



**EUROPEAN UNION
ELECTION OBSERVATION MISSION
EARLY LEGISLATIVE ELECTIONS – KOSOVO* 2017**

PRELIMINARY STATEMENT

13 June 2017

Elections genuinely competitive in most of Kosovo, but political will is needed to address long-standing weaknesses and intimidation within Kosovo Serb areas

SUMMARY

- The 11 June 2017 early elections were genuinely competitive and peaceful in most parts of Kosovo, and voters were generally offered pluralistic information on the political forces in competition. However, the election process was negatively impacted by long-standing weaknesses, in particular: inaccurate voter lists that are vulnerable to fraud, an electoral system open to abuse, and a largely flawed system for Out-of-Kosovo voting. These matters will require political will and commitment to conduct the necessary reforms.
- In Kosovo Serb majority areas, the election process was marred by intimidation and instances of violence from within the Kosovo Serb community against candidates and voters, as well as insufficient response from prosecutors and police. This raises questions over the credibility of the democratic process in those areas.
- Election day was calm and no major incident was observed by the EU EOM, including in the north of Kosovo. Polling was overall assessed positively; observers noted, however, a high incidence of family voting, instances of abusive voter assistance, and the excessive presence of observers from two political entities in breach of the law. The vote count procedures were not always followed, underscoring the need for better training of polling staff. The large presence of domestic observer group Democracy in Action contributed to the transparency and the integrity of the election.
- These legislative elections, like the previous ones, have been held under the shortest possible timeframe. This has negatively affected the entire process, including the right to an effective legal remedy, as well as the capacity of the election administration to guarantee the transparency and integrity of the process.
- Due to a broadly shared concern that, as a consequence of two 2014 Constitutional Court rulings, only the political entity obtaining the most seats might be given the chance to form the future executive, most major political parties on the Kosovo Albanian side regrouped in last-minute pre-election coalitions. Given the open list electoral system, this led to rivalry between political parties within these pre-election coalitions as they had to compete for preferential votes on the same lists. It also made observation by contestants' representatives more complex, and made the appointment of polling station committees a contentious matter.
- With the exception of the Kosovo Serb majority areas, the atmosphere of the campaign was mostly calm, allowing political entities to convey their messages to the voters freely.
- The Central Election Commission (CEC) is politically inclusive, its sessions have generally been open, and it operates largely transparently. It has striven to reach decisions by consensus, and, as a rule, made efforts to deliver a transparent and genuine process. There

* This designation is without prejudice on status, and is in line with the UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

were, nevertheless, delays in the implementation of voter information, in the publication of decisions and in the adoption of preventive anti-fraud measures.

- For these elections, 1,872,941 voters were registered by the CEC based on civil registers' data. Voter lists continue to be a matter of concern, particularly the presence of deceased persons' entries, the fact that voters are not consistently allocated to the closest polling station, and risks that the data of voters residing abroad in the voter lists of their municipality of origin may be misused on election day.
- There were unclear instructions on whether Serbian ID cards should be accepted as valid ID for voting. This resulted in some confusion in certain polling stations on election day.
- The Out-of-Kosovo (OoK) voting process was particularly affected by the shortened timeframe. The population residing abroad is estimated to be close to 500,000. The CEC received 20,354 applications, of which 15,118 were registered. While those residing abroad are entitled to vote, both the method for Out-of-Kosovo voting and its implementation have failed to offer a functional, inclusive and fraud-proof system for exercising their right to vote.
- Kosovo enjoys a pluralistic media environment, and a sound legal framework for media freedom. Election law requires a fair and equitable media coverage, allows paid advertising and provides for some free airtime access. Unclear legal provisions allowed contestants to extensively purchase sponsored coverage of campaign events, in addition to strictly regulated paid political advertising.
- The media extensively covered the election campaign, and generally offered voters pluralistic information on the political forces in competition. News coverage by the main TV channels was generally balanced and equitable. However, they experienced disruptive interference in attempts to organise election debates in line with law by the PAN coalition, which requested favourable treatment. The Independent Media Commission played an essentially passive role.
- Prior to election day, the Elections Complaints and Appeals Panel (ECAP) received 18 appeals against CEC decisions and 171 complaints alleging electoral violations. Most regarded violations of the Code of Conduct during campaigning and were adjudicated swiftly by ECAP. 131 complaints were filed regarding election day. Most of them related to breaking campaign silence, and 32 related to voting and counting.

Upon an invitation by the President of Kosovo issued on 11 May 2017, the EU deployed an Election Observation Mission (EOM) on 19 May to observe the early legislative elections called for 11 June 2017. The EU EOM is led by Mr Alojz Peterle, Member of the European Parliament, and former Prime Minister of Slovenia. A delegation of the European Parliament led by MEP Igor Šoltes joined the EU EOM close to election day. In total, the EU EOM deployed 103 observers from 25 EU Member States, Norway and Switzerland across Kosovo to assess the whole electoral process against international and European standards for democratic elections as well as the laws of Kosovo. 40 observers from the diplomatic representations of EU Member States and Norway, as well as from the EU Office/EUSR also joined the mission to observe election day proceedings. On election day, observers visited 450 polling stations to observe voting and counting.

This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the tabulation of results, and the handling of possible post-election day complaints and appeals. The EU EOM remains in Kosovo to observe post-election developments and

will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005

PRELIMINARY FINDINGS

BACKGROUND

Following a motion of no confidence voted in the Assembly on 10 May, the President of Kosovo called early legislative elections scheduled on 11 June. Kosovo voters were called to elect the 120 members of the Assembly through a proportional representation system with preference voting, guaranteed seats for non-majority communities, and a 30 percent gender quota. These are the third legislative elections since Kosovo declared independence in 2008.

After the early parliamentary elections in 2014, both the Democratic Party of Kosovo (PDK) on the one side, and a post-election coalition of the Democratic League of Kosovo (LDK), Alliance for the Future of Kosovo (AAK) and Initiative for Kosovo (NISMA) supported by Vetëvendosje on the other side, claimed the right to nominate the Speaker of the Assembly and form the executive. The issues were decided by the Constitutional Court. In the judgment AGJ 671/14 of 1 July 2014 on the competencies of the President of Kosovo, it ruled that the party or pre-election coalition that won the most seats must be given the first constitutionally foreseen chance to nominate a candidate for Prime Minister. It furthermore assessed that it is not to be excluded that the President of Kosovo may decide to also give the same party or coalition the second and last chance to propose another candidate, but considered that the President has to assess which political party or coalition has the highest probability of proposing a candidate who will obtain the necessary votes in the Assembly for the establishment of a new executive.

Most major political parties in Kosovo appear to have concluded from this decision and from subsequent decision AGJ 700/14, that both constitutionally foreseen chances to nominate a Prime Minister and form the executive will be granted to the same largest pre-election political entity. A direct consequence from this seems to be the manner in which political parties have been driven into forming coalitions ahead of the 11 June elections despite fundamental differences between them.

The Democratic Party of Kosovo (PDK) formed a pre-election coalition with the Alliance for the Future of Kosovo (AAK), the Initiative for Kosovo (NISMA) and smaller parties. The Democratic League of Kosovo (LDK) and the New Kosovo Alliance (AKR) formed another coalition. Among the major Kosovo Albanian parties, only Vetëvendosje ran on its own.

In contrast to the Kosovo Albanian community, the Kosovo Serb community's political spectrum was fragmented, with political entities such as the Kosovo Serb Party (PKS), the Independent Liberal Party (SLS) and the Progressive Democratic Party (PDS) challenging the dominance of Srpska Lista. Serbian high officials urged voters on repeated occasions to vote for Srpska Lista.

LEGAL FRAMEWORK

The legal framework provides a sufficient basis for democratic elections in accordance with international standards to which Kosovo has committed in its Constitution,¹ but contains challenging provisions for early elections. Since 2011, there have been several unsuccessful attempts to comprehensively reform the electoral system and address previously identified shortcomings, including the possibility of calling early elections on extremely short notice, and as a consequence shortening deadlines within the election calendar, including the campaign period.

Under the current legislation, early elections must be held between 30 and 45 days after the dissolution of the Assembly, an extremely short timeframe. The President of Kosovo opted for calling the elections for the earliest possible date, necessitating the radical shortening of deadlines in the electoral calendar. This presented additional challenges for the organisation of the elections and for the legal deadlines for complaints and appeals prior to election day, thus partially restricting the right to an effective legal remedy. The official campaign was also reduced to ten days.

ELECTORAL SYSTEM

The 120 members of the Kosovo Assembly are elected for a four-year term in a single constituency through a proportional system with guaranteed seats for non-majority communities, a gender quota and preferential voting for candidates. Of the 120 mandates in the Assembly, 20 seats are guaranteed for non-majority communities, including 10 for the Kosovo Serb community.²

Voters mark their choice for a political entity and also mark preferences for up to five candidates from the chosen political entity. If a ballot is marked for more than five candidates, the preferences are invalidated and only the vote for the political entity is counted.

Among the seats allocated to a political entity, the gender that has received fewer seats is required to have at least 30% of the total number of seats won by the political entity. If this is not the case the candidates with least votes from the over-represented gender shall be replaced by the next candidate on the list from the under-represented gender. Replacements continue until both genders have at least 30% of the seats.

ELECTION ADMINISTRATION

The CEC is a permanent independent body composed of eleven members. The chairperson, currently a woman, is appointed by the President of Kosovo from among judges of the Supreme Court. The ten other members of the CEC are appointed after nominations by parliamentary groups in the Assembly, including those holding guaranteed seats for non-majority communities. The CEC sessions are open to observers, the public and the media. The CEC has adopted most of its decisions as a collegial body; however, there were a few contentious debates in which CEC members have traded accusations of supporting the interests of a particular political entity.

¹ Kosovo's constitution states the direct applicability of several international agreements and instruments, including the European Convention on Human Rights and Fundamental Freedoms and its protocols, and the International Covenant on Civil and Political Rights.

² The remaining ten seats are distributed as follows: Roma community (1 seat), Ashkali community (1 seat), Egyptian community (1 seat), the Roma, the Ashkali or the Egyptian community with the highest overall votes (1 seat), Bosniak community (3 seats), Turkish community (2 seats) and Gorani community (1 seat).

Municipal Election Commissions (MECs) are composed of seven to eleven members nominated by political entities that passed the 5% threshold in legislative elections and non-majority communities political entities. EU EOM observers assessed MECs as being competent and well prepared.

The appointment of the 2,490 Polling Station Committees (PSCs) was contentious. Due to the fact that many of the political parties with representation in Kosovo Assembly are running now together in pre-election coalitions (i.e. as one 'political entity'), the usual nomination procedure became impractical. The CEC devised in camera a formula that attempted to secure an adequate political representation on PSCs. This flexibility is allowed by the law, if necessity requires.³ The CEC engaged in heated discussion regarding the initial nominations of PSC members in the northern municipalities as their composition lacked an inclusive and balanced representation among the competing Kosovo Serb political entities.⁴

The representation of women among the election administration is very low. Among the 11 CEC members, only the chair is a woman, and women represent only 10.5 % of MEC members and chairpersons. Women represented 24 % of the members and 18 % of chairpersons in polling stations visited by the EU EOM.

SHORTENED ELECTION TIMEFRAME

The holding of the elections in the shortest possible timeframe has negatively affected the entire process, including pre-election complaints and appeals. Some legal deadlines were not met, such as the certification of candidates for non-majority communities' lists, the appointment of polling station committees, and the sending of election materials to Out-of-Kosovo registered voters. The combination of shortened electoral administration deadlines with complaints and appeals deadlines can affect the right to an effective legal remedy as outlined below for Out-of-Kosovo voting and non-majority representation.

VOTER LISTS

For these elections, 1,872,941 voters were registered by the CEC based on records provided by the Civil Registration Agency (CRA). The voter lists contain a significant section of the population residing abroad, estimated at 562,951 according to the 2011 Census. For these elections, voters had limited opportunity to check their voter list entries and request changes, mostly due to shortened deadlines and a limited information campaign.

Voter lists are a matter of concern. Deficiencies include the failure to remove entries of some deceased persons, and the presence of voters residing abroad in the voter lists of their municipality of origin. This creates opportunities for manipulation on election day. It also appears that voters are not always allocated to polling stations closest to their residence, reportedly due to deficiencies in the Kosovo address system, and to the fact that the CEC uses the residence of voters as recorded at the time of issuance of ID documents, while they may have changed their residence since then.

ELECTION PROCESS IN THE FOUR NORTHERN MUNICIPALITIES

In line with an agreement between the CEC and the Organization for Security and Cooperation in Europe (OSCE) and as a confidence-building measure, international OSCE personnel were

³ See article 77.4 of the LGE

⁴ Among appointed PSCs, the Srpska Lista (GISL) has 22 of 31 PSC chairs in Leposaviq/Leposavic municipality, 6 of 13 PSC chairs in Zvečan/Zvečan municipality, 17 of 28 PSC chairs in Mitrovica north and 7 of 15 PSC chairs in Zubin Potok.

present in each PSC in the northern municipalities to advise and assist, and with authority to report violations to the CEC. OSCE personnel also followed the transportation of sensitive materials by the CEC.

The total number of voters has been reduced in the four northern municipalities since the 2014 legislative elections from 62,797 to 58,064. This difference is partly due to the lack of integration of data from the Serbian civil registry into the voter lists, as was done for the 2014 elections as a result of the Brussels dialogue.

There were unclear instructions from the CEC on whether Serbian ID cards should be accepted as valid ID for voting in the four northern municipalities. This resulted in some confusion on election day in Leposavić/Leposaviq and other areas.

On election day, some 30 buses coming from Serbia brought voters to several of the Kosovo Serb majority municipalities. The process was reportedly smooth.

OUT-OF-KOSOVO POSTAL VOTING

The CEC received 20,354 applications for Out-of-Kosovo voting. 15,118 of them were successfully registered, and 5,236 rejected, mostly for lack of proof of eligibility. The highest numbers of OoK applications came from Switzerland (5,432), Germany (4,340) and Serbia (4,395). The highest number of rejected applications was from Serbia (2,476), due to a large number of applicants not providing sufficient documents proving their eligibility.⁵ The total number of registered OoK voters from Serbia was 1,919.

According to the CEC, technical problems related to the CEC email system resulted in numerous multiple applications that overwhelmed the CEC's Voter Service Division (VSD), as potential voters attempted to send their applications several times. The final list of registered Out-of-Kosovo voters contains some multiple entries. The VSD collected some 4,600 OoK postal ballots in envelopes and on Election day started the process of verification of voters' eligibility and validity of OoK envelopes.

While members of the Kosovo diaspora are entitled to vote, both the method for Out-of-Kosovo voting and its implementation have failed to offer a functional, inclusive and fraud-proof system for exercising their right to vote.

CERTIFICATION OF ELECTION CONTESTANTS

All 26 political entities that applied to contest the elections were certified by the CEC on 23 May. In total five coalitions, 19 political parties and two citizens' initiatives took part. Twenty-one political entities ran for the 20 guaranteed seats for non-majority communities, while five Kosovo Albanian majority political entities for the other 100 seats. In total, 971 candidates were certified. 487 candidates ran on the five lists competing for the 100 seats, while 484 candidates ran on the 21 lists competing for the 20 guaranteed seats.

The certification of candidates was mostly uncontroversial; however, a complex dispute developed over the certification of allegedly 'ethnic' Kosovo Albanians presented as candidates on two lists running for non-majority communities' guaranteed seats. These cases illustrate weaknesses in the system for non-majority party representation, in particular the unclear legal means the CEC has at its disposal to prevent abuses, and the lack of guarantee of the right to an effective remedy when elections are held in a shortened timeframe.

⁵ According to Article 5 of the LGE, applicants need to prove their registration in the Kosovo system, that they were residing in Kosovo until 1998, or that they acquired refugee status after 1995.

CAMPAIGN ENVIRONMENT

The official campaign started on 31 May and ended 24 hours before the opening of the vote. As was the case in previous elections, political entities started campaign activities before the official start of the campaign. The atmosphere of the campaign was mostly calm and low key in Kosovo Albanian majority areas, intensifying towards the end, with larger rallies being held by the large coalitions and Vetëvendosje. Contestants campaigned freely and generally refrained from inflammatory language.

However, the campaign environment was marred by a pattern of intimidation within the Serb communities, specifically affecting non Srpska Lista parties and candidates. This included pressure on individual candidates to withdraw from the race. Isolated violent incidents occurred, involving gunfire attack against the office of PKS in Leposavić/Leposaviq on 22 May and a violent incident involving PKS and Srpska Lista supporters that resulted in the temporary detention of the PKS leader on 4 June.

The Code of Conduct for political entities, their supporters and candidates prohibits the use of public office resources for campaigning, as well as the intimidation of voters. The political entities have generally complied with the campaign rules set forth in the Code of Conduct. However, EU EOM observers received some reports of use of public offices for campaign purposes.⁶ EU EOM observers received reports on vote buying by Srpska Lista in Štrpce/Shtërpçë. After President Thaçi visited primary schools around Kosovo, rival party LDK accused him of campaigning for his former party PDK and hence violating the Constitution.⁷ Allegations of pressure and intimidation on voters were received from several regions.⁸

Female candidates have not received equal support for their campaigns from their political entities. Money and media coverage were prioritised for male candidates. Women were rarely in management positions in campaign teams.⁹ Female candidates rarely spoke at rallies and women's participation in public life was almost never discussed.

THE MEDIA

The media environment is lively and pluralistic and allowed voters' access to information on different political options. The media legislation provides a sound framework for freedom of the media and journalists were generally able to exercise their profession freely. The election law requires from all media fair and equitable coverage of contestants, allows paid advertising, and foresees free airtime access to all political entities from broadcasters that accept paid advertising. The Independent Media Commission (IMC), which is responsible to oversee broadcast media, played a passive role by not issuing any election-related written public statement or decision on detected violations before and during the election campaign.

Television and online news media were the primary source of information for voters. They extensively covered the elections in a variety of formats and abstained from inflammatory messages. The main public and private TV channels reported interference from political

⁶ Reports of public office used in Viti/Vitina; cars with official plates at a PDK rally in Prizren and reports of use of official cars at LDK and PDK rallies in Viti/Vitina; the municipality in Malishevë/Mališevo allegedly favoured Nisma with posting space.

⁷ Article 83 of the Constitution provides that the President "represents the unity of the people of the Republic of Kosovo"; Article 88 prohibits the President from exercising any political party functions.

⁸ EU EOM reported employees in public institutions in Štrpce/Shtërpçë allegedly asked for their IDs, with the indication they would only be returned after Election Day, and cases of intimidation of voters in Novo Brdo/Novobërdë

⁹ LDK coalition campaign team in Gjakovë/Djakovica.

parties, which tried to impose conditions for election debates that would give them favourable treatment in breach of the law. These reported attempts resulted in difficulties for media in organising fair and inclusive debates, which have been a long-established practice in Kosovo, to the detriment of the voters.

Public TV channel *RTK1*, and two private TV channels *RTV 21* and *KTV*, offered in their news a fairly equitable coverage of the three main contestants, while private TV station *Klan Kosova* offered considerably more coverage to the PAN coalition.¹⁰ In addition to paid political advertising spots, the main contestants extensively campaigned on TV by taking advantage of a loophole in the law, which allows TV channels to air sponsored programmes without limits, and fails to prescribe equal conditions to purchase them. Public TV *RTK2* offered a very limited but balanced news coverage of Kosovo Serb political parties, while private TV channels *TV Most* and *TV Puls* almost exclusively covered *Srpska Lista*.¹¹

Online news media extensively covered the election campaign; however, most of the coverage was based on information gathered from news agencies, other media sources and political parties' press releases and Facebook pages. Isolated cases of news websites and Facebook pages created to spread fake and misleading news were also observed, including a fake exit poll on election day.

CIVIL SOCIETY AND DOMESTIC OBSERVERS

Democracy in Action, a coalition of NGOs, is the main domestic election observer group. It fielded over 2,500 observers and issued several reports on election campaign and election day.

A surprisingly large number of observers (4,548) from an NGO named the Regional Institute of Democracy, Human Rights and Political Studies applied for accreditation with the CEC on the last day. The CEC member nominated by *Vetëvendosje* raised concerns that this was being abused by political entities as a cover to have extra accredited party observers, which was raised also by other interlocutors on election day.

PROTECTING THE VOTE

Some very basic anti-fraud measures have not been implemented: no reference to the Criminal Code provisions on electoral crimes was made in the Polling and Counting Procedures Manual, which is also the only written basis for polling staff training, thus inclusion of fraud-detering material in the trainings was not ensured. Also, the reference to election day complaints in the Manual was reduced to providing interested parties with a complaint form, yet even the distribution of these forms was not assisted by the CEC.

On election day, the Elections National Coordinator in the Prosecutor's office organised a control room, which allowed for immediate response to questions regarding violations and the authorisation of arrests throughout Kosovo.

ELECTION DISPUTES RESOLUTION

The Elections Complaints and Appeals Panel (ECAP) is an independent institution composed of judges responsible for adjudicating election-related complaints and appeals of CEC decisions. Up to election day, ECAP had received a total of 171 complaints against alleged

¹⁰ Three main contestants covered by TV channels were PAN coalition, LDK-AKR coalition and *Vetëvendosje*.

¹¹ EU EOM monitored *RTK1*, *RTK2*, *RTV 21*, *KTV* and *Klan Kosova TV* during the election campaign from 17:00 to 01:00, the main primetime newscast of *TV Most* and *TV Puls*, and a sample of online news media.

electoral violations and 18 appeals against decisions of the CEC. Most of the complaints regarded violations of the Code of Conduct during campaigning.

The panel has held two hearings in appeals procedures concerning certification of candidates for political entities aiming to represent non-majority communities. The evidence statements presented in the hearings were, however, only discussed in a very limited fashion in the resulting ECAP decisions. ECAP rejected the appeal of the Turkish KTAP party on the grounds that KTAP had “voluntarily” removed their candidates before certification by CEC without discussing the fact that KTAP would not have been certified in time for the ballot lottery, had it not consented to remove the candidates. This decision was upheld by the Supreme Court, again with the statement that KTAP had “voluntarily” removed their candidates.

ECAP imposed a 25.000 EUR fine on Srpska Lista for a campaign video it deemed in violation of the political parties’ code of conduct, respectively the Article 33.1 of the LGE, specifically for insulting and inciting to hatred. Srpska Lista appealed the decision to the Supreme Court on 10 June. 131 complaints were filed regarding election day. Most of them related to breaking campaign silence, and 32 related to voting and counting.

ELECTION DAY

Election day was calm, without major incidents recorded by the EU EOM observers. Polling stations generally opened on time and were prepared for voting. The opening procedures were mostly followed and the opening was assessed positively in all polling stations observed.

Overall, polling process was assessed as good or very good in 97% of polling stations. However, some political entities stationed more than two accredited observers in a considerable number of polling stations, which is in breach of the election law.¹² In some cases, this may have had a negative impact on voters to cast their votes free from pressure. In addition, some political parties deployed their supporters as accredited observers of NGOs, further exacerbating the problem.¹³

While voting procedures were generally followed, EU EOM observers noted many instances of family voting (in 18% of observations), sometimes combined with proxy voting (4% of observations). Some voters had to be turned away from voting in 16% of polling stations observed, mostly due to coming to the wrong polling station. Significantly, some 39% of polling centres were not accessible for voters with disabilities. During election day, campaign silence was breached by some private TV channels that broadcasted declarations of political party members.

The vote count was assessed more negatively by EU EOM observers, mainly due to PSCs not always following the counting procedures, which appears to be due to the complexity of the process combined with lack of adequate training, leading in turn to difficulties for some PSCs to properly complete the results protocols. In some cases, accredited observers were seen interfering in the process.

The CEC reported a turnout of 41.45% and started publishing the preliminary results per polling station for political entities within hours of closing, therefore enhancing the transparency of results.¹⁴

¹² LDK/AKR coalition and PAN coalition had more than two accredited observers in 17% and 27% of polling stations, respectively.

¹³ For example, the unknown NGO “Regional Institute for Democracy, Human Rights and Political studies.

¹⁴ The results for individual candidates will be published only together with the final confirmed results.

EU EOM observers followed the reception of election materials in 16 municipalities and assessed the process positively. The process of validation of election results and counting of postal and conditional ballots is ongoing in the Counting and Results Centre.
