

## **REQUEST FOR AMENDMENT OF ELECTORAL CODE, ARTICLE ON PUBLIC RESOURCES**

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### **Addressed to:**

The Dialogue Group, under the Committee for Legal Affairs, Public Administration and Human Rights

- Mrs. Klotilda Ferhati – Chair of Committee
- Mr. Damian Gjikhuri – Co-chair of the Dialogue Group
- Mr. Oerd Bylykbashki – Co-chair of the Dialogue Group

**Subject:** Request for the Amendment of Article 91/points 4 and 5, Use of Public Resources in Elections, Law No. 10 019 / 2008 amended.

### **From:**

- The organization Albanian Institute of Science, promoter of Open Data Albania, with Executive Director Mrs. Aranita Brahaj
- Association for Democratic Culture, with Executive Director Mrs. Gerta Meta
- Albanian Center for Economic Research (ACER), with Executive Director Mr. Zef Preçi

**Date: 23.07.2024**

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**Dear Mrs. Chairperson of the Legal Affairs, Public Administration and Human Rights Committee**

**Dear leaders of the Dialogue Group under this Commission,**

With high regard for your work and congratulations on the past weeks dialogue regarding important issues concerning the amendment of the Electoral Code and its legal provisions, please accept the proposal coming from three civil society organizations for changes and amendments to the Electoral Code in the upcoming plenary session.

Our request for amendments complies with the need to improve Article 91, more specifically points 4 and 5, of the Electoral Code and ensures that non-use of public funds and assets during an election campaign to favor certain political subject. The recommended measure aims not only to guarantee the equality of competition between political subjects, but also to improve **Financial Control and Public Funds**. Several countries in the region offer established models of electoral reform regulating the use of public funds, up to the level of Constitutional Law (such as in Greece) or through the application of technical form of interim governance.

The civil society organizations, sending this proposal, are the following:

- The organization Albanian Institute of Science, promoter of Open Data Albania with Executive Director Mrs. Aranita Brahaj
- Association for Democratic Culture with Executive Director Mrs. Gerta Meta
- Albanian Center for Economic Research (ACER) with Executive Director Mr. Zef Preçi

We are at your disposal, at any moment, you wish us to join the Committee discussions to provide further clarifications regarding our amendment proposal the Spring 2025 elections.

### Requested amendment:

Article 91, points 4 and 5, Law No. 10 019/2008 "Electoral Code of the Republic of Albania", as amended, provides that:

4. Four months before the election date until establishment of the new government after the elections, it shall be prohibited to propose, approve, or issue legal or secondary legislation which stipulate the provision of benefits to certain categories of population, such as acts stipulating increases in salaries, pensions, economic and social aid, tax reduction or removal, fiscal amnesty, privatization or provision of assets or rewards, etc., except for when such an initiative is conditioned by a state of natural disaster.
5. The CEC shall issue detailed guidelines to specify the use and misuse of public resources

We propose the two points are amended as following:

4. Four months before the election day until the announcement of the final result for the general or local elections, proposals, approvals, entry into force of legal, by-laws and administrative acts of bodies at central and local level which forecast, plan, approve, change, allocate, implement, execute or guarantee the public financial and material assets to benefit certain categories of the population, through salary and pension increases, privatizations, exchanges, compensations, granting of property rights, granting of individual grants, fiscal amnesties, legalization or lending programs guaranteed by public funds and assets etc. shall be prohibited. In case of natural disaster or state of emergency the prohibition will not stand, provided that the acts do not overstep the established time limits of the current circumstances and are enforced for a period of four months before the date of the elections until the announcement of the final result. Economic assistance and housing bonus will not be considered a prohibited grant.
5. The Regulator issues detailed instructions on the use of public resources, monitoring methodology, administration of complaints, ensuing administrative investigation, deadlines and sanctions for violations committed.

#### **Rationale:**

- In a similar situation, in the local elections of 2021 in Georgia, ODIHR emphasized in its final report<sup>1</sup> that: *“The undue advantage of incumbency persisted throughout the campaign with announcements of public projects, promises of social benefits and a plan to raise the salaries of public servants starting in January 2022.70 While some measures were initiated before the start of the campaign, these actions contravened the spirit of the law and blurred the line between the party and the state, at odds with OSCE commitments and good practice. **To ensure a level playing field for all contestants, the legal framework for combatting the misuse of administrative resources should be applied and enforced including the misuse of public office in the campaign.**”*
- The proposed amendments seek to clarify that this prohibition applies to General Elections and Local Elections alike.
- The proposed amendments seek to clarify that the State of Emergency or Natural Disaster will only be considered current circumstances when they transpire within or is enforced within an established period.
- The intention behind such proposal is so that public aid and public grants are not awarded in an overdue period, long after specific needs has arisen as a result of a state of emergency and natural disaster. Disaster and emergency response programs should not be used for electoral purposes by enabling parties to offer/intimidate groups in need by misusing their electoral influence (e.g. in 2025 no Reconstruction Grants may be awarded for the aftermath of the 2019 earthquake, for there has been the possibility of disbursements during the previous 5 years, and neither is possible to carry unconditional transfers that re-directs funds from capital programs to individual programs or to approve amended administrative list of beneficiaries.
- Acts that bring financial benefits in assets are considered prohibited for both Central and Local Governments. This was not clearly defined previously.

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<sup>1</sup> ODIHR Election Observation Mission Final Report, Georgia Local Elections, 2 and 30 October 2021, OSCEODIHR, 2021 [https://www.osce.org/files/f/documents/3/a/515364\\_0.pdf](https://www.osce.org/files/f/documents/3/a/515364_0.pdf)

- The prohibition is intended not only for acts that "predict" (planning) benefits, but also the "approval, change, allocation, implementation, execution", thus aiming to minimize the cases of distribution "at the time of elections for electoral purposes of consent". Earlier, through the Decisions of the Council of Ministers and the Decisions of the Municipal Councils, a few days before the voting, decisions were made over the distribution of individual grants for dealing with the consequences of the earthquake in certain municipalities (DCM), and with a list of beneficiaries with a certain individual (DMC)<sup>2</sup>. These payments, executed through the State Treasury a few hours before the voting process, were previously non-prohibited as long as the funds were "planned" in earlier stages, whereas their allocation to a specific municipality, such as the approval of a list of beneficiaries in election period were considered as "executing" and not "planning" decisions. The amended provision aims to discipline individual grants that are not qualified for current emergencies or social protection.
- The provision "guaranteed with public funds" has been introduced, with the aim of not using housing programs and crediting of individual business initiatives, to intimidate and create **undue influence by the ruling party during elections**. Our organizations note that the Government has announced, in the summer of 2024, (a few months before the elections) several housing programs with guaranteed loans and programs to support individual businesses for the benefit of employment, which have not been implemented earlier. These initiatives could be misinterpreted and misused during the period preceding the election.
- In point 5, the competence of the respective Regulator on the drafting and approving of normative acts in implementation has been carefully revisited. The current designation of CEC clashes with the competences of the Regulator on normative adjustments.

In the light of the concerns raised above, we remain at your disposal to be called for a hearing before the Committee or Dialogue Group, hoping that the Legislator will give due considerations to our recommendations.

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<sup>2</sup> [Kegpërdorim i Parave Publike në Zgjedhje, Legjislacioni dhe Institucionet nuk garantojnë Procesin – Albanian Institute of Science \(ais.al\)](#), Albanian Institute of Science  
[Vendim-113-shqyrtimi-KA-nr.-74.pdf \(kqz.gov.al\)](#), Central Election Commission