

Bringing Justice to Elections

**Review of dispute resolution and
roadmap for institutional
coordination**



Democracy for Development
Demokraci për zhvillim
Demokratija za razvoj

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roadmap for institutional
coordination**

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Executive Summary

This report reviews electoral justice from the past elections and provides a roadmap for permanent coordination in addressing electoral disputes. Six thematic parts of the paper present data pertaining to: adjudication of administrative election offenses, oversight of political finance, investigation and resolution of serious electoral crimes, and responses to complaints against the media.

During the 2009 local and 2010 general elections there were 550 and 492 complaints respectively submitted to the Election Complaints and Appeals Panel (ECAP) with regard to adjudication of administrative disputes. This doubled to 1,109 during the 2013 local elections and declined to 341 during the 2014 general elections. ECAP's fines on political entities reached their peak in 2010, in the amount of €377,450.

The Central Election Commission (CEC) fined 22 small political entities for delayed submission of finance reports during the 2013 and 2014 elections. As a result of widespread election fraud and result inconsistencies, the CEC also ordered several repeat elections between 2009 and 2014.

The CEC referred 239 suspicious cases to the State Prosecutor (SP) pertaining to the 2014 general elections. There seems to be a mismatch with the number of cases that the State Prosecutor claims to have received. During 2013 and 2014, the State Prosecutor dealt with 378 criminal charges pertaining to election crimes, which involved 1,450 persons. The Basic Prosecutors of Peja, Prizren, Gjakova and Ferizaj have been more efficient in resolving election criminal charges, than those of Mitrovica and Prishtina.

The Kosovo Police (KP) administered 113 cases of election violations during the 2013 and 2014 elections, most of which were investigated jointly with the SP. A considerable number

of persons were also arrested by the police on Election Day, 37 in 2013, and 18 in 2014 elections.

Where there was sufficient evidence, the SP raised indictments to the courts against the persons who committed electoral crimes. During 2014, the courts had a total of 281 cases pertaining to electoral crimes, which involved 1,171 persons. The courts resolved less than half (128) of the cases during 2014, of which 101 resulted in guilty verdicts. Only 10 persons were imprisoned for election crimes, while most of those found guilty were released with conditional imprisonment.

From the 2009 to 2014 elections, the Independent Media Commission (IMC) dealt with a total of 225 complaints regarding alleged media violations. Three quarters of the complaints dealt with the failure of media agencies to submit the log-books to the IMC.

Overall, there was a high number of electoral disputes in the past elections. Whereas in 2009 and 2010 disputes could have been seen as an indicator of poor elections, in 2013 and 2014 they served as evidence of growing readiness of election management bodies and judicial authorities to address grievances from political parties, observers, and voters.

Given that dispute resolution is an interdependent process, it would be useful if the election management bodies and judicial authorities built up to their accomplishment, and strengthen the institutional chain by coordinating their activities throughout the stages of the electoral cycle.

Introduction

The overall aim of this report is to improve coordination between election management bodies and judicial authorities by unveiling cross-institutional data from the past elections, and identifying actions that these institutions can undertake to advance their coordination in all stages of the election cycle. The report was developed under the Electoral Justice Project funded by the Swiss Federal Department of Foreign Affairs (FDFA).

The report covers data on: adjudication of administrative election offenses, oversight of political finance, investigation and resolution of serious electoral crimes, and responses to complaints against the media. Where the information was available, the data was broken down by nature of electoral violations, type of judgement, and municipality or region where alleged violations occurred. To develop this report, D4D collected raw data from the: Election Complaints and Appeals Panel (ECAP), Central Election Commission (CEC), State Prosecutor (SP), Kosovo Police (KP), Kosovo Judicial Council (KJC) and Independent Media Commission (IMC). The data from each of these institutions is presented in separate chapters below.

The order of the chapters follows the chronological flow of electoral justice events from the moment disputes are lodged, to the moment they are resolved. First, electoral grievances are submitted to ECAP, which is the first instance body responsible for adjudicating complaints and appeals. Second, the CEC as the primary body responsible for the conduct of elections, can refer suspicious cases of electoral fraud to the SP for further review. Third, the SP is responsible for investigating cases before raising indictments to the Basic Courts. Fourth, in order to collect evidence and complete the investigations, SP may require help from the Kosovo Police. Fifth, indictments are raised to Basic Courts if the SP

possesses sufficient evidence that electoral crime was committed, and judges issue verdicts on cases pertaining to electoral crimes. Sixth, it is also important to look at the complaints related to alleged media violations which are resolved by the IMC. The data on the appeals to the Supreme Court against ECAP's decisions was included under the ECAP chapter.

The report also includes a workflow of election disputes in 2014, which was the only year with all of the data available. The workflow makes it easier to visualize the engineering behind electoral justice, as disputes travel from one institution to another until they are resolved completely. At times, the workflow indicates potential statistical mismatches (\neq) and missing data. The workflow is enclosed in a separate sheet within this publication, and can also be found in electronic format.

Finally, the report ends with recommendations, framed as a checklist of actions which are intended to strengthen the institutional chain, by identifying possible actions that each institution can undertake in different stages of the electoral cycle. The checklist includes contributions from multiple actors including representatives of election management bodies, judges, prosecutors, police officers and civil society election experts.

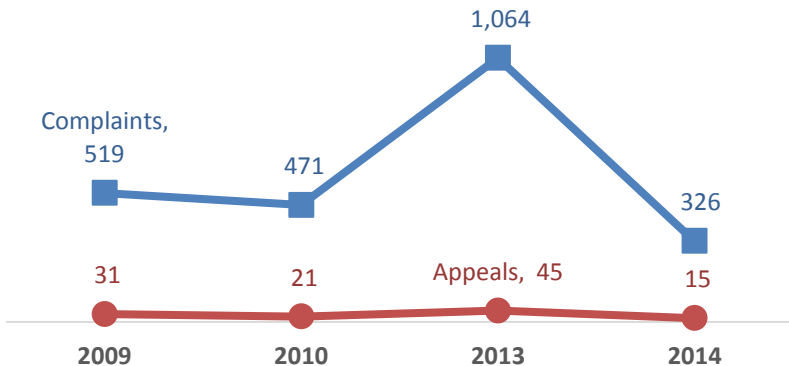
This report would not have been possible without the cooperation of the Election Complaints and Appeals Panel, Central Election Commission, State Prosecutor, Kosovo Police, Kosovo Judicial Council, and Independent Media Commission. These institutions made the data available in a timely manner as requested, and were also available for clarification and consultation throughout the process.

1. Election Complaints and Appeals Panel

The Election Complaints and Appeals Panel (ECAP) serves as the first instance body responsible for adjudication of election complaints and appeals. The only election cases which ECAP refers to other institutions include complaints pertaining to election crimes (referred to SP) and media violations (referred to IMC).

The number of complaints and appeals has remained steady between the 2009 (local) and 2010 (general) elections, doubled in the 2013 (local) elections and marked a steep decline during the most recent 2014 (general) elections (Figure 1).

Figure 1: Number of in-country complaints and appeals, from the 2009 to 2014 elections



It is understandable that the local races are more disputed because there are more political entities and candidates competing in comparison to the general elections. The rate of complaints peaked in 2013 but the widespread opinion is that these elections were markedly better compared to the years before. The high rate of complaints in 2013 could be ascribed to the intensified public information campaigns from ECAP

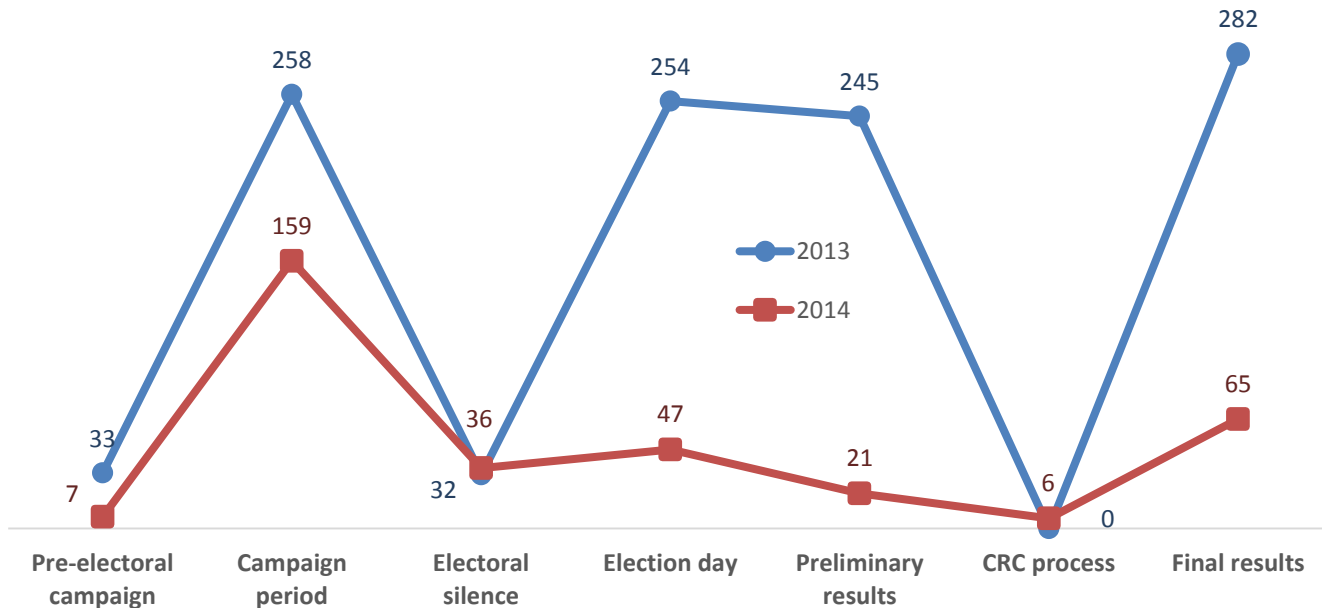
and civil society organizations, which encouraged voters and parties to complain, and informed them of complaints procedures. In the following 2014 elections, there were three times fewer complaints. The lowest rate of complaints in 2014 comes as a result of greater political entity compliance with election laws and regulations, enhanced public trust on elections, and improved election administration.

The red line (Figure 1) tracks the rate of appeals to CEC decisions. The relatively low number of appeals from the 2009 to 2014 elections shows that the CEC decisions are generally fair and rarely contested by political entities or voters. The figure above does not include appeals submitted by out-of-country voters, challenging CEC's rejection of their application to vote from abroad. The data includes only appeals to CEC decisions to: (a) refuse to certify a political entity or its candidate list; (b) refuse to accredit observers; (c) refuse to register a party; (d) impose an administrative fee regarding finance disclosure; or (e) other appeals related to CEC election procedures.

Complaints were submitted to ECAP in different stages of the election process, and the data was broken down for the two elections (2013 and 2014) for which data was made available (Figure 2). The 2013 complaints were evenly distributed in four phases: campaign and Election Day (each 23%), preliminary results (22%), and final results (25%).

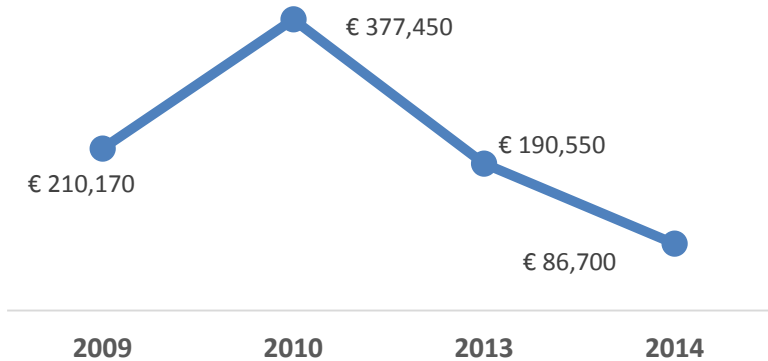
Although the lower number of complaints during the 2014 elections was a positive trend, the polarized political climate kept tension high during the campaigns. In 2014 elections, there was a significant increase in complaints during the campaign period, as nearly a half (47%) of the complaints were submitted during this period.

Figure 2: Number of complaints and appeals during the 2013 and 2014 elections, by election phase



ECAP has the power to issue fines to political entities if it finds that they committed violations. ECAP's sum of fines on political entities doubled between 2009 and 2010. In these elections, observers reported widespread irregularities committed by political entities during all stages of the election process. The large fines during 2010 served a deterrence for the 2013 and 2014 elections, as ECAP's fines have decreased since then (Figure 3).

Figure 3: ECAP's sum of fines on political entities, from 2009 to 2014 elections



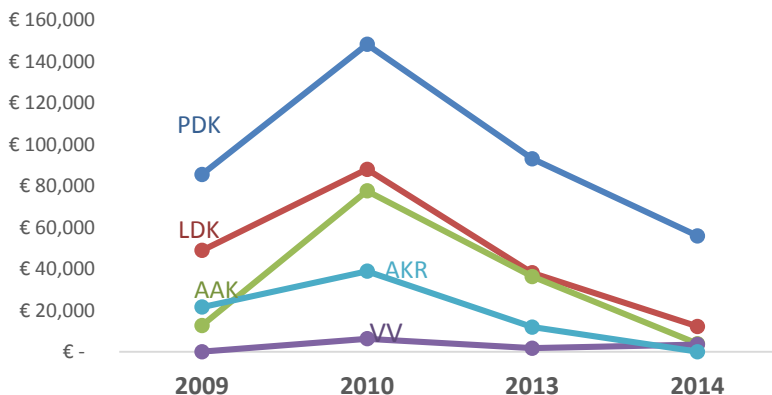
ECAP's sum of fines is further broken down by political entity (Figure 4). Partia Demokratike e Kosovës (PDK) was fined the most in the period of the analysis, having 39% of the total fines in 2010, and 64% in 2014. The party with the second-largest share of fines was Lidhja Demokratike e Kosovës (LDK) with 23% of total fines in 2009 and 2010, gradually reducing to 14% in 2014.

Figure 4: ECAP's sum of fines from the 2009 to 2014 elections, by political entity

	2009	2010	2013	2014
PDK	€ 85,620	€ 148,400	€ 93,150	€ 55,900
LDK	€ 48,900	€ 88,050	€ 38,100	€ 12,200
AAK	€ 12,720	€ 77,600	€ 36,300	€ 3,900
VV	n/a	€ 6,250	€ 1,750	€ 3,500
AKR	€ 21,600	€ 38,850	€ 11,900	€ -
Other	€ 41,330	€ 18,300	€ 9,350	€ 11,200
Total	€ 210,170	€ 377,450	€ 190,550	€ 86,700

Aleanca per Ardhmërinë e Kosovës (AAK) and Aleanca Kosova e Re (AKR) were the third and fourth parties with the largest share of fines. Of the main parties, Vetëvendosje (VV) had the lowest share of fines, consistently below 5% of total fines (Figure 5).

Figure 5: ECAP's trend of fines on political entities, from the 2009 to 2014 elections



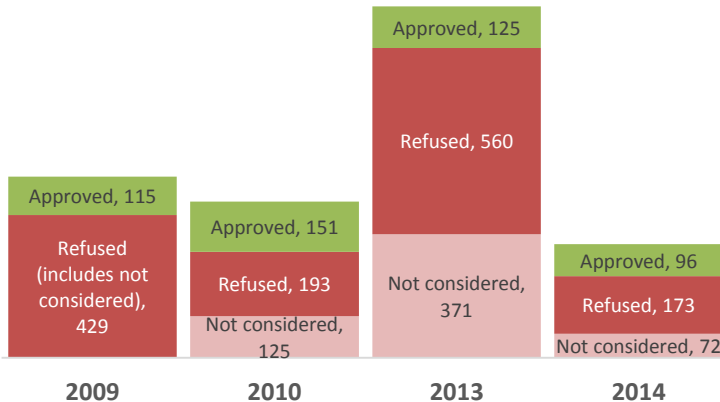
For the demanding readers, the complaints are also presented by municipality where the alleged violation occurred, clustered around the seven largest cities (Figure 6). The largest municipalities naturally have the largest of complaints, as they have more campaign events, polling stations and voters. However, there are several smaller municipalities interestingly creeping up into the list. For example, Lippjan and Vushtrri each command around 5% of complaints. From 2009 to 2014, there were a growing number of complaints being submitted for northern municipalities. There is a mismatch between the number of complaints presented in Figure 1, and the number of complaints by municipality, and this is also the case in the original source data that D4D received.

Figure 6: Complaints by municipality and region where alleged violations occurred, from the 2009 to 2014 elections

	2009	2010	2013	2014		2009	2010	2013	2014
Prishtina	177	215	322	152	Gjilan	89	20	136	14
Prishtina	64	164	109	120	Gjilan	54	18	30	6
Lipjan	48	7	78	1	Kamenica	10	0	53	5
Obiliq	5	2	46	1	Vitia	11	2	35	2
Podujevo	21	6	31	24	Novo Brdo	0	0	11	0
F. Kosova	14	5	28	1	Klllokot	0	0	1	1
Drenas	2	26	11	0	Partesh	14	0	4	0
Gracanica	23	5	19	5	Ranillug	0	0	2	0
Peja	35	27	172	17	Gjakova	66	29	92	31
Peja	16	12	40	8	Gjakova	26	8	36	3
Istog	12	4	57	5	Rahovec	15	2	16	8
Klina	7	11	45	1	Malisheva	25	19	36	20
Decan	0	0	30	3	Junik	0	0	4	0
Mitrovica	35	94	148	22	Prizren	91	36	106	62
Mitrovica	7	32	36	10	Prizren	58	28	81	48
Skenderaj	19	49	2	3	Suhareka	31	3	17	11
Vushtrri	9	12	101	2	Mamusha	0	0	6	3
N. Mitrovica	0	0	4	3	Dragash	2	5	2	0
Z. Potok	0	0	1	0	Ferizaj	60	35	134	41
Leposavic	0	1	2	3	Ferizaj	21	17	107	37
Zvecan	0	0	2	1	Shtime	12	0	12	1
					Kacanik	15	12	8	3
					Hani i Elezit	4	0	5	0
					Strpce	8	6	2	0

It is also relevant to look at what happened to the complaints once they were treated by ECAP. The highest share of complaints were refused by ECAP, for lack of legal basis, i.e. the complaints had no evidence to prove that the alleged violation occurred, or they failed in reasoning. In 2009, most complaints were refused or were not considered at all (79%) (Figure 7). In subsequent years, ECAP started using a more detailed categorization of decisions. The rate of approvals (cases for which ECAP judged that the alleged violation occurred) peaked in 2010 (32%), and marked the lowest level in 2013 (12%).

Figure 7: Number of ECAP decisions by type of decision, from the 2009 to 2014 elections



A significant portion of complaints was not even considered by ECAP’s review panel, and that may have been for several procedural reasons: (a) complaints not falling within ECAP competencies, (b) submitted beyond specified deadlines, or (c) not fulfilling key requirements. In 2010, of the complaints not considered, most (72%) were deemed as “not allowed”, largely a category considered to be outside ECAP’s legal mandate. In 2010, one in five complaints was submitted

beyond the deadline. In 2013, the “not allowed” complaints remained high (74%), however there was a portion (18%) of the complaints that were withdrawn by the complainants.

An average of 5% of ECAP decisions were appealed to the Supreme Court for each election (108 appeals from 2009 to 2014). In most instances, the Supreme Court decided to uphold the ECAP decision, ruling in favor of the appellant in only 4 of the 108 cases.

During the 2013 and 2014 elections, ECAP also faced a substantial number of appeals against CEC’s decisions to deny out-of-country voter applications, 16,410 and 9,171 respectively. These appeals were mainly submitted by Serbian voters who applied to vote out of country. During 2013 elections, 5,458 (33%) of appeals were approved by ECAP. As a result the CEC included the voters’ names in the final voter’s list. During the 2014 elections, only 206 (2%) of appeals were approved.

The vast majority of complaints (from 2009 to 2014) were submitted by political entities. Most of these complaints were submitted by party candidates, a strong indication that the race is driven by individuals trying to get elected, and potentially also of alleged intra-party vote fraud. Almost half (47%) of the complaints during the 2013 local elections were submitted by candidates, as opposed to a fifth (19%) during 2014 (Figure 8). The high number of complaints from candidates is partly due to the high number of candidates (over 7,000) running during the local elections. The candidates were grouped together by ECAP, and there is no data of their partisan affiliation.

Figure 8: Number of complaints and appeals from 2009 to 2014 elections, by complainant entity

Entity	2009	2010	2013	2014
PDK	113	47	128	66
LDK	0	30	87	14
VV		177	157	124
AAK	30	15	41	2
NISMA			0	7
AKR	82	58	19	17
Candidates	0	0	525	64
Lista Srpska			9	3
BIRN	0	39	27	2
Voters	59	50	9	7
Others	266	76	107	35
TOTAL	550	492	1,109	341

The third largest political entity, Vetëvendosje, submitted the most complaints, followed by PDK, AKR, and LDK. Civil society organizations were not very active in submitting complaints, with the exception of BIRN which submitted 68 complaints in all of the elections.

As it can be seen, ECAP dealt with a relatively high number of complaints and appeals in the past elections. The fines that ECAP imposed on political entities in 2009 and 2010 contributed to greater party compliance with electoral legislation and rules in the elections that followed. Additionally, ECAP faced significant challenges in dealing with the appeals from out-of-country voters, as it had to adjudicate them in a very limited time period.

2. Central Election Commission

Although not mandated to adjudicate electoral disputes, the Central Election Commission (CEC), within its frame of competencies, can play a significant role in electoral justice. First, the CEC may refer polling administrators to the State Prosecutor if they are suspected of committing election crimes. The CEC can also provide resources and materials to resolve these cases. Second, the CEC oversees political party finances, and it may issue fines to political entities if they do not comply with the requirements of reporting annual and campaign finances. Third, the CEC may decide to hold full or partial re-polls in the event that election irregularities occur, and that happened quite frequently in the past elections.

With regard to election crimes, the CEC has referred 143 cases to the State Prosecutor (SP) for the 2013 local elections, and 239 for the 2014 general elections. The nature of the cases raised by the CEC is usually related to the mismatches in the results reconciliation forms and candidate results forms. Inconsistencies in and between these forms may lead the CEC to believe that fraud was committed, and such cases are referred to the SP for further review and investigation. According to the data received by the SP, the SP does not seem to record the CEC cases as new criminal charges received. As it can be seen from the [workflow](#), there is a mismatch (\neq) in the number of criminal charges received by the SP during 2014.

With regard to political finance, the CEC fined ten political entities for delayed submission of campaign finance reports for the 2013 local elections. Most of these entities (except one) are not represented in the Assembly of Kosovo and are not entitled to public funding, which means they may not have sufficient administrative capacities to complete financial reports. Only two political entities, Partia e Ashkalinjeve per Integrim and Kosova Turk Adalet Partisi, paid the fine (Figure 9).

Figure 9: CEC fines on political entities for delays in submitting 2013 local elections campaign finance report

Political Entity	Delay	Fine
Partia e Ashkalinjeve per Integrim	47 days	€ 3,516
Kosova Turk Adalet Partisi	34 days	€ 1,003
Crnogorska Liberalna Stranka	32 days	€ 1,002
Inicijativa za Bolji Život	81 days	€ 1,008
Zajedno za Lipljan	81 days	€ 1,008
Hysni Rexhepi	81 days	€ 1,008
Demokratska Inicijativa	78 days	€ 1,008
Narodna Pravda	77 days	€ 1,008
Partia Socialdemokrate	71 days	€ 1,007
Ylli Isufi	84 days	€ 1,008
TOTAL		€ 12,578

In the 2014 elections, there were no delays in campaign finance reporting. These elections were general, and there were fewer, but larger, parties competing. Most of the larger parties seem to respect the deadline for reporting their finances, and this is a positive trend of elections.

In addition to the campaign finance reports, the CEC may also impose fines for delays in submitting annual finance reports. In 2014, there were 12 parties that delayed their annual reporting, none of which were represented at the Assembly of Kosovo. The CEC imposed a €1,000 fine for each of these political entities.

Several repeat elections were held from the 2009 to 2014 elections. Some of these were full re-polls in all polling centers (PCs) within the municipality, and some were only partial – in only one or in a few PCs. The re-polls were ordered through decision of either ECAP, CEC or the Supreme Court, for a variety of problems such as: ballot stuffing, voting fraud, results inconsistencies, violence and intimidation. During the 2009 local elections, full re-polls were held in all polling centers of Lipjan, Prizren and Gjilan.

In 2010 elections re-polls were held in all PCs of Deçan, Skenderaj, Drenas and Mitrovica, and partial re-polls in one polling center in both Malisheva and Lipjan. During the 2013 local elections, re-polls were held only in one PC in Partesh, two PCs in Zvecan, and three PCs in North Mitrovica. There were no repeat elections during the 2014 general election.

In addition, in the past four elections, many polling station's boxes were re-counted mainly due to inconsistencies in results forms and audit failure. The number of polling stations re-counted ranges from between 420 to 450, with the exception of the 2010 general elections where 890 polling stations were re-counted (Figure 10).

Figure 10: Re-polls and re-counts, from the 2009 to 2014 elections

Re-polls and re-counts	2009	2010	2013	2014
Nr. of municipalities holding re-polls	3 full	4 full 2 partial	3 partial	None
Nr. of polling stations re-counted	450	890	439	421

The main conclusion is that the CEC needs to follow-up on the cases that it refers to the State Prosecutor to ensure that these cases are taken into consideration. The CEC should also assist the prosecutors and judges by informing them about the election procedures, and providing resources and materials to resolve election cases.

3. State Prosecutor

With regard to electoral justice, the State Prosecutor (SP) is responsible for prosecuting criminal charges pertaining to electoral offenses foreseen from Article 210 to 220 of the Criminal Code of Kosovo. The SP can initiate criminal charges on its own, but the individuals, entities and institutions can also add to that.

In 2013, more than half (52%) of the criminal charges were filed by the inspectorate, but in 2014, it is the police who filed most charges (56%) (Figure 11). In addition to this list the CEC claims to have referred 239 cases of election fraud to the SP, and ECAP claims to have added another 34 cases, pertaining to the 2014 general elections. These cases do not figure as new criminal charges received by SP, although some of them may have entered the “Others” category.

Figure 11: Number of new criminal charges raised, by entity complainant, 2013 and 2014

	2013	2014
Citizen	0	2
Kosovo Police	30	95
Anti-Corruption Agency	0	1
Inspection	62	44
EULEX	0	0
Others	27	27
TOTAL	119	169

During 2013, the SP dealt with 209 cases of criminal charges, less than half (43%) of which were inherited from previous years. The rest were new criminal charges raised during 2013.

The SP resolved around half of the workload, leaving 105 criminal charges for 2014. In 2014, there were 169 new criminal charges received. Only 75 cases were resolved in 2014, which increased the backlog from 90 in January 2013, to 199 to be resolved in 2015 (Figure 12).

Figure 12: State Prosecutor 2013 and 2014 annual summary and status of criminal charges

State Prosecutor 2013 and 2014	2013		2014	
	Cases	Persons	Cases	Persons
Backlog from previous years	90	562	105	639
New criminal charges received	119	654	169	244
Total criminal charges	209	1,216	274	883
Resolved	104	577	75	229
Remaining Backlog	105	639	199	654

Altogether, in these two years there were 378 criminal charges involving 1,460 persons. The backlog has unfortunately increased, which will require additional resources to tackle in the future.

The criminal charges were in process in all Basic Prosecutors of Kosovo. During 2013, almost two thirds (60%) of the criminal charges were in process in the Basic Prosecutor in Prishtina, which fell to 39% in 2014.

The Basic Prosecutor of Prizren has been the most successful in both years, resolving 56% of the cases in 2013 and 89% of the cases in 2014. Peja exceeds Prizren in terms of percentage, but it has faced significantly fewer number of cases. The Prishtina prosecutor has been very efficient in 2013, resolving 56% of the cases, but performance fell to 11% in 2014. The worst performing seems to be Mitrovica, which resolved only two cases in both years (despite the multitude of 87 cases). The figure below makes a detailed presentation of cases and persons afflicted separately for each year (Figure 13).

Figure 13: State Prosecutor 2013 and 2014 annual summary of cases and persons involved, by Basic Prosecutor

Kosovo Basic Prosecutors 2013 and 2014		Column 1: Cases								Column 2: Persons involved					
		Gjilan		Prizren		Peje		Prishtine		Ferizaj		Gjakove		Mitrovica	
2013	Backlog from 2012	0	0	0	0	0	0	63	441	0	0	13	91	14	30
	New, received during 2013	13	18	25	124	3	9	63	442	3	5	12	56	0	0
	Total during 2013	13	18	25	124	3	9	126	883	3	5	25	147	14	30
	Resolved during 2013	13	18	14	74	2	8	70	464	0	0	5	13	0	0
	Resolved 2013 (%)	100%		56%		67%		56%		0%		20%		0%	
2014	Backlog from 2013	0	0	11	50	1	1	56	419	3	5	20	134	14	30
	New, received during 2014	1	1	16	16	8	8	51	69	1	1	19	51	73	98
	Total during 2014	1	1	27	66	9	9	107	488	4	6	39	185	87	128
	Resolved during 2014	0	0	24	63	8	8	12	20	1	2	27	124	2	12
	Resolved 2014 (%)	0%		89%		89%		11%		25%		69%		2%	
	Pending (left for 2015)	n/a	1	3	3	1	1	95	468	3	4	12	61	85	116

4. Kosovo Police

The Kosovo Police (KP) is primarily responsible for security and order during the election process, and is a key actor for bringing justice to elections. As well as maintaining order during the political campaign and Election Day, KP can also play a role in investigating cases opened by SP and ECAP, and also in executing court decisions.

D4D received data from the KP about the campaign and Election Day activities during the 2013 local and 2014 general elections (Figure 14). During the 2013 election campaign, KP opened 37 cases of election violations. There are no details on the nature of these cases, but this includes violations which the police officers witnessed during the campaign, and in which perpetrators were escorted to the police for further questioning. More than a third (41%) of these cases were referred to the State Prosecutor for further investigation. There was a significantly lower number of cases during the 2014 election campaign.

Figure 14: Summary of KP cases and persons arrested, during the 2013 and 2014 elections

Kosovo Police	2013	2014
Election Campaign	37 cases, of which 15 were referred to SP	4 cases referred to SP
Election day	47 cases investigated with SP 37 persons arrested	25 cases investigated with SP 18 persons arrested

There was also a considerable number of cases initiated by the police for misconduct on Election Day. In 2013 elections 37 persons were arrested on e-day. Although this halved during the 2014, the number of persons who attempt to violate the conduct of Election Day continues to be a great concern. As part of the electoral justice institutional chain, KP should continue acting responsively if it witnesses violations

of electoral process, and assist the other institutions to complete the investigations. KP's activism in the 2013 local elections seems to have prohibited violations during the 2014 elections, as the number of cases and persons arrested was much lower.

5. Kosovo Judicial Council

If the State Prosecutor possesses sufficient evidence to prove that election crimes were committed, indictments are raised to the relevant courts against the persons involved. The Basic Courts follow up with judicial procedures, and the judges issue verdicts on each case.

The Kosovo Judicial Council (KJC) provided data only for 2014, hence no comparison with 2013 or previous years is possible. During 2014, the Kosovo's Courts dealt with a total of 281 cases pertaining to electoral crimes, of which two thirds were inherited from the previous years. It was a successful year for the courts, as they resolved more cases (128) than they received (93) in the same year. This indicates a high rate of efficiency in resolving and prioritizing electoral cases, effectively reducing the backlog they had inherited at the outset of the year. There are still 153 cases afflicting 536 persons left for 2015 (down from 188 cases with 934 persons) (Figure 15).

Figure 15: Annual 2014 summary of cases and their status, and number of persons involved

2014 Annual	Cases	People
Backlog from previous years	188	934
New cases received during 2014	93	238
Total during 2014	281	1,172
Resolved during 2014	128	636
Remaining backlog	153	536

Virtually nine in ten cases pertain to alleged violations on “abuse of the right to vote” which covers scenarios where a person commits one or more of the following offenses: “(a) votes or attempts vote under the name of another person; (b) votes or attempts to vote even though he or she has already voted; or (c) uses more than one voting list” (Article 216 of the Criminal Code). The remaining cases deal with abuse of

official duty during elections (3.6%), obstructing the voting process (3.6%), violating the free decision of voters (2.5%), giving or receiving bribe in relation to voting (1.4%), and other types of violations (1.5%). The number of persons involved in cases is on average four times higher than the number of cases, which is a result of collective prosecution of polling station committee members (Figure 16).

Figure 16: Number of cases and persons involved, by electoral offense

Criminal offense	Cases	Persons
Violation of the right to be a candidate (Art. 210)	0	0
Threat to the candidate (Art. 211)	0	0
Preventing exercise of the right to vote (Art. 212)	1	2
Violating the free decision of voters (Art. 213)	7	9
Abuse of official duty during elections (Art. 214)	10	46
Giving or receiving a bribe in relation to voting (Art. 215)	4	5
Abusing the right to vote (Art. 216)	246	1,093
Obstructing the voting process (Art. 217)	10	14
Violating confidentiality in voting (Art. 218)	3	3
Falsification of voting results (Art. 219)	0	0
Destroying voting documents (Art. 220)	0	0
TOTAL	281	1,172

Of the 128 cases that were resolved in 2014, 101 (79%) resulted in guilty verdicts. In these cases there were 636 persons involved. Only 10 of them were sanctioned with direct imprisonment, and 5 had to pay fine (Figure 17).

In nine out of ten cases, the courts issued a conditional sentence. This should be analyzed with some degree of caution, as to whether this type of punishment is proportional to the consequences of the crime committed. The conditional sentence usually involves imprisonment and/or a fine, however the perpetrator does not have to suffer the sentence as long as he or she respects a specific condition set by the

court. A condition may be, for example, the perpetrator should not commit another crime for a specified period of time.

On the other hand, the courts officially issued acquittals in a fifth of the cases, where most were refused to be considered for various procedural reasons, while a small portion were found not guilty.

Figure 17: Number of cases resolved and persons involved, by type of court judgement and offense (persons in brackets)

Criminal Offenses	Guilty			Acquitted & Other		
	Prison	Fine	Condition	Not Guilty	Refused	Other
Violating the free decision of voters (Art. 213)	0	1 (1)	2 (2)	0	0	0
Abuse of official duty during elections (Art. 214)	0	0	0	1 (1)	2 (15)	0
Giving or receiving a bribe in relation to voting (Art. 215)	0	0	0	0	0	1 (2)
Abusing the right to vote (Art. 216)	5 (10)	2 (4)	89 (462)	2 (7)	21 (122)	0 (8)
Obstructing the voting process (Art. 217)	0	0	2 (2)	0	0	0
TOTAL	5 (10)	3 (5)	93 (466)	3 (8)	23 (137)	1 (10)

In Kosovo election fraud was not considered a criminal act until 2012 when the Criminal Code was adopted. Therefore, election cases are therefore new for most judges, and the technical nature of election procedures makes it difficult for judges to resolve these cases. The high number of conditional punishments leads to believe that the judges are relatively lenient towards election crimes, as they see direct imprisonment as too harsh. It is somewhat a misnomer to

term conditional punishments under the guilty verdicts, for the perpetrators walk home with mild punishments. Additionally, collective sanctions may be problematic for judges to prove direct responsibility of each individual involved, leading them to issue conditional guilty verdicts.

6. Independent Media Commission

As the body responsible for overseeing the audiovisual media, the Independent Media Commission (IMC) plays an important role in ensuring that audiovisual media comply with the requirements set forth in the electoral legislation.

In the last four elections, IMC dealt with a total of 225 complaints against audiovisual media. Broadcasters are required to keep separate daily logs and schedule of the free and paid airtime allocated each political entity. Three quarters of complaints were lodged against media outlets for the failure to submit these log-books to the IMC. Other complaints were filed for failing to allocate unpaid broadcast space (6%), breach of electoral silence (6%), child presence in political advertisement, or other types of violations (Figure 18).

Figure 18: Number of IMC complaints against audiovisual media by nature of complaints, from 2009 to 2014 elections

Nature of complaint	2009	2010	2013	2014
Failure to submit log books to IMC	35	0	58	75
Failure to allocate unpaid broadcast space	3	1	10	0
Breach of electoral silence	7	1	3	2
Failure to identify owner of the spot	0	0	0	6
Child presence in electoral spots	0	0	6	0
Spots broadcast out of campaign period	0	0	0	5
Head of media running in the election	0	0	4	1
Spots broadcast during news editions	2	0	0	0
Other	2	1	3	0
TOTAL	49	3	84	89

The growing number of complaints during the 2013 and 2014 elections shows an increased activity of the IMC, political entities and candidates to initiate complaints against media violations. The complaints have reached their peak in 2013-2014, which indicates that the positive trend in elections does

not apply to the media. The vast majority of complaints (92%) were initiated *ex-officio* by IMC. With the exception of a few complaints initiated by LDK and AAK, parties have not made use of their right to lodge a complaint to the IMC (Figure 19)

Figure 19: Number of complaints by complainant entity, from the 2009 to 2014 elections

Entity	2009	2010	2013	2014
IMC	42	1	76	89
AAK	1	0	1	0
AKR	0	0	1	0
AKR/LDD	1	0	0	0
LDK	1	1	0	0
VAKAT	1	0	0	0
Other	3	1	6	0
TOTAL	49	3	84	89

Most of the complaints were submitted against local radio (62%) and local TV stations (24%). There were also several complaints against main media outlets (Figure 20).

Figure 20: Number of alleged violations against media agencies, from the 2009 to 2014 elections

Media Agency	2009	2010	2013	2014
Radio Televizioni i Kosoves (RTK)	1	0	4	2
Radio Televizioni 21 (RTV21)	1	0	2	1
Kohavision (KTV)	1	0	3	1
Klan Kosova	2	2	5	2
Rrokum TV	1	0	0	2
Local TVs	12	1	16	26
Local Radios	31	0	54	55
TOTAL	49	3	84	89

For all complaints against the media from the 2009 to 2014 elections, the Independent Media Commission issued warning letters to media agencies requesting that they fulfill

their requirements as set forth in the election law. The media addressed the recommendations of IMC in all cases.

While the political entities constantly allege that media agencies are closely affiliated or biased towards certain political entities, there seems to be a low number of complaints to IMC submitted by political entities. Political entities may undervalue the role of the IMC in relation to the media, but they may also not be informed of the complaint possibilities and procedures.

Checklist for Institutional Coordination

During 2014, D4D organized several workshops at the central and local level with representatives of election management bodies, judicial authorities, and local and international organizations to discuss electoral justice issues and lessons learned from the past elections. Deliberation led to a common understanding that the coordination between ECAP, CEC, SP, KJC and KP was key to ensuring free and fair elections in 2013 and 2014. Electoral dispute resolution is an inter-dependent process and coordination between these institutions should be strengthened and legally enshrined on a permanent basis.

D4D was among the civil society organizations consulted by the institutions before the signing of the MoU during 2013, and provided input to the institutional initiative. D4D recommends that the five institutions (CEC, ECAP, SP, KJC and KP) sign a new memorandum of understanding that would regulate permanent coordination. In addition, they should consider establishing a joint body that would coordinate on a regular basis and oversee the implementation. Civil society has been a part of similar initiatives in the past and can contribute further. More ambitiously, the MoU can also be enshrined into secondary legislation to make it legally mandatory and not to depend on the good will of the institutional leaders.

As a follow-up from the electoral justice workshops, D4D prepared a checklist of suggested actions intended to strengthen the institutional chain, by identifying possible actions that each institution can undertake in different stages of the electoral cycle. The checklist includes contributions from multiple actors who were consulted during the process including representatives of election management bodies, judges, prosecutors, police officers and civil society election experts. The proposed actions below are presented for each

institution, for each phase of the electoral cycle: a) Pre-election period; b) Election period & E-day; and c) Post-election period.

The checklist was also developed in a format which enables viewers to see what each of these institutions does in every stage of the election cycle, and this version of the checklist can be found attached to this report, or [electronically here](#).

1. ELECTION COMPLAINTS AND APPEALS PANEL

Pre-election period (period before announcement of elections)

- Develop an operational plan for the elections;
- Maintain a database of persons who are prohibited to participate in elections (as candidate, EMB staff);
- Inform the CEC about the persons who were sanctioned for electoral violations, and political entities which have not paid the fines;
- Examine ways of making lodging of complaints and appeals easier;
- Establish contacts and cooperation mechanisms with observer groups;

Election period (announcement of elections to certification of results)

- Inform the political entities, observer groups, and voters about the complaints procedures;
- Apply effective and proportional sanctions to persons who violated electoral rights;
- Regularly inform the public of the outcome of each complaint submitted to ECAP;
- Ensure that other authorities follow-up on cases which ECAP refers to them;
- Ensure that the public has access to information that ought to be transparent, without violating privacy laws;

Post-Election period (after the certification of results)

- Instruct the CEC to keep the material of polling centers and stations which are under investigation;
- Follow-up on cases referred by ECAP to State Prosecutor, and assist with information as necessary;
- Contribute in electoral law reform and review internal rules or procedures;
- Deliberately review complaints/cases related to political finance reporting;
- Develop public outreach and transparency strategies;

2. CENTRAL ELECTION COMMISSION

Pre-election period (period before announcement of elections)

- Maintain a database of persons who committed electoral violations in the past elections;
- Provide election orientation programs and trainings to EDR authorities;
- Prepare manuals and guidebooks for EDR authorities to cover all areas of the election (polling procedures, security, political finance), and more specific manuals on results audit & investigations;
- Continuously inform the public about the measures taken by judicial authorities against electoral perpetrators

Election period (announcement of elections to certification of results)

- Ensure that the persons who violated electoral rights are not allowed to work on election administration;
- Inform polling officials, election technical staff and voters about sanctions foreseen with the criminal code;
- Determine how the Counts and Results Center (CRC) audit & investigation teams can assist other judicial authorities in investigating cases;
- Ensure that political entities have paid their fines and administrative obligations before certifying them;

Post-Election period (after the certification of results)

- Continue keeping materials (ballot boxes, ballots, RRFs, CRFs) upon instruction by ECAP or State Prosecutor;
- Provide evidence to state prosecutor and police, upon their request;
- Deploy municipal election officers to court hearings and sessions in all municipalities of Kosovo;
- Improve public confidence on election management bodies and dispute resolution authorities;
- Follow-up with judicial authorities on each case related to elections; and gather reports on the outcome of each case;
- Contribute in electoral law reform and review internal rules or procedures;

3. STATE PROSECUTOR

Pre-election period (period before announcement of elections)

- Provide the CEC with the latest database of persons who are under investigation for electoral violations;
- Provide trainings to prosecutors at central and municipal level on elections and electoral violations;
- Develop an operational plan for deployment of prosecutors in all municipalities during the election period;
- Develop an operational plan, resources and budget allocation for investigating backlog of election cases;
- Establish contacts and cooperation mechanisms with observer groups;
- Ensure that State Prosecutors and staff participate in the CEC election orientation program;

Election period (announcement of elections to certification of results)

- Monitor the pre-election day environment, political campaign events and rallies;
- Deploy at least two prosecutors in each municipality of Kosovo during the election day;
- Liaise operations with the CEC during the election day;
- Act immediately and responsively in the event that someone commits electoral crimes;

Post-Election period (after the certification of results)

- Continuously prosecute the persons who are indicted for electoral offences;
- Request assistance and information from election management bodies, as necessary;
- Instruct the CEC to keep the material of polling centers and stations which are under investigation;
- Liaise with observer organizations to assess whether they have any evidence or witnesses to cases;
- Contribute in electoral law reform and review internal rules or procedures;

4. KOSOVO POLICE

Pre-election period (period before announcement of elections)

- Coordinate preparations with election management bodies and EDR authorities;
- Develop an election security and operational plan, for deployment of police during the election period in coordination with the CEC;
- Provide trainings to police officers on electoral violations in coordination with ECAP and CEC;
- Generate statistics and reports regarding elections, based on the information that the KP has available;
- Conduct a risk assessment for polling centers, counts and results center, CEC depo;

Election period (announcement of elections to certification of results)

- Deploy police officers and provide security as necessary during the political campaign events and rallies;
- Act immediately and responsively upon instructions from state prosecutors;
- Deploy the police in all polling centers of Kosovo during election day, and coordinate activities with the CEC;
- Continue coordination with the CEC in the operations room during election day;

Post-Election period (after the certification of results)

- Conduct genuine investigations on each case, in accordance with the instructions of the judicial authorities;
- Conduct individual investigations for each person involved in the case;
- Act immediately upon instructions of state prosecutors and court's judgments;

5. KOSOVO JUDICIAL COUNCIL

Pre-election period (period before announcement of elections)

- Provide the CEC with the latest database of persons who violated electoral rights in a timely manner;
- Provide trainings for court judges and staff who will deal with cases related to elections;
- Continue adjudicating the backlog of cases related to violation of electoral rights;
- Apply effective and proportional sanctions to persons who violated electoral rights;
- Ensure that the decisions of the courts are made available to the public;
- Continuously inform the public about the measures taken by judicial authorities against electoral perpetrators;

Election period (announcement of elections to certification of results)

- Liaise with the State Prosecutor and ECAP on possible cases of violations of electoral rights;
- Act immediately and commence procedures for adjudication cases related to elections;
- Prioritize and adjudicate cases which could affect final election results;
- Inform the public of court's judgments on electoral cases, and make the decisions available online;
- Ensure that the public has access to information that ought to be transparent, without violating privacy laws;

Post-Election period (after the certification of results)

- Adjudicate and complete all cases related to elections, and complete these cases prior to new elections taking place;
- Apply effective and proportional sanctions to persons who violated electoral rights;
- Inform the public of court's judgments related to electoral cases;
- Contribute in electoral law reform and review internal rules or procedures;
- Ensure that persons found guilty by the court serve the sentence;
- Invite municipal election officers in each court case pertaining to elections;
- Develop a set of sentencing guidelines for electoral cases;

List of Publications

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#2 D4D Institute. March 2012. An Impression of Reform: How to Restore Trust on Elections?

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D4D in other publications:

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Bringing Justice to Elections: review of dispute resolution, and roadmap for institutional coordination / paper prepared by Dardan Berisha. – Prishtina : Demokraci për zhvillim, 2015. – 42 f. : ilustr. ; 21 cm.

1. Berisha, Dardan

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The Democracy for Development (D4D) Institute was established in April 2010 by a group of analysts who were increasingly worried that the state-building exercise had neglected democracy.

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