

# **KOSOVO\* MAYORAL AND MUNICIPAL ASSEMBLY ELECTIONS**

**22 OCTOBER 2017**

## **FINAL REPORT**

### **EUROPEAN UNION ELECTION OBSERVATION MISSION**

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\*This designation is without prejudice on status, and is in line with the UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

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## SUMMARY

The 22 October elections were the second mayoral and municipal assembly elections held across all municipalities in Kosovo since the EU facilitated 'Brussels Agreement' of 19 April 2013 between Belgrade and Pristina. A second round of the mayoral elections was held in 19 out of 38 municipalities of Kosovo on 19 November, including in the largest municipalities of Prishtinë/Priština and Prizren. The 2017 mayoral and municipal assembly elections were held shortly after the June 2017 early legislative elections and only a few weeks after a new ruling coalition was established.

Overall, the elections were held in a calm and competitive environment, thus representing an improvement compared to 2013 local elections. However, long-standing weaknesses within the Kosovo electoral process were not sufficiently addressed prior to these elections, *inter alia* those related to the voter register, to training and the professionalism of polling station committees, to a largely defective system of Out-of-Kosovo (OoK) voting, to limited incentive for prosecution of criminal activities related to elections, to the lack of effective enforcement mechanisms for campaign finance requirements, and to the regulation of sponsored programmes on TV.

The election process differed considerably in the Kosovo Albanian-majority municipalities as compared to in the Kosovo Serb-majority municipalities. In the Kosovo Albanian-majority municipalities, elections were genuinely competitive, and the campaign environment was calm, allowing numerous candidates to freely communicate their messages to the electorate. By contrast, the campaign environment within many Kosovo Serb communities was marred by intimidation targeting in particular non-Srpska Lista political entities and their candidates. This included pressure on individual candidates to withdraw and restricted political competition, raising questions about the key principles of the overall democratic process in those areas. The election process within Kosovo Serb-majority municipalities did not meet several international and European standards for democratic elections.

Both election days were quiet and orderly. Observers positively assessed voting and counting as mostly conducted in a transparent manner. However, some important aspects of the voting and counting process need to still be addressed to further improve the election day process. Especially the performance of the polling staff deteriorated at the counting stage, as the vote count procedures were not always followed. Voters' understanding of the voting procedures continues to be an area where much improvement is needed. Assisted voting was frequently requested, and not always by voters unable to cast a ballot independently. The secrecy of the vote was negatively affected by practices such as family and group voting. In addition, access to polling station premises for persons with disabilities proved challenging.

In line with an agreement between the Central Election Commission (CEC) and the Organization for Security and Cooperation in Europe (OSCE), the OSCE provided technical advice and assistance to four Municipal Election Commissions (MECs) and 86 Polling Station Committees (PSCs) in the four northern municipalities.

The legal framework provides a sufficient basis for holding democratic elections in accordance with international standards to which Kosovo has committed to in its Constitution. Despite some important shortcomings, including gaps and ambiguities reflected in reports from previous European Union Election Observation Missions (EU EOMs), the legal framework remained essentially unchanged since the 2013 local elections.

The election campaign took place in a calm atmosphere before both rounds of the elections in most of Kosovo. Contestants prioritized door-to-door campaigns, small-scale meetings tailored for a specific group of voters and the use of social media, organizing rallies mainly towards the end of the campaign. Political parties have not included increased women's participation in politics among their priorities during the campaign. Women have generally been under-represented in the audience at campaign events and have received limited support from their parties to run for elections.

The campaign in Kosovo Albanian majority areas was largely conducted in accordance with the legal requirements stipulated for elections. However, the EU EOM observers had followed up on few cases of intimidation of voters and candidates in some non-majority communities and on cases of vote buying and misuse of public resources.

The EU EOM received reports of intimidation within most Kosovo Serb communities, targeting non-Srpska Lista political entities and voters. Several candidates from non-Srpska Lista political entities have withdrawn from the race allegedly as a result of this intimidation. The main opposition parties, including the Independent Liberal Party (SLS) and the Kosovo Serbs Party (PKS), did not nominate mayoral candidates in most Kosovo Serb-majority municipalities. Before the official campaign period kicked off, violent incidents occurred, including the burning of vehicles of two prominent opposition mayoral candidates. Institutions functioning under the 'Serbian system' operating in Kosovo were involved in pressuring non-Srpska Lista candidates and their families, in some reported cases leading to the dismissal from their employment. The most severe cases of intimidation involving non-Srpska Lista candidates were rarely reported to the Kosovo judicial system. The campaign environment was particularly tense in the north, with recurrent violent incidents involving PKS and Srpska Lista supporters in Leposavić/Leposaviq.

Broadcast media extensively covered the election campaign in a variety of formats and offered voters information on the different political options available. The news coverage of the election campaign was fairly balanced. Major broadcast media positively organized inclusive election debates among mayoral candidates for most Kosovo Albanian-majority municipalities, while they did not succeed to organise debates in Kosovo Serb-majority municipalities. Unclear legal provisions allowed contestants to extensively purchase sponsored coverage, in addition to strictly regulated paid political advertising. This resulted in some TV channels offering a considerable number of paid-for programmes compared to their editorial coverage, to the detriment of delivering proper information of the voters. The Independent Media Commission (IMC) did not effectively address all media violations, which occurred during the election campaign.

The election administration on the central and municipal levels conducted the technical preparation in a well-organized and transparent manner. The CEC sessions were open to the public and CEC members worked collegially, frequently taking decisions unanimously. The CEC is politically inclusive and has striven to reach decisions by consensus, and as a rule, made efforts to deliver a transparent and genuine process.

Public confidence in the accuracy of the voter register remained low as it includes a high number of deceased persons. There was a systemic risk that data entries of around half a million of voters residing abroad may be misused on election day. In addition, voters were not always assigned to the polling station closest to their residence. Based on data compiled by the civil registers the CEC registered 1,890,952 voters, representing an increase of 18,011 voters since the June 2017 elections.

The process of nomination and certification of candidates for the local elections was inclusive. During the certification period all 91 political entities who applied were certified. There were 6,887 certified candidates running for municipal assemblies, of which 2,400 were women. The

total number of mayoral candidates was 204, only eight were women. For the first time the CEC had requested the criminal records of all candidates applying for certification, as required by the law. Eighty-seven certified candidates were decertified by the CEC based on their criminal convictions within the last three years. The CEC decision was appealed to the Supreme Court, which argued that art.29.1 of the Law on General Elections (LGE) was unconstitutional, ordering the CEC to certify the three candidates who submitted the appeals. The CEC in turn pragmatically decided to extend the Supreme Court's decision to all 87 originally decertified candidates. It remains within the Constitutional Court's mandate to declare a law unconstitutional.

Mainly due to unprofessional work of the PSCs, ballots from almost 30 per cent of polling stations (PSs) across Kosovo had to be recounted. The Count and Results Centre (CRC) recounted 717 municipal assembly ballot boxes, which did not pass the audit of the result forms. The EU EOM's analysis was based on a large sample of the result forms. Significantly, ten per cent of the forms analysed showed discrepancies of more than five votes for a political entity, with the largest difference being 123 votes.

The process of recounting at the CRC was conducted in the presence of observers from political entities, and assessed by the EU EOM observers as mostly transparent. Overall, the CRC plays an important role in providing a much-needed additional level of scrutiny over the election process and remains indispensable to ensure correct polling station data.

The share of invalid and blank ballots for the 22 October municipal assembly elections remains much higher than the share for the mayoral elections. The total rate of invalid ballots for the municipal elections was 8.7 per cent with the share of invalid ballots in the mayoral elections was 2.6 per cent, including blank ballots. The number of invalid ballots in municipal assembly elections was exceptionally high in the European context, however there was a small decrease in comparison to the 2013 municipal assembly elections when the rate of invalid ballots was 10.1 per cent.

The Elections Complaints and Appeals Panel (ECAP) has dealt with a high number of complaints and appeals within the tight time frame mandated by law, but the panel's practice to reject complaints which were filed correctly after the closing of the polling stations as essentially premature has led to an accumulation of appeals after the publication of results and to a prolongation of the process leading up to the certification of results. The ECAP found one appeal by a mayoral candidate regarding vote buying as grounded, and decided to annul the mayoral election results in Parteš/Partesh, ordering the CEC to repeat this election.

The atmosphere following the second election day was characterized by tension affecting primarily the municipalities where the results were very close. The Democratic League of Kosovo (LDK) and the Democratic Party of Kosovo (PDK) did not accept the preliminary results in Prishtinë/Priština and Prizren and decided to submit complaints to the ECAP requesting a full recount in both major municipalities.

The ECAP ordered that all polling stations in Prishtinë/Priština and Prizren were to be recounted. These ECAP decisions were based on scarce evidence provided, without any additional investigations undertaken, and partly inconsistently reasoned. These were not accepted by the mayoral candidates of Vetëvendosje (VV) who appealed the ECAP decisions to the Supreme Court. The Supreme Court decided against the full recounts as ordered by the ECAP for all polling stations in Prishtinë/Priština and Prizren, rejecting the respective LDK and PDK complaints. Overall, these ECAP decisions negatively affected the public confidence in the complaints and appeals process.

On 29 November, after the publication of the results for the second-round of the mayoral elections, seven complaints were filed with the ECAP related to the published final results, including in

Prishtinë/Priština and in Prizren. The ECAP rejected all seven complaints. Subsequently four appeals were brought against these ECAP decisions to the Supreme Court, which fully upheld the ECAP decisions on 8 December.

## PRIORITY RECOMMENDATIONS

- **Efficiency and Performance of Polling Station Committees**

Intensify training of polling staff to address recurring shortcomings such as not following the vote count procedures and incorrect filling of results forms. Consider introducing position of PSC Secretary to provide needed advisory and clerical support to the PSC chair. The Secretary could be recruited and trained by the CEC/MEC from members of the public administration.

- **Voter Capacity to Cast a Valid Ballot**

Improve design of ballot papers for municipal assembly elections for better understanding of voters. Enhance voter information about how to correctly mark a ballot.

- **Voter List**

Improve accuracy of voter lists and assignment of voters to polling locations. Dedicate substantial efforts to remove deceased persons from the civil registers, and to establish a unified address system in Kosovo.

- **Campaign Finance**

Properly enforce campaign finance requirements by effectively carrying out audits of campaign finances of election contestants. Consideration could be given to conduct a comprehensive review of the legal framework regulating campaign and political party finance.

- **Paid Airtime in Media**

Limit the amount of political sponsored programmes aired by broadcast media and ensure equal conditions for contestants to purchase paid airtime. Consideration could be given to regulate programmes sponsored by political contestants similarly to political paid advertising spots.

- **Out of Kosovo voting**

Additional safeguards should be considered in order to protect integrity of the Out-of-Kosovo voting process.

- **Complaints and Appeals process**

Provide legal certainty for different complaint deadlines, and the legal possibility to file a complaint or appeal against final results. Allow complainants sufficient time to prepare a complaint regarding polling and counting and to submit evidence and to ECAP to examine evidence prior to issuing a decision.

## **INTRODUCTION**

Upon an invitation by the President of Kosovo issued on 25 April 2017, the EU deployed an Election Observation Mission (EOM) on 12 September to observe the mayoral and municipal assembly elections called for 22 October 2017 and the second round of the mayoral elections called for 19 November 2017. The EU EOM was led by Mr Alojz Peterle, Member of the European Parliament, and former Prime Minister of Slovenia. The Mission comprised a Core Team of eight analysts, 20 long-term observers (LTOs), who were present from 19 September, and 42 short-term observers who were present from 18 to 24 October and 30 STOs from 16 to 21 November. In addition, the Mission was joined by 38/15 locally recruited short-term observers (LSTOs).

On election day, a total, the EU EOM deployed 109 observers from 26 EU Member States Norway and Switzerland during the first round and 72 observers from 25 EU Member States, Norway and Switzerland across Kosovo during the second round of the elections to assess the whole electoral process against international and European standards for democratic elections as well as the laws of Kosovo. 38 observers on 22 October and 15 observers on 19 November from the diplomatic representations of EU Member States and Norway, as well as from the EU Office/EUSR also joined the mission to observe election day proceedings. On 22 October election day, observers visited 466 and on 19 November observers visited 292 polling stations to observe voting and counting. The LTOs remained in the field to follow post-election day proceedings and to observe the activities at the Count and Results Centre in Pristina. Most of the Core Team left on 12 December, five days after the originally scheduled departure to follow the complaints and appeals proceedings in Prishtinë/Priština and Prizren. The remaining two team members finally left on 20 December, after the repeat re-run of the second round of the mayoral elections in Istog/Istok.

The EU EOM assessed the whole electoral process against international and European standards for democratic elections as well as the laws of Kosovo. The EU EOM is independent in its findings and conclusions and operates in accordance with the Declaration of Principles for International Election Observation.<sup>1</sup>

The EU EOM wishes to express its appreciation to the Kosovo authorities, the Central Election Commission, the Election Complaints and Appeals Panel, the Public Prosecutor's Offices and other institutions, the Police, political parties, media and civil society for their cooperation and assistance throughout the Mission's presence. The EU EOM also expresses its appreciation to the EUSR/EU Office, EULEX, KFOR, the OSCE and the diplomatic representations of the EU Member States, Norway and Switzerland.

## **POLITICAL BACKGROUND**

The 22 October mayoral and municipal assembly elections were the second local elections held in all Kosovo municipalities since the 19 April 2013 Agreement between Pristina and Belgrade and were organized shortly after the 11 June 2017 early legislative elections. Kosovo voters were

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<sup>1</sup> While the report is translated into Albanian and Serbian, the English version remains the only official version.

called to elect mayors and members of municipal assemblies through a proportional representation system with preference voting in 38 municipalities across Kosovo.

Two-months after the certification of the legislative election results, the New Kosovo Alliance (AKR) left the pre-election coalition with the Democratic League of Kosovo (LDK) and Alternativa to join the Democratic Party of Kosovo (PDK), the Alliance for the Future of Kosovo (AAK), the Initiative for Kosovo (NISMA), Srpska Lista, and several other political parties representing non-majority communities to form the executive, albeit with a narrow majority. Vetëvendosje (VV), with the largest group of members in the Assembly, was in opposition, as was the former ruling party LDK.

### **Main political actors**

Out of the 91 political entities certified to run in these elections 54 were Albanian, 24 were Serbian, three Turkish, three Gorani, three Bosnian, two Ashkali, one Egyptian, one Roma, and 25 independent candidates. All the parties represented in the Assembly competed independently in these municipal elections in contrast to the legislative elections when two main pre-election coalitions were formed. Although all major political parties presented candidates in most municipalities across Kosovo, most of them targeted their resources at selected municipalities. The PDK presented 30 candidates for mayors, the Alliance for the Future of Kosovo (AAK) 25, the New Kosovo Alliance (AKR) 16 and NISMA 23. The opposition Vetëvendosje presented 26 candidates for mayors and LDK 28. A total of 12 members of the Assembly have competed for mayoral positions: six from VV, two from PDK, one from NISMA, one from Alternativa, one from LDK and one from New Democratic Party (NDS)<sup>2</sup>. Out of a total of 204 mayoral candidates only eight were women, three of them on behalf of PDK.

Out of the 38 mayoral races, 19 candidates have won in the first round. LDK won four mayor positions, AAK won two, PDK and the Turkish Democratic Party of Kosovo (KDTP) won one seat each. Srpska Lista won nine out of the ten Kosovo Serb-majority municipalities in the first round. The independent candidates Bekim Jashari, and Rufki Suma won the mayoral posts in Skënderaj/Srbica and Hani i Elezit/Elezov Han, respectively. More than two thirds of the voters in Kosovo have elected their mayor during the second round, including in the largest municipalities Prishtinë/Priština and Prizren.<sup>3</sup> In the second round, AAK won five mayoral posts, PDK four, LDK three, VV three while Srpska Lista, Alternativa, NISMA, AKR, Citizen Initiative (CI) Narodna Sloga - Parteš/Partesh and the Citizens Initiative Klokot-Vrbovac won one mayor post each.<sup>4</sup> Of the eight women who competed for mayoral posts in the first round, only two candidates went through to the second round, one in Gjakovë/Đakovica and one in Mitrovicë/Mitrovica (South).

Since 2013, Srpska Lista has dominated the political life in Kosovo Serb-majority communities. The party presented mayoral candidates in all ten municipalities where Serbs form the majority and faced limited competition, except for Mitrovica/Mitrovicë (North), Zvečan/Zveçan, Klokot/Klllokot and Parteš/Partesh. The Citizen Initiative “Serbia, Democracy, Justice – Oliver Ivanović” (CI- SDP Oliver Ivanović) had public support mainly in Mitrovica/Mitrovicë (North) and Zvečan/Zveçan. Oliver Ivanović has challenged Srpska List’s incumbent Mayor Goran Rakić of Mitrovica/Mitrovicë (North), who is the current leader of Srpska List. CI “For Our Zvečan”

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<sup>2</sup> Art.9.3 of the LGE states that a candidate who was elected Mayor shall be deemed ineligible to hold a seat in the Assembly of Kosovo or a Municipal Assembly.

<sup>3</sup> Incumbent LDK mayor in Pejë/Peć has won in the first round.

<sup>4</sup> Repeat elections were held in Parteš/Partesh for the first round and in Istog/Istok for the second round.



has presented the mayoral candidate Dragiša Milović and a list of candidates for the municipal assembly in Zvečan/Zveçan. Three Kosovo Serb citizen's initiatives running for the first time in Klokot/Klllokot have joined forces to compete with Srpska Lista: Aktivna Građanska Inicijativa (AGI), Narodno Jedinstvo (NJ) and CI Klokot-Vrbovac (GIKV) and have supported GIKV's leader Božidar Dejanović as candidate for mayor. Also competing for the first time in the municipal elections, Citizen Initiative Narodna Sloga presented Nenad Cvetković, as candidate for mayor in Parteš/Partesh. A former leader of Srpska Lista, Aleksandar Jablanović, has formed the Kosovo Serb Party (PKS) and the party has run for mayor in Leposavić/Leposaviq only. The Independent Liberal Party (SLS), led by Slobodan Petrović, has run campaigns for the municipal assemblies in Gračanica/Graçanicë and Štrpce/Shtërpçë with a total of 68 candidates for local assemblies, but has not competed for mayor posts in those municipalities. The Progressive Democratic Party (PDS) led by Nenad Rašić, has run in Gračanica/Graçanicë and some villages in the Gjilan/Gnjilane region with only one candidate for mayor post in Ranilug/Ranillug.

For the other non-majority communities, the main contenders were VAKAT, a coalition of four Bosnian political parties, the New Democratic Party (NDS), also representing the Bosniak community, KDTP, the Kosovo New Romani Party (KNRP), Kosovo Unified Roma Party (PREBK), the Unique Gorani Party (JGP) and Kosovo Ashkali Democratic Party (PDAK).

## **LEGAL FRAMEWORK**

The legal framework governing elections in Kosovo provides a sufficient basis for holding democratic elections in accordance with international standards. The relevant parts of legislation in Kosovo are the Kosovo Constitution and the Law on General Elections (LGE), the Law on Local Elections (LLE), and the Law on Local Self Government (LLSG). Relevant secondary legislation includes the rules of procedure of the CEC; the rules of procedure of the ECAP; and the 19 regulations issued in 2013, 2015 and 2016 by the CEC, which expand on principles included in the LGE. Other important laws relevant to the electoral process are the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (LPPRC), the Law on Languages, and the Law on Financing of Political Parties.

Kosovo is not a signatory party to any human rights treaty. Article 22 of the Constitution, however, states that several agreements and instruments relevant for elections are directly applicable in Kosovo, and in case of a conflict, have priority over provisions of laws and other acts of public institutions<sup>5</sup>. Equally, Kosovo is not a signatory party to the European Convention on Human Rights, (ECHR), but Article 53 of the Constitution obliges the authorities to interpret the human rights and fundamental freedoms guaranteed by the laws and Constitution in harmony with judicial decisions of the European Court of Human Rights. There is, however, no legal remedy available at the ECHR regarding decisions, acts and omissions of the Kosovo executive and institutions. On 11 June 2014, Kosovo joined the Venice Commission. Therefore, the Code of Good Practice in Electoral Matters of the Venice Commission of October 2002 has a reinforced importance as a reference for the conduct of democratic elections in Kosovo.

Since 2011, an election reform process had been launched on several occasions, but has stalled reportedly due to the lack of political will and consensus between parties. Since 2013, there have

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<sup>5</sup> The following have provisions relevant to the elections process: Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women.

been three EU EOMs deployed to Kosovo issuing recommendations on how to reform the electoral process to bring it fully in line with international and European standards. These recommendations include, inter alia, improving the accuracy of voter lists, providing legal consistency for electoral campaign rules, enhancing the transparency of campaign financing, effectively enforcing campaign finance requirements, regulating TV programmes sponsored by political parties and extending the deadlines for filing and deciding an election complaint. None of these recommendations which require changes in the legal framework have been implemented.

Gaps in the LGE are filled by provisions in the 19 CEC regulations and by the ECAP Rules of Procedure. All of them should be regulated by law, since they deal with crucial aspects of the electoral process. These include the procedures at the Count and Results Centre (CRC), which are only addressed in CEC Regulations No.6 and No.9. The procedure and criteria for deciding on cancelling election results and ordering repeat voting are unclear in the LGE and are only vaguely regulated in the CEC Regulations No.9 and No.6. Finally, the LGE in combination with its Amendment Law is confusing to read with regard to the relevant deadlines for filing complaints and gives practically no guidance as to the necessary minimum content of such complaints. These rules are found in the ECAP Rules of Procedure, which provide the necessary detail.

### **Electoral system**

Local elections in Kosovo are held every four years to elect mayors and members of Municipal Assemblies. Mayors are directly elected in a two-round majority system. A candidate is elected mayor if he or she receives more than 50 per cent plus one of the total valid votes cast in the municipality. In municipalities where no candidate received the required absolute majority of votes, a second round of elections will be held four weeks after the first round, between the two candidates who received the highest number of votes. The candidate who wins the majority of votes in the runoff is elected mayor.

The Municipal Assembly members are elected under a proportional system. Each of the 38 municipalities represents a single electoral district and the number of seats varies from 15 to 51, in proportion to the population of the municipality. Political entities are listed on an open list ballot, where voters mark one preferred political entity and allocate one preferential vote to a candidate from the list of the same political entity. Preferential votes received by the candidates of each political entity are counted separately except for the leader of the list who automatically receives all votes cast for the political entity.

A gender quota requires political entities to include at least 30 per cent of the less represented gender on the list. Among seats allocated to a political entity, the gender that won fewer seats shall be assigned at least 30 per cent of the total seats received by the political entity.

### **Electoral rights**

The legal framework provides an inclusive definition of voter eligibility. Universal suffrage is guaranteed by article 45 of the Constitution, stating that “every citizen (...) who has reached the age of eighteen, even if on election day, has the right to elect and be elected, unless this right is limited by a court decision.”

The LGE goes beyond that, however, even when read in conjunction with other relevant legislation, such as the Law on Civil Registers and the Law on Citizenship, ambiguities remain. The general intention of this legal corpus appears to be to make voter eligibility overall inclusive, so that not only citizens, but every person from the age of 18 who would be eligible to be a citizen of Kosovo, even if he/she is not in fact one, is given the right to vote. This applies to all those potential voters who, due to historic events and population movements in recent decades, are not

citizens of Kosovo. According to Article 5 of the LGE, a person is eligible to vote if he/she is registered as a citizen of Kosovo in the Central Civil Registry; or if he/she was a resident in Kosovo on 1 January 1998; or if he/she has obtained refugee status on or after 1 January 1995, and is eligible to be registered in the Central Civil Registry as a habitual resident of Kosovo.

Restrictions on eligibility to vote in the LGE cover cases when a person has been declared mentally incompetent by a final court decision, is serving a sentence imposed by the International Criminal Tribunal for the former Yugoslavia (ICTY), or is under indictment by the ICTY and has failed to comply with an order to appear before the Tribunal.

Increasingly, this broad concept of eligibility to vote is restricted by the question of which documents are accepted for voter identification on election day. The LGE and the CEC regulations describe as valid documents a valid passport, a valid ID card, a valid travel document, a valid IDP card or a valid refugee card without specifying the origin of the documents; or a valid Kosovo driving license. That the Kosovo origin is specified only in connection with a driving license, could lead to the conclusion that other valid documents could have different origins. The Voting and Counting Manual added IDs issued by the United Nations Mission in Kosovo (UNMIK) to this list, but showed only Kosovo IDs and an UNMIK ID in the annex, raising questions about the use of IDs from other countries for the purpose of identification.

For conditional voters who are not listed in the final voter list (FVL) of a Polling Centre (PC), the selection of acceptable IDs has already been clearly restricted by recent jurisdiction to identification documents issued by the Ministry of Internal Affairs of Kosovo<sup>6</sup>.

Interlocutors have indicated to the EOM that these would be the last elections where non-Kosovo issued IDs would be accepted for identification purposes. This – and the new interpretation for IDs necessary for conditional voting - raises the issue of accessibility of Kosovo IDs. The EOM has received reports, in particular but not only from the four northern municipalities, about difficulties for members of non-majority, especially Kosovo Serb and Roma, Ashkali and Egyptian (RAE) communities to certify citizenship status and receive Kosovo IDs. This is true for returnees, and also for people who have never held a (Kosovo or) UNMIK-ID, which was not necessary so far for many Kosovo Serbs living in the northern municipalities, or for members of the RAE community who found it easier to register in the Serbian system. It is possible that the current problems have to do with a lack of training of the respective institutions since a new Administrative Instruction went into effect on 22 July 2017, but the situation should be monitored with a view to ensuring access to the necessary documentation for registering on the VL and for voting).

## **Candidates' eligibility**

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<sup>6</sup> On 2 July 2017, the ECAP rejected as ungrounded a complaint by Srpska Lista filed against the CEC for not including 1,200 conditional votes in the final results of the parliamentary elections. The ECAP assessed that conditional voting differed from regular voting in that voters were allowed to cast their vote even if their name was not found in the FVL of the PC, as long as they were in possession of identification documents issued by the Ministry of Internal Affairs of Kosovo.

This decision was subsequently upheld by the Supreme Court. Neither the ECAP nor the Supreme Court offered any explanation as to why the provisions of the LGE required an identification document to be issued by the Ministry of Internal Affairs of Kosovo. However, that is currently the official interpretation of the law, and approximately 130,000 voters who registered on the VL with an UNMIK ID will no longer be able vote conditionally, if they do not also possess a Kosovo ID, even though they were still allowed to vote regularly during these elections. IDs from other countries are still valid for identification purposes in Out-of-Kosovo voting.

A person whose name appears in the voter list is eligible to be registered as a candidate, but the LGE restricts this right with reference to quite a large number of categories of persons, e.g., members of armed service, police, judges and prosecutors, members of any election management body, and diplomats.

For candidates currently involved in criminal proceedings, the law respects the presumption of innocence until the person is found guilty by a court of law. A person found guilty of a criminal offence by a final court decision in the past three years; or who has failed to pay a fine imposed by the ECAP or the CEC; or has failed to obey an order of the ECAP, is not eligible as a candidate under the law. For persons with criminal convictions, the Supreme Court has found this restriction to be unconstitutional during the candidate registration process for these elections. Nobody who is already a member of another elected legislative body (such as the Kosovo Assembly) can take a seat in a municipal assembly. One of the mandates must be forfeited.

### **Other rights and freedoms relevant for elections**

The Constitution foresees the principle of equality for all individuals before the law and respect for all internationally recognised fundamental rights and freedoms as well as protection of rights and participation for and by all communities and their members. Everyone is to enjoy the right to equal legal protection without discrimination on any grounds, and fundamental rights and freedoms may only be limited by law.

Legal provisions also foresee rights and freedoms essential for an enabling environment. The Constitution contains guarantees for: freedom of expression, including the right to disseminate and receive information and opinions without impediments; freedom of peaceful gathering, freedom of association - including the right to establish an organization without the need for permission and to establish trade unions; freedom of movement - all citizens have the right to move freely throughout the territory and choose their location of residence; and freedom and pluralism of the media and the prohibition of censorship.

## **CAMPAIGN ENVIRONMENT**

The election campaign took place in a calm atmosphere before both rounds of elections in most of Kosovo, with the exception of some Serb-majority municipalities. Contestants prioritized door-to-door campaigns, small-scale meetings tailored for a specific group of voters and the use of social media, while organizing rallies towards the end of the campaign only. Contestants were largely able to convey their messages to the voters freely and generally refrained from the use of inflammatory language. Most political entities campaigned with general messages on healthcare, education, unemployment and local infrastructure, without major differences between respective contestants and limited policy content.

The legal framework provides for equality of opportunity for all contestants during the electoral campaign. The Code of Conduct for political entities, their supporters and candidates prohibits the use of public resources for campaigning, as well as the intimidation of voters. The CEC Election regulation no. 13/2013 on electoral campaign and notice for political events sets rules for posting electoral materials and holding public events, as well as for participation in the campaign of certain categories of public institutions employees. The campaign rules lack clarity on which activities are considered as a campaign and therefore prohibited for civil servants when acting in their official capacity, thus clearly at odds with relevant international standards.<sup>7</sup>

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<sup>7</sup> Joint guidelines for preventing and responding to the misuse of administrative resources during electoral processes, Venice Commission and OSCE/ODIHR, 2016

Similarly, there are important campaign rules such as those related to the notification of political events that are only addressed in the CEC regulations. Although these rules are not overly restrictive, such fundamental matters affecting the right to hold a political gathering should be stated in the law, and not left to the CEC to regulate for each election.

The political entities have generally complied with the campaign rules set forth in the legal framework. The fines the ECAP has applied to political entities amounted to a total of 257,350 euro, a sum significantly lower as compared to previous electoral cycles. Most fines covered minor offenses related to placing election materials in areas where posting was prohibited or to the presence of minors in campaign and only a few related to inflammatory language or other more serious offenses. Many interlocutors criticised the campaign rules related to the involvement of children for lack of clarity.

Political parties have not included women's participation among their priorities during the campaign. Women have generally been under-represented in the audience at campaign events and have received limited support from their parties to run for the elections. The electoral manifestos of most political entities have offered limited details on specific policies encouraging more engagement of women in public life.

Persons with disabilities were under-represented in campaign activities with their access to campaign events de facto restricted. The electoral manifestos of most political entities have included almost no policy details on facilitating the public engagement of persons with disabilities in public life. Moreover, most political entities have not put forward candidates with disabilities for these elections.

### **The first round of Mayoral elections and Municipal Assembly elections, 22 October 2017**

Overall, the atmosphere was calm, and the campaign was low key in Kosovo Albanian-majority areas, with activities intensifying during the last week prior to election day.

The campaign in Kosovo Albanian majority areas was largely conducted in line with the legal requirements and, generally, contestants were able to campaign freely. However, the EU EOM observers have followed up on isolated cases of intimidation of voters and candidates in some of these communities, including reports that public employees, such as teachers and health care workers, were under pressure to support certain candidates or were prevented from participating in campaign activities. In Malishevë/Mališevo, teachers and other public institutions employees were under pressure not only to support the NISMA candidate but also to resign from membership in other parties. In addition, voters and a candidate in the Gorani community in Dragash were subject to pressure and intimidation by representatives of the so-called Serbian parallel system<sup>8</sup>, with the involvement of the United Gorani Party (JGP). This affected particularly employees working in schools.

The campaign environment for the first round of elections was marred by a deep pattern of intimidation within most Kosovo Serb communities, targeting non-Srpska Lista political entities and voters. This included pressure on individual candidates to withdraw and restricted the political competition, raising questions about the overall democratic process in those areas. Several candidates of non-Srpska Lista political entities have withdrawn from the race allegedly as result

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<sup>8</sup> The government of Serbia covers the costs for the functioning of a parallel administrative system, with a focus on health and education.

of this intimidation. The main opposition parties including SLS and PKS did not nominate mayoral candidates in most of Kosovo Serb-majority municipalities.<sup>9</sup>

The EU EOM received reports about institutions functioning in the ‘so-called Serbian parallel system’ in Klokot/Kllokot and Ranilug/Ranillug that were involved in pressuring and dismissal from their employment of non-Srpska Lista candidates and their families. The most severe cases of intimidation involving non-Srpska Lista candidates were rarely reported to the Kosovo judicial system. These widespread allegations of pressure and intimidation of candidates, combined with pressure and intimidation of voters, had a negative impact on the campaign in these areas, added to the existing public mistrust of the electoral process and raised concerns about voters’ ability to form an opinion and cast their votes free from fear of retribution, at odds with European and international standards.<sup>10</sup> The campaign environment was particularly tense in the north, with recurrent violent incidents involving PKS and Srpska Lista members in Leposavić/Leposaviq.

The EU EOM observers received reports of misuse of public resources in a limited number of cases in Viti/Vitina, Klokot/Kllokot and Zvečan/Zvečan. Many leaders of political entities prominently participated in the campaign, lending support to their local candidates. Furthermore, the Prime Minister campaigned alongside the AAK candidates for mayoral posts, promising funding for local projects if these particular candidates were elected.

### **Second Round of Mayoral Elections, 19 November 2017**

The political environment in most of Kosovo following the election day of the municipal elections and the first round of mayoral elections was calm. Political parties accepted the results but some raised concerns about a high number of invalid ballots, inaccuracies in the voter list, misconduct of polling staff during the voting and counting process, assisted voting, instances of vote buying and continued pressure on voters, especially affecting non-majority communities.<sup>11</sup>

Campaigning continued immediately after election day, albeit in a more subdued manner, mainly involving door-to-door activities and direct contact with voters in private locations and targeting specific groups of voters like women, youth and entrepreneurs. The official campaign took place during the period from 13 to 17 November. Most political entities ran campaigns with limited resources and prioritized spending on sponsored TV programmes, posters and organizing small-scale events with voters. Contestants were able to campaign freely and generally refrained from the use of inflammatory language. The majority of political entities started campaigning with small-scale events and organized rallies only in the last days, with messages on healthcare, education, unemployment and local infrastructure. As in the first round, campaign messaging was very general, without major differences between respective contestants and lacked policy content.

The EU EOM noted heightened tension in a few municipalities where the second round was tightly contested, for instance in Gjakovë/Đakovica and in Mitrovicë/Mitrovica (South) where competitors accused each other of putting undue pressure on voters. The incumbent mayor of Mitrovicë/Mitrovica (South) accused his competitor of unfair campaign tactics, despite the fact that both competing parties were members of the ruling coalition. The EU EOM observers were informed that representatives of non-majority communities such as Roma, Gorani, Ashkali and Egyptians continued to be subject to pressure and intimidation. In Prishtinë/Priština observers

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<sup>9</sup> Violent incidents occurred, including the burning of the cars of Oliver Ivanović and Dragiša Milović in Mitrovica/Mitrovicë (North) before the start of the official campaign.

<sup>10</sup> *Joint guidelines for preventing and responding to the misuse of administrative resources during electoral processes*, Venice Commission and OSCE/ODIHR, 2016

<sup>11</sup> As reported by EU observers VAKAT continued to pressure voters living in Gorani communities.

noted aggressive political rhetoric, with the two candidates resorting to accusations directed at each other rather than discussing content of their policies and election platforms.

The contestants have generally complied with the legal requirements for the campaign. However, the EU EOM observers received reports of instances of vote buying in Parteš/Partesh and Gjakovë/Đakovica. Some interlocutors indicated that vote-buying had become an entrenched part of the local political culture, stating that accepting money or other benefits in exchange for votes was justified by the lack of other opportunities, especially in non-majority communities such as Roma, Egyptians and Ashkali. This affects voters' freedom to form an opinion, at odds with the principle of free suffrage in European and international standards and could diminish the overall public confidence in the electoral process.<sup>12</sup> The EU EOM also received reports on the misuse of public resources by PDK in Klinë/Klina and by LDK in Podujevë/Podujevo in a limited number of cases. There were allegations that AAK had used the issuing of publicly funded veteran certificates to influence voters in Klinë/Klina, Istog/Istok and Rahovec/Orahovac.

The atmosphere in the Kosovo Serb-majority communities of Parteš/Partesh and Klllokot/Klokot was polarized, but without any major incidents. The representatives of the CI Narodna Sloga and Srpska Lista in Parteš/Partesh have accused each other of continued acts of vote buying and pressure on their supporters. Despite intimidation against the candidate for mayor of CI Klllokot/Vrbovac and his supporters throughout the campaign period, he eventually joined Srpska Lista shortly before the elections and after having received official support from its leadership. This had an impact on the political competition which proceeded among factions within Srpska Lista, while both candidates intensified their efforts to persuade Kosovo Albanian voters to vote for them.

## CAMPAIGN FINANCE

The Law on General Elections, the Law on Financing Political Parties no 03/L-174 and several CEC regulations on campaign financing provide the legal framework regulating political entities' sources of income and expenditures.<sup>13</sup> The legal framework aims to level the playing field by setting spending limits and requirements for disclosure, auditing procedure and fines. Political entities' sources of funding are public funds as well as donations by individuals and legal persons.

The Law regulates the allocation of public funds for political entities for election campaigns while the CEC regulations add more detailed provisions on spending limits, disclosure and auditing procedures. The same law sets the criteria according to which 90 per cent of these funds are provided to political subjects represented in the Assembly, based on the number of seats in the previous legislature, while ten per cent are allocated proportionally to other political subjects registered and certified by the CEC to run in the elections. The Kosovo Assembly can allocate extra public funds for election campaigns of any political subjects, while not exceeding 0.05 per cent of the budget. Since 2013 the Assembly has not allocated extra public funding to political entities. Moreover, the law lacks criteria for allocation of public funds to political entities not represented in the Assembly. The lack of extra public funding for these local elections limited campaigning options, especially for smaller parties and those representing non-majority communities.

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<sup>12</sup> International Covenant on Civil and Political Rights (*ICCPR*); Venice Commission, *Code of Good Practice in Electoral Matters, Explanatory report*, CDL-AD(2002)23rev

<sup>13</sup> Electoral Rule no. 12/2013 on Campaign spending limit and financial disclosure and Election Regulation no. 14/2015 on Financing political entities and sanctions.

The Electoral rule no 12/2013 sets the expenditure limit for each political entity to 0.5 euro per registered voter and thus varies depending on the size of the municipality. The Law further clarifies the sources of income, setting maximum donations of a total of 2,000 euro per year for a natural person, and a total of 10,000 euro per year for legal persons.

Political entities have declared plans to run low budget campaigns for these municipal and mayoral elections. The EU EOM observers were informed that major parties spent most of their campaign funds on political advertisement and sponsored programmes in the media. By contrast, information gathered by civil society organizations indicated that most of campaign funds were spent on public events, online media and advertisement in the social media.<sup>14</sup> Many candidates received financial support from their parties, however campaign costs were partially covered by the candidates themselves too.

In line with the Electoral rule 12/2013, each political entity certified to participate in the elections has to provide, no later than 45 days after election day, a campaign financial disclosure report that covers the period starting from the day when elections were called until the election day.<sup>15</sup> The report is submitted by the political entities to the CEC's Office for Political Parties' Registration and Certification (OPPRC). International standards require that campaign financing reports be submitted within a deadline of no more than 30 days after the elections. Such reports should be required not only for the party as a whole, but also for individual candidates and lists of candidates.<sup>16</sup>

Since 2013, the responsibility to audit the reports lies with the Kosovo Assembly, which systematically failed to select auditors, leaving the legal requirements for transparency and accountability largely not implemented. Reports by civil society groups have linked this with the lack of political will of the political parties represented in the Assembly.<sup>17</sup>

The potential positive effect of the existing legal framework is undermined by the limited scope of the financial review. This is worsened by political parties' internal practices. During previous elections, most parties did not disclose comprehensive campaign reports on their websites, claiming a legal provision that requires public disclosure only after the audit has been conducted. On a positive note, following the June legislative elections, political entities such as LDK and Vetëvendosje published their financial reports on their websites, nonetheless without providing information on their donations. The lack of scrutiny is widely perceived as a problem by civil society organizations and raises questions about spending above the limits set by the law, as well as accepting unrecorded donations, especially those directed at individual candidates.

In the absence of systematic monitoring of campaign funding by independent institutions, such as civil society organizations, and effective mechanisms for oversight by public institutions, it is difficult to identify the shortcomings of the campaign financial reporting and the legal requirements for transparency and accountability remain largely not implemented.<sup>18</sup>

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<sup>14</sup> There was no systematic campaign finance monitoring for the municipal elections. The Kosovo Democratic Institute (KDI) has distributed a questionnaire to political entities at the beginning of the campaign, with questions on their planned campaign expenditure.

<sup>15</sup> Art. 3.2 of the Election Regulation no 15/2013 on Extraordinary and early elections.

<sup>16</sup> The Venice Commission and OSCE/ODIHR, *Guidelines on political party regulation*, 2011

<sup>17</sup> The European Commission has reflected these concerns in the 2015 Kosovo Report, under the fight against corruption topic. On 19 October the Assembly selected auditors and the auditing process is ongoing.

<sup>18</sup> Kosova Democratic Institute (KDI) has distributed a questionnaire to political entities at the beginning of the campaign, with questions on their planned budget and received limited feedback that has not contributed to increased transparency in reporting.



## MEDIA

### Media landscape

Kosovo benefits from a pluralistic and lively media environment. The main sources of information are television alongside online and social media. There are currently 71 TV channels and 83 radio stations, which are broadcasting via terrestrial or cable networks. The public broadcaster, Radio Television of Kosovo (RTK), is composed of four TV channels and two radio stations. Besides the first public TV channel, *RTK1*, there are four private TV channels, which enjoy a relevant audience: *RTV21*, *Kohavision (KTV)*, *Klan Kosova* and *TV Dukagjini*.

Online and social media profit from a high internet penetration in Kosovo and are an important source of information, especially for the numerous youth sections of the population. *Gazetaexpress.com* and *telegafi.com* are the most popular online news media, while Facebook is the leading social media. Currently only five daily print media are published, albeit with a very limited circulation, they foster public debate, especially the most respected daily, *Koha Ditore*.

The Kosovo media landscape remains divided between the Albanian and Serbian speaking communities. The main public TV channel, *RTK1*, broadcasts mainly in Albanian while *RTK2* broadcasts in Serbian and in other non-majority languages via cable, but is not accessible in the four northern municipalities. The Kosovo Serb-majority communities reportedly mainly rely for their information on local broadcasters in Serbian or on the main TV channels from Serbia, which are easily accessible via cable TV/network.

### Media legal framework and freedom of the media

The legislation provides a sound framework for freedom of the media. The Constitution of Kosovo guarantees “freedom and pluralism of media” and forbids censorship. Libel and defamation are not criminalized and the legal framework includes laws on protection of journalists’ sources and granting access to public information.<sup>19</sup> The Association of Journalists in Kosovo (AJK) and the Journalists Association of Serbia in Kosovo (UNS) are the main bodies representing the interests of Kosovo journalists.<sup>20</sup> The AJK proved to be active also during the election period.<sup>21</sup> Media interlocutors reported that they were generally able to exercise their profession freely, but threats against journalists are still occurring and, despite the existing legal framework, their actual investigation and prosecution by the judiciary is at times slow and ineffective.

The public broadcaster is regulated by the law on Radio and Television of Kosovo - RTK (2012), The board members of RTK are elected by the Kosovo Assembly, and RTK largely relies on a budget allocated by the Assembly, which according to EU EOM interlocutors hinders its full independence from political influences.<sup>22</sup> Private broadcast media are regulated by by-laws issued by the Independent Media Commission (IMC), the media regulatory body. The Law on the Independent Media Commission (2012) defines its responsibilities, which include regulating the

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<sup>19</sup> Civil Law Against Defamation and Insult (2012), Law on Protection of Journalism Sources (2013), Law on Access of Public Information (2010).

<sup>20</sup> The Journalists Association of Serbia in Kosovo (UNS) is a branch of the Journalists Association of Serbia.

<sup>21</sup> The AJK recorded four threats and attacks to journalists during the election period, but none related to reporting on elections. On 20 November 2017, AJK published its Annual Report: “Indicators of level of media freedoms and journalists’ safety (Kosovo)”.

<sup>22</sup> The National Assembly Committee on Public Administration, Local Government and Media informed the EU EOM that is undertaking discussions to revise the current Law on Radio and Television of Kosovo – RTK (2012), and namely to modify the funding of RTK’s budget.

range of broadcasting frequencies, issuing licences to public and private broadcasters, establishing and implementing broadcasting policies as well as sanctioning broadcasters that do not abide by the law. The seven members of the IMC and the three judges of its Appeal Board are appointed by the Kosovo Assembly. Currently there is a vacant position within the Appeal Board. Taking into consideration that the Appeal Board's decisions should be taken by a majority vote, the late appointment of the third judge by the Kosovo Assembly could jeopardize the IMC capacity to take final decisions and to fulfil its duties and responsibilities.

Print media and online news media do not require any licence to operate. The flourishing of online news media was accompanied by several challenges including their level of professionalism and the lack of transparency of their ownership, which often make difficult to hold them accountable for their published content. Since 2005, print media have voluntarily adopted a Code of Conduct of the Press, and created the Press Council of Kosovo (PCK) as their self-regulatory body. More recently, fostering their own self-regulation, some online news media joined the Press Council and now constitute the majority of its members.<sup>23</sup>

### Media campaign regulation

The LGE also regulates the conduct of the media during local elections. Broadcast media are further regulated by the Law on the Independent Media Commission, the IMC's guidelines based on Chapter VIII of the LGE, and the IMC Regulation on Commercial audio-visual communications.

The election law and media-related regulations require, *inter alia*, all media to ensure a fair and equitable coverage to all electoral contestants. Paid advertising is allowed with no specific expenditure ceiling for the contestants, while private broadcasters should not allocate more than 20 per cent of their prime time to commercial advertising, including political paid spots.<sup>24</sup> In addition, they should provide equal conditions to all contestants and the price charged should not exceed the lowest rate for the same 'time and day of the week' used in the previous six months. Broadcasters which accept paid advertising are obliged to offer a minimum amount of free airtime to all registered political entities to convey their messages, but can decide when and in what format to grant them free airtime access.<sup>25</sup> Broadcasters are required to submit on a weekly basis a 'diary' to the IMC with a schedule of paid advertising and free airtime provided to each certified political entity.

The IMC, which is responsible for overseeing broadcast media compliance with election and other media-related regulations, monitored broadcast media throughout the election period. During the period ahead of the first round, the IMC observed breaches of the law in 12 out of 25 monitored TV channels, while ahead of the second round IMC detected violations on seven broadcasters. Most of the breaches, which were also observed in previous elections and were related to rules on broadcasting of paid political spots, including the presence of children, failure to provide a fair and balanced coverage and to respect the campaign silence period, resulted in fines for the broadcasters.

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<sup>23</sup> The Press Council of Kosovo is currently composed of four print media and 24 online-based media outlets.

<sup>24</sup> Public TV and radio stations cannot allocate more than 10 per cent of their daily programmes to commercial advertising.

<sup>25</sup> Only broadcasters, both public and private, that choose to air paid advertising are obliged to offer some free airtime. The public TV and radio stations are required to provide a minimum of 40 and 30 minutes respectively to each contestant, while private broadcasters are required to offer a different minimum number of minutes of free airtime based on the broadcasters' geographical outreach. During the monitored period, the TV channels, including the public TV *RTKI*, granted free airtime access, but generally there was limited interest of the contestants to make use of this opportunity. Only very isolated complaints of contestants being denied access to free airtime were observed.

The IMC neither issued any public statement to remind broadcasters rules for the election coverage before and during the election period, nor sanctioned breaches of the law in a timely manner as it did not hold any meeting to discuss violations during the one month-long election campaign for the first round. Decisions addressing the media coverage of the first and second round election campaigns were published more than two weeks after the two election days. Moreover, in some instances, the IMC did not take consistent decisions on similar violations observed on different TV channels, and did not address some violations, which were observed by the EU EOM media monitoring, such as the sponsoring of current affairs programmes and the presence of paid political spots in commercial breaks within newscasts. These violations contributed to blurring the lines between editorial content and paid-for material, to the detriment of the public.

### EU EOM media monitoring

Major broadcast media offered an extensive coverage of the electoral race, abstained from inflammatory messages and covered the election campaign in a variety of formats, while most local broadcast media provided a limited coverage of the elections. In line with the law, the public broadcaster aired voter education spots provided by the CEC free of charge on its first TV channel *RTK1*, in Albanian, as well as on the second TV channel *RTK2* in Serbian and non-majority languages.<sup>26</sup>

Similarly, online news media widely covered the local election campaign, and several news websites created an *ad hoc* election section. However, most of the online media's coverage was based on information gathered from news agencies and other media sources and was not the result of a professional journalistic reporting. Some online news media displayed an editorial line leaning towards or against political parties and candidates. Social media were largely used by traditional and online media to disseminate live streaming of election debates and campaign events.<sup>27</sup>

### First round

The broadcast media news coverage of the election campaign focused on political parties represented in the Assembly, with smaller parties and independent candidates almost absent from the campaign coverage.<sup>28</sup> The public TV channel *RTK1* offered a fairly balanced and neutral in-tone coverage, dedicating to LDK 17 per cent, to PDK and Vetëvendosje 16 per cent each and to AAK 14 per cent of its prime-time news coverage of political and institutional subjects. Monitored private TV channels provided as well a fairly balanced news coverage of LDK, PDK, Vetëvendosje and AAK with a more limited news coverage of AKR and NISMA. Two private

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<sup>26</sup> *RTK2* is not accessible in the northern Serb-majority municipalities, which did not benefit from CEC voter education spots.

<sup>27</sup> The analysis of five of the most popular Facebook pages of online media, indicated that the election-related content posted on these pages generated a rather limited engagement of the social media users in comparison with non-election related posts. Among the election-related content, Facebook live videos of campaign events and election debates was the format that generated the highest engagement of the public. By "engagement" we refer to the sum of the number of interactions, such as "likes", comments and shares by the users.

<sup>28</sup> The EU EOM monitored two public TV channels (*RTK1*, *RTK2*) and four private TV channels (*RTV 21*, *KTV*, *Klan Kosova* and *TV Dukagjini*) daily from 17:00 to 01:00, as well as the main primetime newscast of TV Most and TV Puls and a sample of online news media and Facebook pages.

TV channels, *KTV* and *TV Dukagjini*, offered a significant news coverage of the Prime Minister, and leader of AAK, while carrying out his institutional activity.<sup>29</sup>

On a positive note, all major monitored TV channels organised inclusive election debates among mayoral candidates for most municipalities, allowing candidates to present themselves, as well as enabling voters to make an informed choice. Nevertheless, candidates spent a significant part of the election debates attacking the opponent rather than presenting and discussing their platforms. Reflecting the low-key campaign in Kosovo Serb-majority municipalities, there was a very limited news coverage of these mayoral races on broadcast media monitored and none of them succeeded in organising election debates among mayoral candidates.

In addition to strictly regulated paid political advertising spots, especially in the last ten days of the election campaign, the main political parties extensively campaigned on TV by taking advantage of a loophole in the law, which allows TV channels to air sponsored programmes without limits.<sup>30</sup> Moreover, breaching the law, in some instances a TV channel broadcasted paid political spots during the commercial break within newscasts, while other TV channels broadcasted sponsored interviews or other sponsored material during their current affairs programmes.<sup>31</sup> The EU EOM media monitoring also observed other breaches of the law pertaining to paid political spots and to the respect of the campaign silence period.

Despite the exiguous number of women running in the local elections, broadcast media made a positive effort to invite to their programmes women candidates for mayoral seats and municipal assembly. Nevertheless, only *RTV21* introduced in all its election debates discussions on gender equality.

## Second round

The LGE which also regulates the conduct of the media during local elections, applies only during the official election campaign. In the period from 23 October to 12 November, monitored broadcasters offered limited news coverage of election related topics, which mainly focused on the publication and commentary of election results and on the composition of election alliances for the second round. Some private TV channels commenced to host election debates as well as one-to-one interviews with contestants for the runoffs immediately after the first-round election day.

During the five-day election campaign for the second round, from 13 to 17 November, the public TV *RTK1* and monitored private broadcast media offered a fairly balanced and largely neutral news coverage of political parties and candidates.<sup>32</sup> An exception was the more extensive news coverage received by Vetëvendosje on private TV channels *KTV* and *TV Dukagjini*, due to a non-

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<sup>29</sup> See Annexes for detailed media monitoring results.

<sup>30</sup> During the last ten days of the election campaign, the private TV channel *KTV* devoted 44 per cent and 3 per cent of its political and election coverage to sponsored programmes and paid advertising respectively. The private TV *Klan Kosova* devoted 30 and 5 per cent respectively to sponsored programmes and paid advertising. The public TV *RTK1* granted less space to paid-for material than all private TV channels: 16 per cent to sponsored programmes and 1 per cent to paid advertising.

<sup>31</sup> In some instances, *RTV 21* aired paid political spots during the commercial break within its newscasts while *TV Dukagjini* and *Klan Kosova* aired some sponsored material in their current affairs programmes.

<sup>32</sup> The EU EOM during the second-round election campaign monitored two public TV channels (*RTK1*, *RTK2*) and four private TV channels (*RTV 21*, *KTV*, *Klan Kosova* and *TV Dukagjini*) daily from 17:00 to 01:00, and a sample of online news media and Facebook pages.

election-related event occurred at the end of the election campaign.<sup>33</sup> Most of the news coverage of the mayoral elections, 72 per cent, focused on the race for five municipalities out of 20.<sup>34</sup> Positively, *RTKI* and the main private broadcasters enabled candidates to convey their messages by organizing several election debates for each municipality. Between the two rounds, all candidates took part in at least one and up to seven election debates, except for contestants running in the Serb-majority municipalities, who did not participate in any debate. During the election campaign for the second round, major political parties continued to profit from a loophole in the law allowing them to purchase an unlimited amount of sponsored programmes. Namely, Vetëvendosje purchased 44 per cent of the total sponsored programmes in all monitored broadcasters', followed by PDK that purchased 29 per cent and LDK with 20 per cent.

## ELECTION ADMINISTRATION

The local elections were administered by a three-tiered structure, consisting of the Central Election Commission (CEC), 38 Municipal Election Commissions (MECs) and 2,505 Polling Station Committees (PSCs).

The CEC is a permanent independent body composed of eleven members. The Chairperson is appointed by the President of Kosovo from among the judges of the Supreme Court. The ten other members of the CEC are appointed through nominations by parliamentary groups represented in the Assembly, including those holding guaranteed seats for non-majority communities.

Valdete Daka was appointed CEC Chairperson on 16 June 2010 with her first seven-year mandate expiring during the early legislative elections, which was not renewed for a second full term, but rather through a temporary extension. On 15 June 2017, the President's legal office extended her mandate until 90 days after the certification of the legislative elections. As the legislative elections were certified on 8 July, this first extension was valid until 6 October. The President's office stated that in view of the on-going process for the municipal and the mayoral elections, this automatic extension applied also for the second time until 90 days after the certification of results of the local elections. The extension of the mandate after certification of the local elections applied also to the other CEC members whose mandate is otherwise linked to the mandate of the Assembly. The seat for the CEC member representing the Kosovo Serb community was vacant for one month when Mr. Nenad Rikalo resigned from the CEC due to his appointment as Minister for Agriculture, Forestry and Rural Development. Mr. Stevan Veselinović, nominated by Srpska Lista, was sworn in on 10 October as CEC member by the President.

The CEC sessions were open to observers, the public and the media. For most matters, a simple majority of the votes is sufficient for passing a decision, with a minimal quorum of seven members present. For important matters, such as the adoption of CEC regulations, the registration and the certification of political entities, and for the declaration of election results, the CEC aims to decide by consensus. If this is not possible, a two-third majority of votes is needed. In practice, the CEC has adopted most of its decisions as a collegial body; however, there were few contentious debates over the process of the runoffs in races with tight results, during which some CEC members traded accusations of supporting the interests of a particular political entity.

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<sup>33</sup> The verdict of conviction of four Vetëvendosje members announced on the last day of the election campaign for a court proceeding started on August 2016, drew a relevant attention of some media outlets.

<sup>34</sup> Prishtinë/Priština 24 per cent, Mitrovicë/Mitrovica (South), and Gjakovë/Đakovica 14 per cent each, Gjilan/Gnjilane 12 per cent and Ferizaj/Uroševac 8 per cent. The mayoral race for Prizren, the second largest municipality of Kosovo, received only 4 per cent of the news coverage in all monitored broadcasters.

The CEC was striving to provide the public and stakeholders with timely information on the electoral process on the CEC's website aiming for a high level of transparency. However, the CEC Secretariat occasionally failed to publish the latest decisions on the CEC's website, especially in Serbian language.

Following the June early legislative elections, the CEC adopted an Action Plan based on the EU EOM Interim Recommendations, which suggested improvements not requiring changes in the legal framework for the administration of the 2017 local elections. The CEC improved the Polling and Counting Procedures Manual, simplified the results forms, improved PSC trainings, and introduced measures for the CRC to increase the transparency and accuracy of its operations.

The CEC did not fully implement its voter information campaign, stating problems with the procurement process. Prior to the first round, the CEC conducted a 10-day voter information campaign with video spots aired by major broadcast media explaining how to mark the two ballots aiming at minimizing the considerable number of invalid ballots observed in previous elections. However, this effort came very late and without targeting the electorate with a variety of messages and effective communication channels. The number of invalid and blank ballots during the 2017 municipal assembly elections remained high with 8.7 per cent, which represents only a slight improvement over a 10 per cent level recorded in previous 2013 municipal assembly elections. Overall, the voter information campaign was insufficient, while leaving some aspects of the electoral process unaddressed.

Information important for both voters and polling station committees about which ID documents were acceptable for voter identification on election day was addressed by CEC very late and without clear instructions. The CEC released on 18 October 2017 two instructions, a first one for voters who are on a regular voter list<sup>35</sup> and a second one for voters who cast ballots conditionally.<sup>36</sup> However, the CEC failed to provide any clarification on the acceptance of Serbian ID cards for voter identification for regular voting. As this issue was not clarified properly prior to the PSC trainings and the polling manual showed examples of only Kosovo-issued or UNMIK-issued documents, training participants were in some cases misinformed and under the impression that only these could be used for voter identification, while no such legal limitation exists.

The training of the polling staff was well prepared and conducted with the main aim of acquiring practical skills via interactive mock exercises addressing main shortcomings encountered on Election day, such as ballot count, filling out of results forms and the packing procedures. However, the EU EOM noted that the length of the polling staff trainings was not sufficient and there was a lack of specialised training for the PSC chairpersons and for the Special Needs Voters mobile voting teams. The high number of recounts in the municipal assembly elections indicates persistent problems with PSC's performance related to counting and filling results forms properly in a more complicated ballot count, which includes candidate preferences. The MECs were experienced, well organized, and able to follow deadlines regarding election operations in their respective municipalities. As the MECs for the local elections were appointed prior to the certification of the 2017 legislative elections<sup>37</sup>, the CEC had to base MEC nominations on the 2014 election results from political entities represented in the previous Assembly taking into

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<sup>35</sup> Article 90 of LGE defines acceptable documents as a valid personal Identification Document (ID) card, a valid travel document, a valid passport, a valid Kosovo driving license, a valid IDP card or a valid refugee card, and the CEC instruction added expired UNMIK documents as acceptable too.

<sup>36</sup> CEC instruction stated that only Kosovo-issued identification documents were to be accepted for conditional voters even if they are not found in the final voter list of the municipality.

<sup>37</sup> The announcement of local elections was on 21 June and MECs appointment on 3 July, while Kosovo Assembly election results were certified on 8 July 2017.

account also political entities with strong municipal assembly elections results. and non-majority communities' parties with relevant support in the municipality.

The appointment of 2,505 PSCs and their chairpersons was a complex process. The PSCs consisted normally of five to seven members. The mechanism for the establishment of the PSCs gave the right for nominations to the political entities represented in the Kosovo Assembly and the political entities with seats in the respective Municipal Assembly contesting in the elections. One political entity was allowed to have only one member in a PSC and thus the CEC allocated quotas for the number of PSC members, reserves and chairpersons for each political entity within each municipality. The main issue was to equally divide the number of PSC chairpersons among the four political entities that received most of the votes in the 2017 legislative elections in the respective municipality. The CEC adopted quotas for the number of PSC chairpersons thus maintaining an inclusive and balanced approach for the PSC composition in all municipalities incorporating various contesting political entities representing the Kosovo Serb and other non-majority communities.

For the second round of the mayoral elections, the CEC appointed the PSC members attributing an equal number of chairperson positions to the two competing political entities in each municipality, which faced a runoff. As for the other PSC member positions, political entities had the right to confirm or replace their polling staff from the first round. Some political parties replaced their PSC members accordingly.

The CEC attempted to cross-check the eligibility of 19,560 PSC nominees. The Voter Service Division (VSD) verified whether they were registered as voters in their respective municipality. The ECAP swiftly answered the vetting request by giving the CEC a list of thirty persons who were not allowed to be appointed as administrative staff in the elections due to their previous ECAP convictions. However, the CEC Secretariat was not able to check the PSC nominees' eligibility requirement as not being convicted of criminal offense within the past three years by a final court decision.<sup>38</sup> Even though the names of all polling staff nominees were sent on time to the Judicial Council and the State Prosecutor to check their criminal records prior to the PSC members' appointments, the CEC did not receive any answer, indicating a lack of effective vetting mechanisms.

The rate of representation of women within the election administration has remained very low. Among the 11 CEC members, only the Chairperson was a woman, and women represented only 11 per cent of MEC members and chairpersons. The share of women among appointed PSC members was 26 per cent, which, with the exception of Mitrovicë/Mitrovica (North) and Prishtinë/Priština, was far below the 40 per cent target declared by the main political parties.

## **VOTER REGISTRATION**

Kosovo uses a passive voter registration system, where the voter list is generated for each election based on data in the civil registry. According to art.5 of the LGE, a person is eligible to vote if he/she is 18 or older on election day and satisfies at least one of the following criteria:

- Is registered as a citizen of Kosovo in the Central Civil Registry.
- If residing outside Kosovo, left on or after 1 January 1998, provided he/she meets the criteria for being a citizen of Kosovo.

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<sup>38</sup> LGE Art. 75.3.f and CEC Regulation 9/2013, Art.5.3.h

- Obtained refugee status, as defined in the Convention Relating to the Status of Refugees, on or after 1 January 1995, and is eligible to be registered in the Central Civil Registry as a habitual resident of Kosovo.

The voter list is generated by the Civil Registry Agency of Kosovo (CRA) based on a registry that contains all Kosovars who have been issued a Kosovo ID, as well as approximately 140,000 holders of UNMIK IDs. Based on the data from the civil registry, the final voter list certified by the CEC on 22 September 2017 contained 1,890,952 voters, which is an increase of 18,011 since the June elections.

Voters had a sufficient opportunity to check their voter list entries and request changes. The preliminary voter list was publicly available at MECs and throughout the municipalities from 26 July to 12 September, as well as on the CEC's website. During this period, 8,218 voters requested to change their polling locations (4,741 requests at the MECs, 3,477 requests online). From these requests, 7,409 were approved and 809 were denied. In case a request for a change was denied, voters had the possibility to challenge decisions of the election administration from 29 August to 12 September. Election contestants and accredited observer organizations may acquire a copy of the voter list to check its accuracy.

The presence of deceased persons on the voter list has been constantly mentioned by the EU EOM interlocutors as a major deficiency and contributes to a low public confidence in its accuracy. The EU EOM obtained a copy of the preliminary voter list, as provided by art. 8.5 of the LGE. The analysis of the preliminary voter list found that it contained an implausible number of persons aged 100 and over (centenarians). Based on the preliminary voter list, Kosovo has 163 centenarians per 100,000 people, more than 20 times the world average, estimated by the UN in 2015 at 7.4 per 100,000 people. Additionally, in most municipalities, the preliminary voter list contains a proportion of people aged 65 and over higher than in the general population estimates of the Kosovo Statistics Agency. Nine municipalities have a number of voters aged 65 and over higher than 20 percent, which is a highly unlikely figure.

Deceased persons are not removed from the voter list in a timely manner due to deficiencies in the procedures for registering deaths. Many families do not report deaths, as they apparently continue to receive the social benefits of the deceased. Additionally, a death certificate is not required for a funeral. The CRA is taking measures to update the civil registry and remove data of deceased from it persons. To remove incentives that contribute to the under-reporting of deaths, the CRA has signed an agreement with hospitals and the Islamic Community of Kosovo, with limited effect so far. Under this agreement, hospitals and mosques report deaths to Municipal Offices for Civil Status (MOCS) and social benefits are suspended automatically, in a procedure named "passive registration". However, a person cannot be removed from the voter list until a death certificate is issued and this can only be done at the request of the family.

At local level, MOCS report various degrees of implementation of the centrally-signed agreement on the reporting of deaths. The EU EOM observers visited 30 of the 38 MOCSs and only 10 were cooperating regularly with local hospitals or mosques for collecting death reports. In order to encourage requests for death certificates, the municipalities of Gjakovë/Đakovica, Prishtinë/Priština and Podujevë/Podujevo offer financial support towards the costs of the funeral to families who register a death within the legal deadline of 30 days. A similar scheme is being considered by the municipality of Klinë/Klina.

For each election, a separate list for Out-of-Kosovo (OoK) voting is compiled by the CEC based on requests from eligible voters residing outside Kosovo. Applicants who successfully register for OoK voting are removed from the Voter List of the municipality where they have their Kosovo residential address. At the end of application period the CEC received 11,813 applications for



OoK voter registration and 10,476 of them were successfully registered. Except for those who successfully applied for OoK voting, most of the Kosovars of voting age residing abroad are lawfully included in the regular voter list. Some EOM interlocutors expressed concerns that data entries of these voters residing abroad may be misused on election day. The Kosovo Statistics Agency (KSA) estimated the numbers of Kosovar residing abroad at around 700,000.

Voters are not always assigned to the polling station closest to their place of residence, reportedly due to deficiencies in the Kosovo address system and to the fact that voters do not usually request a new ID card when they move to a different place (voters are assigned to polling stations based on the address in their IDs, not their actual residence). KSA estimates that around 300,000 Kosovars live in a municipality other than that where they are officially registered. Polling centres are provided with copies of the entire municipal-level voter list and are thus able to redirect voters to the correct polling station on election day, if it is located in the same municipality.

## **CANDIDATE REGISTRATION**

The process of nomination and certification of candidates for the local elections was inclusive. During the certification period all 91 political entities who applied were certified. Among them were 35 registered political parties, one coalition, 30 citizens' initiatives and 25 independent candidates. There were 6,887 certified candidates running for municipal assemblies, out of which 2,400 were women. The total number of mayoral candidates was 204, only eight of these were women.

For the first time since the LGE entered into force in 2008, the CEC has requested the criminal records of all applying candidates, as required by the law. Since Kosovo does not operate an integrated judicial database, the CEC had to contact all basic courts in Kosovo for the relevant information. 87 certified candidates were decertified by the CEC based on their criminal convictions within the last three years. 17 of these decertified candidates filed appeals with the ECAP, all of which were rejected as ungrounded. Three of those applicants, including one Assembly member, appealed the ECAP decisions to the Supreme Court, which eventually reversed them and ordered the CEC to re-certify the three candidates.

The Supreme Court argued that art. 29.1 LGE was unconstitutional<sup>39</sup>. This question has not yet been referred to the Constitutional Court. This creates an uneasy situation for the authorities, which would legally still be obliged to apply art. 29.1. LGE, except in the specific instances where the Supreme Court has ordered otherwise for specific appellants. The CEC nevertheless unexpectedly decided to extend the Supreme Court's decision to all 87 original candidates who had been decertified due to criminal convictions. Only 27 out of the 87 re-certified candidates resigned or were replaced by their political entities. Out of the 17 candidates known by name to the EOM, who were affected by this re-certification in spite of recent criminal records, 14 ran for office and three were elected into municipal assemblies. Even though it is in the Constitutional Court's mandate to declare a law as unconstitutional<sup>40</sup>, nobody appears to intend to bring the matter there. The Head of the CEC has accepted that LGE art. 29.1. regarding candidate eligibility cannot be applied anymore unless and until an electoral reform will have taken place. However,

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<sup>39</sup> The Supreme Court decision mostly relies on Const. art.45, which states that every citizen of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision. However, the decision fails to consider Const. art. 55.1., which states that fundamental rights and freedoms guaranteed by this Constitution may (only) be limited by law.

<sup>40</sup> According to Const. art. 113.2, the Assembly, the President, the Government and the Ombudsperson are authorized to refer matters regarding the compatibility of laws with the Constitution to the Constitutional Court.

the Supreme Court's argument would extend to all of art. 29.1. LGE except for litera p, effectively invalidating all but one criteria for candidate eligibility. Some clarification will be needed, be it in the course of the long awaited electoral reform, or via the Constitutional Court ruling.

### **Out-of-Kosovo voting**

The Out-of-Kosovo (OoK) voting program is based on postal voting and as such has been criticized in previous elections as lacking many safeguards against possible abuse. At the beginning of the five-week application period, the CEC sent application forms directly to 15,118 voters who were registered as OoK voters for the June legislative elections. The CEC received 11,813 applications and approved 10,476 of them. The process of postal OoK voting for the first round of the local elections started on 22 September with the deadline for receiving postal OoK ballots expiring on 20 October 2017 at midnight. The total number of postal ballots received was 7,621, out of which 6,735 were approved and 886 were refused.<sup>41</sup> The highest number of approved postal ballots was received from Serbia (2,006), Switzerland (1,335) and Germany (847) and the municipalities with the highest number of postal ballots were Istog/Istok (1,413), Klinë/Klina (434) and Gračanica/Gračanicë (414).

The EU EOM was notified about 33 voters from Klllokot/Klokot and one voter from Lipjan/Lipljan who filed complaints with the ECAP claiming that someone fraudulently applied on their behalf to be registered as OoK voters, thus eliminating them from the final voter list. These complaints were rejected as filed after the deadline. The head of the VSD admitted that there were no legal grounds to annul any of those OoK registrations for Klllokot/Klokot municipality and that there was no possibility for these voters to be reinstated in the final voter list. There are no sufficient safeguards against the impersonation of voters in the OoK voting process and there is a lack of effective legal remedy to address cases of disenfranchised voters who learned about their removal from the final voter list only after the appeal period had expired.

For the second round of the mayoral elections, the application period for the OoK voting run for 14 days from 4 November to 17 November. The CEC was able to respect the deadlines for OoK voting for 16 out of 19 municipalities facing runoffs, while in Istog/Istok, Obiliq/Obilić and Kamenicë/Kamenica there was a three-day delay due to pending appeals. To facilitate OoK voting, the CEC posted the ballot papers for the runoffs on their website and informed OoK voters to download the respective ballot paper and mail them to a registered postal box by 17 November at latest. For the runoff elections in 19 municipalities, the CEC received in total 2,330 postal ballots and among them the highest number 1,356 was again from the Istog/Istok municipality.

During the first round in Istog/Istok a total of 1,366 postal ballots were allocated to three Serb candidates for the municipal assembly election, while for the first round of the mayoral there were only 830 postal ballots with 795 of them cast for the LDK candidate. In the second round, however, 1,337 OoK ballots were counted for the AAK candidate and only 18 OoK votes for the LDK candidate, who was in leading after the count of all regular ballots inside polling stations. The OoK ballots had an unexpectedly crucial impact on the overall results in the mayoral runoff elections in Istog/Istok as after the count of all postal ballots the AAK candidate took the lead by 671 votes. After an investigation of the complaints regarding fraudulent OoK ballots in Istog/Istok, the ECAP ordered to repeat the voting of the second round of the mayoral elections in this municipality. The CEC decided to organize the repeat voting in Istog/Istok on 17 December 2017, with a five-day period of identity verification, which included contact information and the place of residence of OoK voters to confirm their OoK registration. Only 85 of 1,587 OoK voters

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<sup>41</sup> The main reasons for rejection were mainly OoK voters who sent postal envelopes more than once (329), persons who did not send any identification document (305), and persons who did not apply for the OoK voting (158).

confirmed their status as OoK voters, while the other 1,467 voters were reinstated back in the final voter list in the municipality of Istog/Istok.

### **First Round of Mayoral and Municipal Assembly Elections, 22 October 2017**

Election day was calm, without major incidents recorded by the EU EOM observers, who visited 466 polling stations in all 38 municipalities. Polling stations generally opened on time and were prepared for voting. However, in Deçan/Deçane municipality several PSC had to suspend the voting process for one hour in the early morning due to the distribution of incorrect PSC stamps. The issue was resolved by the election authorities without affecting the validity of ballots cast. The opening procedures were mostly followed, and the opening was assessed positively in all polling stations observed.

Overall, the polling process was assessed as good or very good in over 99 per cent of polling stations. Voting procedures were generally followed. The EU EOM observers noted many instances of family voting (in 10 per cent of observations). Some voters were turned away in 11 per cent of polling stations observed, mostly for not being on the voter list, as they most likely presented themselves in the wrong polling station. According to data registered in the poll books, in 21 per cent of the observed polling stations the percentage of assisted voting was over ten per cent.

The EU EOM observers noted that 44 per cent of polling stations visited were not accessible for voters with disabilities.

The issue of accepted documents was not sufficiently clarified by the CEC. In most observed polling stations, Serbian IDs were accepted for regular voting, with a small number of exceptions. For conditional voting, there was no uniform interpretation of the rules by PSC staff across different polling stations.

The performance of the polling staff deteriorated at the counting stage, with only 80 per cent of the vote counts observed evaluated as positive. Although the CEC simplified results forms, in line with the interim recommendation made by the EU EOM deployed for June early elections, polling staff in a third of observed polling stations struggled to fill in the Candidate Results Forms correctly. Difficulties in completing the Reconciliation and Results Forms (RRFs) were noted in a 37 per cent of observed vote counts. The polling station results forms were publicly posted in 88 per cent of observed vote counts allowing observers from political entities to copy results from polling stations.

The EU EOM observers visited 30 MEC collecting centers and the process was assessed as positive in all of them. Corrections to polling stations materials and documents were required at least once in 40 per cent of the observed MECs, indicating that additional training for polling staff is needed.

Two major private TV channels, *Klan Kosova* and *TV Dukagjini*, breached the campaign silence period by covering press conferences of political parties during election day.

### **Polling or Voting process in the four northern municipalities**

Upon request from the CEC, the OSCE Mission in Kosovo provided technical support and assistance to four MECs and 86 PSCs in the municipalities of Mitrovicë/Mitrovica (North), Zubin Potok/Zubin Potok, Zvečan/Zveçan and Leposavić/Leposaviq. On election day, the OSCE teams were present in each polling station in the four northern municipalities from the opening to the end of the counting, with the authority to report violations and point out irregularities to the election officials. The OSCE personnel accompanied the transport of the election materials from

polling stations to the designated MEC collection centres in the north and then onward to the Count and Results Centre.

### **Second Round of Mayoral Elections, 19 November 2017**

On 19 November, the EOM visited 292 different polling stations. Opening and voting were calm and orderly, and counting was mostly conducted in a transparent and efficient manner. However, important aspects of the voting process leave room for improvement.

Access to polling station premises for people with disabilities was difficult in 44 per cent of visited polling stations. The layout of the polling stations was not suitable for people with reduced mobility in over one fifth of the polling stations observed.

Opening was observed in 24 polling stations, which generally opened on time. Polling staff and political entities' observers were noted to arrive late in a few cases, which caused minor delays. Opening was positively assessed in all observed polling stations.

Voting was conducted calmly and, overall, the voting process was positively assessed in all except two of the visited polling stations, with polling staff performing well and conducting operations in a transparent manner. Women were under-represented within polling station committees, accounting for 26 per cent of the polling staff in the observed polling stations. In 14 per cent of the visited polling stations, a woman chaired the committee.

Voters' understanding of the voting procedures continues to be an area where improvements are needed. Assisted voting was frequently utilized, and not always by voters unable to cast the ballot by themselves. A percentage of assisted votes higher than ten per cent was recorded in the poll books in 43 visited polling stations. The secrecy of the vote was negatively affected by practices such as family and group voting, which were observed in 15 polling stations.

Campaign materials were observed near 18 of the visited polling stations. A few reports of activists gathering outside polling centres were received by the EOM, but the presence of the police prevented escalations.

Domestic observers were present in over 90 per cent of visited polling station and the respective two candidates were both represented by observers in over 85 per cent of observed polling stations.

Counting was observed in 29 polling stations and in 25 of them it was positively assessed. Polling staff performed their duties transparently and were, with notable exceptions, competent. Difficulties in filling in the RRFs were observed in three of the visited polling stations. In two of the polling stations visited closing procedures were not properly followed and in one other polling station the ballot reconciliation was problematic. In two other polling stations the results forms were not posted. Counting in one polling station in Parteš/Partesh was particularly problematic, with political entities' observers interfering with the process and alleging fraud<sup>42</sup>.

The EU EOM observed the handover of materials to 20 Municipal Election Commission (MEC) premises. Despite minor issues, all of them were positively assessed. Facilities were inadequate in three MECs and almost half of them were overcrowded, however the work of the MECs was conducted in a professional manner nevertheless. In one third of visited MECs polling staff needed to make minor corrections before submitting materials. For the most part, the corrections were related to the filling-in of the results forms and the packing of the materials.

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<sup>42</sup> In this polling station 203 ballots were counted as blank, having no ink mark, but presenting indentations indicating possibility of usage of a pen with disappearing ink.

On 19 November, the Chief Prosecutor's control room reported 23 investigated incidents, of which only one led to a criminal proceeding. On 20 November, the ECAP received 10 complaints regarding voting and counting.

### **Tabulation and Announcement of Results**

The CEC on its website released data about the voter turnout and the early preliminary results for the mayoral elections and the political entities' results of the municipal assembly elections. Data operators fielded in all polling centres entered results from polling stations into the K-Vote database except for candidate preferential votes. Due to technical problems, the CEC's website was not accessible for most of the election night, nonetheless it offered a breakdown of the early preliminary results by polling station. This provided political entities with the opportunity to compare the results posted or copied by their observers from polling stations.<sup>43</sup>

The tabulation of the official results for both the mayoral and the municipal assembly elections took place at the CRC. The CRC is based in a warehouse near Prishtinë/Priština where the election material from all municipalities is collected, examined, processed and archived. Conditional, special-needs and OoK postal ballots and any regular ballots when required by the CEC or the ECAP are counted at the CRC. The results forms from each polling station are entered, audited, tabulated and the final results are compiled at the CRC.

On 23 October during the intake stage the election material from all over Kosovo was handed over to the CRC. Of a total of 5,010 ballot boxes, 135 were quarantined due to wrong seal numbers, incomplete forms or missing signatures. Out of the 135, five boxes for the mayoral elections and 22 for the municipal assembly elections had to be recounted as they were missing sensitive material or showed results forms that were incomplete, blank or wrongly filled.

After the intake phase, the CRC scanned the results forms from polling stations and entered them into the system. The audit and the investigation of the results forms for the mayoral and the municipal assembly elections and of candidate results forms were an important part of the CRC procedures as they reveal discrepancies between recorded candidate preferential votes and the results for political entities.

After the audit of the results forms the CEC decided to conduct a full ballot recount of eight mayoral elections boxes and 695 boxes for the municipal assembly elections that could not pass the audit due to discrepancies in results forms for the number of votes for political entities and for preferential votes for candidates. The process of recounts of 695 municipal assembly ballot boxes was conducted in the presence of observers from political entities and assessed by the EU EOM observers as mostly transparent. To increase transparency, the CEC decided to post on their website all result forms from the original PSC counts at the polling stations and the new result forms after the recounts.<sup>44</sup>

According to the EU EOM analysis comparing protocols before and after 257 selected recounts, 55 per cent of them had minor discrepancies of up to a five-vote difference for political entities. One third did not show any discrepancy in the votes for entities but in candidate preferences only. Significantly, five per cent of the analysed forms showed discrepancies of five to ten votes for a

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<sup>43</sup> After the second round, the CRC had to correct early results for mayoral candidates in Prishtinë/Priština after notification by LDK about data mistakes in two polling stations decreasing the vote difference from 307 to 237.

<sup>44</sup> The CRC posted them, however original results forms from Deçan/Deçane municipality were not available online.

political entity and another five per cent discrepancies for a political entity varying from 11 up to 123 vote differences.<sup>45</sup>

There is no legal deadline for the CEC certification of the election results, as it shall be done after the completion of all CRC procedures and after the adjudication of complaints and appeals that may lead to possible recounts or repeat voting. As the second round of mayoral elections is legally required to be held four weeks after the first round, the CEC tasked the CRC to give priority to the tabulation and compilation of the results of the first-round mayoral elections. Therefore, the count of the conditional ballots was carried out initially only partially, with priority given to mayoral elections, while the conditional ballots for the municipal assemblies were counted only after the conduct of all recounts. From among the 15,540 voters who voted conditionally, 4,856 ballots were rejected as mainly these voters marked their ballots for the municipality in which they were not on the voter list or they were not found on the voter list at all.

The CEC announced the first-round mayoral results for 38 municipalities on 31 October, thus also marking the commencement of a 24-hour appeal period. On 3 November the CEC officially certified the results of the mayoral first-round elections in 32 municipalities and on 6 November in five municipalities where appeals were rejected, while in Parteš/Partesh municipality the ECAP ordered a repeat voting. The voter turnout in the first-round mayoral elections reached 44.1 per cent and total number of invalid ballots was 13,814 (1.6 per cent) and there were 7,899 (0.95 per cent) blank ballots.

The CEC announced the municipal assembly election results for 38 municipalities on 9 November. Detailed data included a breakdown of results by municipality and polling station including preferential votes for individual candidates and municipal assembly seats allocated to political entities. Unlike for the mayoral results, the CEC did not announce aggregated results including the total number of invalid ballots. According to the EU EOM analysis the share of invalid and blank ballots for the municipal assembly elections remained very high, reaching 8.7 per cent.<sup>46</sup> Compared to the 2013 level of ten per cent of invalid ballots, this represents only a minor improvement. The main reasons could be attributed to the poor understating of voters of complexity of the municipal assembly ballot with two votes and overall lack of voter education.

On 14 November the CEC had to implement the ECAP decision to recount ballots from 435 municipal assembly boxes based on complaints by political entities. Surprisingly, the ECAP included in its decisions also 71 boxes which were already recounted at the CRC with no explanation provided why they had to be recounted again. The EU EOM analysed and compared 159 forms of 435 recounts and found that 54 per cent revealed minor discrepancies of up to five votes difference for a political entity, while 43 per cent showed no discrepancy in votes for political entities but only in preferential votes for candidates. A discrepancy of six to ten votes was noted only in 2.5 per cent of the sample and there was no case of a discrepancy of above ten votes difference for a political entity.

The CEC certified the final results for the municipal assembly elections on 29 November for 37 municipalities, except for Vushtrri/Vučitrn due to pending appeals. 435 recounts ordered by the ECAP did not produce any significant changes in the votes for political entities, however there were changes in the preferential votes as 14 candidates for 11 municipal assemblies were certified as elected replacing 14 candidates-elect previously announced by the CEC.

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<sup>45</sup> Most cases with discrepancies in the results were noted in Gjakovë/Đakovica, Rahovec/Orahovac, Pejë/Peć and Prizren.

The intake of election materials from twenty municipalities where voting took place on 19 November was smoother than in the first round. After the intake, 30 ballot boxes were put in quarantine due to incomplete materials or missing signatures. The CEC decided to recount one ballot box from Prizren due to a mistake found in the results form and 22 conditional ballots were invalidated due to missing signatures on the conditional voter list.

After entering all results forms, the CRC initially investigated four ballot boxes that did not pass the audit, but later processed them as regular. The EU EOM noted that the system does not have embedded cross-checks for all possible inconsistencies found in the results forms or triggers to investigate implausible data. Two problematic protocols from the vote counts as observed by the EU EOM were not flagged by the system and passed the audit without investigation, even though in Parteš/Partesh PSC protocol recorded 203 blank ballots of 405 ballots found in the ballot box.

After the complete data was entered into the system including all regular voters who signed the voter lists, the data of voters from conditional envelopes were entered into the system to check their eligibility to vote in the respective municipality and to verify if any of them had already been recorded as voted. The CRC rejected 131 ballots of 545 registered special-needs voters from the Dubrava prison in Istog/Istok due to wrong area codes on envelopes or due to missing names on the voter list, nonetheless, there were less cases of ballot rejections of prisoners compared to the first round.

The CEC plan to count 7,649 conditional, 1,175 special-needs and 2,330 OoK postal ballots on 23 November changed due to the unexpected ECAP decision ordering recounts of ballots from all ballot boxes in Prishtinë/Priština and Prizren, 35 ballot boxes in Dragash/Dragaš and three ballot boxes in Rahovec/Orahovac. The CEC discussed how to proceed with the counts of conditional, special-needs and postal ballots and when to start recounts ordered by the ECAP in anticipation of decision by the Supreme Court on related appeals. On 23 November the CRC counted conditional, SNV and OoK ballots for 16 of 20 municipalities and suspended counting process in anticipation of the Supreme Court ruling.

On 26 November the CRC recounted runoff ballots from 35 polling stations in Dragash/Dragaš and three polling stations in Rahovec/Orahovac having no impact on results. The CRC counted conditional, SNV and OoK postal ballots for the Prishtinë/Priština and Prizren municipalities with increased transparency measures implemented by allowing the presence of a higher number of observers from political entities and by facilitating media access to live broadcast ballot counts from the two largest municipalities.

On 26 November, a team from the ECAP investigated the postal OoK ballots from Istog/Istok and Kllokot/Klokot as part of the adjudication of complaints related to these postal ballots. There were public statements, allegations and complaints that in these two municipalities the postal OoK ballots were manipulated in such a way that they had a decisive impact on the results of the mayoral elections. In Istog/Istok the AAK candidate obtained 1,337 of a total of 1,355 OoK votes<sup>47</sup> and thus took the lead from the LDK candidate who was originally ahead by 648 votes after the counting of the regular and conditional ballots. As a result of ECAP decision the repeat voting in mayoral runoff in Istog/Istok municipality, the CEC that re-vote will be held on 17 December and registration of OoK voters should be verified. In Kllokot/Klokot the candidate of Srpska Lista initially leading lost by a margin of ten votes due to 19 OoK ballots<sup>48</sup>, which were

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<sup>47</sup> In Istog/Istok in the first round the AAK candidate received only 18 OoK votes compared to 795 OoK votes for the LDK mayoral candidate.

<sup>48</sup> In Klokot/Kllokot the OoK ballots were highly controversial already during the first round of the mayoral elections, when all 32 OoK votes were allocated to the Srpska Lista candidate.

allotted to the opponent candidate of GI Klokot-Vrbovac. The CEC announced the mayoral results for the second round on 29 November, except for Istog/Istok and Klokot/Klokot due to the appeals filed at the ECAP and Supreme Court.

Overall, the CRC plays an important role in providing a much-needed additional level of scrutiny over the election process and remains indispensable to ensure correct polling station data. Even though the level of transparency at this stage has increased significantly, there is still much improvement required regarding accuracy, efficiency and quality control.

## ELECTORAL DISPUTES RESOLUTION

### Complaints and Appeals

The Elections Complaints and Appeals Panel (ECAP) is an independent institution responsible for adjudicating election-related complaints, except for challenges to the voter list and media related complaints. The ECAP is composed of 10 judges, two of which are women, including the Chairperson, who is appointed from among the judges of the Supreme Court. The Panel is supported by a permanent secretariat, but lacks adequate premises to fully carry out its responsibilities<sup>49</sup>. This issue has been compounded by a very high number of complaints in past elections and tight timeframes for filing and decisions.

The ECAP's permanent structure with the present number of judges and employees is functional. During elections the capacity of the secretariat is strengthened. Due to their resources, office space, time and staff constraints, the ECAP usually does not conduct hearings<sup>50</sup>. Despite the challenges posed by the often-high numbers of complaints and lack of adequate resources, the ECAP has made progress by partially implementing recommendations suggested by previous EU EOMs, which did not require legal changes. These include the training for secretariat staff, the holding of some hearings of cases where sufficient evidence is presented, and the publication of decisions online. Since the end of 2016, the ECAP also operates a new public database for tracking complaints and appeals<sup>51</sup>.

Complainants may be any person, natural or legal, with a legal interest in the matter, or whose rights concerning the electoral process have been violated. These are voters, political entities, PSC or MEC members, or political party observers. The ECAP also accepts complaints submitted by NGOs. Complainants have 24 hours after the close of the polling stations to lodge complaints related to the voting process and 24 hours from the alleged violation for those related to breaches of the silence period and to counting and tabulation. In every case, the ECAP has 72 hours from the receipt of the complaint to reach a decision, which can be appealed to the Supreme Court within 24 hours, if a fine higher than 5,000 euro or a fundamental right is concerned.

The ECAP has dealt with complaints according to the law, which does not provide much guidance, and following its own internal regulations, with the important exception of “not allowing”

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<sup>49</sup> The secretariat has 10 permanent plus 12 temporary staff during these elections, but their office space is severely limited.

<sup>50</sup> They have conducted four hearings during these elections, and also a public session of the Panel concerning 23 cases.

<sup>51</sup> The ECAP homepage shows the list of complaints and appeals, since the end of 2016 directly accessible under [http://pzap.rks-gov.net/?page\\_id=1836](http://pzap.rks-gov.net/?page_id=1836). The published list includes the date of complaint/appeal submission, complainant/appellant, respondent, and complaint/appeal status. All decisions are fully published, sometimes with a bit of delay.



complaints after voting and counting until the final results are published. These complaints should clearly be allowed according to the law. In turn, the panel allows appeals, or complaints, depending on how those who file them choose to name them, to the final results published by the CEC. However, the LGE only foresees appeals to certain enumerated CEC decisions, and no complaints at all regarding CEC decisions. This approach is meant to save the panel from dealing with the same polling station numerous times, or with cases which in the end turn out to be irrelevant for the outcome of the elections, and also allows complainants more time to prepare a proper complaint including evidence. This is a practical approach towards electoral justice, considering the amount of cases and tight deadlines. However, there is no current legal basis for this practice, which sometimes leads to confusion about the filing deadlines and can produce delays in the certification of results.

After 22 October, the ECAP received 263 complaints related to election day, mainly regarding irregularities of the voting process (101 complaints) or irregularities in the counting process (147 complaints). Some lesser issues on election day concerned breaking the campaign silence, finding deceased people in the voter list, or campaign posters in the surroundings of polling centres. Of the 263 complaints related to election day, only eight - related to campaign silence - were approved by the ECAP. 51 were rejected as filed after the deadline, 27 as irregular (e.g., lacking signatures) and 156 as not allowed but with the indication that they could be submitted again if still relevant after the publication of the final results by the CEC. These 263 complaints concerned both the mayoral and the municipal assembly elections.

The ECAP again rejected all complaints related to voting and counting, which were filed properly within 24 hours of the closing of the polling stations as not allowable, referring the complainants to the possibility of filing these complaints after the publication of the final results. This led to a delay in the electoral process. For the first round of the mayoral elections, the ECAP first partially rejected the complaint regarding bribery in Parteš/Partesh, when filed directly after the elections on 22 October. The Panel fined Srpska Lista 11,000 euro for carrying out “forbidden actions”, but rejected the request of the complainant to annul the elections, adding that the complainant was not precluded from submitting an appeal after the CEC announced the final result. That appeal was consequently granted. This resulted in a nine-day delay for the CEC to re-run the mayoral elections in Parteš/Partesh.

Shortly before the elections, a mayoral candidate of Srpska Lista (and then mayor-elect) in Parteš/Partesh had allegedly agreed to pay potential voters 30 to 50 euro each in order to vote for him. A recording of a telephone conversation between the two men was submitted as evidence, where the candidate also promised to repay his accomplice during the next four years. The ECAP found the appeal by the mayoral candidate for the Citizens’ Initiative Narodna Sloga as grounded, annulling the mayoral election results in the entire municipality of Parteš/Partesh and ordering the CEC to repeat the mayoral election in all polling stations there. The Supreme Court upheld this decision of the ECAP on 7 November. Despite the fact that the prosecutor arrested two persons involved in the vote buying and had them detained under house arrest (but not the candidate) and was further investigating the matter, the Srpska Lista candidate was elected as mayor in the re-run.

Of the other five appeals regarding the mayoral results, four were rejected as ungrounded. These concerned irregularities in the counting process (rejected because no relevant evidence was submitted). One appeal was rejected as beyond the deadline, since it concerned an allegation of a

voter found with a ballot paper late on election day in Junik, indicating a possibility of carousel voting.<sup>52</sup>

After the publication of the municipal assembly results, the ECAP received 495 appeals and had to resolve all of them within 72 hours. In this time period, aside of the usual procedure, the ECAP investigated 38 ballot boxes at the CRC, working in five investigative teams. The Panel used up to 72 additional hours to provide copies of its written decisions, a provision it sometimes applies in order to deal with the large amount of cases. Of the 495 appeals, the ECAP approved 177 and rejected 268 as ungrounded, one appeal was not allowed, two were rejected as filed after the deadline, and 47 as irregular. The ECAP further ordered the CEC to recount 440 ballot boxes. About 70 of these had already been recounted by the CRC due to failing the audit, exemplifying the need for better communication between the CEC/CRC and the ECAP.

Otherwise, the panel has followed procedures and met its tight deadlines under difficult circumstances. The reasoning for its decisions is provided, if often very scarce and sometimes inconsistent, and decisions are published on the ECAP's website, albeit with some delay. The panel was generally perceived to be acting in a rather non-political manner, but less so after the second-round decisions to order full recounts in Prishtinë/Priština and Prizren.

After the 19 November election day, and after having been criticised by the CEC and the EU EOM for the rejection of the complaints filed right after election day, the ECAP dealt with ten complaints filed on 20 November in substance. The ECAP ordered that all polling stations (PSs) in Prishtinë/Priština and Prizren were to be recounted, as well as 35 PSs in Dragash /Dragaš and three in Rahovec/Orahovac. Another decision ordered the CEC to register the votes erroneously registered for a PDK candidate in Prizren for the Vetëvendosje candidate.

The ECAP decisions to recount ballot boxes from all polling stations in the largest municipalities of Prishtinë/Priština and Prizren were based on scarce evidence provided, without any additional investigations undertaken, and partly inconsistently reasoned<sup>53</sup>. These were not accepted by the mayoral candidates of Vetëvendosje (who appealed the ECAP decisions to the Supreme Court on Friday 24 November. On 25 November, the Supreme Court decided against the full recounts ordered by the ECAP for all polling stations in Prishtinë/Priština and Prizren, changing the ECAP decisions to reject the respective LDK and PDK complaints in favour of VV.

In the Prishtinë/Priština case, the court argued that there was no legal provision foreseeing a recount due to invalid or blank ballots because voters were entitled to vote in this particular way. Also, irregularities occurred during the election process and blank ballots “could not have served as grounds for a recount of ballots”<sup>54</sup>. The Supreme Court (SC) found that the ECAP decision was not based on convincing evidence and that the complaint allegations of LDK were not proven. The ECAP assessment based on the narrow results between two candidates, that the many inconsistencies of invalid and blank ballots might influence the outcome of the final elections

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<sup>52</sup> This case shows the understandable confusion of complainants who have partially given up on filing complaints within 24 hours of the close of the polling stations, knowing full well that the ECAP rejects the vast majority of these since 2013, and assuming that it is better to wait for the publication of final results with the filing of complaints or appeals.

<sup>53</sup> Some of the alleged irregularities like illegal influence on voters on election day could not even be remedied by a recount.

<sup>54</sup> The two Supreme Court decisions were also rather scarcely reasoned. Generally speaking, apart from the appeals filed by VV to the Supreme Court, the quality of legal documents in this process was low, considering the stakes – the complaints by LDK and PDK to the ECAP were not well argued and little evidence was provided, and neither the ECAP decisions nor the Supreme Court decisions were as structured or reasoned as might be expected at this level and with these stakes.

results, was not based on law. Other allegations made by LDK could not serve as legal basis for ordering a recount of ballots.

In the Prizren case, the SC found that, as submitted by VV, several of the irregularities mentioned in the electoral process had already been noticed and corrected by the CRC. The SC found that ECAP's justifications for approving PDK's complaint were not sufficient and not based on clear and convincing evidence. Furthermore, the CEC had already corrected the errors related to vote counting. The fact that the results between two candidates were rather narrow, and the fact that the number of invalid and blank ballots was so high, was not accepted as a reason for a recount. On the contrary, the evidence provided related only to a minor number of votes compared to the total number of votes cast in Prizren municipality. The justification offered by the ECAP about preserving trust in and transparency of the electoral process, could not be accepted as grounded, as the trust and transparency were not brought to question also since eventual errors had been corrected by the CEC.

On 24 November, two complaints were filed with the ECAP regarding the OoK vote in Istog/Istok and Klokot/Klllokot, after the respective votes were counted. The ECAP investigated these ballots at the CRC.

Regarding Klokot/Klllokot, the (original) Srpska Lista mayoral candidate Strahinja Spasić, complained to the ECAP that during the counting of the conditional votes and the postal votes at the CRC his observers noticed that the 19 postal ballots from Serbia were identical, one original and 18 photocopies. Included as evidence were the statements of the five observers present during the counting process and statements from citizens who voted for Strahinja Spasić, by postal vote, yet no postal vote was counted for Spasić in the runoff election. Since Mr. Spasić was ahead by 10 votes in the mayoral race in Klokot/Klllokot before the 19 OoK ballots were added, this question decided the race. The ECAP has rejected the appeal of the candidate for mayor of Klokot/Klllokot from Srpska Lista as being unfounded, as they found the investigated ballots to have come in three different types of envelopes. The ballots were each ticked with a pen and did not show photocopied pen marks. The ECAP did not mention the statements from the citizens who had claimed to have voted for Strahinja Spasić by postal vote in its reasoning.

The ECAP accepted as grounded the complaint of LDK and decided to annul the results of the mayoral elections for the second round, held on 19 November in Istog/Istok, ordering the CEC to repeat the vote of this second round in Istog/Istok. LDK had actually only asked for an annulment of all postal votes and their exclusion from the final result. After a thorough investigation, the ECAP decided that the vast majority of the OoK votes were most likely indeed fraudulent, after e.g. checking significant samples of the provided telephone numbers of the supposed voters or examining death certificates of people who supposedly voted. Some of the OoK votes however appeared to be legitimate. This motivated the ECAP to not just annul the OoK vote in Istog/Istok, but the entire second round, and order the CEC to repeat the respective vote. Both AAK and LDK appealed this decision to the Supreme Court, AAK demanding the rejection of the LDK complaint, LDK asking that the ECAP decision be changed to only annul the OoK vote. The Supreme Court has upheld the ECAP decision.

### **Complaints against the final results published by the CEC**

On 29 November, after the publication of the results for the second-round of the mayoral elections, seven complaints were filed with the Elections Complaints and Appeals Panel (ECAP) related to the published final results. Two appeals were filed with the Supreme Court related to the ECAP decision on the OoK voting in Istog/Istok.

LDK submitted three complaints related to the results, one for Dragash/Dragaš, one for Kamenicë/Kamenica, and one for Prishtinë/Priština. The latter complaint, again requesting a full recount for Prishtinë /Priština, repeats many of the allegations of their complaint filed within the 24-hour deadline after election day, but in some more detail and with added allegations about several violations such as illegally influencing voters, discrepancies in and interference with the result forms, the absence of ballots from conditional ballot envelopes, or a large number of invalid ballots. The ECAP rejected many of these arguments as not allowed because filed too late, since these should have been brought within 24 hours of the close of the polling stations or of being noted at the Count and Results Centre (CRC), and also noted that a number of these allegations had already been adjudicated. With respect to allegations of ballots being illegally regarded as invalid, the ECAP conducted investigations at the CRC and found them ungrounded.

In the case of Kamenicë/Kamenica, LDK alleged that the mayor-elect had not lived in Kamenicë/Kamenica, for a period of three years, a legal requirement for mayoral candidates. The ECAP rejected the complaint as filed after the deadline, reasoning that the CEC had certified the VV candidates on 30 August 2017. The deadline for filing an appeal against this CEC decision was on 4 September 2017, but no appeal was filed at that time.

PDK also submitted three complaints, one for Rahovec/Orahovac, one for Klinë/Klina and one for Prizren. Regarding Prizren, PDK asked to annul the results for 26 PSs, and if these irregularities might have affected the final results, to order the CEC to hold a full revote in Prizren municipality. This complaint also repeated many of the allegations of the respective complaint filed after election day. The ECAP rejected the complaint as not allowed because filed too late, since it should have been brought within 24 hours of the close of the polling stations, and mostly had already been adjudicated.

Fatmir Rashiti, who ran as independent candidate in Shtime/Štimlje municipality submitted one complaint claiming irregularities and asking for a revote. The ECAP rejected the complaint as not allowed because filed too late, since it should have been brought within 24 hours of the close of the polling stations.

### **Appeals to the Supreme Court**

Four appeals were brought against these ECAP decisions to the Supreme Court, which fully upheld the ECAP decisions regarding Prizren and Klinë/Klina on 7 December, and the ones regarding Rahovec/Orahovac and Prishtinë/Priština on 8 December. The Supreme Court maintained in some detail that the ECAP decisions were well founded both factually and legally. The Court assessed that the allegations in the appeals submitted against the contested ECAP decisions were ungrounded, because they were in contradiction with the facts correctly established by the ECAP and with the evidence in the case files. The appellants had failed to submit relevant evidence regarding their allegations. The court also held that the ECAP had justly established that, regarding the irregularities during the election process on election day for the second round of the mayoral elections held on 19 November 2017, the legal time frame to file a complaint was 24 hours after the closing of the polling stations.

### **Appeals against the ECAP decision related to the Out-of-Kosovo voting**

Following a different timeline, since this complaints and appeals process was not triggered by the publication of final results, but by the observation of irregularities in the OoK-votes counted at the CRC, two appeals were submitted to the Supreme Court on 29 November against the ECAP decision ordering a full re-run of the second round of the mayoral elections in Istog/Istok. One of the appeals was filed by LDK, asking that only the OoK vote be annulled and excluded from the

results. The other appeal, submitted by AAK, asked to overturn the ECAP decision and to reject LDK's complaint to the ECAP, confirming the final results as published by the CEC. Another appeal was filed by Srpska Lista against the ECAP decision rejecting a complaint regarding the OoK vote in Klokot/Klllokot. On 1 December, the Supreme Court fully upheld both of these appealed ECAP decisions, thus confirming a full re-run of the second round of the mayoral elections in Istog/Istok, with added measures to be taken by the CEC to avoid the OoK vote fraud, and also confirming the results for Klokot/Klllokot.

After the publication of the final results for the mayoral election in Klokot/Klllokot on 7 December, the mayoral candidate from Srpska Lista filed another complaint with the ECAP on 8 December.

The ECAP has consequently resolved complaints within the legal deadline, but in the absence of the necessary and convincing evidence, or before the publication of the final results, has rejected many of them. In contrast to significant fines (257,350 euro) imposed on political entities for breaching campaign rules, no fines were imposed on individuals for complaints regarding election day (voting and counting).<sup>55</sup>

The knowledge of the ECAP complaints process and trust in the institution varies widely. While political entities in most regions seem confident about their knowledge of the required procedure and are usually filing complaints through their head offices in Prishtinë/Priština, there is a general consensus that individual voters do not know how to file a complaint with the ECAP. Trust in the ECAP as an independent institution is generally not much higher than in the judicial system, and was hurt by the scarcely reasoned decisions to completely recount all polling stations in Prishtinë/Priština and Prizren after the second round of the mayoral elections, which were not upheld by the Supreme Court.

### **Protecting the vote**

Violations that might affect the election results, besides being administrative offences, can also be treated as criminal offences. In such cases, the ECAP forwards the matter to the office of the Chief Prosecutor and the police, to pursue a criminal case. This does not divest the ECAP of its jurisdiction to determine the administrative liability. The co-operation of the ECAP with both the police and the prosecutor's office theoretically improved through the institutionalisation of a Memorandum of Understanding between these institutions and the CEC. In practice, the action taken by the prosecutors upon forwarding of ECAP files varies widely.

The operational plan of the police and the National Coordinator for Elections within the Chief Prosecutors' Office involving the deployment of more than 70 prosecutors on the first election day resulted in 21 cases and a number of temporary detentions. Most of the cases concerned minor incidents, were still under police investigation in the beginning of December and will likely not lead to indictments. No major incidents occurred on the second election day. The police and the prosecution reported 23 minor interventions. Only one of these incidents led to the opening of a criminal procedure with regard to an electoral crime, obstructing the voting process, for allegedly staying in the corridor of a school for 20 minutes and hindering the electoral process. On 8 December, the ECAP forwarded the case file regarding the incriminated Out-of-Kosovo voting in Istog/Istok to the prosecution. The Elections Coordinator at the Chief Prosecutor's Office confirmed that all election cases handled by the prosecutorial regional offices still under

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<sup>55</sup> This overall sum is down significantly from the 357,200 euro, which were imposed on PEs during the legislative elections in June 2017. Apparently, many candidates and parties have decided to use fewer posters during the campaign now, posters in inappropriate places being the most frequent reason for fines.

investigation at the time of writing this report. These include, among others, a case alleging the obstruction of the voting process, considered by the prosecution as possibly leading to an indictment, and the cases regarding alleged vote buying in Parteš/Partesh and Gjakovë/Đakovica, where some of the accused were detained for up to 30 days before being released into the regular procedure.

The CRC database does not allow for tracking changes in the process or to take a case, make a comment and forward it to CEC for further handling (like forwarding to the prosecution). The CEC claims it will forward all double votes to the prosecution and all cases of recounts where fraud is more likely than a mere error. The ECAP also stated its intention to forward presumed cases of electoral crimes to the prosecution and has already done so in some cases. The National Coordinator for Elections at the Chief Prosecutor's Office has stated that the prosecution would try to move fast on these cases once they were received, in order to send appropriately deterrent signals in time for the municipal elections, where possible.<sup>56</sup>

Due to the lack of an integrated (or any) case management system between the Kosovo prosecution and the court system, gathering data for prosecuted cases is difficult. These data are produced manually depending on the needs of the respective institution.<sup>57</sup>

Apart from the fact that the information provided on the 23 cases above was very scarce, the question remains as to what happened with all the other allegations of electoral wrongdoing. While it was suggested to the EU EOM that they might still be under investigation, there is a lack of official information to confirm that. This want of evidence that all or most electoral crimes are actually punished is likely to reduce the deterring effect of the electoral crime legislation.

### **Civil Society and Domestic Observers**

The CEC accredited a total number of 33,862 observers in an inclusive manner, increasing the transparency of the electoral process. More than 29,000 accredited observers were from certified political entities and around 3,700 from domestic NGOs.

Kosovo's main domestic observation group, Democracy in Action (DiA), played an important role by deploying around 3,000 observers for the first round of local elections and 1,784 observers for the second round. DiA released a number of reports and statements regarding their analysis of election campaign and of both rounds of the elections. Their call centre gathered mayoral election results from observers in polling stations and published a parallel vote tabulation in both rounds of local elections.

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<sup>56</sup> However, the CEC has not forwarded any of the hundreds of suspicious cases from recounts during the parliamentary elections of June 2017 to the prosecution yet.

<sup>57</sup> Data for the prosecution following the 2014 elections were collected from the seven main prosecutor offices in Kosovo. The provided data shows that of more than 600 allegations of electoral crimes, the prosecutorial offices in Kosovo dealt with 23 indictments involving 26 suspects for criminal offences related to the 2014 election. All of these cases led to conditional convictions, except for one in South Mitrovicë /Mitrovica which is still under investigation. Since the statutes of limitation are rather short in Kosovo, most of these allegations will likely never be fully adjudicated.

## RECOMMENDATIONS:

### Legal Framework

No.	Page	Aim	Recommendation	Suggested activities	Target institutions	Principle/ Standard
1	p. 25	The effective implementation of the right to stand for elective office	Provide legal and constitutional certainty for candidate eligibility requirements after Supreme Court decision on candidate decertification.	Amendments to the LGE.	Kosovo Assembly in close cooperation with CEC, ECAP	Legal certainty, CGPEM(VC) Chapter 2: ECHR, Article 13; ICCPR, Article 2.
2	p. 32	To provide legal certainty for different complaint deadlines, and the possibility to file a complaint or appeal against final results.  To allow complainant sufficient time to prepare a complaint regarding polling and counting and to submit evidence and to ECAP to examine evidence prior to issuing a decision.	The LGE should be amended to provide clarity about deadlines for and necessary content of complaints and appeals. The deadlines for filing election complaints should be extended to 48 hours, and timeframes for ECAP to decide upon appeals against results extended to 5 days.	Amend and consolidate the amended LGE.  An amendment affecting substantial parts of the text would also lead to the much-needed publication of a consolidated version of the LGE and the Amendment Law(s).	Kosovo Assembly in close cooperation with the CEC, ECAP	Legal certainty, Right to effective remedy, CGPEM (VC) Chapter 2; ECHR, Article 13; ICCPR, Article 2.; UDHR, Article 8.

No.	Page	Aim	Recommendation	Suggested activities	Target institutions	Principle/ Standard
3	p.33	To provide ECAP with resources to solve a large amount of cases including examining evidence prior to issuing any decision.	Provide ECAP with adequate resources, including premises to work on a large amount of cases in a very short time.	Increase ECAP's resources, provide adequate premises.	Ministry of Finance, Ministry of Public Administration, in close cooperation with the CEC and ECAP.	Right to effective remedy; ECHR, Article 13; ICCPR, Article 2; UDHR, Article 8.
4	p.37	To enhance credibility of electoral process, to deter electoral crimes.	All electoral crimes, including those committed during the previous elections, should be vigorously investigated, prosecuted, and, where personal responsibility is established, punished at all levels.  A single-number database could be established where election-related cases can be tracked from police to prosecution to court decision. If the currently planned database is not functional by January 2018, a separate system could be implemented.	Conduct thorough investigations into, prosecution and adjudication and of allegations of any electoral crimes.  Ensure regular and widespread publication of the results of these efforts. Establish a single-number database where cases can be tracked from police to prosecution to court decision.	Police Prosecution Courts Kosovo Judicial Council, ECAP, CEC	Free suffrage; Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission  Right to effective remedy; ECHR, Article 13; ICCPR, Article 2; UDHR, Article 8.  Free expression of voters' choice, genuine elections; ICCPR Art 25



### Campaign

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
5	p.13	To enhance the participation of women in the electoral process	Political parties identify effective measures to increase women participation in leadership positions in party activities/electoral campaign	Amendments to internal rules of procedures of political parties	Political Entities Civil Society	CEDAW, Art. 3 & Art. 7; Guidelines on political party regulation by OSCE/ODIHR and Venice Commission, Chapter IX.
6	p.13	To ensure consistency in enforcing campaign regulations	Clarify provisions in the LGE related to the involvement of minors in the electoral campaign	Amendments to the CEC Election Regulation no 13/2013	CEC	Enforcement of campaign rules

### Campaign Finance

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
7	p.15	To engage all relevant actors in a comprehensive review of the legal framework for campaign finance, with the involvement of the Council of Europe's Venice Commission	Conduct a comprehensive review of legal framework regulating campaign and political party finance to address its ambiguities	Amendments to the Law no. 03/L-174 on financing political parties	Kosovo Assembly CEC	Enforcement of campaign rules

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
8	p.16	Effective enforcement of campaign finance requirements	Auditing of campaign finances of election contestants should be carried out effectively	Kosovo Assembly should identify an independent institution tasked to carry out audits of financial reports.	Kosovo Assembly CEC	Enforcement of campaign rules;  Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission, Chapter II.3.5 on Funding in the Explanatory Report
9	p.16	To enhance the transparency of campaign financing	Political entities should be required to maintain separate bank accounts for campaign financing, aggregating all sources of income and expenses during the campaign, at the central and regional levels	Amendments to Law no. 03/L-174 on financing political parties  Public consultations with relevant stakeholders to identify the adequate institution to conduct an independent auditing of financial reports	Kosovo Assembly CEC	Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission, Chapter II.3.5 on Funding in the Explanatory Report

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
10	p.16	To enhance the transparency of campaign financing	The capacity of civil society organizations to monitor the campaign finance and the media should be strengthened by providing more resources and training	Resources and methodology should be made available to civil society organizations	Civil society organizations	Guarantee the exercise of human rights and fundamental freedoms

### Election Administration

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
11	p.30	To improve the capacity of voters to cast a valid ballot	Improve design of ballot papers for municipal assembly elections for better understanding for voters. Enhance voter information about how to properly mark a ballot.	Analysis of invalid ballots from the 2017 local elections and introduction of new design of ballot paper for municipal assembly elections. Voter information should use various channels to be more effective.	CEC	Right to vote, ICCPR Art 25 Transparency and Right to Information ICCPR, General Comment 25, paragraph 11, 12; General Comment 34

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
12	p.22-23	To improve efficiency and performance of the election administration particularly Polling Stations Committees (PSC)	Intensify training of polling staff to address recurring shortcomings such as not following the vote count procedures and incorrect filling of results forms. Consider to introduce position of PSC Secretary to provide needed advisory and clerical support to the PSC chair. The Secretary could be recruited and trained by the CEC/MEC from members of the public administration.	The CEC and MECs shall systematically assess performance of PSC members and introduce and maintain polling staff database.  Enhance training material and curriculum for polling staff and PSC Chairpersons.	CEC	Genuine Elections  ICCPR General Comment no. 25, paragraph 20
13	p.26	To address shortcomings of the Out-of-Kosovo (OoK) voting procedures	Introduce additional safeguards for the OoK voter verification to protect integrity of the Out-of-Kosovo voting against fraud and impersonation. Review timeframe for voter list display and challenge period to allow for effective legal remedy for cases of disenfranchisement.	Amendments to the CEC regulation 03/2013 and 10//2013	CEC	Genuine Elections  ICCPR General Comment no. 25, paragraph 20
14	p.24	To improve accuracy of voter lists and assignment of voters to polling locations	Dedicate substantial efforts to remove deceased persons from the civil registers, and to establish a unified address system in Kosovo.	Changes how deaths are reported and registered.  Civil Registration Agency and relevant institutions to implement a unified address system, and CEC to properly	Civil Registration Agency, Ministry of Interior, Kosovo Cadastral Office, the	Universal and equal suffrage, Code of Good Practices in Electoral Matters of the Council of Europe Venice

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
				assign voters to polling locations.	Municipalities, CEC	Commission 1.2.ii
15	p.21	To enhance the participation of women in election administration	Implement the 2015 declaration of political parties to ensure at least 40 per cent participation of each gender in the election process.	Amend CEC Regulation 18/2016 and 19/2016	CEC, political entities	Gender Equality CEDAW, Art.3
16	p.32	To improve transparency, consistency and public confidence in the Results Tabulation Process	Enhance the tabulation process at the Count and Results Centre by providing more resources, quality control and new technologies.	Redesign the CRC operations to use modern technologies to improve accuracy, information and observer access to all stages of the tabulation, counts and recounts.	CEC, CRC	Genuine Elections, Transparency and Right to Information
17	p.27 p.29-31	To improve the integrity and guarantee the secrecy of the vote. To improve knowledge of polling staff about complaints process and criminal liability	Include training of PSC chairpersons with a special focus on preventing family/group voting and abuse of assisted voting. Include legal module on complaints procedures and criminal liability in PSC training sessions conducted by trainers rather than referred to prosecutors.	Enhance training modules and improve Polling Manuals for PSC members	CEC, ECAP	Right to effective remedy; ECHR, Article 13; ICCPR, Article 2  Right to a Secret Ballot

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
18	p.27	To improve the voters' understanding of electoral process	Implement comprehensive and timely voter education and voter information on right to vote in local elections (how to mark ballots, how to find polling locations and how to find municipality a voter is eligible to cast ballot for, how to apply for OoK voting or special-needs voting, which documents are accepted for voter identification, electoral crimes, complaint procedures).	Conduct voter information and voter education campaigns using various channels (online media, social media, cooperation with NGOs) and target various groups of voters.	CEC	Right to vote, ICCPR Art 25 Right to Information ICCPR, General Comment 25, paragraph 11, 12;

### Media

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
19	p.17-21	To limit the amount of political sponsored programmes aired by broadcast media and ensure equal conditions for contestants to purchase paid airtime.	Consideration should be given to regulate programmes sponsored by political entities similarly to political paid advertising spots.	Amendment of Regulation KPM-2016/02 of the Independent Media Commission (IMC) Amendment of the Law on General Elections	Independent Media Commission Kosovo Assembly	Art. 2.3, Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission.

No.	Page	Aim	Recommendation	Suggested activities	Targeted institutions	Principle/ Standard
20	p.17-21	To ensure an operational and effective regulatory body for broadcast media (Independent Media Commission).	Consideration should be given to timely appoint all seven members of IMC and three members of the Appeal Board.	Ensure a timely renewal of IMC members' mandates and their full commitment to easily guarantee the quorum necessary to convene meetings and make decisions.  Enforcement of Art. 11 and Art. 38, Law on the Independent Media Commission.	Kosovo Assembly	Legal certainty
21	p.17-21	To ensure effective sanctions of violations and remedy to complaints during the election period.	Consideration could be given to convene regular and frequent meetings of IMC members during the election period to address complaints received and violations detected by the media monitoring department.	Enforcement of Art.15.3, Law on the Independent Media Commission.	Independent Media Commission	Right to effective remedy
22	p.17-21	To enhance public information of Independent Media Commission activities and findings.  To raise public and media awareness on the media regulation.	Consideration should be given to actively share with the public, information on activities and findings of the IMC.	To issue public statements through broadcast and online media and organize press conferences to present reports on its findings, especially election related media monitoring results and decisions.  Enforcement of Art. 5.2, Law on the Independent Media Commission.	Independent Media Commission	Transparency  Right to Information

## EU EOM MEDIA MONITORING RESULTS

### Mayoral and Municipal Assembly Elections, Kosovo 2017

#### INTRODUCTION

The EU EOM conducted a quantitative and qualitative media monitoring of a sample of broadcast media during the election campaign for 22 October elections (21 September – 20 October 2017) and during the election campaign for the second round (13 – 17 November 2017).

The broadcast media were monitored from 17:00 to 01:00 daily, the following TV channels constituted the selected sample:

- ✓ **RTK1**, public TV channel (in Albanian)
- ✓ **RTK2**, public TV channel (in Serbian and non-majority languages)
- ✓ **KTV**, private TV channel (in Albanian)
- ✓ **RTV21**, private TV channel (in Albanian)
- ✓ **KLAN KOSOVA**, private TV channel (in Albanian)
- ✓ **TV DUKAJINI**, private TV channel (in Albanian)

In addition, the media monitoring included the daily prime-time newscast of two local TV channels broadcasting in Serbian language, **TV MOST** and **TV PULS**.

The EU EOM conducted as well, a qualitative media monitoring of the mentioned eight TV channels during the pre-election period (16 - 20 September 2017), between the two election campaigns (23 October - 12 November 2017), in the post-election period (20 - 30 November 2017), as well as during the campaign silence periods (21-22 October and 18-19 November 2017). A qualitative monitoring of a sample of online news media and social media (Facebook pages) was also conducted.

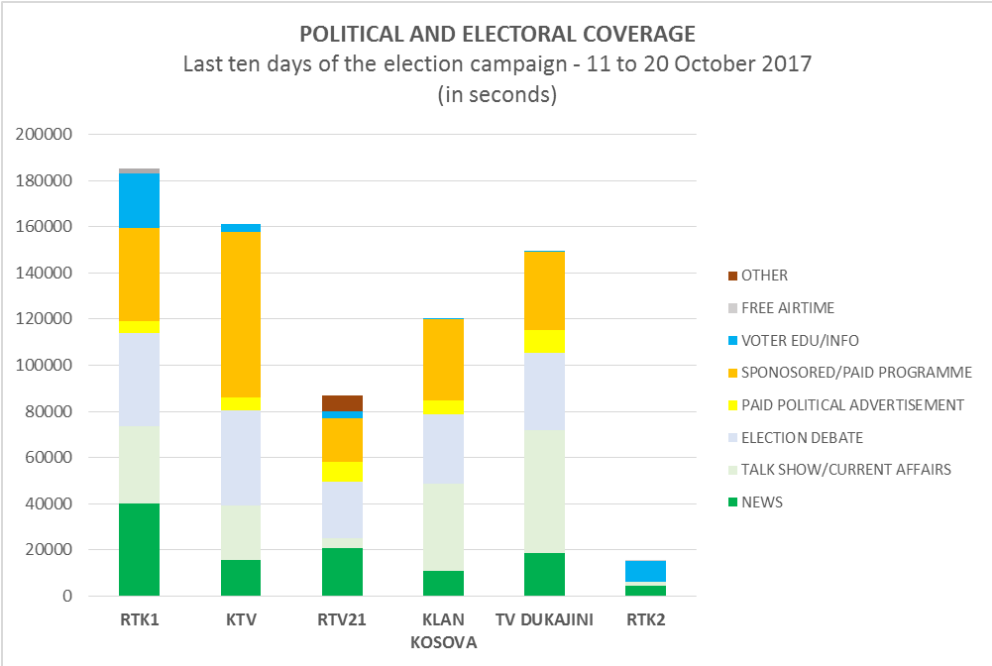
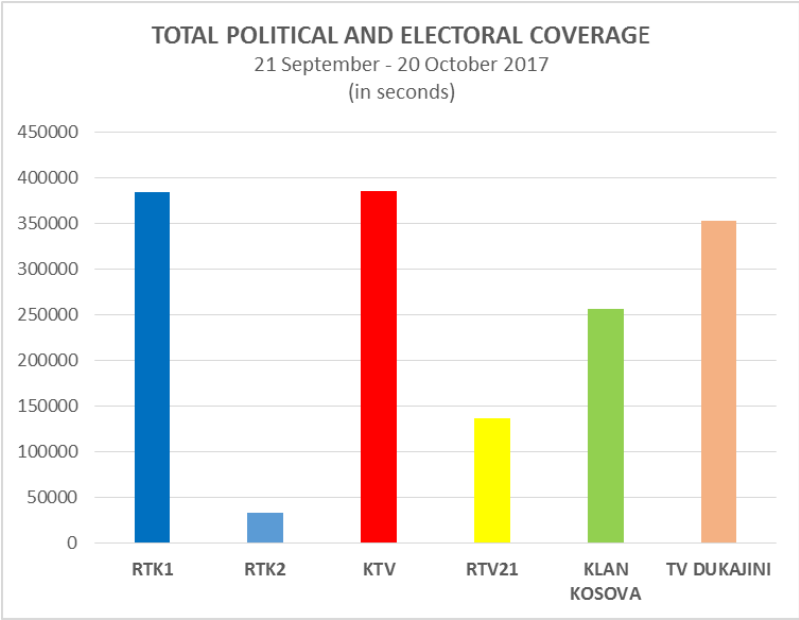
In the following pages, you will find a summary of the results for the quantitative media monitoring of broadcast media.<sup>58</sup>

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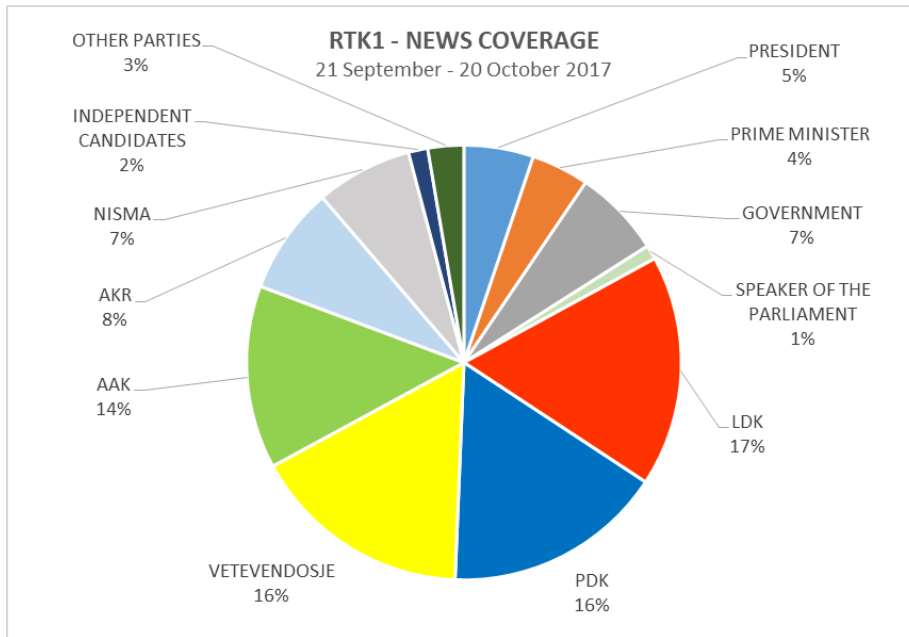
<sup>58</sup> The tone used towards institutional and political subjects by the analysed major broadcast media was largely neutral; therefore, graphics related to the tone of the media are not included in this summary. Moreover, reflecting the very low-key election campaign in the Serb-Majority municipalities, TV MOST, TV PULS as well as the public TV channel in Serbian and non-majority languages RTK2, offered a minimal coverage to electoral contestants, thus their media monitoring quantitative results are not included in this report.



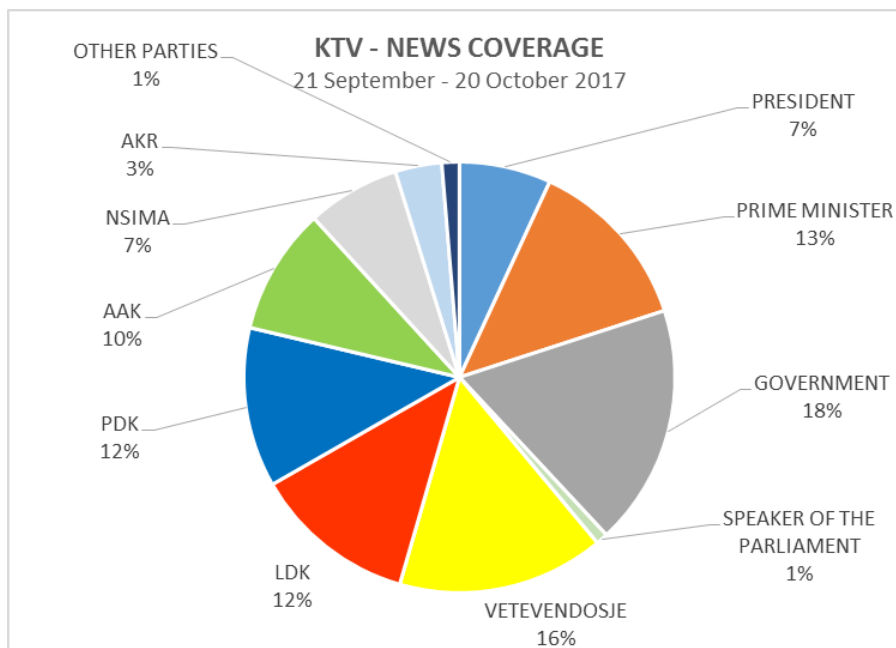
**POLITICAL AND ELECTCORAL COVERAGE**  
**ELECTION CAMPAIGN FOR 22 OCTOBER 2017 E-DAY (First round)**



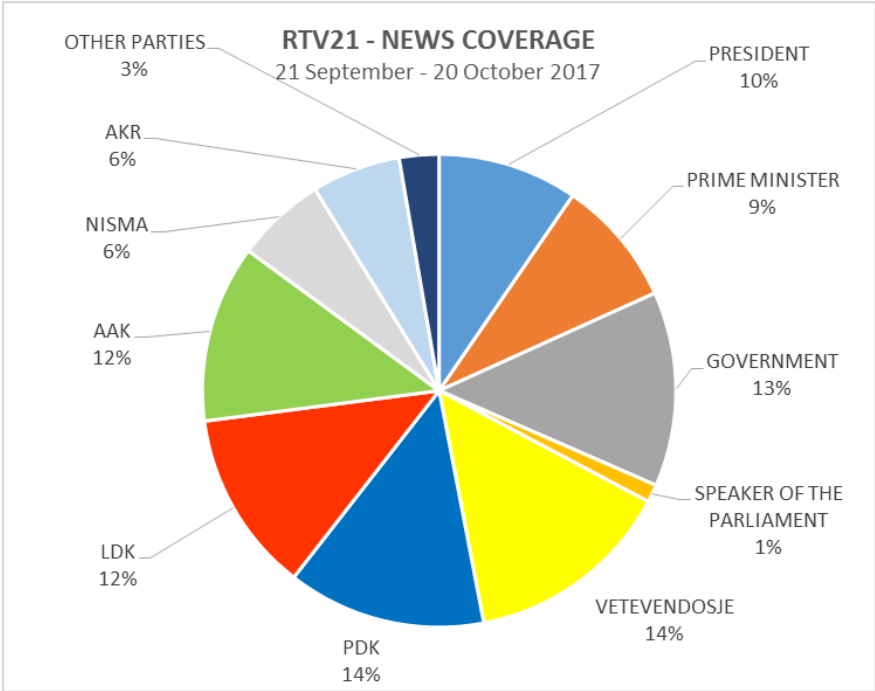
## RTK1 - PUBLIC TV CHANNEL (In Albanian)



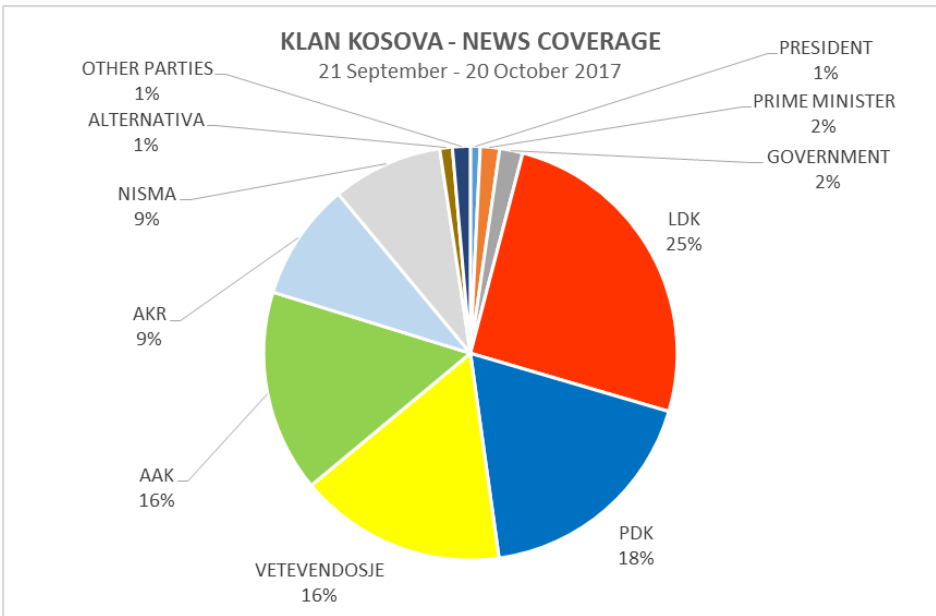
## KTV (PRIVATE TV CHANNEL)



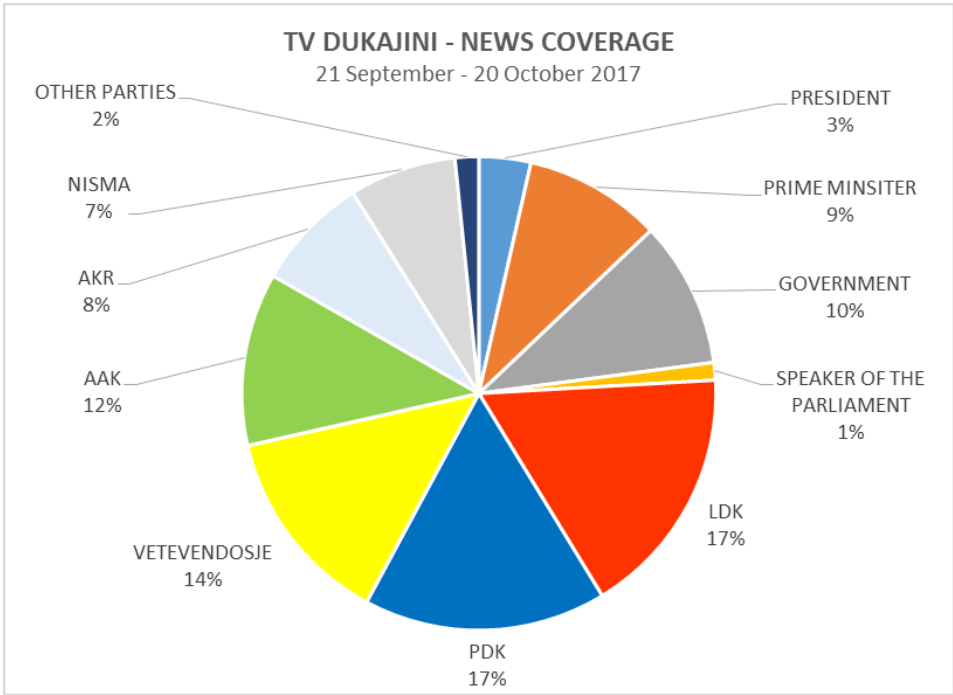
**RTV21 (PRIVATE TV CHANNEL)**



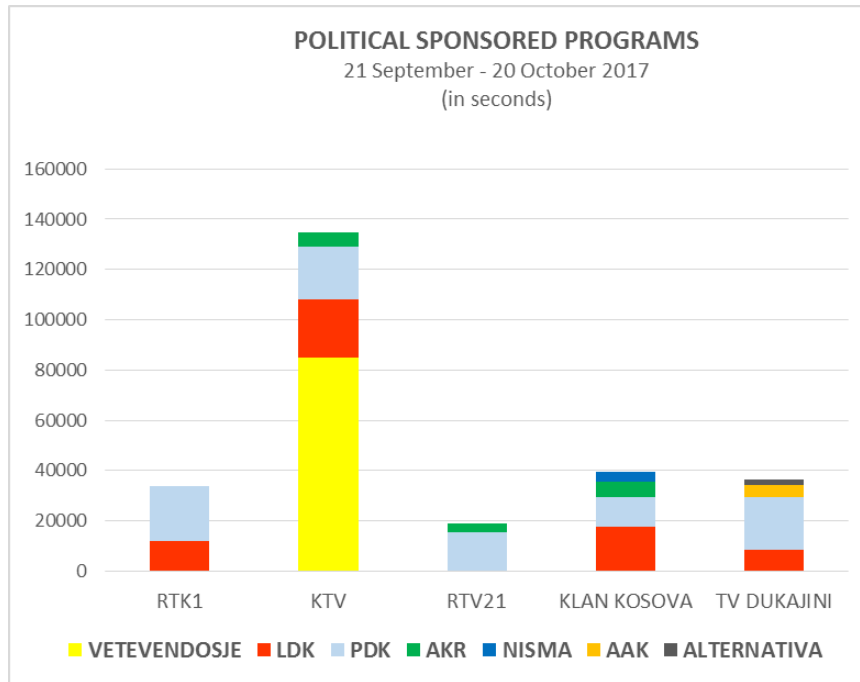
**KLAN KOSOVA TV (PRIVATE TV CHANNEL)**



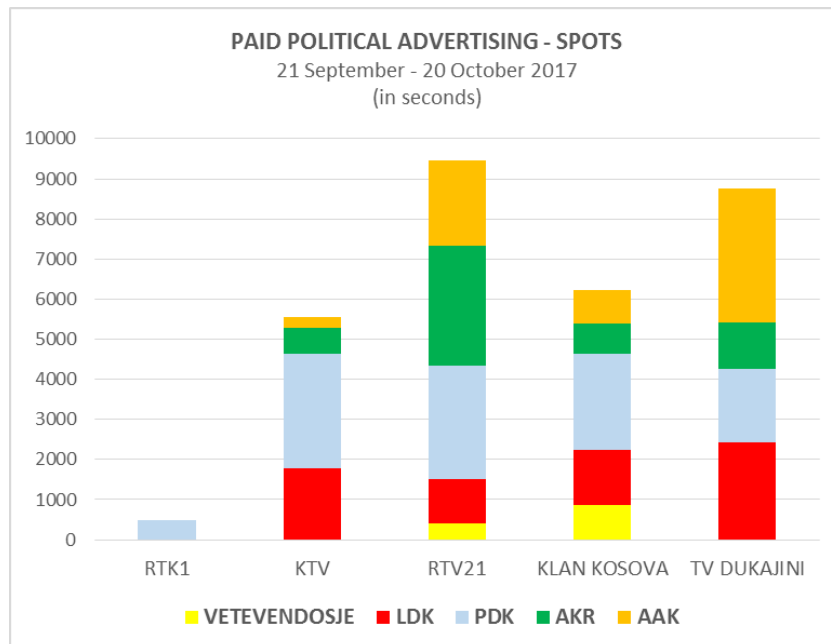
**TV DUKAJINI – PRIVATE TV CHANNEL**



## POLITICAL SPONSORED PROGRAMMES



## PAID POLITICAL ADVERTISING



## SECOND ROUND ELECTION CAMPAIGN

