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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ALBANIA

**POWERS OF A PRESIDENT
TO SET THE DATES OF ELECTIONS
IN A PARLIAMENTARY SYSTEM**

REFERENCE DOCUMENTS

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I. Request for an opinion of the Venice Commission by the Speaker of the Assembly of 22/07/2019

**ASSEMBLY
SPEAKER**

Tirana, 22.07.2019

To the kind attention of
**Mr. Gianni BUQUICCHIO, President
Venice Commission**

Re: *Request for an urgent opinion*

Distinguished Mr. BUQUICCHIO,

I would like to take advantage of this opportunity to reiterate the recognition of the Albanian Parliament for the great contribution that the Venice Commission has provided with regard to the consolidation of the rule of law and constitutional institutions in Albania. The opinions provided by the Venice Commission are considered as a fundamental safeguard to the solidity of legislation and institutional practice in Albania. The reputation of the Venice Commission is undisputable and its contribution continues to be highly appreciated by Albanian people and state institutions.

On behalf of the Albanian Parliament, I am kindly presenting this request for the provision of an urgent opinion by the Venice Commission related to a very important and sensitive situation for the well-functioning of democracy in Albania.

1. The President of the Republic of Albania, within the powers given by the Constitution (article 92/gj) has issued the decree no. 10928, dated 05.11.2018 "*On the Election Date for Local Government Bodies*". Based on this decree, the date June 30, 2019 is designated as the date of holding the local elections in Albania. The President in issuing this decree respected the legal requirements for determination of election date as provided for in articles 8, 9 and 10 of the Electoral Code and took into consideration that the four-year mandate of the local government bodies expires on August 10, 2019.

2. Following the implementation of the Decree no. 10928, dated 05.11.2018 of the President of the Republic, the procedures to enable the election process for taking place on June 30, 2019 according to the Electoral Code, started. Concretely:

- Commissions of Electoral Administration Zones were established, (Article 28 of the Electoral Code);
- Voters' lists were prepared and published, (Article 56 of the Electoral Code);
- The process of registration of political parties was completed (Article 64 of the Electoral Code);
- Lists of candidates for political parties were submitted, (Article 67 of the Electoral Code);
- Election campaign started (Article 77 of the Electoral Code), etc.

3. More than 40 electoral subjects were registered for the local elections of June 30, 2019. The Democratic Party (DP) and the Socialist Movement for Integration (SMI) decided to not register

as electoral subjects in these elections. Earlier, in February 2019, some former parliament members (MPs) of these political parties resigned from the mandate after a long period boycott of parliamentary life and supported by their electorate organized protests for the resignation of the government. More than half of the vacancies created in the Parliament, due to these resignations, were substituted with the new opposition MPs from the multi-name lists of PD and SMI, according to legal procedures followed by the Central Election Commission and the Parliament itself. Hence, the Parliament managed to maintain its functionality for any constitutional decision-making.

4. During the electoral period, the President of the Republic issued another decree, the one no. 11199, dated 10.06.2019 "*On the abrogation of Decree no. 10928, dated 05.11.2018, of the President of the Republic "On the Election Date for Local Government Bodies"*". The new decree of the President provides for the cancellation of June 30, 2019 as the date of elections for the local government in the Republic of Albania. The reasons given by the President of the Republic for the cancellation of the election date are the following:

- deep concern about the political situation in the country;
- the need for un-tensioning of the situation in the country;
- current conditions would not provide real, democratic, representative and all inclusive elections;
- this decision-making, under the current conditions, is the only way to help resolve the country's severe crisis;
- this decision-making is based on the competence given in Article 92, letter "gj" of the Constitution, as well as in the preamble of the Constitution of the Republic of Albania, point 3 of Article 1, Article 3, point 2 of Article 4, Article 15, Article 45, paragraph 1 of Article 86, paragraph 3 of Article 88 and Article 93 of the Constitution of the Republic of Albania.

5. The Central Election Commission (CEC) as the body responsible for organizing, administering and conducting the electoral process did not consider mandatory to implement the President's decree on the annulment of the date for local elections, but continued with the administration of the electoral process, reasoning that this act of the President is absolutely void, because the President had overcome the powers provided by the Constitution. According to CEC, changing of the elections' date is not a prerogative of the President provided for in the Constitution or the Electoral Code. Pursuant to Article 94 of the Constitution, the President of the Republic can not exercise powers other than those expressly recognized in the Constitution and conferred by law. The act issued in the absence of competence and, moreover, in open and flagrant breach of the Constitution and the law, is null and void, and it is considered as never existing.

6. The Parliament of Albania though its decision dated 13 June 2019, adopted the Resolution on the act of the President of the Republic for the abrogation of Decree no. 10928, dated 05.11.2018 "*On the Election Date for Local Government*". Pursuant to this Resolution, the Parliament:

- based on the responsibility imposed by the Constitution of the Republic of Albania in Article 1, which expressly states that Albania is a Parliamentary Republic;
- respecting the constitutional provision that governance is based on a system of free, equal, general and periodic elections;
- taking into account the role and competences of the President of the Republic in the parliamentary republic and,
- pursuant to the Decree of the President of the Republic no. 10928, dated 05.11.2018, relating to the date of the elections for the local government bodies on 30 June 2019, (this act constituting the only lawful act issued by the President of the Republic of Albania in the framework of the 2019 local elections, that has already brought its legal consequences),

has supported the decision of the Central Election Commission for the continuation of the electoral process and has encouraged this body to continue to defend the inviolability and to guarantee the continuation of the election process for local elections of June 30, 2019. Moreover, upon this Resolution, the Albanian Parliament called on all the public bodies charged by the law with the tasks for running and organizing local elections of June 2019, to consider as inexistent the act of the President dated 10.06.2019 for the abrogation of the Decree no. 10928, dated 05.11.2018 and to continue to perform their duties according to the relevant legislation in order to guarantee the constitutional right of Albanian citizens to elect their representatives in the local government.

7. The Central Election Commission in its meeting of 13.06.2019 reviewed a request filed by the "Party of National Unity" (PUK), electoral subject (registered for elections of June 30, 2019), requesting the de-registration from the election process of local government elections of 30.06.2019, claiming that by the decree of President no. 11199, dated 10.06.2019, the local elections were annulled. Based on Decision No. 836, dated 13.06.2019 of Central Election Commission, the request was rejected. The Central Election Commission, *inter alia*, reasoned that the decree of the President for the annulment of the election date is an absolute administrative act, under the senses of Article 108, paragraph 2, letter "a" of the Code of Administrative Procedures (CAP) and that, under the senses of Article 110 of the CAP, *"Absolutely invalid administrative act does not bring any legal consequence, whether or not it has been ascertained, and it is considered that it does not exist."* Any public or private entity that faces such an act is not subject to its rules and does not take it into account during its activity.

8. In its decision, the Central Election Commission also reasoned that *"... aware that it is not the public body that can abolish an administrative act of another public body, in the position of the body competent to review the legal remedies (administrative appeal) according to point 2 of Article 110 of the CAP, "has the legal obligation to ascertain the absolute invalidity of the administrative act", Decree No.11199, dated 10.06.2019 of the President of the Republic (according to the obligation stipulated by Article 111 of the CAP) , considers this decree as it does not exist. Pursuant to the provisions of Articles 110 and 111 of the Code of Administrative Procedures, the Central Election Commission, being the highest permanent state body in charge of administering elections in accordance with the rules set forth in the Electoral Code in the Republic of Albania, when notified on the president decree finds it as absolutely invalid, null and void act and considers this decree as it does not exist, and continues the work for successful implementation of the election process for local government elections of 30.06.2019 "*.

9. This decision of the Central Election Commission became the subject of review by the Electoral College, which is the only court for election issues in Albania, whose decisions are final. On the basis of the PUK lawsuit, the Electoral College, by its decision no. 12, dated 24.06.2019 concluded that the decision of the Central Election Commission no. 836, dated 13.06.2019 was taken in a fair assessment of the facts and based in the correct application of the law, and consequently decided *"The dismissal of the lawsuit of the claimant Party of National Unity. This decision is final and there is right of appeal against it. "*

10. The Electoral College, emphasized that it is the competent court to adjudicate this case based on the previous practice of the Albanian Constitutional Court, which by its Decision no. 150 of 16 June 2017 ruled that: *"Regarding the legitimation *ratione materiae*, the Panel considers that the Constitutional Court, based on Articles 131 and 134 of the Constitution, deals as the last instance for the claims against acts of public authority which violate the fundamental rights and freedoms guaranteed by the Constitution after exhaustion of all effective remedies for the protection of these rights, unless otherwise provided in the Constitution. In the present case, the Panel finds that the act against which the appeal was made, the decree of the President of the Republic is an individual administrative act, since its*

only object is setting of the election date for the Albanian Parliament. For this reason, the College considers that this act does not fall under the jurisdiction of this Court, but under the jurisdiction of the administrative courts and therefore the claimant is not legitimized to address this Court with the object upon request. Whether or not the decree of the President of the Republic is in conformity with the provisions of the Electoral Code is not in the jurisdiction of this Court, but under the jurisdiction of the administrative courts or, as the case may be, of the Electoral College and as such cannot be considered by this Court (Constitutional Court). "

11. The Electoral College in its decision no. 12, dated 24.06.2019, *inter alia*, reasoned that: "... Decree no.11199, dated 10.06.2019 is an absolutely invalid act within the meaning of Article 108, paragraph 2, letter" a "of the Code of Administrative Procedures, according to which: "The administrative act is absolutely invalid: a) when there is an open and flagrant breach to a provision of this Code and the legislation in force regarding: i) the competence of the public body". .. According to the College, "... the powers of the President of the Republic are exercised from the formal point of view by decrees as provided by Article 93 of the Constitution. This constitutional definition is further supplemented by special provisions distributed in the Constitution or in other laws, and in this respect the President, according to article 92, letter "gj" of the Constitution, has the power to set the election date for the Assembly, local government and the conduction of referendums. This competence over the election date is the only one expressed in the Albanian legal order, considering also the regulations stipulated in the Electoral Code, which in its provisions does not foresee other powers, except as provided for in the Constitution. The only aspects that are regulated by articles 64 and following of this code relate to the deadlines and the determination of the electoral period. The Panel observes that, in the absence of a competency expressed in the law, any other action beyond the limits laid down by the Constitution and the law conflicts not only with a provision of order as it is Article 94 of the Constitution, which provides that "the President of the Republic cannot exercise other powers other than those expressly recognized by the Constitution and which are given by law", but also with the jurisprudence of the Constitutional Court itself. The principle of the rule of law sanctioned in Article 4 of the Constitution implies that the action of all state institutions should be performed under the applicable law, recognizing the supremacy of the Constitution to other normative acts. Everybody in a state of law must act to the extent permitted by the Constitution and the law, not exceeding the limits set by these legal acts. In this sense, each state institution must have clearly defined its area of competence within which it is authorized to act in accordance with constitutional and legal requirements....".

12. Moreover, the College reasoned that: "... referred to Articles 8, 9 and 10 of the Electoral Code ... The College appreciates the CEC's position based on the decision that "the decree must be made respecting the electoral period (Article 8)", and that the decree must be issued no later than 9 months ... (Article 9) ". The President of the Republic has limited competence over time, and beyond that time, he no longer has any competence to act in this regard. So neither can it change, nor can it cancel the election date. Both of these provisions of the Electoral Code have not been respected in the issuance of the second decree, therefore, the second decree of the President of the Republic is in an open and flagrant violation of the legal provisions under the senses of Article 108, paragraph 2, letter "a" of the Code of Administrative Procedures ... Following this reasoning, the Electoral College judges that the President of the Republic through the annulment of the election date for the local government bodies of 30 June 2019 in the absence of legal competence and beyond the deadlines provided by the Electoral Code, has taken over the powers of another body, namely the competencies of the Albanian Parliament. Under the conditions, that is the Albanian Parliament the body that has provided the deadlines and rules for determining the date of elections through the provisions of the Electoral Code, any possible change thereof, in the absence of delegation, should only be made by this body, i.e. only by the Albanian Parliament. Furthermore, the Electoral College considers that the cancellation of the election date in the absence of legal competence and in violation of the deadlines provided by the Electoral Code brings as a consequence the denial

of the right to choose and to be elected according to article 45 of the Constitution, a constitutional right for Albanian citizens envisaged by the Constitution of Republic of Albania. This fact also contradicts with the provisions of the Code of Good Practice in Election of Venice Commission and specifically paragraph 1, universal voting, providing that universal voting consists of active (right to vote) and passive electoral law (the right to be elected). ... with the basic principles of European Electoral Heritage. ... Through the cancellation of the election date, the extension of the mandate of the local government bodies is extended beyond the legal deadline, and this is unacceptable because it is in violation of Article 1, point 3 and Article 2, points 1 and 2 of the Constitution ... "

13. Decree no. 11199, dated 10.06.2019, was the cause of some chaos and violence situations and caused legal uncertainty in some areas of the country, mainly in those municipalities that were run by representatives of the non-parliamentary opposition (DP and SMI). The organizers of these protests alleged that the June 30th elections could not be held until a president's decree had annulled them. The offices of the election administration commissions in some municipalities, such as Shkodra or Tropoja, were burned during protests by the non-parliamentary opposition with the support of their electorate. These episodes were isolated in some areas and law enforcement authorities succeeded to manage professionally and in accordance with the law these situations while maintaining public order; election administration bodies made possible the reorganization of burnt local offices and the progress of the electoral process. The Central Election Commission continued with the administration of the entire electoral process that took place normally on June 30, 2019 across the country, and there was no violence or chaos to bring the process out of control. The June 30 elections were also observed by foreign bodies and in particular by OSCE/ODHIR. Currently, the Central Election Commission is releasing the election results and the mandates for mayors are being announced, while in the Electoral College is deciding on the allocation of municipal council mandates.

14. Some members of the Parliament (55 MPs), based on Article 90/2 of the Constitution of the Republic of Albania and Article 112 of the Rules of Procedure of the Parliament, considering arbitrary and unlawful the annulment of the date for local elections by the President of the Republic, in gross violation of the Constitution, on 17.06.2019 filed a request for the dismissal/impeachment of the President of the Republic. MPs stated that the decree of the President for the annulment of the date for the local elections is in open and flagrant breach to the constitutional principles of a parliamentary republic, as well as to the functions envisaged by the Constitution for the President of the Republic, who holds the position of the Head of State, but at the same time is the sole representative of the unity of the Albanian people. MPs in their request underline that the President of the Republic:

- has seriously violated the principle of sovereignty of the Albanian people;
- has grossly violated the Constitution and has vested himself unlawfully with competencies of Parliament and those of sovereignty of the people;
- has arbitrarily used the power, acting as an unlimited executive power, despite the nature of the Parliamentary Republic;
- has arbitrarily canceled the election date;
- has violated the principle of periodicity of elections;
- has extended beyond the constitutional and legal deadlines the mandate of the existing bodies;
- has violated the principle of exercising power in the state by a government resulting from free and periodic elections;
- has violated the principle of constitutionality and legality;
- has issued an act in open and flagrant breach to the Constitution and laws;
- has violated the principle of the right of citizens to elect and to be elected.

15. During the parliamentary procedures for the dismissal/impeachment of the President of the Republic, the latter issued a third decree on 27.06.2019, the Decree no. 11211, dated 27.06.2019. Pursuant to this decree the President of the Republic decided that October 13, 2019 is the new date for the conduction of the local elections, which date has been accepted currently only by one political party, SMI.

16. Currently, the Parliament is rendering the procedures for the dismissal/impeachment of the President of the Republic. According to the Rules of Procedure of the Parliament, Article 112, this procedure is summarized in three phases. At first, the Commission for Legal Affairs examines the request filed by the MPs, if it meets the formal procedural criteria and in such a case the Commission proposes to the Parliament the establishment of a Special Investigatory Commission for verifying the merits of claims (the claims of MPs relate to gross violation of the Constitution). The Special Investigatory Commission carries out its activity, based on the Rules of Procedure of the Parliament and Law no. 8891, dated 02.05.2002 "*On the organization and functioning of the investigatory commissions of the Parliament*" and at the conclusion of its activity, proposes to the Parliament the refusal of the request of MPs or the dismissal of the President. The Parliament, at its plenary session (last stage), should consider the proposal of the Special Investigatory Commission, and in case of dismissal of the President a qualified majority of votes (2/3 of all members of the Parliament) is applicable. The Parliament decision for dismissal of the President is subject of review by the Constitutional Court. The Speaker of the Parliament files the decision of the Parliament for the dismissal of the President with the Constitutional Court. The court examines the merits of this decision of the Parliament. During the adjudication by the Constitutional Court, the President remains in office. As a result of the implementation of the justice reform, the Constitutional Court of the Republic of Albania is not functional, as most of its members did not successfully pass the re-evaluation process. The procedures for replacing the seats of the Constitutional Court have started and are about to end, and it is expected that in autumn of this year the Court will be functional¹.

17. The Legal Affairs Committee has already considered the request of the MPs for the dismissal of the President as it meets the formal procedural criteria and has found the request in accordance with the legal criteria; the Commission proposed to the Parliament through its decision dated 26.06.2019 the establishment of a Special Investigatory Commission. Following this proposal, the Parliament with its Decision no. 84, dated 08.07.2019, decided to establish a Special Investigatory Commission, composed of nine members, five MPs from the majority and four MPs from the parliamentary opposition. This Commission was constituted on 11.07.2019 and approved the investigation plan and the rules for regulation of its activity.

¹ In 2016, Albanian parliament adopted a set of constitutional amendments that paved the way for comprehensive and thorough justice reform. The Constitutional amendment affected one third of the Constitution and redesigned radically the Albanian justice system. The amendments, followed by approval of implementing laws, consist in a complete restructuring of the judicial and prosecutorial systems that would strengthen the independence and efficiency of the judiciary and prosecutors, introduce accountability mechanisms, de-politicize the justice institutions, and install anti-deadlock mechanisms for appointments of judges and prosecutors; and, provisions for innovative solutions related to the re-evaluation of all sitting judges and prosecutors. In addition to the institutional restructuring of the judiciary, the reform process foresaw the launch of a generalized re-evaluation (vetting) of all judges and prosecutors. This entails that around 800 professionals are currently undergoing scrutiny that has now started. This process has cross-party support, is carried out by an independent authority, is subject to international monitoring and its compatibility with the European Convention on Human Rights has been confirmed by the Venice Commission. An International Monitoring Operation has been deployed to oversee the process throughout its implementation.

18. At its meeting of 15.07.2019, the Special Investigatory Commission, considering that a request for the dismissal of the President of the Republic is being examined for the first time in the Albanian Parliament, in order to establish this process on internationally accepted standards, which should be respected by the Albanian constitutional institutions, has decided to address the Venice Commission with a request for an opinion.

19. In light of the above, the Albanian Parliament would greatly appreciate the opinion of the Venice Commission, on the following questions and for any other issue related to the case under consideration:

1. What is the role of the President in parliamentary regimes as Albania, in relation to state powers with regard to electoral processes?
2. What are the constitutional and conventional obligations imposed to the President of the Republic in the parliamentary regimes, such as Albania, in exercising the competency to determine/set the date for the elections?
3. Are there restrictions on the exercitation of this competency deriving from the democratic right of people to exercise the right to vote according to constitutional agreement, with certainty and foreseeability?
4. Is the competency of the President to determine the date for the elections, a right of the President to decide the exercitation of people sovereignty or an obligation of the President to effectively guarantee the exercitation of people sovereignty through election of their representatives, within the restrictions provided by the Constitution approved by the people?
5. If the President of the Republic who has appointed the date for the elections and during the time when the election administration bodies are performing the activity according to the law, delivers another act for cancelation of election date by setting a new date for elections, is there any violation of the principle of the right to be elected and/or of the principle of constitutional certainty, under the rule of law?
6. In the above case, is there any interference of the President of the Republic in the electoral process, violating the right of electoral subjects to compete equally and freely?
7. Given the principle that governance should emerge from a system of periodic elections held every four years, is the issuance of the President's Decree cancelling June 30, 2019 as the date of holding local elections and extending the mandate term of local government bodies beyond the four-year mandate, in respect of the principle of periodicity of elections?
8. Taking into account that the change of election date impacts the legal expectations of electoral subjects and voters, is legal certainty violated in these cases? Is the violation of legal certainty principle related to the consequences arising or such a violation is considered as rendered in case of breach of constitutional provisions, independently from the consequences arisen?

Dear Mr. BUQUICCHIO,

Considering the sensitivity and the situation of the country, your opinion within a short time would be highly appreciated.

Reassuring the highest consideration for You and the Venice Commission, we remain in attendance of your reply.

Kindly find enclosed herein a copy of the documentation related to this request.

**Yours sincerely,
GRAMOZ RUÇI**

II. Presidential Decree no. 10928 of 05.11.2019

**DECREE
ON
SETTING THE DATE OF ELECTION
FOR LOCAL GOVERNMENT BODIES**

Pursuant to Article 92/gj and Article 93 of the Constitution of the Republic of Albania, and in accordance with the rules laid down in Article 9 (1,2) and Article 10 (1,2) of Law No. 10019 of 29.12.2008, "The Electoral Code of the Republic of Albania," amended, I

D e c r e e

Article 1

Elections for the local government bodies shall take place on Sunday, 30 June 2019.

Article 2

This decree enters immediately into force.

Decree No. 10928

Tirana, on 05.11.2018

III. Presidential Decree No. 11199 of 10.06.2019

**D E C R E E
O N
R E P E A L I N G D E C R E E N O . 1 0 9 2 8 O F 0 5 . 1 1 . 2 0 1 8 O F T H E P R E S I D E N T O F T H E R E P U B L I C
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B O D I E S ”**

Pursuant to Article 1/3, 3, 4/2, 15, 45, 86/1, 92/gj and 93 of the Constitution of the Republic of Albania, I

Decide:

Article 1

To repeal Decree No. 10928 of 05.11.2018 of the President of the Republic, “On setting the date of election for local government bodies,” cancelling 30 June 2019 as the date to hold the elections for the local government bodies in the Republic of Albania.

Article 2

The Central Election Commission shall be responsible to implement the decree and take the steps to inform all electoral subjects accordingly.

Article 3

This Decree enters immediately into force.

**Decree No. 11 199
Tirana, on 10.06.2019**

**PRESIDENT OF THE REPUBLIC
ILIR META**

IV. Arguments for Decree no. 11199 of 10.06.2019

ARGUMENTS

ON THE DECISION TO REPEAL DECREE NO. 10928 OF 05.11.2018, ON SETTING 30 JUNE 2019 AS THE DAY OF ELECTIONS FOR THE LOCAL GOVERNMENT BODIES

Pursuant to Article 92/gj of the Constitution of the Republic of Albania, the President of the Republic is the only constitutional body entitled to set the date for the election of the Assembly of Albania, the local government bodies, and conduct of referenda.

Specifically, this Article of the Constitution provides that, "the president sets the date of elections for the Assembly, the local government bodies, and the conduct of the referenda."

According to the Constitution, unless there is a date set by the President of the Republic, the general or local government elections cannot take place.

The choice of the lawmaker to designate the President of the Republic as the authority exercising the constitutional power of setting the date of elections is closely and directly connected to his role and responsibilities as the Head of State and representative of the unity of people.

With reference to this role conferred on the President by Article 86 of the Constitution, the lawmaker has designated him as the authority to set the date of elections, since that should be a moment where Albanian citizens come together and are free to choose out of the presented alternatives. This can in no way be a day of division among them.

Within his constitutional powers and in line with the provisions of Articles 8 and 10 of the Electoral Code, the President of the Republic issued Decree No. 10928 of 05.11.2018, setting 30 June 2019 as the day of elections for the local government bodies. The President of the Republic decreed the date of elections in November 2018 under normal political and democratic circumstances in the country and following consultation with the representatives of the three parliamentary groups, in a constitutional practice that has already been consolidated by the heads of the Albanian State.

The President of the Republic has been closely following the work for the organizational measures taken to deliver the election process, and, at the same time, the expression of willingness by the political parties to be part of this process.

In the course of the process, upon the expiration of the deadline for the registration of the candidates and political parties for the elections of June 30, the opposition parties had not registered themselves with the Central Election Commission, going public with their reasons for not running in the local elections, according to which the constitutional standards for free and fair elections cannot be upheld and implemented.

The decision of the opposition to refrain from registering as electoral entities in local elections follows an earlier move of their opposition MPs relinquishing their mandates *en bloc*, causing a severe crisis of representation in both the political and parliamentary life.

On the other hand, Albania is going through a serious constitutional crisis, clearly reflected by the lack of a functional Constitutional Court since more than a year. To make matters worse, recently, even the High Court has ceased functioning.

This situation is in contradiction with the provisions of Article 7 of the Constitution stipulating that the system of governance is based on the separation and balancing of the legislative, executive and judiciary powers.

This essential principle requires not only that such systems exist formally, but that they are effective and capable of delivering their constitutional mission of checks and balances.

The overall situation is highly concerning and puts Albania's democratic stability at serious risk, considering that the constitutional mechanisms that keep in check and safeguard power separation and balance are no longer functioning.

As the President of the Republic, I have made every effort and have urged all main political stakeholders in the country to collaborate among them and avoid divisions and conflict, as well as take all steps to work together towards the successful implementation of all critical reforms and fulfilment of the key requirements where Albania needs to attain results as soon as possible

and be able to get a positive decision from the European Union Countries on the opening of accession negotiations.

However, notwithstanding all the appeals, messages and efforts of the President of the Republic and the international friends and partners, I regret to see that political parties have further deepened the divide between them.

On the one hand, the ruling majority seems determined to run alone in the local government elections slated for June 30, 2019, without exhausting all the possibilities for a solution of the political crisis in the country or taking any steps to explore the opportunities to reach a political compromise prior to the expiration of the registration deadline for the candidates and political parties and after that.

On the other hand, the opposition has been strong on preventing June 30 elections from happening by using means and ways that are yet unknown, considering their conduct seriously provoking for the democracy of the country.

Considering the situation the country is facing, and the hate speech used by political parties, in my capacity of the President of the Republic I find that there is a risk that Albania heads towards an unpredictable escalation of social tensions that may produce consequences hard to contain.

As the Head of the State and representative of the unity of people, I deem this to be a serious threat to public order, democratic stability, tranquillity and peace in the country.

The primary constitutional task of the President is to guarantee the unity of the people and safeguard the democratic values and principles enshrined in the Constitution of the Republic of Albania.

In that context, my considerations are as follows:

I. First, organization of free and democratic elections is the foundation of a democratic society. Any democracy needs to test from time to time the functioning and efficiency of its institutions and elections are the mechanism that makes it possible.

As one of the fundamental tools of democracy, elections are the way to ensure direct participation of the citizens in political processes.

By electing the public officials who best represent the values and interests of the people, the voters/electorate can influence the development of policies that improve the quality of their lives. In that perspective, conducting local government elections without the participation of the opposition would be a challenge for democracy, since it prevents the Albanian citizens from choosing their local representatives amidst competing alternatives.

Consequently, the citizens are practically denied the opportunity to choose among the best alternatives, making it essentially impossible for them to exercise their constitutional right to elect, by restricting it.

In the last elections to the Assembly of June 2017, the current opposition parties (DP, LSI, PDIU and other parties) won 48,14 % of the total votes, respectively, whereas the Socialist Party and its allies, who are still part of the political alliance, got a total of 49,83 % of the votes as a political subject.

In the meantime, in the last local government elections conducted in Albania in June 2015, the political forces that are currently in opposition won 48,6 % of the votes, whereas the Socialist Party and its allies, who continue to be part of the same political alliance, won around 43 % of the votes as a political subject.

Considering the above data, conducting elections for the local government on June 30, 2019 without the participation of the opposition that represents at least half of the Albanian voters would violate several principles that enjoy special protection in the constitution.

Specifically, the Albanian Constitution provides clearly that the fundamental right to elect and the principle of political pluralism are the cornerstones of our State, which has the obligation to respect and defend these principles.

According to Article 1(3) of the Constitution, "the governance is based on a system of elections that are free, equal, general and periodic."

Further, Article 45 of the Constitution stipulates that: "every citizen who has attained the age of 18, even on the date of elections, has the right to elect and be elected."

The constitutional concept of "electing" or "being elected" cannot be considered fulfilled only formally, as the possibility for the citizens to participate in voting.

That is not a fundamental element of democratic countries like Albania, and every absurd interpretation of this constitutional concept would rank Albania among the non-democratic countries that are only concerned with formally organizing votings.

The constitutional notion that every citizen of the Republic of Albania has the right to “elect” or “be elected” is closely connected to the effective ability of the citizens to choose the best offered alternative.

That is the position of the Constitutional Court in Decision No.40/2007 whereby it states:

“Local elections are different, as their aim is to ensure a closer connection between the voter and the elected for the very nature of organization and powers of the local government. The local government takes care of the day-to-day issues of the citizens, like employment, healthcare, pre-school education, cleaning and beautification of the local government spaces etc.

For that reason, voting in local elections is deemed as part of the bottom-top structure of the democracy, enabling the voters to participate in governance and in the smaller fora, in addition to the national assembly.

In this respect, we acknowledge that the local government is closer to the citizens and the latter are more sensitive to the changes occurring in the leadership of the local government unit where they reside.”

Consequently, in the light of the constitutional principles and the opinions of the Constitutional Court, if the majority is the only one to run in the local elections planned for June 30, 2019, that would seriously undermine the effective exercise of the constitutional right of the citizens to elect. The situation is even more absurd if we considered that, in these elections, more than half of the local government units have only one candidate running for mayor, while in the rest of the country there are candidates of a political force registered only in a last-minute move with the court and registered beyond legal deadlines with the CEC.

This is a clear indication that these elections are fictitious, and it adds to the evidence that the required democratic standards are not only impossible to meet but even being blatantly breached. The entire local government system coming out of these elections without competition would not be based on a system of elections as provided by Article 1(3) and 109 of the Constitution, but rather on a system of direct appointment of representative and executive local government bodies that would undermine the bottom-top structure of democracy and the participation of voters in the local governance.

Additionally, there would be nonexistent control of the collegial municipal council over the executive office of the mayor.

This fictitious outcome makes the elections decreed for June 30 undemocratic, since they infringe the rights enshrined in Article 1(3), Article 45 and 109 of the Constitution.

As a public power authority, it is the obligation of the President of the Republic to observe Article 15(2) of the Constitution providing that: “the bodies of public power, in fulfilment of their duties, shall respect the fundamental human rights and freedoms and contribute to their realization.”

While the President of the Republic is entitled by the constitution to decree the date of elections, but, due to reasons independent of him, holding such elections would prevent citizens from effectively exercising their constitutional, it is the constitutional duty of the President to contribute to the re-establishment and exercise of such right by taking actions he deems proportional and adequate to rectify the situation.

II. Second, having only the majority participate in election and only one candidate running in more than half of the local government units violates seriously the constitutional principle of plurality that is a cornerstone of the rule of law.

It is the constitutional duty of the head of State to safeguard the fundamental principles of the Constitution of the Republic of Albania, intervening at any time where these principles are threatened.

Article 3 of the Constitution of the Republic of Albania provides *inter alia* the clear obligation for everyone to defend the political pluralism. That implies not only the existence of different political parties, but also real chances for them to compete under equal conditions and without hindrance in free and fair elections, as the only way to observe the constitutional right of the Albanian citizens to elect.

It is public knowledge that the opposition political parties have not declared their refusal to run in elections, but they have raised the concern that elections of 30 June will not be free and fair, based on facts and evidence, and on the track record of the elections in years, addressed also in the OSCE/ODIHR reports and recommendations in relation to the elections conducted in the last decades.

The concern voiced by the opposition is essentially looking at the issues related to the misapplication of the laws and standards of elections that, in turn, undermine the constitutional principle of free competition that was also subject to an exhaustive reasoning of Decision No.32/2010 by the Constitutional Court.

That means that the opposition parties are willing to run in elections, provided that the freedom of all citizens to vote and a free competition of all political forces is guaranteed, in line with the constitutional principles and the well-defined legal provisions.

All the State authorities have the obligation to make this possible, respecting pluralism, and, in particular, the effective right to elect.

If this constitutional obligation is not met, the only constitutional authority actually entitled to intervene to restore the process to its democratic and constitutional order is the President of the Republic.

Based on Article 15(2) of the Constitution, the President has decided to exercise his discretion as a public power authority to serve the public interest and guarantee the constitutional order in the Republic of Albania, and to contribute to the exercise of the constitutional right to elect.

Additionally, as mentioned in the Preamble of the Constitution, the President of the Republic is convinced that by using his constitutional discretion and issuing this act, he will contribute to a country that is social and democratic and based on the rule of law, able to guarantee a fundamental human right like the right to be elected.

III. Third, holding elections in a strained political situation could not only result in the non-participation of more than half of the voters, but also bring the risk of civil unrest that would seriously endanger the lives and health of the citizens, the democratic stability of the country, the unity of the people and the constitutional order.

The President of the Republic must engage in a rational and effective manner to ensure that the constitutional values and principles of the Republic of Albania are upheld. The President is under the constitutional obligation to ensure within the limits of the Constitution that constitutional principles are observed both in letter and spirit. According to Article 86 of the Constitution, the President of the Republic is the Head of the State and represents the unity of the people.

In that context, the democratic co-existence and the unity of people are to the President of the Republic constitutional principles that must be defended before any other secondary or formal regulation.

Specifically, safeguarding of the constitutional order, public security, the stability of the country and free and fair democratic elections are constitutional principles that prevail over any other formal aspect, including revocation of the decree setting the election date and cancelling of June 30, 2019 as the day of local elections.

In his capacity as Chair of the National Security Council, the President finds that the behaviour of the political stakeholders has created a deeply conflictual situation that threatens public stability and poses a risk for the national security of the Republic of Albania. That would undermine the role of our country as a factor of peace and stability in the region.

The President of the Republic has been closely following all the protests held by the opposition parties and the counter manifestations organized on the same day and at the same time by the ruling majority.

Both parties have engaged in provocation against one another, making statements that often divide the citizens of the country into two groups, rallying them against one another along political lines ready to manifest the power of the respective parties.

These protests and declarations of the opposition, together with the counter protests or threatening statements of the majority provide no assurance that elections will be serene, free, fair, competitive and based on standards.

Further, during the protests organized by the opposition so far there have been violent incidents against the police forces or the public property, while, at the same time, police forces have used means, techniques and, at certain times, responses that were non-proportional.

Consequently, if the election day turns into a show of force between the supporters of the majority and the opposition or into a battlefield between the citizens and the law enforcement bodies, they would lose their value in a democratic society and, instead of being a fundamental tool guaranteeing a democratic society, they would turn into a threat for the democratic co-existence and the unity of people.

This danger must be countered by using constitutional means, which clearly include cancellation of the election date by the body who is entitled and under an obligation by the Constitution to protect the unity of the people (Article 86 of the Constitution) and to decree the date of elections (Article 92/gj of the Constitution).

If we were to weigh these two constitutional duties of the President of the Republic, I consider that defending the unity of the people and the democratic co-existence prevail over the strict application of legal rules on determining the date of the elections, even more so, as the latter fail to meet their fundamental purpose.

In any case, revocation of Decree No.10928, dated 05.11.2018, "On setting the date of elections for the Local Government Bodies" and the eventual cancellation of June 30, 2019, implies elections will be postponed to another date, within a reasonable time, making sure to fulfil the condition that led to the cancellation of the initial election date.

Under the present circumstances, cancelling elections is the only way to immediately address the severe political crisis and prevent an unfettered, whereas postponement to another date that is agreed by political parties will serve as an incentive for dialogue to address the crisis is threatening the democratic stability of the country.

IV. Fourth, periodicity of election is indeed an important aspect.

That is related to the limited mandate of the representative and executive bodies of the local government units.

However, in local elections, constitutionally speaking, the election day may be set even beyond the conclusion of the mandate of representative or executive local government bodies.

Consequently, the abrogation of the decree and, consequently, the cancellation of the election date, and postponement to a date that is beyond the electoral period established by the Electoral Code does not present any constraints from a constitutional perspective, as long as it is done to defend the constitutional values and principles that are key to the democratic functioning of the state and institutions.

There is a fundamental constitutional distinction between the rules on the end of mandate for local government bodies and for the Assembly.

While Article 65 of the Constitution (1) details the rules on the beginning and end of the mandate of the Assembly, including the timelines for subsequent elections, there is no such provision in Article 109 of the Constitution (2) that prescribes the mandate of local government bodies.

This is not something that the lawmaker forgot to specify, but it is rather a direct result of the electoral model used for the election of the local government executive body.

To give an example, if there is a situation where in a local government unit no candidate has been register to run in elections within a deadline set by law for different reasons, elections in that unit would be postponed to another date, beyond the mandate and electoral period determined by the Electoral Code.

This is an extreme situation that has not been ruled out constitutionally speaking and has its precedent in Albania.

I wish to recall that due to opposition refusing to register in partial elections for the Municipality of Kavaja in 2017 and withdrawal of the candidates prior to the date set on 7 May 2017, elections for this local government unit, set by President's Decree No. 10352 of 21.05.2017, were

postponed beyond the legal deadline (Electoral Code). The new election date was set on 25 June 2017, the same date of the elections for the Albanian Assembly.

Therefore, I consider that the implementation of constitutional safeguards and principles must supersede the rigid implementation of legal rules. The President of the Republic has the constitutional obligation to comply with the Constitution in accordance with Article 4(2,3), to ensure that his acts will safeguard the unity of the people, or political pluralism and peace in the country. These are constitutional principles that prevail over any other formal legal aspect.

V. **Fifth**, elections in the Republic of Albania, both to the Assembly and local government, have a track record that counts cases of election postponements by the President of the Republic, depending on the circumstances and with an aim to fulfil a legitimate purpose.

Specifically, in 2006, the President of the Republic, by the Decree No. 5131 of 02.12.2006, decided to set the date of elections for local government bodies on Saturday, 20 January 2007.

Due to claims from political forces and their assessed inability to conduct elections on the set date (January 20, 2007), due to the political conflict the ended with an agreement on January 12, 2007, the President of the Republic issued Decree No. 5194 of 14.01.2007 stating: "The Decree Nr.5131 of 02.12.2006, 'On setting the election date for the local government bodies,' is repealed and elections for the local government bodies shall take place on Sunday, 18 February 2007".

In 2017, the President of the Republic, set May 7, 2017 for conducting partial mayoral elections in Kavaja by Decree Nr. 10098 of 24.03.2017.

due to opposition refusing to register in partial elections for the Municipality of Kavaja in 2017 and withdrawal of the candidates prior to the date set on 7 May 2017, elections for this local government unit, set by President's Decree No. 10352 of 21.05.2017, were postponed and at a new election date for the partial elections was set on 25 June 2017 that coincided with the date of general elections to the Assembly of Albania.

Further, by his Decree No. 9883 of 05.12.2016, the President of the Republic set 18 June 2017 as the election day for the Assembly of Albania.

Due to the 2017 political crisis and the refusal of the opposition to register and participate in this election process, it became impossible for elections to happen on 18 June 2017.

After the political parties engaged in dialogue and reached a consensus in writing, the President of the Republic issued Decree No. 10 351 of 21.05.2017 amending Decree No.9883 of 05.12.2016, "On the date of elections for the Parliament" (Article 1), whereby the date of parliamentary election was postponed to Sunday, June 25, 2017.

In conclusion, looking at these precedents over the years, it is clear that general or local elections in the Republic of Albania as a result of particular political circumstances, of distrust between the parties, political conflict, and tense situations that in all cases have required the intervention of the only constitutional authority, that is the President of the Republic, to issue a new Decree on the postponement of the election date.

With reference to the above cases, elections have been postponed and conducted both within the time limits provided in the Electoral Code the electoral period, as well as beyond them.

In the said cases, parties engaged in dialogue and subsequently agreed on a solution, including holding elections beyond the date set by a previous decree.

While the President of the Republic, as explained earlier, has been committed to fostering dialogue between the parties, the latter have continued further with their growing rifts, with both the majority and opposition holding rallies and counter-rallies for months now, in a show of force, ruling out any opportunity for dialogue and making tension flare in the country.

In an official statement of 24 May this year, the President of the Republic declared *inter alia* that his institution was willing to revise the decree setting the local election date, in accordance with the power conferred by Article 92/gj of the Constitution, in order to decide on a different date for the process agreed upon by political parties.

Unfortunately, both sides to their extreme positions. The majority is continuously trying to capture institutions entirely, whereas the opposition to ask for their delegitimization.

In view of such circumstances where finding an agreed solution to the situation is impossible, the President of the Republic has taken action to avoid every potential risk of social conflict, while

revoking the election date creates sufficient room for the parties to reflect, to discuss and come up with a solution to this severe crisis.

VI. Sixth, the President of the Republic deems of extreme importance that failure to hold elections within legal timelines due to constitutional motives does not affect the interests of the Albanian citizens.

Law No.139 / 2015, "On Local Self-Government" governs the organization and functioning of local government units in the Republic of Albania, and defines their respective powers, responsibilities, rights and duties and of each respective body. The law also guarantees that citizens shall not be affected in terms of service delivery during transitional periods that occur during election of these local authorities.

This is a guarantee provided by Article 60(4) of Law No. 139/2015, "On Local Self-Government", stating that:

"4. The mandate of the mayor takes effect at the moment of his/her oath and expires upon his/her successor's oath." This means that Albanian citizens are provided with services ad continuum by local government units.

Lawmakers have applied the same provision to City Councils during these transitional moments. Specifically, Article 53(1) of Law no. 139/2015 "On Local Self-Government", stipulates that, "The municipal council exercises its functions from the date of its constitution, according to article 48 of this law, until the establishment of the new successive council."

These two provisions indicate that the situation is regulated by law and that no vacuum is created in the operation of the current local government bodies until the new representatives are elected and take office following the elections expected to take place at a later date.

VII. Seventh, as the President of all Albanians, irrespective of their political affiliations, the Head of State cannot remain indifferent to the enormous damage the political crisis is bringing upon to the economy of the Albanian households and of the country, inducing uncertainty among consumers, small and large companies, domestic and foreign investors, in areas such as tourism and every other aspect of the country's socio-economic welfare.

Article 88(3) of the Constitution stipulates that the President of the Republic serves the general interest and progress.

A prolonged crisis would further undermine the country's overall economic interests and household income and have an adverse impact on the progress towards sustainable development that is critical for the country.

Therefore, the best interest of every Albanian household and entire society requires reflection, maturity, cooperation and return to normalcy.

It is also due to these considerations that the Head of State has decided to intervene, so that this crisis finds a solution, rather than aggravate further, in which case the repercussions for Albanians and the country's economy would be enormous.

VIII. Last, holding elections on June 30, 2019, without competition or the opposition participating would bring the country's progress towards EU integration to an impasse, undermining all chances to open negotiations and comply with the key Copenhagen criterion for free and fair elections. Further, it would taint Albania's image as a member of NATO and the 2020 president of the OSCE, an organization at the heart of which are the issues related to election standards.

It is worth reminding the political parties that Albania has been aspiring to become European Union member since 1991, when immediately after the collapse of the totalitarian regime, the entire society has been openly and constantly vocal of its inclination to be part of Western Europe. In the course of this irreversible process and in line with the required conditions and criteria, Albania has since improved not only its constitution and domestic legislation, but has also taken a series of commitments and measures to give a clear and substantial meaning to the real democratic functioning of the state and of all social life.

One of the fundamental commitments of the Republic of Albania in the process was signing the Stabilization and Association Agreement between Albania and the EU in 2006. The Albanian Assembly ratified the agreement by Law no. 9590 of 27.7.2006, "On the Ratification of the "Stabilization and Association Agreement between the Republic of Albania and the European Communities of their Member States."

The preamble of this document that has become part of domestic legislation upon ratification states clearly that this Agreement was signed considering;

“The commitment of the Parties to increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights and the rule of law, including the rights of persons belonging to national minorities, and democratic principles through a multi-party system with free and fair elections;.

However, regardless of its commitment to conducting free and fair elections, a key Copenhagen criterion, Albania is actually heading towards one-party uncompetitive elections, due to the irresponsible attitude of both parties.

If elections in the Republic of Albania were held on the June 30, in a situation where only one political force is running in the overwhelming part of the territory, that would be a direct violation of the obligations under the Stabilisation and Association Agreement, namely of its underpinning principles, that would lead the country into regress, with very serious consequences for its European future.

The European integration of the country has been for nearly three decades a National Goal for all the political forces and Albanian citizens.

Therefore, should these elections be held in 2019 without the participation of the opposition, it would not only block the way forward in this respect, but it would also convey a wrong and untrue message to all international partners that Albania is taking on a different approach from the one adopted until now.

Consequently, the adverse impact that would inevitably produce on the Albania National Goal would so severe that it would take long to reverse.

Another major international commitment the Republic of Albania has taken for the first time is that of taking over the OSCE Chairmanship in 2020.

In view of this major commitment, it would be immoral for the Republic of Albania, as a country expected to chair the largest regional security organization in the world working for stability, peace and democracy for more than a billion people, to precede its chairmanship with the worst example of the functioning of the rule of law and questioning democracy and political pluralism.

That is another reason why, in an effort to avoid such potential risk, the President of the Republic decided to revoke Decree No.10928 of 05.11.2018 on the local election date, cancelling 30 June 2019 as the days to conduct elections.

The decision of the President of the Republic gives time to each political party to reflect without delay on engaging in dialogue and come up with a solution that serves the country's interests, rather than the narrow and short-term interests of their political forces, and helps with Albania's common European agenda.

For all reasons enlisted above:

- Deeply concerned about the critical situation created in the country as a result of parties failing to reflect;
- Bearing in mind the urgent need to diffuse tension and the risks of an unpredictable escalation of conflict in the country;
- Fully aware that current conditions do not allow for real, democratic, representative and inclusive elections;
- Mindful of the country's European future;
- Determined to build a State that is governed by the rule of law, democratic and guarantees human fundamental rights and freedoms;
- In the spirit of tolerance and at the service of peace, prosperity and social solidarity;
- Convinced that this decision is currently the only way to help in finding a solution to the severe crisis the country is facing;
- Bearing the high constitutional and institutional responsibility, and convinced that defending constitutional principles is more important than any legal terms, faithful to the oath as the Head of State to serve to the safeguard of stability, social peace and national unity;
- In accordance with the powers vested in me by Article 92/gj of the Constitution, and with the preamble to the Constitution of the Republic of Albania, Article 1(3), Article 3, Article 4(2), Article 15, 45, Article 86(1), Article 88(3), and article 93 of the Constitution of the Republic of Albania;

The President of the Republic has decided to revoke Decree No.10928, dated 05.11.2018 "On the Setting Election Date for Local Government Bodies" and the cancellation of 30 June 2019, as the day of elections for the organs of local government in the Republic of Albania.

I call on all responsible national and international actors to come together and contribute in a constructive matter to the immediate re-establishment of the indispensable political dialogue and to finding as soon as possible a solution that is beneficial to Albania's European future.

Therefore, convinced of the importance of this historic act to save the country's European future and to protect the democratic co-existence of all Albanians I am signing this decree in front of all Albanians.

V. Decision no. 836 of the Central Elections Commission of 13.06.2019

Decision no. 836 Decision date 13.06.2019 Decision time 12:00 On review of the request of the National Unity Party to unregister from the local government elections of June 30, 2019 1

**REPUBLIC OF ALBANIA
CENTRAL ELECTIONS COMMISSION
DECISION**

ON REVIEW OF THE REQUEST OF NATIONAL UNITY PARTY TO UNREGISTER FROM THE LOCAL GOVERNMENT ELECTIONS OF JUNE 30, 2019

The Central Elections Commission, in its meeting on June 13, 2019, with the participation of:
Denar BIBA - Deputy Chairman
Bledar SKËNDERI- Member
Edlira JORGAQI- Member
Rezarta BITRI- Member

Reviewed the issue with the following

OBJECT: On review of the request of the National Unity Party to unregister from local government elections of June 30, 2019.

LEGAL REFERENCE: Article 23, point 1, letter "a", article 64, article 67, paragraph 2, of Law No. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania"

The Central Elections Commission, after reviewing the submitted documentation and proposals,

NOTES

The President of the Republic, pursuant to Article 92, letter "gj", and Article 93 of the Constitution of the Republic of Albania, and Article 9, paragraph 1, of Law no. 10019, dated 29.12.2008 "The Electoral Code of the Republic of Albania" as amended, through the decree no. 10928, dated 05.11.2018 set June 30, 2019 as the date of local government elections.

The National Unity Party, with initials "PUK", through its chair, Mr. Idajet Beqiri, submitted to the Central Election Commission the relevant documentation to register as electoral subject for local government elections of June 30, 2019.

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The Central Elections Commission (CEC), through Decision no. 37, dated March 11, 2019, decided to register National Unity Party, chaired by Mr. Idajet Beqiri, with the initials PUK, as electoral subject for local government elections of June 30, 2019.

CEC with the decision no.11, dated January 18, 2019 has approved the template and technical specifications of the ballot papers for local government elections of June 30, 2019. The Central Election Commission, based on Article 98 of the Electoral Code, with the decision No. 728 dated 30.05.2019 approved the result of the lot, which determined the ranking of each electoral subject in the ballot paper. The National Unity Party was also part of this lot.

The Central Election Commission, based on Article 64, Article 67 of Law No. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", and Decision no. 37, dated 11.03.2019 on the registration of the National Unity Party, decision no. 11 dated 18.01.2019 of the CEC "On approval of the template and technical specifications of the ballot papers for local government elections of June 30, 2019", decision no. 728 dated 30.05.2019 "On the approval of the result of the lot for determining the order of electoral subjects in the ballot paper for 2019 local government elections", adopted the content of the ballot paper for the municipality council candidates for 61 municipalities, for local government elections of June 30, 2019. The ballot printing process is over and the National Unity Party appears in the ballot paper of the candidates for municipal council, in the municipalities where this party has registered multi-member lists.

The National Unity Party, with its letter, with prot no.11331, dated 13.06.2019 has submitted to the CEC a request for the cancellation of the registration from local government elections of June 30, 2019. In its request, the National Unity Party claims that after it is informed of the Decree no. 11199, dated 10.06.2019 of the President of the Republic of Albania, it considers that it should no longer be part of the election process of June 30, 2019 local government elections, and thus its name should be removed from the ballot paper.

Regarding the above request, the CEC deems that the "National Unity Party", led by Mr. Idajet Beqiri and "PUK" initials, registered as an electoral subject for local government elections of June 30, 2019, has the legitimate right to submit its request to the CEC.

Concerning its request, the CEC considers that the object of the request represents an election case and it is a CEC competence to address such an issue through a decision. This request has an element, which is the analysis of the legal framework related to June 30, 2019 elections (specifically Decree No.11199 of 10.06.2019 of the President of the Republic) and also relates to an essential element, which is the right of an electoral subject to unregister from an electoral process and remove its credentials from the ballot paper.

I. Concerning the first element, the CEC affirms the stand, made public in its meeting of June 10,2019, with the following arguments:

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The President of the Republic, Mr. Meta, on 05.11.2018 issued the decree no.10928 "On the conduct of local government elections on June 30, 2019" with the following content: "The local government elections will be held on Sunday, June 30, 2019".

I. ii. On June 10, 2019, the President of the Republic, issued the Decree No.11199, which abrogated the Decree No. 10928, of November 5, 2018 of the President of the Republic" On setting the date of Local Government elections ", and annulled June 30, 2019, as the date of local government elections in the Republic of Albania."

The decree no.11199, dated 10.06.2019 of the President of the Republic is published in the Official Journal no.84.

I. iii. On June 13, 2019, the Parliament approved the resolution "On the act of the President of the Republic", that abrogates Decree no. 10928, dated 05.11.2018 "On setting the date of Local Government elections ".

This Resolution, although not legally binding, guides the authorities in the application of the law, in this case, the Central Election Commission, for a more correct interpretation, meaning and implementation of the relevant legislation, as it derives from the primary body that drafts and adopts the Constitution, the Electoral Code and the Code of Administrative Procedures. According to this Resolution:

"The Assembly of Albania is informed about the Act of the President, dated 10.06.2019 on abrogation of the decree no. 10928, dated 05.11.2018 "On setting the election date of local government elections" and considering it an unprecedented act which aims to deprive the citizens of Albania of the constitutional right to elect their representatives in the local government, finds that:

- The Constitution and the Electoral Code do not recognize the President's right to annul the elections;
- The Act of the President, in an illegitimate manner, aims to interfere in an election process which is already announced and administered, according to the criteria, provisions and deadlines provided for in the Electoral Code - such is the started process of organizing and administering elections of June 30, 2019;
- This act aims to directly interfere in a process that is already a competence of its administration body and as such should be reviewed and evaluated by the election administration bodies, stipulated in the Electoral Code;
- - It is a duty of the election administration not only to guarantee the exercising of the right of Albanian citizens to elect, based on constitutional and legal standards, but also to protect the integrity of this right from any illegitimate interference made or attempted to be made, by any natural or legal entity, thus preventing the violation of this process;
- Based on the principle of legitimacy and responsibility and judgment of the administrative bodies, according to which no authority has the obligation to apply- or be held responsible if it fails to apply- an order, act, or decision and which is in flagrant violation of the Constitution and the law;
- - The intervention of the President of the Republic at this stage of the electoral process as an instrument that seriously affects the fairness of political race, thus violating the political impartiality, which is vested in the President based on the Constitution;

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The Albanian Parliament considers that the Act of the President dated 10.06.2019 on the abrogation of the decree no. 10928, dated 05.11.2018 "*On setting the date of local government elections*" is an absolutely a invalid act, which exceeds constitutional and legal powers of the institution of the President and as such it is considered null and void and as if it has never existed".

I. iv. The power to set Parliamentary and local government elections date is explicitly granted to the President of the Republic by the Constitution, Article 92, item "gj" and articles 9 and 10 of the Electoral Code.

Regarding this competence, the Electoral Code further elaborates by providing that:

- "Election Date" is the voting date, determined by decree of the President of the Republic. "(Article 2, point 1)

- "Election period" is the period of the year, defined in this Code, during which the successive periodic elections for the Albanian Parliament and the local government bodies are held "(Article 2, point 15).

- "General elections for the Assembly or local government units are held simultaneously throughout the territory of the country within a period extending from 15 March to 30 June or from 15 September to 30 November." (Article 8).

In the CEC judgment, this second decree, which revokes the Decree dated 05.11.2018 "On the conduct of local government elections on June 30, 2019" is an administrative act which is absolutely invalid, in the meaning of Article 108, paragraph 2 , letter "a" of the Code of Administrative Procedures (KPA), according to which:

"The administrative act is absolutely null and void: a) when it occurs in open and flagrant violation of a provision of this Code and the legislation in force, in terms of i) **the competence of the public body**".

We regard the second decree as an absolutely invalid act, because in this case the relevant body has exercised a power which is not explicitly recognized by law. The act is absolutely null and void, not simply when the competence of the body is questionable, but when this body is exercising powers which are not explicitly granted by law.

The second decree has openly and flagrantly violated a provision of the law, specifically:

Article 92 ,letter gj of the Constitution provides that the President "sets the date of parliamentary elections, local government elections and the date of referenda".

Meanwhile, according to the provisions of Articles 93 and 94 of the Constitution, the President of the Republic, pursuant to his powers, issues decrees. The President of the Republic may not exercise any other powers other than those explicitly recognized by the Constitution and provided by laws issued pursuant to it (Article 94). Thus, the President of the Republic has (only) the authority to set the election date. Any other action that leads to failure to exercise this competence is null and void.

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While the Constitution stipulates the body which is competent to set the elections date, the Electoral Code provides the way the election date is set, pursuant to the provisions of its Articles 9 and 10.

Thus, according to article 9 of the Electoral Code, “1. The date of the elections for the Assembly is set by a decree of the President of the Republic according to the rules provided in article 65 of the Constitution. Elections for the Assembly are to be conducted on one of the last two Sundays within the electoral period determined in article 8 of this Code, and in any case no later than 30 days before the expiry date of the Assembly’s mandate. In case the mandate of the Assembly ends earlier than 30 days from the beginning of the electoral period, elections are to be conducted in the preceding electoral period. For purposes of this Code, the mandate of the Assembly expires on the same date of the same month of the fourth year after the date of its first meeting.

2. The President of the Republic decrees the date of the elections for the Assembly no later than 9 months before the expiry of the Assembly’s mandate. [...]. “

According to article 10 of the Electoral Code,

1. The election date for local government organs is set by a decree of the President of the Republic. For setting the election date for the local government organs, the President complies with the rules provided in points 1 and 2 of article 9 of this Code.

2. For the purposes of this Code, the mandate of local government organs shall end on the same date of the same month of the fourth year after the date the CEC declares its decision on the election results nationwide for local government organs”.

The Constitution, in its Article 65, introduces the notion of "electoral period", which is elaborated by the Electoral Code when it explicitly provides in Article 8 that: " elections... for local government units are conducted....., **within the period lasting from 15 March until 30 June or from 15 September until 30 November**. The cases provided for in points 3, 4, 5 and 6 of article 9 of this Code are exempt from this rule.

Based on this constitutional and legal framework, the CEC would like to bring to the attention the fact that the **President's power concerning the election process consists only in setting the election date, based on well-defined regulations provided by law**. The decree of the President, as a by-law, is exclusively issued for purposes of implementation of the Constitution and the law; it cannot regulate beyond their requirements.

The decree on local government elections of June 30, 2019 - a decree that should be issued within the legal framework of the Electoral Code – is based on this legal reference.

The decree should be issued by complying with the electoral period (Article 8); the decree must be issued no later than 9 months before the expiry of the mandate of local government. (Article 9).

The President of the Republic has powers limited in time, and beyond this time, he has no longer any powers to act in this respect. Therefore, he can neither change nor annul the election date.

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Only an amendment to the law can permit the change or annulment of the election date, as it was the case in 2007.

Article 22 of the Code of Administrative Procedures provides that: "Competencies of public bodies are defined by law, Exercising them is mandatory".

None of the two provisions of the Electoral Code are met when issuing the second decree, therefore, such elements make the second decree of the President of the Republic be in open and flagrant violation of the above legal provisions.

The decree no.11199, dated 10.06.2019 of the President of the Republic openly runs counter to the *principle of legitimacy* provided by Article 4 of the Code of Administrative Procedures based on which "Public bodies exercise their activity in accordance with the Constitution of the Republic of Albania, ... and the legislation applicable in the Republic of Albania, within the boundaries of their competences and in accordance with the purpose for which these powers are conferred."

While the decree which sets the elections date is a competence of the President, the president has the discretion to set a date only within the "electoral period" but should not go beyond this period or, even more, not set at any election date at all, as it has already happened with a second decree that abrogates the decree no. 10928 dated 05.11.2018 "On the conduct of June 30, 2019 local government elections" and annuls the elections date of June 30, 2019".

By leaving the country without an election date, the President of the Republic, publicly declares his intention to refuse to comply with the Constitutional provisions of Article 92, item "gj", which bind him to set the elections date. The competence of a public body is not a right, but a duty provided by the relevant legislation in order to be exercised, and exercised within the boundaries of discretion recognized by law.

According to Article 1 of the Constitution, "3. Governance is based on a system of free, equal, general and *periodic* elections, "and according to Article 109," the representative [and executive] bodies of the basic unit of local government are elected every four years ".

The revocation of the decree that sets June 30, 2019 as the date of local government elections is an open and flagrant violation of the above constitutional and legal provisions.

In this case, the principle of periodicity has been violated. Such provisions run also counter to article 3, "The right to free elections" of the Additional Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952, which explicitly states that "The High Contracting Parties undertake to organize elections at reasonable intervals ... ". Concerning the above, pursuant to Article 109, paragraphs 1 and 2, of the Constitution " The representative authorities of the basic local governance shall be the councils, which are elected in every four years, through general, direct and secret voting.

2. The executive organ of a municipality or commune is the Chairman, who is elected directly by the people in the manner provided for in paragraph 1 of this article" a provision which we consider to be violated by the second decree.

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We would like to underline that pursuant to **article 122, paragraph 1** and 2 of the Constitution, "Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law.

2. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.

Any change in the election date leads to the extension of the mandate of local government, which is prohibited. This extension runs counter to the constitutional requirement of the periodicity of elections. Sovereignty belongs to the people and people exercise it through elections. The President, the CEC, etc., are public bodies which, through their activity, enable the practical procedures for enforcing such sovereignty. These public bodies cannot become an obstacle through their actions or lack of actions. This is not only impermissible by law, but also illegitimate.

Pursuant to Article 110 of the Code of Administrative Procedure (KPA) "An administrative act that is absolutely invalid brings no legal consequences, whether or not it has been found invalid or not. It is considered that it does not exist. "Any public or private entity that is introduced to such an act, is not subject to its rules and does not take it into consideration in the course of its activity.

Therefore, the Central Election Commission, being aware of the fact that it is not the public body that can revoke an administrative act issued by another public body, in the role of "the body competent to review legal administrative instruments (administrative complaints) according to point 2 of Article 110 of the KPA, "has the legal obligation to find the absolute invalidity of the administrative act" – that of the Decree no.11199, dated 10.06.2019 of the President of the Republic (according to the provisions of Article 111 of the KPA). The CEC considers this decree as if it does not exist.

Pursuant to the provisions of Articles 110 and 111 of the Code of Administrative Procedures, the Central Election Commission, being the highest permanent state body in charge of administering elections in accordance with the rules established in Electoral Code of the Republic of Albania, is informed of the above act and finds it as absolutely invalid, null and void, as if it does not exist and follows the work for the successful administration of the elections process for June 30, 2019 local government elections.

The above position of the Central Election Commission is endorsed and supported by the Parliament of the Republic. In its Resolution of June 13, 2019, the Parliament states that:

"The Albanian Parliament supports the stand of the Central Elections Commission to continue the elections process and encourages the latter to continue to protect the integrity of the process and guarantee the continuation of the process for local government elections of June 30, 2019t, pursuant to the President's Decree no. 10 928, dated 5.11.2018 "On setting the elections date of local government elections, recognizing the latter as the sole legitimate act of the President of the Republic of Albania issued in the context of 2019 local government elections.

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The Parliament of Albania appeals to all the public institutions that are responsible, based on the law, for the conduct and organization of local government elections of June 2019, to consider the Presidential Decree date June 10, 2019, that abrogates the Decree no. 10928, dated 05.11.2018 and to continue to fulfill their tasks in compliance with the respective legislation in order to guarantee the constitutional right of Albanian citizens to elect their representatives in the local government”.

I. v. The CEC also notes that since November 2018, the time when the legitimate decree was issued to set June 30, 2019 as local elections date, and which has produced its effects from that time onwards, it has been exercising its tasks stipulated in the Electoral Code, and under these conditions,

- the CEAZs have been established;
- voters' list have been prepared and posted;
- Registration of electoral subjects is completed;
- The lists of candidates of political parties have been filed;
- The election campaign has started;
- A considerable amount of public funds has been tendered, around 330 million Lekë.

It is an obligation of the Central Election Commission to protect the public interest and the finances of the Albanian taxpayers.

II. Regarding the essence of the request, which is the cancellation of the registration of the applicant-electoral subject- from the contest of June 30, 2019 local government elections and the removal of the name of "National Unity Party", the logo, the initials "PUK" and the name of the party chairman, Mr. Idajet Beqiri, from the content of the ballot paper produced for the above elections, the CEC finds that this request is legally ungrounded, as it has serious consequences for the election process and should be overruled.

The Constitution and the Electoral Code recognize each individual and legal entity-the Political Party the right to participate in the general and local elections. Political parties are *conditio sine qua non* for the existence of political pluralism, which is underlined by Article 3 of the Constitution as one of the basic principles of the foundation of the Albanian state. Their participation in the elections is a necessity, both in terms of raising and shaping the political awareness and ideology of voters, but also to identify and supporting those candidates who will run for public offices. For these reasons, the right of political parties to register and participate in general parliamentary elections and election of local government bodies is provided by the Constitution and elaborated by the Electoral Code of the Republic of Albania (Article 64).

Political parties, on the other hand, although subject to laws, operating in the public environment, are formally juridical subjects of the private law. In this meaning, they are presumed to have a will of their own, by which they freely decide whether or not to run in elections. As mentioned above, as political pluralism is very important in having a sound democratic society, the legislator has regulated the aspects of registration of political parties in

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the elections (Article 64 of the Electoral Code) and including their credentials in the ballot paper (Article 98 of the Electoral Code).

On the other hand, the option of withdrawal of political parties (and generally of electoral subjects) after their registration by the CEC and the approval of multi-name lists of candidates, is not provided by the legislator. There is a widely accepted maxim of the law, according to which, in principle, the legislator is deemed to be reasonable. As a result, the CEC deems that the lack of this specific regulation is not a legislative omission, but the intentional lack of will of the legislator to provide such permission. The CEC reminds that the Electoral Code is first of all, a normative act of a highly procedural nature and states that, unlike the material law, under which "anything that is not prohibited is allowed" in procedural law, "everything which is not allowed, is prohibited. "

The permissibility to be unregistered from the electoral contest, particularly after the process of printing ballot papers has ended, would also run counter to the principle of juridical security and would violate the rights acquired by other electoral subjects running in elections, whose rights to run in elections would be denied, since the removal / deletion of the name of an electoral subject is possible only through the complete destruction of all ballots where the subject is positioned.

It is objectively impossible for the CEC, that a few days before elections, to carry out new procurement procedures and print other ballot papers (through the winning economic operator) without the credentials of the political entity that changes its will to participate in elections.

The new procedure definitely implies additional financial costs, as the ballot papers have a considerable, significant cost. Moreover, allowing this precedent can pave the way for similar actions by other electoral subjects, which would result in postponement of the electoral process in a short term and its debasing in a longer term.

With regard to this decision-making, the CEC refers to analogous cases when it has previously rejected claims (similar in essence) filed by individual candidates to unregister. This decision-making of the CEC has also been certified both by the Electoral College and by OSCE / ODIHR reports.

To conclude, the CEC considers that this approach adopted by it, is in compliance with the principle of proportionality, as it does not create any irreparable negative consequences for the electoral subject. Interference with the freedom of the subject, if perceived as such, takes into account all other crucial circumstances and, gives them priority, in order to conduct elections and strengthen the pluralist democracy in Albania.

FOR THESE REASONS

The Central Elections Commission, based on article 23, item 1, letter a, article 67, item 2, 4, 5, and 6, of the law no.10019, dated 29.12.2008 "Electoral Code of the Republic of Albania ", as amended

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DECIDED:

1. To reject the request of National Unity Party to unregister from Local Government elections of June 30, 2019 and remove the name of the National Unity Party from the ballot paper.
2. This decision enters immediately into force.
3. An appeal may be filed against the decision in the Electoral College, Tirana Court of Appeals.

Denar BIBA - Deputy Chairman
Bledar SKËNDERI- Member
Edlira JORGAQI- Member
Rezarta BITRI Member

VI. Resolution of the Assembly of 13.06.2019**RESOLUTION****ON THE DECISION OF THE PRESIDENT TO REPEAL THE DECREE NO. 10 928 OF 5.11.2018, "ON SETTING THE DATE OF ELECTIONS FOR THE LOCAL GOVERNMENT BODIES"****The Assembly of the Republic of Albania:**

- Considering as highly important this historic moment for our country in its integration process into the European Union, while pending for the Decision of the European Council following the unconditional recommendation on the opening of accession negotiations with the EU issued by the European Commission in its progress report of May 20, 2019;

- Reaffirming our full determination and willingness to conduct an all-inclusive electoral reform that is widely agreed by the political players in the country, fully in line with the OSCE/ODHIR recommendations contained in the monitoring reports on the previous elections, and with the international standards of free and fair elections;

- Strongly supporting the implementation of the justice reform as a key requisite for the European future of the country and for the prevailing and consolidation of the rule of law in Albania, assessed very positively by the progress report of the European Commission that singles Albania out as an example to be followed by all the Western Balkans countries;

- Considering the establishment of the new governing bodies of the justice system, such as the Justice Appointment Council, the High Prosecutorial Council, the High Judicial Council, the steps that have been taken to ensure a swift process of filling the vacancies in the Constitutional Court, establishment of the Special Anti-Corruption Prosecution and Court against Corruption and the Organized Crime, the appointment of the Prosecutor General and encouraging a stepped up implementation of the justice reform in this respect;

- Recognizing the constitutional right of the citizens to free assembly and peaceful protests, while condemning every form of assault against life, property, institutional order and State bodies that have an adverse impact on the image of the country, undermine the process of reform and the process of opening accession negotiations with the European Union;

- Considering the political and institutional dialogue among political stakeholders, both in and out of the parliament, as the only way a functional democracy recognizes for a political co-existence, as per the recommendation of the European Commission in the May 2019 report that extra parliamentary opposition parties must re-engage in a constructive manner with the democratic institutions and deter from actions that fall against democratic principles;

- In line with the responsibility enshrined in the Constitution of the Republic of Albania, Article 1 that Albania is a parliamentary republic;

- Observing the constitutional provision that the governance is based on a system of elections that are free, fair, general and periodic;

- Bearing in mind the role of the President in a parliamentary republic as a neutral, impartial and independent body, who stands above powers and does not participate therein, as an institutions that cannot take active part in the political decision-making processes, in order to avoid taking political and partisan positions in the course of exercising his state functions;

Upon being informed of the decision of the President of the Republic of Albania to revoke Decree No. 10 928 of 5.11.2018, "On setting the date of election for the local government bodies" and considering this an unprecedented action aimed at preventing Albanians from fulfilling their constitutional right to elect their local government representatives, the Assembly of Albania notes the following:

- The Constitution and the Electoral Code do not confer on the President the right to cancel elections;
- While it is against the law, the act of the President intends to interfere with an election process that has already been promulgated and administered in accordance with the criteria, conditions and terms provided in the Electoral Code, like the initiated process on the organization and administration of elections of 30 June 2019;
- This act attempts to interfere directly with a process that now falls within the scope of the administrative body, and, as such, it must be reviewed and assessed by the election administration bodies, as provided in the Electoral Code;
- It is incumbent upon the election administration not only to guarantee that Albanian citizens exercise their the right to vote in line with all the constitutional and legal standards, but also to defend such right from any unlawful interference that is committed or attempted by any legal or natural person, preventing the process from being undermined;
- Based on the principles of lawfulness, responsibility, and discretion of the administrative bodies, according to which no administrative body shall bear any consequences or be held legally liable in case they refrain from implementing an order, act or any other decision that is absolutely invalid and a flagrant violation of law and the Constitution;
- The intervention of the President of the Republic at this stage of the election process has seriously affected the fairness of the political competition, thus infringing the political impartiality of then President of the Republic enshrined in the Constitution;
- The possibility to set in motion the parliamentary control and investigation mechanisms foreseen by Article 90(2) of the Constitution;

The Assembly of Albania holds that the decision of the President of 10.6.2019 to repeal the Decree No. 10 928 of 5.11.2018, "On setting the date of elections for the local government bodies," is invalid, and exceeds the legal and constitutional powers of the President, and, as such it is deemed null and inexistent.

The Assembly of Albania supports the decision of the Central Election Commission to continue the election process and encourages this body to keep defending the integrity and guarantee the continuity of the process for the local elections of 30 June 2019, in accordance with the Presidential Decree No. 10 928 of 5.11.2018, "On setting the date of the election for local government bodies," acknowledging the latter as the sole lawful act issued by the President of the Republic of Albania in relation to the 2019 local elections.

The Assembly of Albania calls on all the public bodies that are legally in charge of ensuring the proper running and organization of June 2019 elections to consider the President's Decision of 10.6.2019 revoking Decree No. 10928 of 5.11.2018 as inexistent, and to perform their duties in accordance with the relevant legal provisions, in order to guarantee the constitutional right of the Albanian citizens to elect their local government representatives.

The Assembly of Albania calls on the President of the Republic to reflect and restore the institution of the President within the boundaries of the powers enshrined in the Constitution and prevent from taking any other actions that are in flagrant violation of the Constitution.

Approved on 13.6.2019

**KRYETAR
Gramoz Ruçi**

VII. Decision no. 12 of the Electoral College of 24.06.2019**Court of Appeal of Tirana
The Electoral College**

No. Reg. Fund.13	No. of
Decision 12	
Date of registration 14.06.2019	Date of decision
24.06.2019	

**DECISION
ON THE NAME OF THE REPUBLIC**

The Electoral College of the Court of Appeal of Tirana, with a panel of judges:

CHAIRMAN:	Tomor SKRELI
MEMBER:	Lindita SINANAJ
MEMBER:	Artur MALAJ
MEMBER:	Ridvan HADO
MEMBER:	Shkëlqim MUSTAFA

Assisted by **judicial secretary Eranda Cufo**, in Tirana, today, on 24 June 2019, reviewed in the public hearing the case belonging to the parties:

PLAINTIFF: **The National Unity Party**, represented at trial by the Chairman of the Party Mr. Idajet Beqiri.

DEFENDANT: **The Central Elections Commission**, represented during the trial with authorization no.12148 prot., dated 24.06.2019, by Erion Meta and Olsi Peto.

OBJECT: Objection of Decision No. 836, dated 13.06.2019 of the Central Elections Commission, which has decided rejection of the request of the National Unity Party (NUP) to be deregistered by the local government elections of June 30, 2019.

LEGAL BASIS: Articles 64, 65, 72, 73, 145, 152 and following of Law No. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", as amended.

**THE ELECTORAL COLLEGE
OF THE APPEAL COURT OF TIRANA**

In the end of judicial review of the case, after hearing the representative of the plaintiff, the National Unity Party, Mr. Idajet Beqiri, that in his final discussion requested:

- *Acceptance of the lawsuit.*
- *Annullment of Decision 836, dated 13 June 2019 of the Central Elections Commission, which has decided rejection of the request of the National Unity Party (NUP) to be deregistered by the local government elections of June 30, 2019*

Representative of the defendant party, the Central Elections Commission, that in his final discussion requested:

- *Dismissal of the lawsuit as ungrounded in law and evidence.*

And evaluated the case as a whole:

NOTES

By Decree No.10928, dated 05.11.2018, pursuant to articles 92/gj and 93 of the Constitution of the Republic of Albania, as well as articles 9/1/2 and 10/1/2 of Law no. 10019, date 29.12.2008, "Electoral Code of the Republic of Albania", as amended, the President of the Republic of Albania has appointed the date 30.06.2019 for the conduction of elections for the local government bodies.

The plaintiff, "National Unity Party", abbreviation (NUP) in accordance with Article 64 of the Electoral Code, was registered by the Central Elections Commission (CEC) as an electoral subject in the elections for the local government bodies of 30.06.2019. By decision no. 37, date 11.03.2019, the Central Elections Commission has decided the registration of the plaintiff, the National Unity Party (PUK), with chairman Mr. Idajet Beqiri and abbreviation "NUP" as an electoral subject for the elections for the local government bodies of the date 30.06.2019.

Plaintiff "NUP", together with some political parties regularly registered as electoral subjects, based on Article 65 of the Electoral Code, as amended, have been registered by "CEC" as a nationwide coalition, under the name Alliance for European Albania (AES) for elections for local government bodies dated 30.06.2019.

By Decree no. 11199, dated 10.06.2019 the President of the Republic has abrogated the Decree no.10928, dated 05.11.2018 "On setting the election date for the local government bodies" by annulling the date 30.06.2019 as the date of the elections for the local government bodies.

The Electoral Subject "National Unity Party" (PUK), after being notified on the position of the Central Elections Commission, made public in the meeting of 10.06.2019 where the CEC, after assessing that the Decree no.11199, dated 10.06.2019 of President of the Republic is an absolutely invalid administrative act decided to proceed with the preparations for the elections of 30.06.2019, through its Chairman, Mr. Idajet Beqiri, has submitted to the Central Elections Commission the request to be deregistered from the election process for local government elections dated 30.06.2019.

The Central Election Commission, in the meeting of 13.06.2019 has reviewed the request of electoral subject NUP and, in the end of the administrative review, by Decision no. 836, dated 13.06.2019, decided: "Dismissal of the request of the "National Unity Party" for deregistration from elections for local government bodies of 30 June 2019 and the removal of the name of National Unity Party ballot papers".

CEC in Decision no. 836, dated 13.06.2019, reasons that the request of the "National Unity Party" has an initial premise, consisting in the analysis of the legal basis for the conduction of elections for the local government bodies of 30.06.2019 (in particular Decree no. 11199, dated 10.06.2019 of the President of the Republic), as well as an essential element related to the right of the electoral subject to be deregistered from the electoral process and the removal of its name from the ballot paper.

Related to the Decree of the President of the Republic No.11199, dated 10.06.2019 "On the abrogation of the decree no.10928, dated 5.11.2018 of the President of the Republic "On setting the date of the elections for the local government bodies", the CEC reiterates his publicly stated position in the meeting of 10.06.2019, that "... this decree is an absolutely invalid administrative act, within the meaning of Article 108, paragraph 2, letter "a" of the Code of Administrative Procedures (KAP), according to which: "The administrative act is absolutely invalid: a) when there is an open and flagrant contradiction with a compulsory provision of this Code and the legislation in force regarding: i) the competence of the public body" because:

The second decree has openly and flagrantly violated a provision of the law and, specifically, in accordance with the provisions of the Constitution, Article 92, letter "gj", the President "sets the date of elections for the Parliament, the local government bodies and the referendums."

Meanwhile, according to the provisions of Articles 93 and 94 of the Constitution, the President of the Republic, in the exercise of his powers, issues decrees. The President of the Republic can

not exercise any other powers other than those expressly recognized by the Constitution and provided by laws issued pursuant thereto (Article 94). Thus, the President of the Republic has the authority (only) to set the election date. Any other action that has the consequence of disregarding this competence is null and void.

While the Constitution stipulates which body has the competence to determine the elections date, the Electoral Code provides for the manner in which the election date is determined, namely according to the provisions of Articles 9 and 10 thereof.

Thus, according to Article 9 of the Electoral Code, "2. The President of the Republic issues the decree on the date of the elections ... not later than 9 months before the end of the mandate of the Parliament. "

The Constitution, in its Article 65, introduces the concept of "electoral period", which is detailed by the Electoral Code when it expressly provides in Article 8 that: "Elections ... for local government units are held ... within a period stretching from 15 March until 30 June or 15 September to 30 November."

Based on this constitutional and legal basis, the CEC points out that the President's competence over the electoral process relates only to the setting of the election date, in accordance with the rules well defined by the law. The decree of the President comes out exclusively pursuant to the Constitution and the law; it can not regulate beyond their commandments. Based on this legal basis is the decree of local government elections of June 30, 2019, a decree that should be made within the legal framework of the Electoral Code. Decree must be made respecting the electoral period (Article 8); the decree must be made no later than 9 months before the end of the mandate of the local bodies elected ... (Article 9). The President of the Republic has limited authority over time, and beyond that time, he no longer has any competence to act in this regard. So, neither can President change nor can cancel the elections date. Only a change of the law can allow change or abolition of the elections date, as it was done in 2007.

Both of these provisions of the Electoral Code have not been respected while issuing the second decree, therefore, these are reasons that make the second decree of the President of the Republic to be in open and flagrant breach of the legal provisions cited above.

The decree no.11199 of 10.06.2019 of the President of the Republic is openly in contravention to the principle of legality provided by Article 4 of the Code of Administrative Procedures with stated that: "Public bodies exercise their activity in accordance with the Constitution of the Republic of Albania, ... and the legislation applicable in the Republic of Albania, within the limits of their competences and in accordance with the purpose for which these powers are conferred."

While issuing the decree for setting the date of the elections is a competence of the President, he has the discretion to only set a date within the "electoral period" but not to go beyond this period or, even more, not to set at any election date, as it already resultws when, by a second decree was abrogated, the Decree no. 10928, dated 05.11.2018 "On the conduct of elections for local government bodies on 30 June 2019" and the date of the elections 30.06.2019 was canceled.

Article 22 of the Code of Administrative Procedures provides that: "Competencies of public bodies are defined by law, Their exercise is compulsory".

By leaving the country without an elections date, the President of the Republic, with declared consciousness, refuses to comply with the Constitutional order provided for in Article 92, point "gj", which obliges the President to set the date of the elections. The competence of a public

body is not a right, but a duty which the law has charged the relevant body to exercise within the limits of discretion recognized by law.

According to Article 1 of the Constitution, "3.Governance is based on a system of free, equal, general and periodic elections", and according to Article 109 there, "the representative [and executive] bodies of the base units of local government are elected every four years".

The abrogation of the decree that sets the date 30.06.2019 as a date for local government elections is an open and flagrant violation of the above constitutional and legal provisions.

In this case, periodicity has been violated. The violation of this provision is also in violation of Article 3 "Right to Free Elections" of the Additional Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms Paris, 20.III.1952, which expressly provides that "the High Contracting Parties undertake to organize at reasonable intervals of time elections ... ". Thus, based on Article 109, paragraphs 1 and 2, of the Constitution "The representative bodies of the base units of local government are the councils, which are elected every four years by general, direct and secret balloting. The executive body of the municipality or commune is the chairman, who is directly elected by the people in the manner provided in paragraph 1 of this article ", a provision which, through the second decree is considered that has been violated. We recall that in accordance with the provisions of article 122, paragraph 1 and 2 of the constitution, "Any ratified international agreement constitutes part of the domestic legal system as it is published in the Official Journal of the Republic of Albania. It applies directly, unless it is not self-enforceable and its implementation requires the issuance of a law. 2. An international agreement ratified by law has superiority over domestic laws that disagree with it".

Any change in the elections date leads to the extension of the mandate of local authorities, which is forbidden. This extension contradicts the constitutional obligation of periodicity of elections. Sovereignty belongs to the people and the people exercise it through elections. The President, CEC, etc., are public bodies that, through their activity, enable practical procedures for realization of sovereignty. These public bodies that can not become an obstacle with their actions or inactions. This is not only inadmissible by law, but it is illegal.

Pursuant to Article 110 of the KAP, "Absolutely invalid administrative act brings no legal consequence, regardless of whether or not it has been ascertained as such. It is considered that it does not exist". Any public or private entity that faces such an act is not subject to its rules and does not consider it during its activity.

Consequently, the Central Elections Commission, aware that it is not the public body that can abrogate an administrative act of another public body, in the position of "the competent body to review administrative legal remedies" (administrative complaint) according to point 2 of Article 110 of the Code of Administrative Procedures (CAP), "has the legal obligation to ascertain the absolute invalidity of the administrative act" Decree no.11199, dated 10.06.2019 of the President of the Republic (according to the obligation stipulated by Article 111 of the CAP). The CEC considers this decree as if it does not exist. Pursuant to the provisions of Articles 110 and 111 of the Code of Administrative Procedures, the Central Elections Commission, being the highest permanent public body in charge of administering elections in accordance with the rules set forth in the Electoral Code in the Republic of Albania, did also know for such act and finds it as absolutely invalid, nul, as if it does not exist and follows the work for the successful realization of the electoral process for the elections of the local government bodies of 30.06.2019.

The Central Elections Commission, in its decision no.836, dated 13.06.2019, also refers to the Resolution of the Parliament of the Republic, dated 13.06.2019, according to which:

"The Albanian Parliament supports the position of the Central Elections Commission for the continuation of the electoral process and encourages this body to continue to protect inviolability and to guarantee the continuation of the election process for local elections of 30 June 2019 as a result of the implementation of the President's Decree no. 10928, dated 05.11.2018 "On setting the election date for the local government bodies", recognizing the latter as the only lawful act issued by the President of the Republic of Albania in the framework of the 2019 local elections.

The Albanian Parliament calls all public bodies charged by the law with the task of running and organizing the June 2019 local elections, to consider as inexistent the Act of the President dated 10.06.2019 for the abrogation of Decree no. 10928, dated 05.11.2018 and to continue to fulfill their duties according to the relevant legislation in order to guarantee the constitutional right of Albanian citizens to elect their representatives in the local government".

Regarding the request on deregistration of the applicant-electoral subject, from the competition for the local elections of 30.06.2019 and the removal of the name of the party "National Unity Party", its logo, abbreviation "PUK" and the name of the chairman of the party, Mr. Idajet Beqiri, from the content of the ballot papers produced for these elections, the CEC in the decision estimates that this request is ungrounded by the law, has serious consequences for the electoral process and must be dismissed with the following arguments:

"The legislator did not foresee the possibility of withdrawal of political parties (and generally of electoral subjects) after their registration by the CEC and the approval of multi-name lists of candidates. There is an all accepted maxim of the law, according to which, in principle, the legislator is considered to be reasonable. Consequently, the CEC estimates that the lack of this specific regulation is not a legislative obstruction, but an intentional lack of will of the legislator to foresee such permission. The CEC, recalling that the Electoral Code is primarily a normative act with a pronounced procedural nature, states that, unlike the substantive law, under which "anything that is not prohibited is allowed" in procedural law, "everything which is not allowed, is prohibited. "

The allowance to be deregistered by the electoral competition, particularly as the process of printing ballot papers has ended, would also be in contravention of the principle of legal certainty and would violate the rights acquired by other electoral subjects, to whom it would be denied the right to take part in the elections, since the removal/deletion of the name of an electoral subject is possible only through the complete destruction of all ballots where the subject is located. A few days before the election date it is objectively impossible for the CEC to carry out new procurement procedures and print (through the winning economic operator) other ballot papers without the credentials of the political entity that changes willingness to participate in the election. The new procedure definitely implies other monetary costs, as the ballot papers have a considerable, significant cost. Moreover, allowing this precedent can open the way for it to be repeated by other electoral subjects, with the consequent short-term postponement of the electoral process and the long-term consequence of its banalization.

Concluding, the Central Election Commission judges that this approach adopted by it is in conformity with the principle of proportionality, as it does not create any irreparable negative effect on the electoral subject. Interference with the freedom of the subject, if it is perceived as such, takes into account all other very important circumstances and, in this balance, gives them priority, in order to carry out the elections and strengthen the pluralist democracy in Albania".

This decision of the Central Elections Commission was appealed by the NUP electoral subject to the Electoral College of the Tirana Court of Appeal with the request for the objection of the Central Elections Commission decision no.836, dated 13.06.2019, with the argument that:

"The decision of the CEC ... is taken in violation of the Constitution of the Republic of Albania and the Electoral Code, since everyone participates in the elections, votes and competes freely, as it freely withdraws from them, especially in the conditions when the election process is distorted and violates important state institutions, such as the President of the Republic. The CEC decision seems to force the electorate and the electoral subject itself to participate in the June 2019 local government elections, while the competitions must be free and non-binding. "

II.

Evaluation of the Electoral College:

After submitting the matter to the judicial debate, hearing the parties, administering the evidences, taking into account the facts resulting from the evidence obtained in the trial, concluded that the claim filed by the NUP results ungrounded in evidence and in law, and that the decision of the Central Elections Commission no. 836, dated 13.06.2019 was taken in the fair assessment of the facts, as well as in the correct application of the law, and consequently the lawsuit should be dismissed.

Referring to article 145/1 of the Electoral Code, the Electoral College estimates that the plaintiff, the National Unity Party, being one of the electoral subjects that are regularly and in accordance with the Electoral Code registered in the local government elections of June 30, 2019, enjoys the right to appeal the decisions of the Central Elections Commission when it considers that they violate its legitimate interests, in accordance with the terms set out in Article 152 of this Code.

In the present case, the National Unity Party filed an appeal against the decision of the Central Elections Commission no. 836, dated 13.06.2019, within the deadline provided by the Electoral Code in Article 152.

The plaintiff opposes to the decision subject of the lawsuit, claiming that the Central Elections Commission has violated the Constitution and the provisions of the Electoral Code, since, in the conditions when the election process is distorted by the Decree of the President of the Republic, the CEC again does not allow electoral subjects to withdraw from the elections.

The Electoral College notes that the cause for which the applicant has addressed the request for deregistration by CEC has to do with a new factual moment which relates to the issuance of Decree no. 11199, dated 10.06.2019, of the President of the Republic for the abrogation of 30 June as the date previously decreed for the 2019 local government elections, hence the College agrees to firstly stop in the analysis of this cause which is important for the resolution of the dispute. This new fact does not constitute a premise for accepting the request for deregistration, but as such, it is analyzed in the entirety of the legal and factual circumstances in which the electoral process lies.

The Electoral College assesses the compliance of Decree no. 11199, dated 10.06.2019 of the President of the Republic with the Electoral Code, taking into consideration the decision no. 150 dated 16.06.2017 of the Constitutional Court. In this case, the applicant "Forca Rinia" (YOUTH FORCE) Party addressed to the Constitutional Court a request for the abrogation of the decree of the President of the Republic as unconstitutional by filing the following claims:

= The second decree of the President of the Republic is unconstitutional, as the President of the Republic had once exercised this right, based on Articles 8 and 9 of the Electoral Code and there was no constitutional cause to change it, despite the political agreement between the parties.

= *The new elections date set by the new decree is unconstitutional, as it is beyond the deadline provided by the Electoral Code.*

= *The decree of the President of the Republic violated the principle of legal certainty after having legally changed a legal expectation for electoral subjects and voters.*

By Decision no. 150 of 16 June 2017, the Constitutional Court has considered the decree for setting the date of the elections **as an "individual administrative act"**. The Constitutional Court has concluded that:

*Regarding ratione materiae legitimation, the College notes that the Constitutional Court, based on Articles 131 and 134 of the Constitution, deals in the last instance with the claims directed against acts of public authorities that violate the fundamental rights and freedoms guaranteed by the Constitution, after exhaustion of all effective remedies for the protection of these rights, unless otherwise provided in the Constitution. In the present case, the College finds that the act against which the complaint was filed is **the decree of the President of the Republic, which is an individual administrative act, since it only deals with the date of elections for the Albanian Parliament.** For this reason, the College considers that **this act does not fall under the jurisdiction of this Court** but under the jurisdiction of the administrative courts and therefore the claimant is not legitimized to address this Court with the object upon request.*

Whether or not the decree of the President of the Republic is in accordance with the provisions of the Electoral Code is not in the jurisdiction of this Court, but in the jurisdiction of the administrative courts or, as the case may be, of the Electoral College and as such can not be examined by this Court.

At the base of the decision of the CEC is the fact that the decree no.11199, dated 10.06.2019 of the President of the Republic is an absolutely invalid act, since as an individual administrative act it comes into contradiction with a provision of the law.

The Electoral College also takes into consideration Decision no. 150, dated 16 June 2017, of the College of Constitutional Court, which stated non-competence of the Constitutional Court in a similar case. It is true that this decision is a decision of a college composed of three judges and not a decision of the meeting of judges, but on the other hand the Electoral College notes that according to Article 31/1/a of Law no. 8577, dated 10.2.2000 "On the Organization and Functioning of the Constitutional Court in the Republic of Albania", **this type of decision is precisely taken by the college rather than the meeting of judges.** Article 33/1/a provides that: *"The decision to not pass the case for review at a plenary session by the college is taken unanimously, while by the meeting of the Judges is taken by a majority of votes. The decision to not pass the case for review at a plenary session is made when:*

a) the claims filed in the request do not fall within the competence of the Constitutional Court".

In analyzing the decision object of the lawsuit and the evidences administered in the trial, the College deems equitable and law-based the CEC's assessment that Decree no.11199, dated 10.06.2019 is an absolutely invalid act. In the conviction of the Electoral College, this Second Decree, which abrogates the Decree of 05.11.2018 "On the conduct of elections for local government bodies on 30 June 2019" is an absolutely invalid administrative act, within the meaning of Article 108, paragraph 2, letter "a" of the Code of Administrative Procedures (CAP), according to which: "The administrative act is absolutely invalid: a) when there is an open and flagrant contradiction with a compulsory provision of this Code and the legislation in force regarding: i) the competence of the public body".

More concretely, the competencies of the President of the Republic are exercised from the formal point of view by means of a decree as provided by Article 93 of the Constitution. This constitutional definition is further supplemented by special provisions distributed in the Constitution or in other laws, and in this respect the President, according to article 92, letter "gj" of the Constitution, has the power to set the election date for the Parliament, local government and referendums. This competence regarding the election date is the only one expressed in the Albanian legal order, considering also the regulatory basis of the Electoral Code, which in its provisions does not provide for any other powers except as provided for in the Constitution. The

only aspects that are regulated by articles 64 and following of this code relate to the deadlines and the determination of the electoral period.

The College observes that, in the absence of a competency expressed in the law, any other action beyond the limits laid down by the Constitution and the law conflicts not only with a compulsory provision as Article 94 of the Constitution, which provides that "the President of the Republic can not exercises other powers than those expressly recognized by the Constitution and which are given by law to comply with it ", but also with the jurisprudence of the Constitutional Court itself. Consequently, the Constitutional Court of the Republic of Albania, in its decision no. 15/2010, with the object of "Reviewing the compliance with the Albanian Constitution of the signed agreement between the Republic of Albania and the Republic of Greece" on the delimitation of their respective areas of the continental shelf and other maritime areas belonging to them international law ", emphasized that:

"34. The principle of the rule of law sanctioned in Article 4 of the Constitution implies the action of all state institutions under the applicable law as well as the supremacy of the Constitution to other normative acts. Every body in a state of law must act to the extent permitted by the Constitution and the law, not exceeding the limits set by them. In this sense, each state institution should have clearly defined its area of competence within which it is authorized to act in accordance with constitutional and legal requirements. In accordance with the principle of the rule of law, Article 92 of the Constitution defines the powers of the President of the Republic ... ". Furthermore, referring to Articles 8, 9 and 10 of the Electoral Code, it is unequivocally predicted that:

Article 8

"The general elections for the Parliament or for the local government units shall be held simultaneously throughout the territory of the country within a period extending from 15 March to 30 June or from 15 September to 30 November.";

Article9

"2. The President of the Republic issues the decree on the date of the elections ... not later than 9 months before the end of the mandate of the Parliament. "

Article 10

"1. Elections date for local government bodies is determined by decree by the President of the Republic. For determining the elections date for local government bodies, the President implements the rules provided for in points 1 and 2 of Article 9 of this Code. 2. For the purposes of this Code, the mandate of the local government bodies shall expire on the same date of the same month of the fourth year following the date of the announcement by the CEC decision at national level of election results for the local government bodies".

The college evaluates as grounded the CEC's decision where is stated that: "the decree must be made respecting the electoral period (Article 8)" and that the decree must be made no later than 9 months ... (Article 9) ". The President of the Republic has limited competence over time, and beyond that time, he no longer has any competence to act in this regard. So neither can change nor can cancel the election date. Both of these provisions of the Electoral Code have not been respected in the issuance of the second decree, therefore, are the moments that make the second decree of the President of the Republic to be in an open and flagrant violation of the legal provisions in the sense of Article 108 , paragraph 2, letter "a" of the Code of Administrative Procedures.

Only the law can allow the President to change or abolish the elections date, as it did in 2007, when the Parliament was forced to change the Electoral Code to enable this. Thus, in 2007, the letter "gj" of Article 92 of the Constitution did not allow the President to assign election date beyond the deadline set forth in the Electoral Code, and therefore, the Electoral Code was amended to enable the President to establish a local election date beyond the deadline set out in Articles 7 and 8 of the Electoral Code that was in force in 2007. In the Electoral Code adopted by Law no. 9087 dated 19.06.2003 the legislator *foresaw a special provision*, namely Article 181/1 where point 1 stipulates: "For the 2007 local elections, the President of the Republic, **regardless of the determination made in article 7 point 8 of this Code**, on the day of entry

into force of this law, **redefines the date of the development of elections**, not later than February 20, 2007.

Following this reasoning, the Electoral College estimates that the President of the Republic, through the annulment of the elections date for the local government bodies of 30 June 2019, in absence

of the legal competence and beyond the deadlines provided by the Electoral Code, has received the competencies of another body, namely the competencies of the Albanian Parliament. In the conditions when the body that has provided the deadlines and rules for determining the date of elections through the provisions of the Electoral Code is the Parliament, any possible change thereof, in the absence of any delegation of competencies, should only be made by this body, i.e only by the Albanian Parliament.

Also, the Electoral College considers that the cancellation of the elections date in the absence of any legal competence and in violation of the deadlines provided by the Electoral Code makes in fact that to the eligible Albanian citizens is being denied a constitutional right envisaged by the Constitution of Republic of Albania: the right to elect and to be elected according to article 45 of the Constitution.

This fact also contradicts the provisions of the Code of Good Practice in Election Matters of Venice Commission and specifically paragraph 1, universal voting, providing that universal voting consists of active electoral right (right to vote) and passive electoral right (the right to be elected). The right to vote and to be elected may be subject to a number of conditions, which are outlined below. The most common conditions are those related to age and nationality.

Denial of the right to elect and to be elected conflicts with the Basic Principles of European Electoral Heritage. Thus, according to points 3 and 4 of the Code of Good Practice in Electoral Matters, "3. In order to be in line with the common principles of European constitutional heritage, which form the basis of any truly democratic society, the election must respect the five fundamental rules: voting must be universal, equal, free, secretive, and direct. In addition, elections should be conducted periodically. All of these principles together form the European electoral legacy. 4. Although these principles are of a conventional nature, their implementation is linked to a range of issues, which need to undergo a thorough analysis. It is good to identify the "core" of these principles, which must be respected rigorously by all European countries. 5. The essence of European electoral legacy is generally made up of international rules. The corresponding universal rule is Article 25 (b) of the International Convention on Civil and Political Rights, which expressly sanctions all these principles, with the exception of direct voting, even though this is implied. 1. The Common European Order is Article 3 of the Additional Protocol to the European Convention on Human Rights, which explicitly provides for the right to periodic elections with free and secret voting- See Article 21 of the Universal Declaration of Human Rights CDL – AD (2002). 2. The other principles are also confirmed in human rights litigation. 3. The right to direct elections is also affirmed by the Strasbourg Court, at least indirectly. 4. However, constitutional principles, which are common to the entire continent, are not sanctioned solely in international documents: on the contrary, they are often mentioned in more detail in national constitutions. 5. Convergence of legislation and practices of different countries contributes to the identification of common principles. 6. Frequency of Elections - Elections should take place at regular intervals.

Through the cancellation of the election date, the extension of the mandate of the local government bodies is extended beyond the legal deadline, and this is unacceptable because it is in violation of article 1, point 3 and article 2, points 1 and 2 of the Constitution. To reach this conclusion, the Electoral College also considers legal arrangements for analogous relations in the field of public law. Thus, according to these norms of objective law, for a high category of officials (for example the General Prosecutor, the Supreme Prosecutors Council of and the Supreme Judicial Council, the Constitution and the respective law provides for time limits for commencing procedures for their replacement before the termination of the mandate, respecting the latter.

Practically, Article 29 of Law no.97 / 2016 "On the Organization and Functioning of the Prosecution in the Republic of Albania" provides that:

Article 29

Call for Expression of Interest

The Supreme Prosecutor's Council, no later than four months before the end of the General Prosecutor's mandate, announces the call for expression of interest for the position of the General Prosecutor. In the event of an early termination of the General Prosecutor's mandate, the proceedings shall commence immediately.

Likewise, Article 9 of Law no. 115/2016 "On the governance bodies of the justice system", provides that:

Article 9 Call for Expression of Interest Expression

No later than four months from the date of termination of the mandate of the Supreme Judicial Council judge members, the Supreme Court Chairman announces the call for the expression of interest by the judges interested in the position of a member of the Supreme Judicial Council.

Under the same logic is the provision of Article 107 "Call for Expression of Interest for Members of the Supreme Prosecutor's Council", when expressly provides that:

1.No later than four months before the expiration of the term of prosecutor members of the Supreme Prosecutor's Council, the General Prosecutor announces the call for expressions of interest by prosecutors interested in the position of the Supreme Prosecutor's Council member.

Thus, referred to Article 111 of the Code of Administrative Procedures, which provides that "The public body has the obligation to ascertain the absolute invalidity of the administrative act if it becomes aware of the cases provided for in Article 108 of this Code", the Electoral College estimates that the CEC in the capacity of the public body defined in the same Code, when by its decision has found the absolute invalidity of the Decree No.11199, dated 10.06.2019 of the President of the Republic, has fulfilled a legal obligation in the exercise of the administrative powers.

Under these conditions, referred to in Article 110 of the CAP, where it is envisaged that "the absolutely invalid administrative act does not bring any legal consequence, regardless of whether it has been ascertained or not. It is considered that it does not exist ", the College finds that the lawsuit alleged by the plaintiff does not exist and consequently his claim for deregistration is unfounded. Further, the Electoral College notes that the Electoral Code did not foresee in any provision the right of electoral subjects to withdraw from the electoral process after their final registration. The Electoral Code recognizes to the electoral subject, as well as the coalition (ASE), only the right to nominate candidates for mayors of local government bodies and municipal council candidates, but not the withdrawal of candidates or electoral subjects after their registration.

The Electoral Code has established clear and mandatory procedures and terms regarding the proposal, verification and registration of candidates for elections. These legal arrangements are intended to ensure the stability and progress of the electoral process from delays or actions that put it at risk.

Specifically, the legal provision stated in Article 74, paragraph 4, of the Electoral Code, expressly prohibiting the change of names in multi-name lists after their final approval by the Central Elections Commission, is intended to ensure the realization of an electoral transparent process, respecting the fundamental principles of the electoral right, ensuring the exercise by the voters of their fundamental right to elect the persons who will govern them at the local level.

The principle of free voting (Article 45/3 of the Constitution), the element of which is the freedom of the voters who, through the normal course of the electoral process, can form their opinion on a regular basis having the opportunity to express their preference or consent for one of the alternatives offered by the electoral subjects, can and must be accomplished through the introduction and knowledge of voters of the registered candidates and their programs, a process that carries the responsibility of the candidate and the electoral coalition for a conduct in compliance to the fulfillment of this principle.

Withdrawal/ deregistration or replacement of candidates by electoral subjects after the approval and announcement of lists and registration of candidates or, even after the preparation of the respective election materials, would pose a risk for the stability and transparency of the electoral process and the exercise of the basic voter rights. This is the reason why, in the Electoral

College's assessment, it has led the legislator not to foresee the right of the electoral subject/coalition to withdraw registered candidates for mayor or municipal councils.

The Electoral College considers that the lack of a specific regulation on the withdrawal of the electoral subject after its registration on a regular basis should not be interpreted as law (Electoral Code) recognizes and permits the exercise of these rights as long as it does not explicitly limit or prohibit them. The lack of a specific regulation in the Electoral Code on mentioned above rights, leads to the conclusion that the electoral subjects have not been recognized these rights, assessing that this understanding is closer to the legislator's intent, as well as consistent with the public interest of the electoral process, in addition to its regularity. On the contrary, if the legislator's intention would have been to recognize these rights, then for the sake of the regularity of the electoral process itself, the rights in question would have been foreseen expressly in the electoral law, except that there would be foreseen rigorous deadlines within which these rights could be exercised, where such deadlines would not harm or impede the realization of an election process, respecting the basic principles of the electoral law, meaning universal, equal, free, secret, direct and periodical elections.

The above has been stated earlier also by the Electoral College, namely through decision no. 22, dated 20.06.2015, as well as Decision No. 18, dated 05.06.2015.

While the Electoral College finds the CEC decision grounded, it considers as unfounded the lawsuit filed by the National Unity Party and as such should be dismissed.

FOR THESE REASONS

Electoral College of the Tirana Court of Appeal, based on articles 158, point 1, letter "b", point 3 and point 5 of the Electoral Code:

DECIDED

- The dismissal of the plaintiff's National Unity Party lawsuit.
- This decision is final and there is no appeal against it.

Tirana on 24.06.2019.

THE MEMBER
Artur MALAJ
dv.

THE MEMBER
Shkelqim Mustafa
dv.

THE CHAIRMAN
Tomor SKRELI
dv.

THE MEMBER
Lindita Sinanaj
(parallel opinion)
dv.

THE MEMBER
Ridvan HADO
(parallel opinion)
dv.

The unit is authenticated with the original
Chancellor
Lertida BALILI

PARALLEL OPINION

I, Judge **Lindita SINANAJ**, in the capacity of the member of the Electoral College at the Court of Appeal of Tirana, appointed as a member of panel of judges to judge the case belonging to the plaintiff party National Unity Party, defendant Central Elections Commission and object "objection of Decision No. 836, dated 13.06.2019 of the Central Elections Commission, express my opinion against the reasoning of the decision no. 12 dated 24.06.2019 of the Electoral College regarding this case.

I consider it fair to have concluded by dismissing the lawsuit filed, but I am against the reasons for which the majority of the panel has disposed for the dismissal of the lawsuit. Initially, I emphasize the fact that the plaintiff with the lawsuit has submitted the claims against the activity of the respondent, the Central Elections Commission, challenging the decision of this Commission that has dismissed the plaintiff's request for deregistration from local government elections. Specifically, in the claims submitted in the lawsuit filed, the plaintiff states that: "*On 13.06.2019, the Central Elections Commission, after reviewing our request, without respecting our substantive and procedural right to participate in the elections and to compete in accordance with the provisions as well as to withdraw from them when the process is deformed by the Head of State, arbitrarily with the decision of 13.06.2019 decided: "Dismissal of the request" The decision of the CEC in our assessment is an act taken in contrary to the provisions of the Albanian Constitution and the Electoral Code, since each subject participates in the elections, votes and competes freely, as it freely withdraws from them, especially in the conditions when the electoral process is distorted and violated by important state institutions, such as the President of the Republic. The CEC decision seems to force the electorate and the demanding electoral subject itself, the National Unity Party, to participate in the local government elections of 30 June 2019, while the competition for local government elections should be free and non-binding*".

In assessing the allegations submitted by the plaintiff I ascertain that it is not clearly and directly specified whether the request for deregistration from the elections is a result of the free and independent will of the political entity, the plaintiff in the trial, or is related to the issuance by the President of the Republic of Decree no. 11199 dated 10.06.2019, for the cancellation of the election date. In these circumstances, I consider that ***the claims of the plaintiff should be considered in both of these viewpoints, thus considering the filing of the request for waiver of the electoral process as a free and independent will of the political subject, the plaintiff in the trial, and further, considering the submission of the request as obligatory by the issuance of the relevant Decree.***

To reach a fair conclusion regarding the above I evaluate to analyze that referring to the provisions of paragraph 1 of article 9 of the Constitution "*Political parties are created freely. Their organization must conform to democratic principles*". According to the definitions made in the Constitution and further in the Electoral Code, the electoral system in the Republic of Albania is the proportional system. In a system of proportional representation, the mandates are allocated proportionally to the number and percentage of votes won by the political parties participating in the elections. This system allows the allocation of seats between political parties, depending on the number of votes won in each election unit. Precisely for this reason, the Electoral Code has determined the right to apply for registration as electoral subjects for political parties, coalitions of political parties or any Albanian citizen with the right to vote proposed by a group of voters as provided in the Code. In this way, the parliament or the body of local self-government is transformed into a kind of political mirror of different voter types.

Political parties participate in forming the political will of the people in all areas of life, and among others, this mission is achieved through participation in the general and local elections. Specifically, Article 1 of Law no. 8580, dated 17.02.2000 "On Political Parties", as amended, provides that: "*Political parties are voluntary union of citizens on the basis of ideas, beliefs, views or common political interests that aim to influence life of the country through participation in the elections and the representation of the people in the elected bodies of state*". Thus, the law has explicitly provided that the purpose for which political parties are created is the impact on the life

of the country and this influence is exercised through participation in the elections. From this point of view, the legislator in determining the rights of political entities related to the electoral process is based on the legal logic that the parties will fulfill the mission for which they were created, in the ways and means provided for by the law to accomplish this mission, i.e through participation in the elections. Such a conclusion is also reflected in the provisions of Article 2 of the relevant law which provides that: "*Political parties shall participate in the formation of the political will of the people in all areas of public life and primarily through: ... c) participation in general and lokal elections*". But, I stress that participation in elections is the form through which political parties influence the life of the country, but this does not presuppose the fact that participation in elections is an obligation.

While analyzing the whole legal framework, as the law "On Political Parties" and the Electoral Code, it results that participation in elections is a right, but a right to be realized in accordance with the rules set forth in the Electoral Code regarding the deadlines, procedures, etc. Specifically, article 63 point 1 of the Electoral Code provides that: "*Electoral subject is a political party or a political party coalition, who submits a list of candidates, according to the rules set out in this Code.*" Article 64 of the Electoral Code provides: "*1. Each political party must submit a request to be registered as an electoral subject at the CEC, no later than 70 days before the election date. 2. To register as an electoral subject for any kind of election, a political party must submit to the CEC: ...*".

Referring to the above provisions it is evident that the registration of political parties as electoral subjects is made following their request, as a result of free and independent will to influence the political life of the country by participating in elections through the submission of a candidate list. However, the Electoral Code is also found to have envisaged a procedure for reviewing the request and documentation submitted by the political party. Specifically, Article 73 provides that: "*1. The CEC or, as the case may be, the CEAZ verifies the regularity of the candidacy documentation and if it notes irregularities or non-compliance with the requirements of this Code, it shall return it to the electoral subjects for correction no later than 45 days prior to the elections date. 2. The corrected documentation shall be filed no later than 42 days before the date of the elections. The decision to approve or reject the final documentation is taken within 48 hours of their filing.*"

In the interpretation of the abovementioned provisions, as well as articles 72 and 73 of the Electoral Code, the Electoral College, considers that Central Elections Commission, with the submission of lists of candidates and party coalitions, has the obligation to verify the regularity of the candidacy documentation and within 48 hours from the submission of the documentation, decides on the approval or refusal of the final documentation. Thus, the registration of the electoral subject is done by a decision of the Central Elections Commission, a fact which finds expression in the law. Even in this case, it is ascertained that the CEC by decision no. 37 of date 11.03.2019 has registered the National Unity Party as an electoral subject for the local government elections of 30.06.2019.

But, while analyzing all the provisions of the Electoral Code, it does not appear to be explicitly envisaged the right of electoral subjects to withdraw from participating in the elections. Such a shortage I think is not oblivious to the legislator, but is related to what was discussed above, the will power to compete in the elections. Precisely for this reason, the legislator has not envisioned the pursuit of certain procedures or deadlines to withdraw from the election. In the circumstances when the electoral subject for his political interests or other circumstances does not intend to continue participating in the elections, he is at any time free to withdraw without having any legal obligation to pursue any given procedure or to respect certain deadlines. It is sufficient only to declare to the relevant institutions of the electoral process the will not to participate in the elections and to make this declaration public without being necessary to find the deregistration by any special act from the Central Elections Commission. The implementation of the procedures and deadlines is binding only in the case of explicit provision in the law, a circumstance which is not found in the case of withdrawal of the application to

participate in the elections. **According to this point of view, the decision of the Central Elections Commission to dismiss the request for waiver as an electoral subject does not create any consequence to the plaintiff because, as analyzed above, participation in elections a right and can not be imposed on any elections subject the obligation to participate in the competition beyond his will.**

Regarding the fact that the NUP is listed as an electoral subject on the ballot papers for candidates for municipal councils, I consider it a technical element that belongs to the phase of preparing the elections documentation and can not impose the will of the political entity to continue participating in the elections. I emphasize that the concept of deregistration as an electoral subject is different from the deletion of the name of the subject from the ballot papers, where the latter is a consequence of the withdrawal from the electoral competition, but is not a binding element to confirm the loss of the quality as an electoral subject.

Following the above reasoning, regarding the allegation of the plaintiff claiming to be deregistered as an electoral subject, imposed by the issuance of Decree no. 11199 dated 10.06.2019 for the cancellation of the election date, I consider that, as explained above, the loss of the status of the electoral subject cannot be done for any reason except the free will of the political subject, and the will cannot be called free when dictated by external factors, whether it is from the emergence of acts affecting the electoral process. Furthermore, during the trial, it was not proven how the outcome of the decree in question and its contents influenced the formation of the will of the plaintiff, NUP, not to participate in the elections.

Analyzing the above, I estimate that in the conditions when the plaintiff NUP addressed to the Electoral College, seeking only the rejection of decision no. 836 dated 13.06.2019 of the CEC "On reviewing the request of the National Unity Party for deregistration of Elections for the Local Government Bodies of 30.06.2019", there is no legal interest by the plaintiff for filing this lawsuit. The claim, as a procedural right, differs from the lawsuit as a substantive right or, as is known, the lawsuit in the material sense. The lawsuit in the material sense is the right to seek by the court the pursuit of a claim that derives from a subjective right, is the right of a person to seek enforcement through force, of a subjective right, against another person, regardless of the will of the latter. The lawsuit in the procedural sense is the remedy by which the persons concerned, as well as those authorized by law, address the court for the examination and resolution of legal disputes and for the protection of legitimate rights. **The plaintiff, through the lawsuit, intends to get a concrete judicial decision which he considers legally possible to enforce and capable of removing the alleged antilegal situation from him.**

Point 2 of Article 42 of the Constitution provides that: "*Whoever, for the protection of his constitutional and legal rights, freedoms and interests or in the case of charges brought against him, has the right to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law*". Referring to these provisions, regarding the term "*anyone*", it is estimated that it includes those entities that can not only file a lawsuit but who are also entitled to the material right by referring to a specific and concrete situation and intending to reach a judgment on the very basis of their claim so that the court can declare it grounded or not. The lawsuit has as constitutional guarantee the general right to address the court, but the lawsuit itself is not at all general. Rather, the lawsuit should refer to a concrete situation to prove the violation of a legitimate right or interest.

In the following, regarding the plaintiff's legitimacy, I would emphasize that a particular claim is required to have an interest in addressing the court. This interest is the personal benefit of seeking through the court the recognition or restoration of a denied or infringed right. The right of an entity to file a lawsuit before the court is directly related to the identification of its legitimacy. Entities exercising the right to address a lawsuit before the court have the obligation to prove their legitimacy by proving the direct link between the alleged right or

interest as being affected and the activity that is being challenged as unlawful. The right to file a lawsuit relates to the verification of the existence of a legitimate interest of the party raising the claim, an interest in recognizing or restoring a right denied or violated by another third party, which the claimant can realize and defend by investing, "intervening" the court (Decision No. 91, dated 19.03.2009 of the Civil College of the Supreme Court).

According to Article 145 of the Electoral Code: "1. Electoral subjects have the right to appeal to the Electoral College of the Court of Appeal of Tirana against the decisions of the CEC, when they violate their legitimate interests within the time limit set out in Article 152 of this Code. The right to appeal under this Article is also granted to individuals or political parties who have been denied the application for registration as an electoral subject. 2. Electoral subjects have the right to appeal to the Electoral College for not taking a decision within the legal deadline by the CEC. In this case, the Electoral College does not adjudicate the case on its merits and, when accepting the request, decides the obligation of the CEC to have a decision. An exception to this rule is the decision of the CEC to dismiss the appeal with respect to the decisions taken in accordance with letters "a", "b" "c" and "ç" of article 24 of this Code. 3. The subjects referred to in Article 6 of this Code shall also be entitled to appeal under this Article to whom the request for accreditation of observers has been refused. In cases where the accreditation of observers is delegated to the CEAZ's, then the right to appeal under this point begins with the administrative appeal in accordance with Article 124 of this Code".

The functioning of the Electoral College is provided for in the Electoral Code, which provides for the election, composition, organization, category of complaints that are being considered by this panel of judges, the subjects that are legitimated in filing complaints at the Electoral College and the process of adjudicating appeals. Referring to the provisions of the abovementioned article, it is ascertained that the panel of judges reviews complaints against the decisions of the Central Elections Commission, as long as this Commission exercised its functions in the field of election administration.

Referring to the criteria of Article 145 of the Electoral Code cited above, consideration should be made to the active legitimacy of the plaintiff in filing this lawsuit. It is this provision that envisions the circle of subjects that may appeal to the Electoral College by challenging the activity of the Central Elections Commission as defined in the Electoral Code. Referring to the provisions of Article 145 of the Code, it turns out that the plaintiff, in the capacity of the electoral subject, is included in the circle of subjects that are legitimated to address the Electoral College, but this article has provided as a condition related to legitimacy of the plaintiff the violation of legitimate interest from CEC decisions. As explained above, **the continuity of electoral participation in elections is an act of will. Withdrawal from participation in elections is not subject to any obligation to be made in any particular form, or to implement certain deadlines or procedures. From this point of view, the consideration of the legality of the CEC decision objected, has no consequence to impose the position of the plaintiff in the electoral competition, as there is a lack of will to participate in the elections. If the plaintiff is willing to pursue the electoral competition, it is free to proceed, otherwise it is sufficient to declare the withdrawal from the elections and the withdrawal of the candidates proposed by it. Thus, the exercise of the right of a political subject, to participate in elections, and the exercise of the right to be elected for the candidates proposed by it, is the consequence of the will of this subject and of the candidates proposed by it, which is not affected by any decision of the CEC or the Electoral College itself.** Consequently I estimate that the plaintiff party was not violated in its legitimate interest in the freedom to participate in the elections, and consequently it is not legitimated in filing this lawsuit.

In addition to the above, regarding the legitimacy of the plaintiff for filing this lawsuit, it is ascertained that in the lawsuit and during the trial, the representative of the plaintiff has addresses some claims regarding the lawfulness and constitutionality of the decree of the President of the Republic No. 11199 dated 10.06.2019 that annulled the date of the elections. Contrary to what has been analyzed by the majority of the panel, I consider that, referring to the provisions of

Article 145 of the Electoral Code cited above, the Electoral College has no authority to consider these allegations.

The functioning of the Electoral College is provided for in the Electoral Code, which provides for the category of appeals that are being considered by this College and the procedure for their adjudication. Regarding the competence, referring to the provisions of the aforementioned provision, it is ascertained that the College reviews complaints against decisions of the Central Elections Commission, as long as this Commission exercised its functions in the field of election administration. Point 7 of Article 2 of the Electoral Code stipulates that the Central Elections Commission is the highest state permanent body charged with administering elections according to the rules set out in the Electoral Code. I emphasize that not every decision by the Central Elections Commission is subject to review at the Electoral College, which, on the appeal of the subjects provided for in the Electoral Code, is charged with the obligation to adjudicate complaints against CEC decisions, only within the framework of the competencies that the Electoral Code has charged with this institution, i.e against the decisions given in the field of administration of the electoral process, according to the provisions of the Electoral Code itself. **Further, even in the view of the impact on the electoral process, the Electoral College has no competence to consider the activity of any other institution or acts issued by other institutions.** Consequently, reference of the reasoning of the majority of the panel in the provisions of Decision no. 150 dated 16.06.2017 of the College of three judges of the Constitutional Court, is unfounded. It is true that in the above decision it was argued that "the compliance of the Decree of the President of the Republic with the provisions of the Electoral Code is not under the jurisdiction of this Court but under the jurisdiction of the administrative courts or, as the case may be, of the Electoral College and such can not be considered by this Court", but the Electoral College in the present case has no scope for reviewing the legality of the activity of the President of the Republic in issuing Decree no. 11199 dated 10.06.2019 and can not even consider this activity within this process. Just as I have analyzed above, the claims of the plaintiff are focused on opposing the decision of the CEC regarding the deformation of the will of the plaintiff in order not to have been deregistered by the elections.

JUDGE
Lindita SINANAJ
dv.

PARALLEL OPINION

I, Judge Ridvan Hado, submit this parallel opinion regarding the decision of the majority of Electoral College in the case with the claimant National Unity Party and defendant the Central Elections Commission, objecting the decision 836, dated 13.06.2019 of the Central Elections Commission. By decision no.12, dated 24.06.2019, the Electoral College ruled: "The dismissal of the claim of the claimant party National Unity Party."

By agreeing with the enacting clause of the decision, since it is the only way to resolve this issue, referring to the types of decisions that the Electoral College may get in referring to Article 158 of the Electoral Code, I have an opposing opinion on the reasons for the dismissal of the lawsuit. With the decision no.836, dated 13.06.2019 of the Central Elections Commission, the request for the de-registration from local elections of 30 June 2019 was dismissed, with the reasoning that these elections are in conformity with the Constitution and the law and the decree no.11199, dated 10.06.2019 of the President of the Republic for the abrogation of the previous decree dated 05.11.2018, which set the date of the elections on 30 June 2019, is an absolutely invalid administrative act. Although the solution given by the CEC to the claim of the claimant, the National Unity Party is based on the law, the reasoning of this body is not in accordance with its competences under the Electoral Code. It is not an attribute recognized to the CEC by Electoral Code, the assessment of the legal power of the Decrees of the President of the Republic. This attribute, differently from what majority argues, is not even an attribute of the

Electoral College. The decree of the President of the Republic as a constitutional and legal act can not be a subject of trial in front of the Electoral College (even an incidental one), since the Electoral Code itself has not foreseen this. The Decree of the President of the Republic as a collective administrative act within the meaning of Article 3, point 1, letter b of the Code of Administrative Procedures, is not foreseen as object of objection in the CEC or the Electoral College. The majority argues that the decree of the President of the Republic as an administrative act is absolutely void and can be ascertained as such by the CEC and the Electoral College. In this regard, referring to Article 17, paragraph 1, letter c and article 40, paragraph 1, letter c, of Law No. 49/2012 "On Administrative Courts and Judgment of Administrative Disputes" the clearly does not fall within the sphere of competence of the Electoral College reviewing the absolute invalidity of a collective administrative act. This right does not even have the CEC. Assessment of whether the President of the Republic may abolish his previous Decree, based on the provisions of the Constitution that entitle him to issue a decree for the election date or on the basis of articles 113, point 2 and 116, point 1 of the Code of Administrative Procedures is not an issue that belongs to the Electoral College. The assessment of the reasons why the President of the Republic has canceled the election date, as mentioned above, is not a right of the Electoral College, which does not act either as a Constitutional Court or as an administrative court, but is a sui generis court, created by special law. The Electoral College does not have legal powers under the Electoral Code for the assessment whether incidentally to the invalidity of the Decree that sets the date of the elections or abrogates it. Therefore, regardless of whether the decree of the President of the Republic for the abrogation of the previous decree for the setting of the election date on 30 June 2019 is invalid or not, this does not affect the dismissal of the claim of the plaintiff, the National Unity Party.

If the Decree of the President for the abrogation of the date of the local elections is absolutely invalid, then the claimant has not a legitimated interest to request the deregistration, as referring to Article 73, point 4 of the Electoral Code, he is out of date to make this request. However, as noted above, the Electoral College and the CEC have no constitutional and legal competencies to ascertain the absolute invalidity of the decrees of the President of the Republic, since the finding of the absolute invalidity of a decree of this nature can only be done in special judicial paths. If competent for establishing the absolute invalidity of the Decree of the President of the Republic is the Constitutional Court or the Administrative Court of First Instance of Tirana, this is not an issue that can be raised and resolved by the Electoral College, since no lawsuits against the decree of the President of the Republic have been filed before this panel. Consequently, the Electoral College can not decide on a problem that has not been presented before it, in conformity with the law.

Therefore, I consider that the dismissal of the plaintiff's the National Unity Party claim is the only solution to this matter, but for the above-mentioned reasons and not for those given by the majority in the final decision.

**JUDGE
RIDVAN HADO
dv.**

VIII. Report by the Legal Affairs Committee of the Assembly of 26.06.2019

Parliament
Commission for Legal Affairs

Tirana, 26.06.2019
(Parliamentary document)

**REPORT
ON
EXAMINATION OF THE REQUEST OF A GROUP OF MEMBERS OF PARLIAMENT FOR
INITIATION OF THE PROCEDURE FOR DISMISSAL OF THE PRESIDENT, MR. ILIR META**

- Preamble

The Commission for Legal Affairs upon notification from the Speaker of the Parliament through letter no. 2502/2 prot, dated 17.06.2019 on the request of a group of members of Parliament for initiation of the procedure for dismissal of the President of Republic, based on article 112, prg. 2 of Rules of Regulation of the Parliament, in its meetings of 19.06.2019, 24.06.2019 and 26.06.2019 discussed and examined such request.

- Constitutional base

The request is presented by a group of 55 Parliament members, according to article 90, prg. 2 of the Constitution of Republic of Albania and article 112 of Rules of Regulation of the Parliament.

- Procedure for examination

The Commission started the procedure for examination of the request on 19.06.2019. Attended and presented the request in this meeting, two initiators MPs: Mr.Taulant Balla and Mr. Ervin Bushati.

Mr. Taulant Balla presented the facts based on which the MPs have initiated their request and stated that the Decree of the President of Republic is in full contradiction with constitutional principles of a Parliamentary Republic provided in the Constitution and in opposition of functioning and exercitation of people sovereignty.

Mr. Balla, at the end of his presentation requested the initiation of the procedures for dismissal of the President, summarizing the arguments that justify the request of MPs is based on art. 90, prg. 2 of the Constitution.

After the cross examination by members of the Commission, the latter approved the calendar of procedure for examination of MPs request and appointed Mrs. Klotida Bushka and Mr. Adnor Shameti, as the reporters for this case.

Based on art. 112, prg. 2 of the Rules of Regulation of the Parliament, the Chairman of the Commission, Mr. Ulsi Manja through letter no. 2502/3 prot, dated 19.06.2019, informed the President of the Republic, Mr. Ilir Meta relating the next meeting of the commission in order to guarantee the right to be heard in the Commission related to the MPs request for dismissal of President.

In reply to this letter of the Chairman of the Commission, answered the Secretary General of the President office through letter no.1956/1 prot, dated 22.06.2019, in which letter with ironic, unethical, offensive and improper text for the institution that represents the head of state, the President clearly expressed his intention and lack of interest to be heard in the Commission.

The procedure for examination of the MPs request for dismissal of the President continued according to the calendar in two meetings on 24.06.2019 and 26.06.2019.

The Commission has ascertained:

The President of the Republic of Albania, within the powers given by the Constitution (article 92/gj) has issued the decree no. 10928, dated 05.11.2018 "*On the Election Date for Local Government Bodies*". The local election date is date 30 June 2019.

Following the implementation of the Decree no. 10928, dated 05.11.2018 of the President of the Republic, the procedures to enable the election process for taking place on June 30, 2019 according to the Electoral Code, started. Concretely:

- Commissions of Electoral Administration Zones were established, (Article 28 of the Electoral Code);
- Voters' lists were prepared and published, (Article 56 of the Electoral Code);
- The process of registration of political parties was completed (Article 64 of the Electoral Code);
- Lists of candidates for political parties were submitted, (Article 67 of the Electoral Code);
- Election campaign started (Article 77 of the Electoral Code), etc.

During the electoral period, the President of the Republic issued another decree, the one no. 11199, dated 10.06.2019 "On the abrogation of Decree no. 10928, dated 05.11.2018, of the President of the Republic "On the Election Date for Local Government Bodies". The new decree of the President provides for the cancellation of June 30, 2019 as the date of elections for the local government in the Republic of Albania. The reasons given by the President of the Republic for the cancellation of the election date are the following:

- deep concern about the political situation in the country;
- the need for un-tensioning of the situation in the country;
- current conditions would not provide real, democratic, representative and all inclusive elections;
- this decision-making, under the current conditions, is the only way to help resolve the country's severe crisis;
- this decision-making is based on the competence given in Article 92, letter "gj" of the Constitution, as well as in the preamble of the Constitution of the Republic of Albania, point 3 of Article 1, Article 3, point 2 of Article 4, Article 15, Article 45, paragraph 1 of Article 86, paragraph 3 of Article 88 and Article 93 of the Constitution of the Republic of Albania.

The Central Election Commission (CEC) as the body responsible for organizing, administering and conducting the electoral process did not consider mandatory to implement the President's decree on the annulment of the date for local elections, but continued with the administration of the electoral process, reasoning that this act of the President is absolutely void, because the President had overcome the powers provided by the Constitution. According to CEC, changing of the elections' date is not a prerogative of the President provided for in the Constitution or the Electoral Code. Pursuant to Article 94 of the Constitution, the President of the Republic cannot exercise powers other than those expressly recognized in the Constitution and conferred by law. The act issued in the absence of competence and, moreover, in open and flagrant breach of the Constitution and the law, is null and void, and it is considered as never existing.

The Parliament of Albania through its decision dated 13 June 2019, adopted the Resolution on the act of the President of the Republic for the abrogation of Decree no. 10928, dated 05.11.2018 "*On the Election Date for Local Government*". Pursuant to this Resolution, the Parliament, based on the responsibility imposed by the Constitution of the Republic of Albania in Article 1, which expressly states that Albania is a Parliamentary Republic; respecting the constitutional provision that governance is based on a system of free, equal, general and periodic elections; taking into account the role and competences of the President of the Republic in the Parliamentary Republic and, pursuant to the Decree of the President of the Republic no. 10928, dated 05.11.2018, relating to the date of the elections for the local government bodies on 30 June 2019, (this act constituting the only lawful act issued by the President of the Republic of Albania in the framework of the 2019 local elections, that has already brought its legal consequences), has supported the decision of the Central Election Commission for the continuation of the electoral process and has encouraged this body to continue to defend the inviolability and to guarantee the continuation of the election process for local elections of June 30, 2019. Moreover, upon this Resolution, the Albanian Parliament called on all the public bodies charged by the law with the tasks for running and organizing local elections of June 2019, to consider as inexistent the act of the President dated 10.06.2019 for the abrogation of the Decree no. 10928, dated 05.11.2018 and to continue to perform their duties according to the relevant legislation in order to guarantee the constitutional right of Albanian citizens to elect their representatives in the local government.

The Electoral College with its decision of June 24, 2019 confirmed the decision of Central Election Commission that refused the request of the Party of National Unity to de-register from the local elections of 30 June. The decision of Electoral College clearly gave an answer to the debate on unlawfulness of the President Decree on cancelation of election date, considering it as null and void and not applicable.

Some members of the Parliament (55 MPs), based on Article 90/2 of the Constitution of the Republic of Albania and Article 112 of the Rules of Procedure of the Parliament, considering arbitrary and unlawful the cancellation of the date for local elections by the President of the Republic, in gross violation of the Constitution, on 17.06.2019 filed a request for the dismissal/impeachment of the President of the Republic. MPs stated that the decree of the President for the annulment of the date for the local elections is in open and flagrant breach to the constitutional principles of a Parliamentary Republic. MPs in their request underline that the President of the Republic:

- has seriously violated the principle of sovereignty of the Albanian people;
- has grossly violated the Constitution and has vested himself unlawfully with competencies of Parliament and those of sovereignty of the people;
- has arbitrarily used the power, acting as an unlimited executive power, despite the nature of the Parliamentary Republic;
- has arbitrarily canceled the election date;
- has violated the principle of periodicity of elections;
- has extended beyond the constitutional and legal deadlines the mandate of the existing bodies;
- has violated the principle of exercising power in the state by a government resulting from free and periodic elections;
- has violated the principle of constitutionality and legality;
- has issued an act in open and flagrant breach to the Constitution and laws;
- has violated the principle of the right of citizens to elect and to be elected.

The Commission considered the request of the MPs for the dismissal of the President as it meets the formal procedural criteria and has found the request in accordance with the legal criteria and art. 90, prg. 2 of the Constitution and art. 112 of rules of regulation of the Parliament.

The Commission, considered that from the material/substantial point of view the request of the MPs for the dismissal of the President has grounds as provided by art. 90, prg 2 of the Constitution to legitimate the establishment of a special investigatory commission to investigate on the claims for gross violence of Constitution by the President of the Republic. Part of the investigation should be letter no.1956/1prot, dated 22.06.2019 Secretary General of the President office, as well.

In conclusion of its meeting dated 26.06.2019, the Commission decided to approve this report that will be submitted to the plenary session, proposing the establishment of a special investigatory commission according to article 112, prg. 2 of rules of regulation of the Parliament.

REPORTERS
KLOTILDA BUSHKA
ADNOR SHAMETI

CHAIRMAN
ULSI MANJA

IX. Presidential decree of no. 12211 of 27.06.2019

**DECREE
ON
SETTING THE DATE OF ELECTION
FOR LOCAL GOVERNMENT BODIES**

Pursuant to Article 1/3, 3, 4, 5, 15, 45/1, 86/1, art. 92, letter gj, 93, and art. 103 of the Constitution of the Republic of Albania, I

Decree

Article 1

Elections for the local government bodies shall take place on Sunday, 13 October 2019.

Article 2

This decree enters immediately into force.

Decree No. 12211

Tirana, on 27.06.2019

X.