



Instituti i Kosovës për Drejtësi  
Kosovo Law Institute

## **JUSTICE IN ELECTIONS 2017**

REPORT ON RESPONSIBILITY OF JUDICIAL AUTHORITIES TO CRIMINAL  
OFFENSES AGAINST VOTING RIGHTS

Pristina, august 2017

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## ABOUT PROJECT

The Kosovo Law Institute is implementing the project “Increasing the efficiency of Justice Authorities for a free, fair and democratic election process”, which aims to strengthen capacity and increase co-operation with the judiciary in the effective combat of any kind of crime that hinders the free, fair and credible election process in Kosovo. This project is supported by the US Embassy in Pristina.

KLI has a tradition in implementing such projects, supporting training authorities and providing advice on effective prosecution of election crimes, awareness raising of election-related crimes, observing the response of the judiciary in terms of crimes elections, and drafting reports that provide concrete recommendations to improve the functioning of justice authorities in the future.

The views expressed in the report are those of the authors, they are not necessarily donor attitudes.

## ABOUT KLI

KLI, Kosovo Law Institute is nongovernmental organization and Non profitable of public policy, a think-tank specialized in the justice sector.

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## 1. Executive summary

IKD sikurse në të kaluarën vlerëson se ndërlidhja e punësimit në administratën publike dhe përkrahja për partinë e caktuar politike është vetëm një nga krimet të cilat është vështirë të zbulohet, por që organet e ndjekjes duhet të shfrytëzojnë të gjitha mundësitë ligjore për zbardhjen e këtij klientelizmi. Gjithsesi në këtë drejtim, fokusi i organeve të ndjekjes duhet të jetë tek hetimi i financimit të aktiviteteve të partive politike.

The Kosovo Law Institute (KLI) in cooperation with the Initiative for Progress (INPO) and the Group for Legal and Political Studies (GLPS) have monitored the activities of the judiciary and security institutions in the early national elections held on 11 June 2017.

In the focus of the monitoring were the reactions of the justice and security authorities to the complaints of citizens and officials responsible for the organization of elections, set about suspicions of committing crimes against voting rights. The monitoring was carried out by 65 mobile monitors and included the day of the monitoring of the early national elections held on 11 June 2017 throughout the territory of the Republic of Kosovo, including the Serb and North Mitrovica municipalities.

The KLI assesses the approach, standard and commitment of security and prosecution authorities regarding the reaction to criminal activity against voting rights. In all these aspects, the SP and Kosovo Police (KP) have made progress always comparing the investigation and prosecution of crimes in previous years, elections, especially the national elections 2010.

Inter-institutional co-operation has been deepened by signing a memorandum of cooperation between the KJC, KPC, KP, CEC and ECAP. This cooperation has given concrete results throughout the election process. The greatest achievement, as in the past, is the creation of Standard Action Procedures (SAPs) between SP and KP. SAPs have been the source of unprecedented effective cooperation so far with regard to investigating and prosecuting crimes against the right of elections in Kosovo.

The State Prosecutor's readiness was at the right level, engaging for 24 hours 100 prosecutors on duty on the day of voting, who in cooperation with the police responded to incidents related to the security of the elections process. One of the major concerns in these elections was the unheard of activity of an NGO, which was unknown to the public and for which doubts were raised about its activity. The CEC accredited about 30,000 observers in monitoring the voting day on 11 June 2017. A few days before the election, the organization "Regional Institute for Democracy for Human Rights and Political Studies" had submitted a request to the CEC to accredit 4548 observers for the voting day on June 11<sup>th</sup>. Information about this NGO was lacking and CEC members have raised their suspicions about the purpose of this organization, which has been assessed as a fantasy organization. To this accreditation of the number of observers of this organization are raised numerous doubts and public debate. The State Prosecutor has silenced about the activity of this NGO. Against the latter, the VV party submitted a criminal report with the Basic Prosecution in Pristina. There is no response to what has been done regarding the

submitting of this criminal report. On the voting day there were several minor incidents, violations of the election process rules and several attempts to commit criminal offenses related to the right to vote. Only for the day of voting were raised criminal reports against 16 persons for the criminal offenses “Candidate’s threat”, “Violation of the free determination of voters”, “Abuse of official duty during elections”, “Giving or receiving bribes related to voting”, “abuse of voting rights”, “Falsification of voting results”, “Destruction of voting documents”, “Participation or organization of an organized criminal group”, Failure to report or report false property” and “Announcement or False reporting”. All criminal reports against these persons were filed in BP in Pristina, Prizren, Peja, Ferizaj and Gjilan.

While the CEC has not yet sent any case to the State Prosecutor, ECAP based on received and reviewed cases has sent 14 files to the State Prosecution for which it has considered that there may be elements of criminal offenses to investigate further.

While the prosecutorial system and the judicial system are still being challenged with previous pre-election cases that have not been completed for the June 11<sup>th</sup>, 2017 elections, from criminal reports filed against 16 persons, prosecutors raised indictments against 7 persons. Of these, convictions were issued against three persons as a result of guilty plea by the accused , while other cases are in the process.

The policy of prosecution and sentence continues to be a challenge for the justice system, which has not yet adequately responded to the election manipulators, following the organizers and imposing adequate sentence to achieve the purpose of the sentence.

However, apart from eventual omissions which were recorded on the Election Day on 11 June 2017, the positive results generally shown in the coordination between the justice institutions have directly influenced the overall conduct of the elections, which have been evaluated by both local and international as well organized, fair and democratic elections. Justice authorities remain committed to the paper-based commitment through the memorandum, to prove it in practice by prioritizing election cases. The criminal offense related to the elections are quite complex and the various forms that exist in Kosovo create space for manipulations that pose a great challenge to the judiciary.

KLI as in the past assesses that employment interconnection to public administration a support for a particular political party is only one of the crimes that is difficult to detect but that the prosecution authorities should disclose all legal possibilities for solving this clientelism. However in this regard, the focus of the prosecution authorities should be on the investigation of the financing of political parties’ activities.

## 2. Introduction

The rule of law continues to be the most fragile area of government in the Republic of Kosovo. Challenges in building law and order in Kosovo since the end of the war have been numerous, creating a justice system that has been constantly exposed to government interventions.

Political influences continued even after the declaration of independence, where the processes for selecting the most important institutions of the justice system were virtually influenced by politics. This has directly affected the fragile functioning of the justice system, which has failed to ensure respect for the rule of law in Kosovo. In this regard, the lack of efficiency for prosecution and judgment of criminal offenses that have a high risk for society has been a major challenge for the justice system.

Among the most serious criminal offenses are those related to the right to vote. In the past, enormous manipulation of elections has created many consequences, which are not limited to losing confidence in the judiciary, but also in the loss of citizens' confidence in the election process, the fragile legitimacy of the Assembly, institutions and budget, and damage the image of the country. The Republic of Kosovo has had serious and persistent problems with the organization and conduct of both local and national elections, partly due to the inadequate response of the judiciary. In this regard, the general elections of 2010, which were characterized by industrial manipulation of votes. For these manipulations, prosecutors had filed direct charges addressing these crimes as individual crimes, failing to prosecute the organizers of these crimes.<sup>1</sup> Also, judge's sentences for these cases were quite soft compared to the damages caused and the problems.<sup>2</sup>

However, criminal charges and court sentences for commissioners in 2010 have served to educate the entire public about the legal consequences of involvement in the commission of election offenses. Former Chief State Prosecutor since the 2013 local elections has taken steps in line with the lessons learned from the past, signing a Memorandum of Cooperation on elections between KPC, KJC, KP, CEC and ECAP. Further, the KLI had proposed and drafted Standard Operating Procedures (SOPs) between the State Prosecutor and the Kosovo Police, which brought success in pursuing election manipulators by building the proactive role of these

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<sup>1</sup> For 2010 cases, prosecutors have raised indictments for 232 cases against 1,456 persons and that 758 other commissioners are in the process of raising indictments. CRC had extracted from the audit of 890 polling stations that in 712 polling stations there were many errors that exceeded the margin of simple mistakes. In all these polling stations mistakes were made by 5,000 commissioners, who in different countries, at the same time, did the same. Failure to investigate organized crime in the election is also closely linked to the failure of prosecutors to investigate suspicious financing of political parties, the failure of election materials, and incorrect voter lists. All these crimes have gone unpunished. Gashi A. and Musliu B. "Organized Crime in Elections: Policy Analysis of Prosecution and Sentences". Kosovo Law Institute. June 2012. (See the link <http://kli-ks.org/wp-content/uploads/2015/05/Creative-Organized-Executive-KLI.pdf>)

<sup>2</sup> For the 2010 cases, the courts have solved 97 cases, while 135 remained unsolved. The sentences imposed by the judges are 30 cases of imprisonment, 35 cases of fine, 9 with condition, 1 other sentence, 5 raste release judgment, and 3 cases were resolved in another way. Gashi A. and Musliu B. "Organized crime in Elections: Policy Analysis of Prosecution and Sentences". Kosovo Law Institute. June 2012. (See the link <http://kli-ks.org/wp-content/uploads/2015/05/Creative-Organized-Executive-KLI.pdf>)

institutions. This practice was also followed in the 2014 national elections, in the local elections for mayor in Drenas in 2016, and most recently in the early national elections of June 11<sup>th</sup>, 2017. The Memorandum of Cooperation between the rule of law institutions has contributed to the establishment of co-operation and coordination between these institutions in undertaking activities to successfully combat criminal offenses against voting rights, including the prevention of these offenses which are in conflict with the legislation in force.

Unlike the past, for the June 11<sup>th</sup>, 2017<sup>3</sup> elections a minimum number of incidents was recorded, involving 16 people in the manipulation of elections, against which criminal charges were raised at Basic Prosecution Offices. In addition, indictments have been raised in record time for some of these cases in which the judgment were pronounced immediately because of the guilty plea by the accused. A good practice has already been built up, which activates justice authorities in time to have a proactive role in organizing elections in terms of security, prevention and combating of criminal offenses against voting rights. In this regard, the special relationship with the public has also played a significant role, sensitizing through various activities during the election campaign.<sup>4</sup> The readiness of the Police and State Prosecutor through the engagement of a large number of police officers and 100 prosecutors on duty has impacted the co-operation of the citizens on the voting day to be at an appropriate level, reporting cases to the prosecution authorities.

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<sup>3</sup> For the early national elections of June 11<sup>th</sup>, 2017, the CEC has certified 26 political entities to participate in the elections. Of these, five coalitions, 19 political parties and two civic initiatives have been certified, while 971 candidates for deputies have been identified. In these elections, 29,264 observers participated. Central Election Commission.

<sup>4</sup> Apart from drafting and approving SOPs, which provide a highly professional approach and standard of prosecution authorities, the National Coordinator has organized trainings for prosecutors, engaged in sensitizing the public by co-organizing with the KLI seven debates in the main centers of the country together with representatives of the police, judiciary, CEC, ECAP, political parties, civil society and the media. Civil society has contributed to raising the awareness of citizens and especially political party commissioners regarding the amendments in the Criminal Code as well as the engagement of state institutions to investigate and prosecute cases of election manipulation.

### 3. Methodology

Based on the practices built in the local elections 2013<sup>5</sup>, the 2014 national elections and the elections for the Drenas municipality of 2016, the KLI has continued to monitor the responses of the judiciary to complaints from citizens and certain officials about allegations of criminal offenses against rights of voting.

KLI on June 7<sup>th</sup>, 2017, organized the round table “Justice in early parliamentary elections 2017”, where all key stakeholders participated, where was discussed for the preparation and readiness of the justice and security institutions in ensuring the running of the election process.

On the day of early national elections held on 11 June 2017, KLI conducted election monitoring throughout the territory of the Republic of Kosovo. The monitoring was realized by the KLI in cooperation with the Initiative for Progress (INPO) and the Group for Legal Studies (GLPS) with the support of the Department of State of the United States of America. The three organizations for the voting day have engaged 65 monitors, including mobile monitors in all municipalities of the Republic of Kosovo, static monitors in some of the polls considered more problematic as well as monitors placed at the monitoring center at KLI in its offices in Pristina. Mobile monitors before 7 am have been deployed in all municipalities of the Republic of Kosovo and throughout the monitoring day are distributed at various polling stations to monitor the activities and responses of the justice authorities in cases of eventual incidents related to the criminal offenses against the right to vote. All information provided by various sources and directly to the polling stations by the monitors were sent to the Monitoring Center at KLI, where after these information's are confirmed, communicating also with the police and prosecution authorities, to be finally conveyed to the public and the media. KLI, INPO and GLPS on the day of voting has held three press conferences to inform the public about the conduct of the elections and the reaction of security and justice institutions in cases when allegations of abuse of voting rights have been reported. Through this type of special monitoring of the activities and response of the judiciary in relation to the criminal offenses against the right to vote, KLI has influenced public pressure to ensure effective investigation and prosecution, including deepening of inter-institutional cooperation, raising the standard of investigations and deepening the cooperation between the judiciary authorities and the citizens of the Republic of Kosovo through public awareness and the spread of the hand for genuine cooperation.

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<sup>5</sup> Memorandum of Cooperation between the State Prosecutor and Kosovo Law Institute, State Prosecutor, 23 September 2013.

#### **4. Legal Framework for Criminal Offenses against Voting Rights**

To enable a more efficient and effective combat in prosecuting and judging the manipulation of elections, the Republic of Kosovo legislation in the Criminal Code of the Republic of Kosovo has devoted a special chapter to these offenses. While Chapter XVI “Criminal Offenses against Human Rights and Freedoms” of the old Criminal Code of Kosovo contained six criminal offenses related to elections,<sup>6</sup> the new Criminal Code already contains 11 criminal offenses.<sup>7</sup> The Assembly of Kosovo, through legal changes, has dedicated a special importance to the voting rights. The new Criminal Code already has severed sentences for criminal offenses against voting rights, categorizing them as serious crimes.

New actions sanction incriminating actions in three stages during the election process, including criminal offenses that may be committed before the voting day, during the voting day and after the voting day.<sup>8</sup> The 2010 national elections are evidenced as the worst elections organized after the end of the war in Kosovo. Characteristic of these elections were the involvement in manipulations mainly of election commissioners. The new Criminal Code has severed sentences against this category, where in each case where each of the criminal offenses can be committed by election commissioners, the sentences are extremely severe.<sup>9</sup>

The KLI estimates that the 11 criminal offenses that sanction criminal acts related to elections in the Criminal Code adequately define all the actions and ways of committing these offenses about the election process and the voting rights in Kosovo.

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<sup>6</sup> Note: The old Criminal Code of the Republic of Kosovo was the basis of the criminal legislation for sanctioning criminal election actions, which had paid particular attention to these offenses, as set out in articles 176,177,178,179,180 and 181. These articles sanction criminal acts against all persons who in any way hinder voters from exercising the right to vote, undertake any corrupt activities, use violence on the polling day, vote several times by the same voter, reveal the secret vote, cheating on polls destroying in various forms voting documents. Sentences foreseen in these legal provisions provide for fines, condition and effective imprisonment of up to five (5) years. Criminal Code of the Republic of Kosovo, Chapter XVI: Criminal Offenses against freedom and human rights, Assembly o Republic of Kosovo, April 2003.

<sup>7</sup> The advancement of criminal legislation in this regard defines criminal actions against voting rights related to: the violation of the right to run, the threat of a candidate, the prevention of the exercise of the right to vote, the violation of the free determination of voters, the abuse of official duty during the election. Giving or taking bribes related to voting, abuse of voting rights, obstruction of the voting process, violation of the secrecy of voting, falsification of voting results, disposal of voting documents.

<sup>8</sup> Note: Criminal offenses of Chapter XVIII, “Criminal Offenses against voting rights” may be conducted throughout the election process, including criminal acts before, during and after the voting day. Some of the offenses that may be committed in the preparation of elections are sanctioned in Articles 210 “Violation of the right to run” and 211 “Candidate’s threat”. Some of the offenses that may be committed in preparation and on election day are sanctioned in articles 212 “Preventing the exercise of the right to vote”, article 214 “Abuse of official duty during elections” and article 215 “Giving or receiving bribes in relation to the voting”. Some of the offenses that may be committed on election day are sanctioned in articles 213 “Violation of free determination of voters”, 216 “Abusing the right to vote”, article 217, “Obstructing the voting process” and article 218 “Violation of vote secrecy”. Some of the criminal offenses that may be committed on election day after the closure of the voting process are sanctioned in articles 219 “Falsification of voting results” and 220 “Destruction of voting documents”.

<sup>9</sup> Note: The new Code defines criminal offenses, which focus on election commissioners, to which in each case the sentences are severed as follows: If the offense provided for in article 212 and 218 are committed by election commissioners, the sentences are minimum from 1 to 5 years of imprisonment. If the offense provided for in article 214 is committed by election commissioners, the sentence shall be a minimum of 2 to 5 years of imprisonment. If the offenses provided for in articles 215, 216, 219 and 220 are committed by election commissioners then the minimum sentence for them is from 3 to 5 years of imprisonment.

## 5. Investigations, prosecution and announcement of judgments

KLI as the first organization that has built a practice of monitoring the institutions of justice in dealing with cases related to criminal offenses against voting rights, assesses the approach and standard of the SP in the priority treatment of these cases. This standard for the first time in cooperation with the KLI and other institutions was built in the 2013 local elections, advanced in the 2014 national elections, and continued the same in the national elections of June 11th, 2017. Already in Kosovo, elections are free, democratic and fair, which are recognized by political parties and the international factor, despite minor incidents that have been noted but for which there was an adequate response of the justice institutions, in this case it should be noted Police and Prosecution. As never before, with regard to the incidents evidenced in the national elections of June 11th, 2017, indictments have been raised immediately against suspected perpetrators of committing criminal offenses against voting rights. The time of raising indictments in these cases, if compared to Kosovo's circumstances and the practices of other cases of the justice system, can be considered as a reasonable time and record.

### a. Proactive role of security and prosecution institutions

#### *a) Inter-institutional cooperation*

Lessons from the failures of justice institutions in the elections after the end of the war, especially the 2010 national elections, have served to ensure that justice institutions are well mobilized to respond to any incident that violates the progress of the election process. Initially, the traditional cooperation between justice institutions has been formalized through the signing of a Memorandum of Cooperation between the State Prosecutor, KP, KJC, CEC and ECAP. While in the past the role of the prosecution authorities had been very passive and actions were taken only after the consequences had been created, here is now a more proactive approach based on prevention and proactive prosecution of criminal offenses against voting rights. Inter-institutional cooperation stems from positive legislation in Kosovo, but is constantly empowered through memorandums of cooperation.<sup>10</sup> This cooperation has given concrete results throughout the 2013 election process. For the first time, the Chief State Prosecutor appointed the National Electoral Coordinator who took steps to ensure the implementation of the Memorandum of Cooperation and co-ordination of all stakeholders. The greatest achievement as a result of the Memorandum of Cooperation was the creation of SOPs between the SP and KP, which had specified actions for the effective investigation and prosecution of cases related to elections, always based on lessons learned from the past and the best experiences based on applicable laws. SOPs were a direct recommendation by the KLI, which had drafted SOPs, which subsequently

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<sup>10</sup> Note: It was Chief State Prosecutor, ismet Kabashi, who had invited bodies such as KP, KJC, CEC and ECAP to draft and sign a Memorandum of Cooperation on elections 2013. Memorandum of Cooperation between KPC, KJC, KP, CEC and ECAP regarding elections 2013, 18 September 2013. This practice was continued for other elections organized in Kosovo both for local and national elections.

through a working group had finalized and decided together with KP to implement them to increase efficiency and effectiveness in prosecution of criminal offenses against the right to vote. As in the preliminary reports, the KLI estimates that SOPs have been the source of unprecedented effective cooperation so far with regard to investigating and prosecuting certain crimes in Kosovo. The State Prosecutor's readiness was at the right level, engaging for 24 hours 100<sup>11</sup> prosecutors on duty on the day of voting, who in cooperation with the police responded to incidents related to the security of the election process. Apart from eventual concessions, generally the positive results shown in the coordination between the justice institutions have directly influenced the overall conduct of the elections, which are valued both locally and internationally as well organized, fair and democratic elections. In addition to the incidents for which there were Criminal investigations and indictments, the observers of the European Union Election Observation Mission (EU EOM) noted that "however, the elections were negatively influenced by the old weaknesses, in particular from the incorrect voter lists that are vulnerable to fraud, a system Election that leaves the possibility of abuse, and a system with many defective voting outside of Kosovo".

According to them, "in Serb-majority areas, the election process was damaged by intimidation and cases of violence within the Kosovo Serb community against candidates and voters. There was also an insufficient response by the prosecution and the police against those incidents."<sup>12</sup>

*b) The prosecution's failure to investigate the suspicious activity of the election monitoring NGO*

The Central Election Commission had accredited about 30,000 observers in monitoring the polling day on 11 June 2017.<sup>13</sup> A few days before the election, the organization "Regional Institute for Democracy for Human Rights and Political Studies" had submitted a request to the CEC to accredit 4548 observers for the voting day on June 11th. Information about this NGO was lacking and CEC members have raised their suspicions about the purpose of this organization. At the CEC meeting, held on June 9, two days before the polling day, members of the CEC said that this NGO is a phantom, not even a web site, and have opposed the accreditation of its observers.<sup>14</sup> However, CEC officials have stated that they have no authority to object to their accreditation, as this NGO has submitted a certificate of registration of the

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<sup>11</sup> Police, Prosecution and CEC ready for the June 11th elections. Koha.net. May 24, 2017. (See link <http://www.koha.net/arberi/20626/policia-prokuroria-dhe-kqz-ja-teat-for-value-e-11-june/>)

<sup>12</sup> EU observers: Really competitive choices, but with some old weaknesses. Ekonomiaonline. June 13, 2017. (See link <http://www.ekonomiaonline.com/politike/highlighter-en-be-section-verters-conversion-for-the-few-weaknesses-old/>)

<sup>13</sup> "30,000 observers observe June 11 elections." June 10, 2017. Koha.net (See link <http://www.koha.net/english-news/24493/30-mije-vezhgues-certi-selection-e-11-june/> and <http://www.kqz-ks.org/sq/news/Details/316>)

<sup>14</sup> The phantom NGO that requested the accreditation of over 4,000 people is also surprised by the CEC. Periskopi. 9 June 2017. (See the link <http://periskopi.com/ojq-fantome-qe-kerkoi-akreditimin-e-mbi-4000-personave-habite-edhe-kqzne/>)

competent bodies of the Republic of Kosovo.<sup>15</sup> However, members of the CEC have again insisted that political parties could act under the umbrella of NGOs, which could misuse the number of observers on the polling day, clinging to the loyalties of independent civil society observers.<sup>16</sup> To this accreditation of the number of observers of this organization are raised numerous doubts and public debate about its activity and purpose. This has also prompted the media to explore the founders of this organization, who, in turn, had close relations with leaders of political subjects.<sup>17</sup> Doubts about the involvement of militant political parties under the umbrella of this NGO had pushed the Basic Prosecution in Gjakova to interview 10 observers on the polling day to verify. After verification, these 10 observers were released to continue their work.<sup>18</sup> The CEC, in addition to accrediting about 5,000 observers of this NGO, has taken no steps to clear up the suspicions by dismissing all responsibility to the State Prosecutor.<sup>19</sup> The latter has been silent about the activity of this NGO and its purpose in monitoring the elections. While the VV party has filed a criminal charge against this NGO in the Basic Prosecution Office in Pristina. There is no response to what has been done regarding the filing of this criminal report.

*c) Monitoring of Justice Bodies on Election Day by KLI, INPO and GLPS*

Non-Governmental Organizations, the Kosovo Law Institute (KLI), the Initiative for Progress (INPO) and the Group of Legal and Political Studies (GLPS) with the support of the Department of State of the United States of America have monitored the activities of the justice institutions and security for vote protection in the early national elections, held on June 11<sup>th</sup>, 2017. On the Election Day, KLI, GLPS and INPO engaged 65 mobile monitors in the 38 municipalities of the Republic of Kosovo to report on the progress of the electoral process and the performance of justice and security institutions for all cases when the right was violated of voting, respectively when there were suspicions of committing criminal acts against the right to vote. All 65 mobile monitors since the opening of the polling stations until the end of the voting process have been in constant movement by visiting and monitoring almost all polling stations throughout the territory of the Republic of Kosovo. According to the monitoring and reporting of the KLI, INPO and GLPS monitors, Kosovo Police in coordination with the State Prosecutor intervened in dozens of cases where there were suspicions or reported cases related to violation of the election rules that relate with criminal offenses against voting rights.

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<sup>15</sup> The phantom NGO that requested the accreditation of over 4,000 people is also surprised by the CEC. Peroskopji. 9 June 2017. (See the link <http://periskopi.com/ojq-fantome-qe-kerkoi-akreditimin-e-mbi-4000-personave-habite-edhe-kqzne/>)

<sup>16</sup> The phantom NGO that requested the accreditation of over 4,000 people is also surprised by the CEC. Peroskopji. 9 June 2017. (See the link <http://periskopi.com/ojq-fantome-qe-kerkoi-akreditimin-e-mbi-4000-personave-habite-edhe-kqzne/>)

<sup>17</sup> A person who registered in the CEC suspicious institution (Document) was detected. Periscopje. June 10, 2017. (See the link <http://periskopi.com/zbulohet-personi-qe-e-regjistroi-ne-kqz-institutin-e-dyshimite-dokument/>)

<sup>18</sup> Police Associates 10 NGO Non-Active Monitors. Indeksonline.net. June 11, 2017. (See link <http://m.indeksonline.net/games/policia-shoqeron-10-vezhgues-te-ojq-se-joaktive-97750/>)

<sup>19</sup> Valdete Daka: Ask the prosecution for the NGO of political observers. Gazetaobserver. June 19, 2017. (See the link <http://gazetaobserver.com/valdete-daka-pyeten-prokurorine-per-ojq-ne-e-vezhguesit-politike/>)

The Central office of Monitoring Process of KLI, INPO and GLPS located in Pristina, and mobile monitors throughout the Election Day have kept ongoing contacts with Police and Prosecution representatives on reporting and monitoring the actions of Police and Prosecution in cases where there were suspicions that criminal offenses against the right to vote have been committed. Field monitors in real time sent information to the Central Office of the monitoring process of the KLI, INPO and GLPS for any irregularities that they have identified during the election process, including cases where there were suspicions of the commission of the offense Criminal proceedings against the right to vote.

The main findings related to suspicions of commission of a criminal offense, against the voting right as a result of the monitoring have included:

1. At the polling station 2306D / 03D, in the village of Jazince of the Municipality of Shtërpcë, a person with initials S.S. with the order of the state prosecutor, was interviewed at the Kosovo Police Station in Shtërpcë, as it was reported that he had taken the picture of the vote.
2. In Polling Center Mihaliq of Vushtrri Municipality, photocopied and filled ballots with certain candidates of a political entity were distributed. Regarding this case, members of the Kosovo Police, who were responsible for the progress of the election process in the abovementioned school, did not take any action. However, after the information was sent to the State Prosecutor from the main office of the Monitoring process of the KLI, INPO and GLPS, after 30 minutes, the State Prosecutor ordered the Kosovo Police to appear in place of the incident to remove photocopied ballots. At the scene was also a prosecutor on duty accompanied by investigative police. The investigating officer in charge of this case interviewed the Voting Center manager in this village, and photocopied ballots were confiscated by the Kosovo Police. Also, the school technical worker who found the ballots was escorted to the police to give a statement as the latter did not have the authority to stay within the official Voting Center's premises.
3. In the village of Koshare in Ferizaj, at the "Dëshmorët e Koshares" school, police have accompanied for interviewing a person who has distributed the propaganda material of a political party.
4. Faik Kajtazi, one of the police officers engaged in the Voting Center at Enver Hadri School in Smrekovnica, Vushtrri municipality, is a family member of the Democratic Party of Kosovo (PDK) candidate, Kurtan Kajtazi. Family proximity between them was confirmed by the manager of the voting center in question, Nehat Abazi, according to whom Faik Kajtazi is the uncle of the aforementioned candidate. However, according to Abaz, the concerned police officer did not affect any voters. Otherwise, PDK candidate from the Vushtrri branch is from the village of Smrekovnica, where his uncle is taking care of the conduct of the elections. Upon publication of this information, the manager of the voting center in question, Nehat Abazi, and a commissioner, announce police Kajtazi.

The latter takes over the monitor, sends it to a class and denies it has affected the voters regarding the voting process. After reporting this case to the Oath for Justice portal,<sup>20</sup> police officer Faik Kajtazi has questioned the KLI monitor, in a classroom, asking why he reported.

5. In the elementary school "Asdreni" in Peja, a person entered to vote with four ballots with him. The person in question was arrested by the Kosovo Police and subsequently detained by order of the prosecutor.
6. Kosovo Police at the elementary school "Anton Zako Çajupi" has allowed to enter to vote the person who was wearing a t-shirt with an inscription of a Certain political subject. However, the same was not allowed to vote by the director of the school in question.

Regarding the overall progress of the electoral process, KLI, INPO and GLPS have estimated that the election process on 11 June 2017 has passed quietly, providing a secure environment for Kosovo citizens who have come out to exercise Their constitutional right to vote. During the monitoring process on the voting day, mainly these irregularities or obstacles were identified:

- reported cases of problems with official CEC stamps in several municipalities;
- the presence of dead persons on the voting list,
- voting with assistance;
- family voting;
- lack of name on the voting list;
- in certain cases, the presence of certain groups at the polling stations;
- in certain cases, there has been the presence of unauthorized persons inside polling stations,
- cases of voting with UNMIK documents and documents of Serbia,
- lack of identification cards for commissioners but later provided by the CEC.
- in Leshak of Leposaviq and in the "Dardania" primary school in Pristina, it was reported that the conditional ballot box was filled and no more room to proceed with other voting.
- at the school "Xhevat Jusufi" in the village of Bare of Shala e Bajgores until 13:30 did not present any police officer at the voting center.
- Also, at the Voting Center at the Law Faculty in Pristina at the polling station 1913E, one person attempted to vote twice, but was not allowed by the polling station members. Regarding this case, the members of the polling station council did not report to the Kosovo Police.

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<sup>20</sup> A monitor who reported on family relation to the police and PDK candidate for MPs is being questioned. The oath for justice. June 11, 2017. (See the link [http://betimiperdrejtesi.com/merret-ne-pyetje-monitoruesi-qe-raportoi-per-afersine-familjare-mes-policit-dhe-kandidatit-te-pdk-se-per-deputet /](http://betimiperdrejtesi.com/merret-ne-pyetje-monitoruesi-qe-raportoi-per-afersine-familjare-mes-policit-dhe-kandidatit-te-pdk-se-per-deputet/))

*a. Cases initiated and criminal investigations about the elections*

Within the organization of the national elections of June 11, 2017, in all Basic Prosecutions were initiated cases against 16 persons suspected of having committed criminal offenses against the right to vote. The implementation of SOPs has increased the efficiency and effectiveness of police and prosecutorial actions in all cases related to criminal offenses against voting rights, making security institutions and prosecuting more proactive. Unlike the past, where from 2010 elections there have been thousands of initiated cases since the establishment of institutional cooperation and the implementation of SOPs between the ASP and the KP the number of persons involved in election incidents has dropped to minimum numbers. In the table below are presented the Basic Prosecution Offices, in which are charged the criminal reports, the number of persons and the criminal offenses allegedly committed by these persons.

Criminal charges raised and criminal offenses for the June 11th, 2017 elections			
Prosecution	Persons	Criminal Offenses	Article
BP Peja	1	Candidate's threat	211
BP Pristina	1	Violation of free voter determination	213
BP Prizren	1	Violation of free voter determination	213
BP Peja	1	Violation of free voter determination	213
BP Pristina	1	Abuse of official duty during elections	214
BP Peja	1	Abuse of official duty during elections	214
BP Ferizaj	1	Abuse of official duty during elections	214
BP Peja	1	Giving or receiving bribes related to voting	215
BP Prizren	1	Giving or receiving bribes related to voting	215
BP Peja	1	Abuse of the right to vote	216
BP Ferizaj	1	Abuse of the right to vote	216
BP Ferizaj	1	Abuse of the right to vote	216
BP Peja	1	Falsification of voting results	219
BP Pristina	1	Destroying voting documents	220
BP Pristina	1	Participation or organization of an organized criminal group; Failure to report or false reporting of property	283; 437
BP Gjilan	1	Announcement or false denunciation	390
	5	16	10

Table 1 - Source: National Coordinator for Elections in State Prosecution and the website of the SP, August 2017

According to the official data of the National Election Coordinator in PSh and PS's website, it results that criminal charges have been raised against 16 persons, of which against a person for committing the criminal offense "Candidate's threat" under Article 211, Three persons for the offense "Violation of free determination of voters" from Article 213, against three persons for the criminal offense "Abusing Official Exercise during Elections" from Article 214, against two persons for the criminal offense "Giving or receiving bribes related to Voting "from Article 215, against three persons for the criminal offense "Abuse of the right to vote" from Article 216 to a person for the offense "Falsifying the results of voting" from Article 219 to a person for the offense "Destroying voting documents" from Article 220 to a person for Two criminal offenses "Attempting or Organizing an Organized Criminal Group" from Article 283 and "Failure to

Report or False Reporting of Property" from Article 437, as well as to a person for the criminal offense "Announcement or False Reporting" from Article 390 of the Code Criminal Code of the Republic of Kosovo. All criminal reports against these persons were filed in BP of Prishtina, Prizren, Peja, Ferizaj and Gjilan.

While the CEC has not yet sent any case to the State Prosecutor,<sup>21</sup> the ECAP based on the received and reviewed cases has sent 14 files to the State Prosecutor for which it has considered that there may be elements of criminal offenses to be investigated further. In addition to these 14 cases, for the June 11, 2017 elections, ECAP handled 421 different complaints related to this electoral process. Out of these 21 complaints belong to the pre-election campaign time, 177 complaints during the electoral campaign, 88 complaints for violation of the electoral silence, 67 complaints for the voting day, 2 appeals for preliminary results and 66 appeals for the final results. Regarding these cases, the KED decided to approve 179 appeals as grounded, rejecting 150 appeals, rejecting 33 complaints as unlawful, 37 complaints were dismissed as ineligible, 4 complaints were dismissed as unfounded Irregularities, in 16 appeals the parties have been withdrawn, 1 case has been adjudicated, and 1 complaint has been sent to IOBK.

For all complaints, the ECAP imposed fines on political entities for violating the Code of Conduct for the General Elections Law during the election campaign in the amount of € 348,900.00.

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<sup>21</sup> E-mail communication with the official of the Central Election Commission, Xhemail Peçani. "The Central Election Commission for each party has filed Criminal Charges for the suspects, who on the day Of the vote, have used the right to vote as regular voters. Even though they have voted as regular voters, contrary to Article 91 of the Law on General Elections, they are also suspected of voting as a conditional voter, therefore, there is a grounded suspicion that they have committed a criminal offense, abuse of the right to vote , Sanctioned by Article 216 paragraph 1.2 of the Criminal Code of the Republic of Kosovo. For early elections to the Assembly of Kosovo on June 11, 2017, the CEC has not yet sent cases of persons to the State Prosecutor regarding allegations of committing criminal offenses against the right to vote? When we send these cases to PS we will notify you as soon as possible. " July 2017.

*b. Raising of indictments and announcement of judgments*

Electoral cases of previous years continue to seriously challenge prosecutors and judges who still have unsolved cases of 2010 national elections, local elections of 2013, national elections of 2014, local elections for mayor of Drenas municipality Of 2016.<sup>22</sup> However, for the elections of 11 June 2017, by Criminal charges raised against 16 persons, prosecutors raised indictments against 7 persons. Of these, convictions were issued against three persons as a result of guilty plea by the accused, while other cases are in the process. Further see below the table of these cases and the description of each indictment raised by the Basic Prosecution Offices.

Indictments and Judgments for Elections of 11 June 2017					
Prosecution	Accused	Raise of indictment	Judgment		Process
			Acquittal	Sentenced	
BP Peja	1	12.06.2017			1
BP Peja	1	12.06.2017		1	
BP Peja	1	16.06.2017		1	
BP Peja	1	05.07.2017			1
BP Prizren	1	01.08.2017			1
BP Peja	1	19.07.2017			1
BP Pristina	1	12.06.2017		1	
<b>3</b>	<b>7</b>		<b>0</b>	<b>3</b>	<b>4</b>

**Table 2 -Indictments and judgments for elections of 11 June 2017**

*1) Indictment for giving or receiving bribes related to voting*

BP in Prizren, Department of Serious Crimes, on 1 August 2017 raised an indictment against suspects F.K. And F.B. According to the indictment, defendant F.K. promised undeserved benefit to another person in order to influence that person to vote in favor of a person. One day before the voting day on June 10, 2017, at a local in Prizren, person F.B. Convinces him to go to the polling station and vote for the candidate for MP BK, promising to pay for this service 15 euros and offering the candidate's card for the deputy with two numbers, one political party number and the other of the candidate himself, and then the chemical pen with a black video camera to record - photograph the vote act for the respective candidate. With these actions, the defendant F.K. committed the criminal offense "giving or receiving bribes in connection with voting under Article 215 paragraph 1 of the Penal Code of the Republic of Kosovo".

Defendant FB has accepted a bid or promise of undeserved benefit for himself to vote in favor of a person, so that on the day of voting, on 11 June 2017, the voting of the

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<sup>22</sup> Note: The Kosovo Prosecutorial Council and the Kosovo Judicial Council still do not have a harmonized data base that would allow for a proper analysis of the handling of election cases held in previous years. KID has repeatedly addressed requests to the KJC, KPC and the National Election Coordinator at the State Prosecution, but has never managed to provide credible data, which Correspond to each other. Therefore, in this report, we will not refer to the data of pre-election cases due to the large discrepancies that have the KPC statistics, the KJC and the National Election Coordinator at the State Prosecution.

respective Voting Center Located in the technical high school "11 March" in Prizren and with the black colored video camera pencil, performs the act of voting for the aforementioned candidate for MP, which is detected by the observer of the respective polling station. With these actions, the defendant F.B. has

*2) Indictment for a criminal offense "Abuse of the right to vote"*

PTH in Peja, Department of Serious Crimes, on 19 July 2017 filed an indictment against the defendants N.L. And N.L. For a criminal offense "Abuse of the right to vote" from Article 216 paragraph 1 sub paragraph 1.2 in conjunction with Article 31 of the CCRK. According to the indictment, the defendant N.L. And N.L. On 11.06.2017, around 10:00 am in the village of Dranoc / Deçan municipality, deliberately, acting as co-perpetrators, vote for the second time, even though they knew that they had voted once, so that the defendants initially went with the witness S.H. In the polling station in the aforementioned place and have voted, after returning home they go again with the witness Sh.L. And again vote at the same voting center. Defendants N.L. And N.L. with their actions have fulfilled the elements of the criminal offenses described above. The prosecutor of the case on the occasion of raising the indictment, has proposed to the Court that the defendants to be found guilty and punish them according to the law for the criminal offense that is put into the lawsuit.

*3) Indictment for a criminal offense "Giving or receiving bribes related to a vote"*

BP in Peja, Department of Serious Crimes, on 5 July 2017, in the Basic Court in Peja, raised an indictment against defendant A.S. For a criminal offense "Giving or receiving a bribe related to a vote" from Article 215 Paragraph 1 of the CCRK.

According to the indictment, the defendant A.S. By dt. 26.05.2017 at about 15:26 minutes in the village of Vitomeric Peja Municipality, promised gifts to the other person with the right to vote in order to vote the NDS party that is led by the defendant, so that the same through the social network facebook had sent a message to DS person and asked to vote for this party in return for 50 € and will also be provided the road expenses. The defendant with these actions promising the benefit of 50 euros in exchange for the voter's vote has fulfilled the elements of the offense described above. The prosecutor of the case when raising the indictment, has proposed to the Court to declare the defendant guilty and punish him according to the law for the criminal offense that is burdened.

*4) Indictment for Criminal Offense "Abuse of Official Duty during Elections"*

BP in Peja, Department of Serious Crimes, on 16 June 2017 raised an indictment with a plea agreement against the defendant L.A. For a criminal offense "Abuse of official duty during elections" from Article 214 of the Penal Code of the Republic of Kosovo. According to the indictment, the defendant L.A. On June 11, 2017, in the elementary

school "Asdreni" in Peja, as an official person and as a coordinator of the observers of one of the political parties participating in the elections, misusing his position or authority, advises voters to vote in favor of a political subject He represented, so that the defendant initially gives the witness NM A copy of the ballot which political candidates and political party to vote, and then the same is forbidden by the Kosovo Police who in the defendant's bag find and seize six unfiled ballots. According to the indictment, the defendant L.A. On June 11, 2017, in the elementary school "Asdreni" in Peja, as an official person and as a coordinator of the observers of one of the political parties participating in the elections, abusing his position or authority, advises voters to vote in favor of a political subject He represented, so that the defendant initially gives the witness NM A copy of the ballot which political candidates and political party to vote, and then the same is forbidden by the Kosovo Police who in the defendant's bag find and seize six unfiled ballots. The defendant with these acts by abusing his position, duty and authority as an official person has fulfilled the elements of the offense described above. **The prosecutor of the case raised an indictment with plea agreement in the Basic Court in Peja, which issued a sentencing judgment.**

*5) Indictment for Destroying Voting Documents*

The Basic Prosecution in Prishtina on 13 June 2017 raised an indictment against the defendant D.P. For the criminal offense "Destroying the voting documents from Article 220 of the Criminal Code of the Republic of Kosovo related to the election process of 11 June 2017. According to the indictment, the defendant DP, at the voting center in Dobratin village of Gracanica, under influence of alcohol revolted reasonably because allegedly his son is not allowed to vote in the absence of Kosovo's identification documents, offended the members of the election commission and his ballot has been damaged by teasing it. **After the investigative actions and raised indictment, today is held the hearing session and the initial review where the accused pleaded guilty and by the competent court was found guilty for the offense committed.**

*6) Indictment for violating the free determination of voters*

The Basic Prosecution in Peja raised an indictment against a person for committing a criminal offense "Violating the Free Determination of Voters" from Article 213 in the Municipality of Gorazhdec. **The indictment was raised on 12 June 2017, while the Basic Court in Peja on the same day sentenced him, after the accused pleaded guilty.**

*7) Indictment for threat of the candidate*

The Basic Prosecution in Peja raised an indictment against a person for committing the criminal offense "Candidate's threat" from Article 211 in the municipality of Peja. The indictment was raised on 12 June 2017.

## 6. Recommendations

The KLI has issued the following recommendations, which would contribute to the advancement of prosecution and judgment of cases related to criminal offenses against voting rights:

Institutions that are signatories to the Memorandum of Cooperation on the 2017 Elections must exchange experiences and lessons learned from these elections as soon as possible to identify shortcomings and good practices and address these issues immediately. Topics of interest for this part would be:

- Advancing normative acts regarding the regulation of procedures and the detailed definition of the responsibilities of various officials in the electoral process
- Informing the public about the place of voting for voters in order to be timely informed about changing the polling station's address.
- Advancing Inter-Institutional Communication Means
- Awareness of the public about the possibilities of cooperation with the judiciary and their education about the risks and legal consequences of involvement in the commission of criminal offenses against voting rights. Among other things, these discussions should also address the issue of increasing citizens' confidence in justice institutions and reporting cases to official channels, where they will receive answers from relevant bodies.
- SP and KP should advance SOPs based on practices and lessons learned during the implementation of SOPs during this election process. When drafting SOPs, due regard must be paid to the respect of the legal framework to protect human rights and freedoms guaranteed by the Constitution of the Republic of Kosovo and international conventions.
- SP and KP should conduct detailed investigations as they are required by positive legislation and SOPs in terms of securing elements of organized crime, following the organizers of the perpetrators of election crimes.
- PA should investigate the suspicions that have been raised and may be raised about the way funding of political parties and expenditures of these political parties, especially after the political party finance audit process
- Judges are suggested to understand the degree of danger, the importance of elections and criminal offenses against voting rights and to impose adequate measures against defendants.