

Electoral Reform in Kosovo

A comparative study

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ELECTORAL REFORM IN KOSOVO: A COMPARATIVE STUDY

I. INTRODUCTION

Over many centuries of political theory and regimes, Democracy has emerged as the privileged form of government. One in which the citizens, namely the electorate, choose their representatives and enter into a social contract with that authority. Within the many different types of electoral systems present in the world and even simply in Europe today, the Republic of Kosovo adopted the proportional system with a single electoral district and open lists. Since its independence in 2008, Kosovo has undergone several changes to its electoral system, which has led to improvements but also instability of the electoral system as a whole. Nowadays there are renewed calls for an electoral reform, one which should tackle technical and systemic challenges of the voting and electoral process.

Reforming electoral systems is no easy feat, and therefore must be devised and implemented only after a well-structured and properly thought-through analysis of the current system – what is the current state of play, what are the political challenges, the advantages and the disadvantages of the current electoral system, and what options exist. This report explores all such topics in the context of the need for an electoral reform in Kosovo, as demanded by civil society at large and called by for the European Union, and as visible by shortcomings in the process in place. The present report finds that the Kosovar democratic institutions need some technical refurbishment and the legal framework some amendments to enhance the country's democracy and combat regular undemocratic practices left unsanctioned. Starting from a comparative study of electoral systems elsewhere in Europe, to an in-depth Kosovo case study on its ruling electoral system, this comprehensive report caps off by offering recommendations in light of the research conducted, and taking into account the findings already proposed by the European Commission, the Council of Europe and civil society at large.

II. Overview of the different electoral models in Europe

Electoral systems establish the rules and procedures for holding elections and transforming citizens' votes into legal political mandates of elected officials, be it for the Executive or the Legislative. The vast majority of countries in Europe use the Proportional Representation system, the one also in place in Kosovo. There are, however, many different types of systems used to express this need for representation in the decision-making process and legitimacy of democratic institutions. This is owed to different political histories and democratic traditions on representation and governability, as decided by citizens and decision-makers. In Europe alone, five main electoral systems are worth noting. The report expands on each and analyzes them below¹, before diving into the Proportional System as used in the Republic of Kosovo.

a) Two-Round Majority System

This system is **used in France** for presidential, legislative and regional elections. Should a candidate win absolute majority (over 50%) in the first round, they are immediately elected and the election is concluded in one round, despite the system's name. If no absolute majority is reached, a run-off must be scheduled between the top two candidates in which the **majority (or**

¹ Electoral Reform Society, "Which European countries use proportional representation?", 26 December 2018, available at: <https://www.electoral-reform.org.uk/which-european-countries-use-proportional-representation/>

plurality) rule is applied when counting votes, and the electorate ultimately elects the preferred choice.

The main disadvantage of this system is that it allows for a high number of **wasted votes** cast to all other candidates eliminated in the first round. Another heavy implication is the cost of holding two elections – **financial, governance and personal costs**. On the financial side, holding two elections is logically more expensive than one, and further puts the country under political instability during the offbeat period between elections, which constitutes the governability cost. The personal cost pertains voter fatigue and reduced turnout, which has been linked to two-round systems.

b) First Past the Post or Plurality system

Similar to the Two-Rounds System above, the First-Past-the-Post or Winner-Takes-All system is even more reliant on the majority principle. This model is **used in the UK to elect Members of Parliament**, given the British plurality system in single-member constituencies. The biggest setback of this electoral system is that it favors strong political parties and often produces single-party majorities in Parliament and single-party governments. Parties are empowered, rather than candidates themselves. This has **the benefit of enabling efficient governability in allowing for a stable government able to implement policies, yet this dominance is at the expense of smaller parties**. Thus, representation is seriously hampered and there is no real political diversity put forth by the elected body. Furthermore, wasted votes in large numbers are seen as a non-issue, and small parties are unable to have good representation.

In the UK specifically, during a General Election 650 constituencies nation-wide hold separate contests to elect the 650 Members of Parliament in Westminster. In each constituency, the elected MP is the candidate with the largest number of cast votes. This means that support is set locally, and many voters are rendered without real or preferred representation at a national level since the majority of citizens will not have voted for their constituency's MP. Similarly, should a party enjoy strong yet thinly-spread support across the country instead of concentrated in certain constituency, its MPs do not stand a chance at election. In line with this, the number of MPs a party has in Parliament rarely matches real popularity within the national population.

c) The Single Transferable Vote System

This system is currently used in **Ireland and Malta**, and is a type of proportional representation system. In the Single Transferable Vote System, citizens are required to **rank candidates in order of preference in each ballot cast**. Parties can, and often do, put up more than one candidate per area. After the first-place preferences are counted, a 'quota' of votes is established which one must meet to be elected. Any candidate who received more first-preferences than the quota is immediately elected. Otherwise, the candidate with the lowest number of first-preferences is eliminated and their second preferences are redistributed among remaining candidates, until all elected officials are determined.

This model has the **electorate vote on the basis of candidates, not parties**. The preferential balloting by ranking candidates allows transfer of votes to produce proportionality, to form consensus behind select candidates and to avoid the waste of votes prevalent under other voting systems

d) Mixed Member Proportional Representation

Yet another type of proportional system is the mixed model, which adopts a compromise by using both party list's proportional representation and single-member electoral districts, often with plurality or majority vote requirements. In Europe, it is notably used in **Germany and Hungary**.

In the Mixed Member Proportional Representation, **each voter casts two votes at once**: one for a single candidate in their constituency under the First Past the Post majority model, and one for a party list pertaining regional seat encompassing multiple constituencies under the system of proportional representation. Mixing the two systems allows for a second, more consequential, layer of representation for voters, given that the proportional model of party lists welcomes small parties winning seats. In this way, **fewer votes are wasted and less parts of the country are dismissed** as electorate.

e) Proportional Representation system: the comparative case of Albania as neighboring country

After looking at some of the most significant electoral models used throughout Europe, let us now look at Kosovo's own geopolitical region and neighboring states. The vast majority of countries in Europe generally, as well as the European Union elections, use the Proportional representation system to elect Members of Parliament. As seen above, the two major exceptions are the UK and France. The Proportional Representation model seeks the best possible correlation between the number of votes received by each party and the number of allocated seats, to in turn encourage objective representativeness of the elected officials. This model was devised after a culmination of attempts to allow new or smaller political parties more visibility.

For comparative purposes with neighboring states in the Western Balkans, this report expands on **the Albanian electoral system**. The Republic of Albania is a parliamentary republic with its legislative power vested in the Parliament and the executive power in the Council of Ministers. Albania has a closed list proportional representation system in place, encompassing 12 multi-member constituencies which mirror the country's 12 administrative regions. The current Electoral Code defines a voting threshold of 3% for political parties and 5% for coalitions within a constituency to be able to gain political mandates. The country had a mixed-member system until 2008, and the change was contested by smaller parties who now found it more difficult to gain an allocated mandate vis-à-vis larger, more dominant parties. A 30% gender quota was also introduced in this change of the electoral system to ensure women representativeness in decision-making.

In recent years Albania has undertaken an electoral reform process of its own. The aim is to appease EU conditions for accession negotiations and bring Albania closer to European integration. Nevertheless, the changes decided under an international mediation nature were mostly related to "more 'technical' issues, such as voter registration, counting of votes and electoral administration"². Reforms to this field have been halted or slowed down in recent times due to the COVID-19 pandemic.

II. The Proportional Representation Electoral System in Kosovo

The Republic of Kosovo, born in 2008 after declaring independence from Serbia, is a multi-party, parliamentary, representative democratic republic. In terms of the political system, the main institutions of national power are the Assembly, the Government, and the President of Kosovo.

² European Western Balkans, "How electoral reform in Albania got complicated again", 24 July 2020, available at: <https://europeanwesternbalkans.com/2020/07/24/how-electoral-reform-in-albania-got-complicated-again/>

The executive power is concentrated in the Government of Kosovo, composed of a Prime Minister and a Cabinet of Ministers for specific policy areas. The President, as head of state, also has a role in the executive branch of power. The legislative power is concentrated in the Assembly of Kosovo, wherein 120 Members of Parliament are directly elected by citizens for four year terms. It is the Assembly which elects the President, the Prime Minister along with his Cabinet, and appoints all court justices. As established in the Constitution of Kosovo dated from 2008, the Assembly similarly has the power to pass laws in the country, ratify international treaties and adopt the national budget. The 120 MPs of the Republic of Kosovo are elected by a secret ballot, on the basis of open lists. The third power is the judiciary, which is independent from the other two powers mentioned above.

This report focuses on the legislative power, which encompasses Kosovo's party system and electoral system. The country has in place a proportional representation electoral model, as the vast majority of countries in Europe. The PR electoral model in Kosovo is based on open lists of five candidates, which means voters can vote for up to five preferred candidates in any given party list. Kosovo is a single constituency, wherein the country is a **single electoral district**. Besides the proportional system for allocating the 120 Assembly seats system based on votes cast, some seats are pre-determined. Of the 120 total seats, **20 are reserved for Kosovo's minority populations** – namely 10 for Kosovar Serbs and 10 to be distributed among Bosniaks, Turks, Askhali, Egyptian, Gorani and Roma. Moreover, there is a **30% gender quota** to ensure the appointment of female MPs.

The **institutional context of Kosovo's proportional representation electoral model** comprises three levels of elections management bodies.

Firstly, the **Central Election Commission (CEC)**. The CEC is an independent and permanent institution established by the Constitution of Kosovo with the goal to organize elections and regulate the electoral processes in Kosovo. The CEC composed of 11 members, of which six represent the six biggest political parties represented in the Assembly, four are reserved for minorities, and one is the chair appointed by the President from among Supreme Court judges. The main responsibilities of the CEC are³: to prepare and publish electoral rules; certify political entities; maintain the voter list; accredit observers; conduct voter education activities; establish Municipal Election Commissions and Polling Station Committees PSCs; announce and certify election results. The CEC publishes election regulations which standardize such matters under its responsibility.

The mandate of the CEC is assisted by the **Office of Political Party Registration and Certification**, which handles matters related to maintenance and certification of all parties and political subjects, including financial disclosures of campaign expenditures. The Office of Political Party Registration is, however, noted by watchdog institution KIPRED as lacking in resources and capacity and, most importantly, "personnel with integrity"⁴. The empowerment of the CEC's supporting office is among the electoral reform recommendations this report puts forth in the final chapter

Secondly, the **Municipal Election Commissions**. The Municipal Election Commissions are appointed by the CEC for each election held, established when announced and dissolved after the occurrence. Each commission is composed of at least seven members who, together, have the job to ensure the good administration of the election process in their municipality (i.e. legality, legitimacy, efficiency).

³IFES, "Elections in Kosovo 2017 Parliamentary Elections – FAQ", 6 June 2017, available at: https://www.ifes.org/sites/default/files/2017_ifes_kosovo_parliamentary_election_faqs_final_0.pdf .

⁴ KIPRED-CeMI, "Electoral and Party System – A Perspective of Internal Party Democracy Development", *no date*, pg. 29.

Thirdly, the **Polling Station Committees** also established during each election. These committees are responsible for the good administration of the election process on Election Day itself, such as opening and closing polls and counting final ballots.

a) Current state of political affairs

Kosovo has been experiencing a period of political volatility since mid-2019. **Early legislative elections were held on 6 October 2020 following former Prime Minister Ramush Haradinaj's resignation** after being summoned by the Special Prosecution's Office in The Hague over war crimes as top commanders of the Kosovo Liberation Army. In a surprise result notably celebrated by the younger populations, the self-determination party Vetëvendosje (VV) took the win. VV leader Albin Kurti formed a coalition government with the Democratic League of Kosovo (LDK) and became Prime Minister. Kurti's anti-corruption programme and unwavering stance regarding the removal of 100% tariffs on Serbian goods proved too controversial – Kurti's VV-led government collapsed on 25 March 2020 following a no-confidence vote carried by LDK, the coalition partner.

Following the fall of the government, LDK formed a new government by entering a coalition with the Alliance for the Future of Kosovo (AAK), the Social Democratic Initiative (NISMA) and the Serb List/*Srpska Lista*. Most recently, on 5 November 2020, President Hashim Thaçi resigned also following a charge by Kosovo Specialist Chambers and Specialist Prosecutor's Office for crimes against humanity and war crimes.

Such political instability was worsened and made most shocking in that it came amidst the unprecedented COVID-19 pandemic. As the public health crisis strained Kosovar institutions, the country was left without a government and facing an even higher level of insecurity.

b) The Political Party system

As segway into the bulk of the report, a deep dive into the Electoral system in Kosovo along with its advantages and disadvantages for the country and citizens, it is important to beforehand analyze the party system in place as well.

Kosovo has a **multi-party system**, which implies political coalitions to hold the majority of Assembly seats and therein form the ruling government. From the get-go, this may be interpreted as an advantage – encourages the democratic nature of the country in inciting dialogue and compromise – or a disadvantage – renders governance less efficient and less timely. General elections are usually followed by an 'interim' period of government formation, often triggering political crises. The recent political state-of-play in late 2019/early 2020, as explained in the preceding section, precisely shows how political coalitions can be misleading and effectively hinder good governance and the well-functioning of the state over its citizens.

Moreover, **the need for coalitions obstructs the emergence of new parties** and, in turn, citizens' needs are often not always met by the parties represented in the Assembly's 120 seats. Not only that but new parties are not empowered enough to bring about wide-ranging change to the party system and therefore must oblige to the long-standing, often corrupt or non-transparent, rules of the game to join or be considered for influential coalitions. In this way, hopeful parties for change may find themselves entangled in questionable models of democratic action when attempting to penetrate the party politics inner circle game.

The Constitution lays out the foundation for political party activity in Article 44 on Freedom of Association. Further primary legal basis for elections is guaranteed in the Law on General Elections, the Law on Local Elections, and the Law on Financing Political Parties. Secondary legal basis is provided by the Central Election Commission's election regulations.

Nonetheless, as is often the case in Kosovo's rule of law, while the legal basis is well-versed and in line with global best practices, **implementation is lacking**. For instance, one of the bodies in charge of enacting the election administration legislation, the Office of Political Party Registration and Certification, lacks capacity and transparency. As such, there are calls for a reform of its personnel and resources to ensure "the tasks stipulated by law, which would consequently enable the sanctioning of political parties up to the level of prohibiting them from participating in elections"⁵. Political pressure should not and cannot have a hand over such bodies vital for a country's democracy, otherwise what reaches the public is already filtered and the organization of elections already tainted.

In Kosovo being a relatively recently-independent and post-war country, the stage was set for a difficult and rather instable party politics dynamic. In light of limited sovereignty claims, territorial disputes, and key socioeconomic issues, the Republic of Kosovo bred political parties with competing policies on issues of vital national interest. Not just disparaging views on economic development or social issues for instance, but also on post-war country reconstruction, neighborly relations and international affairs. The **left-to-right spectrum** has seen the *Democratic Party of Kosovo* (PDK) and the *Democratic League of Kosovo* (LDK) as the main opposing conceptual wings. Even though both right-aligning, the former is dubbed as the 'war wing' by Kosovar media and the latter the 'peace wing'. Conversely, in the most recent general elections of October 2019, the Self Determination Movement Vetëvendosje (VV) came out on top, suddenly bringing a left-aligning party to power. Ultimately, a post-war mentality, further afflicted by internationally contested sovereignty issues, plagues the political party system

Within the biggest political parties themselves, influence and overall soft **power is frequently concentrated on a single or a limited number of (senior) members**. This enables the high-profile or powerful members to make decisions without following proper consultative or administrative procedures laid out in the legal framework. Such informal decision-making is an example of undemocratic and non-transparent practices which new parties face when trying to positively erupt into the political scene.

Another key element of the political party system is the **financing of political parties**. As things stand, the legal framework regulating this element is the Law on Financing Political Parties, the Law on General Elections, and the CEC Election Regulation on Financing the Political Parties and Sanctions. It is defined that the state must offer political subjects (parties, candidates) equal access to public funds from the national budget as well as media time on television and/or radio for campaigning and outreach purposes. Election campaigns costs "are stipulated by Law, where for their financing the Assembly of Kosovo shall allocate funds not exceeding 0.05% of Kosovo Budget, (Article 10). Also, political parties cannot spend more than 0.5 euro per registered voter (CEC Regulation No. 12/2013, Article 3.1)"⁶. In parallel, political subjects also gather funds from membership fees, contributions and other incomings from varied activities, as determined in the Law on Financing Political Parties. The problem arises when informal decision-making, or insufficient reporting and disclosure is consciously undertaken by political parties. A GLPS report comparing several Kosovar elections to draw main findings notes that "**political parties often abuse their role by offering lucrative positions to followers and supporters**, channeling public resources to members, and shaping economic and political institutions for their own interests"⁷. This may lead to undemocratic practices such as vote-buying and tangling corporate business too closely with party agendas based on contributions.

⁵ KIPRED-CeMI, "Electoral and Party System – A Perspective of Internal Party Democracy Development", pg.29.

⁶ KIPRED-CeMI, "Electoral and Party System – A Perspective of Internal Party Democracy Development", *no date*, pg.38.

⁷ GLPS, "Financing of Political Parties in Kosovo –can controllability and transparency help?", May 2013, available at: <https://www.files.ethz.ch/isn/166793/Policy%20Report%2005%202013.pdf>, pg.31.

Moreover, another problem lies in weak internal control within the political parties themselves on maintaining regular financial records, which can favor malpractices such as “cases when municipal authorities were signing procurement contracts even though there were no sufficient funds committed. Also (...) municipal authorities were using the public money and facilities to push forward their political agendas and to finance their electoral activities”⁸. In order for transparency and oversight to be properly achieved, legislation needs to better dictate best practices and sanctions, even if pertaining internal organization and decision-making in the party. Furthermore, it is important to strengthening regulating and auditing expert bodies. The European Commission 2020 Kosovo Report recalls that efforts have indeed been made but never duly delivered on - “The Parliamentary Committee on Oversight of Public Finances has conducted formalistic audits of parties' annual financial reports and political parties have provided campaign disclosure reports. However, even clear violations and breaches of legal limits as well as unidentifiable money flows have not been followed up by competent authorities”⁹. As things stand, the Central Election Commission lacks the funding, resources and legal mandate to properly monitor and investigate irregularities or illegal conducts.

c) The Electoral system in Kosovo: advantages and disadvantages

Historically, the Republic of Kosovo has held four parliamentary elections – 2010, 2014, 2017 and 2019. Elections, which are managed by the Central Election Commission, have incorporated a 30% gender quota and reserved seats for minorities, a ballot with an open list of candidates, and a single-district system. This section delves into each component separately.

As is the case in the vast majority of European countries (see Chapter 1), Kosovo has a **proportional representation electoral system**. It is not only tradition in Europe to indulge party coalitions for government formation in order to avoid rigid two-party systems, but also the wisest option for post-war countries. Majority systems would prevent small parties from being represented in the Assembly – it could for instance have kept the onus of power solely on the leading right-wing parties PDK and LDK instead of allowing for parties like VV or minority ones to evolve into influential players. Other clear advantages are that proportional representation better prevents wasted votes and fuels active citizenship participation, for almost all votes cast go into seat allocation among the multi-party system, instead of completely dismissed when in a two-party system

On the other hand, the need for entering coalitions, as mandated by proportional representation systems, may facilitate political gridlock when passing laws or implementing policies. The coalition VV's Albin Kurti entered with LDK proved, for example, fatal since the latter initiated the vote of no confidence which led to the government's collapse. Looking on the bright side, should a coalition go well, then citizens also witness real compromise and power-sharing among the elected officials, instead of nasty power-grabbing tactics.

The independent country of Kosovo has always used a proportional system of **open lists to elect the candidates**, after a change to the electoral system back in 2004 and 2007. The country previously operated with a closed list system and, thereafter, an open list system of up to 10 candidates. In the model in place, voters can mark up to five preferred candidates among each party list. The Law on General Elections determines that MPs are then elected based on most preferred votes gathered from the multi-preferences expressed. The possibility of marking more than one candidate may favor individuals besides party leaders or those most influential. While the benefit of open lists is accepted, there is ongoing wide discussion if the multi-

⁸*Ibid*, pg.34.

⁹ European Commission, “Kosovo 2020 Report”, 6 October 2020, pg.10.

preferential vote is indeed better than voting by single preference. Multi-preferential voting can also, in a way, be more confusing for voters and lead to a higher number of invalid ballots than in single-preference voting.

Regardless, there is consensus that open lists are better than a closed party system, wherein parties themselves decide which candidates shall win the seat should enough votes be gathered. Here, citizens only get to vote for parties instead of for individuals as well. The closed system propagates power being concentrated on a single or limited number of party members instead of allowing new voices to emerge.

As stated in the Law on General Elections, Kosovo has a **single-district electoral system**. This means the country is defined and votes as a single electoral zone, at a central level. Montenegro and Serbia have similar systems, whereas North Macedonia, Albania and Bosnia & Herzegovina have multiple district voting. The advantage of the system lies in the fact that “a single list enables the representation of ideological agendas vis-à-vis narrow geographic interests”¹⁰ and “enables candidates to collect votes from various geographic areas”¹¹.

Notwithstanding, a notable disadvantage is that not all regions of the country are objectively well represented among the 120 seats of the Kosovar Assembly. Similarly, representatives are not particularly close or held accountable by a delimited district or electorate. Also worth noting is that the single-district system may propel unfair campaigning, for not all parties or candidates have the means to fund nation-wide campaigns for maximum reach.

The **electoral threshold for political parties** to have a seat in the Assembly in Kosovo is 5%. Looking at other regional practices, Serbia and North Macedonia also have a 3% threshold while Albania and Montenegro have a 3% threshold. Defining the average threshold figure can be tricky – while a high threshold like in Kosovo helps preserve stability it also impedes new, innovative or transformative voices from being competitive.

On the other hand, a too low threshold may also welcome too much competition and a myriad of parties which don't necessarily add value or best represent the population at large, and which render entering into coalition an even more difficult and scattered exercise. An example to consider is The Netherlands, where the threshold is 0.67% for a party to obtain a parliamentary seat. As a result, the country is widely known for experiencing extremely long periods of coalition negotiations before forming a government – the most recent 2017 elections led to a record-breaking 208 days of coalition negotiation talks. Such a low threshold also carries the disadvantage of potentially easily welcoming extremist powers into Parliament.

Finally, regarding the **gender quota and reserved minority seats**, similar models are used regionally. On legally-guaranteed seats for minority groups to ensure representation, Montenegro, Albania, Bosnia & Herzegovina all enact a provision for reserved minority seats in Parliament, while Serbia does not. Serbia does, however, define that political parties representing recognized ethnic minorities are exempted from the election threshold. On a gender quota, Albania, Bosnia & Herzegovina, Montenegro and Serbia all have legislated quotas for the single/lower house and at the sub-national level

III. Electoral reform proposals - what is best for Kosovo?

When discussing what is best for the electoral system and how to effectively reform, it is important to underline that the main goals of a sound electoral system are to **guarantee democracy, representativeness and governability**. The rules govern, for instance, the voting process and conditions, as well as the campaign and party financing limits. When looking

¹⁰ Democracy for Development, “Electoral Reform Agenda - Towards Real Representation”, Series: Elections and Political Parties, No. 12, Prishtina, September 2018, pg.19.

¹¹*Ibid*, pg.19.

particularly at the Republic of Kosovo, a recently-independent and multi-ethnic state, another key electoral system requirement is to optimize inclusiveness among all political parties at play. Here is where the proportional representation electoral system proves to be the best option – the proportionality of results makes for inclusivity of many different parties in Parliament as distributed by the 120 seats in the Assembly

Besides what elements to reform when undertaking a change to the electoral system, what is equally important is the **political will and consensus** among all parties - “Political consensus is highly encouraged as a prerequisite for a successful process, which would in turn generate credible institutions with representative legitimacy”¹², argues Democracy For Development. The European Commission has made the same point in their 2019 Report on Kosovo, noting that “political will across the political spectrum is crucial to undertake the necessary electoral reforms before the next round of general elections”¹³. The lack of political stability and true consensus may be one of the biggest hindrances to a successful electoral reform process in Kosovo, despite ongoing efforts and moments of pressure. This was actually even noted in the European Commission’s 2020 Report on Kosovo, which reads that “The joint initiative taken by the Kosovo Assembly caucus leaders in April 2019 to address shortcomings and strengthen the electoral process in line with the recommendations of the electoral observation missions led to the Assembly deciding to establish an ad hoc parliamentary committee on this matter, involving local and international experts and stakeholders. While this is a welcome step, no concrete steps have yet been taken by the Assembly Committee”¹⁴.

In parallel, the Central Election Commission and civil society organizations have regularly called for electoral reform. After all, reforming the electoral process seeks to enhance the country’s democracy. The **need for electoral reform has been on the political agenda** so far as the 2010 general elections, with *ad hoc* committees being established for that purpose yet failing to deliver concrete proposals. New momentum came in 2014 yet early elections that same year halted the progress. Then again in 2016¹⁵, after President Thaci took office, he initiated a process to reform the electoral system as well as reform the process for electing the President, but this was rejected by the opposition as a power move in disguise.

Indeed political consensus and political stability are vital for successful reform. As seen above, **early elections and overall political volatility are serious hindrances** to any process of electoral reform. Electoral reform implies founding new institutions or reinvigorating existing ones, potentially establishing transition teams or committees, as well as approving amendments to the Law on General Elections. The priority objective is to reform the electoral system before the next elections but, with the state of current political affairs as it stands, there is no real certainty as to when that will be. The last parliamentary elections of October 2019 were supposed to be only be followed by elections in 2023. Yet the sudden topple of the Kurti government led to a change in government, even if no new elections took place.

Among all the Kosovar electoral system elements broken down above, the one with widest consensus is for **replacing the single-district voting element with electoral districts**. Notes Democracy for Development in their *Electoral Reform Agenda* report of 2018 that the “Kosovo Assembly as the highest representative legislative body should reflect the Kosovo society,

¹² Democracy for Development, “The conference “Unfinished Electoral Reform: Way Forward?”, 28 September 2018, available at: <https://d4d-ks.org/en/activities/conference-unfinished-electoral-reform-way-forward/>

¹³ European Commission, Kosovo Report 2018, Political Criteria and Rule of Law, Elections, 2018, Brussels, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>, pg.5.

¹⁴ European Commission, “Kosovo 2020 Report”, 6 October 2020, pg.8

¹⁵ Office of the President of Kosovo, “The President creates two working subgroups on the electoral reform, proposals shall be drafted until December”, 11 November 2016, available at: <https://president-ksgov.net/en/news/the-president-creates-two-working-subgroups-on-the-electoral-reform-proposals-shall-be-drafted-until-december>

including its geographic regions. Results of elections until now have illustrated a domination of particular regions. The second-largest town, Prizren, has fewer representatives than areas a fraction of its size. 120 MPs represent 24 municipalities, while 14 other municipalities have no MPs in the Assembly¹⁶. Indeed the introduction of electoral districts has been a civil society demand. In addition to civil society calls, “also a number of Kosovar political leaders have urged the subdivision of Kosovo into electoral districts for the purpose of central elections¹⁷.”

Building off the widespread support for replacing the single district for multi-district voting, next question is on the size of the electoral districts. While Kosovo is administratively organized into 38 municipalities, this number would be far too high for electoral districts. The most obvious weakness seems to be fragmenting the country (further) by adopting small electoral districts – it could severely affect the chances for minority, female or independent candidates to succeed, and eventually fall into a two-big party system trap. Naturally, the probability of wasted votes cast to smaller or independent parties would increase should the number of electoral districts increase and their size decrease. All things considered, **creating medium-sized electoral districts would increase the link and accountability** between voters and representatives as well as enable a seat distribution which best represents Kosovo nationwide.

Another point of contention is the defined average threshold for political parties. Currently the electoral threshold stands at 5% in Kosovo and there are calls for **lowering the national threshold to 3%**. The 3% figure, currently in place in Albania and Montenegro for example, is dubbed the “golden middle between stability and allowing new parties to enter the Parliament”¹⁸. In the case of Kosovo, the proposal for a new threshold at a national level would not apply to independent candidates or minorities, and the original 5% figure would still be applied to coalitions. For all other, the 3% figure would come into play.

With regards to the voting lists on the ballot, **open lists remain the best option**. The pending question on matters of reform is then the multi-preferential voting. As things stand, voters get to choose between 5 party candidates in a preferential way, yet some voices in society have called for it to be a single-preference vote or to reduce the number of party candidates to three. On a rather technical level of voting lists and ballots, several stakeholders encourage **simplifying the ballot paper as a way to counter the negative effects of lacking voter education**. In order to lower the percentage of invalid votes – in the last elections of 2019 “the overall turnout reached 44.56% and 3.8% of all votes cast were invalid”¹⁹ – it is proposed to make it easier for voters’ understanding. Therein, a single tick is encouraged instead of multi-preferential candidate voting. This idea has been supported by civil society²⁰ and the EU in its Electoral Observation Mission.

The *Balkans Policy Research Group* notes in its report on *Kosovo and Elections - What Can Be Improved?*²¹ another more technical element the Kosovar electoral process needs to tend to in a forthcoming reform. That is an **efficient management of election results**. Holding an immediate recount of all ballots and votes (including conditional and mail or out-of-country

¹⁶Democracy for Development, “Electoral Reform Agenda - Towards Real Representation”, Series: Elections and Political Parties, No. 12, Prishtina, September 2018, pg. 27.

¹⁷ ACE, “Boundary Delimitation”, no date, http://aceproject.org/ace-en/topics/bd/annex/bdy/bdy_kos [Accessed 21 November 2020].

¹⁸ Democracy for Development, “Electoral Reform Agenda - Towards Real Representation”, Series: Elections and Political Parties, No. 12, Prishtina, September 2018, pg. 23.

¹⁹ EU Election Observation Mission, “KOSOVO 2019 Final Report”, 24 January 2020, available at: https://eeas.europa.eu/sites/eeas/files/eueomkosovo2019_finalreport_en_withcover.pdf, pg.6.

²⁰*Balkans Policy Research Group*, “Kosovo and Elections - What Can Be Improved”, 25 October 2015, available at: https://indep.info/wp-content/uploads/2018/12/KOSOVO-AND-ELECTIONS_What-can-be-improved-web.pdf, pg.10

²¹*Balkans Policy Research Group*, “Kosovo and Elections - What Can Be Improved”, 25 October 2015.

ballots), not only reduces complaints but also reduces the chance of vote manipulation and builds confidence in the democratic institutions and electoral system at large.

On the institutional context and oversight role over elections and party politics, a key part of the reform also passes through **bulking up transparent and independent bodies regulating election cycles**. The Office of Political Party Registration needs to be boosted, for instance, as KIPRED argues in a recent political report²². Only then would it be then able to adequately combat other challenges of the Kosovar electoral system, such as informal decision-making among senior or high-profile members within a particular party and effective sanctioning of political parties.

Finally, **the electoral reform needs to address political party financing**. The lack of financial transparency is perhaps the element most mentioned both in EU report recommendations and civil society analysis. Starting by different civil society findings and recommendations, KIPRED underlines in its *Electoral and Party System in Kosovo - A Perspective of Internal Party Democracy Development* report the need for **increased accountability on parties' expenditures**. It argues this should pass by "the amendment of the respective laws, in order to define and sanction in an explicit way all violations conducted by the political parties during the campaign"²³. This will largely tackle undemocratic, often customary, practices in the country. Democracy for Development similarly stresses that an electoral reform in Kosovo must bypass "addressing of political party financing; disclosure of funding for political candidates; authorizations of the Auditor General to appoint auditors to audit political party finances"²⁴. The importance of effective auditing cannot be dismissed. Lastly, with regards to the European Union's own take on lacking transparency of party and campaign finances, the recommendations are for **both legislative amendments and institution strengthening**. The final report from the EU Electoral Observation Mission deployed to assess the 2019 legislative elections notes that, not only "the regulatory framework does not ensure transparency, integrity and accountability of party and campaign finances"²⁵, but also implementation is deficient by responsible bodies such as the Central Election Commission. Additionally, "auditing and disclosure of the campaign finance reports will not be conducted before June 2020 and auditing does not include identifying unreported incomes and expenditures"²⁶. An example given to illustrate this deficiency is the fact that, despite all political entities having to legally receive all income and incur all expenditures by bank transfer through only one bank account, often this does not happen and remains unreported.

Should these proposals be taken into consideration, the democratization of the Kosovo political scene and election cycle would be enhanced and the country would be better aligned with international standards for democratic elections.

a) European Union and Council of Europe recommendations

The European Union (EU) has set up four different Election Observation Missions (EOMs) to Kosovo – 2014 and 2017 early legislative elections, and 2013 and 2017 municipal elections – to assess if the electoral process is in line with international standards and to build legitimacy and public confidence in the electoral process. Of all the elements noted above when delving into the particular electoral system in Kosovo, an EU EOM provides an assessment based on

²² KIPRED-CeMI, "Electoral and Party System – A Perspective of Internal Party Democracy Development", no date, pg. 29.

²³*Ibid*, pg.91.

²⁴ Democracy for Development, "The conference "Unfinished Electoral Reform: Way Forward?", 28 September 2018.

²⁵ EU Election Observation Mission, "KOSOVO 2019 Final Report", 24 January 2020, pg.4.

²⁶*Ibid*, pg.4.

observed practices and recommendations moving forward to improve future electoral processes in Kosovo.

The latest EU EOM to Kosovo²⁷ took place following an official invitation by President Thaci to **observe the 6 October 2019 legislative elections**. A group of around 100 observers were deployed on 7 September and stayed until final results were certified in late November. The final assessment reported “a **vibrant and competitive campaign** in most of Kosovo, a well-administered and transparent process prior to voting as well as an orderly election day. However, misuse of public resources and a **lack of transparency of campaign finance** resulted in an uneven playing field”²⁸. The dimmest finding came from majority Serb areas wherein campaign intimidation (both political and physical) and preventing effective outreach and lack of competition were widely visible - Srpska Lista was openly supported by the Serbian government, who in turn delegitimized other Kosovo Serb parties in the running.

The final report by the expert observers makes note of the **deficient legal framework in place**²⁹, despite previous reporting derived from the EOM to Kosovo in 2017 recommending a reform. As things stand, primary legislation allows for early elections to be called at extremely short notice, which increases risks of shortened campaigning and hindered electoral rights by, for example, compromising out-of-country voter registration or proper update of voter lists. The following two recommendations, on the organization of early elections and on voter list accuracy, are related to the inadequate legislation guiding the electoral process.

The final report highlights as a priority recommendation that “Early elections to be called with a minimum two months’ notice to allow sufficient time for proper electoral preparations and the election campaign”³⁰, which is especially telling since the 6 October 2019 election observed as an early election in light of Ramush Haradinaj’s resignation. A **limit for the organization of early elections** is important to ensure compliance with international best practices. *Another systemic problem the report stresses is the accuracy of the voter list. Observers found that lists still have yet to remove many deceased citizens and lacks safeguards against impersonation in Out-of-Kosovo postal voting. These issues harm the credibility of the process. Linked to the point above, calling early elections with disregard for an appropriate timeframe for organization and execution of the voting and electoral process in its entirety renders out-of-country registration and voting even more difficult. The report notes that “A large number of postal ballots arrived after the legal deadline”*³¹. A **full revision of voter lists and mail or out-of-country operations**, much like a simpler design of ballots, is therefore on the list of proposals for electoral reform. A reform which seeks an enhanced democratic experience for the country and easier, friendlier, voting experience for citizens.

In agreement with this, **legislation in place should also be amended to enable the better functioning of electoral bodies**, such as the Center of Results and Counting as well as better internal organizational structure of the Central Election Commission. This would avoid poor quality control being enacted. Stepping up the CEC is also important when it comes to ensuring transparency, and accountability of political party financing and expenditure. Bulking up institutions would enable better compliance and accuracy of lists, results and counted votes.

²⁷ EEAS, “About the EOM mission to Kosovo 2019”, 12 September 2019, available at: https://eeas.europa.eu/election-observation-missions/eom-kosovo-2019/66699/about-eom-mission-kosovo-2019_en

²⁸ EEAS, “EU Observers present their Final Report including 23 recommendations to improve future elections in Kosovo”, 24 January 2020, available at: https://eeas.europa.eu/election-observation-missions/eom-kosovo-2019_en

²⁹ EU Election Observation Mission, “KOSOVO 2019 Final Report”, 24 January 2020, pg.4.

³⁰ *Ibid*, pg.7.

³¹ *Ibid*, pg.3.

There are some instances, however, where legislation is sufficient yet social customs may hinder best results – an example to consider is that Kosovo has in place a 30% gender quota, which is indeed respected by all political parties, yet **women are still underrepresented in public office**. The European Commission's 2020 report on Kosovo in the context of the EU Enlargement Policy states that "Women candidates did not receive equal financial or logistical support from their political entities for their campaigns, and they rarely spoke at rallies. The media gave priority coverage to male candidates"³². To note, in the 2019 legislative elections, of the 1,067 total candidates on the party lists 724 men and 343 women (amounting to 32,15% female candidates), and only 39 of the 120 seats in the Assembly pertained female MPs.

The need to amend legislation and reform bodies or institutions connected to the electoral process in Kosovo is intrinsically linked to a recurring EU recommendation which has yet to be addressed in a proper electoral reform - that of **inadequate finance regulation and oversight of political parties**. The Kosovar legal framework guiding campaign and political party financing has been noted as a weakness by EU Election Observation Missions in 2014, 2017 and 2019. All reports stress the need to ensure amendments in line with international standards on reporting, disclosure, oversight and accountability related to financing and expenditures of political parties and electoral campaigns. In Kosovo, this matter "remains non-transparent, the existing legal framework is largely unenforced, and most political parties represented in the Assembly continue to exhibit serious weaknesses in internal financial control"³³. It is **recommended that relevant bodies are strengthened or better engaged in a cooperative nature** to guarantee proper oversight of financing and proper compliance with legislation in place. Here the Central Election Commission's mandate is relevant, as well as its Office of Political Parties Registration and Certification which lacks capacity to best exercise its guarantor role. The EU reminds that cooperation with "the Auditor General, the Anti-Corruption Agency, the prosecution and tax authorities is crucial" to deliver an all-encompassing watchdog role over financial reports and disclosure reports by political parties. Regulating the financing, public or private, of political parties and their respective campaigns is a fundamental element of the Kosovar electoral reform. This element alone would add immense credibility and public confidence in the newborn country's democracy.

The 2019 EU Election Observation Mission to Kosovo made clear recommendations to push Kosovo to full compliance with international standards for democratic elections. The final report observed repeated challenges and technical improvements to tackle in order to enhance the democratic experience in Kosovo. These standards have been best established by the **Council of Europe's Venice Commission**. While Kosovo is not a member of the Council of Europe (CoE), it is an aspiring member and, since 2014, a member of the CoE's European Commission for Democracy through Law, also known as the Venice Commission.

Notoriously, two guiding directions are noteworthy. Firstly, on political parties, the Venice Commission underlines "the importance of the principles of representativeness and receptiveness, responsibility and accountability as well as the principle of transparency with regard to the internal organization of political parties"³⁴. This pertains, for instance, the participation and representation of women and minorities. Secondly, on campaign and political party financing, the Council of Europe's rule of law body "puts specific emphasis on the principles of equal opportunity and transparency concerning the financing of political parties"³⁵. On this note, cap ceilings should be defined for private financing to prevent corrupt actions.

³² European Commission, "Kosovo 2020 Report", 6 October 2020, pg.8.

³³*Ibid*, pg.10.

³⁴ Council of Europe Venice Commission, "Political parties", available at: https://www.venice.coe.int/WebForms/pages/?p=02_parties [Accessed 18 November 2020].

³⁵*Ibid*.

Considering these electoral process EU recommendations from the perspective of Kosovo's EU accession aspirations, delivering on implementing these proposals not only benefits the country's democracy. Delivering on the technical and systemic EU recommendations in line with international standards as defined by the Council of Europe's Venice Commission, certainly enables further progression along the lines of alignment with EU values and standards.

IV. Conclusion

The present report provides an overview of the electoral systems used in Europe, followed by a deep dive into the party system, voting process and electoral system in the Republic of Kosovo. Context was provided into the current state of the political situation, as well as a state-of-play on reforms to the electoral system. From the voting ballots and the single-district system, to financing of parties and relevant institutional mandates, the report explored pros and cons of the Kosovar electoral system in place. The advantages and disadvantages linked to each element prove that, ultimately, there is no perfect electoral system without drawbacks – the trick lies, therefore, in finding the best fit for the country's socioeconomic reality and population's needs. Finding the right electoral system is no easy feat, and may require several electoral reforms as political life progresses and the nature of priorities or contested issues by political parties evolve, for starters. In the background and as foundation to such processes, ensuring the institutions and offices in charge of regulating the electoral process and guaranteeing democratic practices are running well and smoothly is another priority of the electoral system and one which reforms also tackle.

The report concludes that, in the specific case of Kosovo as a relatively recently-independent, post-war and multi-ethnic country, the electoral model **most convenient for allocating seats among directly-elected Members of Parliament is the proportional representation** electoral system. It allows for smaller parties to win Assembly seats instead of power being held solely among large parties. In turn, such a representative seat allocation fuels a sense of participatory and active citizenship.

The change most stressed by different stakeholders, as laid out and moreover explained in this report, is that **replacing the single-district voting system by a multi-district voting system with medium-sized voting constituencies**. This would allow for higher accountability between elected representatives and their (now smaller) constituencies and, overall, a better representation of the country's densely populated regions. Still on the voting process, another recommendation is to **simplify the voting process to counter negative effects of poor voter education**. This would combat high numbers of invalid votes as well as potentially fuel higher turnout rates.

Another widely accepted element of a forthcoming electoral reform is that of **the need to strengthen election management bodies, namely the Central Election Commission and the Office of Political Party Registration and Certification**. Both bodies need refurbishments of their mandates as well as boosted increased budget in order to combat lacking resources and capacity which have led to, for instance, inaccurate voter lists still including deceased citizens. Shaping credible institutions is a key part of a working democracy with values of transparency and accountability, one which prevents informal decision-making and properly sanctions wrongdoings.

Linked to this, **ensuring proper timeframes for organizing elections** is a fundamental part of ensuring they are well organized and regulated. It is recommended that limits be set and respected, not only to enable correct organization of voting and electoral process or political

campaigns, but also to permit timely and well-administered out-of-country registration and mail voting.

On the guiding legal framework in place for the electoral system, it is inadequate in many ways. Not just, related to the preceding recommendation, the organization of elections themselves, but also the financing of political parties. Informal decision-making and non-transparent practices are too commonplace when it comes to declaring expenditures and campaign disclosure reports. It is important to **adjust the legislation in order to discourage corrupt behavior**. On the other hand, in the instances where it is sufficient and in line with international standards in its theoretical nature, it lacks implementation. Such is the case of the gender quota respected on ballots but not practices in customs and overall female representation in elected office.

The legitimacy of a democracy relies on public trust in the process by all citizens and voters, regardless of party affiliation or ethnic background. **Ensuring proper representation in elected officials so as to mirror the heterogeneous composition of Kosovar society is vital**. With regards to **inclusiveness and the role of women and minority groups**, the 30% gender quota and the 20-reserved Assembly seats as defined by the Constitution are a best practice and should be maintained. However, simply ticking the box is not enough and such inclusiveness in decision-making and consultation processes must be enhanced and further encouraged.

This being said, consulting or **taking into consideration civil society proposals on electoral reform needs of the country, as well involving members of the ruling coalition and the opposition**, much like both small and large parties and both senior and junior party members, is fundamental to guarantee an electoral reform which favors the country and not a faction of its political spectrum.

Undergoing electoral reform can be quite a disruptive process for any democracy, let alone a self-titled newborn one marred by recent political instability and repeated calls for early elections. Kosovo should strive to successfully complete the necessary electoral reforms before the next elections. That is **what would be best for the country's democracy, and what has also been stressed by official EU recommendations** - both from electoral observation mission reports by the European External Action Service and annual country reports by the European Commission.

We look forward to sustained efforts by Kosovar politicians and society at large and, most importantly, we look forward to enhanced democratic practices in the Republic of Kosovo.

Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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