

OPEN LETTER

To: Speaker of the Parliament of Albania
H.E.Mrs. Lindita NIKOLLA

Cc: President of the Republic
H.E.Mr. Bajram BEGAJ

Prime Minister H.E.Mr. Edi RAMA
Chairs of Parliamentary Groups
Political Parties
US Embassy
EU Delegation
OSCE Presence
Accredited diplomatic missions

Subject: Assembly of Albania should support the
Central Election Commission (CEC) to
implement the law on prevention of misuse
of state resources.

Honourable Speaker of the Assembly of Albania. H.E.Mrs. Nikolla!

The mission of the Coalition for Reforms, Integration and Consolidated Institutions (KRIIK) is to protect and guarantee the human rights and freedoms, as well as the full dimension of human security by strengthening rule of law, democratic governance, encourage civic engagement, as well as encourage full responsibility, transparency and accountability of public and political institutions.

In cooperation with, *or* in the framework of the Coalition of Local Observers (CLO), KRIIK, as one of the main and leading organizations of CLO, has continuously followed, especially after the Electoral Reform of July 2012, the development of all political and institutional processes and activities, which affect directly or indirectly the integrity of the electoral processes.

Since the decree of the election date by the President of the Republic, KRIIK is closely following the situation in the country, the political and institutional developments, as well as is monitoring the preparatory work for the election process taking place on 14 May 2023, by also being officially accredited by the Central Election Commission through Decision No. 38, dated 08.02.2023, of the CEC.

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As it has been widely made public, the main philosophy and strategy of KRIIK is **to guarantee integrity and strengthen the Independent Institution of the Central**

Election Commission (CEC), for the unequivocal implementation of the law, the preservation of independence and impartiality, as well as the proactive approach and achieved performance in relation to guaranteeing the integrity of elections in the country, especially of the electoral process itself.

The guarantee and manifestation of integrity and impartiality by the Institution of the CEC is closely related to the application of standards and protection of constitutional principles, as it should be manifested by any other state institutions, for the creation of an electoral process that has European standards, as well as a normal institutional and political climate, for as much as CEC can have an impact and influence on it, by offering a calm electoral climate, where **each operator and actor assigned with duties remains maximally committed to fulfil its legal obligations on time**, without infringing the tight deadlines of the process and without losing its quality.

This calm electoral climate is more than necessary **to make citizens feel safe to express their free and impaired will**, by making them understand that the electoral process is for them an opportunity to choose the best electoral offer presented by the electoral subjects, for the good administration of local governance.

It is the duty of the state, which, through the law and through institutions, especially through the Institution of the CEC, **to make sure that the Albanian voters are not impaired, not affected and are not oriented in any case**, by establishing preventive and sanctioning mechanisms against all forms of power, being it political, state, economic, or even criminal.

In this important mission, **the CEC is the only institution commissioned by the law**, which **should face and oblige by law the political parties** to implement the law and the rules of the electoral competition.

In the experience we have seen until now in this respect, the one who has made steps backwards and suffered the consequences was only the institution, by creating negative precedents in the established democratic experience, but also of the inappropriate behaviour of an independent institution.

Political parties, this wealth of political formations, which are protected by the constitution and which allow the preservation of pluralism, which is the foundation of our constitutional-legal order, are completely free to be organized, to express freely and to create opinions and political alternatives for the governance of the country.

But, they are not and should not be considered in any case above the law.

If a political formation wants to take over and develop public responsibility or even to govern the country, **it should start showing responsibility and accountability by strictly respecting the legal framework**, as well as the criteria and obligations foreseen to equally participate in the electoral race.

This request becomes even more indispensable, and it becomes a challenge when we talk about political parties that have experience in administering power and the state, especially those that are currently in power.

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The implementation of law and rules to guarantee equality in the electoral race, **without profiting in any case from the advantage that might come from the official or state post**¹, is the minimal standard that should be respected, and it is a legal obligation that should be respected without doubt in any case. This should be done regardless of the fact that it is these political parties that propose individuals that come from them or representatives of their political will, who administer or politically lead the institutions of the Albanian state.

The dividing line between the state and the party is, and should remain, clear.

Any other approach that differs from this, is not related in any case to a legal and democratic state, and of course is not related to a state that guarantees rule of law and the principles of good governance.

In this difficult battle, especially after the Electoral Reform of July 2012, KRIIK has strongly and continuously supported the institution of the CEC by encouraging the just and complete implementation of the law, and also by often criticizing it.

The beginning of a serious state-formation process and later its consolidation cannot be done without **undoing impunity and unenforceability of the law**, which derives directly from **political parties, representatives and their supporters**, or by the support they give to other individuals with power.

The lack of will and a clear approach in this direction, as well as of a real result in this battle, cannot create **a favourable climate of trust in the law**, state institutions, and also in the democratic system itself, **by having a negative impact even in other challenges for the country, such as the success of the justice reform.**

The challenges of this battle and the absence of real results are closely and fundamentally related to all **conditions and obligations that Albania should fulfil in order to really represent the Euro-Atlantic principles and values, and to enter the European family.**

Even though the election process that elected the MPs (Members of Parliament) of Legislature X of the Assembly of Albania was organized during the pandemic, KRIIK together with a consolidated network of partners, 33 organizations, monitored all its phases in a detailed way by engaging approximately 1000 observers in the field.

While **the mechanism foreseen for the prevention of using state resources**, which was added by the legal amendments of 2020, **failed since the beginning** of the four-month period before the elections, a special attention was given to the just established CEC's discussion and decision-making process in relation to the financing of the electoral campaign.

KRIIK encouraged a proactive approach by the CEC in relation to this issue, which was not addressed before, by also offering findings that came out from evidence in the field and by the detailed analysis of the self-declaration reports of political parties; an issue that was closed with the decision of the Committee on Complaints and Sanctions taken on 25 January 2023.

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After ODIHR, as well as KRIIK, evidenced **the major problem of misuse of state resources** in this process, KRIIK is paying a special attention to the functioning of this mechanism, by considering it not only as a mechanism for misusing state resources, in

their materials sense, but especially as a **direct form of orientation, intimidation or even political blackmailing made to the citizens before the elections.**

In this framework, KRIIK **values the performance and work done until now by the CEC and its administration**, by making this mechanism functional for the first time for more than 700 institutions, and by making possible the control **or preliminary prohibition of some activities** that are considered as misuse of state resources for political/electoral reasons.

KRIIK has closely worked with the CEC, by encouraging its reaction and strengthening its practices, in the sense that it should be the institution of the CEC, which, after taking the indicia, even by a simple anonymous citizen, to completely discuss the information and pretence, and later on proceed as per legal provisions.

The implementation of the law, and of course the success or not of this mechanism, cannot depend on the will to engage or not of the legal subjects, parties or organizations, which have the necessary capacities to address concerns in the form of denunciations and to take the burden of proof, as it was done in the two previous processes.

The letter and the spirit of the law foresees and requires the contrary, **that the burden of any concern and information provided by the citizens is taken and is proved by the institution of the CEC.**

In this framework, for the consolidation of this approach and practice, KRIIK has sent nearly 200 denunciations, in the form of indicia, by offering for each of them the respective evidence and argumentation, as per KRIIK judgement, on the cases of infringements evidenced during this period, such as:

- absence of reporting for 150 activities;
- 11 activities with political/electoral content and presence of political persons;
- 2 prohibited activities, which are in fact organized;
- reporting of 483 activities (from 2699 reported in total) reported to be organized in violation of the legal deadline of 5 days;
- the cases of five municipalities and 20 mayors that have posted in their social media official pages posts from the activities of the Socialist Party; etc.

Honourable Speaker of the Assembly!

In its commitment, and following the information we provided above, KRIIK considers it necessary to share with you, *firstly*, an important issue, which **is being considered a challenge for the institution of the CEC, related to the presence and active participation of MPs** in the institutional activities organized by other state institutions, especially municipalities in the country.

In relation to this issue, KRIIK has expressed its official stance to the CEC, and publicly², by **considering the presence of political representatives, even that of MPs, in the daily activities of the administration of municipalities and its chair, as illegal**, that the latter organize in compliance with their routine functional responsibilities and duties³, which, as per KRIIK judgement and based on the legal provisions⁴ of the law, do not match in any point with the responsibilities and functions of the Member of the Assembly of Albania⁵.

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The state is clearly divided by the politics of parties, and in this respect, all public officials, including Members of the Assembly of Albania, should be careful and respect the Constitution and the law.

Secondly, I inform you and bring to your attention a **flagrant case of infringement of the Code of Conduct by one of the Members of the Assembly of Albania**, namely Mr. Etjen Xhafaj, who, by participating in a prohibited activity, has challenged and infringed the decision and prohibition by the Central Election Commission to one activity of the Municipality of Kavaja.

During the monitoring process, it was evidenced that besides the Mayor of the Municipality and MP Etjen Xhafaj, both co-chairs of the Socialist Party, Branch of Kavaja, would participate in the activity “Meeting with the excellence of the city and the Administrative Unit”, to be organized on 22.03.2023.

KRIIK denounced the case immediately to the CEC, requesting to **prohibit the activity** based on Article 92, point 4, of the Electoral Code.

The activity was prohibited by the CEC on 18 March, which was reflected in the CEC official webpage, the prohibited activities section⁶.

By the following monitoring process for the implementation of this decision, **it resulted that this activity was organized one day before, which means on 21 March 2023**, and besides the Mayor of Kavaja and the co-chairs of Socialist Party, Branch of Kavaja, also MP Etjen Xhafaj participated in the event.

KRIIK denounced⁷ this fact again by considering it a challenge for the implementation of the law and the CEC itself by the actors involved in this activity.

The denunciation requested CEC to **sanction pursuant to legal provisions** not only the local officials, **but also the electoral subject of the Socialist Party of Albania**, which is the main beneficiary of this prohibited activity (Article 172, point 1); and at the same time, one of its high officials, the Digital Secretary Mr Etjen Xhafaj, who also is an MP, has been part of this infringement.

Moreover, besides sanctions, KRIIK suggested CEC to **send a detailed information on this case to the Assembly of Albania, for the infringement of the Code of Conduct by MP Etjen Xhafaj**.

In relation to the above, KRIIK asks You publicly, Honourable Speaker of the Assembly, to encourage the beginning of a verification process and collection of the complete information by the Central Election Commission for this case, by dealing as soon as possible with the infringement made by MP Xhafaj pursuant to the respective disciplinary measures provided by the Rules of Procedures of the Assembly.

The absence of reaction to this case of infringement, is nothing else but an invitation to all Members of Parliament to continue this practice, by not respecting and infringing the CEC decision, **and in this way, by challenging the law, the institution and the entire preventive mechanism for the misuse of state resources specified in the Electoral Code**.

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At the same time, KRIIK encourages You to take the necessary steps to orient and advice all MPs to correctly implement the law, by not abusing in any case with the public post and function they hold, by strictly respecting the legal framework and the Code of Conduct for MPs, especially during the electoral campaign.

With high consideration,

On behalf of the

**Coalition for Reform, Integration and
Consolidated Institutions
(KRIIK)**

**Premto GOGO
Chair**

Tirana, on 31 March 2023!

****This OPEN LETTER is published in Albanian and in English.
The Albanian version is the only official document.***

¹ - Copenhagen Document

Article 5.4 - "clear division between the state and political parties; especially, political parties should not be mixed with the state."

Article 7.6 – States will offer "...political parties and organizations the necessary legal guarantee to allow them to compete with each other based on equal treatment before the law and authorities".

- Venice Commission, the Code of Good Practice in the Field of Political Parties

Paragraph I.2.3.aa - "Should guarantee equality of opportunities for parties and candidates. This implies a neutral stance of state authorities, especially in relation to:

i. electoral campaign

ii. media coverage, especially the public one

iii. public financing of parties and campaigns".

- Carter Center, Declaration of the Council of Presidents and Prime Ministers of the Americas

"Parties and candidates should have just and equal opportunities for their campaigns; access to the media and adequate resources are decisive. Unfair advantages that derive from duty should be addressed and the use of state resources that are not placed at the disposal of all candidates in the electoral campaign should be prohibited".

- Convention on Standards of Democratic Election, Voting Rights and Freedoms, in the Commonwealth of Independent States

Article 3(6) - "Candidates have no right to benefit from their official post or advantages of duty with the aim to be elected".

² All documents officially sent to the CEC have also been published in the [official website of KRIIK](#) (in Albanian).

³ In the meeting of the Commission of Complaints and Sanctions (CCS) held on 29 March 2023, KRIIK publicly suggested to CCS, that as part of the leading bodies of the CEC, to interact with the Commissioner and the administration, as well as to make its interpretation on the prohibition or not of the presence of MPs, political persons that hold at the same time public functions, in the institutional activities of different institutions, especially municipalities, especially now that there is a bit more than one month left until the election day, and which is also the more tense period because this is the official period for the electoral campaign.

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- ⁴ - Constitution of the Republic of Albania (as amended).
- Law No. 8550, dated 18.11.1999 “Status of the MP” (as amended).
- Rules of Procedures of the Assembly of Albania (as amended).
- Decision No. 61/2018 “On approval of the Code of Conduct for the Members of the Assembly of the Republic of Albania”.

⁵ We emphasize that for the case of infringement under discussion, we are not in the case where we prohibit the MP to contact the voters. The law foresees clearly when the MP can contact the voters as part of his parliamentary activity, the forms through which he can contact them, and which are his duties in relation to them. So, he can contact with the voters in a direct way or through the political party he represents, but in no case can he use the institutional activity of different institutions, especially that of local government institutions, for which there is a clear way of institutional communication and interaction with them.

- Constitution of the Republic of Albania (as amended) foresees that MPs represent the people and are not related to any obligatory mandate (*article 70*). This provision, in KRIIK’s judgement, is related to the exercise of sovereignty of the people that they represent (*article 2*) in the stances that they hold while exercising their public function, by addressing among others, concrete issues or other issues that have a wider public or political interest.

- Law No. 8550, dated 18.11.1999 “Status of MP” (as amended), article 4, point 3, specifies clearly the duties of the MP and his connection to the voters in the constituency that he was elected and that he represents, by specifying that “the MP has the right to express freely his opinion and that of the voters he represents, through discussion, proposals, debates, interpellations and questions, motions, declarations or votes”. Meanwhile, article 5 of this law clarifies even further the nature of his activity and interaction with the voters that have elected him, by specifying that “the MP meets periodically with the voters or when they require this”.

The same law, also foresees the participation of the MP in different institutional activities of the local power, but when the later are part of the constituency in which the MP lives or has been elected, as well as the respective protocol relations (article 24).

Article 24, point 3, specifies that “the MP is involved, after the ministers, in the protocol of the municipality, region and prefecture where he lives or has been elected”.

Meanwhile, point 4 of this article specifies also the types of activities and method in which the MP is invited in these activities, by specifying that “the MP is invited to participate in official delegations, ceremonies, receptions and political, cultural, social and sportive activities based on the protocol defined in this article”.

In relation to his special status, article 2 of the law foresees that “1. The Member of the Parliament enjoys a special status during the period he exercises his mandate, a status that comes from the Constitution and the laws. 2. With status of MP we understand the position he has in legal relations, in relations with state administrative bodies and local government bodies, as well as the financial and protocol rights and obligations”.

The provisions specified from article 6 to article 11, make a summary of all competences and method of interaction with central and local institutions, which, in any case remains an institutional communication as the representatives of the voters’ concerns, and it does not foresee any joint interaction with the voters directly, especially in the legal and time context that we are discussing.

- Rules of Procedures of the Assembly of Albania (as amended); article 40 clarifies the parliamentary activity of MPs by specifying that “MPs are in parliamentary activity when they participate in the plenary session, in meetings of parliamentary committees / subcommittees and councils, in activities inside and outside the country or in activities in their constituencies, by previously informing the respective Assembly Services...”

Meanwhile, article 40/1 also specifies that “the programming of parliamentary activity” during the week or even during the calendar month.

So, from Monday to Thursday, it defines the activity of MPs through their participation in the permanent parliamentary committees or other parliamentary bodies, and in the plenary sessions, as specified by the three-week work calendar of the Assembly.

Meanwhile, on Friday, point 1 specifies that “the Assembly organizes parliamentary activity as per the following rules:... ç) On Friday, as a rule, there is the activity of MPs and parliamentary groups for informing the voters on the work of the Assembly and for dealing with the problems that voters have in the regions and in constituencies”.

Also, point 3 of this article specifies that “the fourth calendar week is at the disposal MPs and parliamentary groups for activities specified by point 1, “ç”, of this article”.

- Decision No. 61/2018 “On approval of the Code of Conduct for Member of the Assembly of the Republic of Albania”, which has been approved by the Assembly, and aims, among other things, “to orient the MP

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to exercise his duty, by defining the ethical principles based on the right standards of behaviour, and strengthen his integrity during the duration of the mandate”.

This Code is implemented for all aspects of the public life of the MP (article 2, point 1). According to it, “The MP, while exercising his mandate, should act in compliance with the rights and duties foreseen by the legislation in power for the status of the MP, as well as be guided by the principles of legitimacy, honesty, objectivity, transparency and accountability” (article 3).

In relation to the duties of the MP, article 4 of the Code specifies that “The MP regularly participates in the parliamentary and extra parliamentary activity of the Assembly, in compliance with the Rules of Procedure of the Assembly” (point 1), as well as “The MP organizes periodical meetings with the voters, with his initiative or when requested by them. He represents them by taking their opinion on legal initiatives, amendments, decisions and other issues that he drafts, discusses and approves in the Assembly” (point 3).

Article 5 also foresees that “The MP includes and treats without discrimination and with humanism the concerns and needs of the voters that he represents in discussions and debates in the plenary session and in parliamentary committee meetings, while discussing and approving parliamentary documents and action plans, as well as in the legal acts he approves”.

Meanwhile, article 9 foresees that “The MP uses the time of work, resources, staff and the property of the Assembly only to exercise the duties he has been given”.

⁶ We emphasize that this is the first activity prohibited by the CEC since the establishment and functioning of this mechanism, after the amendments to the Electoral Code made in 2020.

⁷ Denunciation – On the organization of the prohibited activity by the CEC, by the Municipality of Kavaja on 21.03.2023 (in Albanian).

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