

Elections in court

Resolution of election disputes in Kosovo

Third edition



Democracy for Development
Demokraci për zhvillim
Demokratija za razvoj

Elections in Court

Resolution of election disputes in Kosovo

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Pristina, May 2021

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Introduction

Democracy for Development (D4D) has a long-standing legacy and expertise of working with political parties, election management bodies, civil society organizations and justice institutions to promote free and fair elections and promote the participation of marginalized communities in democratic processes.

D4D has been involved in a wide array of election topics including electoral and constitutional reform, voter behavior research, voter list audit, political party finance, election dispute resolution, voter education, and inclusion of youth, women and ethnic communities.

Since 2014, D4D has provided critical support to building a reliable and effective election dispute resolution system in Kosovo. In 2016, D4D supported the signing of a memorandum of understanding between the Central Election Commission (CEC), Election Complaints and Appeals Panel (ECAP), Kosovo Police (KP), State Prosecution (SP) and Kosovo Judicial Council (KJC). During September 2020, the heads election management bodies and justice authorities renewed the Memorandum of Understanding, reaffirming their commitment to free and fair elections. During 2020, the Independent Media Commission (IMC) joined as a signatory party, providing a new momentum to addressing new and emerging challenges such as fake news and disinformation.

Over the years, D4D has supported regular coordination workshops¹ between the institutions, conducted research on

¹ **Roundtable:** <https://d4d-ks.org/en/activities/roundtable-prishtina-electoral-justice-elections-june-11th/>

election justice², and supported the development of a manual³ for resolution of disputes for prosecutors and judges.

This is the third edition of the electoral justice report. The data presented in this report includes: number of complaints and appeals submitted to ECAP, types of decisions and fines, number of penal cases against voting rights in 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 and type of judgment.

This report would not have been possible without the cooperation of institutions including 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).

² **First Edition:** Bringing Justice to Elections: <https://d4d-ks.org/en/papers/bringing-justice-to-elections> ; and **Second Edition:** Enforcing Justice in Elections: <https://d4d-ks.org/en/papers/enforcing-justice-elections-decided-complaints-appeals-penal-cases-pertaining-elections>.

³ **Workshop:** <https://d4d-ks.org/en/activities/workshop-updaing-manual-related-electoral-disputes/>

Executive Summary

There are a number of actors involved in election dispute resolution in Kosovo. 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 and increased the citizens' and political entities' trust in the elections.

- › The Election Complaints and Appeals Panel (ECAP) is an independent body composed of judges mandated to adjudicate complaints and appeals related to election process. During the nation-wide elections held between 2009 to 2021, ECAP received an average of 564 complaints for an election, ranging from lowest 189 complaints in the 2021 parliamentary elections to the highest 1,117 complaints in the 2017 local elections. The low number of complaints in the 2021 elections is mainly due to the limited campaign activity as a result of the Covid-19 pandemic. In the country-wide elections held from 2009 to 2021, the total value of fines imposed by ECAP to political entities was EUR 2,039,470. In these elections, Partia Demokratike e Kosovës (PDK) has been the political entity with the highest penalties, followed by the Lidhja Demokratike e Kosovës (LDK).
- › The Central Election Commission (CEC) is responsible for administering the elections, including registration of political parties and candidates, review of annual and

campaign finance reports, and ordering re-polls or recounts as needed. The data from the CEC shows that repeat elections are becoming a less frequent practice. There have been no repeat elections in the last four parliamentary elections held during 2014, 2017, 2019 and 2021. In the local elections held in 2017 and the parliamentary elections in 2019, there was a considerable increase of re-counted polling stations, which resulted both from decisions of the CEC and ECAP judgments, however this has decreased again in the 2021 elections.

- › The State Prosecutor (SP) is mandated to investigate and prosecute cases of election crimes. The number of criminal charges and persons involved against voting rights has drastically decreased over the years. In 2013 there were 209 criminal charges involving 1,216 persons, while in 2021 elections, the State Prosecutor recorded 13 cases involving 17 persons. A number of factors could have contributed to this: increased visibility of judicial authorities in combating election fraud, meaningful sanctions against offenders, and decrease in criminal offences committed by political parties.
 - › The Kosovo Police (KP) operates within its overall mandate to ensure election security and conduct investigations for serious election violations. Overall, the number of cases has been decreasing from year to year. During the 2021 parliamentary elections, the Kosovo Police recorded a total of 11 cases pertaining to violations of voting rights, arrested 4 persons, and detained 1. Of the 11 cases recorded by the Police, 5 were on election day.
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- › The Kosovo Judicial Council (KJC)/Courts adjudicates penal acts pertaining to violation of voting rights in accordance with the criminal code and criminal procedure. 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 126 in 2020. Also, the number of persons involved in these cases dropped from 1,172 in 2014 to 316 in 2020. Most of the 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”. During 2020, there was an increase in cases pertaining to election results. From 2015 until 2020, of the cases for which the Courts have found the defendants guilty, the Courts have ruled in the following manner:
 - In 9 cases, sanctioned 11 people with effective imprisonment.
 - In 38 cases, sanctioned 53 persons with fines.
 - In 315 cases, sanctioned 767 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).

 - › The Independent Media Commission (IMC) is responsible for monitoring and enforcing regulations
-

pertaining to media. The lack of submission of 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 the recent elections, including those held in 2017, 2019, and 2021 the Independent Media Commission imposed punitive measures on the media, mainly reprimands and fines up to 7,500 euros.

Overall the stakeholders and election observers have praised the response of the institutions in adjudication of election disputes. While there is room for further improvement, their coordination is believed to have been a key factor why Kosovo holds free and fair elections.

Case KO95/20 Constitutional Court



On January 6, 2021, the Constitutional Court of the Republic of Kosovo issued its judgment KO 95/20 in which it held that the June 3, 2020 decision of the Assembly of Kosovo on election of the Government of Kosovo was not in compliance with the Constitution.

The Constitution of Kosovo requires the vote of at least sixty-one (61) deputies to elect the Government. The Government elected on June 3, 2020 had received sixty-one (61) votes. The Court held that the government did not receive majority as one of the votes was cast by a member of parliament who did not meet the election law criteria to stand as candidate, after having been convicted for a criminal offense by a final court decision in the last 3 years.

The Court held that new elections should be held within forty (40) days from the announcement by the President.

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 2021, the number of complaints filed with ECAP varied from the lowest 189 in the 2021 parliamentary elections to the highest 1,117 in the 2017 local elections (Figure 1). The Covid-19 pandemic significantly hampered campaign activity, which is understood to be the reason why only 189 complaints were submitted during the 2021 elections.

Figure 1: Number of complaints⁴ and appeals⁵ from 2009 to 2021⁶

	Complaints	Appeals
2009 loc.	519	31
2010 par.	471	21
2013 loc.	1,064	45
2014 par.	326	15
2017 par.	400	21
2017 loc.	1,117	25
2019 par.	(86)	86
2021 par.	189	583

The number of complaints is significantly higher in local elections than in parliamentary elections. During the local elections each municipality is considered a race of its own and there are more campaign events as a result. In addition, the number of political entities and candidates competing is usually several times higher than in parliamentary elections, which is understood to be the reason for the increase in the number of complaints.

With the exception of 2019 and 2021 elections, the figure

⁴ A Complainant is an alleged violation of election laws or rules, submitted in writing by a person who has a legal interest or whose rights have been violated during the election process.

⁵ A natural or legal person whose legal rights are affected by decisions taken by the CEC, as defined by law, may appeal that decision to the ECAP to request a review of that decision.

⁶ The number of appeals during 2019 and 2021 elections includes the appeals against CEC's decision to refuse out of country voting applications. These appeals are not included in data from previous years.

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. Generally, when out of country voter appeals are excluded, it is apparent that the number of appeals against CEC decisions has been relatively low.

The campaign period, election day and announcement of final results have traditionally been the most challenged periods of the elections. During the 2021 parliamentary election, there was an increase in complaints submitted before the campaign period, and a significant decrease in complaints submitted during the campaign period. (Figure 2). This is primarily understood to be because of the impact of the Covid-19 pandemic in the campaign.

Generally, a higher number of complaints is recorded during the publication of final results. 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

	Pre-electoral campaign	Campaign period	Electoral silence	Election day	Preliminary results	CRC process	Final results	Total
2013 loc.	33	258	32	254	245	0	282	1104
2014 par.	7	159	36	47	21	6	65	341
2017 par.	21	177	88	67	2	0	66	421
2017 loc.	35	223	39	187	78	0	516	1078
2019 par.	89	140	104	22	27	30	102	514
2021 par.	376	37	104	43	3	0	212	775

Political entities are fined if they are found to have committed violations of election laws and regulations. In elections held between 2009 to 2021 the total amount of fines varied from the lowest EUR 86,700 in the 2014 parliamentary elections to the highest EUR 377,450 in the 2010 parliamentary elections (Figure 3). During 2021, political parties were fined in total value of 208,350 euros, which is considerably high considering the limited campaign activity due to Covid-19 pandemic. Although after 2010 fines have been on the downward trend and reached the lowest level in the 2014 parliamentary elections, in the last four elections the value of fines has remained considerably high.

Figure 3: ECAP's fines on political entities

	Total Fines
2009 loc.	€ 210,170
2010 par.	€ 377,450
2013 loc.	€ 190,550
2014 par.	€ 86,700
2017 par.	€ 348,900
2017 loc.	€ 257,350
2019 par.	€ 360,000
2021 par.	€ 208,350

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) was 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

	PDK	LDK	AAK	VV	AKR	Others	Total
2021 par.	66,100	24,600	52,750	40,700	-	24,200	208,350
2019 par.	100,100	74,850	89,600	14,100	33,900	47,450	360,000
2017 loc.	34,950	78,550	17,200	39,400	20,050	67,200	257,350
2017 par.	158,000	71,700	-	62,600	-	56,600	348,900
2014 par.	55,900	12,200	3,900	3,500	-	11,200	86,700
2013 loc.	93,150	38,100	36,300	1,750	11,900	9,350	190,550
2010 par.	148,400	88,050	77,600	6,250	38,850	18,300	377,450
2009 loc.	85,620	48,900	12,720	-	21,600	41,330	210,170

⁷ A number of coalitions affect the figures. In 2021 parliamentary elections AKR was in coalition with LDK. In the 2019 elections, the AAK fines also contained PSD, and AKR fines also contained NISMA. In the 2017 parliamentary elections, fines for the AAK are included in the total of PDK, while the AKR in the total of LDK.

According to its Regulation on Categorization of Sanctions and Fines (01/2012), ECAP may sanction a political entity 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, continues to be the party with the highest number of fines. LDK was fined with more than 70,000 euros in three elections held, although the fines have decreased significantly during 2021. 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.

Lëvizja Vetëvendosje and Partia Demokratike e Kosovës have 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. Partia Demokratike e Kosovës submitted 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 5).

Figure 5: Who complains the most⁸

	PDK	LDK	VV	AAK	NISMA	AKR	Candidate	Lista Srpska	BIRN	Other	TOTAL
2009 loc.	113	0	-	30	-	82	0	-	0	325	550
2010 par.	47	30	177	15	-	58	0	-	39	126	492
2013 loc.	128	87	157	41	-	19	525	9	27	116	1,109
2014 par.	66	14	124	2	7	17	64	3	2	42	341
2017 par.	60	59	71	0	0	0	10	13	37	171	421
2017 loc.	263	151	160	106	82	42	0	10	128	193	1,135
2019 par.	28	68	62	7	62	-	0	2	103	182	514
2021 par.	124	21	117	81	1	0	0	0	14	417	775

⁸ The 2019 BIRN complaints also include complaints by IKS. The 2019 NISMA complaints also include AKR.

A significant proportion of complaints are rejected for procedural reasons, although this number seems to be reducing in the last two elections. ECAP may reject certain complaints submitted beyond legal 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, or lacking evidence 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, 2019, and 2021 parliamentary elections (Figure 6).

Figure 6: Number of ECAP decisions by type of decision⁹

	Approved	Refused (procedural reasons)	Refused (not grounded)
2009 loc.	115	0	429
2010 par.	151	0	193
2013 loc.	125	0	560
2014 par.	96	0	173
2017 par.	179	0	150
2017 loc.	323	0	462
2019 par.	194	0	173
2021 par.	174	36	194

The party which is not satisfied with the ECAP decision may submit an appeal at the Supreme Court in Kosovo. 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 7). This is due to higher number of complaints, and higher number of candidates competing in the local election.

⁹ It is not known whether for the 2009 local elections, the complaints rejected for procedural reasons were placed within the number of unfounded complaints.

Figure 7: Number of ECAP decisions appealed to the Supreme Court, by type of Court decision

	Appeals to the Supreme Court	Approved appeals	Rejected Appeals
2009 loc.	25	0	25
2010 par.	19	1	18
2013 loc.	48	1	47
2014 par.	16	2	14
2017 par.	11	3 ¹⁰	8
2017 loc.	47	7	40
2019 par.	27	5	22
2021 par.	31	3	28

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.

¹⁰ The judgments of ECAP were partially changed by the Supreme Court in 3 cases.

Central Election Commission

The Central Election Commission is a permanent constitutional 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-country 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, marking the highest number in 2021 elections (Figure 8). The increase in 2013 elections was due to the collection and facilitation of voter applications from the Republic of Serbia, which was facilitated as part of the EU-brokered agreement between Kosovo and Serbia to hold municipal elections in four northern municipalities of Kosovo.

During 2021, there was a significant spike in out of country voting applications, mainly due to better mobilization by the political parties.

Figure 8: Review of Out-of-Country Voting Applications by the CEC

	Accepted applications	Approved applications	Approved percentage
2009 loc.	1,806	-	-
2010 par.	5,015	1,640	32%
2013 loc.	41,168	13,653	33%
2014 par.	29,745	16,569	55%
2017 par.	20,354	15,118	74%
2017 loc.	11,815	10,487	89%
2019 par.	35,087	29,861	85%
2021 par.	130,168	102,100	78%

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.

Several repeat elections were held from the 2009 to 2017 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 four parliamentary elections held in 2014, 2017, 2019, and 2021. 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 9), this figure has leveled in 2021 elections.

Figure 9: Re-polls and re-counts, from the 2009 to 2019 elections

	No. of municipalities holding re-polls	No. of polling stations recounted
2021 par.	None	698
2019 par.	None	2,247
2017 loc.	2 full	1,130
2017 par.	None	565
2014 par.	None	421
2013 loc.	3 partial	439
2010 par.	4 full 2 partial	890
2009 loc.	3 full	450

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 10).

Figure 10: 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
Parliamentary Elections 2021		
Srpski Demokratski Savez		€1,000.00

Case 4/2021 – Supreme Court of Kosovo



On January 28, 2021, the Supreme Court of Kosovo issued its judgment Nr. 4/2021 in which it deferred to the judgment of the Constitutional Court KO 95/20, reaffirming the electoral law provision that a person is not eligible to stand as candidate in the election if he or she has been convicted for a criminal offense by a final court decision in the last 3 years.

The judgment of the Supreme Court came after the largest party, 'Levizja Vetevendosje!', appealed the decision of the Central Election Commission, and subsequently the Election Complaints and Appeals Panel, which rejected the certification of several candidates from its candidate list, including the party leader. The Supreme Court amended in part the judgment of the Election Complaints and Appeals Panel allowed the certification of 2 of the 5 appealing candidates, who were deemed eligible to compete in the parliamentary elections held on February 14, 2021.

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. A number of factors could have contributed to this: 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 in 2021 elections, the State Prosecutor recorded 13 cases involving 17 persons (Figure 11).

Figure 11. Number of criminal charges and persons involved, from 2013 to 2021¹¹.

	Criminal charges	Persons involved
2013 annual	209	1,216
2014 annual	274	883
2015 annual	433	887
2016 annual	201	353
2017 annual	182	361
2019 elections	36	41
2021 elections	13	17

Following the 2013 local and 2014 parliamentary elections, the number of new criminal charges received has increased.

¹¹ The timeframe from 2013 to 2017 covers data for the calendar year. The data provided for 2019 and 2021 pertain to the elections, not the entire year.

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.

Figure 12: Number of criminal charges and persons involved, from 2013 to 2018 (annual)

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

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 13: Number of criminal charges raised, by entity complainant, for 2013 and 2018

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

Kosovo Police

The Kosovo Police (KP) operates within its general mandate to ensure security and order during elections. On election day, police units are deployed and positioned outside each polling center and can only enter the polling stations in case of serious incidents or if called to restore order by the polling team.

During the 2021 parliamentary elections, the Kosovo Police recorded a total of 11 cases pertaining to violations of voting rights. During the 2021 elections, the Kosovo Police arrested 4 persons, and 1 person was detained. Of the 11 cases recorded by the Police, 5 were on election day. There was no information provided about the nature of the cases under the review by the Kosovo Police (Figure 14).

Figure 14: Summary of KP cases and persons arrested.

	Election Campaign	Election day	
2013	37 cases, 15 were referred to SP	47 cases, investigated with SP	37 persons arrested
2014	4 cases referred to SP	25 cases investigated with SP	18 persons arrested
2019	14 cases	33 cases of election day violations	(5 cases after election day)
2021	In total 11 cases in all periods	5 cases	

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.

The number of cases and persons being arrested has generally been on a trend of decrease from election to election. The 2013 elections were marked by serious incidents and acts of violence particularly in four northern municipalities of Kosovo. 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.

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.

Kosovo Judicial Council

The Kosovo Judicial Council is a Constitutional body that ensures that the courts are independent, professional and impartial. Judgment for penal acts against voting rights are issued by the Courts.

The number of cases for violation of voting rights and the persons involved is decreasing from 413 cases in 2015 to 126 cases in 2020. In addition, the number of persons involved in these cases has decreased from 1,172 in 2014 to 316 in 2020 (Figure 15).

Figure 15: Number of cases in the courts and persons involved in the criminal offenses against voting rights.

	Cases	Persons
2014	281	1,172
2015	413	1,150
2016	344	837
2017	315	620
2018	226	501
2019	155	313
2020	126	316

Most of the 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 16).

Figure 16: Number of cases in courts, by electoral offense

	2015	2016	2017	2018	2019	2020
Violation of the right to be a candidate	0	0	0	0	1	1
Threat to the candidate	0	0	2	2	2	1
Preventing exercise of the right to vote	5	4	1	0	2	1
Violating the free decision of voters	5	3	4	0	2	1
Abuse of official duty during elections	8	4	4	4	3	3
Giving or receiving a bribe for voting	3	3	7	4	3	2
Abusing the right to vote	377	315	278	204	122	81
Obstructing the voting process	9	5	6	3	3	1
Violating confidentiality in voting	5	5	5	5	12	7
Falsification of voting results	0	2	4	2	3	27
Destroying voting documents	1	3	4	2	2	1
TOTAL	413	344	315	226	155	126

During 2020, there was an increase in the proportion of cases pertaining to falsification of results. There are very few cases

of violation of the right to be a candidate and 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.

From 2015 until 2020, of the cases for which the Courts have found the defendants guilty, the Courts have ruled in the following manner:

- > In 9 cases, sanctioned 11 people with effective imprisonment.
- > In 38 cases, sanctioned 53 persons with fines.
- > In 315 cases, sanctioned 767 persons with conditional punishment.

The most common judgment from 2015 to 2020 has been the conditional sentence. Further study is required 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 17).

Figure 17: 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
2019	Cases	Persons
Cases leftover from previous years	121	263
New cases received during 2019	34	50
Total cases through June 2019	155	313
Resolved during 2019	57	94
Unresolved	98	219
2020	Cases	Persons
Cases leftover from previous years	98	218
New cases received during 2020	28	98
Total cases during 2020	126	316
Resolved during 2020	44	129
Unresolved	82	187

2015

Criminal Offenses	Guilty						Acquitted & Other					
	Column 1: Cases Column 2: Persons						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

	Criminal Offenses	Guilty						Acquitted & Other					
		Column 1: Cases Column 2: Persons						Column 1: Cases Column 2: Persons					
		Prison		Fine		Conditional		Not Guilty		Refused		Other	
2016	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

2017

Criminal Offenses	Guilty						Acquitted & Other					
	Column 1: Cases Column 2: Persons						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

		Guilty						Acquitted & Other					
		Column 1: Cases			Column 2: Persons			Column 1: Cases			Column 2: Persons		
2018	Criminal Offenses	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

2019

Criminal Offenses	Guilty						Acquitted & Other					
	Column 1: Cases Column 2: Persons						Column 1: Cases Column 2: Persons					
	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Threat of a candidate	0	0	0	0	1	2	0	0	0	0	0	0
Violating the right to vote	0	0	1	1	0	0	0	0	0	0	0	0
Violating the free decision of voters	0	0	0	0	0	0	0	0	0	0	1	1
Giving or receiving a bribe in relation to voting	0	0	0	0	0	0	1	2	0	0	0	0
Abusing the right to vote	0	0	2	2	26	55	1	1	13	15	3	7
Obstructing the voting process	0	0	0	0	1	1	0	0	0	0	1	1
Violating the free decision of voters	0	0	1	1	4	4	0	0	0	0	0	0
Destruction of materials	0	0	0	0	0	0	1	1	0	0	0	0
TOTAL	0	0	4	4	32	62	3	4	13	15	5	9

Resolution of election disputes in Kosovo

2020

	Guilty						Acquitted & Other					
	Column 1: Cases			Column 2: Persons			Column 1: Cases			Column 2: Persons		
Criminal Offenses	Prison		Fine		Conditional		Not Guilty		Refused		Other	
Violation of right to stand candidate	0	0	1	1	0	0	0	0	0	0	0	0
Violating the right to vote	0	0	1	3	0	0	0	0	0	0	0	0
Abusing the right to vote	0	0	3	10	9	22	6	27	1	5	17	55
Violating the free decision of voters	0	0	0	0	3	3	0	0	0	0	0	0
Falsification of election results	0	0	0	0	0	0	0	0	0	0	3	3
TOTAL	0	0	5	14	12	25	6	27	1	5	20	58

Case 30/2021 – Supreme Court of Kosovo



On March 11, 2021, the Supreme Court of Kosovo issued its judgment 30/2021, in which it reaffirmed the decision of the Election Complaints and Appeals Panel to annul the votes cast in Serb-majority municipalities in support of the political entities representing the Bosnian ethnic community.

After finding that the number of registered citizens of Bosnian community in Serb majority municipalities is lower than the votes Bosnian political entities received in these municipalities, the Court held that these votes distorted the results and represented a deviation of the will of the community voters.

The Supreme Court established that there must be an objective connection between the representatives of the ethnic communities and the voters of the respective community. The decision changed the outcome of the representation among the Bosnian community.

Independent Media Commission

The Independent Media Commission (IMC) is the body responsible for the regulation, management, and oversight of the broadcasting frequency spectrum. 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 has consistently been the main breach committed by the media. In 2021, the IMC noted 100 cases of media not submitting the required log-books to IMC as required by the electoral law (Figure 18). In all of these cases the IMC issued a notification to the concerning media outlets.

Figure 18: Number of IMC cases against audiovisual media by nature of complaints

Nature of complaint	2009	2010	2013	2014	2017	2019	2021
Lack of submission of logbooks	35	0	58	75	0	20	100
Failure to allocate unpaid broadcast space	3	1	10	0	2	0	0
Breach of electoral silence	7	1	3	2	1	1	0
Content of the spot	0	0	6	6	1	0	0
Spots broadcast out of campaign period	0	0	0	5	0	0	0
Head of media running in the election	0	0	4	1	0	0	0
Spots broadcast during news editions	2	0	0	0	0	0	0
Breach of IMC Laws, Regulations or Ethical Code	2	1	3	0	81	11	24
TOTAL	49	3	84	89	85	32	124

The vast majority of complaints are 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 in elections from 2009 to 2017, parties have not made use of their right to lodge a complaint to the IMC (Figure 19) in the past two elections.

Figure 19: Number of complaints by complainant entity, from the 2009 to 2021

Entity	2009	2010	2013	2014	2017	2019	2021
IMC	42	1	76	89	81	31	124
AAK	1	0	1	0	0	0	0
AKR	0	0	1	0	0	0	
AKR/LDD	1	0	0	0	0	0	0
LDK	1	1	0	0	1	0	0
VAKAT	1	0	0	0	0	0	0
Others	3	1	6	0	3	1 ¹²	0
TOTAL	49	3	84	89	85	32	124

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 elections held from 2017 to 2021.

It is noticeable that in 2021 elections the sum of fines imposed

¹² During 2019, the IMC reviewed one additional complaint submitted by BIRN against Radio Television of Kosovo (RTK), which alleged breach of silence period by RTK. The complaint was rejected by IMC on the basis that it was not grounded.

by IMC against the main media outlets has been increasing with five media outlets receiving sanctions of 5,000 euros, and TV Dukagjini receiving a sanction of 7,500 euros (Figure 20).

Figure 20: IMC punitive measures against main media outlets

	2017 par.	2017 loc.	2019 par.	2021 par.
RTK 1	Warning	2,000	Warning	5,000
KTV	-	-	2,000	5,000
RTV21	Warning	-	1,000	-
KLAN KOSOVA	Warning	5,000	3,000	5,000
Dukagjini TV	Warning	3,000	4,000	7,500
TE 7	-	-	4,000	5,000

These sanctions pertain to various breaches of electoral laws, IMC laws and regulations, and breaches of the ethical code.

Recommendations

Base on the experience of supporting coordination between election management bodies and justice authorities, based on the data and analysis in this report, and in light of new and emerging election challenges, the following recommendations can be made:

- › Continue to build on existing practice of coordination: The renewed memorandum of understanding adds a new momentum to build on the existing practice of coordination. As well as continuing to perform their institutional mandate, the institutions should seek to adapt joint workplans that foresee regular coordination meetings, information exchange, joint training and public outreach programs.
- › A more targeted approach to where and when it is needed: There are some recurring challenges that deserve a more targeted approach. This includes out-of-country voting during the application period, threats to candidates of Serb community in the Serb-majority municipalities during the campaign period, and recently the increased number of re-counts and reported fraud in the counts and results center. In addition, disinformation, fake news and cyber-attacks are emerging as new challenges that deserve a stronger response. In acting within their overall mandate, the institutions should also prioritize certain areas and provide more resources at the specific time of their occurrence.

- › Address issues related to electoral reform: A number of recurring challenges such as voting eligibility, candidate eligibility, out of country voting, timelines for submission of complaints/appeals, may be addressed in electoral reform. The election management bodies and justice institutions should identify the key issues encountered in election dispute resolution, and engage with the parliament in addressing such issues.
- › Prepare a case law handbook related to elections: There have been a number of judgments issued by the Election Complaints and Appeals Panel, Constitutional Court and the Supreme Court about issues such as candidate eligibility, out of country voting, and reserved seats for members of non-majority communities. The institutions should prepare a case law handbook that will help political parties, civil society organizations and media in understanding and enforcing election rules in the pre and post-election period.

List of Publications

Elections & Political Parties

#1 D4D Institute. September 2011. Deconstructing Election Trends 2000-2010.

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

#3 Malazogu, Leon, Visar Sutaj and Drlon Gashi. November 2012. Kaçanik Voters' List Audit: A Sample for Kosovo.

#4 Malazogu, Leon and Selatin Kllokoqi. February 2013. Lessons learned for Future Elections: An Analysis of the Mayoral By-Elections in Ferizaj and Kaçanik.

#5 Malazogu, Leon and Selatin Kllokoqi. September 2013. Translation of Trust Perception of Representation and Participation.

#6 Malazogu, Leon and Selatin Kllokoqi. September 2013. Electoral Deform: Two years later, reform is back to square zero

#7 Leon Malazogu and Brenna Gautam; With contribution by Rezarta Delibashzade & Ngadhujim Halilaj. 26 November 2014. Kosovo's Political Compass – Mapping Party Ideology

#8 Dardan Berisha with contribution by Driton Qeriqi, Mjellma Hapçiu-Alijaj & Rina Vokshi, July 2015. Bringing Justice to Elections

#9 Leon Malazogu with contribution by Ngadhujim Halilaj and Rezarta Delibashzade, July 2015. Election Trends 2000-2014-A Numerical Analysis of Participation and Representation

#10 Thomas Atherton, Driton Qeriqi and Rina Vokshi, February 2016 Manual for Gender Equality in the Electoral Process

#11 Dr. Besnik Pula, May 2018. Kosovo's democracy at risk? Party system volatility, government duration and institutional crisis in Kosovo.

#12 D4D, September 2018. Electoral Reform Agenda: Towards Real Representation. (Discussion paper)

#13 D4D and Democracy Plus (D+), October 2018. Out-of-country voting: Policy Review and Practical Recommendations.

#14 Dardan Berisha, September 2020. Enforcing Justice in Elections: What was decided on complaints, appeals and penal cases pertaining to elections.

#15 D4D, March 2020. Election Trends 2018-2019: A comparative analysis of Polling Data.

#16 Blerinë Ukshini, March 2021. Elections in time of pandemic: Management versus Consequences.

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

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