

## PUBLIC STANCE \*

### Breaking the Political Agreement and unilaterally amending the Constitution, a very dangerous precedent for the democratic future of the country

The conclusion of the several years long political crisis, through the Political Agreement of June 5, 2020, seemed to conclude the series of negative political and institutional precedents, putting in front of the political stakeholders and state institutions, the real challenges facing the Albanian country and society.

Under this premise, the Coalition for Reforms, Integration, and Consolidated Institutions (KRIIK Albania) has closely followed all political and institutional developments, presenting from time to time, through public statements, other issues which necessarily require the joint attention of the political factor and of state institutions, in tackling the major challenges the country is facing, such as the implementation of a free, uninfluenced and with integrity electoral process, advancing justice reform, the unwavering fight against organized crime and illegal influences in decision-making, as well as the economic prosperity of the country.

Lately, KRIIK requested and brought to the attention of political actors the necessary adjustments to be made in case of the possibility of the electoral process being held during a more severe pandemic situation, as well as highlighted the aggravated institutional situation of law enforcement and the functioning of institutions in country, which poses the risk of failure of any possible reforms.

Addressing these issues necessarily requires the extension of the found political will and agreement, in order to ensure the democratic future of the country and the building of the rule of law.

Contrary to the need to address these major issues by political actors, a new political stalemate suddenly reappears, which seems to be dangerously headed towards a new, even more serious crisis, thus shifting the focus of the Albanian society's and international partners efforts towards its solution, overshadowing the major needs of the country and further aggravating the socio-economic situation of Albanian citizens and the democratic progress of the country.

The June 5 agreement, as a product of the agreement of four political actors, whom in respect of the spirit and letter of the Constitution represent and legitimize the popular will expressed in the general parliamentary elections of 2017, as well as with the mediation of the most important international partners, was the first step that marked the return of political normalcy.

The political confrontation that is already jeopardizing this Agreement presents the prospect of an even more dangerous course than the one that preceded the political agreement.

Failing to urgently adopt the June 5 Agreement and the interference in this process of other agendas, which lack a full and comprehensive political agreement, **is leading the country from one dangerous precedent to another.**

The majority in particular, but also the entire political class and all other stakeholders must be aware that another electoral process, even slightly similar to that of 2019, will lead to a loss only of Albanian Citizen and the democratic future of the country.

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On the other hand, the Process of Amending the Constitution undertaken by the Assembly, **with a fictitious consultation process, in violation of the letter and spirit of the law and without full political consent is considered an extremely dangerous action.**

This step, being taken, after the highly criticized precedent of the 2008 constitutional amendments, is the finalization of the desanctification of the Constitution of the Republic of Albania.

KRIIK strongly raises the alarm that **this new precedent and the standard that is being set**, by this majority or the one that will emerge from the next elections, **can be used to extend the hands towards the Justice Reform.**

The foundation of this reform, which is implemented in the Constitution of the Republic, under the set standard, tomorrow can be alienated by nullifying the Reform itself and undermining the democratic state-building project.

In KRIIK's view, any political stakeholder is fully legitimized to initiate the constitutional amendments' process, but it must first ensure a proper and genuine public consultation process, the widest possible consensus of political and civic stakeholders, be conducted with sufficient time available for a broad and effective consultation process, as well as to show maturity by determining the **entry into force and implementation of the amendments, in the subsequent electoral process, after the next one.**

- **Threat to the Political Agreement of 5 June 2020**

The Political Council was an institutional-political finding as an opportunity to overcome an unprecedented crisis of several years, which was in danger of worsening.

This extra-legal module for the reform of the electoral legal framework, in the finalization of its product, was assisted and mediated by the highest representatives of the diplomatic corps of the strategic partners of the country.

Following a hurdle in the dialogue, a final product, in the form of the Agreement of 5 June 2020 was reached.

The first package of legal amendments implemented under this agreement, although a product far from the long-standing expectations and commitments of the political leaders themselves, and coming as a result of a process developed in a totally non-transparent and non-inclusive way, was commended as a first step towards returning to a political and social normalcy<sup>1</sup>.

The Political Council was a module that would reach a four-lateral agreement of the main political stakeholders, the two opposition parties emerging from the 2017 elections, as well as the opposition and the parliamentary majority.

Thus, the discussion, agreement and product of this Council would reflect the will of these four parties, in a natural negotiation process, undertaking the most necessary amendments to the legal framework, according to them, that would lead to a future electoral process, which none of the parties could delegitimize, at least a priori<sup>2</sup>.

The developments that followed this agreement, and mainly these of the recent days, raise the alarm for a more than dangerous precipitation.

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Over anti-democratic precedents layered over time, under a critical institutional context, **another new precedent is manifesting itself, totally unacceptable for a democratic system, the violation, before even taking life, of the agreement and compromise of the political leadership.**

The process of constitutional amendment undertaken recently, in addition to other problems it carries, is a unilateral intervention of the majority, **contrary to the commitments of the Political Agreement of 5 June 2020.**

In the Report accompanying the draft law coming as a result of the Political Agreement, it is stated that these amendments enable the political agreement of the parties on the rules for the next parliamentary and local elections, as well as constitute the changed legal basis with which these two electoral processes will take place.

KRIIK notes with concern the lack of proper political maturity, which is really needed at this moment by all actors of the society, especially by the leadership of the socialist majority.

In a whirlwind of statements and institutional steps, it seems **that political stakeholders are rolling the country into a dialectic farther and farther from the democratic one, bringing even more serious crises to the brink.**

KRIIK recalls the major concern made known at the outset, and that this current debate is again highlighting as a fundamental shortcoming. The necessity for the activity of the Political Council to have been be and be transparent.

The lack of transparency proves, at the very least, the lack of sincerity of the parties to reach an agreement, which may be a reflection of the individual agendas of the political actors, or even worse, it may be a coordinated agenda between them.

In any case, the Political Council was an opportunity for the four stakeholders to negotiate their demands and the agreement reached was the conclusion, at this stage, of the realization or not of these demands.

If after the acceptance of the June 5 Agreement, the Parliamentary Opposition categorically insists on demands outside the Political Agreement, questions arise over the role and vote of its mandated representative in the Political Council.

If the Parliamentary Majority submits claims outside the Political Agreement, ignoring the need for agreement, questions arise over its intention from the outset to reach an agreement with all parties.

If the Opposition outside the Parliament categorically rejects the issues raised for discussion post-agreement, questions arise on what terms it has accepted the functioning and continuity of work through the Political Council.

It is reiterated that the Political Council was and **remains an extra-institutional module to bring together the consent of all political actors and decision-makers, representatives of the popular will from the last parliamentary elections.**

The reached agreement will ensure an improvement of the electoral legal framework, an agreed electoral legal basis<sup>3</sup> and moving towards an accepted electoral process, with the aim of **enabling a normal institutional continuity, as guaranteed and required by the Constitution.**

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- **The process of amending the Constitution**

In parallel and in sync with this alarming political behavior of the majority, KRIIK highlights an alarming behavior from the Albanian Parliament.

In less than two weeks, the Assembly concluded the consultative process for the draft amendment of the Constitution of the Republic of Albania. This amendment was proposed by a group of MPs of the parliamentary opposition, with the object of changing the electoral system in three elements: banning pre-election coalitions, raising the electoral threshold, and voting according to open lists, the latter supported and promoted by some civil groups.

In KRIIK's assessment, **a process of amending the Constitution should compete in terms of consultative process with the process of the Constitution drafting itself.** Thus, a comprehensive consultation process would be needed, encouraging and involving all society actors, effectively engaging academic and university opinions, engaging and setting up a group of senior experts and ensuring an efficient processes of discussion and debate with them, or even other criteria. All this in an extended and sufficient period of time, as well as accompanied by a maximum transparency.

All these criteria not just to carry out a routine process, but to examine any possible implication that the constitutional change may bring, reaching the maximum agreement of political and civil actors, as well as informing as widely as possible and in an easily understandable way for the public.

In the challenge of carrying out a genuine process of discussion and consultation, with the aim of anticipating **a more organic and sustainable intervention in time, the entry into force of the amendments should not be immediate, in the subsequent electoral process**, freeing the consulting process from the pressure of time and narrow interests of immediate benefit, thus giving it more breathing space and providing a more objective approach throughout its entire progress.

In an election year, less than 9 months from the date of the next election, in a context of civil emergency and uncertainty about the future due to the COVID-19 pandemic, and with a parliament boycotted by the opposition that resulted from the previous elections, a process of amending the Constitution on electoral issues, goes beyond imagination.

This case is the perfect example, in which, despite the quality and validity that the content of the legal text can radiate, the **procedure followed and the moment for the amendments nullify its value.**

On the other hand, it was found that the Consultative Process carried out suffered from extremely low participation of stakeholders, both civil society and university. Especially with regard to the latter, it was sad that only one representative from academia appeared at the scheduled session.

This is the exemplary evidence of the fictitiousness of the process, **completed without any opinion from academia, i.e. by those who draft the legal doctrine or are the guardians of political-legal thought.**

The situation worsens even more, when this titanic weight was "assigned" by the Assembly to four constitutionalists. Notwithstanding no doubts about their expertise and individual values, it can not be thought that four, or any other number of contracted professionals, at their discretion, will replace academic institutions.

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As a conclusion of the whole Consultative Process, it is estimated that due to a political agenda of the executive, **the Albanian Parliament was invested in changing the basic act of the country through a very fictitious, ceremonial process, and in violation of the deadlines for legislation on public consultation<sup>4</sup>.**

This moment of constitutional amendment is estimated to lie between a previous problematic experience and what, in KRIIK's view, is considered to be entirely a destruction of the state-building project.

It is reminded that the constitutional changes of 2008 were a dark moment, during which the close agreement of the two leaders ignored the institutional procedures and all the other actors.

Today, as a "correction" of that critical amendment process, another amendment process is being undertaken, again without a real consultation, without full transparency and even without political agreement.

KRIIK considers with concern that such an act of amending the Constitution, in the above-mentioned circumstances, not only turns it into a normative text of lower importance, but opens the door to potential further violations in the future.

**Under the standard attempting to be set, tomorrow there could be interventions in the regulations of the Justice Reform.** A reform which, despite all the criticisms, remains decisive for the democratic state-building project of the country.

The foundation of this Reform lives in the Constitution to give maximum guarantees to its sustainability, but the precedent that is being created may risk that the Justice Reform be soon alienated in the eventual dynamics of political discourse.

In conclusion, there is concern that this **unilateral intervention of the majority is in itself in open contradiction with the commitment made for the Political Agreement** of 5 June 2020, affecting the rules of the game and the legal basis agreed between the four political parties and with which will take place the next two electoral processes, as officially expressed by the socialist deputies, supporters and proponents of the draft law amending the Electoral Code.

It is emphasized that these deputies are part of the Joint Committee of the Law Committee and the Council for Legislation, for the constitutional amendment that is being undertaken, two of them being respectively the Chair of the Joint Committee sessions and the Co-Rapporteur of the majority on the initiative.

But none of them in no case identified this contradiction in relation to the intended legal changes, nor the contradiction in relation to the political position of the socialist majority.

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KRIIK calls on the majority and the Albanian Parliament to reconsider this moment with maturity and high responsibility, reconsidering the entire progress of the amendment process so far, putting it on the constitutional and legal track in the spirit of the Constitution approved by popular referendum. ensuring a genuine consultation process, the widest possible agreement of all political and civil actors, all the necessary time available for a comprehensive and effective consultation process, and **ensuring the entry**

**into force and implementation of amendments concluded in the subsequent electoral process, after that of spring 2021.**

***Tirana, on July 17, 2020!***

***\*This Public Stance is published in Albanian and in English.  
The Albanian version is the only official document.***

<sup>1</sup> "... The draft law submitted for review and approval constitutes only the first phase of the process agreed between the members of the Political Council for the reform, for the legal basis for free and fair elections in Albania. ...

*The political parties participating in the Political Council have agreed to continue the second phase of the reform of the electoral legislation and other related laws, defining the modalities for the realization of such a task. ... "*

Excerpts from the Report that accompanies the Draft Law "On some additions and amendments to Law no. 10019, dated 29.12.2008 "The Electoral Code of the Republic of Albania", amended ", deposited with the Assembly of Albania with Prot. No. 1707, dated 01.07.2020, by the MPs Damian Gjijnuri, Vasilika Hysi, Klotilda Bushka, Adnor Shameti, Blerina Gjylameti and Bashkim Fino.

<sup>2</sup> Ibid. "... The draft law that is being submitted for review and approval enables the political agreement of the parties on the rules of the game in the next general and local elections, guaranteeing the full participation of all stakeholders of political life in Albania. ... "

<sup>3</sup> Ibid. "... The submitted draft law has as its main premise the realization of those emergency interventions in the Electoral Code that realize / reflect the widest political agreement and enable political trust in the next two electoral processes, which will take place with this changed legal basis. ... "

<sup>4</sup> **KRIK's reporting on the procedure followed by the Albanian Parliament**

The Rules of Procedure of the Assembly on draft laws seeking to amend the Constitution entrust the joint activity of the Committee on Legal Affairs, Public Administration and Human Rights and the Council for Legislation. According to the Regulation, the activity of bilateral commissions cannot start in less than two weeks from the date of filing the initiative (Article 77 / a, paragraph 2). Meanwhile, the Constitution prohibits its revision in the period when extraordinary measures are imposed (Article 177, paragraph 2).

- In fulfillment of Law no. 146/2014 "On notification and public consultation" (Articles 15, 16), taking into account the major importance of the act, the Joint Commission was recognized the attribute of allowing a 40-day period to wait for contributions, and even the possibility of postponing the deadline if the contributions or participation would not be satisfactory, as was clearly evidenced during the process attended by less than 1/3 of the notified NGOs and only one lecturer from the entire teaching staff of six universities officially invited to give an opinion according to information made public [by the media](#).

- Also, according to Article 19 of this Law, the draft act must be accompanied by a summary of the received recommendations and if the recommendations of the interested parties have not been accepted, then the public body presents a summary of the reasons for their non-acceptance in one of the forms of the notice.

In the presentation of the Co-Rapporteur, MP Klotilda Bushka, in the session of the Committee on 10.07.2020, where the initiative of the parliamentary opposition for constitutional changes was approved in principle, this obligation was summarized in the statement that the concerns of interest groups, especially those raised by civil society actors, were given the best response by constitutional experts and especially by Mr. Ilir Rusmaili (minutes 36.14 - 36.45 of the [video of the meeting](#)). Which in fact does not stand, as it is neither the duty nor the competence of the experts selected by the Commission to respond to the concerns raised by groups of civil society organizations. Moreover, the latter, summarize in the presented concerns their institutional position, of the political-technical level, in response to which an answer is required at the political level, first, and then also at the technical level from the deputies of the Assembly of Albania, members of the Commission in charge of conducting the Public Consultation Process.

- Initially, the initiative to amend the constitution was submitted to the Assembly on 15/06/2020 by a group of 28 deputies. Referring to public statements, some of the signatories withdrew their support for the proposal, questioning the legitimacy of the request and its content as a whole, as it was filed, and consequently the process itself.

Even, in the meeting of 10.07.2020, such a concern was raised in the Joint Committee by the MP Adriatik Alimadhi, who stated that some of the signatories did not sign the initiative, so he asked the Chair of the session to verify this issue. This was not taken into account by the latter which stated that the procedure followed is correct (43.40 - 58.20 minutes of [the meeting video](#)).

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Overall, it remains unclear that only 10 days after the signing of the June 5 Political Agreement and when the work of the Political Council experts was expected to be completed, a draft law on the revision of the Constitution was submitted.

- On the other hand, referring to the state of natural disaster declared and continued until 23.06.2020, according to the Rules of Procedure of the Assembly and the provision of the Constitution, the first session of the Committee meeting at the beginning of the process of reviewing the Constitution, should have been conducted on 07.07.2020. The same reasoning was announced by the Speaker of the Assembly at the beginning [of the plenary session of the Assembly on 18.06.2020](#), and is included even in the note contained at the [document](#) submitted to the Assembly of Albania.

Contrary to this, the Joint Commission started its work on 30.06.2020, session announced on 29.06.2020, and held a total of nine sessions, specifically on June 30, and July 1, 3, 6, 7, 8, 10, 13 and 14.

Of these sessions, four were devoted to public consultation addressed to organizations, local institutions and international organizations in the country, academics and constitutional experts.

- Apart from the live broadcast of these sessions, on the official page of the Assembly on Facebook and hence on the official website of the Assembly, the minutes of the meetings are not accessible on the official website of the Assembly of Albania, even today on the date of publication of this Public Stance (see the [minutes of the first meeting dated 03.06.2020](#)).

Also, still today there is no information or any reference on where it can be found, nor has there been full transparency of who the nominated actors were, the institutional efforts made to ensure the receipt of the notice, the contributions documented by the participants in hearings held or by others who may have had an interest.

- The duration of the process during which the Joint Commission worked resulted in only two calendar weeks, from consideration to article-by-article approval.

In practice, this prevented the participation of a wide range of stakeholders involved in constitutional issues, except for the limited list of those whom the Assembly deemed to call, according to statements made during the sessions by the Chair of the Committee and Deputy Speaker of the Assembly, Vasilika Hysi.

Also, although unaware of any internal process undertaken by the Assembly, it seems that the deputies themselves had and continue to find it impossible to consult the contributions presented at the session or other income from stakeholders.

- This extremely short duration, which is also contrary to the legislation on public consultation, was also reflected in the low participation of speakers invited to the session, especially in terms of organizations involved and representatives of academia.

Referring to the statements of the Chair of the Commission sessions, out of 19 notified Civil Society Organizations (CSOs), six had confirmed their presence and only four of them spoke. Meanwhile, two other organizations, one of which was KRIIK, asked to be part of the session after the announcement received from the media, as it did not receive any notification from the Assembly, although KRIIK is one of the organizations registered in the Assembly register and follows closely its activity, especially on electoral issues.

The inaccuracy also accompanied the [official announcement of the Assembly](#) dated 03.07.2020, regarding the realization of this session, where it appears as if two of the officially announced CSOs that had confirmed and contributed, but had not been part of the session, appear. Again, the name of one of the CSOs that participated in the hearing is missing in this announcement.

As for the participation of actors from the academia, although the Chair said that they had invited institutionally and personally all professors of law faculties from six universities, only two stated that they had confirmed their participation, of which only one technically managed to speak at the hearing.

During the sessions, the Head of the Commission has mentioned several times the continuous cooperation with the academia and the communication with the professors of 23 universities, with whom the Assembly already has cooperation agreements and a very good database of contacts. Moreover, according to the co-rapporteur of the majority, it is mentioned that in the annual report of the Assembly there are over 730 amendments to certain laws that have come as proposals of civil society or from various interest groups.

It is emphasized that it remains unclear whether the Assembly has used this database to inform professors about this consultation process, while questions are raised as to why the Faculty of Law from other Universities, such as the University of Shkodra or others, do not appear as notified in the announcement made public.

This result of completely insufficient participation, not only did not constitute a concern for the Chair of the session, but [in the official announcement of the Assembly of Albania, dated 06.07.2020](#) of the session in question, reflects a normal performance or progress stating that "... Representatives of academia gave their concrete ideas, comments and suggestions regarding the initiative on constitutional changes, but also answered the questions addressed by the deputies during the hearing. ...", while only one lecturer participated in the session.

In conclusion of all the procedures followed, it is concluded that such a presentation goes beyond a curation of the image of the consultative process, but is considered as an intention to present a consultative process, which in reality did not happen.

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