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Research Group



KOSOVO AND ELECTIONS

WHAT CAN BE IMPROVED?



Policy Report

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This report is supported by:

Democratic Society Promotion (DSP) – financed by the Swiss Agency for Development and Cooperation (SDC) and the Ministry of Foreign Affairs in Denmark (DANIDA) and managed by the Kosovo Civil Society Foundation (KCSF).

and

Royal Norwegian Embassy



Norwegian Embassy

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Executive Summary

Given the long history of electoral engineering in Kosovo, electoral reform has been seen as an inevitable component by international as well as domestic actors. The European Union has consistently insisted on drafting an electoral reform that would best ensure the “implementation of European best practices”. The European Commission considers that political will across the political spectrum is crucial to undertake the necessary electoral reforms before the next round of general elections.¹

However, despite ongoing efforts since 2011, Kosovo entered into early elections in 2017 without any electoral reform. Although the 2017 national and local elections were rated generally well, there were some shortcomings in the administration/management of the election that weakened the success of these elections; such as, the high number of invalid votes, the partial recount of ballot boxes that brought change of results, late certification of final results, among others.

A lack of political unity or consensus on political aspects of the electoral system, such as the maintenance of open or closed lists, the institution of one or more electoral zones, the CEC mandate, the Law on Elections, and others, has made it impossible to address some easily accessible issues that would directly contribute to a better and more credible election process. These amendments do not necessarily require reforming the entire electoral system. This paper aims to address some aspects of electoral system reform for which consensus among relevant factors would be easily achieved.

If these aspects were improved, the electoral process would be more successful, rather than the ample focus on controversial issues relating to the system which have consistently failed to yield positive outcomes. After all, the most crucial component of the entire electoral process of a country is based on the safeguarding of a citizens vote.

Given this, the lack of consensus on the major elements of electoral reform should not hinder the improvement of the system through a bottom-up approach.

Based on the research and analysis of data from the electoral processes organized so far in Kosovo, this paper offers a range of findings, which are elaborated in detail with the aim of offering alternatives for improving the electoral process.

The main aspects of the electoral process which are addressed, among others, include:

- The need for voter education to ensure the full exercise of rights
- Efficient management of election results
 - Need for immediate recounting of all ballot boxes
 - Conditional and by mail ballots
 - Publishing names of voters as incentives for clearing the electoral list

Although there are many problems that need to be addressed and discussed continuously, this discussion paper approaches electoral reform through examining issues that can generate party-wide and efficient consensus. As a result, the entire electoral reform process would not fall

¹European Commission (2018), Kosovo Report 2018, Political Criteria and Rule of Law, Elections, page 5, Brussels, accessible at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf> (accessed July, 2018).

victim to the lack of a broad consensus on some the most controversial aspects of the system. As such, the papers seeks to initiate a debate on the incremental improvement of the electoral system through focusing on citizen's basic democratic right; their vote.

Introduction

The early elections of 11 June 2017 and the local elections of the October 22 were characterized by a tense political environment, an un-reformed electoral system, and with a new constitutional reality as a direct result of past Constitutional Court rulings. For months and years, the Kosovo Assembly had failed to ratify the border demarcation agreement between Kosovo and Montenegro. Given that this was one of the only two remaining visa liberalization criteria, Kosovo remained isolated and without a possibility of freedom of movement.

On the other hand, this topic, and other topics, such as the dialogue with Serbia, the establishment of the Kosovo army, the association of Serb majority municipalities, the fight against corruption, and others, found political parties more divided than ever.

Similar to past experiences, Kosovo found itself in a new election process with an un-reformed electoral system, even though there had been numerous past attempts to initiate reform sequences. The Central Election Commission, civil society organizations and other mechanisms had repeatedly demanded the initiation of an electoral system reform. However, the continued early announcement of elections has not allowed Kosovo to focus on substantial reform. As such, the failure to implement electoral reforms has continued to plague the election processes.

The decisions of the Constitutional Court of 2014, prior to these elections, most likely played a significant role in the announcement of candidates for prime minister. This in turn prompted political parties to pursue pre-election coalitions more vehemently in order to ensure their own advantage. These elections also marked a considerable shift by political parties in their vote-maximization techniques, through making use of municipal mayors as candidates for seats in legislature.

Despite such politically motivated techniques, the parliamentary and local elections were generally competitive and well-administered in most cases.² This in turn has led to a paradoxical conceptualization. On one hand, the popular belief is that electoral reform is crucial as a prerequisite for future elections, yet, on the other hand, it is the same popular belief that celebrates transparent and efficient results. However, isolated irregularities have consistently characterized the electoral process and in most cases, there has been dissatisfaction with the procedures of administering election results, votes by mail, institutional interactions, and others.

Kosovo's reform efforts have been ongoing since 2011. The European Union has consistently insisted on drafting an electoral reform that would ensure "implementation of best European practices". Political will across the entire political spectrum is crucial to undertake the necessary electoral reforms before the next round of general elections. The Assembly is required to urgently address the weaknesses, taking into consideration the recommendations of the EU Election Observation Mission. The EU recommendations included:

- Establishing a minimum time duration for organizing early elections

²European Commission (2018), Kosovo Report 2018, Political Criteria and Rule of Law, Elections, page 5, Brussels, accessible at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf> (accessed July, 2018).

- Changing the law in such a way as to enable the better functioning of the Center of Results and Counting
 - Complaint deadlines to be clarified
 - Better voter information, among others.³

This paper examines the last election from a general perspective highlighting the development of a democratic system on one hand, and the political party system on the other. Firstly, it gives a general background on Kosovo's organization of elections and the political system, coupled by a brief overview of prominent challenges that this system faces. Secondly, the paper moves to discuss the overall progress of the elections, including legal problems, information dissemination to citizens, issues with the administration of election results, and other aspects. Both these aims are pursued through following the principles of independent research and respect for the rules of public policy writing.

A special chapter has been devoted to candidates for parliamentary elections. Specifically, the paper addresses the running of current mayors for parliamentary elections. Attention has been paid to whether there is a legal and / or legitimate basis to ban the running of mayors for deputies and vice versa. In the end, some conclusions have been considered and various recommendations are listed. This paper is part of the INDEP program for democratic governance and aims to contribute for the improvements of the election system and institutional bodies that manage the processes.

Elections and the political system in Kosovo

The Republic of Kosovo is a parliamentary democracy defined by Article 4 of the Constitution. Kosovo is a democratic Republic based on the principle of separation of powers, control and balancing between them, as defined by the Constitution.⁴ The principle of the parliamentary Republic and the unitary state consists on the basis that there is a representative body which has legislative power at the national level.

Municipalities, on the other hand, are the governing units of the second level of government, which is considered as the local government. The right to local self-government is guaranteed and regulated by law. Local self-government is exercised through representative bodies' elected in general, equal, free and direct elections and by secret ballot. The model of local government and territorial organization in Kosovo is mainly based on the principle of devolution, which implies establishing a system of local self-government that carries competencies, which under the traditional system of state organization are exercised by the central government bodies.⁵

Such a model is based on a clear division between central and local government, and it is designed to enhance human rights and decentralize decision-making, services, and power in general⁶. Moreover, the unitary character of governance is reflected on the national election where Kosovo has just one electoral zone, and decision-making in the central elected body is generally valid for the entire territory.

³The European Union Monitoring Mission (2017), Final Report of the Kosovo General Elections in 2017, accessible at https://eeas.europa.eu/sites/eeas/files/final_report_eom_kosovo_june_2017.pdf (accessed July 2018).

⁴Constitution of the Republic of Kosovo, (2008), Article 4, Form of Government and Separation of Power, Pristina: GZRKS.

⁵ Ibid, Article 123.

⁶ Hasani, Enver, Cukalovic, Ivan, (2013), Commentary on the Constitution of the Republic of Kosovo, page 618, Pristina: GIZ.

Similarly, the process of decentralization of power and the establishment of new municipalities with according to the Ahtisaari Package determined the direct election of the mayors partly because of the electoral reform at the time, the office of the Mayor inherited considerable decision-making powers. Thus, the current electoral system is partly determined by the form of governance and the history of state-building of the Republic of Kosovo.

Background on Early Elections

During the parliamentary session of June 6, 2008, two essential laws were adopted for the electoral system of the Republic of Kosovo, the Law on General Elections and the Law on Local Elections. The first was approved with only 64 votes in favor, while the second was approved with 79 votes in favor.⁷ Thus, in the span of one day, two laws were adopted during the second reading phase, which were in turn discussed extensively. In particular, there were considerable dilemmas about the contents of Law no. 03 / L-073 on General Elections in the Republic of Kosovo.

At the beginning of May, during the meeting of the Presidency of the Assembly of the Republic of Kosovo, 41 MPs deposited the no-confidence motion against the Mustafa Government. MPs used Article 100 of the Constitution of the Republic of Kosovo, namely point 1: the motion of no confidence in the Government can be raised with the proposal of one third (1/3) of all MPs of the Assembly.⁸ The Presidency of the Assembly immediately scheduled the 10th of May for the plenary session in which the motion of no confidence would be considered and voted on.

Early elections came as a direct result of the decree for the dissolution of the Assembly after the successful no confidence motion of the Government. The vote on the no-confidence motion was widely supported and 78 MPs voted in favor of it including members of the communities.⁹ On the same day, the President of the Republic of Kosovo, Hashim Thaci, announced the dissolution of the Assembly based on the successful vote of no confidence of the Government.¹⁰ The path for organizing early elections in 2017 was introduced as the third general election since the declaration of independence in 2008.

The prospects of early elections has been consistently viewed as negative factor impacting Kosovo's economic stability. Government programs cannot be finalized and remain in a limbo because a new government is expected to start the implementation of their own programme. Similarly, there is a lack of enthusiasm on behalf of Kosovo voters, who continue facing early elections that seek to determine a 4-year government and parliament mandate.

⁷ Assembly of Kosovo, (2008), Transcript of the plenary session of 5 June 2008, page 5, Pristina: GZRKS, accessible at http://www.kuvendikosoves.org/common/docs/proc/trans_s_2008_06_05_14_al.pdf (accessed at August, 2017).

⁸ Republic of Kosovo, (2008), Constitution of the Republic of Kosovo, Article 100, Non-Confidence Motion, paragraph 1, page 39, Pristina: GZRKS, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (accessed August, 2017).

⁹ Assembly of Kosovo, (2017), Electronic voting of 10 May for only 1 point of the agenda, Pristina: Kosovo Assembly, accessible at http://www.kuvendikosoves.org/common/docs/voting/vot_1_2017_05_10_10_1.pdf (accessed August, 2017).

¹⁰ President of the Republic of Kosovo, (2017), Decree no. DV-001-2017, Pristina: Office of the President of the Republic of Kosovo.

This coupled by narrow vested-interests of political parties, raises the question whether early elections do have a positive impact upon society, given that their pre-mature tenure doesn't significantly affect the political climate.

One way to avoid early and unnecessary elections would be that the no-confidence motion becomes effective only if a new government is elected with a new Prime Minister from the same Assembly. If a parliamentary majority has gathered votes to punish a government, the same majority must reach a compromise to elect the new government. If they fail to elect the new government then the old government continues its work until the end of its mandate. In this way, Kosovo would avoid unnecessary elections and narrow political calculations as a result of vested-interests. MPs who in many cases are accountable to their electorate, should be responsible in engineering the outcomes of the Assembly, rather than focus on frequent electorate voting, which in many cases, overshadows the effectiveness of MPs.

Similarly during the most recent elections, due to the early termination of the V legislature and the unwillingness of political parties, Kosovo could not pursue any electoral reform. In the general discourse, the reform has foreseen the reviewing of the electoral threshold, electoral zone options, and a number of other changes that were not possible. Failure to implement the electoral reform left a number of unresolved issues that were previously identified by foreign organizations, the Central Election Commission and other actors.

The general parliamentary elections were characterized by a new legal reality affecting the composition of competing political entities. The decision of the Constitutional Court of 2014 was a crucial component that urged political parties to seek co-operation in the form of pre-election coalitions. The court in 2014 granted the exclusive right to the party or coalition that won the election to propose the candidate for President of the Assembly and nominate the first candidate for forming the Government.¹¹ This new reality, together with the atmosphere of co-operation, moved LDK to pursue a coalition with the New Kosovo Alliance (AKR) and the new party, ALTERNATIVA, while PDK formed a coalition with AAK and NISMA. VV decided to move by itself, even though it was registered as a political party, which bestowed it with the legal opportunity to form pre-election coalitions.

The Constitutional Court's decisions of 2014 paved the way for a number of debates, while at the same time, they inherently promoted various dilemmas about the state of nature of political influence. This decision has proven to be increasingly detrimental to institutional functioning, rather than yielded a significant outcome. As Albert Krasniqi from KDI notes in terms of the Constitutional Court interpretation, it has "perverted the political system and is producing continuous blockades"¹². Similarly, Alija argues that "the decision of the CC greatly limits the free will of the MPs, placing them and becoming part of the political bargaining where the main aim is power sharing"¹³

In whatever scenario, the decision of the Constitutional Court while authoritative, should always be open for discussion. It is well known that in every advanced democracy, the system operates on the basis of the majority and not on the basis of the first who does not have the majority to form new institutions --however, without denying the fact that the right to form the government

¹¹Constitutional Court of the Republic of Kosovo, (2014), Ruling in Case no. K0103 / 14, p. 23, Pristina.

¹²Kosovo 2.0, Albert Krasniqi, We got the electoral lessons, now it's time to apply them. accessible at <http://kosovotwopointzero.com/mesimet-zgjedhore-morem-tash-ka-ardhur-koha-ti-zbatojme-ato/> (accessed on 07/06/2018).

¹³Interview 1: Researcher at D4D, (20.07.2018).

firstly belongs to the largest political entity that has emerged from the elections.¹⁴ However, such dilemmas need to be elaborated within an electoral reform framework that is not simply limited to legal changes but if needed, should also yield constitutional changes.

It is rather meaningless to impose onto MPs to vote for a certain candidate for the President of Parliament, yet there are arguments that point toward the idea that "the decision of the Constitutional Court of 2014 cannot be thought of as limiting the will of the MPs but orienting them to make more efficient decision. Similarly, the part detailing the election of the president of the assembly is considered robust and does not go against international practices"¹⁵. According to Yll Buleshkaj, the problem "lies in how one gives authority and discretion to another institution, the President, to decide from which parliamentary group the second candidate can come from".¹⁶

Another feature of these elections, which is considerably a consequence of the decision of the Constitutional Court, is the announcement of candidacies for the Prime Minister. The main political subjects nominated their leaders or members of their party for the post of Prime Minister giving the race a spirit of a majority system, though it has never been one. Ultimately, the decisions of the Constitutional Court based on the crisis of 2014, significantly influenced the 2017 election race, from the calculations before the ousting of government, to the formation of coalitions.

Early elections found the political spectrum in Kosovo more separated than ever before. The wide-ranging vote of no-confidence for the Government by all political parties in Kosovo created a rift not just between PDK and LDK, but also between the LDK and other opposition parties which in 2014 were together in the VLAN coalition (Vetevendosje, LDK, AAK and NISMA). Tension also existed due to the failure to reach a consensus on topics like the demarcation issue, the army, the association of Serb majority municipalities, and others. These issues pertaining to vital state interests promoted wide-ranging divisions which inherently affected the electoral process.

There continues to be a lack of political will for drafting electoral reforms. On the one hand, ruling parties have seen their acceptance for the electoral reform as a way promote early elections, and on the other hand, opposition parties are more inclined in initially winning the election, and then engaging on a process of electoral reform.

Institutional Context

The Central Election Commission is a permanent body that prepares, oversees, directs and verifies all actions related to the election process, referendums, and announces their results.¹⁷ The members of the Central Election Commission are appointed by the President of the Republic of Kosovo after being nominated by the political parties.

However, the Central Election Commission (CEC), since September 2017 has remained without a mandate, having not met at all. This is due to the fact that the Office of the President has argued that he has not yet received all the proposals from the political parties. This reasoning assumes that all parties should send names to the President in order to have a group appointed at

¹⁴Interview 2: Former Member of the Central Election Commission, (23.07.2018).

¹⁵Interview 3: Expert of Election Issues, (06.07.2018).

¹⁶ Ibid.

¹⁷Republic of Kosovo, (2008), Constitution of the Republic of Kosovo, Article 139, Central Election Commission, Pristina: GZRKS.

the CEC. This delay in the functionality of the CEC also affects the overall performance of the office and should be taken into account in any future reform.

Elections and their administration

In November 2014, Ms. Valdete Daka, Chairwoman of the Central Election Commission, emphasized that the introduction of information technology in the electoral process would ease the technical aspects of vote counting. She has insisted that electoral reform is necessary to address such issues. However, given that the reform did not happen, Mrs. Daka and the CEC were faced once again with an unchanged legal basis and shortened deadlines for organizing elections.

As a result, Kosovo was subject to early elections. Pursuant to the Constitution of the Republic of Kosovo, these elections came after the Presidential Decree for the dissolution of the Assembly. Based on the legal framework, it is argued that regular elections for the Assembly shall be held no later than thirty (30) days before the end of the mandate, and in cases of dissolution of the Assembly no later than forty five (45) days after the dissolution.¹⁸ In the case of regular elections, the Central Election Commission may start preparations at any point it deems necessary before the elections, while in the case of extraordinary elections, the time frame is considerably limited.

According to the legislation in force, Kosovo is a single electoral district with a proportional system, where twenty seats guaranteed for non-majority communities coupled with a preferential quota of 30% guaranteed for women.¹⁹ The election system has open lists with a possibility to vote for five preferential candidates to be elected as members of the Assembly of Kosovo. This paper does not seek to discuss the advantages or disadvantages of the overall system, however, it seeks to focus on the administration of elections according to most recent electoral trends.

Election administration

Although in public discourse the possibility of early elections was mentioned since the election of the President of Kosovo, the success of the no-confidence motion was uncertain until the date of the parliamentary session. This was largely due to the uncertainty of the Democratic Party of Kosovo (PDK), whose stance was not made public until the day of the vote.

During this election, there was almost no awareness campaign by the Central Election Commission. In the midst of this failure by the CEC, a small number of civil society organizations undertook an awareness campaign for citizens, even though the CEC has a legal obligation to conduct public information activities²⁰. Despite the awareness campaign by CSOs, a large number of votes were invalid.

¹⁸Republic of Kosovo, (2008), Constitution of the Republic of Kosovo, Chapter IV, Assembly of Republic of Kosovo, Article 66, paragraph 2, Election and Mandate, Pristina: GZRKS, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (accessed August, 2017)

¹⁹Republic of Kosovo, (2008), Law no. 03 / L-073 on General Elections in the Republic of Kosovo, Chapter XVIII, Electoral System in the Republic of Kosovo, Article 110, General Provisions, page 47, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544> (accessed August, 2017).

²⁰ Ibid.

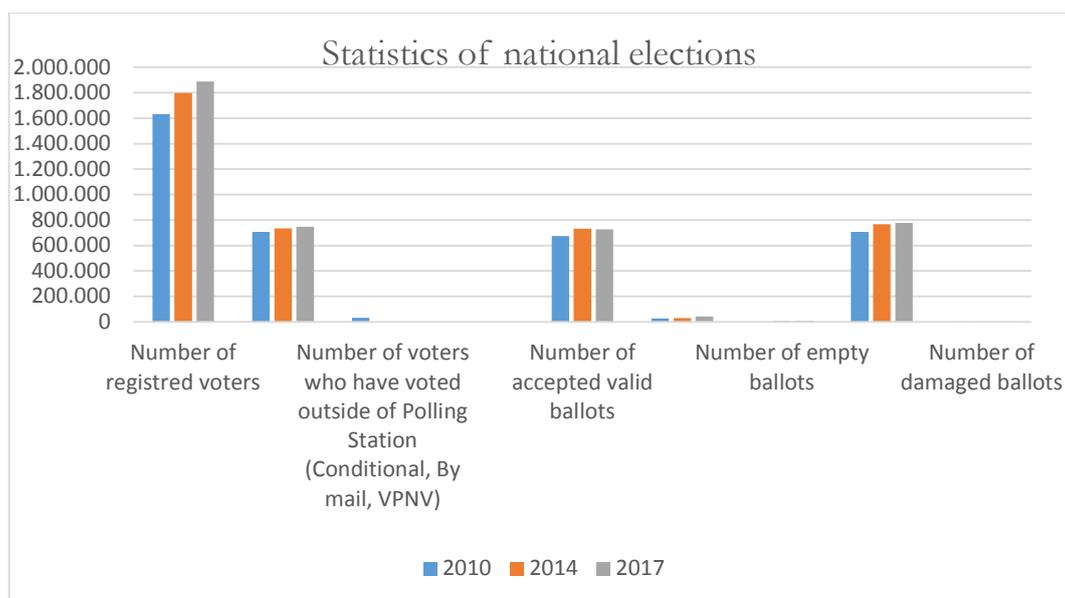


Figure 1. General elections statistics. Source: CEC.²¹

The statistics above serve to depict a large number of invalid votes. The Central Election Commission in the final reports noted that out of the total votes received, 6.2% of them were invalid votes, which given the overall percentage of votes, is quite a large number. In addition, political parties and their candidates focused exclusively on maximizing their vote and paid virtually no importance on the education of their voter base. Despite the short time of the CEC to prepare, and since the dissolution date of the Assembly, the latter had not organized any awareness campaigns in recent years. Thus, the lack of CEC activities at a time when there are no elections is alarming.

Invalid votes- Voters education

Given that there are over 40,000 invalid votes or over 6%, it entails that a large number of voters have failed to participate in collective decision-making during the election of the Assembly of the Republic of Kosovo. As the table below shows, the number of invalid votes has increased if one compares the three recent national elections; the increase is recorded both in percentage and in absolute values.

If the invalid votes were a political party, there would be at least 7 MPs!

Elections for the Kosovo Assembly	2017	2014	2010
No. of Registered Voters	1,888,059	1,799,023	1,632,276
No. of voters who voted at each polling station	747,228	734,055	706,317
No. of voters who voted outside the polling stations	32,501	32,779	33,001

Table 1. Statistics of the Elections for Assembly of Kosovo

²¹Central Election Commission, (2017), General Elections 2017, General Statistics, Pristina: CEC, accessible at http://www.kqz-ks.org/Uploads/Documents/1.%20Statistics%20e%20%20%20C3%20Generally%20-%20General%20Statistics_lvzxcuouox.pdf (accessed August, 2017).

Despite the continued existence of programs for voter awareness and voting procedure implemented by different NGO and official state institutions, coupled by the large investments in ensuring better voter education, there has been little visible impact.

Given that these state and non-state mechanisms have failed to produce positive impacts in terms of voter education, the question at hand is- what then, are more efficient and effective mechanisms? Along the same lines, the recent results both in national and local elections show that the winner in some cases has been determined by a difference of several tens or hundreds of votes. This, compared to the list of votes that were invalid, raises the question whether the will of the actual votes reflects the outcome of the elections.

Type of election	Local elections for municipal Assembly		Local elections for Municipal Mayor	
	2017	2013	2017	2013
Year	2017	2013	2017	2013
No. of used ballots	829,493	830,325	829,467	825,792
No. of voters who voted outside the polling stations	17,812	18,882	22,260	23,592
No. of damaged ballots	2,247	1,466	1,441	1,080
No. of invalid ballots	66,151	70,782	13,814	15,512
No. of empty ballots	5,500	12,775	7,889	8,248

Table 2. Statistics of Local Elections

In local elections, the number of invalid votes is still higher than in the national elections, but the number of invalid votes for the mayoral elections are indeed much lower. This implies that a simpler voting system results in a smaller number of invalid votes.

At first glance and without embarking on any empirical analysis based solely on the number of invalid votes and their comparison, the logical conclusion is that the large number of invalid votes for the Kosovo Assembly or Municipal Assembly elections has to do mostly with the electoral system at these levels. One could correlate this to the fact that voters may not know how to vote, coupled by the "aggressive campaign of the candidates", which are highlighted by some of our interlocutors. Failure to inform voters or their education as a cause of many invalid votes has also been confirmed by the Chairwoman of the Central Election Commission Valdete Daka, for which she also linked the large number of new voters and the short deadline for the preparation of early elections.²²

The fact that voters experience issues in voting also confirms the point by Albert Krasniqi, who argued that "the audit that the CEC has completed for invalid ballots of 2017 parliamentary elections has shown that 45.83% of invalid ballots have come after voters have voted only for candidates yet did not choose a political subject."²³ According to Albert Krasniqi this comes as

²²Valdete Daka, accessible at <http://zeri.info/aktuale/147978/daka-votat-e-pavlefshme-pasoje-e-mosinformimit/> (accessed on 04/06/2018).

²³Kosovo 2.0, Albert Krasniqi, We got the electoral lessons, now it's time to apply them. accessible at <http://kosovotwopointzero.com/mesimet-zgjedhore-morem-tash-ka-ardhur-koha-ti-zbatojme-ato/> (accessed on 07/06/2018).

a result of "extremely aggressive campaigns of candidates who offer voters partial information, without explaining to them the need to mark political entities".²⁴ Yll Buleshkaj, similarly pointed out that the invalid votes "problem may be the individual campaigns of the candidates who call voters to mark their number as candidates but they may forget to call on voters to mark the number of the subject they belong to."²⁵ A large number of votes are declared invalid due to the efforts of the members of the Polling Station Councils to add or remove votes of certain candidates, which may imply of their involvement in vote manipulation, instead of safeguarding the citizen vote based on their official responsibility and the training that they have received from CEC.²⁶

This conclusion is logical given that when voters are faced with a mayoral vote, which is considerably more simplified, they tend to make less mistakes. If ones compares the national, local and mayoral elections of the last few years, one may reach the conclusion that some more than 3% of voters do not know how to vote in national elections due to the complicated system, while this percentage goes up to 6% in elections for local assemblies where the situation is more complicated due to the different systems across the domestic spectrum.

Type of elections	Local elections for municipal Assembly		National elections		Local elections for Municipal Mayor	
	2017	2013	2017	2014	2017	2013
No. of used ballots	829,493	830,325	777,191	766,847	829,467	825,792
No. of voters who voted outside the polling stations	17,812	18,882	32,501	32,779	22,260	23,592
No. of damaged ballots	2,247	1,466	1,746	1,899	1,441	1,080
No. of invalid ballots	66,151	70,782	42,554	30,725	13,814	15,512
No. of empty ballots	5,500	12,775	6,553	4,842	7,889	8,248
% of invalid votes	7.97%	8.52%	5.48%	4.01%	1.67%	1.88%

Table 3. Statistics of National and local elections

There is a need to have a wide range of empirical data which covers different levels of analysis. This is substantially the case for the above stated observations, where different levels of electoral outcomes (National, Local, Mayoral), account for different levels of invalid votes. We think that simplifying the voting process would be the right step in lowering the number of invalid votes as even after more than 9 rounds of elections, voters' education and the millions spent for this purpose have not yielded the expected results.

The options are numerous starting from the closing of the list of nominees until the unification of the voting method for both national and local assembly. Democratic systems should prioritize simplicity over creating systems that on paper seem to work towards more accountability and transparency, however in practice, fail considerably.

Despite the data, the CEC has not yet undertaken any detailed analysis or investigation of the invalid votes to see if there are elements of intentional violations or if it indeed corresponds to

²⁴ Ibid.

²⁵ Interview 3: Expert of Election Issues, (06.07.2018).

²⁶ Interview 2: Former Member of the Central Election Commission, (23.07.2018).

the nature of voter education. The Central Election Commission, based on the information we have, has not undertaken any major investigation and has not previously been prepared to address the problem of invalid votes and voter education. From the budget table for 2017 it is seen that the CEC, disregarding the special budget for each election, has also been given 70 thousand euros for various projects.²⁷ Most of these funds have gone for supplying the equipment and IT software. The CEC should significantly prioritize voter education in the future, as it is points toward an inherent flaw in Kosovo’s electoral outcomes.

Even the budget allocated for elections of close to 5 million virtually had no allocation to voter education:

The planned amount of funds have to do with the production of election material; transportation of sensitive and non-sensitive material; training of Polling Station Councils; payments for Municipal Election Commissions; payments to the Polling Station Council members and other staff members.²⁸

The CEC could use awareness campaigns and other educational activities to reduce the number of invalid votes. Apart from direct activities, the CEC through civil society organizations and other groups could delegate a large part of the work to identify areas where it can intervene with awareness campaigns and other activities that were more present in the past elections.

Conditional votes

A key issue that needs to be addressed is the large number of conditional votes. Despite the fact that Kosovo is one electoral zone and voters have extensive resources in establishing their corresponding polling station and other information, there are still 24,745 people who voted conditionally in the national elections.

From the total number of conditional votes only 23,005 were valid, 1,475 invalid and 177 were empty. It remains enigmatic since it is not known what happened with 88 ballots that are missing from the table that the CEC has presented. Here we face some problems and suspicions can be raised. First we do not know how many of the 1,475 invalid votes were declared as such if the person had already voted on a regular basis since this is not indicated by the CEC data.

National Elections 2017 Conditional votes			
Empty	Invalid	Valid	Total
177	1,475	23,005	24,745

Table 4. Conditional votes of national election 2017

If there are such cases then criminal proceedings should be initiated against those who have attempted to vote twice. Similar cases have occurred from the previous elections when the CEC decided to initiate criminal proceedings against some individuals who attempted to vote twice, one on a regular basis and one conditionally. This has happened in the 2013 elections, however there have been no reports as to what the outcome of these processes were.

²⁷Ministry of Finance of the Government of the Republic of Kosovo (2017), Budget Tables for 2017, Capital Projects for the Center Level, page 99, Pristina: MF, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=13230> (accessed August, 2017).

²⁸Official CEC website (2017), Notification: The CEC starts preparations for the organization of Early Elections for the Assembly of the Republic of Kosovo, accessible at <http://www.kqz-ks.org/sq/lajme/Details/298> (accessed August, 2017).

On the other hand, there could also be attempts at double voting, such a case recorded in the Istog municipality and which was confirmed by the CEC itself.²⁹ In such cases commissioners should be investigated, because if they have done their job properly, it would not be possible for

Local elections for municipal Assembly 2017 Conditional votes			
Empty	Invalid	Valid	Total
26	1,126	9,881	11,065

Table 5. Conditional votes of local elections 2017

the same person to enter twice into different polling station because of the security ink that is placed in his hand. An even bigger problem is the absence of 88 ballots that do not appear on the CEC table.

If these ballots are indeed missing then criminal proceedings should be initiated against 88 people for suspicion of manipulation of the elections. The lack of ballot papers in the ballot boxes poses a serious problem and is directly related to the so-called "Bulgarian train".

That conditional voting serves as a possibility for manipulation, which is also confirmed by Albert Krasniqi, who argues that "delays the process of announcing the results".³⁰

The stolen ballot may be used to buy votes and to ensure that the bought vote will go to the right candidate. Municipalities that lead with missing of conditional ballots are Gjakova with 15, Kaqaniku with 11, Prishtina with 8 and Suhareka and Vushtrri with 6.

Even here we do not know how many of these have intended to vote twice, and what happened with the 32 ballots. Municipalities leading with the number of missing conditional ballots are Prishtina with 11, Istogu with 6 and Gjakova with 3.

As far as the mayoral votes are concerned, there are 236 invalid ballots and 53 ballots are missing. Given the narrow results in many municipalities in the race for mayor, the missing ballots should be a red signal to take action against this phenomenon.

Leading municipalities with missing ballots from conditional votes that run for mayor are

Elections for Municipal Mayor 2017 Conditional votes			
Empty	Invalid	Valid	Total
129	236	10,649	11,067

Table 6. Conditional votes for Municipal Mayoral election 2017

Pristina with 14, Istogu with 6 and Gjakova with 5. The audit of conditional ballot should be done and the results should be transparent, all these who have abused this opportunity should be prosecuted. The past has shown that when criminal measures were taken against

abusive commissioners, future ones were more cautious.

According to Yll Buleshkaj, "the Kosovo voter list is still far from perfect," and thus "while for the local elections conditional voting maybe should be removed, it should not be considered as an option in the national elections until the medium term (up to 10 years)"³¹.

²⁹CEC: That is why the conditional ballots and by mail votes were confirmed and rejected, accessible at <https://infoglobi.com/kqz-ja-pse-u-konfirmuan-dhe-refuzuan-votat-me-kusht-e-poste/> (accessed June, 2018).

³⁰Kosovo 2.0, Albert Krasniqi, We got the electoral lessons, now it's time to apply them. accessible at <http://kosovotwopointzero.com/mesimet-zgjedhore-morem-tash-ka-ardhur-koha-ti-zbatojme-ato/> (accessed on 07/06/2018).

³¹Interview 3: Expert of Election Issues, (06.07.2018).

Similarly, Enis Halimi thinks that we should continue keeping the conditional voting until we have an integrated address system and a reflection of this system on the correct voter allocation as well as an accurate list of voters³², while Albert Krasniqi thinks that "further application of conditional voting is unnecessary"³³.

Rasim Alija on the other hand, argues that "ideally it would be that for the local elections the conditional voting should be completely lifted", but he adds that "this option of lifting the conditional ballot for the local elections should also be analyzed in the spirit of the human rights respectively the freedom and the ability of every citizen to exercise his right to elect and to be elected."³⁴

This paper suggests that the conditional voting should be removed completely. It's the belief that the disadvantages of this system outweigh the advantages considerably. Kosovo's single electoral zone, coupled by easy access to information as to where voters should report to polling stations, all account for arguments against the conditional vote.

In national elections, invalid conditional votes are 6%, for municipal assemblies up to 10%, whereas for municipality mayoral elections they are invalid by about 2%. Again, on the basis of the comparative analysis, we conclude that the simple voting system for mayor produces less invalid votes, while invalid votes for the municipal and national assemblies are too high.

Votes by mail

National elections 2017 votes by mail			
Empty	Invalid	Valid	Total
12	113	5,076	5,201

Table 7. Votes by mail for national elections 2017 is estimated that about half of the votes by mail are forged votes by organized groups³⁵.

Voting by mail was consistently a subject of discussion about the possibility of misuse. The recent elections once again proved that these votes are misused in great numbers. Thousands of by mail votes were canceled due to misuse. According from the sources of CEC, it is estimated that about half of the votes by mail are

According to the same source the votes by mail from Serbia are manipulated in a great number and ultimately, they go through as valid votes.

Elections forMunicipal Mayor 2017 votes by mail			
Empty	Invalid	Valid	Total
2	6	5,440	6,751

Table 8. Votes by mail for Municipal Mayor 2017

The large number of Kosovar voters in the Diaspora and the small number of those who vote by mail is another reason to reconsider this way of voting. Apart from the delays and investments in this way of voting, participation has been very low. In the 2017 national elections, according to

³²Interview 4: Senior Officer at CEC, (09.07.2018).

³³Kosovo 2.0, Albert Krasniqi, We got the electoral lessons, now it's time to apply them. accessible at <http://kosovotwopointzero.com/mesimet-zgjedhore-morem-tash-ka-ardhur-koha-ti-zbatojme-ato/> (accessed on 07/06/2018).

³⁴Interview 1: Researcher at D4D, (20.07.2018).

³⁵ Interview 1: Researcher at D4D, (20.07.2018).

the CEC, 5,201 people voted by mail where 5,076 ballots were valid. In the local elections, 6,570 persons voted whereby 5,030 ballots were valid.

In the mayoral elections 6,751 individuals voted, 5,440 were valid votes, 1,303 ballots were rejected (this is an assumption because there is no explanation given in the table presented by the CEC). Here it should be noted that thousands of applications have been rejected and are not presented in the tables on the official website of the CEC. Bearing in mind that the number of voters from the diaspora is estimated to be over 500,000 thousand voters; their right to vote by mail uses a very small number of voters.

Regarding the voting process by mail, as a process built exclusively for Kosovo citizens who are living abroad, the argument holds that it should change because it is an increasingly difficult process. The change should consist of finding other forms, which are both simpler and more efficient for individuals outside of Kosovo. For example, a form that is widely applied in different countries is the organization of voting in our diplomatic representations.³⁶ These models have not yet been sufficiently discussed in public discourse.

Albert Krasniqi argues that voting by mail should be replaced by "personal vote that is organized in diplomatic missions"³⁷, an opinion similarly shared by Enis Halimi, while adding in the context of vote by mail in municipal settings that they "should be possibly removed completely"³⁸. In addition, Yll Buleshkaj, argues that "voting by mail at the national level should remain while voting for municipal elections" can also be lifted.³⁹ Rasim Alija on the other hand establishes that "a potential reform scenario, as an alternative for replacing voting by mail, Kosovo should consider the option of voting in Embassies"⁴⁰.

There have been continuous doubts about the nature by mail voting, this is clearly notable in past elections as well, where, there was substantial evidence of manipulation. To clear these doubts and institute a more transparent process, voting by mail should be removed and physical voting in embassies and consulates of the Republic of Kosovo should be considered.

The question of Embassy voting should be considered in the context of national elections, whereas during local elections, individuals who haven't lived in the respective community for more than 6 months should not be allowed to vote. It is incoherent for individuals who have never lived in Kosovo to have voting rights simply because they have access to Kosovar documents. Local issues should be locally led and initiated, therefore, it should be up to residents of the locality to decide the decision-making structure's mandate.

³⁶Interview 2: Former Member of the Central Election Commission, (23.07.2018).

³⁷Kosovo 2.0, Albert Krasniqi, We got the electoral lessons, now it's time to apply them. accessible at <http://kosovotwopointzero.com/mesimet-zgjedhore-morem-tash-ka-ardhur-koha-ti-zbatojme-ato/> (accessed on 07/06/2018).

³⁸ Interview 4: Senior Officer at CEC, (09.07.2018).

³⁹ Interview 3: Expert of Election Issues, (06.07.2018).

⁴⁰Interview 1: Researcher at D4D, (20.07.2018).

Administration of election results

An enormous problem noted in these elections has been the delay in announcing the results, especially the question of final results. The failure to certify the results for 27 days after the elections, is a clear example of the lack of efficient administration. The bureaucratic apparatus dealing with vote administering should never delay results by a month. This discrepancy is directly linked to the legal procedures of appealing the results, where actors can engage in appeals starting from the initial results, all the way up to the final vote count. The same situation was also evident during the local elections that were held a few months later. Similarly, in local elections, the legal proceedings foreseen for appeal measures directly coincide with the announcement of the final results.

As such, numerous complaints resulted in the delay of the counting process. This is partly ascribed to the current legal rules, where preliminary results are only provided after a complete overview of votes within respective polling stations. Further delaying the process, the ballot boxes are required to be transferred to the Counting Center where the verification of data is done and if is needed, a recount is possible. Re-counting may only occur by order of the CEC, similarly, if the Commission for Appeals and Complaints evaluates that there were irregularities or a data mismatch. Although the Law⁴¹ restricts the CEC in this respect, the CEC has been able to initiate re-counting procedures at polling stations through other alternatives.

In the last national election, after a re-counting process, three new candidates managed to win seats in Parliament, effectively ruling out the three initial candidates who had won the seats based on the first votes.⁴² Meanwhile, during the last local elections, after the recounting of 440 polling stations, 14 changes were made to the list of assembly members in the respective municipalities, including considerable shifts for candidates running for the mayoral office.⁴³

The vote is secret, but not the act of voting! So, why not publish a list of who has voted?!

Given the numbers presented above, if re-counting at best, allows for a better overview of close discrepancies between candidates, then is a sufficient reason for re-counting as a whole. This further legitimizes the process by ensuring citizens that their vote is indeed reflected in the context of electoral results. Otherwise, final results which are not subject to a re-count, can and will always be disputed. Secondly and more importantly, the overall recount of votes would enable directly affect the number of appeals actors raise, and as such, work to decrease any delays in the publication of final results. Thirdly, the immediate re-counting of all votes would not only result in a more efficient process, but it would also seek to instill more responsibilities for commissioners who work at polling stations. If all ballot boxes were to be re-counted within 3-4 days as of the Election Day, the CEC would then need no more than a week to certify the election result and the final results would have far less room for contestation.

Although this would require the CEC to employ additional staff for a more efficient process, the benefits far outweigh the costs. Moreover, given that commissioners are aware that their ballot boxes in respective polling stations will be re-counted, they are prone to inherently be more

⁴¹Republic of Kosovo, (2008), Law no. 03 / L-073 on General Elections in the Republic of Kosovo, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2544> (accessed August, 2017).

⁴²Recounting of votes changes the list of deputies (PHOTO), <http://klankosova.tv/rinumerimi-i-votave-ndryshon-listen-e-deputeteve-foto/>

⁴³Revoting in Kosovo reversed Istog <http://top-channel.tv/2017/11/24/rinumerimi-i-votave-ne-kosove-permbyset-istogu/>

transparent and effective in fulfilling their duties (as there could be serious repercussions due to their mis-management of ballot boxes).

However, apart from instilling more efficient administration mechanisms, the CEC would also need to address its transparency issue. More specifically, a more transparent CEC would directly decrease the chances of having considerable violations. As of now, the CEC has not published the names of commissioners, for who there have been numerous verifications of considerable violations. This form of public pressure is effective in preventing cases of misuse of the votes in the future. Another measure of transparency that could address a large part of accusations of abuse on Election Day would be the publication of the list of voters who voted. This would accurately identify dead or non-resident persons who are voting and consequently, there would be additional pressure on commissioners to fulfill effective and efficient duties.

Candidates and subjects

In the most recent general election, four municipal mayors were also candidates for MP. Three out of four did indeed gain enough votes to secure a seat in parliament. However, three of them are said to also compete for mayoral positions in their respective municipalities. Such a practice, although legal, cannot be considered legitimate.

According to the legal framework, mandates of municipality mayors are four years. In Kosovo's political system, in the context of the Ahtisaari Framework Agreement and the application of the decentralization model, municipality mayors are de facto local leaders. They are directly elected and exercise enhanced executive powers. Although the Constitution fails to address the running for mayoral office and the exercise of duties, the latter is covered to some extent by Law no. 03 / L-040 of Local Self-Government.

Immediately after their election, municipality mayors are required to interrupt any contracts or relationships they have, which may question their ability to carry out their responsibilities in a fairly manner and impartially.⁴⁴

Although legally prohibited, the participation of mayors in the electoral campaign for general elections in practice interrupts them from the proper exercise of their duty as a Mayor. Consequently, the participation of mayors in municipal elections undermines municipal governance in that municipality. Moreover, schools are also used as polling centers. School directors are appointed by the municipal directorate directly affected by the Mayor. As a result, running of mayors in general elections can also be addressed through the angle of a 'conflict of interest'. However, the issue of mayoral candidates at central elections and MPs for mayoral may be part of the electoral reform, so that the latter are forced to resign from their first position at the time they run for the other office. From a constitutional point of view, this is hardly feasible even though it would be legitimate to do so.

Election performance was not the same in all Kosovo municipalities. The electoral process differed considerably in Kosovo Albanian majority municipalities compared with Kosovo Serb majority municipalities.

In the Kosovo Albanian majority municipalities, the elections were really competitive and the campaign environment was quiet, allowing a large number of candidates to freely communicate their messages to the electorate. On the contrary, the campaign in many Serbian localities was damaged by threats that

⁴⁴Republic of Kosovo, (2008), Law no. 03 / L-040 on Local Self-Government, Article 59, Conflicts of Interest, Pristina: GZRKS, accessible at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530> (accessed August, 2017).

were especially targeting Serbian parties that did not belong to the Serbian List.⁴⁵

Threats aimed at Serb parties and candidates that did not belong to the Serbian List significantly affected the image of the election. These elements of the election were also identified in international reports and especially in the report of the European Union Monitoring Mission. These threats involved the pressure on various candidates to withdraw, as well as the frequent violent incidents in Leposavic, which were specifically addressed by political parties and candidates contesting the dominance of the Serbian List.⁴⁶ All of this paved the way for a view of the electoral process in Serb-majority municipalities as one not ascribing to free and democratic principles.

Conclusion and Recommendation(s)

The pursuit of early elections considerably affects the social climate as well as the economic stability of the county. The establishment of new institutions takes considerable time, and Kosovo loses substantial time in the midst of announcement of early elections, time that could be spent improving policy-dilemmas. Given that Kosovo is in need of a stable political environment to fulfill its many criterias in a quest toward the European Union, early elections only serve to interrupt these processes, and in many cases, set the country back.

This paper sought to address some of the aspects of the electoral system for which political consensus would be easily achieved. If these aspects were to be improved, the election process would be more successful and it would not entail a continuous failure of Kosovo to achieve substantial electoral reform. After all, a key aspect of any democracy, is the ability of the state apparatus to ensure the safeguarding of the fundamental democratic right of any citizen; namely, the effective use of vote. As such, the lack of consensus on more political aspects of the electoral reform discussions should not overshadow Kosovo's ability to reform technical and incremental aspects that will inherently lead to a more democratic system. The recommended actions do not affect the political climate in Kosovo, and are framed in such a way that they are intended to achieve a party-wide consensus.

To ensure a more efficient and accountable process, these recommendations should be considered:

- ✓ **Recounting of votes should be a fundamental requirement. This process:**
 - Reduces the number of complaints;
 - Accelerates the process and announcement of the results;
 - Reduces the likelihood of manipulation of votes of candidates within the same party;
- ✓ **Remove the possibility of conditional voting:**
 - Reduces the possibility of manipulation, including the manipulation of the so-called "Bulgarian train";
 - Accelerates the process of counting and announcing of final results;

⁴⁵The European Union Monitoring Mission (2017), Final Report of the Kosovo General Elections in 2017, accessible at https://eeas.europa.eu/sites/eeas/files/final_report_eom_kosovo_june_2017.pdf (accessed July 2018).

⁴⁶The European Union Monitoring Mission (2017), Final Report of the Kosovo General Elections in 2017, accessible at https://eeas.europa.eu/sites/eeas/files/final_report_eom_kosovo_june_2017.pdf (accessed July 2018).

✓ **Remove voting by mail:**

- Removes the possibility of manipulation of by mail ballots as evidenced in the past;
- Enables physical voting for national elections; for local elections voting by mail should be completely eliminated;
- Accelerates the process of counting and announcing of final results;

Democratic Society Promotion (DSP) – financed by the Swiss Agency for Development and Cooperation (SDC) and the Ministry of Foreign Affairs of Denmark (DANIDA) and managed by the Kosovar Civil Society Foundation (KCSF). The content of this publication is the responsibility of Balkans Policy Research Group and does not state or reflect the views or opinions of SDC, DANIDA or KCSF.

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