



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

A.no. 344/2019

ECAP, Panel composed of Judges: Gyltene Sylejmani, Faton Ademi and Adnan Konushevci members, with the participation of high legal official Antigona Murati, deciding on the complaints submitted by the Nisma-Akr-PD Coalition, from Prishtina, submitted against the chairpersons and members of Polling station with number 2114B/01R, 02R, 03R, 04D in Skenderaj due to the loss of some ballots on election day, in the session of the panel held on 10.10.2019, made the following :

DECISION

To **Approve** the complaints A.no. 344/2019 and A.no. 354/2019 dated 07.10.2019, submitted by the political entity coalition Nisma-Akr-PD from Prishtina **as grounded**, so the Chairperson of Polling Station 2114B/01R, Alban Shala and members of the same polling station Dorent Hajredini with badge no. 209, Rahim Rama, badge no. 210, Bozhidar Tomashevci, badge no. 212, Albulena Bajraj, badge 211, Armend Citaku, badge no. 208; observers: Adem Nimanaj, badge no. 3735, Avdi Dragaj, badge no. 3098, Ermal Shala, badge no. 4314, Fazli Miftari, badge no. 2809, Albert Citaku, badge no. 027, Valbona Hetemaj, badge 3673, Shqipe Misiri badge no. 311, Alban Citaku badge no. 4073 and Petrit Rama, are prohibited in duration of 5 years to participate on elections as a candidate and as an administrative part of any electoral body managed under the authority of the Central Election Commission (CEC), due to the loss of some ballots on election day, of Early elections for the Assembly of Kosovo dated 06.10.2019.

To **Reject as impermissible**, the part of the complaint A.no. 344/2019 dated 07.10.2019, submitted by the Nisma-Akr-PD Coalition from Prishtina, in the part referring to the request for recount by CRC regarding the PS mentioned in the complaint, with number 2114B/01R, 02R, 03R, 04D in Skenderaj due to the loss of some ballots on election day, of early elections for the Assembly of Kosovo dated 06.10.2019.

Reasoning

On 07.10.2019, the ECAP received the complaints A.no. 344/2019 and A.no. 354/2019 submitted by the political entity Nisma-Akr-PD Coalition from Prishtina, against the chairpersons and members of VC 2114B, Polling stations 211B / 01R, 02R, 03R, 04D, at "Shote Galica" school in Runik village, Skenderaj municipality, claiming that some ballots were lost in the polling stations mentioned in the complaint, according to allegations these ballots have been stolen, which they believe has seriously damaged the process and administration of the voting and the number of votes in this Polling Station.

Complainant A.no. 354, claims that at about 17:00hrs., on the Election Day, at about 600 unfilled ballots were taken out of the VC. Police and the Prosecutor's Office have been notified of this case, where they have questioned PSC members and polling station leadership.

The same request from ECAP to approve their complaint, and authorize the CEC, respectively CRC, to conduct recounting of the above-mentioned polling stations.

Concerning this case, ECAP also notified the Kosovo Police and requested from them to undertake concrete action.

The police report dated 08.10.2019 states that concerning the case dated 06.10.2019 at VC 2114B at "Shote Galica" school in which there were four VCs with number 2114B / 01R, 02R, 03R, 04D, at about 18:40hrs., a complaint was filed by the police assigned to this VC. The complaint in question concerned the removal of some blank ballots. Upon receipt of the complaint, at about 19:20hrs., Investigation Unit went to this VC and met Manager of that center and the complainant who was Chairperson in PS no. 2114B / 01R Mr. Alban Shala. These persons informed the investigating unit that 9 blocks with 450 blank ballots had been taken and removed from the PS (one block had 50 pieces of ballots). According to the head of this PS, 750 ballots were received in this PS, they had 889 voters, 299 voters has voted, and 450 ballots were stolen. Chairperson of this polling station, Alban Shala, stated that he had noticed the theft of ballots at about 18:00 hrs. The following persons were engaged in the electoral process at this VC: Alban Shala Chairperson, members: Dorent Hajredini, Bozhidar Tomashevic, Albulena Bajraj, Armend Citaku, observers: Adem Nimanaj, Avdi Dragaj, Erman Shala, Fazli Miftari, Albert Citaku, Valbona Hetemaj, Shqipe Misiri, Alban Citaku and Petrit Rama. After interviewing these persons, all of them stated that the ballots were missing, but no one provided information on who or how these ballots were taken outside of that PS, and stated that they found out that ballots are missing after the case was reported by Chairperson of this PS at the same time the complainant of this case, Alban Shala. According to the police report, the Chairperson of this PS, Alban Shala, who reported the case, after being interviewed by the investigation unit, stated that he had no information about that who took the ballots and excluded the possibility that any of the members of that electoral commission were involved in taking of the ballots. He stated at one time for some minutes, he had left the VC for a few minutes to greet someone in the hallway of the school and at that moment he noticed an unknown person, who had entered and had taken the ballots, but he was not a member of the commission. The police report stated that only 100 of the lost ballots were not found while others were filled. The investigating unit obtained the ballots found for examination as well as DVDs from school cameras to verify whether the cameras were working, since Manager of this VC, at the same time school Principal, stated that the cameras were not operational. The second statement of Chairperson of this PS, Alban Shala, was given on 07.10.2019, who stated that the suspect for taking the ballots is a person who was not engaged in the electoral process, but states that he did not know him previously.

The Panel has assessed that complaints 344 and 354 dated 07.10.2019 are of the same content, by the nature of the same alleged violation, were submitted by the same complainant against the same political entity; therefore the Panel, pursuant to Article 8, paragraph 3 of the Rules and Procedures no. 02/2015 ECAP which provides that: *' In order to facilitate the examination of complaints, Chairperson of the decision-making panel may decide to join the appeals which constitute similar issues themselves and that those appeals are dealt with by a single decision'* so the panel joined the complaints and made a single decision as in the enacting clause of this decision.

The Panel, after examining the parties' allegations in the proceedings and analyzing the case file, found that the complaints were **partly grounded** as follows:

Article 94 of the LGE clearly states that the Chairperson, PSC members and the accredited observers present can make notes or remarks in the voting book (polling station book) in which the events taking place at the polling station are recorded.

The Panel notes that the complainant's allegation of not taking notes on person or persons who took out the ballots from VC 2114B respectively VC no. 2114B / 01R, is credible because the police report dated 08.10.2019 clearly shows that Chairperson of the polling station Alban Shala informed the police about irregularities during the election process - the loss of ballots. This case was also investigated by the police on the basis of a notification made by Chairperson of this polling station, and investigations revealed that the lost ballots were found filled in at the same VC on the upper floor of that polling station; and in this report are listed the names of persons engaged in the electoral process at this polling station, to whom the panel has imposed a sentence as in the enacting clause of this decision.

Concerning the part of the enacting clause of this Decision by which the commissioners and observers of polling station no. 2114B/01R are prohibited for 5 years to participate on elections as a candidate and as an administrative part of any electoral body managed under the authority of the Central Election Commission (CEC), the ECAP decision is based on section 120.3 (d) which provides *"If a violation of this law or an electoral rule, undermining the integrity of elections, has occurred, the ECAP may: (d) prohibit an individual from participating in an election held under the authority of the CEC, either as a candidate or a member of an electoral administrative body, for a period not exceeding six (6) years."*, because ECAP found that none of the commissioners, including Chairman of 2114B, had taken any action on voting day dated 06.10.2019 to avoid violations as alleged in the complaint.

The Panel has not assessed the complainant's claims regarding the request for recount at CRC regarding the polling stations mentioned in the complaint, with number 2114B / 01R, 02R, 03R, 04D, as this request should be filed on announcement of the final result by the CEC and not at this stage of the electoral process. In the present case the CEC had not made the final decision on the announcement of the result, so the Panel decided to dismiss the complainant's complaint as premature in the second part of the enacting clause.

Based on the above ECAP, in accordance with the legal provisions of Article 118 paragraph 1 and 5 in conjunction with Article 122 of the LGE, decided as in the enacting clause of this decision.

Elections Complaints and Appeals Panel

A no.344/2019 dated on 10.10.2019

Gyltene Sylejmani, Chairperson

Legal remedy: Against this decision, the unsatisfied party may file an appeal within 24 hours to the Supreme Court, from the moment of receipt of this decision/n.