

Reform Forum

Recommendations for Electing the President of Kosovo

12 December 2011

- 1. Nomination of the presidential candidates (including the candidates of political parties) should be done with signatures of at least 1% of the electorate from at least 5 municipalities, with a minimum of 2,000 signatures from each of the 5 municipalities where the candidate decides to collect signatures.**

Considering that the number of voters will continue to increase and to ensure that we will have serious candidates for the position of the first of the country, gathering support through signatures for candidacy should be based in the percentage of the electorate. One of the proposed options of 15,000 signatures, over time, could present less than 1% of the total number of voters (based on the last elections), therefore this figure is quite small to ensure a serious candidacy. Collecting signatures should also apply to candidates proposed by political parties so they are not favored compared to independent candidates.

Reform Forum agrees with the preference of the Constitutional Committee that signatures should be at least from 5 municipalities, but it needs to be specified that from each municipality at least 2,000 signatures are collected, in order to make it impossible to gather all the signatures from only one municipality, whereas in four other municipalities to gather a symbolic number of signatures just to fulfill the criteria.

- 2. To verify that the presidential candidate was a permanent resident in Kosovo in 5 out of 10 last years but not five years consecutively.**

Reform Forum considers that it is necessary that the potential presidential candidate should have lived in Kosovo at least 5 years from the last 10 years, however it is not imperative that these 5 years are consecutive. It is important that a President lived for some time in Kosovo and recognizes the problems and concerns of Kosovars, but Kosovo should offer more ease than most countries due to demographic shifts, migration and displacement in the last two decades.

- 3. In case of double citizenship, the newly elected President should renounce the other citizenship prior to taking the oath.**

Reform Forum considers that the President of the country should only have the Kosovo citizenship. However, a presidential candidate should not be asked to renounce the citizenship prior to his nomination, since if he/she is not elected President it would be unfair that as a simple citizen to lose a right that is guaranteed by the Kosovo Constitution. However, because of loyalty to the country, this privilege is lost in case he/she is elected President, since he/she will serve as the head of only the country that elected him/her.

4. The newly elected President takes the oath near the Constitutional Court where it will also submit the resignation.

Since with the upcoming parliamentary elections the President is expected to be elected directly by citizens, the oath and submitting the resignation should be done at the Constitutional Court as the highest representative of the institution that upholds and interprets the Constitution. The oath and resignation should not be done in front of the Assembly President as it was done so far, since the Assembly does not elect the President anymore.

5. Presidential candidate resigns from public positions at the moment of nomination for President but preserves the right to return in the previous position in case of not being elected as President.

A person in a public position or a civil servant should not carry his/her duty when running for President since he/she should not have responsibilities towards other public positions. The candidate preserves the right to return to his position if he/she is not elected president, in order to encourage a lot of persons that fulfill the criteria and collect signatures to run without the concern that they end up unemployed in case they are not elected.

6. The President to enjoy similar immunity with the immunity of Assembly Deputies.

The President of the country should enjoy immunity from criminal prosecution and civil lawsuits for the actions and decisions within the scope of responsibilities of the President. Thus, the immunity should be the same as it is for Assembly Deputies derived from the decision of the Constitutional Court; and any other proposal would go against the interpretation of the Constitutional Court regarding immunity.

7. The Assembly President should serve as the Acting President and there should not be a Vice-President.

Even that Kosovo is changing the mode of electing the President, the government arrangement remains a parliamentary system. Since changes are not going towards a presidential system, in cases of temporary absence of President, the position of the Acting President could be exercised by the Assembly President. With the direct election of the President, even if it comes to cases when the vacant position is kept vacant for a certain time, it is not necessary to dissolve the Assembly, since the Assembly President could serve as the Acting President of the country until the election of the new President. Creating the position of the Vice-President would only burden, the already poor, Kosovo budget.

8. Dismissal of President should be done by Constitutional Court for serious violation of the Constitution and criminal offences punishable with 3 years or more.

The reasons for dismissal of President to remain as they were, for 'serious violation' and to leave it to the Constitutional Court to interpret the 'serious violation'. However, a paragraph should be added in the same article which foresees the dismissal of President in cases when President is found guilty for a criminal offence punishable with more than 3 years. The President of Kosovo should be the guarantor of the Kosovo Constitution and if he/she, according to the Constitutional Court, seriously violates he/she should be dismissed. In here, 'serious' should be specified, since a minor unintended violation should not be a basis for dismissal. Further, the possibility of dismissal from the Constitutional Court should exist if a President conducts a criminal violation punishable for three years since it would be unworthy that number one of the country continues to serve after he is convicted for 3 years.

9. Dismissal of the President – 40 deputies initiate it, 81 deputies send it to the Constitutional Court or through the signatures for 30,000 citizens.

Initiating the procedure for the dismissal of the President should be kept as it is with 1/3 of the deputies (40 deputies) while for proceeding the case to the Constitutional Court more than 2/3 of all deputies should be required (81 deputies). This is since the President will be elected by the citizens and a mechanism needs to be created to make it more difficult for the Assembly to dismiss the President. And by the mere fact that the citizens directly elect the President, they should be given the possibility to initiate the dismissal of the President by gathering 30,000 signatures. In this case Reform Forum proposes a number fixed number of signatures, instead of a percentage of the electorate, otherwise (if it would be done with a percentage of the electorate) it would be a burden for CEC to produce a voters list every time a number of voters would like to initiate a petition to dismiss the president.

10. The decision for dismissing the President to be taken by the Constitutional Court with 2/3 of votes and the president to be considered automatically dismissed.

Taking the decision to dismiss a President by the Constitutional Court should remain with two thirds of votes of all the judges (currently 7 judges) and the decision should be final and not advisory for the Assembly since the Assembly does not elect the President.