



Republic of Kosovo
Republika e Kosoves- Republika Kosova
Elections Complaints and Appeals Panel
Paneli Zgjedhor per Ankesa dhe Parashtrresa
Izborni Panel za Zalbe i Predstavke

A.nr. 90/2019

Elections Complaints and Appeals Panel (ECAP), Panel composed of Judges: Rrustem Thaqi Chairperson Zyhdi Haziri and Ferki Xhaferi members, with the participation of high legal official Florije Krasniqi, deciding on the complaints submitted by Balkan Investigative Reporting Network BIRN and Internews Kosova and Kosovo Democratic Institute (KDI) submitted against political subject Serbian List (SL) due to the Violation of Code of Conduct during the electoral campaign breach for the Early elections for the Assembly of Kosova which will be held on 06.10.2019, at the panel session held on 27.09.2019, made the following :

DECISION

To ACCEPT as well-grounded the complaint A.nr. 90/2019 dated 26.09.2019 submitted by Balkan Investigative Reporting Network BIRN Internews and Kosova based in Prishtina and complaint A.nr.94/2019 dated 26.09.2019 submitted by Kosovo Democratic Institute (KDI) based in Prishtina and IMPOSED A FINE in amount of 30,000.00 (three thousand) euros against the political subject Serbian List (SL) due to Violation of Code of Conduct of Election Entities, the supporters and candidates so they are obliged to pay within 15 days from the day this judgment becomes final, under the threat of bailiff.

Reasoning

On 26.09.2019 ECAP received the complaint A.no.90/2019 submitted by Balkan Investigative Reporting Network BIRN Internews and Kosova based in Prishtina and the complaint A.no.94/2019 submitted Kosovo Democratic Institute (KDI) claiming that Serbian List (SL) has published an election spot, which violates constitutional order and invokes the jurisdiction of another state, namely the state of Serbia, and as such, it incites hatred for the majority community in Kosovo.

In this spot it is also stated that: *'When it is difficult, we can win only if we are together, in defense of what is ours, when Serbia calls, I give my vote'*. So, the submitters of this complaint mention that the Serbian List's post has messages that incite provocation and hatred towards the existence of the state of Kosovo and violates Law on General Elections. The complainant has attached a CD as material evidence.

Panel, based on Article 13 paragraph 2 of ECAP Regulations and Procedures, has decided to aggregate the above complaints and treat them as one complaint, due to the same nature of the cases and allegations, and to decide on all of them by one decision due to the efficiency and cost-effectiveness of the procedure.

ECAP pursuant to Article 7 paragraph 1 of Rules and Procedures of ECAP notified the political subject Serbian List concerning the complaint submitted against this entity and required for a response concerning the complaint/s in question until 27.09.2019 at 10:00hrs.

The political subject Serbian List, in the response to the complaint dated 27.09.2019 mentioned that the submitted that considers the allegations in the complaint ungrounded because the video spot was prepared in order so the majority number of citizens of the Serbian nationality with the right to vote in Kosovo to go out and vote in accordance with Law on General Elections and that in the whole spot there is not provocation or call for violent acts. Political entity Serbian List is the political subject which competes for 10 Serb minority seats belonging to the Serb community, in accordance with Article of the Constitution. So this video - this spot can never be directed against other communities but it is calling *'in defense of what is ours'*, which means those 10 seats the guaranteed for representation of Serbian community and which right is guaranteed pursuant to Article 64 of the Constitution of Kosovo and LGE. Thus, it only applies to the Serb community considering that these are places guaranteed to the Serb community and cannot provoke other persons to acts of violence. The other part of the disputed sentence *"when Serbia calls, I give my vote"* is a part dealing with the Brussels agreement where Serbia is a signatory party together with Kosovo where one of the responsibilities is the integration of Serbian community and the participation of Serbian community in elections. This sentence was made in order to avoid or prevent the boycott of elections and the possibility of someone to accuse Serbia and the Serb community of deliberately boycotting the Brussels Agreement. And in accordance with Article 64 of the Constitution of Kosovo, to protect "our" seats guaranteed by Constitution, for Serbian community. And this would be misused if they were boycotted or if a small number of people would go to vote, which would be contrary to the Constitution and the LGE. We consider that this video-spot should be viewed as a whole and not to cut the words cut and attempt to be misinterpret the same words. Based on we move that the complaint to be dismissed as ungrounded because the same is an attempt to have some words cut out from its context and this is not the essence of the video spot in general.

ECAP, after review and analyze of the case file, pursuant to Article 117 paragraph 2 of LGE found that:

- **The complaint is grounded.**

Panel, after viewing the CD provided as material evidence which is also published on the official website of the Serbian List, has assessed that the political subject Serbian List, in order to promote the political subject and its candidates in the electoral spot, has incited interethnic hatred in Kosovo and used political objects to promote the program of their political subject during the election campaign.

The spot of political subject Serbian List also contains messages that incite and provoke hatred towards the existence of the State of Kosovo when it is said: *'When it is difficult, we can win only if we are together, in defense of what is ours'' when Serbia calls, I give my vote'* and according to Panel's assessment, by using this language, there is hatred incited against others in this spot.

Whereas as far as considering the allegations in the response to the complaint concerning the guaranteed seats at Assembly of Republic of Kosovo, Panel finds it unsustainable because of the Transitional Provisions for Assembly of Kosovo, in Article 148 paragraph 1 of Constitution of Republic of Kosovo, provides as follows: *'For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively''*, whereas with paragraph 2 of this Article it is provided as follows: *'Notwithstanding paragraph 1 of this Article, the mandate existing at the time of entry into force of this Constitution will be deemed to be the first electoral mandate of the Assembly, provided that such mandate continues for a period of at least two (2) years from the date of entry into force of this Constitution''*.

Therefore, Panel assess that abovementioned political subject has committed the violation of Code of Conduct for Political Subjects, Supporters and Candidates, which acts are contrary to Article 33 item (l) of LGE, which provides as follows: *‘During the campaigning period a Political Entity, its supporters or candidates shall be prohibited from doing any of the following: using language, in oral or written form, which incites or provokes, or is likely to incite or provoke, another person to commit an act of violence against other persons or property, or which incites or is likely to incite hatred towards others, or publishing or using pictures, symbols or any other material that has or is likely to have such effects’*”.

Panel, while imposing the fine as in the enacting clause of this Decision, considered the abovementioned violations and imposed the fine, based on Article 120 paragraph 1 item c 0) of LGE, Article 3 item 11 of Regulation no. 01/2012 on Categorization of Sanctions and Fines of ECAP because:

By Article 120 paragraph 1 item c) of LGE, Amended and Supplemented by Law on General Elections of Republic of Kosovo, with no. 03/L-073 dated October 29, 2010 Article 14 provides as follows: “ Article 120 in force paragraph 1 item b) and C) reworded as follows: item c) imposes a fine on a political subject up to 50.000 euros”.

By Article 3 item 11 on Categorization of Sanctions and Fines of ECAP, it is provided as follows: ” *If a Political Subject, its supporters or candidates, during the campaigning period use language, in oral or written form, which incites or provokes, or is likely to incite or provoke, another person to commit an act of violence against other persons or property, or which incites or is likely to incite hatred towards others, or publishing or using pictures, symbols or any other material that has or is likely to have such effects.. that political subject which is represented at Assembly of Republic of Kosovo is fined between 10,000 and 30,000 euros.*

Panel, upon review of the case file and referring to the legal provisions mentioned above and especially considering the circumstance of the case such as:

- *the nature of the violation and its potential impact on the electoral process;*
- *degree and gravity of the violation;*
- *the fact that the political subject participated in earlier elections which means that the same was aware on obligations and responsibilities during the electoral process period and besides the abovementioned the same subject, in the previous elections was considered as inappropriate exactly for the language used which was qualified as inappropriate and through which it could incite act of violence and therefore it was fined twice in the electoral process in 201;*
- *political subject with the video spot published during this electoral campaign has committed a violation of Law on election in force as well as in the previous elections in Kosovo which means that the same subject is a recidivist- repeats the*

law violations and electoral rules which means that the imposed fines in the previous processes had not effect on improving and discipline of this political subject and

- *amount of the funds taken by the political subject from Budget of Republic of Kosovo in order to organize the activities related to the election campaign.*

Besides the abovementioned, Panel while deciding, assessed also all the allegations of political subject Serbian List within the allegations mentioned in the response to the complaint but the same were ungrounded, unstable and with no legal ground as in the Law on Elections, constitutional provisions and Brussels Agreement and as such had no effect for amendment of a decision, which is why Panel assessed and decided as in the enacting clause of this decision.

Based on the reasons mentioned above and pursuant to Article 32, paragraph 2, Article 118 paragraph 1 and Article 120 paragraph 1 item c) of LGE, it decided as in the enacting clause of this decision.

Elections Complaints and Appeals Panel

A no.90/2019 dated on 27.09.2019

Rrustem Thaqi, Chairperson
(signed & stamped)

Legal remedy: *Appeal against this decision, is allowed pursuant to Article 118 paragraph 4 of LGE, to the Supreme Court, from the moment of receipt of this decision.*