against excluding electoral legislation from constitutional control in its entirety,<sup>8</sup> even if it might be justified for the Constitutional Court not to address the constitutionality of electoral legislation during the pre-electoral period – to safeguard the stability of electoral law. In this respect, it should be kept in mind that “free, equal, general and periodic” elections are constitutional requirements to governance according to Article 1 (3) of the Constitution.

27. In conclusion, the Venice Commission is of the opinion that municipal councillors and mayors are “functionaries of bodies foreseen in the Constitution” in the sense of Article 131 (1) e) of the Constitution. However, the competence of the Constitutional Court

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<sup>6</sup> Electoral Code, Article 145.

<sup>7</sup> Electoral Code, Article 158 – Types of decisions of the Electoral College.

<sup>8</sup> See for instance: Venice Commission, Opinion on the draft revised Constitution of Georgia, adopted by the Venice Commission at its 111<sup>th</sup> plenary session (Venice, 16-17 June 2017) ([CDL-AD\(2017\)013](#)), para. 76; Opinion on the draft revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017, adopted by the Venice Commission at its 112<sup>th</sup> plenary session (Venice, 6-7 October 2017) ([CDL-AD\(2017\)023](#)), para. 44.

does not include the examination of the validity of local elections. This does not prevent the Constitutional Court from exercising its control over electoral legislation.

#### IV. Reply to question no. 2 related to the principles of periodicity of elections and of political pluralism

*Question no. 2: Given that the principles of periodicity of local elections and political pluralism are provided as fundamental principles, what would be the interrelation between them in a situation where there is a risk of violation of each of these principles? Which one could prevail over the other?*

28. The deep political crisis that preceded the 2019 local elections played a considerable role in the conditions in which the elections took place. Tensions among prominent political actors and boycotts by opposition parties led to elections that took place on 30 June 2019 with one single competing candidate in 31 of the 61 municipalities of Albania. Moreover, the President had attempted to postpone the elections arguing that the boycott of opposition parties would have caused “a serious crisis of representation in parliamentary political life” and had promoted a political dialogue between majority and opposition parties.<sup>9</sup> Such a context thus raised the issue of the periodicity of elections. Additionally, the boycott of the opposition parties raised the issue of the political pluralism and of the voters’ choice (see question no. 3).

29. As presented, question no. 2 would suggest that the principles of periodicity of elections and of political pluralism could be potentially in conflict and that in such a situation, one would have to take precedence over the other. From a legal point of view, such a binary approach seems, if not at all, rarely applicable.

30. The Constitution of Albania states that “Albania is a parliamentary republic” and that “[g]overnance is based on a system of elections that are free, equal, general and periodic.”<sup>10</sup> The Constitution also states that “[s]overeignty in the Republic of Albania belongs to the people.”<sup>11</sup> The Constitution of Albania thus lays down the principles of periodic elections and of democracy, and, therefore, of political plurality, which is a *sine qua non* precondition of any democratic regime.

31. In international law, periodical elections are framed, for example, in Article 3 of Protocol No. 1 to the European Convention on Human Rights and in Article 25 (b) of the International Covenant on Civil and Political Rights (ICCPR).<sup>12</sup> Regarding local government bodies, the Council of Europe’s European Charter of Local Self-Government provides for elections to a representative body of local government in its Article 3.<sup>13</sup> It is evident that, in a democratic

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<sup>9</sup> The President issued on 10 June 2019 Decree no. 11199 (CDL-REF(2019)021) cancelling Decree no. 10928 of 5 November 2018 that had fixed the date of the elections for 30 June 2019. This Decree no. 11199 was published in the official journal. The President explained that he took this decision when he observed that the opposition parties did not register their candidates before the Central Election Commission and considered that it caused “a serious crisis of representation in parliamentary political life”, adding that “Albania [was] undergoing a serious constitutional crisis”. ([source](#)).

<sup>10</sup> Constitution, Article 1, respectively para. 1 and 3.

<sup>11</sup> Constitution, Article 2 (1).

<sup>12</sup> [ICCPR](#), Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: [...] (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; [...].

<sup>13</sup> Council of Europe, European Charter of Local Self-Government. Strasbourg, 15.X.1985. European Treaty Series – [No. 122](#). Article 3 – Concept of local self-government:

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

system where elected bodies are accountable to voters, such a representative body has to be elected periodically.

32. Both the European Convention on Human Rights and the Venice Commission's Code of Good Practice of Electoral Matters<sup>14</sup> provide a margin of appreciation in deciding the intervals of elections if the purpose of elections is not undermined.

33. In *Timke v. Germany*, the European Commission of Human Rights explained the notion of free elections held "at reasonable intervals" issued from Article 3 of Protocol No. 1 in the following way: "The Commission finds that the question whether elections are held at reasonable intervals must be determined by reference to the purpose of parliamentary elections. That purpose is to ensure that fundamental changes in prevailing public opinion are reflected in the opinions of the representatives of the people."<sup>15</sup>

34. The Venice Commission's Code of Good Practice in Electoral Matters states that "[e]lections must be held at regular intervals".<sup>16</sup> Additionally, the Commission stated in its Report on respect for democracy, human rights and the Rule of Law during states of emergency: Reflections that "[i]n ordinary circumstances, elections must be held periodically. [...] Postponement is a restriction to the periodicity of elections and has to be foreseen in the law, be necessary in the concrete circumstances and be proportionate."<sup>17</sup>

35. Additionally, the Venice Commission noted in its Report on choosing the date of an election that "the power to choose the date of the elections is [...] not a discretionary power, as the Constitution or the electoral law gives compulsory indications as to the period in which the elections will have to be held."<sup>18</sup>

36. The Constitution of Albania states the principle of periodic elections as a compulsory constitutional rule in its Article 109(1), according to which "[t]he representative organs of the basic units of local government are the councils, which are elected every four years by general direct elections and by secret ballot",<sup>19</sup> while Article 65 prescribes parliamentary elections every four years.

37. In most democracies, the Head of the State is responsible for issuing the date of the elections, as it is the case in Albania for the various types of elections.<sup>20</sup> The decision taken by the President to postpone the date of the 2019 local elections reflected the conviction that, due to tensions affecting the political climate with the related dangers for a peaceful management of the elections, the decision for issuing the date of the local elections would not have to be taken at the expiry date of the local government bodies but later on. In such a case, the President's decision of postponing the elections might engender a conflict between the principle that elections, be they national or local, should take place periodically on the one side, and the principle of political pluralism on the other.

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2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

<sup>14</sup> Venice Commission, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report ([CDL-AD\(2002\)023rev2-cor](#)), Guideline I.6. See also para. 57 of the explanatory report.

<sup>15</sup> European Commission of Human Rights, *Timke v. Germany*, application no. 27311/95, 11 September 1995.

<sup>16</sup> Venice Commission, Code of Good Practice in Electoral Matters Report ([CDL-AD\(2002\)023rev2-cor](#)), Guideline I.6.

<sup>17</sup> Venice Commission, Report on respect for democracy, human rights and the Rule of Law during states of emergency: Reflections, taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session ([CDL-AD\(2020\)014](#)), para. 92.

<sup>18</sup> Venice Commission, Report on choosing the date of an election ([CDL-AD\(2007\)037](#)), para. 10.

<sup>19</sup> Constitution, Article 109 (1).

<sup>20</sup> Constitution, Article 92 gj.

38. The Venice Commission stated in the 2019 Opinion on the scope of the power of the President to set the dates of elections that “[w]ithout periodic elections at the local level, local self-government would lack the required legitimacy.” The Commission added that “[i]f the aim of the postponement of elections or cancellation of the previous decision on the Election Day was to lead to a discussion among the stakeholders and guarantee the choice for the electorate, there was at least a legitimate aim for the postponement. Avoidance of possible upcoming conflicts in society and safeguarding democracy can be considered a legitimate aim to postpone the elections.” The Commission added that “[p]eriodic elections are thus both a requirement of the principle of democracy and a fundamental right. Any restriction of the right to take part in periodic elections has to be provided for in the law, have a legitimate aim and be proportionate. The same criteria apply to local elections.”<sup>21</sup>

39. However, the Venice Commission also underlined that “[t]he electoral boycott by political parties, even if they represent an important share of the electorate, cannot prevent regular elections from taking place. Otherwise, these parties would obtain leverage to completely forestall any elections.”<sup>22</sup>

40. Neither in its Code of Good Practice in Electoral Matters nor in other reports or opinions the Venice Commission has pointed out any guideline requesting the Member States to regulate the postponement of elections in a boycotting situation. As the Venice Commission underlined in its Report on respect for democracy, human rights and the rule of law during states of emergency: Reflections, “[a] genuine campaign and real public debate are just as important for democratic elections as the opportunity to vote.”<sup>23</sup> Additionally, the Venice Commission and the OSCE/ODIHR stated in their 2021 Joint Opinion on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament of Georgia that “[w]hile parliamentary boycotts are a legitimate means of expressing dissent in political discourse, lengthy and extensive boycotts may hinder any meaningful parliamentary dialogue and could have impact on the right to political participation of the people through its elected representatives.”<sup>24</sup>

41. Nonetheless, such a postponement of the 2019 local elections did not have a legal basis as no such power existed for the President. In the absence of a statutory provision on the issue, the President can only cancel elections for local government bodies in a situation which meets the criteria for taking emergency measures. Even then, the President needs a specific – *ad hoc* – legal basis to postpone elections.<sup>25</sup> The President of Albania cannot take the powers of the parliament on an *ad hoc* basis and legislate for such postponement. The Venice Commission therefore found that the President of the Republic of Albania had exceeded his competence according to the Constitution by postponing the 2019 local elections.

42. The present Brief does not deviate from these previous statements.

43. Regarding the principle of political pluralism, holding elections at reasonable intervals is only one of many interrelated measures aimed at producing pluralism in a political system and

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<sup>21</sup> Venice Commission, Opinion on the powers of the President to set the dates of elections ([CDL-AD\(2019\)019](#)), respectively para. 72, 74 and 75.

<sup>22</sup> [CDL-AD\(2019\)019](#), para. 98.

<sup>23</sup> Venice Commission, Report on respect for democracy, human rights and the Rule of Law during states of emergency: Reflections, taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session ([CDL-AD\(2020\)014](#)), para. 96.

<sup>24</sup> Venice Commission, Joint Opinion of the Venice Commission and the OSCE/ODIHR on amendments to the Election Code, the Law on Political Associations of Citizens and the Rules of Procedure of the Parliament of Georgia, approved by the Council for Democratic Elections at its 71<sup>st</sup> meeting (online, 18 March 2021) and adopted by the Venice Commission at its 126<sup>th</sup> Plenary Session (online, 19-20 March 2021) ([CDL-AD\(2021\)008](#)), para. 10.

<sup>25</sup> Venice Commission, Opinion on the powers of the President to set the dates of elections ([CDL-AD\(2019\)019](#)), para. 94.



in society. As noted by the Venice Commission in its Guidelines on political party regulation, “pluralism is necessary to ensure individuals are offered a real choice in their political associations and vote choices”.<sup>26</sup>

44. The principle of political pluralism is to a large extent contingent to the constitutional framework and the legislative choices made, such as the choice of the electoral system or the eligibility rules to stand as a candidate. Public authorities have the responsibility to ensure democratic elections by guaranteeing the respect of fundamental rights, in particular the freedom of speech and association, as well as by providing an infrastructure for public debate by regulating political parties and the media.

45. Political pluralism also relies on political parties themselves. They should be free to decide on their participation in elections and ultimately on their influence in providing for a meaningful choice of the voters on election day.

46. In conclusion, the principles of periodicity of elections and of political pluralism are unlikely to conflict *per se* one with each other since they are expressed in very different types of rules. Pluralism may be a legitimate aim for interfering with periodicity, but for that aim to prevail, the interference should have a legal basis and be proportionate. Parliament has a wide margin of appreciation to decide on providing a legal basis for postponing elections; in the absence of such a basis, the Constitutional Court could consider the postponement as unconstitutional.

#### **V. Reply to question no. 3 related to the issues of meaningful choice and voters' highest interest**

*Question no. 3: In a situation of legal uncertainty climate, did the actions of public authorities and political parties violate the voters' right to have meaningful choice? Should they have ensured voters' highest interest?*

47. The action of political parties depends on how they are seen in the Albanian legal order. Political parties rely on the freedom of association, as stated by the Constitution of Albania: “[p]olitical parties are created freely”<sup>27</sup> and possess autonomy in deciding how to achieve their aims.

48. The Venice Commission's Code of Good Practice in the field of Political Parties defines political parties “as non-profit associations of persons intended to act in a long-term perspective, thus having an internal structure that ensures their functioning on a permanent basis and thereby aiming to participate in the management of public affairs through gaining the voters' support to their political programme. [...] [P]olitical parties perform essential functions for representative democracy, both social (contributing to the citizens' political socialisation, association and articulating their ideological pluralism) and institutional (controlling the executive and presenting alternative policies and candidates).”<sup>28</sup>

49. The Code underlines that “political parties precisely aim to participate in the political process, mainly presenting candidates to elections.”<sup>29</sup> It however does not mean that they have such an obligation.

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<sup>26</sup> Guidelines on Political Party Regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice, 15-16 October 2010) ([CDL-AD\(2010\)024](#)), para. 20.

<sup>27</sup> Constitution, Article 9 (1).

<sup>28</sup> Venice Commission, Code of Good Practice in the field of Political Parties, adopted by the Venice Commission at its 77<sup>th</sup> Plenary Session (Venice, 12-13 December 2008), and Explanatory Report, adopted by the Venice Commission at its 78<sup>th</sup> Plenary Session (Venice, 13-14 March 2009) ([CDL-AD\(2009\)021](#)), para. 58.

<sup>29</sup> [CDL-AD\(2009\)021](#), para. 49.

50. The Code adds that “[t]he European Court of Human Rights [...] has upheld on several occasions that “political parties are a form of association essential to the proper functioning of democracy”.<sup>30</sup> The Parliamentary Assembly of the Council of Europe (PACE) has as well acknowledged that “political parties constitute a permanent feature of modern democracies, a key element of electoral competition, and a crucial linking mechanism between the individual and the state”, their role consisting in “integrating groups and individuals into the political process, serving as a tool for formulating and representing their interests, establishing public authorities at different levels, elaborating policies and alternative political programmes and holding the executive to account.”<sup>31</sup>

51. Political parties are therefore private associations representing their members’ views, without the obligation to represent a part of the society and without the obligation to take part in elections, despite this may be one of their main objectives. Boycotting may be therefore a means of political activity, among others, as underlined already in Section IV of the present brief.

52. The action of public authorities depends on their legal obligations and the question raised is closely related to question no. 2. A violation of voters’ rights by public authorities can be discussed with regard to the legal uncertainty of the postponement of elections and possible violations of fundamental rights of political parties, electoral rights or other fundamental political rights, which led to the decision of opposition parties to boycott elections.

53. Decision no. 12 of the Electoral College issued on 24 June 2019<sup>32</sup> already dealt with the legality of the postponement of the 2019 local elections and may thus be considered in the context of the present case. In spite of the fact that the application filed by the Association of Municipalities of Albania does not concern this decision, it should not be disregarded.

54. Question no. 3 thus raises the issue of legal uncertainty in the context of the 2019 local elections. Even if such legal uncertainty cannot be disputed, political uncertainty has deeply and recurrently affected the Albanian political scene to a still bigger extent. While “public authorities and political parties” have not ensured “voters’ highest interest”, the reason does not merely come from their “actions” but from the continuous controversies among themselves that go to the point of eroding the very legitimacy of democracy before the electorate.

55. It therefore remains the co-responsibility of the public authorities and the whole political spectrum to restore trust in the Albanian institutions and in electoral processes. This implies the responsibility of all these stakeholders to promote political dialogue among all political forces as well as among national institutions, such as the Central Election Commission, *inter alia*. This also implies restoring a meaningful choice for voters. All these elements are *sine qua non*, but non-exclusive, preconditions to democratic elections.

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<sup>30</sup> European Court of Human Rights, [United Communist Party of Turkey and Others against Turkey](#), 30 January 1998 (133/1996/752/951).

<sup>31</sup> [Resolution 1546\(2007\)](#) on the Code of good practice for political parties, para. 4.

<sup>32</sup> [CDL-REF\(2019\)021](#), Section VII. In reply to an appeal against the decision of the CEC by the National Unity Party (NUP), the Electoral College established its competence, referring to Decision no. 150 of 16 June 2017 of a college (chamber) of the Constitutional Court (admissibility decision), which had held that the fixing of the date of elections is an individual administrative act. The Electoral College confirmed the CEC decision to refuse the withdrawal of the NUP from the elections. The College also confirmed the CEC’s assessment that Decree no. 11199 of 10 June 2019 is an absolutely invalid administrative act according to the Code of Administrative Procedure. In a separate opinion, Judge Hado pointed out that the Electoral College cannot decide on the validity of the President’s decree, since no lawsuits against the decree have been filed before the College.