**REPUBLIKA E SHQIPERISE**

**KOMISIONI QENDROR I ZGJEDHJEVE**

**DECISSION**

ON THE REVIEW OF THE PLEA NR.18 PRESENTED TO THE CEC BY THE SOCIALIST MOVEMENT PARTY FOR INTEGRATION

The Central Electoral Commission held a reunion in 22.05.2015,with the participation of:

Lefterije LUZI- Chairman

Denar BIBA- Vice Chairman

Edlira JORGAQI- Member

Gëzim VELESHNJA- Member

Hysen OSMANAJ- Member

Klement ZGURI- Member

Vera SHTJEFNI- Member

Reviewed the case of:

**APPELLANT:** Socialist Movement for Integration Party

**INTERESTED PARTIES:** Socialist Party of Albania

 Democratic Party of Albania

 Social-Democratic Party

OBJECT : Rebuttal of the Decision nr.5 of the CEAZ nr.85 “On the registration of the Candidate running as Mayor of the Municipality of Selenicë Mr.,Adem Bashkim Hoxhaj proposed by the political subject the Social Democratic Party of Albania

**LEGAL BASE:** The Central Electoral Commission, based on the articles 68;70; 71; 72; 73; 124, 143, point 1, letter “b” of the law Nr. 10019, 29.12.2008 “The Electoral Code of the Republic of Albania”, amended and the Decisions nr.88, 07.04.2015 and nr.144, 14.04.2015 of the Central Electoral Commission

C.E.C. after rewiving the deposited documentation, and heard the pleas presented by the claimants ,

### OBSERVES

The Socialist Party for integration have deposited in the CEC the plea request nr.18 with the document nr. 4731, 14.05.2015, having as object the “Objection to the Decision nr.5 of the CEAZ nr.85 “On the registration of the Candidate running as Mayor of the Municipality of Selenicë Mr.,Adem Bashkim Hoxhaj proposed by the political subject the Social Democratic Party of Albania”

In its meeting of 15.05.2015, the CEC, before initiating the administrative inquiry according to the article 135,point 3, verified the legitimacy of the parties finds out that for the plea nr.18, the Socialist Movement for Integration is the sole pliant.

Moreover the CEC took in consideration the request of the Socialist Democratic Party, the Democratic Party and the Socialist Party to take part in the administrative revision of the plea as interested parties, and after evaluating the above mentioned requests in conformity with the article 133, point 1,2 and 3 of the Law nr.10019, date 29.12.2008, “The Electoral Code of the Republic of Albania” ,decided to accept the electoral subjects , the Democratic Party represented by Njiazi Kosavrasti ,the Socialist Party rappresented by Genci Gjoçaj and the Social Democratic Party represented by Mariola Ndina and Flamur Bardulla.

Në plea presented in 14.05.2015 the pliant pretends that: “...With the decision nr.5 11.05.2015 of the CEAZ nr.85, the Municipality of Selenicë, Prefecture of Vlorë, has been decided the registration of the candidature of Mr.Adem Bashkim Hoxhaj running for mayor, proposed by the subject Socialist Democratic Party. The documentation presented by the candidate Mr. Adem Hoxhaj contains serious flaws that are contrary and severely affects the spirit of the electoral code, falling in contradiction with the article 71 point 2 and 3 of the Electoral Code . First of all the candiate proposed by the SDP, during the process of collecting the signature in his support, has falsified the signatures of a part of the voters. This has been proved beyond any doubt through the personal declarations released by the voters of this electoral district in front of a public notary, as in the attachment to this plea. Secondly ,this can be clearly seen by a simple observation of the documents ,attached to the documentation presented by Mr.Adem Hoxhaj, as well as by the report conducted by three members of the CEAZ on the list.

Moreover some of the persons that has signed ,declare that they did not know that they were signing in the support of a candidate running for mayor as they have been deceived in thinking that they were signing for the candidates running for the council. The falsification of the signatures is evident by the difference between the signatures in the list and those found in the ID card ,moreover some of the persons that has signed declare that they have not been in Albania at the time of the signature collection. Based on this declaration, a request for verification has been transmitted to the Regional Directorate for the Border and Migration. By the document nr.884/1 of 13.05.2015, we have been informed that two of the persons in the list were not present in Albania at the moment of the collection of the signatures. As stated in the article 71 point 2 ,it is necessary that the Type form approved by the CEC should be accompanied also by the telephone number of the signatories, while as result from the inquiry more than 75% has not put it in the type form.

The CEC after hearing the claims of the appellant and those of the interested parties took in consideration the document of the Regional Directorate for the Border and Migration, notary declaration, the documentation supporting the candidature of z. Adem Hoxhaj, together with the list of the supporting signatories as evidence .

To the Socialist Democratic Party, in the quality of the interested party was requested to present her reasons in relation to the appeal. In the claim it has been stated that the *“...Decision of the CEAZ, the object of the appeal has been voted pro, by five members of the CEAZ, in conformity with the law both in relation with the content and the procedure. According to the SDP, the claim of irregularities in the signatures of the supporting voters is neither based in evidence nor in the law. The Electoral Code gives the right to verify the signatures to CEC or the CEAZ and not to the electoral subject using illegal methods. The claim of the appellant is an indication of efforts to manipulate the process. The conduction of a real dyctaloscopic expertise requires not only the examination of one signature but also the collection of several samples of signature of a person as well as the verification of the conditions in which they were given out of free will. The missing verification of those aspects makes every conclusion or expertise act un admitable ...”*

Moreover the Social Democratic Party requires that a certificate released by the Council of the Commune of Armen and a certificate released by the Council of the Brataj Commune, nr. 132/1, 04.05.2015 to be admitted in quality of evidence.

On the other hand by the representatives of the Democratic Party is pretended that “These are attempts in order to expel other subject from the electoral contest. The Socialist Party has addressed appeals against the SDP. The evidence that pretends to uncover the falsifications has been produced by the same public notary and expert. The object of inquiry is the very legitimacy of the CEAZ that by the view point of the law is in conformity with the articles 68, 71, 72, 73. The CEAZ has verified 5% of the signatures in the list of sustainers, which is has resulted in conformity with the law. The CEAZ has implemented correctly the provisions of the law, respectively to the articles 68, point 2, 71 and 73, during the review and verification of the documentation of Mr. Adem Hoxha, proposed by the Social-Democratic Party as well as its final approval....”

The interested party ,the Socialist Party in presenting its rebuttals stated that *“ backs the request of the SMI on the appeal to the Decission nr.5 of the CEAZ nr.85 as long as this is a decision taken, being based on the list of sustainers which is illegitimate given the falsification of the signatures as proved by the documents send by the respective institutions”*

After the presentation of the claims of the parties and for the necessities presented by the administrative inquiry, the Central Electoral Commission decided to administer as evidence the Document of the Regional Directorate for Border and Migration, the notary declarations, the documentation of the candidature of Mr.Adem Hoxhaj and the list of sustainer’s signatures.

The CEC after hearing the parties in the process and those interested, found out that the documentation administered in quality of evidence contain element that cast reasonable doubt, backed by evidence, that the list of sustainers signatures does not reflect the reality and that they are falsified. For these reasons and in conformity with the article 139/2 of the Electoral Code it has been decided that the lists of sustainers with the relative signatures of the respective voters of the electoral district be send to the Institute of Forensic Police in order to acquire a more competent opinion on the veridicity of the claims of the respective parties. This institution was asked to provide an act of expertise on the sustainers list and it has also been decided on the further proceeding of the inquiry of the case in 22.05.2015.

In 22.5.2015, the CEC reopened the review of the appeal request, and with the request of the appellant the CEC administered as evidence the act of dyctaloscopic expertise performed by the specialist of the Forensic Institute of Police.

In continuing of the review of the appeal request, and by the request of the appellant the CEC administered as evidence the dyctaloscopic act performed by the Forensic Institute of Police, document nr.3580, 20.05.2015.

Further on were heard also the last claims of the appellant and those of the interested parties as follows:

The Socialist Party for Integration, requested the admission of the appeal request ,pretending that the expertise act proves the falsification performed by the candidate.

The Democratic Party asked for the refusal of the appeal as not in conformity with the law and not based on evidence.

The Social Democratic Party requested the refusal of the request and the leaving in force of the decision of the CEAZ.

The Socialist Party, the approval of the appeal request and the dis-registration of the candiate ,as long as according to the article 72 ,the CEAZ should have made the adequate verifications ,including those of the signatures.

The discussion continued furtherly in the Central Electoral Commission, during which other circumstances were underlined.

The CEC found out, in reference with article 67,point 1, article 68,point 1, that the Political Party deposits in the CEC or CEAZ a request for the registration of the candidates no later than 50 days from the day of the elections that is exactly at 24.00 of 4.05.2015. Attached to this request, the political party should deposit the respective documentation for registration ; 1. The declaration that the candidates have the right and the will to candidate, 2. a copy of the document of identification ; By the verification of the documentation deposited in the CEAZ ,it emerges that the Social Democratic Party has deposited all the documents necessary for the registration. This party has deposited the list of sustainers equaling 1% of the voters in the electoral district of Selenicë, which is one of the documents permitting the registration of the candidate.

As shown by the evidence presented by the appealing electoral subject, and as noticed by the dactyloscopic act nr.3580 of 20.05.2015 , performed by the forensic experts of the Forensics Police Institute, emerged that the signatures found in the supporting list in some cases did not coincide with the reality, and as a consequence they have been declared as deposited by a person in the name of another person or other persons. In this way the will of the voters is not respected. This will has been deformed on purpose by those who has drawn or used the supporting list in order to take unlawfully advantage of the elections of 21.05.2015. The list of sustainers, being one of the basic documents for the registration of the candidates, is through these falsifications, scientifically proved, objectively not usable. The falsified signature number is substantial, around 97 cases.

In confirmation of the claim of the appellant is also the report produced by the border police, through which is proved that two of the persons, whose signatures are in the list, where not present in the country at the time, while they were presented by the candidate of the Social Democratic Party as they were in Selenicë and that they were his sustainers.

 So important is the moment of the verification of the sustainers lists that the Commission of Europe for Democracy through Law (Venice Commission) in the Code of Best Practices in Electoral Matters, in the part where is treated the presentation of the candidate recommends in point 1.3, titled „On the presentation of the Candidatures“ that:

1. **The presentation of the candidates or list of candidates can be conditioned upon the gathering of a certain number of signatures**

**ii. The law should not require the gathering of more than 1% of the signatures in the respective electoral district.**

**iii. The verification of the signatures should be subject to clear rules, especially concerning the time limits**.

**iv. The process of the verification should be made on all signatures. Anyway, if it is concluded, beyond any reasonable doubt, that the signatures gathered are sufficient, further verification on the rest is not necessary.**

The falsified signatures found out by the process of expertise nr.3580, 20.05.2015 performed by the Forensic Police Institute, cannot be considered as ‚irregular‘, according to the interpretation of the article 71/3 of the Electoral Code. “Irregular“ signatures are those signatures are those exhibiting one or more anomalies and can be excluded from the sustainers list, but in no way can be considered as false, as long as such affect the entire document making it false. As consequence all circumstances exists in order to derive in forms of penalization.

From the examination of the evidence it results that the Social Democratic Party have not deposited in the CEAZ any certificate of holding a mandate within the time limits prescribed by the article 68 of the Electoral Code. The certificate of the Armen Municipality does not formally fulfil the elements to be included and used in this case as there is no registration number and the date of issuance, so it cannot be considered an official document in order to be examined. During the session of administrative inquiry the representative of the Social-Democratic Party exhibited another document issued by the Muncipality of Brataj stating that the Party was holding a mandate. Moreover the above mentioned certificate issued by the Municipality Council of Brataj, cast reasonable doubt on its validity because it has two seals in two sides of the document that does not convince the Commission ,even though it has the date 4.05.2015 and it is supposed to have been deposited in the CEAZ nr.85, within the time limits prescribed by the article 67 of the Electoral Code. At the same time, the presentation of such document by a representative of this party, removed from the ordinary session on grounds of order breaching, cast doubts on the veridicity and the accuracy of the data contained on the document. Beside this, the CEC concluded that this certificate has been administered and presented beyond the time limits in order to be included in the procedure of the registration of the candidate. Further verification on the sustainers list for the Municipality of Selenicë, showed that the electoral document has other flaws. In referring to the graphic expertise act performed by the Forensic Police Institute, emerged that there are 59 nine hand signatures, 36 out of which signed by the same hand. This breach of law in the compilation of the document invalidates the list of signatures and cannot be accepted.

The use of a falsified list in order to receive undeserved advantages cannot be accepted as stated in the Electoral Code. The decriminalization of the state organs in general and those local in particular, makes the participation of this candidate in the electoral contest impossible, due to the use false documents.

In these conditions, the documentation of Mr. Adem Hoxha, as candidate running for mayor in the Municipality of Selenicë, proposed by the Social-Democratic Party is not in conformity with the articles 68, point 2 and 72 of the Electoral Code.

As stated above, the request advanced by the Socialist Movement for Integration Party is based in the law and other evidence and has to be accepted as such.

Based on what is stated in the document the CEC, deems that the Decision nr.5 of 11.05.2015 of the CEAZ nr.85 , the Municipality of Selenicë was taken against the prescription of the law .

**FOR THESE REASONS**

The Central Electoral Commission, based on the articles 68;70; 71; 72; 73; 124, 143, point 1, letter “b” of the law Nr. 10019, 29.12.2008 “The Electoral Code of the Republic of Albania”, amended and the Decisions nr.88, 07.04.2015 and nr.144, 14.04.2015 of the Central Electoral Commission

**DECIDED:**

1. The acceptance of the appeal request nr. nr.18, the changes in the decission nr.5, datë 11.05.2015 of CEAZ nr.85 “On the registration of the Candidate running for Mayor Mr. Adem Hoxha, Municipality of Selenicë, Prefecture of Vlorë, proposed by the SDP;
2. The refusal of the registration of Mr. Adem Hoxhaj as candidate running for Mayor, Municipality of Selenicë and the passage of the case to the prosecution organs
3. This decision has immediate effects.
4. Against this decision may be subject of appeal in the Electoral College, in the Court of the First Grade of Tirana, within 5 days from the promulgation.

**Lefterije LUZI- Chairman**

**Denar BIBA- Vice Chairma**

**Edlira JORGAQI- Member**

**Gëzim VELESHNJA- Member**

**Hysen OSMANAJ- Member**

**Klement ZGURI- Member**

**Vera SHTJEFNI- Member**