**REPUBLIC OF ALBANIA**

**CENTRAL ELECTION COMMISSION**

**DECISION**

**FOR THE VERIFICATION OF THE DECLARATIONS IN THE SELF-DECLARATION FORM OF THE PUBLIC FUNCTIONARY, MEMBER OF ELBASAN MUNICIPALITY COUNCIL, MR.GANI HIDA, IN ACCORDANCE TO LAW NR.138/2015 "FOR THE GUARANTEE OF INTEGRITY OF PERSONS WHO ARE ELECTED, NOMINATED OR WHO PRACTISE PUBLIC FUNCTIONS".**

The Central Election Commission, in its meeting on 07.02.2017, with the participation of:

 Denar BIBA- Chairman

 Hysen OSMANAJ- Deputy Chairman

 Bledar SKËNDERI- Member

 Edlira JORGAQI- Member

 Gëzim VELESHNJA- Member

 Klement ZGURI- Member

 Vera SHTJEFNI- Member

examined the issue with the following:

**OBJECT:** For the verification of the declarations in the self-declaration form of the public functionary, member of Elbasan Municipality Council, Mr.Gani Hida, in accordance to law nr.138/2015 "For the guarantee of integrity of persons who are elected, nominated or who practise public functions".

**LEGAL BASIS:** Article 23, item 1, letter "a", law nr. 10019, date 29.12.2008 "Electoral Code of the Republic of Albania", as amended; Article 14, article 15 of law nr.138/2015, "For the guarantee of integrity of persons who are elected, nominated or who practise public functions"; Chapter V, Parliament Decree nr.17/2016 "For the definition of detailed rules on the implementation of bans predicted in law nr.138/2015, "For the guarantee of integrity of persons who are elected, nominated or who practise public functions".

The Central Election Commission, after examining the submitted documentation and hearing the discussions of those present,

**NOTES**

In implementation of law nr.138/2015 “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”, CEC is the competent body for administration, verification and implementation of the bans for the election and appointment in public functions, also the elaboration for the self-declaration form and also for the adviser in the municipality council.

In application to the law nr.138/2015 “For the guarantee of integrity of persons who are elected, nominated or who practise public functions” and Chapter V, item 2, letter “b” and item 3, letter “c”, parliament verdict nr.17/2016 “For the definition of detailed rules on the implementation of bans predicted in law nr.138/2015”, the CEC with requisitions nr.2451 and 2452, date 13.05.2016, has requested information from the Civil State Office and Judicial State Office, for the judicial state of the functionaries who have submitted the self-declaration forms at the CEC.

In response to the requisition, the Judicial State Office has delivered to the CEC the judicial state certificates for all the public functionaries that were have asked for. The General Directorate of the Civil State Office still has not delivered a response for the advisers of the municipality councils on whether they have had changes in their generalities.

In reference to article 33, 42 and 47 of the Administrative Procedure Code, CEC gathered as a party in this administrative investigation, Mr.Gani Hida, where he gave explanations on the facts and circumstances of the case.

CEC, in reference of article 15, item 1, law 138/2015 and Chapter VI, item 6, Chapter V, item 3, letter “b” of parliamentary decree 17/2016, verified whether any of the presented circumstances is involved inside the sphere of the bans prescribed from the law for the chief functionariess mentioned above.

From the verification of the self-declaration form of Mr.Gani Hida, in the degree as member of the Council, it results that there does not exist a penalty in the form of a firm verdict from judicial Albanian or foreign authorities for Mr.Gani Hida. Also, in the self-declaration form there has not been presented any case of ban, investigation, measure of personal safety, sentence from the authorities, albanian or foreign.

From the processing of the certificate of the judicial state, issued by the General Directorate of Prisons, results that Mr.Gani Hida has been sentenced with a firm verdict with 1(one) year of jail, for the penal act “Abuse of Duty“, predicted in article 248, 48/ç and 49 of Penal Code, verdict nr.137, date 18.02.2014 of the Judicial District Court of Elbasan.

In reference of letter “b”, item 1 of article 2, of law nr.138/2015 “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”, bans on candidation, election or practicing of the function, are implemented towards people who have been convicted with prison with a firm verdict for commiting felony on purpose...inside or outside the territory of the Republic of Albania, for commiting actions and nonactions that constitute a penal act, according to articles 110/c, 244, 245, 248, 248/a, 259, 260, 319, 319/ç or in the field of elections, predicted in Chapter X “Penal acts that affect free elections and the democratic system of the elections”, of Penal Code.

The penal act “Abuse of Duty”, predicted in article 248, 48/ ç and 49 of the Penal Code, are included, in the scope of stoppage of practising the function, predicted in article 2, item 1, letter “b” of law 138/2015.

Law nr.138/2015 “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”, in article 4 also predicts the period during which are applied the provisions of this law for the ban, candidation, election, practising of the function, depending on the type of the declared penal act.

According to article 4 of the law mentioned above

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2. For people who are prescribed from letter “b”, of item 1, of article 2 of this law, the ban for candidation, election or practising of the function has a 20 year duration from the moment of the completion of the conviction with jail, according to the firm judicial verdict.

In reference to verdict nr.137, date 18.07.2014 of verdict of the Judicial Court in Elbasan according to which Mr.Hida has been declared guilty for the penal act “Abuse of Duty” and article 4, item 2, law 138/2015, Mr.Hida is within the period for ban from exercising the function.

In reference to the data in the self-declared form filled by Mr.Gani Hida, in accordance to penal act “Abuse of Duty”, prescribed from article 248, 48/ç dhe 49 of Penal Code, in accordance to letter “b”, item 2, article 2 of law nr.138/2015, public functionary Mr.Gani Hida is in the condition of being banned of practising the function.

Article 10, item 1 of law nr.138/2015 “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”, predicts that:

When the conditions for not candidating and not being elected are verified, in accordance to this law, CEC performs the below actions:

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d) declares invalidity of the mandate and precocious ending of the mandate when the conditions of not candidating and not being elected are verified after the beginning of practising the mandate...and also notifies the Prime Minister in the case of Municipality Mayors or Municipality Advisors.

As for the above, the CEC in reference to article 179/1 of the Constitution, article 14 and article 10, item 1, letter “d”, decares the invalidity of the mandate and precocious ending of the mandate of the public functionary, Mr.Gani Hida.

**FOR THESE REASONS:**

The CEC, in reference to article 179/1 of the Constitution, article 23, item 1, letter “a”, law nr.10019, date 29.12.2008 “Electoral Code of the Republic of Albania”, as amended; article 14, article 15 of law nr.138/2015, “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”; Chapter V, parliament verdict nr.17/2016 “For the definition of detailed rules on the implementation of bans predicted in law nr.138/2015”, “For the guarantee of integrity of persons who are elected, nominated or who practise public functions”.

**DECIDED:**

1. To declare invalid and precocious ending of the mandate of the member of the Elbasan Municipality Council Mr.Gani Demir Hida.

2. This decision will be delivered immediately to the Prime Minister.

3. This decision shall enter immediately into effect and it will be published on the Official Bulletin.

4. An appeal can be filed against this decision, according to the law.

 **Denar BIBA- Chairman**

 **Hysen OSMANAJ- Deputy Chairman**

 **Bledar SKËNDERI- Member**

 **Edlira JORGAQI- Member**

 **Gëzim VELESHNJA- Member**

 **Klement ZGURI- Member**

 **Vera SHTJEFNI- Member**