

February 9, 2023

AN ANALYSIS OF THE CURRENT SITUATION AND RECOMMENDATIONS FOR CHANGE LOCAL ELECTIONS 2023

The President of the Republic with decree no. 13864, dated 24.10.2022, set May 14, 2023 as the date for holding elections for Local Government Bodies. This is the ninth election (1992, 1996, 2000, 2003, 2007, 2011, 2015, 2019) and the third under the current parliamentary majority (2015, 2019, 2023).

The elections are the first after the EU's decision to start talks with Albania, within the framework of negotiations with the European Union¹. As such, the integrity and standards of these elections, the progress in comparison to previous elections, as well as Albania's ability to establish trustworthy electoral mechanisms, remain essential.

A. Political background

The year 2023 is the third year of the current Majority in its third term. Due to the crisis in the Opposition and its problems in representation and decision-making, as well as in the framework of the electoral reform, the Majority continues to be solid and focused on maintaining control over municipalities and municipal councils.

A number of scandals and charges on corruption have weakened the Majority's rhetoric and ability for serious institutional reforms, however there are no indications that these constitute elements with significant influence in local elections. In the partial elections of March 2022, it was proven that the SP also won in municipalities where the elections were caused by the arrest of mayors on charges of corruption (Lushnja) or resignations in the context of decriminalization (Vora).

¹ EU Albania 2022 Report <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

What is expected in this electoral campaign is the harsh political rhetoric between the parties, as well as the attempt of the two parties to transform the local elections into "national elections", i.e. into political elections that test the relations at the national level between the majority and the opposition.

B. The electoral reform

The Electoral Reform Commission failed to neither complete its work, nor to keep the promises made at the inaugural meeting for a clear agenda of proposals and decision-making. The commission held a minimal number of meetings, and at the last meeting in December 2022², the two co-chairs used vetoes against each other's proposals (DP demanded open-list voting for councilors, the right of mayoral candidates to be councilors, public campaign financing, legal basis for financing online media, etc.; SP rejected the requests, accepting only the package for the media, but requested that it be passed to ODIHR experts to elicit their opinion, which was rejected by the opposition.

SP supported RP on discussing the issue of electoral coalitions; however this point was also dropped due to the use of the veto). The mutual use of the veto causes the de facto failure of the reform and of the commission itself. On the other hand, neither the majority nor the opposition have demonstrated any great interest in the need for electoral reform, the demand has mostly emerged from civil society and other public actors.

The two parties, based on political calculations, have no disagreements regarding the preservation of the voting system, the two-party administration, the refusal to the voting by immigrants, the funding formula, nor in some other essential elements related to recommendations and elections.

C. Political actors

Unlike parliamentary elections, in which since 2009 there have been two parties or two large competing coalitions, in local elections there is room for more actors, especially small parties that have local influence. In the 2023 elections, no new political actors are expected and the race will be between two big blocs, SP and SDP on the one hand, and DP and FP (former SMI) on the other. Attempts for third blocks cannot affect the final results.

The only issue in this case is the crisis in DP and the legitimacy of its representation. The Berisha faction has announced 55 out of 61 candidates for mayor through the primaries system, the Alibeaj faction has announced 12 out of 61 candidates and the announcement of

² The Electoral Reform Commission (2022). <http://www.parlament.al/lajme/70a5889b-dd53-4dc8-a4cd-1d061283a44a>

others continues. If the two factions in DP decide to compete, the Opposition risks de facto losing its bastions as well, whereas if they unite, there may be more political balance.

DP faces the challenge of registration in the CEC, the party that registers has the right to appoint commissioners. If DP (Alibeaj) is registered, the other faction (Berisha) will have to deal with the need to find a coalition formula with FP (LSI) as in March 2022, or an escalation of the situation via protests. The opposite will also bring about disunity.

D. Electoral administration

The CEC has not changed since the 2021 elections, the election administration has remained the same, the CEC's request that the reform commission allow partial experimentation with some non-partisan technical commissioners was not approved. Consequently, the administration remains the same.

The sole current issue is that related to the legitimacy of the appointment of commissioners, due to the internal conflict in the DP. On 8.2.2023, the CEC appointed the commissioners of SP, FP and SDP, but there is still no decision on the DP commissioners. If the DP is unable to register due to a legal conflict, the CEC based on Article 29/5 can appoint itself commissioners. This practice was partially employed in 2019, but given the new circumstances of 2023, it may be a contested practice and, for sure, the DP will not consent to it.

The best scenario is that there will continue to be changes of commissioners in the last moments of the electoral race, depending on the progress of the talks between the two groups in the DP and the impact of the electoral polls.

E. Media

New elements related to the media are ownership changes and the extent of political influence. A TV station with national viewership, i.e., News24, was severely attacked by the government through the attack on its owner's assets. Another TV station, i.e., AbcNews changed its ownership and also changed its editorial policies. Some new TV stations have opened broadcasting off and/or online, such as Panorama TV (critical against the government) and CNA TV, close to the opposition, etc.

Traditionally, on the eve of the campaign, new media are launched, especially online, and the lack of regulatory and monitoring legislation facilitates the abuse of politics with the media. The reform commission did not approve the package for the online media. The CEC may make some decisions in this regard, but basically, online media remains unmonitored and uncontrolled.

SP exploited this gap in order to create the "Aktiv1st" application instead of the patronage system in the 2021 elections, but also the opposition, especially FP has a large number of online media in its favor³. Each party is interested in not having full monitoring of them, especially on funding sources. Party-produced edited footage, will continue to be provided to journalists, and there is no effort or editorial interest from most TV stations to change this approach.

F. State Institutions and Justice

The most important change in relation to the 2019 and 2021 elections are the filling of vacancies in new justice bodies and the change in the leadership of SPAK. The elections are a test for these institutions whether they will follow better and more effective investigative and decision-making practices compared to the previous elections.

The most popular files related to election irregularities have either been procrastinated so long that they have become ineffective for the public, or have been closed altogether for procedural reasons or other legal details. In December 2022, the court made decisions regarding the 2016-2017 commissioners in Dibra, as well as in February 2023, the decision was made for the mayor of Mallakstra regarding his decriminalization form⁴, filled out in 2019.

There are two illustrative cases of the processes that last from 4 to 6-7 years, significantly reducing the confidence that the new justice system will be swift, effective and guarantee the implementation of the electoral law.

³ ISP declaration. <https://isp.com.al/isp-aktiv1st-presioni-politik-dhe-abuzim-me-te-drejtat-e-lirite-kushtetuese/>

⁴ TCH> <https://top-channel.tv/2023/02/02/denohet-kryeb5ashkiaku-i-mallakastres-por-nuk-e-le-mandatin-do-ta-ndjek-ceshtjen-ne-shkallet-e-tjera-te-gjykimit5/>

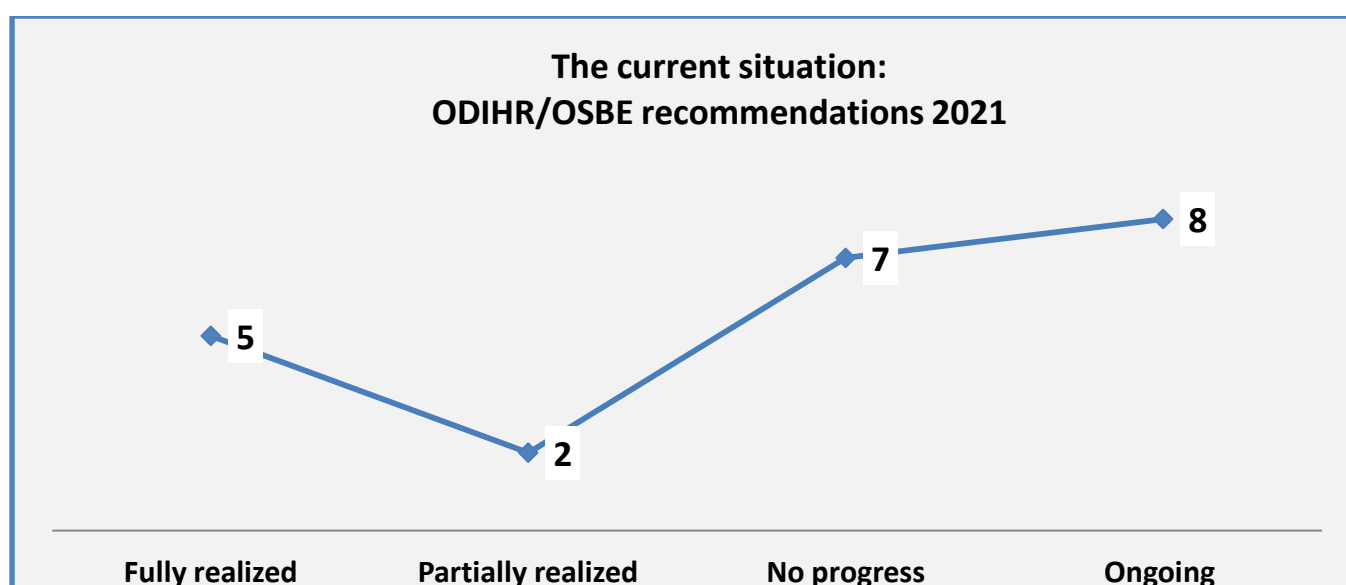
ODIHR 2021 RECOMMENDATIONS AND ELECTIONS OF 2023⁵

The ODIHR/OSCE recommendations constitute a political and institutional obligation for Albania. Some of the 2017 recommendations still apply to local elections, while there are two decisions of the Constitutional Court and an opinion from the Venice Commission. Meanwhile, the recommendations from the last parliamentary elections (2021) remain a priority. The lack of an electoral reform has also made it impossible to implement most of the recommendations, as well as some political statements (especially the one about patronageists) has left doubts about the political will to implement the recommendations.

Possible workaround

1. The CEC can undertake some regulatory acts to "compensate for the lack of electoral reform", minimizing the violation of electoral standards and the problems that this gap causes
2. State institutions can undertake acts and approve decisions that cover their responsibility and that can positively affect the standards of elections in some items related to the 2019 and 2021 recommendations
3. The Parliament can make legal regulatory decisions if it is necessary, not including in them the important elements of the electoral system and the integrity of the electoral legal process, which are forbidden to take place in the period before 6 months or in the year preceding the date of voting. The opposition has proposed an act on state resources, which is now undergoing the parliamentary procedure

Based on this hierarchy, we are presenting the current situation in relation to the four priority recommendations as well as other recommendations:



⁵ ODIHR/OSBE (2021). <https://www.osce.org/files/f/documents/5/1/493687.pdf>

More information on recommendations and current situation

Priority recommendations	Fully realized	Partially realized	No progress	Ongoing
<i>Priority recommendation 01</i> <i>Changes must be preceded by an open and inclusive consultation process, and approved before the next election</i>			There was no consultation process, no transparency, no inclusiveness, and (so far) no pre-election approval	
<i>Priority recommendation 02</i> <i>Prevention of any form of pressure from the state, etc.</i>			There is no strengthening of provisions (yet) nor additional safeguards	
<i>Priority recommendation 03</i> <i>Investigation and criminal prosecution for vote-buying cases</i>				<i>The campaign must be awaited to test the implementation of this recommendation</i>
<i>Priority recommendation 04</i> <i>Safety of citizens' personal data.</i>			The scandal of the cyber-attacks and the SP's "Aktivisti" program, have increased concerns pertaining personal data	
OTHER RECOMMENDATIONS				
<i>Recommendation No. 5</i> Restriction of news content by parties in the media			There is no change and party activities continue to be served "as ready-made materials for coverage of events"	
Recommendation No. 6 Regarding the national threshold of 1% Mandatory bylaws comply with the law and be approved on time.			There are no legal changes and no impact on local elections. Due to the lack of legal amendments, there have been no by-laws yet, just as well as in the current Code, there are no amendments in its by-laws	
<i>Recommendation No. 8</i> The CEC should publish a comprehensive calendar with deadlines		Yes, the CEC has implemented this recommendation.		

<i>Recommendation No. 9</i>	Independent observation / audit of electoral technologies.		The campaign will be the one to put this recommendation to the test
<i>Recommendation No. 10</i>	Voter education programs tailored according to category	The CEC has implemented several initiatives so far, innovations in information	
<i>Recommendation No. 11</i>	Registration of voters over age 100 should belong to the state.		Still in process, verification after the release of the public list
<i>Recommendation No. 12</i>	All voters should be informed in time about their polling station	Municipalities have not yet fulfilled this obligation (Tirana)	
<i>Recommendation No. 13</i>	Review of the candidacy of leaders in some constituencies		It is related to parliamentary elections, not the local ones
<i>Recommendation No. 14</i>	Removal of restrictions on the right to run for the deported persons		Still too early, verification only after the announcement of the candidates
<i>Recommendation No.</i>	Revision of the provisions on the maximum number of candidates on the lists		There is no change in provisions
<i>Recommendation No. 16</i>	Investigation of cases of misuse of state resources		There is still no system of reflection nor serious investigation, only statements
<i>Recommendation No. 17</i>	Legal amendments to expand regulations on donations and expenses	There are no new legal amendments on this matter	
<i>Recommendation No. 18</i>	Financial transparency be demanded from them before the election day	In legal terms, there are no changes yet in this matter	
<i>Recommendation No. 19</i>	The capacity of the CEC for financing supervision must be enhanced		It remains to be tested during and after the campaign
<i>Recommendation No. 20</i>	Free media time allocation for all contestants during		It remains to be verified in the campaign

	the campaign		
<i>Recommendation No. 21</i>	Voter education programs (ethnic/other minority groups)	The CEC has undertaken several acts in this regard	
<i>Recommendation No. 22</i>	Clarification of the responsibility for appeals against CEC's decisions		It remains to be verified in the campaign