

(Leterhead)

(OIK receipt stamp)

C.no.3258/19

BASIC COURT IN PRISHTINA, as a civil first instance court, presided by the judge Bujar Dobërdolani, on judicial issue of the plaintiff/proposer, the Ombudsperson of Republic of Kosovo, with the Main Office in Prishtine, Str. “Migjeni”, No. 21, versus the defendant/ objector of the insurance- Central Election Commission of Republic of Kosovo, with the headquarter in Prishtine, regarding the proposal for setting interim measure, on 30 September 2019 took the following

### DECISION

1. OVERRULES the proposal of the plaintiff / proposer, the Ombudsperson of Republic of Kosovo, with the Main Office in Prishtine, through which has requested setting of interim measure so that the defendant/ objector of the insurance- Central Election Commission of Republic of Kosovo, with the headquarter in Prishtine, is requested to review lists of political parties so that the same comply with provisions of Article 6, paragraph 8 and 14 of the Law on Gender Equality, as ungrounded

### Reasoning

The plaintiff, the Ombudsperson of Republic of Kosovo, with the headquarter in Prishtine, lodged a suit with the Basic Court in Prishtine versus the defendant / objector of the insurance- Central Election Commission of Republic of Kosovo with the headquarter in Prishtine, through which has requested that his claim is approved as founded, to attest that CEC conduct has infringed the right of equal treatment of women on electoral rights and participation, to ban undertaking actions which violate or may violate the right for equal treatment, or conduct activities that eliminate discrimination or its consequences regarding unequal treatment of women on electoral rights and participation, to publish in media the decision which attests the violation of the right for equal treatment. The plaintiff, among others, pointed out that upon announcement of Early Elections by the President of Republic of Kosovo by Decision 236/2019, filing of lists with candidates' names for members of parliament of the Assembly of Republic of Kosovo by political parties, with individual decisions for each political party the Central Election Commission has approved the recommendation of the office for certification of political parties. 1067 candidates were proposed from all political parties, out of which 337 are women while 730 are male. Based on ascertainties

stated above the plaintiff pointed out that the defendant has failed to act in accordance with the Law, since it should act in accordance with the provisions of the Law on Gender Equality, regardless what the Law on General Elections stipulates, in the meaning of setting the gender quota.

The plaintiff jointly with the claim has submitted also the proposal for the interim measure, through which has proposed to request from the defended /objector of the insurance- Central Election Commission of Republic of Kosovo, with headquarter in Prishtine, to review of list of political parties, so they comply with provisions of Article 6, paragraph 8 and 14 of the Law on Gender Equality.

The Court reviewed diligently the proposal for the interim measure as well as plaintiff's statement in the claim-proposal related to setting presently interim measure and upon review of material proves which the case files contain, has come to the conclusion that the proposal of the plaintiff/ the proposing party for setting the measure of insurance, is ill-founded.

Article 297 of the Law on Contested Procedure, decisively is stipulated that " Measures for insurance can be determined if the propose of the insurance makes it believable the existence of the request or of his subjective, and in case there is a danger that without determining a measure of the kind the opposing party will make it impossible or make it difficult the implementation of the request, especially with alienating of its estate, hiding it, or other way through which it will change the existing situation of goods, or in another way will negatively impact on the rights of the insurance party that proposed". Furthermore, with Article 300 of the LCP is foreseen that for insuring the request aimed at the directed item or at part of it, several measures could be applied, while with Article 304.3 of the LCP is determined that, among others, "the proposal should show facts the claim charge is based on, as well as propose proofs which could prove pretension, already pre-noted in the proposal" and that these "proofs are attached to the proposal"

By deciding upon the proposal of the plaintiff/ proposing party, by which has been requested setting of interim measure so that from the defendant/ objector of the insurance- Central Election Commission of Republic of Kosovo with the headquarter in Prishtine is requested to review political parties lists, so they abide with provisions of Article 6, paragraph 8 and 14 of the Law on Gender Equality, the Court has judged as ungrounded due to the fact that the plaintiff has failed to provide proofs for attestation of relevant facts, or made them credible as per the subjective right, failed to provide proofs who are precisely subjects /individuals who have not been incorporated into electoral lists and have been discriminated, through which existence of the subjective right would be reliable, as one of conditions for setting of interim measure.

By Article 306 of the LCP, is foreseen that the interim measure can be set if the proposed insurance shows plausible pretence that measures of insurance is based and urgent, and if acted otherwise it will loose the aim of the insurance measures. Further it must be stated that this measure does not stand alone, but should refer to any of measures stipulated by Articles 299 up to 301 of the LCP,

and which the plaintiff/ proposer in his proposing request, in none of them has specified as request for which the Court should decide.

The Court is obliged also to enforce applicable legal provisions as per the circumstances for setting interim measures. The request for interim measure is subject to specific procedural rules, the causes and claims on which it is set should be reliable and grounded. It is legal determination that the proposer of insurance measure, upon request of setting interim measure, should present in his proposal addressed to the Court the risk and the causes for setting of interim measure, and that in the present case the plaintiff/ proposer failed to do that.

Apart what has been stated above, the Court in the course of review of the proposal for the measure, found that the given proposal is ungrounded, this also due to the fact that by possible approving of the proposal for setting the proposed interim measure, the Court will prejudice the decision related to the main issue/ the claim, since by interim measure the main issue cannot be solved/prejudice, but through it solely the claim is insured, in the present case if the Court with the measure orders that electoral lists are compiled according to the proposal of the proposer, it will resolve/ prejudice the main issue.

Based on what has been stated above, the Court overruled the proposal of the plaintiff/proposer for setting the measure of insurance, finding that in the present case the same is identical with the main request.

From what has been stated above and in conformity with the legal provisions set forth with Article 387.1 point (1), regarding Article 142.5 of the LCP, this Court has decided as in the enacting close of this Decision.

### **Basic Court in Prishtine**

#### **General Department C.nr.3258/19, of 30.09.2019**

Legal remedy

(stamp and signature)

Against this decision, in the meaning of Article 310.5 of the LCP, no appeal is allowed.