



Republic of Kosovo  
Republika e Kosovës-Republika Kosova  
*Paneli Zgjedhor për Ankesa dhe Parashtrësia*  
*Izborni Panel za Zalbe i Predstavke*  
*Elections Complaints and Appeals Panel*

**A.no. 375-2/2019**

**Elections Complaints and Appeals Panel (ECAP)**, Panel composed of Judges: Fejzullah Rexhepi Chairperson, Nenad Lazic, Afjete Sada-Gllogjani, Kymete Kimete, Zyhdi Haziri, Rrustem Thaqi, Ferki Xhaferi, Faton Ademi and Adnan Konushevci members, with participation of legal official Antigona Murati, deciding on the appeal filed by political entity LVV based in Prishtina submitted against Central Election Commission (CEC) - Count and Results Center (CRC) based in Prishtina, due to the non-processing of 4.639 ballots of voters from outside of Kosovo as regular ones and non-counting of the same at CRC on Early Elections for Assembly of Republic of Kosovo dated on 06.10.2019, at the panel session held on 28.10.2019, made the following :

### **DECISION**

To **dismiss** as ungrounded the appeal A.no.375/2019 on 17.10.2019 filed by political entity Lëvizja Vetëvendosje based in Prishtina, claiming that Central Election Commission (CEC) should be ordered to transport to Count and Results Center (CRC) the 4.639 packages with ballots for counting, ballots which were sent by post service by citizens ( voters) outside of Kosovo.

### **Reasoning**

On 17.10.2019 the political entity LVV has submitted in ECAP the complaint A.no.375 / 2019 dated 17.10.2019, against CEC which claims that on 16.10.2019 at around 23:00hrs., the counting of ballots of citizens living abroad, received by post service, has been completed; out of which 13,491 ballots received by 11,922 post mails. The appellant alleges that they were informed by their observers that there are 4,639 packages with ballots received by post service and sent by citizens who live outside of Kosovo and which have not arrived and counted yet at CRC. Further the appellant political mentioned that it is necessary to count the packages of 4,639 ballots in order to realize the will of the citizens who live abroad and thus their constitutional right to elect as per Article 45 of Constitution of Kosovo. As per constitutional provisions, respectively of Article 45 paragraph 1 and 2 and in order to fully realize the will of citizens of Kosovo, by giving them the right to elect their representative at Assembly of Kosovo through their democratic vote

with which we require from ECAP to order CEC to transport for counting to CRC, 4,639 packages with ballots sent via post service by citizens who live outside of Kosovo.

CEC through its response to appeal, on 17.10.2019 mentioned that at the meeting of CEC dated 12.10.2019 number 50/2019, one of the meeting agenda items was the report concerning the process of voting outside of Kosovo. The report on receipt of the packages with ballots from voters outside of Kosovo, of Department of Elections Operations-Election Service Division, notified CEC concerning the receipt of the post mails after the deadline for the voting *via* post mail, that on 10 October 2019, at the post number 6, there were 4058 post mails received and which are considered as postal deliveries received after the deadline of the voting *via* post service. Further they mention that in the report of ESD it is ascertained that upon the counting and verification of these envelopes, those post deliveries have been sent to Kosovo within the voting period. The considerable number these post deliveries, as the sent date have the dates 19, 20, 23, 25 up to 30 September 2019 and based on Article 96.2 of LGE and rule 03/2013 voting outside of Kosovo, item 4.4, votes from outside of Kosovo shall be accepted by CEC 24 hours before the Election Day.

Panel, pursuant to Article 3 paragraph 8 of Rules and Procedures of ECAP, decided to treat the complaint in question as an appeal, considering that in this case such treatment is the adequate one.

Panel, in review upon assessment of the allegations of the parties in the procedure, evidence in the case files and Judgement of Supreme Court A.A -U.Zh. no.19/2019 on 25.10.2019 found that:

**The appeal is ungrounded.**

From the case files it derives that: amongst the parties in procedure, in this case it is not disputable that 4,639 packages with ballots from voters outside of Kosovo, were received by CEC from 08.10.2019 to 11.10.2019, after the election date of 06.10.2019, it is not disputable that these packages with ballots were delivered by voters outside of Kosovo via post service in the states where they live from dates 19.09.2019 to 30.09.2019.

It is disputable in this case the matter of validity of these packages with ballots as valid ones because CEC has received the same after the legal deadline on accepting of the packages with ballots from voters outside of Kosovo.

Panel, ascertains that the allegations of the appellant are unsustainable and legally ungrounded because CEC acted fairly when 4,639 packages with ballots of voters outside of Kosovo, which were received by CEC from 08.10.2019 to 11.10.2019, did not transport them to CRC, for regular proceeding and counting because: Article 96 paragraph 2 of Law on General Elections (LGE) provides as follows: *'An Out of Kosovo Vote should be received by the CEC prior to election day as determined by CEC rule'*, whereas Article 4 paragraph 4 of Election Rule no.03/2013 provides the following: *'the votes outside of Kosovo shall be accepted by CEC 24 hours before the election day'*. Based on the provisions cited above it results that packages with ballots received in the postal box 351, post no.6 in Prishtina which was opened by CEC for receipt of the ballots from outside of the country, so the arrival of any package with ballots to this address within the legal time limit is considered valid whereas the ballots which arrived to this address after the set deadline as per Article 96 paragraph 2 of LGE and Article 4 paragraph 4 of Election Rule no.03/2013 as is the case with the ballots on which the appeal was filed, which were received after the election day of 06.10.2019, they were received after the set legal deadline therefore the same cannot be proceeded as valid ballots.

Panel assessed also the remarks and suggestions given in the reasoning of the decision of Supreme Court as far as concerning the implementation of Article 127 of LGE but that in this case Law on General Elections (LGE) is a special law ( read *specialis*) in report to Law on Contested Procedure, and all this based on principle: ‘ *Lex specialis derogate lex generali* ‘ or The special law prevails the general law” which regulates only the electoral process, but if two laws regulates the same factual situation, the law which regulates the specific field such as LGE, it prevails the law which regulates only general issues ( read *generalis*).

Based on this, Panel assess that in this case Law on General Elections in Republic of Kosovo is a substantive legal and procedural law that expressly and clearly defines the deadline when the ballots are supposed to arrive at CEC in order to be treated as valid ones ( this deadline is hours before the election day as determined by Article 96 paragraph 2 of LGE and Article 4 paragraph 4 of Election Rule no.03/2013) and that in this case we are not dealing with undetermined situations with LGE and Elections Rules where the provisions of LGE would be implemented appropriately. Also in this case there are no submissions which would be sent in an court proceedings or sent to the court, so the provisions of LCP would be implemented appropriately but we have to deal with sensitive material such are the ballots as determined in Manual of Voting and Counting Procedure of Elections for Assembly of Republic of Kosovo 2019. Therefore in this case the deadline for receipt of these packages is specific comparing to delivery of the submissions delivered to the court, because by Article 96 paragraph 2 of LGE and Article 4 paragraph 4 of Election Rule no.03/2013, CEC at this electoral process stage it is not foreseen the consideration of the delivery time at the post of the sending country but it is determined that the ballots should arrive at CEC before elections, not later then 24 hours, before the voting date.

The allegations of the appellant in the appeal that non sending of the ballots to CEC in order to be counted is a violation or denial of the right to elect as it is guaranteed by Article 45 of Constitution of Republic of Kosovo, is ungrounded, because with no action or decision CEC denied the right for voting, because in order to use the constitutional right to vote and elect are determined by the rules as how can they exercise this right as provided by Article 96 paragraph 2 of LGE and Article 4 paragraph 4 of Election Rule no.03/2013 of CEC which means that the same should arrive at CEC 24 hours before the election day.

Panel, while deciding, assessed all other allegations of the appellant but those allegations were assessed as unsustainable and without impact on deciding otherwise because in this case we are not dealing with the election right and participation right but with failure to respect the legal terms and deadlines, which deadlines are percussive and cannot be changed or extended but only be implemented as determined by law. The same as the voters inside Kosovo have legal deadlines to vote on the election day when the polling stations are opened, as per Article 88 paragraph 2 of LGE, no one may vote after the closing time of the polling centers, except voters who are in the queue of a PS at the time of closing, the same goes for the voters outside of Kosovo, which is provided as per Article 96 paragraph 2 of LGE that packages with ballots should be received by the CEC prior to election day, which in this case as it was ascertained above 4,639 packages with ballots outside of Kosovo, were received by CEC after the set legal deadline.

From the reasons mentioned above and based on Article 115, 117,118 and 122 of LGE, Panel decided as in the enacting clause of this decision.

### **Elections Complaints and Appeals Panel**

A.no. 375-2/2019 dated on 28.10.2019

Fejzullah Rexhepi, **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 upon the receipt of this decision.