

forum 2015

Series analysis "What Went Wrong"?

TOP ELECTORAL SHAMS

A Practical Approach to Fixing Elections in Kosovo





Projekt i Fondacionit të Kosovës për Shoqëri të Hapur
Projekat Kosovske Fondacije za Otvoreno Društvo
Project of the Kosovo Foundation of Open Society

Short analyses of public policies:
“What went wrong?”

Top Electoral Shams

A Practical Approach to Fixing Elections in Kosovo

Copyright © 2013. Forum 2015.

This paper was drafted by Leon Malazogu and Selatin Klllokoqi. This report has been produced for Forum 2015 and funded by the Kosovo Foundation for Open Society. The content of this paper are sole responsibility of Democracy for Development (D4D).

2013 Kosovo Foundation for Open Society

The views expressed in this publication do not necessarily reflect the views of the Kosovo Foundation for Open Society (KFOS).

Published by:

Forum 2015 - KFOS operational project

Imzot Nikë Prela nr. 13

10 000 Pristina

Kosovo

For more information contact:

info@kfos.org

www.kfos.org

Table of Contents

Introduction	5
General	
Problem 0 – The Electoral ‘Deform’	7
Problem 1 – Voters’ List	8
Problem 2 – Legal Vacuum & Discretion	10
Problems 3 – The CEC	11
Election Day	
Problem 4 – School Directors & PS Commissioners	15
Problem 5 – Crowds	17
Problem 6 – Voter Intimidation	17
Problem 7 – Secrecy of the Vote	18
Problem 8 – The Conditional and the By-mail Ballot	19
Problem 9 – Voting by Proxy	19
Problem 10 – Group Voting	22
Counting & Post-Elections	
Problem 11 – The Preferential Vote	25
Problem 12 – Low Fines & Dysfunctional Courts	26

Introduction

When we do a regular medical check-up, we tend to focus on the values that stand out. We worry about the worrisome results and get little comfort from the rest of the normal results. Somehow, we seem not to care about the health of the nation at the same rate. Inspired by this comparison, this brief policy paper outlines the most prevalent and recurring electoral manipulations in Kosovo.

Critical reports such as those that we usually publish have a major draw-back for they are seen by the authorities as too critical and not giving due praise to positive developments. However, it is the very nature of 'check-up' reports to improve public affairs by focusing on areas that need improvement most. It only intends to help the patient improve its outlook.

This paper comes after several years of electoral work by D4D including research, observation, following of trends, or analysis of results. Numerous publications focused on the electoral system, the process, the work of the parliamentary committee on electoral reform, voter lists, and the work of the CEC.

Electoral fraud marred the 2010 elections in the country and led to a six-month institutional deadlock, the consequences of which Kosovo still suffers. A repeat of such levels of manipulation would almost certainly incite political violence.



The political leadership has engaged in a half-hearted reform during the past year. Unfortunately, they focused only on systemic solutions which serve them to maximize political gain. In this sense, the resulting reforms were motivated by little more than political party calculations.

The 2012 EU Feasibility Study concluded that Kosovo's elections were followed with serious deficiencies¹. The international community sees the importance of fraud prevention and advises Kosovo to simplify its electoral system.

There is some improvement of electoral management in Kosovo, as noted by the progress of the mayoral by-elections in Ferizaj and Kacanik in 2012, and by a more positive trend of electoral justice.

¹ European Commission. EU Feasibility Study 2012, page 7. http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf (last accessed on 19 March 2013).

The approach uses the medical analogy. Most Kosovars go to see the doctor too late, never hear the doctor's exact diagnosis and do not take the prescription seriously. Unfortunately, there is no electoral doctor, and Kosovars will have to conduct its own test, face the diagnosis and engage in a long-term treatment.

D4D does not believe in easy shortcuts, for they do not exist. The system must build immunity and focus on prevention. The vacuum for fraud remains wide open, which is why D4D and Forum 2015 chose to focus on the top ten electoral problems and on techniques to address them. Closing the space for fraud is laborious and detail-intensive work (where the devil lies as has been widely proven).

This paper treats each fraudulent electoral practice into one to two pages. Each technique for fraud or space for manipulation starts with the diagnosis of the problem and is followed by a recommendation. The ten chapters are organized in three general themes that pertain to the different stages of elections: (a) general, (b) Election Day, and (c) counting and post-elections.

Problem 0 – The Electoral ‘Deform’

For those who worried that Kosovo has no industry were relieved to hear that we actually do. When it comes to electoral fraud, no less than ‘industrial’ was the term used to describe the scale of manipulation. A six-month institutional crisis ensued and soon after its resolution, electoral reform was initiated.

Diagnosis

Unfortunately, the political agreement and the parliamentary resolution paving the way for reform did not cite fraud as the driving force. Close to two years later, and after two stints of work by a parliamentary committee, massive mobilisation of the international community, the reform has entered a dead-end.

Reform has deviated to the degree that it has started to be called ‘deform’. There is an unfinished draft-law that does little justice to the needs for proper elections. Main successes that are often touted are the shortening of the electoral campaign or doing away with the collective fines. It is primarily reforms with a clear party interest that are passing.

In a deadlock, the process has been taken over by the party heads and it is likely to be further hijacked to serve only their interests. Stronger leaders are likely to have their way and subjugate the parties to the will of their narrow interest groups. This approach leaves the suspicion that ‘reform’ that some leaders and political parties aim is to maximize the harvest of votes and to confirm them as undisputed leaders who will have free

hands to lead their own political party and the state.

Remedy

The civil society managed to push some important reforms, but many more need to follow. Civil society is lobbying for a set of recommendations such as balanced CEC between position and opposition, separate voters list of diaspora, commissioners to serve in other municipalities different from the municipality they come from and number of other recommendations that are not attractive to the main political parties. The process of electoral reform needs to go back to the parliamentary committee for electoral reform who should continue the work that they have begun. Recommendations of the civil society as well as the recommendations of opposition should be taken more seriously for reform to be meaningful. The interests of Kosovo society should prevail over the short term interest of political party leaders.

Problem 1 – Voters’ List

One of Kosovo’s major electoral problems is the voters’ list. There are hundreds of thousands of Kosovars who reside abroad, have long been deceased, or have moved around the country and are included in outdated and inaccurate addresses on the voters’ list².

Diagnosis

Only around half of the names of voters are found in the towns and villages where they are registered to vote. A recent audit of the voters list audit conducted by D4D indicated that only 60% of the voters of Kacanik (a small southern municipality), lived where they were listed. The other 40% were either abroad, deceased, had moved, or could not be accounted for³. As a small and ethnically homogeneous municipality, Kacanik is probably the best-case scenario for accuracy of the voters list. Large and mixed municipalities would probably yield a reverse trend with fewer than 50% accurate lists.

2 IFES, Assessment of the Civil Registry Extract in Kosovo, January 2011, <http://elibraria.org/assets/2011-04-18t-IFES-Eval-of-K-Civil-Registry-Extract-English-Final-Report.pdf> (last accessed 19 March 2012). Leon Malazogu, Visar Sutaj and Drilon Gashi. Kaçanik Voter’s List Audit, A Sample for Kosovo. http://d4d-ks.org/assets/D4D_Elections_3_ENG_WEB.pdf (last accessed on 15 January 2013). ENEMO observation report at <http://www.gndem.org/ENEMO-kosovo-assembly-elections-final-report-2010> (last accessed on 18th of February 2013), p.10. EU EEM observation report at http://eeas.europa.eu/delegations/kosovo/documents/press_corner/25012012_final_report_eu_eem_kosovo_2010.pdf (last accessed on 19 March 2013), p. 34.

3 Leon Malazogu, Visar Sutaj and Drilon Gashi. Kaçanik Voter’s List Audit, A Sample for Kosovo. Page 18. http://d4d-ks.org/assets/D4D_Elections_3_ENG_WEB.pdf (last accessed on 15 January 2013).

When Kosovo émigrés vote abroad through the by-mail system, their vote may be rejected if someone else has already marked their names in the original voters’ list in Kosovo. These citizens are listed as regular voters in their address of residence in Kosovo. While émigrés have the right to vote, the size of the diaspora presents a challenge for election administrators to encourage them to vote and ensure that their vote is not manipulated.

The problem with deceased persons is more serious and a clear legal violation. Family members do not routinely report deaths, and even when they do, municipalities often do not adequately report the names to the Ministry of Interior. Some names are removed from the civil status roster, but not from the civil registry. Other challenges pertaining to the voters list are persons who are in the civil registry but have not obtained a Kosovo ID card and persons who do not report their change of address.

Individuals who have moved inside their municipality remain in the voters’ list with their prior addresses and often refrain from voting because their names are allocated to their past polling centres, often many kilometres away. New voters (who turned 18) are not allocated by address but in a single polling center. In main towns, this is especially problematic and reduces their turnout. Voters usually find out about their misplacement on Election Day, when they are told that they are at the wrong polling centre.

Even the smallest inaccuracy along this process implies that the Central for Civil Registry does not remove names, and they ultimately appear in the voters' list. The example of extraordinary mayoral election in Ferizaj has shown the inability of the CEC to intervene on the voters' list even when they were aware that there is data on the list that is inaccurate. The CEC knew about 1,300⁴ deceased voters in Ferizaj ahead of the municipal by-elections, but due to incomplete data, these names could not be removed (a task for the Ministry of Internal Affairs).

The fear remains that for every person who has the right to vote and does not do so (be those abroad, deceased persons, or merely those who choose not to vote), the opportunity remains for others to vote on their behalf. The level of inaccuracy indicates that any turnout above 60% is technically impossible. Most elections with little or no indication of fraud report turnout of 30-40%. There are municipalities where turnout routinely hovers around ninety percent—a doubtless indication of massive fraud. We found the example of a village in Kaçanik with over 90% turnout in 2010 and just below 30% in 2012⁵.

Each year, Kosovo's voters' list grows by forty to fifty thousand voters while the net population growth 18

4 CEC. 9 April 2012. Regular Meeting of the Central Election Commission. [Observed by D4D representative].

5 Malazogu, Leon and Selatin Kllokoqi. Lessons Learned for Future Elections, Analysis of the by-mayoral elections in Ferizaj and Kaçanik, http://d4d-ks.org/assets/D4D_Elections_KacanikFerizaj.Eng_.pdf, p. 43. (Last accessed 19 March 2013).

years ago was only around twenty thousand. The voters' list represents the most recent available extract of the Central Civil Registry"⁶ which is maintained and managed by the Ministry of Internal Affairs (MIA). While the Central Election Commission (CEC) is responsible for maintain the voters' list⁷, it has no influence on the civil registry.

Remedy

The Ministry of Internal Affairs is legally responsible for maintaining the civil registry in its electronic form, but they need to work more closely with municipalities to update all information in real-time, including permanent residence. While the CEC could conduct minor clean-up, it is more useful if an audit is conducted for the overall civil registry, for this would automatically improve the voters' list/civil registry. It is encouraging that with the help of a project by the European Commission, the databases of the civil status and of the civil registry have merged. If the civil registry cannot be addressed in time for the next elections, the CEC should introduce a parallel active registration process for those elections.

Diaspora voters should continue to have the right to vote, but the authorities should compile a roster of its citizens living abroad. Names of persons living abroad more than half of the calendar year should automatically appear in separate voters' lists in respective consulates abroad. Their names should be marked in a way

6 Law on General Election, Article 7.1 section a.

7 Law on General Election, Article 7.1.

that allows software to filter voters by location, just the way it filters voters by municipality. This would improve their turnout, and their names would not be available in their villages back in Kosovo to be marked by others. Each citizen must be legally obliged to declare one's permanent address, report address changes promptly, and face legal consequences for misinformation, which would also benefit better budget allocation for the municipal grants.

Kosovars should be obliged by law to report deceased members of the family. The death certificate should be issued for free and fines should be foreseen for violators.

Problem 2 – Legal Vacuum & Discretion

Diagnosis

Elections are partly regulated in the Constitution, the General Election Law and Local Election Law, secondary legislation by the CEC. The current election legislation is inconsistent and fails to regulate a number of important matters.

Since the law does not regulate elections to a sufficient detail, it is inconsistent with best international practice⁸. One of the documents that Kosovo has to comply with to pursue EU integration, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) provides:

A clear and detailed legislative framework for conducting elections must be established through statutory law, either in a comprehensive code or through a set of laws that operate together consistently and without ambiguities or omissions⁹.

The law is problematic for what it fails to address. Some issues are addressed with CEC regulations, decided by the CEC or left to the discretion of individual officials further down the hierarchy. The legal vacuum leaves it to the CEC to regulate much more than it should and independent reports have criticized the excessive competence of the CEC (discussed in the next point). The report published by the European Union Election Expert Mission to Kosovo points out that:

⁸ Malazogu, Leon. Discussion paper on Electoral Process. Thematic Round Table "Justice, Freedom and Security", p.13.

⁹ ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 2.5, p. 13.

It is regrettable that the [Law on General Elections] LGE does not specifically oblige the CEC to develop and publish detailed guidelines, with appropriate examples, for the implementation of the election system. Such guidelines would have contributed significantly to fill lacunae in the legal provisions and explain existing ambiguities¹⁰.

Allowing for the legal vacuum to be filled through excessive legislation by the CEC is problematic particularly considering the political composition of this body. Issues are very important for the electoral process are left entirely out of the legislation. There are examples such as political party financing, campaign spending and financial disclosure, involvement of public officials during the campaign, the counting and results center and its observation, the period for challenging and confirmation of the voters list, crowds in polling centers, the role of the operations room, the signatures for new parties, fines and adjudication of violations, or the allocation of the roles of commissioners on Election Day.

Remedy

To prevent the politically composed CEC from becoming the leading legislative body for election purposes, secondary legislation should be integrated into either an enhanced Law on Elections, the Code of Elections or through a set of consistent electoral laws. This would allow for newly promulgating legislation to be able to better fulfil European best practices.

¹⁰ European Union Election Expert Mission to Kosovo. 25 January 2011. Final Report, p. 21.

Problems 3 – The CEC

The problems of the Central Election Commission are manifold and pertain to (a) outvoting, (b) lack of independence of the CEC members, and (c) competence of election management.

3.1 Outvoting

Diagnosis

The Kosovo Constitution determines the size and the party composition of the CEC¹¹. The CEC is composed of one representative from each of the 6 largest parliamentary groups represented in the Assembly. Four other members are representatives of non-majority communities in Kosovo.

It is problematic that the four community representatives almost exclusively side with the coalition government. This constellation enables consistent outvoting at the CEC. The credibility of the very institution of the arbiter has been threatened. The very neutrality that should make the referee a trustworthy implementer of the law has been seriously compromised. This composition leaves very few parties in opposition at the CEC, and they are unable to address their grievances.

Remedy:

Change the composition to ensure equal representation of the coalition government and the opposition in the CEC will prevent outvoting. A balanced representation in the CEC, 50% position and 50% opposition would

¹¹ Kosovo Constitution, Article 139.

require the revision of the Article 139 (4) of the Constitution. Equal representation of the position and opposition does not necessarily imply the reduction of communities' representatives in the CEC as it is foreseen by the Kosovo Constitution. First will be allocated seats for political subjects that are running for reserved seats. The other seats will be allocated in a matter to achieve the balance between position and opposition. The result would be a balanced CEC in which the opposition believes.

3.2 Dependent Members

Diagnosis

The CEC is composed of party nominees who should serve professionally and independently once appointed. However, the party which nominated them has the power to withdraw them at any time, and nominate a new person which effectively makes them servants of the party interest throughout their mandate.

Such dependence runs against international practice, which foresees that "bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence¹²."

Remedy

Members of the CEC should enjoy greater independence, and once appointed, a nominee of a political party

12 ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 2.5, p. 13.

should serve up to two mandates without the right of recall.

3.3 Competence of Election Management

Diagnosis

The training and capacity of CEC staff during the election process is weak, including that of polling station commissioners on Election Day. There are numerous reports that procedures are not followed and commissioners complain of unclear procedures (e.g. use of ID cards, missing material, competences of the polling station chair or the polling center manager, posting of results on the door, etc.).

A weak Secretariat ends up being subjugated to the CEC, and this is best observed by the politisation of the Secretariat's CEO. It is standard international practice that election institutions are assisted by a professional secretariat¹³. The recruitment of the CEC's Chief Executive Officer should not be left to the CEC's whim. For the purpose of comparison, Kosovo already legally ensures the practices of insulated permanent secretaries in each Ministry, which cannot be discharged by the Minister to whom they report to.

Remedy

The electoral law should specifically require that CEC train electoral commissions and establish the chain of

13 ODIHR. October 2003. Existing Commitments for Democratic Elections in OSCE Participating States. Office for Democratic Institutions and Human Rights, Article 4.3, p. 14.

responsibility to mismanagement and flawed election administration.

It is essential to empower the CEC Secretariat whose powers should be enhanced and gradually gain competence to develop into a professional body with sufficient insulation from the political CEC. The Secretariat should be professional and operate independently of the CEC. Finally, the CEO should not be elected by CEC members but hired by open competition and be part of the civil service.

ELECTION DAY

Irregularities during the Election Day have been reported by various organizations like OSCE, Democracy in Action, and other observing organization since 2007. Instead of lowering fraud, it is regrettable that irregularities have worsened over the years, reaching the peak in 2010.

Elections in 2007 were characterized among others with misuse and manipulation of votes, destroying of ballots and as well as with falsification of voting results. The Electoral Complaints and Appeals Panel (ECAP) annulled election results in 40 Polling Stations and around 34,000 votes sent by mail¹⁴. Only 12 indictments were filed, and no court process had been initiated for any of these cases.

The outcome of the 2007 elections was only a prelude to the 'industrial' manipulation of the elections in 2009 and 2010. EU EEM report shows that the scale of manipulation was so high that there was a problem to coordinate the results between MEC and CEC.

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

ENEMO indicated the turnout difference between the

¹⁴ Ibid

¹⁵ EU EEM Report, 13 http://eeas.europa.eu/delegations/kosovo/documents/press_corner/25012012_final_report_eu_eem_kosovo_2010.pdf, (Last accessed on 18 February)

Elections in 2010 and the repeated elections in these municipalities in 2011 compared with turnout in previous years. Voter Turnout Data for Kosovo Assembly Elections (2001 – 2010) is presented in the table below¹⁶:

	Kosovo	Deçan/ Deçani	Gllgovc/ Glogovac	Skenderaj/ Srbica	Mitrovicë/ Mitrovica
2001 KA Election	64.3%	66.3%	73.1%	64.3%	56.0%
2004 KA Election	49.5%	59.5%	65.8%	57.0%	45.9%
2007 KA Election	40.1%	45.8%	49.9%	52.8%	28.9%
<i>12/12/2010 KA Election *preliminary results cancelled by CEC</i>	<i>47.8%*</i>	<i>43.4%*</i>	<i>86.9%*</i>	<i>93.7%*</i>	<i>37.0%*</i>
2010 KA Election (final results from 30/1/11 after repeat elections)	45.3%	34.6%	55.9%	59.8%	27.0%

As long as there is political will for manipulation and courts are influenced by politics, it is difficult to end fraud. But a number of measures could reduce the scale of manipulation. The section below raises a number of key issues pertaining to Election Day and recommends specific action to prevent large scale of manipulation in the future.

Problem 4 – School Directors & PS Commissioners

4.1 School Directors as Polling Centre Managers

It is widely known that virtually all school directors are selected by political prerogatives and that this position is one of the main giveaways of the winning political party for its active supporters. Despite political affiliations that may or may not affect their role as directors,

¹⁶ ENEMO, Election Observation Mission, Kosovo Assembly Election 2010, Final Report. See at, <http://www.gndem.org/sites/default/files/Final%20Report%20ENEMO%20EOM%202010.pdf> (Last accessed on 18 February 2013).

on Election Day they acquire a role that may benefit the electoral race. School Directors by default serve as polling centre managers and their party affiliation hampers them to correctly fulfil their duty on Election Day.

Diagnosis

In practice they have the ability to influence the order of the electoral process. Managers/school directors often exceeded their logistical competencies and engage in the election process actively or through negligence. There are cases reported in the past when PC manager/school director pressured commissioners to allow person to vote despite them being rejected by Polling Station Committee (PSC).

The main role for PC managers is to manage crowds and ensuring an orderly process in the school corridors. D4D observation has shown that in many cases school directors do not discharge their primary duty to ensure crowd-free hallways in polling centres. Problems caused by crowds in the hallways are discussed separately in the next section.

Remedy

The role of school directors as polling centre managers on Election Day should be of technical nature only, to turn on the generator, open the classrooms for polling and similar.

School directors should not have the right to enter PS except in these cases when they are called by the PSC and even then only for technical purposes. CEC should prepare a detailed job description for PC managers.

4.2 Polling Station Commissioners

PS Commissioners have been identified as main manipulators of the elections in 2007, 2009 and 2010. This was best documented by various international and local observing missions and ultimately enforced by few court decisions against PS Commissioners. It may seem secondary and technical but this may be the key to preventing massive violation in the future.

Diagnosis

PS Commissioners as politically representatives have misused their position at the PSs by manipulating the will of the voters. While preferential voting was meant to offer the voters the opportunity to elect their preferred candidate, the commissioners misused it.

In many cases voters voted only for one candidate and the other four candidates were chosen by Commissioners, a clear election manipulation. Many cases have been proceeded further to the prosecutors and few court decisions against commissioners have been decided. The local solidarity is too strong and loyalties to the party and to individual candidates end up being decisive.

Remedy

Political Parties should take legal responsibility for the conduct of their commissioners at the PS. A change in the election law should foresee that in case when a commissioner of a PC is sentenced for election manipulation, the political entity of the same commissioner should also be fined. The CEC should also bear responsibility for the chain of command and to address shortcomings appropriately through its staff. Most importantly, commissioners should be allocated to areas other than their own on Election Day, to eliminate the local solidarity factor.

Problem 5 – Crowds

The issue of school directors is closely related to that of crowds in front of schools and inside school corridors. Overcrowded polling stations, polling centres and the immediate perimeter around schools create an atmosphere of disorder and raises fears of undue influence and intimidation of voters.

Diagnosis

Observation has indicated that crowds around and within polling centres are intentionally created to serve a specific purpose. Crowds form even when there are no lines for polling and they are mostly made of large numbers of party militants accredited party observers. While the number of party observers within the PS is limited to two observers, the total number of accredited observers per political party is unlimited, which enables them to staff corridors and school-yards to exercise undue influence on voters. While persons without badges is a problem of the past, now the same problem persists, but this time caused by observers with badges.

Remedy

The problem is two-fold and can be addressed by tackling two issues (a) the overall number of accredited observers, and (b) the role of school directors (the second was partly discussed in the previous section).

The number of observers per political party and other observing subjects per polling station should be limited to maximum one observer per entity. The total number of accredited observers should also be limited not exceed 10% of the total number of PSs.

The CEC should ask accountability from the school directors not to have any observers manning the corri-

dors or school-yards up to a perimeter of 100 meters. A regulation adopted by the CEC should describe in detail the steps that PC managers should undertake to prevent crowds and make it mandatory for them to ensure a proper environment.

Problem 6 – Voter Intimidation

Diagnosis

Voter intimidation continues in various forms. An elaborate mechanism of intimidation is the calling of voters who have not voted during Election Day and asking them why they have not voted.

Party observers have a routine task to see who has not voted. They pass this information on to observers in the hallway (which is why the crowds in corridors are essential to disperse). Voters are then called and asked by the party why they have not voted yet. Corridor observers serve as ‘calling centres’ and liaise with the drivers who fetch voters from home and bring them to the voting centre. Such ‘curiosity’ can easily be perceived as intimidation for voters are concerned about the party’s ability to know whether they voted or not.

Concern over this ‘privileged’ information may worry voters that if the party knows whether they voted, they may also know whom they voted for. This feeling is more accentuated in the villages where any investment is directly controlled by the ruling party of that municipality. This technique is more likely to have an effect in small rural villages than in major towns. This is the main reason why it is disconcerting when election results in villages favour the winner significantly more than the towns do. For example, the Mayor of Kaçanik

Problem 7 – Secrecy of the Vote

won more than two thirds in villages and under a third in the town.¹⁷ Considering the elaborate patronate system and the predominance of the public sector as the main employer in Kosovo, voters are worried about the loss of jobs for themselves and their kin.

Remedy

Whether a person has voted or not should be a private matter and this should be regulated with the Law on Elections and/or with the Law on Privacy.

Commissioners should not have the right to check the voter's book to see who has voted and who has not. Fines should be foreseen for persons who violate this rule and abuse confidential information. All commissioners (perhaps except the chairperson) should be banned from carrying and using a mobile phone.

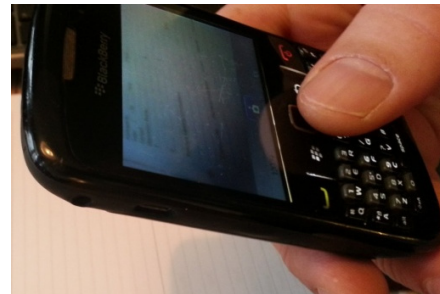
Whereas the corridors are controlled by the polling centre managers, the police should be more attentive and patrol the outer perimeter, and spot vote-buying and other forms of illegal organisation.

7.1 Taking Photos

Taking photo of the ballot by the voter has only one explanation, the voters proves loyalty to the party when there is little trust between them.

Diagnosis

One indication that a photo is taken is the length of the time to vote. Many voters take too long time to vote, raising suspicion that they are busy with more than merely voting. It is understandable that elderly and semi-illiterate voters take longer to vote. But even in the mayoral by-elections (with 6-7 names), and including in the second round (with only two names), up to a third of voters took more than a minute to vote¹⁸.



Taking photos of the ballot is related to corruption or vote buying. The voter is blackmailed and needs to prove the mark to the party in order to obtain the

promised benefits, or avoid to incur punishment. Photos can be shown to the party officials, and some benefit, usually in cash, is provided in exchange¹⁹.

¹⁷ Leon Malazogu and Selatin Kllokoqi. Lessons Learned for Future Elections, Analysis of the by-mayoral elections in Ferizaj and Kaçanik, http://d4d-ks.org/assets/D4D_Elections_KacanikFerizaj_Eng_.pdf, page 53. (Last accessed 19 March 2013).

¹⁸ Leon Malazogu and Selatin Kllokoqi. Lessons Learned for Future Elections, Analysis of the by-mayoral elections in Ferizaj and Kaçanik, http://d4d-ks.org/assets/D4D_Elections_KacanikFerizaj_Eng_.pdf, page 30. (Last accessed 19 March 2013).

¹⁹ Besa Shahini. 3 May 2012. Selam prej Ferizajt (Greetings from Ferizaj). Gazeta Jeta në Kosovë. <http://gazetajnkk.com>.

Remedy

Taking photo of the ballot is prohibited by law but is very difficult to enforce. The main remedy is to turn the voting booths in the opposite direction. Observers would see the back of each voter and would be better able to spot suspicious moves such as pulling a phone. This is standard practice and the secrecy of the vote is still maintained. Police should patrol areas in the vicinity of the polling centre, identifying party officials who give instructions and pay the voters once they show the photo.

7.2 Bulgarian Train

There are cases reported when white or other paper was found inside the ballot boxes. This is an indication that a voter took the original ballot with him/her and placed something else in the box instead.

The technology is that the empty ballot reaches a party militant outside the PC who marks the ballot and gives this ballot to the next voter. The next voter pulls out the already marked ballot to put in the box and brings the empty ballot back to the party militant outside. This form of manipulation which can continue all day long is not Kosovo's invention and already enjoys the name of "Bulgarian Train". This is a more elaborate form with the same effect as taking the photo and enables vote-buying.

This form of manipulation is even easier when conditional voting is allowed for it becomes even more difficult to catch the 'fake' ballots. Placing a fake ballot or a piece of news-

paper is easy when one votes conditional and this may only be found out later, if at all. Conditional ballots enabled an inventive modification of the 'train', by putting fake addresses, and these votes ended up rejected. These are usually not opened at all, which raises suspicion over the choice of policy by the election management authorities.



In 2012, rejected conditional ballots were also opened after the mayoral by-elections in Ferizaj and Kaçanik and the worst fears materialized – eight ballots of the first round were found having been cast in the second round²⁰!

Remedy

Turning voting booths in the opposite direction is not only a remedy against taking photos (as discussed in the previous section) but also to prevent voters pulling a fake ballot from their pocket. The conditional vote should be abolished, but this largely depends on the accuracy of the voters list. If the conditional ballots are not done away with, it must be a mandatory part of the procedure to open all conditional ballots, including rejected ones. If fake ballots are to be found, it should automatically be forwarded to the prosecutor.

com/?cid=1,1015,2057 (last accessed 25 January 2013).

20 Central Election Commission. 1 June 2012. Regular CEC Meeting (Meeting No. 39. [Observed by D4D representative]).

Problem 8 – The Conditional and the By-mail Ballot

Diagnosis

Conditional ballots are routinely used to vote on behalf of others. Around half of conditional votes are rejected as invalid either due to wrong addresses, or because the same names were already marked in the original signature sheets²¹. An interesting illustration is the case of Ferizaj in the 2012 where there were paradoxically more conditional votes for the second round than for the first²².

Worse, legitimate voters who are unable to vote in their preferred location and choose to vote by-mail or conditional may see their votes invalidated. When a ballot arrives from abroad via mail, the name in the outer envelope is compared to the original signature. If someone has managed to vote and sign by his/her name, the ballot which has arrived by-mail will be eliminated before the inner envelope is even opened.

Remedy

It is good news that there is wide consensus to do away with the conditional ballot. It must be noted that if the voters list is not addressed, doing away with the conditional vote may violate the right to vote which is a basic human right. Placing the diaspora in a separate voters list also eliminates much of the space for such fraud.

²¹Central Election Commission. 5 June 2012. Regular Meeting of the CEC (Meeting No. 40). [Observed by a D4D representative].

²² Leon Malazogu and Selatin Kllokoqi. Lessons Learned for Future Elections, Analysis of the by-mayoral elections in Ferizaj and Kaçanik, http://d4d-ks.org/assets/D4D_Elections_KacanikFerizaj_Eng_.pdf, page 33. (Last accessed 19 March 2013)

Problem 9 – Voting by Proxy

9.1 Location of Observers

Diagnosis

The standard set up of a polling station prevents observers from the position where they observe to see closely voters' identification documents. More in the role of spectators, observers can hardly observe whether voters sign by their name.

The position of observers is not regulated by law, although the law foresees that they have the right to observe the process from close proximity, which may be interpreted differently. The mayoral by-elections in Ferizaj and Kaçanik have changed location of observers, but this is yet to be regulated by law.

Remedy

Observers should be allowed to sit behind the ID and other commissioners so that they can actively observe the process. After much uproar by the civil society, observers were allowed to sit behind commissioners in the mayoral by-elections in Ferizaj and Kaçanik. Better wording should be introduced in the law that foresees 'close scrutiny that allows observers to see and inspect all stages of the voting except which do not violate the privacy of the vote'.

9.2 The ID Commissioner

Diagnosis

Without minimizing the role and importance of each commissioner on the Election Day, the ID Commissioner has been identified as the key official who almost alone can directly influence the outcome of the election. The ID Commissioner has a crucial role which can facilitate proxy voting on Election Day. The ID controllers often allow to vote with inadequate identification or allow signing by someone else's name.

The law was silent on this distribution and left it to the chairperson of polling stations to allocate these positions to the various parties who nominate commissioners. This was problematic and often a single party received this position in most polling stations (was easier before this technique was discovered by civil society)²³.

The excessive role of the ID commissioner is closely related to the voters list and the diaspora. Besides allowing multiple voting, this infringes the right of others to vote. If commissioners come from the municipality where they serve on Election Day, they also know which names live abroad or who has passed away. This enables a higher rate of proxy voting on behalf of those abroad. In such manner, this may enable them to point voters they are in cahoots with to names who are highly unlikely to turn out.

23 KTV. 19 April 2012. The Interaktiv program can be accessed here: <http://www.kohavision.net/video/interaktiv/3936/>

Remedy

After the advocacy by the civil society, this role was distributed proportionally to all political parties, but only for Ferizaj and Kaçanik. Similarly to the location of observers, distribution of commissioners needs to be regulated by law and not to leave it to the whimsical CEC. Modelling other countries which have strong local identities and loyalties, Kosovo should dispatch commissioners in areas other than their own on Election Day. They can vote one day before similarly to the way special needs voting occurs in hospitals or for home-bound and bed-ridden patients.

Problem 10 – Group Voting

Both family voting and voting with assistance is made more necessary by a complicated voting process which should be simplified. Except the technical tools to counter these phenomena, a system with a single tick in a ballot is strongly recommended.

10.1 Family Voting

Diagnosis

Family voting is a violation of human rights and privacy of family members. In most of the cases family voting violates the privacy of wives and elderly persons in rural areas. The argument that most family members vote the same anyway and many are illiterate rings hollow and should be countered.

Family voting is prohibited by law but observers routinely report family voting in virtually every polling station. The phenomenon is very widespread and the perception that it as a violation is very weak. As a result, commissioners do not undertake any measures against, and they are not instructed to prevent or stem this phenomenon vigorously by the CEC.

Remedy

Stage a campaign against family voting and instruct commissioners how to handle cases, instruct voters as per their right. Commissioners should be instructed to insist more vigorously to reduce the incidence of family voting. Targets must be introduced to bring this trend to zero within a number of years.

10.2 Voting with Assistance

Diagnosis

While family voting is a clear legal violation, voting with assistance is allowed but it is still disconcerting. In many cases the same person offers assistance to various voters what is prohibited by law.

The law foresees that every voter who asks for assistance should be assisted, but one person may only assist a single person throughout Election Day. Civil society observers have noted that individuals who hang out around corridors offer ‘assistance’ to elderly voters.

Remedy

Persons who assist more than once should be handled by the justice and treated as election manipulators. These persons including those in corridors who offer assistance to elderly voters should be prosecuted for intimidation and manipulation. This again tests the resolve of the polling centre manager who needs to be more determined to fulfil the duty ascribed to them. It remains problematic that the public opinion does not consider such acts clearly as violations and there is a dose of leniency and lack of understanding as per the degree that these twist the individual will.

COUNTING & POST-ELECTIONS

Problem 11 – The Preferential Vote

Diagnosis

Preferential voting has paved the way for massive manipulation of the election outcome by the very individuals who are assigned to protect it, polling station commissioners. Preferential voting meant that voters were supposed to mark the party and additionally mark up to five candidates (which correspond to names written elsewhere) that pertain to the first preference. Elections in 2009 and 2010 have shown that commissioners have massively abused preferential voting.

Some voters marked the numbers without the party, which provided an incentive to commissioners to conveniently fill in the party later. Other voters marked the party and left the names unmarked, which provided an incentive to party militants and fans of particular candidates not to let this great opportunity pass.

The most widespread phenomenon was voters who marked 2-3 preferred candidates. Additional names were added by commissioners to ensure not to pass the opportunity to use up the maximum five. Once pens were out, blank ballots were filled, and regular ballots of parties without commissioners were invalidated.

In some areas, this process reached industrial proportions leaving almost no valid ballots of smaller parties, no blank ballots, and turnout reached 100%.

The main reason why we know today plenty about fraud is internal party dissatisfaction. Numerous party

officials accused that such ‘additional marks’ were not merely individual wishes but were orchestrated. Other means we know is observers, and a D4D activist reported a video on the election evening in 2010.



Remedy

The most obvious tool against this phenomenon is to do away with the preferential vote, remove the option

Problem 12 – Low Fines & Dysfunctional Courts

to vote for multiple candidates. Therefore, in order to preserve the principle of open lists and at the same time avoid the possibility stealing votes, the recommendation is that the new election system adopts the “one tick” model where lists would be open, but voters are only able to vote for one candidate from their preferred party. No box should be placed next to the label of the party. The voter would not be able to vote for the party only as this could leave the individual names blank and serve as an incentive for commissioners to fill in a name of their choice.

The main problem is that doing away with the preferential vote without introducing districts will keep 110 name options for each party. Such a cumbersome ballot could lead most voters to simply plump for the leader and strengthen the hierarchy inside their parties.

Another option that is sometimes suggested is the use of scanners and centralize counting but this is fraught with other risks. Not opening boxes in the polling centre but only in a centrally designated location is an advantage but transport raises the fear of their replacement. Some find a scapegoat in the open lists and suggest closing them. This must be resisted for it is probably the single biggest success that the civil society has accomplished that forces at least some minimal democracy inside the parties. D4D and the Forum of Civil Society have recommended an elaborate model how to reconcile all the principles into a golden middle²⁴.

²⁴ Forum Reforma Recommendations for the Electoral System, <http://d4d-ks.org/aktivitetet/rekomandimet-e-forumit-reforma->

Diagnosis

A small number of violations were forwarded by the CEC and ECAC to the prosecutor. Even fewer were investigated and tried. A very small number were ultimately tried and mostly with symbolic fines. The number of prison sentences is ridiculously low.

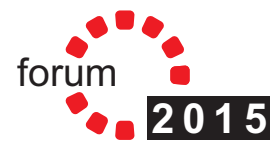
By reviewing few cases and issuing very low fines, courts have not been helpful to stem election fraud. There were cases when fines were just few hundred Euros. These fines sometimes were even under the minimum penalty foreseen by the law. Taken as a whole, low fines which are rarely imposed are stimulating fraud, instead of preventing it.

Remedy

The political elites should cease exercising pressure on judges and prosecutors to influence the outcome of electoral justice. Courts in Kosovo are swamped with a massive backlog of cases, but election fraud must be prioritized.

Kosovars should press courts to be more assiduous in pursuing electoral crimes of this and other nature, but hopes are not high. Judges and prosecutors should face professional and judicial consequences if they impose low fines that are not foreseen even with the applicable law. More detail in the law regarding judicial remedy would narrow the space for discretion of the judges.

per-sistemin-zgjedhor/?lang=en. (last accessed on 19 March 2013).



Projekt i Fondacionit të Kosovës për Shoqëri të Hapur
Projekat Kosovske Fondacije za Otvoreno Društvo
Project of the Kosovo Foundation of Open Society