



# 2023 STUDY REPORT

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DECISIONS OF THE JUDICIAL  
ELECTORAL COLLEGE



ALBANIAN HELSINKI COMMITTEE



**STUDY REPORT ON THE DECISIONS OF THE JUDICIAL  
ELECTORAL COLLEGE**

*(Legal analysis based on the provisions of the Electoral Code)*

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## Abbreviations

<b>GDCS</b>	<b>General Directorate of Civil Status</b>
<b>CT</b>	<b>Counting Team</b>
<b>ASC</b>	<b>The Appeals and Sanctions Commission</b>
<b>VCC</b>	<b>Voting Center Commission</b>
<b>CEC</b>	<b>Central Election Commission</b>
<b>EC</b>	<b>The Electoral Code</b>
<b>EAZC</b>	<b>Electoral Administration Zones Commission</b>
<b>RA</b>	<b>Republic of Albania</b>
<b>IC</b>	<b>The Initiating Committee</b>
<b>CR</b>	<b>The Regulatory Committee</b>
<b>CRICI</b>	<b>Coalition for Reforms, Integration and Consolidated Institutions</b>
<b>ECC</b>	<b>Electoral College of the Court of Appeal</b>
<b>SEC</b>	<b>State Election Commissioner</b>
<b>MoI</b>	<b>Ministry of Interior</b>
<b>PL</b>	<b>Partia e Lirisë (Freedom Party)</b>
<b>PKD</b>	<b>Partia Demokratike (Christian Democratic Party)</b>
<b>PBDNJ</b>	<b>Partia Bashkimi për të Drejtat e Njeriut (Union Party for Human Rights)</b>
<b>LRE</b>	<b>Lëvizja e Re (The New Movement)</b>
<b>PDSH</b>	<b>Partia Demokratike e Shqipërisë (Democratic Party of Albania)</b>
<b>EVCE</b>	<b>Electronic Voting and Counting Equipment</b>
<b>PS</b>	<b>Partia Socialiste (Socialist Party)</b>
<b>NRCS</b>	<b>National Register of Civil Status</b>
<b>VCS</b>	<b>Vote Counting Stations</b>

## INTRODUCTION

"Elections determine the extent of democracy in a society, as they directly influence the quality of governance. Therefore, the progress of elections is a crucial measure of democratic legitimacy and the overall development of a country."<sup>1</sup> "The importance of elections lies in the fact that, within the framework of parliamentary democracy, they enable formal citizen participation in the exercise of power.

Free and fair elections are the cornerstone of a democratic state, fostering political stability, social cohesion, and the protection of human rights. They are essential for upholding the principles of representation, accountability, and the rule of law within society.

*The right to vote* is one of the fundamental political rights individuals enjoy. Its primary contribution is ensuring that all voters have the opportunity, without discrimination based on social strata, group affiliation, or other grounds, to influence the formation of political will in a democratic society."<sup>2</sup>

The expression of individual will through voting aims to *shape the political will in a democratic society* by selecting representatives for central or local government bodies, which is intrinsically linked to the general public interest.

Electing representatives through an electoral process is fundamentally important in a state governed by law, as it is a key form of exercising the sovereignty of the people.<sup>3</sup>

Similarly, the election of representatives for local government units is conducted through an electoral process based on the voting rights of residents within the respective administrative unit.<sup>4</sup> Given the significance of the election process in a democratic society, the Constitution of RoA has explicitly mandated the special legal regulation of this process in the law on elections."<sup>5</sup>

This report primarily analyzes the local elections held on May 14, 2023, in which voters elected mayors and councilors for Albania's 61 municipalities. Approximately 3.65 million voters were registered for these elections.<sup>6</sup> A total of 40 parties and coalitions participated in these elections, fielding 144 candidates for mayors and approximately 23,700 candidates for councilors.

The Study Report on the Decision-Making of the Judicial Electoral College provides a legal analysis of the provisions of the Electoral Code, emphasizing that a fair electoral process ensures equal opportunities for all citizens to participate. During the observation of the parliamentary elections on April 21, 2021, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) highlighted the need for further revisions to the legal framework. This

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<sup>1</sup> OSCE presence, Decisions of the Constitutional Court in the Field of Elections [1992-2015], Tirana 2016  
<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osce.org/files/f/documents/c/e/304871.pdf>

<sup>2</sup> Decision no. 11, dated 13.03.2015 of the Constitutional Court

<sup>3</sup> Article 2 of the Constitution of RA, which expressly provides that: "The people exercise sovereignty through their representatives or directly".

<sup>4</sup> Article 109 of the Constitution, which expressly provides that: "1. The representative bodies of the base local government units are the councils, which are elected every four years by general, direct and secret ballot elections."

<sup>5</sup> Article 68/2 of the Constitution provides that: "2. The law on elections also defines criteria and other rules necessary for the organization and conduct of elections, including those for voter registration, the conduct of the election campaign, the administration, the validity of the elections and the announcement of their results."

<sup>6</sup> <https://www.osce.org/files/f/documents/4/6/542511.pdf>



should address the unaddressed recommendations of the ODIHR and the Venice Commission through an open and inclusive consultation process, approved before the next election.

The principle of free elections that ensure the secrecy of the vote remains only partially realized. It is recommended that ways be found to prevent any form of pressure to disclose whether someone voted and how they voted. Following these recommendations, efforts have intensified to identify, investigate, and prosecute vote-buying cases by law enforcement agencies, as well as to encourage citizens to report and provide evidence of any vote-buying or instances of exertion of pressure.

In relation to the local elections of May 14, 2023, ODIHR's recommendations address several issues highlighted, including vote buying and the use of state funds in campaigns at both local and central levels. These recommendations include measures to prevent the misuse of state resources at all levels, to address accusations of vote buying from all sides, to ensure safeguards for the secrecy of voting, and to prevent voter intimidation and pressure on public sector employees and voters.

## **I. DOMESTIC/INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR ELECTIONS**

### **1.1 Free elections as a constitutional/international right**

In the Republic of Albania, local elections are regulated by:

- Constitution of the Republic of Albania (1998) - The first part of the Constitution of the Republic of Albania sets forth basic and concrete principles. Article 1/3 of the Constitution provides: '*Government is based on a system of free, equal, general elections.*'
- Electoral Code (2008, amended) - The Electoral Code serves as a fundamental basis for democratic elections. It regulates the electoral process in specific ways and elements as specified by this Code, which is the organic law applicable to all claims regarding the regularity of the electoral process.

Both of these important acts, which have supremacy in the pyramid of normative acts of the RA, were last amended in 2020. As a result, the new legal provisions related to electoral administration, campaign financing, and safeguards against the abuse of public resources were implemented for the first time in the parliamentary elections of 2021.

Among other normative acts applicable in matters of electoral administration and the resolution of electoral disputes, can be mentioned the following:

- Administrative Procedure Code;
- Civil Procedure Code;
- Law on Political Parties (2000);
- Law on Guaranteeing the Integrity of Elected, Appointed or those Exercising Public Functions (2015);<sup>7</sup>

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<sup>7</sup> The so-called Decriminalization Law.

- Law on Assemblies (2001);
- Law on Gender Equality (2008);
- Law on Protection of Personal Data (2008);
- Regulatory acts of the Central Election Commission (CEC).<sup>8</sup>

Additionally, Albania is a *party to the specialized bodies of the Council of Europe and has ratified conventions related to democratic elections and human rights within the framework of its accession to the Council*. Albania is also a member of:

- The Commission of the Council of Europe on Democracy through Law (Venice Commission) and the Group of States against Corruption (GRECO);
- The Council of Europe, through the ratification of the European Convention on Human Rights (ECHR).

**This Convention provides** for the right to free elections in Article 3 of Protocol no. 1:

*“The High Contracting Parties undertake to organize, at reasonable time intervals, free elections by secret ballot, under conditions that ensure the free expression of the people's opinion on the election of the legislative body.”*

In general, the implementation of Article 3 of Protocol No. 1 does not include local elections, such as municipal ones<sup>9</sup>; or regional.<sup>10</sup> The Court has ruled that the power to issue regulations and administrative acts, which is recognized to local authorities in many countries, differs from the legislative power referred to in Article 3 of Protocol No. 1, even though legislative power should not necessarily be understood as pertaining only to national parliaments (Mólka v. Poland).<sup>11</sup>

## 1.2 Electoral Administration

The May 14<sup>th</sup> local elections were managed by a three-tier electoral administration:

1. Central Election Commission;
2. 92 Commissions of Electoral Administration Zones;
3. 5211 Commissions of Voting Centers.

Counting was carried out by Counting Groups at 92 Vote Counting Sites.

For the local elections on May 14, 2023, the CEZCs were established on February 12 and were responsible for conducting the elections in their respective constituencies,<sup>12</sup> which consisted of 7 members and 1 non-voting secretary, appointed by the parliamentary majority and the

<sup>8</sup> The acts of the CEC supplement the legislation related to the elections.

<sup>9</sup> *Xuereb v. Malta, Decision no. 52492/99, 15.06.2000 and Salleras Llinares v. Spain, decision no.52226/99, 12.10.2000*

<sup>10</sup> *Malarde v. France, Decision no. 55093/13, 17.06.2021*

<sup>11</sup> [Udhëzues rreth nenit 3 të Protokollit nr. 1 të Konventës Evropiane të Drejtave të Njeriut. E drejta për zgjedhje të lira](#), p. 5

<sup>12</sup> Municipalities with over 80,000 registered voters are divided by the CEC into more than one Electoral Zone. For these elections, 50 of the 92 CEAZs corresponded with their respective municipalities and handled the registration of candidates and the accreditation of party observers. In the remaining 11 municipalities, the registration of candidates and the accreditation of party observers were carried out by the CEC

opposition.<sup>13</sup> Political parties could withdraw or replace members of their commissions at their discretion and without justification.<sup>14</sup>

Sessions of the CEAZs are open to the public, and their decisions are either posted on-site or provided upon request. VCCs are established in the same manner as CEAZs. The law requires that voting centers be located in accessible venues.

The CEC piloted electronic voting in the municipalities of **Elbasan, Kamza, and Vora**, covering 401 voting centers.<sup>15</sup> For the first time in Albania, electronic voting and counting devices were tested during the 2021 Assembly elections and again in the local elections on May 14, 2023. According to **decisions no. 30, dated 19.06.2023, and no. 32, dated 20.06.2023, the ‘Bashkë Fitojmë’ Coalition contested the elections against the Central Election Commission.** They aimed to (i) invalidate the elections held in the Kamza/Elbasan electoral area, and (ii) repeat the elections for the Mayor of Kamza/Elbasan Municipality and the Kamza/Elbasan Municipal Council using traditional physical ballots. In both cases, the Judicial Electoral College determined that the claimant's request to invalidate the elections in Kamza/Elbasan due to violations in electronic voting was not legally supported. It was not proven that non-compliance with one of the technical conditions of the Electronic Voting and Counting Equipment (EVCE) affected the electoral process or influenced the election outcomes.

### 1.3 Voter Registration

Citizens aged 18 and older have the right to vote on election day, except for those deemed incompetent by a court decision, which contradicts international obligations prohibiting discrimination based on disability.<sup>16</sup> The right to vote is also suspended for citizens serving prison terms for certain crimes.<sup>17</sup>

Voter registration is passive and decentralized. Voter lists are extracted from the National Registry of Civil Status and maintained by the General Directorate of Civil Status at the Ministry of the Interior. The compilation of voter lists based on the criterion of residence was the subject of decision no. 28, dated 15.06.2023, by the Judicial Electoral College. The College partially upheld the plaintiff's claims, specifically regarding the invalidity of the elections at Voting Center No. 2224/1 of ZAZ No. 43, Rrogozhina Municipality. The alteration of the voter list concerning their place of residence exceeded the legal deadline of 60 days before election

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<sup>13</sup> Three members of the CEAZ are appointed by the parliamentary majority, and three are appointed by the parliamentary opposition (two from the main opposition/ruling party and one from the second majority/parliamentary opposition party). The seventh member is nominated by the SP in even-numbered CEAZs and by the DP in odd-numbered CEAZs. The chairman of the CEAZ represents the party that appointed the seventh member, while the vice-chairman comes from the opposite affiliation. The secretary is proposed by the political entity that appoints the vice-chairman.

<sup>14</sup> Section II.3.1.f of the Code of Good Practice in Electoral Matters of the Venice Commission 2002 stipulates that "bodies appointing members of electoral commissions should not have unrestricted authority to remove them arbitrarily."

<sup>15</sup> In each of these three municipalities, every voting center will be furnished with two machines. Altogether, the CEC has acquired 828 electronic voting devices. Paper ballots will be on hand at polling stations as a contingency in case of equipment malfunction..

<sup>16</sup> Article 29 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) mandates states parties to "ensure that persons with disabilities can exercise their political rights on an equal basis with others." Additionally, refer to paragraph 48 of General Comment No. 1 on Article 12 of the CRPD. Paragraph 7.3 of the 1990 OSCE Copenhagen Document asserts that OSCE participating States must ensure universal and equal suffrage for adult citizens. In practice, very few voters are actually deprived of this right due to mental, intellectual, or psychosocial disabilities.

<sup>17</sup> The Decriminalization Law suspends voting rights for committing crimes listed in more than 80 articles of the Criminal Code (ranging from election-related offenses to serious crimes).

day. Even if voters request a court clarification of their residence after the voter list is announced, the list does not change.

Until April 4, voters had various methods to verify their records,<sup>18</sup> while changes could be requested through the district court up to 24 hours before Election Day.<sup>19</sup> On Election Day, voter identification was conducted using offline electronic identification devices containing voter lists from all polling stations. Voters were required to present ID cards or biometric passports for identity verification, and their fingerprints were scanned instead of using a signature to confirm their identification.<sup>20</sup>

## 1.4 Candidates in Local Elections

**Every eligible voter** has the right to stand for local elections, with exceptions for individuals serving prison sentences, those convicted of certain crimes, individuals wanted by authorities, and those holding public positions incompatible with candidacy.<sup>21</sup>

**Political parties and coalitions** must register with the CEC as electoral entities before submitting candidate lists for municipal councils and mayoral positions.<sup>22</sup>

**Each candidate** can only appear on one list, and their position on the list cannot be altered after registration.

**Political parties, coalitions** not represented in parliament or municipal councils, and independent candidates must submit supporting signatures from at least 1% of registered voters in the municipality.<sup>23</sup>

The electoral administration is required by law to verify 5% of the submitted signatures. Candidate eligibility is assessed in accordance with the Electoral Code and the Law on Decriminalization.<sup>24</sup>

In the local elections on May 14, a total of 61 positions for mayor and 1,603 positions for council members were contested, which included 2 independent candidates for mayor and 10 for municipal councils:

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<sup>18</sup> Voters can review their voter list information through the CEC application or online portals available on e-Albania. Extracts of the voter list have been published by the electoral unit.

<sup>19</sup> The voter lists were distributed to the CEAZ by April 9, and the final voter lists were published shortly thereafter. The final voter list comprises 1,843,170 male voters and 1,807,380 female voters.

<sup>20</sup> To enhance security against potential identity theft, the CEC has implemented new criteria for voter identification. Voters will have up to three attempts to authenticate themselves using their thumb and forefinger. If unsuccessful, they must sign the voter's roll and provide a printout from the device to be permitted to vote.

<sup>21</sup> The Decriminalization Law addresses individuals deported from EU member states, Australia, Canada, and the United States. It also encompasses citizens convicted of specific crimes, even without a final court decision, and those subject to an international search warrant. Certain officials, including judges, prosecutors, military personnel, law enforcement officers, national security personnel, diplomats, prefects, election commission members, the President of the Republic, and senior state administration officials as designated by law, must resign to be eligible for candidacy.

<sup>22</sup> Parties must submit documentation for registration by March 6, while coalitions have until March 15.

<sup>23</sup> Political parties without representation in parliament or local councils are required to submit between 50 and 3,000 signatures of supporters for registration, regardless of the election type. Independent candidates for local elections must provide signatures equivalent to 1% of registered voters in their respective municipality regardless of its size, with a threshold of 7,000 voters set for Tirana municipality. Independent candidate Eduard Nallbani was denied registration due to insufficient supporter signatures.

<sup>24</sup> The CEC and the 50 CEAZ verify candidates' eligibility to run, while the CEC ensures they meet legal integrity criteria, such as having no criminal convictions or ongoing investigations for certain offenses. Candidates requiring further investigation are referred to the General Prosecutor's Office.

- 40 parties and coalitions;
- 144 candidates for mayor;
- 23,700 candidates for municipal councils.<sup>25</sup>

## 1.5 Election Campaign

The election campaign officially commenced on April 14, 2023, and concluded one day before the elections, on May 13, 2023. Campaigning in public facilities is strictly prohibited.<sup>26</sup>

**Decision No. 9 of the CEC** of 2020 bars public servants from engaging in political activities during working hours. The CEC is empowered to scrutinize all activities of public institutions to detect the misuse of public resources and halt any actions contrary to the law. The practical implementation of these legal provisions became the subject of scrutiny by the Electoral College via **Decision No. 20, dated May 18, 2023**. This decision pertained to **Dallëndyshe Bici, General Director of the State Cadastre Agency, who was reported to the CEC** by the "Civic Resistance" Center for alleged misuse of public resources. The complaint alleged that on *April 16, 2023, a meeting took place at the courtyard of the "Isuf Seferi" primary school in the village of Fshat between the Socialist Party's mayoral candidate for Kukës, at the same time incumbent mayor Safet Gjici, and residents of the village*. When the administrative procedure followed by the State Election Commissioner and then the Appeals and Sanctions Commission pertains to a third person, not an electoral subject, the College has determined a lack of subject matter competence and has suspended the trial. In the lawsuit filed by *Safet Gjici v. the Central Election Commission (Decision No. 24, dated 24.05.2023)*, the College decided to dismiss the case after Mr. Gjici did not appear in court without justified reasons, indicating a lack of interest in the trial.

Regarding the case of Dallandyshe Bici, it is essential for the court to interpret her case in light of constitutional principles and the Electoral Code, emphasizing the impartiality of public officials to prevent the misuse of their positions to unfairly influence elections. Additionally, it is crucial to clearly define the limitations that general directors of public government institutions may have in their involvement in electoral campaigns. These limitations may include: Restrictions on the use of government resources for campaign purposes; Prohibitions on involvement in party political activities while in office; Requirements for obtaining leave or resigning from their positions if they wish to actively participate in a campaign.

## 1.6 Financial Funds

Contestants can finance their campaigns with both public and private funds. The principle of transparency in the financing of political parties is outlined in Articles 15/1 and subsequent articles of the law "On Political Parties" Article 15/2 states: *The Central Election Commission is the body responsible for monitoring and supervising the financing of parties, according to the rules of this law. 2. The Central Election Commission: d) Imposes sanctions when it finds a violation of the provisions of this law.*

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<sup>25</sup> Based on CEC data, three parties and seven voter groups were denied registration due to incomplete documentation. Three candidates for mayor and ten candidates for local councilors withdrew after being registered. On April 18, 2023, the CEC reinstated the candidate for mayor of Nisma Thurje in Dropull (Gjirokastra District) following a decision by the Electoral College.

<sup>26</sup> These prohibitions are regulated by the Electoral Code, the Law on Ethics in Public Administration, and the Law on Civil Service.

With the amendments made to this law in 2020, coinciding with changes to the Electoral Code, provisions related to the financing of election campaigns were moved from the law "On Political Parties" to the Electoral Code, specifically in Article 3, point 5/1.

On April 12, 2023, the CEC allocated 345,341,079 ALL (about 3.07 million Euros) from the annual public fund, as provided by the Law on Political Parties, to the 11 parties that competed in the last parliamentary elections.<sup>27</sup> Political parties that received at least 1% of the votes in the last local elections are eligible for additional public funds, as stipulated in the Electoral Code. The Parliament allocated 100 million ALL for the local election campaign.<sup>28</sup> In support of this, the CEC decided on April 22 to allocate about 97 million ALL to 13 electoral subjects. Independent candidates do not benefit from public funds.

In the final report on monitoring the local elections of May 14, 2023, the AHC recommended revising law no. 8580, dated 17.02.2002, specifically Article 19/2, which governs the distribution of financial aid to political parties. The recommendation suggested that parties meeting one of the defined criteria should not also benefit under another criterion. AHC recommended that the provision should include clear and objective criteria to enable a fair and proportional distribution of public funds among political parties<sup>29</sup>.

Private funds for campaign financing can consist of the contestant's own resources, donations from Albanian citizens and legal entities, and bank loans. Donations, including those in kind, are limited to 1 million lek (about 8,850 Euros).<sup>30</sup>

Total campaign expenses for a party must not exceed 300%, and those for an independent candidate must not exceed 50%, of the highest amount of public funds allocated to a party based on the results of the last local elections. Since these funds were determined on April 22, contestants became aware of the spending limit after the campaign had already begun. Each contestant had to register every donation they received, along with the donor's identification data, in a special register approved by the CEC. Contestants were not required to publicly disclose the source and value of funds raised before Election Day but must submit financial reports within 60 days of the final results being announced. The Electoral Code includes a list of sanctions for financial violations during the campaign.

The decisions related to the bypassing of the obligation for financial reporting by political parties pertain to the Assembly elections of April 25, 2021. The first decision involves the Legality Movement Party as the plaintiff against the CEC (respondent). In decision **no. 1, dated 09.03.2023**, the College determined that the plaintiff, as a political party, could not bypass the financial reporting obligations outlined in the Electoral Code by merely justifying that it was

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<sup>27</sup> Of these, the Socialist Party (PS) received about 151.5 million ALL, the Democratic Party (PD) 106.4 million, the Freedom Party (PL) 15.5 million, the Social Democratic Party (PSD) 12.3 million, the Republican Party (PR) 11.5 million, the Justice, Integration and Unity Party (PDIU) 9.8 million, the Union Party for Human Rights (PBDNJ), the Agrarian Environmentalist Party (PAA), the Progressive Alliance Party (PAP), and the Legal Movement Party (PLL) 8.0 million each, and Nisma Thurje (NTH) 6.3 million. 1 euro is converted to approximately 113 ALL.

<sup>28</sup> On April 20, the government approved a decision on "Taking measures and monitoring the activity, behavior, or use of administrative resources during the electoral process," establishing an ad hoc task force for the coordination of the monitoring process. This task force comprises 11 ministers and state officials, with representatives from four other institutions, including the CEC and the General Prosecutor's Office.

<sup>29</sup> Raporti-Perfundimtar-per-Monitorimin-e-Zgjedhjeve\_19-Shtator-2023.pdf (ahc.org.al), p.28

<sup>30</sup> Legal entities that have benefited from public procurement funds over 10 million lek (approximately 88,500 euros), those involved in public partnership projects or with debts to the state budget, as well as those engaged in activities related to the media, are not allowed to donate to electoral campaigns. All donations exceeding ALL 50,000 (approximately EUR 440) must be made through a designated bank account.

an obligation of the leading party of the coalition. Upon analyzing this decision, it is evident that there is an inaccuracy in the Electoral Code's provisions regarding the right to appeal to the court, as the incorrect legal reference was used. Specifically, Article 145/2 of the Code refers to letters "a," "b," "c," and "ç" of Article 24 of the Code concerning the exception for electoral subjects to appeal to the Electoral College should the CEC make not a decision within the legal deadline. However, Article 24 does not contain the letters "a," "b," "c," and "ç," thus creating legal ambiguity.

**In the second decision, No. 2, dated 09.03.2023, the plaintiff party Bindja Demokratike requested the annulment of the decision of ASC No. 07, dated 25.01.2023, which imposed an administrative sanction of ALL 500,000 for violations related to financial reporting, according to Article 173, point 3, of the Electoral Code. The College decided to suspend the trial of this case and referred the acts for jurisdiction to the Administrative Court of First Instance of Tirana.**

**In the third decision, No. 3, dated 09.03.2023, the request of the political party "Lëvizja për Zhvillim Kombëtar " to amend the decision of ASC No. 07, dated 25.01.2023, imposing a fine of 500,000 lek for violations related to financial reporting, was not terminated by the ECC. Instead, the case was sent for jurisdiction to the Administrative Court of First Instance of Tirana. The ECC upheld the decision of the ASC to impose an administrative measure against the electoral subject.**

These differing positions on similar issues highlight the ambiguity within the electoral process, particularly regarding financial matters, and the unclear scope of competence of the Judicial Electoral College. The inconsistent interpretation of the law, sometimes resulting in decisions by the JEC and other times referral to the Administrative Court of First Instance in Tirana, contributes to unstable jurisprudence. To address this situation, it is essential to specify in the Electoral Code the range of disputes that fall within the purview of the Judicial Electoral College during an electoral process.

## **1.7 Media**

The Electoral Code governs campaign coverage broadcast by the media, mandating impartial and balanced reporting. It also includes provisions to enhance transparency in election advertising and media monitoring reports. While television and traditional media remain primary sources of political information, the utilization of online media during elections and beyond is steadily increasing.

The College's decisions address various issues related to campaigns conducted through **online** media platforms and the use of **hashtags** by candidates themselves. In this analysis, **four decisions concerning the imposition of fines against candidates who utilized the official pages of public institutions on various social media platforms** (such as Facebook, Twitter, Instagram, etc.) categorized as "assets" under Article 91/2 of the Electoral Code have been identified. According to this provision, these websites are considered "resources" of the institution. Hence, the official websites of municipalities on these social networks cannot be used to support candidates, political parties, or coalitions during elections.

One of the decisions, **EC No. 19 dated 15.05.2023**, involved a case between **Shijak Municipality and the Central Election Commission**. The decision dismissed the lawsuit on the grounds that Shijak Municipality lacked the legal standing to file the lawsuit, as the legal interest belonged to the Mayor personally.

*Decision no. 21, dated 24.05.2023, Armando Subashi v. the State Election Commission and the Appeals and Sanctions Commission at the CEC.* However, Mr. Subashi failed to appear at the court hearing on 24.05.2023, despite receiving proper notification. He also did not provide any reasons justifying his absence to the Judicial Electoral College. According to Article 179 of the Code of Civil Procedure, as amended, non-appearance without reasonable cause leads to legal consequences, and if parties are regularly informed but fail to appear, the court or single judge may decide to suspend the trial. Consequently, the College canceled this trial.

*Decision No. 22, dated 24.05.2023, Gledian Llatja v. the Central Election Commission.* The Judicial Electoral College affirmed the position of the ASC, stating that “9. candidates for mayor, as per decision no. 441 dated 05.05.2023 of the State Election Commissioner, hold a dual status: as candidates and as acting mayors of their respective municipalities.” In this capacity, they have access, knowledge, and responsibility for the content posted on the official websites of the municipalities they lead. They possess the legal authority to order the cessation of any law violations and to take measures to prevent such behavior from recurring. The failure to exercise this authority until the Commissioner's order implies that, in their capacity as electoral subjects, they are subject to sanctions as stipulated in Article 172/1 of the Electoral Code. The College dismissed the lawsuit, deeming it unfounded in both law and evidence.

In **Decision No. 23, dated 24.05.2023, Majlinda Bufi v. ASC and the Central Election Commission**, the case presented by the Mayor of Roskovec challenging the administrative sanction imposed by ASC has been closed due to the lack of jurisdiction of the Electoral College. The case has been referred to the Administrative Court of First Instance in Tirana.

It's worth noting that in the case involving plaintiff **Majlinda Bufi**, the Judicial Electoral College took a different stance compared to two other cases with the same object (those brought by **A. Subashi** and **G. Llatja**). While the latter two lawsuits were dismissed and the decisions of the ASC remained in force, the case of Majlinda Bufi was dismissed with documents sent for jurisdiction to the Administrative Court of First Instance in Tirana. These differing interpretations of the law lead to inconsistent decisions and jurisprudence. Such discrepancies highlight issues within the legal system, as it is the court that ensures the implementation of the law. Therefore, it's imperative to specify in the Electoral Code the scope of disputes that fall under the purview of the Judicial Electoral College during an electoral process.

## **1.8 Institutional framework**

The Electoral Code outlines the right to appeal to the Judicial Electoral College for various processes and subjects. This right is granted to electoral subjects whose legal interests are impacted by decisions made by the CEC, as well as to third parties. While voters have the option to raise concerns about their inclusion in the voter list, and observers can address the rejection of their accreditation, anyone can file reports regarding alleged violations to the CEC. These reports can also be submitted electronically via the CEC website.



## 1.8.2 Formation of the Judicial Electoral College

The Judicial Electoral College comprises eight judges randomly selected by the High Judicial Council from among those judges<sup>31</sup> who have successfully completed the transitional re-evaluation process, as stipulated in Law No. 84/2016. This body is responsible for adjudicating complaints filed by electoral entities against decisions made by the Central Election Commission.

The required quorum for court proceedings is outlined in Article 155/2:

*The Electoral College convenes with a panel consisting of five judges. The case's rapporteur assumes the presidency of the judicial body.*<sup>32</sup>

The decision of the party/parties filing the lawsuit must be fairly heard, publicly announced by an impartial and independent court established by law, respecting legal deadlines.

## 1.8.3 Electoral subjects that can set the CEC/HJC in motion

Based on the Electoral Code, political parties, coalitions and candidates proposed by voters, as well as candidates for presidents of local government bodies, registered in accordance with this Code, are electoral subject.<sup>33</sup>

Electoral subjects have the **right to appeal to the Electoral College of the Tirana Court of Appeal** against the decisions of the CEC, when they violate their legitimate interests within the time limit defined in Article 152 of this Code. The right to appeal, according to this article, is also available to individuals or political parties whose application for registration as an electoral subject has been rejected.<sup>34</sup>

Appeals against any decisions made by the CEC during the period starting 48 hours after the decree of partial or general elections and ending with the completion of the administrative review of election appeals or the expiration of election appeal deadlines must be filed within 5 days of their announcement. For decisions made by the CEC outside this period, the deadline for appealing to the Electoral College is 30 days.<sup>35</sup>

The Electoral College adjudicates and decides on claims within a reasonable time, specifically within 10 days from the filing of the claim. This applies to decisions made by the CEC during the period starting 48 hours after the decree of partial or general elections and ending with the completion of the administrative review of election appeals or the expiration of election appeal deadlines.<sup>36</sup> The Electoral College decides within 30 days from the filing of the appeal.

Depending on the issues under consideration, the Electoral College decides:

- a) dismissal of the trial;

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<sup>31</sup> From the courts of first instance, courts of appeal, administrative courts of first instance and the Administrative Court of Appeal of Tirana

<sup>32</sup> Article 155, point 2, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

<sup>33</sup> Article 2, point 20, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

<sup>34</sup> Article 145, point 1, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

<sup>35</sup> Article 152, point 2, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

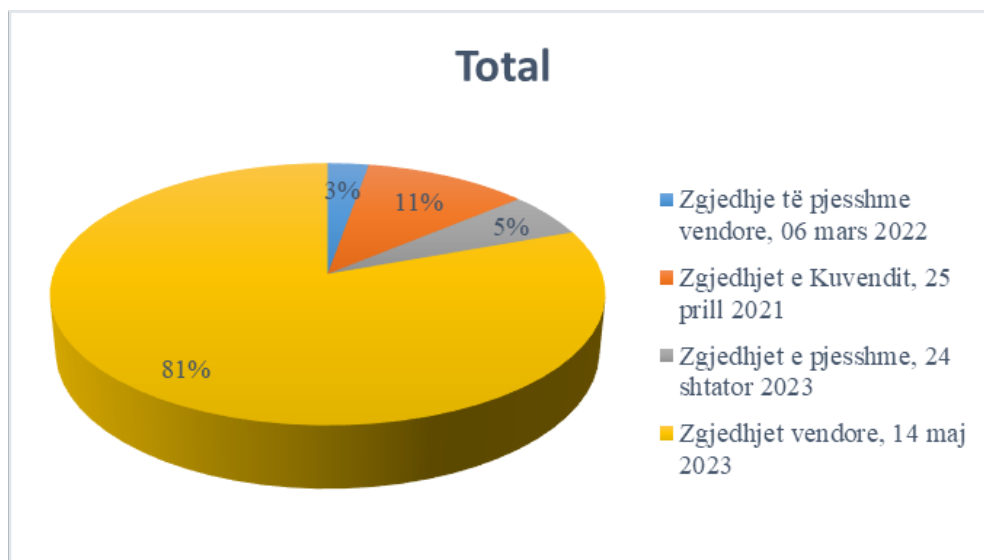
<sup>36</sup> Article 157, point 2, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

- b) judging the case on its merits; or
- c) requiring the CEC to make a decision.<sup>37</sup>

The decision of the Electoral College is final. It may not be appealed.<sup>38</sup>

## II. ELECTORAL COLLEGE DECISIONS IN GRAPHS

Through this study report, a legal analysis of 36 decisions by the Judicial Electoral College has been conducted. The following chart presents data pertaining to these decisions, the electoral subjects/third parties that filed lawsuits, and the categorization of elections. The categories include the partial local elections of 2022 and 2023, the parliamentary elections of April 25, 2021, and the general elections for local government bodies on May 14, 2023.



*Chart no. 1 – Assembly elections, local elections and partial local elections*

In the decisions of the College reflected in chart no. 1 we find cases related to:

- a) Partial elections held on March 6, 2022: One decision by the College has been analyzed regarding these elections.
- b) Partial elections held on September 24, 2023, for the Mayor of Kukës: Two decisions have been analyzed for this process, accounting for 5% of the total analyzed decisions.
- c) General elections for the Assembly on April 25, 2021: Four decisions related to the use of funds and transparency in financial reporting have been studied, making up 11% of the analyzed cases.

<sup>37</sup> Article 158, point 1, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

<sup>38</sup> Article 158, point 5, Law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania", amended

d) The local government body elections held on May 14, 2023, accounted for the largest number of decisions analyzed. Specifically, 29 decisions, representing 81% of the total, pertained to issues related to these local elections.

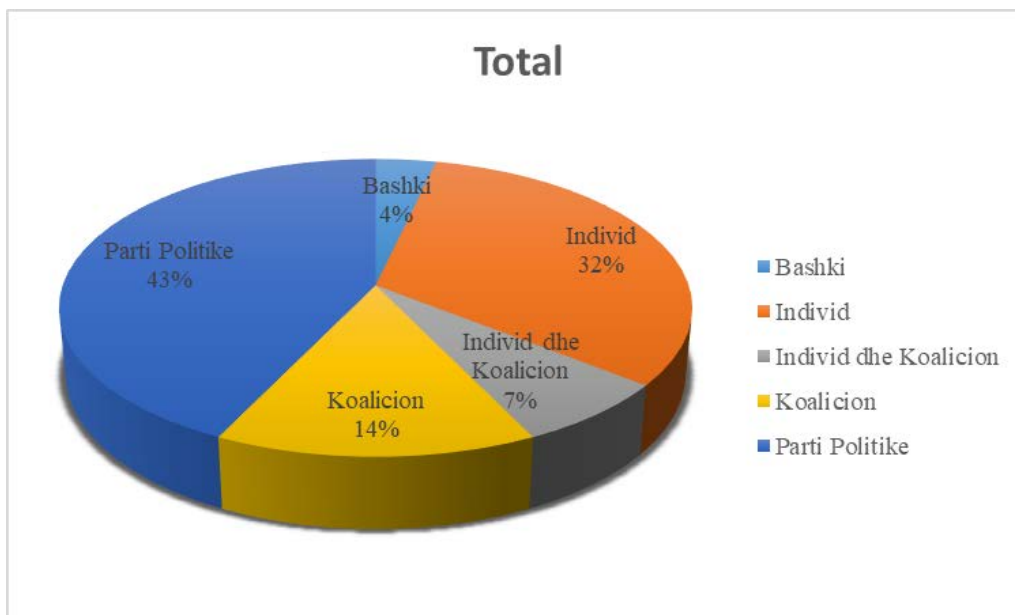


Chart no. 2 - Entities that filed lawsuits during these local elections of May 14, 2023

Throughout the analysis carried out, the entities that have the highest number and percentage of the submission of lawsuits reflected in chart no. 2 are the Political Parties in 12 decisions, followed by lawsuits filed by individuals, in 9 decisions, 4 cases filed by the Coalition, 2 cases of lawsuits filed by individuals and the coalition together and in one case it was filed by 1 municipality.

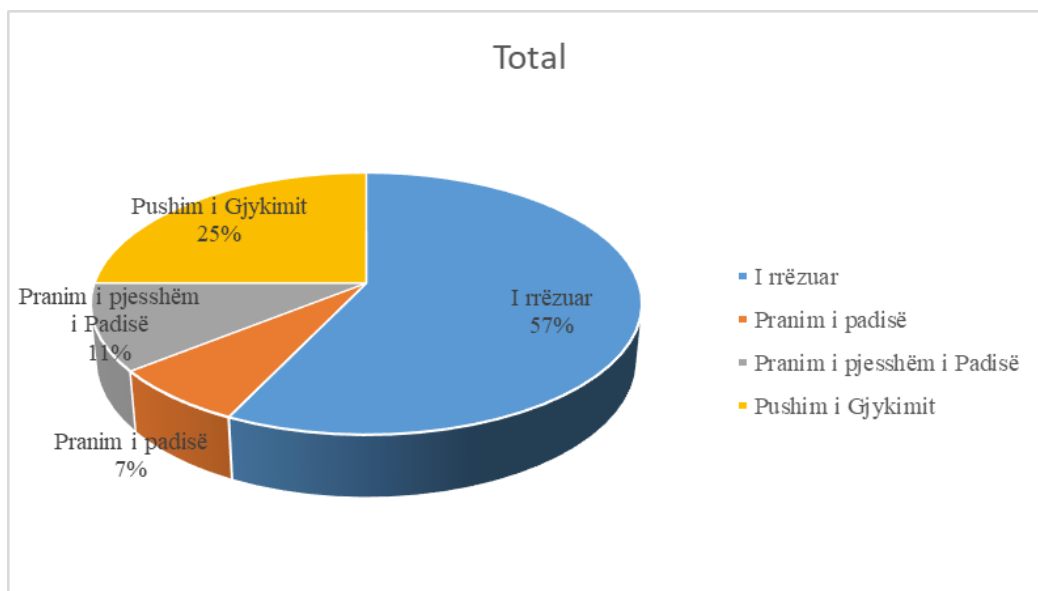


Chart No. 3 – Acceptance/Dismissal of Lawsuits for the Local Elections of May 14, 2023

Chart 3 reflects the outcomes of lawsuits filed regarding the local elections of May 14, 2023. The analysis reveals the following distribution of decisions: Dismissal of the lawsuit: 16 cases,

accounting for 57% of the analyzed cases. Dismissal of the trial: 7 cases, making up 25% of the cases. Acceptance of the lawsuit: 2 cases, representing 7% of the cases. Partial acceptance of the claim: 3 cases, constituting 11% of the cases.

### III. DECISIONS OF THE JUDICIAL ELECTORAL COLLEGE ANALYZED OVER TIME

#### **Lëvizja e Re (LRE) v. the Central Election Commission**

*Decision No. 1, Dt. 23.02.2022*

*The political movement "Lëvizja e Re" failed to submit the certificate of possession of the representative mandate or the list of supporting voter signatures for its mayoral candidate to the CEC.*

#### **\* Analysis of the content of the decision**

The matter concerns the partial elections for the Municipality of Durrës scheduled for 06.03.2022, as decreed by the President (Decree No. 13438, dated 20.01.2022).

In this specific case, the electoral entity "Lëvizja e Re" was denied the request to register its candidate for mayor of Durrës. The electoral subject objected to decision No. 08, dated 15.02.2022, titled "For Review of Appeal No. 03, submitted to the CEC on 12.02.2022" by ASC, and filed a lawsuit with the CEC on 17.02.2022.

The College assessed that the claimant enjoyed the legal right to request the College to examine its claims.

#### **\* Comment**

Through the decision-making in this case, the College has clarified the method of supporting candidates for local government bodies presented by political parties that do not hold any mandates in the Assembly or in the relevant local government unit bodies. The College emphasized the meaning of a mandate in the municipal council, distinguishing between personal support and the political support required for candidates presented by political parties without any mandates in the Assembly or local government unit bodies. The College concluded that ASC could not approve the registration of a candidate without meeting at least one of the conditions stipulated in Article 68, paragraph 2 of the Electoral Code. These conditions must be met for candidate registration, as their fulfillment affects the eligibility for candidacy.

#### **Lëvizja e Legalitetit Party v. the Central Election Commission**

*Decision no. 1, Dt. 09.03.2023*

*The Legality Movement party, as a political party, could not ignore the obligations for financial reporting under the Electoral Code, by not fulfilling them, simply with the justification that it was an obligation of the leading party of the coalition.*

#### **\* Analysis of the content of the decision**

The case concerns the ASC imposing an administrative fine of ALL 500,000 on the political party "Legality Movement Party" for failing to submit financial reports for three candidates from the lists for the parliamentary elections on April 25, 2021. Consequently, the candidates' reports were not audited.

In the lawsuit reviewed by the College, the plaintiff argues that in the parliamentary elections, the Legality Movement Party was part of the PD-AN coalition, where, according to Article 65/3 of the Electoral Code, any legal obligation to the CEC is fulfilled by the leading party of the coalition (PD).

In this case, the decision of KAS No. 07, dated 25.01.2023, was contested, and the claim was submitted to the Judicial Electoral College on 24.02.2023.

The College deemed that the plaintiff has the legal right to request the College to examine his claims. However, the College decided to dismiss the claim as unsupported by the evidence and the law.

**\* Comment**

Electoral subjects have the freedom to compete in the political race through the forms provided by the Electoral Code, including electoral coalitions. To enhance the transparency of political parties and their awareness when participating in an electoral coalition, we recommend that the Electoral Code should specify the essential elements that the coalition agreement must include. This will ensure that the agreements are comprehensive and aligned with paragraph 3 of Article 65 of the Electoral Code.

***Article 65 of the Electoral Code***

*3. At the time of registration, the coalition must declare its leading political party. For the purposes of implementing this law, all rights and obligations defined for electoral subjects by this law are fulfilled by the leading party of the coalition. The relations between the coalition parties and their mutual obligations are regulated in the coalition agreement, which is included in the documentation submitted by the coalition to the CEC.*

**Ambiguity in the Electoral Code**

During the analysis of this decision, an inaccuracy was found in the Electoral Code concerning the exception that allows electoral subjects to appeal to the Electoral College if the CEC does not decide within the legal deadline. Article 145, point 2 of the Code refers to letters "a," "b," "c," and "ç" of Article 24 of the Code, which do not exist in that article.

**Bindja Demokratike Party v. the Central Election Commission**

*Decision no. 2, Dt. 09.03.2023*

*Dismissal of the adjudication of the claim filed by Bindja Demokratike, as the case falls within the subject matter and territorial competence of the Administrative Court of the First Instance of Tirana.*

*The subject matter competence of the Electoral College of the Court of Appeal extends only to disputes arising from the electoral process*

**\* Studying the content of the decision**

The case concerns the request of the political party "Bindja Demokratike" for the annulment of ASC decision No. 07, dated 25.01.2023, which imposed an administrative sanction for financial reporting violations against this electoral subject in the amount of ALL 500,000, according to Article 173, point 3, of the Electoral Code.

The claim was submitted to the Judicial Electoral College on 24.02.2023.

The College decided to dismiss the trial of case No. 2 Found. Reg. dated 24.02.2023, and to transfer the case for competence to the Administrative Court of the First Instance Tirana.

**\* Comment**

In the case of two decisions by the Judicial Electoral College, decision No. 1 dated 09.03.2023 and decision No. 2 dated 09.03.2023, it was found that different solutions were provided for issues with the same or similar object. Both cases involved appeals against ASC decisions regarding the imposition of an administrative fine of ALL 500,000 for non-submission of financial reports. In the first case, the Judicial Electoral College upheld the ASC decision to impose the administrative measure against the electoral subject, while in the second case, the College dismissed the case and sent it for review to the Administrative Court of First Instance.

This approach by the Judicial Electoral College does not promote consistency in jurisprudence for resolving cases with similar objects, leading to the possibility of the law being interpreted and applied in different ways.

### **The Lëvizja për Zhvillimin Kombëtar Party v. the Complaints and Sanctions Commission and the Central Election Commission**

*Decision no. 3, Dt. 09.03.2023*

*The LZHK party has not fulfilled the legal obligations for the submission of financial data and expenses of the election campaign*

#### **\* Analysis of the content of the decision**

The case concerns the request of the political party "Lëvizja për Zhvillimin Kombëtar" to amend ASC's decision No. 07, dated 25.01.2023, which imposed an administrative sanction for violations related to financial reporting. The electoral entity "Lëvizja për Zhvillimin Kombëtar" was fined 500,000 ALL, according to Article 173, point 3, of Law 10019, dated 29.12.2008, "Electoral Code of RA", amended. Additionally, a fine of 100,000 Lek was imposed as an administrative measure for the party's financier, and the political party "Lëvizja për Zhvillimin Kombëtar" was obligated to return the amount of 55,166.74 Lek to the CEC.

The panel decided to dismiss the lawsuit.

#### **\* Comment**

The resolution of this case is once again intertwined with the issue highlighted in the case of two decisions by the Judicial Electoral College, decision No. 1 dated 09.03.2023 and decision No. 2 dated 09.03.2023. It has been noted that the court has provided different outcomes for cases with the same or similar subject matter. All three cases involve appeals against ASC decisions regarding the imposition of an administrative fine for non-submission of financial reports. In decision No. 1 dated 09.03.2023 and in the current case, the ECC upheld the ASC decision to impose an administrative measure against the electoral subject. However, in the case of decision No. 2 dated 09.03.2023, the ECC dismissed the case and referred it for review to the Administrative Court of First Instance.

As previously emphasized in the earlier analysis of decision-making, the inconsistency in standards does not promote the stability of judicial practice and raises concerns about the principle of public trust in the justice system. This case involves the **"Lëvizja BASHKË" party v. the Central Election Commission.**

*Decision no. 4, Dt. 21.03.2023*

*The "Lëvizja Bashkë" party has taken all necessary measures to fulfill the two cumulative conditions, specifically obtaining approval as a political party and completing registration within the deadlines stipulated by law at the Court of the Judicial District of Tirana.*

### **\* Analysis of the content of the decision**

The issue pertains to the request of the political party "Lëvizja BASHKË" to annul decision No. 157 dated 09.03.2023 of the State Election Commissioner and decision No. 23 dated 14.03.2023 of the Appeals and Sanctions Commission. Additionally, it involves obligating the Central Election Commission to decide regarding the registration of the Political Party "Lëvizja BASHKË" as an electoral subject for the local government bodies elections on May 14, 2023.

The electoral entity "Lëvizja BASHKË" is a political party registered in the Court of the Judicial District of Tirana with decision No. 2 dated 02.03.2023, which attained finality on 20.03.2023. The College decided to accept the lawsuit, deeming that the lawsuit presented by the "Lëvizja BASHKË" Party is supported by evidence and the law.

### **\* Comment**

From the provisions of the Electoral Code, it's evident that after the registration of electoral subjects, the registration of coalitions is carried out, followed by the presentation of candidacy lists. However, unlike the deadlines set for these preparatory steps, the Electoral Code does not specify a deadline for the CEC to decide on the registration of electoral subjects, coalitions, or candidacy lists.

Referring to Part IV of the Electoral Code, particularly Article 67, the deadline for submitting candidate lists is up to 50 days before the election day. In such circumstances, when the plaintiff's claim is filed within the legally stipulated deadline, it is recommended that the Commissioner could issue an interim decision to suspend the ongoing procedure until the end of the appeal period against the court decision for the registration of the requesting political party (the appeal period ended on 17.03.2023), in accordance with Article 66 of the Administrative Procedures Code.

Based on this case, it's essential to consider the interim decision as a mechanism for decision-making at specific moments clearly defined in the Electoral Code, to ensure that subjects are afforded the right to a fair decision regarding their request for registration as an electoral subject, and not only.

### **Democratic Party of Albania v. the Central Election Commission**

*Decision No. 5, Dt. 27.03.2023*

*The lawsuit is dismissed on the grounds that the plaintiff, the Democratic Party represented by Vice President Mr. Enklejd Alibeaj, lacks legitimacy to present it before the Judicial Electoral College. As the Democratic Party is not itself an electoral subject, its interests are not directly affected by the decision-making of the ASC regarding the deregistration.*

### **Analysis of the contents of the decision**

The case involves a request from the plaintiff, the "Partia Demokratike e Shqipërisë" headed by Mr. Sali Berisha, to the Central Election Commission and the Democratic Party being the interested legal entity on the matter, urging the State Election Commissioner to deregister the entity "Democratic Party" registered with Vice President Mr. Enklejd Alibeaj as acting chairman. Additionally, the plaintiff seeks to register the Democratic Party of Albania represented by Chairman Mr. Sali Berisha as an electoral subject in the elections for local government bodies on May 14, 2023, and to include it as part of the "Bashkë Fitojmë" Coalition, registered by the SEC with its decision dated 18.03.2023.



The SEC concluded that the plaintiff party, the Democratic Party chaired by Mr. Sali Berisha, lacks legitimacy to oppose the decision-making of the ASC regarding the registration of another electoral subject, as per Article 145 of the Electoral Code. This legal provision stipulates that only electoral subjects have the right to appeal to the Electoral College against CEC decisions that violate their legitimate interests within the specified term defined in Article 152 of the Code. The right to appeal, as per this article, is also extended to individuals or political parties whose request for registration as an electoral subject has been rejected. Consequently, the Judicial Electoral College decided to dismiss the lawsuit.

#### **\* Comment**

In the present case, one of the most contentious aspects concerns who has the right to submit a request for the registration of a party as an electoral subject. Article 64 of the Electoral Code states that each political party must submit such a request to the CEC no later than 70 days before the election date, accompanied by the required documentation outlined in subparagraph "b" of this article. However, the article does not explicitly specify which body is competent to make this request. Conversely, the Civil Code, particularly in its provisions on representation, allows for representation through authorization to perform various legal actions. Given this, it is advisable to clarify the relevant body responsible for submitting the request for the registration of a political party as an electoral subject to the CEC. Additionally, the right to representation by other bodies in the absence of the party leader should also be addressed. This clarification would ensure consistency and clarity in the electoral process, preventing potential ambiguities or disputes regarding representation.

### **Democratic Party of Albania v. the Central Election Commission**

*Decision No. 6, Dt. 30.03.2023*

*The plaintiff's claim that, in his decision, the State Election Commissioner should have decided that the name of the Democratic Party of Albania was removed from the agreement as it violated the plaintiff's interests in this trial, constituted an unfounded claim in the law.*

#### **\* Analysis the content of the decision**

The case pertains to the request of the electoral entity "Partia Demokratike e Shqipërisë," represented by its acting chairman/vice-chairman Mr. E. Alibeaj, addressed to the Central Elections Commission and the "BASHKË FITOJMË" coalition, with an interested person, regarding the annulment of decision No. 32, dated 23.03.2023, by ASC. This decision concerns the non-acceptance for consideration of appeal request No. 37, dated 21.03.2023, filed by the "Democratic Party of Albania," aiming to repeal decision No. 178, dated 18.03.2023, by the State Commissioner of Elections. Decision No. 178 pertains to the examination of the request for the registration of the coalition "Bashkë Fitojmë" (BF) for the elections for local government bodies on May 14, 2023. Additionally, the request seeks to rectify the shortcomings from the side of the applicant Partia e Lirisë by amending the coalition agreement to remove reference to the Partia Demokratike e Shqipërisë from this document.

The Judicial Electoral College decided to dismiss the lawsuit.

#### **\* Comment**

In the present case, one of the most contentious aspects concerns the coalition agreement made between the political entities and lodged with the CEC. One of the areas not extensively addressed in the Electoral Code pertains to coalition agreements. The Electoral Code lacks specific provisions for agreements made between political parties that are part of a coalition. Article 65, point 3, of the Electoral Code addresses this agreement in a general and declarative manner.

**Article 65**

1. *At the time of registration, the coalition must declare the leading political party of the coalition. For the purpose of implementing this law, all the rights and obligations defined for electoral subjects by this law are fulfilled by the leading party of the coalition. The relations between the coalition parties and their mutual obligations are regulated in the coalition agreement, which forms part of the documentation submitted by the coalition to the CEC.*

Based on the electoral disputes that have been addressed by the electoral administration bodies and the Judicial Electoral College, the AHC (Albanian Helsinki Committee) assesses that the Electoral Code should explicitly outline the essential elements of the coalition agreement, including its object, the rights and obligations of the parties involved. Furthermore, it should clarify the competence of the CEC in reviewing and accepting the agreement.

**Lodovik Hasan v. the Central Election Commission**

*Decision No. 7, Dt. 05.04.2023*

*The fine imposed by ASC on the plaintiff without prior notification, summons, and hearing regarding the alleged violation constitutes a breach of the principle of legality. Such an administrative process violates the principle of due process, as an administrative fine cannot be imposed without adhering to the principles of procedural fairness.*

**\* Studying the content of the decision**

The case involves a request from the plaintiff, candidate Ludovik Hasan of the Republican Party, to the Central Election Commission for the annulment of point 3 of decision No. 7, dated 25.01.2023, of the Complaints and Sanctions Commission. This decision concerns the imposition of an administrative sanction of ALL 500,000 against the plaintiff for the non-submission of income and expenditure reports.

The subject, Ludovik Hasan, is entitled to appeal to the Judicial Electoral College. According to Article 2/20 of the Electoral Code, "**political parties, coalitions, and candidates proposed by voters, as well as candidates for presidents of local government bodies, registered in accordance with this Code, are considered electoral subjects.**"

According to this regulation, when the ASC charges a candidate with administrative responsibility in the context of *financial audits of funds received and spent during an election campaign, the candidate, as part of the electoral subject, has the right to lodge a complaint before the College against the relevant decision of the ASC.* This is because the electoral entity for which the plaintiff was a candidate does not necessarily protect and represent his interests, particularly if the violation was committed by the candidate and not by the electoral entity itself.

The appeal to the Judicial Electoral College was submitted two months after the announcement of the decision of the CEC, in violation of Article 152, point 2 of the Electoral Code.

Based on the analysis of the facts, the plaintiff in the judicial review claimed violations of the rights of due process provided by the Code of Administrative Procedure and the Electoral Code.

The College emphasized that during the trial, it was found that ASC conducted the hearing in the presence of the representative of the Republican Party. The Commissioner had requested a fine for this electoral subject due to the non-submission of the income and expense report for their candidate.

The panel determined that the plaintiff was fined by ASC without being notified, summoned, or heard regarding the violation for which he was held responsible. This administrative process violated the principle of legality, as an administrative fine cannot be imposed without respecting due process principles. ASC was obligated to comply with Article 4, point 2 of the Code of Administrative Procedures, which states, "*The legal rights or interests of a party cannot be infringed by administrative action except when provided by law and in accordance with a regular legal process.*" The Judicial Electoral College decided to accept the lawsuit filed by Mr. Ludovik Hasan.

#### **\* Comment**

In the case of four decisions by the Judicial Electoral College—decision no. 1 dated 09.03.2023, decision no. 2 dated 09.03.2023, decision no. 3 dated 09.03.2023, and decision no. 7 dated 05.04.2023—different solutions were reached for issues with the same or similar object. The first three cases involved appeals against ASC decisions imposing an administrative fine of 500,000 ALL for non-submission of financial reports.

In the first and third cases, the Judicial Electoral College upheld the ASC decision to impose the fine on the electoral subject. However, in the second case, the College dismissed the case and referred it to the Administrative Court of First Tier for review.

In the fourth case, the Judicial Electoral College accepted the lawsuit filed by the candidate for MP, revoking point 3 of decision no. 7 dated 25.01.2023 of ASC. In this instance, the principle of due process was violated by the CEC, which made the decision in absence of awareness of the subject to whom the administrative offense and fine were referred, without notifying the subject and without their presence. This resulted in the plaintiff not being a participating party in the administrative investigation process by the CEC, thus the deadline for submitting the lawsuit to the CEC was not linked to the announcement of the ASC decision.

The principle of "notice and opportunity to be heard" is essential to ensuring fairness and due process in administrative proceedings. This principle mandates that individuals or parties affected by administrative actions be informed of the actions being taken against them and be given an opportunity to present their case or respond before a decision is made.

#### **Mehmet Nelaj v. the Central Election Commission**

*Decision No. 8, Dt. 11.04.2023*

*The obligation to create and register the initiator committee was found by the CEC bodies as an essential flaw, which then led to the rejection of the candidate's registration*

#### **\* Analysis of the content of the decision**

The case pertains to the request of the plaintiff, Mr. Mehmet Nelaj, to contest decision no. 38, dated 31.03.2023, of the Appeals and Sanctions Commission (ASC) at the Central Election Commission. Mr. Nelaj sought to amend this decision by having his request to be registered as a candidate for the Saranda Municipal Council in the local government elections on 14.05.2023 accepted. Initially, Mr. Nelaj's request to be registered as an independent candidate was rejected by decision of EAZC no. 90 of the Municipality of Saranda, and subsequently by the aforementioned decision of the ASC, due to the lack of an initiating committee.

The applicant Mr. Nelaj was legitimately entitled to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code. During the judicial investigation, new evidence emerged that had not been presented during the initial trial at the Central Election Commission (CEC), specifically the submission of Template Form KQZ-04-05, "Request for the Registration of the Candidate Proposed by the Voters." Despite this new evidence, the Judicial Electoral College decided to dismiss the lawsuit filed by Mr. Nelaj for his registration as a candidate for the Saranda Municipal Council in the local government elections on 14.05.2023, due to the absence of the required initiating committee.

#### **\* Comment**

The procedure for candidates proposed by voters is outlined in Article 70 of the Electoral Code. Point 3 of Article 70 mandates the creation of an initiator committee if the candidate is proposed by voters. However, Point 4 of same Article provides an exception to this requirement if the candidate is a mayor, a member of the council of the relevant local government unit, or a MP. In such cases, the candidate must present a written certificate from the Assembly or the local government unit, proving they have held the mandate for at least the last six months.

Point 4 of Article 70 does not offer a partial exemption from the obligation set out in Point 3 of article 70; rather, it completely removes the need for an initiator committee for these specific candidates. For Mr. Nelaj, this means it is unnecessary to form an initiator committee to collect supporting signatures. It is important to note that Mr. Nelaj was registered as an electoral subject in the local elections on June 30, 2019, based on the same procedures outlined in Article 70 of the Electoral Code. The interpretation of this article through Instruction no. 1, dated 18.01.2023, by the State Election Commissioner, violates the principle of legal certainty by failing to protect the acquired rights and legitimate expectations of the subjects under the law.

#### **"Nisma Thurje" party v. the Central Election Commission**

*Decision No. 9, Dt. 13.04.2023*

*The candidate, completed the required documentation within the legal deadline and should therefore be registered in the local elections. There is no indication of any deficiency in his identification documents, and the legal conditions for refusing his registration and imposing a penalty for inaction are not met. Consequently, any penalty for his alleged inaction is not applicable in the absence of a valid reason for registration refusal.*

#### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, "Nisma Thurje," Party and Mr. Kosta Garo to change Decision no. 10 dated 28.03.2023 of CEAZ no. 82 and Decision no. 43 dated 03.04.2023 of ASC, concerning the local government elections on May 14, 2023. The

claimant's request for the registration of Mr. Kosta Garo as an independent candidate was initially denied due to the lack of regular documentation.

"Nisma Thurje" Party and Mr. Kosta Garo were entitled to appeal to the Judicial Electoral College. Based on the analysis of the facts, the claimant argued that there were violations of rights related to due legal process. Specifically, they contended that the evaluation of the submitted documents, the decision-making by the administrative bodies, and the notification to the claimant were all conducted without transparency, as the plaintiff was not properly notified throughout the process. The Judicial Electoral College decided to accept the lawsuit.

#### **\* Comment**

Based on the analysis of the case, it is concluded that the election administration bodies, specifically EAZC no. 82 and the Appeals and Sanctions Commission in the CEC, acted in violation of legal procedures and multiple principles outlined in the Electoral Code and the Code of Administrative Procedure<sup>39</sup>. Article 3, point 6 of the Electoral Code mandates that electoral commissions fulfill their functions in accordance with the law, and in an impartial and transparent manner. The principle of transparency is also reinforced in the Code of Administrative Procedures. Article 5 of this code stipulates the obligation of public bodies to conduct administrative activities transparently and in close cooperation with the involved natural and legal persons.<sup>40</sup> Furthermore, Article 10 of the Code of Administrative Procedures enshrines the principle of providing active assistance, a principle that has been violated by the electoral administration bodies in this case.

#### ***Eduard Nallbani v. the Central Election Commission***

*Decision No.10, Dt. 18.04.2023*

*The initiator committee with no less than 9 voters from the electoral zone had failed to collect the supporting signatures for the candidate corresponding to the minimum limit of 1% of the list of the electoral zone Municipality of Tirana (at least 7,000 signatures)*

#### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Mr. Eduard Nallbani, to overturn the decision of the State Election Commissioner no. 220 dated 30.03.2023, and the decision of the Appeals and Sanctions Commission no. 44, dated 04.04.2023. Mr. Nallbani seeks to obligate the Central Election Commission to decide regarding his registration as a candidate for the municipal council, proposed by voters in the Tirana Municipality electoral area, for the local government elections on May 14, 2023. The refusal to register Mr. Nallbani was based on the argument that he did not meet the minimum threshold of voter support, which is 1% (7,000 voters) of the voter list for the Tirana Municipality electoral zone.

<sup>39</sup> Law no. 44/2015 "Code of Administrative Procedures of the Republic of Albania"

<sup>40</sup> **Article 10: The Principle of Providing Active Assistance**

1. The public body ensures that all parties and other persons involved in the procedure can pursue and protect their legal rights and interests as effectively and easily as possible. It informs the parties of their rights and obligations, including all information related to the procedure, and warns them of the legal consequences of their actions or inactions.

2. The public body promotes the possibility for the party to access the public authority electronically. However, this possibility does not impose any obligation on the party to use electronic communication means.

3. The public body conducting the administrative procedure ensures that the party's lawsuit does not deteriorate the protection of the rights and interests that the party enjoys according to the law.

The plaintiff, Mr. Eduard Nallbani, was legitimized to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code. However, the college assessed that Mr. Nallbani's lawsuit should be dismissed as it was not supported by evidence or by law.

**\* Comment**

The interpretation carried out by the Judicial Electoral College is supported and in accordance with Article 70 of the Electoral Code, which outlines the rules to be followed by candidates proposed by voters for local government elections. According to Article 70, the candidacy must be supported by a number of voters corresponding to 1% of the voter list for the electoral district. This requirement applies not only to candidates for mayor but also to candidates proposed by a group of voters for a member of the local council (municipal council).

**Aleanca Progresiste Party (LZHK) of Albania v. the Central Election Commission**

*Decision no. 11, Dt. 18.04.2023*

*The Judicial Electoral College dismissed Mr. Eduard Nallbani's lawsuit on the grounds that the electoral subject was aware of the irregularities in the documentation and had the opportunity to correct them by submitting the required documentation within the deadline, but failed to do so.*

**\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Aleanca Progresiste LZHK Party, to annul the Decision of the Appeals and Sanctions Commission (ASC) dated 05.04.2023. The ASC had denied the plaintiff's request to register a multi-name list of candidates for the municipal council in Përrenjas municipality, citing irregularities in the documentation.

The College decided to dismiss the claim.

**\* Comment**

The College's interpretation is supported and in accordance with Article 73 of the Electoral Code, which mandates that “*the CEC or CEAZ verifies the regularity of candidacy documentation and, if irregularities or non-fulfillment of requirements of this Code are found, returns them to the electoral subjects for correction no later than 45 days before the election date. Corrected documentation must be filed no later than 42 days before the election date, and the decision to approve or reject the final documentation is made within 48 hours of submission....*”.

**Uniteti Kombëtar Party v. ASC**

*Decision No. 12, Dt. 18.04.2023*

*The case involves the dismissal of the lawsuit following the non-registration of Vebi Tahir Hana as a candidate for the Mayor of Prrenjas, presented by the National Unity Party. The Judicial Electoral College upheld the decision due to the incomplete documentation submitted by the electoral subject.*

**\* Analysis of the content of the decision**

The case pertains to the request of the Partia e Unitetit Kombëtar (PUK) to object to decision no. 49, dated 06.04.2023, of the Appeals and Sanctions Commission and to amend this decision by registering Mr. Vebi Tahir Hana as a candidate for Mayor of Përrenjas Municipality, proposed by the party for the local government elections on May 14, 2023. The rejection by ASC was based on the irregularity of the documentation.

The College decided to dismiss the lawsuit.

#### \* **Comment**

The interpretation by the Judicial Electoral College is supported and aligned with the provisions of the Electoral Code, particularly Part X, which delineates administrative appeals and relevant deadlines. Article 124, titled "The Right of Appeal,"<sup>41</sup> it is envisaged that: "1. *Any political party, member or not of a coalition, and the candidate proposed by the voters have the right to complain to the CEC against the decisions of the CEAZ, which violate their legitimate interests, within 3 days from the date of the announcement of the decision.* Also, the College relied on Article 130/c of the Electoral Code, which stipulates that: "The CEC decides on the acceptance or rejection of the appeal request, after verifying the following elements: a)...c) **compliance with the legal deadlines for appeals.**

#### **"Bashkë Fitojmë" coalition v. the CEC**

*Decision No. 13, Dt. 21.04.2023*

*The mandatory components contained in the ballot paper are applicable to all electoral subjects, including electoral coalitions. Consequently, the Judicial Electoral College dismissed the lawsuit as unfounded.*

#### **\* Analysis of the content of the decision**

The issue involves the request of the coalition "Bashkë Fitojmë," represented by the Leading Party of the Coalition "Partia e Lirisë," and the interested party, the "Democratic Party of Albania," to change Decision no. 61, dated 19.04.2023, of ASC. This decision amended decisions no. 361 and 362 of the SEC, dated 15.04.2023, altering the content of the ballot for candidates for members of the municipal council in the Municipality of Tirana and other 60 municipalities across the country, by adding the name of Mr. Sali Berisha next to the "Bashkë Fitojmë" Coalition.

In this case, the claims of the plaintiff and the interested party were related to the content of the ballot.

The Judicial Electoral College decided to dismiss the suit.

#### \* **Comment**

In this case, the College has interpreted Article 98 of the Electoral Code, which outlines the elements of the ballot paper, as the primary provision determining the content of the ballot paper for all electoral subjects, including coalitions. Article 98, point 3 of the Electoral Code specifies the elements related to the electoral subjects. While the first sentence covers the general elements, the second sentence specifies the content related to political parties without explicitly mentioning coalitions. However, the College concluded that the components related to the identification of electoral subjects must be mandatory for both political parties and coalitions, as clearly defined in the Electoral Code. Additionally, the AHC recommends a more comprehensive regulation of the Electoral Code regarding the registration of coalitions, their legal relationships within the electoral process, and the rights and obligations of the parties, including the leading party. This is necessary to ensure clear identification of electoral subjects

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<sup>41</sup> Amended by law no. 74/2012, dated 19.07.2012

and to maintain transparency both among the political parties within the coalition and in front of the voters.

### **"Bashkë Fitojmë" coalition v. the Central Election Commission**

*Decision no. 14, Dt. 21.04.2023*

*The Judicial Electoral College dismissed the lawsuit on the grounds that the decision to include the logo of the electoral entity that proposed the mayoral candidates on the ballot does not constitute an infringement of the legitimate interests of the complaining electoral entity or the electoral process as a whole.*

#### **\* Analysis of the content of the decision**

The case is related to the request of the plaintiff, the coalition "BASHKË FITOJMË" and the interested party, "Democratic Party of Albania," to change decision no. 62, dated 19.04.2023, of ASC, which decided to *amend decisions no. 360 and no. 363 of the State Commissioner of Elections, dated 15.04.2023. The amendments changed the content of the ballot for the candidates for Mayor of Tirana and the other 60 municipalities by removing the logos of parties and/or coalitions from the ballot content for the mayoral candidates for the local government elections on May 14, 2023.*

The electoral entity coalition "BASHKË FITOJMË" was legitimized to appeal to the Judicial Electoral College. In this case, the claims of the plaintiff and the interested party were related to the content of the ballot for the mayoral candidates, (unlike the above decision, which dealt with the ballots for the Municipal Council).

The Judicial Electoral College decided to dismiss the lawsuit.

#### **\* Comment**

In this case, the College has adhered to its previous interpretation of the Electoral Code, specifically evaluating Article 98, which contains the elements of the ballot paper as the main provision determining the content of the ballot paper for all electoral subjects, including coalitions. Furthermore, based on decisions no. 13 and no. 14, dated 21.04.2023, of the Judicial Electoral College, which also addressed the content of the ballot, a better discipline of the Electoral Code is recommended regarding Article 98/3. Given that the first sentence of point 3 addresses all electoral subjects, the mention of the word "party" instead of "electoral subject" in the second sentence creates the impression of a more limited application concerning the use of the sigla, initial letter, and the name of the party leader.

- 2. The names of the electoral subjects are placed on the ballot according to the order randomly determined by the lottery. Next to the name of the party, the initials and the name of the party chairman are placed. Each subject listed on the ballot paper has a corresponding space for the voter to mark their vote.*

For this purpose, it is necessary to maintain consistent legal and linguistic terminology for the same subjects or objects to avoid ambiguity in the legal provisions.



## **Democratic Party of Albania v. the Central Election Commission**

*Decision No. 15, Dt. 24.04.2023*

*The plaintiff can waive the trial of the lawsuit at any stage of the first-instance trial, resulting in a dismissal of the adjudication in this particular case.*

### **\* The analysis of the content of the decision**

The case concerns the request of the electoral subject "Democratic Party of Albania" and the interested party "Socialist Party of Albania" to annul Decision No. 53, dated 10.04.2023, of ASC, which pertains to the non-acceptance for examination of the appeal request No. 48, dated 07.04.2023, filed by the "Democratic Party of Albania," and the ban on the candidacy of the mayoral candidate for Mallakstra, Qerim Ismail Ismailaj, proposed by the Socialist Party of Albania, for the local government elections on May 14, 2023".

The plaintiff party, the electoral entity Democratic Party of Albania, has argued that it is legitimate to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code. According to the party, electoral subjects whose legal interests have been violated have the right to appeal to the College within the deadline defined in Article 152 of the Electoral Code. However, ASC contends that the electoral subject "Democratic Party" does not meet the conditions outlined in point 1 of Article 33 of the Code of Administrative Procedures, as it is neither a subject that requested the initiation of the administrative procedure nor a subject against which the procedure has been initiated, or to which decision no. 300, dated 05.04.2023, is addressed or intended to be addressed. The Judicial Electoral College decided to suspend the trial of the administrative case.

### **\* Comment**

Article 45 of the Constitution of the Republic of Albania (RA) outlines limitations on the right to be elected. It states: "*3. Excluded from the right to be elected are citizens who have been sentenced to imprisonment, with a final decision, for committing a crime, according to the rules established by law approved by three-fifths of all members of the Assembly. In exceptional and justified cases, the law may provide for restrictions on the right to vote of citizens serving a prison sentence, or on the right to vote before a final decision is made or when citizens have been deported for a crime or for very grave and serious infringement of public security.*"

The Electoral Code, in article 63, item 3, refers to the constitutional provision regarding the conditions for the election of candidates.

### **Article 63**

#### **Electoral subjects and candidates (Amended by law no. 74/2012, dated 19.7.2012)**

*3. A candidate is a citizen who meets the conditions outlined in articles 45 and 69 of the Constitution and who is registered as a candidate for deputy in the Central Election Commission (CEC) or as a candidate for mayor or for local councils in the EAZC.*

In accordance with Article 45, point 3 of the Constitution, the Assembly of the Republic of Albania has approved Law No. 138/2015 "On guaranteeing the integrity of persons who are elected, appointed, or exercise public functions," aimed at ensuring public trust in the functioning of elected bodies, as expressly provided in Article 1. This law imposes restrictions on citizens seeking to run in local and central elections if they commit criminal offenses. Specifically, Law No. 138/2015, in Article 2, point 1, letter "a," stipulates that individuals

sentenced by a final court decision to no less than 6 months of imprisonment for the commission of an intentional crime are subject to these restrictions. Meanwhile, Article 4 of the law determines the duration of this prohibition for such individuals to exercise the right to be elected. Point 4 specifies that for individuals considered convicted under Article 2/1, letter "c" of the law, the ban lasts from the completion of the prison sentence according to the final court decision until the moment of rehabilitation according to Article 69 of the Criminal Code.

Article 4/9 of Law No. 138/2015 stipulates, under letter "a," that the amount of punishment shall not include reductions of the sentence due to accelerated trials or suspended prison sentences, and (b) such reductions or suspensions do not affect the implementation of the law or count as a function of shortening the term of punishment to shorten the period of detention provided for in this law. Furthermore,

Article 5/4 of Law No. 138/2015 states that the self-declaration form is submitted and administered at the a) Central Election Commission for elected officials and candidates for MP in the Assembly of Albania or local government bodies. The commission has the right to verify *ex officio* the compliance of mayoral candidates with the requirements of Law No. 138/2015 and Article 45 of the Constitution, based on Article 33, letter "f" of the Electoral Code and Article 5 of Law No. 138/2015. This verification is crucial because candidates with legal prohibitions to be elected should not be allowed to participate in the election, as it would violate the validity of the electoral process.

Given that citizens running in local and central elections hold public functions crucial for political life and the functioning of elected bodies, it is suggested that the Electoral Code provides the right for anyone with a direct personal interest or in the public interest to report cases of candidates who are under election bans, especially if they have stated otherwise in the relevant form. These individuals must be authorized to appeal against relevant decisions before the Appeals and Sanctions Commission and the Electoral College, in accordance with their subject competence.

### **Democratic Party of Albania v. CEC**

*Decision NO. 16, Dt. 24.04.2023*

*The dismissal of the lawsuit and the non-acceptance for review of the Appeal Request of the Democratic Party of Albania is due to a lack of substantial or material legitimacy.*

#### **\* Analysis of the content of the decision**

The case pertains to the request of the plaintiff party, the electoral entity "Democratic Party of Albania," and interested person "Socialist Party of Albania," for the annulment of Decision No. 60, dated 19.04.2023, of ASC, which involves the review of appeal request no. 49, dated 17.04.2023, filed by the "Democratic Party of Albania." It also involves the annulment of Decision No. 366, dated 15.04.2023, of the State Election Commissioner, which examines the request of the Democratic Party and verifies the data in the self-declaration form of Mr. Qerim Ismail Ismailaj, a candidate for mayor of Mallakastra proposed by the Socialist Party of Albania for the local government elections on May 14, 2023. The lawsuit aims to challenge the ban on the candidacy of Mr. Qerim Ismail Ismailaj for mayor of Mallakastra, as proposed by the Socialist Party of Albania, for the local government elections on May 14, 2023."

The plaintiff, the electoral entity the Democratic Party of Albania, has lodged a claim that is legitimate for appeal to the Judicial Electoral College in accordance with Article 145, point 1

of the Electoral Code. This provision grants electoral subjects whose legal interests have been infringed the right to appeal to the Electoral College of the Court of Appeal, Tirana, against decisions of the Central Election Commission (CEC) within the timeframe specified in Article 152 of the Electoral Code. However, the Judicial Electoral College has determined that the electoral subject "Democratic Party" does not meet the conditions outlined in Article 33, point 1 of the Code of Administrative Procedure.<sup>42</sup> The Judicial Electoral College decided to dismiss the lawsuit on the grounds that the complaining subject, the Democratic Party of Albania, lacked formal legitimacy. The College reasoned that formal legitimacy is only granted when a subject has initiated the administrative procedure or can demonstrate that its interests were violated through the decision-making process, as outlined in Article 145 of the Electoral Code. Since the Democratic Party of Albania did not meet these criteria, being neither the initiator of the administrative procedure nor directly affected by Decision No. 366 of the State Election Commissioner, the College concluded that it lacked formal legitimacy and thus dismissed the lawsuit.

#### \* **Comment**

Based on the court's analysis of the plaintiff's legitimacy to file a lawsuit, it is necessary to emphasize the importance of the integrity of individuals who are elected, appointed, or exercise public functions in the electoral process. Additionally, it is crucial to uphold the right of anyone to report a violation related to the criteria set forth in Law no. 138/2015, "On guaranteeing the integrity of persons who are elected, appointed or exercise public functions."

It is a constitutional requirement to prevent any individual from exercising the right to be elected if they have been imprisoned. Article 45 of the Constitution provides the basis for this restriction. Consequently, the Assembly approved Law no. 138/2015, which elaborates on this restriction in detail to ensure compliance with the constitutional mandate. This criterion is mandatory regarding the prohibition of the right to be elected. Therefore, candidates for mayor who do not meet the criteria set forth in Article 45 of the Constitution and in Law no. 138/2015 do not have the right to be elected. Consequently, their candidacy and participation in the elections would be illegal and unconstitutional. Such a violation severely compromises the electoral process, rendering it invalid according to Article 60, point 1, letter "an" of the Electoral Code. This article stipulates that the Central Election Commission (CEC), either on its own initiative or at the request of electoral subjects, declares the elections invalid in one or more polling stations if: a) There have been violations of the law that have seriously compromised the electoral process, or when the totality of violations in these polling centers (according to this letter of the law), may have influenced the electoral process to such an extent that it could affect the distribution of mandates in the electoral area.

On the other hand, the College, in its argumentation, has reached two important conclusions: **First, the state authority charged by law to carry out the relevant verifications (in this case, the Commissioner) must immediately submit the criminal report to the relevant prosecutor's office. Secondly, Qerim Ismailaj, who is registered as a candidate for the local elections of May 14, 2023, in EAZC no. 62 Mallakastër, should be prohibited from**

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<sup>42</sup> **Article 33 Code of Administrative Procedures**  
**Party in the Administrative Procedure**

1. A party to the administrative procedure, except as provided in Article 3 of this Code, is any person: a) at whose request the administrative procedure was initiated; b) to whom the administrative procedure has started, or to whom the decision of the administrative procedure is addressed or intended to be addressed; or c) with whom the public body intends to conclude or has concluded an administrative contract.

**running. According to the provisions of Law no. 138/2015 "On decriminalization," he falls within the scope of application of this law.**

However, these conclusions were not addressed to the relevant bodies by court decision and remained at the level of argument without holding the state institutions accountable. As a result, the College decided to dismiss the lawsuit.

### **Partia e Lirisë v. Central Election Commission**

*Decision No. 17 Dt. 09.05.2023*

*The lawsuit could not be examined in its essence because it was not addressed by a decision of the Court of Cassation, according to the appeal submitted by the Partia e Lirisë.*

#### **\* Analysis of the content of the decision**

The case is related to the request of the plaintiff party, the electoral entity "Partia e Lirisë," and the third party "Partia Drejtësi, Integrim e Unitet," for the objection of Decision No. 71, dated 02.05.2023 of ASC; the amendment of Decision No. 71, dated 02.05.2023 of ASC in the CEC, deciding: Designating the Partia e Lirisë as the political party that has the right to propose the fourth member of the vote counting groups, for the elections for local government bodies on 14 May 2023 or alternatively, finding absolute invalidity of Decision No. 71, dated 02.05.2023 of ASC for these elections.

The College decided to partially accept the lawsuit, finding absolute invalidity of Decision No. 71, dated 02.05.2023 of ASC, and obligating ASC to decide by 10.05.2023, related to Appeal No. 53, dated 27.04.2023, filed by the electoral entity "Partia e Lirisë."

#### **\* Comment**

The interpretation carried out by the Judicial Electoral College is supported by the Electoral Code, Part II, Article 21, Point 3, which outlines the competencies of ASC and the legal obligation of ASC members to participate in decision-making. According to Point 3 of Article 21, decisions constitute the basic administrative acts of ASC. Decisions are valid when at least three members vote in favor of them, except for decisions related to objections of the summary table for the election results in the electoral area, as outlined in Points "a," "b," or "c" of Point 1. In such cases, the decision requires at least four members to vote in favor of it. Therefore, a vote taken under conditions other than those specified in Article 21, Point 3, renders the decision-making process invalid. Consequently, the interpretation made by the Judicial Electoral College aligns with the principles and provisions of the Electoral Code.

### **Partia e Lirisë v. the Central Election Commission**

*Decision No. 18, Dt. 12.05.2023*

*The dismissal of the lawsuit is based on the determination that claims regarding what would be considered fair in the composition of the GNVs (vote counting groups) do not pertain to matters of legal enforcement. Instead, they fall within the realm of recommendations for potential changes to electoral laws, which are outside the jurisdiction of the court.*

#### **\* Analysis of the content of the decision**

The case concerns the petition of the plaintiff party, the electoral entity "Partia e Lirisë," and the interested party "Partia Drejtësi Integrim e Unitet," seeking a modification of Decision No. 90, dated 10.05.2023, issued by the ASC to the CEC. The decision designated the Freedom

Party as the political entity entitled to nominate the fourth member of the vote counting groups for the local government elections on May 14, 2023.

In this particular case, the plaintiff's claims contest the designation of Partia e Lirisë as the political party entitled to nominate the fourth member of the vote counting groups for the local government elections on May 14, 2023. This is in opposition to the decision of the SEC, which recognized both the Partia e Lirisë and the Drejtësi, Integrim, Unitet Party as political parties of the parliamentary opposition with the right to propose the fourth member.

The panel decided to dismiss the lawsuit.

#### **\* Comment**

The interpretation conducted by the Judicial Electoral College finds support in the Electoral Code, specifically in Part XIV, Final and Transitional Provisions, Article 183, Point 8. This provision outlines the composition of election administration bodies and the right to propose their members based on the results of the general elections of 2017 and the majority-minority configuration of the Assembly at its opening, immediately following these elections. Notably, this is a transitional provision established through amendments to the Electoral Code by Law No. 101/2020, dated July 23, 2020. It regulates the establishment of electoral bodies for both the upcoming elections for the Assembly (in 2021) and the elections for local government bodies (in 2023).

Irrespective of the resolution of the current case prompting the lawsuit, AHC, considering recommendations from the OSCE/ODIHR over time, advocates for the complete depoliticization of all election administration bodies, including the GNVs. Alternatively, it suggests implementing the electronic vote counting process at the national level rather than partially.

### **Shijak Municipality v. the Central Election Commission**

*Decision No. 19 Dt.15.05.2023*

*The lawsuit has been suspended due to the determination that Shijak Municipality lacks legal standing to file the lawsuit, as it lacks a legal interest in doing so. Instead, the legitimization to oppose Decision No. 84, dated 08.05.2023 of ASC, rests personally with the Mayor.*

#### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Shijak Municipality, for the annulment of Decision No. 84, dated 08.05.2023, issued by the ASC at the CEC, and the revocation of the fine imposed on Mayor Mr. Elton Arbana in the amount of 100,000 ALL for the local government elections on May 14, 2023.

The Central Election Commission (CEC) argued that the plaintiff lacks legitimacy to file the lawsuit under Article 145, Point 1 of the Electoral Code. According to Decision No. 84, dated 08.05.2023, "Regarding the consideration of Request No. 21, dated 06.05.2023, from the SEC," issued by ASC, no administrative sanction was imposed on Shijak Municipality, but rather on the electoral subject, the mayoral candidate, Mr. Elton Arbana.

The Electoral College decided to suspend the trial of the case. It argued that the exercise of the right to a due legal process is demonstrated by the right granted to the party to file a lawsuit to protect rights and interests provided for in the law. This constitutes the formal procedural

aspect, distinguishing it from the material interest or right that the lawsuit serves to protect. In the present case, the lawsuit filed by Shijak Municipality does not provide evidence of an infringement of a right or interest that can be claimed against the opposing party.

**\* Comment**

The interpretation conducted by the Judicial Electoral College finds support in the Electoral Code, specifically in Article 2/20 and Article 145. These provisions outline which electoral subjects have the right to appeal to the Electoral College, thus providing a legal basis for determining the legitimacy of parties to file appeals.<sup>43</sup> Based on Article 2/20 of the Electoral Code, "*electoral subjects*" include political parties, coalitions, candidates proposed by voters, as well as candidates for presidents of local government bodies, registered in accordance with this Code. In this case, Mr. Elton Arbana was administratively sanctioned for his role as a mayoral candidate in the local government elections on May 14, 2023, qualifying him as an electoral subject under Article 2/20 of the Electoral Code. This capacity is independent of his position as Mayor of Shijak Municipality. While Mr. Arbana is personally entitled to oppose the decision of ASC, he does not possess the same legitimacy as the public legal entity, Shijak Municipality, where he serves as Mayor. Therefore, the decision of the ECC is based on and aligns with the provisions of the Electoral Code.

**Dallëndyshe Bici, General Director of the State Cadaster Agency v. Central Election Commission**

*Decision No.20, Dt. 18.05.2023*

*The trial has been adjourned as the College assesses that it lacks subject matter competence to examine this claim, particularly where the third person involved is not an electoral subject.*

**\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Dallëndyshe Bici, Director General of the State Cadaster Agency, for the annulment of Decision No. [not yet published and announced], dated 08.05.2023, of ASC, specifically regarding the imposition of an administrative sanction, a fine of 2,500 ALL, against Mrs. Dallëndyshe Bici, concerning the local government elections on May 14, 2023.

Dallandyshe Bici claimed that she was entitled to file the complaint both with ASC and with ECC. However, the ECC argued that the plaintiff lacks legitimacy to file the lawsuit in accordance with Article 145, Point 1 of the Electoral Code. This provision intends for the Electoral College to review decisions of the CEC when they violate the legitimate interests of electoral subjects. In this specific case, Mrs. Dallandyshe Bici is not an electoral subject.

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<sup>43</sup> *Electoral subjects have the right to appeal to the Electoral College of the Tirana Court of Appeal against decisions of the Central Election Commission (CEC) when these decisions infringe their legitimate interests, within the timeframe defined in Article 152 of the Electoral Code. Additionally, individuals or political parties whose application for registration as an electoral subject has been rejected also have the right to appeal, as stipulated by this article.*

The trial of the case took place with the presence of the parties, as required by Article 156 of the Electoral Code. However, the College finds a lack of subject matter competence and orders the adjournment of the trial, as the case does not fall within the scope of matters that the College can consider, as per the interpretation of the Electoral Code.

#### **\*Comment**

This case involves the interpretation of provisions within both the Electoral Code and the Civil Procedure Code. However, the College cannot proceed with the examination of the claim submitted by the plaintiff. The administrative procedure followed by the State Election Commissioner initially and then the Appeals and Sanctions Commission identifies the party as a third person, rather than an electoral subject. As only electoral subjects have the right to appeal to the Electoral College, the College lacks subject-matter competence to examine this claim.

### **Armando Subashi v. State Election Commission & Appeals and Sanctions Commission at the Central Election Commission**

*Decision No. 21, Dt. 24.05.2023*

*Any dispute involving the Central Election Commission (CEC) that does not pertain to the electoral process itself but rather concerns the exercise of public functions outlined in the Electoral Code and other relevant laws, falls outside the jurisdiction of the ECC. Such disputes should be appealed through the usual administrative court procedures.*

#### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Armando Subashi, acting in his capacity as the mayor of Fier, for the annulment of Decision No. [not published and announced yet], dated 08.05.2023, issued by ASC at the CEC regarding the elections for local government bodies on May 14, 2023.

In this case, the plaintiff's claims are related to the annulment of the ASC decision imposing an administrative fine in the amount of ALL 100,000.

However, Mr. Subashi did not appear at the court hearing on 24.05.2023, despite receiving regular information about it. Furthermore, he did not inform the Judicial Electoral College of the reasons justifying his absence from the court session. According to Article 179 of the Code of Civil Procedure, as amended, the legal consequences of the non-appearance of parties *without any reasonable cause result in the court or the single judge deciding to suspend the trial*. Consequently, the panel decided to suspend the trial of the case.

#### **\* Comment**

The College has consistently interpreted situations where an individual holds dual capacities, as demonstrated in previous decisions (Decision No. 19, dated 15.05.2023). This includes instances where an individual, such as the mayor, also holds the position of a mayoral candidate. In such cases, if the individual utilizes public resources or platforms, such as the municipality's website, to promote their candidacy, it raises concerns regarding the misuse of public office for personal political gain. In the present case, as the plaintiff was absent, the College dismissed the trial of the case.

## **Gledian Llatja v. the Central Election Commission**

*Decision No. 22, Dt. 24.05.2023*

*The matter raised by Mr. Gledian Llatja should have been brought forth, and the relevant documents should have been forwarded to the Administrative Court of First Instance in Tirana for jurisdiction.*

### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Gledian Llatja, acting in his capacity as the mayor of Elbasan, to amend Decision No. 84, dated 08.05.2023, issued by ASC at the CEC, specifically regarding the imposition of an administrative sanction on the plaintiff in the amount of ALL 100,000, in accordance with Article 171 of the Electoral Code.

The College decided to dismiss the claim.

### **\* Comment**

The college has maintained a consistent stance similar to the decision made in the case filed by Armando Subashi, the mayor of Fier. It upholds the prohibition outlined in the Electoral Code against the use of public resources to support electoral subjects, aiming to ensure free, equal, and fair elections by preventing the party in power from creating preferential situations. When a plaintiff appears in two capacities, the college prioritizes their role as an electoral subject. Based on this rationale, it analyzes cases involving administrative sanctions imposed on electoral subjects.

Furthermore, the college consistently presents minority opinions regarding administrative measures of a financial nature issued by the CEC to various subjects as stipulated in the Electoral Code. While there is a minority opinion that such matters should be addressed to the Administrative Court of the First Instance in Tirana for resolution, it underscores the need for clarity within the Electoral Code regarding the types of issues falling under the jurisdiction of the Judicial Electoral College within the electoral process.

## **Majlinda Bufi v. ASC & Central Election Commission**

*Decision No. 23, Dt. 24.05.2023*

*The case presented by the Mayor of Roskovec, challenging the administrative sanction imposed by ASC, has been dismissed due to the lack of Subject Matter Competence of the Electoral College. It will be forwarded to the jurisdiction of the Administrative Court of the First Instance of Tirana.*

### **\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Majlinda Bufi, acting in her capacity as the mayor of Roskovec, for the annulment of Decision No. 84, dated 08.05.2023, issued by ASC at the CEC. This decision pertains to the imposition of an administrative sanction, a fine of 100,000 ALL against Mrs. Bufi.

The plaintiff became aware of the decision of ASC on 12.05.2023 and submitted the claim to the Judicial Electoral College on 19.05.2023. She is legitimized as the mayor of Roskovec Municipality to appeal to the College.

The College decided to dismiss the case and refer it for jurisdiction to the Administrative Court of the First Instance of Tirana. The rationale behind this decision is that the competences of the CEC do not include the review of disputes related to offenses committed under the Electoral



Code. Additionally, the CEC does not consider issues that have an impact on the continuity of a mandate won in the election, such as cases of CEC decisions on the invalidity of the elected mandate, which directly impact the candidacy lists used by electoral subjects in the election.

**\* Comment**

The AHC notes that on this issue, the College has taken a different position from the solutions given to two other cases with the same object (the case brought by A. Subashi and the one brought by G. Llatja). In those two cases, the lawsuits were dismissed and the decision of the ASC remained in force. However, in the present case, it was decided to dismiss the case and send the acts for jurisdiction to the Administrative Court of the First Instance, Tirana. The AHC reiterates its earlier position that it is necessary to specify in the Electoral Code the categories of disputes that arise during an election process which the Judicial Electoral College has the power to examine.

**Safet Gjici v. the Central Election Commission**

*Decision No. 24, Dt.24.05.2023*

*Dismissal of the case after the electoral subject Mr. Gjici did not appear in the trial without justified reasons, showing a lack of interest in the trial*

**\* Analysis of the content of the decision**

The case involves the request of the plaintiff, Safet Gjici, in his capacity as the mayor of Kukës, for the annulment of Decision No. 85, dated 08.05.2023, issued by ASC. This decision pertains to the partial acceptance of appeal requests No. 19 and No. 20 from the SEC, resulting in the imposition of an administrative sanction, a fine of 100,000 ALL against Mr. Gjici.

The claimant, Safet Gjici, as the mayor of Kukës, is authorized to appeal to the College. The lawsuit was filed with the College on 22.05.2023. The plaintiff was notified of the KAS decision on 17.05.2023.

Mr. Gjici did not appear at the court hearing on 24.05.2023, despite having received proper notice and not failing to present reasons justifying his non-appearance. Article 179 of the Code of Civil Procedure, as amended, provides for the legal consequences of the non-appearance of the parties without any reasonable cause. *If it is evident that the parties were duly informed, the court or the single judge can decide to suspend the trial.* The College decided to dismiss the case.

**\* Comment**

When the Judicial Electoral College dismisses a case due to the plaintiff's absence without a valid reason, the standard usually followed is that the plaintiff has not met their burden of proof or has failed to pursue the case administratively. In this specific case, the Judicial Electoral College may dismiss the case based on this standard, as the absence of the plaintiff prevents the proceeding and judgment of the case on its merits.

## The "Lëvizja e Legalitetit" party v. the Central Election Commission

Decision No. 25 30.05.2023

*The Electoral College finds the lawsuit unfounded in law and evidence, given that the investigation conducted by the ASC was thorough and uncontested by the "Lëvizja e Legalitetit" Party. The ASC not only reviewed the report on the damage to the ballot box but also examined the ballot box itself, ensuring a comprehensive investigation.*

### **\* Analysis of the content of the decision**

The case concerns the request of the plaintiff party, the "Lëvizja e Legalitetit" Party (PLL), to annul decision no. 125, dated 23.05.2023, issued by the ASC. The ASC's decision rejected the appeal by PLL and upheld decision no. 325, dated 17.05.2023, of EAZC no. 19, Dibër Municipality, which deemed a ballot box irregular and did not count it due to a damaged security seal found during transport to the EAZC.

The "Lëvizja e Legalitetit" Party is legitimized to file a complaint with the CEC in accordance with Article 145, point 1 of the Electoral Code. The parties were present at the Judicial Electoral College hearing, in accordance with Article 156 of the Electoral Code. The College decided to dismiss the lawsuit.

### **\* Comment**

The Electoral Code outlines various irregularities that can result in a ballot box being deemed irregular.

Ensuring the regularity and legality of voting and the entire related process includes the proper handover of electoral materials from EAZC. The security seal on a ballot box is crucial for maintaining the integrity of the election process. If the security seal is damaged, broken, or compromised in any way, it raises concerns about the credibility and fairness of the election, affecting the perceived legitimacy of the results.

It is within the competence of the EAZC to verify and ascertain irregularities in the ballot boxes to preserve the integrity of the electoral process. In this case, the decision-making of the Judicial Electoral College aligns with the principles of the Electoral Code, upholding the decision that does not legitimize altering the results of the summary table of the electoral area based on ballots found in an irregular ballot box.

## Lefter Maliqi; "Bashkë Fitojmë" coalition v. the Central Electoral Commission

Decision No. 26, Dt. 07.06.2023

*The partial acceptance of the lawsuit obligates the ASC to partially review the dismissed claims due to the lack of competence regarding appeal request no. 74, submitted by Lefter Maliqi, within the framework of determining the causes of the invalidity of the elections.*

### **Analysis of the content of the decision**

The case involves the plaintiff party, Lefter Maliqi and the "Bashkë Fitojmë" coalition, with the third party being the Socialist Party, requesting the annulment of point 2 of Decision No. 136 dated 24.05.2023, issued by ASC. This decision dismissed four aspects of the appeal request due to lack of competence. The plaintiffs sought to annul the decision and have the case returned for trial at the ASC. The lawsuit was filed with the Judicial Electoral College on 02.06.2023. The Electoral College determined the plaintiff's legitimacy, based on Article 145,

point 1, and Article 124, point 1 of the Electoral Code<sup>44</sup>. Although Article 124, point 1 does not explicitly include candidates for presidents of local government bodies as electoral subjects, it does provide electoral subjects the right to appeal to the CEC (i.e., ASC). This provision was interpreted to mean that electoral subjects have the right to appeal ASC's decisions to the Electoral College according to Article 145 of the Electoral Code.

An analysis of the facts revealed that the parties raised claims regarding the violation of rights as provided in the Code of Civil Procedure and the Code of Administrative Procedure. The ASC decision regarding the lack of competence on the four aspects of the appeal was found to be unfounded. Moreover, ASC had not decided on these aspects, impacting the legality of the process followed at the administrative level by the CEC. During the judicial investigation, it was established that the ASC's decision was valid, contrary to the plaintiff's claims, with evidence showing the signature of four ASC members as required by Article 21, point 3 of the Electoral Code.<sup>45</sup> Respect for the parties' rights and relevant procedures was shown to respect the due process of law by the court. The parties were present at the trial of the case at the Judicial Electoral College in accordance with Article 156 of the Electoral Code.

The college decided inter alia on the partial acceptance of the lawsuit and mandated that ASC review the dismissed aspects due to the claimed lack of competence in the appeal request by the plaintiff party, within the causes of the invalidity of the elections.

#### \* Comment

During the trial, it was found that ASC's decision-making was contrary to the Code of Administrative Procedure and the Electoral Code, particularly regarding the obligation to justify the issues presented by the subject in the appeal request. The competence of the CEC includes considering all issues in the submitted appeal requests, including the invalidity of elections in specific voting centers, without being limited to the scope of the appeal request submitted by the electoral entity.

Moreover, the AHC has repeatedly noted that the same legal language is not used consistently in the Electoral Code when referring to electoral subjects. For instance, Article 145 recognizes the right of all *electoral subjects to appeal to the Electoral College of the Tirana Court of Appeal against CEC decisions that infringe on their legitimate interests within the term defined in Article 152 of the Code*. This contrasts with Article 124, point 1, which seems to limit the right to appeal to electoral administrative bodies.

Article 124, point 1, refers to any political party, whether or not a member of a coalition, and the candidate proposed by voters, but omits candidates for presidents of local government bodies. This omission is significant because **candidates for presidents of local government bodies** are explicitly provided as electoral subjects in Article 2, point 20 of the Electoral Code.

*Any political party, whether a member of a coalition or not, and any candidate proposed by voters have the right to complain to the CEC against the decisions of the*

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<sup>44</sup> Any political party, whether a member of a coalition or not, and any candidate proposed by the voters, has the right to file a complaint with the CEC against the decisions of the CEAZ that violate their legitimate interests. This complaint must be filed within 3 days from the date the decision is announced.

<sup>45</sup> **Article 21 of the Electoral Code.** 3. *The basic administrative acts of ASC are decisions. Decisions are made when at least three members vote in favor of them, except for decisions according to letters "a", "b", or "c" of point 1, when the object of the appeal is the objection of the summary table for the election results in the electoral area. In such cases, the decision is taken when at least four members vote in favor of it.*

*EAZC, which violate their legitimate interests, within 3 days from the date of the announcement of the decision.*

In addition, the lack of standardized and harmonized terminology throughout the provisions of the Electoral Code may result in the practice of their implementation violating the rights of interested parties, thereby undermining the constitutional principle of legal security. Consequently, the AHC suggests harmonizing the terminology and legislative technique in these two provisions.

**Progressive Alliance Party LZHK v. the Complaints and Sanctions Commission;  
Central Election Commission**

*Decision No. 27, Dt. 07.06.2023*

*The lawsuit was dismissed since the claim of invalidity of the elections and their repetition is not based on the law. According to Article 161/5 of the Electoral Code, the elections for the municipal councils are not repeated.*

**\* Analysis of the content of the decision**

The case pertains to the request of the plaintiff, the Party 'Aleanca Progresiste LZHK', seeking the alteration of Decision no. 160 dated 29.05.2023, issued by the ASC. The plaintiff's claims are centered on the obligation of the State Election Commissioner to consider valid the ballot box for the Kurbin Municipal Council, specifically from Voting Center no. 0907 in Shpërdhet village, Mamurras Administrative Unit, Kurbin Municipality.

The Party 'Aleanca Progresiste LZHK' is legitimized to appeal to the College under Article 145, point 1 of the Electoral Code. The lawsuit was filed with the Judicial Electoral College on 06.05.2023.

In accordance with Article 156 of the Electoral Code, the parties were present at the trial of the case before the Judicial Electoral College. The Judicial Electoral College decided to dismiss the lawsuit.

**\* Comment**

Ensuring the regularity and legality of voting, including the secure transfer of election materials from EAZC, is essential. The integrity of the electoral process also relies on the regularity of the ballot box. Any damage to the ballot box can have far-reaching consequences, casting doubt on the credibility and fairness of the election and affecting the perceived legitimacy of the results.

In the present case, the decision-making of the Electoral Judicial College aligns with the principles defined in the Electoral Code. Similar to its previous rulings on related issues, the College emphasizes the non-legitimacy of altering the results of the summary table for the electoral district based on ballots found in an irregular ballot box. This approach reinforces the commitment to preserving the integrity of the electoral process and upholding democratic values.

Furthermore, the Electoral Code stipulates that the repetition of elections should be ordered in the same decision by the CEC that declares them invalid. However, the Electoral Code

prohibits the repetition of elections for local government councils. The AHC finds that this prohibition on repeating elections for municipal council members undermines the right to a fair and orderly legal process.

### **"Bashkë Fitojmë" coalition & Shkëlqim Hoxha v. the Central Election Commission**

*Decision No. 28, Dt. 15.06.2023*

*The annulment of elections in a polling station is mandated when the number of its electors is greater than the difference between the two candidates who received the largest number of valid votes. This condition necessitates a repeat of the elections in that polling station to ensure the accuracy and fairness of the electoral results.*

#### **\* Analysis of the content of the decision**

The case involves the plaintiff party, the Coalition "Bashkë Fitojmë" and Shkëlqim Hoxha, who requested the modification of Decision no. 174, dated 06.06.2023, issued by the ASC at the CEC. The plaintiffs sought the approval of a new summary table of results for the mayoral candidates of Rrogozhina, excluding the election results from Voting Center No. 2224/1 at the Rrogozhina prison, and the declaration of Shkëlqim Hamid Hoxha, proposed by the "Bashkë Fitojmë" Coalition, as the winner for the mayor of Rrogozhinë Municipality.

The plaintiff party, the "Bashkë Fitojmë" Coalition and Shkëlqim Hoxha, is legitimized to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code.

The Judicial Electoral College decided to partially accept the lawsuit, annulling Decision no. 174, dated 06.06.2023, of the ASC. The College declared the local elections of May 14, 2023, invalid in the Electoral Administration Zone No. 43 for the mayor of Rrogozhina and ordered the repetition of these elections.

#### **\* Comment**

The decision of the Electoral College focused on two main aspects: the right to vote for individuals serving a prison sentence in a special institution and the manner of forming the Voting Center Commission (VCC) at the Institution of Execution of Criminal Decisions (IEVP) in Rrogozhina.

Regarding the legitimization of the prisoners' right to vote in local elections, the College's reasoning connected this right to the prisoners' registered residence. The place of residence is a component of civil status and is reflected in the National Register of Civil Status for each polling station area. A voter's registered residence in a specific polling station area is the determining criterion for their inclusion in the voter list for that area.

The voter list is drawn up for each polling station area and includes all voters whose residence is registered in the National Register of Civil Status within that area.

The College considered provisions from the Civil Code that define both residence and domicile. In this specific case, the place/institution where prisoners reside while serving their sentence is considered their place of residence. Unlike their abode, prisoners do not have the freedom to determine their residence while incarcerated.

Indeed, according to the law on civil status, individuals serving sentences in institutions for the execution of criminal decisions or detained pending a court decision have their residence

considered as the address of the relevant institution if their stay exceeds three months. The responsible institution is obligated to notify the civil status office within 48 hours of the citizen's registration in the institution, and the civil status office then registers the citizen's place of residence based on this notification.

This process of determining residence occurs before the approval of the voter list by local government bodies. It's important to note that the procedure for returning residence to a place of residence differs from the procedure for approving the voter list for local government bodies and precedes it.

Requests for changes in electoral components, including changes in residential codes, must be submitted no later than 60 days before the election date. This includes changes to the residence code. Once this stage is complete, the voter list is announced no later than 40 days before the election date and becomes unchangeable. According to the Electoral Code, the voter list cannot be modified under any circumstances after this 40-day period leading up to the election date. However, an exception is made if a voter notices inaccuracy in their electoral component, is not registered in the voter list of their voting center area, or is not registered at all in any of the lists of the local government unit where they reside. In such cases, the voter has the right to submit a request to the court of the relevant judicial district up to 24 hours before the election date to make the necessary changes.

In this specific case, the prisoners of the IEVP Rrogozhinë were not registered with the NRCS within 48 hours of their registration in the IEVP. Furthermore, they were registered after the legal deadline, which is no later than 60 days before the election day. **Within the legal timeframe for changing the National Register of Civil Status, there was only one prisoner residing in Rrogozhina.**

On the other hand, even the establishment of a voting center in a special area, such as the IEVP Rrogozhina, is subject to specific conditions outlined in the Electoral Code. It can only be established if it is confirmed, during the preparation of the voter list, that at least 15 voters with registered residence in Rrogozhina Municipality have served their sentence in the IEVP Rrogozhinë. Failure to confirm the establishment of the special Voting Center Commission (VCC) in IEVP Rrogozhina by the decision of the CEC for the May 14, 2023 elections, resulted in the establishment of Voting Center No. 2224/1 in IEVP Rrogozhina without proper authorization, constituting a serious legal violation.

Finally, the College also evaluated the difference in votes between the two mayoral candidates in Rrogozhinë. It was found that for the local government elections, the impact on the result, as per Article 161, point 2 of the Electoral Code, is considered when the number of voters in the declared invalid centers exceeds the difference between the two candidates who received the largest number of valid votes. In this case, the number of voters in that voting center declared invalid was 118, while the difference between the two candidates was 21 votes.

Upon analyzing the identified violations, the College rightly declared the elections invalid in the entire electoral zone, as the invalidity of the elections in the special Voting Center in Rrogozhina affected the overall result of the entire electoral zone.

The specific case reveals a fragmented approach to regulating the voting rights of prisoners across multiple laws, leading to complexity and confusion among the responsible institutions tasked with enforcement.

To address this issue, there's a pressing need for amendments to the Electoral Code, consolidating relevant provisions to ensure clarity and coherence in facilitating the exercise of voting rights for individuals in special institutions. Such revisions would promote legal certainty, enhance understanding, and facilitate consistent application of the law.

Another ambiguity arises from Article 161, point 2, sentence 2 of the Electoral Code, which specifically pertains to local elections.

The Electoral Code has not explained in terms of legal terminology what is the impact on the result for the elections of the president of the local government and why this does not affect the candidates for members of the municipal councils. Secondly, the content of this provision is unclear by not establishing a specific measure between the number of voters in the centers declared invalid and the difference between the two candidates who received the largest number of valid votes. It is suggested to present a concrete difference defined in the margins to leave no room for legal ambiguity.

### **"Bashkë Fitojmë" coalition v. the Central Election Commission**

*Decision No. 29, dt. 15.06.2023*

*The presence of female voters incarcerated in I EVP Kosovë did not impact the allocation of the mandate, as the difference in votes between the winning candidate and the plaintiff's candidate remained unaffected.*

#### **\* Analysis of the content of the decision**

The case is related to the request of the plaintiff party, the "Bashkë Fitojmë" coalition for the change of decision no. 175, dated 06.06.2023 of the ASC in the CEC, deciding:

- a. Recounting and fair re-evaluation of votes in all voting centers of the electoral unit, Belsh Municipality, and the approval of the Summary Table for the electoral area Belsh Municipality, incorporating the results obtained from the recount and fair re-evaluation of votes;
- b. Declaring the elections held in VC no. 2565/01 I.E.V.P Burgu Kosovë, from the Belsh Municipality electoral area, as invalid (on grounds of alleged voting by individuals not entitled to vote in this municipality);
- c. Amending SEC decision no. 533, dated 18.05.2023, titled 'On the approval of the Summary Table of Results for the election of the mayor of Belsh, in the elections for Local Government Bodies dated May 14, 2023,' to reflect the change in the summary table of results for the candidates for mayor of Belsh, excluding the result of voting center no. 2565/01 I EVP Burgu Kosovë, and announcing Mr. Bedri Qypi, supported by the 'Bashkë Fitojmë' coalition, as the winning candidate for the mayoral elections of Belsh."

The Electoral Judicial College decided to dismiss the lawsuit.

#### **\* Comment**

The Electoral Judicial College has upheld the exceptional nature of cases warranting the invalidation and repetition of elections. It asserts that election repetition cannot be warranted solely by demonstrated violations, unless it's proven that these violations had a tangible impact on the final outcome. Mere evidence of violations is insufficient to justify election invalidation;

the plaintiff must demonstrate that these violations had a material effect on the distribution of mandates. Moreover, the claim that violations were widespread and may have influenced election results must be substantiated during trial; otherwise, it remains speculative and cannot form the basis of a court decision. The panel concluded that prisoners at the IEPV of Kosovë had secured voting rights through individual court decisions, recognizing their right to vote at VC No. 2565/01 Kosovë Prison, in accordance with Article 57 of the Electoral Code.

### **"Bashkë Fitojmë" coalition v. the Central Election Commission**

*Decision No. 30, dt.19.06.2023*

*The Electoral College, echoing its previous decision, underscored that voting irregularities do not automatically render elections invalid, emphasizing the principle of proportionality.*

#### **\* Analysis the content of the decision**

The case pertains to the plaintiff's, the coalition 'Bashkë Fitojmë,' and the interested party 'Socialist Party of Albania's' appeal for the amendment of Decision no. 176, issued on 07.06.2023 by the ASC within the CEC, seeking:

- a) The nullification of SEC Decision no. 536, dated 20.05.2023, titled 'Approval of the Summary Table of Results for the Mayor and Municipal Council Elections in the Electoral Zone of Kamëz Municipality, for the Local Government Bodies Elections on May 14, 2023'.
- b) Deciding: (i) Declaring the elections conducted in the Kamëz Municipality electoral area as invalid; and (ii) Ordering the repetition of mayoral and municipal council elections in Kamëz Municipality through traditional voting with physical ballots.

The plaintiff party, the "Bashkë Fitojmë" coalition, is authorized to appeal to the College under Article 145, point 1 of the Electoral Code. The Judicial Electoral College has ruled to dismiss the lawsuit.

#### **\* Comment**

The College has reiterated a standard similar to that outlined in previous decisions, particularly in the case of the Municipality of Belsh. It emphasized that declaring elections invalid typically requires demonstrating specific violations that undermine the fairness and integrity of the electoral process, supported by concrete evidence. In this instance, the College concluded that the violations were not sufficiently detrimental to the electoral process. While the Electoral Code assigns the responsibility for declaring elections invalid to the CEC at the administrative level and to the College, which assesses each situation individually, there is a recommendation for more comprehensive provisions categorizing violations that significantly impact the electoral process, leading to its invalidation.

### **Lefter Maliqi v. the Central Election Commission**

*Decision No. 31, dt. 20.06.2023*

*The College determined that the subject matter of the lawsuit should be considered within the context of the trial regarding the objection to decision No. 178 of ASC. This is because it forms an integral part of that decision rather than being treated as a separate issue in the form of a lawsuit.*

#### **\* Analysis of the content of the decision**



The case involves the plaintiff, Leter Maliqi, and the interested party, the Socialist Party of Albania, seeking the annulment of ASC's decision to overturn the appeal requesting a recount and re-evaluation of votes for CEAZ No. 64.

The plaintiff Leter Maliqi is entitled to appeal to the Judicial Electoral College under Article 145, point 1 of the Electoral Code, and the claim was submitted on 13.06.2023.

During the trial, claims of violating rights under the Code of Civil Procedure were raised, particularly regarding due process violations as ASC dismissed the plaintiff's appeal without hearing all claims. However, the Judicial Electoral College decided to dismiss the lawsuit under Article 299, letter "c" of the Civil Code, determining that the lawsuit cannot proceed.

#### \* **Comment**

The Electoral Code outlines specific conditions under which a recount and/or reevaluation of votes can be conducted during the appeal procedure. The Electoral Code allows for such actions only for certain votes, such as those identified or disputed during the counting process or for disputed result table votes. These conditions require **contestations or findings of inaccuracies**, which must be documented on the contested sheets, result tables, or in the EAZC protocol book. Therefore, votes subject to evidence of inaccuracies are eligible for recounting, as the Electoral Code doesn't mandate automatic recounting and reevaluation in all voting centers. The decision of the Electoral College to suspend the trial aligns with these provisions.

#### **"Bashkë Fitojmë" coalition against the Central Election Commission,**

*Decision No. 32, Dt. 20.06.2023*

*The plaintiff's request to declare the elections in Elbasan Municipality invalid, citing violations in electronic voting, lacks a legal basis. There was no evidence to demonstrate that the failure to meet one of the technical conditions of the Electronic Voting Counting Equipment (PEVN) violated the electoral process. Furthermore, it was not established that this violation had any significant impact on the outcome of the elections. Therefore, the request cannot be supported under the law.*

#### **\* Analysis of the content of the decision**

The case pertains to the petition filed by the plaintiff coalition "Bashkë Fitojmë" and the interested party "Socialist Party of Albania" seeking the revision of Decision No. 177, issued by the ASC on June 8, 2023, ruling the following:

- a. Annulment of SEC Decision No. 539, dated 20.05.2023<sup>46</sup>,
- b. The invalidity of the elections held in the Elbasan Municipality electoral area; and Repeating the elections for the Mayor of the Municipality and the Elbasan Municipal Council by means of traditional voting with physical ballots.

The plaintiff, the "Together We Win" coalition, is authorized to lodge an appeal with the Judicial Electoral College under Article 145, Section 1 of the Electoral Code. The complaint was lodged with the Judicial Electoral College on June 12, 2023. The Judicial Electoral College has ruled to reject the complaint.

#### \* **Comment**

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<sup>46</sup> The request concerns the approval of the Summary Table of Results for the mayoral and municipal council elections in the Elbasan Municipality Electoral Area, held on May 14, 2023.

The College has consistently applied a standard regarding the seriousness of violations in electoral processes, emphasizing the need to assess whether such violations significantly impact the integrity of the electoral process.

While the Electoral Code outlines the powers of the Central Election Commission (CEC) regarding technology in elections and the procedures for its implementation, it lacks clarity on which violations constitute a serious threat to the electoral process, particularly those involving technological systems and electronic voting. The Electoral Code has not clearly specified which violations will be considered serious and will compromise the electoral process, especially those related to the use of technological systems and electronic voting

During the examination of this case, the College identified potential errors made by certain voters when using electronic devices, which could have influenced their choices. However, the extent of these errors stemming from the non-fulfillment of technical conditions for electronic vote counting equipment was not thoroughly evaluated. It is essential for electronic vote counting equipment to include mechanisms for error tracking to ensure the integrity of the voting process and prevent compromises to the accuracy of votes cast.

As mentioned above, considering the voters' right to cancel their vote and to enable its confirmation, it is recommended to provide in the Electoral Code relevant alternatives in case of problems with electronic voting on the day of the vote, as well as to determine specific violations related to electronic voting that seriously undermine the electoral process. The lack of clear regulations and standards for electronic voting systems can contribute to inconsistencies and potential abuses of the right to vote.

### **Lefter Maliqi & the "Bashkë Fitojmë" Coalition v. the Central Election Commission**

*Decision No. 33, dt. 30.06.2023*

*The Electoral College assesses that the mere identification of one or more irregularities does not constitute prima facie grounds for invalidating the elections, as long as it is not proven that these irregularities have significantly undermined the voters' will, seriously compromising the electoral process.*

#### **\* Analysis of the content of the decision**

The case is related to the plaintiff's request, Lefter Maliqi and the coalition "Bashkë Fitojmë," and the interested party, the Socialist Party of Albania, for the annulment and/or invalidation and/or determination of the total and/or partial invalidity of Decision No. 178, dated 13.06.2023, of the ASC at the CEC, which rejected the appellant's request for a recount of votes in all ballot boxes, for the CEAZ No. 64.

The plaintiff, Lefter Maliqi, and the coalition "Bashkë Fitojmë" are authorized to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code.

The lawsuit was filed with the Judicial Electoral College on 19.06.2023. The Judicial Electoral College decided to dismiss the lawsuit.

#### **\* Comment**

The College has argued cases of invalidity of ballot papers, in the context of cases sanctioned as such in the Electoral Code, not finding specific cases that served as a reason for the invalidity of ballot papers. The Electoral College also analyzed the violation of not holding the minutes of delivery of materials from the CEAZ to the CEC, considering it an administrative irregularity, as long as it is not proven to have consequences on the voting process or the election results.

Similarly, to the standard elaborated in previous decisions, for issues with the same or similar object, the Electoral College assessed that the mere identification of one or more irregularities does not inherently constitute a reason for the invalidity of the elections, as long as it is not proven that these irregularities have seriously undermined the will of the voters, seriously affecting the electoral process. Based on these arguments, it dismissed the lawsuit.

Regarding the analysis of the legal provisions of the Electoral Code, the best provision in the Electoral Code by specifically identifying the cases that lead to the invalidity of elections and the specific provisions that address the circumstances in which elections may be declared invalid, serving the integrity of the electoral process.

### **Democratic Party of Albania v. the Central Election Commission**

*Decision No. 34, dt. 01.09.2023*

*The Judicial Electoral College cannot examine the merits of the appellant's claims, but only the legality of the decision of the preliminary appeal examination, imposing the obligation on the CEC to decide.*

#### **\* Analysis of the content of the decision**

The case pertains to the request of the plaintiff, the Democratic Party of Albania, and the interested party, the "Partia e Lirisë", for the annulment of Decision No. 179, dated 22.08.2023, of the ASC "Regarding the non-acceptance for review of appeal No. 93, dated 20.08.2023, filed by the "Democratic Party of Albania" and the obligation of the ASC to make a decision regarding this appeal.

The plaintiff, the Democratic Party of Albania, is authorized to appeal to the Judicial Electoral College in accordance with Article 145, point 1 of the Electoral Code. Earlier, the ASC concluded that the plaintiff did not have legitimacy to submit an administrative appeal, and for this reason, it decided to reject the appeal, denying the plaintiff the right to be heard regarding the merits of its claims. The Judicial Electoral College assessed that the Democratic Party of Albania has legitimacy to challenge the decision of the State Election Commissioner through administrative channels, as it is considered a party in the administrative procedure based on which the decision of the State Election Commission was made. The Judicial Electoral College evaluates that in the specific case, besides the **formal legitimacy** arising from the content of Article 33 of the Administrative Procedure Code, the Democratic Party of Albania also has **substantive legitimacy**, as it appears to have a legitimate interest in submitting the administrative appeal.

Based on the analysis of the facts, the Judicial Electoral College has determined that the plaintiff was denied the right to a fair legal process in conducting the administrative procedure, by denying its right to be heard regarding all its claims, the right to present evidence, the right to conduct an adversarial administrative procedure, etc.

The Judicial Electoral College decided to accept the lawsuit, annul the decision of the ASC, and compel it to make a final decision regarding the administrative appeal submitted by the Democratic Party of Albania, within 2 days from the notification of the reasoned decision.

**\* Comment**

Based on the analysis of the facts, the Judicial Electoral College has determined that the plaintiff was denied the right to a fair legal process in conducting the administrative procedure, by denying its right to be heard regarding all its claims, the right to present evidence, the right to conduct an adversarial administrative procedure, etc.

The Judicial Electoral College decided to accept the lawsuit, annul the decision of the ASC, and compel it to make a final decision regarding the administrative appeal submitted by the Democratic Party of Albania, within 2 days from the notification of the reasoned decision.

**Democratic Party of Albania v. the Central Election Commission**

*Decision No. 35, dt. 15.09.2023*

*Acceptance of the request of the Democratic Party, noting that the right to propose 2 members of the CEAZ No. 11 for partial local elections for the mayor of Kukës Municipality belongs to the Democratic Party of Albania, and the right to propose 1 member of this CEAZ belongs to the Partia e Lirisë*

**\* Analysis of the content of the decision**

The case concerns the request of the plaintiff, the Democratic Party of Albania, and the third party "Party of Freedom" to annul Decision No. 181, dated 07.09.2023 of the ASC "For reconsideration of appeal no. 93, dated 20.08.2023 deposited by the political party "Democratic Party of Albania" and to amend the decision of the Commissioner no. 722, dated 19.08.2023, by changing it in letters "b" and "c" of point 1 as follows: b) two members are proposed by the "Democratic Party" (DP); c) one member is proposed by the "Partia e Lirisë" (PL).

The plaintiff, the Democratic Party of Albania, is authorized to appeal to the Judicial Electoral College in accordance with Article 145, paragraph 1 of the Electoral Code.

The lawsuit was filed with the Judicial Electoral College on 13.09.2023.

Based on the analysis of the facts, the parties in the judicial review process of the lawsuit did not raise claims for violations of the rights provided for in the Code of Civil Procedure. The parties, except for the third party "Partia e Lirisë", were present at the hearing of the case in the Judicial Electoral College, in accordance with Article 156 of the Electoral Code.

The Judicial Electoral College decided to accept the lawsuit, according to the object raised by the plaintiff.

**\* Comment**

Through this decision, the Judicial Electoral College has clarified the method of calculating votes at the party level, even in the case of coalitions, regarding their representation in the composition of the CEAZ membership. The reasoning of the decision highlights that the

Electoral Code attributes a series of rights to political parties and not political coalitions. One of these rights is the right to choose members of the CEAZ, recognizing this right to the main parliamentary majority party, the main parliamentary opposition party, the second majority parliamentary party, and the second parliamentary opposition party.

In local elections, the ranking of parties is determined based on the number of votes won nationally for local councils in the preliminary elections by parliamentary parties. The Judicial Electoral College, noting that in the specific case of the coalition, the name of the party to which this candidate belonged was missing on the ballot, identified the mechanism and calculated the number of votes won nationally for the Partia e Lirisë to compare it with the number of votes won by the Democratic Party of Albania. From this calculation, it resulted that the number of votes won by the Partia e Lirisë was smaller than the number won by the subject "Democratic Party of Albania" in the elections of May 14, 2023.

It is necessary to emphasize that both Article 29 and Article 88/3 of the Electoral Code provide rights to political parties participating in the recent elections and are conditioned by the number of valid votes received by them nationally. Based on the above, it is recommended to provide clearer provisions in the Electoral Code regarding the organization of political coalitions, as hybrid bodies without legal personality, based on the agreement between the coalition parties, standardizing the method of calculating mandates for electoral subjects even within the political coalition.

## IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis of the decisions of the Electoral College that were the subject of this study report, the AHC concludes as follows:

- The issues were deliberated by the Judicial Electoral College, with a panel composed of 5 members in accordance with Article 155, paragraph 2 of the Electoral Code, chaired by the rapporteur.
- Electoral subjects have mainly been authorized to appeal to the Judicial Electoral College in accordance with Article 145, paragraph 2 of the Electoral Code. Pursuant to Article 145/1 of the Electoral Code, the right to appeal to the Judicial Electoral College of the Court of Appeals, Tirana, against decisions of the CEC, is granted to electoral subjects and individuals or political parties whose request for registration as an electoral subject has been denied, within the deadline specified in Article 152 of the Electoral Code. Regarding the lack of legitimacy, we can mention decision no. 5, dated 27.03.2023, where the "Democratic Party of Albania" was not authorized to appeal to the Judicial Electoral College in accordance with Article 145/1 of the Electoral Code, as it was not registered as an electoral subject. [*Entities entitled to appeal*]
- Article 145 of the Electoral Code grants electoral subjects the right to appeal to the Electoral College of the Court of Appeals in Tirana against CEC decisions that violate their legitimate interests within the deadline specified in Article 152 of this Code. The Albanian Helsinki Committee (KShH) assesses that the stance of the Electoral College is correct regarding the right of appeal granted to electoral subjects/political parties/coalitions, who have presented their appeals to the Judicial Electoral College within the 5-day deadline from the announcement of the CEC's decision, in accordance with Article 152, paragraph 2 of the Electoral Code. [*Deadline for submitting appeals*]
- AHC observes that the decisions of the Judicial Electoral College have been issued within 30 days from the date of filing the lawsuit, in accordance with Article 157/2 of the Electoral Code.<sup>47</sup> [*Deadline for announcing the decision*]
- Appeals to the Judicial Electoral College for all decisions that the CEC takes within the period starting 48 hours after the decree of partial or general elections until the end of the administrative review of election appeals or the expiration of election appeal deadlines must be filed within 5 days of their announcement, in accordance with Article 152, point 2 of the Electoral Code. For decisions made by the CEC outside this period, the appeal deadline to the Electoral College is 30 days.
- In most cases, the parties involved in the judicial review processes of claims have not raised issues regarding violations of rights as provided for in the Code of Civil Procedure. During the judicial investigation, no new facts or evidence emerged, and the representatives of the parties were present at the trial of the case, in accordance with Article 156 of the Electoral Code. The respect for the rights of the parties and the relevant procedures demonstrates the Judicial Electoral College's adherence to due process. [*Due Process*]<sup>48</sup>

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<sup>47</sup> Article 157, point 1 of the Electoral Code states: "1. The Judicial Electoral College adjudicates and decides on claims within 10 days from the filing of the claim. In the cases provided for in the last sentence of point 2 of Article 152 of this Code, the Judicial Electoral College decides within 30 days from the filing of the appeal."

<sup>48</sup> Decision No. 1, 23.02.2022; Decision no.1, 09.03.2023

- AHC notes that the Judicial Electoral College has adhered to the deadlines for issuing decisions as stipulated in Article 157, point 1 (the 10-day deadline for appeals against decisions taken by the CEC within the period 48 hours after the decree of partial or general elections until the end of the administrative review of election appeals or the passing of appeal deadlines for elections) and point 2 (the 30-day deadline for decisions taken by the CEC outside this period).
- In decision no. 5, dated 27.03.2023, the "Democratic Party of Albania" was not legitimized to appeal to the Judicial Electoral College in accordance with Article 145/1 of the Electoral Code. The Democratic Party, with chairman Mr. Sali Berisha, was not registered as an electoral subject and therefore is not legitimized to challenge the decision-making of the ASC.
- In the decision *Ludovik Hasan v. Central Election Commission*<sup>49</sup> The plaintiff was fined by ASC without being notified, summoned, or heard in relation to the violation for which he was found responsible. Such an administrative process violated the principle of legality, as an administrative fine cannot be imposed without respecting the principles of due process.<sup>50</sup>
- AHC assesses that in the case of decision no. 32, dated 20.06.2023 of ECC, as well as in the case of decision no. 33, dated 30.06.2023, *it was not possible to prove that the relevant violations had managed to compromise the election process. Moreover, it was not proven that the violations were significant enough to have influenced the election outcome.* The mere evidence of one or several irregularities does not constitute an a priori reason for the invalidity of the elections, as long as it is not proven that these irregularities have seriously affected the will of the voters, severely impacting the electoral process.<sup>51</sup>

### ***Ambiguity in the Electoral Code***

- The code regarding the right to appeal to the court contains inaccuracies by using an incorrect legal reference. Specifically, Article 145, point 2 of the Code refers to the letters "a", "b", "c", and "ç" of Article 24 of the Code, regarding the exception that arises for electoral subjects to appeal to the Electoral College for not receiving a decision within the legal term by the CEC. In this specific case, Article 24 does not contain the letters "a", "b", "c", and "ç", a provision which causes legal ambiguity.<sup>52</sup>
- Article 64 of the Electoral Code stipulates that every political party must submit its request to register as an electoral subject to the CEC no later than 70 days before the election date, accompanied by the respective documentation specified in letter "b" of this article. The article does not clearly specify which competent body should submit the request. On the other hand, the Civil Code, in its provisions on representation, provides for the legal possibility of representation through authorization for conducting various legal actions. In light of the above, it is recommended to specify the relevant

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<sup>49</sup> Decision no. 7, dated 05.04.2023

<sup>50</sup> The CEC was obligated to respect the provision of Article 4, point 2 of the Administrative Procedures Code, which states that "the lawful rights or interests of a party may not be violated by administrative action, except as provided by law and while respecting due process."

<sup>51</sup> Lefter Maliqi & the "Bashkë Fitojmë" Coalition vs. the Central Election Commission, Decision No. 33, June 30, 2023; The "Bashkë Fitojmë" Coalition vs. the Central Election Commission, Decision No. 32, June 20, 2023; The "Bashkë Fitojmë" Coalition vs. the Central Election Commission, Decision No. 29, June 15, 2023; The "Bashkë Fitojmë" Coalition vs. the Central Election Commission, Decision No. 30, 19.06.2023

<sup>52</sup> The Legality Movement Party against the Central Election Commission, Decision no. 1, 09.03.2023

body responsible for submitting the registration request of a political party as an electoral subject to the CEC, as well as the right of representation by other bodies in the absence of the party chairman.<sup>53</sup>

- Article 65, point 3 of the Electoral Code briefly mentions the coalition agreement between electoral subjects. However, the Electoral Code fails to elaborate on the essential elements that must constitute an integral part of any coalition agreement, as well as the role of the CEC in cases where the coalition agreement presents issues or inaccuracies regarding the involved parties, the object, or the rights and obligations of the parties. In light of the above, it is recommended that the Electoral Code specify the necessary elements of the coalition agreement, as well as define the role of the CEC in reviewing and approving such agreements.<sup>54</sup>
- Article 70/4 of the Electoral Code does not establish a partial exemption from the obligation outlined in point 3 of this article, which would solely entail the establishment of the initiating committee without the acquisition of supporting signatures. Additionally, the candidate was registered as an electoral subject in the local elections of June 30, 2019, as a candidate nominated by a group of voters, following the same procedures stipulated in Article 70 of the Electoral Code. Since Article 70 of the Criminal Code has remained unchanged since 2012, the obligation specified in point 3 of Article 70 cannot be interpreted in two different ways. The interpretation of this article through Instruction no. 1, dated 18.01.2023, issued by the Central Election Commissioner, which introduces procedures not endorsed by the Code itself, violates the principle of legal certainty by failing to safeguard the acquired rights and legitimate expectations of legal subjects through the provisions of the Code. It is advisable to clarify Article 70, point 4 regarding the exceptions recognized for candidates proposed by voters, especially if they hold positions such as mayors, members of the council of the relevant local government unit, or members of the parliament.<sup>55</sup>
- Based on decision no. 13 and no. 14 dated 21.04.2023 of the Judicial Electoral College of the Court of Appeals, which pertained to the content of the ballot papers, it is recommended to have better discipline in the Electoral Code regarding Article 98/3 concerning the content of the ballot papers. Since the first sentence of paragraph 3 addresses all electoral subjects, mentioning the word "party" instead of electoral subject in the second sentence creates the impression of a more limited use regarding where the logo, initial letter, and name of the party leader will be placed. For this purpose, it is necessary to maintain a consistent legal and linguistic terminology for the same subjects or objects, aiming to avoid ambiguity in legal provisions.
- Given that citizens who wish to run in local and central elections hold public functions of special importance for political life and the functioning of the state, we deem that it is necessary to foresee in the Electoral Code the right that may arise for anyone to report cases of candidates when they are under prohibition conditions to run, especially when they have declared the opposite in the respective form.
- Part XIV Transitional and Final Provisions, Article 183, point 8, conditions the composition of the electoral administration bodies and the right to propose these

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<sup>53</sup> Democratic Party of Albania v. the Central Election Commission, Decision No. 5, dated 27.03.2023

<sup>54</sup> Democratic Party of Albania v. the Central Election Commission, Decision No. 6, dated 30.03.2023

<sup>55</sup> Mehmet Nelaj v. Central Election Commission, Decision No. 8, 11.04.2023



members based on the results of the general elections of 2017 and the majority-minority configuration of the Assembly at its opening, immediately after these elections. This is a transitional provision approved through amendments to the Electoral Code by Law No. 101/2020, dated July 23, 2020, which regulates the establishment of electoral bodies only for future parliamentary elections (those of 2021), as well as for local government elections (those of 2023). In the long term, it is recommended to depoliticize electoral administration bodies and provide the possibility to engage trained individuals to carry out electoral administration processes independent of various political subjects, or to digitize the vote counting process through the development of technology.

- Regarding the right to vote for prisoners, there is a fragmentation of the way this right is regulated in several laws. The fragmentation and interpretation of how prisoners can exercise their voting rights across different laws create complexity and confusion for individuals and legal professionals. To address this issue, it is recommended to enhance the Electoral Code by incorporating necessary additions that prevent legislative fragmentation, thereby clearly outlining the realization of the right to vote for individuals in special institutions.
- Another ambiguity is observed in Article 161, point 2, sentence 2 of the Electoral Code, specifically concerning local elections. The Electoral Code fails to clarify in legal terms the impact on election results for the position of local government president and why this does not affect candidates for municipal council members. The wording of this point lacks clarity, as it does not establish a specific measure between the number of voters in invalidated centers and the difference between the two candidates with the highest number of valid votes. It is recommended to amend the Electoral Code to include a defined concrete difference in margins, eliminating any room for legal ambiguity.
- It is recommended to include provisions in the Electoral Code outlining alternative measures in case of identification of issues with electronic voting on election day, as well as specifying specific violations related to electronic voting that seriously compromise the electoral process. The lack of clear regulations and standards for electronic voting systems may contribute to discrepancies and potential abuses of the right to vote.<sup>56</sup>
- It is necessary to emphasize that both article 29 and article 88/3 of the Electoral Code foresee rights that belong to the political parties participating in the last elections and are conditional on the number of valid votes received by them at the national level. Based on the above, it is recommended to provide in the Electoral Code clearer provisions regarding the organization of political coalitions, as hybrid organisms, without legal personality, establishing clear measures on the way of calculating mandates for electoral subjects even within the political coalition.

***Recommendations for the unification of the practice of the ECC and guaranteeing an effective appeal tool for electoral matters***

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<sup>56</sup> Coalition "Bashkë Fitojmë" v. the Central Election Commission, Decision No. 32 20.06.2023

- AHC has observed different standards in the decision-making of the Judicial Electoral College<sup>5758</sup>. These Decisions do not serve the continuity of delivering justice and stability in resolving cases that share characteristics or have similar objectives, making it possible for the law to be read and applied in different ways. The AHC, also based on previous technical consultative discussions with representatives of the CEC and the ECC regarding the preliminary draft of this report, deems that the harmonization of the practice of the Electoral Judicial College requires a permanent body and not an ad hoc one (the judges of the college are chosen by lot, with a limited 4-year mandate, according to Article 146 of the Electoral Code).
- We assess that it is necessary to specify in the Electoral Code the range of disputes that arise during an electoral process which the Electoral Judicial College has the competence to review.
- AHC notes that some of the decisions of the ASC, when administrative fines have been imposed, are contested in the administrative court, and the process of their review takes time, thus losing the efficiency of this appeal mechanism. If they were appealed to the College, the duration of these processes would be reasonable and would be completed within the legal 10-day period. Consequently, we assess that it is advisable to discuss the need to expand the substantive competence of the Electoral Judicial College and the subjects who have the right of active legitimacy to appeal to the College (referenced in Article 145 of the Electoral Code).
- It is also worth emphasizing that the special protection guaranteed to the judges of the Electoral Judicial College, according to Article 149 of the Electoral Code, creates privileges that are not in accordance with the competences granted to independent constitutional bodies of judicial governance according to the Constitution (Articles 147/a and 147/d), as well as the principle of judicial responsibility and accountability.

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<sup>57</sup> Lëvizja e Legalitetit Party v. the Central Election Commission, Decision No. 1, 09.03.2023; Bindja Demokratike Party v. the Central Election Commission, Decision No. 2, 09.03.2023; Lëvizja për Zhvillimin Kombëtar Party v. the Complaints and Sanctions Commission and the Central Election Commission, Decision No. 3, 09.03.2023

<sup>58</sup> Armando Subashi v. the State Election Commission & the Complaints and Sanctions Commission at the Central Election Commission, Decision No. 21, 24.05.2023; Gledian Llatja v. the Central Election Commission, Decision No. 22, Dated 24.05.2023