

ELECTORAL PROCESS MANAGEMENT IN KOSOVO

Mr.Sc. Xhavit Shala, PhD (candidate)
European University of Tirana, ALBANIA

ABSTRACT

This paper deals with models of electoral process in Kosovo, the institutions that are charged with the responsibility to organize elections, the mandate and the means of electing the members of the steering bodies, the Central and local election management and forms of organization and the composition of the Central Election Commission (CEC) in Kosovo. Kosovo from 2000 to 2015 held nine election rounds, where five of them are organized and managed by international institutions (OSCE, UNMIK) and four election rounds are organized and managed by the Central Election Commission (CEC) and other Kosovo independent institutions and have been observed by international organizations present in Kosovo and local and international specialized mechanisms as observers during the electoral process. Challenge for Kosovo institutions is the fulfillment of the recommendations to meet international standards for free elections given by the missions and experts who observed the elections.

Keywords: Management, the central election commission, Polling advice, the electoral process.

INTRODUCTION

Consolidation of democracy and the rule of law in Kosovo continue to be a major challenge for society and its institutions. Fundamental role in this regard have the organization and management of the electoral process based on free elections and transparent as a very important element in building the rule of law and genuine democracy. Although electoral democracy in Kosovo is new, efforts to achieve the best standards and practices have not been forthcoming. Since 2000 to 2015, Kosovo has held nine elections, where five of them are organized and managed by the international institutions - the Organization for Security and Cooperation in Europe Mission in Kosovo ¹(OSCE) and the four elections are organized and managed by the Central Election Commission (CEC) and independent institutions of Kosovo and have been observed by international mechanisms present in Kosovo, local specialized organizations and international observers. However, all elections have taken positive and negative assessments by different observers², stakeholders participating in the elections and civil society. Since the first elections held in Kosovo after the war in 2000 until the recent election of June 8 of 2014, occasionally Kosovo has made some partial changes in the electoral system itself. Electoral reforms in Kosovo are usually initiated after the elections take place while changes in laws have been done just before new elections. Good practices for drafting electoral legislation should require that legislation be enacted before the elections so that voters and political participants have sufficient time to be informed about the rules of the electoral process. Election legislation enacted "last minute" undermines the legitimacy of legislation and prevents political participants and voters to be informed in a timely manner to

¹ Organization for Security and Cooperation in Europe Mission in Kosovo (OSCE) organized five elections from 2000 to 2007 and has helped establish two electoral institutions - the Central Election Commission and the Secretariat of you. <http://www.osce.org/sq/kosovo/118214> (09/19/2015)

² See Progress Report on Kosovo, European Commission, Brussels

the rules and regulations of the electoral processes³. Due to this and to the political circumstances, phase of transition that Kosovo has passed, these changes have not brought any major advancement in its election system. These changes have dealt mainly with list issues (open / closed) and other issues of more technical nature. However, now it has been more than sixteen years after the war and nearly eight years since the declaration of its independence (17 February 2008) and the country's institutions and its society have to work harder to consolidate and strengthen democratic principles. A change or further improvement of the electoral system will affect the growth of democratic legitimacy and overall accountability.

Election Management Process in Kosovo

Governance and administration of elections has to do with the administrative infrastructure required to support the democratic election process. Successful elections do not happen without preparation and planning. Election management has to do with selecting the right system for certain political circumstances, economic, cultural and democratic society. After the announcement of the election decree from President of the Republic of Kosovo⁴ for local or national elections the whole process of management of elections and administration of the electoral process focuses on the Central Election Commission (CEC). CEC is the institution at the center of public attention in verge of the elections, during elections and until the elections are certified but is ignored or relegated to the sidelines when the election process is. Elections should never be left on the sidelines even during periods when public scrutiny is lower, subjects involved in elections, from legislators, political parties, civil society and election managers should cooperate to improve the process and to ensure that the election administration be able when necessary to respond to the call for new elections. Professor Guy Goodwin-Gill argues that for fair and free elections, independent and impartial electoral process management is essential⁵. There are three models of institutional placement in higher election commission – independent, governor and combined⁶. Kosovo is part of the group of countries that have applied an independent model institution in organizing and managing the electoral process.

In the framework of Kosovo Constitution (Chapter XII - institutions and independent) Article 139 designates that the Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results⁷ while the Law on General Elections specifies the responsibilities and functions of the CEC, which are: a) prepare and issue rules, forms and procedures relating to the implementation of this law and any other matter pertaining to the conduct of elections within its competence; b) publish all approved rules, forms and procedures and make them readily accessible to the public; c) establish and maintain the list of persons eligible to vote in a particular election; d) maintain an Office for Registration of Political Parties and Certification of Political Entities as provided in this law; e) design and approve ballot papers and other electoral materials; f) accredit official election observers; g) certify the voters list in relation to an election; h) certify the results of elections i) publish the

³ Guidelines for reviewing the legal framework for elections, the OSCE-ODIHR, Warsaw 2005 p 13 <http://www.osce.org/sq/odihr/elections/13960> (19/09/2015)

⁴ The Constitution of the Republic of Kosovo, Article 84 point 3

⁵ Guy Goodwin-Gill in his Free Elections and Rights: International Law and Practice, 1994. ITER-parliamentary Union Pg 46 (ISBN9951-402-06-2) Albanian

⁶ Electoral Management Design – Revised Edition, IDEA, 2014 ff 6, <http://www.idea.int/es/publications/emd/loader.cfm?csModule=security/getfile&pageID=66788> (21.09.2015)

⁷ Constitution of the Republic of Kosovo, http://www.gjk-ks.org/repository/docs/Kushtetuta_RK_shq.pdf (21/09/2015)

results of elections; j) establish municipal election commissions and polling station committees and regulate their operation; k) appoint ballot counting teams for any polling station committees as circumstances may warrant⁸. CEC during the implementation of its mandate, inter alia, undertake activities to educate voters designed to increase voter awareness and participation in elections; undertakes projects or researches in relation to electoral system and related matters; establishes appropriate procedures and undertakes activities to ensure that all persons with disabilities can exercise their right to vote and to participate fully in the electoral process in Kosovo; and performs any other functions ancillary to the holding of elections in Kosovo assigned to the relevant regulations and instruments, including actions necessary to protect the integrity of the electoral process⁹.

The composition of the Nomination Committee's mandate and its members is determined by the Constitution and the law on general Elections. The Commission consists of eleven members¹⁰. Six members are appointed by the six largest parliamentary groups represented in the Assembly¹¹, which are not entitled to reserved seats. If fewer groups are represented in the Assembly, the largest group or groups may appoint additional members. One member is appointed by the Assembly deputies holding seats reserved or guaranteed for the Kosovo Serb Community, and three members are appointed by the Assembly deputies holding seats reserved or guaranteed for other Communities that are not in majority in Kosovo. Chairperson of the Commission is appointed by the President of the Republic of Kosovo from among the judges of the Supreme Court¹². Also members of the Commission are also appointed by the President after nomination by parliamentary groups entitled to appoint a member (s) to the commission. The mandate of the Chairman of the CEC is seven years from the date of appointment by the President of Kosovo while for the Members of the CEC, the mandate shall begin no later than sixty days after certification of the election results to the Assembly¹³.

Law for the general elections in Chapter XI has defined responsibilities, composition and mode selection in the Municipal Election Commissions (MEC). MEC are bodies established by the CEC in thirty-eight municipalities of Kosovo to help organize the elections. MECs are responsible to administer elections within their respective municipality, under the exclusive supervision and direction of the CEC acting through the Secretariat, ensuring the legality,

⁸ Law no. 03 / L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO Article 64,

⁹ Law no. 03 / L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF., Article 59 . http://www.kqz-ks.org/Uploads/Documents/ligji_per_zgjedhjet_e_pergjithshme_ne_republiken_e_kosoves_ibrejquwhq.pdf

¹⁰ Yes there ... the Constitution of the Republic of Kosovo Article 139.22

¹¹ The Assembly has one hundred twenty (120) deputies elected by secret ballot on the basis of open lists. The seats in the Assembly are distributed amongst all parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly. In the framework of this distribution, twenty (20) of the one hundred twenty (120) seats are guaranteed for representation of communities that are not in the majority in Kosovo as follows: (1) Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through the open election, with a minimum ten (10) seats guaranteed if the number of seats won is less than ten (10); (2) Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through the open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed. Article 64 CONSTITUTION OF THE REPUBLIC OF KOSOVO (with amendments I-XXIII) This edition includes text of the CONSTITUTION OF THE REPUBLIC OF KOSOVO (adopted on 9 April 2008) with AMENDMENTS I - XXII (Official Gazette of Republic of Kosovo no.25, date 7 September 2012) and AMENDMENT XXIII (Official Gazette of Republic of Kosovo no.7, date 26 march 2013) http://www.gjk-ks.org/repository/docs/Kushtetuta_RK_ang.pdf (20.09.2015)

¹² Ibid, the Constitution of the Republic of Kosovo, Article 139

¹³ General law on the Kosovo election on Article 61.4

legitimacy and efficiency of the electoral process¹⁴. Each MEC is composed of Executive Officer of MEC employed by the CEC and who will be the Chair of the MEC and one member nominated by the political parties that have passed election threshold in national elections. MECs generally have seven members, this number may increase if the number of political parties that qualify to be part of the commission is bigger¹⁵. Beside municipal committees there are the Polling Station Committee (PSC) that reflect the structure of members of MEC. MEC may, in special cases, increase the number of members of a PSC¹⁶ and immediately notify the CEC. The polling station selection is done by CEC, when Secretariat of the Central Election Commission (CECS) invites all certified Political Entities represented in the Assembly of a Municipality that are contesting national elections to submit to the MEC nominations of persons they wish to be appointed to the PSCs established within their. Each PSC is approved by the CEC and is led by its chairperson¹⁷. PSC is responsible for ensuring the integrity, security and tranquility in the voting and counting process at the Polling Station under the immediate supervision of the MEC¹⁸.

Management of the electoral process in Kosovo is led by the CEC and its bodies such as the Secretariat of the Central Election Commission. The CEC Secretariat is a technical body, established by the CEC to assist CEC in carrying out its responsibilities and functions. Secretariat of the CEC, implements the decisions of the CEC and prepare reports, recommendations for CEC decisions, provides administrative and other necessary support to the CEC. After approval by the CEC, Secretariat conclude agreements with third parties on behalf of the CEC based on procedures established by the CEC. CEC Secretariat, headed by the Chief Executive Officer and Deputy Chief Executive who are directly accountable¹⁹ to the CEC. Within the secretariat functions the counting and tabulation center²⁰ which receives all results and other election materials to be verified, investigated and audited²¹.

In order to address the complaints (appeals) eventual dealing with the electoral process, the electoral law has established the institution of the Election Complaints and Appeals Panel (ECAP) as an independent competent body²² to deal with this issue. Electoral reform has given the authority to the President of the Supreme Court in appointing the members of ECAP which number has increased to ten members. Therefore, the amendment of the Law on General Elections in Republic of Kosovo is attributed as the exclusive right of the President of the Supreme Court who appoints the chairman and members of ECAP from among the judges of the Supreme Court and courts county within fifteen days²³. ECAP is composed of ten members, including the chairperson. It may meet in separate sessions with at least three members²⁴. ECAP members serve for a renewable term of four years²⁵. When the position of

¹⁴ Ibid, Article 68

¹⁵ Ibid, Article 67

¹⁶ Ibid, Article 74

¹⁷ Ibid, Article 76

¹⁸ Ibid, Article 74 point 10

¹⁹ Ibid, Article 74 and Article 66

²⁰ Election Regulation no. 06/2013 Counting and Results Centre Article 2, the Central Election Commission http://www.kqz-ks.org/Uploads/Documents/6_bjglntvptx.PDF (accessed on 3 .11.2015)

²¹ Ibid, Article 2

²² General law on the Kosovo election 03/L-073, Article 115 point 1

²³ Law on amending and supplementing Law no. 03 / L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO Article 9

²⁴ Ibid, Article 11

²⁵ General law on the Kosovo election 03/L-073, Article 115 point 3

chairman or member becomes vacant, the President of the Supreme Court shall appoint a person to fill the vacancy within fifteen²⁶ days under the provisions of the legislation in force.

The procedure for the protection of the right to vote in the electoral process is as follows. ECAP's handles every complaint that comes from a person that has a legal interest in a matter within its jurisdiction or whose rights have been violated with regard to the electoral process regulated by law or electoral regulations. One may appeal to ECAP within 24 hours after the close of the polling stations and the ECAP will decide on the appeal within 72 hours from the time when the complaint was received. However ECAP receives complaints based on facts and dismisses a complaint that does not meet the standards. But when a natural or legal person, which rights are affected by any of the following decisions, decisions taken by the CEC, may appeal that decision to the ECAP within twenty four hours after the decision being appealed is announced by CEC and the appeal shall be decided by ECAP within seventy-two hours after the appeal. Also prior to certification of the election results, it is under the jurisdiction of ECAP, in exceptional circumstances to cancel the results in a polling station or polling centre and to order the CEC to repeat the voting in a polling center or polling station, if it considered that it has an impact on the final results²⁷. The election law in Kosovo has defined powers of this body by entitling its decisions are binding for the CEC in advance if they are not appealed to the Supreme Court. Article 12, paragraph 3 of the Law on Amending and Supplementing the Law on General Elections expressly stipulates that the ECAP decision is binding upon the CEC to implement, unless an appeal allowed by this law is timely filed and the Supreme Court determines otherwise. After, The CEC shall certify the final election results after the completion of all polling station and counting centre procedures and when all outstanding complaints related to voting and counting have been adjudicated by the ECAP and any appeals of ECAP's decisions on them have been determined by the Supreme Court of Kosovo²⁸. With the certification of the electoral process and the whole concludes focus shifts to building national institutions, whether that is done by decree of Presidents for the inaugural session or local ones that made the acceptance of the assignment and the granting of the oath before the competent institutions. Here ends the post electoral process in Kosovo. .

After each election process the challenge remains in the fulfilment of the recommendations given by observers of elections in Kosovo. For this is necessary that political parties achieve consensus on electoral reform issues such as: the electoral system, constituencies, electoral threshold, managing the electoral process and the composition of the CEC, the way of selecting ECAP etc. Any lack of political consensus will (re) produce a blockade of the process of electoral reform (2013). Therefore the responsible institutions, elected officials, political parties, the CEC and civil society should take lessons from the experience of the current election to become a comprehensive reform to improve the electoral process.

RECOMMENDATIONS

The method of nomination and selection of members of the CEC should be reviewed in order to decrease the number of members from 11 to 9 members. Selection of member of CEC should be done after the public announcement, to be selected by the Parliament and appointed by President of Kosovo. CEC members must be professional, not political party officials.

²⁶ Law on amending and supplementing Law no. 03 / L-073 ON GENERAL ELECTIONS IN THE REPUBLIC OF KOSOVO, Article 115 point 1

²⁷ Ibid, Article 15 and 16

²⁸ Ibid, Article 6

This requires change in the provisions of the Constitution and the electoral law regarding the election of members of the Central Election Commission. Election of members of the CEC should be done in the same manner as for the members of the Constitutional Court. Central Election Commission should be consistent in decision making and react in all cases where there is a breach of the provisions of the electoral rules and other laws related to the electoral process. Municipal Election Commissions should be professional and not political also PSC should be done with public announcements and efforts should be done to select professional individual during the voting process because in the PSC are emerging all the irregularities that occur during the electoral process. Representatives of political parties should be only an observer in the election process. This depoliticizes an electoral process. Also the Election Complaints and Appeals Panel (ECAP) should be abolished or fused to the Court of Appeal like first instance and the Supreme Court remains the second level to provide electoral justice.

REFERENCES

1. Constitution of the Republic of Kosovo (with amendments I-XXIII) This edition includes the text of the Constitution of the Republic of Kosovo (Adopted on 9 April 2008) with Amendments I - XXII (Official Gazette of Republic of Kosovo No.25, on 7 September 2012) end Amendment XXIII (Official Gazette of Republic of Kosovo No.7 dated 26 march 2013) http://www.gjk-ks.org/repository/docs/Kushtetuta_RK_ang.pdf
2. Law no. 03 / L-073 on General Elections in Republic of Kosovo. Article 59. http://www.kqz-ks.org/Uploads/Documents/ligji_per_zgjedhjet_e_pergjithshme_ne_republiken_e_kosoves_ib_rejqwhqh.pdf
3. Law no. 03L-256 amending and supplementing Law no. 03L-073 for the general elections in Kosovo, Official Gazette of the Republic of Kosovo / PRISTINA: YEAR V / NO. 87/16 November 2010, http://www.kqz-ks.org/Uploads/Documents/ligji_per_plotesim_igzulrlgsv.pdf
4. Guidelines for reviewing the legal framework for elections, the OSCE-ODIHR, Warsaw 2005 <http://www.osce.org/sq/odihr/elections/13960>
5. Election Regulation no. 06/2013 Counting and Results Centre Article 2, the Central Election Commission http://www.kqz-ks.org/Uploads/Documents/6_bjglntvptx.PDF
6. Guy Goodwin-Gill in his Free Elections and Rights: International Law and Practice, 1994. ITER-parliamentary Union (ISBN9951-402-06-2 Albanian)
7. Electoral Management Design - Revised Edition, IDEA 2014, <http://www.idea.int/es/publications/emd/loader.cfm?csModule=security/getfile&pageID=66788>
8. Progress Report 2010 on Kosovo, Brussels, 9 November 2010 SEC (2010) 1329, http://www.mei-ks.net/repository/docs/KS_Report_2010_Alb.pdf
9. Progress Report 2011 on Kosovo, Brussels, 12.10.2011 SEC (2011) 1207, p 5, http://www.eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/20111018_progress_report_sq.pdf
10. 2014 Progress Report on Kosovo, Brussels, 10.8.2014 SWD (2014) 306 final ,, [http://www.mei-ks.net/repository/docs/Final_20141008-kosovo-progress-report_en_\(2\).pdf](http://www.mei-ks.net/repository/docs/Final_20141008-kosovo-progress-report_en_(2).pdf)