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1 EXECUTIVE SUMMARY

On 3 November 2010 the Acting President of Kosovo¹ requested the European Union (EU) to deploy an EU election observation mission for the 12 December 2010 early general election. As this was not possible in the circumstances, the European Commission (EC) chose to deploy a three-person European Union Election Expert Mission (EU EEM). An EU EEM is not equivalent to an election observation mission due to its limited staff and period of deployment. Therefore, the EU EEM was not in a position to offer a comprehensive assessment of the election process in its entirety.

The overall objective of the EU EEM was to support Kosovo's democratic development and institution building. The specific objectives were to provide continuous analysis and to report to the EC, the wider EU family and EU Member States on the electoral process before, during and after the election day(s). The EU EEM prepared a final report² including detailed recommendations for further improvements and confidence building measures in the context of an urgently needed electoral reform prior to future elections in Kosovo.

The EU EEM was present in Kosovo from 19 November until 16 December 2010. Due to the significant scale of irregularities identified by the authorities and observers alike, the EU EEM was extraordinarily asked to redeploy, from 6 to 12 January 2011, in the context of the 9 January 2011 repeat elections in Deçan/Deçane, Glogovac/Glogovac and Skënderaj/Srbica. On similar grounds, the EU EEM redeployed again in the period from 21 to 27 January, in the context of the 23 January 2011 repeat elections in Mitrovicë/Mitrovica and with the objective to present its final report to stakeholders in Pristina.

For the 12 December polls, the European Parliament (EP) deployed a seven member Election Observation Delegation. Two members of the Delegation returned to Kosovo for the 9 January repeat election. The statements of the Delegation are annexed to this report. The EU EEM provided support to the EP Delegation as required. The mission also participated in briefings for the diplomatic poll watch exercise in the context of the 12 December election which was coordinated by the EU Special Representative (EUSR) in Pristina.

The experience of the 2009 municipal elections diminished public trust in the election process. Although the Criminal Code envisages prison sentences of up to five years for election fraud, there was only one case of prosecution for alleged abuse during the 2007 or 2009 elections with a final court decision still pending. Some civil society, media and political parties expressed the view that the international community had prioritised stability, Kosovo Serb participation and the forthcoming Kosovo-Serbia dialogue over democracy, thereby encouraging election fraudsters to believe they would not be held accountable.

The 12 December election was the first general election to be held after Kosovo's declaration of independence and administered by the Kosovo Central Election Commission (CEC). Also for the first time, this election was conducted under the 2008 Law on General Elections (LGE), amended in haste shortly before the election was called. The amendments addressed, fully or in part, some of the recommendations offered by the 2009 EU EEM. This led to some improvements in the electoral legal framework; notwithstanding, a number of recommendations were not addressed.

A coalition between the Democratic Party of Kosovo (PDK) and Democratic League of Kosovo (LDK) was established in early 2008. This changed, after a Constitutional Court decision forced the LDK's then leader Fatmir Sejdiu to resign as President of Kosovo. An early general election was negotiated to take place in February 2011. However, the LDK then withdrew from the

¹ Under UNSCR 1244/99.

² This report was completed on 25 January 2011.

government. After a no confidence motion was passed in the Assembly, the Acting President Jakup Krasniqi called an early general election for 12 December.

Following the February 2008 independence declaration, the largely Kosovo Serb-populated municipalities north of the River Ibar detached almost fully from administration by Pristina. The Kosovo Serbs who reside in these municipalities, representing approximately one third of the Kosovo Serb community, did not participate in the 2009 local elections. In the run-up to the 12 December 2010 election, there were violent attacks by unidentified persons in this area targeting residents of different ethnicity with Pristina connections. There was considerable turnout among the Kosovo Serb community residing to the south of the Ibar, where a Pristina-oriented Kosovo Serb party, the Independent Liberal Party (SLS), strengthened its political standing. In addition, a Belgrade-oriented citizen initiative, United Serb List (JSL), was formed to contest the 12 December election.

Group and regional interests largely define the parliamentary parties of the Kosovo Albanian majority, all of which maintain client-patron networks. Under the PDK's governance, separation between the PDK and independent state institutions, as well as relevant checks and balances, appeared to have eroded. The two largest parties to date, PDK and LDK, held snap leadership election congresses to qualify under CEC rules for contesting the election. The PDK congress was conducted in contravention of its own statute. In an unprecedented development for Kosovo, the LDK congress elected a new leader.

A new party, Vetëvendosje, was established as a successor of a protest movement which refused the Ahtisaari plan. This movement achieved notoriety by vandalizing vehicles of international organisations with executive authority in Kosovo. Its leader Albin Kurti was sentenced, on 14 June 2010, by a court of law for participation in a group obstructing official persons in performing official duties. Albin Kurti was leading a demonstration in which two participants were killed by United Nations (UN) police on 10 February 2007.

The CEC determined that completion of all necessary procedures allowed for only ten days, from 1 to 10 December 2010, for the official election campaign, rather than the 29 days stipulated in its own rule. The campaign was free of major incidents south of the Ibar. The economy, promises on public sector investment and salaries, and rival claims of ability to ensure speedy integration of Kosovo into international bodies, including the EU, were major themes. Parties' energies were devoted to maximising support in their respective heartlands; much campaigning was for individual candidates within party lists. The campaign for the 9 and 23 January repeat election in parts of Kosovo was of a similar nature.

South of the Ibar, the JSL received no explicit backing from the Serbian government. This could have discouraged Kosovo Serbs from voting, although representatives of the Serbian government insisted that none would be punished if they did. There was no election campaigning north of the Ibar, yet local Kosovo Serb nationalists mounted an aggressively toned boycott campaign, and on 8 December an unidentified gang shot two Kosovo Bosnian CEC officials, one fatally.

All Kosovo Albanian political entities were well represented in TV debates. While several international bodies expressed concerns about government domination of the media, there were no significant complaints of bias, although domestic observers claimed that the public broadcaster favoured the PDK, which also significantly outstripped other parties in spending.

The Constitution explicitly provides for respect of international law and guarantees direct applicability of key UN and Council of Europe (CoE) human rights instruments, including positive discrimination for non-majority communities and women. The EU's Kosovo 2010 Progress Report cited problems with freedom of expression, association and assembly, freedoms which appeared constrained also by dependency upon employers in the context of Kosovo's 45% unemployment rate.

While the electoral legal framework is conducive overall for the conduct of elections in line with international standards, room for improvement to establish full compliance with international standards for democratic elections remains. This is particularly relevant to aspects of the election system intended to augment women's participation in politics and to the use of sanctions and restrictions of rights that are not proportional to offences committed. The election system is complicated and difficult to understand, and does not allow for prompt and accurate determination of election results.

Transparency of the process is restricted because the law enables the CEC to draft rules on important issues which should be part of written law, there are no public hearings of complaints and appeals, procedures for resolution of election disputes remain confusing despite recent amendments and agents of election contestants are not provided with copies of results forms at any level of the election administration.

CEC rules that should be part of written law include, *inter alia*, regulating registration and deregistration of political parties and candidate lists for the Kosovo Assembly, and development of election day procedures. In addition, the law does not explicitly oblige the CEC to draft detailed guidelines for the implementation of the election system to allocate seats to political entities on the basis of the votes cast for them.

Elections were administered by a three tier election administration comprising the CEC, 37 Municipal Election Commissions (MECs) and 2,280 Polling Station Committees (PSC) located in 746 polling centres to administer election day procedures. The CEC seemed to be on track with regard to most operational aspects of the election prior to election day including appointment of PSCs, although it did not perform well with regard to consolidation and announcement of results. Election administration bodies included nominees of parties represented in the Kosovo Assembly. Such a composition of the election administration contributes to transparency.

However, some election administrators, including at the CEC, seemed to perceive themselves as members of a "political board" for the election rather than administrators tasked to implement the LGE in a professional manner and good faith. In addition the CEC did not seem to be "hands-on" the electoral process, with the management largely delegated to the CEC Secretariat. Guidance and substantial technical assistance was still provided to the CEC by the international community throughout the process. Attempts by CEC members to hold international technical assistance providers responsible for the protracted counting and tabulation were inappropriate. The CEC's failure to ensure the quality of UV lamps and indelible ink led directly to the Supreme Court's ordering of a repeat election in Mitrovicë/Mitrovica, which further protracted the election process.

The CEC certified, in an inclusive manner, a total of 1,266 candidates included in the candidate lists of 29 political entities. Of these, 24 lists were submitted by political parties, two by coalitions of political parties and three by citizens' initiatives. Of the 29 political entities, seven were representing the Kosovo Albanian majority community and the remaining were representing Kosovo non-majority communities, including eight - the Serb community, four - the Bosnian community, two each the Ashkali, the Egyptian, Turkish and the Gorani communities, and one each of the Roma and the Montenegrin communities. No independent candidates were certified by the CEC.

The CEC Office for Political Party Registration and Certification (OPPRC) failed to properly implement the rule on political party functioning and the LGE provisions on political parties' campaign spending. Several candidate lists, particularly the PDK one, included names of convicted persons or suspects under EULEX investigation. There was a culture of impunity which was not conducive for the proper conduct of the 12 December election and the subsequent partial repeat polls.

The final voter lists (VL) were prepared by the CEC on the basis of Central Civil Registry (CCR) records provided by the Ministry of Internal Affairs (MoI). The 2010 VL comprised 1,630,636 voters, up from 1,563,741 in 2009. The CEC stated that some 7,000 names of deceased

persons were removed prior to election day, 12 December 2010. It is widely believed that the VL continues to include records of deceased persons, often due to a lack of reporting of vital life events by citizens to the administration or possible negligence by the public administration.

A high number of domestic observers, totalling more than 33,000 were accredited to observe polling and counting on 12 December. Most of these were observers accredited by political parties who attempted to observe in each of the polling stations. For the 9 January 2011 repeat election, some 2,213 domestic observers were accredited. For the 23 January repeat election, some 1,858 observers were accredited.

The Kosovo network of non-governmental organisations (NGO) "Democracy in Action" was the largest domestic non-partisan observer group. The European Network of Election Monitoring Organisations (ENEMO) deployed the only international election observation mission for the 12 December 2010 early general election. The EUSR Office organised a diplomatic poll watch which witnessed the election.

Observers and poll watchers reported that voting and counting, on three election days, unfolded peacefully and without major incidents. Notwithstanding, they reported deficiencies during the implementation of election day procedures including with the use of indelible ink as prevention against possible multiple voting. During the counting of the ballots in the polling station, there were reports of disrespect of procedures, identification of fake signatures on the voter lists and ballot stuffing. The requirement to post results forms at the polling stations was at times ignored.

Serious irregularities were observed and reported from a number of localities in Kosovo, including the municipalities of Glogovac/Glogovac and Skënderaj/Srbica, where implausible turnout figures were reported by the CEC in the evening of 12 December and indicated the potential of deliberate fraud aiming to provide undue advantage to the PDK. It would appear that there was a deficiency of political will to conduct elections in line with international standards. This fueled a culture of impunity deterring Kosovo from its democratic development.

On 14 and 15 December, the EU EEM was provided with the opportunity to view original reconciliation and results forms (RRF) from Glogovac/Glogovac and Skënderaj/Srbica. From the 40 or so RRFs from Glogovac/Glogovac reviewed, it became evident that often the figures reflecting the vote count on the RRFs did not match. There were frequent occasions of inexplicable mismatch between the draft RRFs and the originals, "corrections" in the figures written on the original RRFs which did not allow identification of the official who had inserted these "corrections" and discrepancies between the figures from the original RRFs and the tabulated results at the MEC. Numerical inconsistencies in some 40% of the polling stations' results forms across Kosovo, in particular those reflecting the preference votes cast for party candidates, led the CEC to decide, on 18 December, to recount the ballots in these polling stations.

Following complaints about electoral malfeasance, on 16 December, the ECAP ordered repeat elections in some 70 polling stations from Glogovac/Glogovac and Skënderaj/Srbica, as well as from the municipalities of Deçan/Deçane, Lipjan/Lipljan and Malishevë/Mališevo. On the same day, the CEC ordered repeat elections in the entire municipalities of Deçan/Deçane, Glogovac/Glogovac and Skënderaj/Srbica, and in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo, to be held on 9 January. On 6 January, following a lengthy appeal process, the Supreme Court of Kosovo ordered a repeat of the election in 24 out of 29 polling centres in the municipality of Mitrovicë/Mitrovica. The CEC scheduled this repeat election to be held on 23 January in the entire Mitrovicë/Mitrovica municipality. Turnout dropped by 11 %, while observers found fewer irregularities. However, a better repeat election in Mitrovicë/Mitrovica has not remedied the shortcomings of the election process overall.

Complaints and appeals procedures were simplified and streamlined to a considerable extent, and overall the new Election Complaints and Appeals Panel (ECAP) decided on complaints and appeals within legal deadlines. As of 25 January 2011, the ECAP had received some 445 complaints. The only pending complaints relate to the 23 January repeat election in

Mitrovicë/Mitrovica. Complaints could still be filed in respect of the pending announcement of final results. In an attempt to curtail the culture of impunity, the President of the Supreme Court and the State Prosecutor committed to fast-track criminal cases arising from the 12 December election; 133 cases involving an unknown number of perpetrators were disseminated to district prosecutors for investigation; a report on progress is due in February 2011. However, in adjudicating similar complaints, the ECAP ordered a repeat election on 16 December, but only a recount on 13 January. In addition, 63 cases were forwarded to the State Prosecutor with regard to the 9 January repeat election.

The possibility that the CEC can expand on ECAP decisions renders the process of resolution of electoral disputes confusing. Further contributing to confusion, the CEC cancelled the results in a limited number of polling stations without ordering repeat elections there, an option which is not established by the LGE. As a result, the key stage of the election process – counting and tabulation of the vote – was protracted and lacked transparency for the public, notwithstanding that the EU EEM was on the whole provided with information upon request. The entire process of announcement of preliminary results was protracted, not fully transparent and undermined the credibility of results. Final results are anticipated in February 2011.

All Kosovo Albanian political parties other than the PDK did not accept the 12 December preliminary results, alleging manipulations; several have asked for the entire election to be repeated. Only the PDK assessed the 9 January repeat polling as regular. Pending final results, the PDK stated that it can form a government in coalition with some other parties. The LDK has proposed the formation of a multiparty “technical” government to prepare new elections for September 2011. The AAK proposed a coalition government formed by PDK, LDK and AAK. None of these suggestions has yet received other parties’ explicit support.

It is the overriding recommendation of the EU EEM 2010 that a timely and comprehensive electoral reform is commenced without delay and built on genuine political will with broad consultation and agreement between Kosovo’s election stakeholders. If Kosovo’s political class and wider society fail to demonstrate sufficient political will to conduct elections in line with international standards and good practice, amendments to the legal and administrative framework alone will not suffice to overcome current problems.

2 INTRODUCTION AND ACTIVITIES OF THE EU EEM

On 3 November 2010 the Acting President of Kosovo requested the European Union (EU) to deploy an EU election observation mission for the 12 December 2010 early general election. As it was not possible to respond positively to this request given the short time available, the European Commission chose to deploy a three-person European Union Election Expert Mission (EU EEM) funded through the Instrument for Pre-accession Assistance (IPA) programme 2009 for Kosovo.

The EU EEM consisted of two legal/election experts and a political/human rights expert. The experts reported on the election process to the Head of the EC Liaison Office and thus to other relevant EU institutions and Member States. The EU EEM was managed by the European Commission Liaison Office (ECLO) to Kosovo. An EU EEM had also been deployed to Kosovo for the 2009 municipal elections.

The EU EEM arrived on 19 November 2010 and remained in Kosovo until 16 December 2010, four days after the election day. Due to improper conduct of the polls in a number of polling stations a repeat election was held on 9 January 2011 in the entire municipalities of Deçan/Dečane, Glogovc/Glogovac and Skënderaj/Srbica, and in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo. Accordingly, the EU EEM was extraordinarily asked to redeploy from 6 to 12 January 2011. In addition, on 6 January, the Supreme Court of Kosovo ordered repeat election in 24 polling centres in Mitrovicë/Mitrovica; subsequently the Central

Election Commission (CEC) decided to repeat the election in all polling stations in this municipality on 23 January. The EU EEM was asked to return to Pristina on 21 January for this repeat election, to present its final report to stakeholders in Pristina on 26-27 January and participate in a debriefing in Brussels on 28 January. In line with its Terms of Reference, the EU EEM closes on 31 January 2011.

The overall objective of the EU EEM was to support Kosovo's democratic development and institution building. The specific objectives were to provide continuous analysis and to report to the EC, the wider EU family and EU Member States on the electoral process before, during and after the election day, as well to provide recommendations³ for further confidence building measures in the context of possible electoral reform, which is urgently needed prior to future elections in Kosovo. To this end, the EU EEM provided analysis of the legal framework for elections and the organisation of the process in line with international and regional standards for democratic elections, and good electoral practice.

An EU EEM is not equivalent to an election observation mission due to its limited staff and period of deployment.⁴ Therefore, the EU EEM was not in a position to offer a comprehensive assessment of the election process in its entirety. Given the nature of the EU EEM, it was not possible for the mission to provide a conclusive assessment on the accuracy of the voter lists, the registration of candidates, the media coverage of the campaign and the quality of the voting and counting on election day(s). Notwithstanding the above limitations, the EU EEM has used its findings to offer a number of targeted recommendations which could lead to an improvement of the overall election process and enhance voter confidence.

In Pristina, the EU EEM met and maintained regular contacts with representatives of the CEC, the Election Complaints and Appeals Panel (ECAP), the Central Civil Registry (CCR) at the Ministry of Internal Affairs (MoI), political parties contesting the election, civil society, resident diplomatic community and media. The mission also met representatives of the State Prosecutor, the Supreme Court, the Auditor General, several Municipal Election Commissions (MECs), and candidates and representatives of political parties in the municipalities of Pejë/Peć, Graçanicë/Gračanica, Mitrovicë/Mitrovica, Shtime/Štimlje and Pristina.

For the 12 December polls, the European Parliament (EP) deployed a seven member Election Observation Delegation. Two members of the Delegation returned to Kosovo for the 9 January repeat election. The statements of the Delegation are annexed to this report. The EU EEM provided support to the EP Delegation as necessary.

The EU EEM also participated in briefings for the diplomatic poll watch exercise in the context of the 12 December election which was coordinated by the European Union Special Representative (EUSR) in Pristina. The mission provided logistical support to European Commission Liaison Office staff who chose to observe polling day procedures on 12 December 2010 and 9 January 2011.

³ Please see Section 9.

⁴ An EU election observation mission would be deployed for a longer period of time, with a substantial number of both long and short term observers, as well as a core team of experts, and would be led by a Chief Observer, a member of the European Parliament.

3 POLITICAL CONTEXT

3.1 BACKGROUND

Since the adoption of UN Security Council Resolution 1244 (1999) Kosovo has held general elections in 2001, 2004 and 2007. These elections were all supervised to a varying degree by the OSCE Mission in Kosovo and the final results were certified by the United Nations Mission in Kosovo (UNMIK), of which the OSCE Mission was part.

Following internationally mediated but inconclusive status talks, Kosovo's Assembly declared independence on 17 February 2008. In the declaration, Kosovo committed to the principles of democracy, secularism, multi-ethnicity and to the obligations of Martti Ahtisaari's Comprehensive Proposal for the Kosovo Status Settlement (Comprehensive Settlement Proposal, CSP). The 12 December 2010 early general election was Kosovo's first general election since declaring independence.

Serbia opposes Kosovo's declaration of independence, does not recognise Kosovo institutions or elections, and has lobbied actively against international recognition of Kosovo's independence and its accession to international bodies. In October 2008, Serbia achieved UN General Assembly backing for the International Court of Justice to issue an advisory opinion on the compatibility of Kosovo's independence declaration with international law. In July 2010, the Court ruled that the declaration did not violate general international law or UNSCR 1244. Serbia and the EU reached consensus on a 9 September 2010 General Assembly resolution calling for dialogue between Serbia and Kosovo to promote cooperation, achieve progress on the path to European Union membership and improve the lives of the people.

Following the February 2008 independence declaration, the largely Kosovo Serb-inhabited municipalities north of the River Ibar (Zvečan/Zveçan, Zubin-Potok/Zubinpotok and Leposavić/Leposaviq), together with north Mitrovicë/Mitrovica deepened further their detachment from administration by Pristina. Kosovo's institutions are barely present aside from the Kosovo Police which in these municipalities is influenced by Serbian Interior Ministry parallel security structures and is minimally accountable to Pristina. Except for uniformed police and criminal courts, Serbian government institutions prevail. Neither the 2009 municipal elections nor the 2010 general election could be organised in this area, beyond several Kosovo Albanian and Bosnian villages, and only mobile polling stations were established.

No reliable figures regarding the resident population of Kosovo exist, but estimates range from 1.6 to 2.3 million. Some 90% of the population are Kosovo Albanian. Kosovo Serbs are the biggest non-majority community representing some 5 to 7 % of the population. Approximately a third of them have been estimated to live in the area north of the Ibar river, the rest reside in municipalities where Kosovo institutions hold sway.⁵ Other constitutionally recognized non-majority communities include Kosovo Bosnians, Gorani, Roma, Ashkali, Egyptians and Turks.

A range of politicians, civil society activists and media expressed low expectations for the integrity of the election process, particularly given its hasty organisation. The CEC President stated that although the CEC could organise the technical aspects of the election, it could not offer a "quality guarantee" since this was in the hands of the political parties.⁶ The experience of the 2009 municipal elections diminished trust both in the election administration and political

⁵ See European Stability Initiative report: "The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo's Serbs," 7 June 2004, http://www.esiweb.org/index.php?lang=en&id=156&document_ID=53.

⁶ See Besnik Krasniqi, "Fushata elektorale nis me 1 dhjetor" [Election campaign begins on 1 December], *Koha Ditore*, 3 November 2010.

parties' expectations of one another's behaviour. The lack of prosecution of officials involved in irregularities exacerbated this perception. The phrase "defend the vote" has consolidated in Kosovo's lexicon since the 2009 elections, usually meaning the need to take action at polling station level to prevent manipulations by activists of opposing parties. It contains the risk of escalating confrontation between rival party supporters.

Increased disillusionment with elected institutions and political pessimism were among the findings of a UNDP opinion poll conducted in November 2010. Satisfaction with the government was 25%, down from 56% approval in September 2009, while 32% were satisfied with the Kosovo Assembly, down from 46% approval in September 2009. Among the Kosovo Albanian majority 75% were ready to join public protests for economic reasons, up from 59% in April 2010, and 60% were ready to join political protests, up from April 2010's 49%.⁷

The international community has a considerable stake and role in setting Kosovo's political agenda, including implementation of the Ahtisaari plan, maintenance of internal and regional stability, as well as bilateral interests. The international community and its concerns, which currently include the proposed dialogue with Serbia and privatisation of the PTK telecom utility, have become a factor in Kosovo's party political competition and its civil society.

In meetings attended by the EU EEM, some parties and civil society activists expressed concern that the international community's perceived prioritising of stability and Kosovo Serb participation created moral hazards, giving those inclined to election fraud confidence that abuses would not be exposed by international actors focused on a bigger picture.

3.2 KEY POLITICAL PARTIES AND THE RUN UP TO THE 12 DECEMBER ELECTION

The five parties of the Kosovo Albanian majority represented in the 2007-2010 Assembly, the Democratic Party of Kosovo (PDK), the Democratic League of Kosovo (LDK), the Alliance for the Future of Kosovo (AAK), the Alliance for New Kosovo (AKR) and the Democratic League of Dardania (LDD) defined themselves as centre-right. The PDK and LDK were in a coalition government from January 2008 until November 2010; the other three parliamentary parties were in opposition. However, ideology appears to be worn lightly, and group and regional interests have proved more important. A newspaper editor described these parties as operating like private businesses.⁸ Whether at municipal or central government level, distributing state jobs, licenses and procurement contracts to reward supporters and consolidate patron-client networks is a common trait.

Most of the Kosovo Albanian political spectrum is drawn from two contrasting traditions. Two parties, PDK and AAK, have a Kosovo Liberation Army (KLA) heritage. The PDK is led by former KLA commander Hashim Thaçi, Prime Minister since January 2008. The AAK is led by former KLA commander Ramush Haradinaj, who was Prime Minister from November 2004 to March 2005, when he was obliged to resign after the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted him for war crimes. Two parties, LDK and LDD, originate from the non-violent movement of resistance to Serbian rule in the 1990s. The LDK's founding leader, Ibrahim Rugova, died in 2006 and was succeeded by Dr Fatmir Sejdiu. Dr Sejdiu was replaced in early November 2010 by Dr Isa Mustafa, the current LDK leader. The LDD splintered from the LDK three years ago.⁹ The LDD's leader is Professor Nexhat Daci. The AKR was

⁷ See "UNDP launches Public Pulse", 23 December 2010, <http://www.ks.undp.org/?cid=2,26,999>.

⁸ Quoted in Arben Ahmeti, "YIHR: Shoqëria kosovare është e frikësuar" [YIHR: Kosovo society is frightened], *Koha Ditore*, 24 May 2010.

⁹ According to CEC preliminary results, the LDD was not able to surpass the 5% eligibility threshold required for participation in the seat allocation for the incoming Kosovo Assembly and will not be represented in the Assembly. In the meantime, some LDD branches announced their merger with LDK branches.

founded by construction magnate Behgjet Pacolli to contest the 2007 elections, in which most of its vote is believed to have come from former LDK supporters. Although formally in opposition, it has had an ambivalent relationship with the PDK.

Two new Kosovo Albanian political entities, *Vetëvendosje* (Self-Determination) and *Fryma e Re* (New Spirit, FER), contesting an election for the first time, sought to gain support among disillusioned voters. Both largely define themselves in opposition to the five parties currently represented in the Assembly, perceive themselves as representing a younger generation, and have promised to eliminate corruption.

Vetëvendosje, led by Albin Kurti, can be seen as a protest populist movement, engaging in vandalism of UNMIK's and more recently EULEX's vehicles. Its representatives told the EU EEM that it does not intend to give up vandalism. It opposes supervision and limitation of Kosovo's independence, and decentralisation that favours Serb communities. According to *Vetëvendosje*, as a sovereign state Kosovo should have an army and forcefully integrate the territory north of the Ibar. It proposes use of referenda on key issues, including unification with Albania, and favours wealth redistribution.

FER, jointly led by Shpend Ahmeti and Ilir Deda, is recently founded, largely by civil society activists, liberal and centrist, promising clean, technocratic government, and does not challenge the Ahtisaari Comprehensive Settlement Proposal.

The two largest parties to date, PDK and LDK, were required to hold snap leadership election congresses, respectively on 24 October and 7 November 2010. This was necessary in order to qualify for registration for the general election.¹⁰

The PDK congress appeared to have been convened and conducted without regard to its own statute, which requires notice of three months, and stipulates the holding of an election congress every two years. There was no prior process at branch level of electing congress delegates. The current party leader Hashim Thaçi and the 81-member Council of the party were re-affirmed without any formal election process and minor amendments were made to the PDK statute.

The LDK's congress took place on 7 November 2010 and was preceded by a challenge to incumbent leader Dr Fatmir Sejdiu from Dr Bujar Bukoshi. Branch elections were in progress on the assumption that the congress would be held after the New Year. Congress delegates originated from this incomplete and, in places, flawed process.¹¹ In the event, Dr Bukoshi did not attend the congress, having departed the party with the "List Ibrahim Rugova," a group gathered around the son of the late President of Kosovo Ibrahim Rugova. Yet, Pristina mayor Isa Mustafa ran against Fatmir Sejdiu, winning the secret ballot of delegates by 235 to 124 votes. Change of leadership in this manner is unprecedented among the key Kosovo Albanian political parties. Delegates then elected a new 23-member party presidency, retaining eight of its previous members.

The 5% eligibility threshold for Kosovo Albanian parties to be represented in the Assembly encouraged consolidation of smaller parties of the Kosovo Albanian majority community into pre-election coalitions with larger parties, with the result that just seven Kosovo Albanian

¹⁰ In accordance with CEC Rule 01/2008 "On Registration and Operation of Political Parties", Article 13.1, which stipulates that each party must hold an Assembly at least once every three years. The PDK had previously held an election congress in October 2005. The LDK held its last election congress in December 2006, which was marred by a mass brawl and followed by the creation of the rival LDD.

¹¹ There were allegations of gerrymandering on behalf of the incumbent, Fatmir Sejdiu. The Gjakovë/Đakovica branch election, for example, reportedly excluded half of the members. See Besnik Krasniqi, " Gara për kryetar të LDK-së me një kandidat?" [Race for LDK President with one candidate?], *Koha Ditore*, 7 November 2010.

political entities registered for the 2010 election. There were several transfers of candidates between parties immediately prior to registration of candidate lists. The AKR's list included six other smaller parties of considerably differing profiles, such as the Islam-oriented Party of Justice (PD), former Prime Minister Agim Ceku's Social Democratic Party (PSD), and the Green Party. The AAK list also included a range of other groups, including the "List Ibrahim Rugova".

Several of the Kosovo Albanian political entity lists attracted comment, on moral grounds, due to the presence in them of individuals who were recently convicted for abuse of office or war crimes, or were on trial for war crimes or under EULEX investigation for serious crimes. The PDK list attracted particular comment. Several EU EEM interlocutors noted that individuals under investigation saw election to the Assembly, particularly on a government ticket, as protection against indictment. They criticised EULEX for allowing such an impression to develop, by not following up on promised arrests of senior government officials. Remarks made by the EULEX Deputy Head of Mission, in an interview with *Kosovapress* news agency, about the inadvisability of fielding candidates under investigation by EULEX led to the dismissal of the journalist from the *Kosovapress* news agency who made the interview.¹² This response is a clear indication of disrespect for freedom of expression.

The concerned parties did not appear to fear any backlash from public opinion or significant loss of votes as a result of the inclusion of such candidates. In meetings attended by the EU EEM, one PDK official noted of the several such figures high in its list that, "everyone is innocent until proven guilty. We followed all the legal procedures..."; another official of the party offered to respect EULEX advice after the election when it came to appointing ministers in the next government. A LDD official argued that the recent conviction of the party leader for abuse of office was staged to discredit him ahead of the election. The AAK has put its leader Ramush Haradinaj at the head of its list although he is in ICTY detention awaiting retrial for war crimes. In the case of *Vetëvendosje*'s leader Albin Kurti, who received a final conviction on charges of "participating in a group obstructing official persons in performing their duties" in June 2010, there is a widespread perception that his prosecution has benefited his political standing.¹³

Several parties and commentators have argued that the outgoing government practised political discrimination in its allocation of public funds in favour of the PDK, implying creation of an uneven playing field in the run up to this election. The AAK cited unequal division of revenue between PDK-run and AAK-run municipalities.¹⁴ PDK-run ministries had several times more funds at their disposal than LDK-run ministries for discretionary capital investment.¹⁵ In the November 2009 municipal election campaign Prime Minister Thaçi made promises of high investment in certain municipalities conditional upon how they voted.¹⁶ A newspaper editor told the EU EEM that in practice the outgoing government directed public investment disproportionately towards the municipalities of Skënderaj/Srbica and Prizren. The former is PDK heartland,¹⁷ the latter was gained by the PDK in the 2009 mayoral elections after a

¹² Kosovapress news agency is historically associated with the PDK.

¹³ The question of whether this should have disqualified Kurti as a candidate is addressed in section 5.2.

¹⁴ The AAK published data in March 2010 showing the difference in government spending on roads in five PDK-run and five AAK-run municipalities of roughly equal total population. The former received €25 million and the latter €2.2 million. See Arsim Rashiti, "Favorizohen komunat e PDK-së" (PDK municipalities are favoured), *Zëri*, 2 March 2010.

¹⁵ In 2009 PDK-controlled ministries had a combined budget of €300 million, while LDK-controlled ministries' budget totalled €50 million. See Foreign Policy Club draft report: "How Corruption is Driving away Investors from Kosovo", presented 16 December 2009.

¹⁶ They included €170 million for Prizren, €155 million for Pejë/Peć, €120 million for Ferizaj/Uroševac, and €100 million for Gjilan/Gnjilane.

¹⁷ Skënderaj/Srbica secured €18 million in capital investment in 2008: discretionary spending by ministries multiplying its regular capital budget by a factor of fifteen. See Adem Meta, "Në Skënderaj 18 milionë euro investime, janë realizuar dhjetëra projekte" [18 million euros of investments in Skënderaj, dozens of projects implemented], *Koha Ditore*, 2 January 2009. In a TV debate on RTK, 5 January 2010, the PDK Minister of

questionable rerun. At a 2 December 2010 rally in Klinë/Klina, outgoing Prime Minister Thaçi reportedly stated that the more PDK candidates the municipality elected the more public investment it would receive, in violation of the LGE.¹⁸ At an AAK party meeting held on 16 January 2011 to debate whether to join a future PDK-led government, grants to AAK-run municipalities were reportedly an important element of discussion: the prospect of receiving them if in coalition with the PDK, or suffering further alleged discrimination if not.¹⁹

“There should be a clear separation between the State and political parties.”²⁰ However, a number of commentators, organizations and reports have suggested that under the PDK’s governance independent state institutions and checks and balances have been eroded.²¹ Debating concerns expressed in the EU Kosovo 2009 Progress Report (renewed in that of 2010) about public procurement, commentator Veton Surroi stated that, “The government has taken the right to distribute money without competition.”²² He and several other commentators have talked of a “captured state”.²³ A PDK minister earlier acknowledged that public enterprise boards were filled with “people who are prepared to implement the policies of the ministry or government.”²⁴

The PDK-LDK coalition government was foreseen to continue until a general election in late 2011. This changed after the Constitutional Court, responding to a petition initiated by two independent Assembly members²⁵ with support from 30 others, ruled in September 2010 that LDK leader and President of Kosovo Fatmir Sejdiu had violated the Constitution by holding both posts simultaneously. Sejdiu resigned the presidency, his relations with the PDK deteriorated and the PDK Speaker of the Assembly Jakup Krasniqi took over the President of Kosovo’s role in an acting capacity.

Mid-October 2010 cross-party discussions in the Assembly produced agreement and announcement of an early general election to be held on 13 February 2011. However, Sejdiu then unilaterally withdrew LDK ministers from the government on 18 October, after the PDK attempted to claim Assembly approval for its plans to privatise the PTK telecom utility without LDK agreement or a quorum. The PDK wished neither to continue in government alone nor to seek new coalition partners, and so supported a no confidence motion tabled by the Alliance for a New Kosovo (AKR) party on 2 November. Unusually, it therefore passed with the help of the governing party’s votes, despite abstentions from most of the opposition, namely the LDK and AAK. This allowed acting President Jakup Krasniqi to dissolve the Assembly and announce an early general election for 12 December.

Representatives of Kosovo Albanian parties and civil society voiced concern to the EU EEM about militant supporters of the two KLA successor parties, the PDK and AAK. Concerns for institutional stability rose after the LDK leader Isa Mustafa made a public statement in November

18 Internal Affairs Bajram Rexhepi argued that the extra investments in Skënderaj/Srbica were legitimate positive discrimination, because the area was neglected for decades.

19 LGE Article 33.f prohibits political entities from promising any financial reward for the purpose of gaining support of voters.

20 See Jeton Llapashtica, “Dilemat e mëdha të AAK-së” [The AAK’s big dilemmas], *Zëri*, 17 January 2011.

21 See “Guidelines on Political Party Regulation”; Paragraph 207, CoE Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, 25 October 2010, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.asp).

22 See “State of Constriction? Governance and Free Expression in Kosovo,” Youth Initiative for Human Rights, 24 May 2010. Online at: <http://ks.yihr.org/en/article/3>.

23 Veton Surroi, address, Foreign Policy Club (FPC) conference on the EU’s Kosovo 2009 Progress Report, Pristina, 16 October 2009.

24 Ibid and several speakers at FPC conference: “The Burden of Corruption on Foreign Direct Investment,” Pristina, 16 December 2009.

25 Transport and Telecommunications Minister Fatmir Limaj, interviewed in Arbana Xharra “Qeveria duhet të ketë njerëzit e saj në bordet e ndërmarrjeve publike” [The government must have its people in the public enterprise boards], *Koha Ditore*, 25 April 2008.

26 Elected in 2007 on AKR and PDK tickets, respectively.

2010 that his party will not recognise the election results if it were to perceive significant manipulation. A PDK official criticised the statement, telling the EU EEM that “It intimidates people and will affect turnout. [...] We should start trusting our institutions.” The LDK emphasised to the EU EEM the need for everything to be done to avoid such a situation. The AAK stressed that it will try to contribute to creating a sense of normality in the election and will use the official mechanisms of complaint and appeal.

3.3 PARTICIPATION OF NON-MAJORITY COMMUNITIES

Only small numbers of Kosovo Serbs voted in the 2004 and 2007 general elections, enabling parties with meagre support to claim the ten reserved Assembly seats for the community. The Serbian government’s instructions have played an important role in whether Kosovo Serb communities vote or boycott elections. Therefore the only significant Kosovo Serb turnout occurred in the 2001 general election. The umbrella *Povratnik* (Return) entity was then a robust presence in the Assembly until it walked out in late 2003. Its intended successor The Serb List for Kosovo and Metohija did not secure the Serbian government’s support and polled poorly in the 2004 general election, so it did not take its guaranteed seats and did not contest the 2007 general election.

In the 2007 general election, the Pristina-oriented Independent Liberal Party (SLS) gained guaranteed seats with a limited number of votes and joined the PDK-LDK government, running two ministries. It has since benefited from support from the PDK and the resident international community. In the 2009 local elections, the considerable Kosovo Serb turnout further strengthened the SLS influence in the municipalities south of the Ibar. It now runs the three municipalities of Gračanica/Graçanicë, Štrpce/Shtërpçë, and Klokot-Vrbovac/Klllokot-Vërboc, manages infrastructure investments and appears to be a source of patronage for Kosovo Serbs in Pristina, yet it lacks connections in Belgrade. A range of observers questioned the size of the vote it achieved in the December 2009 Štrpce/Shtërpçë mayoral run-off, suspecting manipulation. The SLS mayor of Gračanica/Graçanicë told the EU EEM he saw nothing amiss in inducing voters with promises of construction material, wood or employment.

Until 2008, the northern Kosovo Serb municipalities have been dominated by the Serb National Council-North (SNC), which supports the Democratic Party of Serbia (DSS) and other nationalist parties in the Republic of Serbia. The SNC co-existed in uneasy accommodation with the Democratic Party (DS) led Serbian government from mid-2008, which appointed a representative for the region, to oversee Serbian parallel structures. In 2009, the Serbian government dissolved the nationalist administration in the northernmost municipality Leposavić/Leposaviq. Serbian organised elections were held in May 2010 for a parallel municipality of north Mitrovicë/Mitrovica.²⁶ In late October 2010, the nationalists gained control of the parallel municipal assembly after two pro-Serbian government deputies changed sides. Relations between the two Serbian camps deteriorated; yet the Serbian government assented to the parallel north Mitrovicë/Mitrovica municipal assembly’s inaugural session on 9 December 2010 rather than dissolving it – as in the case of the Leposavić/Leposaviq administration a year earlier, notwithstanding that both bodies were located in Kosovo.

Power structures north of the Ibar river have a record of enforcing a Kosovo Serb boycott of Kosovo elections in their territory. Moreover, few have wished to vote. There was virtually no Kosovo Serb participation in the 2007 and 2009 elections to the north of the Ibar river.

On 10 November 2010, the Serbian government announced that conditions had not been met for Kosovo Serbs to be called to go to the polls. However, several parties in the Serbian

²⁶ This is not recognised by the Kosovo authorities, who intend to hold an election to establish a north Mitrovicë/Mitrovica municipality during 2011 in accordance with the CSP.

government openly called for Kosovo Serb participation. Some representatives of the Kosovo Serb community alleged that the Ministry for Kosovo and Metohija quietly facilitated creation of the civic initiative “United Serb List” (JSL). The list included candidates from the municipalities south of the Ibar, drawn from a range of Serbian parties, including from the DSS, Serbian Progressive Party (SNS), and Serbian Radical Party (SRS). Many of the candidates run Serbia’s parallel institutions, such as the chief of the Gračanica/Gračanicë health house Rada Trajkovic and the Gračanica/Gračanicë post office Randjel Nojkic. Six other Kosovo Serb political entities registered.

The Serbian government’s tacit acceptance that Kosovo Serbs south of the Ibar would vote and engage in the Kosovo Assembly marked an evolution of policy, and follows on from the International Court of Justice ruling, which ended Belgrade’s hopes of renewed Kosovo status talks. The Serbian government was careful not to make this official policy at this point, as it neither achieved consensus, nor wished to prejudice its position in the upcoming UN General Assembly-mandated Belgrade-Pristina dialogue, or to expose itself to attacks from the nationalist opposition in the Republic of Serbia. Thus schools or other buildings it considers to belong to the Serbian state were not made available as polling stations for the early general election in Kosovo. JSL leaders said they intended to become part of the dialogue process, either on the Pristina or Belgrade side of the table.

North of the Ibar, there has been an upsurge in violent incidents in recent months. The violence targeted people with links to Pristina. In July 2010, the General Secretary of the SLS Petar Miletic, who was trying to create a local branch of his party, was shot in the legs in front of his north Mitrovicë/Mitrovica apartment. In September 2010, Hakif Mehmeti (“Kiko”), a controversial local Kosovo Albanian activist, was shot dead in a Kosovo Albanian enclave of north Mitrovicë/Mitrovica. In October 2010, in Zvečan/Zveçan, the car of NGO leader Momcilo Arlov was burned and the house of the leader of a nascent Kosovo Serb party, Democratic Alternative, formed by members of the Municipal Preparation Team for the yet to be created North Mitrovicë/Mitrovica municipality, was repeatedly attacked. The party abandoned plans to participate in the early general election. Altogether, dozens of violent incidents have been reported in north Mitrovicë/Mitrovica and Zvečan/Zveçan since September 2010.²⁷

The vast majority of northern Kosovo Serbs reject Pristina institutions as alien. There is also no list of northern Kosovo Serbs for them to vote for. The CEC had little enthusiasm for making election arrangements north of the Ibar, citing security concerns. It delegated to the International Foundation for Electoral Systems (IFES) what one international official described as face saving arrangements, in the shape of mobile polling stations. North Mitrovicë/Mitrovica radio station Contact Plus remarked that its repeated requests to the CEC for information on how and where people could vote met no response.

Yet the upsurge in violence appeared to be a new drive by power structures north of the Ibar to deny Pristina any foothold. In addition to a recent escalation of rhetoric from international community representatives in Pristina on the unsatisfactory situation in the north, EULEX and Kosovo Serb sources suggested that these structures perceived a cluster of recent Pristina initiatives as a threat to the status quo. These initiatives included the institution of ID checks at the two northern crossings with Serbia, making Kosovo car licence plates obligatory, destruction of Serbian mobile phone masts, and plans to hold elections and a census in the North.

Other constitutionally recognised non-majority ethnic communities with reserved seats include Kosovo Bosnians, Gorani, Roma, Ashkali, Egyptians and Turks. In the 2007 general election, parties from these non-majority communities also won four seats from the general allocation of

²⁷ See Inge Baanders, “Blasts Shake Mitrovica as Negotiations Loom”, *Balkan Insight*, 1 November 2010, <http://www.balkaninsight.com/en/article/blasts-shake-mitrovica-as-negotiations-loom>, for background.

100 seats put on general competition.²⁸ The CSP and the Constitution of Kosovo do not provide for any reserved seats for the Kosovo Montenegrin community, who for most of the last decade identified themselves as Kosovo Serbs. However, one political party seeking to represent the Kosovo Montenegrin community was certified to contest the 12 December 2010 early general election.

Most of the other non-majority communities' parliamentary parties to date joined successive governments, providing one minister. These included the largest Kosovo Turkish and Bosnian parties, the Kosovo Democratic Turkish Party (KDTP) and Vakrat, respectively. Other non-majority communities' parties tended to align with the post KLA party, PDK or AAK, which was strongest in their areas of habitation.

3.4 PARTICIPATION OF WOMEN

Women's participation in public life in Kosovo remains low. This reflects their subordinated position in society and the economy as most lack personal income and property. In 2010, the World Bank reported that only 11% of working age women were employed.²⁹ Despite inheritance laws that guarantee gender equality, the customary practice among the Kosovo Albanian majority community is to pass property exclusively down the male line of the family.³⁰ Various aspects of inequality are most marked in rural areas and less marked among Kosovo Serb women.³¹

Although several of the parliamentary parties include in their structure a women's forum, in areas where they are not compelled by legislation to guarantee a certain percentage of women's representation, such representation is low. Respective party leadership bodies include the following percentages of women: PDK 14.3%, LDK 17.4%, AAK 22.2%, AKR 22%, LDD 20.8%, *Vetëvendosje* 10%, FER 20%.³² In the 2009 local elections the European Network of Election Monitoring Organizations (ENEMO) Election Observation Mission (EOM) reported that only 11 women out of a total of 205 mayoral candidates, or some 5 %, contested the 36 mayoral positions in Kosovo and all of them were defeated during the first round vote.

The LGE attempts to counterbalance the deeply rooted gender inequality with a provision that at least 30 % of the *elected* candidates of each political entity should be of the lesser represented gender.³³ While running contrary to international standards, this provision has assisted a number of women to build political careers and gain public recognition who otherwise would not have gained a foothold in politics. Yet the quota also introduces distortions. Most have owed their positions to being positioned in political entity candidate lists by a male-dominated political leadership in a non-transparent process. Few women Assembly members get into the Assembly presidency or government.

Women were under-represented in the election management bodies. Although the CEC President is a woman, she is the only woman who is member of the CEC. The ENEMO EOM reported that only two of the executive officers of the 34 MECs it assessed to be functional were women. Although it has not published a figure for this election, in the 2009 local elections

²⁸ Please see Section 4.6 "Election System".

²⁹ World Bank Kosovo Country Economic Memorandum, 2010.

³⁰ Mevlyde Salihu, "Kosovo women Sacrifice Inheritance Rights to Tradition", *Balkan Insight*, 21 April 2010.

³¹ See Kosovar Gender Studies Center report, "How do Women in Kosova Vote?", May 2005.

³² Figures cited in RTK TV election debate on gender and social policy, 3 December 2010.

³³ Please see Section 4.6.4 "Women's Participation and Gender Quota".

ENEMO reported that only some 12 % of the Polling Station Commission (PSC) members were women.³⁴

ENEMO reported seeing group or family voting in 36% of the polling stations it visited on 12 December. The domestic observer organisation “Democracy in Action” highlighted family voting as a problem in its statements both on the 12 December early general election and the 2009 local elections. PSCs’ failure to intervene to protect the secrecy of what are, in the overwhelming majority of such cases, women’s votes may partly be attributed to gender imbalance in the PSCs’ composition.

3.5 RESPECT FOR FUNDAMENTAL CIVIL AND POLITICAL RIGHTS

The freedoms of expression, association and assembly are mutually supporting and crucial to the health of a democracy. Kosovo has a formal architecture of institutions and law to guarantee civil and political rights, overseen both by a formal international oversight presence, the International Civilian Representative (ICR) and EULEX, and the embassies of these missions’ major stakeholders. Yet a senior EULEX representative stated to the EU EEM that: “This country is still ruled by intimidation”. While Kosovo has pledged to adhere to UN and Council of Europe (CoE) human rights instruments,³⁵ it is not a party to any international treaty due to its lack of UN and CoE membership. Persons therefore have no recourse to the European Court of Human Rights.

The European Commission Kosovo 2010 Progress Report assessed that as regards freedom of expression, limited progress can be reported “[...] Journalists continue to receive pressure, including from elected officials, in reaction to their reporting. Freedom of association and assembly has not improved [...] Government plans to amend the Law on Freedom of Association in non-governmental organisations have raised concerns within civil society. Public understanding of the role of civil society remains low. The latter continues to depend mostly on international funding, preventing any long-term strategy. The monitoring capacity of NGOs is increasing, but remains limited. Overall, no progress can be reported in this area. The environment in which NGOs operate needs to be significantly improved. The government does not make sufficient use of civil society expertise.”

Kosovo fell 17 places from 2009 to rank 92 in the Reporters without Borders’ 2010 World Press Freedom Index. Reporters without Borders assessed that media freedom markedly deteriorated. Several international bodies expressed concern at growing government control over the public broadcaster, RTK. Newspapers associated with the ruling party PDK have mounted campaigns of abuse against targeted journalists and international officials. In March 2010, the government castigated NGOs and journalists that criticized corruption and in April 2010 a minister said it was appropriate to put investigative journalists under surveillance.³⁶

Kosovo’s 45% unemployment rate and the structure of its job market, which is dominated firstly by a public sector where client-patron relationships influence hiring and firing and secondly by a handful of larger private companies that are close to politics, constrain the freedoms of expression, association and assembly. A commentator stated that “servility,” “conformism” and “silence” are qualities gaining hold in government and public service.³⁷ A political party complained to the EU EEM that three teachers withdrew from its candidate list after they were threatened with dismissal.

³⁴ ENEMO EOM, Statement of Preliminary Findings and Conclusions for the Second Round of Mayoral Elections, 14 December 2009.

³⁵ Please see Section 4.3 “Applicability of International Standards”.

³⁶ Minister Fatmir Limaj, press conference, 14 April 2010.

³⁷ Analyst Belul Beqaj, interviewed on *Rrokum TV*, broadcast several times in mid-October 2009.

The dependency of most Kosovo employees upon patrons and in turn of several family members upon a single breadwinner may explain why public opinion is not a stronger force, for example in constraining parties from including criminal suspects and convicted persons in their candidate lists. In three municipalities, PDK mayors were re-elected in the 2009 local elections, despite charges or convictions for kidnapping, assaulting a judge, and manslaughter. PDK deputy Rustem Mustafa continued to head the 2007-2010 Kosovo Assembly's Committee on Internal Affairs and Security despite his October 2009 conviction on retrial for inhumane treatment and torture of imprisoned civilians in the 1998-1999 war.

Impunity for serious crimes attributed to political leaders is a major issue. Kosovo's justice system does not enjoy broad public confidence.³⁸ There was political interference, for example, when Rustem Mustafa's retrial opened in October 2009. Prime Minister Thaçi declared him innocent. Later, the Kosovo Albanian judge on the EULEX-dominated trial panel recanted the guilty verdict. Alleged abuses in state procurement have been a major focus of attention in recent months. The 2010 Progress Report noted "widespread corruption at high levels." In May 2010, EULEX's chief prosecutor stated that the perpetrators of corruption keep people in fear to maintain their impunity, said that six high officials were under investigation, and outlined plans to indict the PDK transport and telecommunications minister Fatmir Limaj,³⁹ but this has not yet occurred.

There is also a legacy of unsolved murders, both of LDK officials and Kosovo Serbs, although such killings have petered out in recent years. A former member of the SHIK intelligence service, an unaccountable security organization associated with the PDK that announced its voluntary dissolution in June 2008, confessed in November 2009 to killings and beatings while being part of what he alleged to be a SHIK murder squad. EULEX has arrested several persons implicated by him; two others are on the PDK candidate list.

4 LEGAL FRAMEWORK

4.1 BACKGROUND

The Constitution,⁴⁰ which came into force on 15 June 2008, commits Kosovo to implement the CSP.⁴¹ The Constitution clearly stipulates full precedence of CSP provisions over provisions of the Constitution itself and of any other Kosovo legislation. For example:⁴²

All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation.

The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo.

³⁸ UNDP's November 2010 opinion poll gives courts 18.5% approval and prosecutors 15%. See "UNDP launches Public Pulse", 23 December 2010: <http://www.ks.undp.org/?cid=2,26,999>.

³⁹ Newspaper interview, Arben Ahmeti, "EULEX: Kemi fakte për miliona të keqpërdorura" [EULEX: We have facts on misuse of millions], *Koha Ditore*, 7 May 2010.

⁴⁰ Constitution of the Republic of Kosovo, available at <http://www.assembly-kosova.org/common/docs/Constitution1%20of%20the%20Republic%20of%20Kosovo.pdf>.

⁴¹ The CSP is available at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf.

⁴² Constitution of the Republic of Kosovo, Chapter XIII "Final Provisions", Article 143 "Comprehensive Proposal for the Kosovo Status Settlement".

The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail.

In addition, the ICR will be “[...] the final authority in Kosovo regarding interpretation of the civilian aspects of the said Comprehensive Proposal [...]”.⁴³

With regard to elections, the CSP states⁴⁴ that:

No later than 9 months from the entry into force of this Settlement, Kosovo shall organize general and municipal elections in accordance with the terms of this Settlement and the new municipal boundaries, as defined by its Annex III. The elections shall require certification by a competent international authority as having met international standards.

General and local elections were conducted in Kosovo on 17 November 2007 under international authority. These elections were observed by an election observation mission deployed by the Council of Europe (CoE). In its final report⁴⁵ the mission stated that “[...] While concluding that these elections were conducted generally in line with Council of Europe’s principles, as well as international and European standards, the preliminary statement pointed out a number of shortcomings [...]”.

The PDK-LDK governing coalition formed in January 2008 held that, due to the delays in the status process, the pre-independence November 2007 elections satisfied the CSP requirements. The ICR and other key international actors concurred with this interpretation,⁴⁶ despite objections from the opposition AAK.

4.2 OVERVIEW

The legal framework includes the Constitution, the Law on General Elections (LGE),⁴⁷ 15 Rules developed by the CEC with a view to clarifying the implementation of the law, as well as other legislation⁴⁸ such as the Citizenship Law, the Law on Languages, and relevant provisions of the Criminal Code.⁴⁹

This was the first implementation of the LGE, adopted on 5 June 2008 and amended in haste in early November 2010, to regulate general elections in Kosovo. Also for the first time, its implementation was tasked to the sovereign Kosovo CEC which was nevertheless strongly supported by the international community. A new Law on Financing Political Parties (LFPP) was adopted in September 2010.⁵⁰

⁴³ Constitution of the Republic of Kosovo, Chapter XIV “Transitional Provisions”, Article 147 “Final Authority of the International Civilian Representative”.

⁴⁴ CSP, Article 11 “Elections”.

⁴⁵ Available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/ASIN-7DYNNMB?OpenDocument>, page 5, paragraph 12.

⁴⁶ Later, this view was reflected in the Constitution of the Republic of Kosovo, Chapter XIV “Transitional Provisions”, Article 148.2 “Transitional Provisions for the Assembly of Kosovo”.

⁴⁷ Available at http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L073_en.pdf.

⁴⁸ These pieces of legislation are available at <http://www.assembly-kosova.org>.

⁴⁹ Articles 55 and 176-181 of the Criminal Code of Kosovo, http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&lang=en&id=291.

⁵⁰ See Section 5.5 “Regulation of Political Entities and Their Finances”.

The LGE hands considerable discretion to the CEC, which is tasked to draft numerous substantial rules to clarify the law. This effectively enables the CEC to legislate which does not accord with good practice. It also lessens transparency as it could prevent broad and timely understanding of election rules by voters and candidates alike. In addition, the CEC issued decisions clarifying the implementation of the rules and other day-to-day business.

Examples include the rules on certification and decertification of political entities, political party financing, certification of political entities and their candidates to contest a given election, and election day procedures.⁵¹ In view of the rules determining the composition of the CEC as a multi-party body, the certification of entities and candidates for contesting an election, essentially takes the form of a “peer review”, and may therefore result, or be perceived to result, in conflicts of interest.⁵²

It is regrettable that the LGE does not specifically oblige the CEC to develop and publish detailed guidelines, with appropriate examples, for the implementation of the election system. Such guidelines would have contributed significantly to fill lacunae in the legal provisions and explain existing ambiguities.⁵³ This was of particular concern in view of the complicated election system and the fact that representatives of political parties and institutions offered conflicting views on this issue. In this context, if such guidelines were made available in a timely manner, it would have allowed for dissenters to appeal against such guidelines (or some of their provisions) in the courts and resolve possible disputes prior to election day. A letter sent by the ICR to the CEC in this regard added little to clarify the issue for the public at large. In a TV debate on 14 January 2011 two former presidents of the CEC presented conflicting views regarding the 5% threshold applicability for non-majority parties.⁵⁴

The LGE allows for criminal proceedings against political parties that seem inappropriate as they amount to ‘collective punishment’. LGE Article 14.1 assumes the possibility for criminal conviction of a political entity with the consequence of deregistration, although the Criminal Code of Kosovo does not seem to make a relevant reference. In addition, LGE Article 32.5 holds political entities accountable for “violations of the Code committed by their members, supporters and candidates”,⁵⁵ which also seems inappropriate.

4.3 APPLICABILITY OF INTERNATIONAL STANDARDS

Article 16.3 of the Constitution explicitly provides for respect of international law and Article 22 guarantees direct applicability of key UN and CoE human rights instruments as listed in Article 22. This represents the legal basis to assess the legal framework for elections for its compliance with international standards for democratic elections.

Explicit reference is made to the UN Universal Declaration of Human Rights,⁵⁶ the UN International Covenant for Civil and Political Rights (ICCPR)⁵⁷ and its Protocols, the European Convention for the Protection Human Rights and Fundamental Freedoms and its Protocols, the

⁵¹ Most of these are usually part of written law.

⁵³ For further considerations on this issue, please see Section 4 “Election System”.

⁵⁴ RTK’s “Debat” program, a 90-minute discussion of “the election system and its defects,”

⁵⁵ Here, reference is made to LGE, Chapter V “Code of Conduct for Political Entities, Their Supporters and Candidates”.

⁵⁶ Available at <http://www.un.org/Overview/rights.html>.

⁵⁷ Available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm; direct applicability of the ICCPR General Comments could be questioned prior to the final resolution of the status issue. Nevertheless, these Comments are an established source of good practice. The Comments are available at <http://www.jcs.act.gov.au/prd/rights/documents/report/appendix5.pdf>.

CoE Framework Convention for the Protection of National Minorities,⁵⁸ the UN Convention for the Elimination of All Forms of Racial Discrimination,⁵⁹ and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁰

4.4 ELIGIBILITY TO ELECT AND TO RUN FOR PUBLIC OFFICE

According to the LGE, Article 5.1, those eligible to vote are persons, at least 18 years old, registered as citizens of Kosovo in the CCR or refugees registered in the CCR as habitual residents of Kosovo. There is no requirement for a citizen to have resided in a given locality for a specified period of time in order to be eligible to vote in that locality.

The eligibility conditions to stand as a candidate for member of the Kosovo Assembly are provided by LGE Article 29.1. This provision defines a series of incompatibilities for mayoral candidates. However, it also restricts the right to stand, contrary to the principle of proportionality⁶¹ by declaring ineligible such citizens who “were found guilty of a criminal offence by a final court decision in the past three years”, LGE Article 29.1.q. This restriction is imposed for *any* criminal offence and is therefore disproportionate.⁶² Similar restrictions apply for prospective members of the CEC.⁶³ Further to that, it would appear that if someone was found guilty by a final court decision earlier than the “past three years” for a serious crime, he or she could still be a candidate.

Another unreasonable restriction of the right to be elected as member of the Assembly is provided for by LGE Article 29.1.r. According to this provision, if a prospective candidate has failed to obey an order of the ECAP⁶⁴, or has failed to pay a fine imposed by the ECAP or the CEC, such a person is not eligible to become a candidate. Restriction of fundamental civil and political rights should not be possible unless it is decided for by a court of law and is proportional to the offence committed.

4.5 AMENDMENTS TO THE LGE AND IMPLEMENTATION OF RECOMMENDATIONS

In its Final Report on the 15 November and 13 December 2009 local elections in Kosovo, the EU EEM offered for consideration by the Kosovo authorities a number of recommendations aiming to improve the conduct of elections in Kosovo.

⁵⁸ Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>.

⁵⁹ Available at <http://www2.ohchr.org/english/law/cerd.htm>.

⁶⁰ Available at <http://www2.ohchr.org/english/law/cedaw.htm>.

⁶¹ “Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report”, Opinion no. 190/2002, CDL-AD (2002) 23, Strasbourg, 30 October 2002, Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002), page 5, point 1.1.d; available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.asp). More specifically, the principle of proportionality means that any measure by a public authority that affects a basic human right must be (a) appropriate in order to achieve the objective, which is intended, (b) necessary in order to achieve the objective, which is intended, i.e. there are no less severe means of achieving the objective, and (c) reasonable, i.e. the person concerned can reasonably be expected to accept the measure in question; http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=174&Itemid=216. See

also Article 33 of the Constitution and Article 4 of the Criminal Code of Kosovo.

⁶² Notably, Article 70.2.6 of the Constitution represents an example of proportional sanction by requiring that the term of public office of an elected member of the Kosovo Assembly terminates if the member has been sentenced by a final court decision to imprisonment of at least one year. With regard to restrictions of the right to be elected, see also Article 55 of the Criminal Code of Kosovo.

⁶³ Please see Section 5.1 “Central Election Commission”.

⁶⁴ The ECAP is the new complaints and appeals body, established by the Law on Amendments of the LGE, see Section 4.5 “Amendments to the LGE and Implementation of Recommendations”.

The Kosovo authorities set up a Working Group (WG) to prepare draft amendments to the electoral legal framework.⁶⁵ In a limited timeframe, the WG offered to the Assembly a set of draft amendments to the LGE, which the Assembly approved in haste on 29 October 2010.⁶⁶

While the WG considered the EU EEM recommendations in the process of preparing the draft amendments to the LGE, it addressed only some of these recommendations.

Importantly, the Amendments Law largely streamlined the complaints and appeals process.⁶⁷ While amendments addressed most EU EEM recommendations on this issue, the complaints and appeals process continues to be conducted behind closed doors, as a matter of rule.⁶⁸

In a positive step, the CEC is now allowed to certify final election results⁶⁹ only “[...] after the completion of all polling station and counting centre procedures and when all outstanding complaints related to voting and counting have been adjudicated by the ECAP and any appeals of ECAP’s decisions on them have been determined by the Supreme Court of Kosovo [...]”. Notwithstanding, it remains unclear why an administrative body, such as the CEC, should “certify” judicial decisions resolving possible electoral disputes.⁷⁰

Another welcome amendment, which addressed past EU EEM recommendations, removed the possibility of fining election observers.⁷¹

In addition, changes in the election system were introduced; under the new amendments, voters are allowed to mark on their ballots up to five preferences⁷² for candidates in their chosen list and cancelled the rule that the vote for a political entity was considered as a preference vote for the candidate topping the list of this entity.

4.6 ELECTION SYSTEM

4.6.1 Overview

The election system for the Kosovo Assembly is determined by the Kosovo Constitution⁷³ and the LGE.⁷⁴ The Assembly consists of 120 members, the seats of 20 of these are set aside for representation of ethnic communities that are not in majority in Kosovo;⁷⁵ the remaining 100 members are to be elected from one Kosovo-wide electoral district, through proportional

⁶⁵ The WG was able to start substantive work only in the middle of September 2010. It was chaired by Valdete Daka, currently President of the CEC.

⁶⁶ The two readings of the “Law on Amending and Supplementing the Law on General Elections” (Amendments Law) by the outgoing Kosovo Assembly took place on 28 and 29 October 2010. The approved bill was signed into law by the Acting President of Kosovo on 1 November and published by the State Gazette on 16 November, less than a month before election day, 12 December 2010.

⁶⁷ LGE, Articles 105.1, 105.3,

⁶⁸ See Section 4.7 “Complaints and Appeals”.

⁶⁹ LGE, amended Article 106.1.

⁷⁰ It seems more appropriate that the CEC certifies the results after it concludes the tabulation of the vote and the allocation of the seats in the Assembly and publishes them, as annex to its decision, shortly after the vote is finished, e.g. 72 hours after the closure of the polls. Then election contenders should be given (at least) 72 hours to file complaints at the ECAP against this decision of the CEC. The final results will then emerge after the final resolution of possible electoral disputes by the courts.

⁷¹ LGE amended Article 120.1.c.

⁷² As opposed to one preference prior to the adoption of these amendments; it seems that this is seen by many as a vehicle to enhance the number of women elected by merit, rather than by quota.

⁷³ Constitution of the Republic of Kosovo, Chapter IV “Assembly of the Republic of Kosovo”, Article 64 and Chapter XIV “Transitional Provisions”, Article 148.

⁷⁴ LGE, Chapter XVIII “Electoral System for the Assembly of Kosovo”, Articles 110-112.

⁷⁵ Please see Section 4.6.5 “Participation of Minorities: Reserved Seats and Guaranteed Seats”.

representation, on the basis of open candidate lists of political entities. Replacement of the Kosovo-wide electoral district by several multi-seat electoral districts has the potential to enhance the link between the member of the Assembly and the electorate who elected him or her. The present system includes special provisions aiming to ensure enhanced participation of women in politics.

The legal framework lays the ground for participation in public life of ethnic communities that are not in the majority in Kosovo, including in elections on the basis of the principle of the so called “set aside” seats. This often stimulates the development of ethnically based parties, which does not run contrary to international law,⁷⁶ although it does not uphold the development of political parties across ethnic dividing lines.

The requirement that political entities should declare their ethnic affiliation may turn into an obstacle in the development of Kosovo-wide political parties. In addition, the legal framework is silent with regard to potential coalition candidate lists between parties representing communities that are not in the majority in Kosovo, as well as between parties representing the majority community and communities that are not in the majority.

Following the count and tabulation of the vote, candidate lists are to be reordered on the basis of the valid preference votes cast. At least 30 % of the *elected* candidates should be of the less represented gender. Thus, the election system based on “partially open”⁷⁷ candidate lists, attempts to achieve simultaneously two conflicting objectives:

- (a) Allow voters to choose among the candidates included in the list of their preferred political entity; and
- (b) Ensure that at least 30 % of the *elected* candidates are of the less represented gender.

It may be difficult to reconcile simultaneously these objectives within the framework of international standards. If voters are granted preference votes and these are respected, it may not be possible to achieve the 30% quota of the less represented gender among the *elected* candidates; *vice versa*, if the 30% quota among the *elected* candidates is to be achieved by all means, some preference votes may need to be ignored.

Some representatives of Kosovo civil society vigorously argued that both the 30% gender quota among the *elected* candidates and the preference voting should be retained, no matter what international standards provide for. However, such a position may not be ideal for Kosovo’s democratic development. The conduct of party primary elections could be a substitute for preferential voting.

During the term of office of the Assembly, possible vacancies are treated with priority given to filling the vacancy, rather than respecting fully the outcome of the vote at the time the Assembly was elected.⁷⁸ Thus, if a member of the Assembly terminates his or her term early and there are no more candidates on the list of the entity in question, such a vacancy is filled by a candidate on the list of another political entity, on the basis of the magnitude of the Sainte-Laguë quotients.⁷⁹ This approach could be at odds with the sovereignty of voter choices. A similar approach is applied if a political entity⁸⁰ has gained more seats than the number of its certified candidates.

⁷⁶ Another option would be a requirement that “mainstream” parties include in their candidate lists representatives of minority communities in a proportion corresponding to respective population numbers.

⁷⁷ Such lists do not allow addition or removal of names of candidates.

⁷⁸ The latter option could lead to keeping the vacancy empty until the end of the term.

⁷⁹ LGE, Article 112.

⁸⁰ Including an independent candidate.

In general, with the exception of the method to achieve the objective that at least 30 % of the *elected* candidates are of the less represented gender, and the method for filling vacancies in some exceptional situations, the electoral system ensures the sovereignty of voters' choices and the equality of the votes, as required by relevant UN instruments. Notwithstanding, the current electoral system is too complicated to enjoy broad and easy understanding among the Kosovo electorate.

4.6.2 Allocation of the 100 seats

Those eligible for allocation of the 100 seats are “[...] political entities representing the Albanian majority community who have won at least five per cent (5%) from the general number of total valid votes for Assembly elections and Political Entities of the Kosovo Serb and other non-majority communities [...]”.⁸¹ Proportional allocation is conducted by the method of Sainte-Laguë⁸², on the basis of the valid votes cast for the political entities.

This provision implies that, unlike political entities representing the Kosovo Albanian majority community, political entities representing “non-majority communities” are eligible for participation in the allocation of these 100 seats without having to surpass the 5% eligibility threshold.⁸³ In interviews with domestic interlocutors, the EU EEM found that some⁸⁴ believed that the 5% threshold requirement was also applicable for non-majority communities' political entities.

This divergence of opinions on the electoral system creates an environment of uncertainty with some potential for legal disputes after the election, and – more probably - undermines the likelihood of prompt acceptance of the election outcome. Regrettably, the CEC did not provide a public official interpretation of this provision, despite the fact the EU EEM raised the issue on a few occasions. The absence, at the time of writing, of CEC guidelines⁸⁵ detailing in full the procedures for seat allocation is of concern and is not in compliance with good electoral practice.

Neither the Constitution nor the CSP make reference to an eligibility threshold for the allocation of these 100 seats. It would appear that the intent of these documents was to render the election system, at least for the initial period of independence, most inclusive. The introduction of the 5% eligibility threshold does not contradict international standards, but it could restrict pluralism, particularly in the ethno-political context of Kosovo. If applied to non-majority communities' parties it could represent an obstacle for them to gain more seats than those which are reserved.

The legal provisions treat independent candidates as political entities whose candidate lists comprise only one candidate each.

⁸¹ LGE, Article 111.2.a; the term “political entity” includes political parties, coalitions, citizens' initiatives and independent candidates, in accordance with LGE, Article 3 “Definitions”. Notably, the translation of this provision from English into Albanian and Serbian, the official languages in Kosovo according to Article 5.1 of the Constitution, seems to convey a different message. However, Kosovo interlocutors indicated that the “original” of the LGE was drafted in English.

⁸² LGE, Article 111.2.b-e; the method of Sainte-Laguë is a quotient method for seat allocation, generally considered as favourable to “small” parties.

⁸³ Representatives of PDK and some media upheld this view.

⁸⁴ Representatives of AAK, and some representatives of ICO and CEC; notably, representatives of the CEC indicated that there was a translation error in the English language law resulting in the above mentioned confusion. However, it would appear that being an “Ahtisaari law”, the LGE was first drafted in English.

⁸⁵ In accordance with the Constitution, Chapter XIV “Transitional Provisions”, Article 147, the final authority to interpret the above mentioned provisions is vested with the ICR.

4.6.3 Preference vote

According to the recent amendments of the LGE,⁸⁶ voters are issued a single ballot, where voters choose one political entity and may also choose up to five candidates from that entity. If a ballot is marked for more than five candidates only the vote for the political entity shall be counted. The possibility to have up to five preference votes was introduced with a view to enhancing the election of women candidates by merit.⁸⁷

However, there were reports of abuse of this provision from candidates within a single party. Most recounts were due to discrepancies in the candidate results forms (CRF) where the sum of preferences for the candidates of a given political entity exceeded the number of votes for the political entity in question times five and created difficulties in the vote count and tabulation. As a result, there was a need to recount the ballots in a high number of polling stations, protracting the tabulation and publication of the final results.

All preference votes received by the candidates appearing on the open list of each political entity shall be counted separately. The candidate lists shall then be reordered in descending order based on the number of preference votes received by each candidate.⁸⁸

4.6.4 Participation of women: Gender quota

At least 30 % of the *elected* candidates of each political entity should be of the less represented gender. If the 30 % quota has not been achieved for a given political entity, “[...] the last elected candidate of the majority gender will be replaced by the next candidate of the opposite gender on the reordered candidate list until the total number of seats allocated to the minority gender is at least 30 % [...]”.⁸⁹

Although States have a wide margin of appreciation in electoral systems, electoral rules should not violate the basic principles of universal and equal suffrage.⁹⁰ The problem with this aspect of the election system is that, depending on the “partially open” list choices expressed by voters, distribution of seats can be determined by gender and not by the choices expressed by voters through their preference votes.

The Constitution explicitly provides that “[...] The composition of the Assembly of Kosovo shall respect internationally recognized principles of gender equality.”⁹¹ Further to that, measures to promote women’s participation in politics are usually part of the political parties’ internal statutes. It is up to the political entities in Kosovo to ensure that women are well represented in political life.

⁸⁶ Article 7 of the Amendments Law (LGE, Article 110.4).

⁸⁷ The National Democratic Institute (NDI) office in Kosovo published a report, “Women participation in local elections 2009 in Kosovo (Analyses and comparisons for 2007-2009 elections)” concluding that the higher the number of preference votes provided to voters, the higher the number of women candidates elected by merit.

⁸⁸ Article 8 of the Amendments Law (LGE, Article 111.4).

⁸⁹ LGE, Article 111.6.

⁹⁰ The following cases of the European Court of Human Rights are of relevance: *Bompard v. France*, Application No. 44081/02 (4 April 2006); *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81 (2 March 1987); *Py v. France*, Application No. 66289/01 (6 June 2005); *Ždanoka v. Latvia*, Application No. 58278/00 (16 March 2006), www.echr.coe.int.

⁹¹ Constitution of the Republic of Kosovo, Chapter IV “Assembly of the Republic of Kosovo”, Article 71.2; this provision is in line with the CSP, Annex 1 “Constitutional Provisions”, Article 3.1; which stipulates that “[...] Candidate lists shall have due regard for internationally recognized principles of gender equality, as reflected in the human rights instruments referred to in Article 2 [...]”. Neither of the human rights’ instruments referred to in Article 2.1 of the CSP, Annex 1, promotes the current quota arrangements.

The EU EEM fully recognises the need to enhance women's participation in politics, in Kosovo and beyond. However, the EU EEM is of the view that measures undertaken to achieve this goal should respect international standards and good electoral practice, in line with the Constitution of Kosovo.

4.6.5 Participation of non-majority communities: Reserved seats and guaranteed seats

The elements of the electoral system related to the allocation of the 20 seats set aside for members of the Assembly representing ethnic communities not in the majority in Kosovo were designed in two versions. The first version applied for the "first two electoral mandates upon the adoption of the Constitution",⁹² while the second one applied for any subsequent terms of the Assembly.⁹³ The first version refers to 20 "reserved" seats for representation of communities which are not in the majority in Kosovo, while the second one refers to 20 "guaranteed" seats for these communities.

As the LGE does not distinguish explicitly between the arrangements for the first two terms of the Assembly and those for the terms to follow, there could be a perception of a conflict of legal provisions.⁹⁴ In the absence of formal guidelines for the implementation of the election system approved by the Kosovo authorities, such ambiguity creates confusion and is not in line with good electoral practice. It is regrettable that the clear distinction made in the CSP seems obscured, in particular in the LGE.

Both the reserved and the guaranteed seats include ten for the Serb community, three for the Bosnian community, two for the Turkish community and one each for the Gorani, Roma, Ashkali and Egyptian communities; an additional seat is to be awarded to one of the latter three communities that received the highest number of votes. The method of seat allocation for the 20 reserved/guaranteed seats is regulated by the LGE and is similar to the allocation of the 100 seats, but there is no eligibility threshold.⁹⁵

LGE Article 111.3 provides that "[...] The twenty (20) reserved seats [...] shall be allocated to the Political Entities representing the Kosovo Serb community and other non-majority communities [...] based on the total number of valid votes received by each Political Entity, irrespective of the number of seats already allocated from the hundred (100) seats [...]". This provision is in line with the last sentence of Article 3.2 of Annex 1 of the CSP, applicable for the first two terms of the Kosovo Assembly after the adoption of the Constitution. Consequently, during the first two terms of the Kosovo Assembly, non-majority communities will receive their reserved seats in addition to any seats they might have won from the 100 seats.

LGE Articles 111.1.b.i and ii, relating to the terms of the Kosovo Assembly after the expiry of the second term, provide that each of the constitutionally recognized non-majority communities will secure their number of guaranteed seats if the number of seats won is less than the number guaranteed.

The key difference between this arrangement and the arrangement for the first two terms is that during the first two terms of the Assembly lists representing non-majority communities will achieve their respective reserved seats in addition to those won in accordance with LGE Article

⁹² CSP, Annex 1, Article 3.2; as the Constitution of Kosovo came into force on 15 June 2008 and the two terms of the Assembly have not yet expired, the 12 December elections were conducted under this version of the election system.

⁹³ CSP, Annex 1, Article 3.3.

⁹⁴ An implicit distinction is made in the Constitution between Chapter XVI 'Transitional Provisions', Article 148 "Transitional Provisions for the Assembly of Kosovo" and Chapter IV "Assembly of the Republic of Kosovo", Article 64 "Structure of the Assembly", Paragraph 2.

⁹⁵ Please see Section 4.6.2 "Allocation of the 100 Seats".

111.2.a. However, after these two terms, non-majority communities will secure seats above the guaranteed number only if such seats are won in accordance with LGE Article 111.2.a.

There may be a need to review the provisions for the terms of the Assembly after the expiry of its second term, with a view to clarifying them, because neither the Constitution, nor the LGE, nor the CSP provide guidance with regard to how many seats will be distributed among the Kosovo Albanian majority parties. It is not up to the EU EEM to interpret the spirit of the LGE (and consequently of the CSP) on this matter. The following examples illustrate the issue:

Example 1. *Allocation for the second term of the Assembly*

Let us assume that the Kosovo Serb lists have won three of the 100 seats, in line with LGE Article 111.2.a and no other list representing a community which is not in majority has won a seat in accordance with this article.⁹⁶ Then the Kosovo Serb lists will have a total of 13 seats, in line with LGE Article 111.3, while the other lists representing communities which are not in the majority will share the remaining 10 reserved seats in line with LGE Article 111.1.b.ii. The eligible lists representing the Kosovo Albanian majority will share the remaining 97 out of 100 seats as described by LGE Article 111.2. At the end all 120 seats will be allocated in accordance with the law.

Example 2.1 *Allocation for the third term of the Assembly.*

Let us assume that the Kosovo Serb lists have won three of the 100 seats, in line with LGE Article 111.2.a and no other list representing a community which is not in the majority has won a seat in accordance with this article. In accordance with LGE Article 111.1.b.i,⁹⁷ as the number of seats won by the Kosovo Serb lists is less than 10, they will receive their 10 guaranteed seats; other communities' lists which do not represent the majority community will secure their guaranteed seats as well. Consequently, there remain 100 seats to be allocated.

However, from the implementation of LGE Article 111.3.a, which led to the three seats for the Kosovo Serb lists, it follows that of the 100 seats 97 were to be allocated to the eligible Kosovo Albanian lists. The question is whether the Kosovo Albanian lists will share these additional three seats notwithstanding the fact that they had votes only for 97 seats.

Example 2.2 *Allocation for the third term of the Assembly.*

Let us assume that the Kosovo Serb lists have won 11 of the 100 seats, in line with LGE Article 111.2.a and no other list representing a community which is not in majority has won a seat in accordance with this article. In accordance with LGE Article 111.1.b.i,⁹⁸ the Kosovo Serb lists will keep these 11 seats and the other communities' lists which do not represent the majority population will secure their guaranteed seats as well. Consequently, there remain 99 seats to be allocated.

However, from the implementation of LGE Article 111.3.a, which led to the 11 seats for the Kosovo Serb lists, it follows that of the 100 seats 89 were to be allocated to the eligible Kosovo Albanian lists. The question is whether the Kosovo Albanian lists will share these additional 10 seats notwithstanding the fact that they had votes only for 89 seats.

There is a lack of clear provisions that provide for the need to conduct a second seat allocation, after the distribution of the guaranteed seats when a political entity representing a non-majority community has won seats on the basis of LGE Article 111.2.a. In such circumstances, it is also unclear which political entities are eligible to participate in this second allocation and which method should be used for this purpose.

⁹⁶ Implementation of LGE Article 111.2.a, regulating the allocation of the 100 seats, is always the first step of the seat allocation.

⁹⁷ LGE Article 111.1.b.i reproduces word by word Article 3.3.1 of Annex 1 of the CSP.

⁹⁸ LGE Article 111.1.b.i reproduces word by word Article 3.3.1 of Annex 1 of the CSP.

In the Examples 2.1 and 2.2 above, the second seat allocation relates to the 100 seats and the 99 seats mentioned at the end of the respective first paragraphs of these examples.

4.7 COMPLAINTS AND APPEALS

Following some welcome amendments to the legal framework, the complaints and appeals system was considerably simplified and streamlined in line with recommendations offered by the EU EEM for the 2009 local elections. The CEC, the ECAP and the Administrative Division of the Supreme Court of Kosovo are now involved in the resolution of election disputes.

The newly appointed President of the ECAP, Shukri Sylejmani, expressed satisfaction at the reinforcement of the composition of the ECAP,⁹⁹ which now comprises three teams of three members; each of these teams can consider complaints in parallel. The President also appreciated the new timelines for processing of election complaints and appeals, and the clarified status of the ECAP decisions. The President indicated his readiness to provide access for the EU EEM to complaints and decisions, and indicated that he would like the ECAP to be transparent in its activities.

Those eligible to file complaints with the ECAP are election contenders, candidates and citizens. Complaints should be filed within 24 hours after a violation is alleged to have happened. The ECAP is obliged to issue a decision (binding on the CEC) within 72 hours. This is not a public process. ECAP decisions can be appealed at the Administrative Division of the Kosovo Supreme Court within 24 hours of publication. The court must pronounce its final decision within 72 hours of the lodging of the appeal. Regrettably, this is not a public process either. The 24-hour deadline for filing complaints and appeals may be too short for parties, candidates and observers to prepare credible complaints and appeals.

It would appear that, generally, decisions on complaints adequately portray the details of the complaint. However, as the election process unfolded, examples occurred where the nature of a given complaint was not adequately reflected in the respective decision of the Panel.¹⁰⁰ Throughout most of the election process, decisions were found both on the website of the former Election Complaints and Appeals Commission (ECAC) and on the new website of the ECAP. At times, this delayed finding information. All decisions were made available on the new ECAP website by mid-January 2011.

Good practice would require that complaints be also publicly available. However, the new Rules of Procedure of the ECAP continue to treat complaints as confidential and to review complaints behind closed doors, notwithstanding the newly introduced possibility for exceptions.¹⁰¹

The maintenance of the Serbian language version of the ECAP website requires more attention as it provides the Serbian translation of a given decision of the ECAP only if the decision resolves a complaint explicitly relevant to a political entity representing the Kosovo Serb community.

⁹⁹ Article 8 of the Amendments Law (LGE Article 115.2) provides that "The President of the Supreme Court shall appoint a Chairperson of ECAP from among the judges of the Supreme Court and members from among the judges of the District Courts."

¹⁰⁰ For example, ECAP decision A08/2011 of 13 January 2011, which united 21 complaints and lacked their adequate description, stating only that, "in many polling stations there was theft of votes, bribing of commissioners, falsification of signatures, threats, ballot stuffing, family voting, pressures and blackmail etc."

¹⁰¹ Paragraph 1.4 of the new Rules of Procedure of the ECAP provides that "[...] All sessions of the panels shall be closed and confidential. Notwithstanding, the Chief Presiding, or, in his/her absence, the presiding officer of the making-decision panel, may authorize observers to be present at any panel session, upon receipt of a formal request by said observer [...]."

4.8 TRANSPARENCY

While the LGE largely upholds important aspects of transparency in the electoral process¹⁰² as it allows for insight into the process by international and domestic partisan (political party) and non-partisan (NGO) observers, transparency issues remain to be addressed.

It is unclear why individual observers are granted more time to apply for accreditation as opposed to the observer organizations. The removal of the possibility to fine election observers up to €200,000 is a welcome development enhancing transparency.

However, the arrangement whereby the CEC drafts numerous substantive rules that should be part of written law undermines transparency. The lack of a legal obligation for the CEC to publish detailed guidelines for the procedure of seat allocation severely undermined transparency, in particular in view of the EU EEM's discovery that different representatives of political parties and even institutions shared with the EU EEM contradictory views regarding key aspects of the implementation of the electoral system.

Further to that, the LGE does not provide timelines for counting and tabulation of the votes, and for announcement of preliminary, provisional or final results at all levels. This renders the process at this critical stage unpredictable and significantly obscures transparency.

In addition, while the posting of election results (the "pink" copy of the results reconciliation forms, RRF) at the polling stations enhances transparency, there are no guarantees that party agents and other observers are provided with certified copies of the RRF and CRF, despite the short deadlines to file potential complaints at this stage of the process.

The CEC website is inconsistently maintained and cannot be relied upon as a source of up to date information. Often, key announcements are posted several weeks late, and there are frequent difficulties in downloading documents from the site. When checked on 19 January 2011, the most recent press release posted in English and Albanian was of 3 January, and in Serbian of 7 January.

Finally, there is a deficit of transparency with regard to the complaints and appeals process. First, as a rule, the hearing of complaints and appeals related to election disputes takes place behind closed doors. Secondly, the ECAP posts on its website only its decisions on complaints that were heard by the Panel, rather than both the complaint and the relevant decision, including complaints that were dismissed due to a failure to submit them within the legal deadlines or which were considered inadmissible. Thirdly, the Supreme Court lacks a website or spokesperson and its appeal decisions are difficult to obtain. Its decision on an appeal lodged by *Vetëvendosje* with regard to the repeat election of 9 January was such an example, adding uncertainty to the election process.

4.9 COMPLIANCE WITH APPLICABLE INTERNATIONAL STANDARDS

The electoral legal framework generally protects fundamental freedoms, as well as the rights to elect and to be elected, and ensures positive discrimination of minority communities and women. It is conducive overall for the conduct of elections in line with international standards, although considerable room for improvement remains in a number of aspects.

¹⁰² LGE Article 56.1 provides a broad spectrum of rights to election observers; full respect of these rights by the election and any other relevant officials will significantly contribute to the transparency of the election process.

Possible improvements that have the potential to enhance compliance with international standards for democratic elections include:

- a. Ensuring respect for the principle of proportionality in restricting civil and political rights;
- b. Clarification of the priorities of the election system for the Kosovo Assembly with regard to enhancing women's participation in politics;
- c. Clarification of the priorities of the election system for the Kosovo Assembly with regard to filling possible vacancies in the Assembly;
- d. Identification of an alternative procedure to ensure that 30 % of the *elected* candidates are of the lesser represented gender; and
- e. A review of legal provisions that may amount to collective sanctions.

In addition, respect for good electoral practice would require:

- a. Simplification of the election system
- b. Reviewing the timeline for accreditation for election observers;
- c. Strengthening the capacity of the election administration bodies, in particular with regard to ensuring the transparency of the vote count and tabulation, announcement of the results and seat allocation; and
- d. Further reviewing and streamlining the complaints and appeal process, view to ensuring that administrative decisions do not interfere with implementation of judicial decisions and enhance the transparency of the process.

5 ELECTION MANAGEMENT BODIES

5.1 CENTRAL ELECTION COMMISSION (CEC)

Elections in Kosovo are administered by a three tier election administration comprising the CEC, 37 MECs¹⁰³ and some 2,280 PSCs located in 746 Polling Centres.

Currently, the CEC comprises a President, Valdete Daka, and ten members nominated by the political parties represented in the Assembly of Kosovo, in line with Art.139 of the Constitution. The PDK has two members,¹⁰⁴ the LDK, LDD, AAK and AKR have one member each. Four members represent parties from non-majority communities. The MEC and PSC have one chairperson and six members nominated by parliamentary political entities. *De facto*, some MECs have more representatives in order to facilitate representation of non-majority communities on election commissions. The EU EEM found this to be the case in Pejë/Peć.

The President of the CEC is appointed by the President of Kosovo from among the Supreme Court judges¹⁰⁵ for a seven year term,¹⁰⁶ for a maximum of two consecutive terms.¹⁰⁷ The current President was appointed to complete the term of the previous one who resigned for health reasons in 2010. The composition of the CEC is established by the Constitution,¹⁰⁸ however the terms of its members are not specified. One could conceive that they will be appointed by the incoming Kosovo Assembly. The maximum number of consecutive terms for a

¹⁰³ In practice, there are only 34 MECs, as three MECs North of the Ibar River are not fully operational.

¹⁰⁴ In line with Constitution of the Republic of Kosovo, Article 139.4, second sentence.

¹⁰⁵ Constitution of the Republic of Kosovo, Article 139.3.

¹⁰⁶ LGE Article 61.2.

¹⁰⁷ LGE Article 61.3.b.

¹⁰⁸ Constitution of the Republic of Kosovo, Article 139.4.

member is three.¹⁰⁹ Except for the CEC President, the members of the CEC remain largely the same as for the 2009 elections.

The selection criteria for nomination of CEC members and the rules for early termination of their mandates run contrary to the principle of proportionality.¹¹⁰ Further to that, it is unclear who decides whether the prospective members of the CEC “meet the conditions and criteria” of the LGE and whether the behaviour of a member “seriously affects the status and integrity of the CEC”.¹¹¹ While the intent of including the qualifications¹¹² provided for by the LGE are clear, they could be used in a selective manner to disqualify “inconvenient” individuals.

It would appear that CEC members who are party representatives often perceive themselves as members of a “political board” overseeing the election, rather than professional election administrators. One is left with an impression that they are not always on “top of the election issues”, which are mostly left in the hands of the CEC Secretariat, a body stipulated in the LGE to assist the CEC discharge its responsibilities and functions, and whose Chief Executive the CEC appoints.¹¹³ This attitude has the potential to make the CEC membership “hostage” to the CEC staff who could have their own agendas, despite being formally civil servants.¹¹⁴

The existing solution for the composition of election commissions does not challenge international standards as such standards do not exist. It is conducive to transparency as it allows the key parties of the day to have an insight into and involvement in the process.

This solution will work as long as neither the authorities nor political parties are in a position to influence the performance of the election commissions beyond the limits of the law and as long as the commissions conduct business in a professional and politically impartial manner.¹¹⁵

Clearly, it was a huge task for the CEC to organise elections in less than six weeks, even given the right “to change time frames as needed in accordance with the circumstances.”¹¹⁶ Facilitating out-of-Kosovo voting, adjusting to newly adopted legislation, certification of political entities and candidates, appointment and training of polling station commissioners, ensuring proper voter education, setting up the Counting and Results Centre (C&RC), not to mention having to update a voter list often perceived as problematic, were just some of the demanding tasks of the election management bodies.

International support was still in demand. The OSCE again provided support to the CEC up to the day of election, with both advice and technical assistance e.g. on finalising the voter list. IFES played a key role in giving technical support at the C&RC, and voting north of the Ibar River was almost solely facilitated by IFES international advisors. However, the EU EEM witnessed an inappropriate attempt by members of the CEC to put undue responsibility for the protracted processing of RRFs and CRFs at the C&RC on providers of international technical

¹⁰⁹ LGE Article 61.3.c.

¹¹⁰ LGE Articles 61.8.l and 61.5.c.

¹¹¹ LGE Articles 61.5a and d.

¹¹² LGE Article 61.7 provides that, “A member of the CEC must have work experience of no less than 5 years and a university degree in law, public administration, political science, human rights, mathematics, election administration, in social sciences, public relations, or statistics.”

¹¹³ LGE Articles 65 and 66.

¹¹⁴ This was illustrated by a statement made by one member of the CEC at a meeting attended by the EU EEM on 7 January 2011, where the member in question stated: “At least here where the process is in our hands we expected there would be no such problems.” This was in the context of a discussion related to glitches in the software for checking the consistency of polling station reconciliation and candidates’ results forms, please see Section 7.5 “Recount”.

¹¹⁵ The CEC is reported during the 12 December general election process to have adopted more decisions by consensus than during the 2009 local elections, where issues more frequently were decided by a vote of CEC members. The change may be seen as encouraging, indicating a waning of partisan party political approaches to decision-making in the CEC. Nevertheless, a competent source emphasised to the EU EEM that, whether active or latent, there is an inbuilt majority favouring the governing party of the day in the CEC membership, given non-majority community parties’ preference for aligning with such.

¹¹⁶ LGE. Article. 4.5.

assistance. As a matter of fact, this protracted process might have resulted from inappropriate management by the CEC Secretariat.

The CEC issued its amended rules clarifying the implementation of the LGE on time. However, it did not issue guidelines for the seat allocation procedure prior to election day, despite the fact that election contenders had different understandings with regard to which entities had to surpass the 5% eligibility threshold in order to qualify for seat allocation.¹¹⁷

In general, the CEC was successful in its logistical preparations up to election day. However, Kosovo interlocutors also point out that the 2009 elections were far from perfect even with a proper timeframe; mentioning the malpractices at polling station level, leading to re-polling in three municipalities, but also to the performance of the ECAC and the C&RC. The timeframe of the 2010 elections did not make the task any easier and sufficient steps to secure an improvement of especially the counting at polling station level were not taken. However, the announcement of preliminary results¹¹⁸ for the 2010 general elections was a source of serious concern. It damaged the overall assessment of the election and more importantly it further damaged public confidence in the election process.

Clearly, the problems related to the lack of publication of credible preliminary results and timely final results are not just a question of management by the CEC. These problems result from aspects of the legal framework that require serious review and from poor conduct at the polling station level due to a lack of political will, including at the grass root level, to adhere to proper procedures and prevent electoral fraud. The impunity when it comes to electoral offences is part of the genesis of poor elections. The CEC informed the EU EEM that it used a system of blacklisting staff who have been assumed to be involved in electoral malfeasance. The CEC took no measures beyond dismissal of several C&RC staff suspected of manipulating a recount in mid-January.¹¹⁹

The CEC conducted a voter information campaign with support from IFES. Nevertheless, due to the system of five preferential votes to be cast, it was difficult for voters to remember five numbers as no names of candidates were on the ballot.

The EU EEM has mixed findings of MECs' work. Pristina's MEC pro-actively invited the two non-parliamentary Kosovo Albanian entities to nominate polling station commissioners. However, the JSL complained that the Gračanica/Graçanicë MEC did not permit it to nominate any. The Malishevë/Mališevo MEC was discovered by FER to have registered 14 polling station commissioners who were falsely represented as FER members. At very least, the performance on 12 December of the Gllgovc/Glogovac and Skënderaj/Srbica MECs was questionable, as each provided successive versions of implausibly high turnout figures.¹²⁰

5.2 REGISTRATION OF POLITICAL ENTITIES AND CANDIDATES

Certification of the candidate lists of the political entities registered to compete in the 12 December election was completed on 19 November 2010.¹²¹ Candidate lists were available at the website of the CEC.¹²²

¹¹⁷ See Section 4.6 "Election System" for further details.

¹¹⁸ See Section 7.3 "Preliminary Results".

¹¹⁹ See Bukurie Bajraliu, "Votat e kandidatëve po manipulohen edhe në QNR" [Candidates' votes are manipulated even in the C&RC], *Koha Ditore*, 19 January 2011. Confirmed to the EU EEM by competent sources in the CEC and C&RC.

¹²⁰ A newspaper moreover cited a PDK candidate who wished to remain anonymous alleging that his own party orchestrated the Gllgovc/Glogovac MEC to rearrange results during the night following the 9 January partial repeat election. Vehbi Kajtazi, "Vjedhja 'institucionale' e votive në Drenas" ["Industrial" theft of votes in Drenas], *Koha Ditore*, 15 January 2011.

¹²¹ The EU EEM arrived in Pristina on the same day.

The CEC certified, in an inclusive manner, a total of 1,266 candidates included in the candidate lists of 29 political entities. The latter included 24 lists submitted by political parties, two – by coalitions of political parties and three - by citizens' initiatives. Of these political entities, seven represented the Albanian majority, eight – the Serb minority, four – the Bosnian minority, two each – the Ashkali, the Egyptian, Turkish and the Gorani minorities, and one each – the Roma and the Montenegrin communities. No independent candidates were certified by the CEC for the 12 December election.

The President of the CEC informed the EU EEM that it was the view of the CEC that it is not an investigating body and consequently the CEC did not verify the candidates' statements for compliance with the LGE requirements for eligibility and compatibility.¹²³ The EU EEM finds this approach to be at odds with the CEC's legal obligations.¹²⁴

According to many, the leader of the citizens' initiative *Vetëvendosje*, Albin Kurti, was not eligible to stand as a candidate as he was sentenced by a district court in June 2010 and the verdict became final since it was not appealed by the defendant. In a meeting with the EU EEM, representatives of *Vetëvendosje* argued that Albin Kurti was eligible to stand as he was not formally informed of the court's final decision.

5.3 VOTER REGISTRATION AND IDENTIFICATION

There has been no major drive to improve the voter lists (VL) since the 2009 elections. VL are compiled on the basis of the CCR data maintained by the Mol and provided to the CEC. The CEC is tasked to maintain the VL and administer, through rules, this aspect of the process in the close run-up to election day. The EU EEM of 2009 recommended that it could be "useful to conduct a thorough audit, possibly with international involvement, of the CCR maintained by the Mol in order to refute allegations for inaccurate records or, in case that such allegations are grounded, to take appropriate steps and improve the quality of the voter lists for future elections."

Among many interlocutors who criticised the VL, a PDK official argued that its inadequacy misrepresents turnouts in Kosovo elections, which he gauged at closer to 60% rather than 40%. His estimate was that the 1.6 million records on the VL include 300,000 Kosovo Albanians living abroad, 120,000 Kosovo Serbs absent from Kosovo, and tens of thousands of deceased, amounting altogether to some 500,000 inactive voter records, although it must be borne in mind that all but the deceased have the right to remain on the VL.

A voter service period was open from 10-16 November in order for citizens to check, and if need be, require change(s) to their entry on the VL. In Pristina Municipality, this service was extended until 21 November in order to meet requests. While there has been an interest by citizens to check their own entry on the VL, which can also be undertaken over the internet, there appears to be no interest in challenging other voters on the VL. The Chairperson of Pristina MEC stated that during the many elections she has served, no one has ever made a challenge.

The 2010 VL comprise 1,630,636 voters, up from 1,563,741 in 2009. This is an increase of 66.895 voters or 4,28 %. The increase was not evenly spread over Kosovo. It is notable that the increase in Glllogvc/Glogovac from 2009 to 2010 was 12.45 %, while in Skënderaj/Srbica it was 9.71 %. The CEC stated that some 7,000 names of deceased persons were removed in the final few weeks leading up to the election. It is widely believed that the VL contain records of deceased persons. The late President Rugova, who died in January 2006, was removed in 2009, but according to press reports he was listed again in 2010 and finally removed on the basis of a submitted death certificate prior to election day 12 December.

¹²² http://www.kqz-ks.org/SKQZ-WEB/al/materiale/Subjektet_Politike_te_certifikuara_2010.pdf.

¹²³ LGE, Article 29.

¹²⁴ LGE, Article 29.4.

Voter identification at the polling stations on election day is regulated by Article 90 of the LGE, whereby voters have to present a *valid* identification document (ID) in order to receive their ballot. However, some non-majority community voters, notably the Kosovo Serbs, expressed concerns that they could present only ID issued by the authorities of the Republic of Serbia which in some instances had expired. In its Rule 9,¹²⁵ the CEC simply repeated the provisions of LGE Article 90. However, later it issued separate guidelines to the lower level election commissions,¹²⁶ allowing for voter identification with expired IDs.

5.4 CONDITIONAL VOTES AND OUT-OF-KOSOVO VOTING

Conditional voting has been a characteristic feature of Kosovo elections for a decade. In the Kosovo context, conditional voting refers to cases where a voter cannot be found on the voter list, but he or she can prove eligibility to vote. A voter in Kosovo, whose name cannot be found on the voter list on election day, or his or her name is found on the voter list with a mark indicating that he or she should cast a conditional ballot, shall be allowed to cast a conditional ballot provided that his or her identity can be established by means of a valid ID.

Conditional voting is well understood as an enfranchising tool in a post conflict environment where (a passive system for) voter registration is based on permanent population registers. It is regrettable that conditional voting remained for the 2010 election. It is deplored by the CEC and most interlocutors. It opens an avenue for manipulation of the election and delays the process of announcing results. The justification given is the timeframe of these elections and that it serves as a means to enhance Serb participation.

According to information given by the C&RC, 32,483 conditional votes were cast on 12 December 2010. Adjudication at the C&RC is still pending at the time of writing. The signed VL used on election day has to be scanned at the C&RC. Each conditional ballot is cast in a security envelope with the detailed information of the voter. In order to approve a conditional ballot it has to be verified that the voter has not voted in more than one polling station. This time consuming process delays the publication of final results and it lacks transparency. It is unclear in which format the CEC will publish the results emerging from the adjudication of the conditional ballots.

Out-of-Kosovo voting was organised as a by-mail programme. The registration period was from 3 to 16 November 2010. The CEC received 5,014 applications. 1,639 were approved: down from 1,806 in 2009. These votes are also counted at the C&RC.

5.5 REGULATION OF POLITICAL ENTITIES AND THEIR FINANCES

The LGE foresees registration of political parties, through an office within the CEC, the OPPRC, which is part of the Secretariat. Requirements include provision of the party statute, annual audited financial statements, agreement to the Political Party Code of Conduct, the date of the most recent party convention, and a list of at least 500 members. Registered parties are automatically certified as political entities eligible to contest elections. Coalitions, citizen's initiatives and independent candidates have their own certification procedure.

The CEC Rule 01/2008¹²⁷ additionally stipulates that parties must hold an assembly at least every three years, to elect their president and highest executive body in a democratic and transparent manner, enabling each party member to have an equal vote, either directly or through a duly assigned delegate. It also requires the party statute to specify procedures for

¹²⁵ Rule N 9 from 2009 amended on 11 November 2010, Section 10.

¹²⁶ On 11 November 2010.

¹²⁷ On Registration and Operation of Political Parties, Article 13.1.

such internal elections and for selection of general and local election candidates. However, administrative regulation of a fundamental political right, such as the freedom of association, falls short of good practice.¹²⁸

In late October 2010, in a letter to the CEC, two independent members of the outgoing Assembly requested decertification of the PDK on the basis of CEC Rule 01/2008. They alleged that the PDK congress of 24 October 2010 breached this rule, because it failed to hold delegate elections at branch level, to which the party statute moreover states MECs should be invited, to monitor.¹²⁹ There were no such complaints from within the PDK.

The CEC OPPRC responded that the documentation submitted by the PDK about its congress was in order.¹³⁰ However, it appeared to rely only on the PDK's own written account, and did not monitor the congress.¹³¹ While maintaining strict rules for political party registration, which went beyond the stipulations of the LGE, the CEC balked at implementing them.

A new Law on Financing Political Parties (LFPP) was adopted on 16 September 2010 to supersede the Finances of Political Parties provisions of UNMIK Regulation 2004/11. It limits annual donations from individuals to € 2,000 and from legal entities to € 10,000; replacing the earlier limit of € 20,000 from individuals. A FER official commented to the EU EEM that the timing of the new lower limit, passed into law shortly before the early general election, benefited established parties and disadvantaged newly established ones.

Some civil society representatives were disappointed that a draft provision banning donations from companies that win public tenders was left out of the finalised version of the LFPP, although others believed that would have been too draconian. Its proposal reflected concern over the widespread alleged political abuse of public procurement: highlighted in the European Commission's 2009 Kosovo Progress Report and several substantial reports by domestic NGOs since. By way of example, a newspaper reported that a PR company which recently won a ministry contract was designing the election campaign for the party which heads the ministry.¹³²

The LFPP provides for public funding of political parties, from a fund not exceeding 0.17% of the Kosovo budget. The money is allocated by the CEC among the parties represented in the Assembly in proportion to their number of seats. Upon the proposal of the government the Assembly may also allocate funds not exceeding 0.05% of the Kosovo budget for parties' election campaigns, 90% allocated as above, with 10% allocated to newly certified political entities.

Parties can be fined up to € 10,000 for receiving funds in violation of the LFPP or for bad recordkeeping. A party's unpaid fines can be docked by the CEC from the public funds it disburses. Any party that fails to submit to the CEC its annual financial report loses its right to public funds for the following year. The CEC audits each financial report "in compliance with standards of applicable accounting in Kosovo", sending preliminary findings within 60 days to the party's executive body, granting it five days for comments and explanations, then finalising the report after a further ten days. The law does not appear to require the report's publication or availability to the public.

¹²⁸ Please see "Guidelines on Political Party Regulation"; CoE Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, 25 October 2010, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.asp).

¹²⁹ See Jeton Llapashtica, "I vërsulen PDK-së" [Going for the PDK], *Zëri*, 28 October 2010.

¹³⁰ Ibid.

¹³¹ CEC Rule 01/2008 Section 13.6 stipulates that, "A registered political party shall invite the Office to monitor its Assembly."

¹³² Arbana Xharra, "Fitoi tenderin nga Qeveria, ia bën fushatën PDK-së" [Won a tender from the government and now doing the PDK's campaign], *Zëri*, 27 November 2010.

The LGE regulates campaign spending, making the CEC OPPRC responsible for its oversight. Political entities must submit a report of expenditures within 45 days after the election, covering the campaign period and the 90 preceding days, which the CEC OPPRC audits within a further 45 days and then publishes after giving each party 15 days to comment.

Oversight of the LGE provisions on the campaign spending limit has been weak. While it is premature to judge implementation of the LFPP, its oversight is conducted by the same body, the CEC OPPRC. Political parties are becoming accustomed to a lack of effective control in this area. The CEC OPPRC was late in processing the campaign audit for the November 2009 local elections. It relies on a paper trail only and could not tell the EU EEM how it would detect undeclared expenditure or goods and services provided in kind. Neither has the CEC OPPRC made copies of the parties' expenditure reports available for public inspection, as required by the LGE, while the originals have been sent to the external auditor it appointed.

The CEC moreover did not publish the audited financial reports of the political entities that took part in the 2009 local elections, before the general election campaign began. The CEC President stated to the EU EEM that those political entities that received unfavourable auditor comments might claim that the publication just before the early general election was politically motivated; therefore it was better to publish the reports after the election. This decision however deprived voters of information upon which to base their choice.

The NGO Kosova Democratic Institute (KDI) piloted a project for monitoring expenditure during the official campaign period, deploying 63 observers to track advertisements, meetings and other political entity expenditures in the field. The NGO planned to publish campaign expenditure reports for each political entity in parallel with those officially submitted to the CEC. The CEC's failure to make such reports publicly available restricts the scope for such civil society and investigative journalism initiatives.

The CEC OPPRC, tasked with oversight both of political party regulation and financing, appears too weak politically and administratively for the tasks the laws and the CEC's own rules stipulate. It appears to shy away from a potential confrontation with the political parties. The CEC leadership meanwhile appears content to devolve its responsibilities under the above laws to this office. The OPPRC lacks powers of investigation and the resources thereto. The Venice Commission has stated that: "Generally, legislation should grant regulatory agencies the ability to investigate and pursue potential violations."¹³³

The strategic decision on whether Kosovo should have a light touch or interventionist approach to political party and political financing regulation is therefore hedged in a highly unfortunate way. The regulations are interventionist, and overstep relevant written law, yet there is little political will to implement them. The decade of international supervision of Kosovo has created an interventionist legacy: the CEC Rule 01/2008, On Registration and Operation of Political Parties, derives much of its text from a lapsed UNMIK Regulation (2004/11). The Venice Commission however recommends that: "The internal functions of political parties should generally be free from state interference [...] best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed to by the parties themselves."¹³⁴

The LFPP awards the Office of the Auditor General (OAG) prerogatives to author secondary legislation. The CEC OPPRC invited it to audit the 78 political entities that submitted financial reports for the 2009 local elections. The OAG has declined both invitations, arguing that involving a state body in auditing private associations smacks of authoritarianism: parties should rather be obliged to appoint internationally certified auditors. The OAG does though intend in

¹³³ Please see "Guidelines on Political Party Regulation"; CoE Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, 25 October 2010, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.asp).

¹³⁴ Ibid.

2011 to audit the CEC, including its management of the disbursement of public funds to the political parties.

It is regrettable that the LPPF does not attempt to address the need to enhance participation of women in politics as a priority task that political parties should address.

6 CAMPAIGN AND MEDIA

6.1 ELECTION CAMPAIGN

Acting President Krasniqi's declaration on 2 November 2010 of a 12 December general election left 40 days for its organization. The CEC determined that completion of all necessary procedures allowed for only ten days, 1-10 December 2010, for the campaign, rather than the 29 days stipulated in its Electoral Rule 13/2009, Political Entities Election Campaign. The CEC formalized a stipulation that the electoral campaign for Extraordinary and Early Elections would last 10 days, ending one day before election day, in a new Election Rule, No. 15/2010, Early Elections and Extraordinary Elections, dated 18 October 2010. Shortening of the election campaign by a decision of an administrative body falls short of good electoral practice.

The LGE prohibits any campaigning during the last 24 hours before polls open, and until their closure.

Interlocutors from several parties welcomed the short campaign, for obliging messages to be focused and limiting the amount of money spent. Nevertheless, the CEC set a campaign spending limit for each of the political entities according to a formula that took no account of the shortness of the campaign: one third of the usual duration. On the basis of 50 cents for each registered voter, the limit set was € 818,119.

LGE Chapter VII is titled "Campaigning and Notification of Public Events", although the law does not provide for a procedure for such notification. That is instead defined in a rule issued by the CEC,¹³⁵ which stipulates that political entities must apply at least 72 hours in advance to the relevant MEC in order to hold a public event.¹³⁶ If the MEC refuses permission, an appeal can be lodged within 48 hours at the CEC, whose decision "shall be final." However, the rule also states that ECAP may consider and resolve disputes. If two or more political entities apply to hold public events at the same place and time, the earliest applicant has priority, yet none will be allowed to use public places. The rule further stipulates that any public event held without MEC permission shall be considered unauthorized and a violation of the rule.¹³⁷ Kosovo Police or MECs coming across an unauthorized event are to send details of it to the ECAP.

The CEC Rule is more restrictive than the LGE implies, as the latter refers only to "notification" of public events. It amounts to licensing of such events by local administrative bodies, moreover with a lead time of three days that could be regarded as overly restrictive in the context of an election campaign, limiting freedom of assembly.¹³⁸ Neither does the rule's prohibition of anyone under the age of 18 from involvement in election campaigning rest upon written law.¹³⁹ The rule

¹³⁵ CEC Rule 13/2009 "Political Entities Election Campaign".

¹³⁶ CEC Rule 13/2009, Section 4.2.

¹³⁷ CEC Rule 13/2009, Section 6.1.

¹³⁸ Political entities have not complained about this rule. On 22 January the Mitrovicë/Mitrovica MEC chairman told the EU EEM that political entities largely complied with the rule, yet their requests were sometimes submitted with 48 hours rather than 72 hours notice, which he nevertheless did his best to satisfy.

¹³⁹ CEC Rule 13/2009, Section 2.2.

is restrictive of the rights of free expression, association and assembly. It is not good practice for an administrative authority to be the source of legislation on such sensitive matters.

A part of the campaigning activity was displaced into the period before the official campaign started. PDK and LDK billboard posters were erected in Pristina on 29 November 2010, SLS billboard posters were erect in Gračanica/Gračanicë on 30 November 2010. Although the LGE describes the right to conduct campaign activities as if pertaining to the official campaign period only, neither it nor the CEC rules foresee any sanction for campaigning before its commencement. Any such restriction would in any case limit freedom of expression, association and assembly.

Several other parties complained to the EU EEM that the PDK took unfair advantage of its incumbency, such as using government vehicles for campaign purposes and repeatedly using public funds to arrange dinner events for large numbers of teachers, for party political purposes. Schools were closed early in Ferizaj/Uroševac on 26 November 2010 for such an event.¹⁴⁰ A PDK official acknowledged to the EU EEM that municipal education budgets had funded them.

The LDK claimed to the EU EEM that the PDK had a monopoly of control over all the official institutions, including police, which could be misused. For the PDK, Prime Minister Thaçi's reported retort was that this was the consequence of the LDK's walk-out from the government. All other parties criticised outgoing Prime Minister Thaçi's late November 2010 announcement of a 50% pay rise from 1 January for Kosovo's 25,000 teachers, claiming he was dressing up an election promise as a government decision, for which he had no mandate or agreed budget. Prime Minister Thaçi then made similar undertakings for 20-30% pay rises from January 2011 for 70,000 other civil servants, pension increases for miners, and a range of VAT concessions to big businesses. These promises appeared to put in question Kosovo's financial stability in 2011.

The two new Kosovo Albanian parties relied on the exercise of preference votes by their supporters to the degree that they ranked their candidate lists alphabetically, *Vetëvendosje* from the second ranked candidate on and FER from the twelfth ranked candidate on, rather than by seniority. FER and the JSL were the only political entities to rank more women than required by the 30% quota among their first ten candidates.

In the ten day election campaign, between 1 and 10 December, the economy, promises on public sector investment and salaries, and rival claims of ability to ensure speedy integration of Kosovo into international bodies, including the EU, were major themes. Most political entities devoted their energies to maximising support in their respective heartlands.

The parliamentary parties and *Vetëvendosje* used rallies around the country as a mainstay. FER instead used walkabouts. Children participated in many of the rallies, in contravention of a contentious provision of the CEC's Rule 13/2009, referred to above.

Several political entities appeared somewhat fragmented in their campaigning. This was because wider coalitions of parties and groups were brought together under political entity lists due to the 5% eligibility threshold requirement. Also, the prospect of the five preference votes helped to demote the role of official party structures in the campaign, as many groups campaigned for individual candidates, driving some of the electoral competition inside political entities. There was much local and door-to-door campaigning, mostly on behalf of individual candidates of the political entities. Much of the advertising was also for individual candidates, which they have often financed themselves. It remains to be seen how this will be reflected in the financial reports political entities must submit within 45 days after the election to the CEC OPPrC.

¹⁴⁰ On this occasion meals were not provided, only drinks.

During the campaign the domestic observer network “Democracy in Action”¹⁴¹ gave two estimates of parties’ spending on newspaper adverts based on KDI’s monitoring, one after the first four days, a second after the ninth day. After four days the PDK led with € 35,230 (59.31% of estimated spending), while AKR spent € 14,389 (24.23%). The other parties lagged far behind. After nine days, the PDK had spent an estimated € 103,062 (49.4%), the AKR € 60,765 (29.14%), the LDK € 25,870 (12.4%), with others far behind, *Vetëvendosje* spending was least, € 1,033 (0.5%). The PDK appeared to outstrip all other parties in billboard and television advertising; the preponderance of PDK television adverts was most marked in the closing days of the campaign. Although KDI had set out to monitor such advertisements too, it did not report its spending estimates during the campaign.

Among the Kosovo Albanian political entities there were few violent incidents. In the pre-campaign period, *Vetëvendosje* claimed that an organised group of men disrupted a meeting it attempted to hold in a village of Glllogovc/Glogovac (Drenas) municipality on 26 November 2010. During the campaign, the Prime Minister cancelled his appearance at a PDK campaign event in a school of Pristina’s Kodra e Trimave/Vranjevac neighbourhood on 6 December 2010 due to a disturbance by youths supporting the LDK. In Podujevë/Podujevo on 3 December 2010 the LDK accused the PDK of making threats by phone. In a village of Shtime/Štimlje municipality on 7 December 2010 some *Vetëvendosje*-supporting youths were allegedly beaten by PDK-supporting youths.

Vetëvendosje refused to sign the code of conduct, denouncing other parties’ signature to it as a “masquerade”. The code is overseen by the ECAP, which can impose fines for violations by parties’ officials, candidates and supporters. These include interference with opponents’ posters, carrying weapons, disrupting opponents’ meetings, promising financial reward in return for votes, threatening opponents, inciting hatred, and making false, frivolous or vexatious complaints to the ECAP. However, in practice *Vetëvendosje* was the most prolific complainant.¹⁴²

Vetëvendosje’s call for unification with Albania, a Kosovo army, and forcible integration of the municipalities north of the Ibar injected nationalism into the campaign, prompting other parties and even journalists to take more account of it.¹⁴³ The LDD argued that the Albanians in Serbia’s Presevo valley should reciprocally receive every right granted to Kosovo Serbs, while the AKR leader stated that *de jure* unification with Albania would take 10-15 years.

Negative campaign messages were muted, although most others criticised the incumbent PDK for alleged corruption, while rivalry sharpened between the PDK and new challenger *Vetëvendosje* for patriotic credentials and the heritage of the KLA. Several parties criticised the PDK for its (now formally dissolved) associated SHIK security structure, several of whose former leading members are PDK candidates.

The international community became an important factor in the campaign. The PDK presented itself in speeches and advertisements as the established partner of the international community, with good links to Washington DC and Brussels, and Prime Minister Thaçi urged voters not to support parties lacking such credentials. LDK leader Mustafa retorted that he was not seeking votes in these capitals, but from Kosovo citizens. In late November 2010, the US ambassador to Pristina denounced *Vetëvendosje* a day after his apparent endorsement of FER.

¹⁴¹ Please see Section 8.1 “Domestic Observer Groups”.

¹⁴² Please see Section 6.2 “Complaints and Appeals during the Campaign”.

¹⁴³ For example, the presenter of the RTK television debate on security, broadcast on 5 December, pressed party representatives for their policies on taking control of the territory north of the Ibar, in a charged atmosphere in front of a studio audience that included a significant number of Kosovo Albanians from divided Mitrovicë/Mitrovica.

In late November 2010, PDK election promises on salary raises for public sector workers and that it would deliver EU visa liberalisation within 15 months brought public criticism respectively from the IMF's representative in Kosovo and the European Parliament's Kosovo rapporteur Ulrike Lunacek, while the ICR/EUSR stated that politicians should not make promises they cannot keep. In a meeting attended by the EU EEM, a senior PDK representative demanded that such criticisms cease, questioned why the international community was not instead criticising *Vetëvendosje*, and expressed outrage that a prominent former international official, the 1998-1999 OSCE Kosovo Verification Mission chief William Walker, was speaking at *Vetëvendosje* campaign rallies, supporting unification with Albania. He suggested that the PDK could abandon the Ahtisaari plan and also back a greater Albania if it was not better supported by the international community.

Some civil society representatives assessed that the international community was influencing the campaign in favour of the political status quo. One cited an informal EULEX moratorium on arresting politicians during the election process, reported in the press,¹⁴⁴ as unfair. Another cited attempts to control domestic observer organisations.

In meetings attended by the EU EEM, LDK representatives asked that the international community favour those who win the election honestly rather than those who blindly apply their advice. Similarly, AKR representatives expressed concern that the international community tacitly supports Prime Minister Thaçi and the PDK, regarding them as the most convenient partner for the anticipated dialogue with Serbia. *Vetëvendosje*'s leader expressed frustration that the international community supervises Kosovo in areas where it is not welcome, but fails to do so properly for elections, where it is needed.

In Kosovo Serb areas south of the Ibar, SLS – JSL rivalry and mutual accusations dominated the campaign. Neither articulated a political program. Two Kosovo Serb NGOs that observed the campaign found that both political entities offered money, jobs or goods in exchange for votes.¹⁴⁵

The SLS campaigned on its record, including significant infrastructure improvements it has made during a year in charge of Gračanica/Graçanicë municipality, and alleged that JSL leaders who run parallel institutions were pressurising employees for their votes. The JSL campaigned against the SLS's record in central and local government, its closeness with Thaçi's PDK, and alleged that it was buying votes and taking old people's ID card numbers. The JSL complained that while the SLS and PDK had members on the Gračanica/Graçanicë MEC, JSL observers were not even allowed to be present at its sessions.

Serbian government support for the JSL did not seem to materialise: no clear orders were passed through its Kosovo parallel governance structures to vote for it; its message was muddled. Although Serbia's Minister for Kosovo made clear that Kosovo Serbs would not be punished or stigmatised for voting, during the campaign period most messages from Belgrade, including from his ministry, the Serbian Orthodox Church and the DSS, discouraged voting. Serbian media gave the JSL campaign scant coverage.

The mainstream choice facing those Kosovo Serbs who were ready to vote was between the JSL and the SLS. The JSL seemed to have a likely future role as an opposition force in the Kosovo Assembly, a less likely role as a semi-detached member of the government and a

¹⁴⁴ See Zijadin Gashi, "EULEX-i në moratorium" [EULEX in moratorium], *Zëri*, 2 December 2010. An EULEX representative stated to the EU EEM that there is no formal moratorium, but that such arrests were not included in the mission's operational plan during this period.

¹⁴⁵ Women's NGO *Avenija* and the Centre for Peace and Tolerance. They presented findings at a 12 December 2010 press conference at the Caglavica/Caglavicë media centre near Pristina. Serbian transcript available at <http://www.medijacentar.info/>.

determination to use CSP mechanisms to defend Serbian vital interests including activation of the neglected issue of restoration of Serbian Orthodox Church lands. On the other hand, the SLS, with its close relationship with the PDK, seemed likely to continue its role in government and the patronage this makes available to Kosovo Serbs from Pristina. Belgrade's indifferent stance toward its would-be protégé made the JSL electoral environment challenging.

North of the River Ibar, the DSS launched an aggressively toned campaign demanding a boycott of the elections of the "Shiptars".¹⁴⁶ To the EU EEM, the regional DSS chief described any northern Serbs willing to participate in the elections as "prostitutes". The DSS Belgrade leadership spoke on 4 December 2010 of creating a "body to oversee the election" to prevent false claims of Serb turnout. The Serbian government official heading the area's parallel structures also broadcast a boycott appeal on 1 December 2010 on north Mitrovicë/Mitrovica's *TV Most*, overstepping official Belgrade's more nuanced position. For the broadcast, he surrounded himself with the region's mayors, the Kosovo Police station commanders and Serbia's parallel structures' non-uniformed police commanders.

Northern Kosovo Serbs have previously tolerated low key election campaign activities among the area's small Kosovo Albanian and Kosovo Bosnian communities. Although north Mitrovicë/Mitrovica's *Radio Contact Plus* and Leposavić/Leposaviq's *TV Mir* offered coverage, there has been no election campaigning in the area and no expectation of Serb participation. No parties bought any advertising time with these stations. The Kosovo Montenegrin Democratic Party submitted an advert, but without money. *Radio Contact Plus* refused this and adverts from the boycott campaign, and transmitted an hour-long program of election news co-produced with Kosovo Serb radio stations from south of the Ibar two to three times a week. Its director told the EU EEM that there were no negative reactions.

On 8 December 2010, a gun attack on two local Kosovo Bosnian employees of the CEC's Municipal Election Commission in the northern Kosovo Serb-majority municipality of Leposavić/Leposaviq left one dead and the other severely wounded. While the motives for the attack are still being investigated, it could be seen as an escalation upon recent attacks on the persons or property of northern Serbs with links to Pristina.¹⁴⁷ A subsequent announcement by Serbia's Interior Minister Ivica Dacic that the shooting victims were wanted in Serbia on criminal charges dating back to 2000 underlined their lack of protection in the environment north of the Ibar, to which their non-Serb ethnicity and support for Kosovo institutions may have contributed.

In the night of 11 December 2010, an empty KFOR Liaison and Monitoring Team (LMT) office in Zubin-Potok/Zubinpotok municipality was sprayed with bullets. A leaflet claiming to be from a "Serbian terrorist organisation" was found there; similar leaflets were seen in other locations north of the Ibar over the election weekend. It warned KFOR, EULEX and the Kosovo Police not to facilitate the "Shiptars'" elections, or they would be shot, like the Kosovo Bosnian CEC official.

6.2 COMPLAINTS AND APPEALS DURING THE CAMPAIGN

According to ECAP statistics on complaints, received by the EU EEM on 6 January 2011, a total of 124 complaints on the election campaign were filed with the Panel. The vast majority of these, 110, were related to destroying opponents' posters. Most complaints were filed against the PDK - 42, followed by LDK - 27 and AAK - 21.

¹⁴⁶ The derogatory term for Albanians.

¹⁴⁷ The most recent one was the burning of a local OSCE employee's car in north Mitrovicë/Mitrovica on 29 November 2010.

The ECAP fined a number of political entities for campaign violations during the election campaign preceding the vote on 12 December election. The total of fines on the PDK was € 135,400, followed by the LDK – € 83,250 and AAK – € 69,600. The total of fines imposed on political entities for campaign violations amounted to € 359,850.¹⁴⁸ The ECAP indicated to the EU EEM that the Panel intended to start collection of these fines immediately after the election was over. As of 11 January, no fines were paid, despite a 15-day deadline set by the ECAP.

6.3 MEDIA LANDSCAPE

Most people in Kosovo receive their information from television. There are three established terrestrial television stations that broadcast Kosovo-wide. These include the public broadcaster RTK, and the privately owned KTV and TV21. RTK is the most watched. A privately-owned Kosovo-wide cable-broadcast TV station, *Klan Kosova*, was established in 2009 as an offshoot of Albania's *Klan TV*. That and several other TV stations from Albania are watched on cable networks. There are a number of local TV stations. Although RTK is obliged to include programs in Serbian and other non-majority community languages, nearly all Kosovo Serbs prefer to watch Serbian TV stations, available in some Kosovo Serb areas on cable, or by satellite.

Shortly before the 2009 local elections, in October 2009, the European Broadcasting Union Director General accused Prime Minister Thaçi of transforming the public broadcaster RTK “into a media arm of the ruling party.”¹⁴⁹ This followed the resignation of RTK's director, changes made in the management of news programmes, and the removal of RTK's independent financing, making it dependent upon grants voted by the Kosovo Assembly. RTK has since given the government much uncritical coverage, both in protocol news coverage and non-challenging interviews. RTK's Brussels correspondent was featured less after she gave a frank on-air assessment of the EU Kosovo 2009 Progress Report in October 2009, and was not seen to give an assessment of the 2010 Progress Report.

KTV (*Kohavision*) maintains what appears to be an independent, critical position. So too does the independently-produced *Life in Kosovo* current affairs show, broadcast weekly on RTK. TV21 strives to be inoffensive. *Klan Kosova* has favoured the PDK in its many debate programmes, though its news has maintained independence. Local TV stations try not to offend the parties in power, both locally and Kosovo wide.¹⁵⁰

The EU's 2010 Kosovo Progress Report stated that the media structure remained conducive to strong influence by partisan and ownership interests on journalists. The Kosovo authorities remain one of the biggest advertisers in the print media generating a dominant position over the media. Because overall circulation of newspapers is low, most depend upon adverts from the government and public sector or upon businessperson proprietors.

The most prominent newspaper, *Koha Ditore*, owned by the same group as KTV, has the reputation of being independent and performs investigative journalism into alleged government and public sector corruption. So does *Zeri*, to a lesser extent. *Kosova Sot* is cautious and inoffensive. Other newspapers are partisan, including *Bota Sot* favouring the LDK, *Lajm* - the AKR, *Express*, *Epoka e Re*, *Infopress* and *Tribuna Shqiptare* - the PDK. The PDK newspapers have a record of hounding government critics.

¹⁴⁸ This amount differed more than 10 times from the amount provided to the OSCE on 14 December 2010.

¹⁴⁹ See: http://www.ebu.ch/en/union/news/2009/tcm_6-66520.php.

¹⁵⁰ See Lawrence Marzouk, “BIRN Show Triggers Row on Freedom of Speech in Kosovo,” *Balkan Insight*, 11 June 2009.

The Balkan Investigative Reporting Network, which produces the Life in Kosovo TV show, also runs the *Balkan Insight* website news service and *Prishtina Insight*, an English-language newspaper and all three practise investigative journalism.

6.4 COVERAGE BY THE MEDIA

The LGE stipulates that the Independent Media Commission (IMC) issues codes of conduct both for broadcast and print media that cover all aspects of campaign coverage and advertising. All media must give all certified political entities fair and equitable coverage. Any broadcaster that accepts paid political advertising must also provide all certified entities with free airtime. The Kosovo-wide TV broadcasters offered free airtime in the shape both of some free advertising spots and equal representation in studio debates, of which there were very many during the 10-day campaign.

All political entities of the Kosovo Albanian majority received exposure and opportunity to present themselves in these debates, which were lively. In previous general elections, journalists have expressed frustration that the OSCE-derived rules stipulating equal time for all political entities hinder focused debate between the key political actors. However, the reduction in this election of the registered Kosovo Albanian political entities to seven made this less of an issue. However, as in previous elections, there was no party leaders' debate. Prime Minister Thaçi in particular declined to answer journalists' questions on whether he would debate with LDK leader Mustafa. Several parties appeared poorly prepared for RTK's innovative, lively and probing TV debates devoted to specific areas of governance, such as healthcare, energy and the budget, and failed to offer policies or a vision.¹⁵¹

There were no particular complaints of bias in TV coverage of the campaign, until several parties expressed dissatisfaction that RTK granted Prime Minister Thaçi an uncritical interview on 10 December, the last evening of campaigning. At 40 minutes long, it was allegedly double the length granted other leaders. "Democracy in Action" remarked that RTK over-reported PDK campaign activity, by first covering the daily activities of the prime minister and ministers, which were PDK campaign activities, and then granting the party equal coverage with the other political entities in its election campaign chronicle.¹⁵² The IMC monitoring found RTK's coverage to be balanced, yet that several local television stations favoured the PDK, and two the AAK.¹⁵³

"Democracy in Action"¹⁵⁴ assessed that press coverage of the campaign was balanced, with the exception of *Infopress* newspaper, which devoted 40 % of its coverage to the PDK.¹⁵⁵

Several party leaders gave interviews to TV stations in Albania, which reached Kosovo audiences yet were not subject to the IMC rules requiring balanced coverage. Serbian TV stations gave the election scant coverage. The north Mitrovicë/Mitrovica-based, Serbia-funded *TV Most* gave coverage to the boycott campaign, yet joined several other local Kosovo Serb TV stations in showing debates between Kosovo Serb parties in the last three days of the campaign.¹⁵⁶ The IMC handed *Klan Kosova* TV a € 20,000 fine for repeatedly breaking the

¹⁵¹ All can be viewed online at: <http://www.jetanekosove.com/video/120/Alb/>.

¹⁵² "Democracy in Action" press conference, 10 December 2010. The NGO KIPRED performed media monitoring during the official campaign period on "Democracy in Action"'s behalf.

¹⁵³ The IMC report is online, in Albanian, at: <http://www.kpm-ks.org/materiale/dokument/1295342195.4412.pdf>

¹⁵⁴ Please see Section 8.1 "Domestic Observer Groups".

¹⁵⁵ "Democracy in Action" press conference, 10 December 2010.

¹⁵⁶ *TV Herc* of Štrpce/Shtërpçë, *TV Puls* of Šilovo (near Gjiilan/Gnjilane), and *TV Mir* of Leposavić/Leposaviq. See IMC report, op. cit.

campaign silence by transmitting interviews with candidates and political party press conferences throughout 11 and 12 December.¹⁵⁷

The four Kosovo-wide TV stations covered the 12 December election day process, including reports from the different regions, claims and counter-claims. The coverage aided transparency yet ran some risk, as in *Klan Kosova's* case, of disseminating political campaign messages. Following IMC warnings, TV coverage of the 9 and 23 January 2011 partial repeat polling did not give air time to political party voices, but more instead to its own reporters and "Democracy in Action" representatives.

7 ELECTION DAY PROCESS AND POST ELECTION DEVELOPMENTS AS SEEN BY THE EU EEM

7.1 PROCESS

The environment on election day and in the evening, when counting of the votes at the polling stations took place, was characterized by a generally calm atmosphere. The CEC appeared to have been successful in organising the polls in a compressed timeframe.

Kosovo Serb participation to the south of the river Ibar was notable in most areas, although several observers remarked that the polling process was of poor quality, particularly in Gračanica/Graçanicë, and a violent incident involving the Kosovo Serb mayor temporarily halted polling in a Štrpce/Shtërpçë polling station. However, participation in the northern Kosovo Serb municipalities was almost non-existent. Polling at mobile polling stations north of the Ibar was halted in three locations due to non-violent but intimidating obstruction by groups of militant Kosovo Serb elements.

7.2 TURNOUT

The CEC announced turnout figures in a timely manner during voting hours, from 07.00 to 19.00 hours. The final turnout figures, released by the CEC at 21:25 hrs on 12 December indicated that 779,401 voters had cast their ballots for candidates in the Kosovo Assembly, representing 47.8 % of the total number of voters registered on the final voter lists. This implied that some 100,000 more votes were cast in comparison with the 15 November 2009 local elections. However, this optimistic note was overshadowed by later worrying developments.

At 02.00 hrs on 13 December, on RTK and KTV "Democracy in Action" stated that the municipalities Skënderaj/Srbica and Glogovac/Glogovac "[...] damaged the election process in Kosovo [...]" These two municipalities account for some 6% of registered voters in Kosovo and are considered a heartland of the PDK.

This statement of "Democracy in Action" was preceded by a number of reports by observers and representatives of political parties about alleged electoral malfeasance in these municipalities, including power cuts after dark. Turnout reported by the CEC at 21.25 hrs on 12 December was some 94% in Skënderaj/Srbica and 87% in Glogovac/Glogovac, approximately twice the turnout across Kosovo in this election, as well as the turnout in these municipalities in the 15 November 2009 local election.

¹⁵⁷ IMC decision, 15 December 2010, kindly communicated by the IMC to the EU EEM by email on 24 January 2011.

The following table compares turnout figures for Gllgovc/Glogovac and Skënderaj/Srbica in 2009, 2010 and 2011:

Preliminary Results of CEC

Municipality	Registered Voters on Final Voter Lists		Turnout Based on Signatures on Final Voter Lists			
	2009 Municipal Election	2010 General Elections	2009 Municipal Assembly	2009 Mayor, I round	2010 Kosovo Assembly	2011 9 Jan repeat
Gllgovc/ Glogovac	41,492	46,657	26,741	25,814	40,563	25,713
Skënderaj/ Srbica	44,953	49,320	25,612	25,552	46,203	29,034

In the early afternoon on 13 December, the Embassy of the United States of America in Pristina issued a press release which stated that “The Ambassador also observed a vote count at Hamez Jashari High School in Skënderaj (polling station 2101X/02R). There were irregularities during the count that the Ambassador observed, challenged, and reported. The ballots in the box exceeded the number of signatures in the voters’ book.”

On 14 and 15 December, the EU EEM was provided with the opportunity to view original Reconciliation and Results Forms (RRF) from Gllgovc/Glogovac and Skënderaj/Srbica. While conclusive research would require more time than was available, it became clear from the 40 or so RRFs from Gllgovc/Glogovac that key control parameters had often not been satisfied. Further to that there were occasions of inexplicable mismatch between the draft RRFs and the originals, and there were frequent “corrections” in the figures written on the original RRFs which did not allow identification of the official who had inserted these “corrections”. Finally, the figures from the original RRFs and the tabulated results at the MEC¹⁵⁸ did not always match.

On 15 December, the EU EEM received information from the representatives of the CEC at the Counting and Results Center (C&RC) in Pristina that, initially, the turnout in Gllgovc/Glogovac reported by the MEC was some 107%, later corrected to 90.4% and finally reported by the CEC to be 87%. Similarly, in Skënderaj/Srbica, the MEC reported turnout of 95.3%, which was corrected to 94%.

Electoral contestants and observers alleged fraud, at these two municipalities and beyond, undermining public trust in the electoral process.

The above mentioned implausible turnout figures left only limited possibilities for good faith interpretation. On the contrary, they seemed to indicate possible deliberate fraud aimed at providing undue advantage to the PDK, a tendency which appeared valid for the 9 January repeat election in Skënderaj/Srbica as well. It would appear that there was a deficiency of political will to conduct elections in line with international standards. This feeds into a culture of impunity deterring Kosovo from its democratic development.

7.3 PRELIMINARY RESULTS

The Pristina-based Centre for Humanistic Studies ‘Gani Bobi’ presented the first results of their exit poll in a press conference at 19:45 hrs on 12 December. The survey was conducted with 2000 eligible voters while the representatives of the institute claimed that the error margin could be up to 3.5%. According to this exit poll, the PDK had garnered 31% of the vote.

¹⁵⁸ Communicated by e-mail from the MEC to the CEC and kindly provided to the EU EEM by representatives of the CEC.

“Democracy in Action”, at their press conference at 02:00 hrs on 13 December, presented preliminary election results from 51.7% of the polling stations included in their full parallel vote tabulation (PVT). They emphasized that Skënderaj/Srbica and Glogovc/Glogovac, where serious irregularities were reported, were included in these results.¹⁵⁹ According to “Democracy in Action”, the PDK had garnered 30.69% of the vote. It is regrettable that “Democracy in Action” did not provide the final results of their parallel vote tabulation.

On the basis of these forecasts, the PDK claimed victory during the evening of 12 December. According to media reports, acting Foreign Minister Vlora Çitaku stated that the PDK was leading by 7-10% over the next party [referring to the LDK]. She also added that the PDK had seen an increase of over 20,000 voters.¹⁶⁰ At the same time, all key election contenders including the PDK claimed electoral violations. Notwithstanding, the PDK assessed the election process as very positive and thanked all citizens for the high turnout.¹⁶¹

At a press conference at 20:30 hrs on 13 December, the CEC released preliminary results on the basis of MEC reports tabulating the polling station results in their respective municipalities.¹⁶² According to these results, the PDK had won the highest number of votes, 238,959 votes or 33.5%, across Kosovo.

The following table compares the PDK vote in 2009 and 2010/2011:

Preliminary Results of CEC: Votes for PDK in Glogovc/Glogovac and Skënderaj/Srbica

Municipality	2009 Municipal Assembly	2009 Mayor, I round	2010 Kosovo Assembly	2011 9 Jan repeat
Glogovc/Glogovac	20,134	21,834	32,062	22,140
Skënderaj/Srbica	18,743	21,262	37,801`	25,976

The EU EEM was in contact with key political parties following election day. All informed the EU EEM that they were in the process of preparing complaints, as were a number of civil society organisations.

On 10 January, at a press conference at 15.00 hrs, the CEC provided a new set of preliminary results which included the outcome of the 9 January repeat election and the recount of ballots cast on 12 December, but excluded the 12 December vote in Mitrovicë/Mitrovica due to the 6 January decision of the Supreme Court.¹⁶³ According to these preliminary results, the PDK led with 32%, the LDK had 24.7%, *Vetëvendosje* - 12.6%, AAK - 11.2% and the AKR Coalition - 7.3%.

Speculations were brought to the attention of the EU EEM that parties were trying to assess what results they needed from Mitrovicë/Mitrovica on 23 January, in order to achieve their ultimate purposes. This possibility was a result of the conduct of repeat elections only in parts of

¹⁵⁹ http://www.newsmonitors.org/Pages/Kosovo_Media_Monitor_0830_Report_13_12_2010.aspx, Kosovo Media Monitor, 13 December 2010, 08:30 hrs.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.* In line with this message, at the end-of-year press conference held by the outgoing Prime Minister Thaçi, he reportedly said that the 12 December elections had been free and democratic; see http://www.newsmonitors.org/Pages/Kosovo_Media_Monitor_0830_Report_31.12.10.aspx.

¹⁶² On 14 December, representatives of the C&RC informed the EU EEM that they had not provided any results to the CEC yet.

¹⁶³ Please see Section 7.6 “Repeat Election”.

the electoral district, which is the whole of Kosovo. The preliminary results from the repeat election in Mitrovicë/Mitrovica also illustrated that such a partial repeat election particularly advantaged the PDK, which managed to hold on to the number of voters even with the fall in turnout, and disadvantaged two others already deemed not to have made the 5 % threshold for entering the Assembly, many of whose supporters most likely either did not vote or tactically switched to other parties. Preliminary results for the candidates were not released by the CEC, but it appeared that some political parties had access to these. Newspapers had published what they claimed were some of the candidates' results.¹⁶⁴

On 24 January at a 10.00 hrs press conference, the CEC announced a new set of preliminary results Kosovo wide. According to these results, the PDK received 32.4% of the vote, the LDK – 24.67%, *Vetëvendosje* – 12.55%, AAK – 11.09%, AKR – 7.22%, FER – 2.15%, LDD – 2.13%, SLS – 1.89%, KDTP – 1.22% and JSL – 0.76%. These preliminary results differed considerably from the “Democracy in Action” PVT results announced ten hours before, which, on the basis of 90% of the polling stations counted, reported that PDK had 30.85%, LDK – 26.37%, *Vetëvendosje* – 13.3%, AAK – 10.51%, AKR – 8.2%, FER – 2.6%, LDD – 2.2% and others – a total of 4.48%; the reported margin of error was between 1 and 3 %. Statistically, there is an unusually large difference in the percentages of the leading parties and an equally unusual coincidence in the percentages of the trailing parties.

In respect of the repeat election in Mitrovicë/Mitrovica, the following comparison of voter turnout figures for both the 2009 and 2010 elections is of interest.

Preliminary Results of CEC

Municipality	Registered Voters on Final Voter Lists		Turnout Based on Signatures on Final Voter Lists			
	2009 Municipal Election	2010 General Elections	2009 Municipal Assembly	2009 Mayor, I round	2010 Kosovo Assembly	2011 23 Jan repeat
Mitrovicë/Mitrovica	83,307	86,835	24,939	23,347	32,154	23,238

The table demonstrates that the turnout figure for 12 December is significantly different compared to the turnout recorded during 2009 municipal elections and the 23 January repeat election. This indicates that irregularities regarding the 12 December election may not have been limited to those identified in the municipalities of Glogovc/Glogovac and Skënderaj/Srbica.

7.4 COMPLAINTS AND APPEALS ON ELECTION DAY

It would appear that the ECAP was generally able to manage its tasks, despite time pressure in the immediate aftermath of election day, 12 December.

¹⁶⁴ Such publications included preference votes cast for the most voted male and female candidates. For example, reportedly the most voted female candidate was Mimoza Kusari-Lila (AKR) with 18,720 preference votes, http://www.newsmonitors.org/Pages/Kosovo_Media_Monitor_1530_Report_21_01_2011.aspx; for the most voted male candidate some unconfirmed and seemingly contradictory information is available at http://www.newsmonitors.org/Pages/Kosovo_Media_Monitor_0830_Report_12.01.11.aspx.

As of Monday, 13 December, the ECAP informed the EU EEM that it had received some 40 complaints on election day procedures. Later the mission was informed¹⁶⁵ that as of the late afternoon on 14 December,¹⁶⁶ the following statistics applied

Complaints received (total Assembly)	344	100%	
(1) Adjudicated	199	58%	
(2) In progress	145	42%	
(a) Comments required:	76	52%	
From police	54	37%	
From CEC	22	15%	
(3) Specific municipalities:			
(a) Skënderaj/Srbica	10	7%	
Referred to police	4	40%	
Issues:	Voting irregularities		Intimidation
(b) Glogovac/Glogovac	11	8%	
Referred to police	10	91%	
Issues:	Voting irregularities		Intimidation

On 15 December, the EU EEM requested from the ECAP copies of all complaints filed with regard to the election in Glogovac/Glogovac and Skënderaj/Srbica, wishing to assess the quality of the complaints, but the request was declined. The EU EEM recognises that this request was made prior to the expiry of the 72 hour deadline for the ECAP to decide on election day complaints, when the ECAP was overwhelmed with work; notwithstanding, this was a disappointment.

Upon its return to Pristina, on 6 January 2011, the EU EEM received the requested information. In addition, further clarifications were provided with regard to the complaints and appeals process related to election day 12 December. According to ECAP statistics, a total of 365 complaints were filed; of these 39 were related to violations on election day processes¹⁶⁷ and 131 were related to preliminary results. Of the latter, seven referred to campaigning on election day, 21 – to malfunction of equipment, 15 – to multiple voting, 20 – to threatening of individuals involved in the election, six to physical assaults and 62 – to other issues. Of the 365 complaints filed, 119 were upheld by the ECAP, 239 were dismissed and 16 were undecided.

The ECAP informed the EU EEM that, as of 6 January, there were no complaints filed with regard to the 9 January repeat elections. Complaints against activities in the C&RC were mostly dismissed because the C&RC had not yet produced results. However complainants were informed that they would have to re-file their complaints once such results were made publicly available.

As of 19.30 hrs on 10 January, the ECAP informed the EU EEM that no complaints were filed with regard to the three-day campaign of the 9 January repeat election and 69 complaints were filed with regard to election day procedures on 9 January. Of the latter, 47 were filed by *Vetëvendosje*, two by the PDK, 10 by LDK and 10 by the Balkan Investigation Reporting Network (BIRN). Complaints were mostly against the PDK, AAK, members of polling station commissions and observers.

As of 25 January 2011, the ECAP had received some 445 complaints. The only pending complaints relate to the 23 January repeat election in Mitrovicë/Mitrovica. Complaints could still be filed regarding the pending announcement of final results.

¹⁶⁵ Courtesy of the OSCE Mission to Kosovo.

¹⁶⁶ After the expiry of the 24 hour deadline to file complaints on election day process.

¹⁶⁷ Likely to relate to voting hours violations.

Due to time limitations, the EU EEM was not in a position to clarify all details surrounding the complaints and appeals process, nor was it in a position to provide a comprehensive analysis of the quality of the complaints filed with the ECAP and the respective responses of the Panel, or analyse evidence supporting ECAP decisions.

The ECAP decided to order a repeat election for alleged irregularities that took place on 12 December,¹⁶⁸ but it ordered only a recount for similar irregularities alleged in the context of the 9 January partial repeat election.¹⁶⁹ Thus it took two different approaches for similar irregularities on two different occasions. While this is likely to have happened because the Panel was reluctant to order repeats of repeat elections, it only indicates that addressing irregularities by partial repeat elections does not provide a sustainable remedy.

7.5 RECOUNT

In its decision of 18 December,¹⁷⁰ the CEC ordered a recount of the ballots of 866 polling stations across Kosovo, almost 40% of all polling stations. The number of polling stations was reduced to 762 when the polling stations to be included in the 9 January partial repeat election were subtracted, and to 760 after the CEC decided on 18 December to increase the tolerance level of discrepancy between ballots in the box and voters' signatures from three to six. The decision to perform recounts was taken on the basis of recommendations from the C&RC about mismatches in 32 RRFs and a high number of Candidate Results Forms (CRFs).¹⁷¹ The EU EEM was informed that the intention was to attach to this report copies of the "old" RRFs and/or CRFs (compiled on 12 December in the polling stations) and of the "new" ones which resulted from the recount and to provide the CEC with recommendations for further action. It would therefore be difficult, in view of the amount of such information, for an outsider to assess the impact of the recount.

The C&RC report was released to the CEC on 18 January. There is a high possibility that it could result in a new wave of complaints, because the CRFs are reported to reveal a significant number of discrepancies related to the count of the preference votes for the individual candidates. The report recommends that, *inter alia*, the CEC excludes from the final election results (i.e. annuls) two polling station results.

Incidentally, attending a CEC meeting at 11.00 hrs on 5 January, the EU EEM was informed that the recount revealed glitches in the software developed by the company "Innovation" under a contract with the CEC. The software had "not flagged for audit" all polling station results where the margins of error, established by the CEC, were exceeded. This development did not allow the C&RC to announce the results of the recount on 4 January as anticipated. It also raises a number of questions including:

- Was this contract a result of a public tender?
- Was the software tested prior to the 12 December election?

¹⁶⁸ ECAP decision A 490 of 16 December 2010.

¹⁶⁹ ECAP decision A 8 / 2011 of 13 January 2011.

¹⁷⁰ It is unclear why the motivation of this decision is based on LGE Article 63, when LGE Article 106.2 seems to be the relevant one.

¹⁷¹ While the EU EEM has all understanding for the current circumstances in Kosovo and has full trust in the competence of the IFES international assistance effort at the C&RC, the mission is concerned that a recount can lead to a change of the result established in a polling station and recorded on the respective results forms, without the knowledge of the polling station officials who produced the respective forms counting the ballots on site.

- If the software was tested, was this reflected in an official certification document signed by the parties to the contract?
- Why was the expiry date of the contract set for 24 December 2010?
- Was the contracted company obliged to support the work of the CEC after the expiry of the contract?

The EU EEM is pleased to note that the CEC demonstrated openness, providing the contract for the software used to check reconciliation and candidates' results forms (RRFs and CRFs) when requested. However, they were not in a position to provide a copy of any document certifying that the software was produced in accordance with the CEC requirements and functioned accordingly.

Further to that the EU EEM was informed that the recruitment of the staff for data entry and processing was conducted without the participation of the international assistance effort conducted by the International Federation for Electoral Systems (IFES). In this context, attempts by representatives of the CEC to hold IFES responsible for the protracted recounts were inappropriate.¹⁷²

Prior to its departure from Pristina on 12 January, the EU EEM was informed that some 100 out of a total of 185 polling station ballot boxes from the 9 January repeat election might need to be recounted. In fact, 116 were recounted (63 % of the 185), which included recounts of those that failed C&RC audit that the CEC ordered on 12 January, another 12 where Results and Reconciliation Forms (RRFs) showed a high number of unmarked or invalid ballots, and eight polling stations the CEC ordered on 15 January be recounted, complying with an ECAP decision of 13 January.

In the course of meetings with the EU EEM, the number of polling stations where the results were to be annulled or recounted, or where voting was to be repeated often changed without clear reasons. This seriously undermined the transparency and credibility of the election process.

7.6 REPEAT ELECTION

On 16 December, the CEC decided¹⁷³ to repeat the elections in the entire municipalities of Deçan/Deçane, Glogovc/Glogovac and Skënderaj/Srbica, as well as in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo on 9 January, following a decision of the ECAP to repeat elections in some 70 polling stations in these municipalities.

This raises a question related to the logic of the existing procedure, whereby the CEC can order repeat elections in polling stations or even entire municipalities independently of the ECAP, or expanding on ECAP decisions. It would appear that a possible answer¹⁷⁴ to this question is included in a decision of the ECAP,¹⁷⁵ whereby the ECAP can decide only on polling stations which are involved in specific complaints, but unlike the CEC it does not have an *ex officio* authority to order repeat elections and/or recounts.

¹⁷² Meeting of the CEC held at 11.00 hrs on 7 January and attended by the EU EEM.

¹⁷³ This decision was issued on the basis of LGE Article 63 and 106.2 and ECAP decision A 490/2010. It would appear that it was registered under N 1621-2010 in the CEC archives, although the decision itself was not numbered.

¹⁷⁴ Based on interpretation of LGE Articles 106.2 and 120.1.b.

¹⁷⁵ ECAP decision A 8/2011 of 13 January 2011.

The solution chosen by the CEC seems to comply with the Council of Europe's "Code of Good Practice on Electoral Matters".¹⁷⁶ No other international standards that advise how to manage a situation such as the one arising in Gllgovc/Glogovac and Skënderaj/Srbica were identified. Generally, existing options include:

- a) Cancel election results and repeat the election in the entire electoral district; on this occasion, this is the whole of Kosovo;
- b) Cancel election results and repeat the election only in those parts of the electoral district, where serious violations were established; and
- c) Cancel the election results in those parts of the electoral district where violations were established and declare the election results for the electoral district disregarding the input to the results of the areas where violations occurred.

Repeating the entire election, case (a), in the immediate aftermath of a fraudulent election, from a purist's point of view might seem an appropriate political response to fraud. However, this could make sense if there are reasonable chances that the repeat election would be free from fraud. If repeated fraud cannot be excluded, it might make more sense to establish, in line with constitutional procedures, a government with "clean hands", address potential deficiencies in the legal and administrative electoral framework and conduct the new election after a reasonably short period of time.

Repeating elections in parts of an electoral district, case (b), has the disadvantage that it is conducive to "engineering" the overall election outcome and it puts under undue pressure the population in the areas where elections are repeated. On the other hand, such a decision seems convenient from the point of view of optimizing resources to achieve some perceived remedy. However, even if a partial repeat election is conducted better, this still falls short of remedying the issues identified with regard to the "initial" polls.

Cancellation of results without repeating the election in the parts of the electoral district where violations occurred, case (c), eliminates the protraction of the electoral process due to partial repeat elections. However, one might argue that such a solution disenfranchises those voters from the area who cast their votes in honesty. Such an option could be acceptable only as a temporary measure to combat election fraud and only if decided by a court of law, rather than by an administrative body.

A repeat election in the entire municipalities of Deçan/Deçane, Gllgovc/Glogovac and Skënderaj/Srbica, as well as in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo was held on 9 January. It was preceded by a three day "official" campaign, from 5 to 7 January 2011. The election was conducted with the voter lists compiled for the 12 December vote, as the CEC explained to the EU EEM that they did not have sufficient time to update the one month old voter lists. The CEC informed the EU EEM that all election officials at the polling station and polling centre level responsible for the conduct of the 12 December vote were replaced; however, the respective MECs remained the same.

¹⁷⁶ "Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report", Opinion no. 190/2002, CDL-AD (2002) 23, Strasbourg, 30 October 2002, Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002). Paragraph 101 provides that "The powers of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated." page 5, point 1.1.d; available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.asp).

Following the 12 December vote, a number of omissions and violations related to the use of indelible ink and UV lamps were reported by election observers. The CEC informed election stakeholders that it had taken special measures to double check the quality of this equipment used to prevent possible multiple voting. However, the EU EEM tested the equipment in the presence of representatives of the CEC on 7 January and established that it failed to perform as intended.

On 6 January, the Supreme Court of Kosovo finally decided to repeat the election in 24 of the 29 polling centres in Mitrovicë/Mitrovica municipality due to malfunction and abuse of indelible ink and UV lamps to prevent possible multiple voting. This decision of the Supreme Court was the result of a process whereby the Supreme Court twice had decided to instruct the ECAP to review their decision to dismiss the relevant complaint filed by *Vetëvendosje*.¹⁷⁷ It is regrettable that the ECAP provided no indications to the EU EEM about this case during their meeting on 6 January.

It is surprising that a decision to repeat polling was taken by the CEC on 16 December, at a time when there could have been a pending appeal with the Supreme Court. The CEC explained that they took this decision on the basis of written information from the ECAP,¹⁷⁸ that all complaints and appeals at the ECAP were resolved.

Subsequently, the CEC decided¹⁷⁹ to repeat the election in the entire municipality of Mitrovicë/Mitrovica on 23 January, after the decision of the Supreme Court. The comments provided by the EU EEM with regard to the 16 December decision of the CEC remain valid in this case as well.¹⁸⁰ This concerned 86,835 eligible voters, representing 5.32% of the electorate.

The CEC indicated that it intended to annul polling station results rather than order the repeat of a repeat election¹⁸¹ in cases where any further complaints related to the 9 January repeat election were to be upheld by the ECAP. The CEC also intended to use the possible option to annul and not repeat the election in polling stations presented by “the audit section” of the C&RC following completion of the recount. The CEC President expected the (politically nominated) members of the CEC to vote in favour of such an approach to end the protracted electoral process.

Asked by the EU EEM what would be the legal ground to annul polling station results without a subsequent repeat vote, initially representatives of the CEC did not indicate the legal provisions allowing them to do so. Later, they explained that this was done on the basis of LGE Article 106.2. However, this provision does not allow the CEC to cancel polling station results without a subsequent repeat.

In subsequent discussion, the CEC made the distinction that it had excluded several polling stations’ results from the final result rather than having annulled them, and that it derived this prerogative from secondary legislation of its own authorship, given that Article 128 of the LGE empowers it both to issue rules “referred to [in] this law” and “any other rules deemed necessary for the implementation of this law.” The CEC cited the C&RC Procedures chapter on

¹⁷⁷ It is usual practice that a higher instance can choose between two options in responding to an appeal of a decision of a lower instance: (a) decide on the substance of the appeal, or (b) decide to return the decision back to lower instance with an instruction to review its decision. The latter option is usually a result of lack of substantive evidence at the higher instance. In general, the concrete arrangements for Kosovo should be found in the Code for Administrative Procedures; the EU EEM is yet to assess details of this issue.

¹⁷⁸ Such information was requested from the CEC, but was not made available to the EU EEM.

¹⁷⁹ CEC Decision 38 of 10 January 2011.

¹⁸⁰ Please see the first paragraph of the current section.

¹⁸¹ LGE Article 106.2 provides that “Prior to certification of the election results, the CEC may order a recount of ballots in any polling station, or counting centre, or a repeat of the voting in a polling centre or municipality”.

Investigations. However, this document is not widely available and the extract the CEC provided to the EU EEM did not appear to ascribe such a prerogative to the CEC, providing only that the C&RC Coordinator may make a written recommendation to the CEC for the determination of a problem with polling station results that investigation has not resolved.

In an explanation the CEC stated it had given to the International Civilian Representative/EU Special Representative (ICR/EUSR) the CEC stated that: "When investigating Dual Polling Stations, the recommendation to the C&RC and CEC may include:

- Partial exclusion and/or annulment of the Regular/Dual aspect of the Polling Station.
- Recount of the ballots for the respective Polling Station.
- Exclusion of the Polling Station's results."

The CEC is yet to explain the derivation of the above cited text.¹⁸²

Notwithstanding, as of 18 January 2011, four polling station results were already annulled without subsequent repeat vote.¹⁸³ It would appear that the only provision of the LGE that could be relevant to annulment of polling station results without subsequent repeat vote is LGE Article 120.1.b,¹⁸⁴ yet it grants such discretion in exceptional circumstances not to the CEC, but to the ECAP.

7.7 IN ANTICIPATION OF FINAL ELECTION RESULTS

Final election results were not announced by the CEC by the expiry of the EU EEM mandate, on 31 January 2011. This was due to

- o Protracted counting and tabulation of polling station results by the C&RC, and recount of significant numbers of ballot boxes;
- o Repeat elections held on 9 January in all polling stations in the municipalities of Deçan/Deçane, Glllogovc/Glogovac and Skënderaj/Srbica, as well as in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo on 9 January, with subsequent recounts ; and
- o Repeat election on 23 January in the whole municipality of Mitrovicë/Mitrovica.

At the time of writing, all regular preference votes bar those for the repeat election in Mitrovicë/Mitrovica were processed and conditional votes were to be processed only after all repeat elections have been completed. Reserved seats for non-majority communities and election of women were aspects yet to be processed in order to determine the actual composition of the incoming Kosovo Assembly.

In order to improve transparency, the CEC must publish the final results of the 12 December 2010 early general election in all detail by polling stations and equally, provide detailed information on the procedure for seat allocation.

As the repeat election in Mitrovicë/Mitrovica was conducted only a week prior to the expiry of the mandate of the EU EEM, related developments are not fully reflected in its final report.

¹⁸² Moreover, two of the four annulled polling stations were regular rather than dual.

¹⁸³ The CEC handed to the EU EEM a decision relating to polling station 1102X/08R in Mitrovicë/Mitrovica, 0907E/01D in Fushë Kosovë/Kosovo Polje, and 1203B/02D and 1203B/01R in Leposavić/Leposaviq. However, the CEC's published decision of 9 January replaced 0907E/01D with a second Mitrovicë/Mitrovica polling station. Both Mitrovicë/Mitrovica polling stations were subsequently included in the municipality's repeat election. On 18 January the CEC annulled polling station 0307e/01r in Glllogovc/Glogovac and 2110b/02d in Skënderaj/Skënderaj/Srbica.

¹⁸⁴ LGE Article 120.1.b provides that "Prior to certification of the election results and under exceptional circumstances in the sole discretion of ECAP, nullify the results of a specific polling station or direct the CEC to order a repeat of the voting in a polling centre".

7.8 POLITICAL DEVELOPMENTS IN THE AFTERMATH OF 12 DECEMBER 2010

After the first announcement of preliminary results on 13 December and amid mounting evidence of polling and counting violations, by 14 December all Kosovo Albanian political entities other than the PDK (and briefly the LDD) declined to recognise the preliminary results, alleging manipulation. The LDK, *Vetëvendosje* and AAK alleged that the CEC was biased in favour of the PDK. The long wait for final results, on-going at the time of writing, allowed such perceptions to consolidate, although at the time of writing the AAK and AKR indicated that they were unlikely to challenge the final results.

The LDK, FER and others demanded a repeat of the entire election. *Vetëvendosje* and the LDK stated that the attention devoted to the municipalities of Skënderaj/Srbica and Gillogovc/Glogovac (Drenas) served to draw attention away from violations in a number of other municipalities. When the C&RC determined to recount ballots from forty per cent of the polling stations, the LDK and AAK requested that instead all be recounted.

Several international press reports painted a bleak picture of the counting process and mingled it with a furore over a draft Parliamentary Assembly of the Council of Europe (PACE) report that alleged Prime Minister Thaçi's long-term involvement in human organ trafficking. The PDK referred to initial EU statements from Catherine Ashton and Stefan Fühle welcoming an orderly election day and encouraging a quick start to Pristina-Belgrade dialogue as validation of the election process; these statements were then modified to sound a more cautious note.

Recognition that the election process was “damaged” became universal. Political parties, together with civil society and institutional voices, placed blame on political parties' polling station commissioners. The CEC President said that they had distorted the process. Acting President Jakup Krasniqi of the PDK said that his own party's commissioners manipulated its candidate results, and he wanted them completely recounted. While the PDK was most heavily blamed for the situation, Prime Minister Thaçi claimed that manipulations in polling stations were the result of a cross-party conspiracy.

The PDK, relying on the 10 % lead attributed to it by the first preliminary results, courted coalition partners to form a new government for a four-year term. It counts upon the SLS and several other parties representing non-majority communities, and had preliminary discussions with the AKR. More seats than possessed by these parties may be required for the PDK to create a stable majority in the new Assembly. Therefore it also proposed talks with the AAK, though the latter so far kept its distance. The PDK is also understood to have discussed with several potential deputies from the LDK about securing their support on an individual basis. Such a coalition may be difficult to assemble; competing demands from the different parties and groups may be difficult to reconcile.

The LDK proposed the alternative of a “technical” multiparty government, with new elections to be held in September 2011 or spring 2012, and stated that it would not join the PDK in government on any other basis. Neither the LDK proposal nor an AAK alternative suggestion of a PDK-LDK-AAK coalition government found support from other parties at the time of writing.

A war of words continued to develop between members of the PDK and *Vetëvendosje*. A KLA War Veterans leader accused by *Vetëvendosje* of ballot-stuffing for the PDK accused it of “pro-Slav” sympathies. The PDK blamed *Vetëvendosje*'s leaders for its activists' alleged killing of a PDK activist and beating of others in Malishevë/Mališevo on 1 January. The attack appeared to be a response to election day violence perpetrated by PDK members.

On 6 January 2011 the PDK caretaker government raised most public sector employees' wages 30-50%, as per its election promise, although Kosovo has no approved budget for 2011 and its

mandate for such a decision, is doubtful. Other parties condemned the move as illegal, unconstitutional and electioneering for the 9 January partial repeat election.

The PDK was alone among political parties in evaluating the repeat polling as generally very good. The LDK said that irregularities were sufficient to affect the results, and renewed its call for fresh elections in the autumn. The LDK challenged the PDK to explain the 30,000 fewer votes cast in Skënderaj/Srbica and Glogovc/Glogovac on 9 January, compared with 12 December. PDK representatives claimed that it was due to the presence of large numbers of diaspora Kosovo Albanians in December and their absence in January. The AAK and AKR also alleged violations in Glogovc/Glogovac and Skënderaj/Srbica.

Following the 9 January partial repeat poll, two key international officials in Kosovo, ICR Pieter Feith and U.S. ambassador Christopher Dell, came out with matching arguments that although the elections were flawed, repeating them would bring no benefit. Instead, faith in Kosovo institutions should be revived by focus on formation of a government with a four-year mandate, composed of credible ministers, who were “new faces”, and have “clean hands”. Ambassador Dell proposed to quarantine the new government from the number of convicted or suspected criminals likely to enter the Assembly (notably on the PDK ticket) by setting criteria for selection of ministers: none who have been found guilty by a court, none who have been investigated or raided by EULEX.¹⁸⁵

The PDK has not to date given an official response. Outgoing transport and telecommunications minister Fatmir Limaj, who is under EULEX investigation, is likely to be the party’s second most voted for candidate. Azem Syla, standing for the Assembly for the first time, understood to be among the party’s five most voted for candidates, yet under EULEX investigation with regard to the murders confessed to by Nazim Bllaca, is also among those affected.

ICR Feith’s and Ambassador Dell’s search for a political way forward is understood. However, Ambassador Dell came close to disparaging elections in his comments, said that new elections would not significantly change the results, and that Kosovo’s political energy should now instead be invested in the business of government if it is to avoid state failure. In a subsequent television interview, ICR/EUSR Feith dismissed some parties’ calls for new elections, and emphasised that the new government should have a full four year mandate if it can command a parliamentary majority. He suggested the appointment of a woman as president as a measure to improve Kosovo’s image.

Given the significant shortcomings that have damaged public confidence in the election process in its entirety, this approach has been the subject of some criticism in the media. Notably *Koha Ditore*’s columnists suggested that the concern with a clean government would not solve the issue of poor elections and assembly members illegitimately holding their seats.¹⁸⁶

7.9 HANDLING OF ELECTION-RELATED CRIMINAL OFFENCES

Media and civil society have expressed concerns about impunity for election fraud. A CEC official told the EU EEM: “Last time people were not punished, so this year we pay the price. The CEC and Kosovo must take this seriously. Otherwise we are going to repeat everything.”

In early December 2010, the State Prosecutor informed the EU EEM that he was not in a position to say whether any previous cases of election fraud had been prosecuted. A EULEX

¹⁸⁵ Presented in the form of extensive interviews on successive days in the newspaper *Koha Ditore*, ICR Feith’s on 14 January, Ambassador Dell’s on 15-16 January.

¹⁸⁶ See Enver Robelli, “Hipokrizia diplomatike” [Diplomatic hypocrisy] and Avni Zogiani, “Zgjedhjet nuk janë lista të hiteve muzikore” [Elections are not lists of musical hits], *Koha Ditore*, 18 January 2011.

representative explained that the case registration system was old-fashioned and would make it difficult to retrieve such cases. An NGO told the EU EEM that its staff members were contacted by prosecutors with regard to giving testimony on election fraud investigations related to the 2009 local elections only in November 2010.

Kosovo's criminal code envisages prison sentences ranging from six months to five years for election fraud. In the second half of December 2010 the State Prosecutor and Supreme Court President responded to public concerns, acknowledging that no cases from the 2007 and 2009 elections were prosecuted in court.¹⁸⁷ Supreme Court President Fejzullah Hasani said that: "Unfortunately, the same people are engaged in each election and they are never punished."¹⁸⁸

Consequently, these officials have stated that cases arising from the 12 December election will be fast-tracked. State Prosecutor Ismet Kabashi said, "Absolute priority will be given to criminal proceedings coming from election complaints." Supreme Court President Hasani said, "Judges will have a deadline of two months to proceed with all cases even though they are overloaded with work."¹⁸⁹

The State Prosecutor instructed the Pristina municipal chief prosecutor to work with ECAP on assembling possible case material from the complaints received regarding polling and counting on 12 December.¹⁹⁰ On 30 December the ECAP sent to the State Prosecutor 133 cases involving an unknown number of perpetrators. The next day the cases were distributed for investigation to the seven district prosecutors: including 48 to Pristina, 26 to Prizren, 19 to Mitrovicë/Mitrovica, 14 to Ferizaj/Uroševac, 14 to Pejë/Peć, seven to Gjiilan/Gnjilane, and two to Gjakovë/Đakovica.¹⁹¹ In addition, 63 cases were forwarded to the State Prosecutor with regard to the 9 January repeat election. The State Prosecutor delegated a prosecutor in his office as coordinator, and has planned to make a public report of progress in early February.

8 ELECTION OBSERVATION AND POLL WATCHING

8.1 DOMESTIC OBSERVER GROUPS

More than 33,000 domestic observers were accredited to observe polling and counting on 12 December. Most of these were observers nominated by political parties who attempted to observe in each of the polling stations. For the 9 January 2011 repeat election, some 2,213 domestic observers were accredited. For the 23 January repeat election, some 1,858 observers were accredited.

The effectiveness of party observers depends on the training given them, the overall management of their monitoring efforts, as well as the integrity of the persons deployed. The extraordinary mayoral election held in Rahovec/Orahovac on 21 November 2010 illustrated that party observers can make a difference if properly organised. However, the experience from the 12 December 2010 early general election shows that it is demanding to properly organise such an effort. The output from the party observers was limited in terms of qualitative complaints to

¹⁸⁷ On 22 January the Mitrovicë/Mitrovica district prosecutor informed the EU EEM that one person, a Kosovo Serb, was convicted – for impersonating a PSC member in the 2009 local elections. He was sentenced to one year in prison and a € 1,300 fine. His appeal is pending, so the sentence has not yet been implemented. See Petrit Collaku, "Kosovo Judge Vows End to Vote Fraud Impunity", *Balkan Insight*, 27 December 2010.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Vehbi Kajtazi, "Shtatë prokurori në ndjekje të keqpërdoruesve të votes," [Seven prosecutors to pursue vote manipulators] *Koha Ditore*, 18 December 2010.

¹⁹¹ Bukurie Bajraliu, "Prokuroria thotë se 133 lëndët kundër komisionerëve do të trajtohen me prioritet," [Prosecutor's office said that 133 cases against commissioners will be treated as a priority], *Koha Ditore*, 6 January 2011.

ECAP, with the partial exception of *Vetëvendosje*, and no serious attempts of parallel vote tabulation have taken place to the knowledge of the EU EEM.¹⁹² The evident poor quality of the polling and counting at polling station level in a significant number of locations indicates that a high number of party observers alone cannot produce good elections.

The NGO umbrella organisation “Democracy in Action” was the largest domestic observer group accredited. It included 11 NGOs, with Kosova Democratic Institute (KDI) as the lead organisation. The observer group faced critical remarks for providing limited substantive information in relation to the conduct of the 2009 elections, particularly the first round, in the immediate aftermath of election day.

Donor support for the organisation has increased substantially in 2010 and the organisation employed two shifts of observers in each polling station. The organisation deployed some 4,600 observers. This is a significant number to recruit and train in a limited time. In the context of the recent by-election for mayor of Rahovec/Orahovac, “Democracy in Action” recognised that it made technical mistakes in announcing incorrect preliminary results. The credibility of “Democracy in Action” was questioned by representatives of some political parties and media.

“Democracy in Action” is yet to present its consolidated findings to the public; it abandoned its parallel vote tabulation after processing some 51% of the results. Late in the evening following election day 12 December, the observer group made critical remarks in the media regarding the process in two municipalities. Apparent internal discussions over the line and leadership of the organisation led to the withdrawal of three of the partner NGOs in the organisation including KIPRED. These NGOs alleged that the leadership of “Democracy in Action” monopolised information, was late in reporting, showed ambivalence toward election violations, and allowed itself to be guided by outsiders. These factors damaged the credibility of “Democracy in Action”.

“Democracy in Action” submitted three complaints to the ECAP with regard to the election process on 12 December, in a departure from its usual policy of not submitting complaints. It did not submit any in relation to the 9 and 23 January partial repeat election.

The Balkan Investigative Reporting Network (BIRN) fielded 15 observer teams, who reported their findings on the “Life in Kosovo” TV programme it co-produces with RTK,¹⁹³ and submitted 22 complaints to the ECAP with regard to the 12 December polling and counting, 12 of these were upheld. BIRN submitted 10 complaints to ECAP with regard to the 9 January partial repeat election, seven of these were upheld. It submitted six complaints with regard to the 23 January Mitrovicë/Mitrovica repeat election.

Two Kosovo Serb NGOs, “Avenia” and Centre for Peace and Tolerance, observed the campaign and 12 December polling in Kosovo Serb areas south of the Ibar, and presented their qualitative findings in a 12 December press conference, which were balanced, critical and perceptive. This debut marked a welcome advance for Kosovo Serb civil society.

For the 9 January repeat election, “Democracy in Action” deployed over 500 observers. Both its statements during the day and its preliminary statement of 10 January were notable for their sharpness and detail, given the organisation’s previous constraint in reporting.

In its press conference at 17:00 hrs on 9 January, “Democracy in Action” stated that the voting process had been marred by “many irregularities”, primarily in Skënderaj/Srbica and Glllogovc/Glogovac. The preliminary statement stated that the “election process was held under pressure”, which included threats against “Democracy in Action” observers, their expulsion from two polling stations during counting, and the slashing of a “Democracy in Action” team vehicle’s

¹⁹² The AKR stated party results based on what it said was its tabulation of 30% of the 12 December vote, yet it did not announce completion of this exercise.

¹⁹³ With subtitles in English, <http://www.jetanekosove.com/shikovideo/644/Eng>.

tires. It also cited cases of non-use of the UV lamps to detect invisible ink, 68 cases of multiple voting, 227 cases when one person assisted several voters including when assistance was not requested, power cuts to seven polling stations (leaving them in darkness), many cases of unauthorised persons in polling stations, and irregularities in counting, including cases where the number of signatures did not match ballots in the box and five cases of commissioners falsifying results in forms.

The LDK stated that its observers were not allowed inside several polling stations. *Vetëvendosje* submitted 47 complaints to the ECAP, and claimed that its observers were for a period not allowed into some polling centres, they (and *Vetëvendosje*'s commissioners) were threatened in several polling centres, physically attacked in one, and required police escorts to safely leave two, when they were surrounded by PDK militants.

In respect of the 23 January Mitrovicë/Mitrovica repeat election, in a TV debate, "Democracy in Action"'s leader called it a "regular" and "good process" with a "minimal" degree of irregularities. In an evening press conference, "Democracy in Action" reported 38 cases of the same person assisting more than one voter, six cases of multiple voting, two of unauthorised people in polling stations, and 446 cases of family voting. Although *Vetëvendosje* claimed its observers saw a series of violations like those of 12 December, they were of "a visibly lesser quantity." BIRN's 16 observer teams reported largely regular count processes.

8.2 ENEMO ELECTION OBSERVATION MISSION

The only fully fledged international observation mission was implemented by the European Network of Election Monitoring Organizations (ENEMO). The ENEMO consists of NGOs from Central and Southeast Europe and has its headquarters in Romania. ENEMO deployed a mission of a total of 12 long term and 188 short term observers from 23 countries. Individual EU member states seconded observers to this end. The USA, through the National Democratic Institute, also seconded a considerable number of observers.

ENEMO issued a press statement with preliminary findings on 13 December¹⁹⁴ under the headline: "*Elections were organised in an orderly manner meeting many international standards – procedural shortcomings and challenges remain*". The voting process was described as "*generally calm and peaceful but some cases of breaches of procedural and irregularities were observed*". ENEMO continued to say that "[...] Allegations of manipulation of the voting and counting processes in certain municipalities along with doubts over reported turnout figures in certain parts of Kosovo have been registered [...]."

ENEMO observations of the count should be noted: "*The counting process was assessed as bad or very bad in 12 % of the polling stations observed during the closing and counting procedures. In some cases voters arriving after 19.00 were allowed to vote and in 6 % of the polling stations unauthorized persons were seen directing the counting process in the PSC. Some of the counting procedures were not fully adhered to and in 15 % of the polling stations the chairperson did not announce the results, nor were the results posted on the wall as stipulated in the law.*"

A final ENEMO report is still to be released with more detailed information also regarding the observations of the 9 January 2011 repeat election and is expected in February 2011. The repeat elections were followed by a core team of the ENEMO, who issued a press release on 12 January with the following key findings:

¹⁹⁴ <http://www.enemo.eu/kosovo2010.htm>.

“A high number of irregularities during the Kosovo Assembly elections have severely affected the trust in the democratic process in Kosovo.

Breaching the secrecy of the vote by family and group voting was in many places the rule and not the exception as reported by ENEMO observers from 38% of polling stations visited during the January 9 repeat elections. These serious breaches of procedures were seemingly accepted and there were no attempts by the polling station staff to stop irregular voting behaviours. Similar incidents and alleged fraudulent acts reported for the December 12 elections give a bleak picture of the election process in Kosovo. Furthermore, cases of intimidation and pressure on domestic observers have been reported to ENEMO adding to other weaknesses during the process.”

8.3 DIPLOMATIC POLL WATCH

The Office of the EUSR coordinated the deployment of over 250 diplomats and Kosovo staff in order to watch opening, polling and counting. Some recurring irregularities were reported Kosovo-wide. The watch did not make their findings public but shared information and briefed the EP Delegation in the late evening of 12 December.

Diplomatic watchers noted some irregularities during the polling and counting including: (a) not following the correct procedures; (b) allowing for group or family voting, (c) failure to properly check identification documents, (d) inconsistent verification of inking procedures to ensure against multiple voting; (e) poor conduct of the count and (f) a considerable number of unstamped ballots. Problems were noted regarding the inclusion in the voter lists of names of deceased persons and the conduct of the vote count. There were technical problems with UV lamps and ink, a mechanism established to prevent multiple voting, which seemed widespread.

The EU EEM provided limited support to the diplomatic poll watch coordinated by the EUSR, as required, participating in their briefings. Coordination and cooperation with the EUSR election staff, which included election observation experts seconded by the Netherlands, Norway and Switzerland, was collegial and efficient. The EU EEM was provided with the final summary of findings of the diplomatic poll watchers.

Observers from the EC Liaison Office were present at polling stations in the municipalities of Shtërpcë/Štrpce and Graçanicë/Gračanica. Their presence did not bar the members of polling station commissions from allowing malpractices such as not checking for ID and permitting persons to cast more than one vote.

For the 9 January repeat election, a new diplomatic watch exercise was deployed by the EUSR. Diplomatic watchers intended to cover all 62 polling centres where the election was repeated, but not all 185 polling stations within these centres. They deployed “stationary” teams, in the context of a polling centre rather than a polling station, who would “witness” the process without leaving their areas of responsibility. Some 1,600 Kosovo Police officers were engaged in the election. Even with this presence, several teams of national staff of the EUSR election watch reported being threatened, in one case by a domestic observer.

The EUSR-co-ordinated election watch found that some improvement was noted on 9 January 2011 although irregularities were also observed; the very significant decrease in turnout, to more realistic levels was almost certainly also an indicator of a very significant decrease in ballot stuffing and multiple voting.

Forty teams of election watchers coordinated by the EUSR were present for the Mitrovicë/Mitrovica repeat election of 23 January, deployed as static observers; on this occasion without U.S. or German participation. Two teams reported that polling station commissioners tried to restrict their movements (two BIRN domestic observer teams reported the same). They found fewer irregularities than in either the 12 December poll or the 9 January partial repeat poll.

8.4 THE EUROPEAN PARLIAMENT ELECTION OBSERVATION DELEGATION

As an indication of the EU's strong interest in the democratic development of Kosovo, the European Parliament deployed an official election observation delegation of seven Members of the European Parliament (MEPs) to visit Kosovo in the context of the 2010 general election. As it is unusual for the EP to field election observers in the absence of a long-term EU or OSCE/ODIHR EOM, the EU EEM was also tasked to provide briefings to the EP delegation and to offer input in the drafting of the EP delegation's press statement.

A seven member Election Observation Delegation of the European Parliament monitored the conduct of polling day. The statement released 13 December (please see Annex) concluded; that *"[...] a generally well organised election day with a good voter turnout is encouraging for the continuous democratic development of Kosovo [...]"* The Delegation also noted that *"[...] Serious allegations of fraud in two municipalities have been brought to the attention of the delegation. The delegation encourages the political parties to follow proper legal procedures. Identified perpetrators should be prosecuted promptly in line with the law in order to curtail the culture of impunity [...]"*

The European Parliament Election Observation Delegation re-deployed two of its seven members, MEP and rapporteur for Kosovo Ulrike Lunacek and MEP Jutta Steinruck, in order to follow up findings from the 12 December election and to monitor the polling and counting for the 9 January repeat election in Deçan/Deçane, Glllogovc/Glogovac and Skënderaj/Srbica, and in one polling centre each in Lipjan/Lipljan and Malishevë/Mališevo each. The statement released 10 January concluded; that *"[...] Notwithstanding the well-intentioned efforts of many activists and individuals, during the election of 12 December and 9 January, some serious shortcomings underscored insufficient political will, including at grass root level, to conduct a genuine election in line with international standards and good electoral practice. [...]"*

The Delegation also noted that *"[...] Although the vote took place in an overall calm atmosphere, reports of electoral fraud and intimidation were brought to the attention of the Delegation.[...]"* and concludes that *"[...] Kosovo should take immediate steps to improve future electoral process in order to secure the democratic rights of the citizens of Kosovo and strengthen Kosovo's European perspective. The delegation welcomes the fact that political parties acknowledge the need to promptly further the election reform in line with international standards and good electoral practice. [...]"*

9 RECOMMENDATIONS

9.1 PREFACE

These elections were organised in haste and an EU EEM was the only election expertise presence possible for the EU to deploy in the timeframe. While some previous recommendations offered by the 2009 EEM had been addressed fully or in part, due to time constraints and/or lack of sufficient political will, many recommendations were not implemented for the 12 December 2010 early general election. It is the overriding recommendation of the EU EEM 2010 that a timely and comprehensive electoral reform is commenced without delay and built on genuine political will with broad consultation and agreement between Kosovo's election stakeholders. If such political will is seen to materialise, then a request for a fully-fledged EU Election Observation Mission could be considered.

Civil society voices and institutional leaders such as the CEC President have stated their dissatisfaction with the current election law. In a meeting attended by the EU EEM, acting President Krasniqi said that all members of the outgoing Assembly presidency, drawn from all political parties represented in it, have expressed their readiness for thorough election reform. This remains to be tested as political party representatives' participation in the former Election Working Group seemed formal until, in October 2010, a new election appeared to be approaching.

A limited debate in the press since 12 December has focused on perceived abuses with regard to the five preference votes. Dividing Kosovo into seven or more election zones has been discussed. Some blame the open list system as a stimulus for abuse and argue for reverting to closed political entity candidate lists.¹⁹⁵ One commentator defended open lists as a tool that will ultimately force parties to democratise themselves, since candidates will owe their mandates to their electorate, not to party leaderships.¹⁹⁶

The problem with such an approach is that the one or two elections foreseen by the commentator to allow for a process of maturation may instead foster further and irrecoverable deterioration. The political entities and the candidates within them that are elected to the Assembly determine the direction the state will take. That direction could be one of mutually interacting increasingly flawed institutions and election processes.

A similar dilemma exists across a range of issues related to Kosovo institutions and the democratic process. Should efforts and reliance continue to be invested in institutions that are performing poorly, and moreover worsening, or should corrective interventions be applied that short-circuit them? In the Kosovo context, key recommendations – whether on elections or in other areas – essentially present a choice between:

- a) urging the relevant underperforming institutions to implement properly their legal obligations or
- b) creating technical fixes either to make deviation more difficult or compensate for the likelihood that institutions will default on their obligations.

Neither approach can by itself guarantee better outcomes. If Kosovo's political class and wider society fail to demonstrate political will, including for better elections, technical fixes will not overcome this.

¹⁹⁵ Leonard Kerquki, "Ndërrojeni sistemin" [Change the system], *Express*, 23 December 2010.

¹⁹⁶ Leon Malazogu, "Mos i bjer samarit!" [Don't beat the saddle!], *Express*, 26 December 2010.

9.2 COMPLIANCE WITH INTERNATIONAL STANDARDS

- 2.1 The LGE should be amended to ensure that only courts have the authority to impose a restriction on a citizen's civil and political rights. Legislation should give guidance to the courts so as to better ensure that their decisions in this regard are proportionate to the offenses committed, in line with the Constitution and the Criminal Code.
- 2.2 The language "in the past three years" of LGE Article 21.1.q should be reviewed. If a time period is to be included. It might be appropriate that such time period coincides with the potential probation period related to the final court verdict.
- 2.3 Measures to enhance women's participation in politics should comply with the Constitution of the Republic of Kosovo and international standards to ensure gender equality.
- 2.4 The LGE should be amended to remove any possibilities for collective punishment.

9.3 ELECTION SYSTEM

- 3.1 Consideration should be given to removing the requirement to declare ethnic affiliation in politics.
- 3.2 Consideration should be given to decreasing the 5% eligibility threshold in order to further enhance inclusiveness of the Kosovo Assembly. A threshold of 2 or 3% seems more appropriate in order that inclusiveness is enhanced.
- 3.3 Consideration should be given to amending the rule whereby a seat in the Assembly which is vacated by a representative of one political entity (e.g. due to death or resignation) can be awarded to a representative of another entity's candidate list, as this practice does not adequately respect voters' choices.
- 3.4 The electoral system should be reviewed to include provisions regulating the seat allocation for the Kosovo Assembly in the case when a general election is contested by coalition candidate lists:
 - a) Between parties representing non-majority communities, and
 - b) Between parties representing the majority and one or more non-majority communities.
- 3.5 The election system for the Kosovo Assembly (and for municipal assemblies) must be simplified and brought in line with international standards, as required by the Kosovo Constitution, and to allow for a timely and accurate establishment of the election outcome. Voters must tick their ballot once, when they make their choice. Two possibilities seem to exist to date:
 - a) Return to closed candidate lists and ensure that approximately 30% of the elected candidates are women; this would require an amendment to the Constitution; or
 - b) Retain the open candidate lists, as required by the CSP and the Constitution, and allow for one single preference for a candidate to be marked by the voter on his or her ballot; thus, the political entity which nominated the preferred candidate will receive its votes on the basis of the voter preference marked on the voted ballot.
- 3.6 The LGE provisions determining the election system for the terms of the Assembly after the expiry of its second term should be clarified to provide guidance with regard to how

many seats will be distributed among the Kosovo Albanian majority parties from this point. Necessary clarifications include:

- a) The possible need for a second seat allocation, in case a political entity representing a non-majority community has won seats on the basis of LGE Article 111.2.a;
- b) The intention of the law as to which political entities are eligible to participate in a possible second seat allocation; and
- c) The method for a possible second seat allocation.

3.7 Consideration should be given to amending the provisions regulating the election of independent candidates. For example, an independent candidate could be considered elected if he or she has secured a number votes not less than the average “price” of a mandate, as such a procedure would ensure better respect for voters’ choices.

9.4 ELECTION MANAGEMENT

4.1 The term of office of members of the CEC must be specified clearly by the law, whether in terms of number of years or in terms of the duration of the Assembly that nominated them.

4.2 Conditions and criteria for membership of the CEC, LGE Article 61.5.a) and d), must be clarified. The discretion granted to the President of Kosovo to decide an early termination of the term of a member of the CEC, without a decision of a court of law, should be reviewed.

4.3 The CEC membership should clearly understand that they are administrators enjoying the confidence of their nominating parties for their personal integrity and professional qualification, rather than perceive themselves or be perceived by others as politicians.

4.4 Once the work on the civil register has been completed, conditional voting should be replaced by voting with absentee voting certificates (AVC), under strict regulations ensuring transparency and accountability, which would simplify post election day procedures. AVC should be issued, under exceptional circumstances and strict accountability procedures, by the municipality corresponding to the registered permanent residence of a voter, to allow the voter to vote in a specific polling station different from the polling station corresponding to his or her polling station of registered residence.

4.5 Citizens should be informed in a timely manner, including through the media, about the personal documents acceptable for voter identification at the polling stations on election day. Such information must be clear and unambiguous, and reflect broad international practice.

4.6 The LGE should be amended to include key provisions currently provided for by CEC rules. This recommendation is relevant, in particular, to regulation of registration of candidates, the election campaign and election day procedures including voting, counting and tabulation of the vote. The CEC must verify the candidate lists of the registered political entities ensuring full compliance of the prospective candidates with the requirements set out in LGE Article 29.

4.7 The period for the “official” election campaign should be defined by the LGE, rather than CEC rules, and be long enough to ensure that voters receive sufficient information in order to be able to make informed choices. The period of 29 days, envisaged by CEC Rule N13 for a “regular” election should not be reduced to less than 20 days for an early general

- election. Consideration should be given to conducting early elections under the same timeline applied to “regular” ones.
- 4.8 The CEC should draft a special rule, with appropriate examples, to detail the procedures for seat allocation for the Kosovo Assembly.
- 4.9 In order to simplify the system and equipment for prevention of possible multiple voting, serious consideration should be given to replacing indelible ink with visible ink. Whether visible or invisible, the ink should be delivered to the polling stations in bottles sealed by the producer in a way that will make evident any attempt to tamper with bottles.
- 4.10 The LGE must be amended to provide for a clear time line for the counting and tabulation of the vote at all levels, and for the announcement of preliminary and final results by the election administration at all levels. The CEC must declare final election results in the format of a detailed CEC decision appealable to a court of law.
- 4.11 The CEC must publish election results, in full detail, by polling stations and municipalities at the time of declaration of any such results. The CEC must provide political entities with such results in an electronic form at the beginning of the period for filing possible complaints.
- 4.12 The voter service period for the 12 December early general election was too short and must be extended to at least 14 days, even in the context of early general elections.
- 4.13 The LGE must be amended to ensure that election stakeholders are provided with certified copies of RRFs and CRFs at the polling stations immediately after the RRFs and CRFs were compiled, at the municipal election commissions immediately upon completion of the informal tabulation there and at the CEC.
- 4.14 The transition between the RRF and the CRF, for a particular polling station, should be clearer in indicating that the votes for a particular political entity reflected in the RRF are then transmitted to the CRF before candidate preferences are counted and reflected on the CRF.
- 4.15 Clear procedures should be established, well in advance of an election, concerning how polling station election officials can correct technical mistakes on the original RRFs. The role of the MECs and the CEC in the context of intake of election materials should be reviewed in order to enhance credibility of the results.
- 4.16 Clear and reliable lines of communication must be maintained between the body which decides on the operational aspects of partially repeated elections and all bodies that have decision making authority with regard to ordering repeat elections, with a view to conducting any repeat polls on a single day. This would require that all electoral disputes be finally resolved prior to appointing the date for repeat elections.
- 4.17 Outsourcing of the most sensitive element of an election - counting and tabulation of the votes or its elements - to an external agency requires clear division of responsibilities between the contractor and the contracting agency, sound testing of any software and clear conditions related to its maintenance. These arrangements must be public and allow for full access by all stakeholders to boost confidence in the process.
- 4.18 The CEC must maintain its website to function as a source of timely information on its decisions and the election process. CEC decisions and announcements should be uploaded on the day they are made, in Albanian, Serbian and English.

9.5 COMPLAINTS AND APPEALS

- 5.1 The culture of impunity must be curtailed for Kosovo to uphold its democratic development. Perpetrators must be sanctioned in a timely manner.
- 5.2 The transparency of the complaints and appeals process must be further enhanced. The complaints and appeal process should take place in public hearings, including in front of a court of law. In this context, the ECAP should be part of the judiciary. The Panel should post on its website all complaints, next to their respective decision, even if the decision is to render the complaint inadmissible or ungrounded. The same should apply to the appeals made to the Supreme Court, which should create a website accordingly and appoint a spokesperson.
- 5.3 The LGE should be amended, with a view to further streamlining the complaints and appeals process and ensuring that all decision making authority of the CEC is exhausted prior to transferring the process to the judiciary, including the ECAP and/or the Supreme Court.
- 5.4 The CEC should use its public leverage to press harder for prosecution, rather than simply blacklisting suspects for electoral violations. Blacklisting of suspects has nothing to do with justice.
- 5.5 The roles of the CEC, the ECAP and the Supreme Court should be further clarified with regard to ordering repeat elections and recounts. The streamlining of the complaints and appeals process should continue, to ensure against the amending of ECAP or Supreme Court decisions through CEC ones. The current procedure for ordering recounts gives excessive authority to the CEC. Recounts and repeat elections should be possible only upon a decision of a court of law.
- 5.6 All decisions of the ECAP and the Supreme Court should be provided both in Albanian and Serbian languages.
- 5.7 Consideration should be given to increasing the period for filing complaints and appeals from 24 to 48 hours.

9.6 POLITICAL PARTIES

- 6.1 Political parties should select their respective nominees for members of the CEC on the basis of personal integrity and professional attitude towards the implementation of the electoral legal framework, rather than on party loyalties. Once appointed, the members of the CEC should not be subject to any pressure from their nominating parties. Thereby, the CEC members should elect the CEO of the Secretariat on professional grounds only, without any intrusion of political considerations. The option of electing the CEO of the Secretariat by qualified majority of all CEC members, with a view to ensuring a broad agreement on the choice of the particular personality, could be considered.
- 6.2 The issue of political parties' internal functioning should not be regulated by rules adopted by an administrative body such as the CEC (i.e. secondary legislation). Either it should be left unregulated so as to avoid undue state interference or it should be regulated by primary legislation.
- 6.3 Until a decision is taken in this regard, the CEC should, as an interim measure, revise its rules, particularly 01/2008 On Registration and Operation of Political Parties and 13/2009

Political Entities Election Campaign, so that they no longer contain restrictions or regulations that significantly overstep written law, such as requiring parties to hold assemblies every three years and banning those under 18 years of age from participation in election campaigns.

6.4 The OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation recommend that internal functions “should generally be free from state interference” unless for compelling reasons. In Kosovo’s case, factors that might militate in favour of an appropriately legislated regulatory regime are:

- a) The problems identified in this report with regard to political party culture, specifically their tendency for merging with the state, and poor procedural practices in electing leadership, determining candidate lists and ensuring gender balance.
- b) Given the above, if a return to closed political entity lists is to be an option for election reform, “compensation” for reduced voter choice may reasonably be required in the form of legislation requiring specific standards of democratic processes in parties’ formulation of their lists.

6.5 However, the sanction of deregistration or decertification should be applied sparingly. Rather, disrespect of internal democratic process and gender balance could be sanctioned with forfeiture of public funding for a specified period.

6.6 The CEC OPPRC should implement its obligation under the LGE to make political entities’ campaign financial reports accessible to the public at every stage after their receipt. Even if the LPPF does not specify that political parties’ annual financial reports be made public in the same manner, the CEC OPPRC should also make them publically available in the same way, since neither does the LPPF forbid this.

6.7 The CEC OPPRC ought to publish audit conclusions regarding parties’ financial reports in a timely manner, in accordance with the deadlines set by law. The CEC OPPRC should regularise political entities’ reporting of campaign spending into an electronic form, both to enable easier comparison and uploading of parties’ financial reports onto the CEC website as soon as they are received.

6.8 Notwithstanding the lack of specific provision in the LGE and LPPF of mandate and resources for the CEC OPPRC to investigate political party functioning and finances, the OPPRC must be proactive in monitoring, and in building relationships with the media and civil society, including through timely and web-based publication of the information it receives from political parties, to enable and encourage “social auditing” and investigative journalism.

6.9 Any possible new legislation regulating registration and activities of political parties could be drafted to include incentives to uphold political parties’ respect for gender balance and sanctioning political parties’ neglect of gender balance, as regards participation of women in politics.

6.10 To conform better with good practice, prior to the commencement of the official campaign period, the law ought to list and define which campaign activities are considered as legitimate in the context of fundamental freedoms and which are prohibited, in particular clarifying the use of free airtime and disbursement of state funds to political party campaigns. This may serve to uphold equitable treatment of contesting parties.

6.11 Political parties could give consideration to conducting primary elections to select their candidates and their ranking on the party candidate list.

9.7 OTHER RECOMMENDATIONS

7.1 Registration of vital life events, such as births, deaths, marriages and divorces, change of names, and registration of residence address are administrative activities which have a serious impact on the quality of the civil register and as a result, on the voter lists. An education campaign may be needed until such practice becomes fully established.

7.2 Exercising the right to vote in a specific polling station should be possible only if the voter has resided (on the basis of registered residence) in the area of the polling station for a minimum period such as two months prior to election day. Persons who changed their residence in this period should be allowed to vote at the polling stations corresponding to their last registered residence.

10 LIST OF ABBREVIATIONS

AAK	Alliance for the Future of Kosovo
AKR	The Alliance New Kosovo
BIRN	Balkan Investigative Reporting Network
BSDAK	Bosniak Democratic Action Party of Kosovo
C&CR	Count and Results Centre
CCR	Central Civil Registry
CEC	Central Election Commission
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CoE	Council of Europe
CRF	Candidate Results Form
CSP	Comprehensive Proposal for the Kosovo Status Settlement
DS	Democratic Party (Serbia)
DSS	Democratic Party of Serbia (Serbia)
ECAC	Election Complaint and Appeal Commission (2009)
ECAP	Election Complaint and Appeal Panel (2010)
ECLO	(formerly used for EC Liaison Office)
ENEMO	European Network of Election Observation Organizations
EP	European Parliament
EU EEM	EU Election Expert Mission
EU EOM	EU Election Observation Mission
EULEX	European Union Rule of Law mission in Kosovo
EUSR	European Union Special Representative
FER	New Spirit (political party)
FPC	Foreign Policy Club (NGO)
ICTY	International Criminal Tribunal for Ex-Yugoslavia
ICO	International Civilian Office
ICR	International Civilian Representative
ICTY	International Criminal Tribunal for the former Yugoslavia
ID	Identification document
IFES	International Foundation for Election Systems
IMC	Independent Media Commission
JSL	United Serb List
KDI	Kosova Democratic Institute
KDTP	Kosovo Turkish Democratic Party
KFOR	Kosovo Force/ Multinational Peacekeeping Forces
KIPRED	Kosovo Institute for Policy Research and Development
KLA	Kosovo Liberation Army
KP	Kosovo Police
KTV	Kohavision Television
LDD	Democratic League of Dardania
LDK	Democratic League of Kosovo
LFPP	Law on Financing Political Parties
LGE	Law on General Elections
LMT	KFOR Liaison and Monitoring Team
MEC	Municipal Election Commission
MEP	Member of the European Parliament
MoI	Ministry of Internal Affairs
NDI	National Democratic Institute
NGO	Non-Governmental Organisation
OAG	Office of the Auditor General
OPPRC	CEC Office for Political Party Registration and Certification
OSCE	Organization for Security and Cooperation in Europe

ODIHR	OSCE Office for Democratic Institutions and Human Rights
PACE	Parliamentary Assembly of the Council of Europe
PD	Party of Justice
PDK	Democratic Party of Kosovo
PS	Polling Station
PSC	Polling Station Committee
PSD	Social Democratic Party
PTK	Post and Telecommunications of Kosovo
PVT	Parallel vote tabulation
RRF	Reconciliation and Results Form
RTK	Radio Television of Kosovo
SHIK	Informative Service of Kosovo
SLS	Independent Liberal Party
SNC	Serbian National Council (North)
SNS	Serbian Progressive Party (Serbia)
SRS	Serbian Radical Party (Serbia)
UNDP	United Nations Development Program
UNMIK	United Nations Interim Mission in Kosovo
UNSCR	United Nations Security Council Resolution
UV	Ultra violet
VL	Voter List
WG	Working Group (on election law)
YIHR	Youth Initiative for Human Rights (NGO)

11 ANNEXES – STATEMENTS BY EUROPEAN PARLIAMENT ELECTION OBSERVATION DELEGATION



The elections in Kosovo are an important step forward in its democratic development

Prishtinë/Priština, 13 December 2010. A generally well organised election day with a good voter turnout is encouraging for the continuous democratic development of Kosovo. This was underlined by the Election Observation Delegation of the European Parliament after monitoring the conduct of the polls. The delegation also acknowledged the successful effort of the Central Election Commission in organising this snap election in a short period of time.

This statement was issued prior to the completion of vote reconciliation and resolution of election complaints. This delegation is awaiting the results of various local and international election observation missions in order to make a full assessment of the election process.

The delegation states with satisfaction that the process has taken place in a peaceful atmosphere. It also notes some technical difficulties and regrets some worrying incidents. Serious allegations of fraud in two municipalities have been brought to the attention of the delegation. The delegation encourages the political parties to follow proper legal procedures. Identified perpetrators should be prosecuted promptly in line with the law in order to curtail the culture of impunity.

The members highlighted the increased participation of the Kosovo Serb community as a sign of further engagement with the country's institutions. However the delegation regrets that the Kosovo Serbs of northern Kosovo refused to use the opportunity to exercise their democratic rights.

These elections are key to Kosovo's democratic transition. The ten-day campaign was intensive, with lively debates in the broadcast media, focusing on economic growth, poverty reduction, the rule of law, and visa liberalisation in the context of Kosovo's European integration.

The delegation wishes to underscore that this creates a new momentum in the process of building a multiethnic Kosovo for the benefit of all its population. It also encourages all relevant actors to seize the opportunity to further contribute to peaceful regional stability and prosperity.

Therefore the delegation hopes for a rapid formation of the assembly and the government as well as the election of the president.

The delegation also notes the rights of the parties to appeal to the Election Complaints and Appeals Panel (ECAP) after the elections and trusts that in case of complaints, they will seek legal remedy. At the same time the delegation expects all complaints and appeals to be dealt with in full transparency, without delay.

European Parliament election observation delegation information: The delegation was led by Doris Pack (EPP, DE) and included Eduard Kukan (EPP, SK), Jutta Steinruck (S&D, DE), Francesco de Angelis (S&D, IT), Jelko Kacin (ALDE, SL), Fiona Hall (ALDE, UK) and Ulrike Lunacek (Greens, AT) who is also the EP's standing rapporteur on Kosovo. The delegation arrived in Kosovo on 10 December. Members of the delegation met representatives of the authorities, political parties, civil society and the resident international community. On election day, the delegation visited a number of polling stations in Prishtinë/Priština, Gračanice/Gračanica, Skënderaj/Srbica, Glogovac/Glogovac, Mitrovicë/Mitrovica, Gjilan/Gnjilane, Partesh/Parteshi and Prizren, and had the opportunity to meet members of the election commissions, candidates and voters. The delegation drew on support from the European Union election expert mission.



More efforts needed to strengthen democracy in Kosovo

Prishtinë/Priština, 10 January 2011. Notwithstanding the well-intentioned efforts of many activists and individuals, during the election of 12 December and 9 January, some serious shortcomings underscored insufficient political will, including at grass root level, to conduct a genuine election in line with international standards and good electoral practice.

This statement is issued prior to the completion of vote reconciliation and resolution of possible complaints for the 9 January repeat elections.

Electoral violations had led to repeat elections in the entire municipalities of Deçan/Dečane, Glogovc/Glogovac and Skënderaj/Srbica and few other polling centres on 9 January. In addition, on 6 January, the Supreme Court of Kosovo ordered to repeat the election in most polling stations in Mitrovicë/Mitrovica. As a result, the Central Election Commissions (CEC) will be in a position to announce the election results only after all electoral disputes will have been resolved. Although the vote took place in an overall calm atmosphere, reports of electoral fraud and intimidation were brought to the attention of the Delegation. The Delegation is awaiting the final assessments of ongoing domestic and international election observation efforts in order to draw its conclusions.

The Delegation encourages the Central Election Commission to complete the counting and tabulation of the vote accurately and to announce in a transparent and detailed manner the results as soon as possible. It noted relative improvements in the performance of the Election Complaints and Appeals Panel and initial steps undertaken to curtail the culture of impunity.

The Delegation underlined the importance of this election for Kosovo's ongoing democratic transition, to which the European Parliament is fully committed. It regretted the serious electoral violations in several municipalities and a protracted process of counting and tabulation of the 12 December vote. In order to strengthen public trust in the democratic process, a determined effort must be made to prosecute all identified perpetrators of fraud promptly and transparently, including pending cases from the 2009 local elections.

Kosovo should take immediate steps to improve future electoral process in order to secure the democratic rights of the citizens of Kosovo and strengthen Kosovo's European perspective. The delegation welcomes the fact that political parties acknowledge the need to promptly further the election reform in line with international standards and good electoral practice.

European Parliament election observation delegation information: The European Parliament (EP) delegation deployed for the 9 January repeat election was led by Ulrike Lunacek (Greens, AT) who is also the EP's standing rapporteur, on Kosovo and included Jutta Steinruck (S&D, DE). The delegation arrived in Kosovo on 7 January and met representatives of the authorities, political parties, civil society and the resident international community. On election day, 9 January, the delegation visited a number of polling stations in Skënderaj/Srbica and Glogovc/Glogovac, and had the opportunity to meet members of the election commissions and voters. The delegation drew on support from the European Union election expert mission and the EUSR diplomatic watch.