

# Election Crimes

An analysis of the criminal prosecution and trial of the cases of election crimes in Kosovo



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## **ABBREVIATIONS:**

AAK	Alliance for the Future of Kosovo
AKR	New Kosovo Alliance
BIRN	Balkans Investigative Reporting Network
CEC	Central Elections Commission
CEEOMV	Council of Europe Election Observation Mission in Kosovo
CRC	Count and Results Centre
ECAC	Elections Complains and Appeals Commission
ECAP	Election Complaint and Appeals Panel
ENEMO	European Network of Election Monitoring Organizations
FER	New Spirit Party
FRK	Results Forms for Candidates
KDI	Kosovo Democratic Institute
KIPRED	Kosovar Institute for Policy Research and Development
KJC	Kosovo Judicial Council
LDK	Kosovo Democratic League
MEC	Municipal Election Commission
OSCE	Organization for Security and Cooperation in Europe
PDK	Kosovo Democratic Party
PSC	Polling Station Council
SPRK	Special Prosecution of the Republic of Kosovo

## 1. INTRODUCTION

Elections are the foundation of a democratic society. Representational institutions, which carry the responsibility of governing the state and with it also society, need to rely on the will of the majority of citizens. Organizing free and democratic elections, and ensuring their quality and proper running is one of the key points in evaluating new democracies and those in transition.<sup>1</sup> As a country that is continuing in efforts to establish a pluralist and functional democracy, it is necessary for Kosovo to be in a position to organize elections in line with the international standards for elections adopted by other democratic countries.

In the Republic of Kosovo, citizens elect their representatives to the Kosovo Assembly, the highest institutional body, and also directly elect members of the municipal assemblies and the mayors. Very soon, Kosovans will also elect through their free and direct vote the head of state, specifically the President of the Republic.<sup>2</sup> The highest authority that holds the responsibility for organizing and running elections is the Central Elections Commission (CEC).

After the war, under international administration, Kosovo held the first local elections in 2000 and those for the Kosovo Assembly in 2001. Local elections were also held in 2002 and both local and national elections were held in 2004. In 2007, Kosovo authorities took on larger responsibilities in the election process and three types of elections were held simultaneously, in which the citizens for the first time elected their representatives to the Kosovo Assembly, Municipal Assemblies and their Mayors of municipalities through direct open list voting.

All of these elections were assessed to have been properly organized in accordance with international standards and could serve as an example for countries in the region. However, municipal elections in 2009, the first to be organized completely by local authorities after the declaration of independence, and especially the national elections in 2010, have marked a drastic fall in the quality of their planning and execution. Manipulation of the free vote of citizens reached its peak in December of 2010, significantly damaging the election process. The phenomenon of massive filling of ballot boxes with ballot papers (“ballot stuffing”) and other more sophisticated methods of manipulations cast a dark shadow over the democracy and statehood of Kosovo.

These multiple irregularities and manipulations were the focus of criticism made by our international allies. The embassies of states that strongly support Kosovo, local and international observers, but also the political parties themselves did not hold back any words to describe what had happened on the 12<sup>th</sup> of December 2010.

As a result of multiple abuses, the Election Complaints and Appeals Panel (ECAP) received a total of 454 complaints related to irregularities and manipulation of elections held in

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<sup>1</sup> Reports of organizations like Freedom House, OSCE Office for Democratic Institutions and Human Rights, European Commission, and of other organizations and institutions used amongst other things these indexes.

<sup>2</sup> On April 7, 2011, the Kosovo Assembly approved a resolution highlighting that the Kosovo Assembly will establish a Parliamentary Commission which will work on the revision of the Constitution so that in the future the President of the Republic of Kosovo would be elected directly by the people. Minutes of the Plenary Session of the Kosovo Assembly, 7<sup>th</sup> of April 2011

December 2010 and during re-election process during January 2011.<sup>3</sup> Some of these complaints have served for the CEC to repeat elections in Skenderaj, Drenas and Decan, and in two polling stations, one in Lipjan and another in Malishevo.<sup>4</sup> While after the complaint of the Self-determination Movement (Lëvizja Vetëvendosje!) made before the Supreme Court on the polling stations in Mitrovica, repeat elections were called in this municipality also.<sup>5</sup>

Officials of political parties in power, after the conclusion of the repeated elections process, were quick to blame the election system for the manipulations, contributing in this way to retroactive amnesty for the manipulators of elections. As a consequence, the Kosovo Assembly appointed a special parliamentary commission which is working on amending the Law on General Elections in Kosovo.<sup>6</sup>

However, what remains disturbing is the fact that the manipulators of the will of people did not face a strong hand of justice, as should have been the case. Since penalties for cheating are rare and mild, fines can be classified as a fee to buy votes, consequently legalizing the de facto trade of votes.

In this study, the Kosovar Institute for Policy Research and Development (KIPRED) will analyze the criminal prosecution of those who manipulated the election process, by focusing on the general elections of 2010.

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<sup>3</sup> KIPRED email communication with the Permanent Secretary of the ECAP, Mr. Mulë Desku, October 2011.

<sup>4</sup> Decision for the repeat of voting of the Kosovo Assembly Elections of the Republic of Kosovo in the Municipalities of Drenas, Skenderaj and Decan and the repeat voting in some PSs in the Municipalities of Lipjan and Malishevo, decision number 1621-2010, Central Elections Commission. December 2010.

<sup>5</sup> Repeat voting in the Municipality of Mitrovica was done after the Supreme Court has ruled in favor of the complaints in this municipality, specifically the Decision of the Supreme Court of Kosovo A.A. no. 37/2011 of January 6, 2011 on the approval of the appeal and annulment of the decision of the Election Complaints and Appeals Panel number 442/2010 of the 31<sup>st</sup> of December 2010. Such a decision of the Supreme Court was transformed into a decision of the CEC for a repeat voting in the municipality of Mitrovica. The decision to repeat the voting for the Assembly of the Republic of Kosovo of December 12, 2010 in the Municipality of Mitrovica.

<sup>6</sup> On the day of the election of the President of the Republic of Kosovo on April 7, 2011, the Kosovo Assembly with 75 votes approved a resolution which included the agreement made between Mr. Isa Mustafa, President of the Democratic League of Kosovo, Mr. Hashim Thaci, President of the Democratic Party of Kosovo and Mr. Behgjet Pacolli, President of the New Kosovo Coalition. The resolution which was supported by the Kosovo Assembly is described in the Minutes of the Plenary Session of the Kosovo Assembly held on April 7, 2011. Kosovo Assembly. April 7, 2011.

## 2. A BRIEF HISTORY OF ELECTION CRIMES

In the past, the police, prosecutors and judges did not consider the cases of voting manipulation and theft during elections in Kosovo as priority.<sup>7</sup> Hence, they failed to adequately prosecute and conduct trials on these cases. The unprecedentedly massive theft in elections for the Kosovo Assembly in 2010 and the considerable damage it caused compelled the Supreme Court and State Prosecution to review with priority the cases related to elections, including those of previous years.<sup>8</sup> The basis for prosecuting election abuses was established through complaints filed with the ECAP.<sup>9</sup> This judicial body was established specifically for the election process and reviews the complaints and appeals of all of the parties related to irregularities during the election process.<sup>10</sup> All the decisions of the ECAP, which verify any kind of violation or manipulation with the election process, have been forwarded to the State Prosecutor to continue additional criminal investigations.<sup>11</sup> The election cases were distributed from the State Prosecutor to the competent municipal prosecutors in order to conduct investigations in accordance to their official duties.<sup>12</sup> A costly mistake was not treating past election cases as a high priority, which has resulted in the repeat and a gradual increase of election manipulation cases.

In past practice on election cases we can see that the failure of the three links of the system of justice, the police, prosecution offices and courts. Even though the general and local elections organized in 2007 were considered satisfactory and in accordance with international standards and the laws of Kosovo,<sup>13</sup> a number of violations were reported during Election Day. These violations undoubtedly have a negative effect on different aspects of Kosovo society and institutions, yet their reporting was a positive thing. The ECAP for the elections of 2007 forwarded over 100 cases to the State Prosecutor (formerly the Public Prosecution of Kosovo).<sup>14</sup> However, the most disturbing issue with these instances of fraud remains the poor prosecution of these manipulation cases by the justice authorities. In May 2009, the Organization for Security and Cooperation in Europe (OSCE) issued a report which concluded that even a year and a half after the end of the election process in 2007, the justice authorities were quite unproductive in resolving election cases.<sup>15</sup> The lack of punishment for

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<sup>7</sup> Monthly report – May 2009. Department for Human Rights and Communities. Organization for Security and Cooperation in Europe Mission in Kosovo. May 2009.

<sup>8</sup> KIPRED interviews with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011, and Chief Prosecutor of the State Mr. Ismet Kabashi, July 2011.

<sup>9</sup> ECAP in previous elections was known as the Commission for Resolution of Complaints and Appeals (CRCA)

<sup>10</sup> The Law on General Election in the Republic of Kosovo, Law number 03/L-073. Also, the Law on the revision and amendment of the law number 03/L-073 on the general elections in the Republic of Kosovo, Law number 03/L-256.

<sup>11</sup> KIPRED email communication with the Permanent Secretary of the ECAP, Mr. Mulë Desku, August 2011.

<sup>12</sup> KIPRED interview with the Prosecutor of the State Prosecution and the Coordinator for election cases Ms. Laura Pula, July 2011.

<sup>13</sup> Council of Europe Election Observation Mission in Kosovo (CEEOMV) has presented conclusion that elections of 2007 were in general in line with principles of the Council of Europe, Preliminary Declaration, Council of Europe, November 2007.

<sup>14</sup> “Review of election fraud cases by municipal public prosecutors in Kosovo”; Monthly report of the OSCE; Department of Human Rights and Communities; Sector for Legal System Monitoring; May 2009

<sup>15</sup> Based on OSCE, a year and a half after the conclusion of the election process there was no court process for any of the election fraud cases. Monthly report – May 2009. Department of Human Rights and Communities. Organization for Security and Cooperation in Europe Mission in Kosovo. May 2009.

manipulation of elections in the past has undoubtedly encouraged worsening fraud in the elections organized in 2009 and 2010.

From the more than 100 cases received by the State Prosecution for the elections of 2007, municipal prosecutors have considered only 36 cases, involving 57 accused individuals.<sup>16</sup> Until May 2009, from the cases of the 2007 elections, eight cases were rejected, 16 cases were postponed or were waiting to be resolved, and 12 indictments were filed. No court process had been initiated for any of these cases.<sup>17</sup> See the summary of 2007 election cases in table 1.

<b>Processes</b>	<b>Number of Cases</b>	<b>Progress</b>
Number of cases that ECAP forwarded to the State Prosecution	100	-
Progress in the review of cases by the Municipal Public Prosecutions	36	36%
Court Processes	0	0%

*Table 1 – Prosecution and litigation of 2007 election cases in May 2009*

The 2009 election cases were also neglected and not considered seriously by the justice system. The officials responsible for the prosecutions of these manipulations are obviously the prosecutors, which in this case did not completely fulfill their official duties.

In 2009, European Network of Election Monitoring Organizations (ENEMO) raised the concern that the courts did not achieve to resolve any of the election manipulation cases of 2007, which the ECAP had presented to the prosecution.<sup>18</sup> For the 2009 elections, the ECAP received 55 complaints before Election Day and 112 complaints on Election Day.<sup>19</sup> A large number of complaints were related to damaged or irregular placement of posters of the candidates which involved violation of the Code of Conduct. As for the second round of elections for the Mayors of Municipalities, the ECAP received 61 complaints, which were related to abuses during the voting.<sup>20</sup> The complaints were accompanied with satisfactory evidence, and hence the CEC had decided to repeat the election in three municipalities, including Prizren, Gjilan and Lipjan.<sup>21</sup>

Therefore, the three links of the justice system failed in reviewing cases of election manipulation in 2007 and 2009, creating with this a system that does not punish violators and manipulators of elections.

<sup>16</sup> Monthly report – May 2009. Department of Human Rights and Communities. Organization for Security and Cooperation in Europe Mission in Kosovo. May 2009.

<sup>17</sup> “Review of election fraud cases by municipal public prosecutors in Kosovo”; Monthly report of the OSCE; Department of Human Rights and Communities; Sector for Legal System Monitoring; May 2009

<sup>18</sup> Local elections 2009, final report. European Network for Election Monitoring Organizations (ENEMO).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.



### 3. PARLIAMENTARY ELECTIONS OF 2010

The representatives elected in the 2007 balloting declared the independence of the Republic of Kosovo in February 2008.<sup>22</sup> The 2007 elections produced a ruling coalition between the two biggest political forces, the Democratic Party of Kosovo (PDK) and the Democratic League of Kosovo (LDK), leaving in opposition considerably smaller parties. However, the ruling coalition was very fragile. Before the third year of the government's mandate, the coalition broke down. The fall of the Government came in November 2010 after the initiation of a vote of no-confidence against the government by the Kosovo Assembly. The motion passed with the support of members of the coalition themselves.<sup>23</sup> Consequently, the country began preparing for early parliamentary elections set for December 12, 2010, two months earlier than the regularly schedule election.<sup>24</sup> On December 12, 2010, Kosovo held its first parliamentary elections as an independent state in which the local authorities were responsible for the organizing and running of the whole process. Considering that the time for organizing these elections was very short, there was skepticism of the capacities of the CEC for organizing and running of elections under such extraordinary circumstances. The CEC, which is comprised of 11 members, is the responsible authority for organizing and running elections in Kosovo.<sup>25</sup> The Chairperson of the CEC is a judge of the Supreme Court or comes from the Courts of appeals and is appointed by the President of the Republic of Kosovo. The 10 other members are appointed from parliamentary groups in the Kosovo Assembly.<sup>26</sup> The CEC, Kosovo Police, political parties, local and international observers and other organizations undertook a range of measures to ensure the proper running of the election process.

In order to avoid abuse as much as possible, in each Polling Station Council (PSC) there were seven (7) commissioners appointed which had different responsibilities.<sup>27</sup> The duties of each of these were specified clearly: one checked fingers with an ultraviolet light, another checked the identification documents and located the place in the schedule where the person should sign, another took care of the stamp being placed on the ballot paper and to hand it over to the voter, another sprayed the finger of the voter with ultraviolet ink, and another ensured that the ballot paper was placed in the proper ballot box. At the end of the voting process, the PSC continued with the process of counting the votes. The same commissioners of the PSCs counted the ballots and filled out the forms that were handed over to the CEC, which included, among other information, the data on the number of votes cast for each party and each candidate. After the conclusion of the counting process, all seven commissioners would sign the forms to certify the proper running and accuracy of the process. In order to ensure

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<sup>22</sup> On February 17, 2008, the Kosovo Assembly at 15:00 hours held an extraordinary session in which it declared the independence of Kosovo. The extraordinary session of the Kosovo Assembly. Kosovo Assembly. See <http://www.assembly-kosova.org/?cid=1,128,1637> (last accessed on the 4<sup>th</sup> of October 2011).

<sup>23</sup> Gashi, K. "Actual causes of Kosovo's institutional crisis". Kosovar Institute for Policy Research and Development. November 2010.

<sup>24</sup> The dissolution of the Kosovo Assembly. Assembly of the Republic of Kosovo. See <http://www.assembly-kosova.org/?cid=1,128,3502> (last accessed on October 4, 2011).

<sup>25</sup> Article 139, Central Elections Commission. Constitution of the Republic of Kosovo.

<sup>26</sup> Article 139, paragraph 3 and 4, Central Elections Commission. Constitution of the Republic of Kosovo.

<sup>27</sup> Voting and Counting within the Polling Stations at the level of Municipal Elections Commission, Election Rule No. 09/2009; Central Election Commission.

the security of all commissioners and persons involved in the running of the elections, the Kosovo Police placed police officials in all the polling centers.

The monitoring of elections was conducted by a large and diverse number of actors, including the observers of political parties, civil society, media, international organizations, and international officials. Civil society was involved in the monitoring of elections through a wide and experienced coalition called “Democracy in Action”, which had observed all the elections organized in Kosovo since 2007. During the election process of 2010, the Kosovo Democratic Institute (KDI) was the leader of the coalition, which involved close to 5,000 observers.<sup>28</sup> The Acting President, Jakup Krasniqi, invited the ENEMO organization to observe the process before and during Election Day; ENEMO’s Election Observation Mission fielded 188 observers on Election Day.<sup>29</sup> A certain number of international officials were involved in the monitoring of elections, including members of the EU Parliament, officials of foreign embassies and international organizations working in Kosovo.

Despite the involvement of a large spectrum of society and institutions on Election Day, a large number of irregularities were recorded which damaged and jeopardized the holding of free elections. For the parliamentary elections of December 12, 2010, the ECAP received 363 complaints related to election irregularities.<sup>30</sup> Based on these complaints, the ECAP decided to call for a repeat of elections in Skenderaj, Drenas and Decan, and in two polling stations, one in Lipjan and another in Malishevo.<sup>31</sup> After the appeal of the Self-determination Movement to the Supreme Court related to polling stations in Mitrovica, a repeat of voting was called for this municipality.<sup>32</sup> The ECAP received another 91 complaints which were related to the re-voting process, which resulted in the total number of complaints for the all process to 454 complaints.<sup>33</sup> In polling stations where the elections were repeated, the turnout in the repeat elections organized in January 2011 was considerably lower than what was recorded in the voting held in December 2010.<sup>34</sup> The drastic decrease of the number of voters served only to strengthen the argument that violations in these polling stations were of a

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<sup>28</sup> According to the Coalition of NGOs Democracy in Action, 5000 observers will be involved in the monitoring of the election process which will take place from 7:00 to 19:00 hours and the process of the cote counting which will start at 19:00. Media Brief, Democracy in Action. December 1, 2010. See [http://www.demokracianeveprim.org/al/index.php?subaction=showfull&id=1291217168&archive=&start\\_from=&ucat=&](http://www.demokracianeveprim.org/al/index.php?subaction=showfull&id=1291217168&archive=&start_from=&ucat=&) (last accessed on October 1, 2011).

<sup>29</sup> Parliamentary Elections in Kosovo 2010 – Final Report. Mission for Election Monitoring. European Network of Election Monitoring Organizations (ENEMO). April 2011.

<sup>30</sup> Ejupi B. and Qavdarbasha Sh. “Parliamentary Elections in Kosovo 2010: General observations and trends”. KIPRED. April 2011.

<sup>31</sup> Decision for the repeat of voting of the Kosovo Assembly Elections of the Republic of Kosovo in the Municipalities of Drenas, Skenderaj and Decan and the repeat voting in some PSs in the Municipalities of Lipjan and Malishevo, decision number 1621-2010. Central Elections Commission. December 2010.

<sup>32</sup> Repeat voting in the Municipality of Mitrovica was done after the Supreme Court has ruled in favor of the complaints in this municipality, specifically the Decision of the Supreme Court of Kosovo A.A. no. 37/2011 of January 6, 2011 on the approval of the appeal and annulment of the decision of the Election Complaints and Appeals Panel number 442/2010 of December 31, 2010. Such a decision of the Supreme Court was transformed into a decision of the CEC for a repeat voting in the municipality of Mitrovica. The decision to repeat the voting for the Assembly of the Republic of Kosovo of December 12, 2010 in the Municipality of Mitrovica.

<sup>33</sup> KIPRED e-mail communication with the Permanent Secretary of the ECAP, Mr. Mulë Desku, October 2011.

<sup>34</sup> Preliminary results indicate that turnout in the elections organized in December 2010 was 43.4% in Decan, 86.9% in Gillogoc, 93.7% in Skenderaj and 37% in Mitrovica. While after the conclusion of the process of repeat voting the turnout in these centers was considerably lower as in Decan it went down to 34.6% (or 8.8% less than during the voting in December 2010), Gillogoc 55.9% (-31%), Skenderaj 59.8% (-33.9%), and Mitrovica 27% (-10%). Parliamentary Elections in Kosovo 2010 – Final Report.

Mission for Election Monitoring. European Network of Election Monitoring Organizations (ENEMO). April 2011.

considerable level and indicates the huge damage that the manipulation of voting causes, where the number of votes abused or added reached the order of tens of thousands.

In contrast to previous elections, cases of fraud in the general elections held in 2010 and in the repeat elections during January 2011 were declared to be priority cases by the State Prosecution and the Supreme Court.<sup>35</sup> The ECAP has forwarded to the State Prosecutor all the complaints that have been presented to the institution which are related to the election process. At the same time, the Count and Results Center (CRC) has handed over information on the irregularities that have been found during the auditing of candidate forms.<sup>36</sup> Together, these materials represent sufficient evidence for the Municipal Public Prosecution to file indictments against those who committed fraud in the elections. Additionally, in a large number of cases, a close cooperation between more than two individuals was necessary in order to manipulate the elections, which gives an indication that in such cases the indictments have to be filed against groups which have colluded in committing election violations.

Where theft or manipulation of votes occurred, it was done with the knowledge and involvement of the seven members of the PSCs. These members were present when the election materials arrived, during the voting process, and during the process of vote counting. At the end of the counting process all of these members signed the forms which contained the number of votes for each political entity and each candidate. No form was considered complete if the signature of any of the members was missing. Therefore, the manipulation of results was well coordinated and required the involvement of more than two persons, meaning that in cases of manipulation with the forms, each polling station would have at least seven persons conspiring to commit the crime.

The political elite have seen the reform of the election system as a way out from the situation in which the country has found itself after the ruined election process. The election reform has been seen also as a tool to ensure that in the future the number of irregularities will be reduced or eliminated. The revision of the Constitution of the Republic of Kosovo and the law on general elections and related legislation, seek to solve the problem of election manipulation by creating more election zones.<sup>37</sup> Political entities are mostly responsible for the irregularities caused in the election process, and as such they should have shown larger willingness and commitment to denounce fraud. Their minimal involvement in giving evidence on irregularities before the judiciary authorities indicates that they have chosen the wrong path in directing their energies.

Based on the number of observers and their diversity, KIPRED comes to the conclusion that the number of observers is not in direct correlation to the prevention of abuses in an environment like Kosovo. The campaigns for raising awareness amongst the people, the

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<sup>35</sup> KIPRED interview with the Prosecutor of the State Prosecution and the Coordinator for election cases, Ms. Laura Pula, July 2011. KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, July 2011.

<sup>36</sup> KIPRED email communication with Senior Officials CEC, July 2011.

<sup>37</sup> On the day of the election of the President of the Republic of Kosovo on the 7<sup>th</sup> of April 2011, the Kosovo Assembly with 75 votes approved a resolution which included the agreement made between Mr. Isa Mustafa, President of the Democratic League of Kosovo, Mr. Hashim Thaci, President of the Democratic Party of Kosovo and Mr. Behgjet Pacolli, President of the New Kosovo Coalition. The resolution which was supported by the Kosovo Assembly is described in the Minutes of the Plenary Session of the Kosovo Assembly held on the 7<sup>th</sup> of April 2011. Kosovo Assembly. April 7, 2011.

training of election commissioners, the reorganization of institutions which are in charge of organizing elections and all other efforts for free elections have provided a low degree of success in preventing manipulation of elections.

While the CEC is the mechanism with primary responsibilities for elections, the judicial system is an integral second node; if it does not function well, free and successful elections in the future in Kosovo will be impossible.

Therefore, KIPRED sees it as crucially important to analyze the institutional approach of CEC, Kosovo Police, prosecution offices and courts in the investigation and trial of cases related to the election process in Kosovo. This analysis will contribute by revealing issues of concern that are sabotaging the system of justice in issuing penalties against persons or groups that were involved in the manipulation of votes. At the end of the analysis, a range of recommendations are be presented which call on action from relevant institutions so that in the future we will have a more suitable environment for organizing free elections.

### **3.1. Complaints by organizations and political entities to the CEC on the 2010 elections**

During the process of the 2010 elections, a number of organizations and political entities which were involved in the observation of the election process presented complaints on this process to the ECAP. Of these organizations and political entities the most active in the presentation of complaints were the Self-determination Movement with 174 complaints, the Democratic Party of Kosovo (PDK) with 56 complaints, New Kosovo Alliance (AKR) with 54 complaints, New Spirit Party (FER) with 41 complaints, and the Balkans Investigative Reporting Network (BIRN) with 39 complaints.<sup>38</sup> KDI officials state that the coalition of NGOs “Democracy in Action” have been able to submit up to four complaints to ECAP.<sup>39</sup> However, official statistics of ECAP contradict this statement, showing that this coalition of NGOs failed to submit any complaint to this institution.<sup>40</sup> Undoubtedly all of these complaints have contributed to the irregularities being uncovered which in some cases have resulted in repeat voting process in four municipalities and some voting centers. One of the most outspoken entities on the election process and manipulations that covered them was the Democratic League of Kosovo (LDK), which requested the complete annulment of the election process and up to the very last moment qualified the process as illegitimate.<sup>41</sup> Based on the complaints presented to the CEC, we notice that this political entity has offered a minimal contribution in regard to uncovering abuses with the election process. Similar to the LDK, the Alliance for the Future of Kosovo (AAK) also presented a small number of complaints in parallel to its request for annulment of the whole election process.<sup>42</sup> Based on these claims and denouncements, it appears that political entities have continued with empty

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<sup>38</sup> KIPRED email communication with the Permanent Secretary of the ECAP, Mr. Mulë Desku, August 2011.

<sup>39</sup> KIPRED phone communication with the Executive Director of KDI, Mr. Ismet Kryeziu, October 2011. As well, Ejupi B., Qavdarbasha Sh. “Parliamentary Elections in Kosovo 2010: General overview and trends”. KIPRED. April 2011.

<sup>40</sup> KIPRED email communication with the Permanent Secretary of the ECAP, Mr. Mulë Desku, October 2011.

<sup>41</sup> Demanding a repeat of elections. Telegrafi. <http://www.telegrafi.com/?id=2&a=11855> (last accessed on October 4, 2011).

<sup>42</sup> “The AAK demands the repeat of elections” Telegrafi. See <http://www.telegrafi.com/?id=2&a=11897> (last accessed on 27 September 2011).

rhetoric by leaving aside their contribution in regard to shedding light on the election process, specifically towards development of a rule of law state.

<b>Party / Institution / Organization</b>	<b>Number of complaints</b>	<b>% out of total</b>
Self-determination Movement (LVV)	174	38%
Democratic Party of Kosovo (PDK)	56	12%
New Kosovo Alliance (AKR)	54	12%
New Spirit Party (FER)	41	9%
Balkans Investigative Reporting Network (BIRN)	39	9%
Democratic League of Kosovo (LDK)	31	7%
Alliance for the Future of Kosovo (AAK)	19	4%
Others	40	9%
<b>TOTAL</b>	<b>454</b>	<b>100%</b>

*Table 2 – number of complaints by political entities and organization presented to the ECAP*

### **3.2. Re-count of votes**

The 2010 elections were associated with a large number of irregularities and manipulations including also the stealing of votes between political parties and even within the parties. The Acting President of the Republic of Kosovo, who was at the same time the President of the Kosovo Assembly and General Secretary of the PDK, Mr. Jakup Krasniqi, acknowledged that political parties had stolen votes.<sup>43</sup> Immediately after the conclusion of elections, the high number of abuses due prompted the CRC to re-count 40% of the votes cast.<sup>44</sup> The repeated counting resulted in a successful identification of a large number of polling stations where manipulations occurred. The CRC revealed that during the process of vote counting for candidates votes were stolen in a large number of polling stations, meaning that the Candidate Results Forms (CRF) were false. These irregularities included candidates that received more votes than the political entity, votes for candidates five times larger than those for the political entity, and votes for candidates in cases where the political entity did not obtain any votes.<sup>45</sup> The results of the CRC's work in the identification of irregularities are presented in the following table.

<sup>43</sup> Parties violated the will of the citizens. Telegrafi. See <http://www.telegrafi.com/?id=2&a=12094> (last accessed on 27 September 2011).

<sup>44</sup> Ballot boxes are opened for a re-count. Express. See <http://www.gazetaexpress.com/?cid=1,13,43779> (last accessed on 27 September 2011).

<sup>45</sup> Decision on the approval of the CRC recommendations related to the counting procedures and preparation of results for the Elections of the Republic of Kosovo Assembly. Decision number 1662-2010. December 2010.

Number	Topic	Number of polling stations	Description
1	Manipulations recorded during the repeat counting	890	Polling stations re-counted which resulted in discrepancies between the Forms and real results
2	Manipulations recorded during the repeat counting	712	Polling stations where the votes of candidates were noticed to have been manipulated
3	Manipulations recorded during the repeat counting	178	Polling stations considered to have had calculation mistakes
4	Persons suspected of crimes (712 polling stations x 7 commissioners)	4,984	Commissioners responsible for discrepancies / manipulation of candidate votes

***Table 2 – Cases of manipulation with Candidate Results Forms***

In general, problems were noticed in 890 polling stations. In 80% of these cases (712 polling stations) the number of votes for candidates had discrepancies with political party votes. In the other 20% of cases (178 polling stations) there were mistakes which could have been of a mathematical nature.<sup>46</sup> Each polling station had seven (7) members of the commission who were responsible for the proper running of the whole voting process, vote counting, and collating of information for the forms handed over to the CEC. Based on this data it appears that 4,984 commissioners which were involved in the 712 polling stations should be facing justice. This is due to the re-counting process revealing that there were irregularities in all of these polling stations, which are related to the stealing and adding of candidate votes.<sup>47</sup> In all of these cases there is reliable evidence that would serve the prosecution authorities to file direct indictments, as has been done in a number of cases so far.

<sup>46</sup> KIPRED email communication with the Director of the CRC-CEC, July 2011. Also, KIPRED phone communication with the Director of the CRC-CEC, 25<sup>th</sup> of July 2011.

<sup>47</sup> According to the State Prosecution so far about 500 persons have been accused of crimes related to elections. The six month report, (January – June 2011), related to the cases that are related to premature parliamentary elections held on the 12<sup>th</sup> of December.

#### 4. LEGAL FRAMEWORK FOR THE PROSECUTION AND TRIAL OF ELECTION CASES

The legal framework for punishing violators, manipulators and abusers of the votes during the election process in Kosovo is based on the Criminal Code of Kosovo. Six separate articles, which are part of the criminal acts against human rights and freedoms, are dedicated to crimes related to various abuses of elections.<sup>48</sup> The legal basis for the criminal prosecution is not limited to only these acts but continues further by classifying them in a more serious category like that of organized crime, if certain legal conditions are met.

The main articles that sanction election abuses are 176, 177, 178, 179, 180, and 181 of the Criminal Code of Kosovo. These provisions on offences prescribe punishment for all persons who in any way hinder voters' ability to exercise their right to vote, those who undertake any corrupt activities or use violence during Voting Day, multiple voting by a voter, violating the confidentiality of the vote, commit fraud during voting and destroy in any way the voting document. Vote fraud is considered a serious crime and the punishment for this can be in fines, a suspended sentence, and imprisonment of up to five years. Therefore, the legal framework does not have any deficiencies in this regard, as it sanctions almost every type of abuse which has been committed so far in the elections held in Kosovo. However, the effectiveness of laws depends directly on their application. See below a table containing all the provisions that prescribe punishment for election crimes.

Article	Criminal Act	Description	Punishment
176	Preventing Exercise of the Right to Vote	<i>Whoever, in the exercise of duties entrusted to him or her relating to elections in Kosovo and with the intent to prevent another person from exercising his or her right to vote, unlawfully fails to record such person in a voter registration list or removes such person from the voter registration list or in any other manner prevents another person from exercising his or her right to vote shall be punished by a fine or by imprisonment of up to one year.</i>	Min: Fine Max: <b>1 year imprisonment</b>
177	Violating the Free Decision of Voters	<i>Whoever, by the use of force, serious threat, bribery or abuse of the economic and professional dependence of a voter, influences a voter in Kosovo to vote in a particular way or to abstain from voting in an election shall be punished by imprisonment from six months to three years.</i>	Min: six months imprisonment Max: <b>3 years imprisonment</b>
178	Abusing the	<i>Whoever, in an election held in Kosovo, votes under the name of another person or votes or</i>	Min: fine Max: <b>1 years</b>

<sup>48</sup> Chapter XVI: "Criminal act against human rights and freedoms", Provisional Criminal Code of Kosovo, 6 April 2004;

	<i>Right to Vote</i>	<i>attempts to vote even though he or she has already voted shall be punished by a fine or by imprisonment of up to one year.</i>	<b>imprisonment</b>
<b>179</b>	<i>Violating Confidentiality in Voting</i>	<p><i>(1) Whoever, in an election held in Kosovo, violates confidentiality in voting shall be punished by a fine or by imprisonment of up to six months.</i></p> <p><i>(2) Whoever, by use of force, serious threat or in any other way, demands from a person to reveal how he or she has voted shall be punished by a fine or by imprisonment of up to one year.</i></p> <p><i>(3) When the offence provided for in paragraph 1 of the present article is committed by a member of the Central Election Committee or any other person in the exercise of his or her duty in elections or voting, the perpetrator shall be punished by imprisonment of up to three years.</i></p>	<p>Min: fine Max: <b>3 years imprisonment</b></p>
<b>180</b>	<i>Election Fraud</i>	<i>Whoever falsifies the results of an election held in Kosovo by adding, removing or deleting votes or signatures, by counting them incorrectly, by registering incorrectly the results of the election in the election documents or in any other manner, or publishes results of the election or the voting that do not correspond to the actual voting shall be punished by imprisonment of six months to five years.</i>	<p>Min: six months imprisonment Max: <b>5 years imprisonment</b></p>
<b>181</b>	<i>Destroying Voting Documents</i>	<p><i>(1) Whoever, in an election held in Kosovo, destroys, conceals, damages or takes any document or any other object related to the election shall be punished by a fine or by imprisonment up to one year.</i></p> <p><i>(2) When the offence provided for in paragraph 1 of the present article is committed by an official in the exercise of his or her duties related to elections, the perpetrator shall be punished by imprisonment of up to two years.</i></p>	<p>Min: fine Max: <b>2 years imprisonment</b></p>

**Table 4 – Criminal acts related to elections in Kosovo**



## 5. DAMAGES FROM ELECTION MANIPULATIONS

The numerous criminal actions manifested through election crimes have resulted in significant and various damages. In general, these negative phenomena have raised doubts over the election process. The high rate of vote theft<sup>49</sup> casts doubts on whether the votes of the people have been translated into a deserved election success of the elected or if the members of the Kosovo Assembly have been placed there as a result of manipulated votes. Members who obtained their votes illegally have very little reason to be accountable towards the citizens for their work in the Assembly. They are, on the other hand, surely accountable to the persons who contributed in securing a seat for them in the Assembly through fraud, significantly damaging in this manner one of the most valuable principles of democracy, which is accountability towards the citizens.

The damages to citizens are manifested in different ways. Firstly, re-voting caused by fraud means that citizens lose their valuable time by having to participate in voting a number of times to elect their representatives. Secondly, every abuse of the vote is translated into a loss of trust amongst the citizens in the election processes. Thirdly, organizing a repeat voting carries budgetary implications which fall on the shoulders of taxpayers. Fourthly, cases forwarded to courts and prosecution offices put a burden on these institutions that are already overwhelmed with an enormous number of unresolved cases. The election process for the Kosovo Assembly held in December of 2010 and January 2011 has involved a large number of abuses at various levels, including the failure of the basic means that ensure the proper running of the voting process<sup>50</sup>, extreme vote stealing<sup>51</sup>, and tampering with the vote numbers recorded in the count forms.<sup>52</sup> The high degree of manipulation is reflected in the large consequences that Kosovo society has had to and is still carrying. Finally, the high degree of abuses has plunged the country into an institutional crisis which has lasted for a number of months<sup>53</sup> and which left many important processes behind, including also the capacity of institutions to offer services for citizens both at the central and local levels.

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<sup>49</sup> The high degree of manipulations was documented in various forms from a large number of sources. See “Kosovo election prompts EU observer fraud claims”. BBC. Found on <http://www.bbc.co.uk/news/world-europe-11986105> (last accessed on 27 September 2011). Also the decisions of the CEC for the approval of recommendations of the Count and Results Centre for the re-counting of ballot papers. Also Ejupi B. and Qavdarbasha Sh. “Parliamentary Elections in Kosovo 2010: General observations and trends”. KIPRED. April 2011.

<sup>50</sup> According to Democracy in Action in many polling stations the ultraviolet lamps and invisible ink did not function. Media Brief. Democracy in Action. See [http://www.demokracianeveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start\\_from=&ucat=&](http://www.demokracianeveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start_from=&ucat=&) (last accessed on 26 September 2011).

<sup>51</sup> American Ambassador to Kosovo Christopher Dell observed such irregularities where the number of ballot papers had exceeded the number of signatures. See “Kosovo election prompts EU observer fraud claims”. BBC. Found on <http://www.bbc.co.uk/news/world-europe-11986105> (last accessed on 27 September 2011).

<sup>52</sup> Such a thing is confirmed by the CEC and CRC, as the re-counting of the ballot papers was done after the number of votes for candidates were seen to have exceeded five times the number of political parties, where candidates received more votes than the political entity, and cases where the entity did not get any votes but the candidate did. The decision for the approval of recommendations by the CRC for the re-count of ballots of certain polling stations in the Kosovo Assembly elections of the 9<sup>th</sup> of January 2010, Decision number 88-2011. January 2011. Also, the Decision for the approval of recommendations of the CRC on the procedures of re-counting and preparation of results for the Elections of the Assembly of the Republic of Kosovo, Decision number 1662-2010. December 2010.

<sup>53</sup> The Kosovo Assembly is dissolved on November 2, 2010 after the voting of the motion of no-confidence against the Government, opening the road door for premature elections. While, the Government of the Republic of Kosovo and the

Election fraud has caused financial damages in various respects, including the additional cost for organizing re-voting process. The Secretariat of the CEC was compelled to organize repeat voting in 185 polling stations on January 9, 2001 and 126 polling stations on January 23, 2011.<sup>54</sup> There were 2,887 additional members of the PSCs involved in the repeat voting, which cost the CEC €12,902.<sup>55</sup> In general, the repeat voting process and repeat counting has resulted in expenses of over €674,000.<sup>56</sup> The damages have also caused dissatisfaction in Kosovo society, yet the addressing of the problems by political parties, citizens and civil society actors was manifested through the expression of dissatisfaction in the form of political rhetoric without any legal repercussions for the manipulators. Kosovo society has in different forms publicly condemned the irregularities which occurred in these elections, where amongst other activities a group of activists, politicians and citizens in this occasion declared that the election process has degraded to the point of killing democracy in this country.<sup>57</sup> However, there was lack of a strong reaction by organizations, political entities, and activists from civil society in relation to criminal prosecution of those committing fraud.<sup>58</sup> The complaints and anger over the manipulations was continuously directed at the members of the Kosovo Assembly and the political elite, but there was little pressure directed to the justice authorities, who would be responsible for punishing the manipulators of elections.

The justice authorities have occasionally published information for the wider public on the review of election cases by the prosecution and courts. A public debate on the matter was missing throughout all of this time, however. Even when information was published by the justice authorities, the topic passed without the much deserved consideration.<sup>59</sup> The commission for the amending of the Law on General Elections in the Republic of Kosovo has held a meeting in which they discussed the criminal sanctions issued to the culprits of offences during the election process.<sup>60</sup> Members of this Commission, the Chief Prosecutor of

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President were voted in office only on the 22 of February 2011, a full four months after its dissolving. The Kosovo Assembly dissolves. See <http://www.assembly-kosova.org/?cid=1,128,3502> (last accessed on 27 September 2011). Also, Assembly elects the President and the Government of the Republic of Kosovo. See <http://www.assembly-kosova.org/?cid=1,128,3517> (last accessed on 27 September 2011).

<sup>54</sup> Report on the Expenses for Premature Elections for the Kosovo Assembly 2010. Central Elections Commission. February 2011.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> In the peaceful protest organized on December 18, 2010 in front of the National Theatre in Prishtina, tens of activists of civil society, politicians, and other citizens light candles with the motto "Light a candle for the deceased democracy".

<sup>58</sup> The Self-determination Movement organized a protest with the motto "Against Theft", which contained a number of concerns raised related to theft and under these was also the concerns of election manipulations. According to officials of the Self-determination Movement there were about 10,000 citizens taking part in this protest, while according to the Kosovo Police this protest was joined by about 2,000 persons. See *VM: Government Building, The VIP wing of the Dubrava prison*. Zëri Info portal. Found in <http://www.zeri.info/artikulli/1/1/28523/policia-ia-heqe-skenen-vetevendosjes/> (last accessed on 18 August 2011). Also, KIPRED email communication with the Media and Communication Secretary, Self-determination Movement, August 2011.

<sup>59</sup> During the months of July 2011, the State Prosecution and the Kosovo Judicial Council notified the public on the running of the investigation process and the punishment of those that manipulated the elections. All the media covered this story but no wider debate was initiated in society or any investigative reporting conducted on the prosecution of manipulators.

<sup>60</sup> In this meeting of the Commission the main item of the Agenda was the discussion on criminal sanctions which have been issued against criminal acts during the election process and the problems that have been identified during the process of elections. The invited parties to the meeting were the members of the Commission, Chief Prosecutor of the State, and representatives of the Kosovo Judicial Council. Sertolli F., "The courts amnestied the vote thieves" Zëri Info. September 2011. See <http://www.zeri.info/artikulli/1/1/33123/gjykatat-amnistuan-hajnat-e-votave/> (last accessed on 27 September 2011).

the State and the President of the Kosovo Judicial Council (KJC) expressed their dissatisfaction with the punishments issued by judicial authorities against the election manipulators.<sup>61</sup> This meeting of the Parliamentary Commission should have served for the members of the Kosovo Parliament to understand that minimal punishment threaten every other initiative which is being undertaken to improve the election process in Kosovo. These damages and the lack of an adequate response by judicial officials to these phenomena have undoubtedly affected the image of the Republic of Kosovo in the international arena.<sup>62</sup> The quality of elections is always used as a measurement of a country's state of democracy. The image of Kosovo society and statehood has been damaged after the Government has invested €7.7 million in branding and promoting the country through the campaign "Kosovo, the young Europeans".<sup>63</sup> Therefore, the manipulation of votes and irregularities in the election process has multi dimensional damaging effects.

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<sup>61</sup> Ibid.

<sup>62</sup> Various articles were published in international prestigious media after the conclusion of the election process in Kosovo, including here The Economist, The Guardian, BBC, The Telegraph, RTE News, Deutsche Welle, and many other international media. The articles of these media which have reviewed the election irregularities are found in the following links: 1) Lewis P., "Kosovo election fraud suspicions undermine PM's victory claim." The Guardian. See <http://www.guardian.co.uk/world/2010/dec/13/kosovo-election-fraud-claims> (last accessed on 27 September 2011). 2) Day M., "Kosovo election marred by fraud allegations". The Telegraph. See <http://www.telegraph.co.uk/news/worldnews/europe/kosovo/8199269/Kosovo-election-marred-by-fraud-allegations.html> (last accessed on 27 September 2011). 3) Calm now, a storm to come?. The Economist. See [http://www.economist.com/blogs/easternapproaches/2010/12/kosovos\\_election](http://www.economist.com/blogs/easternapproaches/2010/12/kosovos_election) (last accessed on 27 September 2011). 4) Kosovo election prompts EU observer fraud claims. BBC. See <http://www.bbc.co.uk/news/world-europe-11986105> (last accessed on 27 September 2011). 5) Kosovo election marred by fraud allegations. RTE News. See <http://www.rte.ie/news/2010/1213/kosovo.html> (last accessed on 27 September 2011). 6) Kosovo PM's party wins majority amid complaints of fraud. Deutsche Welle. See <http://www.dw-world.de/dw/article/0,,6325414,00.html> (last accessed on 27 September 2011).

<sup>63</sup> Veliu E., Hamidi L. "Millions for protection of Kosovo or the Government". Zëri Info. Shih <http://www.zeri.info/artikulli/2/8/11406/miliona-per-mbrojtje-te-kosoves-apo-te-qeverise/> (last accessed on September 27, 2011).

## 6. ROLE AND EFFICIENCY OF THE MUNICIPAL PUBLIC PROSECUTION OFFICES

By noticing the way the justice authorities ignored the need to prosecute and bring to trial instances of election manipulation in 2007, certain individuals and groups were encouraged to increase the intensity of their fraudulent activities in the next election processes in 2009 and 2010. This trend of manipulations on one side and the lack of punishment on the other have compelled the State Prosecution and the Supreme Court to consider these cases with high priority.<sup>64</sup> Of all of the elections so far, the highest degree of abuses and manipulations was recorded in the general elections held in 2010 and in the repeat voting in January 2011. The State Prosecutor has created a task force which is chaired by him in coordination with all the prosecutors of the Municipal Prosecutions to which the election cases have been forwarded.<sup>65</sup> The State Prosecutor has received cases which have been considered by the ECAP and the CRC, both bodies of the CEC. Cases have been forwarded to the appropriate municipal prosecutions with the requirement of collecting sufficient evidence and of filing indictments in the courts. The municipal prosecutions, from a total of 239 cases received for processing, have filed charges against 377 persons for whom indictments and proposed indictments were made, while for the elections of 2010 so far there have been only 12 verdicts issued.<sup>66</sup>

Municipal Public Prosecution	Number of cases received	Indictments filed		Proposed indictments		Criminal reports rejected	Cases closed	VERDICTS
		Number of cases	Number of persons	Number of cases	Number of persons			
Prishtinë	87	19	137	19	162	7	18	5
Gjilan	8	0	0	3	4	4	2	1
Ferizaj	34	9	47	0	0	2	0	4
Gjakovë	2	2	2	0	0	0	0	2
Mitrovicë	55	0	0	10	13	12	0	0
Prizren	28	0	0	3	3	5	0	0
Pejë	25	2	8	1	1	17		0
<b>TOTAL</b>	<b>239</b>	<b>32</b>	<b>194</b>	<b>36</b>	<b>183</b>	<b>47</b>	<b>20</b>	<b>12</b>

*Table 3 – Efficiency of Municipal Public Prosecutions on election cases*

<sup>64</sup> KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011. Also, KIPRED interview with the Chief Prosecutor of the State Mr. Ismet Kabashi, July 2011.

<sup>65</sup> KIPRED interview with the Prosecutor of the State Prosecution and the Coordinator for election cases Ms. Laura Pula, July 2011.

<sup>66</sup> Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on December 12.

Most of the sentences are in fines, while several are effective jail terms of a few months.<sup>67</sup> In all of these decisions, the State Prosecutor has decided to appeal against all verdicts, seeking harsher sentences.<sup>68</sup> This is a proper step of the State Prosecutor considering that these are fairly light sentences when compared to the damages caused. However, if we analyze the contributions of prosecutors in these cases, we notice that they have not been effective in investigating all the election offences, which would reveal a joint criminal enterprise, when considering the enormous number of thefts and persons involved in these. The prosecutors in these cases were satisfied only with the material received from the ECAP. Knowing the role of prosecutors in the protection of the public interest, there is no doubt that they have failed in the proper review of these cases. Their hesitation to continue with an efficient and proper prosecution has resulted in an increased election crime level over these years.

### **6.1. Filing of direct indictments**

The instances received from the CRC specifying the manipulations made during the registration of results for candidates for the Kosovo Assembly have made the work of public prosecutor easier, as most of the instances have resulted in the filing of direct indictments. To this point, as part of the 18 cases of direct indictments filed, 125 persons have been charged.<sup>69</sup> Municipal Public Prosecutions are currently reviewing 174 additional cases with preliminary reports involve 1217 official individuals.<sup>70</sup> The irrefutable evidence secured by the CRC during the process of vote re-counting has compelled the State Prosecution to pursue a direct filing of indictments. The findings of the CRC contain facts on the removal and addition of votes to candidates, which accurately proves vote manipulations. Such irregularities were identified by the CRC in 712 polling stations. Because each station involves seven commissioners, municipal prosecutions should file indictments against close to 5,000 officials involved in the process of election tampering.<sup>71</sup> Table 6 presents the efficiency of prosecution offices in resolving cases related to direct indictments.

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<sup>67</sup> KIPRED interview with the Prosecutor of the State Prosecution and the Coordinator for election cases Ms. Laura Pula, July 2011. Also, KIPRED interview with Chief Prosecutor of the State Mr. Ismet Kabashi, July 2011.

<sup>68</sup> Ibid.

<sup>69</sup> Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on the 12<sup>th</sup> of December.

<sup>70</sup> Ibid.

<sup>71</sup> This number was derived based on the data issued by the CRC on the polling stations where irregularities were noticed in the forms filled in by commissioners. KIPRED phone and email communication with the Coordinator of the Count and Results Centre Mr. Burim Ahmetaj, July 2011.

Municipal Public Prosecution	Direct Indictments			
	Preliminary reports		Indictments filed directly	
	Number of cases	Number of persons	Number of indictments	Number of persons
Prishtinë	70	490	0	0
Gjilan			0	0
Ferizaj	34	238	0	0
Gjakovë	11	76	11	76
Mitrovicë			0	0
Prizren	59	413	7	49
Pejë			0	0
<b>TOTAL</b>	<b>174</b>	<b>1217</b>	<b>18</b>	<b>125</b>

**Table 4 – Filing of direct indictment by the prosecutors**

If the same practice continues in filing direct indictments, then State Prosecution should initiate criminal prosecution of another 538 cases which will complement the overall number of cases forwarded by the CRC for a total of 712 cases of such manipulations. Therefore, the preliminary reports with irrefutable facts on the manipulation of votes involving seven commissioners in each polling station should prompt the prosecutors to investigate large-scale criminal collusion between them.

## 7. INVOLVEMENT OF THE COURTS IN RESOLVING OF CASES

The filing of a large number of indictments against persons involved in manipulations was conducted mainly on the basis of Article 180 of the Criminal Code of Kosovo, which addresses election fraud. From the six criminal acts in this Code which are related to abuses in elections, the most severe punishments are those under election fraud. The perpetrators of this act can be sentenced from six months to five years of imprisonment. Based on the CCK, for the offence of election fraud there were 300 persons indicted. In the event of these people being sentenced with imprisonment of only six months we would have a total of 150 years of imprisonment issued to them.

ARTICLE	177		178		179		180	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
<b>MUNICIPAL COURT</b>								
Gjilan							6	12
Kamenicë	1	2					4	8
Viti							2	2
Prizren	1	1						
Dragash	1	1						
Pejë							1	3
Gjakovë			1	1			12	77
Prishtinë			8	8	1	2		
Ferizaj							4	18
Shtërpcë							3	9
Glllogovc							20	128
Kacanik							4	24
Lypjan			1	1			1	14
Skenderaj			1	2			5	5
Vushtrri			1	1				
<b>TOTAL</b>	<b>3</b>	<b>4</b>	<b>12</b>	<b>13</b>	<b>1</b>	<b>2</b>	<b>62</b>	<b>300</b>

*Table 5 – Indictments confirmed by courts divided by type of criminal act*

The Supreme Court has decided to consider the election cases with priority and ensure that punishment for these perpetrators achieves its legal effect. So far the sentences issued are quite minimal, specifically in fines and in suspended sentences. The judges, when issuing the lightest possible sentences foreseen by the legislator in the Criminal Code of Kosovo, have opted for the election manipulators to be treated as lightly as possible, and consequently either intentionally or unintentionally, as in the past, they are contributing to giving an incentive for the commitment of these offences again.

### 7.1. Efficiency of courts in resolving cases

The courts and prosecutions have not been able to create a platform to follow for making progress in resolving cases. This problem has left its effects in processing the election cases, where despite the marking of these cases as priority ones, neither the KJC nor the Supreme Court together with the State Prosecution have been able to provide a clear picture of progress in resolving these cases. Each of these institutions possesses statistics that come into conflict with each other, and consequently progress or failure with these cases cannot be assessed accurately. For purposes of illustration, the lack of institutional coordination between the State Prosecution and the KJC is represented by the ambiguity over the number of indictments filed. The prosecutors state that there are 239 cases in total, while the municipal courts state that there are only 78 cases. The following analysis will be based on the data provided by the KJC and has been entered into a database in order to obtain statistics on trends related to the resolution of these cases.

MUNICIPAL COURT	Number of cases	Number of indicted persons	Cases resolved	Persons in resolved cases	Progress in resolving of cases	Progress in resolving cases based on persons
Gjilan	6	12	1	2	17%	17%
Kamenicë	5	10	2	4	40%	40%
Viti	2	2	0	0	0%	0%
Prizren	1	1	1	1	100%	100%
Dragash	1	1	0	0	0%	0%
Pejë	1	3	0	0	0%	0%
Gjakovë	13	78	1	1	8%	1%
Prishtinë	9	10	2	2	22%	20%
Ferizaj	4	18	4	18	100%	100%
Shtërpcë	3	9	2	8	67%	89%
Glllogovc	20	128	13	77	65%	60%
Kaçanik	4	24	1	3	25%	13%
Lypjan	2	15	1	1	50%	7%
Skenderaj	6	7	1	1	17%	14%
Vushtrri	1	1	1	1	100%	100%
<b>TOTAL:</b>	<b>78</b>	<b>319</b>	<b>30</b>	<b>119</b>	<b>38%</b>	<b>37%</b>

*Table 6 – Progress in resolving of election cases*

The resolution of election cases has not been conducted in line with the circular issued by the Supreme Court of Kosovo, which obliged the Municipal Courts to treat these with the highest



priority.<sup>72</sup> The treatment of these cases by judges remains to be a concern, as they have not achieved the expected results in resolving these cases, as so far not even half of these cases have been resolved.<sup>73</sup> From the 319 persons charged with involvement in election manipulation, judges have issued sentences against 119 of them.<sup>74</sup> Those managing the State Prosecution, KJC and the Supreme Court, supported by their circulars on the treatment of these cases as priority ones, have expressed their dissatisfaction with the number of cases resolved so far.<sup>75</sup> In a way, the procrastination and disregard for the declared priority is discouraging and flouts public expectations and the efforts to punish election manipulators.

A practice now established in the vocabulary of those managing the justice system of the country, has begun to look like the political rhetoric. Their decisions and declarations on the resolution of a range of important cases for Kosovo's society have begun to be treated with lack of seriousness and accountability. The responsibility for the overall failure of the whole institutional mechanism for organizing and running the election process should be met with the deserved punishment by the justice system of the country within the shortest and legally reasonable period of time.

The action taken so far demonstrates lack of accountability amongst municipal judges, who have not responded as required to the call of those leading the judiciary to treat these cases with priority.<sup>76</sup> The reason behind a number of cases not being resolved by the judges is related to the fact that the filing of indictments in these cases has been done very superficially. This has happened due to the tendencies of prosecutors to file a large number of indictments, in order to fulfill the order of the State Prosecution for an urgent consideration to resolving of election cases.<sup>77</sup> This is an intolerable violation of the professional ethics of prosecutors, who have opted to do their work in haste. The negative effect of this work will result in failure to uncover cases of election manipulation.

Since the end of the war there have been no mechanisms of supervision over the work of the judges and prosecutors in the judicial system of Kosovo. This syndrome has continued also with the election cases. There was no control mechanism established to monitor the trends of these cases being resolved. Despite the commitment of the President of the Supreme Court of Kosovo that cases of 2007 and 2009 elections will be resolved within two months at the court of first instance<sup>78</sup>, this resolution has not occurred. This failure indicates a failure to exercise responsibility among the heads of the judiciary and especially among their subordinates, who

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<sup>72</sup> The Supreme Court of Kosovo has issued a circular through which it has decided that election cases to be treated with full priority. KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011.

<sup>73</sup> See table 8, in the heading "Progress in Resolving of cases", in all the municipal courts only 38% of cases appear to be resolved.

<sup>74</sup> Ibid.

<sup>75</sup> KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011. Also, KIPRED interview with the Chief Prosecutor of the State Mr. Ismet Kabashi, July 2011. Also, KIPRED interview with the Head of the Kosovo Judiciary Council Mr. Enver Peci, July 2011.

<sup>76</sup> Even for the Head of the Kosovo Supreme Court it is not clear why a large part of these cases have not be resolved so far. KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011.

<sup>77</sup> In some cases the judges were faced with lack of witnesses to present their evidence in the court hearings. Judges called for as many as five hearings and did not achieve to secure witnesses. The blame for this rests with the prosecutors who were not careful in accurately gathering all the information on these witnesses. KIPRED interview with the President of the Supreme Court of the Republic of Kosovo, Mr. Fejzullah Hasani, August 2011.

<sup>78</sup> Justice in Kosovo. See <http://www.jetanekosove.com/drejtesia/645/Alb> (last accessed on 28 September 2010). 20 December 2010.

have shown disregard in implementing priorities and delivering justice in due time based on the legal provisions for a fair and reasonable trial.

The lack of willingness and readiness among judges to resolve these cases can result in a stifling effect for the justice system, especially at this time when there are 174 cases with preliminary reports, which can include 1217 indicted individuals. The Supreme Court will certainly need to act in order to properly manage this work as the judiciary can very soon be faced with about ten times more election cases compared to what is currently being worked on.<sup>79</sup> KIPRED believes that judges should be taking the circular of the Supreme Court seriously in order to respond to it with efficiency in resolving these priority cases. Otherwise, KIPRED fears that the procrastination, non-resolution and non-sentencing of election manipulators will have a huge negative effect for all the processes in the country as was the case in the past. If the punishment of manipulators is delayed again, the manipulators will not back down and these election crimes can be easily repeated.

## **7.2. Sentences issued by the municipal courts**

The sentences issued by the municipal courts for the manipulators of elections in Kosovo are scarce, insufficient and ridiculous. Furthermore, they do not respond to calls for the law to achieve its legal effect of punishing damages against society through adequate sentences. Over 90% of the sentences were inadequate, which can be interpreted as showing that judges ruling that the damages from election crimes were completely symbolic. Such sentences appear more like fines for minor offences rather than sentences for crimes with serious repercussions.

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<sup>79</sup> KIPRED has calculated the data of the CRC, which can serve the municipal prosecutions to file direct indictments, which would include 5000 accused commissioners of elections. Currently the municipal courts have had 78 resolved cases, while in the case of direct indictments which can be filed by the prosecutions, as the preliminary reports are available which contain violations proven by the CRC, this number would increase to 712 new cases, which is about 10 times more than the current number.

SENTENCES MUNICIPAL COURT	Acquittals	Fines	Suspended sentences	Without specification	Specific criminal procedure	Sentences with effective jail terms
Gjilan	1					1
Kamenicë			2			2
Viti						
Prizren	1					
Dragash						
Pejë						
Gjakovë		1				
Prishtinë			1	1		
Ferizaj	7		11			1
Shtërpcë	3		5			
Gllogovc	4	56	12		2	2
Kaçanik		3				
Lypjan		1				
Skenderaj		1				
Vushtrri						1
<b>TOTAL:</b>	<b>16</b>	<b>62</b>	<b>31</b>	<b>1</b>	<b>2</b>	<b>7</b>
<b>% out of total</b>	<b>13.4%</b>	<b>52.1%</b>	<b>26.1%</b>	<b>0.8%</b>	<b>1.7%</b>	<b>5.9%</b>

*Table 7 – Sentences issued for election crimes*

Out of 78 cases involving 319 charged individuals, the Municipal Courts have issued sentences against 119 persons.<sup>80</sup> In 92% of these cases, the sentences are fines, suspended sentences or acquittals, while sentences of effective jail terms have been issued only in rare cases<sup>81</sup>, as if this type of punishment is disappearing and that elections were the smallest problem in the country. Of the 119 sentenced individuals, we have 62 individuals fined, 31 individuals with a suspended sentence, 16 individuals acquitted, and only seven sentenced to imprisonment.

Sentences in fines are of various sums between €250 and €350. The Municipal Court in Drenas has dealt with the largest number of cases so far, hearing a total of 20 cases involving 128 persons. It has resolved 65% of cases and issued the largest number of fines. In this court, 56 individuals have been fined, as with the approval of the parties it was made possible to transform the prison sentence to a fine.<sup>82</sup> So far the Municipal Courts have issued suspended sentences to 31 persons, which can be considered as an issued caution in order for those individuals not to be involved in such crimes in the future.

<sup>80</sup> KIPRED communication with the Department of Statistics in the KJC Secretariat, August 2011.

<sup>81</sup> Ibid.

<sup>82</sup> In general, sentences with one month imprisonment were transformed into fines of 450 Euro, for two months imprisonment into 900 Euro, and for three months imprisonment transformed into a 1.350 Euro fine. KIPRED communication with the Department of Statistics in the KJC Secretariat, August 2011.

These sentences foresee that the decision of the court will not be enforced until the sentenced individual is involved in criminal acts within the determined period, which in these cases is a maximum period of two years. In this manner, not only that the sentences have not reached their effect, but have allowed the same persons to be perpetrators of vote stealing in future elections, taking into consideration that the term of the suspended sentence will pass before the next elections are held. The Municipal Courts have sentenced with an effective jail term only seven out of the 119 individuals included in the election cases which have been resolved so far. The highest sentence issued is a one year prison term and all others are mainly of three or six months. With only seven individuals sentenced to an effective jail term for a crime so damaging to society, this proves that the sentences of courts are scandalous and that judges have misunderstood the effects of this damage.

Despite the tendency of the judicial and prosecutorial system to be independent from other authorities, it should be taken under consideration that laws are supported by the majority of the representatives in the Kosovo Assembly and as such should be applied by all. By handing down such weak sentences, the judiciary is very far from the will expressed by the legislation it is applying. Indeed, the legislation prescribes significant punishment, involving multiple years of imprisonment, and even the possibility of these acts being investigated as organized crimes.

Article 180 of the Criminal Code of Kosovo for the criminal act of election fraud prescribes punishment of up to five years of effective imprisonment. Based on the current level of sentences it is unlikely that we will see such a sentence ever being issued. KIPRED, being the creator of the coalition of civil society organizations “Democracy in Action”, was directly involved in the monitoring of all the elections organized in Kosovo since 2007. The irregularities of the 2010 elections were unprecedented and it is exactly the hesitation of the justice authorities to put behind bars the individuals that have abused the votes of the citizens that has encouraged and empowered certain individuals and organized groups to be involved in the stealing votes and manipulating of elections. In such a situation where everyone else has criticized the enormous stealing of votes and election fraud, the courts have reached decisions that do not contribute at all to the development of a state where the citizens will have the right to free voting. The decision of the municipal courts not only that they are not close to the sentences that would give the proper effect with regard to election crimes, but rather are so light that they can be compared to sentences issued for traffic offences.

During this research, the KIPRED Institute has not looked into the political influences on the work of the prosecutors and judges related to election crimes. However, a separate study on the independence of the judicial authority published by KIPRED in September 2011 has found that despite the guarantee of the separation of powers under the Constitution of the Republic of Kosovo, some laws and practices create a dependency of the judiciary on the executive.<sup>83</sup> The analysis highlights the phenomenon of submission by judges to political figures in court cases where they have been implicated. Furthermore, the analysis reveals the

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<sup>83</sup> Gashi A. and Musliu B. “Undivided Authority: Analysis of the independence of the judicial authority in Kosovo” Kosovo Institute for Policy Research and Development, September 2011.

phenomenon of self-censorship of judges in the review of these cases, even when the politician did not exert influence over them.

Even though it has not been specifically studied, it would be natural for the political pressure to be higher in cases that are related to elections, as the election process directly affects the existence of political parties. But what has been noticed during this research is the fact that the judges are being self-censoring and this represents a negative example, especially as considerable steps are being taken to reform the judicial system.

The effects of light sentences have a multidimensional spread, as it mostly damages Kosovo's society in general. The citizens of Kosovo are already disappointed by the election process in Kosovo, as they are skeptical about whether their vote is of any value. The situation will become even more disappointing when the individuals that have caused this insecurity amongst the citizens will not suffer a single day of imprisonment when the law provides the possibility of imprisonment for up to five years. As explained in the introduction to this analysis, all other links that include the education of voters, training of commissioners, and other efforts in this regard are completely dependent on the efficient and impartial functioning of the judiciary.

Fines issued so far by the judiciary can be seen as setting the exchange rate for the purchase of votes. In a way, the judiciary has legalized the trading of votes, which represents a degradation of the citizen's vote and doubles the negative effects of election manipulations.

The leaders of the judicial institutions have immediately raised concerns over sentences that have been issued on these cases. It appears that the judges have misunderstood the marking of these cases as priority ones, by attempting to achieve a higher number of concluded cases rather than focusing on the quality of the decision in these cases. Furthermore, the State Prosecutor has made a final decision that for all the decisions of the municipal courts, the prosecution offices will launch appeals in order to initiate review trials for those cases at the district courts.

With all the problems qualified in serving justice in the Municipal Courts, there is still hope that the mistakes done by judges of the courts of first instance will be rectified in other instances of the court chain, specifically the District Courts. By noticing the failure of municipal judges, it remains in the hands of the District Court judges to prove their maturity and their professional ethics in the deserved punishment of election abuses. Additionally, the District Courts are obliged to resolve these cases with priority in accordance with the circular of the Supreme Court.

## 8. CRIMINAL PROSECUTION OF ORGANIZED CRIME

At the office of the State Prosecutor of the Republic of Kosovo there is a collection of files on the manipulation of elections organized in Kosovo since 2007 and onwards. The commission of election crimes, as a very wide spread form of crime, has undoubtedly required close cooperation between the culprits. Based on evidence secured from the CRC, the prosecution has prepared preliminary reports in order to file direct indictments for 174 cases that involve 1217 official election commissioners.<sup>84</sup> In contrast to previous elections, the ECAP and CRC have secured a good foundation of evidence for the prosecutors for prosecuting election abuses in the most recent 2010 elections.

The failure of the three links of the justice system in the proper treatment of election manipulation cases has undoubtedly affected the manipulators, who have only been encouraged to increase the level of manipulation. Manipulation of such high degree requires proper investigation and analysis of every criminal act related to elections. Taking into consideration that all of these manipulations have been committed by the commissioners, which were delegated by political parties, the responsibility for the manipulations falls on their superiors.<sup>85</sup> Having in mind that such a theft of votes requires organization and coordination between more than two individuals, an investigation can bring before justice a structured group or a criminal enterprise.<sup>86</sup>

The prosecutors should investigate the link between the commissioners and other persons which could have incited, encouraged, financed or assisted them in committing the offence.<sup>87</sup> So far, the Municipal Public Prosecutions of Kosovo have charged about 500 persons for massive manipulations of elections,<sup>88</sup> while about 4,500 commissioners should be part of the process, given that there is enough evidence to file direct indictments against them.<sup>89</sup> This large number of implicated individuals in the manipulation of elections represents sufficient suspicions to initiate investigations of this kind. The majority of them are being prosecuted for the crime of “election fraud”<sup>90</sup>, an act for which a sentence from six months and up to five years is prescribed.<sup>91</sup> Fraud by commissioners in each of these polling stations was done in

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<sup>84</sup> Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on the 12<sup>th</sup> of December.

<sup>85</sup> According to Ms. Valdete Daka, Chairperson of the CEC, “For the manipulations conducted on Election Day the responsibility fall 100% to the political parties because they were the originators, they were the implementers, and they were the one who undertook the manipulations.” KIPRED interview with the Chairperson of the Central Elections Commission, Ms. Valdete Daka. October 2011.

<sup>86</sup> KIPRED interview with legal experts, July 2011.

<sup>87</sup> Statement of expert Dastid Pallaska, in the TV programme “Justice in Kosovo”: “A good prosecutor considers all the possibilities, it is true that a commissioner in a remote village of Kosovo has not got a considerable interest in manipulating elections and it is true that behind him or behind all of those individuals that have committed these criminal acts there were individuals that have incited them, encouraged them, financed and helped them before, during and after the committing of the crime. All of these include elements that should be considered, without prejudice if such a thing existed or not, but it has to be considered as it may lead to the conclusion that there was a joint criminal enterprise for committing these criminal acts”, “Justice in Kosovo”, December 2010.

<sup>88</sup> Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on the 12<sup>th</sup> of December.

<sup>89</sup> KIPRED phone and email communication with the Coordinator of the Count and Results Centre, Mr. Burim Ahmetaj, July 2011.

<sup>90</sup> Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on the 12<sup>th</sup> of December.

<sup>91</sup> In order for an act to be prosecuted as a criminal act of Organised Crime, that act should be punishable with at least five (5) years imprisonment. Article 274 – Organized Crime, paragraph 2, Criminal Code of Kosovo.

close collusion between them as a structured group<sup>92</sup>, otherwise such manipulations of elections would not have been possible at such a scale.

### **8.1. Failures with election materials**

The proper running of the election process is regulated under an Internal Regulation of the CEC<sup>93</sup>, which allows us to analyze individual and joint actions and responsibilities that the commissioners of the CEC had before, during and after the election process.

In the 2010 elections, commissioners allowed the initiation of the voting process without necessary voting materials being in proper form.<sup>94</sup> Such a thing should not have happened as the internal rules of the CEC describe to the detail all the responsibilities and procedures. Based on the internal rules of the CEC, the procedure before the initiation of voting on Voting Day at 06:00h obliges and makes responsible the Chairperson of the PSCs and his/her deputy to check all the materials of the Municipal Election Commission (MEC), including the most important, such as conditional ballot papers, ballot papers, ballot boxes, voting stands, ultraviolet lights, invisible ink spray, official stamp of the ballot paper, ink, ink refills, voting book, and other stationary materials.<sup>95</sup> In various polling stations the ultraviolet lights and the invisible ink intended to prevent repeat voting did not function.<sup>96</sup> After the voting process started, this problem started to be manifested as a phenomenon throughout Kosovo, on which all relevant authorities were notified, including the supervisors and CEC.<sup>97</sup> The CEC spent €2,265 for the lamps and flashlights and €28,800 for the invisible ink.<sup>98</sup> The Procurement Officers in the Secretariat and other levels of the organization, including the higher management, of the CEC are the main responsible parties for the failure of these vital materials that would ensure a proper running of the election process.

The election process should not have started at all before resolving these problems. This problem could have been treated as an isolated case if it had happened in a smaller number of polling stations. However, when such a thing happens in a large number of the polling stations, then it needs to be investigated beyond the polling centers in order to find the common denominator of this failure. Holding individuals accountable should begin from each chairperson and deputy chairperson that allowed the initiation of the voting process without

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<sup>92</sup> Article 274, Organized crime, "The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure", Criminal Code of Kosovo.

<sup>93</sup> Voting and Counting inside the Polling Stations at the level of the Municipal Elections Commission; Election Regulation No. 09/2009, Central Elections Commission.

<sup>94</sup> According to Democracy in Action in many of the polling stations there were no functional ultraviolet lamps and invisible ink. Media Brief, Democracy in Action. See [http://www.demokracioneveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start\\_from=&ucat=&](http://www.demokracioneveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start_from=&ucat=&) (last accessed on 26 September 2011).

<sup>95</sup> Article 7, "Procedures Before the Initiation of Voting", Voting and Counting inside the Polling Stations at the level of the Municipal Elections Commission; Election Regulation No. 09/2009, Central Elections Commission.

<sup>96</sup> According to Democracy in Action in many of the polling stations there were no functional ultraviolet lamps and invisible ink. Media Brief, Democracy in Action. See [http://www.demokracioneveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start\\_from=&ucat=&](http://www.demokracioneveprim.org/al/printo.php?subaction=showfull&id=1292337622&archive=&start_from=&ucat=&) (last accessed on 26 September 2011).

<sup>97</sup> Ibid.

<sup>98</sup> Report on Expenditure for Premature Elections for the Kosovo Assembly 2010, Report of the CEC. Central Election Commission.

the fulfillment of necessary conditions for a proper running of voting. Responsibility moves up the hierarchy to all other supervisors and finally to the managers of the Central Elections Commission Secretariat, as the main responsible parties for ensuring condition foreseen by law for the proper running of the election process. Therefore, it remains a disturbing fact that the prosecutors in charge of investigating violations and manipulations in this election have not expanded their investigations to cover this group.

The lack of an efficient control as a consequence of technical and organizational problems has created enough space for election crimes, which was made use of by commissioners and political militants.<sup>99</sup> Consequently, the abusers were made able to vote a number of times and there were cases where the same persons voted a number of times, as was recorded during Election Day.<sup>100</sup> Therefore, everyone who has voted twice in an election process has violated the law, which is criminally punishable.<sup>101</sup> Even in this initial phase of the election process there was collusion between the commissioners and their supervisors, allowing in this manner the committing of crimes as they have allowed the abuse of the voting process. Naturally, this collusion in committing these serious criminal acts could not have been done in most of the polling stations and election centers in Kosovo without having an element of organization, an organizational structure and encouragement of these commissioners. This orientation of investigations should be taken into consideration by prosecutors, by analyzing the large masses involved in the manipulation and the manner in which they have committed these election crimes.

## **8.2. Manipulation of vote counting**

Each PSC was comprised of seven (7) commissioners which had separate responsibilities compared to each other and were responsible for the proper running of the election process in the specific polling stations. Failures should have been very easy to avoid since all seven commissioners were present from the outset to the conclusion of the process. Furthermore, at the end each commissioner was obliged to put his/her signature in the forms that contained all the data related to the running of the process and votes of the ballot papers as they referred to that given polling station.

The objectives of the procedure for the counting of valid ballot papers should be managed with accuracy, transparency, efficiency and protection of the security of the vote.<sup>102</sup> The staff responsible for organizing and running of the elections failed to ensure a process that corresponds to these objectives. After the identification of large number of irregularities in the candidate result forms, the CRC initiated the repeat counting of 40% of ballots, which revealed that the forms for 712 polling stations had irregularities consisting of manipulations

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<sup>99</sup> So far the Municipal Public Prosecutions have filed indictments against close to 500 persons. Six month report, (January – June 2011), on the cases related to premature parliamentary elections held on the 12<sup>th</sup> of December.

<sup>100</sup> Parliamentary Elections in Kosovo 2010 – Final Report, Elections Observation Mission, European Network of Election Monitoring Organizations (ENEMO), April 2011.

<sup>101</sup> Article 11, Regular Voting, paragraph 11.12 “Voting in the same elections more than once represents a offence and is punishable in accordance to the Criminal Code of Kosovo”, Election Regulation No. 09/2009. Central Election Commission.

<sup>102</sup> Article 15, the Process of Counting in Regular Polling Stations, paragraph 15.1 “The counting procedures for regular ballots will be guided based on the presented objectives: accuracy, transparency, efficiency and protection of the security of the vote”, Election Regulation No. 09/2009, Central Elections Commission.



with candidate votes.<sup>103</sup> These irregularities are a result of the responsible commissioners that were members of the Counting Teams in the polling stations. These teams in the presence of the Chairpersons, in a unified manner have abused the possibility to manipulate the candidate votes. The procedures of the CEC explains in an accurate manner all the procedure for the counting phase and manipulation in the forms can only happen through close collusion between the commissioners and the chairpersons of the PSC. The latter is the main responsible individual for the preparation and accuracy of results counted.<sup>104</sup> Based on the massive manipulations that have occurred, one must conclude that the Chairpersons have led and approved every abuse as part of a joint criminal enterprise during the election process.

### **8.3. Legal basis for prosecuting election crimes as organized crimes**

The legal basis for the prosecution of these massive election manipulations does exist. The Municipal Prosecutors have charged most of the suspects with the crime of election fraud, for which the punishment of six months to five years imprisonment is prescribed. In order to fulfill legal conditions for prosecuting the act as an organized crime, the criminal act needs to be punishable with five years imprisonment. These legal criteria are fulfilled for most of the accused so far by the prosecution, as almost all are accused of the crime of election fraud. The Criminal Code of Kosovo has clearly specified the meaning of the organized crime group, which means a structured group which exists for a certain period of time and acts in collusion with the objective of committing serious crimes for their direct or indirect benefit in property or finances.

Taking into consideration the resources that are controlled by the Kosovo political forces, the interest of commissioners to commit these crimes could be related directly or indirectly to property or financial gains. Often political parties were accused of hiring their supporters in the State Administration and in Public Enterprises.<sup>105</sup> Furthermore, the process of public procurement is often criticized as a process that is heavily affected by politics and does not provide space for proper and fair competition.<sup>106</sup>

Identifying the organizers, inciters, culprits and those joining together in these massive crimes would help to identify the involved political parties themselves, which are responsible for the proper running of the election process. However, because many individuals within them were implicated in these crimes, this has caused for, apart from the media declarations, their contributions to be minimal in the uncovering of manipulation cases. However, this

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<sup>103</sup> “New elections in Kosovo” See <http://www.telegrafi.com/?id=26&a=3207> (last accessed on 4 October 2011).

<sup>104</sup> Article 15, the Process of Counting in Regular Polling Stations, paragraph 15.19, the Chairperson of the PSC will be responsible for the preparation and accuracy of results counted and recorded in the proper Results Form, Election Regulation No. 09/2009. Central Election Commission.

<sup>105</sup> The declaration of the Minister of the Minister of Public Administration, Mr. Mahir Jagxhillar, “The politicization has been done for a long time. However, through public administration reforms which are underway we will decrease the political interferences in public administration.” Llapashtic J. “Frustration increases due to politicization”. Zëri Info. See <http://www.zeri.info/artikulli/2/8/35697/politizimi-rrit-frustrimin/> (last accessed October 6, 2011). As well, former Minister of Public Administration, Ms. Edita Tahiri, declared that the politicization of the public administration has been going on continuously during the past ten years, mostly affected by those governing the country. “Attempts to de-politicize the administration”. Express. See <http://gazetaexpress.com/index.php?cid=1,15,41834> (last accessed October 6, 2011).

<sup>106</sup> Progress Report on Kosovo 2010 raises the concerns over the level of corruption related to the public prosecution. Progress Report on Kosovo 2010. European Commission.

remains a part of the responsibilities of the prosecutors, who have to conduct thorough investigations on election crimes and move beyond individual crimes in order to discover joint criminal enterprises which were in action. The judges also can contribute in the uncovering of these criminal enterprises by delegating cases to the authority of the District Court in cases where collusion and the interest for manipulation was of a higher than that of an individual.

The criminal prosecution and trial of acts of organized crime is the essential element of uprooting massive manipulations in the future.

## 9. GENERAL FINDINGS

The manipulation of the election process is in no way part of the election system, but rather an undesirable contribution of organized groups with political influence, abetted by the failure of justice authorities and the CEC to prosecute or prevent these manipulations. The manipulation of citizens' votes has caused damage to a number of social spheres and governance in Kosovo. The massive theft of votes seriously damages the process of accountability of the legislation members towards citizens, which is one of the fundamental values in consolidating democracy in a country. Furthermore, the stealing of votes has resulted in serious consequences in a number of other aspects like the wasting of citizens' time to participate in voting, the loss of citizens trust in the election process, financial costs including those for reorganizing elections and other consequences like the institutional crisis. Additionally, the stealing of votes had caused such serious damage to the image of Kosovo in the international arena that even the largest of world media had reported on the numerous abuses.

The CEC secretariat was compelled to organize a repeat voting and to re-count the votes which resulted in the spending of over €74,000. Despite the fact that activists of civil society, political parties, citizens and other persons had raised their concerns over the theft and manipulation of votes during the parliamentary elections, the involvement of these players was limited only to media statements and ended almost at the same time with the election process and the voting in of the government.

The justice authorities ignored the election cases of 2007 and 2009 and continued with the same practice even with the last elections of 2010. For years the justice authorities did not conduct any litigation for these cases. So far the three links of the justice system have failed in prosecuting and trying election cases, reaching only a symbolic number of verdicts. Consequently, the manipulators of elections have seen their appetite grow and the scale of manipulations has gradually increased.

Only after the elections of 2010 did the justice authorities decide to treat these cases with priority. Unfortunately, not even the circular issued on treating these cases with priority was observed, leaving more than half of these cases unresolved, therefore granting de facto amnesty to many manipulators of elections. On the other side, the legal framework is complete and allows for the punishment of any type of crime related to elections. The legislation has expressed its will that such offences are punished with up to 5 years of imprisonment and also create the possibility to investigate such acts as organized crimes.

The efforts and contribution of political entities and other players, including civil society, to uncover the election crimes through legal means were minimal. The claims and verbal allegations of some political entities on massive manipulations in elections were never proven through legal and institutional paths. Political parties were focused too much on political rhetoric in the media and neglected the legal mechanisms to intervene in uncovering the manipulation cases. Through the latter, the leaders of some parties even vigorously demanded the annulment of the whole election process, by claiming that the whole process was manipulated.

The political parties and civil society actors who have been involved in observing the election process have made minimal contribution to file complaints at ECAP. The Self-determination Movement has led in the number of complaints presented to the ECAP, followed by other parties like the PDK, AKR, FER, LDK and AAK. An example of success is the case of Mitrovica municipality, where with the persistence of the Self-determination Movement the matter was put before the Supreme Court, which resulted in the annulment of elections in that municipality. On the other side, despite the low number of observers, BIRN had raised a total of 39 complaints which resulted with decisions for election annulments by the ECAP. In contrast, the coalition of NGOs "Democracy in Action," led by KDI, was unable to officially present any complaint despite having 5,000 observers. The continuous verbal actions not accompanied by complaints on irregularities through the legal system, demonstrate an empty rhetoric, lack of responsibility and immaturity on the part of political parties and organizations of civil society towards the development of a rule of law state.

Massive theft and manipulation in the elections of 2010 and in the process of repeat voting in 2011 was uncovering during the process of auditing the polling station forms. In addition to ordinary stealing of votes between parties, a form of stealing that is considered a novelty and which took unprecedented proportions in these elections was the stealing of candidate votes within the same political entity, a concern raised also by the former acting President, who at the same time is the General Secretary of the biggest party in the country, the PDK, Mr. Jakup Krasniqi.

The massive theft and manipulation created the need for the CRC to re-count 40% of the votes. The process of re-counting candidate votes by the CRC indicated that a total of 890 polling stations had problems with manipulation and mathematical errors. In 80% of the problem cases (712 polling stations) the process of re-counting uncovered irregularities that relate to stealing and adding of candidate votes, while the remaining part relate to errors that are more of the mathematical nature.

Such information reveals that the State Prosecutor is giving amnesty to election manipulators and vote thieves. So far the State Prosecutor has charged about 500 persons, representing a small fraction of the 4,984 commissioners which were involved in the 712 polling stations should be facing justice also, based on this data of the CEC. In all of these cases there is well-grounded evidence which would suffice for the prosecution authorities to file direct indictments, as they have done in a number of cases so far.

The courts and prosecution offices have not been able to create a platform to follow the progress on resolution of cases. The lack of coordination is directly affecting this as well as hurting a database shared between the justice institutions like the Kosovo Judicial Council, the Supreme Court and the State Prosecutor. Therefore, there is uncertainty on the progress with these cases as each of these institutions has statistics which are in conflict with one another.

The resolution of these cases has not been done in line with the circular issued by the Supreme Court of Kosovo, which binds the municipal courts to treat them with outmost priority. The courts so far have not been able to resolve even half of the cases which they have received for processing. With such unsatisfactory progress, the justice authorities

represent only an additional element in the link of those who utilize political rhetoric but lack concrete actions in implementation. The biggest burden for this outstanding failure in issuing punishment falls on the municipal courts, which have tried these election crimes and issued fines that do not reflect the severity of the damages caused.

The crimes that went unpunished in the elections of 2007 and 2009 gave an incentive to other individuals to be involved in the manipulation of votes during the elections of 2010, when the number and severity of abuses peaked. The prosecution authority, by ignoring these cases, has left their investigation only to the local level, despite the fact that there are enough elements to require knocking on the doors of key individuals behind the organizing and the inciting that enabled these election crimes to happen.

The conduct of election offences, especially when we are dealing with such a high degree of abuses, requires collusion between numbers of individuals which also involves certain gains. Therefore, for all the offences and damages caused in elections we are not dealing with only individual responsibility, but rather responsibility of a joint criminal enterprise.

The enormous number of vote thefts and manipulations, which so far have been finalized with the filing of indictments against 500 commissioners, where this number is expected to be raised to 5,000 such, demonstrates a mass that could not have functioned in individual basis. In order to achieve this aim there was organizing, inciting, and financing and assistance before, during and after the conduct of election crimes.

There is a legal basis that enables the prosecutions of these election crimes under the category of organized crime, a crime which unfortunately was never mentioned by the prosecutors in their discussions. The offence of "elections fraud" is punishable with up to five years of imprisonment. Most of the accused are currently being prosecuted for election fraud, hence enabling their criminal prosecution in the category of organized crime. Every polling station had seven commissioners which certainly had to cooperate, or at least to be passive participants in the manipulation of ballot papers. This proves organized criminal structures which acted uniformly in most parts of Kosovo.

Political parties, observers, justice authorities and all other mechanisms involved in the election process need to provide evidence to the irregularities and damages caused by the abuses in the 2010 elections and the repeat voting of 2011 by following the legal path. The municipal prosecutors when seeing this high degree of abuses should not hesitate to prosecute them, but rather cooperate with the Kosovo Special Prosecution, to consider all of the evidence for the prosecution of all these crimes under the category of organized crimes. Only through punishment of the manipulation organizers will we achieve the eradicating of such abuses. The judges should issue sentences that are nearer to the maximum punishment and not grant amnesty to the election criminals, considering the destructiveness of election fraud.

## 10. RECOMMENDATIONS

After an analysis of the findings of this study and consultations with rule of law institutions, independent experts and all the players involved in organizing the elections, KIPRED presents these recommendations for the institutions of Kosovo:

- 1) The **State Prosecutor** should expand the investigations and direct them also towards examine the offences as instances of organized crime. The multiple abuses presented to the ECAP and the manipulations of forms in 712 polling stations identified by the CRC, indicate the involvement of an organized structure in the manipulations. Furthermore, the coordination and collusion of these manipulators was done with the intention of either direct or indirect gain. Finally, the Criminal Code gives the possibility for these crimes to be prosecuted as an organized crime, given that they hold penalties of five years imprisonment. Therefore, the State Prosecutor should order detailed investigations of the election cases, where the main contribution will be made by the Special Prosecution of the Republic of Kosovo (SPRK), in order to uncover the structure and organization of election crimes.
- 2) All the abuses identified by the CRC, which involve about 712 polling stations or close to 5,000 commissioners, where manipulations with candidate votes have been verified, should serve as the foundation for direct indictments filed by the prosecutors. The **State Prosecutor** should order the investigation of criminal collusion of commissioners in these cases.
- 3) The **State Prosecutor** should order investigations on the failure of UV lamps and invisible ink. These failures have enabled the manipulations in the elections and were the cause for organizing repeat elections. Therefore, this costly failure should be investigated to determine if it was done purposefully; if the failure was deliberate, it should be criminally prosecuted.
- 4) Based on the considerable damages caused by election crimes, **Municipal Courts** should issue tougher sentences which would be adequate in punishing crimes of this severity. In 92% of cases decided so far, the sentences were fines, suspended sentences, or the acquittal of the indicted. Only in rare cases was the sentence of an effective jail term was issued. If this trend of sentencing continues, the same fraud as in the past will happen again as the manipulators will only be encouraged to be involved in these criminal activities.
- 5) The **Supreme Court of Kosovo** should toughen its policy on sentences in cases of election manipulation in Kosovo. Based on the large damages that election crimes have caused, the judges should toughen their sentences in order for the punishments to achieve their legal effect and consequently to achieve the aim of the punishment for the conduct of offences.
- 6) The **State Prosecutor, Supreme Court and Kosovo Judicial Council** should harmonies their actions towards the priority resolution of election cases. These cases should be monitored continuously by the heads of prosecution offices and courts, and regular reports prepared on the progress of resolving these cases. Despite the issuing

of the circular on the priority resolution of election cases, the municipal courts have not yet ruled on even half of these cases.

- 7) The **Kosovo Police** should be more involved in the investigation of offences related to elections. Their contribution should be greater and as professional as possible in obtaining proof and evidence in uncovering organized structures that act in the conduct of election offences.
- 8) The **CEC** should strengthen its monitoring capacities in the selection and provision of quality materials that enable the proper running of a regular election process. During the parliamentary elections of 2010, there was lack of specification for the election materials, something which compromises the quality of these materials.
- 9) The **Election Observers**, including here those from political parties, representatives of civil society and other observers, should channel their complaints through the legal mechanisms for investigation and trial of election manipulation cases. Throughout the election process there were over 32,000 observers involved who all together handed over only 454 official complaints. The wide coalition of civil society “Democracy in Action”, led by the KDI, with 5,000 observers involved on Election Day failed to present even a single complaint. The energy of all the players was focused mainly in verbal media accusations on abuses. Therefore, their obligation is to follow the legal and institutional path to prove every type of violation claimed by allowing the judicial authorities to establish justice in these cases.