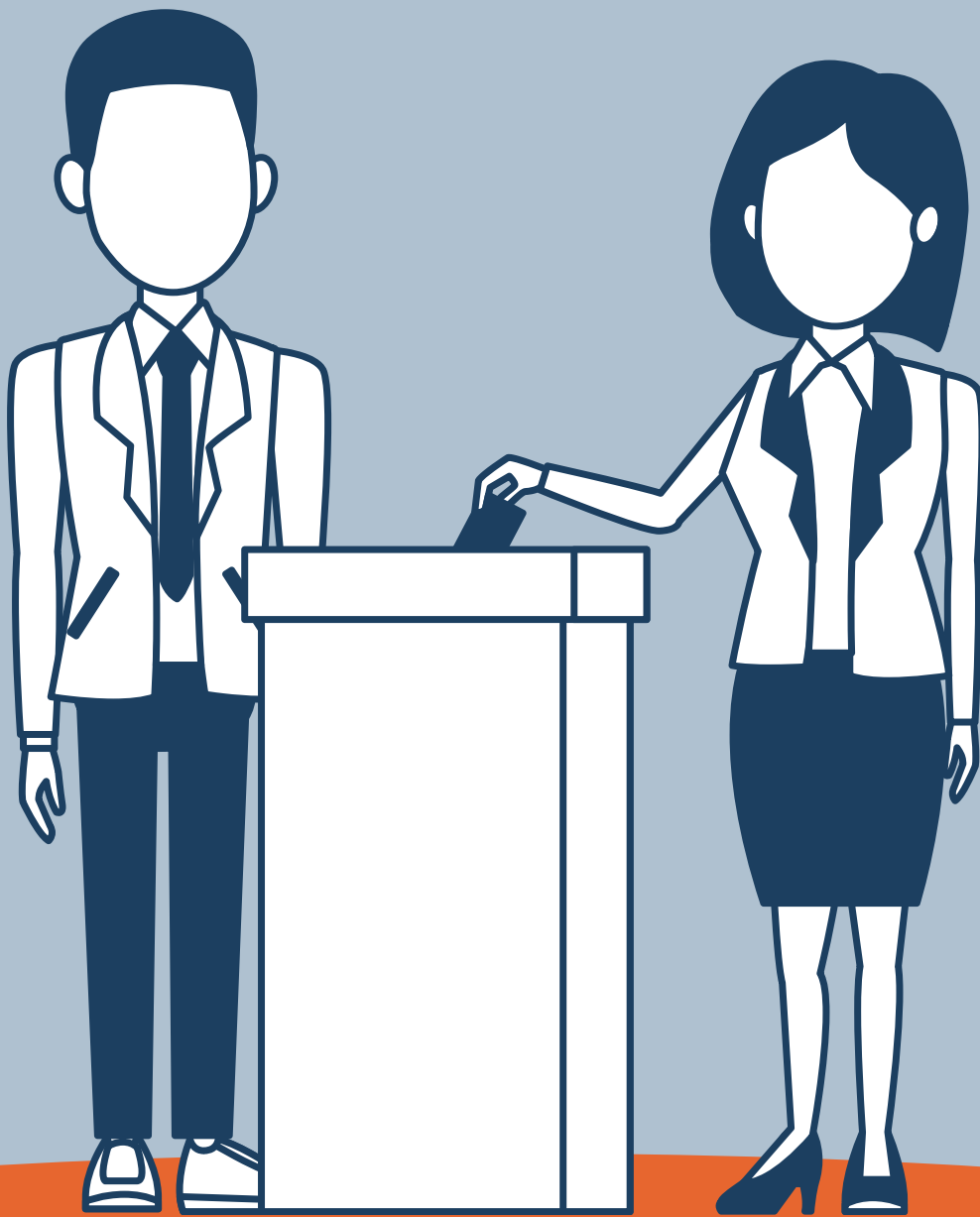


# Local Elections in North Mitrovica, Zvečan/Zveçan, Zubin Potok, and Leposavić/Leposaviç

December  
2023



**Authors:** Robert Muharremi, Jovana Radosavljević and Lulzim Peci

This document is a part of the latest effort of the Kosovo CSO to compensate the lack of social dialogue through New Civic Initiative on Dialogue.

The ongoing political stalemate between Kosovo and Serbia, marked by a lack of willingness to compromise on key issues, poses a significant threat to regional stability. In response, a commendable civic initiative seeks to establish a platform for inclusive and structured dialogue among diverse communities in Kosovo. By ensuring representation from Kosovo Albanians, Kosovo Serbs, and other minorities, and employing neutral facilitators, the initiative aims to address specific issues such as the establishment of the Association/Community of Serb Majority Municipalities and the integration of the Kosovo Serb community. Focusing on fact-based discussions, policy proposals, and international support, this effort strives to break the current deadlock and foster a long-term commitment to peaceful dialogue, emphasizing the importance of non-violence and public awareness campaigns to garner support for a comprehensive agreement.

# Table of Contents

|           |                                                                      |
|-----------|----------------------------------------------------------------------|
| <b>01</b> | <b>I. Background</b>                                                 |
| <b>03</b> | <b>II. Recall of Mayors – Legal Aspects</b>                          |
| <b>07</b> | <b>III. Other forms of Termination of Mandate for Mayors</b>         |
| <b>08</b> | <b>IV. Termination of Mandate of Members of Municipal Assemblies</b> |
| <b>10</b> | <b>V. Policy Options</b>                                             |

## I. Background

In November 2022, Kosovo Serb officials resigned collectively from their public offices as police officers, judges, prosecutors, mayors, municipal assembly members and administrative staff in the four northern municipalities of North Mitrovica, Zvečan/Zveçan, Zubin Potok, and Leposavić/Leposaviç. The collective resignations were given effect at a meeting in Zvečan/Zveçan organized by Lista Srpska, the political party which represents the Kosovo Serb community. The collective resignation was triggered by the dismissal by the Kosovo Government of the regional police director, Nenad Djuric, for failing to implement the Government's decision to enforce the replacement of Serbian license plates with Kosovo license plates. The Kosovo Serb Community claimed that the decision to enforce the replacement of the license plates was contrary to agreements reached between Prishtina and Belgrade during the Brussels dialogue.

New local elections were announced for December 2022, but they were postponed due to increasing tensions and a clear refusal of the Serb Community to participate in the elections. The Kosovo Serb Community, through Lista Srpska, conditioned its participation in the elections with the establishment of the Association/Community of Kosovo Serb Majority Municipalities, which was agreed upon between Prishtina and Belgrade in 2013 (First Principles on the Normalization of Relations) and further detailed in an additional agreement in 2015.

The establishment of the Association/Community of Kosovo Serb Majority Municipalities was re-confirmed in February and March 2023 as part of the 'Ohrid Agreement' and its implementation plan between Kurti and Vucic, which endorsed an EU sponsored proposal on the normalization of relations between the two parties. Both the EU and the US publicly stated that they considered the Ohrid Agreement to be legally binding even if not signed by Vucic and Kurti.

Following endorsement of the Ohrid Agreement, local elections were announced for April 2023. The Serb Community still insisted that the Association/Community of Kosovo Serb Majority Municipalities had to be established as a prerequisite for its participation in the elections. Despite the Kosovo Serb boycott, local elections were held in North Mitrovica, Zvečan/Zveçan, Zubin Potok, and Leposavić/Leposaviç in April 2023.

## Due to the boycott, only 3,47% of the eligible voters participated.

Vetevendosje won in Leposavić/Leposaviç and North Mitrovica, while PDK won in Zvečan/Zveçan and Zubin Potok. Thus, all of the candidates for mayors and members of the municipal assemblies came from ethnic Albanian political parties, which caused further tensions in northern Kosovo. While the elections were considered lawful, the very low turnout of the Kosovo Serb community, which is the majority in these municipalities, questioned the legitimacy of the election results as the newly elected mayors and members of the municipal assemblies did not represent the majority of the local citizens.

Violence broke out in May 2023 when the government attempted to install the newly elected mayors in the municipal offices. Kosovo Serb protesters clashed with Kosovo Police and KFOR when trying to prevent the new mayors from entering the municipal buildings, leading to dozens of injured on both sides.



Photo: EPA-EFE/GEORGI LICOVSKI

In view of the escalation of the situation, the EU and the US demanded that local elections be repeated. They demanded an end to the violence, and asked Prishtina to de-escalate the situation by removing the Special Police from the municipal buildings. New local elections should be organized in a manner that would ensure substantial participation of the Kosovo Serb community. In view of Prishtina's reluctance to follow up in a meaningful manner, the EU and the US imposed punitive measures.

In September 2023, Kurti announced that new local elections would be held, and that a local referendum in each of the four municipalities to remove the elected mayors would pave the way for the new elections. The Ministry of Local Government Administration published a draft administrative instruction on a local referendum for the removal of municipal mayors. The draft administrative instruction was widely criticized by both Serb and Albanian civil society representatives as administratively burdensome and unconstitutional because a referendum would require a law adopted by the Kosovo Assembly. As an alternative, Lista Srpska, but also the EU and the US suggested a resignation of the mayors and members of the municipal assembly, which, however, was rejected by the Kosovo government.

## II. Recall of Mayors – Legal Aspects

The current political discussion centers around **Art. 72** of *Law No. 03/L-040 on Local Self-Government*, which provides as follows:

**72.1.** The citizens of a municipality may take the initiative to remove a mayor from the office.

**72.2.** A request to this effect shall be signed by twenty (20) percent of the registered voters and shall be submitted to the Chairperson of Municipal Assembly who shall refer the matter to the appropriate institution for the administration of voting.

**72.3.** If the majority of the registered voters vote in favor of the Mayor's removal, new mayoral elections shall take place in accordance with the law on elections.

The initiative to recall a mayor is different from a *referendum*, which is regulated in **Art. 71** of *Law No. 03/L-040 on Local Self-Government*, and which provides as follows:

**71.1.** The citizens of a municipality may request that a regulation of the Municipal Assembly adopted by the Municipal Assembly be submitted to a referendum by the citizens.

**71.2.** The request must be submitted to the Chairperson of the Municipal Assembly within 30 days from the date of adoption of the regulation and must be signed by 10% of the registered voters.

**71.3.** The Municipal Assembly shall consider and act upon the request within the thirty days after the receipt of a valid petition in accordance with applicable law.

According to the Council of Europe, a recall of local officials is different from a referendum.<sup>1</sup> A **referendum** applies to legislative action, as reflected in Art. 71 of Law No. 03/L-040 on Local Self-Government (i.e., referendum as an instrument to force the municipal assembly to adopt a municipal regulation).

A **recall** is also an instrument of direct democracy. It is part of a set of direct democratic mechanisms of control and accountability beyond elections, which may operate next to other mechanisms of local direct democracy, such as the popular initiative or the referendum. What differentiates the recall is that the decision taken concerns the question whether to put an end to the office of an elected official or body before the end of the term. Unlike other types of popular votes, the recall does not invite the voters to take a position on laws or policies but on persons or, more rarely, bodies as a whole.<sup>2</sup>

<sup>1</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), REPORT ON THE RECALL OF MAYORS AND LOCAL ELECTED REPRESENTATIVES, Venice, 21-22 June 2019

<sup>2</sup> Ibid., p. 18.

The Council of Europe emphasizes that the recall is an **empowering tool for citizens**, enabling them to remove from office politicians who are seen as having badly performed in office, who have not considered the interests of the electorate that has elected them, or who performed in a problematic manner from an ethical point of view. Recall can play a role as a protective and preventive mechanism from corrupt and irresponsible holders of political power.

The Council of Europe stresses that a clear distinction has to be made between recall of members of legislative or deliberative assemblies (bodies exercising representative democracy, such as a parliament or a municipal council) and recall of elected members of the executive. In order not to be at odds with representative democracy, based on elections at regular intervals and the free mandate of elected officials until the next elections, a recall should be regulated very carefully and only used as an exceptional tool.

The Council of Europe cautions against the possible risks of a recall. If not precisely defined and established, the recall can be abused as a tool – by the political parties in the battle against their political competitors, but also by incumbents to artificially alter the conditions of electoral competition – and become a political "weapon". The recall can be misused by various interest or pressure groups to destabilize the governance and make it inefficient by preventing selected politicians from taking certain steps or decisions because of the danger of being removed by the citizens. At the local level, the danger of manipulation is even higher as the recall may be used by the ruling parties at central level to exert a pressure on opposition-led municipality leaders, thus reducing both local autonomy and the political pluralism in the country.

Against this background, the Council of Europe recommends the following criteria for a recall:

- It is important, in terms of equality of municipalities and elected representatives, but also for reasons of predictability and stability of the applicable rules, that the general framework for the recall be established by the law and not left to the decision of individual municipalities.
- As far as a mayor's recall is concerned, beyond local specificities, legislation regulates several basic common aspects of the procedure, which in fact prove to be common to other recall processes as well: the initiative for the recall, the timeframe and/or time limits for the process; a minimum number of signatures as an activating condition; quorum requirements (turnout and approval majority); the possible involvement of the municipal council and judicial control of the procedure.

- Legislation may also provide grounds for the mayors' recall. Such grounds may be, for example:
  - failure to uphold the interests of the local community.
  - incompetence in the performance of duties; gross mismanagement.
  - failure to perform duties prescribed by the law, neglect of duties (for example, not fulfilling the mayor's obligations).
  - failure to implement/violation of legal provisions related to citizen participation.
  - unethical behavior in the service (unprofessional and irresponsible performance of the job), infringement of moral and ethical norms.
  - misuse of office and authority (in case of bribery and corruption), conviction for a felony; conviction for a drug-related misdemeanor or a misdemeanor involving a "hate crime".
- In most cases, legislation provides that the popular recall may be initiated directly by citizens. The number of signatures needed in support of the petition activating the recall should be sufficiently high to prevent too frequent votes on the recall; the necessary percentage of the electorate may be higher in small than in big municipalities.
- One of the main common features of existing recall regulations, as far as the mayor's recall is concerned, is the clear focus on the participatory dimension of the recall. Apart from the number of signatures of voters or of members of the local council required to initiate the process, proper quorums have often to be reached: turnout quorums – a minimum number of voters taking part in the vote – and/or approval quorums – a required majority to approve the mayor's removal. Recall thresholds must be sufficiently high to ensure that it is not up to a minority who have lost the elections to remove a mayor from office.
- Judicial review should be available but since the recall is a political act which should not be based on specific (legal) grounds, such judicial review should not address substantive issues.

- In virtually all countries where recall is allowed, there are strict rules establishing time limits, during the mayors' term, within which the procedure for recall may be initiated. In this way, a reasonable time for action is left to the elected official in the first part of the term, to prove that he/she is acting in accordance with his/her voters' expectations. These limits range from six months to one year after the start and before the end of the term.
- When the recall process is activated, it is essential for the concerned elected official to be provided with adequate opportunities to give explanations and make known his/her views on the action (inaction) complained of and the shortcomings having led to the activation of the recall. Such opportunities are presumably provided in the context of the campaign that usually takes place prior to the vote in favor or against the recall.

To summarize, a recall is an instrument that enables citizens to remove from power elected local officials who have badly performed in office, who have not considered the interests of the electorate that has elected them, or who performed in a problematic manner from an ethical point of view.

A recall is ill-suited for situations where the local citizens deny representative legitimacy to elected officials. The Council of Europe Venice Commission<sup>3</sup> states that elections are more than technical matters. Electoral processes are part of a compact between citizens and the government that represents them. Elections are indicative of how a government treats and respects citizens through a wide range of institutions and processes. A democratic election is one the electorate has confidence in. Where the elected local officials do not have the confidence of the vast majority of the local citizens, and they are elected to local offices by a minority, there is no issue about bad or unethical performance, but it is about the legitimacy of the elections as the very foundation of the compact between citizens and the local government for democratic and representative governance.

---

<sup>3</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), REPORT ON THE TIMELINE AND INVENTORY OF POLITICAL CRITERIA FOR ASSESSING AN ELECTION, Venice, 15-16 October 2010.

### III. Other forms of Termination of Mandate for Mayors

*Law No. 03/L-040 on Local Self-Government*, **Art. 64**, provides for the removal of mayors by the government as follows:

**64.1.** Municipal Mayor may be suspended from the office by a decision of the Government of Republic of Kosova within thirty (30) days, if it considers that the Mayor has violated the Constitution and the applicable laws.

**64.2.** If the ministry responsible for local government considers that the conditions for the suspension of the Municipal Mayor are met, it shall recommend the suspension of such Mayor to the Government of Republic of Kosova. The Government of Republic of Kosova may suspend the Municipal Mayor (for up to 30 day) by a decision and submit the case to the Constitutional Court.

**64.3.** If the Constitutional Court upholds the decision the Government shall remove the Mayor from the office.

A prerequisite for this mechanism is that the mayor has violated the law or the Constitution, which may not be the case in the four northern municipalities.



Photo: Birn

The other form is that of resignation, as set out in *Law No. 03/L-040 on Local Self-Government*, **Art. 56.3**:

**56.1.** The Mayor of the Municipality shall be elected by a direct election in accordance with the law on local elections.

**56.2.** The Mayor of the Municipality shall be elected for a term of four years.

**56.3.** The term of office of the Mayor of the Municipality shall end upon:  
c) his resignation

## IV. Termination of Mandate of Members of Municipal Assemblies

**Art. 72** of *Law No. 03/L-040 on Local Self-Government* applies to mayors only and **does not apply** to members of municipal assemblies. There is no mechanism provided in the law for a citizens' initiative to remove an elected member of the municipal assembly, as there is for the removal of a mayor.

The end of the mandate of a **member of a municipal assembly** is set out in *Law No. 03/L-040 on Local Self-Government*, **Art. 37**:

**37.1.** The term of office of members of the Municipal Assembly shall be four years.

**37.2.** A member of the Municipal Assembly shall cease to be a member:

- at the expiration of the member's term of office.
- at the change of the municipality of the residence where he is elected.
- upon the submission of a written resignation of his post to the Mayor of the Municipality.
- if a member is convicted of a criminal offence by a final court decision.
- if he/she misses Municipal Assembly meetings for three (3) consecutive months without valid excuse.
- if this law, or other laws applicable to the member, disqualifies or deems ineligible the member.

**37.3.** A member of a municipal assembly may not simultaneously hold a position of a member of the Assembly of Republic of Kosova.

In addition to these grounds, which terminate the mandate of an individual member of the municipal assembly, the government may dissolve a municipal assembly as a body under the conditions set out in *Law No. 03/L-040 on Local Self-Government*, **Art. 50**:

**50.1.** If a municipal assembly fails to perform a mandatory function up to the standards set by law or becomes non-functioning, thus jeopardizing the exercise of basic rights of the citizens, the ministry responsible for the local government shall notify the failure to perform to the municipality and request that appropriate measures be taken in order to ensure the smooth performance of the challenged function.

**50.2.** A municipality is considered as non-functioning if it:

- fails to elect a Chairperson thirty (30) days after it is duly constituted.
- fails to adopt its statute within sixty (60) days from the day it is duly constituted.
- fails to adopt the budget within the time limit determined by the law.
- fails to hold a meeting for a period of more than six (6) months.

**50.3.** The ministry responsible for the local government shall notify the Government of Republic of Kosovo on the non-functioning of municipality. The Government of the Republic of Kosovo may dissolve a non-functioning Municipal Assembly.

**50.4.** New elections will be held for the Municipal Assembly in accordance with the law on local elections.

There are no indications that any of the requirements for the dissolution of any of the four northern municipalities are **fulfilled**.

Apart from the individual resignation of the elected members of the municipal assemblies, there seems to be no legal way to prematurely terminate their mandate.

## V. Policy Options

Against this background, there are the following policy options:

### Policy Option # 1: Do Nothing.

---

This option will not resolve the problem and may in fact further contribute to escalation. While it is impossible to predict the reactions of the Serb citizens in the four municipalities and to what extent the situation could escalate, it is clear that this option would render local self-government in the northern municipalities a sham. It would erode confidence in meaningful democratic governance and, as a minimum, damage Kosovo's credibility to build and maintain genuinely democratic local institutions.

### Policy Option #2: Recall of mayors and do nothing in respect of members of municipal assemblies.

---

The above legal analysis has shown that a recall might not be the suitable instrument for terminating the mandate of the mayors. Apart from strictly legal questions, it might also fail as a policy instrument. Even under the best-case scenario that all legal issues are resolved, it is doubtful if the Serb Community would use this instrument as that would mean that they legitimize the current mayors and only remove them from office for bad or unethical performance. Even if they recall the mayors, the municipal assemblies will still lack legitimacy as their composition would not change.

### Policy Option #3: Recall of mayors and terminate the mandate of members of municipal assemblies.

---

The concerns about the recall of mayors as above remain the same. In addition, there is no legal mechanism available for the termination of the mandate of an elected member of the Assembly other than through dissolution of the Assembly (which may not be applicable in the present situation) or individual resignation.

## **Policy Option #4: Resignation of mayors and do nothing in respect of members of municipal assemblies.**

---

The individual resignation would circumvent the problems associated with the recall of mayors. However, this option would not resolve the problems with the members of the municipal assemblies, which will remain the same as in Option #2.

## **Policy Option #5: Resignation of mayors and resignation of members of municipal assemblies.**

---

There is no legal mechanism to compel the mayors and the members of the municipal assemblies to resign. It would therefore have to be a political act based on political good faith and goodwill with a view to ensuring substantive local democracy and a meaningful compact of local governance between the citizens and the government. The alternative to this would be merely a poor façade of lawful local self-government lacking substantive support and acceptance by the majority of the citizens in the northern municipalities. This option would be the most feasible way forward especially since there are no legal mechanisms equivalent to that of a recall of mayors for members of the municipal assemblies. It would be critical for the government to engage in a direct dialogue with the citizens in the northern municipalities to build confidence to ensure meaningful participation in the new elections. Visible and sincere progress with respect to the establishment of the Association/Community of Kosovo Serb Majority Municipalities will be equally important to reach a pre-election compact with the citizens in the northern municipalities that would commit them to participate in the new elections and return to Kosovo's government institutions.

---

This report is based on the discussions, which were held under the Chatham House Rule.

This report was made possible with support from the National Endowment for Democracy (NED) and the Rockefeller Brothers Fund. The opinions and views of the report does not necessarily stat or reflect the views of NSI, NED, those of the Fund, or of individual participants. It is simply a brief summary of the discussions.

---