

Kosovo's Election Reform and the Serb Community

Introduction

On June 19, 2002, the Council for Inclusive Governance (CIG) organized a roundtable discussion in Pristina on Kosovo's election law reform and its implications for Kosovo's Serb community. Among others, the issues of personal identity cards and reserved seats for minority communities in Kosovo's parliament were discussed. Participants included members of all Kosovo Serb parliamentary parties, three representatives from the Parliamentary Election Reform Committee, and members of Kosovo's civil society.

The election fraud in the 2010 Kosovo elections prompted the authorities to review the election law with the aim of reducing the possibility of theft. Soon after the election, a parliamentary committee was formed and is in the process of drafting the proposals to amend the election law. But it has proved more difficult than expected for the changes to come about. The one-year mandate of the Committee expired before it agreed on draft changes. The Committee's mandate was extended for three more months, but, again, it seems unlikely to finish its work by the new deadline of August 15. Though the parties agree on the need to reform the law, the leaders of the major parties have failed to agree on specific proposals. They agree on dividing Kosovo into electoral districts, but haven't been able to agree on how many. The Democratic Party of Kosovo (PDK) reportedly favors 6 districts, the Democratic League of Kosovo (LDK) 10 or more districts, the Alliance for the Future of Kosovo (AAK) suggested to keep a single district for the entire country or have a pure majoritarian 100-district system, the Self-Determination Movement (VV) also supports a single district. The civil society organizations have come up with various proposals, ranging from one to 100 districts. The minority parties, including those representing the Serb community, favor keeping a one-district system for all the parties, not just for the ethnic parties.

The law includes some other proposals, such as what IDs can be used for voting. According to the new proposals, voters can vote only with Kosovo-issued IDs. In previous elections, voters could use other identification documents, such as UNMIK-issued IDs, Serbian IDs, and other international documents as long as their names were in the voters' lists. The Serb representatives argue that this would prevent many Serbs from voting, especially those that have been living in Serbia. Also, a number of Serbs living in Kosovo don't have Kosovo ID cards, especially those living in the north of Kosovo. Furthermore, the Serbs complained that the administration officials are making it difficult for Serbs to obtain Kosovo IDs, usually by requesting additional documents. Local officials say that one needs a birth certificate, a citizenship document, and

proof of paying the property tax to apply for Kosovo ID. In case one cannot obtain a birth certificate, then one needs to have two witnesses to testify about his/her residency in Kosovo.

Kosovo authorities say that local authorities are not making it difficult for Serbs to get IDs. They say the reason behind the Serb complaint is that Serbs want to be able to use Serbian documents, including the possibility of voting with them. A large number of Kosovo Serb voters live in Serbia and for them it is impossible to obtain such documents there given that Kosovo has no embassy or office in Serbia. They would need to go to an office in Kosovo.

Election Law Reform

Officials from the Election Reform Committee said that in addition to the Committee for the Election Reform, there was also a working group that included members of civil society whose input was included in the recommendations and suggestions of the Committee. The Committee will send the recommendations to the parliament that would have to adopt them before they enter into force. But, according to a speaker, the leader of PDK, currently the Prime Minister of Kosovo, has been avoiding a meeting with the party leaders where they would give the green light to the proposed changes.

The Committee includes representatives of all parliamentary groups and had a one-year mandate. It had to address legal, technical, and political issues. The Committee's representatives reported that the legal and technical issues have been almost completed. "The draft law is ready to be sent to the parliament." But the political problems have not been resolved yet. Political issues include a decision on the number of election districts, the election threshold, and whether the candidates' lists should be open or closed. The Committee was supposed to complete its work by August 15, but its members reported that it is highly unlikely given that the political leaders are still making their own calculations about which model could suit their parties best. While LDK has proposed 10 or more districts, it has also prepared an alternative package, and, according to its officials, it is ready to compromise and find a consensual solution. Many believe that no agreement will be reached before the fall.

PDK will soon make its positions public that will take into consideration other parties' proposals, a PDK member reported. He said that PDK is fine with one district, or many districts, closed lists, or open lists. He was in favor of open lists since, the speaker said, they contribute to democracy even though they do create some problems both within and between parties (intra-party fraud, candidates stealing votes from their own colleagues).

The election reform was prompted by the fraud in the 2010 election, but many participants said that the law was not the cause for election manipulation. One suggestion by a civil society organization and the Committee's members is to sanction those that commit fraud not only with fines but also with jail terms. "We have suggested that the law sanctions become tougher, not to just fining people, but also putting them in jail, one year at minimum," a civil society member said.

Representatives of the Democracy for Development, a local think tank, presented a report on the election reform. Some of their suggestions to the Election Committee included the following:

eliminate conditional voting since it was used as a tool for manipulation and fraud; keep voting abroad for parliamentary elections but not for local ones; keep one district for minority community parties; have open lists and vote for one candidate only, not for five as it was in the last election; campaign silence should be 48 hours. They said that a difficult problem to resolve is the fact that about 400,000 people in the voters' list don't vote. Some of them are dead and some live abroad. Political parties could misuse these names.

Election Law and Serb Political Parties

The new draft law states that Kosovo will remain one electoral district for parties that represent ethnic minorities in Kosovo. The changes to the law such as the division into districts, threshold, or the nature of candidates' lists do not affect the representation of minority parties. These parties will be able to run on the entire territory of Kosovo with a single list and will obtain the number of seats based on the number of total votes. Also, there will be no threshold, except for the natural one percent, for minority community parties.

The Serb representatives, however, raised two issues that are not directly related with the election law but indirectly affect their voting and representation. These are the issue of documents and the reserved seats. Starting from the next election, voters in Kosovo can vote only with documents issued by the Republic of Kosovo. Previously, voters could vote with any document, including those issued by UNMIK or Serbia. Serb representatives said that there are a lot of Serb voters living in Serbia who are not able to get Kosovo IDs. They alleged that even those Serbs living in Kosovo are given a hard time by Kosovo local administrations to get their IDs. Some said that they had to intervene to obtain documents for their acquaintances. Kosovo Albanian officials deny such claims. They said it is possible to have unprofessional local officials or some who abuse their power but that the law regulates the issuance of the documents for all citizens equally.

ID Cards and Voting

Local officials say that one needs a birth certificate, citizenship certificate that is obtained at the municipality by showing the birth certificate, and proof that you have paid the property tax in order to apply for a Kosovo ID. These requirements apply to all citizens of Kosovo regardless of ethnicity. The participants alleged that the Serbs encounter difficulties in obtaining IDs. Some of them blame the shortcoming in the law; others allege abuse of power by some local officials. The Albanian participants said if the allegations are true, they are a result of abuse of power by some individuals.

Some Albanian party representatives say that the problem is not with obtaining Kosovo IDs, but the issue is that Serbs want to continue to be able to vote also with Serbian IDs, but don't want to say it directly.

The main problem is with the Serbs who live in Serbia. Since Kosovo has no offices for registration in Serbia, and the international community is not likely to facilitate such a process, a large number of Kosovo Serbs will not be able to cast their ballots. How will this affect the Serb community parties is difficult to quantify. The Serbs will obtain their ten reserved seats anyway.

And the likelihood of gaining extra seats is unlikely given that they need to obtain sufficient amount of overall votes to gain an additional seat.

Guaranteed and Reserved Seats

The Ahtisaari Plan provisions, also included in Kosovo's Constitution, provide that "for the first two electoral mandates upon the adoption of the Constitution, the Assembly of Kosovo shall have twenty seats reserved for representation of communities that are not in the majority in Kosovo. Any seats gained through the elections shall be in addition to the ten reserved seats allocated to the Kosovo Serb Community and other Communities respectively... After the first two electoral mandates parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb community shall have the total number of seats won through the open election, with a minimum ten seats guaranteed if the number of seats won is less than ten."

Representatives of the Serb Community insist that the reserved seats provision should remain at least for a few more rounds of elections. Some reported that a deal with the prime minister has been reached to keep this provision for another two electoral mandates. However, this requires a change of the Constitution for which the votes of the two thirds of the members of parliament are required. The current coalition governing parties have just over 60 votes out of 120. Though not unlikely, the opposition parties will not give their votes for these provisions easily. Some of them are strongly opposed to such affirmative action provisions and will most likely not vote in favor. Thus, an agreement between Serbs and Kosovo Albanian governing parties may not be sufficient for such a change. This would also be considered as "opening the Ahtisaari Plan" by some which would lead to unknown consequences.

An opposition member said that when it is in the Serb community's favor, its representatives insist on implementing every aspect of the Ahtisaari Plan, without any changes, as it was the case with the law on Velika Hoca and the Cultural Center of Prizren. In this case, "we will insist on implementing the Ahtisaari Plan as it is. The Plan was discussed for two years in Vienna. Where were the Serbs then," the speaker asked.

Conclusion

The changes to the election law do not affect the Serb political parties in terms of representation since the one-district provision will be most likely maintained for minority community parties. The Serb political parties have been actively engaged in the debate and have proposed a number of changes. They propose that Kosovo remains one election district and the candidate lists remain open.

Kosovo Serbs have two major concerns. One regards the ID cards required for voter identification in the next election and the reserved seats. The Serbs fear that new requirements to vote only with Kosovo IDs would prevent a large number of Serbs from voting in the next election. The Kosovo government is not likely to change this provision and a large number of Serbs are not likely to come from Serbia to Kosovo to get Kosovo ID cards. Also, opening a Kosovo office in Serbia is not likely either any time soon.

The Ahtisaari Plan and Kosovo's Constitution provide that the reserved seats for the Kosovo minority communities are valid for two election cycles only following the adoption of the Plan. Changing this provision requires constitutional changes that require two thirds of the members of parliament. The current governing parties have 67 members in parliament. An intermediate solution such as extending the reserved seats for another two election cycles is a possibility.

Participants

English Alphabetical Order

Jetmir Bakija, Democracy for Development Institute
Jelena Bontic, Independent Liberal Party
Haki Demolli, Democratic League of Kosovo
Biserka Kostic, Independent Liberal Party
Halit Krasniqi, Democratic Party of Kosovo
Dragisa Krstovic, Liberal Democratic Party
Leon Malazogu, Democracy for Development Institute
Goran Marinkovic, Independent Liberal Party
Sasa Milosavljevic, Independent Liberal Party
Randjel Nojkic, Serbian Renewal Movement
Zivojin Rakocevic, Glas Juga
Vesimir Savic, United Serb List
Boban Todorovic, Independent Liberal Party
Momcilo Trajkovic, Serb Resistance Movement
Rada Trajkovic, United Serb List
Jasmina Zivkovic, Independent Liberal Party
Shpetim Gashi, Council for Inclusive Governance
Alex Grigorev, Council for Inclusive Governance
Arber Kuci, Council for Inclusive Governance
Krystyna Marty Lang, Embassy of Switzerland
Norbert Ruetsche, Embassy of Switzerland