

Enforcing Justice in Elections

What was decided on complaints, appeals and penal cases pertaining to elections

Second edition



Democracy for Development
Demokraci për zhvillim
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Enforcing Justice in Elections

What was decided on complaints, appeals and penal cases pertaining to elections

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Executive Summary

There are a number of actors involved in election dispute resolution in Kosovo. The Election Complaints and Appeals Panel (ECAP) is an independent body composed of judges mandated to adjudicate complaints and appeals related to election process. The Central Election Commission (CEC) is responsible for administering the election, including registration of political parties and candidates, and receipt of annual and campaign finance reports. Election crimes foreseen in the criminal code are investigated, prosecuted and adjudicated by the Kosovo Police (KP), State Prosecutor (SP) and Courts, respectively. Lastly, the Independent Media Commission (IMC) is responsible for monitoring and enforcing regulations pertaining to media.

Experience from the past elections has shown that the synergy between these actors is critical to effective and fair resolution of election disputes. Over the years, the coordination between election management bodies and judicial institutions, the sanctioning of political entities for violation of election rules, and the criminal prosecution of those who violated voting rights has improved the electoral process over the years and has increased the citizens' and political entities' trust in the election process.

During the elections held between 2009 to 2019, the Election Complaints and Appeals Panel (ECAP) has received an average of 650 complaints for an election process, most of which pertain to campaign violations and election results. The number of complaints submitted to the ECAP has varied from lowest 326 complaints in the 2014 parliamentary elections to the highest 1,117 complaints in the 2017 local elections. In the country-wide elections held during this decade, the total value of fines imposed by ECAP to political entities was EUR 1,831,120. Partia Demokratike e Kosovës (PDK) has been the political entity with the highest penalties,

followed by the Lidhja Demokratike e Kosovës (LDK).

In terms of remedies provided other than fines, the data from the Central Election Commission shows that repeat elections are becoming a less frequent practice, while the re-count of the polling stations is becoming a more common practice. There have been no repeat elections in the last three parliamentary elections held during 2014, 2017 and 2019. In the last local elections 2017 and the parliamentary elections 2019, there was a considerable increase of re-counted polling stations, which resulted both from decisions of the CEC and ECAP judgments.

With respect to the State Prosecutor, the number of criminal charges and persons involved in the criminal charges against voting rights has drastically decreased. In 2013, there were 209 criminal charges involving 1,216 persons, and by September 2019, the State Prosecutor's Office had dealt with only 69 criminal reports involving 109 persons. Most of the criminal charges are filed by the Kosovo Police.

The Courts have had considerable number of cases for penal acts against voting rights. The number of cases in the Courts has dropped from 413 cases in 2015 to 266 in 2018, and further to 130 cases by June 2019. Also, the number of persons involved in these cases dropped from 1,172 in 2014 to 501 in 2018, and 273 by June 2019. Nine of 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”.

From 2015 to June 2019, in 73% of the cases resolved the Courts have found the defendants guilty. Only in 4% of the cases, there were acquittals, while the rest were rejected or resolved by other means. Of the cases resolved with a guilty

judgment, the data from the Courts from 2015 to June 2019 show that Courts:

- › In 9 cases, sanctioned 11 people with effective imprisonment.
- › In 31 cases, sanctioned 37 persons with fines.
- › In 278 cases (62%), sanctioned 699 persons with conditional punishment. In most cases of conditional punishment the offender is sanctioned with imprisonment, but would only be imprisoned if the offender commits another crime for a specified period of time (i.e. next two years).

In the Independent Media Commission, the lack of submission of the log-books, failure to allocate unpaid broadcast space, breach of electoral silence, hate speech or child presence in electoral spots have been the most common media violations. In some cases during elections held in 2017 and 2019, the Independent Media Commission imposed punitive measures on the media, mainly reprimands and fines.

Introduction

The first edition of the report "Bringing Justice to Elections" was published in 2015 and presented data on the elections held from 2009 to 2014. This is the second edition of the report that merges the data from the previous report with the data from the last local and parliamentary elections of 2017 and the parliamentary elections of 2019.

The data presented in this report includes: number of complaints and appeals submitted to ECAP, types of decisions and fines imposed on political entities by ECAP, number of penal cases against voting rights and judgments of the Courts, number of municipalities and polling stations holding repolls, number of recounted polling stations, and measures against media complaints. In instances where information was available, the data was broken down by the nature of violation, year, type of judgment, and municipality or region.

To prepare the second edition of the 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).

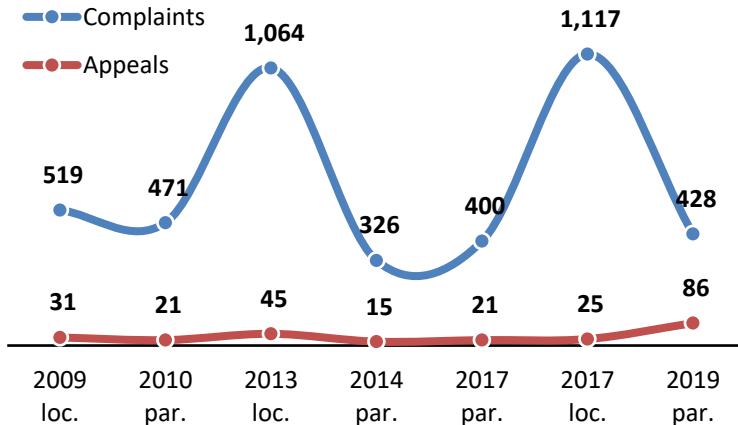
This report would not have been possible without the cooperation of the institutions which have generally provided access to data in a timely manner and have consistently been available for clarification and consultation.

Election Complaints and Appeals Panel

The Elections Complaints and Appeals Panel (ECAP) is a permanent independent body mandated to adjudicate complaints and appeals related to the election process (Art. 115 of Law on General Elections). All eligible voters, political entities, candidates and polling station commissioners have the right to complain at various stages of the election process if they find that there has been a violation of election laws or regulations or their electoral rights.

During the elections held from 2009 to 2019, the number of complaints filed with ECAP varied from the lowest 326 in the 2014 parliamentary elections to the highest 1,117 in the 2017 local elections (Figure 1). For all nation-wide elections held between 2009 and 2019, ECAP received on average of 650 complaints per election.

Figure 1: Number of complaints and appeals from 2009 to 2019 elections



Complaints are alleged violations of electoral laws. Appeals typically consist of complaints following a decision of the

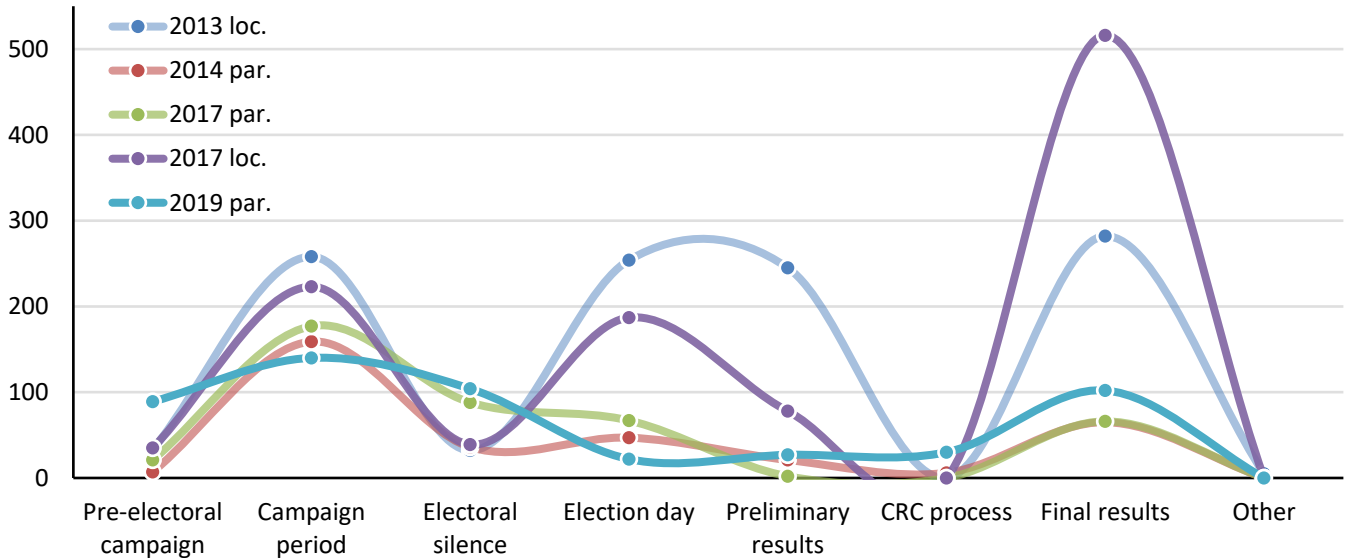
Central Election Commission (see below). The number of complaints is significantly higher in local elections than in parliamentary elections. This is because in a local elections each municipality is considered a race of its own and can be contested as such, and the number of political entities and candidates competing is many times higher than in parliamentary elections.

The number of appeals against CEC decisions has been relatively low. The figure above does not include appeals submitted by out-of-country voters, challenging CEC's rejection of their application to vote from abroad, with the exception of the numbers shown for the 2019 parliamentary elections (which has contributed to the increase in the number of appeals above). 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.

Campaign period, election day and announcement of final results are the most challenged periods of the election process. ECAP received less challenges during the pre-campaign period, electoral silence, and the post-election day procedures at the Count and Results Center (Figure 2).

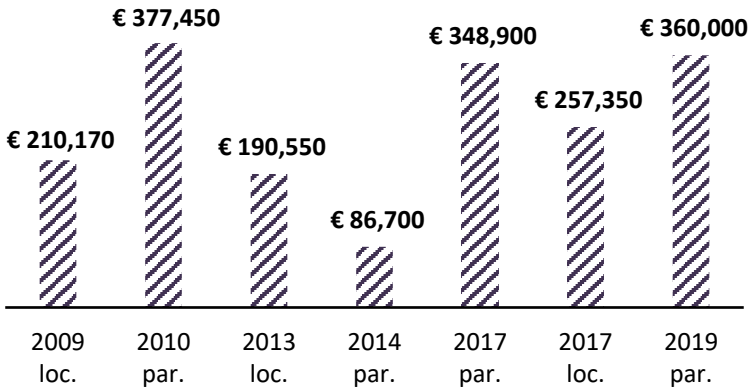
In the 2013 and 2017 local elections, the highest number of complaints was recorded in the period when the final results were announced. ECAP may consider proactive planning and optimization of resources to cope with the high volume of complains during this period.

Figure 2: Number of complaints and appeals by election phase



Political entities are fined if they are found to have committed violations of election laws and regulations. During the 2009 to 2019 elections the total amount of fines varied from the lowest EUR 86,700 in the 2014 parliamentary elections to the highest EUR 360,000 in the 2019 parliamentary elections (Figure 3). Although after 2010 fines have been on the downward trend and reached the lowest level in the 2014 parliamentary elections, in the last three elections the value of fines has increased considerably.

Figure 3: ECAP's fines on political entities



The political entity that has been fined the most is Partia Demokratike e Kosovës, which except during the 2017 local elections, has been the party with the highest level of fines in all elections. Lidhja Demokratike e Kosovës (LDK) is the party with the second highest value of fines and reached the highest penalty value of 78,550 EUR in the 2017 local elections (Figure 4).

Figure 4: ECAP's fines by political entity

	2009 loc.	2010 par.	2013 loc.	2014 par.	2017 par.	2017 loc.	2019 par.
PDK	85,620	148,400	93,150	55,900	158,000	34,950	100,100
LDK	48,900	88,050	38,100	12,200	71,700	78,550	74,850
AAK	12,720	77,600	36,300	3,900	-	17,200	89,600
VV	-	6,250	1,750	3,500	62,600	39,400	14,100
AKR	21,600	38,850	11,900	-	-	20,050	33,900
Others	41,330	18,300	9,350	11,200	56,600	67,200	47,450
Total (EUR)	210,170	377,450	190,550	86,700	348,900	257,350	360,000

¹ In the 2017 parliamentary elections, fines for the AAK are included in the total of PDK, while the AKR in the total of LDK. In the 2019 elections, the AAK fines also contained PSD, and AKR fines also contained NISMA.

According to its Regulation on Categorization of Sanctions and Fines (01/2012), ECAP may sanction a political entitle in value up to 50,000 euros. The table above raises the question of whether fines have been an effective measure to reduce electoral violations by political parties and their candidates. While after the 2010 parliamentary election there was a decrease in the total amount of fines, after the 2014 election the total amount of fines increased again. PDK, with the exception of 2017 election, continued to be the party with the highest number of fines. LDK was fined with more than 70,000 euros in each of the last three elections held. It would have been intuitive to assume that after being fined in such amount, the political entities would be more compliant, but this has not proven to be the case.

The following table presents data on the number of complaints by municipality where the alleged violations occurred (Figure 5). The largest number of complaints are submitted for municipalities with the largest number of voters. In these municipalities there are more campaign events, more polling stations and more voters. In every election, Prishtina, Prizren and Ferizaj have been in the top ten of municipalities where there have been alleged violations. Of the medium-sized municipalities, Lipjan, Podujeva, Vushtria, and Malisheva are the municipalities where complaints have been frequent. Except the municipalities run by non-majority communities where the number of complaints is significantly lower, the number of complaints has also been low in Elez Han, Junik, Dragash and Decan.

Figure 5: Complaints by municipality where alleged violations occurred (highlighted, top 10 for each election).

Municipality	2009 loc.	2010 par.	2013 loc.	2014 par.	2017 par.	2017 loc.
Prishtina	64	164	109	120	134	110
Lipjani	48	7	78	1	12	64
Obiliqi	5	2	46	1	7	65
Podujeva	21	6	31	24	11	44
F. Kosova	14	5	28	1	4	34
Drenasi	2	26	11	0	3	16
Gracanica	23	5	19	5	13	3
Peja	16	12	40	8	20	31
Istogu	12	4	57	5	4	39
Klina	7	11	45	1	4	21
Decani	0	0	30	3	8	10
Mitrovica	7	32	36	10	16	51
Skenderaj	19	49	2	3	6	47
Vushtrri	9	12	101	2	1	66
N. Mitrovica	0	0	4	3	0	0
Zubin Potok	0	0	1	0	2	0
Leposavici	0	1	2	3	19	5
Zveçani	0	0	2	1	2	0
Gjilani	54	18	30	6	35	24
Kamenica	10	0	53	5	19	40
Vitia	11	2	35	2	5	14
Novo Brda	0	0	11	0	3	3
Klllokoti	0	0	1	1	0	37
Parteshi	14	0	4	0	0	3
Ranillug	0	0	2	0	0	1
Gjakova	26	8	36	3	13	57

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Rahoveci	15	2	16	8	1	13
Malisheva	25	19	36	20	12	27
Junik	0	0	4	0	2	10
Prizren	58	28	81	48	22	128
Suhareka	31	3	17	11	8	10
Mamusha	0	0	6	3	2	4
Dragashi	2	5	2	0	0	0
Ferizaj	21	17	107	37	21	74
Shtime	12	0	12	1	5	40
Kacanik	15	12	8	3	0	5
Hani i Elezit	4	0	5	0	0	6
Shterpce	8	6	2	0	3	4

Lëvizja Vetëvendosje has filed more complaints to ECAP than other political entities. In the 2010 and 2014 parliamentary elections, VV was responsible for 36% of the complaints filed to ECAP. The Democratic Party of Kosovo has also been consistent with complaints, submitting 23% of total complaints in the 2017 local elections. From civil society organizations, the Balkan Investigative Reporting Network (BIRN) has maintained consistency by submitting complaints to almost every election (Figure 6).

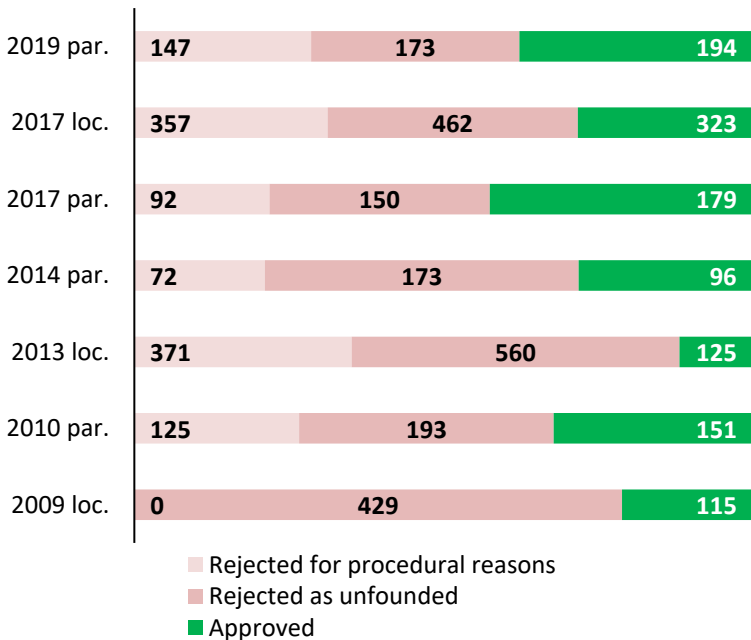
Figure 6: Who complains the most

	2009 loc.	2010 par.	2013 loc.	2014 par.	2017 par.	2017 loc.
PDK	113	47	128	66	60	263
LDK	0	30	87	14	59	151
VV	-	177	157	124	71	160
AAK	30	15	41	2	0	106
NISMA	-	-	-	7	0	82
AKR	82	58	19	17	0	42
Candidates	0	0	525	64	10	0
Lista Srpska	-	-	9	3	13	10
BIRN	0	39	27	2	37	128
Voters	59	50	9	7	0	76
NGO and others	266	76	107	35	171	117
TOTAL	550	492	1,109	341	421	1,135

It is also relevant to look at how ECAP handled and resolved the complaints. A significant proportion of complaints, from 21% in the 2014 parliamentary elections to 37% in the 2013 local elections, are rejected for procedural reasons. This includes complaints submitted beyond deadlines, complaints not fulfilling key requirements (i.e. missing data, name,

signature, defendant), complaints not falling within ECAP jurisdiction, or complaints that are withdrawn. Consideration should be given to reviewing electoral laws and ECAP regulations to provide opportunity for complainants to correct any procedural deficiencies. In each election, the highest proportion of complaints are refused as ungrounded, lacking evidence or reasoning that the alleged violation occurred. A higher proportion of complaints are approved for parliamentary elections than local elections, as approval rates have reached about 40% in the 2017 and 2019 parliamentary elections (Figure 7).

Figure 7: Number of ECAP decisions by type of decision,¹



¹ It is not known whether for the 2009 local elections, the complaints rejected for procedural reasons were placed within the number of unfounded complaints.

In the past elections, about 3% to 5% of ECAP decisions have been appealed to the Supreme Court. The number of ECAP decisions appealed to the Supreme Court is significantly higher in local elections than in parliamentary elections (Figure 8). This is due to higher number of complaints, and higher number of candidates competing in the local election.

Figure 8: Number of ECAP decisions appealed to the Supreme Court, by type of Court decision

	2009 loc.	2010 par.	2013 loc.	2014 par.	2017 par.	2017 loc.
Appeals to the Supreme Court	25	19	48	16	11	47
Approved appeals	0	1	1	2	3	7
Rejected Appeals	25	18	47	14	8	40

While in the elections held from 2009 to 2013 the Supreme Court rejected more than 95% of the cases for being ungrounded, from the 2014 elections onwards the percentage of approved appeals increased. In the 2017 parliamentary and 2017 local elections, the Supreme Court approved 27% and 15% of appeals, respectively.

Central Election Commission

The Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections. The CEC contributes in electoral justice by taking actions such as: referring criminal charges to the justice authorities, providing expertise in resolving cases, overseeing the political entity finances, reviewing and verifying out of country voting applications, and discretion for ordering repolls or recounts of polling stations.

With respect to out-of-Kosovo voting, the Central Election Commission admits and verifies the out of country voter applications, and determines eligibility for voting. CEC decisions to approve or reject applications of out-of-country voters may be appealed to ECAP.

Following the 2009 and 2010 elections, the number of out-of-country voting applications has drastically increased in the 2013 local elections, reaching a peak of 41,168 (Figure 9). This unusual increase was mainly due to the collection and facilitation of voter applications from the Republic of Serbia.

Figure 9: Review of Out-of-Country Voting Applications by the CEC

	2009 loc.	2010 par.	2013 loc.	2014 par.	2017 par.	2017 loc.	2019 par.
Accepted applications	1,806	5,015	41,168	29,745	20,354	11,815	35,087
Approved applications	-	1,640	13,653	16,569	15,118	10,487	29,861
Approved percentage	-	32%	33%	55%	74%	89%	85%

Following these elections there was a decrease in the number of applications for elections held in 2014 and 2017, and the applications increased again in the 2019 parliamentary elections. Over the years, the percentage of approved applications has significantly increased. That may be due to the support that political entities offer to voters abroad during the application process, and the mobilization campaigns organized by political entities abroad. D4D did not obtain data on the number of appeals against CEC decisions for approval or rejection of applications submitted to ECAP, and subsequently the number of appeals rejected or approved by ECAP.

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 a 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. In 2017 local elections, the elections were repeated in Istog and Partesh.

However, repeated elections are becoming a more unusual practice, especially for parliamentary elections for which there has been no repeat elections in the past three parliamentary elections of 2014, 2017 and 2019. There are a number of factors that could have contributed to this: reduction of election fraud, improved coordination between election justice and election management bodies, and better

integration of Serb-community elections. Whereas in the last local elections 2017 and parliamentary elections 2019, there was a significant increase in number of polling stations recounted (Figure 10).

Figure 10: Re-polls and re-counts, from the 2009 to 2019 elections

	No. of municipalities holding re-polls	No. of polling stations recounted
2009 loc.	3 full	450
2010 par.	4 full 2 partial	890
2013 loc.	3 partial	439
2014 par.	None	421
2017 par.	None	565
2017 loc.	2 full	1,130
2019 par.	None	2,247

With regard to political finance, the CEC fined ten political entities for delayed submission of campaign finance reports for the 2013 local elections, while after the local elections 2017, three other entities were fined for the same reason. Most of these entities 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.

There were no delays in campaign finance reporting from political entity and as a result there were no fines in the 2014, 2017 and 2019 parliamentary elections (Figure 11).

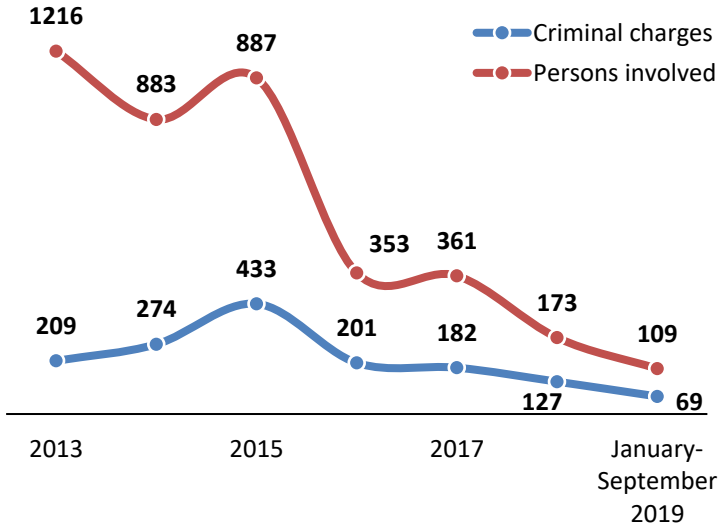
Figure 11: CEC fines on political entities for delays in submitting elections campaign finance report

Political Entity	Delay	Fine
Local Election 2013		
Partia e Ashkalinjeve për 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 2013 local		€ 12.578
Parliamentary Elections 2014		
	0	0
Parliamentary Elections 2017		
	0	0
Local Elections 2017		
PSHDK	92 days	€ 1,009.20
Gi Narodna Pravda	14 days	€ 1,001.40
Gi Narodno Jedinstvo	46 days	€ 1.004,60
TOTAL 2017 local		€ 3,015.20
Parliamentary Elections 2019		
	0	0

State Prosecutor

The State Prosecutor (SP) is responsible for the prosecution of persons who committed penal acts against voting rights. The number of criminal charges and number of persons involved in these charges has drastically decreased. This could be for a number of reasons: increased visibility of judicial authorities in combating election fraud, meaningful sanctions against offenders, and decrease in criminal offences committed by political parties. In 2013 there were 209 criminal charges involving 1,216 persons, while by September 2019, the State Prosecutor's Office had only 69 criminal charges involving 109 persons (Figure 12).

Figure 12: Number of criminal charges and persons involved, from 2013 to September 2019



Following the 2013 local and 2014 parliamentary elections, the number of new criminal charges received has increased. In 2014 there were 169 new criminal charges received, while

in 2015, 234 new charges received, which together with the criminal charges from previous years increased the number of criminal charges to 433 in 2015. The number of new criminal charges has dropped drastically since then. Although the local and parliamentary elections were held in 2017, the number of new criminal charges received during 2017 was 5, in 2018 it was 11, and by September 2019 it was only 2 (Figure 13).

Figure 13: Number of criminal charges and persons involved, from 2013 to September 2019

2013	Charges	Persons
Unresolved from previous years	90	562
New criminal charges received	119	654
Total criminal charges 2013	209	1,216
Resolved during year	104	577
Unresolved	105	639
2014	Charges	Persons
Unresolved from previous years	105	639
New criminal charges received	169	244
Total criminal charges 2014	274	883
Resolved during year	75	229
Unresolved	199	654
2015	Charges	Persons
Unresolved from previous years	199	640
New criminal charges received	234	247
Total criminal charges 2015	433	887
Resolved during year	233	535
Unresolved	200	352

2016	Charges	Persons
Unresolved from previous years	200	352
New criminal charges received	1	1
Total criminal charges 2016	201	353
Resolved during year	24	42
Unresolved	177	311

2017	Charges	Persons
Unresolved from previous years	177	311
New criminal charges received	5	50
Total criminal charges 2017	182	361
Resolved during year	66	201
Unresolved	116	160

2018	Charges	Persons
Unresolved from previous years	116	160
New criminal charges received	11	13
Total criminal charges 2018	127	173
Resolved during year	60	66
Unresolved	67	107

January – September 2019	Charges	Persons
Unresolved from previous years	67	107
New criminal charges received	2	2
Total criminal charges up to Sep 2019	69	109
Resolved during year	24	30
Unresolved	45	79

In most cases the criminal charges are filed by the Kosovo Police. During 2014 and 2015, 56% and 75% of criminal charges, respectively, were filed by the Kosovo Police. A significant proportion of criminal charges are submitted by other entities, including election management bodies. The number of criminal charges submitted directly by citizens and the prosecution over the years has been very low or zero (Figure 14). Citizens may lack information as to their right to file criminal charges for violations of electoral laws or their electoral rights.

Figure 14: Number of criminal charges raised, by entity complainant, for 2013 and 2019

	2013	2014	2015	2016	2017	2018	09. 2019
Citizen	0	2	0	0	0	0	0
KP	30	95	177	0	0	0	2
ACA	0	1	0	0	0	0	0
Inspection	62	44	0	0	5	0	0
EULEX	0	0	0	0	0	0	0
Others	27	27	56	1	0	11	0
Prosecution	0	0	1	0	0	0	0
TOTAL	119	169	234	1	5	11	2

Kosovo Police

The Kosovo Police (KP) is primarily responsible for security and order during the election process.

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.

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. During 2019, KP had a total of 52 cases in various phases of review. Of the 33 cases that were open during election day, nearly 50% of the cases deal with violation of secrecy of the vote, or taking photograph of the vote. This violation has occurred more in the region of Prizren and Gjakova (Figure 15).

Figure 15: Summary of KP cases and persons arrested, during the 2013, 2014 and 2019 election

Kosovo Police	2013	2014	2019
Election Campaign	37 cases, of which 15 were referred to SP	4 cases referred to SP	14 cases in various review status
Election day	47 cases investigated with SP	25 cases investigated with SP	33 cases of election day violations
	37 persons arrested	18 persons arrested	(5 cases after election day)

Of the 52 cases noted during 2019, 7 were initiated for North Mitrovica, mainly dealing with threats and intimidation of candidates.

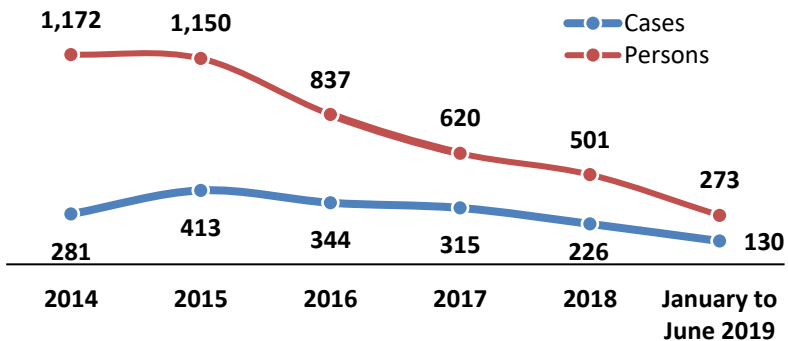
As part of the electoral justice institutional chain, KP should continue acting responsively if it witnesses violations of electoral process, and assist the other institutions to complete the investigations. KP's activism in the 2013 local elections seems to have prohibited violations during the 2014 elections, as the number of cases and persons arrested was much lower.

Kosovo Judicial Council

The Kosovo Judicial Council is a fully independent institution that ensures that the Kosovo courts are independent, professional and impartial. The Kosovo Judicial Council among others is responsible for conducting judicial inspections, judicial administration, developing court rules, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction.

Judgment for penal acts against voting rights, according to Articles 207 to 217 of Criminal Code of the Republic of Kosovo (2019), are issued by the Courts. The number of cases for violation of voting rights and the persons involved is decreasing. The number of cases in the Courts has decreased from 413 cases in 2015 to 226 in 2018, and further to 130 by June 2019. Also, the number of persons involved in these cases has decreased from 1,172 in 2014 to 501 in 2018, and to 273 through to June 2019 (Figure 16).

Figure 16: Number of cases in the courts and persons involved in the criminal offenses against voting rights



Nine of ten cases pertain to the alleged violation 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”.(Figure 17).

Figure 17: Number of cases in courts, by electoral offense

	2015	2016	2017	2018	2019
Violation of the right to be a candidate	0	0	0	0	0
Threat to the candidate	0	0	2	2	1
Preventing exercise of the right to vote	5	4	1	0	0
Violating the free decision of voters	5	3	4	0	0
Abuse of official duty during elections	8	4	4	4	3
Giving or receiving a bribe in relation to voting	3	3	7	4	2
Abusing the right to vote	377	315	278	204	114
Obstructing the voting process	9	5	6	3	2
Violating confidentiality in voting	5	5	5	5	4
Falsification of voting results	0	2	4	2	2
Destroying voting documents	1	3	4	2	2
TOTAL	413	344	315	226	130

The number of cases pertaining to falsification of results is low, despite the high number of polling stations re-counted. There were no cases of violation of the right to be a candidate, and very few cases of threat to the candidate, despite concerns raised from the observer reports on the threat of the candidates especially among the political entities of the Serbian community.

In 2015, Courts received 223 new cases against voting rights, which increased the total number of cases to 413 during 2015. During 2016, 2017 and 2018 Courts have resolved 32%, 35% and 46% of cases, which reduced the number of cases to 120 at the end of 2018. Even though two elections were held during 2017, the number of new cases received during 2018 (22), and 2019 through June (9) is significantly lower than in previous years (Figure 18).

From 2015 to June 2019, in 73% of the cases resolved the Courts have found the defendants guilty. Only in 4% of the cases, there were acquittals, while the rest were rejected or resolved by other means. Of the cases resolved with a guilty judgment, the data from the Courts from 2015 to June 2019 show that Courts:

- › In 9 cases, sanctioned 11 people with effective imprisonment.
- › In 31 cases, sanctioned 37 persons with fines.
- › In 278 cases (62%), sanctioned 699 persons with conditional punishment.

The most common judgment, in 62% of the cases resolved from 2015 to June 2019, is the 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 (Figure 18).

Figure 18: Number of cases and persons involved, by type of court judgement

2014	Cases	Persons
Cases leftover from previous years	188	934
New cases received during 2014	93	238
Total cases 2014	281	1,172
Resolved during 2014	128	636
Unresolved	153	536
2015	Cases	Persons
Cases leftover from previous years	190	682
New cases received during 2015	223	468
Total cases 2015	413	1,150
Resolved during 2015	100	313
Unresolved	313	837
2016	Cases	Persons
Cases leftover from previous years	297	755
New cases received during 2016	47	82
Total cases 2016	344	837
Resolved during 2016	111	329
Unresolved	233	508

2017	Cases	Persons
Cases leftover from previous years	227	508
New cases received during 2017	88	112
Total cases 2017	315	620
Resolved during 2017	111	150
Unresolved	204	470
2018	Cases	Persons
Cases leftover from previous years	204	470
New cases received during 2018	22	31
Total cases 2018	226	501
Resolved during 2018	105	238
Unresolved	121	263
January to June 2019	Cases	Persons
Cases leftover from previous years	121	263
New cases received through Jun. 2019	9	10
Total cases through June 2019	130	273
Resolved through June 2019	25	44
Unresolved	105	229

What was decided on complaints, appeals and penal cases pertaining to elections

2015

Criminal Offenses	Guilty Column 1: Cases Column 2: Persons						Acquitted & Other Column 1: Cases Column 2: Persons					
	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Violating the free decision of voters	0	0	0	0	1	2	0	0	0	0	0	0
Abuse of official duty during elections	0	0	0	0	0	0	2	3	0	0	0	0
Giving or receiving a bribe in relation to voting	0	0	1	2	1	1	0	6	2	8	1	1
Abusing the right to vote	5	5	3	4	62	210	4	10	6	27	8	26
Obstructing the voting process	1	2	0	0	3	6	0	0	0	0	0	0
TOTAL	6	7	4	6	67	219	6	19	8	35	9	27

2016

Criminal Offenses	Guilty Column 1: Cases Column 2: Persons						Acquitted & Other Column 1: Cases Column 2: Persons					
	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Violating the free decision of voters	0	0	0	0	0	0	0	0	0	0	1	1
Abuse of official duty during Elections	0	0	1	1	0	0	1	1	1	7	0	0
Giving or receiving a bribe in relation to voting	0	0	0	0	0	0	0	0	0	0	1	1
Abusing the right to vote	0	0	2	5	73	232	5	21	9	20	13	35
Obstructing the voting process	0	0	0	0	0	0	1	2	0	0	0	0
Violating the free decision of voters	0	0	2	2	1	1	0	0	0	0	0	0
TOTAL	0	0	5	8	74	233	7	24	10	27	15	37

What was decided on complaints, appeals and penal cases pertaining to elections

2017

Criminal Offenses	Guilty Column 1: Cases Column 2: Persons						Acquitted & Other Column 1: Cases Column 2: Persons					
	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Violating the free decision of voters	0	0	0	0	1	1	0	0	0	0	0	0
Abuse of official duty during Elections	0	0	1	1	2	2	0	0	1	1	0	0
Giving or receiving a bribe in relation to voting	0	0	1	1	0	0	0	0	0	0	1	1
Abusing the right to vote	1	2	0	0	1	1	1	1	1	1	0	0
Obstructing the voting process	1	1	16	16	56	77	2	2	13	13	4	18
Violating the free decision of voters	1	1	1	2	1	1	0	0	0	0	0	0
Abuse of official duty during Elections	0	0	0	0	1	1	0	0	0	0	0	0
Giving or receiving a bribe in relation to voting	0	0	0	0	1	1	0	0	0	0	1	3
Abusing the right to vote	0	0	0	0	2	2	0	0	0	0	0	0
TOTAL	3	4	19	20	65	86	3	3	15	15	6	22

2018

Criminal Offenses	Guilty						Acquitted & Other					
	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Violating the free decision of voters	0	0	0	0	0	0	1	1	0	0	0	0
Abuse of official duty during Elections	0	0	0	0	1	1	0	0	0	0	0	0
Giving or receiving a bribe in relation to voting	0	0	0	0	1	1	1	1	0	0	1	1
Abusing the right to vote	0	0	1	1	61	138	3	9	18	31	13	50
Obstructing the voting process	0	0	0	0	1	1	0	0	0	0	0	0
Violating the free decision of voters	0	0	0	0	0	0	0	0	0	0	1	1
Abuse of official duty during Elections	0	0	0	0	1	1	1	1	0	0	0	0
TOTAL	0	0	1	1	65	142	6	12	18	31	15	52

What was decided on complaints, appeals and penal cases pertaining to elections

		Guilty						Acquitted & Other					
		Column 1: Cases			Column 2: Persons			Column 1: Cases			Column 2: Persons		
2019	Criminal Offenses	Prison		Fine		Conditional		Not Guilty		Refused		Other	
	Abusing the right to vote	0	0	2	2	6	18	0	0	2	2	1	5
	Obstructing the voting process	0	0	0	0	1	1	0	0	0	0	0	0
	TOTAL	0	0	2	2	7	19	0	0	2	2	1	5

The Basic Courts of Prishtina, Ferizaj and Gjilan have been less effective in resolving election cases than the Basic Courts in Mitrovica, Peja, Prizren and Gjakova (Figure 19).

Figure 19: Annual summary of cases resolved by the Basic Courts

2015	Total	Prishtina	Mitrovica	Peja	Prizren	Ferizaj	Gjilan	Gjakova
Cases	413	146	85	46	32	19	60	25
Resolved	100	13	13	19	14	8	17	16
Resolved %	24%	9%	15%	41%	44%	42%	28%	64%

2016	Total	Prishtina	Mitrovica	Peja	Prizren	Ferizaj	Gjilan	Gjakova
Cases	344	153	76	34	5	13	55	8
Resolved	111	41	4	22	2	2	34	6
Resolved %	32%	27%	5%	65%	40%	15%	62%	75%

What was decided on complaints, appeals and penal cases pertaining to elections

2017	Total	Prishtina	Mitrovica	Peja	Prizren	Ferizaj	Gjilan	Gjakova
Cases	315	138	107	19	7	13	28	3
Resolved	111	31	58	8	3	4	6	1
Resolved %	35%	22%	54%	42%	43%	31%	21%	33%

2018	Total	Prishtina	Mitrovica	Peja	Prizren	Ferizaj	Gjilan	Gjakova
Cases	226	119	52	13	5	12	22	3
Resolved	105	54	30	7	4	2	6	2
Resolved %	46%	45%	58%	54%	80%	17%	27%	67%

Jan-June 2019	Total	Prishtina	Mitrovica	Peja	Prizren	Ferizaj	Gjilan	Gjakova
Cases	130	67	28	7	1	10	16	1
Resolved	25	12	9	2	1	1	0	0
Resolved %	19%	18%	32%	29%	100%	10%	0%	0%

Independent Media Commission

The Independent Media Commission (IMC) is the body responsible for the regulation, management and oversight of the broadcasting frequency spectrum in the Republic of Kosovo. The Code of Conduct for audiovisual media issued by the Independent Media Commission, applies in all aspects of political advertising and media campaign. This Code of Conduct applies to all journalists, editors, broadcast leaders, and publishers.

The lack of submission of the log-books, failure to allocate unpaid broadcast space, breach of electoral silence, and hate speech or child presence in electoral spots have been the most common media violations. In the elections held in 2017 and 2019, no data were received by type or nature of the violation. (Figure 20).

Figure 20: Number of IMC complaints against audiovisual media by nature of complaints

Nature of complaint	2009	2010	2013	2014	2017	2019
Lack of submission of the log-books	35	0	58	75	0	0
Failure to allocate unpaid broadcast space	3	1	10	0	2	0
Breach of electoral silence	7	1	3	2	1	1
Content of the spot	0	0	6	6	1	0
Spots broadcast out of campaign period	0	0	0	5	0	0

Head of media running in the election	0	0	4	1	0	0
Spots broadcast during news editions	2	0	0	0	0	0
Others/unknown	2	1	3	0	81	12
TOTAL	49	3	84	89	85	12

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 vast majority of complaints 92% were initiated ex-officio by IMC, and this is particularly important given the limited number of complaints submitted by other entities. 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 21).

Figure 21: Number of complaints by complainant entity, from the 2009 to 2019

Entity	2009	2010	2013	2014	2017	2019
IMC	42	1	76	89	81	11
AAK	1	0	1	0	0	0
AKR	0	0	1	0	0	0
AKR/LDD	1	0	0	0	0	0
LDK	1	1	0	0	1	0
VAKAT	1	0	0	0	0	0
Others	3	1	6	0	3	1
TOTAL	49	3	84	89	85	12

In some cases, the Independent Media Commission has imposed punitive measures to media agencies mainly

through warning and fines. The figure below summaries the warnings and fines imposed by the IMC to the media for the 2017 local and parliamentary elections and for the 2019 parliamentary elections.

The media with the highest fines have been Klan Kosova and TV Dukagjini (Figure 22), and some other media mainly small media, whose fines ranged from 1,000 to 2,000 euros.

Figure 22: IMC punitive measures, by media

	2017 par.	2017 loc.	2019 par.
RTK 1	Warning	2,000	Warning
KTV	-	-	2,000
RTV21	Warning	-	1,000
KLAN KS	Warning	5,000	3,000
Dukagjini TV	Warning	3,000	4,000

Conclusions and recommendations

On December 13 to 15 2019, a workshop on election justice was facilitated by Democracy for Development with election management bodies and justice authorities. The workshop was attended by heads of key institutions including Central Election Commission, Election Complaints and Appeals Panel, Kosovo Police, State Prosecutor, and Kosovo Judicial Council. The findings of this report were presented at the workshop with the aim of getting feedback from the respective institutions.

The data and the input from the institutions shows that generally that violations of election laws are on the trend of decline, and the number of case and persons involved in penal cases has been significantly decreasing over the years. Overall the institutions were of the view that the coordination between the institutions has contributed to free and fair elections, and was commended by both domestic and international observer reports. The institutions were generally pleased with the level of coordination and cooperation that resulted from the signing of the memorandum of understanding during 2016, under the facilitation of Democracy for Development.

The most positive aspects of recent elections mentioned by participants included: timely publication of election results, improved communication with political parties, more effective administration of operations during election day, effective coordination in preventing violations of election legislation, and handling of election disputes.

The most challenging aspects of the recent national elections identified during the workshop were: out-of-country voting, political interference in elections, lack of adequate qualifications/training of polling staff, mistake in the results reconciliation form, lack of quality in media reporting of elections, and security (primarily concerning in

municipalities led by Serb communities. The institutions discussed at length about the contamination of ballots received from Serbia. They viewed this as a threat to the integrity of elections and one way in which political interference was manifested during this process.

It was noted that repeated elections are becoming a more unusual practice, especially for parliamentary elections for which there has been no repeat elections in the past three parliamentary elections of 2014, 2017 and 2019. Most of the discussion during the workshop revolved around reduction of the proportion of ballot boxes re-counted.

In accordance with the lessons learned from previous elections, and with the aim of further advancing their coordination, participants recommended the following:

- › Inviting the Independent Media Commission to join as a signatory party in the memorandum of understanding, with the aim of addressing the issue of fake news and quality of media reporting of elections.
- › Holding joint trainings for police, prosecutors and judges with respect to key areas/aspects of elections, campaign finance, election day procedures, and results tabulation. The trainings are aimed at assisting justice authorities in resolving cases in an informed and effective manner.
- › Preparing a joint calendar of actions and activities, and establishing funds for further enhancing the cooperation between the institutions.

Developing effective channels of communication between the institutions and sharing of information, particularly during campaign period and election day operations i.e. hold joint press briefings, exchange information in written form, and participate in the CEC operation room.

What was decided on complaints, appeals and penal cases pertaining to elections

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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#1 Valëza Zogjani, Gentiola Madhi and Boris Žerjav, November 2018. Connectivity for Development: Taking the Highway for Economic Growth

#2 Valëza Zogjani, Ana Nenezić, and Nirvana Deliu. Edited by: Shpend Emini. January 2020. Evolving or revolving: Institutional reforms and democratic legitimacy in Kosovo, Albania, and Montenegro.

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D4D's vision is to promote an active and educated citizenry that both fully participates in the public space and utilizes the public arena of representation and decision-making to deliberate and build consensus over smart, efficient, and sustainable resource allocation as well as equitable development. For more information about

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