



PRELIMINARY STATEMENT

24 October 2017

Two faces of Kosovo municipal elections

Competitive and well-administered elections in most of Kosovo, while deep concerns persist over the democratic process in Kosovo Serb areas

EXECUTIVE SUMMARY

- The 22 October Mayoral and Municipal Elections are the second local elections held in all Kosovo municipalities since the 19 April 2013 Agreement between Pristina and Belgrade, facilitated by the European Union.
- The election process differed considerably in Kosovo Albanian-majority municipalities in comparison to Kosovo Serb-majority municipalities. In Kosovo Albanian-majority municipalities elections were genuinely competitive and the campaign environment was calm, allowing numerous candidates to freely communicate their messages to the voters. The campaign environment was marred by intimidation within many Kosovo Serb communities; in particular it targeted non-Srpska Lista political entities and their candidates. This included pressure on individual candidates to withdraw and restricted political competition, raising questions about key principles of the overall democratic process in those areas. The election process within Kosovo Serb-majority municipalities thus did not meet some international and European standards for democratic elections.
- Following the June legislative elections, the Central Election Commission (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 local elections. The CEC has made improvements in voter education, training of polling committee members and simplifying the results forms. However the long-standing weaknesses of the Kosovo electoral process were not sufficiently addressed prior to these elections, inter alia those related to the voter register, the system of Out-of-Kosovo (OoK) voting, enhancing the transparency of campaign financing, effectively enforcing campaign finance requirements, and regulating sponsored programs on TV.
- Election day was calm, without major incidents recorded by the EU EOM observers who visited 466 polling stations across all 38 municipalities. Polling stations generally opened on time and were prepared for voting. The voting procedures were mostly followed and the polling was assessed positively in almost all polling stations observed, even though instances of family voting and abusive voter assistance were noted. The performance of the polling staff deteriorated at the counting stage, when 20 per cent of EU EOM teams assessed the process negatively as the vote count procedures were not always followed.
- Overall, the election administration bodies on the central and municipal levels conducted the technical preparations in a well-organized and transparent manner. The CEC sessions have been open and CEC members worked collegially, frequently taking decisions

* 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

unanimously. Instructions on whether Serbian ID cards should be accepted for voter identification in regular voting remained unclear.

- In line with an agreement between the CEC and the Organization for Security and Cooperation in Europe (OSCE), the OSCE provided technical advice and assistance to four Municipal Election Commissions and 86 Polling Station Committees in the four northern municipalities.
- Public confidence in the accuracy of the voter register is low as it includes a high number of deceased persons. There is also a systemic risk that data entries of some half a million of voters residing abroad may be misused on election day. In addition, voters are not always assigned to the polling station closest to their residence. Based on civil registers' data, CEC registered 1,890,952 voters, a 18,011 increase since the June 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. While the total number of mayoral candidates was 204, only eight were women.
- For the first time the CEC has requested the criminal records of all applying candidates, as required by the law. 87 certified candidates were decertified by the CEC based on their criminal convictions within the last three years. Three candidates appealed to the Supreme Court, which argued that art. 29.1 Law on General Elections (LGE) was unconstitutional, reversed all three of them and ordered the CEC to certify the three candidates. The CEC in turn unexpectedly decided to extend the Supreme Court's decision to all 87 originally decertified candidates.
- 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 of Kosovo Albanian-majority municipalities, while they did not succeed for 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 amount of paid-for programs compared to their editorial coverage, to the detriment of proper information of the voters. The Independent Media Commission did not effectively address media violations on election law, which occurred during the election campaign.
- The legal framework provides a sufficient basis for holding democratic elections in accordance with international standards to which Kosovo has committed in its Constitution. Although Kosovo is not a signatory party to any human rights treaty, the Constitution states that a number of agreements and instruments relevant for elections are directly applicable in Kosovo.
- The Elections Complaints and Appeals Panel (ECAP) swiftly adjudicated the large number of complaints and appeals and contributed to a transparent process by publishing all its decisions on its website. Prior to election day, the ECAP received 25 appeals against CEC decisions and 327 complaints alleging electoral violations. Most regarded minor violations of the Code of Conduct during campaigning. 80 complaints were filed related to voting and counting.

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 municipal and mayoral elections called for 22 October 2017. The EU EOM is led by Mr Alojz Peterle, Member of the European Parliament, and former Prime Minister of Slovenia. In total, the EU EOM deployed 109 observers from 26 EU Member States, Norway and Switzerland across Kosovo to assess the whole electoral process against international and European standards for democratic elections as well as the laws of Kosovo. 38 observers 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 election day, observers visited 466 polling stations to observe voting and counting.

This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the tabulation of results, and the handling of possible post-election day complaints and appeals, as well as the second round of mayoral elections, where necessary. The EU EOM remains in Kosovo to observe the second round and post-election developments and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.

PRELIMINARY FINDINGS

BACKGROUND

The 22 October mayoral and municipal elections are the second local elections held in all Kosovo municipalities since the 19 April 2013 Agreement between Pristina and Belgrade and are organized shortly after the 11 June 2017 early legislative elections. Following a two-month stalemate in the aftermath of the certification of the 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, is in opposition, as is the former ruling party LDK.

All the parties represented in the Assembly compete independently in these municipal elections in contrast to the legislative elections when two main pre-election coalitions were formed. The ruling coalition and the opposition parties VV and LDK presented candidates for mayor in most municipalities. Srpska Lista presented mayoral candidates in all ten Kosovo Serb municipalities where it faced limited competition except for two municipalities in the north.

LEGAL FRAMEWORK

The legal framework provides a sufficient basis for holding democratic elections in accordance with international standards to which Kosovo has committed in its Constitution. Although Kosovo is not a signatory party to any human rights treaty, the Constitution states that a number of agreements and instruments relevant for elections are directly applicable in Kosovo. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, and the International Covenant on Civil and Political Rights. In case a conflict arises, these instruments have priority over provisions in the law and other acts of public institutions. There is, however, no legal remedy available at the European Court for Human Rights regarding decisions, acts and omissions of the Kosovo executive and institutions. The Venice Commission

Code of Good Practice in Electoral Matters has importance as a benchmark for the conduct of democratic elections in Kosovo.

Since 2013, there have been three EU EOMs issuing recommendations how to reform the electoral process to bring it fully in line with international 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 that require legal changes have been implemented.

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% 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% 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% of the total seats received by the political entity.

ELECTION ADMINISTRATION

The CEC is a permanent independent body composed of a chairperson and ten other members. The Chairperson is appointed for a 7-year term by the President of Kosovo from among judges of the Supreme Court. The ten members of the CEC are nominated by parliamentary groups, including those holding guaranteed seats for non-majority communities.

Overall, the election administration bodies on the central and municipal levels conducted the administrative preparations in a well-organized and transparent manner. The CEC sessions have been open and CEC members worked collegially, frequently taking decisions unanimously. However, there were unclear instructions on whether Serbian ID cards should be accepted for voter identification in regular voting.

The CEC maintained an inclusive and balanced approach towards the appointment of 38 Municipal Election Commission (MEC) and 2,505 Polling Station Committee (PSC) members, including nominees from various entities representing Kosovo Serbs and other non-majority communities. Women represent only 11% of MEC members and chairpersons. The share of women among appointed PSC members is around 26%, which, with the exception of Mitrovicë/Mitrovica (North) and Prishtinë/Priština, is still far below the 40% target declared by the main political parties.

The CEC Action Plan based on the EU EOM Interim Recommendations

Following the June 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 has improved the Polling and Counting Procedures Manual, simplified the results forms, improved PSC trainings, and the Count and Results Centre introduced measures to increase the transparency and accuracy of its operations.

The CEC conducted an intensive 10-day voter information campaign with various video spots aired by major broadcast media explaining marking of the two ballots aiming at minimizing the considerable number of invalid ballots observed in previous elections. Due to a contested procurement process, the CEC could not fully implement its voter information campaign. This affected how voters were informed about requesting a change of polling center or registering as an Out-of-Kosovo voter.

Some basic anti-fraud measures recommended by the EU EOM have been implemented: references to the provisions in the Criminal Code on electoral crimes and a section on complaints to the ECAP were included in the Polling and Counting Procedures Manual. Prosecutors were assigned throughout all 38 municipalities from the beginning of the electoral campaign until the end of the electoral process.

ELECTION PROCESS IN THE FOUR NORTHERN MUNICIPALITIES

In line with an agreement between the CEC and the OSCE, the latter provided technical advice and assistance to four MECs and 86 PSCs in the four northern municipalities. On election day, the OSCE teams were present in MECs and in each polling station located there 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 centers in the north and then onward to the Count and Results Center.

VOTER REGISTRATION

Public confidence in the accuracy of the voter register is low as it includes a high number of deceased persons. Deceased persons are not removed from the voter list in a timely manner due to deficiencies in the procedures for registering deaths. Death certificates, required for the removal of a voter from the list, are only issued at the request of the family. Many families do not report deaths, as they apparently continue to receive social benefits for the deceased. Recent measures taken by the CRA to address the issue have a limited effect and are not implemented in a uniform manner by all Municipal Civil Status Offices.

There is also a systemic risk that data entries of some half a million voters residing abroad may be misused on election day. In addition, voters are not always assigned to the polling station closest to their 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.

Based on the data from the Civil Registry, the CEC registered 1,890,952 voters, which is an increase of 18,011 since the June elections. The Kosovo Statistics Agency estimates that approximately 700,000 Kosovars reside abroad and, except for those who successfully applied for Out-of-Kosovo voting, most of those of voting age are still present in the voter list.

Interpretations of the rules regarding the evidence for citizenship of the Federal Republic of Yugoslavia and permanent residence in the territory of Kosovo on January 1998 make it difficult

for some non-majority persons to obtain a Kosovo ID and thus to be included in the voter list. This especially concerns young people and those born outside of Kosovo with only one parent holding a Kosovo ID, returning Kosovo Serbs, and also members of the Roma, Ashkali and Egyptian community. The situation is compounded in the four northern municipalities, where Civil Status Offices are not fully operational.

OUT-OF-KOSOVO VOTING

The Out-of-Kosovo (OoK) voting operation was inclusive; however, safeguards against possible abuse were missing. 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 for OoK voting and approved 10,476 of them. The highest numbers of OoK voters were from Serbia (3,244), Switzerland (2,226) and Germany (1,400). The process of postal OoK voting started on 22 September and ended on 20 October 2017.

There are no sufficient safeguards against impersonation in the OoK voting process and there is a lack of effective legal remedies for such cases of disenfranchisement. At least 34 voters were removed from the voter list after someone had applied for OoK voting in their name. Since the disenfranchised persons found out about this only after the appeals deadline had expired, they had no legal venue to rectify this.

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. While the total number of mayoral candidates was 204, only eight were women.

For the first time since the Law on General Elections (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 reversed them and ordered the CEC to re-certify the three candidates.

The Supreme Court argued that art. 29.1 LGE was unconstitutional. This question has not yet been referred to the Constitutional Court. The CEC 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.

CAMPAIGN ENVIRONMENT

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. Generally, contestants were able to campaign freely. However, the EU EOM observers received reports that in a limited number of cases public employees, such as teachers and health center workers, were under pressure to support certain candidates or were prevented from participating in campaign activities.

Many political entities prioritized door-to-door campaigns, small-scale meetings tailored for a specific group of voters, and the use of social media, organizing larger rallies towards the end of the campaign only. Many leaders of political entities prominently participated in the campaign, lending support to their local candidates.

The campaign environment 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 of this intimidation. The main opposition parties including Independent Liberal Party (SLS) and Kosovo Serbs Party (PKS) did not nominate mayoral candidates in most of Kosovo Serb-majority municipalities.¹

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. 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/Zveçan. Furthermore, the Prime Minister campaigned alongside the AAK candidates for mayor, promising funding for local projects if they were elected.

Political parties have not included women's participation among their priorities during the campaign. Women have been generally under-represented in the audience at campaign events and have received less 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.

CAMPAIGN FINANCE

The LGE, the Law on Financing Political Parties and several CEC regulations on campaign financing provide the legal framework for the sources of income and expenditures of political entities. This framework aims to level the playing field by setting spending limits and requirements for disclosure, auditing procedures and fines. However, financial reports of political entities have not been subject to an audit since 2013 and have not been made available for public review, not fulfilling the legal requirement for transparency and accountability of campaign finance.

The spending ceiling for each certified entity during the electoral campaign is established at 0.5 EUR per registered voter and thus varies depending on the size of the municipality. Individual candidates raising their own funds for the campaign appear to believe these do not have to be included in the financial reports, which is at odds with the existing legal requirements. The lack of a systematic monitoring of campaign finance and the limited scope of the financial review mechanism raise questions about exceeding the limit set by the law.

MEDIA

The media landscape is lively and pluralistic and offered voters information on the different political options available. The media legislation provides a sound framework for freedom of the

¹ 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.

media and journalists were generally able to exercise their profession freely. The LGE requires all media to provide fair and equitable coverage of contestants, allows paid advertising, and foresees free airtime for all political entities.

Television and online news media were the primary media source of information for voters. Social media were largely used by traditional and online media to disseminate their content including live streaming of election debates and campaign events. Major broadcast media abstained from inflammatory messages and extensively covered the election campaign in a variety of formats, while most local broadcast media provided a limited coverage of the elections. Online news media widely covered the local election campaign; however, most of the coverage was based on information gathered from news agencies and other media sources.

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.² The public TV channel RTK1 offered a fairly balanced coverage, dedicating 17 per cent to LDK, 16 per cent each to PDK and Vetëvendosje and 14 per cent to AAK of its news coverage of political and institutional subjects. Monitored private TV channels provided as well, a fairly balanced coverage of LDK, PDK, Vetëvendosje and AAK with a more limited coverage of AKR and NISMA. Two private TV channels, *KTV* and *TV Dukagjini*, offered a significant coverage to the Prime Minister, and leader of AAK, while carrying out his institutional activity.

All major monitored TV channels held inclusive election debates among mayoral candidates in 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 in political accusations rather than presenting and discussing their platforms. Despite the very limited number of women running for mayoral posts, broadcast media made a positive effort to invite in their programs women candidates for mayoral seats and municipal assembly. Nevertheless, only RTV21 channel introduced in all its election debates discussions on gender equality.

In addition to strictly regulated paid political advertising spots, the main political parties extensively campaigned on TV by taking advantage of a loophole in the law, which allows TV channels to air sponsored programs without limits. Moreover, in some instances sponsored programs were included within newscasts or were not clearly labeled as paid-for programs, blurring the line between the editorial and the paid-for material, to the detriment of the public. The EU EOM media monitoring observed several breaches of the law pertaining to paid political spots and to the respect of the silence period. The Independent Media Commission (IMC), responsible for overseeing broadcast media, did not effectively address or sanction most of the detected violations during the election campaign.

Reflecting the low-key campaign in Kosovo Serb majority municipalities, there was almost no news coverage of these mayoral races on broadcast media monitored and none of them succeeded in organising election debates among mayoral candidates. Some local broadcast and online media in the four northern Kosovo Serb majority municipalities faced external disruption, which affected their capacity to freely cover the election campaign.

CIVIL SOCIETY AND DOMESTIC OBSERVERS

The CEC has 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.

² 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.

Kosovo's main domestic observation group, Democracy in Action (DiA), has trained and deployed around 3,000 observers for the elections. DiA's call centre gathered mayoral election results from observers in polling stations in the largest municipalities and published a parallel vote tabulation on the night of the elections.

ELECTION DISPUTES RESOLUTION

The Elections Complaints and Appeals Panel (ECAP) is an independent institution composed of judges responsible for adjudicating election-related complaints and appeals of CEC decisions. The ECAP dealt swiftly with the large number of complaints publishing all its decisions on its website, contributing to a transparent process. Up to election day, the ECAP received a total of 352 complaints and appeals related to the current local elections. Apart from 17 appeals against the CEC decisions on candidate decertification, the ECAP considered cases related to pre- and post-campaign period activities, candidates' withdrawal from political entity lists, the appointment of MEC members, and mostly about campaign activities. Due to resources, time and staff constraints, the ECAP usually does not conduct hearings, but they have conducted four hearings during these elections so far, and also a public session of the Panel concerning 23 cases. By 22 October, the ECAP had issued fines to candidates and political entities in the amount of 196,750 EUR, mostly concerning minor violations of the Code of Conduct during campaigning such as campaign posters in inappropriate places, and appearance of children in campaign activities. By 23 October evening, 80 complaints were filed related to voting and counting, mostly concerning candidates' results.

ELECTION DAY

Election day was calm, without major incidents recorded by the EU EOM observers which visited 466 polling stations in all 38 municipalities. Polling stations generally opened on time and were prepared for voting. 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% of polling stations. Voting procedures were generally followed. EU EOM observers noted many instances of family voting (in 10% of observations). Some voters were turned away in 11% of polling stations observed, mostly for not being on the voter list, as they most likely presented themselves to the wrong polling station. According to data registered in the Poll Books, in 21% of the observed polling stations the percentage of assisted voting was over 10%.

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% of the vote counts being evaluated as positive. Although CEC simplified results forms, polling staff in a third of observed polling stations had difficulties filling in the Candidate Results Forms. Difficulties in completing the Reconciliation and Results Forms were noted in a 37% of observed vote counts.

MECs were visited by EU EOM observers in 30 municipalities. The process was assessed as positive in all MECs. Corrections to polling stations materials and documents were required at least once in 40% of the observed MECs, indicating that additional training for PSC 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 the election day.