

GOVERNANCE WITH INTEGRITY

Comparative Report of Candidates with Indictments in
Election Lists 2010, 2014 and 2017



**WESTMINSTER
FOUNDATION FOR
DEMOCRACY**



KOSOVO LAW INSTITUTE
INSTITUTI I KOSOVËS PËR DREJTËSI
KOSOVSKI INSTITUT PRAVDE

GOVERNANCE WITH INTEGRITY

What Candidates are Parties Offering in 2019!

**Comparative Report of Candidates with Indictments in
Election Lists 2010, 2014 and 2017**

Prishtina

September 2019

Author: Kosovo Law Institute (KLI) for the Westminster Foundation for Democracy, funded by the Government of the United Kingdom.

No part of this report may be printed, copied, multiplied in any form, be it electronic or printed, or in another other way of multiplication without the consent of the Kosovo Law Institute and the Westminster Foundation for Democracy.

The content of this publication is an exclusive responsibility of the KLI and it does not represent the views of the donor.

Table of Contents

Executive Summary	5
Introduction	6
International practice and legal basis in Kosovo	7
1. Legislative prohibition	7
2. Institutional exclusion.....	7
3. Rules and policies within political parties.....	7
Political Party Election Lists with Candidates with Indictments	10
Elections in 2010	11
Election in 2014	11
Elections in 2017	12
Governing Cabinet Members with Indictments.....	14
Government formed after the 2010 elections.....	15
Government formed after the 2014 elections.....	16
Government formed after the 2017 elections.....	16
Conclusions and recommendations	18

Executive Summary

The present report aims at verifying the number of persons with indictments and sentences for criminal acts that were present in the election lists for members of the Assembly of the Republic of Kosovo and that held posts in governing cabinets in three legislatures and governing periods in Kosovo 2010-2014, 2014 – 2017 and 2017 – 2019. Also, the report makes a comparative analysis to ascertain the trend of the occurrence of the presence of persons with indictments and sentences for criminal acts in election lists and senior state posts. The report is based on research and comparisons from the data obtained from institutional sources.

The organization of elections in Kosovo remains a challenge for all institutions involved in the process. Being a new democracy, Kosovo faced problems of election process abuse and manipulations, in particular in the 2010 elections. Despite the fact that the later elections marked a significant improvement in terms of organization, unfortunately the candidates' lists for members of the Assembly of the Republic of Kosovo in 2014 and 2017 suffered a degradation by including persons with indictments for criminal acts.

The research found that in 2010 elections there were two candidates with indictments competing for member of the Assembly. In the 2014 elections, this number increased from two to 15, and in 2017 election the situation worsened with a total of 27 candidates in the election lists for the Assembly.

Apart from the Assembly, the presence of persons with indictments or sentences for criminal acts, was confirmed in the executive branch, the Government of the Republic of Kosovo. Consequently, the governing cabinet 2010 – 2014 had two members with indictments holding senior positions, and the same was the case with the governing cabinet in the period 2014 – 2017. In the period 2017 – 2019, we saw the biggest degradation with 15 senior state posts held by members with indictments, including a deputy prime minister, ministers and deputy ministers.

During the 2017 local elections, the Central Election Commission (CEC) made efforts to decertify candidates with indictments from running for municipal elections. However, the CEC decision, though having a legal ground, was reversed by the Supreme Court of Kosovo following a complaint by several decertified candidates with the justification that according to the Constitution of the Republic of Kosovo no one is denied the right to compete in election, unless if such an entitlement is revoked by a court resolution.

WFD and KJI raised the awareness and advocated for more than two years to address this problem by providing examples of best international practice and support, but political parties never showed the political will to address this problem.

Introduction

For some time now in Kosovo we saw certain political party members, who have problems with the law, competing in elections and holding public posts. This negative occurrence is detrimental for Kosovo and its citizens for many reasons. We will list few of them below.

First, political parties are carriers of social processes in any democratic country. Resultantly, political party members are expected to exhibit and promote highest moral values of the society they live in. Actions of politicians at all levels must be of high dignity, integrity and responsible. The presence of persons facing problems with the law in election lists and holding institutional posts fails to meet this democratic value and damages the image of political parties.

Second, and probably most important, when such persons with indictments or sentences assume senior posts in governing cabinet or as members of the Assembly, the same manage large amounts of money collected from the taxes of Kosovo citizens. This represents a grave risk that citizens taxes may be misused.

The third reasons concern European integration and international relations. Kosovo is going through the EU integration process. EU standards are pretty clear to this end and demand a fully functioning rule of law system. Having persons with indictments and sentences holding senior state offices fails to meet the rule of law principle. Furthermore, at the international level, these persons give Kosovo a very bad image.

It should be highlighted that Kosovo is not unique with regard to this occurrence. Many states throughout the world faced such challenges and regulated the matter in different forms. EU member states and those aspiring membership have also gone through the process by adopting legal provisions or other rules to prevent or remove persons with criminal background from competing in elections and from hold public posts.

International practice and legal basis in Kosovo

During 2018, the Westminster Foundation for Democracy (WFD) and the Kosovo Law Institute (KLI) presented two reports with the aim of raising the awareness on this occurrence and to provide theoretical and practical solutions. The WFD report provided international experiences in resolving the problem, whereas the KJI report offered recommendations on the basis of Kosovo legislation and circumstances. Below find a brief summary of the two reports.

Various EU and other states addressed this problem in mainly three areas, as follows:

1. **Legislative prohibition.** By adopting this approach, the state approves within the constitution or other legislation, or both, restrictions in addressing this problem. States approve legal provisions that prevent the participation in election of persons with criminal backgrounds on the basis of the quality of the act or the duration of the sentence.
2. **Institutional exclusion.** This approach gives certain elected institutions, such as the parliament or other bodies, to exclude politically-elected citizens on the basis of ineligibility. This means that regardless of the fact that a candidate may win in elections, the institutions have high ethical rules that may not allow the candidate to assume the public office.
3. **Rules and policies within political parties.** Using this approach, political parties approve, within their rules and statutes, or special ethical codes, that provide for the prevention and expulsion of citizens with indictments or sentences from membership into the party, leading positions and nomination as candidate in elections. This means that if a party member conducts an unethical behaviour or an indictment is filed against a member, then the party immediately suspends or expels the member from the party. Simultaneously, this results with the loss of public post if the same person was holding one.

On the other hand, the KJI report, following a thorough analysis of the occurrence against Kosovo circumstances, concludes that for a legislative prohibition, it is necessary to have the Constitution of the Republic of Kosovo amended due to a legal collision between the Constitution and legislation regulating elections. This could be a prolonged process, face difficulties and delay the decriminalization process a lot.

Therefore, from the two remaining options, institutional exclusion and regulation through party statutes or ethical codes, the latter seems more tangible especially having in mind the urgent need to address this problem. This requires the awareness-raising of the political class to remove persons with indictments, sentences and other forms of conflict with the law.

Apart from the legal collision ascertained between the Constitution and primary legislation, the situation got further complicated in September 2017 when CEC on the basis of Article 29 of the Law on General Elections, made a decision to decertify all candidates that competing for mayor and municipal assembly in the local elections held on 22 October 2017. The decertification would be valid for candidates having a final sentence confirmed by Kosovo courts.

Few of the decertified candidates filed complaints against the CEC with the Supreme Court of Kosovo, and the latter approved the complaint of the candidate from political entity NISMA, who was competing for the mayor of Prizren.

In the Resolution AA-Uzh. No. 16/2017, dated 19 September 2017, the Supreme Court states that no one may be denied the entitlement to compete in elections unless if such an entitlement is revoked with a court order, which means that a candidate needs to have a final sentence as guilty of a criminal act and a supplementary order “to revoke the right to be elected”. Consequently, CEC Was obliged to re-certify the NISMA candidate for local elections in October 2017.

The Supreme Court resolution also stated that the Law on General Elections, is in contradiction with Article 45 of the Constitution, because if on one hand there is a constitutional norm providing for the entitlement to compete in elections may only be restricted with a court order, on the other hand Article 29 of the Law on General Elections provides for the possibility of restricting such an entitlement without a court order. In this case, the Constitution as the highest legal act prevails.

As a consequence of the Supreme Court interpretation and legal uncertainties, the Constitution and Law on General Elections respectively, in local elections 2017 alone, more than 600 persons with criminal background were certified and competed for mayors or municipal assemblies.¹

The reviewed Criminal Code of the Republic of Kosovo entered into force on 14 April 2019.² Even though amended, Code’s provisions with regard to the entitlement to be elected are identical with the provisions of the Criminal Code that were implementable previously in Kosovo. The Criminal Code provides for three types of sanctions against perpetrators: principal punishments, alternative punishments and accessory punishments.

¹ “KJI reacts to the violation of the law by CEC, demands the removal of persons with indictments and final sentences from lists and calls on the State Prosecutor to investigate CEC decision-making process. KJI 10 September 2017. (See link: <http://kli-ks.org/ikd-reagon-ndaj-shkeljes-se-ligjit-nga-kqz-kerkon-largimin-e-kandidateve-tecertifikuar-qe-kane-aktgjykime-denuese-perfundimtare-dhe-fton-prokurorin-e-shtetit-te-hetoje-vendimmarren-ekqz-se/>)

² “KOSOVO CRIMINAL CODE No. 06/L-074”, approved on 28 November 2018 (see link: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413>).

Within the supplementary orders, the revocation of the entitlement to be elected is envisaged. According to Article 60 of the Code, the court can revoke to a perpetrator the entitlement to be elected for a period of one to four years, if the person for purposes of election performs criminal acts against the right to voting or any other criminal which provides for a sentence of at least two years of imprisonment.

On the basis of the same Code, the execution of supplementary orders commences simultaneously with the execution of the sentence or alternative sanction. The execution of supplementary order with regard to the revocation of the entitlement to be elected shall commence after the sentence is served and that during the serving of the sentence the criminal may not enjoy the entitlements restricted with supplementary order.

However, the Supreme Court decision AA.-Uzh. No. 16/2017, dated 19 September 2017, states that no one's entitlement to compete in elections shall be denied unless that entitlement is revoked by a court order. This would mean that the candidate needs to have a final sentence for a criminal act that would include the restriction on the right to vote or any other sanctionable criminal act up to two years, and the court had imposed the supplementary order of "revoking the entitlement to be elected".

To this end, the established court practice by the Supreme Court considers legal provisions related to legislative prohibition as provided for by the Law on General Elections and the Kosovo Criminal Code, as anti-constitutional and unenforceable.

Furthermore, the Venice Commission's Code of Good Practice in Electoral Matters defines cumulative criteria to revoke the entitlement to be elected, which include the obligation that the restriction is provided for by law, the principle of proportionality should be observed, it should be based on a sentence for serious criminal act and should be imposed by the court.

Political Party Election Lists with Candidates with Indictments

Many individuals are facing justice for various criminal acts suspected of committing almost a decade ago and that are related with election offences. In particular, the 2010 elections remain the darkest period of Kosovo in terms of the organization of free and democratic elections. These local and international observation reports assessed this process lowest possible due to the “industrial level” of vote theft.

As a consequence of continuous irregularities, the State Prosecutor and Kosovo Police, assisted by KLI, developed the Standard Operating Procedures (SOP) to increase efficiency and effectiveness of these institutions to react in preventing and fighting election-related criminal acts. Resultantly, in following years, a significant improvement was recorder in the organization of elections, in particular after the application of the SOP.³

Improvements in the organization of elections were not, unfortunately, followed-up with the same rhythm by political parties. This is due to the increase of persons with indictments or some sort of judicial process against candidates running in elections.

WFD and KJI have continuously raise the issue of decriminalization of politics in Kosovo. in February 2018, WFD, in partnership with KJI, organized a roundtable titled “Initiative for Decriminalization of Politics”, with the attendance of political parties and other institutional actors.⁴ At the event, a report “Comparative Study on Decriminalization of Politics” was presented, which offers best international practices in addressing this occurrence. Later on, in October 2018, KJI published the report “Decriminalization of Politics in Kosovo”⁵ in a roundtable that included political parties and civil society.

The number of candidates with indictments for each party and respective criminal acts for each national election organised in 2010, 2014 and 2017 are listed below.

³ “*Setences in 2018, suspended sentences against inditees for manipulation and misuse in elections*” Betimi për Drejtësi. 7 January 2019. (See link: <https://betimiperdrejtesi.com/aktgjykimet-e-vitit-2018-denime-me-kusht-ndaj-te-akuzuarve-per-manipulim-e-keqperdorim-ne-zgjedhje/>)

⁴ “*Legal or Ethical Regulation Necessary to Decriminalize Politics in Kosovo*. 20 February 2018. (See link: <https://kli-ks.org/kerkohet-rregullim-ligjor-ose-etik-per-dekriminalizimin-e-politikes-ne-kosove/>).

⁵ Shih <https://kli-ks.org/dekriminalizimi-i-politikes-ne-kosove/>

Elections in 2010

Elections in 2010 had two candidates for members of the Assembly with indictments. Both candidates were members of the Democratic Party of Kosovo (PDK). Both indictments were related to war crimes. One of the two candidates was elected member of the Assembly.

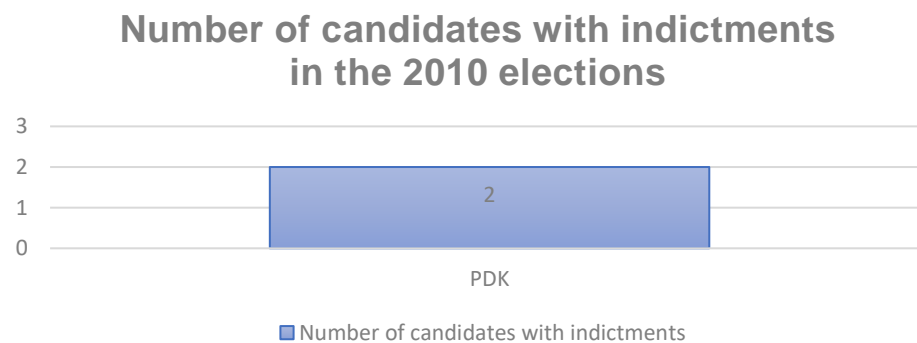


Chart 1 – Number of candidates with indictments during the 2010 elections.

Election in 2014

Election in 2014 saw an increasing trend of candidates with indictments for various criminal acts competing in elections. These elections counted a total of 15 candidates with indictments, out of which five from PDK, three for war crimes, one for failure to declare assets and one for theft. LDK had two candidates, both indicted for criminal act of corruption.

Vetevendosje [Self-Determination] Movement had five candidates with indictments, three of them accused of “light bodily injury”, two for “participation in crowd coming criminal act and hooliganism” and annihilation or damage of property”. NISMA for Kosovo had two candidates with indictments, one of them for war crimes, organized crime and corruption, and another one for the criminal offence of “unauthorized contraction of services”.

Finally, a candidate from VAKAT, non-majority communities, was charged with “failure to report assets”, which is a criminal offence.

Out of a total of 15 candidates with indictments, 12 of them became members of the Assembly.⁶

Number of candidates with indictments in the 2014 elections

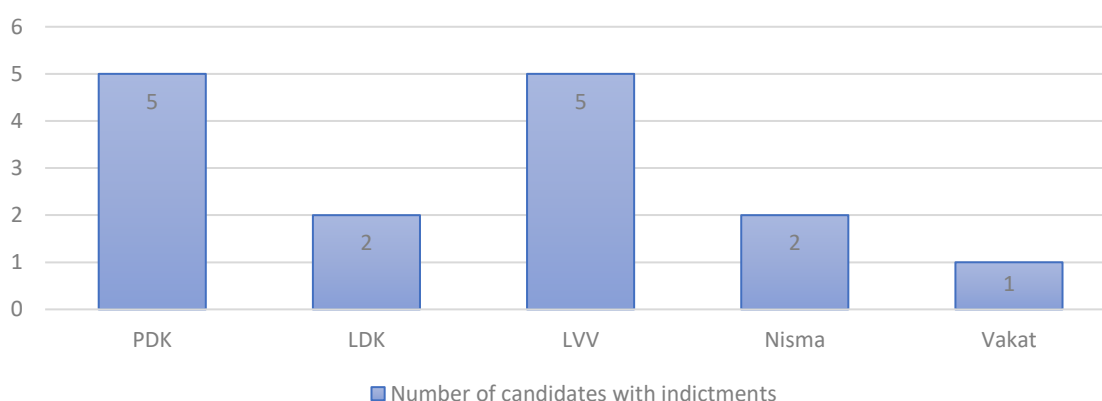


Chart 2 – Number of candidates with indictments in the 2014 elections.

Elections in 2017

Election lists in 2017 represent the worst case due to the high number of candidates with indictments competing. These lists had a total of 27 candidates with indictments.

It should be noted that a number of indictments were related to protests inside the Assembly of Kosovo against the Kosovo-Montenegro Border Demarcation Agreement and Kosovo-Serbia Agreement on Association of Serb Municipalities. A significant number of indictments were related to the setting off of teargas and obstructing officials in performance of official duty.

Despite these, there were candidates accused of corruption and other criminal offences.

Out of the 27 candidates, 15 were from Vetevendosje, four accused of terrorism, whereas 11 for the offence of “participation in crowd committing criminal act and hooliganism”, annihilation or damaging of property”, “illegal use of weapon” and “obstructing officials in performance of official duty”.

Five candidates from Alliance for Future of Kosovo (AAK) were accused of “illegal use of weapon” and “obstructing officials in performance of official duty”. One of them had an

⁶ Out of the 12 candidates elected, four resigned three due to the final sentence related to their respective criminal offences, whereas one moved to the executive branch in the capacity of Deputy Prime Minister).

additional two indictments for corruption. One candidate had another indictment of abuse of office.

NISMA for Kosovo had two indicted candidates. One of them had two indictments: one for organized crime and corruption and one for war crimes. And the other candidate was indicted for “illegal use of weapon” and “obstructing officials in performance of official duty”.

Democratic League of Kosovo (LDK) had two candidates with indictments. One of them had two indictments one for the criminal act of “abuse of office” and the other for “tax evasion” and “misuse”. The other candidate was indictment with “serious theft”.

PDK had one candidate accused of the criminal act of “enabling escape while in custody”.

The Ashkali Party for Integration (PAI) had two candidates with indictments.

Out of the indicted candidates, 21 were elected. So regardless of the indictments, citizens voted for them.

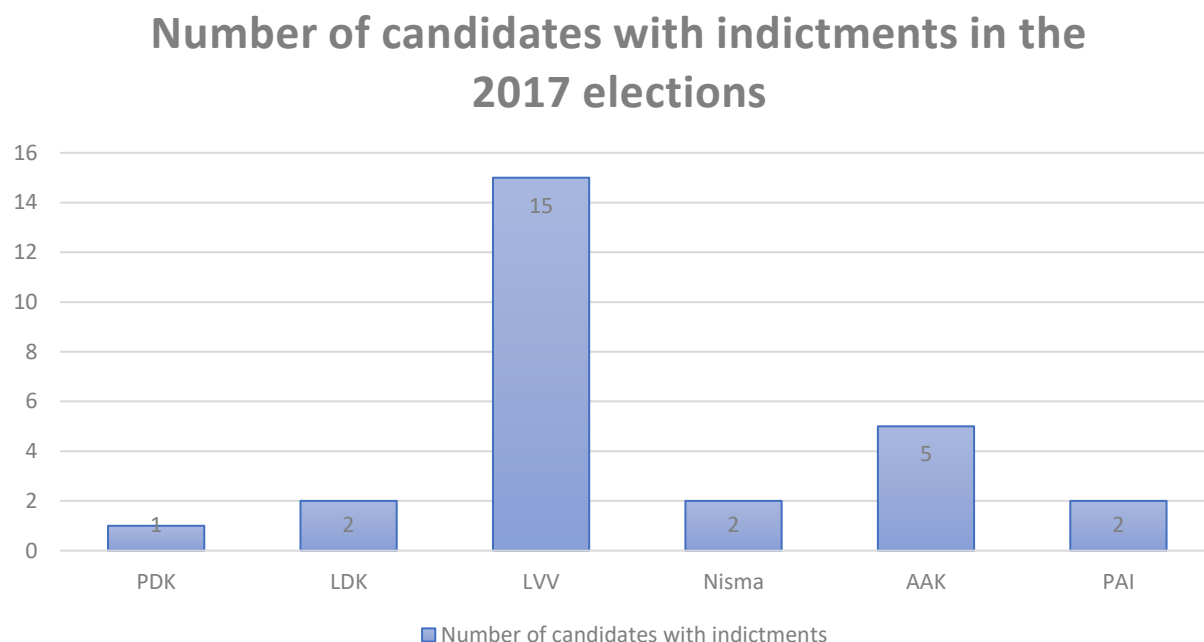


Chart 3 - Number of candidates with indictments in the 2017 elections.

An interesting fact about this legislature is that a number of members of the Assembly, were indicted by the State Prosecutor after assuming their mandate. Eight members were accused for various criminal acts ranging from assault to corruption. Three members from AAK, two from PDK and one each from NISMA, Social Democratic Party (PSD) and United Gorani Party.

2017-2019 Legislature

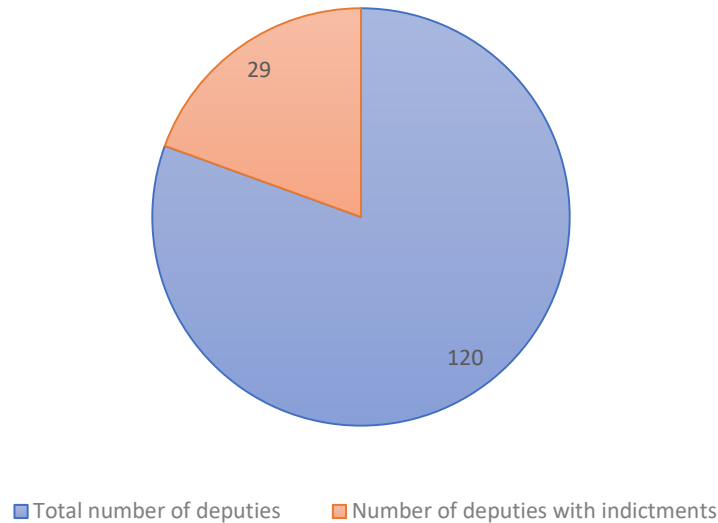


Chart 4 – Total number of deputies vs. deputies with indictments during the 2017-2019 legislature

Governing Cabinet Members with Indictments

Apart from the members of the Assembly with indictments, the governing cabinets in the periods 2010-2014, 2014-2017 and 2017-2019 also had such persons with indictments. They had various indictments for criminal acts, mainly corruption, and the same time they held senior posts such as deputy prime minister, minister and deputy minister.

The government deriving from the 2010 elections had two senior posts with indictments. The same was the case with the cabinet 2014-2017 with two government members with indictments. The situation deteriorated in the government 2017 – 2019 with 14 senior state officials with indictments, the same holding posts of deputy prime minister, minister and/or deputy minister.

The section below presents figures for each governing cabinet deriving from elections in 2010, 2014 and 2017 in terms of members with indictments and holding senior posts. The report presents only members of the cabinet and not other lower-level public servants. The number of other public officials holding posts with indictments is at least tenfold higher.

Government formed after the 2010 elections

The legislature deriving from the 2010 national elections, had a total of two candidates with indictments, both related to war crime court proceedings. One of them was voted as member of the Assembly. Both candidates came from the Democratic Party of Kosovo (PDK).

These elections, and the consequent members of the Assembly, were very controversial due to the high number of voting irregularities. Resultantly, around three thousand political party commissioners were indicted for vote manipulation.

the same was the case with the governing coalition from the 2010 elections. Two members of the cabinet had indictments, one deputy prime minister and one deputy minister. Both were charged with the criminal act of corruption. Both came from the political entity "Ibrahim Rugova List".

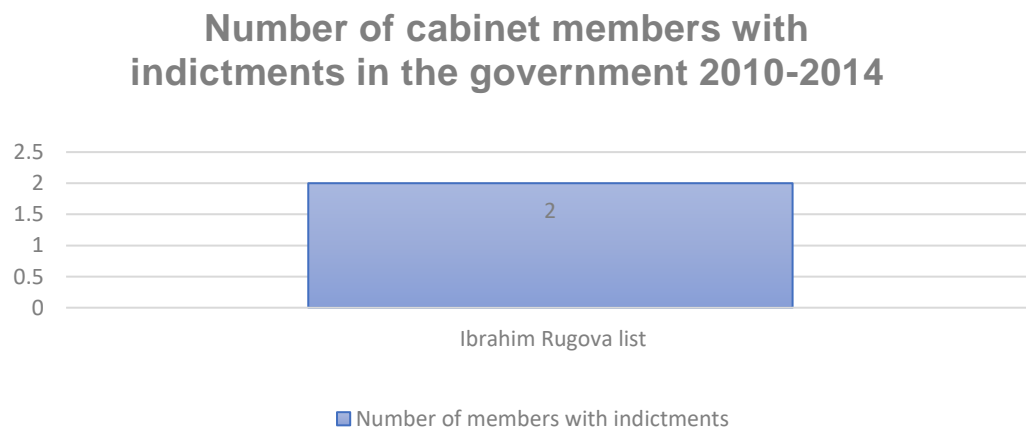


Chart 5 – Number of cabinet members with indictments in the government 2010 - 2014

Government formed after the 2014 elections

The national elections in 2014 marked an increasing trend of candidates with indictments running for member of the Assembly, with a total of 15 candidates. Out of these, 12 were elected⁷.

The executive branch in the period 2014 – 2017 had two ministers with indictments. One was Srpska List and other one from the Justice Party. The latter resigned immediately after he was indicted.

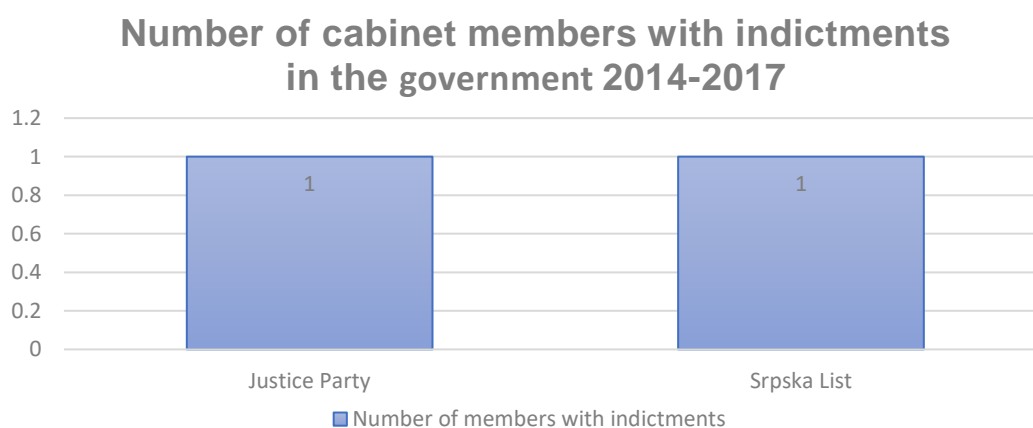


Chart 6 – Number of cabinet members with indictments in the government 2014-2017

Government formed after the 2017 elections

As stated earlier in the report, following 2017 elections, the number of candidates and members of the Assembly increased which was largely due to protests inside and outside the Assembly against the Kosovo-Montenegro Agreement on Border Demarcation and Kosovo-Serbia Agreement on Establishment of the Association of Serb Municipalities. Most of the indictments were pressed on grounds of setting of tear gas and obstructing officials in performance of official duties. A number of them were accused of corruption and other criminal acts. In total, there were 27 candidates with indictments, out of which 21 were elected.

⁷ Ibid.

The governing cabinet deriving from the 2017 elections had the highest number of members with indictments.

A total of 14 members of the cabinet had indictments starting with one deputy prime minister, seven ministers and six deputy ministers. Four of them were members of AAK, three members of PDK, three from NISMA, two from AKR, one from Ibrahim Rugova List and one from Ashkali Party for Integration.

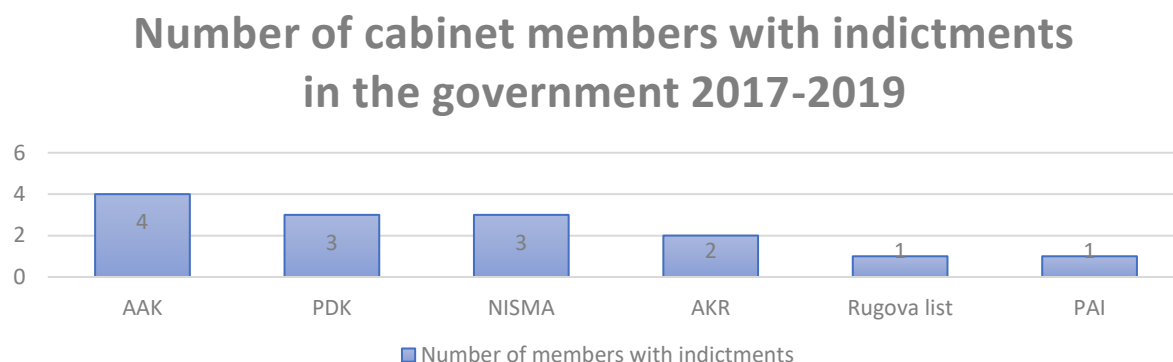


Chart 7 – Number of cabinet members with indictments in the government 2017-2019

Conclusions and recommendations

The study and comparison of elections lists for 2010, 2014 and 2017 on the basis of institutional sources concludes that there is an increasing trend in the inclusion of persons with indictments in elections in Kosovo.

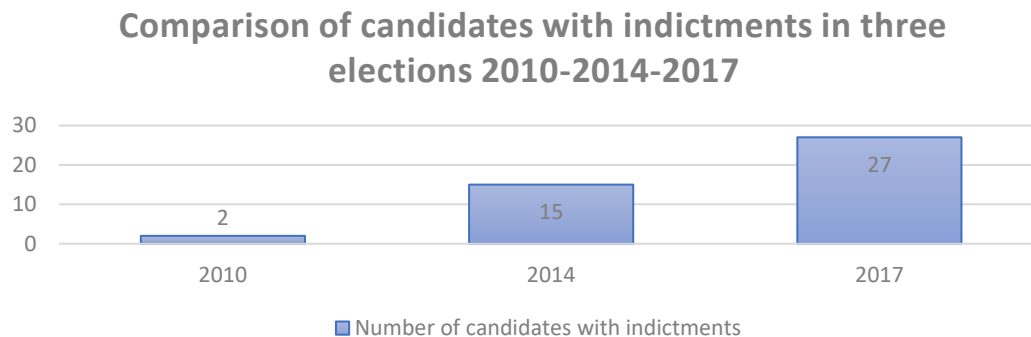


Chart 8 – Comparison of candidates with indictments in three elections 2010-2014-2017

This is an extremely concerning trend due to the continuous worsening of the situation through the years. Apart from damaging the image of political parties, this negative image is carried over to the most representative state institution, the Assembly of the Republic of Kosovo.

The same negative trend is noticed with governing cabinets. Furthermore, in many cases senior party members when assuming senior government posts did not have indictments, but were indicted during their service and they did not resign.

Just as in the case of the Assembly, the presence of persons with indictments in the governing cabinet damages the image of the Government of the Republic of Kosovo domestically and internationally. Another concerning matter is that these persons with indictments manage high budget sums collected from citizen taxes, thereby increasing the risk of misuse.

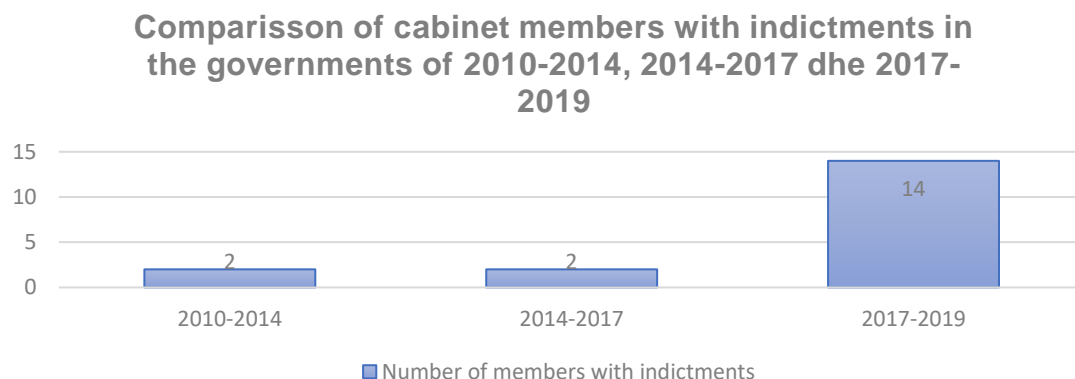


Chart 9 – Comparison of members with indictments in governing cabinets 2010-2019

Therefore, on the basis of the findings above it is recommended that:

- Parties must not include in election lists for 2019 elections, candidates that are facing justice, i.e. persons under investigation, with indictments or previously sentenced;
- Governing cabinet deriving from 2019 elections must not have persons under investigation, with indictments or previously sentenced;
- Once elections are over, party leaders should undertake joint or individual initiatives to address this negative occurrence once and for all.

The recommended options to address this problem, on the basis of international practices and Kosovo circumstances, are, as follows:

1. Approval of ethical rules. This may be achieved through a joint initiative of political parties to approve an Ethical Code, which would be applied by all parties; or each political party could approve ethical rules within their statutes or as separate acts with clear provisions to remove any party member from all party and state functions if an indictment is pressed or sentence for criminal act. The approval of Codes of Ethics would be binding, self-regulatory and exclusive against persons having problems with the law. Ethical codes may take as basis, and include principles developed by the Venice Commission and states with long experience in parliamentary democracy.
2. Legislative prohibition. This could be achieved through a legal initiative to amend a number legal acts. In the current situation in Kosovo, especially after the Supreme Court judgment, legal provisions of the Law on General Elections and Criminal Code of Kosovo, are deemed anti-constitutional and unenforceable. Therefore, to address this occurrence through legislative prohibitions is necessary to amend the Constitution and the abovementioned laws.⁸

⁸ “*Dekriminalizimi i politikës në Kosovë*”. Instituti i Kosovës për Drejtësi (IKD). Tetor, 2018. fq. 19 (Decriminalization of politics in Kosovo. Kosovo Law Institute, October 2018, pg. 19)



WESTMINSTER
FOUNDATION FOR
DEMOCRACY

Western Balkans Democracy Initiative

Westminster Foundation
for Democracy (WFD)

www.wfd.org/wbdi

