

PUBLIC STANCE*

Avoiding abuse of state resources as well as correct and impartial behavior of the public administration employees, essential for ensuring the intact will of the citizen in exercising the right to vote

On January 13, four months before the voting day for the Local Elections of May 14, 2023, a series of obligations and restrictions on public institutions began, with the aim of prohibiting the use of state resources for electoral gain. The restrictions include the prohibition to a significant extent of the promotion of the activity of these institutions, employment, or dismissal, etc.

During the following four months until the day of the elections, the Electoral Code also defines the obligation to report on any public activity of public institutions to the Central Election Commission, which has the responsibility to stop those activities that it deems to be in violation of the law.

These legal and other obligations are applied for the first time in a general local election process, while they were also applied in the partial local elections of March 6, 2022.

The misuse of state resources and the financing of electoral subjects were two of the most problematic issues observed in previous election processes, which were agreed to be addressed in the Electoral Code based on the Political Agreement of June 5, 2020.

Despite the expressed will and the clear purpose of adopting the relevant legal provisions to strengthen, first, the prevention of the use of state resources for electoral advantage by those in power, their application in the 2021 Assembly Elections evidenced the insufficiency of them to prevent the phenomenon.

The reports of domestic monitoring organizations or international organizations emphasized that the use of state resources for electoral advantage was one of the most prominent issues of the last parliamentary elections¹.

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

¹ [KRIIK Final Report on the Elections for the Assembly of April 25, 2021](#), page 6: The majority entered these elections with the advantage of being in full control of public institutions, at the central and local level, which gave it an advantage in the electoral process and visibly blurred the dividing line between the state and the party throughout the process.

[ODIHR Final Report on the Elections for the Assembly of April 25, 2021](#), page 1: The ruling party gained significant advantages from being in power, including through control of local administrations and waste of administrative resources.

Observers stated that legal obligations were massively ignored in their spirit, while even the implementation of the letter of the law limped markedly², **setting negative precedents for the following processes, as was seen later during the partial local elections of March 6, 2022.**

Currently, the country is heading towards the Local Elections of May 14, 2023, in a situation where a political party alone controls both the majority in the Assembly of Albania, the executive, and almost all the country's municipalities.

In the situation where, until now, there was no legal reformation and no institutional reflection in the approach of the majority as far as it has been reported and denounced and initiated by the established precedents and the steps initiated in the meantime, **concern is expressed that the tendency to use state resources for electoral purposes will continue and be carried even further**, bringing incalculable damage to the country and the democratic state-building process.

The election campaign has already started, even though legally it should start only 30 days before the elections. **KRIIK notes that the government's recent decision-making is clearly electoral in nature³**, regardless of the usefulness and necessity they have in content for Albanian citizens.

The measures taken are an obligation of the state and the Government of the Republic of Albania towards the well-being of its citizens, so they must be planned, processed, and presented to the public as such by the members of the government and the leadership of the majority as a whole.

Even in this launched campaign, there were again excessive shows of electoral propaganda related to the measures taken, while gift **packages were distributed to**

² [KRIIK Final Report on the Elections for the Assembly of April 25, 2021](#), page 8: The mechanism that aimed to address the problem of misuse of state resources, one of the innovations brought by the legal amendments of July 2020, failed in its purpose and turned into a bureaucratic formality with no real effect in practice. State institutions failed and even neglected to a considerable extent to report according to the requirements of the legal framework.

The total number of institutions recorded in Decision no. 9 of the Regulatory Commission that carried the obligation to report their own activities was 344. But of these, only 51 (less than 15%) reported having performed activities during the four-month period (in total 1,254 activities). The number of institutions that have not reported is higher, considering that the list of institutions in Decision no. 9 is not exhaustive. On the other hand, even though the regulatory framework required that activities be reported at least five days in advance, about 72% of reported activities (906/1254) were reported less than five days in advance. A significant part (8%) was reported on the day the activity was to take place, and there are even those reported after the activity had taken place (39 activities).

³ Economic assistance at the end of 2022, approved by VKM no. 897, 898 and 899 dated 29.12.2022, called by the government "The Big Package" is considered as such. In addition to the aid allocated to various groups of society through it, the Council of Ministers allocated additional funds to some municipalities in the country at the end of the year, through VKM no. 767 – 798, no. 801 – 804, 813, approved on December 12, 2022.

At the end of the mandate, the Municipality of Tirana started the systematization and asphaltting of a number of roads in the territory of the municipality, justifying this action with funds remaining unspent at the end of 2022. Meanwhile, according to the statements of [Prime Minister Rama](#) AND [Deputy Prime Minister Balluku](#), even the revenues collected from the extraordinary tax for energy producers will be used to support vulnerable groups. It is not clear from the statements when this revenue will be distributed, but it is implied that it will be in the spring.

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

beneficiary families in need, publishing their identity and photos, including photos of minor children without any masking tape on the face⁴.

The Central Election Commission has an essential role in controlling the public activities of institutions and preventing their use for electoral purposes.

KRIIK appreciates the initiative of the State Election Commissioner to remind public institutions of their legal obligations⁵ during the period January 13 - May 13, 2023, but in the meantime notes that until January 12, only one activity was reported via e-mail⁶, from the Municipality of Kolonjë. This means that until January 17, it was assumed that there would be no public activity by the institutions, and the fact that such activities have been carried out, as evidenced by the reflection so far on the reporting interface⁷ on the website of the CEC, it shows that the obligation to report has already been violated by those institutions that have carried out such activities.

Despite delays in system functionality in the reporting interface, **KRIIK urges the CEC for its further completion with additional fields⁸**, in which institutions can detail a more complete information on the activities they plan to organize.

This addition to the required reporting is necessary in the first place for the fulfillment of the CEC's obligations and responsibilities in the control of these activities, which was not done in the parliamentary elections of 2021 and those of March 6, 2022. On the other hand, it is also a help for the efficiency of the examination undertaken in function of the administrative investigations that can be done based on the indications or denunciations filed with the CEC.

The legal changes of 2020, in line with the increase in the efficiency of the mechanism built for the control and prohibition of the use of state resources, **introduced as an innovation the possibility of third parties to carry out denunciations** related to cases of using state resources for electoral purposes.

As it has made public in its reports, **KRIIK has observed an obstructing and politically biased approach of the Appeals and Sanctions Commission (ASC) of the CEC**, against the spirit of the law against whistleblowers, demanding that they bring evidence of their findings, thus leaving the entire burden of proof on the whistleblower. The complaints' review processes turned into almost literal judicial processes, where ASC considered itself as a court, which examines the claims of the citizen on the one hand and

⁴ Only the posts on the Prime Minister's official website about the distribution of gifts to families in need are about twenty, while they have been redistributed (shared) on average 340 more times each and have received about 6 thousand likes each. This does not count other possible posts by the ministers themselves and distributions that may have been made to them afterwards.

⁵ Central Election Commission - [REMINDER - On the activity of public institutions four months before the election date](#), date 12.01.2023.

⁶ From KRIIK's communication with the CEC administration, it was referred to receiving only this report, but this activity has not yet appeared in the reporting interface on the CEC website.

⁷ From what is reflected in the reporting interface on the website of the CEC until the moment of publication of this Opinion, it is evident that there are eleven notifications which are in violation of the 5-day deadline before the organization of the activity foreseen to be organized. Specifically, Tirana Municipality 7 announcements, Durrës Municipality 2 announcements, Prime Minister's Office 1 announcement, Assembly of Albania 1 announcement.

⁸ KRIIK, [Recommendations regarding the reporting interface of public activities of public institutions, agencies and/or state enterprises set up by the CEC](#), sent to the CEC on 14.01.2023.

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

the accused state institution on the other hand, together with the candidates and political parties.

In this approach, despite the fact that ASC was made aware of violations and abuses by state administration officials or electoral subjects, it **did not take measures to invest itself as an institution and as part of the CEC to investigate the case fully and to the end**, but left the violations unproven and consequently unsanctioned, undermining the process, the efficiency of the mechanism and the law, **setting in the process negative precedents and encouraging the continuation of illegal behavior**.

KRIIK, in continuation of its position, urges the Central Election Commission, as a trilateral institution, to be oriented according to the spirit of the law and implement it only in the best and general interest of the citizens, **considering and assessing the content of each denunciation presented and taking the burden of proof itself as an institution, instead of leaving it to the denunciation**⁹.

In the Albanian democratic reality, as has been made known by the previous positions of KRIIK, the proper functioning of the law and the institution is closely related to the political will of the incumbent and his political force, as well as the spirit that the latter conveys as a force governing.

The use of state resources can be completely stopped, and it may even cease to exist as a major election problem in the country, if a complete and clear political will to stop it will be manifested by the political force in power.

KRIIK appeals to the senior officials of the governing majority that it is necessary for them to exercise restraint and show high prudence, not using the official office for electoral advantage, in the spirit of the separation of the party from the state, according to the principles of [The Copenhagen Document](#)¹⁰.

The socialist majority must clearly understand that it is mandated to administer the state with a fixed and time-limited mandate, and every policy and service that is done for the citizens and in their interest, **is an obligation of the Albanian state and not a privilege** that the Socialist Party and the governing majority do to the citizens.

Today, Albania is one of the member countries of the Security Council of the United Nations Organization, this high world forum in which the highest principles of freedom and human rights, the protection of people's democracy and freedom are encouraged and examined.

Likewise, the country has officially started negotiations for membership in the European Union, a union which radiates the highest level of implementation of freedoms and human rights, as well as democratic principles and standards.

In these circumstances, even more appears as **a major task of the Government of the Republic of Albania and the current majority**, to ensure and raise the credibility of Albania and the Albanian people, as a country which is found naturally in these positions,

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

⁹ KRIIK, [Recommendations for improving the legal regulatory framework for the 2023 local elections](#), sent to the CEC on 10.01.2023.

¹⁰ Paragraph 5.4.

as it fully manifests the principles and democratic norms of a legal state, the guarantee of freedoms and human rights, as and there is a functional and living democratic state system, where first **the state guarantees the right to a free and secret election, and where any form of pressure is prevented to reveal whether someone has voted or not, and how they voted**¹¹.

The Constitution of the Republic of Albania stipulates that basic human rights and freedoms are indivisible, inalienable, and inviolable and are the foundation of the entire legal order and that public **authorities, in fulfilling their duties, must respect the basic human rights and freedoms, as well as contribute to their realization**¹².

In this framework, **it is necessary first that all public administration employees** at all levels, regardless of whether they have civil servant status or not, **demonstrate legality and impartiality, as well as not allow the official position to be used or abused** for electoral purposes, in any form.

For civil servants, the legal framework has a clear and complete provision allowing, in addition to running, only participation in political activities outside official hours, but without becoming a protagonist in them and without sporting electoral propaganda materials and tools.

They are prohibited from publicly expressing their political preferences and beliefs, including posting in the media and social networks, as well as campaigning for political parties or candidates, or even the so-called door-to-door campaign.

The legal framework, especially the law "On the rules of ethics in public administration" provides for clear obligations **not only for public employees, but also for employees of private companies that perform public services**¹³, asking them among other things **legality, correctness, honesty and above all political impartiality**, where the latter is essential and stems from the political plurality that underlies the state¹⁴.

¹¹ The second priority recommendation of the [ODIHR Final Report on the Elections for the Assembly of April 25, 2021](#), page 30.

¹² Article 15 of the Constitution.

¹³ [Law no. 9131, dated 8.9.2003](#), "On the rules of ethics in public administration", Article 2 "Field of action", point 3. "The provisions of this law constitute an obligation also for persons employed by private organizations that perform public services".

¹⁴ Ibid., Article 3 "General principles of ethics", point "1. In performing the functions, the public administration employee must respect the following principles:

- a) perform the tasks, in accordance with the legislation in force;
- b) act independently from a political point of view and not hinder the implementation of policies, decisions or legal actions of public administration authorities;
- c) in the performance of duties, he must be honest, impartial, efficient, considering only the public interest;
- ç) to be polite in relations with the citizens he serves, and with his superiors, colleagues and subordinates;
- d) must not act arbitrarily to the detriment of a person or organization and must show due respect for the rights and personal interests of third parties;
- dh) not to allow his private interests to conflict with his public position, avoid conflicts of interest and never use the position for his private interest;
- e) to always behave in such a way that the public trust in the honesty, impartiality and effectiveness of the public service is preserved and increased;

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

A public servant must not use or allow his official position to be used in such a way as to induce or coerce any other person, including subordinates, to obtain any financial benefit or any other type of personal interest.¹⁵.

He must use the tools provided by his job position only for the performance of his duties and not for personal purposes.

He should also **use working time effectively** for the performance of official duties and **cannot use this time for any other purpose**¹⁶.

A state administration freed from political bias and truly independent is a condition for building and consolidating a correct and professional administration, **thus undoing the system of political patronage set up and employed illegally in the ranks of the public administration.**

Moreover, such an administration can be the basis for the supply of human resources for the independent electoral administration for the elections of 2025 and beyond, as provided for in the Political Agreement of June 5, 2020.

In the conditions of the insufficiency of the current legal framework to completely prevent the misuse of the administration for electoral advantage, as well as **of the urgent need for the expression of a clear political will** in undoing previous negative practices, **KRIIK appeals to the Prime Minister of Albania H.E. Mr. Edi Rama, at the same time leader of the majority and Chairman of the Socialist Party, in line with previous practices**¹⁷, **to promote and adopt a Decision of the Council of Ministers** which should fill in the missing elements of the current legal regulatory framework and provide for the undertaking of concrete steps for the complete prevention of this phenomenon, including, among others, the limitation of the issuance of by-laws that can be perceived as being used for electoral purposes for the period up to on election day.

Also, since electoral propaganda is already carried out to a considerable extent on social media, and there is already a clear and complete definition set by the Civil Service Oversight Commissioner¹⁸ that **considers posts on social media of an electoral nature, both the sharing of posts and reactions of them, in violation of the law** for the civil servant¹⁹, KRIIK judges that **it is imperative that part of the above mentioned decision**

¹⁵ Ibid, Article 12.

¹⁶ Ibid, Articles 13 and 14.

¹⁷ - [Decision of the Council of Ministers No. 283, dated 10.05.2019](#), for "Taking measures and monitoring the activity, behavior or use of human, financial and logistical resources of the state administration, during the electoral process for the local elections for 2019".

- [Decision of the Council of Ministers no. 473, dated 1.6.2017](#), "On taking measures and monitoring the activity, behavior or use of human, financial and logistical resources of the state administration, during the election process for the elections to the Assembly of Albania for the year 2017".

¹⁸ The Commissioner for Civil Service Supervision, in letter no. 458, dated 05.04.2021, addressed to the human resources monitoring groups of institutions part of the civil service, interpreted in a more complete way the limitations provided by the law by extending their scope of action to social media as well.

According to the definition of the Commissioner: "... sharing or consenting to electoral materials of political entities in social media (*Facebook, Twitter, Instagram*) in the personal accounts of civil servants constitutes a violation of the obligation not to publicly express their political beliefs or preferences".

¹⁹ According to the Law "On Civil Servants" and the Electoral Code, public administration employees, at the central or local level, are prohibited from participating in electoral activities during official working

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

be the extension of this obligation to all public administration employees, as a more complete and accurate implementation of law no. 9131, dated 8.9.2003, "On the rules of ethics in public administration".

Such an arrangement appears more necessary by giving the proper interpretation to the spirit of the Constitution and the law and the manner of their implementation, **making it clear to every employee of the public administration but also to every employee who performs public services²⁰**, that their constitutional rights and freedoms, personal political freedom is related to their free participation in the political activities they prefer and the right to elect or be elected, and **not by abusing the position or title they hold, to influence the political opinion of others or the orientation of their vote.**

In conclusion, KRIIK calls on all state institutions to take the necessary measures and set up truly functioning mechanisms to prevent the misuse of state resources for electoral advantage throughout this period, until the day of the elections, including but not limited to the Commissioner for Civil Service Supervision.

Also, KRIIK calls on citizens, actors of civil society, including journalists and the media to denounce and make public any violations observed, by making use of the mechanisms that the legal framework has made available, with the Central Election Commission or even other institutional mechanisms.

Tirana, on January 16, 2023!

This Public Stance is published in Albanian and in English.
The [Albanian version](#) is the only official document.

Address:

Rr. "Ymer Kurti",
Nd.4, H.2, Ap.3,
Nj.Adm.5,
Tirana

Mailingaddress:

P.O.Box. 2396
Tirana, 1001,
Albania

hours, as well as, in case of participation outside these hours, they must not perform actions that openly manifest support for any political force.

In addition to physical participation, with the interpretation of the Commissioner for the Supervision of the Civil Service, the restriction was also defined not to publicly express political preferences or beliefs by public servants on social networks.

²⁰ Law no. 9131, dated 8.9.2003, "On the rules of ethics in public administration", Article 2 "Field of action", point 3. "The provisions of this law constitute an obligation also for persons employed by private organizations that perform public services".