REPUBLIC OF ALBANIA
PRESIDENT OF THE REPUBLIC

REASONS FOR THE RETURN BY THE PRESIDENT OF THE REPUBLIC

OF LAW NO 118/2020
"ON SOME ADDITIONS AND AMENDMENTS TO LAW NO 10019, DATED 29.12.2008, "THE ELECTORAL CODE OF THE REPUBLIC OF ALBANIA", AS AMENDED"

INTEGRAL PART OF DECREE NO 11797, DATED 22.10.2020

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I. Introduction

The Assembly of Albania on **October 5th, 2020** has adopted Law No 118/2020 "On some addenda and amendments to Law No 10019, dated 29.12.2008, "Electoral Code of the Republic of Albania", as amended.

On 6 October 2020, through Official Letter No 2539, dated 06.10.2020, the Assembly has officially forwarded to the President of the Republic Law No 118/2020 *"On some addenda and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended",* for promulgation.

The President of the Republic, by exercising the powers provided in Article 85, paragraph 1, of the Constitution, examined the content of the provisions of Law No 118/2020 *"On some addenda and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended"*, and concluded that these unilateral interventions to the Electoral Code:

- Are in open contradiction with the Constitution of the Republic of Albania and the basic democratic principles protected by it;
- Violate the international democratic principles of conducting an electoral process through free and fair elections;
- Are carried out unilaterally, lack inclusiveness and consensus, and contradict the spirit of the conditions as set by the European Council of 25 March 2020 and their implementation well ahead of commencing the first intergovernmental conference;
- Severely impair cooperation climate between the political forces in the country, practically by mining mutual trust;
- Are in flagrant contradiction with the European principles and standards set by the **Venice Commission** in the ***Code of Good Practice in Electoral Matters***, as the only guide for the countries of the Council of Europe to hold democratic, free and fair elections;
- Generate unequal and discriminatory grounds, in serious contradiction with both the Constitution and the European Convention on Human Rights;
- Inflame even stronger polarization, given the fact that in absence of the Constitutional Court, any contest to these provisions related to their constitutionality cannot receive a final timely answer;
- Violate the conditions as set by the European Union, to the effect of another negative decision for Albania, therefore directly affecting the progress of the country in its European integration course;
- Violate the spirit and substance of the agreement reached in the country through the 14 January and 5 June 2020 Agreements between the political forces, which aimed at guaranteeing a minimum standard of elections in Albania;

- Attempt to create an electoral environment of rules which favor the ruling majority, while through *ambiguous* and hidden rules, they will affect the real, clear and objective reading of the will of the people in this electoral process;
- Generate a risk that the pre-election process, as well as electoral campaign, voting, counting, and potential appeals until proclamation of election results, take place under a highly polarized and antagonistic political climate, as well as in profound mistrust between the parties, which may consequently lead to the violation of the electoral standards, the disruption of social peace and the possibility of increasing tension in the social life of the country;
- Were carried out while the President of the Republic **since 6 September 2020** by **Decree No 11700** had set the date of elections for the Assembly, for the Sunday of 25 **April 2021**, thus breaking the rules of an electoral process that has already started, undermining the democratic principles;
- Violate the constitutional principle of legal security and are in conflict with the jurisprudence of the Constitutional Court of the Republic of Albania;
- **Violate the principle of a regular legal process, the right to elect and to be elected, and above all the principle of vote equality.**

Based on aforementioned and the comprehensive reasoning below, including **the public request of the EPP parliamentary group within the European Parliament, as expressed by spokesman MP Mr. Michael Gahler**[1]**,** in conclusion to the review of this Law, pursuant to Article 85, paragraph 1, I have decided **the return for review to the Assembly of Law No 118/2020** *"On some addenda and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended"*, as a last chance for the ruling majority of the Socialist Party to reflect and withdraw from its anti-democratic behavior and actions that may favor the Socialist Party in the electoral process of 25 April 2021, at the expense of gravely damaging Albania, its citizens and their European future.

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[1] Mr. Michael Gahler, through a public status made on October 5th, 2020, right after the voting of the amendments to the Electoral Code, stated that: "*By voting today to breach the EU brokered 5 June agreement with the opposition, the Albanian Prime Minister Edi Rama cast a dark shadow over next April's general election which were supposed to be free and fair and better than the previous ones. By doing so Rama clearly hinders Albania's EU integration. More precisely the breach of the 5 June agreement may very well postpone the first Intergovernmental Conference as the first step for the beginning of the real EU accession negotiations.*
Albania deserves much better than that. We call on the Albanian President to send back today's laws to Parliament. We call on PM Rama to reconsider his position for the sake of the European future of the Albanian people."
This status is in the link: https://www.facebook.com/100007343383150/posts/2720338128220940/?extid=0&d=n

II. Context of political and social developments in the country

Before proceeding with a detailed assessment of amendments to the Electoral Code, it is necessary to point out in this reasoning a summary of facts and circumstances which provide for the general context in the country, including the unconstitutional activity of the Albanian Assembly throughout this legislature, the emergence of a grave political, constitutional, institutional crisis that has been sitting in the country for a long time, as well as the activity of the parliamentary ruling majority which has had an obvious impact on the deterioration on the quality of living standards for the citizens of the Republic of Albania.

Enumeration of these facts clearly evidences that adoption of unilateral amendments to the Electoral Code on 5 October 2020, concludes a premeditated scenario authored by the ruling majority.

1. Article 64 of the Constitution of the Republic of Albania provides that the Assembly consists of 140 Members of Parliament, elected by a proportional system with multi-name electoral zones. The multi-name electoral zone complies with the administrative division of one of the levels of administrative-territorial organization, while the criteria and the rules for the implementation of the proportional electoral system, for the designation of the electoral zones and number of mandates for each zone are determined in the Law on Elections.

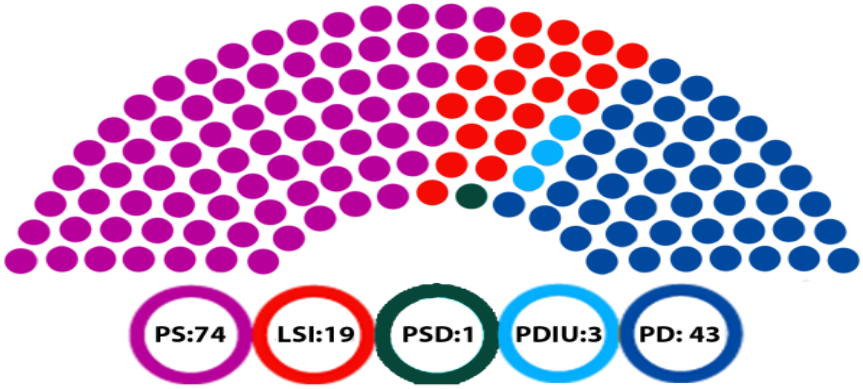
Based on these constitutional arrangements and those of the Electoral Code, on 25 **June 2017,** the previous elections for the Albanian Assembly for its **IX (ninth)** Legislature took place.

The final result of this electoral process was announced by the Central Election Commission (CEC) by **Decision No 555, dated 26.07.2017,** by approving the name list of Members of Parliament elected for each subject and for each electoral zone. From the summary table, the dissemination of mandates in this electoral process, approved by CEC[2], was as follows:

SOCIALIST MOVEMENT FOR INTEGRATION SMI	19	mandates
SOCIALIST PARTY OF ALBANIA SP	74	mandates
DEMOCRATIC PARTY DP	43	mandates
SOCIAL DEMOCRATIC PARTY OF ALBANIA SDP	1	mandates
JUSTICE, INTEGRATION AND UNITY PARTY JIUP	3	mandates
Total	**140**	**mandates/MPs**

[2] http://results2017.cec.org.al/Parliamentary/Results?cs=sq-AL&r=r&rd=r14

The first session of this Parliament was held on 9 September 2017, and according to the electoral result announced by CEC, graphically its composition is reflected as follows[3].



2. Also this electoral process for the Albanian Assembly (2017), like all the other processes in Albania, was monitored by international missions. The OSCE/ODIHR, in its latest report on the 2017 general elections, stated that during the election process it noted with concern the phenomenon of vote buying, pressure towards voters and abuse of state resources to influence the election result.

3. The ruling majority since the beginning of the IX legislature in 2017 has shown a lack of genuine willingness to cooperate and dialogue with the opposition, while during 2018-2019, a strong political polarization has prevailed. The lack of political dialogue between the majority and the opposition deepened the gap and increased the mistrust between the parties.

4. The ruling socialist majority, in December 2017, in contradiction of explicit Constitutional provisions, of the explicit recommendations of the Venice Commission, as well as ignoring the repeated calls of the President of the Republic for dialogue, unilaterally elected the Provisional General Prosecutor[4] with **69**/140 votes. This was the first, but not the only unilateral act of the majority. To avoid the risk of political capture of the new judiciary bodies, the Venice Commission recommended that implementation of the reform, as well as its adoption by the Assembly, must preserve a spirit of consensus.

5. The Venice Commission recommended that:

[3] https://www.parlament.al/Kuvendi/ZgjedhjetParlamentare
[4] The Provisional General Prosecutor does not exist as a provision in the Constitution.

"Until the parliamentary elections in June 2017, (until September 1st 2017[5]) the Prosecutor General shall be elected by 2/3 of the members of the Assembly (94 votes), whereas after September 1st 2017, the next elections of the Prosecutor General shall be done by 3/5 of the members of Assembly (84 votes)".

6. The unilateral implementation and in contradiction to clear recommendations of the Venice Commission and the constitutional provisions of the reform on justice system, was one of the main reasons for the emergence and subsequent escalation of the crisis.

7. While implementation of OSCE/ODIHR recommendations froze due to the lack of constructive political dialogue between the majority and the opposition, the media published facts leaking from official files in possession of the prosecution office, attesting electoral crimes during the local elections in Diber Municipality (2016) and during the general elections of 2017.

8. Evidence for some of opposition's claims, reflected also in the OSCE/ODIHR report, was found in the two files administered by the Prosecution Office with No 184 and No 339. The published materials leaked to the Albanian and international media exposed a well-organized scheme involving senior Socialist Party officials, including cabinet ministers, mayors, senior state police officers and other senior civil servants who collaborated with notorious criminal gangs (involved in international drug trafficking) for manipulation of the election result in favor of the Socialist Party.

8.1 This information, although available to the Prosecution Office for more than two years, had not mobilized the Investigative Bodies to carry out further legal action. None of the real perpetrators involved in these communications (senior exponents of the socialist majority) were brought to justice. The persons involved in this criminal scheme enjoyed both political immunity and legal impunity[6].

8.2 The publication of these scandals reinforced the opposition's claims and its early denunciations regarding cooperation between the socialist majority and the organized crime[7], in order to ensure a power-hold through vote manipulation.

8.3 The opposition claimed that current Parliament emerging from 2017 elections did not represent the free will of the Albanian people, adding that under the conditions of capture of the judicial

[5] The majority of that time in the Assembly (SP + SMI) at the time of the adoption of the reform had over 84 votes, which is over 3/5 of the members of the Albanian Parliament.

[6] The final OSCE/ODIHR report states that: *" […] the lack of efficiency of the criminal investigations contributes to the perception of impunity for past electoral crimes, including vote-buying and voter pressure."*

[7] The opposition managed to pass in parliament the Law on "Decriminalization", which made impossible to hold public offices for persons with a criminal record. As a result of the implementation of this Law, a large number of officials, including MPs, members of the Socialist Party were forced to resign from public office due to criminal precedents in the past.

bodies by the Prime Minister and his socialist majority, it had no other choice but to take the **extreme action of giving-up the parliamentary mandates.**

8.4 The government, on its part, initially denied the existence of evidence implicating the Socialist Party officials in electoral crimes, and accused the opposition of trying to cover up its political weakness by ruining the image of the country and that of senior socialist officials.

8.5 The Prime Minister and other senior Socialist Party officials sued several members of the opposition for defamation. The Prime Minister initially said that he would file a lawsuit also against the journalist of the German daily "Bild", who published a part of the audio tapping, part of the Prosecution files. Although he procedurally formalized the engagement of a foreign advocacy firm, soon after, Prime Minister Rama withdrew from the lawsuit and adjudication against the journalist of the German daily "Bild".

8.6 While the Prosecution body reacted to these media scandals by publicly communicating that it had initiated an investigation on the "leak of investigative information", while giving no explanation on the destiny of the investigative data of files 184[8] and 339 at its disposal.

8.7 Under these conditions, the opposition started to organize regular mass national protests demanding the resignation of the Prime Minister and holding of early general elections.

The atmosphere was further aggravated by using hostile and divisive language by both political camps during their public communications. The protests were accompanied by acts of violence as well as by a disproportionate response of the State Police.

The protests got widespread national and international media coverage, due to the intensification of the clash between the protesters and the police.

8.8 In the beginning of December 2018, the entire country was involved by a wave of mass protests incited by students against the government, forcing the Prime Minister to recompose most of the government cabinet in the beginning of January 2019.

Other protests by the small and medium-sized businesses, farmers, doctors, artists, etc., continued to spread in various cities of Albania, culminating in the violent protest over the fee imposed on the "Nation's Road" (Rruga e Kombit) accompanied by burning and destruction, as well as the protest of Tirana's "New Ring Road" (Unaza e Re) residents.

[8] At the end of the 3-year term of filing of the criminal proceeding (August 2016), the criminal file 184 related to electoral crimes carried out in Dibër District was transferred from the Prosecution Office of Serious Crimes for subject matter competence to the Prosecution of the Dibër Judicial District.

The Government reacted to the violent protest on “Nation’s Road” by withdrawing and reviewing the financial consequences on residents of Kukes region.

The Government partially withdrew from the “New Ring Road” project, acknowledging the forgery of official documents by the wining company of this infrastructure project. But, the failure of Prosecutor's Office and of the other law enforcement structures to pursue with a full investigation and penalty for all perpetrators of this scandal, casted strong shadows of suspicion for influencing the decisions and the activity of the Prosecution Office by the Government.

This matter, which received extensive media coverage, further deepened the contradictions between the political camps and strengthened opposition's claims that the judiciary institutions were captured by the majority.

8.9 Antagonistic attitudes were further deepened when the opposition boycotted the Parliament during September-December 2018 and warned the handing over of the parliamentary mandates when the majority voted down in the Assembly their initiative on constitutional amendments regarding the vetting of politicians.

8.10 Earlier, the opposition had raised many concerns for the restriction and blocking of its oversight role in the Assembly, including the right to establish investigation commissions and to call government members questions by the Assembly. The government, on its part, claimed that it had provided the opposition with enough speaking time in the Assembly, claiming its misuse to block governmental reforms.

8.11 The opposition had in parallel denounced the misuse of the legislative activity by the parliamentary socialist majority, with adoption of corruptive concessionary contracts giving preferential treatment to certain companies through special unconstitutional Laws, deepening therefore allegations for corruption.

8.12 The excessive mistrust and resistance to diametrically opposed political trenches further aggravated the political climate. The complete lack of political dialogue and the stubbornness of the parties to continue the course of conflict, affected further polarization of social life in the country.

8.13 Under increasing pressure from their supporters and influential pundits, **the opposition parties announced their resignation en bloc of the parliamentary mandates in the Albanian Assembly**.

8.14 The President's public appeals to both sides to back off from this collision course and any his efforts to urgently establish a channel of dialogue between the parties were unsuccessful.

8.15 The opposition, **in February 2019**, relinquished *en bloc* **58 parliamentary mandates** (including the rest of party lists, in total **182** mandates were relinquished), while the majority accelerated the resignation procedures and their replacement, in violation of the Constitution, the Electoral Code and the Rules of Procedure of the Assembly.

The majority rushed to replace without delay the mandates of **opposition MPs** who resigned *en bloc* **in February-March 2019**.

8.16 This extreme act, unprecedented in the political history of Albanian democracy, gave a new dimension to the crisis in the country, now not only of political, constitutional and institutional nature, but also of representation.

58 (fifty-eight) vacancies appeared within the same period since the former MPs representing the opposition parties had submitted to the Albanian Assembly the acts of their resignation from the mandate as MP in the Albanian Assembly. This moment was accompanied by mass rallies near the Albanian Assembly, where the handing over of the mandates of the opposition's *MPs* became known worldwide.

Beside the 58 resigned opposition MPs, **124 candidate** MPs who were on the multi-name competition lists of each opposition party, did not accept either their mandate, after the resignation of their colleagues. Meanwhile the mandate was accepted, offered by CEC, from the very last candidates left in the multi-name competition lists. In total, 182 MPs and candidate MPs have refused to exercise/receive their mandate.

8.17 The current number of MPs in the Albanian Assembly is **122**, while the Constitution defines that the number of MPs in the Albanian Assembly **should be 140**. Meanwhile, **18 mandates** of the Assembly of the Republic of Albania have remained vacant because of the exhaustion of multi-name lists of candidates for MPs of the Democratic Party and all other opposition parties.

8.17.1 No MP who submitted his resignation was summoned before any Commission of the Albanian Assembly to publicly declare his withdrawal from the mandate, according to the requirements of Article 164, paragraph 1 of the Electoral Code.

The Electoral Code in Article **164 provided that**:

> *"The mandate a MP won in accordance with articles 162 and 163 of this Code may be interrupted only for the reasons provided for in article **71 of the Constitution**.*
> ***Preliminary individual or collective agreements** or declarations to withdraw from a seat **do not constitute** reasons for the interruption of the mandate. In the case of letters **"a" and "b" of point 2 of article 71 of the Constitution, the MP declares publicly, in front***

***<u>of the respective Assembly's committee</u>**, his refusal to take the oath **<u>or his withdrawal from the seat.</u> In this case, the Assembly notifies the CEC of the creation of the vacancy within 30 days."*

Therefore, the Electoral Code forbids the resignation *en bloc* of the mandates.

8.17.2 Meanwhile, **none of the resigned MPs** was called in front of the **Council for the Rules of Procedure, Mandates and Immunity** for a hearing on the reasons for their resignation and to publicly declare their withdrawal from the mandate, according to the requirements of Article 164, paragraph 1 of the Electoral Code. **The Assembly had 30 days for each MP to carry out these procedures, but it did not comply with this requirement of the Electoral Code, rushing to replace the mandates through administrative notifications by the Assembly's General Secretary.**

8.17.3 Pursuant to Article 71/2 "b" and 75/2 of the Constitution, Article 164/1 of the Electoral Code, as well as Article 13 and onwards of the Rule of Procedure of the Assembly of Albania, **all procedural actions of the assessment and the decision-making** on ascertainment of vacancies for the Albanian Assembly and the certification of the conditions on termination of the mandate for each resigned MP **should have been completed first <u>by the Council for the Rules of Procedure, Mandates and Immunity and then by the Albanian Assembly by a decision in plenary session.</u>**

8.17.4 In contradiction with the requirements of the Electoral Code and the Rules of Procedure of the Assembly, all the actions, assessments and notifications for each of the vacancies emerged in the Albanian Assembly, aroused because of the withdrawal from the mandate of the MP, **<u>have been carried out only by the General Secretary through administrative official letters</u>.**

8.17.5 The General Secretary of the Assembly, out of his powers and contrary to the procedure required for any submitted resignation, **immediately** (within a period of **1 to 4 days from the submission of the resignation)** has carried out the action of the vacancy ascertainment and notifying it to the CEC. All the activity and the administrative procedures followed in this regard are in contradiction to the requirements of the Law and it represents entirely elements of **absolute invalidity.**

8.17.6 Under this unconstitutional and illegitimate practice, the Central Election Commission, following the announcement for the creation of a vacancy by the General Secretary of the Assembly, although aware of the fact that the written practice did not contain any decision of the Albanian Assembly according to the Law, **continued to follow the procedures for the immediate filling of vacancies, in descending order of the multi-name lists, thus becoming part of this completely illegal process.**

8.17.7 Formally, the current parliamentary "opposition" consists mostly of MPs who have been in the lists of opposition parties which have left the Parliament, but in reality, in Albania, the voters vote according to the preferences of Political Parties or/and their leaders. Most of the candidates, who have accepted the parliamentary mandates on behalf of the opposition, are unknown to the voters, as they were ranked at the bottom of the lists compiled by the Party Leaders, and **the will of the people expressed by vote** in the 25 June 2017 elections, **did not reach up to their names**.

8.17.8 These are the main reasons that make those replaced opposition mandates illegitimate and for which I have constantly made public my position that the Assembly **has no legitimacy to carry out constitutional reforms, and much less to change the electoral system or electoral rules, without the inclusive consent of the real opposition which today is outside the Albanian Parliament**.

9. The majority, through its representatives in the former Central Election Commission, **without the participation of the opposition, without race, without competition**, and without a date of elections determined by the President of the Republic, held alone on 30 June 2019, a farce voting process for local government.

9.1 The opposition did not register for the local elections. The voting process for local government took place on 30 June 2019, without participation of the opposition, without competition, without a date for holding the elections by the President of the Republic according to Law. As a result, currently, 61/61 municipalities and municipal councils of the country are run by and represent only the Socialist Party.

9.2 The date 30 June 2019 did not legally exist as an election date for local government bodies in the Republic of Albania, because the President of the Republic had determined 13 October 2019 as the date of elections. This Decree of the President and the Decree repealing 30 June 2019 as the Election Day for local government were not implemented by the former Socialist Party members in the Central Election Commission and this act was not challenged in front of any court.

9.3 Holding these elections without race and without competitive alternatives, in violation of the Constitution and international acts, resulted in that the entire local government system lost its legitimacy and its diverse political representation, being in the hands of a single political force (the Socialist Party).

Currently, the Constitutional Court has registered at least one case related to the unconstitutionality of these elections, a matter which consolidates the belief that the interest of the ruling majority is to delay or even block the filling of vacancies in the Constitutional Court and ensure its political capture.

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III. Lack of functioning of the Constitutional Court for 32 months

Another very problematic situation is the non-functioning of the Constitutional Court for more than 32 months and the blocking of functioning of the Justice Appointments Council (JAC) by the majority, so that Constitutional Court vacancies would be impossible to complete, practically letting the Government and the Assembly out of constitutional control and accountability.

The non-functioning of the Constitutional Court was caused by two circumstances.

While the process of transitional re-evaluation of judges (*the vetting process*) started to empty the Constitutional Court, **the socialist majority blocked the functioning of the Justice Appointments Council to prevent the filling of vacancies[9].**

If JAC functioning would have not been blocked during 2017-2018, the Constitutional Court would have continued to function normally, because the created vacancies would have been filled on a case-by-case basis.

The President of the Republic has been the only one who has taken every institutional effort for the functioning of JAC. Unfortunately, his persistent efforts were undermined by the socialist majority with the purpose to block JAC, resulting in the non-functioning of the Constitutional Court.

Furthermore, the ruling majority, through political officials of Government, state administration institutions under its control or subordination, or officials of the justice system, has also blocked the provision of timely information to the Justice Appointments Council on vetting of candidates, or has misused the mission of this body by bringing even greater and unjustified delays, thus prolonging and extending the filling of vacancies to the Constitutional Court.

The absence of the Constitutional Court has led therefore to a total lack of constitutional control towards Government and Assembly's activity, since March 2018.

On the other hand, the unilateral unconstitutional election of the Temporary General Prosecutor, in December 2017, also put, *de facto,* out of control and criminal investigation all the decision-makings of the Government and of the Assembly.

[9] Look at the preliminary Draft Opinions and the Final Opinion of the Venice Commission **No 978 dated 19th of June 2020.**
https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)010-e

The non-functioning of the Constitutional Court for 32 months actually is one of the main factors that influenced escalation towards this unprecedented constitutional, institutional and representative crisis.

Not only that, but the majority through the illicit actions of the former Chairman of the Justice Appointments Council, the Minister of Justice, other senior state officials, made every possible but unsuccessful effort to unable the President of the Republic to exercise his power to appoint Constitutional Court judges.

As a result of these illegal actions, the situation was further aggravated and was taken under consideration by the Venice Commission, through a request by the Albanian Assembly on 20 December 2019.

The Venice Commission, in its Final Opinion No 978/2020[10], dated 19.06.2020 *"On the appointment of Judges to the Constitutional Court",* clearly identified all problems related to this process, recommending the way forward.

As a result of delays, the country today is in a situation with only three new Judges appointed to the Constitutional Court. While the Constitutional Court has only 4 members in office, thus unable to take decisions regarding the constitutionality of cases, including those related to the voting process of 30 June 2019, Law No 118/2020 or others which may arise during the election process scheduled on 25 April 2021.

Lacking a full functioning Constitutional Court, no claims, including on the Law amending the Electoral Code, can be reviewed and decided upon.

Therefore, there is a risk that <u>the electoral process of 25 April 2021, takes place without a fully functional Constitutional Court with its 9 members, making impossible that certain issues of high sensitivity and of public interest be reviewed and decided upon, harboring an uneasy and tense situation.</u>

The OSCE/ODIHR, in its Final Report on 30 June 2019 elections, stated that, *"The Vetting of judges and prosecutors, which is part of the ongoing judicial reform, evaluates the integrity, assets and professionalism of all judges and prosecutors in Albania. The* ***Vetting resulted in many dismissals and resignations, impacting the functioning of many courts and prosecutor offices, leaving, in particular, the Constitutional Court and the High Court without the quorum necessary to operate"***[11]*. It also found that "****The Constitution grants to the Constitutional Court***

[10] https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)010-e

[11] Final Report of the ODIHR mission on Local Election Observation, dated 5th of September 2019, footnote **No. 86.** You may consult it in Albanian via link: https://www.osce.org/odihr/elections/albania/417425

jurisdiction over violations of constitutional rights and freedoms, but in practice, this jurisdiction is not exercised with respect to electoral rights." [12] .

Thus, the OSCE/ODIHR notes with concern the impossibility of reviewing the complaints for violations of the fundamental constitutional electoral rights of voters and electoral subjects in the next elections.

For this reason, the OSCE/ODIHR recommends as a priority that: "***All courts that have a competence in elections should be fully operational during the electoral periods. The independence and the impartiality of the Central Election Commission and the judiciary should be ensured…"***

The Electoral Code designates only one court that has a competence in elections, the Electoral College, which was elected by drawing of lot from the High Council of Justice on 8 September 2020.

While reference of OSCE/ODIHR recommendation regarding the "Courts" is directly related to the competence that the Constitution grants to the Constitutional Court to review any violation of the rights at the constitutional level, including the electoral ones.

From one side, the Law No 118/2020 infringes the independence of the Electoral College, because of the amendments to Article 149 of the Electoral Code, creating an opportunity for a Judge to be promoted in his career during the exercise of his function as a member of the Electoral College. On the other side, even if the Constitutional Court during this period will be able to have 6 members, which is the quorum for the Court to be gathered in a plenary session, the **non-appointment of 3 Judges by the Supreme Court to the Constitutional Court (ensuring therefore its full functioning) clearly presents the risk to the Constitutional Court's inability to take decisions.**

This is because according to Law No 8577, dated 10.02.2000, "On the organization and functioning of the Constitutional Court", as amended, **a case in the Constitutional Court can be reviewed and a final decision can be taken, when 5 of its members vote "for" or "against"[13].**

It is therefore expected that the governing majority shall continue with all efforts through their mechanisms to block or to prevent the full functioning of the Constitutional Court, in order to

[12] Final Report of the ODIHR mission on Local Election Observation, dated 5th of September 2019, footnote **No. 87**. You may consult it in Albanian via link: https://www.osce.org/odihr/elections/albania/417425

[13] Article 72, paragraph 2, of Law No 8577, dated 10.02.2000, "On the organization and functioning of the Constitutional Court", as amended, provides that: ***The Constitutional Court decisions are made by majority vote of all the judges thereof. Abstention is impermissible.***

enable the rejection of a constitutional request, not yet reviewed, according to the provision of Article 73, paragraph 4 of Law No 8577/2000, which sanctions that:

"When a majority of 5 judges is not achieved, the request is considered rejected"

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IV. The Assembly has entirely lost its constitutional oversight role over the Government. The unconstitutional activity of the Assembly in the legislative process during this legislature

Subsequently, the President of the Republic has noted a constant diminution of the oversight role of the Assembly towards the activity of the Government. After the *en bloc* resignation of the opposition, it is clear that the Assembly has entirely lost its oversight role over the executive. This dominant position of the Government towards the Assembly was emphasized even more after the local governmental voting process of 30 June 2019.

The Government already exercises full controlling authority over the Local Government, seriously violating the principle of decentralization and local autonomy. So the Local Government is clearly a natural extension of the executive.

Meanwhile the governing majority exercises full control over most of the other independent institutions.

The Assembly of Albania throughout this legislature, apart from the recent changes to the Electoral Code which are subject to be reviewed, has adopted a number of abusive Laws, which are in flagrant inconsistency with constitutional provisions, with international acts that Albania has ratified, undermining public and state interest:

- Law No 111/2020 "On some additions to Law No 8743, dated 22.02.2001, "On state immovable property", as amended";
- Law No 102/2020 "On regional development and cohesion";
- Law No 74/2020 "On the transitional and periodic evaluation of the employees of the State Police, the Republican Guard and the Service for Internal Affairs and Complaints in the Ministry of Interior, as amended";
- Law No 66/2020 "On financial markets based on distributed registry technology", (*Bitcoin* - digital currency);
- Law No 62/2020 "On Capital Markets";
- Law No 64/2020 "On an addition to Law No 92/2014, "On Value Added Tax in the Republic of Albania", as amended" (Yacht VAT);
- Law No 55/2020 "On payment services";
- Law No 58/2020 "On the approval of an addendum to the concession contract of the 'BOT' form (Build, Operate and Transfer) for a port of MBM type in Porto-Romano, Durres, approved by Law No 104/2015, between the Ministry of Infrastructure and Energy and the Concessionaire Company 'Port MBM (*Multy Buoy Mooring*)', as amended";
- Law No 36/2020 "On procurement in the area of defense and security";

- Law No 18/2020 "On the approval of the normative act with the power of Law, No 1, dated 31.01.2020, of the Council of Ministers, 'On preventive measures in the framework of strengthening the fight against terrorism, organized crime, serious crime and consolidation of public order and security"';
- Law No 20/2020 "On the completion of the transitional ownership processes in the Republic of Albania";
- Law No 14/2020 "On an addition to Law No 8577, dated 10.02.2000 'On the organization and functioning of the Constitutional Court', as amended";
- Law No 15/2020 "On some additions and amendments to Law No 96/2016, 'On the status of Judges and Prosecutors in the Republic of Albania', as amended"';
- Law No 91/2019, "*On some amendments and additions to Law No 97/2013 "On the audiovisual media in the Republic of Albania",* as amended"; (part of the "anti-defamation" package);
- Law No 92/2019, "On some additions and amendments to Law No 9918, dated 19.05.2008, "On electronic communications in the Republic of Albania", as amended" (part of the "anti-defamation" package);
- Law No 71/2019, "On the Albanian Investment Corporation";
- Law No 75/2019, "On Youth";
- Law No 53/2019, "On the Academy of Sciences in the Republic of Albania";
- Law No 52/2019, "On the approval of the concession/PPP contract between the Ministry of Infrastructure and Energy, as the contracting authority, the company "ANK ", sh.p.k., as the concessionaire, and the company "Bardh konstruksion", sh.p.k., as the concessionary company, for the design, construction and maintenance of the road segment Milot - Balldren";
- Law No 51/2019, "On the approval of the concession/PPP contract between the Ministry of Infrastructure and Energy, as the contracting authority, and "Gjikuria", sh.p.k., as the concessionaire, and the concession company "Orikum - Llogara Street", sh.p.k., for the design, construction and maintenance of the road "Yacht Harbor - By-Pass Orikum - Dukat (Saint Eliza Bridge)";
- **Law No 50/2019 "On some amendments and additions to Law No 125/2013, "On concessions and the Public Private Partnership", as amended";**
- Law No 44/2019, "On some additions and amendments to Law No 7895, dated 27.01.1995, 'Criminal Code of the Republic of Albania', as amended";
- Law No 42/2019, "On some additions and amendments to Law No 107/2014 'On planning and development of territory', as amended";
- Law No 38/2019, "On some additions and amendments to Law No 139/2015 "On local self-governance";
- Law No 37/2019, "On some additions to the normative act with the power of Law, No 4, dated 09.07.2008 of the Council of Ministers, "On the privatization and putting into use of trade companies and state institutions of special enterprises or objects, main assets and

turnover means of these enterprises", adopted by Law No 9967, dated 24.07.2008, and amended by Law No 3/2015"

- Law No 36/2019, "On an amendment to Law No 9900, dated 10.04.2008, "On state material reserves";
- **Law No 20/2019, "On some amendments to Law No 12/2018, "On the transitional and periodic re-evaluation of the officers of the State Police, Republican Guard and the Service for Internal Affairs and Complaints at the Ministry of Interior";**
- **Law No 111/2018, "On Cadaster";**
- **Law No 94/2018, "On some amendments and additions to Law No 8438, dated 28.12.1998, "On Income Tax", as amended";**
- Law No 37/2018, dated 20.09.2018 "On the definition of the special procedure for the evaluation, negotiation and signing of the contract with subject "Design and implementation of the urban project and of the new building of the National Theatre";
- Law No 39/2018, "On some amendments and additions to Law No 8438, dated 28.12.1998, "On Income Tax", as amended";
- Law No 98/2017, "On Court fees in the Republic of Albania".

A good part of these laws have a favorable and preferential character for a certain part of businesses (clientele nature). The Assembly, through adoption by the Law, has tried to provide legal protection for all entities that have committed illegal actions.

Through these Laws, the Assembly of Albania has openly violated the Constitution of the Republic of Albania and has brought serious consequences by infringing the freedom of economic activity, equality before the law, the right to private property, the rational use of public property, the protection of national heritage or the sustainable development, by damaging the state budget and finances, public property and directly violating the fundamental rights and freedoms of citizens and, consequently, the public interest.

By adopting these Laws, the ruling majority,

- has overturned the hierarchy of norms in the Republic of Albania;
- has achieved the political goals for the preferential treatment of some trade entities to the disadvantage of the interests and finances of the state;
- has violated the right to freedom of expression and information;
- has infringed the principle of decentralization and autonomy of local government;
- has violated the principle of equal treatment and has stimulated the preferential treatment through the Law;
- has violated several times the principle of judicial assurance and the rule of law;
- has attempted to limit the constitutional powers of the President of the Republic;
- has produced a constitutional institutional conflict with the other institutions;

- has infringed the civil and political rights of citizens;
- has infringed the right of citizens to go to a Court designated by the Law;
- has violated the respect of the privacy;
- has misused public finances and property;
- has violated the cultural heritage and national identity; or other rights recognized by the Constitution and international acts which are part of the mandatory internal legislation for implementation.

Through these Laws and the activity of the Assembly, it is openly and repeatedly violated the jurisprudence of the Constitutional Court, where its decisions are binding for the implementation, both from the enacting part and for their reasoning part.

All this unconstitutional activity and contrary to the interests of the citizens of the country has not been accepted by the President of the Republic and through the Decrees, these Laws have been returned for review to the Assembly. The latter, unfortunately, has not reflected on their review.

The failure of a functioning Constitutional Court throughout this legislature has made impossible the suspension of the effects of the implementation of these Laws, thus bringing serious irreparable economic and social consequences for all the citizens of the country.

All this unconstitutional activity of the majority was clearly evidenced even in the activity of the Assembly during the month of October 2019 and onwards, which pointed out not only the intention to block the functioning of the Constitutional Court for two consecutive years (2017-2018), but actually also the seizure of the constitutional powers of the President of the Republic on the appointment of Judges of the Constitutional Court, in order to control its composition to ensure in a later stage a decision-making of this Court in support to the Government and to the one-party parliamentary majority.

In the conclusion of all this unconstitutional activity which has not stopped, the Assembly of Albania through unilateral changes to the Electoral Code, conducted without consensus through Law No 118/2020, is trying to install a continuation of remaining into power through an electoral process where the rules of the electoral race are unilaterally set by the one in power, trying to reduce the power of the popular support of the divergent opposition political forces.

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V. Conditions (15) imposed by the European Council

This serious and unprecedented political, institutional and constitutional crisis was further aggravated due to the holding of one-party elections at the local level, in contradiction to the Decree of the President of the Republic, without the possibility of choice between alternatives and without the participation of the opposition.

Under these circumstances, including the elimination of every mechanism of government's constitutional accountability, the European Union imposed 15 new explicit conditions for Albania, at the European Council meeting of 25 March 2020.

The European Council reconfirmed the political and strategic support for Albania's membership in the European Union, and noted that the responsibility for opening the negotiations lies with the Albanian authorities by meeting the **6 conditions** before the First Inter-Governmental Conference with the EU, while **9 others to be** reflected in the Negotiating Framework.

The European Council asked the Commission to draft a detailed report on the progress for each priority, while the new methodology in force also provides for *ad hoc* monitoring missions by Member States to monitor on the spot the presumed progress.

As a rule, the European Commission should have submitted the progress report before the European Council Meeting of June 2020. However, in order to offer another change during the German Presidency of EU, it was decided that this report would be published in autumn, before the November Council meeting, when member states will review the progress made by Albania and North Macedonia.

Albania will be able to hold its first inter-governmental conference (commence accession negotiations) if:

"Prior to the first Inter-Governmental Conference, Albania:

1. **Should adopt the electoral reform fully in accordance with OSCE/ODHIR recommendations, ensuring** transparent financing of political parties and electoral campaigns;

2. Ensure the continued implementation of the judicial reform- **Including ensuring the functioning of the Constitutional Court and the High Court, taking into account**

relevant international expertise including applicable opinions of the Venice Commission;

3. Finalize the establishment of the anti-corruption and organized crime specialized structures (SPAK and BKH);

4. Strengthen the fight against corruption and organized crime, including through cooperation with EU Member States and through an action plan to address the Financial Action Task Force (FATF) recommendations;

5. Tackle the phenomenon of unfounded asylum applications and ensuring repatriations;

6. Amend the media law in line with the recommendations of the Venice Commission;
The Commission will provide a report on these issues, including progress on the basis of a track record, when presenting the negotiating framework. The negotiating framework will be adopted by the Council and has to reflect that Albania has successfully addressed all five key priorities:

7. Initiation of criminal procedures against judges and prosecutors accused of criminal conduct during the vetting process;

8. Initiation of proceedings against those accused of vote buying;

9. A sound track record regarding fight against corruption and organized crime at all levels, including initiation of proceedings and completion of first proceedings against high ranking public officials and politicians;

10. Tangible progress regarding reform of public administration;

11. Implementation of the reform of the electoral law;

12. A final decision on the lawfulness of the local elections of 30th of June 2019;

13. Further progress in the adoption of the remaining implementing legislation related to the 2017 framework law on the protection of national minorities;

14. The adoption of the law on the population census in accordance with the Council of Europe recommendations;

15. The advancement of the process of registration of properties"[14].

* * * * *

[14]Conclusions of the Council of 25 March 2020: https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf

VI. Resumption of political dialogue and composition of the Political Council as a credible and acceptable instrument by the local actors and international institutions

1. After a long time when the political parties did not reflect the willingness to sit and dialogue with each other, a positive development was marked during **January 2020**.

An inclusive Agreement was reached between the political forces on **14 January 2020**, shaping a Cooperation Framework between all the parties on Electoral Reform. (**The Political Council** is established).

This was a welcomed first step towards inclusive dialogue and consensus, under circumstances where the composition of the Albanian Assembly did not genuinely represent the will of a part of the population and the will of the main opposition forces in the country.

This process was supported and welcomed by all local and international actors of the European Union and the United States of America.

2. Even after the establishment of **the Political Council**, the majority/Prime Minister continued to provoke the opposition with actions that essentially aimed at inciting the opposition to abandon the Political Council, thus holding the opposition accountable for the non-implementation of electoral reform recommendations.

3. Prime Minister's decision to demolish the National Theater Buildings, during state of emergency measures due to the pandemic, only a few days after the Political Council recommenced its activity, is only one striking example. Through a government decision, in violation of the Constitution, the Government decided to transfer the ownership of the "National Theater" to the Municipality of Tirana, so that the latter would follow with the demolition of Theater and the construction of the new buildings, contested and filed to the Constitutional Court by the civil society and the opposition on grounds of a corruptive contract adopted as a law in Parliament.

Identifying the unconstitutionality of this Decision and pursuant to a previous request submitted to the Constitutional Court, the President of the Republic on May 14th, 2020 **deposited to the Constitutional Court** another request (a second request) for the revocation of Decision No 377, dated 08.05.2020 of the Council of Ministers *"On the transfer of ownership to the Municipality of Tirana of Property No 1/241, named "National Theater", in the cadastral zone 8150, Tirana"*, as incompatible with the Constitution, by requesting, both officially and publicly, the interruption and suspension of any action of the authorities in this regard.

But despite the calls from civil society, the community of artists, the opposition, the President of the Republic, and distinguished representatives of the European Union, during the period that the country was under the effect of implementing emergency measures due to the pandemic caused by COVID 19, the Government and the Municipality of Tirana, in violation of the Constitution and the Law, without any legal reason, without any justified legal or technical motive, **on 17 May 2020**, in early morning hours, intervened with numerous police forces and demolished the buildings of the National Theater.

Through this act, Albanians lost a public asset of high national interest. With its demolition, the cultural heritage, the national identity embodied in those buildings and our shared collective memory, were severely damaged.

This unprecedented act of the Government to loss of public and national interest, not only put in danger the life and health of the artists, civil society, journalists and police forces because of the provocation towards a physical confrontation and the risk of further spreading the infectious disease because of COVID-9 virus, **but it was another act that aimed within itself to encourage the opposition to abandon the Political Council, because the protection at all costs of the National Theater had already become one of their public political commitments.**

Even the date, 17 May 2020, chosen by the Prime Minister to intervene for the demolition of the National Theater, was a political message to the opposition. On that same day, 3 years earlier (2017), Prime Minister had reached a political agreement with the leader of the Democratic Party, for the June 2017 elections.

4. Despite many provocative actions of the majority, the opposition showed maturity and continued with its active presence in the Political Council. As a result of the contribution of the parties on **5 June 2020, the Political Council** reached a consensual agreement in a spirit of cooperation and joint contribution to the progress toward the European integration process.

5. In achieving this Agreement within the Political Council, the U.S. Ambassador[15] in Tirana, the Head of the EU Delegation in Tirana and senior representatives of the European Union were

[15] US Embassy Statement, **31 May 2020,** may be consulted at:
https://www.facebook.com/usembassytirana/posts/10157423302025838
The Statement of the US Ambassador in Tirana, **3 June 2020,** you may consult it at: https://www.syri.net/politike/344547/yuri-kim-topi-eshte-ne-fushen-e-bashes-mazhoranca-ka-leshuar/
The statement says: *"We have what could be a very good deal. It is an agreement that will firmly set Albania towards its membership in EU. It contains measures that have been addressed by the ODIHR. It also contains some significant steps which were not recommended by the ODIHR, but would also be seen as an important step forward for Albania.* ***The time has come for the opposition, for the Democratic Party, for my friend Luli Basha, to balance all the factors***

directly invested. The Agreement itself was drafted and signed in English by all the parties, as represented in the Political Council.

6. The 5 June Agreement was welcomed **by the US State Secretary, Mr. Mike Pompeo[16],** the High Representative of the European Union, Mr. Joseph Borrel and the Commissioner for Enlargement Negotiations, Mr. Oliver Varhelyi. Also, the United States Embassy in Tirana, after reaching this Agreement, in a press conference dated June 5th, 2020, explicitly states that[17]:

> *"We welcome the cross-party agreement on electoral reform in Albania, which strengthens the guarantee for free and fair elections and moves Albania forward on its European path. This agreement is the result of long hours, spirited discussions, and difficult decisions by Political Council members Oerd Bylykbashi, Damian Gjiknuri, Rudina Hajdari, and Petrit Vasili. All parties were required to make concessions so that the Albanian people could gain new guarantees such as electronic identification of voters, which protects the integrity of the ballot box. It also takes steps to depoliticize election administration in Albania, ensuring more transparency and increased independence of poll workers. Some depoliticization measures will take immediate effect, with additional measures to take effect shortly thereafter. Finally, this agreement should give Albanians more confidence in the oversight of disputes through the inclusion of vetted judges. This important milestone was reached because Albania's leaders put their differences aside and worked to deliver a tangible result to the Albanian people. We commend Prime Minister Rama and Democratic Party Chair Basha for their leadership. We appreciate the important voice of President Meta, who encouraged all sides to reach consensus. Their leadership, along with that of Speaker Ruci, will be important as the agreed reform is adopted by Parliament and implemented. The United States will continue to strongly support these efforts. We will continue to strongly support Albania's aspiration to be a full member of the European family".*

7. The conclusion of the Electoral Reform with consensus and inclusiveness would be considered by the European Union as a fulfilled condition by Albania.

8. A consensual draft codifying the necessary amendments to the Electoral Code was agreed by the Political Council on 30 **June 2020**. This codified agreement passed through the parliamentary

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and say 'Yes' to the Albanian people and say 'Yes' to Albania in Europe. The ball is in his court, the future is in his court. Thank you".

[16] Statement of State Secretary Mike Pompeo, which may be consulted at: https://www.youtube.com/watch?v=LY9elJjU3d8

> *"**I welcome the cross-party agreement in Albania on Electoral Reform, which will strengthen its democracy and further strengthen Albania's European future. We encourage all stakeholders to codify this political agreement**".*

[17] You may consult it via link: https://www.facebook.com/usembassytirana/posts/10157436399205838

procedure **without any changes** in the Albanian Assembly, as foreseen in both Agreements of 14 January and 5 June. On 23 **July 2020**, the Assembly adopted Law No 101/2020 *"On some additions and amendments to Law No 10 019, dated 29.12.2008 "The Electoral Code of the Republic of Albania", as amended"*.

The adoption of these amendments to the Electoral Code was welcomed by all domestic actors and international partners involved in this process.

9. These amendments to the Electoral Code were also welcomed by the President of the Republic, who by **Decree No 11573**, **dated 31.07.2020**, immediately announced these legal amendments, which were later published in the Official Journal No 143, dated 04.08.2020[18], by making possible that the adopted amendments with consensus **to enter into force on 19th of August 2020**.

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[18] The link where is located the electronic version of this Official Journal: https://qbz.gov.al/eli/fz/2020/143/82f816ff-4638-446d-b3f6-c1125ecec32f

VII. The actions of the Prime Minister to breach the 5 June Agreement

1. Even after 5 June Agreement was reached, and while the Political Council further worked to codify it in concrete amendments to the Electoral Code, the Prime Minister continued his provocation course. He now engaged in a new debate with the extra-parliamentary opposition (already represented in the political council and party to the 14 January and 5 June agreements), promoting additional legislative changes for next elections. On 18 June 2020, through public statements made during a plenary, he warned: ***"[...] But a thread separates the final accomplishment of the Agreement from the tearing apart of that Agreement. Therefore, this thread should be well preserved [...]"*** [19].

2. The Prime Minister engaged in a public show, while working in secret with the so-called "opposition MPs" in the Assembly, by promising that if they would submit a proposal for open lists, the Prime Minister would agree to their proposal in exchange for their support to exclude pre-election coalitions.

This fact was publicly affirmed by MP Myslym Murrizi[20], the very MP proposing constitutional changes, who publicly admitted in a TV show that abolition of pre-election coalitions was not requested by him, but by Prime Minister Rama.

3. Prime Minister moved on with his plan, and 10 days after 5 June Agreement, on 15 June 2020, bypassed the Political Council, and misused the "opposition MPs" to submit a new proposal for legislative changes.

4. On 15 June 2020, a group of MPs of the "parliamentary opposition" submitted to the Assembly a proposal to amend Articles 64 and 68 of the Constitution. This draft Law consisted of 2 Articles, where in Article 2, it was foreseen that: *"The pre-election coalitions are not allowed"*. Through this proposal, the Prime Minister with the parliamentary opposition, enabled the introduction of a parliamentary procedure to amend the Constitution.

5. The initiative to amend the Constitution was itself an unconstitutional procedure. The parliamentary procedure of the initiative for the revision of the Constitution was taken in

[19] See page 20-21, of the Minutes of the Plenary Session of date 18.06.2020. For more consult with the link: https://www.parlament.al/Files/Procesverbale/20200626093446Proc.%20dt%2018.06.2020.pdf

[20] https://www.syri.net/politike/354701/video-myrrizi-nxjerr-ramen-zbuluar-ishte-ai-qe-kerkoi-heqjen-e-koalicioneve/

https://lapsi.al/2020/07/15/edi-paloka-nxjerr-videon-myslym-murrizi-e-pranon-hapur-qe-kerkesa-per-heqjen-e-koalicioneve-ishte-e-edi-rames-video/

contradiction with Article 170, paragraph 5, and Article177, paragraph 2, of the Constitution of the Republic of Albania and as such it should not have been taken for consideration by the Assembly of Albania.

6. The initiative to revise the Constitution was proposed in the Assembly by a group of opposition MPs, **already represented in the Political Council and signatory to the 5 June agreement, and whose mandates as MPs were attained** in violation of the Constitution, the Electoral Code and the Rules of Procedure of the Assembly. Their proposal to the Assembly was introduced by Official Letter No 1561 Prot., dated 15.06.2020. Exactly on this date, **15 June 2020**, Albania was legally under the state of natural disaster declared by the Albanian Assembly by **Decision No 18/2020**, which ended on **23 June 2020**.

7. Under these conditions, the **"the undertaking of the initiative"** of these MPs to review the Constitution, has been drafted, submitted and tabled exactly within the period when the country was subject to the implementation of extraordinary measures.

8. Article 177, paragraph 2, of the Constitution states that:

> *"[…]* ***2. No amendment to the Constitution may take place*** *when extraordinary measures are in effect.*".

So the undertaking of this initiative could not and should not have been carried out at the moment when the extraordinary restrictive measures were in force in the country, as a result of the state of natural disaster.

9. The unilateral amendments to the Constitution of the Republic of Albania on 30 July 2020, were deposited and reviewed not only in violation of the requirements of the Constitution, but also in terms of content, because they are in conflict within the same amended norm or with other provisions of the constitutional text.

10. Nevertheless, the majority, in fulfillment to its political goals and without the consent of the Political Council, continued the discussion of this initiative for the amendment of the Constitution and on 30 **July 2020** (*7 days after the consensual adoption of the codified 5 June Agreement*) lacking any debate or consensus within the Political Council, unilaterally adopted the Law **No 115/2020 "*On some amendments to Law No 8417, dated 21.10.1998, "The Constitution of the Republic of Albania", as amended*", with the following content:**

*"**Article 1***

Article 64 is amended as follows:

"Article 64

1. The Assembly consists of 140 MPs, elected according to a proportional election system by regional competition and national threshold.
2. The electoral subjects which reach the national threshold participate in the dissemination of mandates.
3. The voters enjoy the right to preferential voting of the candidates on multi-name lists. The criteria and rules for the implementation of the electoral system, for the designation of electoral zones, the national threshold, the number of mandates for each zone, the dissemination of the mandates and the extent of the preferential vote are defined in the Law on Elections. The Law on Elections guarantees that no less than two-thirds of the multi-name list will be subject to preferential voting and shall provide gender representation".

Article 2

Paragraph 1 of Article 68 is amended as follows:
"1. Candidates for MP shall be presented at the electoral zone level ***by the political parties or voters. A candidate may be presented by only one of the proposing subjects, according to this point.*** *The rules for the registration of candidates for MP are determined by the Law on Elections.".*

Article 3

Entry into force

This Law enters into force 15 days after its publication in the Official Journal."

11. For comparative purposes, the constitutional amendments are reflected below:

Article 64 of the Constitution <u>WAS</u>:

Article 64

(Amended by Law No 9904, dated 21.4.2008)

1. Assembly is composed of 140 MPs, ***elected on proportional system with multi-names electoral zones.***
2. The multi-name electoral zone corresponds to the administrative division of one of the levels of the administrative-territorial organization.
3. Criteria and rules on the implementation of the proportional electoral system, on the determination of electoral zones and on the number of seats to be obtained in each electoral zone shall be defined by the law on elections.

Article 64 of the Constitution <u>BECOMES</u>:

Article 64

(Amended by Law No.118/2020, dated 05.10.2020)

1. The Assembly consists of 140 MPs, elected ***according to a proportional elections system by regional competition and <u>national threshold.</u>***

2. The electoral subjects which reach the national threshold participate in the dissemination of mandates.
*3. The voters enjoy the right **to preferential voting** of the candidates on multi-name lists. The criteria and rules for the implementation of the electoral system, for the designation of electoral zones, the national threshold, the number of mandates for each zone, the dissemination of the mandates and **the extent of the preferential vote are defined in the Law on Elections**. The Law on Elections guarantees that no less than two-thirds of the multi-name list will be subject to preferential voting and shall provide gender representation.*

Paragraph 1, of Article 68 of the Constitution <u>WAS</u>:

Article 68

(Amended by Law No 9904, dated 21.4.2008)

*1. Candidates for MPs shall be presented at the level of the electoral zone by political parties, **electoral coalitions of political parties** as well as by voters. A candidate may be presented by only one of the proposing subjects according to this section. The ranking of the candidates in the multi-name lists may not be changed after the submission of the list to the respective electoral commission. The rules for the registration of the candidates for MPs are determined by the law on elections.*

Paragraph 1, of Article 68 <u>BECOMES</u>:

Article 68

(Amended by Law No 118/2020, dated 05.10.2020)

*1. Candidates for MP shall be presented at the electoral zone level **by political parties or voters**. **A candidate may be presented by only one of the proposing subjects, according to this point.** The rules for the registration of candidates for MP are determined by the Law on Elections.*

12. From the meaning of the provisions of Articles 64, 68 paragraph 1 of the Constitution, it was very clear that the majority through the constitutional amendments was establishing the conditions to move towards a detailing of rules in the Electoral Code, where in order to win an MP mandate the competition would be carried out on regional basis, whereas the electoral threshold **would be calculated at national level. Yet the real intention was to ban the right of participating parties in pre-election coalitions to nominate candidates for** *MPs* **on their lists.**

13. Also, it was understood that a new electoral threshold would be set in the Electoral Code and that the candidate lists would not be completely open. Although majority induced a media propaganda claiming that constitutional changes would relate only to open lists (preferential votes), it was as a matter of fact intended to ban pre-electoral coalitions.

14. Clearly all these efforts were made with the purpose of shrinking the vote weight of those political forces lined up in opposition vis a vis the majority (SP), including the possibility of their total triviality in view of a new national electoral threshold, therefore pre-establishing a better competitive position for the socialist majority in next elections. These constitutional amendments obviously aimed at changing the rules which determine the method of collecting votes from electoral subjects and their transformation into mandates, in simple terms, to affect the outcome of the elections.

15. These unilateral changes to the Constitution, bypassing dialogue and consensus within the Political Council were considered **unacceptable by the President of the Republic**. Under current circumstances, where the real and dignified representation of Albanian citizens in representative institutions is missing, both at central and local level, **the consensual agreement of the parties within the Political Council on important legal reforms were and remain essential**.

Law No 115/2020 *"On some amendments to Law No 8417, dated 21.10.1998 "The Constitution of the Republic of Albania", as amended*" was forwarded for promulgation to the President of the Republic on 30 July 2020. Disagreeing with these constitutional amendments and referring to Article 177, paragraph 6[21], of the Constitution, The President of the Republic did not express himself with a Decree.

In this way, these Constitutional amendments approved by the Law No 115/2020, were published in the Official Journal No 153, on 24.08.2020[22] and entered into force on **8 September 2020**.

While 2 days before the entry into force of these amendments, the President of the Republic with Decree No 11700, dated 06.09.2020 "On determining of the date of the elections for the Assembly", had set the date for general elections, on 25 April 2021, on Sunday.

[21] **Article 177**

1. Initiative for revision of the Constitution may be undertaken by not less than one-fifth of the members of the Assembly.

2. No revision of the Constitution may be undertaken during the time when the extraordinary measures are taken.

3. The draft law is approved by not less than two-thirds of all members of the Assembly.

4. The Assembly may decide, with two-thirds of all its members that the draft constitutional amendments be voted in a referendum. The draft law for the revision of the Constitution enters into force after ratification by referendum, which takes place not later than 60 days after its approval in the Assembly.

5. ***The approved constitutional amendment is put to a referendum*** *when this is required by one-fifth of the members of the Assembly.*

6. ***The President of the Republic does not have the right to return for review the law approved by the Assembly for revision of the Constitution.***

7. The law approved by referendum is declared by the President of the Republic and enters into force on the date provided for in this law.

8. Revision of the Constitution for the same issue cannot be done before a year from the day of the rejection of the draft law by the Assembly and 3 years from the day of its rejection by the referendum.

[22] https://qbz.gov.al/eli/fz/2020/153/67ec863a-085a-4ded-af3a-a9c36ffe2508

It should be reemphasized that the agreement of January 14th, 2020 comprised the specific provision:

> "*-The involved parties commit to address by consensus **all issues** of election administration, subject to the work of the Electoral Reform Commission, including OSCE/ODIHR recommendations, and **on issues which are not agreed upon, it shall be requested opinion and assistance from OSCE/ODIHR international expertise in order to find an acceptable solution.***
>
> *-To assist in this process, the Electoral Reform Commission shall formally request the assistance of the OSCE/ODIHR, including the sending of experts if possible, who will co-operate with the political and expert representatives set out in the first paragraph of this point, in order to facilitate the process of discussion and drafting of relevant project proposals".*

So, the 14 January agreement, endorsed and welcomed by all domestic actors and international partners, established the political council as a political instrument to unblock the standstill of electoral reform, serving to the national interest for European integration, recognizing the lack of this Parliament's full legitimacy, and foreseeing inter alia, permanent OSCE/ODIHR assistance to reach acceptable solutions and political consensus.

The United Opposition, as exposed in all the media outlets, repeatedly introduced to the Political Council a request to address OSCE/ODIHR[23] on contested issues, as foreseen in 14 January Agreement, but their request was publicly and constantly rejected by the socialist representative in the Political Council.

On 22 September 2020, the extra-parliamentary opposition petitioned also officially to the Political Council a draft request addressed to the OSCE/ODIHR, on key issues requiring an expert opinion. The Socialist representative in the Political Council again officially rejected[24] this request for OSCE/ODIHR expertise.

On 27 September 2020, the opposition submitted for discussion to the Political Council some draft amendments on the model of pre-election coalitions, as adopted in 2003 and as endorsed with consensus in the 23 July 2020 (adopted by the Law No 101/2020).

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[23] https://euronews.al/al/politike/2020/09/18/opozita-ne-keshillin-politik-dorezon-kerkesen-per-te-marre-ekspertizen-e-osbe-odihr-per-ceshtjet-e-pazgjidhura
https://a2news.com/2020/09/14/ngerci-per-koalicionet-opozita-kerkon-mendimin-e-osbe-odihr-ps-nuk-e-mirepret/
https://tvklan.al/mosdakordesite-ne-keshill-opozita-propozon-te-merret-mendimi-i-osbe-odihr/
https://abcnews.al/bylykbashi-opozita-propozoi-te-merret-mendimi-i-osbe-odihr-per-koalicionet-ps-kunder/

[24] https://exit.al/gjiknuri-e-quan-leter-politike-kerkesen-e-opozites-per-opinion-nga-osbe-ja/

Through submission of this draft for discussion to the Political Council, the opposition proposed that both drafts be forwarded to OSCE/ODIHR, to check on their compliance with international standards. The majority yet again refused[25] to engage the OSCE/ODIHR, although Albania is currently Chair-in-Office of OSCE.

In this manner, the majority proceeded with the unilateral adoption of the amendments to the Electoral Code on 5 October 2020 in the Assembly.

Amendments to the Constitution and any subsequent amendment to the Electoral Code on 5 October 2020, adopted unilaterally while lacking dialogue and consensus within the Political Council, and after the President of the Republic had set the date of elections, constitute a change in the rules of electoral competition violating every democratic principle on the conduct of the electoral processes.

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[25] https://www.zeriamerikes.com/a/5604915.html

VIII. Determining of the date of general elections and implementing electoral rules

The President of the Republic, after entry into force of the amendments to the Electoral Code approved on 23rd of July 2020, which codified the inclusive Agreement of 5th of June, conducted a consultation process with the political parties in order to set the date of the elections. The President received the Prime Minister and Leader of the Socialist Party, the Leader of the opposition, as well as the Leaders of other opposition parliamentary parties emerged from 2017 elections.

After consulting with the parties, the President of the Republic, by Decree No 11700, dated 06 September 2020, pursuant to Article 65, paragraph 1 and 2, 92 letter "gj" and 93 of the Constitution of the Republic of Albania, as well as Article 8, 9, paragraph 1 and 4 of Law No 10019, dated 29.12.2008 "The Electoral Code of the Republic of Albania", as amended**, decreed the date of the elections for the Assembly, determining that they shall take place on Sunday, April 25th, 2021.**

On September 6th, 2020 when the President of the Republic approved this Decree, neither the unilateral constitutional changes had entered into force, nor had any other amendment been approved to the Electoral Code.

In this way, at the time of determining the election date, the electoral rules in force on which the parties had agreed to and would have to run in the elections of 25th of April 2021, were the amendments to the Electoral Code of 23rd of July 2020, agreed unanimously in the Political Council and codified by the Albanian Parliament.

Referring to the good practices and recommendations adopted over the years by the OSCE/ODIHR, the Venice Commission, etc. (which shall be quoted below), any other change that would follow these rules both to the Constitution and to the Electoral Code**, at least it should not be used for the elections already scheduled to be held on April 25th, 2021. Otherwise it should have the agreement of all parties represented in the Political Council.**

Noting the permanent behavior of the majority and precisely to avoid this state of unconstitutionality and an overlap or change of rules for the next election process, the President of the Republic conducted a consultation process with the political forces and on September 6th, 2020, approved the Decree for deciding the 25th of April 2021, as the day of Elections for the Assembly of Albania, before the entry into force of the unilateral Constitutional changes.

The provision of Article 68 of the Constitution, which was unilaterally amended, based on the absurd justification that it was a change done in 2008 in a hurry and that coalitions could and should have been provided only in the Electoral Code and not in the Constitution, **is rejected in relation to the provision of Article 96, paragraph 1, of the Constitution, which has never been amended over the years and which clearly acknowledges the organization of political parties in coalitions. This constitutional provision provides that:**

> *"The President of the Republic, at the beginning of the legislature, as well as when the post of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party* ***or coalition of parties*** *that have the majority of seats in the Assembly."*

The Constitution is the fundamental Law of the State and cannot be treated as a worthless document, which can be amended unilaterally and without an inclusive discussion, in order to achieve the narrow objectives of the moment of a political force. Such a partial behavior, as it was shown by the subsequent developments, has deepened the political conflict in the country and has again ruined the trust, not only of the opposition, but of all the citizens and local and international actors against the Prime Minister and the political force he leads.

By endorsing these amendments unilaterally, it is already clear that the Prime Minister seeks, inter alia, to remove some political forces from the political scene, be it from the left or right, which over the years have established a stable number of voters and supporters, and have been able to be represented in the Assembly with a parliamentary mandate through pre-election coalitions.

With the increase of the electoral threshold and the difficulties created by this Law for joining in pre-election coalitions with a unique competitive list, the leaders of these parties would now be forced to negotiate with the main political forces to include their candidates within the list of an electoral subject, thus bringing the risk of suffocation of these political forces and the level of their representation in the Assembly, regardless of the votes they may receive at the regional level.

These changes shall hide the political parties behind the logo of a coalition and would make it impossible for the voters to choose the coalition party they want as well as for the voters to determine directly, by vote, the electoral power of each party. The consequence of this change will be the reduction of the parliamentary political pluralism.

If these changes were to be consulted and agreed upon by the political forces in Albania, or to be subject to the will of the people through a referendum, they could be acceptable. **But under the conditions where the Leader of the Socialist Party, through force and abuse of the activity of the Assembly, tries to decide which political force should exist and which not, this is an anti-democratic and a clear sign that the country is tumbling into authoritarianism.**

In a democratic system, if one of the leaders of the political forces enjoys an unmerited momentary position when he can impose through constitutional or legal amendments the existence or not of other political forces, then practically representative democracy does not work, and the country is *de facto* subject to an authoritarian system.

These situations, which correspond with the unilateral constitutional and legal amendments, without consensus and with negative effects on various political forces, are in contradiction not only to the principles and fundamental constitutional rights, but also to the principles and standards set by the Venice Commission, provided for in the ***Code of Good Practice in Electoral Matters***[26].

This document, which is also a guide for the countries of the Council of Europe for holding democratic elections, in summary **defines that**,

- **The essential election rules should start at least 1 year before the election period and should not be changed during the period immediately before the election, unless absolutely necessary to do so** *and* **unless there is a strong/inclusive consensus in support of them.**

The Decree of the President of the Republic, dated 6th of September 2020, issued on the basis of the provisions of the Electoral Code just entered into force (19th August 2020 after the approval with the consent of the Political Council), means that the electoral process (pre-election) officially started on this date (6th of September 2020).

From the day of issuance of this Decree for setting the date of the elections for the Assembly of Albania, the rules in force for the registration of voters and electoral subjects (political parties, coalitions and/or independent candidates) were applicable, according to the agreement of 5th of June, codified on 23rd of July 2020.

The parties could follow the registration procedures at the CEC and even register the coalitions based on the model recognized by the Electoral Code in force, confirmed by the amendments done to it on July 23rd, 2020.

Therefore, any subsequent change constitutes a direct violation of the principle of legal certainty, for a process that has already begun on the basis of some well-defined rules.

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[26] Look at the Chapter XI of this reasoning.

IX. The unilateral amendments to the Electoral Code violate the Political Agreements. The Political Council and the importance of the "5 June Agreement on Electoral Reform"

In the Agreement of January 14th, where the establishment of the Political Council was formalized with representatives of the opposition, leaders of the Electoral Reform Commission and representatives of Parliamentary Groups, the Political Council continued its work and as a result of consensus reached on June 5th, 2020, with Law No 101/2020, on 23rd of July 2020, the amendments to the Electoral Code were adopted, by codifying the product of the political agreement.

The majority continued towards achieving its political purpose and on October 5th, 2020, the Albanian Assembly adopted Law **No 118/2020** "On some additions and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended".

Through this Law, among other things, some articles adopted by the Assembly on July 23rd, 2020 were also amended.

There are fundamental interventions in election rules, made 1 month after the President of the Republic has set the date of elections and when there are less than 5 months left for the parties to address their electoral campaign by building electoral competition strategies. These unilateral changes, not approved within the Political Council, include in total 26 Articles.

From the comparative review of the content of the two Laws through which the Albanian Assembly has intervened in the Electoral Law, it results that, through Law No 118/2020, a total of 25 Articles of the Electoral Code in force have been affected.

Law No 118/2020, dated 05th of October 2020, intervenes in the following provisions: Article 2, 6, 10, 12, 51, 65, 67, 68, 88, 90, 98, 101, 103, 105, 106, 117, 118, 147, 149, 162, 163, 164, 165, 166, 179/1.

Comparing the amended provisions in the Electoral Code, those adopted through the consensual **Law No 101/2020, dated 23rd of July 2020** to those adopted unilaterally through Law **No 118/2020, dated 5th of October 2020,** it results **some important provisions of the agreed articles in the Agreement have been affected.**

Namely, from the articles of the Electoral Code adopted by the previous Law No 101/2020, are affected Articles **12, 67, 88, 90, 149, 163, 164**.

Further amendments to the Electoral Code, after the ones adopted on 23 **July 2020**, through a fait accompli voting in 5 October, **violate the mutual trust between the political forces and the conditions agreed with in the 5 June Agreement on Electoral Reform.**

In **Article 10** of 5 June agreement the parties have consented that:

> *"The Approval"*
> *"All agreed proposals shall be drafted as legal amendments that shall be reviewed and controlled by the Political Council to properly reflect* ***the agreement BEFORE it is submitted to the Parliament, WITHOUT making any change and without further amendments.*** *In the event of any technical legal correction proposed in the text of these amendments by the parliamentary bodies, they MUST be approved by the Political Council BEFORE the voting. "*

This clear provision reflects the consent of the parties that any amendment to the Electoral Code cannot be sent to the Assembly for adoption, without the consent of the Political Council. This means that, not only what was agreed and codified in the Assembly on July 23rd through the Law, but also for any other amendments related to or affecting what was agreed, could not and should not pass without receiving again the approval by the Political Council.

Following the June 5th Agreement, **two main provisions of the Electoral Code (Articles 67, 164) that were drafted by consensus on June 30rd and subsequently voted by the Parliament on July 23rd, 2020, were**:

1) The provision amending paragraph 5 of Article 67 of the Electoral Code, with the following agreed content:

> *"5. The names in the multi-name list of the electoral subject are presented ranked in numerical order, starting from number one. The number of candidates in the multi-name list cannot be less than the number of mandates to be elected in the respective electoral zone, adding two. In any case, the number of candidates in the multi-name list must be divisible by the number three.* ***For the member parties of the coalition that compete with separate multi-name lists,*** *the number of candidates on the multi-name list cannot be less than half the number of mandates to be elected in the respective electoral zone, adding two. In any case the number of candidates in the multi-name party list must be divisible by the number three.*

2) The provision that amended paragraph 5, of Article 164, of the Electoral Code, with the following agreed content:

"5. In case the list of candidates of the political party, ***member of a coalition****, is exhausted; the mandate passes* ***to the coalition party with the highest quotient****".*

These two provisions were adopted with this content on **July 23rd, 2020**, through **Law No 101/2020**, **and refer specifically to the preservation of the existing rules regarding the allowance of competition <u>with pre-election coalitions where each party participating in the coalition could compete with separate lists of its candidates and the transformation of votes of the participating parties in the coalition into mandates</u>**.

Meanwhile, through the voting process of **October 5th, 2020** and the adoption of Law **No 118/2020** *"On some additions and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania"* as amended*",* both of these basic Articles, adopted on July 23rd, which regulate the manner how to compete in coalitions and how the vote of the participating political parties is calculated in a pre-election coalition, **<u>are changed unilaterally and immediately the candidacy with special lists of the participating parties in the pre-election coalitions is prohibited !!</u>**

<u>This is nothing but a direct violation of the June 5th Agreement and its codification and not "an additional measure" as articulated by the majority.</u>

Through Article 7 of Law No 118/2020, paragraphs 1-5 of Article 67 change completely, with this content:

"Article 7

In Article 67, paragraphs 1 to 5 are amended as follows:

1. ***The political party or the electoral coalition, within the meaning of Article 65****, which is registered in the CEC as an electoral subject for elections in the Assembly, submits to the CEC* ***the multi-name list of its candidates*** *for each electoral zone no later than 50 days before the election date.*

For the elections of local government bodies, the candidate for mayor of the local government unit and the list of candidates for local councils are registered in the CEAZ that covers the local government unit within the deadline defined in this paragraph. The CEAZ submits a copy of the list to the CEC within 48 hours.

2. Pursuant to the second paragraph of point 1 of this article, the list of the subject is deposited to the CEC in cases when the territory of the local government unit is not covered by a single CEAZ.

3. A candidate MP, registered in a multi-name list in an electoral zone, or a candidate for mayor or municipal council may not be registered as such for another electoral zone, either on behalf of another party or coalition, nor as proposed by a group of voters. An exception to this rule is the leader of the party or the leading party of the coalition, who can be registered in up to four electoral zones in the elections for the Assembly. After the distribution

of mandates according to this Law, he cannot hold more than one mandate, which he chooses of his own free will.

*4. **The names in the multi-name list of the electoral subject** are presented in numerical order, starting from number one. The number of candidates in the multi-name list may not be less than the number of mandates to be elected in the respective electoral zone, adding two. In any case, the number of candidates in the multi-name list must be divisible by the number three. For coalitions, next to the name of the candidate, it is written which party the candidate belongs to.*

5. The electoral subject may not change the ranking of the candidates on the list after its registration. Candidates are re-ranked only in compliance with the procedures of this Law for the calculation of winning seats based on preferential voting and meeting the legal requirement for gender quota."

While, through Article 22 of Law No 118/2020, dated 5th of October, paragraph 5 of Article 164, adopted on 23rd of July 2020 is **repealed**.

In this way, according to the changes, the pre-election coalition agreements are allowed, but these forms of pre-election cooperation are accepted only for competition by being presented in a unique multi-name list submitted by the electoral subject (coalition).

Meanwhile, according to the June 5th Agreement, codified on July 23rd, 2020, it was agreed that political parties participating in a pre-election coalition could have the possibility of a pre-election coalition, but while preserving the right to register as a competing electoral subject on their own to run with their party's multi-name list.

By removing this agreed and codified right, the June 5th, 2020 Agreement was not only violated, but rejected by the Socialist Party, thus unilaterally changing the basic rules of political competition for the April 25th, 2021 Elections.

Here we bring to your attention that the **Venice Commission**, through the Opinion given to Albania in 2011, in addition to the need for the stability of electoral legislation, has emphasized that:

*"A public process, with the inclusion of all stakeholders, is instrumental in encouraging trust and confidence in electoral outcomes. All parties, both in the Government and the opposition, have a responsibility in this regard. For these reasons, **the process for revision of the electoral legislation should therefore be inclusive. It should also be finalized well in advance of the next elections.**"*[27]

[27] Opinion No 641/2011 (CDL-AD(2011)042), "Joint Opinion on the Electoral Law and the electoral practice of Albania", paragraph 136, expressly quotes: *"136. A public process, with the inclusion of all stakeholders, is instrumental in encouraging trust and confidence in electoral outcomes. All parties, both in the government and the*

The introduction of preferential voting, by which the voter has to vote for the candidate he prefers in a multi-name list, has fundamentally changed the rules of the electoral race.

Now every candidate on a list has the right to compete to collect votes and to be declared winner. For this, each candidate must be provided with equal conditions of competition, the same with each electoral subject, in particular with the candidates proposed by the voters.

Thus, a candidate of a party list or coalition should have the right to campaign with graphic means such as posters, etc.; should have the right to access the media; to create financial resources and spend; and all this on the basis of the principle of equality both within the subject where he competes, and against competing subjects.

The candidate has the right to complain if the counting, the drafting of the result, the calculation of the quotient, or the distribution of the mandate are wrong.

The Electoral Code denies the constitutional right of complaint to the individual candidates of the multi-name lists of parties in the coalition. In case the party of the complaining candidate does not file a complaint on behalf of the candidate, the latter is not provided with access to the complaint procedures. Consequently, this carries the risk of distorting the result through the denial of a constitutional right to candidates.

The Electoral Code should also provide clear rules for drafting a clear ballot paper so that voters are not confused and their vote, being a constitutional right, is not declared invalid because of the inability to understand the voting method.

Also, the procedures for counting, contesting and compiling scoreboards should be reviewed in detail, in order to ensure the accuracy of the result, its transparency and the reduction of the appeals.

All these recommendations and requests for guaranteeing the principle of free and fair elections according to European and international democratic standards have been ignored with the unilateral adoption of the amendments to the Electoral Code by Law No 118/2020, dated 5th of October.

* * * * *

opposition, have a responsibility in this regard. The process for revision of the electoral legislation should therefore be inclusive. It should also be finalized well in advance of the next elections."
You may consult the link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)042-e

X. Reactions after the unilateral amendments of October 5th, 2020 to the Electoral Code

After the adoption by the Assembly of Law No **118/2020** *"On some additions and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended"*, authorities of international organizations or representatives of the diplomatic corps in Tirana, have reacted.

- **Mr. Michael Gahler[28],** MP and spokesman of the Parliamentary Group of European People's Parties in the European Parliament, through a public statement made on **October 5th, 2020**, immediately after the voting on amendments to the Electoral Code, stated that:

  "By voting today to breach the EU brokered 5 June Agreement with the opposition, the Albanian Prime Minister Edi Rama cast a dark shadow over next April general election which were supposed to be free and fair and better than the previous ones. By doing so Rama clearly hinders Albania's EU integration. More precisely the breach of the 5 June agreement may very well postpone the first Intergovernmental Conference as the first step for the beginning of the real EU accession negotiations.
  Albania deserves much better than that.
  We call on the Albanian President to send back today's laws to Parliament. We call on PM Rama to reconsider his position for the sake of the European future of the Albanian people."

This call from the biggest political group of parties of the European Parliament is enough to understand how important dialogue, cooperation, inclusiveness and consensus are in determining the election rules and that every unilateral step of Prime Minister Edi Rama shall clearly be highly costly that would penalize not only him and the party he leads, **but even more so the Albanian people, by postponing the opening of negotiations with the European Union. An inclusive process in adopting and implementing election legislation has been established as a sine qua non condition for Albania's further progress in its accession process.**

- The Delegation of the European Union in Albania also reacted to amendments to the Electoral Code. Through a public status on **October 5th, 2020**, immediately after the voting on the amendments to the Electoral Code, the delegation underlined[29] that:

[28] https://www.facebook.com/100007343383150/posts/2720338128220940/?extid=0&d=n
[29] https://www.facebook.com/304579276278549/posts/3293685364034577/

"We take note of the Parliament's adoption of further amendments to the electoral code. ***We recall that these are unrelated to the implementation of the OSCE/ODIHR recommendations on electoral reform as referred to in the March Council Conclusions****. We regret that no compromise could be reached in the Political Council before the amendments were voted on in the Parliament. Despite the positive outcome of the agreement on OSCE/ODIHR recommendations* ***reached on 5 June 2020****, the political dialogue in the country needs to be improved. We encourage all stakeholders to maintain the focus on implementing the reforms needed for the country to advance on the EU integration path,* ***including the reforms foreseen in the 5 June Agreement****. This will introduce higher integrity and transparency standards into the electoral process, which is crucial to the political future of the country"*

- Another reaction that has come from the Embassy of the United States of America in Tirana. Through a public status[30] on **October 5th, 2020**, it is stated that:

  "*The United States has long pressed for Albania's leaders – inside and outside Parliament – to engage each other in a transparent and inclusive manner on issues of national importance. This kind of positive engagement produced the June 5 agreement on electoral reform. We have made clear since then that the June 5 agreement should be honored and that any additional measures should be considered and adopted in similar transparent and inclusive manner using the Political Council. Today, the ruling party terminated discussions at the Political Council and voted to adopt significant changes to the rules that will govern the April 25 elections. While it was within Parliament's competency to adopt these changes and while these changes are in addition to – not in violation of – the June 5 agreement, it is regrettable that the majority failed to honor its own stated commitment to seek common ground in the Political Council. Albania is a member of NATO, an aspirant for membership in the European Union, and Chairman-in-Office of the OSCE. It is incumbent upon Albania's leaders – beginning with but not limited to those in power – to hold them to a higher standard and to ensure the freedom and fairness of the upcoming elections. We stand with the Albanian people in this expectation."*

The President of the Republic, considers that this reasoning must include the statements of the representatives of our strategic partners EU and USA, only in view of raising public awareness. The President of the Republic of Albania is the only one vested with the power to review this legal initiative, in implementation of Article 85, paragraph 1, of the Constitution.

If the Albanian Assembly does not reflect on the revision of this Law after its return by the President of the Republic, the legal right for a final assessment on the incompatibility of Law

[30] https://www.facebook.com/74591195837/posts/10157741842170838/

No 118/2020 with the Constitution and consequently with the European Convention on Human Rights and international standards rests with the Constitutional Court of the Republic of Albania, regrettably still not functional.

Lack of the Constitutional Court increases the reasonable doubt that the functioning of this Court has been deliberately blocked by this governing majority, which has already enjoyed **32 months of being free from any accountability and constitutional control, and is hoping to remain so until** April 25th, 2021.

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XI. The unilateral changes of the 5th of October 2020 to the Electoral Code violate the international principles and standards adopted over the years by the OSCE/ODIHR and the Venice Commission and the benchmarks set by the EU and the German Bundestag

Through adoption of Law No 118/2020, the basic principles and European standards of the OSCE/ODIHR, the Council of Europe (Venice Commission), and accession benchmarks set by the European Council and German Bundestag have been violated.

The principles, basic standards and recommendations of the OSCE/ODIHR and the Council of Europe and the Venice Commission, require, *inter alia*: **Not to change the basic electoral rules such as the manner of competition, and the transformation of votes into mandates, 1-year before the elections and in particular without an inclusive consensus**.

Meanwhile, in Albania, the process of preparation for the electoral race has already begun.

The documents approved by international bodies such as the OSCE/ODIHR, the Venice Commission, etc., already acknowledged and known, must be implemented and serve as a roadmap to the member states of these bodies. These documents, reflecting the European Electoral Standards are mandatory for Albania as well.

In all these documents it is emphasized the fact and the need that every state **must necessarily carry out the changes of the election rules through inclusiveness and consensus and in the interest of their voters.**

Specifically:

❖ Recommendations of OSCE/ODIHR

1. In the document "*Existing Commitments for democratic elections in OSCE participating states*"[31], in point 2.5, it is stated that:
"A clear and detailed legislative framework for conducting elections must be established through statutory law, either in a comprehensive code or through a set of laws that operate together ***consistently and without ambiguities or omissions****. Except* ***in extraordinary cases*** *– in which serious deficiencies have been revealed in the legislation or its application and* ***when there is an effective political and public consensus on the need to correct them – amendments to the law may not be made during the period immediately preceding elections,*** *especially if the ability of voters****, political parties****, or candidates to fulfill their roles in the elections could be infringed."*

[31] You may consult the link in albanian: https://www.osce.org/odihr/elections/13957

This position is based on the CDL Guidelines, II, 2.b, which provides that: *"the fundamental elements of electoral law ... **should not be open to amendment less than one year before elections.**"*

Paragraph 2.5 emphasizes that there must be a clear framework for elections in statutory law. Aspects of the legislative framework may be provided for in the Constitution or may be addressed through regulatory or administrative action, under appropriate legal direction. […] This paragraph also stipulates that election-related laws **should not be amended during the period immediately preceding the elections unless it is absolutely necessary to do so; there is a strong consensus in support, and the amendments would not infringe the ability of election participants to fulfill their role in the process.** It was not considered advisable to mention any specific time period or other circumstances related to the legal amendments, such as those proposed by the Venice Commission, as the reasons for proposing amendments to the election laws by the deadline vary widely[32].

2. Final Report of ODIHR Local Election Observation Mission, dated 5 September 2019,[33] in Recommendation no. 1, it clearly stated that:

> *"With a view to strengthen pluralistic democracy, reaffirm the right of citizens to take part in government and demonstrate shared responsibility toward the integrity of the electoral process, political parties and other electoral stakeholders should engage **in an open and inclusive dialogue** and facilitate electoral reform addressing the recommendations contained **in this and prior ODIHR reports**."*

❖ Council of Europe - European Commission For Democracy Through Law (Venice Commission), provides these guidelines on electoral matters:

Code of Good Practice in Electoral Matters[34]**,** a document adopted by the European Commission for Democracy through Law (Venice Commission), 18-19 October 2002 (Opinion no. 190/2002, CDL-AD (2002) 23rev2-cor) , contains instructions and explanatory report on election-related matters.

[32] OSCE "*Existing Commitments for democratic elections in OSCE participating states*", page 32. https://www.osce.org/odihr/elections/13957
[33] You can also consult it in Albanian at the link: https://www.osce.org/odihr/elections/albania/417425
[34] You can also consult it in Albanian at the link: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-alb

Code of Good Practice in Electoral Matters is adopted by the Parliamentary Assembly of the Council of Europe at its first session in 2003 and by the Congress of Local and Regional Authorities of Europe at its spring session in 2003[35].

1. This Code[36], in Chapter II, point 2, on "**Regulatory levels and stability of electoral law",** provides that::

> *"a. Apart from rules on technical matters and detail – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.*
> *b.* ***The fundamental elements of electoral law****, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries,* ***should not be open to amendment less than one year before an election,*** *or should be written in the constitution or at a level higher than ordinary law."*

2. Whereas in paragraphs 63 to 66 of this document, where it is evidenced the European rules and standards on "**Regulatory levels and stability of electoral law"**, it is determined that:

> *"****63. Stability of the law is crucial to credibility of the electoral process,*** *which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated –* ***may confuse voters****. Above all, voters may conclude, rightly or wrongly****, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.***
>
> ***64.*** *In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged)* ***as stability of some of the more specific rules of electoral law, especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results,*** *and care must be taken* ***to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.***
>
> ***65.*** *It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as* ***changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests****.*

[35] Code of Good Practice in Electoral Matters, page 2.
[36] Code of Good Practice in Electoral Matters, https://rm.coe.int/090000168092af01.
You can also consult it in Albanian at the link:
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-alb

66. *One way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries).* ***Another, more flexible, solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that."***

3. The Interpretative Declaration on the Stability of the Electoral Law, adopted by the Council for Democratic Elections on 15 December 2005 and by the Venice Commission on 16-17 December 2005 (Study No. 348/2005, CDL-AD (2005) 043), states that[37]:

"*I. The Code of Good Practice in Electoral Matters (CDL-AD (2002)023rev, item II.2.B) states: "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment* ***less than one year before an election****, or should be written in the constitution or at a level higher than ordinary law."*

II. The Venice Commission interprets this text as follows:
1. The principle according to which the fundamental elements of electoral law ***should not be open to amendment less than one year prior to an election*** *does not take precedence over the other principles of the Code of Good Practice in Electoral Matters.*

2. It should not be invoked to maintain a situation contrary to the standards of the European electoral heritage or to prevent the implementation of recommendations by international organizations.

3. This principle only concerns the fundamental rules of electoral law, when they appear in ordinary law.

4. In particular, the following are considered fundamental rules:
- the electoral system proper, i.e. ***rules relating to the transformation of votes into seats;***
- rules relating to the membership of electoral commissions or another body which organizes the ballot;
- the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies.

5. In general any reform of electoral legislation to be applied during an election should ***occur early enough for it to be really applicable to the election****.*[38] *"*

[37] You may consult the link: https://www.venice.coe.int/webforms/documents/CDL-AD(2005)043.aspx#
[38] "I. The Code of good practice in electoral matters (CDL-AD(2002)023rev, item II.2.B) states:

Referring to the content of unilateral changes to the Electoral Code of 5 October 2020, compared to European standards on electoral processes well defined in the OSCE/ODIHR guidelines, or in the opinions of the Venice Commission, it turns out that the majority, **through changes in the Albanian Assembly has openly and intentionally violated any one of these documents.**

This clearly proves that the political force in power, through force and abuse of the legislative process:

- **Wishes to manipulate the Elections of April 25th, 2021 in favor of the Socialist Party, through law, currently using the position of Prime Minister as chairman of OSCE;**
- **Wishes to minimize the transforming power of the opposition vote into parliamentary mandates;**
- **Wishes to create advantages for his party in the election process of April 25th, 2021;**
- **Wishes to reduce the trust of the public as a whole and of the voters in this electoral process, in order to reduce, as much as possible, the participation of opposition voters in the process of elections;**
- **Risks keeping Albania out of the European Union, escaping every accountability and re-labeling Albania as a country incapable of holding free and fair elections, even after 30 years of political pluralism.**

❖ Position of Germany – Rotating Presidency of the European Council

The decision of the German Bundestag and the Federal Government on Albania's application for accession to the European Union and on the recommendation of the European Commission and the High Representative on 29 May 2019, states that[39]:

"The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law."
II. The Venice Commission interprets this text as follows:
1. The principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters.
2. It should not be invoked to maintain a situation contrary to the standards of the European electoral heritage or to prevent the implementation of recommendations by international organizations.
3. This principle only concerns the fundamental rules of electoral law, when they appear in ordinary laë.
4. In particular, the following are considered fundamental rules :
- the electoral system proper, i.e. rules relating to the transformation of votes into seats;
- rules relating to the membership of electoral commissions or another body which organizes the ballot;
- the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies.
5. In general any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election."

[39] Page 4 of the Decision, you may consult the link:
https://www.bundestag.de/resource/blob/661474/a7dbc7059c21262d3053c2baa8704adb/decision_albania-data.pdf

"In addition, the Bundestag calls on the Federal Government:
1. to make its consent in the European Council on 17 and 18 October 2019 subject, as a matter of principle, to the following prerequisites:
[Albania…] - ***has adopted electoral law reforms that fully accord with the recommendations of the OSCE ODIHR,*** *has ensured that the funding of political parties and electoral campaigns is transparent and has acted on* ***the findings of the ad hoc parliamentary committee on electoral reform;*** *the review of the committee draft should take place* ***in an open and inclusive dialogue involving all political forces,*** *as recommended in the ODIHR report of 5 September 2019;".*

❖ European Union

The conclusions of the European Council on Albania, dated 25 March 2020, explicitly state that: "*Prior to the first Intergovernmental Conference, Albania should adopt the electoral reform* ***fully in accordance with OSCE/ODIHR recommendations […]"***[40]***.***

Referring to the good practices, recommendations, European standards set by the OSCE/ODIHR and the Venice Commission, **it results that the amendments to the Electoral Code openly contradict these documents**, regardless of continuous calls by European leaders and international partners on the government to build consensus prior to adoption in Parliament.

Furthermore, the socialist majority rejected also OSCE/ODIHR expertise on proposed amendments, as requested by the opposition within the Political Council.

It is ironic and pitifully that Mr. Edi Rama, as current Chairman-in-Office of the OSCE, refuses the expertise of a body currently chaired by him, and at the same time violates the political Agreements brokered by international partners.

The Albanian Prime Minister is the only OSCE Chairman-in-Office, who before taking up this rotating duty, has set the worst example with gravest violations in his own country, as he did in the 2019 local elections running without alternative candidates and without competition. He is now trying at all costs through changes in the Electoral Code, to create a legal environment that favors his ruling political force and which harms any opposition force to the Government.

[40] The conclusions of the Council of the European Union on the Enlargement and Stabilization-Association Process of the Republic of North Macedonia and the Republic of Albania, dated 25 March 2020, page 5. You may consult the link: https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdfENLARGEMENT

This is the most severe case of legislative corruption, where through amendments to election rules, it is being attempted to obtain a positive result in favor of the Socialist Party and to harm political opponents. Such an action violates the OSCE principle of "equal playing field".

Achieving through vote in one-party Assembly, the favoring of the political force which he leads, while in office as Prime Minister and as current OSCE Chairman-in-Office, is a clear indication that within this legislative will are hidden and realized goals that go beyond political objectives.

These actions would have to be criminally investigated in order to gather detailed evidence and facts on attempts made to manipulate electoral reform and electoral competition to the harm of the interests of Albanians.

If the majority does not reflect, as the President of the Republic, I feel obliged to take all constitutional and legal actions in defense of the values and principles of democracy to prevent the distortion of the will of the people, while expressing the conviction that this serious state of illegitimacy would be resolved through popular reaction and the rightful choice of a sovereign.

*** * * * ***

XII. Amendments to the Electoral Code carried out on 5 October 2020, through Law No 118/2020, conflict the Constitution, violate the principle of legal certainty and regular legal process, as well as create noticeable discrimination in the political life

1. Law No 118/2020 deteriorates the position of small parties and causes discrimination. The amendment of the electoral threshold and the imbalance of the conversion of votes into representative seats in the Assembly.

One of the essential changes made regarding the way of calculating and converting citizens' votes into representative mandates, is related to Article 162 of the Electoral Code, determining the method of calculating mandates of electoral subjects.

Article 162, paragraph 1 of the Electoral Code, **prior** to the amendments to Law No 118/2020, determined that:

> *"No later than 3 days from the completion of the appeals process against a decision on the approval of results of the electoral zone or the invalidation of elections, in accordance with this Code, the CEC calculates the allocation of seats for each electoral zone based on the number of valid votes obtained by the subjects* ***in the electoral zone****.* ***For elections to the Assembly, parties that run on their own and that have obtained less than 3%, and coalitions that have obtained less than 5% of the valid votes in the respective electoral zone are excluded from the allocation of seats."***

With Law No 118/2020, this amended paragraph contains this provision:

> *"No later than 3 days from the completion of the appeals process against a decision on the approval of results of the electoral zone or the invalidation of elections, in accordance with this Code, CEC calculates the allocation of seats for each electoral zone based on the number of valid votes obtained by the subjects in the electoral zone.* ***For elections to the Assembly, the electoral subjects that have obtained less than 1% of the valid votes at national level are excluded from the allocation of seats."***

At first reading, it seems that this change supports political entities to be represented in the Assembly, **since in numerical value, the percentage of votes necessary to be included in the distribution of mandates decreases.**

However, in reality, such change would be positively understood only if the reduction in the percentage of votes were made **for an electoral zone**, **as previously stipulated in the provisions**.

The applicable electoral system provided for in the Constitution is **regional proportional**, according to Article 64, paragraph 1, while the amendment to the Constitution and then to the Electoral Code of a threshold of **1% at national level is very problematic for some political parties.**

The constitutional concept **of the electoral threshold at the national level** does not correspond to the other concept that the Constitution provides within the same norm, of the **proportional electoral system with regional competition.**

The authors of the unilateral constitutional change, within the same constitutional paragraph (Article 64, paragraph 1) have caused a significant contradiction/conflict to the provision. This contradiction, further regulated by the amendments to Law No 118/2020 of the Electoral Code, results that the norm of the Electoral Code is in contradiction with one of these notions of the Constitution, by bringing further unconstitutionality, *ambiguity* and confusion in implementation.

With the revision of the percentage of the votes necessary for the distribution of the mandate**, from 3% at the district level, to 1% at the national level**, it has also changed the calculation of the threshold of this percentage **from district level to national level**.

Such a change leads to **unequal treatment and discrimination of some parties**, which in certain electoral zones represent mostly a certain category of voters (depending on the division of electoral zones and which include the historical, geographical, demographic nature, etc.), **denying the latter the right to feel represented and devaluing their vote at national level**.

So if until today, within an electoral zone, the voters through their supporting votes given to a certain political force or candidate, had the opportunity to be represented in the Albanian Assembly due to the calculation of the number of votes at electoral zone level; with the new system of calculation at national level, their vote risks being devalued and the political force they want to be represented by may not reach the percentage set for a parliamentary mandate

For illustration: **From 12 electoral zones are elected 140 MPs.**
In the 2017 elections, a total of **1,582,150** citizens voted.

In Diber District, in the 2017 elections:
- Voted: **73 702 voters,** which was translated to 6 parliamentary seats**.**
- According to the election result, approximately **11,000 votes** produced **1 mandate**. This also applies to small parties, which crossed the legal electoral threshold at the regional level.

While, with the national legal electoral threshold of 1%, set by law No 118/2020, an electoral subject shall need approximately over **15,822 votes**.

So, with the changes made, a party in this district, which shall receive another 15,821 votes, may not be able to get any mandate, as it must reach the legal electoral threshold at the national level, leading at least up to **15,821** votes (hence one vote less than the legal electoral threshold) from **73,000 voters** of that district, therefore lose the power of representation in the Assembly.

This situation can occur in any district, where different parties with special characteristics or ties to the district/electorate represent and have the historical support of the voters.

Moreover, if we compare the data of the results at the national level in the elections for the Assembly of 2017, out of 18 political parties that participated in the elections, 13 of them have not managed to reach the percentage at the national level that is intended to be determined by Law No 118/2020. Below it is the summary table of the 2017 election results, according to CEC:

SUMMARY TABLE OF RESULTS IN THE COUNTRY

	Total		M	F
Number of voters on the list	3,452,324		1,743,761	1,708,563
Participation (number,%)	1,613,810	(46.75%)	809,668	714,961
Unused ballot papers	1,831,846			
Damaged ballot paper	5,815			
Ballot papers found in the box	1,614,051			
Invalid votes	31,898	(1.98%)		
Valid votes	1,582,150	(98.02%)		

(gender data for participation for 302 VCs missing)

No.	Parties		Votes	%	Mandates
1.	SOCIALIST MOVEMENT FOR INTEGRATION	LSI	225.901	14.28 %	19
2.	SOCIALIST PARTY OF ALBANIA	PS	764.750	48.34 %	74
3.	CRISTIAN DEMOCRATIC PARTY OF ALBANIA	PKD	2.421	0.15 %	0
4.	CHALLENGES FOR ALBANIA	SFIDA	3.546	0.22 %	0
5.	REPUBLIC APLBANIAN PARTY	PR	3.225	0.20 %	0
6.	DEMOCRATIC PARTY	PD	456.413	28.85 %	43
7.	ALBANIAN DEMOCRISTIAN UNION PARTY	PBDKSH	924	0.06 %	0
8.	THE DEMOCRISTIAN ALLIANCE PARTY	ADK	767	0.05 %	0
9.	SOCIAL DEMOCRATIC PARTY OF ALBANIA	PSD	14.993	0.95 %	1
10.	DEMOCRATIC ALLIANCE	AD	547	0.03 %	0
11.	THE NEW DEMOCRATIC SPIRIT	FRD	5.146	0.33 %	0
12.	SOCIAL DEMOCRACY PARTY	PDS	2.473	0.16 %	0
13.	JUSTICE, INTEGRATION AND UNITY PARTY	PDIU	76.069	4.81 %	3
14.	NATIONAL ARBNORE ALLIANCE	AAK	351	0.02 %	0
15.	GREEK ETHNIC MINORITY FOR THE FUTURE	MEGA	2.287	0.15 %	0
16.	COMUNIST PARTY OF ALBANIA	PKSH	1.026	0.06 %	0
17.	POPULAR ALLIANCE FOR JUSTICE	APD	1.505	0.10 %	0
18.	EQUAL LIST	LIBRA	19.806	1.25 %	0
		Total	1.582.150	100.00%	140

Some of these parties reached up to 14,000 votes at national level, and have won at least 1 mandate in a given district. While now, with the new constitutional and legal provision

adopted by Law No 118/2020, they would no longer be able to win any mandate. This threshold, already set at the national level, worsens the position of political forces to ensure a representative mandate of their voters in the Assembly.

By limiting the possibility of representation, another constitutional violation is done through discrimination, which is **contrary to Article 18 of the Constitution, which provides that**:

> *"[…] No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry."*

This unilateral change to the Electoral Code, **seems to have been well-studied by the Socialist Party, aiming to remove from political influence the weight of some parties, therefore monopolizing the political arena in only two main blocs.**

Given that these changes are done unilaterally and where the Democratic Party, the Socialist Movement for Integration and all other opposition parties oppose this choice, **then the only obvious real beneficiary is the socialist majority, represented by the Prime Minister and Leader of this political force.**

This decision-making of the Assembly contradicts the principles of the rule of law and the democratic social order, which guarantees fundamental human rights and freedoms, part of which is the right to vote and to be represented, **principles that are protected by Articles 2[41], 3[42], 15[43], 18[44], 45[45], of the Constitution of the Republic of Albania**.

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[41] Article 2, paragraph 2, of Constitution determines that: "*2. The people exercise sovereignty through their representatives or directly."*

[42] Article 3, of Constitution determines that: "*The independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, **pluralism**, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them*."

[43] Article 15, of Constitution sanctioned that:
"*1. **The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order.***
2. The bodies of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization."

[44] Article 18, of Constitution determines that:
"*1. All are equal before the law.*
*2. No one **may be unjustly discriminated** against for reasons such as gender, race, religion, ethnicity, language, **political**, religious or philosophical **beliefs**, economic condition, education, social status, or parentage.*
3. No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification."

[45] Article 45, of Constitution sanctioned that:
"*1. Every citizen who has attained the age of 18, even on the date of the elections, has the right **to elect and be elected**.*
2. Citizens who have been declared mentally incompetent by a final court decision are excluded from the right of election. 3. Exempted from the right to be elected shall be the citizens being sentenced to imprisonment upon a final decision for commission of a crime, under the rules set out in a law to be approved by three fifth of all the members of the Parliament. In exceptional and justified cases, the law may provide for restrictions of the election right for

Amendments carried out on October 5th, 2020, respectively in Article 21 of Law No 118/2020, expressly provide that:

"Article 21

Article 163 is amended as follows:

"Article 163

Allocation of mandates for the winning candidates of the list

1. Immediately after the completion of the calculation of the result, in accordance with Article 162 of this Code, the CEC calculates the allocation of mandates for the winning candidates for each subject.

2. The allocation of mandates begins with descending order, based on their ranking in the list submitted pursuant to Article 67 of this Code, starting from serial number one, as well as the number of preferential vote of each candidate based on the following procedures and criteria.

3. At the beginning, the mandates are allocated to the candidates who have received a number of preferential votes greater than the quotient resulting from dividing the number of votes of the subject by the number of seats won by the subject, according to Article 162 of this Code. ***In any case, the quotient may not be more than 10,000 votes****. If the quotient obtained from the division is a number with a decimal remainder, the nearest whole number shall be considered as the quotient.*

4. ***Candidates with the highest number of preferential votes than the quotient, according to paragraph 3 of this article, replace alternately the candidates on the list, who could have won mandates, who have the lowest number of preferential votes.***

5. This rule does not apply if the candidate with the fewest votes belongs to the under-represented gender. In this case, the replacement passes to the other candidate ranked immediately above with a number of votes until the list is exhausted according to the same criteria. When the candidate with the largest number of votes than the quotient belongs to the same gender, the provisions of point 4 of this article are applied.

6. After the exhaustion of the replacement of the candidates according to paragraphs 3 and 4 of this Article, the allocation of mandates continues with the remaining candidates according to the ordinal number of the list.

7. The remaining candidates of the list, who do not receive seats according to points 2 to 6 of this article, are re-ranked based on the number of preferred votes starting from the highest number of votes. When the number of votes is equal, the ranking is determined by lot. The reordering according to this point is used in the application of article 164 of this Code.

8. The calculation and allocation of mandates, according to Article 162 and this Article, for each electoral zone is approved by a decision. The decision is issued for each electoral zone

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citizens serving an imprisonment sentence or the right to be elected prior to a final decision being rendered, or the citizens having been deported for a crime or very serious and grave breach of public security.

4. The vote is personal, equal, free and secret."

separately. Against the decision can be filed an administrative complained at the Commission for Complaints and Sanctions (KAS).”

If this norm enters into force, this system makes the **votes to have different weights** both, within the same electoral subject (in the case of several parties that decide to run as a pre-election coalition), as well as between competing electoral subjects.

The candidate of one party may take many more votes than the candidate of the other party, but he is conditioned and denied the right to the mandate precisely because of the calculating method of the quotient of the electoral subject in whose list he is included for competing.

Simply put, according to the provisions of Article 163 redrafted by Law No 118/2020, the quotient number for an electoral subject is calculated from the number of valid votes of that subject, divided by the number of mandates won in that electoral zone. This means that each electoral subject shall have different quotient number, depending on the votes received and the mandates won. This different number of quotient leads to **the weight of the vote to be different, depending on the electoral subject, and not equal.**

So even in the case when two candidates receive the same number of votes, but the quotient of the respective lists is different, these **candidates do not have equal opportunities to be elected**, because they must provide a number of votes that exceeds the quotient of the respective electoral subject in which they compete. Thus, the candidate of one subject that has the lowest quotient manages to win mandates by replacing a candidate who has less votes, while the candidate of the rival list where the quotient is higher, fails to exceed the quotient even though he has the same number of votes with the candidate of the other list that was declared a winner.

Example of discriminatory formula, during implementation in practice:

In an electoral zone in which a total of 6 mandates are allocated:
Electoral Subject A: Has the quotient 9 000 votes
Manages to ensure 3 seats.
Electoral Subject B: Has the quotient 7 000 votes.
Manages to ensure the 3 other seats.
Candidate X of Electoral Subject A: is ranked 4th on the list.
Receives **8 500 preferential votes**.
He fails to receive a mandate.
Candidate Y of electoral subject B: is ranked 4th on the list.
Receives **8 500 preferential votes**.
He manages to receive the mandate because he shifts from the list one of the top three ranked.

So, for the same electoral zone, the weight of 8500 voters in one list is less than the weight of 8500 voters in the other list.

Thus, this is a **violation of the constitutional principle of equality of the vote and non-discrimination of candidates**. Also, this inequality of weight of a vote also violates the principle of legal certainty and makes it difficult for voters to understand whether they **have equal opportunities with other voters to elect a candidate with their votes.**

The addition to the paragraph 3, Article 88 of the Electoral Code, through Article 9, of Law No 118/2020, establishes a discriminatory report regarding the political and electoral rights of a party participating in the voting as part of a coalition. This is because these amendments provide that **for financing purposes,** the official number of votes received by a party, part of a coalition *is calculated by adding the average number of votes for mandates for each candidate elected from their ranks.* The sum of these results in each of the 12 electoral zones constitutes the total number of votes of that party at the national level. This prediction does not correspond at all with the real number of votes received by individual candidates of the party part of the coalition, **as it does not factor in the result the preferential votes received by the candidates of that party in the coalition lists**, but who cannot be elected exactly because of the scheme.

According to the provisions of Law No 118/2020, and the scheme defined by this Law subject of review, a party part of a pre-election coalition, which has reached the threshold of votes at the national level, but which has not managed to get a mandate, shall be considered as not receiving votes and consequently, it would not be able to benefit from financing either. The lack of financing, which in this case is mainly related to small parties, diminishes in a discriminative manner its political weight, without taking into consideration at all the preferential votes that may have received the candidates of this party. This directly affects both the opportunities to campaign and to be present in the political life of the country.

2. On the violation of the principle of the legal certainty and jurisprudence of the Constitutional Court of the Republic of Albania

The unilateral amendment to the Constitution, and later to the Electoral Code, particularly violates the **constitutional principle of legal certainty** and the legitimate expectations of the individuals or subjects to whom this norm is addressed.

Legal certainty, as a constitutional concept addressed several times by the current practice of the Constitutional Court, includes the clarity, comprehensibility and **stability of the normative system**[46]. This principle should be especially applied when electoral rules are established to be addressed, affect and implemented by the entire population with the right to be elected and to elect.

[46] Decision of the Constitutional Court of the Republic of Albania: **V-26/2005, V-34/2005, V-36/2007, etj**

After the signing of the Political Agreement of 5th June 2020 and its agreed Codification on 23rd of July 2020, through Law No 101/2020, effectively all the political forces historically participating in the electoral race have a safer ground on the rules of competition. And referring to these agreed rules, the President of the Republic decreed the date of elections for the Assembly, on April 25th, 2021.

Based on these agreed rules, it is expected that political parties would build their electoral strategies and programs by deciding to run on their own or in a coalition and making these decisions public, as well as informing simultaneously the public or their supporters, on the method of implementation of this agreed reform and the realization of the voting process.

The political forces and their structures (supporters or electorate) had therefore legitimate expectations that their legal position would not change. **This legal ground established by consensus should not have changed for any reason, except for outstanding reasons and agreed by all.**

The Constitutional Court, in its jurisprudence, has reasoned long on the respect of the principle of legal certainty, as one of the pillars of respect for the rule of law. The Constitutional Court quotes in its decisions that:

> *"Legal certainty presupposes, among other things, the trust of citizens in the state* ***and the inalterability of the law on regulated relations.*** *Trust is related to the fact that* ***the citizen does not have to constantly worry about the variability and negative consequences of normative acts that violate and aggravate a situation established by previous acts. The constitutional principle of the rule of law*** *shall be considered violated if* ***legal certainty, legal stability and the protection of lawful expectations are denied or violated****.* ***The legislator may not unreasonably worsen the legal status of persons, deny the acquired rights or ignore their legitimate interests.*** *To understand and apply this principle correctly, it is required, on the one hand,* ***that the law in a society should provide security, clarity and continuity,*** *so that individuals orient their actions in a correct manner and in compliance with it and on the other hand, the law itself should not remain static if it has to shape a concept, such as that of justice in a rapidly changing society. (See Decision No 36, dated 15.10.2007 of the Constitutional Court, etc.)."*

Loyalty to the principle of legal certainty is one of the main pillars of evaluating an electoral process. For this reason, OSCE/ODIHR and the Venice Commission have paid great attention in their guidelines to the stability of the electoral law. In reference to the principles of these bodies, it has been exhaustively discussed in Chapter XI of this reasoning, but it is enough to mention the fact that the Venice Commission **in the Code of Good Practice in Electoral Matters**[47]**,** adopted

[47] You can also consult it in Albanian at the link:

on 18-19 October 2002, in Chapter II, point 2/b, on **"Regulatory levels and stability of electoral law"**, states that:

> *"b.* ***The fundamental elements of electoral law****, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries,* ***should not be open to amendment less than one year before an election****, or should be written in the constitution or at a level higher than ordinary law."*

Also, in paragraphs 63 to 66, of this document, where the rules and standards on **"Regulatory levels and stability of electoral law**" are reflected, it is determined that:

> *"**63.** **Stability of the law is crucial to credibility of the electoral process**, which is itself vital to consolidating democracy.* ***Rules which change frequently – and especially rules which are complicated – may confuse voters.*** *Above all, voters may conclude, rightly or wrongly,* ***that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.***
>
> *64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged)* ***as stability of some of the more specific rules of electoral law, especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results,*** *and* ***care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.***
>
> *65. It is not so much changing voting systems which is a bad thing – they can always be changed for the better –* ***as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests.***
>
> *66. One way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries).* ***Another, more flexible, solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that."***

Referring to the European standards of the OSCE/ODIHR, the Venice Commission and the Jurisprudence of the Constitutional Court of the Republic of Albania, which has incorporated in

https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-alb

its decision-making these standards, the unilateral amendments to the Electoral Code on October 5th, 2020, **create instability of the legal order regarding the April 25th election process, bringing multiple negative effects, reducing mutual trust between political parties, reducing the trust of voters, as well as the trust of international partners, thus violating the principle of legal certainty and credibility to the electoral process.**

Through the unilateral intervention first to the Constitution and then on October 5th, 2020 to the Electoral Code, the majority violated legal certainty and destroyed the mutual trust that the parties had created, because the fundamental competitive political electoral rules changed again, **without consensus, shortly before the election, and in obvious disadvantage towards all voters.**

The *a priori* inclusion by the majority, by force, under a new regime of rules through amendments to the Electoral Code, constitutes in itself a violation of the principle of legal certainty.

This uncertainty derives from the direct power that the Socialist Party has in its role as organizer of the electoral process, in the quality of the responsible party that exercises the governance of the country, but also in the role of the competitor in the upcoming elections. All this because, this party, through the Albanian Parliament, with new uncoordinated rules, already obliges the whole electoral process not to take place with the rules agreed jointly in a consensual and inclusive way, but with new rules ordered in unilaterally by a political force competing in elections (Socialist Party).

Also, in the Joint Opinion on the Electoral Code of the Republic of Albania adopted by the Venice Commission and the OSCE/ODIHR on 13th of March 2009, regarding the Electoral Code adopted in 2008, in the final paragraph of the conclusions, the Venice Commission and the OSCE/ODIHR conclude that:

> "96. ***It has however to be reminded that the stability of the electoral legislation is important for the public's confidence in the electoral process.*** *Amendments should therefore take place in the future when necessary to improve the conformity of the legislative framework with international standards, but should otherwise be avoided in principle*."[48]

[48] Opinion No 513/2009 (CDL-AD(2009)005), "Joint opinion on the Electoral Code of the Republic of Albania", point 96, states that: "*96. It has however to be reminded that the stability of the electoral legislation is important for the public's confidence in the electoral process. Amendments should therefore take place in the future when necessary to improve the conformity of the legislative framework with international standards, but should otherwise be avoided in principle*."
Mund ta konsultoni në link-un: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)005-e

3. Impediment of pre-election coalitions by imposing the joint multi-name list and the distortion of the vote

With Law No 118/2020, adopted on 5th of October 2020, essential amendments are made to the electoral system, which distort and aim to limit the opportunities of political parties to run in the form of a coalition, as well as distort their ability to present themselves before the voters **with their separate lists of candidates.**

This amendment, through inclusion of the unique multi-name list of a coalition, by limiting the opportunities for political parties **to each have their own list**, **limits:**

- the right of these parties to compete with their own members,
- citizens' opportunity to choose the parties they prefer; and
- citizens' opportunity to choose among candidates.

The concept of the pre-election coalition of political parties, with an expressed will for participation in elections, was shaped by the people in the fundamental Law of the state - the Constitution, which was adopted through a referendum in 1998. In this referendum the people expressed their will on how they shall be represented and governed, through the voting of a political party, participating or not in a pre-election coalition.

So the concept of pre-election coalitions of political parties was born along with the birth of the fundamental Law of the state. This concept was further elaborated in the election Law, where the participant in the pre-election coalition is allowed to compete with his party lists in a special way.

Political parties, in 2003, have defined the concept of multi-name lists which clearly identify the political will of each political party within a coalition. This is a known model in electoral doctrine as "*apparentement*" and has been used and is used by a number of European countries.

The Parliamentary Document dated 15.07.2020, "Report on the draft Law "On some amendments to Law No 8417, dated 21.10.1998 "The Constitution of the Republic of Albania", as amended", explains that the rapporteurs supported the recommendations of the constitutionalist experts. Page 11, quotes: "[…] ***the pre-election coalition is a mechanism or electoral technique*** *where it is provided by Law, just as it does not exist where it is not provided by Law. If we make the opposite reasoning: if they were part of the constitutional concept of freedom of organization, then democratic states that do not recognize and do not envisage them in their electoral legislation […], today would have a real problem with the violation of fundamental freedoms. In the expert's assessment,* ***there is no violation of the constitutional rights of political parties, if it is preferable not to have pre-election coalitions***."

This approach is not accurate at all. The coalition, in the sense of Article 96, paragraph 1, of the Constitution, is a concept that is clearly sanctioned in the fundamental Law of the state. And the Constitution itself can in no way foresee "electoral tactics", but only principles, rights and fundamental freedoms, to be organized according to the respective conviction in political formations and/or to run in elections. Any restriction in this regard directly violates political rights and freedoms, recognized and protected directly by the Constitution.

Even without taking into extensive analysis the fact of recognition or not of "pre-election coalitions" at the constitutional level, it should be emphasized that the freedom of organization itself, in function of a program or political choice to govern and be governed, is an undeniable fundamental right. Like political parties, coalitions are a form of organization of the constitutional political system in function of democratic competition in elections and governance. The Albanian citizens have the right to compete alone, to be organized in parties or within party coalitions.

The two most problematic provisions of Law No 118/2020 regarding this restriction are those of **Article 6** and **Article 7 of the Law**, which make amendments respectively in **Articles 65 and 67** of the Electoral Code.

Namely:

- In Article 65, it added paragraph 3 with this content:

> *"**At the time of registration, the coalition must declare the leading political party of the coalition.** For the needs of the implementation of this Law, all the rights and obligations that this Law defines **on the electoral subjects are fulfilled by the leading party of the coalition**. The relations between the member parties of the coalition and the mutual obligations between them are regulated in the coalition Agreement, which is part of the documentation submitted by the coalition to CEC."*

- In Article 67, paragraphs 1 to 5 are amended with this content:

> *"1. **A political party or an electoral coalition, within the meaning of Article 65**, which is registered with the CEC as an electoral subject for the elections to the Assembly**, submits to CEC the multi-name list of its candidates for each electoral zone,** no later than 50 days before the election date.*
> *For the elections for local government bodies, the candidate for mayor of the local government unit and the list of candidates for local councils are registered with the CEAZ that has jurisdiction over that local government unit by the deadline set forth in this point. The CEAZ submits a copy of the list to the CEC within 48 hours.*

2. Pursuant to the second paragraph of point 1of this Article, the list of subject is submitted to CEC, in cases when the territory of the local government unit is not covered by a single CEAZ.
3. A candidate for MP, registered on a multi-name list in an electoral zone, or a candidate for mayor or municipal council may not be registered as such for another electoral zone, either on behalf of another party or coalition, nor as proposed by a group of voters. ***An exception to this rule is the leader of the party or the leading party of the coalition, who can register in up to four electoral zones in the elections for the Assembly.*** *After the allocation of mandates according to this Law, he cannot hold more than one mandate, which he chooses of his own free will.*
4. ***The names in the multi-name list of the electoral subject*** *are presented as ranked in numerical order, starting from number one. The number of candidates in the multi-name list may not be less than the number of mandates to be elected in the respective electoral zone, adding two. In any case, the number of candidates in the multi-name list must be divisible by the number three. For coalitions, next to the name of the candidate, it is indicated which party the candidate belongs to.*
5. The electoral subject may not change the ranking of the candidates on the list after its registration. Candidates are re-ranked only in compliance with the procedures of this Law for the calculation of winning mandates ***based on preferential voting and meeting the legal requirement for gender quota."***

Therefore, these amendments:

1) Clearly aim **to weaken the unity power of the opposition camp**, by **limiting the opportunities to cooperate and compete**, under a political program in front of the citizens, and with their respective candidates. This election, among other things, seems to have been made to provoke controversy among opposition parties seeking to form a pre-election coalition, as it restricts them by obligating these parties to run with a limited number of candidates to be proposed for electoral lists within a single coalition list. This kind of restriction translates into reduced opportunities for citizens to choose the political program they find better and faster implementable in a spirit of cooperation among parties.

2) **Article 65, paragraph 3** of the Electoral Code, provision amended by Law No 118/2020, which defines the obligation to declare the "**leading party**", beside a reminiscence denomination of Albania's notorious past of, is an arrangement in contradiction to the Constitution and is not in accordance with Law No 8580, dated 17.02.2000 "On political parties", as amended.

Political parties participate in the institution of the political will of the people in all areas of public life. The Albanian political parties are part of a free and democratic governing system in the country.

Their establishment and activity is free and guaranteed by the Constitution. **Therefore, the obligation to give up certain rights and obligations, even in a representative relationship, openly violates their right not only to represent the will of their supporters, but also denies the rights and obligations of the member party in a coalition for the fulfillment of all rights guaranteed by the principle of the application of a regular legal process.**

This means that, even in case a party within the coalition would have resentment or would identify violations in the electoral process of voting or counting, which may harm its interests, the submission of complaints with the CEC or the Electoral College, **is denied and left to the will of the "leading party", which may have no interest in following and reviewing these claims.**

Exactly, it is this situation which kills the political identification of a party and on the other hand, erases the right of the party part of the coalition to legitimize itself as an initiating party in an eventual administrative or judicial complaint process against the actions/decisions of the election administration or the election result.

3) The inclusion of the notion of "**preferential voting**", specially combined with some other unclear amendments to the Code regarding the counting method, leads to the **distortion of the citizen's vote.**

Namely, other interventions in Article 117 of the Electoral Code (through Article 16 of Law No 118/2020), may invalidate the votes, because if the vote of a person is given for one electoral subject, and for the candidate of another electoral subject, **the vote is declared invalid**.

The will of the voter is not always the same for both the candidate and the political force. If the vote is free, it is precisely to the fact that it must be uninfluenced, by any kind of factor.

If by Law it is ordered that the vote shall be declared invalid if it is not unique both for the political force and the affiliation of the candidate, then here we are dealing with a direct violation of the freedom of voting protected by Article 45 of the Constitution which provides that: *"The vote is personal, equal, free and secret."*

This provision, together with the partially open lists, further freezes the possibilities of options of voters, who are oriented towards political parties and candidates elected by the party leader, and not for the candidates whom the voter can find himself better represented with!

Such a system constitutes a distortion of the will of the voter and of the democratic principles of being represented.

4) This purpose is also clear from the provision in Article 11 of Law No 118/2020, which through the amendments to point 4, Article 98, of the Electoral Code, **imposes that in the same Ballot-Paper, provide enough space for both the electoral subject and the candidates.** This is to ensure that the votes for the electoral subject/party **do not deviate from the votes for the candidates of the same electoral subject/party.** While CEC is left with an unregulated and wide space to determine the manner of preferential voting, through this provision.

5) Also, when the political parties run alone, if the voter selects two candidates on the list of the party running without a coalition, the vote does not apply to any of the candidates but is considered valid for the party. This rule is not provided if the parties compete by joint list. There is no prediction to which coalition party will be recognized the vote when the voter has voted for two candidates on the joint list, but belonging to different parties.

6) Also, the new rule provided in **Article 67, paragraph 3**, of the Electoral Code which states that, "***the leader of the party or the leading party of the coalition, who in the elections for the Assembly can be registered in up to four electoral zones",*** strengthens the role of the party leader, enabling that in at least 4 of the electoral zones where he will run, every vote given "pro" is considered as a vote for the leader, thus completely shadowing the position and strength of other candidates, that can be many times more liked by voters.

This provision infringes the principle of equality and causes discrimination, in direct violation of Article 18 of the Constitution, because to the competitive position of party leaders is given a superior *apriori* status over the other candidates.

The Party Leader within a system of political competition should have the same chances and the same opportunities to face other candidates. Creating this favor to appear in the list of 4 (four) different electoral zones makes it more distinct and with a dominant status vis-a-vis other candidates, both competitors and within the political force or coalition he leads, status which the Assembly unjustly grants to him with these amendments to the Electoral Code.

This exceptional rule does not find support in any legal, democratic or political logic, and creates a favorable position for only the leader of the majority.

Furthermore, this rule **contradicts the recommendations of the Venice Commission**, which, since 2009, has qualified such provisions for the position of preferential treatment of party leaders, **as negative developments in violation of the principles of equality and non-discrimination**.

The Venice Commission has assessed and recommended that **the special treatment of political party leaders in the exercise of candidacy rights** (as the right to run simultaneously in more than one electoral zone) **is contrary to the international and European standards[49].**

Moreover, the appearance of the party leader in the lists of four electoral zones at the same time, gives more political power to both the political force and the candidates of that political party in these 4 electoral zones.

For every "positive" discrimination for party leaders, there is on the other hand a negative discrimination for members of the political force and for citizens. Citizens should vote for the subject/person they trust and represents them better, instead of "donating" their vote to the party leader, who in turn will only choose those candidates under his full obedience and control.

These amendments distort the system of representing the will of the people. They are in violation of Articles **2, 3, 15, 18, 45, of the Constitution of the Republic of Albania, as they lead to lack of accountability of the MPs towards the voters**.

The repercussions of such lack of accountability are already present in Albania, with Albanian citizens frustrated at current Assembly, unable to fill in the constitutional quorum of seats, has ensured 97 "pro" votes to amend the election rules against public support and consensus, and **only 5 months before the election campaign. Those illegitimate MPs are now misusing their mandate as well as misrepresenting the voters, whom they allegedly represent.**

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[49] Opinion No 513/2009 (CDL-AD (2009)005), "Joint opinion on the Electoral Code of the Republic of Albania", points 18 and 19, expressly cites:
*"**Special Treatment for the Chairpersons of Political Parties***
18. In a negative development, a new provision grants special candidacy rights to the chairpersons of political parties. To protect the candidacies of political party chairpersons, the Code allows the chairpersons of political parties – and chairpersons only – the right to run on the political party's list in each of the twelve electoral zones for the National Assembly. This special treatment for the chairpersons of political parties violates the fundamental principle of equality and of non-discrimination.
19. The special treatment granted to the chairpersons of political parties in the exercise of candidacy rights appears to be contrary to international and European standards. The Venice Commission and the OSCE/ODIHR recommend that Article 67(3) of the Code be amended to respect the fundamental principles of equality and non-discrimination."
Mund ta konsultoni në link-un: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)005-e ,

4. The amendments with Article 8 of Law No 118/2020 favor current illegitimate MPs, in exchange of their vote of 5 October, strengthening the position of current majority and creating unnecessary difficulties for the other political parties

The amendment carried out through Article 8, of Law No 118/2020, leads to the following reading in Article 68 of the Electoral Code:

"Article 68

Supporting lists of political parties and coalitions

1. The lists of candidates for the Assembly submitted by political parties, which do not have seats in the Assembly, shall be supported ***by no less than 5,000 voters nationwide.*** *In case of an electoral coalition, the lists in their entirety must be supported by no less than* ***7,000 voters nationwide.*** *This rule does not apply to coalitions where the participating parties together hold a number of seats in the Assembly not smaller than the number of parties participating in the coalition.*

2. Candidates for the bodies of local government units, presented by political parties that do not have any seats in the Assembly or in the bodies of the respective local government units, shall be supported by no less than 1% of the voters of that unit, but, in any case, by no more than 3,000 and no less than 50 voters. This rule does not apply to coalitions where the participating parties together hold a number of seats in the Assembly, or in the respective municipal council, not smaller than the number of parties participating in the coalition.

3. For the purpose of this article, the political party or the coalition submits ***a written attestation issued by the Assembly*** *or the local government unit, certifying the holding of a seat for* ***at least the last 6 months before the end of the Assembly mandate or of the body of local government unit, based on self-declaration of the holders of the seats for their affiliation in the political party, in the respective institution."***

So, with this amendment, it is clear that not only the so-called "opposition" MPs, who have received the seats without following the relevant constitutional and legal procedures, are favored, but such provision constitutes **a serious obstacle,** for the real opposition parties outside parliament and for the new political forces that want to enter the political life of the country.

Actually these political forces shall have to arbitrarily follow the procedures to prove that they have the support of a certain number of voters nationwide, while the MPs who are accidentally sitting in the Assembly today, in exchange of their vote in favor of unilateral changes of 5 October 2020 , will have to submit only a written attestation, issued by the institution of the Assembly (hence by the Secretary General).

So those MPs who voted Law No 118/2020, playing along with Prime Minister's alibi, and who really did not enjoy a genuine electoral support to win a parliamentary mandate, shall be provided

with an Assembly attestation, after declaring themselves part of a political party, and shall be able to run freely in elections.

This moment of "exchange" between the Prime Minister and parliamentary "opposition" MPs, may appear like a political compromise within the legislative process, but in reality is an indicator of how the legislative process is affected by the phenomenon of legislative corruption. This is the typical case when through legal provisions it is intended to pave the way for benefits for personal gains. Such cases should be investigated criminally.

This way of misusing and abusing with an unconstitutionally obtained seat is the most dreadful event in the electoral reform.

This provision, not only constitutes discrimination and unequal treatment for the real opposition, but also a serious obstacle for them in the election process for the Assembly, scheduled to be held on April 25th, 2021.

5. Unequal treatment in the declaration of assets, as one more obstacle for pre-election coalitions

Article 90 of the Electoral Code was amended as a result of the codification of the 5 June Agreement and the content of this agreement was approved by Law No 101/2020 dated 23rd of July 2020.

Paragraph 2 of Article 90, determined that:

> *"2. For the purposes of implementing this Law, gifts in monetary value, in kind or in the form of service provided to candidates of electoral subjects, as well as loans or credits received by candidates to finance the campaign are considered as contributions to the political party for which they run.* ***For candidates proposed by coalitions, the political parties participating in the coalition determine in the agreement for the establishment of the coalition which party shall declare the incomes and expenses of the candidate***.

This provision is now again amended, through Article 10 of Law No 118/2020, repealing the second sentence of paragraph 2, of this Article. This repealed sentence, provides that:

> *"For the candidates proposed by the coalitions, the political parties participating in the coalition determine in the agreement for the establishment of the coalition which party shall declare the incomes and expenses of the candidate."*

Thus, creating one more obstacle for the establishment of pre-election coalitions, by provoking disagreements between the parties also on matters of information coordination by the candidates and their exposure to penalties, because of the reports of the candidate proposed by one of the parties, part of the coalition.

Such provision is not even compatible with the other amended provisions adopted by Law No 118/2020, which in Article 6, through paragraph 3 that adds to Article 65, it sanctions that:

> ***"[…] For the needs of the implementation of this Law, all the rights and obligations that this Law defines for the electoral subjects are fulfilled by the leading party of the coalition."***

So, forgetting what is defined in the above provisions of the Law, through the intervention made to Article 10 of Law No 118/2020, it is identified once again the need to intervene and to create or to add any possible obstacle for the non-functioning of the pre-election coalitions.

If the rights and obligations are carried by the leading party of the coalition, then any kind of adjustment within the coalition in the division of duties and responsibilities, should be left to their free will, according to the relevant agreements.

6. Efforts to affect the independence and impartiality of the Electoral College, aiming at its political capture

Part of the June 5th Agreement, codified with the changes to the Electoral Code on July 23rd, 2020, by Law No 101/2020, were also regulations on the Electoral College. Full agreement was reached for the entire reformulation of Article 149 of the Electoral Code, which contained provisions for "**Protection of the Electoral College Judges**".

Judges of the Electoral College are undoubtedly protected by immunity during exercise of their duties in the Electoral College. This provision stipulated in view of this purpose, in point 1, that:

> *"1. The judge during the exercise of duty in the Judicial Electoral College* ***cannot****:*
> *a) be subject to investigation or disciplinary proceedings during the entire term for which the College is constituted;*
> *b) Move from office temporally or permanently for disciplinary reasons,* ***judicial organization or promotion;***
> *c) be assessed as "insufficient" for the professional skills of the judge and the ethics/commitment to the professional values of the Judge."*

Prohibition of judges' submission to investigation or disciplinary proceedings, or their transfer and negative evaluation in office is not the only form of pressure and influence on the impartiality, objectivity and independence of the Judges of the Electoral College. Another way to **exercising influence over them is also "promotion".**

This important principle of impartiality and independence of the members of the Electoral College, a principle specifically protected by the existing Commitments to democratic elections in the OSCE participating States, or the Code of Good Practice in Electoral Matters[50], is seriously infringed through the repeal made in the above-mentioned provision of the phrase **"or promotion"**.

Thus, if a direct influence through penal measures would be too noisy and difficult to hide from public opinion, now the ruling majority has enabled a calmer and easier solution: **that of capturing College Electoral Judges, through proposals for promotion.**

We recall that, especially for this amendment, **the Minister of Justice herself was invested, addressing the Assembly in person to amend Article 149 of the Electoral Code[51], in an effort to justify the violation of the fundamental principle of democratic elections: that of an effective appeal system.**

The report on existing commitments for democratic elections in the OSCE[52] participating States, in point 10.1, has determined that:

> *"10.1 OSCE participating States "solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following: ... everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity; administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available; and **the independence of judges and the impartial operation of the public judicial service will be ensured**".*

Also, the OSCE/ODIHR Final Report on Election Observation of 30 June 2019, Priority Recommendation no. 5, reads that:

[50] You can also consult it in Albanian at the link: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-alb

[51] This information was obtained from the print and electronic media, while the official request is administered by the Assembly itself. One of the news links: https://gazetamapo.al/pengohet-procesi-i-gjykates-se-larte-gjonaj-kerkese-kuvendit-per-ndryshimin-e-nenit-149/

[52] You can also consult it in Albanian at the link: https://www.osce.org/odihr/elections/13957

"All courts that have a competency in elections should be fully operational during the electoral periods. ***The independence and the impartiality of the Central Election Commission and the judiciary should be ensured****."*

Meanwhile, in the request of the Ministry of Justice this amendment was requested because:

> "*The High Judicial Council is concluding the procedures for filling the vacancies in the High Court, through the promotion of judges who meet the conditions to be appointed to the High Court. Some of the candidates who have applied for promotion to this court are selected, by lot, as members of the Judicial Electoral College. In this way, despite their will, due to the provision of letter "b", paragraph 1, Article 149 of the Electoral Code, these judges are prohibited from continuing the procedures for promotion. On the other hand, for the High Judicial Council, difficulties are created for the selection of candidates in the High Court due to the reduction of the number of candidates who can apply for promotion.* [...] "

In relation to this matter, it should be noted that the commitment and official requests of the President of the Republic to the High Judicial Council to fill as soon as possible with **19 (nineteen) judges** of the High Court have been repeated and frequent since June 2019. While the High Judicial Council, 2 years after its establishment, with unjustifiable delays, has so far proposed for appointment to the High Court only **3 (three) candidates** from the ranks of prominent jurists on March 5th, 2020, immediately then appointed by the President of the Republic on March 10th, 2020. Despite this disturbing situation, **the Minister of Justice is the only government member to raise (for the first and only time) the issue of the functioning of the High Court.** And her reaction came only in the context of amendments to the Electoral Code.

On the other hand, it should be emphasized that the Council of Ministers, part of which is the Minister of Justice, with Decision No 563, dated 15.07.2020[53], **has given an opinion and voted in favor of the draft-Law on amendments to the Electoral Code**, which includes the agreement on the provisions for the Electoral College, voted on 23rd of July 2020. At this time, the Council of Ministers and The Minister of Justice herself does not seem to have raised any concerns about the provision in the Draft-Law on the prohibition of promotion of members of the Electoral College. **This consent was given less than three months before the Minister of Justice made a new proposal, for the repeal of this provision.**

So, clearly the proposal to change the guarantee for the independence of the Electoral College, aims to keep under pressure the members of the Electoral College, and is not genuinely related to the functioning of the High Court.

[53]https://www.kryeministria.al/newsroom/vendime-te-miratuara-ne-mbledhjen-e-keshillit-te-ministrave-date-08-korrik-2020-2/

The HJC has not yet completed the verification and evaluation procedures to fill the **other 15 members** of this court, including a vacancy from the ranks of prominent jurists, a procedure that is running for 13 months.

Referring to this situation and the unjustified delays of the procedures followed by the HJC for filling the vacancies in the High Court, the provision of the amendment to Article 149 of the Electoral Code, which in turn guarantees the process of free and democratic elections, **cannot be considered as an obstacle to the completion of High Court.**

Even if some applicants for the High Court have also been elected by lot as members of the Electoral College, before the entry into force of the amendments to the Electoral Code, the Assembly should have ensured through this intervention a solution to only this obstacle and the immediate ending of the respective procedures by the HJC. The Assembly shouldn't have repealed the whole article, **hence paving the way for the permanent application of this rule whereby the members of the Electoral College could be permanently subject to offers for career promotion and therefore under influence.**

*** * * * ***

XIII. Amendments to the Electoral Code through Law No 118/20120 do not meet the promise for an electoral process with fully open lists

With the incorporated interventions and phrasing manipulations, the leader of the socialist majority was able to sustain the same dominant power of determining the lists for candidates MPs and the selection of his favorites.

All newly introduced amendments sustain the controlling power of party leaders, leaving therefore some members of the parliamentary "opposition" short of their cause to have an electoral process with **MPs elected and chosen by the people and not the Party Leader**.

The demand of some "opposition" MPs in the Assembly to implement open lists **was deliberately misused** by Prime Minister Rama, and served his alibi to "secure" their vote for the Constitutional amendments of 30 July to exclude from competition the electoral coalitions with separate list of parties.

The possibility of competition with open lists and the preferential vote of citizens exist today in the Constitution in Article 64 according to the amendments adopted on 30 July 2020, while in the Electoral Code this right has been manipulated through ambiguous provisions and not easily understood.

The political and public discussion about open lists comes as a reflection of the public perceived need to change the way candidates are selected by the leaders of political parties.

Although lacking political consensus, on 30 July 2020, the Albanian Assembly adopted the amendment of paragraph 3, Article 64 of the Constitution. This amendment foresees that the lists should be opened in not less than their 2/3. This means that the electoral Law should materialize this constitutional provision in accordance with paragraph 3 of Article 64 of the Constitution.

According to paragraph 3 of Article 64, in order to make effective the preferential vote, **at least 2/3 of the list must be elected directly through the sum of votes received by a candidate in that list, without being conditioned by its ranking in numerical order in that list.**

This constitutional notion has been overturned in the Electoral Code with the amendments made by Law No 118/2020, which provides **a methodology for voting and the distribution of seats within the list, the same as when the list is closed**.

From the interpretation of Article 64, paragraph 3, of the Constitution, it is required that at least 2/3 of the list of candidates for MPs be subject to preferential voting, but by respecting the legal gender quota.

The Code should not have a numerical order or the orientation of the voters towards the ranking of candidates made by the party leader. Because the numerical order, in current tradition, has been determined by the party leader, who by comparing the number of votes at the district level, determined the enumeration of the list of candidates to be translated into MP mandates in the Albanian Assembly.

The ranking itself with a numeric number orients the voter towards who is the most important candidate. While the methodology of allocation of votes in this way, is a clear indicator of vote devaluation, in relation to the ranking in the list.

The concept of **open lists (preferential vote as the only element that conditions the ranking of candidates)** means that the allocation of seats starts from the candidate who has received the most votes.

Whereas according to Article 163, paragraph 2 of the Electoral Code (*also this article amended by Law No 118/2020*), the ranking in the list is a key element to get a seat, regardless of the number of preferential votes.

Such way of allocation of seats, which does not correspond to the direct number of votes received by a candidate, contradicts with paragraph 4, Article 45, of the Constitution, which stipulates that: "*The vote is personal, **equal**, free and secret.*"

This way of allocation of seats makes the **vote no longer equal** and does not ensure the real representation of the voters. Although they can give a considerable number of votes for a certain candidate, the latter cannot get a mandate, precisely because of his ranking in the list.

Exactly this distortion and devaluation of the vote, but also of the constitutional rule, the majority has managed to realize it through very vague provisions of Article 163, reformulated by Law No 118/2020.

These provisions, in a camouflaged way and with an evident lack of clarity, have managed to achieve the political goal of continuing the procedure with partially open lists, where the will of the party leader, combined with his presence to compete in the lists of 4 electoral zones at the same time, is again decisive for winning the mandate of the MP.

*** * * * ***

XIV. Conclusions

Our Constitution clearly stipulates that the fundamental right to elect and the respect to the principle of political pluralism are the basis of the functioning of our state, and everyone has a duty to respect and protect these principles.

According to Article 1, paragraph 3, of the Constitution, "**governance is based on a system of elections free, equal, general and periodic**".

On the other hand, Article 45 of the Constitution provides that: "*every citizen who has attained the age of eighteen, even on the date of the elections, has the right to elect and be elected*."

The constitutional concept of "to elect" or "to be elected" should not be seen and cannot be considered as fulfilled only in the formal aspect of the possibility of the participation of citizens in elections.

The constitutional concept that every citizen of the Republic of Albania "elects" or "is elected" is closely related to **the effective ability of citizens to choose the best alternative offered to them**.

The President of the Republic has the obligation to protect and respect paragraph 2, Article 15, of the Constitution, which stipulates that: "***The bodies of public governance, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization".***

In these conditions, when unilateral legal amendments that tend to change the fundamental election rules when the pre-election process has started and 5 months away from election campaign, and may become a cause to violate the effective exercise of constitutional rights of citizens, the President of the Republic has the constitutional obligation to contribute to the restoration and realization of these rights, by undertaking any act or proportionate measure to regulate the created situation.

Article 3 of the Constitution of the Republic of Albania, among others, clearly defines the constitutional obligation to protect political pluralism by all. This implies not only the existence of different political parties, but also their real opportunity to compete, including small parties that should have equal opportunities to represent the electorate they represent with their political program.

All political forces and parties should have the opportunity to compete and for their vote to be objectively converted into seats according to the received votes on equal terms and

without obstacles, in free and fair elections, as the only opportunity to respect the constitutional right of Albanian citizens to elect and to be elected.

The unilateral change of the fundamental rules for the elections violates, among other things, the principle of free competition, a principle for which the Constitutional Court has made an exhaustive reasoning in Decision No 32/2010.

This means that they want to participate in the elections, but on the condition to guarantee the freedom of all citizens to vote freely, as well as free competition for all political forces, in accordance with constitutional principles and well-defined legal rules.

It is the duty of all state bodies to enable this, in respect of the principle of pluralism, with a special focus on effective respect for the right to vote.

The adoption of these unilateral changes, without dialogue and consensus, and above all by changing the rules after setting the date of the elections, very close to election date (April 25th, 2021), would be one more reason for blocking the accession process of the country to the European Union, would undermine any possibility of starting negotiations and meeting the main Copenhagen criteria for free and fair elections, as well as would damage the image of the Republic of Albania as a NATO member and Chair-in-Office of OSCE, when for the OSCE itself the matters of electoral standards are essential.

I have to bring to your attention for several times already one of the fundamental commitments that the Republic of Albania has undertaken in 2006 by signing the Stabilization and Association Agreement, ratified by the Albanian Assembly, with Law No 9590, dated 27.7.2006 "*On the ratification of the 'Stabilization and Association Agreement between the Republic of Albania and the European Communities and their member state*", which clearly states that:

> *"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".***

But despite this commitment for free and fair elections, a key Copenhagen criteria, it results that in Albania, under the current conditions, for lack of accountability of the Prime Minister, and in violation of all European standards, **the country is moving towards elections where competition rules favor his ruling party.**

The changes in the electoral system in 2008, which were made in the interests of the major parties, led to **the continuous weakening of the role of citizens in governance. This change, although made without the consent of a large number of political parties, still does not resemble at all**

to this interference that took place nowadays in the Constitution and the Electoral Code, where the Prime Minister completely avoided dialogue between political forces, and breached the agreement reached between them.

At that time, the selection of the Spanish electoral model, regional proportional, as adapted to domestic legislation, started **to give a major stroke to small parties,** excluding them from representation in Parliament. This, combined with the strengthening of the position of party leaders, the shrinking of the powers of constitutional or independent bodies, as well as the restriction to the point of **impossibility of the people to apply referendums on important issues has led to a lack of representation, and an increasingly weakened Assembly, increasingly depending on the executive.**

This is not the will of the sovereign expressed in the Referendum of 1998. As in both times, in 2008 and 2020, the Constitution of Albania changed past the expressed will of the people through the referendum.

While the two changes of the fundamental electoral rules, in 2008 and 2012, were made with partial dialogue, the opinion and certification of these changes was requested by the Venice Commission[54]. Whereas this time, Venice Commission opinion was not requested, unilateral amendments to the electoral system were made too late and too close to election date, but also OSCE/ODIHR expertise and assistance was refused.

If the ruling majority had a sincere will to carry out an electoral reform in line with the OSCE/ODIHR recommendations and international standards, it would have been wise that, during the review in the Electoral Reform Commission, and why not even after the establishment of the Political Council, to address to both the OSCE/ODIHR and the Venice Commission for an opinion on all additional measures that the majority wished to implement in the election rules. **This action was not carried out, not even respecting the expressed demands of the United Opposition.**

These rushed and contested amendments, few months before election date, violate not just one, but several constitutional principles and rights, as well as the standards, commitments and the good European elections practice. In view of this, and in absence of a functioning Constitutional Court, and in compliance with the official request submitted by the Leader of the United Opposition asking the petitioning of an opinion from the Venice Commission, **as President of the Republic, on October 21st, 2020, I addressed an urgent request to the European Commission for**

[54] We recall here the two Opinions of the Venice Commission:
1) Opinion No 513/2009 (CDL-AD(2009)005), "Joint opinion on the Electoral Code of the Republic of Albania". You can consult it at the link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)005-e
2) Opinion No 641/2011 (CDL-AD(2011)042), "Joint Opinion on the Electoral Law and the electoral practice of Albania". You can consult it at the link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)042-e

Democracy through the Law (Venice Commission) for a specialized and objective opinion on this process.

The President of the Republic estimates that, after the return to the Assembly of Law No 118/2020, the majority should reflect by reviewing its position on these new rules, and await the opinion of the Venice Commission, and simultaneously reestablish the inclusive dialogue within the Political Council.

The President of the Republic is convinced that, with his constitutional authority, through this act he shall contribute to the construction of a democratic state and society, functioning according to rule of law, guaranteeing a fundamental human right, such as the right to elect and to be elected.

I remain convinced that, through this Decree, the President of the Republic is creating the necessary timespan for the ruling majority to reflect and put before its own interests for sustaining power, the interests of the Albanian people and its European future.

Based on the above, in support of Article 85, paragraph 1, of the Constitution of the Republic of Albania, I have decided to return for review to the Albanian Assembly the Law No 118/2020 "*On some additions and amendments to Law No 10019, dated 29.12.2008, "The Electoral Code of the Republic of Albania", as amended."*

Sincerely,

PRESIDENT OF THE REPUBLIC

Ilir META