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PREVENTING AND FIGHTING CRIME IN ELECTION

(STANDARD OPERATING PROCEDURES; THE SOLUTION FOR THE CRIMES
BEFORE, DURING AND AFTER THE VOTING DAY IN ELECTION)



*PROJECT "INCREASING CIVIC PARTICIPATION IN ELECTORAL PROCESS IN KOSOVO"
WITHIN THE COALITION FOR ELECTORAL INTEGRITY (CEI)*

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ABOUT KLI

KLI, Kosovo Law Institute, is a non-governmental and non-profit organization on public policy, think-tank specialised in in the justice sector.

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1. Executive summary

As a result of the 2010 elections, which were followed by many irregularities, manipulations and reactions of the local and international factor, the Chief State Prosecutor, according to the recommendations of the KLI, had decided to implement a proactive policy for the 3 November 2013 elections, based on prevention and proactive prosecution of criminal offenses against voting rights.

Based on positive legislation in Kosovo, SP in cooperation with the KLI had drafted a Memorandum of Cooperation, through which inter-institutional cooperation was established with all relevant justice institutions involved in the electoral process of 3 November 2013.

As a result of the Memorandum of Cooperation, the State Prosecutor and the Kosovo Police, with the assistance of the KLI, have drafted Standard Operating Procedures (SOPs) to increase the efficiency and effectiveness of these institutions to react to the prevention and fight against the commission of criminal offenses that are related to the elections. The concrete results of this cooperation were witnessed throughout the 2013 election process, as well as following, either municipal or general elections, until the last parliamentary elections held on 11 October 2017, in which there was drastic reduction of cases of election manipulation. The KLI estimates that SOPs have been the source of unprecedented effective cooperation so far with regard to investigating and prosecuting certain crimes in Kosovo, increasing the readiness of action by the police and the prosecution.

The KLI estimates that the voting day, will no longer be problematic, if justice institutions strictly implement the SOPs and legal obligations in the prevention and prosecution of perpetrators of the criminal offenses against the right of vote. The problem, remains the other forms of manipulation of election processes and the abuse of the right of voters. This involves the abuse that occurs before and after the voting day in the election process

The KLI estimates that election crimes are related to other criminal activities that are related to the elections but do not start and do not end with the voting day. In this regard, several phases and phenomena are involved, which stem from the suspicious way of funding of political parties, a issue, that has been continuously raised by the KLI and other civil society organizations.

While SOPs to a large extent concentrate on undertaking police and prosecution actions on Election Day, the pre-election campaign should be given proper attention by completing SOPs before and after the voting day in the elections.

During the phase before the voting day, elections are followed by pre-election campaign, in which, if there was an effective prosecution by the SP, many unlawful actions could be revealed, which entered in the criminal sphere. This means the funding of political parties.

During this phase, the KLI recommends that SP appoints special prosecutors for elections for each municipality in Kosovo, which would focus on monitoring of activities of pre-election campaign, through special investigators, through informations that are published in media and offering access for the public to inform on secure communication lines anonymously via telephone and internet. In this way, it would initially be possible to prevent the suspicious funding of political parties which, after the information that SP would investigate these financing activities, would minimize suspicious funding activities and then if these suspicious actions were to take place, will be prosecuted efficiently by the prosecution bodies.

The KLI estimates that after the end of the voting day and the announcement of the election result, the SP must undertake actions to analyse the activities in the public procurement field, a field in which the public budget is abused by rewarding businesses and other financiers that have financed political parties or specific candidates during pre-election campaign.

The database created by SP during the pre-election campaign for activities financed by political parties from businesses and certain individuals, will pave the way for thorough investigation and prosecutions for the prosecutors that will be obligated to investigate political party financial connection and rewards of financiers with public tenders.

In this form, it would initially be possible to prevent the suspicious financing of public tenders to businesses or individuals who financed the political parties, which, after informing that SP will investigate these financing activities, would minimize activities of suspicious financing businesses or individuals through public tenders and then if such abuse would occur, they will be prosecuted efficiently by the prosecution bodies.

2. Legal framework for criminal offenses against the right of vote

To enable a more effective and efficient fight in the prosecution and trial of election manipulations, the legislation in the Republic of Kosovo in the Criminal Code of the Republic of Kosovo has devoted a special chapter to these offenses. While Chapter XVI "Criminal Offenses against Human Rights and Freedoms" of the old Criminal Code of Kosovo contained six criminal offenses related to elections,¹ the new Criminal Code already contains 11 criminal offenses.² The Assembly of Kosovo through legal amendments has paid special importance to the voting rights. The new Criminal Code has a severity of sentences for criminal offenses against voting rights, categorizing them as serious crimes.

New Offenses sanction incriminating actions in three stages during the election process, including criminal offenses that may be committed before the voting day, during the voting day and after the voting day.³ The national elections of 2010 have been identified as the worst elections organized after the end of the war in Kosovo. Characteristics of these elections were the involvement in manipulations mainly of election commissioners. The new criminal code has made the sanctions more severe for this category, where for every case, where criminal actions can be carried out by election commissioners, the sanctions are more severe.⁴

¹ Note: The Old Criminal Code of the Republic of Kosovo was the basis of the criminal legislation for sanctioning criminal activities in elections, which had paid particular attention to these offenses, as set out in Articles 176, 177, 178, 179, 180 and 181. These articles sanction criminal acts against all persons who in any way hinder voters from exercising the right to vote, undertake any corrupt activities, use violence on the voting day, vote several times the same voter, reveal the secret vote, cheating on polls and destroy in various forms the voting documents. Sentences foreseen in these legal provisions foresee a fine, condition and effective imprisonment of up to five (5) years. *Criminal Code of the Republic of Kosovo, Chapter XVI: Criminal Offenses against Freedom and Human Rights*, Assembly of the Republic of Kosovo, April 2003.

² The advancement of criminal legislation in this regard defines criminal actions against voting rights related to: the violation of the right to run, the threat of a candidate, the prevention of the exercise of the right to vote, the violation of the free determination of voters, the abuse of official duty during the elections, giving or receiving bribes regarding voting, abuse of voting rights, obstruction of the voting process, violation of secrecy of the voting, falsification of voting results, disposal of voting documents.

³ Note: Criminal offenses of Chapter XVIII, "Criminal Offenses against Voting Rights" may be conducted throughout the election process, including criminal acts before, during and after the voting day. Some of the offenses that may be committed in preparation for elections are sanctioned in Articles 210 "Violation of the Right to Run" and 211 "Candidate's threat". Some of the offenses that may be committed in preparation and on election day are sanctioned in articles 212 "Preventing the exercise of the right to vote", Article 214 "Abusing official duty during elections" and Article 215 "Giving or receiving bribes regarding the voting ". Some of the offenses that may be committed on Election Day are sanctioned in articles 213 "Violation of the free determination of voters", 216 "Abusing the right of vote", Article 217 "Obstructing the voting process" and Article 218 "Violation of secrecy of the vote ". Some of the offenses that may be committed on Election Day after the closure of the voting process are sanctioned in articles 219 "Falsifying the results of voting" and 220 "Annihilate voting documents".

⁴ Note: The new code defines criminal offenses, which focus on election commissioners, to whom in each case the sentences are severed as follows: If the offenses provided for in *Article 212 and 218* are committed by *election commissioners*, the sentences are from *1 to 5* years of imprisonment. If the offense provided for in *Article, 214* are committed by *election commissioners*, the sentence shall be a minimum of *2 to 5* years of imprisonment. If the offenses provided for in *Articles 215, 216 and 220* by the commissioners of elections then minimum sentence for them is *3 to 5* years imprisonment.

The KLI estimates that the 11 criminal offenses that sanction criminal activities related to the elections in the Criminal Code adequately define all the actions and ways of committing these criminal offenses about the election process and the voting rights in Kosovo.

3. Inter-institutional cooperation for elections

The KLI in its first domestic publications on prosecution and sentencing for election cases,⁵ having analyzed past failures in prosecution and sentence policies, recommended a proactive role of justice and security institutions to effectively prevent and fight election manipulations.

As a result of the 2010 elections, which were followed with many irregularities, manipulations and reaction of the local and international factor, the Chief State Prosecutor, according to the recommendations of the KLI, had decided to implement a proactive policy for the elections of 3 November, 2013, based on prevention and proactive prosecution of perpetrators of criminal offenses against voting rights. Based on the positive legislation in Kosovo, SP in cooperation with the KLI had drafted a Memorandum of Cooperation, through which it was established for the first time an inter-institutional cooperation among all the relevant justice and security institutions involved in the electoral process of 3 November 2013. On 18 September 2013, according to the initiative of the former Chief State Prosecutor, Ismet Kabashi, for the first time was signed a Memorandum of Cooperation between the Kosovo Prosecutorial Council, the Kosovo Judicial Council, the Kosovo Police, the Central Election Commission and the Election Complaints and Appeals Panel.⁶

The purpose of this memorandum was to increase the cooperation and coordination between the abovementioned institutions, in undertaking activities to successfully fight, including the prevention of all those who are in conflict with the provisions of the applicable law regarding criminal offenses against the rights of voting, to be held in 2013.

As a result of the Memorandum of Cooperation, the State Prosecutor and the Kosovo Police, with the assistance of the KLI, have drafted Standard Operating Procedures⁷ to increase the efficiency and effectiveness of these institutions to respond to the prevention and fighting of the commission of criminal offenses related to elections. In fact, the greatest achievement as a result of the Memorandum of Cooperation was the creation of SOPs, which had specified actions for the effective investigation and prosecution of cases related with elections, always based on lessons learned from the past and better experiences based on applicable laws. SOPs were a

⁵ Musliu B. and Gashi A. "Organized Crime in Elections: Analysis of the Policy of Prosecution and Sentence". 6 June, 2012, Pristina. Kosovo Law Institute.

⁶ Note: It was Chief State Prosecutor, Ismet Kabashi, who had invited bodies such as Kosovo Police, Kosovo Judicial Council, Central Election Commission, and Election Complaints and Appeals Panel to draft and sign a Memorandum of Cooperation for the 2013 Election. Memorandum Cooperation between KPC, KJC, KP, CEC and ECAP regarding elections 2013, 18 September 2013. This practice was continued for other elections organized in Kosovo as for local and national elections.

⁷ Note: SP and KP have drafted SOPs in cooperation and with the assistance of the KLI, which has drafted these SOPs, which have been modified and approved on 26.09.2013 by the SP and KP.

direct recommendation from the KLI that had drafted SOPs, which subsequently the SP through a working group had finalized and had decided, together with KP, to implement them to increase efficiency and effectiveness in prosecution of criminal offenses against the right of vote. As in the preliminary reports, the KLI estimates that SOPs have been the source of unprecedented effective cooperation so far with regard to investigation and prosecution of certain crimes in Kosovo, increasing the readiness of action by the police and the prosecution.⁸

The concrete results of this cooperation were witnessed throughout the 2013 election process, as well as following municipal and general elections, until the last parliamentary elections held on 11 October 2017.

This good practice has continued over the years, while the coordination of responsible institutions has consistently been based on positive legislation and the Memorandum of Cooperation, from which derived standard action procedures and action plans related to the elections.

Excluding eventual concessions, generally the positive results shown in the coordination between the justice institutions have directly affected the general election performance, which has been assessed by locals and also by internationals as well-organized, fair and democratic elections.

In addition to incidents for which there were criminal reports and indictments, the observers of the EU Election Observation Mission (EU EOM) emphasized that "however, the elections were negatively affected by the old weaknesses, especially from the incorrect voter lists which are vulnerable to fraud, an electoral system that leaves possibility for abuses, and a system with many defective for voting outside Kosovo. "According to them," in Serb majority areas, the election process was damaged by intimidation and violence cases within serb community of Kosovo against the candidates and voters. There was also an insufficient response from the prosecution and the police against those incidents".⁹

⁸ Police, Prosecution and CEC ready for the June 11th elections. Koha.net. 24 May 2017. (See link <http://www.koha.net/arberi/20626/policia-prokuroria-dhe-kqz-ja-te-agatshme-per-luzgjedhjet-e-11-qershorit/>)

⁹ EU observers: Really competitive elections, but with some old weaknesses. Ekonomiaonline. June 13, 2017. (See the link <http://www.ekonomiaonline.com/politike/vezhguesi-e-be-se-the-choice-vertet-konkurriese-por-me-disadobesi-te-vjetra/>)

4. Standard Operating Procedures (SOPs) between Prosecution and Police

The Standard Operating Procedures for the first time between SP and KP with the assistance of the KLI were approved on 26 September 2013. Their purpose is to specify common standard actions between Prosecutors and the Police from the beginning of the electoral process until the end of the election process. The procedures specified the specific actions of prosecutors and police to eliminate the possibilities of abuse before, during and after election day, focusing on quick response to any information on abuse of elections, respect for the rights of defendants in criminal procedure as well as quick information of the public about each potential incident. The same SOP's have been modified¹⁰ and continued to apply in all organized elections after 2013.

Assessing the bad practice of the voting day in the previous elections, the regulation of SOP's is set exactly in the way of preventing and fighting abusers on the voting day. In this regard, the SOP's have created mutual obligations between the Police and the State Prosecutor on the voting day, which, upon their implementation in practice, have reached their goal. However, other forms of abuse of the election process related with actions before and after the voting day have remained unregulated through SOP's, leaving many possibilities of abuse. For these possibilities, a more thorough elaboration will be made in the following section of the report, whereas the following are attached the SOP's that are in force that relate to the standard actions of the Police and Prosecution on the day of voting in the election processes.

¹⁰ Note: In addition to the Memorandum of Cooperation between Justice Institutions, in September 2017, the State Prosecutor and Kosovo Police had modified SOPs. Standard Action Procedures - State Prosecutor and Kosovo Police. 25 September 2017.

STANDARD OPERATING PROCEDURES - SOP

<p>1. The police in cooperation with the State Prosecutor in any case where there is a grounded suspicion that a criminal offense has been committed by a person who is suspected of committing acts against the voting rights during the electoral process (which actions are sanctioned with CCK), with urgency and priority, undertake procedural actions foreseen by the CCPRK, conducting a preliminary investigation for the collection of evidence / facts in the case that there are indications that the offense was committed or attempted to be carried out by a suspicious person/s always respecting the positive laws of RKS that regulate the legal field for elections.</p>
<p>2. Police with urgency/ in the optimal term, notifies the prosecutor for the detention of persons, who decides on an immediate detention for the purpose of processing the case.</p>
<p>3. The police provide the scene, collect relevant evidence, and takes statements from potential witnesses.</p>
<p>4. In cases when criminal offenses against voting rights are committed by citizens or any other person, the police notify the prosecutor, who decides on the arrest measure.</p>
<p>5. In cases when the criminal offense against voting rights is committed by citizens or any other person, the police notifies the prosecutor, who decides on the measure of detention.</p>
<p>6. The Police for the Arrest of Officials (Voting Center Manager, Chairperson, Voting Council members, Voting Center Assistants, and Assistant Table Staff at the Voting Center), during the exercise of official duty regarding the voting, notifies the municipal senior official of the election for the Municipality, with the purpose of replacing with other VCM members by reserve staff.</p>
<p>7. In all cases for which there is information that in polling centers and in polling stations there are abuse of electoral process by appointed staff by the CEC, Chairperson of the VCM and other members who are obliged to report abuses during the elections on the right to vote and do not do such a thing, Kosovo Police urgently undertakes operational / investigative actions with the purpose of verifying these allegations and for confirmed information, through communication channels of the KP, urgently notify the prosecutor, which decides to initiate the necessary legal procedures.</p>
<p>8. The police in cooperation with the Prosecutor in charge forbid all persons, responsible persons and officials who falsely declare the commission of a criminal offense to the law enforcement institutions.</p>
<p>9. During the "Day Z" (Election Day), at any level the elections are held (general or local), in coordination will establish joint teams of Prosecutors and Investigators from the KP, which will interact, co-operate and coordinate investigative activities in concrete day wherever the need arises in the territory they cover according to Territorial and Subject Competence.</p>
<p>10. Kosovo Police takes on the obligation to secure the conditions for work of joint teams in the Region / Police Station, including offices, electronic equipment and transport. Also, at the Regional Directorate of the KP there will be caretaker teams of technical crime specialists who will be required to appear on the scene, if it is necessary to gather evidence for the investigative procedure.</p>
<p>11. Whoever, in abusing of the economic dependence of the voters, performs these services in order to influence them to vote in a certain way or not to vote, and this is understood by the police, they will be identified by the police and after consultation with the prosecutor they will be detained.</p>
<p>12. Kosovo Police urgently notifies the Kosovo Police Coordinator of the electoral process about all actions related to the detention / arrest of suspected persons.</p>
<p>13. Prosecutors in charge urgently inform the National Coordinator about all actions related to the detention / arrest of suspected persons.</p>
<p>14. The National Coordinator and Kosovo Police Coordinator as soon as possible inform the public with official information about criminal cases that happen during the electoral process. The same information then can be issued by the prosecutor in charge at the local level depending on the interest of the local media.</p>

Table 1: Standard Operating Procedures.

5. Effects of implementing the SOPs in preventing and fighting stealing of votes

KLI as the first organization that has built a practice of monitoring justice institutions in dealing with cases related to criminal offenses against voting rights, assesses the approach and standard of the SP in treating these cases with priority. This standard for the first time in cooperation with the KLI and other institutions was built in the local elections 2013, advanced in the national elections 2014, and continued the same also in the national elections of 11 June 2017. Currently in Kosovo, elections are free, democratic and fair, recognized by political parties and the international factor, despite minor incidents that have been noted but for which there was an adequate response of the justice institutions, for which the police and prosecution should be acknowledged. As never before, with regard to the incidents evidenced in the national elections of 11 June, 2017, indictments have been raised immediately against suspected perpetrators for committing criminal offenses against voting rights. The time of raising indictments in these cases, if compared to Kosovo's circumstances and the practices of other cases of the justice system, can be considered as a reasonable and record time.¹¹

a. Implementation of the SOPs, proactive role of security and prosecution institutions

The SOP's for the first time "awakened" the prosecutorial system from its sleep, which then was mobilized in all aspects, creating inter-institutional coordination, especially between the Police and the Prosecution.

Unlike the past, the announcement of the election presents an "alarm" for the justice institutions, which are mobilized to protect the citizen's vote.¹² The persistent presence of the police on the voting day does not present a good view, because the voting day in any democratic country, must represent a peaceful day in which the citizens express their will in a democratic manner, by voting their favorite.¹³ However, until the establishment of an acceptable standard in Kosovar society, the KLI estimates that police responses to the protection of the citizen's vote are needed and the presence of the police on the voting day should be minimized.

¹¹ Musliu B. and Miftaraj E. "Justice in the 2017 Elections". 14 August 2017, Pristina. Kosovo Law Institute.

¹² Mobility is required to prevent manipulation of elections. Telegrafi.com. 05/18/2017. (see link <https://telegrafi.com/make-mobile-mobile-make-many-pulse-manipulations-/>)

¹³ KLI interview with Mr. Kujtim Kerveshi, legal expert. September 2018.

The practice built in the 2013 local elections has increased the proactive role of security and prosecution institutions.¹⁴ In this regard, Kosovo Police teams in the operational part of the Election Voting Day take numerous actions to be ready to act in any situation that may be created in terms of manipulating the electoral process.¹⁵ Mobile teams include over 5000 police officers, divided into: mobile police teams in all voting stations, civilian police teams, and other investigative teams. Meanwhile, the State Prosecutor has established joint teams with the Police as well as over 100 prosecutors in charge on Election Day in all municipalities of the Republic of Kosovo.¹⁶

KLI is the only organization that has built for the first time the practice of monitoring the institutions of justice in their reactions in criminal offense cases related to elections. This practice has been built since 2013 and has continued in all elections. Further, KLI has extended the chain of collaborators in civil society to increase oversight in the response of justice institutions.¹⁷

Based on the KLI practice in monitoring the activities of the justice and security institutions for the protection of the vote in the local and national elections, it results that since 2013, the implementation of SOP's has made great progress in changing the role of these institutions. The access and role of the State Prosecutor and the Kosovo Police¹⁸ has transformed into a proactive role, directly affecting the prevention and fighting criminal offenses against the right of vote.

It is better noticed in the efficient and effective response, which has affected in each election, to reduce the number of cases and persons involved in the manipulation of elections.¹⁹ See in the graphic below the trend of persons involved in manipulation in elections held in 2010²⁰, 2013²¹, 2014²² and 2017.²³

¹⁴ KLI interview with Ms. Laura Pula, Prosecutor at the State Prosecution and Coordinator of election cases. August, September 2018.

¹⁵ KLI interview with Mr. Naim Rexha, A.D. General Director of the Kosovo Police. August 2018.

¹⁶ Police, Prosecution and CEC ready for the June 11th elections. Koha.net. 24 May 2017. (See link <http://www.koha.net/arberi/20626/policia-prokuroria-dhe-kqz-ja-te-agatshme-per-luzgjedhjet-e-11-qershorit/>)

¹⁷ *Note:* The KLI in 2016 and 2017 involved monitoring partner organizations such as the Group for Legal and Political Studies (GLPS) and the Initiative for Progress (INPO).

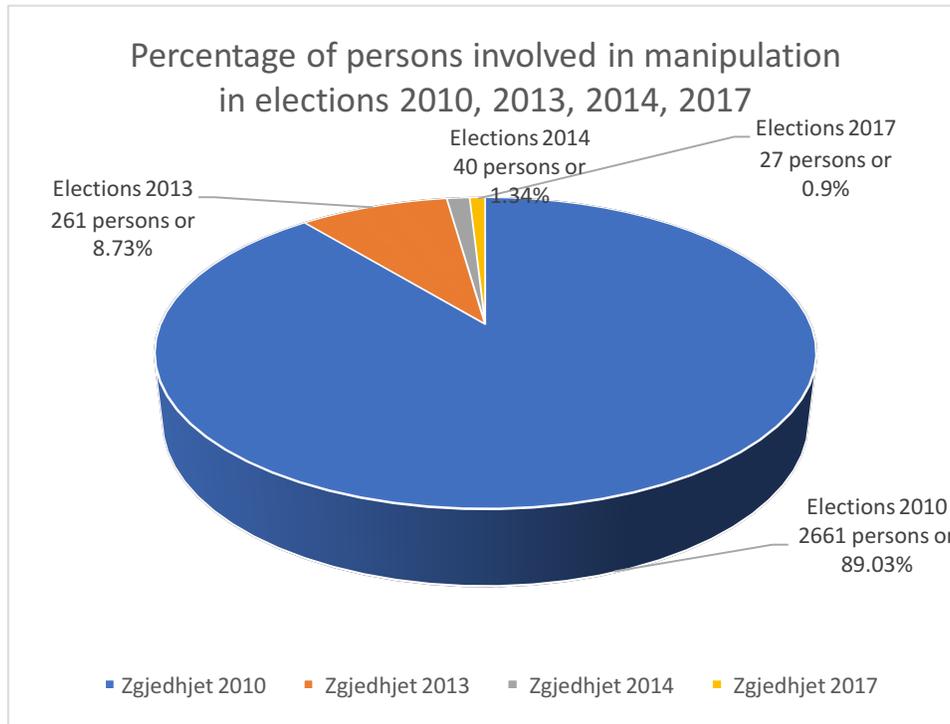
¹⁸ KLI interview with Mr. Bajram Shabani, Kosovo Police, Lieutenant - Election Coordinator. August 2018.

¹⁹ Musliu B. and Miftaraj E. "Justice in Elections 2017: Report on the Response of Justice Bodies to Offenders of Criminal Offenses against Voting Rights". August 2017. Kosovo Law Institute.

²⁰ *Note:* According to the data provided by the National Election Coordinator at the Office of the Chief State Prosecutor, Ms. Laura Pula, results that for the 2010 elections, Prosecutions have filed 448 criminal reports for election abuse involving 2661 people, mainly political party commissioners. October 2018.

²¹ *Note:* According to these data provided by the National Election Coordinator at the Office of the Chief State Prosecutor, Ms. Laura Pula, turns out that for the 2013 elections, the Prosecution have filed 197 criminal reports for election abuse involving 261 people, mostly political party commissioners. October 2018.

²² *Note:* According to these data provided by the National Election Coordinator at the Office of the Chief State Prosecutor, Ms. Laura Pula, results that for the 2014 elections, Prosecutions have filed 25 criminal reports for election abuse involving 40 people, mostly political party commissioners. October 2018.



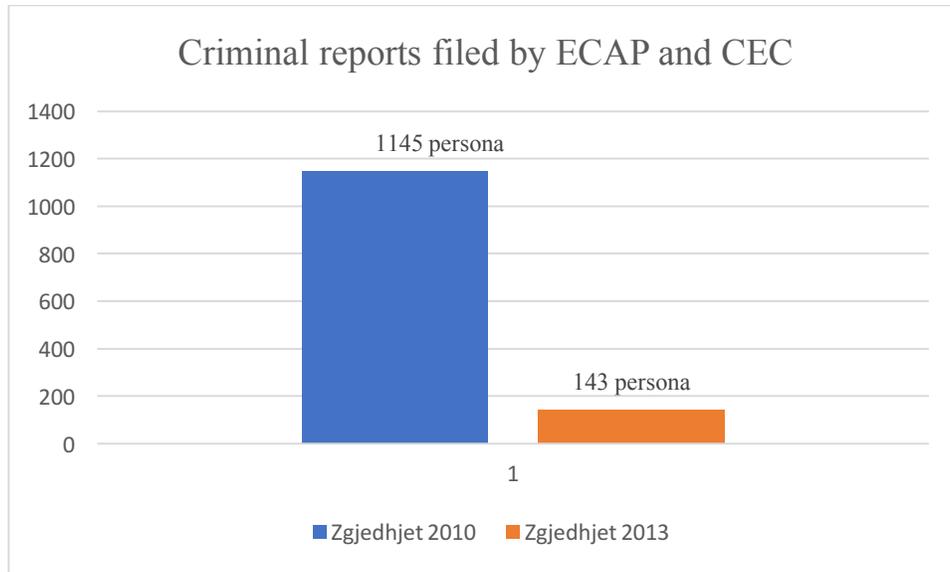
Graphic 1: Percentage of persons involved in manipulation of the elections over the years.

This data proves that the proactive role of justice institutions has been the determinant to significantly reduce the number of election manipulators. The policy of prosecution and quick response, in all cases of incidents on the voting day, has brought this positive result of reducing cases of manipulation on the voting day, for which the KLI has appreciated the commitment of these institutions in implementing the SOP's .

Beyond these criminal reports initiated by the Prosecutions itself, criminal reports were raised by the Election Complaints and Appeals Panel (ECAP) and the Central Election Commission (CEC). See below the graphic for the number of persons to whom criminal reports have been raised by these two institutions for the 2010 and 2013 elections.²⁴

²³ *Note:* According to these data provided by the National Election Coordinator at the Office of the Chief State Prosecutor, Ms. Laura Pula, results that for the 2017 elections, Prosecutions have filed 23 criminal reports for election abuse involving 27 people, mostly political party commissioners. October 2018.

²⁴ *Source:* Data was provided by the National Election Coordinator at the Office of the Chief State Prosecutor, Ms. Laura Pula. October 2018.



Graphic 2: Criminal reports per election, filed by ECAP and CEC

For the 2010 elections, ECAP and CEC have filed 227 criminal reports against 1145 people, whereas for the 2013 elections have filed 143 criminal reports against 143 people.

Based on all these election experiences from 2010 onward, it is noticed that only after the approval of the SOP's in 2013 and their implementation in practice, progress has been made in preventing and fighting abuse in elections on the day of voting.

b. Deficiencies of SOP's, limited policy of prosecution

KLI estimates that the voting day will no longer be problematic, if the justice institutions strictly implement the SOP's and legal obligations in prevention and prosecution of perpetrators of criminal offenses against the right to vote. The problem remains the other forms of manipulation of election processes and the abuse of the right of the voters. This means the abuses that occur before and after the voting day, in the election process.

KLI in the analytical report on the policy of prosecution and convictions in cases of election crimes published in 2012 "Organized Crime in Elections", has raised concerns about the policy of prosecution, which is limited only to the pursuit of political party commissioners, who were involved in the manipulation of the votes. The State Prosecutor had not gone further investigating the elements of organized crime, even though there were about 5000 commissioners involved in manipulation of the votes in the 2010 elections. KLI estimates that

the Prosecution has amnestied the perpetrators of these manipulations in the year 2010, who have been the organizers, the inciters, and financiers of these criminal activities in elections.²⁵

KLI estimates that election crimes are related to other criminal activities, which are related to the elections, but do not start and do not end with the voting day. In this regard, several phases and phenomena are involved, that stem from the suspicious way of financing political parties, a matter that has been constantly raised by KLI and other civil society organizations.²⁶

While SOP's, to a large extent concentrate on undertaking police and prosecution actions on voting day of the elections, the pre – election campaign should be given proper attention through completion of SOP's in the phase before and after the voting day in elections.

KLI while evaluating the actions of political parties and certain candidates, to the investments they make in electoral campaign, and after taking power with the award of businesses with public tenders, estimates that there are no standard actions of police and prosecution in efficient prevention and prosecution of these illegal acts. This efficiency is facilitated by reviewing the supplementation of SOP's in these two election stages, before and after the voting day.

In the stage before the voting day, elections are followed by pre – election campaign, in which, if there was an effective prosecution by the SP, many unlawful actions could be detected, that are included in criminal sphere. By this we mean funding of political parties. The latter usually make much more money than they declare in election campaigns. Their finances have consistently remained non – transparent for the public in most cases. On the other hand, businesses close to the political parties that govern, which have funded party campaigns, have been awarded with public tenders.²⁷ In order of having an adequate response to effective prosecution, KLI recommends the supplementation of the SOP's, which would enable to prevent and fight criminal offenses committed before and after the voting day of the elections.

In the stage before the voting day, in which, political parties conduct an electoral campaign, by monitoring the reaction of the State Prosecutor and Kosovo Police, KLI has found that these institutions do not pay particular attention to monitoring of funding activities of electoral campaigns of political parties or certain individuals from suspicious sources. In this respect, there should be SPO's that enable monitoring of election campaign activities of political parties. KLI recommends that SP along with police investigation teams, monitor the activities of the electoral campaign, by collecting reports that are published in the media, as well as providing access to the public through safe communication lines, anonymously, using telephone and internet, in order to inform regarding campaign expenditures of political parties.

²⁵ Musliu B. and Gashi A. *“Organized crime in election process: An analysis of prosecution and adjudication policy”*, June 6, 2012, Pristina, Kosovo Law Institution.

²⁶ *Note:* KLI and other civil society organizations continuously have raised concerns regarding suspicious funding of political parties in Kosovo, for which was requested to be part of the investigation and prosecution process of the State Prosecutor.

²⁷ *“Failed meditation: Funding of political parties in Kosovo”*, Çohu, December 2016 (Follow link http://cohu.org/repository/docs/Persiatja_e_Deshtuar_ALB-FINAL-Print-Bleed-v1_175837.pdf).

KLI estimates that such an approach would impact on preventing the suspicious funding of political parties, which, after being informed that SP will investigate these campaign funding activities, would minimize suspicious funding activities, and then if these suspicious activities would happen, they would be efficiently prosecuted by the prosecution authorities.

In Kosovo, the funding of political parties is based on the Law on General Elections²⁸ and Law on Financing Political Parties²⁹. With the amendments to the Law on Financing Political Parties made in 2012, the budget from which political parties would benefit was increased from 0.17% to 0.34% of Kosovo's total budget. In addition to this budget, political entities also benefit from the Fund for Electoral Campaigns that reaches up to 0.05% of Kosovo's total budget. In this situation, political parties seek support from businesses and citizens, so their election campaigns influence their goal achievement of reaching power.

On the other hand, the financial statements of most political entities continue to remain unclear and closed for citizens, consequently their voters. A problem constantly raised by civil society is the discrepancy of realistic political parties' expenditures with declared revenues. This situation has affected politics and business to be inseparable. Political parties fight for power, through which campaign funders, in these cases businesses, are repaid, whereas all this goes beyond legal frameworks. In this regard, there have been many reports on the phenomenon of repayment of businesses with public tenders at all levels of government.³⁰ The continuous findings of national and international institutions testify that systematically there have been favours in public tenders, which have not been implemented in accordance with contracts and that companies have been amnestied continuously.

KLI has addressed this phenomenon in previous reports within the program "Justice in Elections", and despite the tight liaison of politics and business, prosecutors did not conduct investigations that would discover suspicious funding of political parties. This kind of political party or candidate funding, and the repayment of businesses (that have funded political parties) with public tenders, are the fields/areas in which prosecutors have failed to conduct advanced prosecution, in order to uncover all forms of election manipulation.

The tight liaison of politics and business, before and after the voting day, should be the focus of the State Prosecutor's investigation and prosecution, in order to reach the real cause of manipulation of the election process. KLI recommends that SP undertakes actions in terms of analysing actions in the field of public procurement, the field in which the public budget is

²⁸ *Law on General Elections in the Republic of Kosovo, Law no. 03/L-073*, Assembly of the Republic of Kosovo, June 5, 2008. Also, *Law on Local Elections in the Republic of Kosovo, Law no. 03/L-072*, Assembly of the Republic of Kosovo, June 15, 2008.

²⁹ *Law on financing political parties, Law no. 03/L-174, article 7 on Financial funds for the support of political subject*, Assembly of the Republic of Kosovo, January 12, 2012.

³⁰ Kastriot Jahaj, "Repaying campaign funders with tender", paper "Jeta në Kosovë", March 19, 2012 (Follow link <http://www.gazetajnk.com/?cid=1,3,1671>).

abused by rewarding businesses and other funders, that have funded political parties or certain candidates in election campaigns.

Now at this stage, drafting and implementing of the SOP's for monitoring and collecting information on election campaign funding by businesses or individuals meant for political parties, would provide a good track of investigation and prosecution for prosecutors who would be obliged to investigate connections between the funding of political parties and rewarding these funders with public tenders.

Herewith, it would initially be possible to prevent the suspicious funding of public tenders to businesses or individuals who have funded political parties, which, after being informed that SP would investigate these financing activities, would minimize suspicious funding activities of businesses through public tenders, and then if such abuse would occur, they would be pursued efficiently by the prosecution authorities.

KLI considering all these actions in the field of public procurement and the liaison of politics and business, recommends that the SP carries out actions in monitoring and analysing public procurement actions, to investigate and prosecute the reward of the funders of political parties with public tenders. This kind of monitoring should be conducted through SP along with police investigation teams, who would focus on monitoring public procurement activities, by collecting reports that are published in the media, as well as providing access to the public through safe communication lines, anonymously, using telephone and internet, in order to inform regarding the reward of the businesses (that have funded political parties) with public tenders.

6. Sentence Policy in Cases of Election Crimes

The judicial system³¹ and prosecutorial system³² in Kosovo, after the massive manipulation of the 2010 elections, have decided to treat election crime cases with priority. KLI while systematically monitoring the handling of election cases has consistently provided assessments of prosecutorial system failures in prosecution policy and of inadequate sentence policies of judicial system, that did not achieve the purpose of the sentence.

However, KLI has praised the prosecution policy for the 2010 elections. Although the reaction was delayed, and these crimes were not prevented, the actions of the prosecutors in filing criminal reports against over 2500 political party commissioners, positively affected all the actors and political party militants to withdraw from attempts of manipulating votes of the citizens.

As in the past, KLI raises concerns on the lack of a unique database of Police, Prosecution and Judiciary, regarding election cases. There is still no data that can accurately indicate the continuity of election crime cases, from the census to the end. However, some data provided by Kosovo Judicial Council (KJC)³³ testify to a large number of cases initiated for crimes committed in the 2010, 2013, 2014 and 2017 elections. In the table below, KLI has presented the KJC data regarding all these elections held in Kosovo.

³¹ KLI interview with Mr. Shkëlzen Maliqi, Director of Secretariat of the Kosovo Judicial Council, August, September 2018.

³² KLI interview with Mrs. Laura Pula, Prosecutor and Coordinator of election cases, August, September 2018.

³³ *Note:* KJC data make impossible to analyze the movement of equal cases processed in court. Therefore, KLI has described cases and has commented them regarding the number of inherited cases, received cases, solved and unsolved cases at the end.

Criminal cases regarding the elections held throughout the years	Courts (General Department GD) (Serious Crimes Department SCD)	Criminal Code; NCC – Old Criminal Code; OCC – New Criminal Code)	Unsolved cases at the beginning of the reporting period	Received cases at work	Overall cases at work	Number of solved cases										Total number of solved cases	Unsolved cases at the end of the reporting period
						Sentences				Judgment of Acquittal	Rejection Judgement	Statutory limitation		Solved in alternative method			
						Punishment of imprisonment	Punishment of a fine	Suspended sentence	Other punishments			Relative statutory limitation	Absolute statutory limitation				
2010	Former M.C.	OCC	113	19	132	6	8	5	2	0	1	0	0	22	65	67	
2010	Former D.C.	OCC	3	0	3	0	0	0	0	0	0	0	0	0	0	3	
2013	B.C. - GD	OCC	104	20	124	0	0	1	5	0	0	0	4	79	89	35	
2013	B.C.- GD	NCC	5	8	13	0	1	1	0	0	0	0	0	6	8	5	
2013	B.C. - SCD	OCC	45	182	227	2	0	2	0	0	3	0	0	1	8	219	
2013	B.C. - SCD	NCC	0	22	22	0	0	1	0	0	0	0	0	0	1	21	
2014	B.C. - GD	NCC	29	5	34	0	0	1	0	0	1	0	0	0	2	32	
2014	B.C. - SCD	NCC	249	110	359	9	8	109	0	3	18	0	0	17	164	195	
2017	B.C. - GD	NCC	88	0	88	0	0	0	0	0	1	0	0	1	0	87	
2017	B.C. - SCD	NCC	227	88	315	3	3	84	0	3	14	0	2	2	111	204	

Table 2: The handling of the election cases from Basic Courts throughout the years

According to KJC data, for the 2010 elections, at the time the former Municipal Courts have been working on 132 election crime cases, of which 65 cases were solved, while 67 cases remained unsolved. Whereas, the former District Courts had 3 cases at work, that still remain unresolved. Overall, it turns out that there are over 2500 commissioners, to whom criminal reports have been filed for the 2010 elections. Consequently, if comparisons are made with the number of accused persons for the following elections (2013, 2014 and 2017), it turns out that these over 2500 people to whom criminal reports have been filed, represent 89% of the people against whom criminal reports have been filed for all these elections.

In the 2013 elections, there were cases initiated against 261 persons on the voting day. However, based on the KJC data it results that the General Department in the Basic Court under the old Criminal Code have inherited 104 unresolved cases and received 20 new cases. For these elections, 89 cases have been resolved, while 35 election cases have remained unresolved. Also, in this General Department of Basic Courts, under the new Criminal Code, 5 unsolved cases

have been inherited, 8 new cases have been received and 8 cases have been resolved, while 5 election cases remain unresolved.

KJC data indicates that the Basic Courts for the 2013 elections have election cases in Serious Crimes Department as well. In this Department, there are election cases under the old Criminal Code, which means 45 unresolved cases have been inherited, 182 new cases have been received, 8 cases have been resolved, while 219 election cases remain unresolved. In this Department, under the new Criminal Code, there have been no cases that have been inherited, 22 new cases have been received, 1 case has been resolved, while 21 election cases have remained unresolved.

KJC data for the 2014 elections, indicate that Basic Courts in General Department under the new Criminal Code, have inherited 29 unresolved election cases, 5 new cases have been received, 2 cases have been resolved, while 32 election cases have remained unresolved. Whereas, in the Serious Crimes Department, under the new Criminal Code, 249 unresolved cases have been inherited, 110 new cases have been received, 164 cases have been resolved, while 195 election cases have remained unresolved.

KJC data for the 2017 elections, indicate that Basic Courts in General Department under the new Criminal Code, have inherited 88 unresolved election cases, no new cases have been received, while 1 case has been resolved in alternative method, whilst 87 election cases have remained unresolved. Whereas, in the Serious Crimes Department, under the new Criminal Code, 227 unresolved cases have been inherited, 88 new cases have been received, 111 cases have been resolved, while 204 election cases have remained unresolved.

Sentence policy, based on these data of the KJC, results that the highest number of sentences have been sentences of a fine, while minimally there have been effective imprisonment sentences. KLI estimates that this sentence policy is inadequate and does not achieve the purpose of the sentence.

7. Monitoring court hearings regarding cases of election crimes

KLI based on the systematic monitoring conducted in seven Basic Courts in Kosovo, and in Court of Appeals, during 2018, has monitored dozens of court hearings regarding to the criminal offenses against the right to vote.

Most of these court hearings monitored by KLI³⁴ were related to charges of criminal offenses under Chapter XVIII of the Criminal Code of the Republic of Kosovo.

Number of monitored hearings:	30
Number of cases monitored:	22
Number of accused persons:	89
Number of accused persons in the 2010 elections:	76
Number of accused persons in the 2013 elections:	5
Number of accused persons in the 2014 elections:	7
Number of accused persons in the 2017 elections:	1
Number of accused persons from Albanian nationality:	81
Number of accused persons from Serbian nationality:	8
Number of male accused persons:	60
Number of females accused persons:	29

Table 3: Number of monitored hearings from KLI regarding the election cases

As noted, the highest number of cases dealt with in 2018, belongs to the 2010 election cases. This proves a failure of the judicial and prosecutorial system to treat these cases in accordance with legal obligations and policies of the KJC and KPC, to be treated with priority.

Number of convicted persons:	16
Number of convicted persons from Albanian nationality:	16
Number of convicted persons from Serbian nationality:	0
Number of convicted persons regarding the 2010 elections:	15
Number of convicted persons regarding the 2013 elections:	0
Number of convicted persons regarding the 2014 elections:	1
Number of convicted persons regarding the 2017 elections:	0
Convicted with suspended sentence (3 months imprisonment, with a verification period of 1 year)	16

Table 4: Number of convicted persons regarding elections, in cases monitored by KLI

In 2018, as seen from the above data, the judicial system of the Republic of Kosovo, is mostly dealing with cases of criminal offenses committed 8 years ago, respectively in the 2010 elections. Of the 16 convicts during this year, 15 of them are convicted for the 2010 elections, while out of 89 accused, 76 are for the 2010 elections.

³⁴ *Note:* All monitored and reported hearings can be found in the portal “Betimi për Drejtësi” (www.betimiperdrejtesi.com).

In these cases, persons involved in election manipulation are accused of committing criminal offenses of electoral fraud, falsification of election results, abuse of official duty during elections and abuse of the right to vote, ranging from 6 months up to 5 years of effective imprisonments. However, the policy of sentence in all these cases is the imposition of suspended sentences. Moreover, the suspended sentence was 3 months effective imprisonment, with a verification period of 1 year. So, in all these cases, the Courts have imposed sentence below the legal minimum.

The overwhelming majority of the accused are from Albanian nationality. Regarding gender, the male gender dominates with 67.4% or 60 persons, unlike females with 32.5% or 29 persons.

One characteristic is the accusation of persons for abuse of the right to vote, respectively conditional voting and regular voting (double voting). Since this criminal offense is sentenced for up to 3 years, in most cases it is seen that the prosecutors proceed with direct indictments, they do not conduct investigations at all. This way, they do not conduct a graphological expertise regarding whether the signature of the suspect in the list of regular voters is the same with the one of the conditional voters. Consequently, this expertise should be conducted during the main trial. KLI estimates that this raises two issues. The first issue is that a part of the investigation, which in this case is the crucial part, is not carried out during the investigation stage in prosecution, but during the trial stage at the Court. The second issue is that in cases when the graphological expertise finds that the signature is not the same in both lists, the prosecutor withdraws from the indictment and this happens after a very long period, giving the pace of the completion of these cases. In this way, the suspected and accused person is held for a long time as a suspect and a longer period of time as accused, and at the end the prosecutor withdraws, thus the accused is persecuted without any basis, affecting the violation of human rights and fundamental freedoms.

KLI based on all these monitored and analysed cases, estimates that the policy of investigation, prosecution and sentencing has been inadequate. The investigations were not conducted professionally, the prosecutors failed to go further with investigations and were limited only on the activities of the commissioners but did not conduct further investigations to find funders and organizers who have incited commissioners to manipulate votes for political parties and for political party candidates. Also, the sentence policy applied by judges, imposing in most cases suspended sentences, KLI estimates that this does not achieve the purpose of the sentence. Although, KLI takes into account the fact that in these cases, the parties involved have served sentences in some form, because their rights were limited, holding them for almost a decade under charge and court proceedings. In this respect, KLI estimates that prosecutors and judges have failed to address these cases in a reasonable time, in accordance with legal obligations and policies of the KJC and KPC, to be treated with priority.

8. KLI Recommendations on amending and supplementing the SOP's

KLI has consistently assessed the coordination and cooperation between the State Prosecutor and Kosovo Police regarding the institutional response to the protection of the electoral process and the advancement of prosecution and sentencing of causes related to criminal offenses against the right to vote.

While SOP's to a large extent concentrate on undertaking police and prosecution actions on the voting day of the elections, the pre – election campaign should be given better attention, by supplementing the SOP's, in the stage before and after the voting day of the elections.

KLI while evaluating the actions of political parties and certain candidates, to the investments they make in electoral campaign, and after taking power with the award of businesses with public tenders, recommends standard actions of police and prosecution in efficient prevention and prosecution of these illegal acts. This efficiency is facilitated by reviewing the supplementation of SOPs in these two election stages, before and after the voting day.

- At the stage before the voting day, the elections are followed by a pre – election campaign, during which, if there was an effective prosecution by the SP, many unlawful actions could be detected, which enter the criminal sphere. By this we mean funding of political parties. The latter usually make much more money than they declare in election campaigns. Their finances have consistently remained non – transparent for the public in most cases. On the other hand, businesses close to the political parties that govern, which have funded party campaigns, have been awarded with public tenders. In order of having an adequate response to effective prosecution, KLI recommends the approval of the SOP's, which would enable to prevent and fight criminal offenses committed before and after the voting day of the elections.

In the stage before the voting day, in which, political parties conduct an electoral campaign, KLI recommends that SP designates special prosecutors for elections in each municipality in Kosovo. The duties of these prosecutors will focus on monitoring the pre – electoral campaign activities, through special investigators, through information published in media and by providing access to the public through safe communication lines, anonymously, using telephone and internet. In this way, it would initially be possible to prevent the suspicious funding of political parties, which, after being informed that SP would investigate these financing activities, would minimize suspicious funding activities, and then if such abuse would occur, they would be pursued efficiently by the prosecution authorities.

- After the end of the voting day and the announcement of the election result, the SP must undertake actions to analyse actions in the field of public procurement, the field in which the public budget is abused in the form of rewarding businesses and other funders, who have funded political parties or certain candidates to the pre – election campaign.

The SP database created during the election campaign for the activities of political parties from certain businesses and individuals would provide a good track of investigation and prosecution for prosecutors who would be obliged to investigate funding connections of political parties and the reward of funders with public tenders. Now at this stage, drafting and implementing of the SOPs for monitoring and collecting information on election campaign funding by businesses or individuals meant for political parties, would provide a good track of investigation and prosecution for prosecutors who would be obliged to investigate connections between the funding of political parties and rewarding these funders with public tenders.

Herewith, it would initially be possible to prevent the suspicious funding of public tenders to businesses or individuals who have funded political parties, which, after being informed that SP would investigate these financing activities, would minimize suspicious funding activities of businesses or individuals through public tenders, and then if such abuse would occur, they would be pursued efficiently by the prosecution authorities.

The KLI considering all these actions in the field of public procurement and the liaison of politics and business, recommends that the SP carries out actions in monitoring and analysing public procurement actions, to investigate and prosecute the reward of the funders of political parties with public tenders. This kind of monitoring should be conducted through SP along with police investigation teams, who would focus on monitoring public procurement activities, by collecting also reports that are published in the media, as well as providing access to the public through safe communication lines, anonymously, using telephone and internet, in order to inform regarding the reward of the businesses (that have funded political parties) with public tenders.

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