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**Addressed:** Parliament, Relevant Parliamentary Committees  
**From:** AIS /Open Data Albania  
**Object:** Opinion on Normative Act with the authority of Law no. 1, dated 21. 02. 2024  
"On some changes in Law no. 97/2023 "On the 2024 State Budget"  
Petition to discuss the issue in the Committee.  
**Date:** March 4, 2024

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**Honorable Mrs. Klotilda Bushka,**  
Chairwoman of the Legal Affairs, Public Administration and Human Rights Parliamentary Committee

**Honorable Mr. Eduard Shalsi,**  
Chairman of the Economy and Finance Committee

Expressing high consideration for your work and commitment, the AIS organization wishes to present the following opinion and request:

The Council of Ministers has recently submitted for review and approval in the Parliament the Normative Act no. 1, dated 21.02.2024 "On some changes in the law no. 97/2023 "On the 2024 Budget".

The 2024 State Budget underwent revisions shortly after its initial approval, which inevitably, indicates necessarily leads to the conclusion that a weak legislative act approved, and exposing a lack of foresight highlighting there was a failure lack of proper planning by both the governing structures and Parliament. Such a practice of changing laws approved by Parliament is not recommended.

In its last Progress Report, the European Commission (2023)<sup>1</sup> emphasizes *“In recent years, including in 2022, budget revisions have been made primarily through normative acts, often lacking transparency and confirmed ex -post by Parliament. Uncertain economic conditions have justified this to some extent, but a return to more regular budget revision procedures seem appropriate»*.

The Supreme State Audit estimates that *“the changes in the budget expenditure plan by the Council of Ministers, after the approval of the revised budget in the Parliament, shows that the Executive branch has taken up the attributes of the legislator, and at the same time .... it has altered it into an action adjusting the extent to which some of the expenditure indicators are realized”*.

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<sup>1</sup> [https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b\\_en?filename=SWD\\_2023\\_690%20Albania%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b_en?filename=SWD_2023_690%20Albania%20report.pdf) p.15.

The Constitutional Court has previously assessed the compliance of the Normative Act with the Constitution, emphasizing that delegating legislative powers to the Government has an exclusionary character towards the power of the Parliament to approve primary norms. The court has justified the delegation of powers by noting that in certain situations or specific areas, the conventional exercise of legislative authority demands a certain technical timeframe. Moreover, given the complexity of disciplines in particular domains, the intervention of the legislator may be conducted at a later stage.

Nonetheless, the Court has determined that delegating legislative authority to the Government must adhere to the hierarchical structure of the Right sources, the requirements stemming from the separation and balance of authority principle, and the foundational values of the rule of law. Consequently, the discretion granted to the Government in assessing emergency situations and urgent circumstances is circumscribed by constitutional requirements and relevant restrictions (*see Decision no.5 of the Constitutional Court, dated 05.02.2014*).

Contempt, initially by the Council of Ministers, for procedural and substantive constitutional criteria and limitations, constitutes a deficiency in the constitutional legitimacy of the Government concerning the issuance of the Normative Act, as well as a flaw in the law approved by the Parliament (*see Decision no.5 of the Constitutional Court, dated 05.02.2014*).

The Budget is the most relevant Official Policy Document of any state, mirroring the country's economic and social development policy. The level of Budget indicators should be harmonized with other economic indicators in the process of drawing up and approving the Budget, the principles of unity and universality, as well as that of economizing and saving. Consideration should be given to the Public Investment plans, economic and social policies, objectives, or priorities of the country's Government in various periods, etc. (*see Decision no.19 of the Constitutional Court, dated 03.05.2007*).

According to Article 159 of the Constitution, the principles, and procedures for drafting the budget, along with its implementation are outlined in Law no. 9936, dated 26.06.2008 "*On the management of the budget system in the Republic of Albania*". Article 160 of the Constitution provides that, "*During the financial year, the Parliament can make changes to the budget. Changes in the budget are made based on the procedure provided for the drafting and approval of the budget itself.*" Based on the substance of this constitutional norm, explicitly, the Parliament retains the authority to intervene in the State Budget as long as it follows the same procedure used for approving the initial budget. This implies that the principles used in approving the initial budget are also applicable to revisions. Therefore, the approval of revisions to the state budget law falls exclusively within the jurisdiction of legislators.

In regard to the criteria conditioning the government's use of legislative competence delegation, the Constitution - through its article 101, - acknowledges the Council of Ministers' right to issue such acts only during extraordinary situations and when the necessity and urgency prevent Parliament from exercising its legislative powers. Even if we were to consider these two elements, in relation to the "need" for the approval of such an act, it is deemed that the Government possesses other means to conduct financial maneuvers and manage public finances. Regarding the "urgency" of the regulation, Article 46 of Law no. 9936, dated 26.06.2008, "*On the management of the budget system in the Republic of Albania*", provides that "*In the month of June of each year, but not later than the day of presentation of the medium-term budget program to the Council of Ministers, the Minister of Finance presents before the Council of Ministers an analysis of the implementation of the budget for the following year... In the event that the Council of Ministers decides to revise the annual budget law, the*

*procedure for its revision is the same as the procedures defined in Article 29 of this law, for the approval of the proposed State Budget. In case the approval of the revisions is not carried out within the month of July, then the proposal to amend the law on the annual budget is voted on with an accelerated procedure."*

The Parliament's Rules of Procedure, in Article 28, provides for procedural actions that must be undertaken during the review and approval of a draft law through an accelerated procedure. A request by the Council of Ministers or one fifth of the deputies is presented in writing to the Chair of the Parliament, who subsequently informs the Parliament during the next plenary session. The Chair of the Parliament submits the relevant draft decision to the Parliament for voting, establishing the day for reviewing the draft law in the respective committee, the deadline for proposing amendments, and the date for discussion in the plenary session. The deadline, within which the issue must be examined in the committee and in the plenary session, must not be less than one week from the day that Chair of Parliament submitted the request in the plenary session (*see Decision no. 5 of Constitutional Court, dated 05.02.2014*).

Accordingly, when the existing legislation allows for the approval of budgets revisions through an accelerated procedure and imposes a short timeframe for Parliament's review, the "urgency" argument for the act may not be applicable in these circumstances. Article 46 of Law no. 9936/2008, which stipulates the use of the accelerated procedure for the budget revision proposals, submitted after July, further strengthens the argument that such amendments can only be enacted through Parliament. This underscores that the competence for such matters solely resides withing the Legislative body and cannot be delegated.

**Based on the above-mentioned reasoning, the approval by the Council of Ministers of the Normative Act with the authority of law to implement revisions in the State Budget, a matter belonging to the reserve of the Parliamentary regulation, contradicts the principle of separation and balance of powers, outlined in Article 7 of the Constitution, as one of the fundamental principles of the rule of law.**

Accordingly, the AIS Organization AIS, also known as Open Data Albania, expresses concern and urges the Parliament to withhold consent for Normative Act no. 1/2024, and exercise its competencies in overseeing the budget and public finances through proper legislative process. Likewise, we stand prepared to present and argue our stance at a hearing in the relevant committees.

**Sincerely,**

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