

ORGANIZED CRIME IN ELECTION PROCESS

AN ANALYSIS OF PROSECUTION AND ADJUDICATION POLICY

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June, 2012
Prishtina

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June 2012

Prishtina, Republic of Kosovo

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AAK	Alliance for the Future of Kosovo
CEC	Central Election Commission
CRC	Count and Results Center
CRF	Candidate Result Form
ECAP	Elections Complaints and Appeals Panel
IKD	Kosovo Law Institute
KACA	Kosovo Anti-Corruption Agency
KP	Kosovo Police
LDK	Democratic League of Kosovo
MIA	Ministry of Internal Affairs
PDK	Democratic Party of Kosovo
SPRK	Special Prosecution Office of the Republic of Kosovo
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
VV	Self-Determination movement

1. EXECUTIVE SUMMARY

“Elections are a major factor in the stabilization and democratization of emerging democracies and post-conflict states”.¹ Republic of Kosovo continues to have substantial problems organizing elections. Due to large number of election fraud cases during 2010 general elections, Central Election Commission was forced to repeat elections in four municipalities and two additional polling stations and recount votes in 890 polling stations. The manipulations have had negative impact in several aspects including but not limited to undermining public confidence in election process, questioning the legitimacy of the Assembly by different political parties and citizens, damaging the institutions and budget, and worsened country’s international image.

The current legal framework enables efficient investigation, prosecution and adjudication of all types of election fraud cases. On December 2010, the Supreme Court and State Prosecutor declared prosecution and adjudication of crimes related to elections as priority.² Elections Complaints and Appeals Panel and Count and Results Centre supplied provided relevant information on 854 cases related to elections, which involve over 5,000 people. Prosecutors have filed indictments on 221 cases which involve 1,516 people and they are conducting further investigations on 758 additional people.³ However, judges have been inefficient as they have confirmed only 94 indictments.

Prosecutors’ approach “quantity before quality” has resulted in an inadequate investigation and prosecution policy, as they have ignored the possibility of existence of organized crime. Election fraud was organized in a systematic manner, which contained elements of serious crime, structured groups and gaining of other material benefits. Counting and Results Center recounted and investigated 890 polling stations, and found out fraudulent data in 712 polling stations, involving around 5,000 election commissioners. State Prosecutor and Special Prosecution Office of the Republic of Kosovo did not investigate any person for the organization of manipulations even though the commissioners engaged in election fraud acted in the same manner at the same time in different places. Despite public accusations that senior political party officials gave orders to manipulate elections, so far no such official has been investigated, prosecuted or tried. Further, the failure of prosecutors to investigate suspicious financing of political parties, the failure of election materials and the

¹ Winrich Kuhne, “The Role of Elections in Emerging Democracies and Post-Conflict Countries” (Friedrich Ebert Stiftung, August 2010), p. 1.

² IKD interview with Mr. Fejzullah Hassan, President of the Supreme Court of the Republic of Kosovo, and Mr. Ismet Kabashi, Chief State Prosecutor, April-May 2012.

³ IKD interview with Mrs. Laura Pula, Prosecutor at State Prosecutor and Coordinator of Election cases, May 2012.

inaccurate voters' lists may send a wrong signal and set free the perpetrators who engaged in criminal activities related to the election process.

Municipal Courts so far have been working on 154 cases,⁴ out of which 41 cases that involved 191 people have been solved. 69% of the sentences have been fines and conditional sentences, while only 9.4% are effective imprisonment. The sentences are disproportionate with the damages caused by the crime. District Court judges have adjusted the decisions of Municipal Courts by pursuing more severe sentences, by imposing six months imprisonment for each of the accused.⁵

Election fraud has involved financial damages, where Central Election Commission has been the damaged party.⁶ Regardless of the instructions that Central Election Commission received from the courts to initiate a civil lawsuit for compensation, such thing has not happened so far.

It is the first time that justice authorities are engaged in a more adequate response to the prosecution and adjudication of election fraud cases in Kosovo. The current approach can contribute to a certain degree to prevent these crimes in the future. However, unless there is prosecution and adjudication of those who organized election fraud, justice will not be served and there are risks for repetition.

⁴ Attention: there is discrepancy between the statistics provided by prosecutors and judges. According to State Prosecution, courts have confirmed 94 indictments, whereas, the Secretariat of the Kosovo Judicial Council claims that courts have been working on 154 cases as the courts have included here also election fraud cases of 2007 and 2009.

⁵ Supreme Court of the Republic of Kosovo has provided District Court judgments to IKD, May 2012

⁶ Judgment against eight defendants charged on election fraud cases, Section 180, relating it to Article 23 of CCK. Judgment number P.nr.163/2011 Municipal Court in Glogovac, May 27, 2011. Also, the judgment against six defendants charged fraud at the polls, Section 180, relating to Article 23 of CCK. Judgment number AP.nr.41/2012 District Court in Pristina, May 7, 2012.

2. INTRODUCTION

The 2010 elections, the first general elections held after independence, bring bitter memories of industrial manipulation of the votes. Consequently, the re-voting process was organized in four municipalities (Skenderaj Drenas, Decani, and Mitrovica) and two polling stations in two other municipalities (Lipjan and Malishevë),⁷ and 890 polling stations were recounted.⁸ Election fraud showed once again lack of the political will of political elite in Kosovo to consolidate democratic mechanisms given that elections are the foundation of a democratic society. Organized election fraud had taken place throughout Kosovo, and as such cannot be imagined without the approval of senior officials of political parties. The circumstances and other elements of these crimes suggest that these could not be isolated cases that happened only in certain locations.

Misuse of official position,⁹ politicized administration,¹⁰ and other opportunities to gain different benefits makes political parties consider power as pivotal tool to ensure material and non-material benefits for their members and supporters. Therefore, there is a strong motivation for political parties to win elections at any price, by using different means. Before 2010 elections, justice authorities had a weak or almost inexistent response to election fraud cases.¹¹ Throughout years, prosecutors and judges have applied inadequate investigation and prosecution policies by ignoring the fact that a number of other crimes are a consequence of election fraud crimes. Consequently, they have stimulated the theft of votes. In December 2010, the Supreme Court and State Prosecutor had declared election fraud cases as priority,¹² marking for the first time a change and more pro-active approach in dealing with these crimes.

Election fraud cases of 2010 general elections came shortly after some very important processes of the judicial reform in Kosovo, such as the re-appointment and appointment of

⁷ The decision of the Central Election Commission for the re-voting process for the Assembly Elections of the Republic of Kosovo in these municipalities Drenas Skenderaj and Decan and re-voting in some polling stations in the municipalities of Lipjan and Malisheva decision number 1621-2010, signed on December 16, 2010. Also, the decision of the Central Election Commission for re-voting process for the Assembly of Kosovo of 12 December 2010 in the municipality of Mitrovica, the decision number 38-2011, signed on January 10, 2011.

⁸ IKD email communication with Mr. Burim Ahmetaj, Coordinator at the Count and Results Center, May 2012.

⁹ 2011 Progress Report on Kosovo (Brussels: European Commission, 12 October 2011), p. 14.

¹⁰ Lecture of Minister of European Integration Ms. Citaku. Jeton Lushaku, "Citaku: Politics is "violating" the administration." Zeri Info, May 19, 2012. See <http://www.zeri.info/artikulli/1/1/49604/citaku-politika-po-e-dhunon-administraten> (last visited on May 23, 2012).

¹¹ Monthly Report-May 2009 (Pristina: Organization for Security and Cooperation in Europe OSCE - Department of Human Rights and Community-Sector Legal System Monitoring).

¹² IKD interview with Mr. Fejzullah Hassan, President at the Supreme Court of the Republic of Kosovo, and Mr. Ismet Kabashi, Chief State Prosecutor, April-May 2012

judges and prosecutors and improvement of their income. This was a good opportunity for the justice system to show if the reform was essential.

Kosova Law Institute (IKD) has decided to conduct this research and produce a descriptive and analytical report about the response of the judicial actors to the election fraud cases, with focus on prosecution and adjudication of persons who have organized, supported, driven and financed these crimes. Further, IKD has offered concrete recommendations that would serve judges, prosecutors and other justice actors to obtain further information about these crimes in order to prevent their occurrence in the future. IKD feels an obligation to monitor the election fraud cases and ensure that they are being prosecuted and adjudicated appropriately, which would result in: **establishing justice and preventing crime in the future.**

1.1. Methodology

In order to develop a comprehensive report on the response of the judicial authorities to the election crimes, IKD has combined different forms and elements of research, including but not limited to statistical data, semi-structured interviews, analysis of legislation and local and international practices, and analysis of specific prosecution and adjudication cases related to election fraud.

Initially, IKD has analyzed the legal framework that regulates the field of prosecution and sentencing of irregularities that occur in electoral processes. IKD has paid attention on the shortcomings of the Criminal Code provisions, and has reviewed commentaries of the United Nations about certain provisions as it is "financial or other material benefit". After completing this analysis, IKD has analyzed statistical data and prosecution and adjudication cases related to election fraud cases that happened in 2010 general elections. Afterwards, we prepared questions for in-depth interviews with key stakeholders in these processes. IKD has conducted 35 interviews with prosecutors (State Prosecutor, Special Prosecution Office of the Republic of Kosovo, Municipal and District Prosecution Offices), judges (Supreme Court, District and Municipal Courts), representatives of political parties, members of the Assembly of the Republic of Kosovo, legal experts, criminal and civil justice academics, officials of the Central Election Commission and the Count and Results Centre and civil society activists. All these have served for preparation of final report. IKD has tried to secure information on the number of votes manipulated for each candidate but this was impossible as CEC has destroyed a huge part of the re-counted materials in compliance with the law, while the remaining material belongs to the State Prosecutor.

Despite the effort to provide more accurate and updated statistics, IKD considers that the accuracy of the statistics is not of the desired level. This is mainly due to the lack of

automated databases as well as lack of a joint database between police, prosecutors and judges.

3. LEGAL FRAMEWORK

The laws in the Republic of Kosovo provide sufficient provisions to prosecute and adjudicate all sorts of election fraud cases that have occurred so far in the electoral processes. Rules about the procedures, rights, obligations and limits related to the general and local elections in Kosovo, are defined by two laws, the Law on General Elections and Local Elections in the Republic of Kosovo.¹³

Criminal Code of the Republic of Kosovo is the essential criminal law that has paid special attention to the election fraud cases through its articles 176, 177, 178, 179, 180 and 181. These articles stipulate criminal actions against all people who in any way prevent voters from exercising their right to vote, undertake any corrupt activities, use violence on Election Day, the same voter votes several times, discovers the secret ballot, cheats on polling station and destroys voting documents. The sentences provided in these provisions, involve fines, conditional sentences and up to five (5) years effective imprisonment. Based on the crimes related to elections committed so far in Kosovo, it seems that these provisions are sufficient to prosecute these criminal actions.¹⁴

Elections fraud in 2010 elections involved a large number of election commissioners. The large number of people involved in these crimes shows that these crimes could not be done solely by individuals without having other people who organized, financed, pushed and stimulated these actions. Most of the election commissioners are charged with the Article 180 Election fraud, which defines that: "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."¹⁵ Further, article 23 on Co-Perpetration of the Criminal Code ensures that all seven election commissioners who signed the fraudulent results at the polling stations to be charged for co-commitment of the crime.

Article 274 on Organized Crime of the Criminal Code depends on the severity of the sentencing; there should be a structure group that commits a criminal act, which should

¹³ Law on General Elections in the Republic of Kosovo, Law number 03L-073, the Assembly of Kosovo, June 5, 2008. Also, the Law on Local Elections in the Republic of Kosovo, Law number 03L-072, the Assembly of Kosovo, June 15, 2008.

¹⁴ Criminal Code of the Republic of Kosovo, Chapter XVI: Criminal Offences against Liberties and Rights of Persons, the Assembly of Kosovo, April 2003.

¹⁵ Criminal Code of the Republic of Kosovo, article 180 Election Fraud, the Assembly of Kosovo, April 2003

aim to obtain direct or indirect financial or other material benefit.¹⁶ Criminal Code of Kosovo has shortcomings in terms of clarifying legal terms. There is no explanation in the Criminal Code about the meaning of “other material benefit”, which leaves room for interpretation by the law enforcement agencies.

IKD considers that six articles of the Criminal Code related to election fraud cases are sufficient in defining all kind of election fraud activities. However, Article 180 of the Criminal Code is absurd, because it allows judges to issue a fine or sentence the perpetrators with up to five years imprisonment. IKD considers that such provisions should be changed and they should either make this a cumulative or leave out only the imprisonment option. The draft-Criminal Code of the Republic of Kosovo has addressed such problems and has advanced the provisions related to election fraud cases. The draft-Criminal Code has amended all provisions where in most of them it has eliminated fines and left out only the imprisonment option.

¹⁶ Criminal Code of the Republic of Kosovo, Article 274 on Organized Crime. Chapter XXIII: Criminal Offences against Property, the Assembly of Kosovo, in April 2003.

4. PROSECUTION POLICY

Due to the failed prosecution of election crimes in the past, State Prosecutor announced these crimes as priority after the 2010 election.¹⁷ Two main sources of information for election fraud have been the Elections Complaints and Appeals Panel (hereinafter, ECAP) and the Count and Results Centre (hereinafter CRC). Both bodies, which are part of Central Election Commission (hereinafter CEC), have submitted to prosecutors information on 854 cases related to election fraud. On the other hand, the Kosovo Police (hereinafter KP) has played a passive role in investigating the organizers and perpetrators of election crimes. ECAP has submitted 142 cases to the public prosecution offices, which were suspected to involve different kind of violations, intimidation, manipulation of the votes, or voting on behalf of someone else. On the other hand, the audit of 890 polling stations performed by CRC has revealed significant differences of the results in 712 polling stations, which involved 4,984 election commissioners. KP did not initiate as it considered that the responsible authorities for these cases remain ECAP, CEC and the State Prosecutor.

CRC findings have been used as undisputable evidence for prosecutors as the audit of the Candidates Results Forms (hereinafter CRF) has highlighted mainly manipulation of votes for candidates and in each polling station these manipulated forms have been signed by seven election commissioners. Prosecutors raised mainly direct charges on co-perpetration for election fraud against election commissioners.¹⁸ So far, the prosecutors filed indictments against 1,516 persons, while cases on additional 758 people are being prepared.¹⁹ Meanwhile, there are over 300 other cases which the State Prosecutor should investigate. Based on the figures regarding the indictments filed, it seems that the State Prosecutor has a more adequate response to the prosecution of election fraud cases.

TABLE 1
Election related cases at the Municipal Public Prosecution Offices

1. Municipal Public Prosecution Office	2. Number of cases received	3. Indictments filed		4. Proposed Indictments		5. Reports dismissed	6. Cases closed	7. Verdicts	8. Confirmed indictments	9. Terminated proceedings
		No. of cases	No. of people	No. of cases	No. of people					

¹⁷ IKD interview with Mrs. Laura Pula, Prosecutor at State Prosecutor and Coordinator of election related cases, May 2012.

¹⁸ Criminal Code of the Republic of Kosovo, Section 180 Election Fraud, and Article 23 Co-perpetration, Criminal Code of the Republic of Kosovo, April 2003.

¹⁹ IKD Interview with Mrs. Laura Pula, Prosecutor at State Prosecutor and Coordinator of election cases, May 2012.

Ferizaj	47	38	260	0	0	9	0	9	9	0
Prishtina	160	30	210	19	162	12	16	12	19	0
Gjilan	58	40	320	0	0	0	27	0	9	1
Peja	47	36	252	0	0	10	0	1	8	0
Gjakova	33	13	78	1	1	0	21	2	14	0
Mitrovica	55	0	0	10	13	12	0	6	10	0
Prizren	95	31	217	3	3	15	0	5	25	1
TOTAL:	495	188	1337	33	179	58	64	35	94	2

Source: State Prosecutor, March 31, 2012

As the courts have confirmed only 94 indictments, it appears that courts are not able to follow up on the work dynamics of the prosecutors. Further, prosecutors are appealing on all the cases where the Municipal Court sentenced the perpetrators with fines and conditional sentences.

State Prosecutor by focusing on the quantity of the cases, has had an inadequate investigation and prosecution policy. Prosecutors have ruled out the possibility of investigating and prosecuting organized crime by limiting their investigations only at the municipal level.

1.2. Manipulation of candidates' votes

The election fraud on 2010 elections was focused on the votes of the candidates within political parties.²⁰ Furthermore, the election commissioners were traded from one party to another in order to ensure that certain candidates receive the votes.²¹ Institutional and political party leaders through their public appearances stated that the votes were manipulated by militants for particular candidates. These manipulations were reported also to ECAP. One of those who complained at ECAP was the Democratic Party of Kosovo (hereinafter, PDK) candidate Mr. Gani Koci, who claimed that the manipulation of results was ordered by certain people, as it is written in the complaint:

"Commissioners at the polling centers-2103b-Likoc, 2110b-Vojnik, 2113b-Leqinë, 2114b-Runik, 2121b-Arbëri e Poshtme, 2122b-Makërmal, 2106b-Klinë e Epërme, 2102b-Qubrel, 2132b-Baks, 2123b-Izbicë, 2109b-Krasaliq and other centers, have manipulated the votes which belonged to him [Gani Koci-t], by placing those votes for the other candidates. According to the party that issued this complaint [Gani Koci] all final forms are completed

²⁰ IKD interviews with members and officers at CEC, representatives of political parties, public prosecutors, and judges, April - May 2012.

²¹ IKD interviews with Mr. Dardan Molliqaj, Organizational Secretary of the Self-Determination movement, and Mr. Burim Ramdani, Secretary General of the Alliance for the Future of Kosovo, May 2012.

*according to a list imposed by certain persons. [...] Also according to the complainant [Gani Koci], the conversations he had with commissioners and observers, it appears that they were pressured to remain silent and act according to certain official orders."*²²

Mr. Murat Musliu PDK candidate has also reported on manipulation of the results based on the orders which came from the top, as he stated publicly:

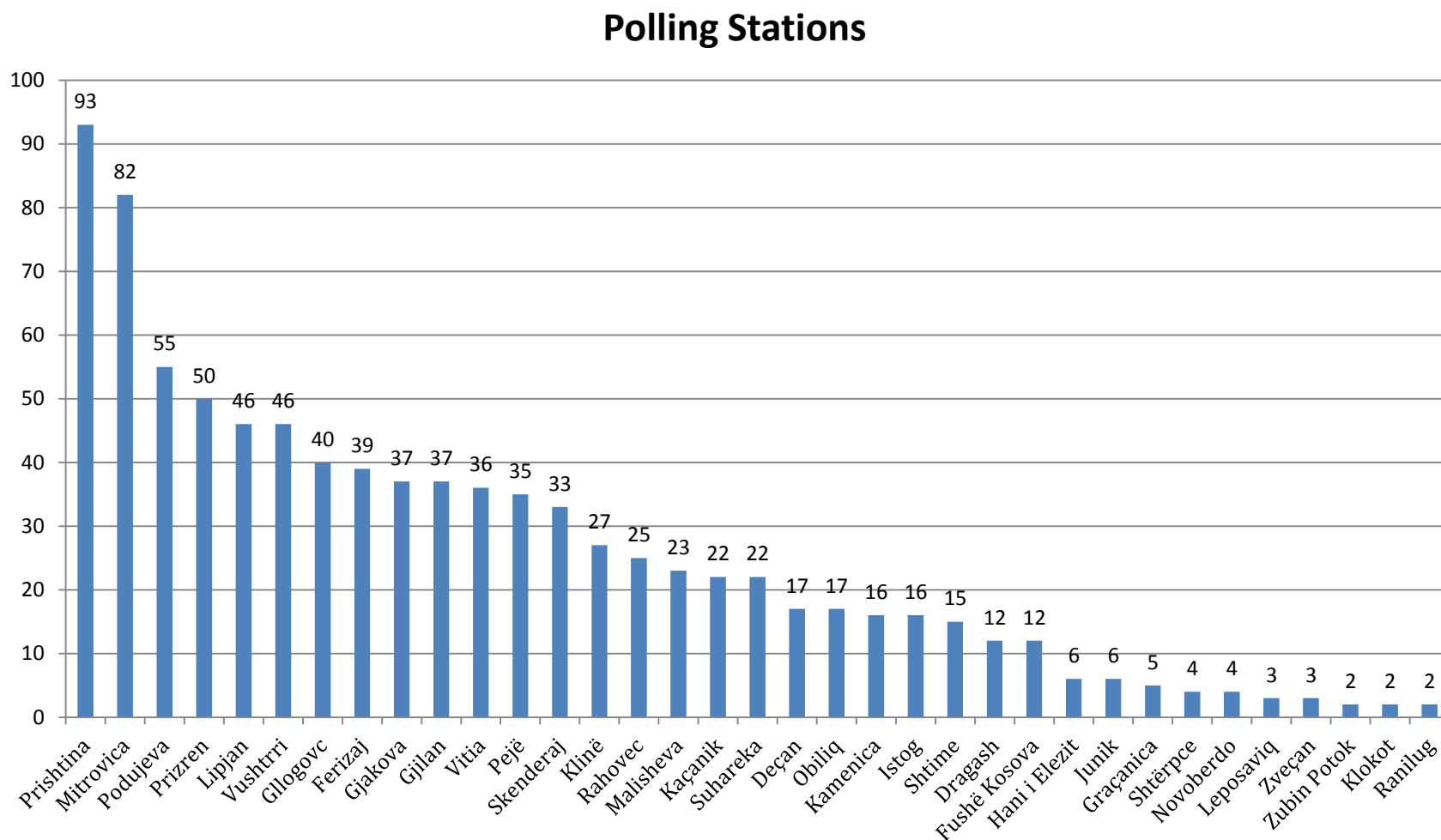
"I am willing to testify through video recordings, that the election commissioners in Prekaz i Epërm, Klinë e Epërme, Makërmal, Tushilë (polling station number: 2128b/2), Rezallë (polling station 2116b, 00-R, 2116/0,0,1-R), Runik dhe Qubrel and in the city of Skenderaj, the votes of PDK candidates were not counted at all, but they were written in the results forms according to a list imposed by powerful persons and senior local government officials in Skenderaj and PDK [...] the purpose of this organized activity, led by deputy-Mayor, has been primarily the accumulation of votes for particular candidates within the list of PDK, where each commissioner in every region was given a list of names that should be voted, for eg. In Prekaz Xhevahire Izmaku, in Polac Valbona Dibra, in Runik a candidate outside of Skënderaj
"23

Vote theft between candidates by the election commissioners was not an isolated phenomenon which occurred only in certain regions, but it was observed all over Kosovo. Because of inconsistency of data in the forms of the results, CRC was forced to re-count 890 polling stations where 712 polling stations resulted to have significant differences of the results. Figure 1 shows the number of polling stations recounted by CRC in each municipality.

²² Note: The appeal submitted by the PDK candidate Mr. Gani Koci. ECAP has decided to dismiss this appeal on the grounds that the case was decided in an earlier decision; more specifically appeal number 490/2010. Complaint No. 584/2010, signed on 16.12.2010, the Election Complaints and Appeals, December 2010.

²³ Kajtaz Gecaj, "Musliu from PDK: Our party stole from us", Zeri Info, December 14, 2010. See <http://www.zeri.info/artikulli/1/1/14924/musliu-nga-pdk-na-vodhi-partia-jone/> (last visited May 9, 2012).

FIGURE 1
890 polling stations recounted by CRC



Source: Count and Results Center

Particular candidates have accused their fellow party members on organizing the manipulation of votes through election commissioners, by forcing them through orders issued from above to manipulate the results for certain candidates. Despite these public statements and delivery of complaints through legal channels, the prosecutors have not initiated any investigation regarding the people who organized, funded and pushed commissioners to commit these crimes during election process.²⁴ Public statements contain elements that suggest on organized crime during election process. The recount process revealed that the commissioners manipulated thousands of votes for certain candidates.²⁵

So far, there is no public report, except the calculations made by political parties for internal purposes, on the number of votes the candidates had before and after the recount process conducted by CRC. Further, various institutions such as the CEC or the State Prosecutor did not seek to reveal the truth about the manipulation of votes through which certain candidates tried to gain a seat in the Parliament.²⁶ Such investigation would be beneficial to initiate preliminary investigations on candidates and people who might have organized the election fraud.

1.3. Organized crime

Public Prosecution Offices have engaged in an inadequate investigation and prosecution policy as they have been handling each case as an isolated case while there are suspicions that around 5,000 election commissioners were involved in the manipulation of 2010 elections. It would be a mystery if such a large number of election commissioners act at the same time, in the same manner, in different places, without a proper organization. Most of the politicians, analysts, media representatives and international diplomats have criticized political parties for organizing the election fraud. However, none of among suspects for involvement in election fraud is a senior political party official. The public prosecutors have limited their investigations, which could be observed during the trials where prosecutors did not

“Election commissioners received orders by political parties, hence, prosecutors should investigate why they manipulated the votes and what were the political motives or material benefits.”

Valdete DAKA, President of CEC

²⁴ IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, Mrs.. Laura Pula, Prosecutor at the State Prosecutor and Coordinator of the cases related to elections, Mr. Aleksander Lumnezi, Chief Prosecutor at Pristina District Prosecution Office, and Mrs. Sevdije Morina, Deputy-Chief Prosecutor at the Kosovo Special Prosecution Office, April-May 2012.

²⁵ IKD interview with members of the Central Election Commission and Counting and Results Centre officials, May 2012.

²⁶ IKD interview with Mrs. Valdete Daka, President of the CEC, May 2012. Also, the IKD interview with Mrs. Laura Pula, Prosecutor at State Prosecutor and Coordinator of the election cases, May 2012.

make any question to the accused parties regarding the people who might have pressured these election commissioners to engage in election fraud.²⁷ Senior political party officials consider that the election commissioners, against whom indictments have been filed, have carried out orders given by people who were looking forward to secure a seat in Parliament for certain candidates.²⁸ In December 2010, there was a debated initiated over the organized manner of the election fraud, as the legal expert Mr. Dastid Pallaska stated:

“A good prosecutor examines all possibilities. Clearly, an election commissioner in a distant village in Kosovo does not have any considerable interest to manipulate the elections and definitely such persons or all these people who committed such criminal acts are backed by other people who have induced, urged, financed, and assisted them before, during and after the commitment of the crime. [...] there should be no presumption but all the evidence should be examined, which could lead to a conclusion whether there was a joint criminal enterprise in committing these crimes”.²⁹

Suspicious financing of political parties and businesses, the failure of institutions which enabled manipulation of the election process, large number of election commissioners engaged and indicted show that election fraud was planned ahead through organized groups. Hence, this type of crime falls into the “organized crime” category. The former acting President of the Republic of Kosovo Mr. Jakup Krasniqi stated that election fraud was a result of individuals who gave orders to secure seats for certain candidates in Kosovo Assembly:

“Election commissioners are political party representatives and surely the responsibility relies on certain individuals of different levels of political parties who seem to have issued inappropriate orders with the purpose to assist certain candidates who did not gain the trust of citizens of Kosovo nevertheless wanted to enter Kosovo Assembly based on the will of political party commissioners. The distortion of the election process started at this moment.”³⁰

Similar concerns regarding the political elite and election process in Kosovo were raised by the American Ambassador to Kosovo Mr. Christopher Dell, who stated:

²⁷ Judgment against eight people charged on election fraud, article 180, related to article 23 of CCK. Judgment number P.nr.163/2011, Municipal Court in Glogoc, May 27, 2011. Also, Judgment against six people charged on election fraud, article 180, related to article 23 of CCK. Judgment number AP.nr.41/2012, District Court in Prishtina, May 7, 2012.

²⁸ IKD interview with Mr. Adem Grabovci, Chairman of PDK Parliamentary Group, Mr. Isa Mustafa, Leader of LDK, Mr. Burim Ramadani, General Secretary of AAK, and Mr. Dardan Molliqaj, Organizational Secretary at VV, May 2012.

²⁹ TV Show “Justice in Kosovo”, Radio Television of Kosovo, December 2010.

³⁰ Acting President Mr. Jakup Krasniqi’s interview at TOP Channel television, December 23, 2010.

“Members of every political party here have pointed fingers at others claiming they are the corrupt ones. Yet those same finger-pointers are just as willing to stuff ballot boxes, stick family members into plumb government jobs, and funnel profitable contracts to friends when doing so is in their own interest. Let me be clear: I exclude no political party from this.”³¹

Each segment of Kosovo society agrees that election fraud “has not been sporadic rather the manipulation has been systematic and could not have been contrived without a network”.³² Article 274 of the Criminal Code of Kosovo states that organized crime involves only serious crimes punishable by imprisonment of at least four years, where the group is structured with the aim to obtain, directly or indirectly, a financial or other material benefit, the structured group consists of three or more persons who exist for a period of time and is not formed for immediate commission of crime, however does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Regardless of the different elements which suggested that the election fraud might have involved organized crime, the Special Prosecution Office of the Republic of Kosovo (henceforth, SPRK) did not look over to investigate in this course.³³ IKD deems that SPRK has failed to accomplish its duties that derive from its exclusive mandate to fight organized crime. In the following paragraphs, we will elucidate the conditions which fill the bill for extending the investigations into organized crime.

1.3.1. Structured group

In every polling station, seven election commissioners cooperated with intention to commit election fraud, which suggests that this condition has been fulfilled in almost all cases investigated by prosecutors. The President of Supreme Court Mr. Fejzullah Hasani claims that “one could not exclude the possibility that there was structured group, where an agreement existed, a hierarchy existed, orders were given, and orders were obeyed. Hence, the structured hierarchy was built in compliance with the provisions [the articles on organized crime]”.³⁴ The Chief State Prosecutor claims that the perpetrators involved in

³¹ Ambassador Dell Remarks, Graduating Ceremony at the Kosovo Judicial Institute – Corruption in Kosovo, Moving out of the Shadows and into the light, March 30, 2012.

³² IKD interview with Mr. Avni Zogiani, Co-founder of Cohu movement, June 2012.

³³ IKD interview with Mrs. Sevdije Morina, Deputy-Chief Prosecutor at SPRK, May 2012.

³⁴ IKD interview with Mr. Fejzullah Hasani, President of the Supreme Court, May 2012.

election fraud are reckoned as structured group, who consciously in co-perpetration contributed in committing the crime.³⁵

Election fraud suspects had defined their roles for which they agreed prior or during the election-day. Election commissioners signed the results forms, which leaves no room for questioning their involvement in these manipulations. This presents strong evidence that the suspects consciously involved in these actions.

1.3.2. Punishable by imprisonment of at least four years

Most of the suspects are being accused on the grounds of article 180 of the Criminal Code on election fraud. Election fraud is a serious crime as it is punished by imprisonment of up to five years, which fulfills the condition to extend investigations also on organized crime. Indictments filed against election commissioners, accuse them also on article 23 of the Criminal Code on co-perpetration. Polling station had seven elections commissioners who altogether manipulated the votes and final results forms, which was proved as well after recounting that was conducted by CRC.

1.3.3. Other material benefit

The key dilemma is raised whether obtaining a seat in the Parliament poses “other material benefit”. Criminal Code does not contain comments or explanation regarding definition of “other material benefit”.

There are major deficiencies in the law formulation in Kosovo, including but not limited to the process of formulation, inadequate content and translation. Poor translation has affected also the “Organized Crime” in the Criminal Code. The English term “financial or other material benefit” has been translated as “financial or material benefit”, by eliminating the word “other”. Hereafter, we will use only the term “financial or other material benefit”, as the English version of the Criminal Code is applied in case of conflict or any uncertainty.

The community of legal experts in Kosovo is divided on interpretation of other material benefit issue. Lack of a Criminal Code commentary gave rise to uncertainty regarding interpretation. Hitherto, leaders of the justice system in Kosovo interpret “financial or other material benefit” in a narrow grasp, which entails only material or financial

“Material benefit includes diverse benefits. At first sight employment might not seem to be a material benefit but later on it generates income.”
- Hasan PRETENI, Director at KACA

³⁵ IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, April – May 2012.

benefits that result directly from commitment of the crime, while insisting that securing a seat in the Parliament does not imply “other material benefit”. Chief State Prosecutor defines other material benefit as a pure profit that is anticipated as the added wealth that resulted from commitment of the crime.³⁶ President of the Supreme Court shares the same opinion, by stating that organized crime requires financial or material benefit.³⁷ This sort of interpretation has made the authorities to exclude several other benefits that could fall within the other material benefit. Therefore, benefits such as employment, advancement or privileges are excluded as initially they do not produce pure financial or material benefit but create the opportunity to gain other material benefit in the future. Contrary to the leaders of key justice institutions, their local and international colleagues suggest that “other material benefit” includes employment, advancement and privileges.³⁸ Kosovo Anti-Corruption Agency (henceforth, KACA) is one of the institutions involved directly in the fight against corruption which deals with different benefits which fall within corruptive activities. According to KACA, “other material benefit” involves several benefits which go beyond the interpretation of the leaders of judicial and prosecutorial systems.³⁹

The uncertainty related to interpretation of “other material benefit” is reflected also in the draft commentary of the Criminal Code of the Republic of Kosovo, which is being drafted by three authors, Prof. Dr. Ismet Salihu, Dr. Fejzullah Hasani and Mr. Hilmi Zhitia. The authors have substantial differences in their interpretations of “other material benefit”, which can be observed in the provisions that involve this legal term. Contrary to the other co-authors, former Chief Prosecutor of the Public Prosecution Office of Kosovo Mr. Hilmi Zhitia states that “other material benefit” in the extensive interpretation includes material and non-material benefits, which could also include the opportunity to gain a seat in the Parliament.⁴⁰

In quest for a more adequate interpretation of this legal term, IKD has examined different international documents, with special focus on the interpretation made in United Nations (henceforth, UN) documents. IKD did this on purpose as the Criminal Code of Kosovo was drafted during the United Nations Interim Administration in Kosovo (henceforth, UNMIK) era. IKD findings show that the “financial or other material benefit” includes any “type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service (including here sexual and other)”.⁴¹ Table below show a comparison on

³⁶ IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, April – May 2012.

³⁷ By material benefit in this case meaning money, land or other assets that could be converted immediately in monetary terms. IKD interview with Mr. Fejzullah Hasani, President of the Supreme Court of the Republic of Kosovo, April 2012.

³⁸ IKD interview with special local and international prosecutors, legal experts, former Chief Prosecutor at the Public Prosecution Office in Kosovo, co-author of the first commentary of Criminal Code, May 2012.

³⁹ IKD interview with Mr. Hasan Preteni, Executive Director at KACA, May 2012.

⁴⁰ IKD interview with Mr. Hilmi Zhitia, co-Author of the Draft-Commentary of the Criminal Code of Kosovo and former Chief Prosecutor of the Public Prosecution Office in Kosovo, May 2012.

⁴¹ *Model Law against the Smuggling of Migrants* (New York: United Nations- Office on Drugs and Crime, 2010), p. 13-15.

interpretation of similar cases, where the first case involves opportunity for employment, while the other one involves opportunity to pass the border.

TABLE 2
Comparison table on interpretation of “financial or other material benefit”

Kosovo case ⁴²	United Nations ⁴³
<p><i>Explanation of the case:</i> Gaining a seat at the Parliament of the Republic of Kosovo through manipulation of the votes.</p> <p><i>Interpretation by the Chief State Prosecutor:</i> Obtaining a job position through an illegal manner involve gaining “other benefit” but not “other material benefit”.</p>	<p><i>Explanation of the case:</i> Misuse of the identification to pass a border for personal benefit or the benefit of the organization.</p> <p><i>Interpretation:</i> “Financial or other material benefit” is a broad term that includes also non-financial gains such as in this case securing entry into another country.</p>
<p><i>Conclusion:</i> The opportunity created in an unlawful manner does not present “financial or other material benefit”</p>	<p><i>Conclusion:</i> The opportunity created in an unlawful manner is included in “financial or other material benefit”.</p>

In conclusion, “financial or other material benefit” is an expression which includes several benefits which goes beyond the limited interpretation of leaders of justice institutions. The UN commentaries related to organized crime, indicate that “financial or other material benefit” should be interpreted as broad and inclusive as possible. Leaders of the justice system in the Republic of Kosovo should interpret “financial or other material benefit” in a broader context, by including also cases such as obtaining a working place, as it is the case with obtaining a seat in the Parliament. In the following chapter, we will explain the benefits that people enjoy by entering politics.

1.3.4. Benefits by entering politics

Election fraud is a very complex problem, and as such it is difficult to find an easy solution. Elections are a channel for representation of the citizens and a channel to enjoy various benefits that come along with public positions. Politicians and their supporters benefit through appointment and employment in public institutions, abuse of power by taking bribes or other material benefits, drafting policies that are tailored for certain groups of interest, as well as channel public resources in the hands of the party members and those

⁴² IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, April – May 2012.

⁴³ *Handbook on Identity-related Crime* (New York: United Nations Office on Drugs and Crime, 2011).

who are close to the party.⁴⁴ Due to these benefits, party members seek to gain more power, especially in countries like Kosovo, where the political and financial institutions are consolidating.

During the time span as member of the Parliament and one year after completing the mandate until they find another source of income, on average, a MP earns around 95.7 thousand Euros.⁴⁵ Further, the benefits of the members of the Parliament include also the costs of communication and transport. In 2010, MPs aimed to ensure greater earnings from the Budget of Kosovo by including “supplementary pension” of 50%, 60% and 70% of their salary in the Law on Rights and Responsibilities of the Deputy.⁴⁶ This pension would be distributed starting at the age of 55. The Constitutional Court has stated that “supplementary pension” of deputies seems to be “a gift without any clear predestined public purpose” and it is in contradiction with the Constitution of the Republic of Kosovo. As such, these provisions were considered invaluable and without any legal power.⁴⁷ The table below shows the revenues of MPs during the time span of a mandate and one year after the end of mandate.

TABLE 3
Income of the members of the Parliament

#	TYPES OF INCOME AND COMPENSATION	AMOUNT PER UNIT (EURO)	UNIT	FOR 120 MPs (EURO)	FOR MP (EURO)
1	Basic salary and other compensations for four years ⁴⁸	2,296,519	4	9,186,076	76,551

⁴⁴ Verena Blechinger, *Corruption and Political Parties* (Washington: Management Systems International and USAID, November 2002), p. 3.

⁴⁵ IKD has calculated the salary and other bonuses of 107 MPs which were declared at the Kosovo Anti-Corruption Agency, while the income of the other 13 MPs was calculated based on the average income of these 107 MPs. According to article 14 on Financial and material benefits of the deputy states that the deputy has the right for Compensation (article 15), transitional compensation after the end of the mandate (article 16, where the deputy will be compensated during one year period after the end of the mandate), compensation for participation in sessions and meetings of the committees, parliamentary functions, monthly expenses, supplementary pension, and other rights determined by this law. *Law on Rights and Responsibilities of Deputy, Law number 03/L-111*, Assembly of the Republic of Kosovo, July 20, 2010.

⁴⁶ On June 4, 2010, 74 MPs voted on the Law on Rights and Responsibilities of Deputy, where a deputy enjoys a supplementary pension starting from age of 55, where a deputy who served one mandate earns 50% of his/her base salary, while for others who served more this pension goes up to 70% of the base salary. According to a 2007 report of the Kosovo Statistical Agency, the life expectancy in Kosovo is 69 years, hence, through a calculation it seems that a deputy would benefit out of the supplementary pension around 133 thousand Euros in average. Further, article 27 on Family pension states that in case of death, the family members receive 70% of the pension. *Law on Rights and Responsibilities of the Deputy, Law number 03/L-111*. Assembly of the Republic of Kosovo, July 20, 2010. See also, *People older than 100 years in Kosovo* (Prishtina: Statistical Office of Kosovo, December 2007), p. 11.

⁴⁷ *Judgment on the case number KO 119/10, Constitutional Review of the article 14 paragraph 1.6, article 22, article 24, article 25 and article 27 of the Law on Rights and Responsibilities of Deputy, number 03/L-111*, Constitutional Court of the Republic of Kosovo, December 8, 2011.

⁴⁸ Each deputy enjoys the basic salary and other compensations which are related with their participation and functions in the Assembly of the Republic of Kosovo. *Law on Rights and Responsibilities of the Deputy, Law number 03/L-111*. Assembly of the Republic of Kosovo, July 20, 2010.

2	Transitional salary for one year ⁴⁹	2,296,519	1	2,296,519	19,297
TOTAL:				11,482,595	95,688

Source: IKD's calculation in accordance with the Law on Rights and Responsibilities of Deputies and the declaration of property at KACA

Besides the compensation that they earn through their work, MPs have much power in making decisions that could be translated into benefits for them personally and certain groups of interest. It was mentioned earlier the case when MPs approved a law which would provide a channel of income for the deputies through the “supplementary pension”. Besides this law that would generate revenues for the members of the Parliament, the Assembly of Kosovo in every session reviews laws, draft-laws, requests, and other documents which are pivotal in regulating different issues. For instance, on April 6, 2012 session of the Assembly of Kosovo, draft-law on gambling was going through a Parliamentary review, where MPs questioned the personal interests of few deputies related to specific amendments. These questions were mainly aimed for the MP Shaip Muja, who continuously persisted to include amendments in the law. MP Latif Gashi stated “I have no doubts that deputy Muja has some kind of personal interest ...”, whereas the deputy-Spokesperson of the Assembly Mr. Xhavit Haliti said “... I congratulate the owners of the gambling companies who seem to have lobbied so good and I congratulate as well people here in this assembly room who have interests [out of this]”, whereas a member of the Parliamentary Committee on Budget and Finance was astonished by unexpected interest that Mr. Muja showed, as according to her this was the first time that this MP appeared at the respective Parliamentary Committee to intervene for certain amendments.⁵⁰ This case is only one of the few that that illustrates how a seat in Parliament creates other opportunities to influence, which results in benefits either for MPs or certain groups of interest.

The opportunities for political parties are also in other mechanisms, as MPs establish the governing coalition. The governing coalition created after the general elections of 2010 has populated several governmental positions: a Prime-Minister, six deputy Prime-Ministers, 19 Ministers, around 33 deputy-Ministers, and many political advisors. These are key positions that are attractive for the leaders and supporters of political parties. Up to 2.1 million Euros of the Kosovo budget are spent on salaries annually.⁵¹ In meantime, there is additional budget allocated for expenses related to communication, representation, use of automobiles, and access to other resources. The most concerning issue remains public

⁴⁹ According to article 16 on Transitional compensation, for 12 months after the end of the mandate, a deputy enjoys the right to his basic salary, until he/she finds another source of income. *Law on Rights and Responsibilities of the Deputy, Law number 03/L-111*. Assembly of the Republic of Kosovo, July 20, 2010.

⁵⁰ *Transcript of the Assembly Plenary Session, held on March 29, 30, and April 5, 6, 2012*. Assembly of the Republic of Kosovo.

⁵¹ *The need for approval of the Law on Government* (Prishtina: GAP Institute, June 2011).

administration, which is populated by 70 thousand people.⁵² Public administration has served as “an institution to employ people affiliated with certain political parties”,⁵³ and as such it has served to “fulfill the appetites to emolument political parties”.⁵⁴ The recent case of employment of Mr. Naim Maloku, ex-political advisor of the former President Pacolli, as Director of the High Security Prison, shows the emolument practice of political party supporters through public administration. In this specific case, the offer and agreement were reached prior to the regular procedures for employment in public administration.⁵⁵ Further, political party supporters populate the Boards of Public Enterprises,⁵⁶ who receive up to 30 thousand Euros per year income.⁵⁷

In meantime, public procurement remains a very concerning issue and a source of benefits for the people in power. Tenders continue to remain a great concern in the context of corruption.⁵⁸ Kosovo has a fragile economy where public institutions’ tenders constitute a major source of revenue for local businesses. In a recent case, Mayor of Prizren Mr. Ramadan Muja was confronted by his campaign supporters. These supporters claim that Mr. Muja has not awarded contracts which he promised to do.⁵⁹ Hence, there is a cozy relationship between politics and business, where different benefits take place.

1.4. Other issues that contributed to election fraud

Political party financing

Crimes related to elections take place prior, during and after the election-day. These crimes appear in different phases and phenomena, including suspicious political party financing. During election campaigns, political parties require financial funds in order to engage in

⁵² *Gender and ethnic structure of the officials employed in the civil service in Kosovo* (Prishtina: Ministry of Public Administration), p. 1.

⁵³ Statement of the Secretary of the Kosovo Chamber of Commerce, Mr. Berat Rukiqi, in the TV Show “Live in Kosovo”, September 23 2010, <http://www.jetanekosove.com/sq/Reportazhe-Hulumtuese/Sa-sh%C3%ABrbyes-civil-ka-Kosova--342> (May 15, 2012).

⁵⁴ Lecture delivered by the Minister of European Integration Ms. Vlora Çitaku. Jeton Llapashtica, “Çitaku: Politics are “violating” the administration”. *Zëri Info*, May 19, 2012. See <http://www.zeri.info/artikulli/1/1/49604/citaku-politika-po-e-dhunon-administraten/> (last retrieved May 27, 2012).

⁵⁵ “Maloku – director through a manipulated job vacancy announcement, Kuqi denies”. *Koha Net*, May 23, 2012. See <http://www.koha.net/index.php?page=1,13,100509> (last retrieved June 7, 2012).

⁵⁶ Florent Spahija and Sanije Jusufi, “Boards as an opportunity of the supporters”. *Gazeta Jeta në Kosovë*, December 5, 2011. See <http://www.gazetajn.com/?cid=1,3,796> (last retrieved May 27, 2012).

⁵⁷ Enis Veliu, ““Sheiks” of the public enterprises”. *Zëri Info*, February 21, 2012. See <http://www.zeri.info/artikulli/2/8/44248/sheiket-e-kompanive-publike/> (last retrieved May 22, 2012).

⁵⁸ *Report on Enlargement on Kosovo, European Parliament Resolution, March 29, 2012 on the European Integration Process of Kosovo (2011/2885 (RSP))*, (European Parliament, March 29, 2012).

⁵⁹ Kastriot Jahaj, “Pays off the campaign supporters through tenders”. *Gazeta Jeta në Kosovë*, March 19, 2012. See <http://www.gazetajn.com/?cid=1,3,1671> (last retrieved on May 15, 2012).

propaganda and mobilize their supporters, which is the best time to observe their financing. Kosovo has already established legal framework that regulates financing political parties through Law on General Elections and Law on Financing the Political Parties. In 2012, the amendment of these laws resulted in increase of the support from Kosovo budget for political parties, from 0.17% to 0.34% of the total budget of Kosovo.⁶⁰ Besides this annual budget allocation, the political parties gain also from the electoral campaign fund, which is up to 0.05% of the Kosovo budget.

Political parties find it difficult to maintain their structures with the funds allocated from Kosovo budget. Hence, they raise funds from businesses and ordinary citizens. Audit reports show that political parties do not have systematic support rather members and supporters donate funds mainly during the election campaigns.⁶¹ Political parties receive funds through different channels, which results in discrepancy between legal income and real expenses.⁶² Financial reports of political and their reporting to CEC remains a problem.⁶³ Lack of sustainable political party financing and fragile economy make the politics and business closely entwined.⁶⁴ Political parties seek to gain power through which they reward businesses which finance campaigns. Hence, after the end of election processes and establishment of respective institutions, we encounter corruptive activities. All governmental levels are affected by the so called tender-mania. Office of the General Auditor's annual audit reports show different types of misconducts in public tenders, including but not limited to companies being favored, payments not corresponding with contracts, contracted work remains unfinished, and no penalty is applied.⁶⁵ Public officials generate wealth which does not match with their lawful income.⁶⁶ Consequently, politicians and businesspeople gain different material benefits out of the situation.

⁶⁰ *Law on financing political parties, law number 03/L-174, article 7 on the financing funds for the support of political subject*, Assembly of the Republic of Kosovo, October 21, 2010. Also, *Law on amendment and supplement of law number 03/L-174 on financing political parties, law number 04/L-058, article 2*, Assembly of the Republic of Kosovo, January 12, 2012.

⁶¹ *Financial declarations and the independent audit report (December 31, 2010)* (Prishtina: Audit & Conto, September 2011).

⁶² *Monitoring of the election campaign costs: 2010 general election. Transparency in financing political parties* (Prishtina: Kosovo Democratic Institute (KDI), March 2011).

⁶³ Bashkim Shehu, "Civil Society in Kosovo calls for political parties to publish their financing sources". *Deutsche Welle*, November 25, 2010. See http://www.dw.de/dw/article/0,,6265180_page_0,00.html (last retrieved on May 15, 2012).

⁶⁴ See also, AAK MP Mr. Burim Ramadani states "... the main problem remain trackless money and funds that political parties receive from ordinary citizens or legal entities, who afterwards get rewarded with economic benefits which is a corruptive activity. Hence, control mechanisms should be established in order to deal with this problem, especially during the election campaigns, as we witnessed the buying of votes, as well as the venality of election system". Interview given to TV Show "Target", topic: Political party financing in Kosovo. Albanian Screen Television, March 30, 2012.

⁶⁵ Adem Gashi et al., *Public Funds: Towards efficient and transparent municipal budget management* (Prishtina: KIPRED, March 2011).

⁶⁶ *Progress Report 2011* (Brussels: European Commission, October 12, 2011), p. 13.

Despite the close links between politics and business, prosecutors have not undertaken investigations in order to shed light on illegal channels of political party financing.⁶⁷ Election fraud is primarily a consequence of the personal interest of certain individuals who want to gain financial benefits. Hence, certain businesses provide financial support and are ready to support any criminal cooperation on the election process. Most of the times cooperation between representatives of political parties and businesses constitutes pure corruptive activity, as such it should be investigated by prosecutors.

Voters' list

The governmental institutions through an update of the voters' list would contribute to eliminate the election fraud of dead people voting. CEC in cooperation with the Ministry of Internal Affairs (henceforth, MIA), have formed a working group that intends to increase the accuracy of the voters' list. Recent CEC and MIA engagement has revealed that voters' list contained 15,000 dead people and 10,000 other people who have given up the Republic of Kosovo citizenship.⁶⁸ In meantime, some 60,000 people had wrong address.⁶⁹ Regarding the voters' list, fault lies mainly on citizens as they have not taken the effort to announce the death of their relatives and lack of coordination within MIA to file properly death cases and those who gave up Republic of Kosovo citizenship.⁷⁰ This number of voters created the opportunity for election commissioners to misuse it during the election-day.⁷¹

IKD considers that updating and increasing the accuracy of voters' list is challenging. However, this would eliminate the opportunities for manipulation during election-day. Hence, the responsibility for the voters' list which creates the opportunity for election fraud primarily lies on MIA.

Ultraviolet lamps and invisible ink

Prosecutors have not investigated at all failure of ultraviolet lamps and invisible ink which occurred during the election-day in a large number of polling stations.⁷² Due to this problem, a municipality organized re-voting process.⁷³ The problem occurred all over Kosovo and resulted in different consequences, which makes rules out the possibility to be

⁶⁷ IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, April – May 2012.

⁶⁸ "15 thousand dead people on the voters' list". *RTV 21*, January 31, 2012. See <http://rtv21.tv/home/?p=56484> (last retrieved May 20, 2012).

⁶⁹ IKD interview with Mr. Florian Dushi, member of the CEC, June 2012.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² IKD interview with Ms. Laura Pula, Prosecutor at State Prosecution and Coordinator of election cases, May 2012. Also, IKD interview with Ms. Valdete Daka, President of CEC, May 2012.

⁷³ After VV movement's complaint on the failure of the ultraviolet lamps, the Supreme Court and CEC decided that Municipality of Mitrovica should organize re-voting process.

an isolated case. So far, it is unclear about the responsibility, if this failure was organized by commissioners who attempted to manipulate the system or the officials at the Secretariat of CEC who were responsible to provide this material. The prosecutors have lack of knowledge on different issues that were related to election fraud. Hence, failure of prosecutors to investigate the failure of ultraviolet lamps and invisible ink that occurred during the election-day proves their lack of will to shed light into all criminal activities that have been developed during these elections. Only through comprehensive investigations, the prosecutors can succeed in prosecuting all perpetrators involved in election fraud.

5. ADJUDICATION POLICY

In 2010, the Supreme Court announced crimes related to elections as priority, after the failure of the judicial system to deal with these type of cases in the past, enormous number of cases related to election fraud during general elections in 2010, as well as concerns raised by the international diplomats. This has been the first time that Municipal Court judges have dealt in a more serious manner with election crimes. Judges have been inefficient in responding to indictments filed by prosecutors and cases presented to the court. So far, the prosecutors have filed indictments on 221 cases, where 1,516 people are involved, whereas the Municipal Courts have confirmed only 94 cases.⁷⁴ The announcement of the State Prosecutor to file additional indictments against 758 people should be an alarm for the judicial system, which has been inefficient in responding to cases presented by prosecutors.

According to the statistics of Secretariat of the Kosovo Judicial Council, Municipal Courts in Kosovo have been dealing with 154 cases, out of which 41 have been solved which involve 191 people. There are certain elements that influenced the slow pace of solving cases. Few courts have already appointed sessions to review these cases.⁷⁵ Lack of prosecutors and judges in the justice system has affected as well the process of solving election fraud cases, as it is the case with Municipal Court in Vitia and Kamenica.⁷⁶ In few other cases, parties are not showing up in court sessions which cause further delays.⁷⁷ The figure below shows the efficiency of Municipal Courts in solving election fraud cases.

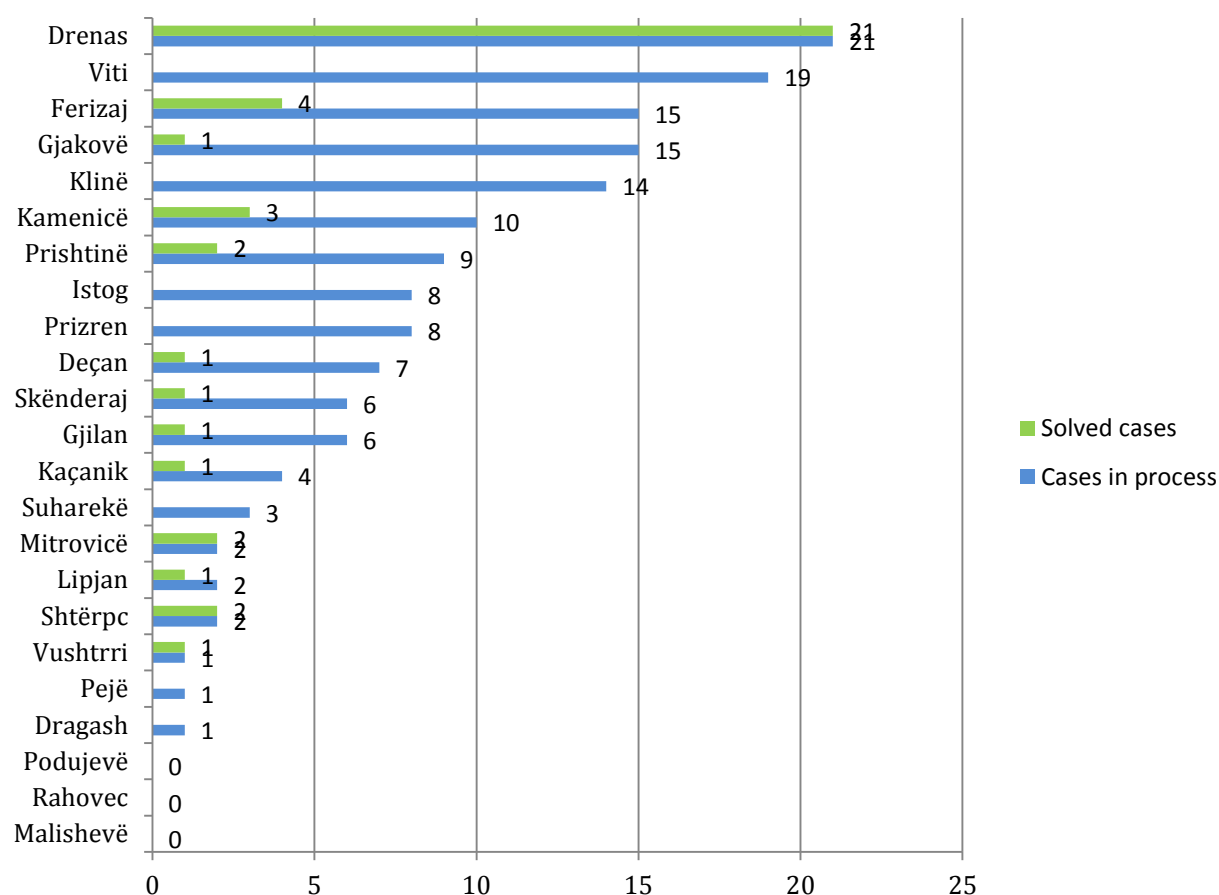
⁷⁴ These statistics of State Prosecutor contain information only on cases related to 2010 elections. On the other hand, the courts have statistics which include also cases that have to do with election crimes prior to 2010 election, which suggest that overall there have been 154 cases in process.

⁷⁵ IKD interview with Mr. Bashkim Hyseni, President of the Municipal Court in Ferizaj, and Ms. Afijete Sada, President of the Municipal Court in Gjakova, June 2012.

⁷⁶ IKD interview with Mr. Skënder Shefkiu, acting President of the Municipal Court in Viti, and Mr. Jashar Gashi, President of the Municipal Court in Klina, June 2012.

⁷⁷ IKD interview with Mr. Ramiz Azizi, President of the Municipal Court in Gjiilan, June 2012.

FIGURE 2
Election fraud cases in Municipal Courts



Source: Secretariat of Kosovo Judicial Council, December 31, 2011

Municipal Court judges have issued inadequate sentences which did not correspond to damages caused to society, budget and image of Kosovo. Most of the sentences or 68.8% of them have been fines and conditional sentences, while only 9.4% were effective imprisonment. Fines ranged from 300 up to 1,350 Euros, which are considered too low to have any desired result.⁷⁸ The table below presents the adjudication policy for all cases solved until the end of 2011 by municipal courts.

TABLE 4
Adjudication policy in the Municipal Courts

⁷⁸ IKD interview with Mr. Fejzullah Hasani, President of the Supreme Court of the Republic of Kosovo, April – May 2012.

Municipal Court	Persons involved in the cases solved	Imprisonment	Fine	Conditional	Refusing	Acquitted	Other method
Gjilan	2	1				1	
Kamenicë	6	6					
Deçan	7						7
Gjakovë	1	1					
Prishtinë	2			1			1
Ferizaj	19	1	3	7	4	3	1
Shtërpce	8	1		4		3	
Drenas	138	4	85	27	1	4	17
Kaçanik	3	3					
Lipjan	1		1				
Mitrovicë	2		2				
Skënderaj	1		1				
Vushtrri	1	1					
TOTAL:	191	18	92	39	5	11	26
%	100%	9.4%	48.2%	20.4%	2.6%	5.8%	13.6%

Source: Secretariat of Kosovo Judicial Council, December 31, 2011

The reason for taking such decisions remains unclear but the main factor remains pressure from political parties.⁷⁹ While observing such adjudication policy, prosecutors filed appeals on all cases that did not involve effective imprisonment.⁸⁰ As a result of these appeals District Courts are now involved in solving election fraud cases. So far, the District Courts have amended the verdicts by issuing more severe sentences, mainly six months imprisonment, which shows that Municipal Courts did not judge to their best ability.⁸¹ The adjudication policy of District Courts has had immediate impact, for instance Municipal Courts have started to issue more often imprisonment sentences. Meantime, the publicity regarding these decisions has discouraged election commissioners to engage in election fraud in future, as it is the case for Mayor Elections in Ferizaj in 2012. IKD considers that such adjudication policy should be followed on by all other courts.

Election fraud has damaged Kosovo budget, as it was required to organize re-voting and re-counting processes. So far, there was no compensation by perpetrators. At the end of the trials where perpetrators were found guilty, the courts have claimed the CEC has been a damaged party and should pursue with a civil lawsuit to compensate the financial

⁷⁹ IKD interview with judges who dealt with election fraud cases, May 2012.

* IKD has removed from the table the following Municipal Courts that have not solved any case at all: Viti, Prizren, Dragash, Malishevë, Rahovec, Suharekë, Pejë, Istog, IKDnë, Podujevë, Leposavic, and Zubin Potok.

⁸⁰ IKD interview with Mr. Ismet Kabashi, Chief State Prosecutor, April – May 2012.

⁸¹ IKD has received judgments of the District Courts, May 2012.

damages.⁸² CEC has not pursued with a lawsuit in courts.⁸³ Regardless of the sentences issued on criminal charges, CEC is obliged to use public money in efficient manner. Hence, it should ask for compensation of financial damages which were caused by certain individuals.

⁸² *Judgment against eight perpetrators on the grounds of election fraud, article 180, related to article 23 of the Criminal Code. Judgment number P.nr.163/2011, Municipal Court in Glogoc, May 27, 2011. Also, judgment against six perpetrators on the criminal charges on election fraud, article 180, related to article 23 of the Criminal Code. Judgment number AP.nr.41/2012, District Court in Prishtina, May 7, 2012.*

⁸³ IKD interview with Ms. Valdete Daka, President of the CEC, May 2012.

6. COSTS RELATED TO THE KOSOVO CORRECTIONAL SERVICE

In 712 polling stations there is evidence that election fraud occurred, which means that around 5,000 election commissioners will be handled responsible by the judicial institutions. Based on the current sentences issued by District Courts, it seems that all perpetrators will end up in prison. If we consider that average sentence is three months imprisonment for each perpetrator, for 5,000 people there will be 15,000 months or 450,000 days of effective imprisonment. In conclusion, this would cost Kosovo budget around 12.6 million Euros, if we consider that the Kosovo Correction Service spends around 28 Euros per night per prisoner.

TABLE 5
Possible budgetary implications for the Kosovo Correctional Service

Potential perpetrator s	Effective imprisonmen t per each (months)	Total imprisonme nt (months)	Total imprisonme nt (days)	Cost per one prisoners per night (Euro)	Total cost
5,000	3	15,000	450,000	28.00	12,600,000

Source: IKD's calculation based on the data from CEC, prosecution offices, courts and Ministry of Justice

7. CONCLUSIONS

Political party representatives are responsible for election fraud. There is no significant correlation between the election system in Kosovo and the election fraud. Lack of adequate response by justice institutions in the past has encouraged people to engage in election fraud. IKD values the readiness of Supreme Court and State Prosecutor to announce election fraud as priority.

The Criminal Code of the Republic of Kosovo is a very complete document that allows for prosecution of various elections fraud elements. Despite the high level of election fraud and enormous number of people involved, the State Prosecutor did not place adequate effort in investigating people who organized these crimes, who are the source of the problem. Despite the successful process of filing indictments against 1,516 people, prosecutors have failed to conduct comprehensive investigations which would deal with people who organized crimes related to elections, failure of the ultraviolet lamps and the invisible sink, suspicious political party financing as well as inaccurate voters' list.

Municipal Court judges have failed to assess properly the damages caused during election fraud, as they issued sentences as these crimes were contraventions. District Courts have amended these judgments into effective imprisonment.

This is the first time that justice institutions have reacted in a more adequate manner. However, such approach will not ensure establishing justice and prevent the crime in future. In order to succeed in this, justice system has to prosecute and judge those who organized election fraud.

8. RECOMMENDATIONS

In order the justice institutions to provide an adequate response on prosecution of election crimes, IKD recommends:

1. **Public Prosecution Offices and Special Prosecution Office of the Republic of Kosovo** should extend investigations into organized crime, in order to prosecute those who organized election fraud. **State Prosecutor** should authorize the Special Prosecution Office of the Republic of Kosovo to investigate elements of the organized crime that are related to: manipulation of the votes of candidates, suspicious political parties financing, failure of ultraviolet lamps and invisible ink, as well as inaccurate voters' list.
2. **Judges and prosecutors** should take into account broad interpretation of "financial or other material benefit", as it is suggested by the United Nations organization.
3. **State Prosecutor** should seek advice from the Central Election Commission and other stakeholders involved in the election process, in order to gain better knowledge and improve their skills in investigating different issues that lead to election fraud. This would be beneficial in prosecuting the crimes which occurred in the past as well as develop a strategy to prevent election fraud in future.
4. **Municipal and District Court Judges** should assess properly the damages caused by the election crimes and issue sentences that reflect upon these damages.
5. **Central Election Commission** as a damaged party of the election fraud should ask for compensation from perpetrators who have been accused on election fraud. The perpetrators have damaged budget of the Republic of Kosovo. Hence, CEC should file civil lawsuits against these perpetrators, as it is suggested by judges dealing with election crimes.
6. **Ministry of Justice**, through the **Kosovo Correctional Service**, should draft a strategy to accommodate a large number of people who are expected to be convicted with imprisonment. So far the prosecutors have filed indictments against 1,516 people, while the District Courts are amending all judgments into effective imprisonment. Currently, Kosovo Correctional Service lacks the capacities to deal with the large number of people who might be convicted. Hence, IKD suggests them to increase the space, security measures, the number of staff, as well as allocate adequate budget in order to ensure efficiency in executing the criminal sanctions.

