

# Electoral *Deform*

**Two years later, reform is back to square zero.**



Democracy for Development  
Demokraci për zhvillim  
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**Two years later, reform is back to square zero.**

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## Executive Summary

Instead of initiating reform with the purpose of preventing irregularities, reform was initiated with the purpose of creating multiple election districts and introduce direct elections for president. The Election Reform Committee made few improvements, ignored other important points, but even this modest draft was discarded by the powerful political leaders who restarted reform from scratch.

Political leaders reversed a number of previously accomplished improvements by the Committee but soon it ran into a deadlock itself. The leaders' forum raised issues that had not been diagnosed as problematic before, which seem to cause the ire of some parties. Some previous achievements suffered setback, such as allowing the members of the Assembly to hold executive positions again.

The more the reform was delayed and elections neared, the higher the pressure on the opposition to withdraw from some of its demands. Regardless of their desire for early elections, they were afraid of holding these elections with the old law as it benefits the main party, as well as two other regionally powerful parties.

After few years of advice, verbal and through various reports, EU member states and the EU Office in Kosovo drafted a brief document urging the political leaders to accelerate electoral reform by including other stakeholders in the process as well as suggesting a series of improvements. The EU, inter alia, suggests the removal of the preferential vote, the use of black ink to mark voters, improve the reporting by the media, the timely holding of municipal elections, and more.

Other problems, such as school directors, composition of MECs, the removal of conditional voting and by-mail voting for local elections, the early publication of the voters' list,

the performance of the judiciary, clarification with regards to the documents that may be used to vote, were central to political leaders' discussions and some of them were also mentioned in the EU's memo.

Some of the decisions made by party leaders are in contradiction with EU best practices such as the decision to count votes at a municipal centre. Disputable elections, coupled with a controversial arbiter with dwindling credibility to resolute disputes, are a scenario that may lead to political violence.

In this publication, D4D presents two documents and describes the current the state of affairs with the purpose of feeding into the debate about electoral reform, which will likely commence immediately after the completion of upcoming municipal elections.

## Introduction

After a long period, Kosovo had three non-electoral years. From 2011 to 2013, policy-makers had a unique opportunity to undertake comprehensive reforms without the distraction of electoral populism.

During these three years, the electoral reform started and restarted several times, each time to hit a deadlock. Each time reform restarted, it rekindled our hopes to see it unlock, but the reformist ambition were gradually reduced. Media debates started to refer to the process of electoral 'deform'.

The last time we expected some modest reform was the Spring of 2013 when two documents were published. A two-page document reflects a list of principles drafted by the member states of the European Union which now awaits an answer by the Kosovar leadership.

The other document reflected the opinion of the party leaders who had begun to harmonise their positions. This document was made public by AKR, the party which hosted the last meeting of the leaders' forum. Both documents are indicators of the direction that reform can take after the municipal elections when discussion is expected to resume.



## The Reform Process

### *Why Did It Start?*

Any evaluation of the current situation demands a review of the motivations, which fuelled the reform in the first place. The political agreement of the leaders signed in Spring 2011 was based on two objectives.

Support, among others, the creation of more electoral districts, and  
Elect the president of the country directly by the citizens.<sup>1</sup>

The key words here is “among others”, because the formulation lacked to specify manipulation which concerned people most. Instead of starting reforms to prevent manipulation, it started with the aim to create districts and introduce direct presidential elections. In order to accomplish these main objectives, the political leaders agreed on two points of specific action,

Immediately establish a Committee to Reform the Law on General Elections, which would be tasked to draw up necessary legislative and constitutional amendments;  
Set an 8 to 12 months timeframe from the day the Committee is established and had the opposition chair the work of the Committee.<sup>2</sup>

The reform stalled because of the party calculations, which as habitually, have been put ahead of the state interest. This is best illustrated by the decision to create new municipalities, a decision taken only months before the municipal elections.

### *Where Do We Stand?*

The work of the Parliamentary Committee gave way to a high-level format composed of party leaders, only to stall completely months later. Political leaders did not allow even the minimal reform that the parliamentary committee took

the courage to undertake. The leaders put the issue to the function of the narrow political agenda.

Above all, this is a matter of principle because it displaced decision-making from the Assembly where it belongs to an informal and closed format. This is not the first time that such displacement takes place – a working group was established earlier (lead by the OSCE and the Chairperson of the CEC), which reduced the influence of the Assembly.

The creation of the working group cited the absence of expertise in the Parliament as justification. The second time that the issue was displaced, this time to the leaders' forum, the justification was that all remaining issues are only political. Even though in different formats, the two displacements from the Assembly excluded not only the public but the vast majority of party officials too. This discussion largely aimed at an agreement among the leaders that would result in their empowerment at the expense of the others within their own parties.

The final meeting of the leaders, on 23 April, and the EU letter were the reasons why we embarked to draft this paper. The meeting was convened by the Alliance New Kosovo – AKR – (the last in the series of meetings convened by various leaders by rotation) and it appeared that positions had started to harmonise.

This was the last such meeting not only because the election period was getting close – there were several months left before the country entered into the electoral cycle. The chance was missed to introduce some of the technical improvements in time for the local elections. More than two years later, very little has been achieved and the chance was missed to make technical improvements to take effect for local elections.

The leaders' forum failed because AAK decided to boycott these meetings and the VV leader stated that he is attending

these meeting primarily to obtain information and to transmit to the opinion what is being talked about behind closed doors.<sup>3</sup> The reasons for the failure of reform are different.

### *The Mistake of Linking Reform With Presidential Elections*

The current law fits the interests of most parties, which still harbour the desire to keep the loopholes, which enable manipulation. Our observation of Parliamentary Committee, working group and CEC discussions, convinced us that apart from the ruling party there are many officials among other parties resisting positive changes.

The second obstacle was the conditioning of the presidential elections with the conclusion of the reform. On the basis of the agreement, presidential elections were to be held

not later than six months from the day the necessary constitutional and legislative amendments enter into force<sup>4</sup>

If there was will to postpone the presidential elections (for which some of the larger parties hesitated), it was sufficient to delay the reform. In this manner, the electoral reform was a victim of the lack of will for presidential elections.

The more the reform was delayed and elections got closer, the higher the pressure on the opposition to withdraw from some of its demands. Regardless of their desire for early elections, they were afraid of holding these elections with the old law as it benefits the main party, as well to other regionally powerful parties.

In a roundtable organized by Forum 2015 and D4D, attended by 100 participants, more than the half of participants were of the opinion that:

larger parties are not interested to find solutions to the “industrial” scale manipulation, because they have already mastered their skills for manipulation and see no other forces that can disturb this situation.

As a reason for the lack of reform, around a third agreed that:

Leaders of larger political parties have ensured that the election process generates maximum votes for themselves, and to confirm themselves as undisputable leaders within and outside the parties they lead.<sup>5</sup>

Only 11% saw more positive reasons for the delay in reform or thought that the reform was progressing well.

Precisely during this ambitious period, member state of the European Union drafted a two-page document, which could nudge the reform on the right track.

## What is EU's Advice?

Just when the parties were trying to conclude their discussions, the international community, led by the European Union, reached consensus on the principles to be followed by Kosovo in reforming the election law. After long deliberation among themselves, several EU member states agreed on what they should expect from Kosovo. This time, expectations were not presented as a list to be imposed on Kosovo, but the Progress Report, in autumn, will likely assess their completion. More precisely, the document<sup>6</sup> of the EU Office asks to

Conclude discussion among political leaders without further delay, involving also civil society and other relevant stakeholders and conclude discussion in the Assembly by adopting the necessary changes.<sup>7</sup>

The memo does not clarify within what timeframe the discussion needs to return to the the Assembly. Having in mind the European electoral tradition, the memo should be interpreted as a request not to harmonise decisions in a closed and non-democratic process among leaders only, but to open the process and make it inclusive.

Elections seem to have become a victim of the change in the way the international community oversees Kosovo. In the past, Kosovo used to be prescribed in detail what its obligations were, leaving no room for political resistance, 'creativity' or delays.

As it enhances its sovereignty, Kosovo is treated increasingly as a state. As a country aspiring Europe, the European Union has largely taken over the earlier roles of the ICO and the US Embassy ICO's role, as the main source of policy-making guidance.

This take-over carries advantages as well as disadvantages. The EU has no unique European practice with regard to

elections, therefore it cannot prescribe in detail what Kosovo ought to do. Domestic dialogue becomes necessary in order to conclude what it is supposed to do. Such deliberation must inevitably involve research and consultations on best international practices. This EU document should be seen in this context, i.e. as an approximate instruction as to what Kosovars should do, and a call for a transparent and inclusive process on aspects it falls short of clear instructions. Hence the general entreaty,

Reform to provide for free, fair and democratic elections<sup>8</sup>

A specific point dealt with the local elections' date, which drew attention to the legal framework and instructed against the extension or shortening of the mandate for political calculations. The EU insisted that the 2013 local elections are held within the legally established timeframe, not earlier than 22/09/2013 and not later than 15/12/2013; while the President was supposed to announce them between 22/03/2013 and 15/08/2013.<sup>9</sup> This clear language scotched attempts to change the timing.

### *Political Will for Reforms and Prevention of manipulations*

Lack of trust in reforms is indicated by an informal survey among conference participants. Half of them thought that

Only a small, almost irrelevant part, of manipulative techniques applied during elections may be eliminated by legal or administrative procedures. Most violations are caused by party militants, which is difficult to address by law, rules and procedures.

The other half thought that if the

CEC, Ministry of Internal Affairs, OSCE, civil society and other institutions with a role in elections performe their duties properly, manipulations in elections would be minimal and tolerable.<sup>10</sup>

The 2010 elections were classified as ‘calm’, a term carefully picked by senior EU officials.<sup>11</sup> The EU did not want to commend a manipulated process, but it was not the right moment to reprimand Kosovo because of the upcoming dialogue with Belgrade. The same classification was later used in a report produced by an EU expert.<sup>12</sup>

Gradually, the main priorities of electoral reform have slowly become clear. The EU EEM Report assessed the current election system as

Complicated to be understood by the electorate<sup>13</sup>

For the purpose of addressing this diagnosis, the EU document requests a reform that enhances simplicity and transparency of the election legislation as well as introduces simple voting procedures.<sup>14</sup>

The broad character of the recommendation requires interpretation and discussion in order to decide how to implement it in Kosovo. The memo explicitly suggests an obvious manner to simplify the system, remove preferential voting. For some time now, D4D has recommended that voters mark only one name (necessary to have ballots with names and not numbers). Civil society has long warned against sacrificing the quality of representation and participation as collateral damage of simplification.<sup>15</sup> The paper quoted above was presented in a roundtable on EU integration with regards to elections and provides a blueprint how to interpret some of the general advice provided by the EU.

EU asks from political parties to show a clear political will to prevent the repetition of irregularities from the 2010 elections. Along with the explicit recognition of large-scale irregularities in 2010, the document gives a clear message that their repetition in the future will not go unpunished by the international community.

Other recommendations by the EU are addressed below in the paper, in thematic sections, along the analysis of issues raised by the leaders' forum. Issues dealing with the election system are included in another publication, whereas this paper focuses on the process itself and in few concrete points for the prevention of manipulations as well as other issues which do not deal directly with systematic aspects.



## Election of the President

Citizens' disillusionment with the entire political elite has led them to seek salvation from an imaginary super-human, who would clean up the entire political scene from corruption that has captured it. Such an expectation is naïve and unrealistic and most likely the president will be elected as per the will of the main. The chances that a fresh leader may emerge from outside the established elite are extremely low. This popular perception has nudged the parties to declare themselves in a populist manner, that they favour direct elections for president, although we believe that this is not their preference. The statements of some of the parties in favour of a directly-elected president are driven,

- (a) to present as reformers before citizens;
- (b) because they think that they have the best candidates;
- or
- (c) because they think that this makes things difficult to other parties.

Parties reasoned they should adopt a stance that appeals to citizens not to miss the chance to gain additional votes. The table below shows the positions officially supported by party leaders as summarized at the last meeting of the leaders's forum.

		PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Elections of President (Article 86)	By the Citizens	YES	X*	X		X	X	X	X	
	By the Assembly	NO	X*	X						

It is interesting to observe how all of them prefer a directly-elected president, but somehow we have never been further from this option, which is not at all in the agenda. Moreover, smaller parties, who do not benefit from a directly-elected president, also do not want to pass this opportunity to be seen as reformist. The power of smaller parties in the Assembly is clearly reduced if they give up the need to obtain 2/3 of the votes in the Parliament. Perhaps they

expect to gain people's trust through a super-candidate as a shortcut to supersede the larger parties. It is good that the international community did not take a position on such a normative matter, which should be part of Kosovo's domestic agenda.

Direct presidential election was one of the points agreed upon by the leaders two years ago. In retrospect we can conclude that this 'agreement' was not sincere and its sole aim seems to have been the delay of reform.

Moreover, circumstances have changed in the meantime. Firstly, the calculations of candidates as per their chance to win have changed, resulting in their re-positioning. Secondly, the Committee on Constitutional Reform recommended to slightly reduce the competencies for the future president (should the amendments pass), which additionally weakens the argument for direct elections.<sup>16</sup>

The civil society has different opinions too. The Forum "Reforma", comprising civil society members, failed to reach a consensus on the matter. The idea of a directly-elected president enjoyed widespread support but only under the condition that the future president's competences are enhanced. Should the competencies remain unchanged, there is no rationale to go ahead with direct election.

There are sufficient arguments to believe that a directly elected president may cause confusion of competencies among the Government, Assembly and the President. In a nascent, dependent on powerful non-institutional layers of decision-making, the move from a parliamentary system to a mixed system could result in additional problems. Even well-established democracies (e.g. France) indicate that confusion in competencies may result in challenges that are not easy to overcome.

There are also proposals that a president voted by the Assembly, may also be voted through with 2/3 of its

members, removing the possibility for a third round simple majority voting. Such a proposal would lower the domination of the two larger parties and would impose wider consensus that would result in a President with a wider legitimacy. However, due to the immaturity of the political scene, there is a chance that no president is elected and the country descends into chaos.

## Conflict of Interest and Mandate

The best evidence that the reform is going backwards is the broaching of two topics, which until now, have ensured some separation between elected and professional positions. There are tendencies to make members of the Assembly more dependant on their leaders as well as politicise the police, judiciary, prosecution and other important institutions.

Judges, prosecutors, members of the police cannot run unless they resign in advance, as provided for by the Constitution (Article 73).<sup>17</sup> This conflict of interest was never raised as a problem, it is clear that this useful limitations is an obstacle for some leaders, who want to see this restriction eliminated.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Position won through citizens' vote	Impossible to compete during mandate (Art. 73)	YES	X				X	X	X	X	
	Resigns when announcing the electoral race	YES									
	As currently regulated	NO		X*	X*						

It can be extrapolated that the coalition partners want a constitutional amendment to undo this constitutional separation and politicise important apolitical positions. LDK and VV have voted in favour of preserving this clear separation between politics and the civil service.

Until few years ago, Kosovo Assembly members could serve as ministers too, even though this was a severe violation of the principle of separation of powers between the legislative and the executive. After few mandates, Kosovo made a difficult decision prohibiting members of the Assembly to serve as ministers. Putting this topic in the agenda reveals that this separation has important enemies and some of the leaders want to undo this decision. Article 72 reads, as follows:

A member of the Assembly of Kosovo shall neither keep any executive post in the public administration or in any

publicly owned enterprise nor exercise any other executive function as provided by law.<sup>18</sup>

It was challenging for Kosovo to address this problem as it faced major resistance of powerful ministers who preserved their posts as members of the Assembly. Now this success of the past is under attack by the parties seeking to amend it.

		PDK	LDR	VV	AAK	AKR	SLS	KDTP	PD	Approval
Elected MP may hold an executive position	YES	X				X	X	X	X	
As currently arranged	NO		X*	X*						

The voting trend on this topic was similar with previous ones where the opposition voted to preserve the current regulation.

## Management of Elections

One of the main problems with elections in Kosovo is the very institution that manages them, Central Election Commission. This paper identified five points that were subject of discussions either among leaders or raised as a concern by the EU.

### *The Composition of the CEC*

One of the problems faced by the CEC is the lack of opposition which frequently results with out-voting, which has been often raised by the civil society. The Forum 'Reforma' and D4D have proposed a numerical balance between the position and the opposition in the CEC.

It is not surprising that opposition parties have supported this model, which was rejected by the ruling coalition. PDK's president<sup>19</sup> once suggested to have the CEC divided into 70% for the opposition and 30% for the position, but where decisions count, it has voted to keep the CEC's composition as it currently is (see table below).

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
CEC Composition (Article 139)	50% position + 50% opposition	YES		X	X						
	70% position + 30% opposition	YES									
	Current arrangement	NO	X				X*	X	X	X	

\* AKR agrees with the first option but offers a consensus for the third option too.

CEC's role to organize elections as well as, its partial role as an arbiter is under threat. The opposition has serious doubts with regard to CEC's impartiality, which should be addressed – if not by creating a 50-50 balance between position and opposition balance, or reinstate credibility in another way.

A continuation of out-voting makes it impossible for the CEC to exercise the role of an impartial arbiter and may make it difficult to convince the opposition to abide by its decisions or to accept the final results. Disputable elections,

coupled with a controversial arbiter whose credibility to resolute disputes is dwindling, is a scenario that may lead to political violence. The Secretariat was run by an acting lead for two years and faced serious difficulties in hiring a new CEO. Such tussles are illustrative of extreme politicisation not only at the CEC but at the Secretariat as a professional and permanent body as well.

### *Municipal Election Commissions*

The lack of trust is an among election management bodies at lower levels too. VV and AKR demanded that Municipal Election Commissions have their duties defined by law and not to leave it to the discretion of the CEC.

		PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Duties of the MEC	Current arrangement (by CEC instruction)	NO	X	X			X	X	X	
	Duties defined by law	NO			X*	X*				

\* VV and AKR favour the second option!

Most recommendations coming from the international community and local organizations demand that most CEC regulations to be enshrined in the Election Law. This is one of the main comments deriving from the EUEEM Report and ENEMO.<sup>20</sup>

D4D and Forum Reforma have timely required that most CEC regulations are enshrined into the law as well as to narrow CEC's room for legislation and to reduce the necessity to interpret laws. The CEC's political composition itself creates the possibility to politicise MECs as well, thus the definition of duties within the election law is superior to leaving it to the daily whims of the CEC to decide.

The positions of LDK and AAK on this matter are interesting because it coincides with those of the main party. Conversely, AKR which is in power, shares a position with VV. This is easily explained with the fact that AKR is a coalition partner at the central level and has no control over any municipality. LDK and AAK are in opposition but

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command control over municipalities which it can use to influence the work of MECs. VV and AKR, as the only entities without control over any municipalities, were against. The conclusion may be easily derived that control over municipalities gives parties significant control over MECs too.

### *Management of Polling Centres*

Lack of trust is even more obvious with regard to the role of school directors (on Election Day as Polling Centre Managers). Apart from PDK, which has “asked for additional consultations”, all entities have declared that the polling centre manager should be selected through open competition and it should not be carried out by the school director. Forum Reforma and D4D have long insisted that the role of the school directors should be done away with or amended, for they have often strayed beyond their competencies and have put themselves in the function of politics.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Polling Centres	School Director – Manager (Currently)	NO	*								
Management	Manager through open competition	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations

The support for this option by the majority of political parties is seen as positive. Their recruitment by open competition paves the way to make an apolitical choice, but it does not create much space for hope. School directors are also elected through open competition, but they are almost always political figures. It is difficult to believe that open competition for polling centre managers can be less rigged than the recruitment of school directors. The politicized of much of the civil service in Kosovo is evidence that open competition is not much of a guarantee.

Harbouring reservations to any form this matter is decided, it is important that the responsibilities of the centres’



managers (be it a school director or not) are defined in detail, specifying specific obligations, including the removal of crowd from corridors and holding them legally accountable for violations and negligence if they have not undertaken all measures possible.

### *Commissioners to Serve in Other Municipalities*

D4D and Forum Reforma have initiated a change in the lower tier of election management by proposing that, on Election Day, commissioners serve in municipalities other than their own. Several papers<sup>21</sup> presented a lot of arguments that the solidarity of commissioners to the area where they come from is higher than their professional accountability to CEC. Therefore, their placement into other areas would increase professionalism and decrease the motive and possibility for abuse.

Forum Reforma sent this request to the Assembly Committee on Election Reform, and it fell only one vote short of becoming part of the reform package.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Commissioners	Current arrangement	NO	X	X	X		X	X	X	X	X
	Placed to other municipalities	NO					X*				

*Conclusion: Approved!*

*\* AKR proposes the second option but offers consensus for the first option too!*

As initiators of this matter we are happy that such a proposal was included in leaders' agenda as well, although we regret to see that the leaders proved to be even more conservative, refusing the proposal altogether.

### *Election Observation*

Leaders and parties continuously demand observation from external organisation, but whether there is observation will not depend on our appeals. OSCE and the EU do not observe elections mainly because they have not recognized Kosovo as an independent state. At the last elections, the

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only serious external observation was from a mission comprising international NGOs, under the ENEMO banner. The EU urged to

Explore possibilities with the Council of Europe (CoE) to deploy an Election Observation Mission on the occasion of the 2013 Local Elections<sup>22</sup>

Another reason why ODIHR is not an observer in Kosovo is the active role that the OSCE has in organising elections. The Kosovo-Serbia agreement gave an additional organisational mandate to the OSCE for the organization of elections in the north. By corollary, Kosovo cannot invite ODIHR to observe in 2013 or in 2014, but it must insist that the OSCE adopts a strong observation and monitoring role throughout the election process and to draft similar reports as they monitor Kosovo's judiciary.

Apart of international observation, a lot must be done to improve domestic observation to enable real inspection of the election process. Party observers must become disciplined, militants who gather in corridors must be chased away, voters should not be called on the phone on Election Day, the new position of observers introduced in the mayoral by-elections in Ferizaj needs to be preserved, voting screens need to be turned backwards for the voters to have their back turned to the polling station.

## Voters' List and Conditional Voting

### *Cleaning Up and Publication of Voters' List*

A technical task, such as maintenance of the voters' list, cannot benefit much from leaders' statements. The recommendations to include various sources (such as MIA, population census) are good for their public relations, but in reality they are so off-the-mark that they do not contribute to the process. The census is an entirely separate process from the civil registry and its results cannot be used.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Maintenance of	CEC + MIA + Census Agency	NO	*	X	X		X	X	X	X	
Voters' Lists	Current Arrangement	NO	*								

\* PDK needs additional consultations

Such statements by the leaders reveal their perceived necessity that something has to be done, but they have not come up with any useful ideas or decisions. Such a powerless quandary inevitably leads to desperation and mutual suspicion.

D4D and Forum Reforma have put forward various recommendations options how to revise the voters' list but given the remaining timeframe little was possible to do before the local elections in the Fall of 2013. The EU has also put asked that the voters list are put in order three months ahead of elections.<sup>23</sup> Point 14 further asks to

Clarify competences of authorities on all matters related to the electoral process, including by consolidating the new central population database to allow for an improved voters list.<sup>24</sup>

As part of the project "Improvement of voters' list", during 2012 and 2013, the CEC removed 11,097 names from the voters' list, whereas as of 2000 removed a total of 52,451 names of deceased persons.<sup>25</sup> The CEC has also stated that recently it has removed around 30,000 names, including the

names of deceased persons and the ones that renounced Kosovo’s citizenship. For CEC this means that the lists are cleaned up<sup>26</sup> but this is only a tiny fraction of the magnitude of the problem.

In the meantime, around 140,000 new voters have been added to the voters’ lists in the last three years<sup>27</sup>, while the natural growth (birth rate minus mortality minus migration) explains a possible growth of only 15,000 per year. It is clear that point 7 has not been fulfilled, whereas point 14 needs to await the continuation of the reform after elections.

It is encouraging that there is readiness to publish the voters’ list earlier than usual, also an earlier request evoked by the Forum Reforma. While all voted *in favour*, this depends on CEC’s capacities and the accuracy of the civil register, which is maintained by the the Ministry of Internal Affairs.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Time of Publication of Lists for Verification	Publication at least 120 days before election day and closure 45 days before election day	NO	X*	X	X		X	X	X	X	
	Current arrangement	NO									

\* PDK needs additional consultations

It would have been better to follow the Venice Commission which advises to have the voters’ list public at all times.<sup>28</sup> We do not recommend at this stage to go as far as to clean up all persons who never obtained Kosovo documents (there are over 300,000 individuals still listed with UNMIK documents).<sup>29</sup> A number of voters from the northern municipalities of Kosovo, who are in possession of documents of the Republic of Serbia only, should be added to this number. Due to political sensitivities, a flexible attitude may be maintained until the national elections in 2014, but after that Kosovo should insist to fix its voters’ lists once and for all.

## *Conditional and By-mail Voting*

Leaders have at least agreed that conditional voting should be removed. This is in compliance with the recommendations of the international community and it should also add the removal of by-mail voting for municipal elections in conformity with civil society recommendations.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Conditional Voting	Current arrangement	NO									
	Eliminate conditional voting	NO	X	X	X		X	X	X	X	X

The EU member states asks to

Eliminate the conditional voting for all elections, as it provides for potential misuses and fraudulent activities, as well as out of country voting for local elections.<sup>30</sup>

It must be added that the ultimate removal of conditional voting depends on the clean-up of voters' list as well as from the level of accuracy in the allocation of voters to nearest polling centres. The maintenance of accurate voters' addresses remains a challenge. If the voters' list is not fixed, doing away with conditional voting may strip many voters off the basic human right to vote. Consequently, despite leaders' statements, we may see conditional voting back.

## *Voting from Diaspora*

Voting from abroad remains very low. Complicated application and voting procedures for voters from abroad is one of the reasons for the low participation of diaspora in elections. Another reason seems to be the fact that diaspora is more interested to take part in the local political life at their place of residence where they pay taxes (place of migration) rather than in their municipality of birth.

Election irregularities have also had an impact in the low participation of diaspora. The high expectations of Diaspora to see improvements in Kosovo and the comparison with Western countries they live in results with major

disappointment and consequent loss of interest to vote. Another factor is the growing integration of Diaspora in the countries they live in.

Increase in the number of voters from Diaspora that take part in elections remains a challenge for political parties to which they have no appropriate response. Up to date, by-mail voting proved to be unsuccessful taking into account the high number of persons in Diaspora that are eligible to vote against the low number of those applying to vote (2,000- 3,000) and even lower number who turns out to vote (1,500).

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Manner of Voting from Diaspora	Embassies and Consulates	NO	*	X	X		X	X	X	X	
	Electronic	NO	*				X	X	X		
	Embassies and Consulates of Friendly States	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
By-mail voting		NO	X	X	X		X	X	X	X	X

\* There is consensus for by-mail voting by all parties!

The leaders' forum openly expressed for all ways of voting (given below and through diplomatic missions), but this is more of a wish list rather than an expression of what can be accomplished swiftly.

D4D supports the idea to introduce new voting vehicles for the Diaspora, including the in-person voting throughout embassies and consulates of the Republic of Kosovo. The Diaspora should be included in separate voter lists and their names must not appear in the villages where they originally came from. Developing a special voters' list improves the outlook to increase turnout of the Diaspora, improves their connection to Kosovo, and it eliminates the possibility of voting on their behalf.

Kosovo Diaspora with permanent residency abroad should maintain the right to vote on general elections, but not for municipal ones. The election of local representatives should be the exclusive right of those persons living in the

respective municipality for at least six months prior to elections taking place, and this excludes much of the Diaspora and may enfranchise a number of foreigners residing in Kosovo.

### *Personal Documents for Voting*

Kosovo has not clearly decided on the documents with which voters may vote on the elections organized by the Republic of Kosovo. Article 90 of the LGE provides for documents with which one may vote, but allows room for interpretation as to which country these documents belong to:

- (a) a valid personal Identification Document (ID) card;
- (b) a valid travel document;
- (c) a valid passport;
- (d) a valid Kosovo driving license;
- (e) a valid IDP card; or
- (f) a valid Refugee card<sup>31</sup>

This documents appears to be unclear as the EU asks to clarify which documents are admissible for voting.<sup>32</sup>

The Election Reform Committee has included an amendment whereby the law provides for the voting to be conducted with Republic of Kosovo documents only. Forum Reforma and D4D recommended that the documents of Kosovo become the sole acceptable documents to vote taking into account that it has been long since independence was declared and the citizens had the opportunity to obtain Kosovo's documents. Furthermore, the recent agreement between Kosovo and Serbia paved the way to vote in Kosovo with the documents of the Republic of Kosovo only. While some flexibility can be introduced during the north's transition, this should be Kosovo's aim not for emotional reasons, but to put an end to fraud.

Negotiations with Serbia have allowed for Serbs in the north

to vote with other documents apart from Kosovo ones and this may be justified in exchange for the integration of the north. However, after local elections, Kosovo needs to make it clear that from now on persons may only vote with the documents of the Republic of Kosovo and commence applying this position with general elections in 2014. Elections cannot be safeguarded if there is a legal loophole, which may be misused.

This issue is not about personal documents and state symbolism only, but is about persons who have not obtained Kosovo documents, have no personal identification number and as such cannot be included in the civil registry (and voters' lists). Inclusion of persons who are not in possession of Kosovo's citizenship paves the way for double names and makes cleaning up lists more difficult.



## Election Process

### *The length of the campaign period*

The shortening of the election campaign period received the support of all political parties with the exception of VV.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Duration of Election Campaign	14 days	NO	X	X			X	X	X	X	
	21 days	NO									
	31 days	NO			X						

A shorter pre-election campaign will have a negative impact in the presentation of programs of political parties programs, and particularly damages the opposition and smaller parties. Ruling parties have a full four-years mandate to show their performance, whereas the campaign is a chance for the opposition to present their plans. It is only during the official campaign that the opposition has guaranteed media exposure and shortening the campaign would limit the opposition's opportunity to compete with their visions.

Shortening the campaign may also fuel tensions because it compresses campaign events in a shorter time-frame. The competition for public venues where to hold campaign events becomes fiercer and multiple requests for use of space may result in conflict and will favour the main parties.

### *Identification and the marking of voters*

Since the first post-war elections, voter identification was conducted manually. Recent elections in 2009 and 2010 saw a setback with the removal of voters' photos, which was used in earlier elections. With the exception of PDK, other political parties supported the proposal for dual identification, biometrical and manual.

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voter Identification	Current arrangement (Manual)	NO	*								
	Biometric + manual	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations!

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This is a good desire, but does not take reality into account. Some consultants have recommended the Election Reform Committee that biometrical identification is very difficult to accomplish. Due to the lack of confidence to prevent multiple voting, opposition laid its hopes on a ‘magical’ solution, more to absolve them of responsibility rather than to really expect to address the matter. Opposition should be supported with advice how to ensure safe identification, without dreaming about state-of-the-art technology. Nurturing hopes on a technical super-solution loses valuable time and at the end identification will remain as problematic as before.

One technique enabling multiple voting was the poor quality of indelible ink as well as the dys-functional of UV lamps. European Commission has also identified this problem and proposed to

Replace indelible with visible ink<sup>33</sup>

Forum Reforma and D4D have earlier proposed to procure the ink and the lamps in original packages from the manufacturer up to the moment when they are handed over to the polling centre, but this has proved to be an insufficient guarantee.

The EU proposal may appear somewhat radical (reacting to this proposal, the CEC’s chairperson complained in a TV debate that Kosovo is not Africa) and in a way insulting. Visible ink is indeed used mainly in countries in post-conflict societies and nascent democracies but this clearly where Kosovo still belongs.

Technology was suggested as a cure for the voting process too, but this received support from AKR only. Most shared the opinion that voting should be conducted manually as it was until now.

Two years later, reform is back to square zero

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		PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voting	Current arrangement (Manual)	NO	X	X	X		X	X	X	X
	Electronic	NO								
	Electronic + manual	NO				X*				

*\* AKR proposes the third option but offers consensus for the first option too!*

Despite technological advancements and possibilities of using various forms of electronic voting, D4D also thinks that manual voting is the most appropriate form of voting. Electronic voting would be dangerous because of the possibilities of software misuse, failure of electronics on Election Day as well as the impossibility to conduct an audit should that prove to be necessary.

## Counting and Electoral Justice

### *Location and Manner of Counting*

Despite suggestions by the EU, political parties have supported the idea that vote counting is conducted at a centralised counting centre in each municipality.

		PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Location for Counting of Ballots	Polling station	NO								
	Counting centre at municipality	NO	X	X	X		X	X	X	X
	Polling centre	NO								

The EU suggested the contrary:

Continue the practiced counting in polling centers rather than in centralised locations [Venice Commission: The votes should preferably be counted at polling stations themselves [...] as it reduces the risk of substitution].<sup>34</sup>

The civil society was divided on this matter. Supporters of vote counting in polling stations stress the possibility of changing ballot boxes as well as delays that would be caused in counting and publishing of results. The Progress Report had criticized delays as one of the elements causing the loss of trust in elections:

The repeat elections, recounts and delayed publication of results damaged the credibility of the process and the legitimacy of the results.<sup>35</sup>

Supporters of counting the vote at a single centre for each municipality emphasize the hitherto bad experience whereby commissioners committed most manipulations, the vast majority of which occurred during the counting. Counting at each centre would enable a transparent counting in front of a larger number of media, observers and may employ scanners/cameras, which may reduce manipulations down to a minimum. The deficiency of counting in polling centres remains the possibility of changing ballot boxes on the way there, the impossibility of an audit as well as the lack of safeguards that the counted

box was the box containing the real ballots.

With the exception of PDK, the leaders' forum agreed to count ballots both physically and electronically.

		PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voting Form	Physical and electronic	NO	*	X	X		X	X	X	X
	Physical (current arrangement)	NO	*							

\* PDK needs further consultations!

Improper discussion and quick decision-making in principle reveals that opinions were formed without sufficient deliberation, which would be necessary for such technical topic. D4D supports the use of technology when counting, but this may be taken into account only if the counting is indeed centralised into regional centres, which we strongly caution against.

## Results

The fast publication of results has an impact in decreasing tensions at the election evening. Official results of Kosovo's elections are often delayed for weeks, which raises doubts for manipulations among political parties and electorate alike. Another occurrence which affects the credibility of published results is the failure to provide a copy of results at the polling stations, to parties and to observers. These problems were noticed by the EU representatives who proposed to:

Set a deadline for final results and publicise all information on the CEC website in a timely fashion.<sup>36</sup>

The EU also asks to

Provide certified copies of the reconciliation and results form to all party agents and other observers upon their request.<sup>37</sup>

The CEC website has serious problems and creates the impression that it hides more than it publishes. The CEC has recently improved the website but ample information which

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should be public is still missing. A truly transparent institution should not make it difficult for the public to access information, but should make them accessible widely.

### *Electoral Justice*

EU's request to do away with collective sanctioning was supported by political entities and this request has been included in the new uncompleted draft law. It remains unclear yet what collective sanctions mean, considering that political entities are legal entities. D4D recommends the removal of collective sanctions for individual violations, but calls to find a way to ensure hierarchical responsibility throughout the chain of command inside political parties. This has nothing to do with collective sanctions but with hierarchical and chain responsibility in cases when manipulations are planned from the top.

The EU asks to make the complaints and appeals process more transparent and to extend the deadline for filing them.<sup>38</sup> Earlier, the EU EEM Report found that courts do not conduct transparent processes and that

The 24-hour deadline for filing complaints and appeals may be too short for parties, candidates and observers to prepare credible complaints and appeals<sup>39</sup>.

In general, the Election Reform Committee supported extending the deadline for complaints and appeals, but it appears that this was not part of the agenda at the leaders' forum.

### *Slow and Dysfunctional Courts*

It took a long time for courts to impose sentences or not to sanction the cases of 2010 election manipulators from the point these cases were submitted to courts. Many cases have not ended yet, at the time when the country is preparing for another set of elections. The situation is so dire that the EU

memo states that: Less than half of the 232 cases resulting from the 2010 general election have been adjudicated as of February 2013.<sup>40</sup>

The slow work of courts was raised by the EU, which asks to “Adjudicate all past cases of alleged electoral fraud”<sup>41</sup> and argued that “perpetrators must be sanctioned in a timely manner”.<sup>42</sup> Taking note that judges imposed sanctions that are lower than provided for by the law, the document also asks to “ensure that appropriate sanctions are applied”<sup>43</sup>

Courts need to improve their performance and prove that they are independent. Application of meritorious sentences in proportion with the offence committed must be ensured in order to have adjudicate cases efficiently and in a transparent manner. Electoral crimes should be addressed swiftly during the election period, and that is why they should, as a matter of urgency, become a priority for courts.

The CEC should be more active in monitoring manipulations because this damages the image of elections and the CEC itself. The CEC itself did not make use of all available legal remedies. The Kosovo Institute of Justice, an independent think-tank, found that:

Despite courts’ instructions that the Central Election Commission initiates a civil law suit for compensation, that has not happened yet<sup>44</sup>.

CEC needs to be more transparent and communicate whether it initiates civil lawsuits is instruction by the courts, and if not, CEC must assume responsibility for its decision to do otherwise. The CEC must also report statistics of all sorts of violations reported throughout the chain of electoral justice.

There was a case that occurred for the mayoral by-elections in Ferizaj in 2012. Eight persons were reported to have voted both conditionally and regularly. At a meeting of the CEC, it was decided to forward these cases to the

prosecution but according to information in possession of D4D, this has never taken place<sup>45</sup>. Not only that the CEC has not taken any measures, but it has chosen silence as a way to let offenders off the hook.



## Beyond Electoral Reform

Some of the recommendations deal with elections but not directly. The EU memo asks to “Guarantee free access to public media outlets”. The fact that the EU raises the freedom of public media outlets is worrisome and needs to be addressed seriously. The EU raises two other issues, the financing and registration of political parties.

### *Political Party Financing*

Even though regulated by law and CEC regulations, political party financing suffers from serious deficiencies. In its memo sent to political parties, the EU asks to

Amend and fully implement the Law on political party financing to strictly regulate donation rules and clarify the reporting obligation of political parties<sup>46</sup>.

Furthermore, this document refers to the European Commission report on visa liberalization asking for transparency in the financing of political parties<sup>47</sup> as an effective measure in fighting corruption and as a measure preventing corruption.

A study on the financing of political parties concludes that the legal framework is not in line with European standards because it neither strictly prohibits and it does not regulate donations by legal entities and recommends that the law should “oblige parties to contain only one bank account and it should set strict deadlines regarding the publication of financial reports”.<sup>48</sup>

The absence of a tougher law to scan the origin of donations is directly linked with equal opportunities in the electoral competition and the possibility of a patronage system to use the civil service and the state budget for party needs.

## *Political Party Registration*

Existing political parties have significant power over the registration of new parties, because this process is performed by the Office for the Registration of Political Parties, which is part of the Secretariat, while the final decision-making lies with the CEC (i.e. larger existing parties). This is a conflict of interest, for current parties can raise the threshold that new entities have to meet to enter competition (number of signatures and certification fee).

The EU memo asks to

Urgently increase the resources of the Office for Political Party Registration and Certification and the Central Election Commission<sup>49</sup>

Civil society has demanded that the registration of political parties is not conducted by the political CEC but by a judicial body.

## Conclusions

Entering politics in Kosovo results with massive privileges. The investment that parties and individuals invest is returned multiple times after elections for the winners. This “winner takes all” rationale increases the motive to win elections, and contestants use all means to this effect. But if all means involve irregularities similar to 2010, our country may quickly slide towards political violence. Numerous parties have warned that this time they will defend the vote with all means.

The repetition of violations of the scale in 2010 must be prevented and this may happen only if there sufficient political will to put the country ahead of the party interest. While expectations for awareness-raising, which may be futile, the legal reform should be amended to narrow the room for manipulation. Pressure by civil society and the international community may push forward both aspects. The final piece of the chain are courts which can close the circle of electoral justice, and they can only do if they impose sanctions that are sufficiently high to discourage violations.

Elections marked by integrity are the main way to translate public trust into decision making. The ambitions for election reform should return on stage to bring back politics in the service of citizens and not vice versa. The extinction of the industry of electoral manipulation is the only way to promote the development of industry in other sectors.

## **Reforma Forum Conclusions**

Most recommendations of this paper are included in special parts above, whereas below you will find the recommendations of the Forum Reforma and D4D. Conclusions of the Forum Reforma on some of the topics may be found in the links below:

### **Electing the President of Kosovo**

<http://d4d-ks.org/assets/ElRecommendations-on-Presidential-Elections.pdf>

### **Central Election Commission**

<http://d4d-ks.org/assets/ElReform-Forum-Recommendations-CEC-ENG.pdf>

### **Electoral System**

<http://d4d-ks.org/assets/El-ReformaforumElec-Sys-Recs.pdf>

### **Voters' List**

<http://d4d-ks.org/assets/ElReform-Forum-Recommendations-Voters-List-ENG.pdf>

## *Annex I: Assembly Resolution*



### **Republika e Kosovës**

**Republika Kosovo - Republic of Kosovo**

**Kuvendi - Skupština - Assembly**

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#### **The Assembly**

Pursuant to Article 65.1 of the Constitution of the Republic of Kosovo and Article 52.2 of the Rules of Procedure of the Assembly of the Republic of Kosovo, upon the proposal of the parliamentary groups of the PDK, LDK and AKR, hereby approves

#### **RESOLUTION**

Endorsing the Memorandum of Agreement between Mr. Behgjet Pacolli, Mr. Isa Mustafa and Mr. Hashim Thaci

1. The Assembly of the Republic of Kosovo expresses its support for the Memorandum of Agreement between Mr. Behgjet Pacolli, Mr. Isa Mustafa and Mr. Hashim Thaci (hereinafter the Memorandum) of April 6, 2011, and fully endorses the commitments contained therein.
2. The Assembly of the Republic of Kosovo endorses the commitments and timeliness contained in the Memorandum related to the need for amendments to the Constitution of the Republic of Kosovo and associated legislation to provide for a direct election of the President of the Republic of Kosovo by the people. The Assembly endorses the timeline contained in the Memorandum whereby the first direct presidential elections in Kosovo will take place no later than 6 months from the date the necessary constitutional and legislative changes are enacted. The Assembly supports the establishment of a Commission, led by a member of Parliament identified by the governing coalition, that will be responsible for this purpose as outlined in the Memorandum. Consistent with the Memorandum, the Commission will aim to complete its work within 6-9 months from the date it is established.
3. The Assembly of the Republic of Kosovo endorses the commitments and timeliness contained in the Memorandum related to the need for amendments to the Constitution of the Republic of Kosovo, the Law on General Elections and associated legislation which will among other provisions support the creation of multiple electoral districts in Kosovo. The Assembly supports the establishment of a Commission, led by a member of Parliament identified by the opposition parties, that will be responsible for this purpose as outlined in the Memorandum. Consistent with the Memorandum, the Commission will aim to complete its work within 8-12 months from the date it is established.

## Electoral Deform

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4. The Assembly of the Republic of Kosovo endorses the timeline contained in the Memorandum whereby the first general elections in Kosovo under the amended Law on General Elections will take place no later than 18 months from the date it is enacted.
5. The Assembly of the Republic of Kosovo supports the establishment of the abovementioned Commissions necessary for the constitutional and legislative processes in full compliance with the Constitution of the Republic of Kosovo.

N0. 04 - R -02  
Prishtine, 7 April 2011

President of the Assembly  
**Jakup KRASNIQI**

**Resolution is sent to:**

- President of Kosovo,
- Parliamentary Groups,
- Government of Kosovo,
- Archive of the Assembly.

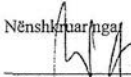
## Annex II: The Political Agreement

### Memorandum i Marrëveshjes Ndërmjet

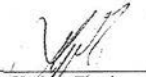
Z. Behgjet Pacolli, z. Isa Mustafa dhe z. Hashim Thaçi

1. Ne, udhëheqësit e AKR-së, LDK-së dhe PDK-së, nominojmë Atifete Jahjagën si kandidate tonën për presidente të Republikës së Kosovës dhe shprehim përkrahjen e plotë të partive tona respektive për kandidaturën e saj. Jemi të përkushtuar ta vemë interesin e vendit mbi atë tonin.
2. Ne pajtohemi që menjëherë të formojmë një “Komision për Reformën e Zgjedhjeve Presidenciale” që do të hartojë amandamentet e nevojshme kushtetuese dhe çfarëdo legjislacioni të ndërlidhur, të nevojshëm për të amandantuar Kushtetutën e Republikës së Kosovës në mënyrë që presidenti të zgjedhet në mënyrë të drejtpërdrejtë nga populli. Komisioni do të synojë të përfundojë punën e vet brenda 6 - 9 muajsh nga data e themelimit të tij. Një anëtar i Kuvendit i identifikuar nga koalicioni qeverisës do të udhëheqë Komisionin e themeluar për këtë qëllim. Ne pajtohemi se zgjedhjet e para të drejtpërdrejta presidenciale në Kosovë do të mbahen jo më vonë se gjashtë muaj nga data në të cilën ndryshimet e nevojshme kushtetuese dhe legjislative hyjnë në fuqi.
3. Ne pajtohemi që menjëherë të formojmë një “Komision për Reformën e Ligjit për Zgjedhjet e Përgjithshme”, i cili, mes dispozitave tjera, do të përkrahë krijimin e më shumë distrikteve zgjedhore në Kosovë dhe do të hartojë ndryshimet e nevojshme legjislative dhe kushtetuese për ta arritur këtë qëllim. Komisioni do të synojë të përfundojë punën e vet brenda 8 - 12 muajsh nga data e themelimit të tij. Një anëtar i Kuvendit i identifikuar nga partitë opozitare do të udhëheqë Komisionin e themeluar për këtë qëllim.
4. Ne pajtohemi se Ligji i reformuar për Zgjedhjet e Përgjithshme do të përfshijë një dispozitë që thotë se zgjedhjet e para të përgjithshme sipas ligjit të amandantuar do të mbahen jo më vonë se 18 muaj nga data në të cilën Ligji i reformuar për Zgjedhjet e Përgjithshme dhe amandamentet e ndërlidhura kushtetuese hyjnë në fuqi.
5. Ne, po ashtu, pajtohemi se si pjesë e kësaj marrëveshjeje, do të paraqesim ndryshimet e përmendura në paragrafët 2, 3 dhe 4 në mbledhjen e Kuvendit në të cilën zgjedhet presidenti i Kosovës.


Nënshkruar nga

  
Behgjet Pacolli

  
Isa Mustafa

  
Hashim Thaçi

Dëshmuar nga:

  
Christopher Dell

Prishtinë  
6 prill 2011

## *Annex III: The EU Letter*

### **Memo to Party Leaders on Kosovo's Electoral Reform Process from the EUSR/Head of European Union Office and EU Member States represented in Pristina**

#### **GENERAL PRINCIPLES FOR ELECTORAL REFORM**

1. **Conclude discussions among political leaders without further delay, involving also civil society and other relevant stakeholders and conclude discussions in the Assembly by adopting the necessary changes<sup>1</sup>**
2. **Reform to provide for free, fair and democratic elections**
3. **Deliver a reform that enhances simplicity and transparency of the electoral legislation<sup>2</sup>**
4. **Ensure strong and enduring representation of minority communities, potentially through the extension of the system of reserved seats or by other way that is in line with international standards<sup>3</sup>**
5. **Maintain gender representation**
6. **Guarantee free access to public media outlets**
7. **Put order into the voters lists at least three months ahead of the elections**
8. **2013 Local elections to be held within the legally established timeframe. *Date for the election: not earlier than 22/09/2013 and not later than 15/12/2013; date for the President to set the date: not earlier than 22/03/2013 and not later than 15/08/2013.*<sup>4</sup>**
9. **Political leaders should express their determination and commit not to allow irregularities as in the 2010 elections**
10. **Explore possibilities with the Council of Europe (CoE) to deploy an Election Observation Mission on the occasion of the 2013 Local Elections.**

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<sup>1</sup> Once the revision of the Law on General Elections has been completed, harmonisation with the Law on Local Elections and with secondary legislation is required. Due to the tight timeframe, the 2013 Local elections shall be held under the applicable legislation, taking due account of the Venice Commission's Code of Good Practice in Electoral Matters, point II.2.b: "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election."

<sup>2</sup> European Commission for Democracy through Law (Venice Commission), 9 October 2002. Code of Good Practice in Electoral Matters states "Rules which change frequently – and especially rules which are complicated – may confuse voters" and further "international practice mostly provides for simple voting procedures."

<sup>3</sup> "Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage" Venice Commission Opinion no. 190/2002"

<sup>4</sup> Universal Declaration of Human Rights, Article 21 establishes five basic principles of electoral democracy: legality, periodicity, secret ballot and universal and equal suffrage.



*To fulfil these general principles, and point 4 in particular, consideration should be given to the following options:*

- Reduce the number of **preferential votes to a minimum**. Preferably, the voter should express a single preference for a candidate of his/her choice. This would enable quicker counting by the election management bodies and reduce opportunities for intra-party fraud.
- Specify that the **electoral threshold** does not apply to parties representing minority communities.
- Eliminate **conditional voting** for all elections, as it provides for potential misuse and fraudulent activities, as well as out of country voting for local elections.
- Clarify which **documents** are admissible for voting.
- Replace indelible with **visible ink**.
- Remove **collective sanctions**.
- Make the **complaints and appeals process** more transparent by rendering all complaints public and opening the review process to the public. Extend the complaints and appeals deadlines, as recommended by the Electoral Reform Commission.
- Continue the practiced **counting** in polling centres rather than in centralised locations [*Venice Commission: The votes should preferably be counted at polling stations themselves [...] as it reduces the risk of substitution*].
- Set a **deadline for final results** and **publicise** all information on the CEC website in a timely fashion.
- Provide **certified copies** of the reconciliation and results form to all party agents and other observers upon their request.

#### **BEYOND THE ELECTORAL REFORM**

11. **Amend and fully implement the Law on political party financing to strictly regulate donation rules and clarify the reporting obligations of political parties.** *This is also a requirement under the first report on the Visa liberalisation dialogue as political party financing is considered one of the most critical areas in the fight against corruption.<sup>5</sup>*
12. **Urgently increase the resources of the Office for Political Party Registration and Certification and the Central Election Commission.**
13. **Adjudicate all past cases of alleged electoral fraud.** Perpetrators must be sanctioned in a timely manner. Ensure that appropriate sanctions are applied [*less than half of the 232 cases resulting from the 2010 general election have been adjudicated as of February 2013*].
14. **Clarify competences of authorities on all matters related to the electoral process, including by consolidating the new central population database to allow for an improved voters list.** *This process is currently ongoing with the assistance of the IPA project in support of the Civil Registration Agency in the context of the visa liberalisation dialogue. Enhanced political attention would help speeding up the creation of a consolidated central population registry, thus leading to a more up-to-date voter list.*

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<sup>5</sup> European Commission for Democracy through Law (Venice Commission), 11 September 2003, Convention on Election Standards, Electoral Rights and Freedoms requires "public, timely and full funding of elections, election campaigns of candidates and political parties (coalitions), and disclosure of information about all expenditures incidental to the preparation and administration of elections or election campaigns of candidates and political parties (coalitions)";

"candidates and political parties (coalitions) participating in elections shall, at the intervals established by law, submit to the bodies and officials designated by law, the information and reports concerning the receipt of all donations to their election funds, the donors, and all expenditures made by them from these funds to finance their election campaign. They also shall arrange for the publication of such information and reports, unless this duty is imposed by law on election bodies."

## Annex IV: Leaders' Positions

Report on Electoral Reform Meeting – political leaders meeting  
Organized by New Kosova Alliance – 23 April 2013



Issues to be decided		Constitutional changes	PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Electoral Districts	A single electoral district	NO	X*	X*	X		X	X	X	X	
	6 electoral districts	NO	X*								
	One municipal one electoral district	NO		X*							
	100 electoral districts	NO									

\*PDK is for a single or six electoral districts!

\*LDK is for a single district or each municipal one electoral district!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Threshold	7% coalitions	NO	X	X	X		X	X	X	X	X
	5% political parties	NO	X	X	X		X	X	X	X	X
	2.5% independent candidates	NO	X	X	X		X	X	X	X	X

Conclusions: Threshold is approved by all political parties!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Elections of President (Article 86)	By the Citizens	YES	X*				X	X	X	X	
	By the Assembly	NO	X*		X						

\* PDK is for both alternatives!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
CEC Composition (Article 139)	50% position + 50% opposition	YES		X	X						
	70% position + 30% opposition	YES									
	Current arrangement	NO	X				X*	X	X	X	

\* AKR agreed for the first version but also offers consensus for the third variant!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Lists	Open Lists	NO	X	X	X		X	X	X	X	X
	Closed Lists (article 64)	YES									

Conclusion: All the parties agreed for open lists!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voting List	Parties votes, vote for leader + 3 people	NO	X	X			X	X	X	X	
	As it is now / + 5 people	NO			X*						

\* VV does not offer consensus!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Duration of Election Campaign	14 days	NO	X	X			X	X	X	X	
	21 days	NO									
	31 days	NO			X						

\* VV does not offer consensus!

## Two years later, reform is back to square zero

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Manner of Voting from Diaspora	Embassies and Consulates	NO	*	X	X		X	X	X	X	
	Electronic	NO	*				X	X	X		
	Embassies and Consulates of Friendly States	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
*By-mail voting		NO	X	X	X		X	X	X	X	X

\* For voting by post there is a consensus from all parties!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
MP from Diaspora	Plus 5 MP	YES	*					*			
	Plus 2 MP ( within 120)	YES	*	X*	X*		X*	*	X	X	

\* PDK and SLS need additional consultations about how to vote, who votes etc!

\* Other parties agreed to have two seats without increasing number of 120 MP!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Increasing the number of MP (article 64)	From 120 to 125	YES									
	From 120 to 130	YES									
	As it is now	YES	X	X	X		X	X	X	X	X

Conclusion: Approved version as it is currently!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Reserved Seats (articles 148)	Reserved seats + 1 mandate	YES								X	
	Reserved seats + 2 mandates	YES	X				X	X	X		
	1 seat for montenegrin	YES	X				X	X	X	X	
	1 seat for croatian	YES	X				X	X	X	X	
	Do not agree for reserved mandates	YES		X	X						

Conclusions: Parties do not agree for reserved seats!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voter Identification	Current arrangement (Manual)	NO	*								
	Biometric + manual	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Polling Centres Management	School Director – Manager (Currently)	NO	*								
	Manager through open competition	NO	*	X	X		X	X	X	X	

\* PDK needs additional consultations!

## Electoral Deform

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Maintenance of Voters' Lists	CEC + MIA + Census Agency	NO	*	X	X		X	X	X	X	
	Current Arrangement	NO	*								

\*PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Election Monitoring	Civil Society + OSCE + EU etc	NO	X	X	X		X	X	X	X	X
	As it is now	NO									

Conclusion: Approved!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Time of Publication of Lists for Verification	Publication at least 120 days before election day and closure 45 days before election day	NO	X*	X	X		X	X	X	X	
	Current arrangement	NO									

\* PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Location for Counting of Ballots	Polling station	NO									
	Counting centre at municipality	NO	X	X	X		X	X	X	X	X
	Polling centre	NO									

Conclusion: Approved!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Method of counting	Physical and electronic	NO	*	X	X		X	X	X	X	
	Physical (as it is actually)	NO	*								

\* PDK needs additional consultations!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Commissioners	Current arrangement	NO	X	X	X		X	X	X	X	X
	Placed to other municipalities	NO					X*				

Conclusion: Approved!

\*AKR proposes second option but offers consensus for the first option too!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Voting	Current arrangement (Manual)	NO	X	X	X		X	X	X	X	X
	Electronic	NO									
	Electronic + manual	NO					X*				

\* AKR proposes third option but offers consensus for the first option too!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Duties of the MEC	Current arrangement (by CEC instruction)	NO	X	X				X	X	X	
	Duties defined by law	NO			X*		X*				

\* VV and AKR are for the second option!

## Two years later, reform is back to square zero

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Position won through citizens' vote	Impossible to compete during mandate (Art. 73)	YES	X				X	X	X	X	
	Resigns when announcing the electoral race	YES									
	As currently regulated	NO		X*	X*						

\* LDK and VV are for the third option!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Elected MP may hold an executive position		YES	X				X	X	X	X	
As currently arranged		NO		X*	X*						

\* LDK and VV are for the second option!

			PDK	LDK	VV	AAK	AKR	SLS	KDTP	PD	Approval
Conditional Voting	Current arrangement	NO									
	Eliminate conditional voting	NO	X	X	X		X	X	X	X	X

Conclusion: Approved!

## Endnotes

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<sup>10</sup> Forum 2015. 21 May 2013. Roundtable organized by Forum 20015 and D4D for launching publication "[Top Electoral Shames – A Practical Approach to Fixing Elections in Kosovo.](#)"

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<sup>20</sup> EU EEM. 25 January 2011. Final Report. European Union Election Expert Mission in Kosovo. [http://eeas.europa.eu/delegations/kosovo/documents/press\\_corner/25012012\\_final\\_report\\_eu\\_eem\\_kosovo\\_2010.pdf](http://eeas.europa.eu/delegations/kosovo/documents/press_corner/25012012_final_report_eu_eem_kosovo_2010.pdf), p. 6.

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<sup>33</sup> EUSR/Head of European Office. April 2013. Memo to Party Leaders on Kosovo's Electoral Reform Process from the EUSR/Head of Union Office and EU Member States represented in Pristina. <http://elibraria.org/assets/General-Principles-for-Electoral-Reform.pdf>, Point 10, page 2.

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### **Elections:**

#1: D4D Institute. September 2011. Deconstructing Election Trends 2000-2010.

#2: D4D Institute. March 2012. An Impression of Reform: How to Restore Trust on Elections?

#3: Malazogu, Leon, Visar Sutaj and Drilon Gashi. November 2012. Kaçanik Voters' List Audit: A Sample for Kosovo.

#4: Malazogu, Leon and Selatin Klllokoqi. February 2013. Lessons learned for Future Elections: An Analysis of the Mayoral By-Elections in Ferizaj and Kaçanik.

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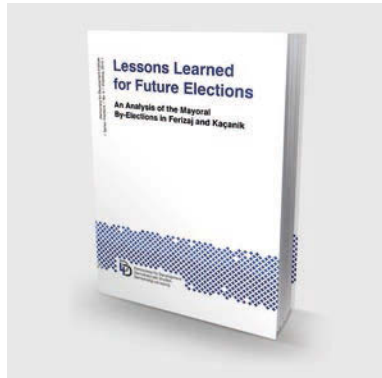
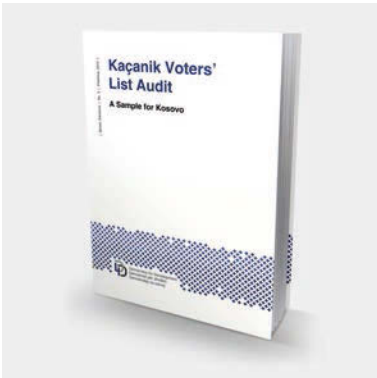
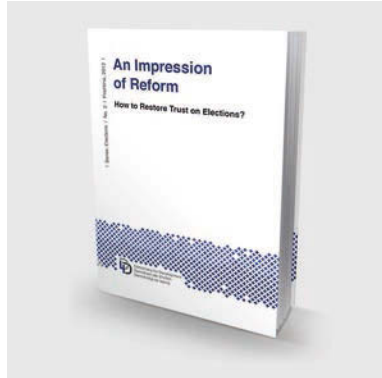
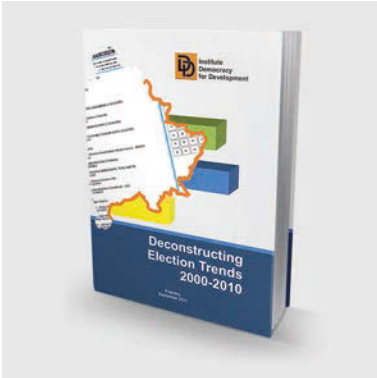
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