



**REPUBLIC OF ALBANIA
CENTRAL ELECTIONS COMMISSION**

DECISION

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

The Central Elections Commission, in its meeting on June 13, 2019, with the participation of:

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

Reviewed the issue with the following

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

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

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

NOTES

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

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

Decision no. 836

Decision date 13.06.2019

Decision time 12:00

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



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

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

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

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

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

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

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



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

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

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

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

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

According to this Resolution:

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

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

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

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

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

- "Election Date" is the voting date, determined by decree of the President of the Republic. "(Article 2, point 1)
- "Election period" is the period of the year, defined in this Code, during which the successive periodic elections for the Albanian Parliament and the local government bodies are held "(Article 2, point 15).
- "General elections for the Assembly or local government units are held simultaneously throughout the territory of the country within a period extending from 15 March to 30 June or from 15 September to 30 November." (Article 8).

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

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

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

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

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

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

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

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

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

According to article 10 of the Electoral Code,

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The permissibility to be unregistered from the electoral contest, particularly after the process of printing ballot papers has ended, would also run counter to the principle of juridical security and would violate the rights acquired by other electoral subjects running in elections, whose rights to run in elections would be denied, since the removal / deletion of the name of an electoral subject is possible only through the complete destruction of all ballots where the subject is positioned. It is objectively impossible for the CEC, that a few days before elections, to carry out new procurement procedures and print other ballot papers (through the winning economic operator) without the credentials of the political entity that changes its will to participate in elections.

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

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

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

FOR THESE REASONS

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



Decision no. 836

Decision date 13.06.2019

Decision time 12:00

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

DECIDED:

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

Denar BIBA - Deputy Chairman

Bledar SKËNDERI- Member

Edlira JORGAQI- Member

Rezarta BITRI Member



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