



To: **The OSCE Office for Democratic
Institutions and Human Rights (ODIHR)**

Tirana, 22 September 2020

Dear Madam/Sir,

Thank you for the valuable assistance that OSCE/ODIHR has provided to the Political Council in the process of electoral reform in Albania.

Less than two months after the July 23 law reconfirmed the existing mechanism of coalitions and allocation of mandatesⁱ, the ruling party is proposing to change itⁱⁱ. It proposes that instead of the composed lists, coalitions must present a single “joint list”, which would subsequently change fundamentally the election rules governing the transformation of votes into seats. The model of joint list and the related formula for the allocation of mandates that the ruling party proposes, has been applied in past elections between 2000 and 2001 in Albania, and has been consensually abrogated and replaced in 2003 with the existing model of composed lists.

The opposition has objected to the proposal of the ruling party and has requested to maintain the existing mechanism of “electoral alliance” with composed lists and the related formula of allocation of mandates that is already in forceⁱⁱⁱ. On 6 September the President of the Republic has decreed that the general election date is 25 April 2021. Consequently, the electoral process has officially started and political parties have already acquired the right to register as electoral subjects, starting from September 7 until 70 days prior to the Election Day. The opposition deems that the fundamental rules governing electoral competition among opposing political parties as well as the distribution of mandates in accordance with the respective votes, cannot be changed after the election process has started. The opposition deems that such actions affect the principles of stability of law, legal certainty and level playing field, which are key to uphold OSCE commitments for democratic elections. The opposition holds that the proposal of the ruling party to change the rules is dictated by immediate political interests of the ruling party and are aimed at manipulating the system to its own advantage.

The 14 January 2020 Agreement provides that parties in the Political Council shall seek consensus on the electoral reform issues, and in the event this is not possible, the parties shall seek the expert opinion of OSCE/ODIHR. Based on this agreement, we kindly ask your expert opinion and assistance on the following issues:

1. Are the provisions in force of the Electoral Code regarding the mechanism of electoral coalitions and the relevant formula for allocation of mandates in compliance with the international standards?
2. Do the mechanism in force of electoral coalitions and the related formula for allocation of mandates impede the introduction of open lists? In case legislation adopts the open lists and the existing mechanism of electoral coalitions and the relevant formula for allocation of mandates for coalitions remain as they are currently in force, would the relevant Albanian legislation be in compliance with OSCE commitments?

3. Can fundamental rules governing electoral competition be changed by one side, after the election process has started, and only 6 months before election date? How important is the stability of election legislation and knowledge of the law by the electoral competitors well ahead of elections, for the quality and the credibility of elections?
4. If rules are changed unilaterally and very close to elections in order to provide advantage to the party that has introduced the changes, do such changes undermine or otherwise affect the principles of stability of law, legal certainty and level playing field, which are key to uphold OSCE commitments for democratic elections?
5. Given the diverging positions, what would be an acceptable solution for both sides, in compliance with the OSCE commitments and other European standards for democratic elections?

Your timely response to the above issues is highly appreciated and is very important to address this dispute with the purpose of finding an acceptable solution that would create a climate of trust of citizens in a democratic election process.

Yours respectfully,

MEMBERS OF POLITICAL COUNCIL:

ⁱ The consensual amendments adopted on 23 July by the law No. 101/2020 stipulate the following:

Article 19 (amending article 67 of the existing Electoral Code):**For the parties which are part of a coalition participating in the elections with individual multi-names list, the number of the candidades in the multi-names list cannot be lower than half of the number of the mandates which will be elected in the relevant election zone, adding two.**

Article 36 (amending article 164 of the existing Electoral Code):**"In case the list of candidates of a political party, which is a member of a coalition, is exhausted, the mandate will be transferred to the party with the highest result in such a coalition."**

ⁱⁱ The Political Council established based on the agreement of 14 January 2020, where both the ruling majority and the opposition are represented, concluded with consensus the political agreement of 5 June 2020. All the agreed amendments were adopted by the parliament on 23 July 2020 and are in force now.

On 30 July, the ruling majority unilaterally approved amendments to the Constitution to introduce the concept of partially opened lists. Another proposal of the ruling majority was to introduce in the Constitution a prohibition of pre-electoral coalitions. The ruling majority withdrew from that proposal after domestic and international objections.

Consequently the unilateral changes of July 30 did not remove from the Constitution the coalition as a form of political organization in the election race – see Article 96 of the Constitution. Also, the constitutional changes of July 30 do not dictate the change of the current mechanism of coalitions and distribution of mandates as currently in force in the Electoral Code.

ⁱⁱⁱ Currently, the Albanian legislation applies a coalition model commonly known as "electoral alliance" with "composed lists". This current model of coalitions was adopted by consensus in 2003 and has remained uncontested and unchanged, having been applied to two different election systems, the Mixed Member Proportional election system in 2005 general elections, and the Regional Proportional system in use since the 2009 general elections. It has been reconfirmed consensually through various electoral reforms ever since its adoption 17 years ago. It is noteworthy that this mechanism was also preserved and reconfirmed by both sides, in the last amendments adopted by consensus to the Electoral Code on 23 July 2020ⁱⁱⁱ. OSCE/ODIHR has never noted any problems or made any recommendations related to this existing mechanism of electoral coalitions and the relevant formula for allocation of mandates, during the observation of elections in Albania.