



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

A.no. 374/2019

Elections Complaints and Appeals Panel (ECAP), Panel composed of Judges: Gyletene Sylejmani Chairperson, Faton Ademi and Adnan Konushevcı members, with the participation of high legal official Kudret Hasani, deciding on the complaint filed by LVV Political Entity submitted against Central Election Commission (CEC) due to the Irregularities at Counting and Result Center for the Assembly of Kosova held on 06.10.2019, at the panel session held on 19.010.2019, made the following :

DECISION

- I.** To partly **ACCEPT** the complaint A.no. 374/2019 dated 16.09.2019 submitted by LVV Political Entity based in Prishtina and **ORDER** Central Election Commission - Counting and Results Center to assess as valid 3 ballots at Polling station BM015/001 and 1 ballot at Polling Station BM019/001 and attach the same to the final results.
- II.** To **refuse** as partly ungrounded the complaint A.no.374/2019 dated 16.10.2019, submitted by LVV Political Subject based in Prishtina, asking for announcing the all ballots from the following polling stations as valid : BM001/001, BM025/003, BM002/001, BM002/004, BM002/005, BM006/003, BM031/001, BM007/002, BM007/001, BM008/001, BM030/002, BM030/001, BM019/002, BM019/004, BM019/006, BM020/004, BM020/001, BM012/001, BM021/001, BM024/002, BM024/001, BM026/003, BM026/002, BM026/001, BM027/003 and BM010/003.

Reasoning

ECAP, on 16.10.2019 received the complaint A.no. 374/2019 submitted by political entity Levizja Vetevendosje (LVV) with allegations that on 16.10.2019 at the Count and Results Center (CRC), while counting the votes received by post service, there were three ballots announced as invalid contrary to Article 6 and 7 of Election Regulation 06/2013, by defining additional criteria which are not provided as per provisions of the mentioned regulation. According to the complaint submitter, CEC has announced invalid the three mentioned ballots with the reasoning that the ballots were printed on A4PDF format whereas CEC has published them in A3 PDF format. Further they added that while printing those ballots, the last line was not printed and that this was the reason why CEC has announced these ballots as invalid. In the amendment to the complaint 374/3 dated 17.10.2019 political entity LVV mentioned that CEC has announced 170 other ballots invalid for identical reason, only because the last line of the ballots was not completely shown so there was a non-legal criteria on which these ballots were announced as invalid. The submitter of the complaint claimed that the 170 ballots which were announced as invalid, were found in the ballot boxes for municipalities as follows: BM001/001, BM025/003, BM002/001, BM002/004, BM002/005, BM006/003, BM031/001, BM007/002, BM007/001, BM008/001, BM030/002, BM030/001, BM019/002, BM019/004, BM019/006, BM020/004, BM020/001, BM012/001, BM021/001, BM024/002, BM024/001, BM026/003, BM026/002, BM026/001, BM027/003 and BM010/003.

The submitter of the complaint claims that the entire technical process was conducted in accordance with Article 4 of Election Regulation 03/2013 Voting outside of Kosovo as the Article 6 of Election Regulation 06/2013 was accurately respected whereas the ballots which were announced invalid are not qualified on any of the categories provided in Article 7 paragraph 2 of Election Regulation 06/2013 on which these ballots can be announced as invalid ones.

The response of CEC received by email on 18.10.2019 Central Election Commission, upon review of the complaint and allegations of the complainant states the following: Center for Counting and Results during the counting of votes received by mail encountered ballots which due to the printing issues in some of the ballots all political subjects /entities are not visible. CEC has approved the ballots in which all certified political entities were placed and listed according to the lot drawn and which entities competed for Early Election for Assembly of Kosova on 06.10.2019. The allegations of the complaint include printed ballots without one or more political entities and the reason why Counting center announced these ballots invalid is that the printed ballots did not contain all certified political entities which were listed by lot and which ballots were approved by CEC. Attached as evidence are ballots which were announced as invalid by CRC because there not all political entities there.

ECAP, upon review of the complaint, assessment of the allegations and the attached evidence and pursuant to Article 105 paragraph 1 and Article 117 paragraph 2 and 3 of LGE, found that:

The complaint is partly grounded.

Based on case file it was ascertained that in the ballot boxes: BM001/001, BM025/003, BM002/001, BM002/004, BM002/005, BM006/003, BM031/001, BM007/002, BM007/001, BM008/001, BM030/002, BM030/001, BM019/002, BM019/004, BM019/006, BM020/004, BM020/001, BM012/001, BM021/001, BM024/002, BM024/001, BM026/003, BM026/002, BM026/001, BM027/003 and BM010/003 there were 173 ballots announced as invalid ones by CRC because in the most of them there are not all competing political entities identified or in some of them there is not voting at all for the political entity only the vote for the candidates whereas in one part of these ballots besides mark on the box of the identified subject, there is another mark to the other subject or the marked to one subject went through the other subject as well. As the result of this CRC at the counting process, has announced those ballots invalid.

Political entity Levizja Vetevendosje as the complainant has submitted a complaint as per Article 105 paragraph 1 of LGE within legal time set by CEC so these ballots to be announced as valid as the errors and flaws referred to CEC are not a criteria which makes a ballot an invalid one.

Panel, on receipt of the complaint, response to the complaint, has established the investigating unit and sent it to CRC in order to conduct investigations concerning the allegations made by the complainant. Upon completion of the investigations at CRC, Panel found that the allegation of the complainant stands for a few ballots found in the ballot box as mentioned on item I of the enacting clause of this Decision were found invalid as after the examination of the same it resulted that the they do not meet any of the criteria for invalidity and that the same should be considered as valid ones and be added to the results. Whereas most of the ballots placed as on item II of the enacting clause of the Decision, upon the examination of the same, it results that the same cannot be considered as valid ones because in them there are not all political entities shown so in absence of any of political entity, the ballot cannot be considered as valid one as the same is not complete. The same rule goes also during the voting on the voting day when the errors and shortcomings in any of the ballots makes it not complete/ irregular and consequently invalid.

ECAP, in order to avoid the abovementioned shortcomings, based its Decision on Article 119 paragraph 5 of LGE which provides that: *'The ECAC may upon its own discretion consider matters otherwise within its jurisdiction, when strictly necessary to prevent serious injustice'* in conjunction with Article 118 paragraph 1 of LGE, decided as in the enacting clause of this Decision.

The result which derives on the validity of the ballots as under item I of the enacting clause of this Decision and attached to this Decision, shall be included while announcing the results of the election, by CEC.

Therefore, Panel pursuant to Article 117, 118 and 120 of LGE, decided as in the enacting clause of this Decision.

Elections Complaints and Appeals Panel
A.no.374/2019 on 19.10.2019

Gyltene Sylejmani,
Chairperson
(signed & stamped)

*Legal remedy: Appeal against this decision,
is allowed pursuant to Article 118 paragraph 4
of LGE, to the Supreme Court, 24 hours on receipt
of this decision.*