

THE FUNCTIONING OF THE REPORTING MECHANISM, IN RELATION TO THE VIOLATIONS OF THE PROVISIONS FOR THE FINANCING OF ELECTORAL CAMPAIGNS AND ELECTIONS



REPORT

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Introduction

In the intricate landscape of democratic governance, the integrity of electoral processes stands as a cornerstone, ensuring fair representation and the voice of the people. Central to this integrity is the mechanism through which violations of provisions concerning electoral processes are reported and addressed. This intricate web of checks and balances, collectively known as the reporting mechanism, plays a pivotal role in upholding the transparency, accountability, and legitimacy of electoral systems in Albania. In this exploration, we delve into the functioning of the reporting mechanism, examining its critical role in identifying and rectifying violations that may compromise the ultimate importance elections. As we navigate through the complex interplay of legal frameworks, investigative procedures, and institutional structures, we aim to unravel the mechanisms that safeguard the democratic bedrock of elections.

During the last parliamentary elections held on April 2021 and this year's local elections of May 2023, the Civic Resistance has developed an educational campaign with the aim of discouraging public administration employees from participating in electoral activities during the official working hours. It has also played an active role in monitoring the reporting mechanism and the use of public resources, materialized in professional complaints to the Central Election Commission (CEC). Through this report which analyzes the functioning of the reporting/monitoring/supervisory mechanism for campaign financing of electoral subjects and the decision-making of the governing bodies of the CEC, the Civic Resistance aims to contribute to the improvement of the administrative practice of penalties by the CEC.

Also, from the joint analysis and report for the misuse of public resources and the activity of the competent bodies for their evaluation, it becomes necessary to have recommendations in the electoral legislation and administrative practices followed by the CEC. The Civic Resistance, through recommendations for possible changes in the electoral legislation, aims to help the expected electoral reform before the 2025 parliamentary elections.



I. Overview of 2023 local elections

I.1. Local Elections 2023.

The President of the Republic of Albania, with Decree no. 13864, dated 24.10.2022, designated May 14 as the date to hold local elections.

Local government units consist of 61 municipalities and 12 counties. The administrative-territorial division of local government units is determined by law no. 115/2014 "On the Administrative-Territorial division of local government units in the Republic of Albania". Local elections of 2019 were the first elections held according to the new administrative division.

Elected local government bodies consist of the municipal councils and the mayor. The mayors and the municipal councils are elected by direct vote by voters residing in the territory of the municipality. The members of the municipal councils are elected on the basis of multi-name lists submitted by an electoral subject, be it political parties, coalitions, or candidates proposed by voters. Electoral subjects can present only one candidate for mayor and one list of candidates for the municipal council.

I.2. Electoral subjects participating in the elections of May 14, 2023.

Every person with the right to vote has the right to run for local elections. Exceptions apply to persons serving a prison sentence for a certain category of crimes, wanted persons, and persons who hold public office positions which are incompatible with the status of a candidate in elections. Political parties and coalitions must be registered at the CEC as electoral subjects prior to submission of lists of candidates for municipal councils and mayors. A candidate can appear in only one list and the ranking of candidates in the list cannot be changed after registration. For the May 2023 local elections, electoral subjects and initiating committees had to submit the lists of candidates for municipal councils and mayors to the respective Commissions of Election Administration Zone (CEAZ) or to the CEC, no later than March 25.

In the 2023 local elections, a total of 48 political parties were registered, 44 electoral subjects submitted candidates for mayor or multi-name lists, 38 electoral subjects submitted candidates for council members with their own lists and 6 electoral subjects were registered as part of two coalitions and have filed multi-name lists with common candidates. In addition, 12 independent candidates were registered as electoral subjects. A total of 23,907 candidates were registered, out of which 23,763 ran for municipal councils and 144 ran for mayor in 61 municipalities.



The registration of political parties as electoral subjects encountered disputes. Two requests were submitted to the CEC for the registration of the Democratic Party. The disputes were resolved following administrative appeals to the Complaints and Sanctions Commission (CSC and judicially to the Electoral College at the Tirana Administrative Court of Appeals.

II. Legal framework

II.1. The legislation applicable to elections and campaign finance

The Constitution provisions the right to vote and be voted for, as well as the basic principles for free, equal, periodic, and pluralistic elections. The Electoral Code, adopted in 2008 and most recently amended in 2020, regulates the organization of elections. The financing of elections and election campaigns is provided for in a special chapter in the Electoral Code. In addition to the Electoral Code, political parties and their candidates running in elections must also comply with the tax legislation, the legislation on accounting and financial statements, etc.

The chapter of the Electoral Code on election and campaign finance provides for **public financing** according to criteria mainly based on the result that the party received in the preceding elections, and **private financing**. The latter is regulated by imposing limits on the value of donations and gifts received, prohibition of the use of public resources for campaign purposes, and ensuring transparency through implementation of reporting, monitoring, oversight, and auditing mechanisms. The Electoral Code provides administrative sanctions in cases of violations of the law.

II.2. Novelties of the Electoral Code on election and campaign finance

Transparency, monitoring, financial supervision of political parties and election campaigns is a relatively new institute provided by the Electoral Code and the Law "On Political Parties", Important restrictions regarding the financing of the election campaign were foreseen for the first time in the Law "On political parties", shortly before the parliamentary elections of 2017.

The amendments of the Electoral Code in 2020 introduced new regulations of campaign and election finance, including:

- i. Reducing the maximum limit on the value allowed to be spent, as well as by establishing some restrictions regarding campaign activities and propaganda materials with the aim of reducing campaign expenditure;



- ii. Balancing of the ratio between public and private funding of the election campaign;
- iii. Increasing transparency and accountability on monetary and in-kind donations.
- iv. Restrictions on donations from recipients of public contracts
- v. Restrictions of public activities of public institutions for the four month period before the election date,
- vi. Restrictions to prevent abuse of public resources.
- vii. Strengthening of requirements on reporting and publication of financial reports for election campaigns for political parties and candidates, etc.
- viii. Strengthening the oversight role of 120 observers of the CEC.

III. Data for reports on campaign and election financing.

The local elections of May 2023 showed that political parties in Albania conduct intensive, long-term and costly campaigns.¹ The changes of 2020 to the Electoral Code, with the aim of strengthening the transparency and financial oversight of political parties and candidates in elections, provision the reporting of public activities of public institutions² and the CEC portal³ for denunciations of observed violations related to campaign finance.

Election campaigns in public institutions are prohibited. In order to limit the possibility of using the human resources of the administration, the Electoral Code and the Law "On the Civil Servant" prohibit the participation of civil servants in political/electoral activities during official working hours. Starting from four months before the election day and until the formation of the new government, public institutions cannot issue legal acts and by-laws that provide benefits for certain categories of the population.

The CEC has the power to carefully examine all the activities of public institutions to identify potential abuse of public resources and to prohibit activities that are not in accordance with the law. Additionally they are

¹ Article 77 foresees that the period of the election campaign lasts 30 days before the date of the elections until 24 hours before the date of the elections. Propaganda, promotions, meetings and rhetoric of political parties began immediately with the issuance of the Presidential Decree

² Article 92 of the Electoral Code "Public, central and local institutions, as well as state agencies and/or enterprises, are obliged to report to the CEC all activities of a public nature that they plan to carry out in the period four months before the date of the elections until the day of elections..."

³ Article 92/5. "The CEC creates and maintains the online portal, with free access, to report possible violations of this law by electoral subjects and candidates in relation to campaign financing..."



obliged to report for the public based on deadlines specified ahead of the election process..

In order to monitor the fulfillment by electoral subjects of obligations related to campaign financing and other obligations, no later than six months before the election date the CEC appoints monitors who must report once a week.

For the 2023 local elections, the obligation of public institutions to report to the CEC their activities for the period 4 months before the date of the elections until the day of elections, began on January 13. Simultaneously, the CEC monitors started the field monitoring of electoral activities, with the aim of identifying violations of the election and campaign finance regulations and abuse of state resources.

Pursuant to Article 92 of the Electoral Code, 147 public institutions reported a total of 3,811 activities. The State Election Commissioner (SEC) banned 37 activities for violation of the reporting deadline and/or participation of political representatives, and launched administrative investigations for violation of the reporting deadline for 516 activities. The CEC closed the administrative investigation for 496 activities and conducted administrative review/investigation for only 20 activities. For 20 activities, the State Election Commissioner proposed to the CSC, the imposition of administrative sanction⁴ for 18 activities. The CSC accepted the Commissioner's proposal and imposed sanctions on the responsible persons. For 2 public activities,⁵ CSC, at the conclusion of the administrative review, decided to overturn the Commissioner's proposal.

The public bodies have held intense and crowded public activities during the election process which they have promoted mostly on the official social media of the institution or of the leader of the institution, but also in the media. The high number of reports reflects the misuse of state resources in the 4 months before the date of the elections.

III.1. The role of civil society in monitoring violations of the legislation on financing of elections and the election campaign

Elections are of high public interest and voters have the right to vote and be elected, according to the rules approved by the legislation in force. Until 2019, the Electoral Code did not grant the right to the citizens to be involved in the electoral process through complaints or reports. In 2020, the Electoral Code legitimized the right of citizens to submit complaints to the CEC in relation to

⁴ 8 activities of Durrës Municipality, 7 activities of Berat Municipality, 3 activities of Roskovec Municipality and 2 activities of Fier Municipality.

⁵ Activities of Durrës Municipality



alleged violations, which can also be done electronically through the portal for denunciations on the CEC website. The reporting portal created by the CEC is a good opportunity for reports coming from the public, for violations of the legislation on the financing of campaigns by political parties, candidates or the use of public resources in elections.

In the local elections of May 2023, civil society played an active role by reporting a high number of observed violations of the Electoral Code. The reports on the reporting portal in some cases served as an indication for the initiation of the administrative review by the CEC and in some cases, the reports⁶ or complaints were documented, based on evidence and facts, which forced the competent bodies of the CEC to do an administrative review, upon request.

The civil society reported violations observed by monitoring in the field, monitoring of publications on the official websites of public institutions and social media, in relation to:

- The establishment of electoral offices in violation of the Electoral Code and the by-laws of the CEC.
- Use of public resources in the campaign,
- Participation of human resources of the public administration/public institutions during official working hours in the election campaign.
- Misinformation from the media
- Survey publication, during the prohibited period.
- Issuing legal acts or by-laws, which provide for the granting of benefits to certain categories of the population in violation of Article 91, point 4, of the Electoral Code
- Non-reporting of public activities of public institutions
- Use of hashtags on social media of public institutions in violation of article 91, point 1 of the Electoral Code
- Breaking of the election silence
- Abuse of office by public officials.
- Holding of activities for which the Central Election Commission had ordered their prohibition.

⁶ The Civic Resistance participated as a petitioner with a complaint/report for non-reporting of institutional public activity; for use of public resources in the campaign; for posting electoral propaganda content on the institution's social media; for non-reporting of public activities; for issuing by-laws that benefit certain categories of the population, in the period prohibited by the Electoral Code. Complaints/reports were presented accompanied by evidence, facts and legal arguments, in the administrative procedure several times at the CEC, exercising the right of administrative appeal at the CSC.



The active role of civil society, through reporting of violation of rules for financing and misuse of public resources, was aimed at raising awareness of public bodies for the correction of violations, restoring equality between electoral subjects, as well as punishing irregularities. Also, in their entirety, they serve as an overview of the electoral process, seen from the perspective of the citizens

III.2. Reports from electoral subjects.

Electoral subjects running in the elections are obliged to comply with the provisions of the Electoral Code and other laws on the financing of their election campaign and the use of public resources in the campaign. On the other hand, electoral subjects have the right to report to the CEC observed violations of the campaign financing provisions by other competing subjects.

Electoral subjects reported 89 cases to the Central Election Commission, mainly related to the use of public resources in the campaign, display of propaganda materials in violation of the Electoral Code and the by-laws of the CEC, and participation in the campaign of the public administration or students and teachers.

III.3. Reports from the CEC monitors.

No later than six months before the date of the elections, the CEC appoints a number of people to monitor the fulfillment of obligations by electoral subjects, related to campaign financing and other prohibitions during the campaign. The object of monitoring is to assess the degree of compliance of the electoral activities of political parties, electoral subjects, candidates for MPs, candidates for mayors and municipal councils with the requirements of the Electoral Code on campaign finance, and the provisions provided by other by-laws of the Central Election Commission. The monitors have the obligation to observe and report the activity of the central or local public administration bodies, or their leaders in relation to the implementation of the obligations defined in the Electoral Code and the by-laws of the CEC. The monitoring is limited to the easily verifiable observation of compliance with obligations by political parties, electoral subjects and candidates for the monitoring period, on: a) Organization of meetings, activities and electoral gatherings, b) Use of propaganda materials, electoral offices, c) Respecting the prohibitions and restrictions for certain activities before the date of the elections as well as the use/abuse of state resources during the monitoring period, ç) Monitoring of online media as well as social media such as but not limited to, Facebook, Instagram, related to institutional activities, electoral activities of electoral subjects, as well as profiles sponsored by the party and/or candidates.



For the 2023 local elections, the CEC appointed about 120 monitors, who reported only 8 cases related to:

- Misuse of state resources;
- Non-reporting of institutional public activities;
- Publishing of propaganda materials;
- The establishment of electoral offices contrary to instruction no. 6/2021.

V. Analysis of reports, types of violations., Implementation of prohibitions on the issuance of by-laws that bring benefits to certain categories of voters (Article 91, point 4 of the EC).

The new provisions of the Electoral Code after the 2020 amendments, among others, relate to electoral administration, campaign financing, reduction of campaign costs, and measures to prevent abuse of public resources, and were implemented for the first time in the local elections of May 14, 2023.

The monitoring of the election campaign by civil society, the CEC monitors, and electoral subjects, found that public institutions, public officials, and electoral subjects themselves were recurrently in violation of articles 79, 91, and 92 of the Electoral Code.

Civil society, electoral subjects, and CEC monitors submitted recurring reports on violation of Article 79 of the Electoral Code on the display of propaganda materials. Observed violations included display of propaganda materials, such as billboards, posters, flags, and other static materials, further than five meters from the electoral offices, failure to include the disclaimer identifying the electoral subject paying for the material, and display of propaganda materials on the facades of public institutions and light poles.

As demonstrated by the large number of reports submitted to the CEC by civil society, electoral subjects, and in a few cases the CEC monitors, the use of public resources for campaign purposes has been the Achilles heel of these elections. Reported violations on misuse of public resources included use of public facilities,⁷ human resources,⁸ and mostly the use of official websites,

⁷ The case of the Civic Resistance, against Ervin Demo and Sotiraq Filo, who at that time were mayors and incumbent candidates in the elections of May 14, 2023, etc.

⁸ The case of the Civic Resistance, against the Minister of Health and Social Affairs, Ogerta Manastirliu, for meetings with doctors and employees at the hospital in Dibra, Lezha, etc.



and official social media,⁹ of public institutions, and their leaders,¹⁰ in the function of propaganda for certain candidates, or political parties and issuing by-laws offering benefits to certain categories of the population.

The Civic Resistance has reported to the CEC the use of public cultural facilities, in function of candidates for the purpose of the election campaign, the holding of meetings by public officials representing high , like political leaders of regions, levels of political parties and candidates for mayor, in public institutions such as hospitals and school, by using the meeting for the purpose of promoting the candidates for mayor. Cases of organized meetings in public institutions between public officials, representatives of political parties, and candidates for mayors, with the participation of civil servants or pupils within official working or school hours, have been identified. In addition, there have been several cases of public activities, including promotions or inaugurations of public works or government initiatives, which were published in the media, as well as official websites and social media accounts of public institutions and their leaders.

VI. Analysis of decision-making by the competent bodies of the CEC, regarding the reports

V.1. The role of the administration of the Central Election Commission in the administrative review.

The legal changes of 2020 in the Electoral Code provided the legal competence of the administration to carry out the administrative investigation, except in cases where the election legislation requires the appointment of experts outside the administration for the investigation of special issues. This provision, in principle, is in accordance with the principle of the efficiency of public institutions, which in the local elections is vulnerable due to the large volume of cases, reports, complaints.

Although the Electoral Code defined competence for the administrative investigation of the administration, in the administrative review of the reports, there were delays and bureaucracy from the governing bodies of the CEC. For a report, the administration, the Commissioner and CSC were involved, implementing all the basic procedures for administrative review. Also, conducting an administrative, professional and efficient investigation requires clear procedural rules, in order for the investigation to be a mandatory application of norms and not a case-by-case will.

⁹ The case of the Civic Resistance against Erjon Veliaj etc.

¹⁰ "Assets" in regard to the Civil Code, registered in the actives of the public institutions, Ministry of Culture/Municipality



In some cases, the CSC claimed that the administration and the Commissioner have not been carried out investigation for various claims in reports, such as the participation of human resources in meetings held by public institutions and their leaders. The CSC has reasoned that "in order for the participation of human resources to be considered a violation, the fact that the employees participated in a forced manner must be proven" for this there is no rule approved for investigation and verification of the fulfillment of the obligation condition. An investigation cannot be done without clear unifying procedures and rules for implementation by the administration, and assessment by the Commissioner and the CSC.

V.2. Decisions of the State Election Commissioner after the administrative review of reports and complaints

The Commissioner, through the administration of the CEC or contracted entities, monitors the behavior of public institutions during the campaign and the use of public resources, and asks the CSC to impose administrative sanctions against individuals or electoral entities and/or their candidates, who commit administrative offenses regarding elections.

The State Election Commissioner has completed the administrative investigation for 386 activities and has decided to propose to the CSC an administrative sanction with a fine for 35 public activities, mainly for misuse of public resources in the campaign, performance of activities "prohibited by the CEC", failure to report on the interface of CEC, from public institutions, etc

The State Election Commissioner has, in some cases, interpreted the limitations and prohibitions provided for in the provisions of the Electoral Code, articles 79, 91 and 92, by-laws of the CEC, for the posting of propaganda materials, the use of public resources in elections, public objects, human resources, in order to educate the subjects, through warning with attention, and not penalties through administrative sanction.

In some cases, the Commissioner has argued the non-reporting of public activities on the CEC interface as a human error. Also, activities in public institutions of public officials, such as Mayors, Ministers, Heads of Government Agencies, to promote achievements, public works, rewards, government or local government bonuses, with the participation of MPs, officials with important tasks in political parties, which then served for entirely electoral activities by representatives of political parties, as permitted activities and in accordance with Article 91 of the Electoral Code. In the cases where there were speeches and electoral open calls in these



activities, the Commissioner rightly argued the decision as a violation of the provisions of the Electoral Code and specifically Article 91, for misuse of public resources, on the grounds that the organizer of the public meeting, has the obligation to take the necessary measures so that the public activities in function of the normal progress of the institution's affairs are not transformed into electoral activities, in the period of four months before the date of the elections until the day of the elections.

The State Election Commissioner has determined that for the local elections, the provisions of Article 91, point 4 of the Electoral Code, which prohibit the proposal, approval, or issuance of legal acts or by-laws granting benefits to specific population groups, including those related to salary increases, pensions, economic or social support, do not apply during the four months before the election date until the formation of the new government.

V.3. Decisions of the Complaints and Sanctions Commission (CSC) after the administrative review of complaints against the Commissioner's decisions. (case study of the decision of the CSC, no. 45, dated 04.04.2023, "For the review of the complaint request no. 38, dated 27.03.2023 filed by the organization "Civic Resistance")

The Complaints and Sanctions Commission (CSC) is the competent body for examining administrative complaints and imposing sanctions for violations of the electoral law.

In the administrative review where the CSC has decided to reject the Commissioner's proposals or the reports of the subjects interested in the use of public resources in the elections, they have argued based on the analysis of some elements of the report.

The reported activity

According to the CSC, an activity has a clear political/electoral character when it is carried out with the purpose of promoting not only an investment made, but also government policies in a respective field. The reported activity is an activity in the service and support of a political entity when high ranking officials of a certain party are present. The reported activity is a public activity if it took place in public premises, such as hospitals, schools, etc. The reported activity uses public resources if it takes place in public premises.

This is a very narrow application of the law. Political/electoral activity can be much wider in nature, and Parliament must consider how wide or narrow it wishes this definition to be. It is not necessary for a high functionary to be



present for the nature of an activity to be political in nature. It is for example quite possible for such a person to organise or orchestrate such an activity without being present. The application of public is reasonable, but use of public resources does not require the activity to take place in a public setting. The resources may be people, or equipment, or support of any sort.

There is also a related issue that at present the law allows bodies not holding an election to engage in activities even where other bodies are holding elections. In other words, central government may make announcements which may influence voters during local elections, and vice versa. The law must recognize that the same political parties are generally contesting elections, whether national or local, and that restrictions should apply to both during any election.

In the UK there is no law around this, but there is an accepted convention that during the period before any election no public body, local or national, makes any announcement that could influence the outcome.

Use of human resources in elections

According to the CSC, the use of human resources in elections is considered a use of public resources only if it is proven that the participation of employees was forced related electoral code, even when the activities are activities of a political/electoral nature, during official working hours.

This application of the law appears to combine two very separate issues. Any force applied (or incentive offered) to employees to participate should be prohibited, but the use of public resources is a much wider matter. There is a fundamental principle in effective democracies that separates any public institution, and public funds, from political activity. Public funding for political parties or other entities is an exception to this but is provided for by law and subject to controls. Public funds are generally intended for use by public institutions for the benefit of all citizens. Where any individual or entity uses those funds for the advancement of their own political objectives, citizens are deprived of those funds, and their trust in the impartiality of the institution is undermined.

For example Montenegro prohibits any engagement by public officials in election campaign activities during working hours. There is no condition of force being used. In some countries government officials such as civil servants and public employees are banned from directly or indirectly intervening in electoral affairs or using their position to favor any candidate. In Denmark, Belgium, Italy and Poland the principle of political neutrality for civil servants is set out in Constitution, law or regulation. Even in France and Germany,



where the most senior civil servants are appointed by the government at the time and are allowed to express political views, they are not permitted to act in any way that places those political views ahead of their duties. The Election Code of Georgia does not allow civil servants to campaign in the pre-election period during work hours or while performing their professional duties. However, a civil servant may be involved in the election campaign during their vacation time.

Therefore, the use of public resources in elections for political activity must be prohibited regardless of whether any coercion was involved. The purpose of the law here is to protect public funds and public trust.

In the UK, these objectives are achieved through Codes of Conduct, for elected officials and for employees. There is a Code for Ministers, and each local government body has a code for its elected officials. Separate codes exist for employees. In some cases, employees have different restrictions depending on seniority – in other words, the more senior the employee is, the greater the restrictions because the greater their potential influence. Both types of code include a requirement not to use public resources for political purposes. The Codes are not law, but institutions can take action when they are not followed. These codes apply *at all times*, not just during elections.

It is important that anyone voluntarily misusing public resources in this way is accountable, as well as any person who has asked them to, or encouraged them to.

Separately, but importantly, coercion of any kind must be prohibited, to prevent the exploitation of employees by others, seeking to use public resources without being accountable for doing so. This prohibition should apply at all times, not just during election periods. It is important that public institutions take responsibility for setting out clearly their expectations of the conduct of their elected officers towards employees.

It is important that anyone seeking to coerce is accountable for their actions, but also any person who is coerced. This is because it is desirable to give anyone who feels they are being coerced a powerful reason to refuse, which in turn will reduce the likelihood of attempts to coerce.

Use of other public resources

We also noted other use of public resources, for example institutions' social media accounts being used for political material. In some cases the CEC found that, for example, a Mayor was using their social media account for both their own political activity and their 'official' communications, which led to there



being no effective difference to the public between the two. Such a situation risks undermining public confidence in a public institution being impartial and non-political.

An elected Mayor, for example, is a temporary post holder in an institution and does not by holding that post become the institution. The institution must be impartial and cannot hold any political position, which means that the Mayor must separate their conduct in a personal or political capacity from an official capacity.

As noted above, codes of conduct for elected officials will assist in preventing this situation, but it is also necessary for public institutions to take responsibility for their impartiality. This is not always a matter of legal controls, but can be one of institutions creating effective ways to separate the 'official' from the personal or political. Armenia's legal framework has evolved in recent years to take a stronger position in relation to 'misuse of state resources', amid concerns of a similar nature. The current law prohibits public officials from campaigning while performing their official duties, as well as the use of public premises, official transport or material resources for campaigning. In the UK and France there is also a prohibition on use of public resources for political activity, which is structured by making it illegal to use public funds for political activity (except where the law explicitly allows) and the use of public resources constitutes the use of funds. In Moldova any form of financing and material support of electoral campaigns by organizations financed from the state budget is prohibited. In Ukraine the use of municipal websites for campaign purposes and distribution or posting of materials on public transport is prohibited by law.

In terms of social media specifically, in the UK, whilst not a legal requirement, public institutions will generally have an official social media account for the elected officer. That account is for use by the elected official but is controlled by the institution and should only be used for communications as the postholder, rather than for political campaigning purposes. It is not always easy to judge where the line is between each, but the approach does make clear that the two are different. The elected official is then free to have a separate account for use for political and/or personal activity.

If public institutions adopt this approach the likelihood of use of public social media accounts for political activity should be significantly reduced.



The time when the activity was carried out in reference to the date of the elections.

According to the CSC, the time when the activity is carried out can cause a conflict with the law and for this, the CSC has interpreted the provision of Article 91 of the Electoral Code to define the period of prohibition.

Point 1 of Article 91 of the Electoral Code states that *"...resources of public bodies or entities at the central or local level, or any other type of entity where the state owns capital or quotas or/and appoints the majority of the entity's supervisory body or administrative body, regardless of the source of capital or ownership, cannot be used or made available in support of candidates, political parties or coalitions in elections"*. The period when the prohibition applies according to point 1 of article 91, of the Electoral Code, the CSC foresees it by the word "ELECTIONS" and for this purpose, as long as the Electoral Code and the by-laws of the CEC do not provide an exact period when the prohibition operates, it estimates that this period should be limited to the election campaign period.

The Code has defined the period of the election campaign, as a period that lasts from 30 days before the date of the elections, to 24 hours before the date of the elections (Article 77).

But are "Elections" a period that includes only the period of the election campaign?

It is common in other nations for the period of an election to be defined differently for different purposes, but to provide clarity for campaigners and the public it is desirable to have as little complexity as possible. In the UK, there are separate controls and periods for candidates, and for political parties, but this creates significant complexity. Albania uses a list system for candidates, which is also used in parts of the UK, for example in Scotland and Wales. In those nations, a general four month period before the day of voting exists during which the various controls apply. In Colombia inaugurations of public buildings; launch or promotion of plans, projects and programs; and any governmental act in favor of candidates is forbidden 4 months before elections, and in Mexico there is a ban on the promotion of social development programs from the start of the electoral campaign through to election day.

In Article 92, letter "gj", the Constitution grants the right to set the date of the elections to the President of the Republic. The President of the Republic with Decree no. 13864, dated 24.10.2022, designated May 14, 2023 as the date to hold the local elections. Article 2, point 1 of the Electoral Code provides that the "date of elections" is the date of voting, determined by



decree of the President of the Republic. Elections are a date set by the president when voters must appear at the voting center and mark the electoral subject on the ballot paper of their own free will. The elections begin with the issuance of the President's decree and end with the announcement of the official final result announced by decision of the CEC.

So the organization, development and announcement of the election results should have a start date and an end date clearly defined in the law. Within this period there are certain periods where various processes begin and end in function of their development, such as the period of drawing up the list of voters, the period of registration of electoral subjects, the period of the election campaign, and the period of obligation to **financial reporting**, monitoring of the campaign and activities of public institutions, supervision of electoral subjects, political parties and public institutions, for the prohibition of the use of state resources in support of electoral subjects. The implementation of all these instruments form in their entirety the organization of elections, voting and the announcement of the result.

A single 'election period' applying to all controls is therefore possible and desirable to create.

The way the provision is written is very clear, state resources "cannot be used or put in support of candidates, political parties or coalitions IN ELECTIONS". This 'a priori' determination does not need an expressed term in order for the prohibition to be classified as a violation. Political parties, candidates and coalitions have exhaustively defined in article 86 of the Electoral Code the resources they can use for electoral purposes. It is also to be noted that the period for reporting of public activities is the four month period, and such a requirement would not be necessary if the restrictions only applied for the final 30 day period. It cannot therefore have been the intention of Parliament that the restrictions only applied for that final 30 day period.

Interpreting the use of public facilities, the human resources of public institutions, or any other public assets for the benefit of political parties, candidates, and coalitions within 30 days before the election date goes against the spirit of the law .

So in this aspect, the interpretation made by the CSC on the period for the obligation to respect and implement the restrictions in function of the measures to prevent the use of state resources only for the period of the 30-day election campaign period distorts the purpose of the law.

Similarly, we evaluate the provisions of Decision no. 9, dated 24.12.2020, amended "On the rules for reporting public activities of public institutions, agencies and/or state enterprises, the categories of prohibited activities, as



well as monitoring the activity, behavior and use of human and financial resources and logistics of the state administration before the elections" amended, of the Regulator, which has determined in article 3, subpoint 1.2, that the ban on the use of state resources begins four months before the date of the elections.

Finally, a general point. Regardless of the election period, the current structure of Article 92 creates a significant burden for the CEC. The requirement is to report to the CEC no more than 5 days before the scheduled activity, and the CEC is then allowed 24 hours to decide whether it will prohibit the activity. This does not allow CEC enough time to seek further information if appropriate, or to consider reports properly where significant numbers are received. As noted above, in 2023 147 public institutions reported 3,811 activities, a very significant number. Our understanding is that some of these events did not require reporting, but some institutions reported every public event as they were unsure as to the restrictions.

Where a public activity is to take place, the institution organising that activity will in almost every case be planning the activity for a period of time in excess of 5 days. Consideration should therefore be given to increasing the period of time ahead of the scheduled event when CEC must be notified. Such a change would allow the 24 hour period allowed to the CEC to be increased, allowing CEC more time to consider each report. An alternative approach would be to replace the reporting requirement with a published set of rules as to the characteristics of events that would be prohibited, and a power for the CEC to take action if an event takes place that should not have. This would mean that some events might go ahead that should not, and would only be dealt with afterwards, but the evidence of 2023 suggests that this has happened even under the existing rules.

Regarding the **use of human resources** for campaign purposes, the legislation must be interpreted in its entirety, and not only article 91, point 1 of the Electoral Code.

The Albanian legislation that regulates labor issues, such as the Law on the Status of Civil Servants, the Labor Code, etc. foresee as a banned activity the participation of public servants in electoral activities during the official working hours. In its entirety, the legislation prohibits the participation of public employees in political/electoral activities during official hours. In the case where the development of political/electoral activity is accepted, in public environments, with public employees, it is inappropriate to seek to prove that the participation was forced, in order to fulfill the criterion to classify it as use of public assets, for campaign purposes. Moreover, there are no clear rules on how this condition should be verified.



As noted above, the participation of public servants in political activities is a significant risk to public confidence in the separation of institutions and individuals. Restrictions on such activities during working hours should not be applied only to an election period, but should apply at all times. The level of restriction might vary depending on how senior the position of the public servant, and junior staff may be permitted to engage voluntarily in political activity outside of working hours, but consideration should be given to a complete prohibition for the most senior roles.

With regard to **propaganda materials**, the Commissioner and the CSC reasons that the restrictions provided for in Article 78, 79 of the Electoral Code apply only to the display of propaganda materials in the premises designated for free by the municipality. In cases where propaganda materials are displayed against payment, they are not subject to restrictions but can be displayed anywhere according to the rules for displaying advertisements by any other legal entity.

The main purpose of the legal changes in 2017 was to reduce the cost of the election campaign by political parties. Article 78, 79 of the Electoral Code do not make a difference for the propaganda materials of the election campaign, the rules for posting them are the same for any posted material. Article 79 refers to 'use and display of any other...' clearly encompassing material of any sort. Their only difference is static and non-static propaganda materials. The interpretation of the CSC in this regard contradicts the purpose of the law.

There is also a question as to how effective Articles 78 and 79 are in practice. The experience of the CEC is that where prohibited propaganda material is removed by the police, further material often appears to replace it. Also, some parties are increasing the number of electoral offices temporarily to enable them to post more material within the 5m limit.

We also note that the nature of propaganda materials is a fast changing area of political activity. The increased use of social media, added to the above concerns, means that we believe it is necessary for Articles 78 and 79 to be reconsidered.

In other nations, such as the UK and United States, digital campaigning is rapidly increasing because it is easier and cheaper to produce and distribute than physical material. That pattern will spread quickly. At the last UK Parliament election spending on digital campaigning rose significantly and most likely accounted for the majority of spending on campaigning. Digital can reach into every home and every person's computer and mobile phone. Online campaign activity can be achieved without cost, or with payment, for example to social media platforms or service providers.



This leads us to believe that controls on propaganda material must be reviewed to take account of the variety of ways in which it can be produced and distributed and to ensure that appropriate controls are in place for campaigning, rather than only for some types of campaigning, which may in any case become less common in future elections.

Reports from the CEC monitors and others.

It seems clear that the reporting of potential violations by civil society and the public in general accounted for the vast majority of issues raised with the CEC. The contribution of the 120 monitors appointed by the CEC was minimal.

Monitoring of activities during elections is not a highly developed aspect of other Electoral Commissions around the world, and it is often the case that reliance is placed on members of the public bringing forward concerns or complaints. That position is changing however, largely due to the increased use of social media in campaigning, and the need to monitor this because in many cases it is not visible to all and in some cases only to those who receive it. The UK Electoral Commission for example has a small team monitoring online activity using automated searches with defined terms relating to any particular campaign and utilising social media advertising libraries. The information gathered on spending is compared with the spending reported by campaigners to check accuracy. Any other potential issues, such as the failure to include an identifier for the campaigner on the material, identified are considered and action may be taken.

The CEC's ability to appoint monitors is therefore a significant positive aspect of its powers, and should be retained, but it must also provide value for the costs involved. We are not able to comment on exactly why the 120 monitors identified only 8 cases, but it seems very unlikely that this represents the full number of issues that could have been identified.

The CEC should therefore review its approach to appointing monitors, and the qualifications and skills it requires from those individuals. It may be that monitors could be appointed for specific types of possible violations, with a number focused on online activity, and based at the CEC itself overseen by experienced CEC officers. Online activity will often include the promotion of public events, enabling less monitors to be seeking to identify this by other means. Others might be instructed to monitor propaganda material and public events in specific areas.



The roles of the CEC, the Commissioner, and the CSC

There is a general concern arising from the various issues listed above, and in particular the fact that there have been different interpretations of the law applied by the different bodies. It is natural and appropriate that in some cases a sanctioning body may decide that it does not believe a sanction is appropriate after considering another body's investigation. Where the bodies disagree about the law however, there is uncertainty for all involved, including political parties and electoral subjects seeking to comply with the law. There is a need for clarity for those engaged in political activity, as well as for those responsible for overseeing it.

That also applies to the respective roles of each body. Article 10 of the International Declaration of Human Rights states that everyone 'is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.

In practice, this right to a fair trial means that anyone should know who is charged with investigating them, and with making decisions about their position. It is also helpful for separate individuals or bodies to conduct investigations, and make decisions on sanction. In this way assurance is provided that the same person or body has not decided that a person is guilty in some way, and then also decided the punishment. A 'public hearing' can mean different things, but in the interests of transparency, it is very important that the process to be followed is made public.

On this basis we believe there is a need for CEC, the Commissioner, and CSC to agree some form of protocol, to be published, whereby it is clear to all what the responsibilities are of each. This should include how, in general terms, investigations will be conducted, decisions on sanctions will be taken, and how levels of those sanctions will be set. It should also include the scope of appeals, including whether appeals will involve further investigation and new decisions, or simply review the original decision and either agree or refuse them. The UK Electoral Commission produces such guidance, which is published in its website.

We also believe that these bodies should work together to produce public guidance on the interpretation of the Electoral Code. This will reduce any accidental violations, and make it more difficult for deliberate violations to be portrayed as accidental. Any such guidance should be subjected to consultation with political parties as well as civil society.



VII. Recommendations

Recommendations for legal changes

- 1. Consideration should be given to a legal definition of ‘political/electoral activity, which will clarify the meaning of this, both for the Electoral Code and for any codes of conduct public institutions develop. The controls should apply to all public bodies at any election, local or national**
- 2. All significant public institutions should be required by law to have codes of conduct for elected officers and employees, which include requirements regarding appropriate limitations on political activity**
- 3. Article 91 "Prohibition of the use of public resources in support of electoral subjects" of the Electoral Code, should be revised, so that the provision clearly defines the period for the implementation of the prohibition of the use of public resources in the function of the elections.**

Point 4 of Article 91 should be revised, regarding the period of implementation of the ban. The implementation of the current provision in force, "Four months before the date of the elections until the formation of the new government after the elections, it is prohibited to propose, approve or issue legal acts or by-laws, which provide for the granting of benefits to certain categories of the population,.. " brought problems, because the provision must be clear about the type of elections to which the foreseen ban must be applied. The phrase "until the formation of the new government" leaves the possibility for different interpretations, the formation of general government, local government, one of them or both together, when the violation of inequality in elections by issuing such acts is the same for any election process. In order not to leave this only to the will of law enforcement institutions, the legislator should clarify the prohibition period for this provision.

In order to be effective, article 91 of the Electoral Code must be formulated in accordance with the constitutional principle of equality in elections, provided by point 3 of its article 1. The prohibitions provided in this article, such as the use of public resources (points 1 and 2), is a permanent prohibition. Never and under no circumstances can public resources be used for the purposes of candidates, political parties and coalitions. Prohibitions on employment, dismissal, release, movement and transfer to public institutions or entities, except in legitimate cases, (point 3) and prohibitions on proposal, approval or issuing of legal acts or by-laws, which provide for the granting of



benefits to certain categories of the population (point 4) must have the same prohibition period of four months before the election date.

Consideration should also be given to whether the 5 day period for reporting, and the 24 hour period for CEC consideration of reports, should be extended.

4. Articles 78 and 79 should be reviewed by a competent body, to consider whether they meet the needs of effectively controlling propaganda material in light of experience and technological change.
5. Article 92/4 of the Electoral Code should be revised to strengthen the role of CEC monitors, and to define more professional criteria in their selection.
6. Article 171 of the Electoral Code should be revised by providing that leaders of institutions or entities that manage public assets, can be subject to a special sanction, equivalent or greater in value than the sanction for electoral subjects, provided by article 172, point1 of the Electoral Code.

In some cases, public institutions and their leaders have not implemented the prohibition imposed by the CEC for non-development of activities "Prohibited by the CEC", even though the provision of article 92, point 6 of the Electoral Code provides that the non-reporting of public activities of public institutions, agencies and / or state enterprises, or their development, despite the prohibition by the CEC, charges the responsible person with responsibility, as well as the relevant leader of the institution when they have prevented the implementation of this provision. It is not clear what the sanction provided for these cases is. The CSC has not imposed an administrative sanction on these subjects on the grounds that they are not part of the list of "persons charged with duties, according to the Code".

Recommendations for the revision of by-laws.

1. Decision no. 9, dated 24.12.2020, amended "On the rules for reporting public activities of public institutions, agencies and/or state enterprises, the categories of prohibited activities, as well as monitoring of the activity, behavior and use of human and financial resources and logistics of the state administration before the elections", should be reviewed in accordance with the provisions of Article 91 and 92 of the Electoral Code.

The by-law cannot contradict the purpose of the law. The limitation of the period for the implementation of the ban on the use of public resources in the campaign is contrary to the purpose of the law.



2. Issuing clear rules for the methodology of verification, investigation and examination of complaints and reports.

The by-law in implementation of the principle of legality, objectivity and efficiency should provide clear rules for the procedures to be followed by the administration for the administrative investigation, the Commissioner and the CSC. It should be clear where the rights and obligations begin and end for each of the bodies charged by law for the verification, investigation and review of reports, so that there is no overlap of duties and powers, procedures for the administration of evidence, types of evidence, and their evaluation, for each one. The determination of clear unifying rules¹¹ for the verification, investigation and review of reports, "institutional protocols" minimize the evaluations and treatments in different ways by the governing bodies of the CEC of reports and complaints related to campaign financing and the use of public resources in the function of political parties, coalitions and candidates and in elections.

3. The role of CEC monitors should be strengthened.

In this regard, by-laws must adopt clear monitoring standards and more professional selection criteria for monitors in order to increase the effectiveness and supervisory role of the CEC for the financing of political parties, their candidates, election propaganda and the use of public resources in the pre-election period.

4. All significant public institutions should also ensure that they establish an official communications route, including online and social media, for elected officials for exclusive use in their official capacity, controlled by the institution.

5. CEC, the Commissioner, and CSC should agree to some form of protocol, to be published, whereby it is clear to all what the responsibilities are of each.

6. These bodies should also work together to produce guidance, to be published, on the following areas:

- Explanation of how each aspect of the Electoral Code is to be interpreted
- How, in general terms, investigations will be conducted, decisions on sanctions will be taken, and how levels of those sanctions will be set
- The scope of appeals – whether appeals will involve further investigation and new decisions, or simply review the original decision and either agree or refuse them

¹¹ The practice established so far could serve as a basis for targeting the unifying rules for implementation by the administration, the Commissioner and CSC





Bashkëlidhura dhe pjese përbërëse e këtij raport:
Supporting documents to this report are attached as annexes:

Annex I “STATISTICS ON THE REPORTS” sourced from the CEC

Annex II “SUMMARY CIVIC RESISTANCE” sourced from the Civic Resistance

Annex III “SUMMARY OF DECISIONS FROM THE COMMISSIONER AND THE CSC”,



THE FUNCTIONING OF THE REPORTING MECHANISM, IN RELATION TO THE VIOLATIONS OF THE PROVISIONS FOR THE FINANCING OF ELECTORAL CAMPAIGNS AND ELECTIONS



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