

**THE NEXUS BETWEEN VOTER PARTICIPATION AND
THE RULE OF LAW**

By

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A Thesis

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ABSTRACT

The major objective of this study is to examine the correlation between voter participation and the rule of law. Since it greatly matters who wins elections, voting systems matter as well, and so does the final voter participation. The subjects of this study are empirical legal research from open to closed societies, and opinions and reflections of field interviews with local analysts. The results provide support that a credible electoral system is the primary tool of the rule of law and the optimum assurance of compliance with democratic principles. In conclusion, this study suggests differentiation between active and passive voters (diaspora), annual population estimates to take place, updates of the voting lists and foremost building electoral incentives as predominant factor to increase voter turnout.

KEYWORDS: (Rule of Law, Voter Participation, Elections)

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I. INTRODUCTION AND BACKGROUND TO THE RESEARCH STUDY

1.1 Introduction

This study analyzes the relationship between voter participation in elections and the state of rule of law in Kosovo. It has three main parts. The first part consists of an overview of the electoral system, the social legacy of Yugoslavia, the current legal and institutional framework and the mechanisms to enhance capacities of the system. The second part reviews voter participation in the last decade in several countries selected for comparative analysis and the state of rule of law in those countries. The third part focuses mainly on the Kosovo institutions, their maturity, the influence of voter participation and efforts to building sustainable electoral incentives which would strengthen the rule of law.

1.2 Statement of Purpose

The primary purpose of this research paper is to examine the effect of voter participation on the state of rule of law in Kosovo. Given the importance of elections, voters are perceived to be responsible for their influence over elected policy makers, who are expected to push forward agendas to strengthen the rule of law. The question this study seeks to answer is whether robust voter participation is indeed a fundamental basis to prospering and advanced democracies, and whether acknowledging people's impact for change shall be attributed as a voter mobilization.

1.3 Research Methodology

The starting point for the main argument of my thesis will be a mixed method approach grounded in empirical legal research from open to closed societies. A multi method approach is often perceived to be more compelling than a singular research method.

For this subject matter, emphasis will be placed on qualitative doctrinal legal research, analysis of the legal structure and legal framework, based on an extensive study of the relevant legal literature. As this study focuses on facts and strives for accuracy, through the quantitative work it will attempt to quantify the problem by its prevalence, and will help support the arguments raised in this paper. This method enables examination from different angles, it asks the same question but in different manners or from different prisms.

To answer the research questions, it is necessary to present a complete definition of the role and the impact that voter participation may have in a state of rule of law. The present paper moves from Kosovo's denied statehood after the World War II to the autonomy it was vested with in 1974, to its ability to organize free and fair elections; and then to the current demographics and the state of rule of law. Further, this study will focus on the demographics and current state of rule of law in the countries selected for comparative purposes. This will be achieved primarily in the course of a number of case studies, assessments or publications of different observations.

This study attempts to describe and present perceptions of experts and professionals in the field. Opinions and reflections of field interviews and interviews with NGO's that work to promote citizen participation are part of this study as well. However, qualitative and accurate quantitative data presented chronologically, vis-à-vis the comparative analysis aim to make this

research paper more compelling so that it can offer more predictability and address the work hypothesis in a more holistic way.

The purpose of this paper is not to focus on theoretical approaches. Rather, it focuses on analyzing the facts and their direct impact on the state of rule of law in Kosovo primarily, as well as in the referenced countries. Hence, determining similarities and differences related to the issue being addressed in this paper, is an attempt to learn from the best practices of political culture, but also to examine the relationship amongst variables, while enabling access on a selection of various bibliographic databases, legislation, international norms and principles.

1.3.1 Limitations of the study

As this study focuses more on fact analysis, few limitations were faced during the research process and data collection. The main and foremost challenge of this study is the limited literature currently available.

The quantitative approach data collected sometimes seems to have limited applicability to the specific situation or context at hand, referring mainly to the census data and the database used by the Central Election Commission. There may also be a small margin of error in the statistical data collected due to ages presented in the Census, which final and last update took place in 2012. This made data interpretation difficult and led to conflicting results. In addition, census data does not always correspond to the data used by the Central Election Commission.¹

¹ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

Lastly, another limitation was presented in the access of information. Official institutional web pages are not updated on a regular basis and lack key information.

1.3.2 Research questions

Whether and to what extent high voter participation has an effect on the state of rule of law? Whether a weak rule of law is a contributing factor in causing low turnout in elections? Whether there is a relationship between the maturity of a democracy and voter turnout? Can we advise that a strong rule of law can assure credible turnout, regardless whether turnout is under or above 50%?

While high voter participation is considered desirable and the main determinant to carry responsibility over the policy makers, this theory still remains debatable. Scientists focusing on public choice argue that low voter turnout does not really matter; which means that even those least likely to participate in elections, formulate electoral preferences in accordance with their approval of the incumbent government and in line with perceived ideological differences². Others argue that low turnout should be a concern, because when fewer people vote, the connection between the people and the laws that govern them grows enormously. They also argue that low turnout also affects the quality of government and their policy making which is reflected in the level of rule of law in countries³. However, high voter participation has been always generally seen as an evidence of the legitimacy of the systems.

² Rosema, M. (2007). *Low turnout: Threat to democracy or blessing in disguise? Consequences of citizens' varying tendencies to vote*. Netherlands: University of Twente Department of Political Science.

³ Ibid.

Evidence shows that high voter participation is of significant importance. What happened in the past is that polls with low voter turnouts were considered as not accurate reflection of the will of the people. Assuming that low voter participation does reflect gratifications which most likely presents same ideologies of the governing parties, than regardless how low the voter turnout may be, it still represents the right of the people to vote. Previous research shows tendency to contrast the view that low voter turnout may be a threat to democracy with the argument that it might, in fact, be a good thing. Evaluating if high voter participation is an implicit endorsement of the legal systems in different economies, is incorporated as part of the general concept. Yet, low voter participation can be an indicator that people's representatives are being elected by a minority of the population. Therefore, this study will maintain specific attention to correlation of the voter participation and the state of rule of law.

1.4 Key terms and definitions

- **Legitimacy** means conformity to the law or to rules.⁴
- **Rule of Law** means a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁵
- **Voter registration** means the process used by the government to ensure that everyone who votes in an election is legally eligible to do so.⁶

⁴ Oxford dictionary: <http://www.oxforddictionaries.com/definition/english/legitimacy>

⁵ United Nations: <http://www.un.org/en/ruleoflaw/>

⁶ US government: <http://usgovinfo.about.com/od/thepoliticalsystem/a/voterreg.htm>

- **Transparency** means an environment in which the objectives of policy, its legal, institutional, and economic framework, policy decisions and their rationale, data and information related to monetary and financial policies, and the terms of agencies' accountability, are provided to the public in a comprehensible, accessible, and timely manner.⁷
- **Civic duty** refers to the responsibilities of citizens. Often rights enjoyed by citizens also implies corresponding responsibilities.⁸
- **Political participation** means an opportunity for the citizens to communicate information to government officials about their concerns and preferences and to put pressure on them to respond.⁹
- **Conflict** means a serious incompatibility between two or more opinions, principles, or interests.¹⁰
- **KFOR** means the North Atlantic Treaty Organization NATO-led Kosovo Force.¹¹
- **Social welfare** means the well-being of an entire society concerned more with the quality of life that includes factors such as the quality of the environment, level of crime, extent of drug abuse, availability of essential social services, as well as religious and spiritual aspects of life.¹²

⁷ OECD: <http://stats.oecd.org/glossary/detail.asp?ID=4474>

⁸ US legal: <http://definitions.uslegal.com/c/civic-duty/>

⁹ Cultural diplomacy: <http://www.culturaldiplomacy.org/academy/content/pdf/participant-papers/eu/Maria-Eremenko-Political-participation-Model-by-Verba-in-the-EU-and-Russia.pdf>

¹⁰ Oxford Dictionary: <http://www.oxforddictionaries.com/definition/english/conflict>

¹¹ NATO: <http://www.nato.int/kfor/>

¹² Business Dictionary: <http://www.businessdictionary.com/definition/social-welfare.html>

II. BACKGROUND TO THE ISSUE AND BRIEF OVERVIEW OF THE ELECTORAL SYSTEM IN KOSOVO

2.1 The problem

Elections in Kosovo remain problematic because of faulty monitoring mechanisms, unreliable voting lists, the tension created by a large diaspora that is eligible to participate in elections, and uneven capacity for organizing elections implementation and fraud. Weak elections weaken the rule of law in the country by undermining the legitimacy of government institutions and distorting the will of the electorate.

In democratic countries, elections are very important for determining that the citizens' vote has been translated into seats in their respective legislative representative institutions. Who is elected directly affects what kinds of policies are passed and who benefits or suffers from those policies. Since it matters greatly who wins elections, voting systems matter as well, because different methods of voting can produce different winners¹³.

Kosovo held its first elections as an independent country in 2000. Several local and national/general elections have been held between 2000 and 2011, this is also when the first Kosovo Population and Housing Census was also conducted. A report by EUCER indicates that the major failure of the census was the non-inclusion of the three northern municipalities of Kosovo which still remain out of authority of Kosovo institutions, lack rule of law, and are a

¹³ Amy, D. (April 8, 2005). *What are Voting Systems and Why are They Important?* Massachusetts: Department of Politics, Mount Holyoke College.

haven for organized crime.¹⁴ Further, the census had a data update in 2012,¹⁵ but no further updates were conducted. Kosovo entered 2013 local elections and 2014 national elections not only with these gaps, but also the voting lists were only slightly or partially updated. The Central Election Commission is not authorized to request access to the census data, as according to the Principle 6 of the Fundamental Principles of Official Statistics “Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.”¹⁶ Therefore, gaps are created within census databases and Central Election Commission databases, which uses the one provided by the Civil Registration Agency of Kosovo. The problem is complex and important aspects need urgent resolution:

- a) Civil registry of Kosovo has been introduced to one central database for civil status data, merging the electronic data from the previous civil registry and civil status databases¹⁷. Until this initiated process is finished, gaps will arise and problems will be faced. Municipalities maintain their record of civil registry which feeds the Central Register at the Ministry of Internal Affairs (MIA). In preparation for elections, the Central Election Commission receives it from the MIA. As a result, names of the

¹⁴ EUCEP Census Support Project, EU funded project. (2011). *Kosovo Population and Housing Census 2011 Final Results*. Retrieved 12 July 2014, from <http://unstats.un.org/unsd/censuskb20/Attachment488.aspx>

¹⁵ Agjencia e Statistikave e Kosovës. (April, 2013) *Vlerësim Popullsisia e Kosovës 2012*. Retrieved 6 May 2014, from https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCoQFjAB&url=https%3A%2F%2Fask.rks-gov.net%2Fpublikimet%2Fdoc_download%2F993-vleresim-popullsia-e-kosoves-2012&ei=WyjidU_eQMucr0QXV8oCoBA&usg=AFQjCNHWzrR06gEXkwV4jorVIE3BPYtUpA&sig2=OM3SCShsvJ-mlzxBkKK7FA

¹⁶ United Nations Statistics Division (2013). *Fundamental Principles of Official Statistics: Revised preamble 2013*. Retrieved 12 July 2014, from <http://unstats.un.org/unsd/dnss/gp/FP-New-E.pdf>

¹⁷ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

deceased would often not be updated in municipal registers used for the subsequent elections¹⁸. Discrepancies and mismatches are shown in the census data collection and voting lists.

- b) Voting lists are those which enable the voters to cast their ballot and on this basis only *eligible* voters shall be part of it.¹⁹ On the contrary, in Kosovo the voting lists are constantly poorly updated and late voters remain part of the lists, causing a big concern and ultimately effecting the voter turnout. Moreover, poorly administered and updated voting lists leave room for manipulation and election fraud.²⁰
- c) Kosovo Diaspora constitutes quite a large number of population eligible to vote. Official data shows a number of 703,978 citizens living outside Kosovo. In the last national elections, which took place in June 2014, diaspora citizens had 31 days to complete the voting registration, which included mail being sent internationally three separate times as well as the time it takes for their applications to be reviewed. A study conducted by Democracy for Development, a leading NGO in Kosovo, showed that in the last national elections only 3,500 eligible Diaspora citizens on the voters list out of 300,000 to 400,000 voters for, were actually registered²¹. A majority of Diaspora citizens are not active participants in the Kosovo political and social life. However they have the right to vote, and as a consequence, always affect the final voter participation.

¹⁸ Institute Democracy for Development. (September 2011). *Deconstructing Election Trends 2000-2010*. Prishtina. Retrieved 18 July 2014, from <http://d4d-ks.org/assets/2012/09/2011-09-22-Election-Deconstructing-Election-Trends-2000-2010.pdf>

¹⁹ Central Election Commission of Kosovo. (2008). Law on Genral Elections in the Republic of Kosovo. Assembly of Kosovo, Prishtina. Retrieved 9 May 2014, from http://www.kqz-ks.org/Uploads/Documents/zgjedhjetpergjithshme_en_oieflvprux.pdf

²⁰ European Union Election Expert Mission. (January 2011). *Final Report*. Retrieved 24 June 2014, from http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf

²¹ Freda, S. (June 2014). Diaspora voting, it's harder than it looks. *Kosovo 2.0*. Retrieved 29 June 2014, from <http://kosovotwopointzero.com/en/article/1235/diaspora-voting-its-harder-than-it-looks>

Legal framework and unfinished electoral reform Whereas for the organization of the elections, according to the Constitution of Kosovo, “the Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results.”²² The current legislative framework “provides a sufficient basis for democratic elections in accordance with international instruments to which Kosovo has committed in its constitution.”²³

In 2011 Kosovo faced an institutional and political crisis. The Constitutional Court ruled that election of the President has breached constitutional principles, due to the lack of quorum in the Parliament on the day of the election. To overcome the political and institutional crisis, a nonpartisan and consensual president was elected, where the governing coalition together with the largest opposition party agreed to initiate an electoral and constitutional reform and set a timeline of 8 months for the constitutional reform, and 18 months for the completion of the electoral reform.²⁴

Last year, the European Commission Progress Report for Kosovo urged the Kosovo institutions to complete the electoral reform, which started three years ago.²⁵ With the mandate of the Committee for Electoral Reform of the Kosovo’s Parliament ended, the new legislature is to be established. Furthermore, the European Commission has listed the completion of the

²² Office of the Prime Minister. Constitution of the Republic of Kosovo. Retrieved 12 July 2014, from <http://kryeministri-ks.net/zck/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

²³ European Union Election Observation Mission Kosovo. (9 June 2014). *Preliminary Statement: Successful Election Day consolidates progress in democracy in Kosovo*. Retrieved 23 June 2014, from http://www.eueom.eu/files/pressreleases/english/eueom-kosovo2014-preliminary-statement_en.pdf

²⁴ Office of the Prime Minister of Kosovo. (06 April 2011). *Prime Minister Thaçi: We, the three leaders of our parties, PDK, LDK and AKR, have reached an agreement for a reformed Kosovo, a European Kosovo*. Retrieved 21 May 2014, from <http://www.kryeministri-ks.net/?page=2,9,1942>

²⁵ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

electoral reform as a top priority for Kosovo, alongside advancement of rule of law and better functionality of the judiciary.²⁶

2.2 Importance of the issue

The aforementioned aspects of the main research issue strongly suggest that the state of rule of law in Kosovo is profoundly affected by voter participation in elections. Indeed, a correlation between the rule of law and constituent participation in elections has been suggested in publications of the Institute for Democracy and Electoral Assistance – IDEA, where institutional factors and socioeconomic factors are predominantly factors to determine a voter participation in a country. The type of electoral system used is very much important and so is whether voting is compulsory or not. Socio-economic factors such as the literacy rate, the wealth of a nation, its population size, and its human development level, and political factors such as the competitiveness of the system, have all been proposed as having a direct impact upon voter turnout²⁷.

2.2.1 Elections and EU accession process

Kosovo pursues a European Integration agenda, in line with the EU integration processes for the Western Balkan countries.²⁸ In the last two year, Kosovo has been included in the EU enlargement mainstream of the region. In January 2012, the EU launched the visa

²⁶ Ibid.

²⁷ Institute for Democracy and Electoral Assistance – IDEA, *What affects Turnout?* Retrieved 12 June 2014, from http://www.idea.int/vt/survey/voter_turnout8.cfm

²⁸ European Commission. (10 October 2012). *Commission Communication on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

liberalization dialogue with Kosovo and presented the visa liberalization roadmap to Kosovo. In October 2013 Kosovo and the EU launched the first round of negotiations on a Stabilization and Association Agreement (SAA) and in July 2014, Kosovo and EU concluded the negotiations on the SAA.²⁹ In addition, Kosovo's commitment to become a member of the EU was reaffirmed in its seriousness in the dialogue on the normalization of relations with Serbia, an important precondition to improve neighborly relations and regional cooperation for any country which aspires to join the EU.³⁰

The Ministry for European Integration of Kosovo has functionalized all coordinating structures and established a Task Force for European Integration as a national consensus-building mechanism in order to discuss and analyze comprehensively the current state of affairs and the challenges that must be addressed within the European integration process.³¹ Further, in 2012, the President of Kosovo established the National Council for European Integration which serves as an institutional coordinating mechanism and is led by the President. The Council sets the strategic framework in the process of European Integration; coordinates and harmonizes the positions of the institutions, political parties and civil society in the process of European Integration, with the goal to ensure the necessary political and social support on the implementation of necessary reforms; follows on the progress of Kosovo towards European

²⁹ Ministry of European Integration of Kosovo. (25 July 2014). Stabilization and Association Agreement is initialed. Retrieved 28 July 2014, from <http://www.mei-ks.net/?page=2,5,1011>

³⁰ Regional cooperation and good neighborly relations remain essential parts of the enlargement process. Read more at: Council of the European Union. (December 2011). *Council conclusions on enlargement and stabilization and association process*. Brussels. Retrieved 28 July 2014, from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126577.pdf

³¹ Ministry of European Integration of Kosovo. *Task Force for European Integration*. Retrieved 5 May 2014, from <http://www.mei-ks.net/?page=2,211>

Union integration; issues recommendations for European integration process, including as well the negotiations with European Commission and the EU member states³².

The Treaty on the European Union states that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them. The first step is for the country to meet the key criteria for accession. These were mainly defined at the European Council in Copenhagen in 1993 and are hence referred to as 'Copenhagen criteria'³³. Countries wishing to join the European Union need to have: stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union. The European Council in its meeting of March 2003 stated “that the future of the Western Balkans is within the EU and strong political will and sustained efforts are required to secure it.”³⁴

The European Commission reports regularly to the European Council on the progress the potential candidate and candidate countries have made towards meeting European criteria for membership.³⁵ The EC has assessed there were serious shortcomings in the past electoral process of 2010 in Kosovo. Challenges remain in terms of compliance with international standards and simplicity of the current system and past impunity with regard to electoral fraud. One of the main

³² Office of the President of Kosovo. National Council for European Integration. Retrieved 12 May 2014, from <http://www.president-ksgov.net/?page=1,138>

³³ Euro Treaties. (7 February 1992). *The Treaty on European Union*. Retrieved 13 June 2014, from <http://www.eurotreaties.com/lisbontext.pdf>

³⁴ European Commission. (10 October 2012). *Commission Communication on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

³⁵ Council of the European Union. (December 2011). *Council conclusions on enlargement and stabilization and association process*. Brussels. Retrieved 28 July 2014, from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126577.pdf

priorities for Kosovo remains to deal more decisively with cases of electoral fraud. Kosovo needs to address the shortcomings and to ensure political will at all levels to conduct fair elections at every stage of the process.³⁶

A top priority for the EU reform agenda remains advancement of the rule of law. Without it, there is no foundation for free and fair elections. The European Commission reports further stipulate that Kosovo needs to take urgent steps to address these by simplifying the system, increasing the transparency of the system and investigating and prosecuting cases of electoral fraud.³⁷ Elections were part of the short term priorities/conditions for Kosovo set by the EU before signing the SAA agreement with the EU, a first step in the path towards the European Union.³⁸

The voter turnout in Kosovo differs from elections and often is not in line with the EU trends.³⁹ However, the ability to hold free, fair and democratic elections is a precondition under the Copenhagen Criteria. According to Kosovo's institutions, a credible election with decent higher voter participation also proves democratic development, and strengthens European path of Kosovo, given that integration into the EU is the main strategic and foreign policy goal for Kosovo and the regional countries. How fast Kosovo improves these standard, will also determine the acceleration of this important process for the country.⁴⁰

³⁶ European Commission. (12 November 2011). *Kosovo 2011 Progress Report*. Brussels. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

³⁷ Ibid.

³⁸ European Commission. (10 November 2012). *Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*. Brussels. Retrieved 24 May 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf

³⁹ Hasanpapaj, Bardhyl. (2014, May 16). University Professor. Personal interview.

⁴⁰ Prenkaj, Adrian. (2014, May 14). Adviser for European Integration to the President of Kosovo. Personal interview.

2.3 Post-war election

Still suffering from the physical and the political wounds of war, Kosovo held its first elections as a free country in 2000. They were the local elections organized under the UNMIK administration.⁴¹ Taking into account that there were the first post war elections, Kosovo greeted these democratic and internationally supervised elections with enthusiasm. The largest minority, Serbian community did not participate, instead boycotting and not recognizing the process.⁴² While general voter turnout was in line with the expectations, given that these were the first free elections with 79% voter participation.⁴³

Furthermore, first national elections in a free Kosovo took place immediately a year later in 2001, making these elections as landmark elections. The conduct of the election was generally judged to have been a clear improvement from the municipal elections of 2000. Whereas, unlike previous elections, a low number of the Serb community took part in the election, making the process more inclusive and comprehensive than the previous one. With a final voter turnout of 64.30%,⁴⁴ during this period of time, suggestions were for the international community to take control of the situation in Mitrovica and the northern municipalities. To that date, an absolute lack of rule of law characterized the northern municipalities of Kosovo, thus,

⁴¹ United Nations Security Council, by its resolution 1244 of 10 June 1999, authorized the Secretary-General to establish an international civil presence in Kosovo – the United Nations Interim Administration Mission in Kosovo (UNMIK) – in order to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy. Its task was unprecedented in complexity and scope; the Council vested UNMIK with authority over the territory and people of Kosovo, including all legislative and executive powers and administration of the judiciary. Subsequently, following the declaration of independence by the Kosovo authorities and the entry into force of a new constitution on 15 June 2008, the tasks of the Mission have significantly been modified to focus primarily on the promotion of security, stability and respect for human rights in Kosovo.

⁴² Schmidt, Albert J. (2011). *Toward the rule of law: Kosovo 2000 elections*. School of Law. Quinnipiac University. Connecticut Vol. 20:467.

⁴³ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

⁴⁴ Ibid.

there was an urge and demand for KFOR and UNMIK to act legally to improve the situation in this part of Kosovo.⁴⁵

Kosovo held four more different rounds of elections, 2002 municipal elections, 2004 national elections and in 2007 local and national elections. During this period, Kosovo was also recovering from the war and with the help and assistance from the international community it was laying the first stones of democracy and establishment of institutions. The Council of Europe Election Observation Mission assessed that 2002 local elections took place in a peaceful atmosphere, marking a significant step in the process of constructing a democratic society.⁴⁶ These elections were organized in a unique legal context in which ultimate authority rested with the international community, more precisely with the Organization for Security and Cooperation in Europe (OSCE) as a third pillar of UNMIK administration in Kosovo. With a general turnout of 54%,⁴⁷ Serb community again let down voter participation expectations.

Later, the objective of the international community was to hand over the entire electoral process to Kosovo authorities and to local election professionals, as a precondition to have the country be ruled by the law, where free and fair elections would be entrusted to be organized by the national authorities.⁴⁸ National elections of 2004 were again boycotted by the Serb community, whereas voter participation started to subtract within four years at 49.52%.⁴⁹ Comparison between municipal election of 2000 and national elections of 2004 show an abrupt

⁴⁵ International Crisis Group. (21 November 2001). *Kosovo: Landmark Election*. Balkans Report N° 120. Brussels. Retrieved 22 June 2014, from <http://www.crisisgroup.org/~media/Files/europe/Kosovo%2027.pdf>

⁴⁶ Council of Europe. (8 January 2003). *Report on the municipal elections in Kosovo 26 October 2002*. Congress of Local and Regional Authorities, Strasbourg. Retrieved 02 July 2014, from <https://wcd.coe.int/ViewDoc.jsp?id=886367&Site=COE>

⁴⁷ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

⁴⁸ Council of Europe. (8 January 2003). *Report on the municipal elections in Kosovo 26 October 2002*. Congress of Local and Regional Authorities, Strasbourg. Retrieved 02 July 2014, from <https://wcd.coe.int/ViewDoc.jsp?id=886367&Site=COE>

⁴⁹ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

decrease of voter participation of 29.48%. The following year, the European Commission issued the annual progress report for Kosovo, stating that rule of law needs to be significantly strengthened, in particular as regards effective implementation and enforcement of the legislation.⁵⁰

In 2007, for the first time, the Kosovo Central Election Commission (CEC) was responsible for the organization and administration of the elections. This was a crucial test point for Kosovo, as this process was to be fully observed by the international community. The Council of Europe Observation Mission in Kosovo one more time was the leading observation mission and as such, their final report and recommendations were of a significant importance. Bearing in mind that the voters list has not been fully accurate and also includes, for example, the names of deceased persons, preliminary data indicates that overall voter turnout was just above 43%, showing a decrease from past elections considering.⁵¹ Moreover, this report acknowledges a confirmation of this continuous downward trend, which started in the 2001 elections, revealing dissatisfaction among the population, due to the lack of improvements expected from the previous four rounds of elections. At this time, there were preparations to establish the largest European Union's Rule of Law Mission in a potential candidate country for EU membership. As a result, in February 2008, under a joint action of the European Council, the

⁵⁰ European Commission. (9 November 2005). *Kosovo 2005 Progress Report*. Brussels. Retrieved 21 June 2014, from http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1423_final_progress_report_k_s_en.pdf

⁵¹ Council of Europe. (18 November 2007). *Preliminary statement - Observation of Kosovo elections 2007*. Prishtina. Retrieved 29 July 2014, from http://hub.coe.int/c/document_library/get_file?uuid=16460e90-6e2f-491c-8c69-52a3457f14ff&groupId=10227

rule of law mission known as EULEX was established. The EU Council agreed for the main tasks of the mission to be mentoring, monitoring and advising in the area of rule of law⁵².

New political and social developments were to take place in Kosovo. On February 17, 2008 Kosovo declared its independence based on a Proposal for the Kosovo Status Settlement that Finish President Martti Ahtisaari⁵³ submitted to the UN Security Council.⁵⁴ The first post-independence elections were to take place in 2009, after one and a half years of Kosovo functioning as an independent country, though, the Government of Kosovo was supervised by the International Civilian Office (ICO)⁵⁵ for the implementation of the Comprehensive Settlement Proposal, Ahtisaari Plan. These elections would prove what was so important, even to date, the maturity of Kosovo to organize and hold free and fair elections and the path towards democratic consolidation. The significance of these elections were to show the citizens of Kosovo, but also the ICO and the rest of the international community that the new independent state can hold account for decisive processes.

⁵² Official Journal of the European Union. (16 February 2008). *COUNCIL JOINT ACTION 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*. Retrieved 12 June 2014, from http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf

⁵³ On 14 November 2005 Mr. Martti Ahtisaari was appointed the Special Envoy of the Secretary-General of the United Nations for the future status processes for Kosovo. In April 2007 Mr. Ahtisaari submitted to the UN Security Council his Comprehensive Proposal for the Kosovo Status Settlement the so called the "Ahtisaari Plan". Special Envoy Ahtisaari also proposed that Kosovo become independent, subject to a period of international supervision. Read more: United Nations Security Council. (26 March 2007) Comprehensive Proposal for the Kosovo Status Settlement. Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, New York. Retrieved 12 May 2014, from http://www.unosek.org/docref/Comprehensive_proposal-english.pdf

⁵⁴ US Department of State. (January 2009). *Summary of the Comprehensive Proposal for the Kosovo Status Settlement*. Factsheet, Bureau of European and Eurasian affairs. Retrieved 12 June 2014, from <http://www.state.gov/p/eur/rls/fs/101244.htm>

⁵⁵ United Nations Security Council. (26 March 2007). Comprehensive Proposal for the Kosovo Status Settlement. Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, New York. Retrieved 12 May 2014, from http://www.unosek.org/docref/Comprehensive_proposal-english.pdf

2.4 Post-independence elections

In 2009, Kosovo held its first post-independence elections at the local level. Many shortcomings were recognized. The highly complex and long legal procedures were established for addition or deletion of data in the voters list. The voter registration has been much debated and criticized for containing names belonging to deceased or persons that for some reason have been erroneously included.⁵⁶ ENEMO⁵⁷ in its final report suggested that for election at the local level, diaspora voting should not be practiced, as for this type of election it is not a common practice. ENEMO further argued that best practices demonstrate that the local elections are focused on addressing local issues, and are of major interest to the citizens residing in the country. The voter participation for these local elections was 45.36%⁵⁸ and what might have affected this turnout stays in line with the recommendations of the ENEMO, that diaspora may not show an interest in the local issues addressed.⁵⁹

In December 2010, Kosovo held its first post-independence elections at the central level. National elections of 2010 were a cornerstone for Kosovo's democracy and its commitment to advancing the rule of law. The EU progress report stated that the repeat elections in three municipalities and two polling stations of two different municipalities, recounts and delayed publication of results damaged the credibility of the electoral process and the legitimacy

⁵⁶ European Network of Election Monitoring Organizations, ENEMO. (14 May 2010). *Final report: Municipal elections Kosovo 2009*. Retrieved 26 June 2014, from http://www.enemo.eu/press/Kosovo_EOM_Final_report_2009_.pdf

⁵⁷ ENEMO - European Network of Election Monitoring Organizations is a group of 22 leading civic organizations from 17 countries of Eastern and Central Europe and Central Asia. ENEMO seeks to support the international community's interest in and promotion of democracy in its region of engagement, to assess electoral processes and the political environment, and to offer accurate and impartial observation reports. ENEMO international observation missions evaluate the electoral process using international standards for democratic elections and benchmarks in the assessed country's legislation and constitution.

⁵⁸ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

⁵⁹ European Network of Election Monitoring Organizations, ENEMO. (14 May 2010). *Final report: Municipal elections Kosovo 2009*. Retrieved 26 June 2014, from http://www.enemo.eu/press/Kosovo_EOM_Final_report_2009_.pdf

of the results. The EU acknowledged remaining challenges such as compliance with international standards, simplicity of the current system and past impunity with regard to electoral fraud.⁶⁰ Though voter participation in the six Serb majority municipalities increased, in the three northern municipalities, the turnout was negligible, affecting the final turnout of 45.29%.⁶¹

Repeatedly, ENEMO urged Kosovo Government to commit to cleaning-up the voter lists, update them to remove deceased persons and persons that were erroneously included. Highlights are put in a more proactive effort needed in this aspect, which would reach required accuracy of the voter lists that would increase public confidence in the credibility of election process.⁶²

An overwhelming consensus to enforce accountability for the electoral process was also raised in a very detailed post-election assessment conducted by the National Democratic Institute (NDI).⁶³ According to this assessment, the parliamentary elections of 2010 were the most problematic elections Kosovo held since its independence. The report brings to central attention the lack of rule of law by recognizing essential forms of widespread violations of the election law, included altered ballots, ballot box stuffing and multiple voting.⁶⁴

In the same note, the International Crisis Group (ICG) soon announced their observations regarding the rule of law in the independent Kosovo. The ICG noted that the newly

⁶⁰ European Commission. (12 November 2011). *Kosovo 2011 Progress Report*. Brussels. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

⁶¹ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

⁶² European Network of Election Monitoring Organizations, ENEMO. (April 2011). *Final report: Kosovo Assembly Elections 2010*. Retrieved 6 May 2014, from http://www.enemo.eu/press/ENEMO_final%20report_KOSOVO_EOM_2011.pdf

⁶³ NDI – The National Democratic Institute is a nongovernmental institution based in the United States, that has supported democratic institutions and practices in every region of the world for more than three decades. The Institute has conducted democracy programs in Kosovo since 1999 that contribute to the development of political parties representing a broad spectrum of Kosovo’s diverse communities. Read more at: <https://www.ndi.org/>

⁶⁴ National Democratic Institute. (April 2011). *The Post-Election Assessment Report of Kosovo’s 2010 Parliamentary Elections*.

independent country was losing out on important benefits that would be offered by the rule of law, in which important decisions are made on the basis of formal rules and in the context of public institutions.⁶⁵ This would mean an extraordinary delay for the EU membership, given that five countries⁶⁶ out of 28 member countries do not recognize Kosovo's independence, and an absolute delay to becoming a member of the United Nations.

The last elections to take place in Kosovo were local elections held in 2013 and national elections held in June 2014. The local elections were of a high significance because for the first time they would be organized throughout Kosovo, including in all Serb majority municipalities. The legal framework that governed previous legislative and local elections remained in place for these elections, too. Despite several attempts to reform the electoral system in Kosovo, shortcomings identified during these two last election processes were not addressed. However, the legislation provides a sufficient basis for democratic elections in accordance with international instruments to which Kosovo has adhered to in its constitution.⁶⁷ Whereas, a different report from the same institution – the European Union puts in a focal point the fact that Kosovo has not yet signed up to any major international commitments on human rights or the conduct of democratic elections, the Constitution states the direct applicability of several

⁶⁵ International Crisis Group. (19 May 2010) *The rule of law in independent Kosovo*. Europe Report N°204. Retrieved 19 July 2014, from [http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo](http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo)

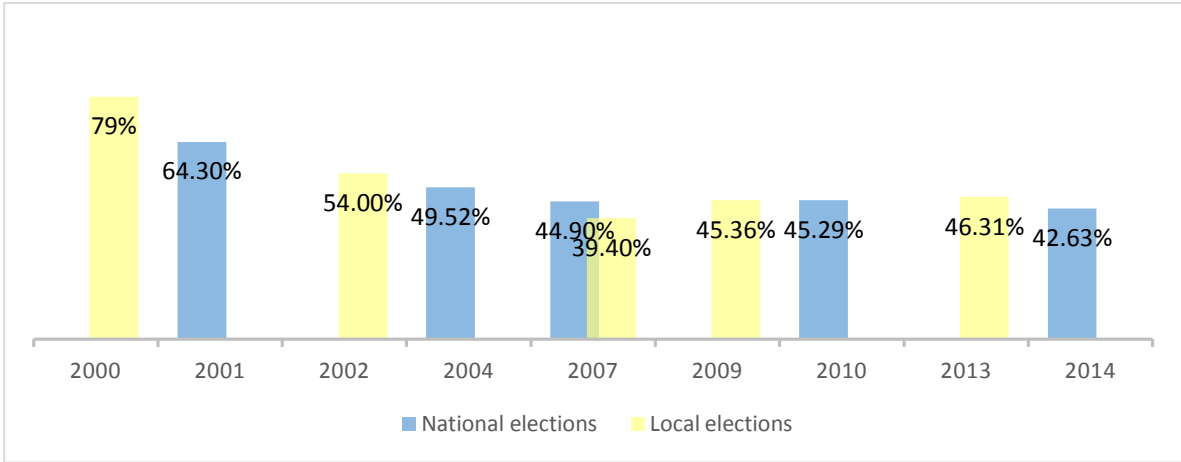
⁶⁶ Ministry of Foreign Affairs of Kosovo. *The remaining "EU five" begin to recognize Kosovo reality on the ground*. Retrieved 5 May 2014, from <http://www.mfa-ks.net/?page=2,131,1768>

⁶⁷ European Union Election Observation Mission Kosovo. (9 June 2014). *Preliminary Statement: Successful Election Day consolidates progress in democracy in Kosovo*. Retrieved 23 June 2014, from http://www.eueom.eu/files/pressreleases/english/eueom-kosovo2014-preliminary-statement_en.pdf

international agreements and instruments, including the European Convention on Human Rights and Fundamental Freedoms and its protocols.⁶⁸

The voter participation for local elections was 46.31%,⁶⁹ while for the national elections of 2014 the voter turnout was 42.63%⁷⁰ marking it the lowest turnout in the history of Kosovo national elections. A major concern still remains in the confidence of the accuracy of the voter list remains low. An estimated of 500,000 people who do not reside in Kosovo are still registered in the civil registry and in the voter list⁷¹.

Figure 1. Kosovo local and national voter turnout 2000-2014. Source: International Foundation for Electoral Systems: Election guide; Kosovo Election Central Commission



⁶⁸ European Union Election Observation Mission. (5 November 2013). *Kosovo municipal election preliminary statement: Positive Step Forward for Democracy in Kosovo*. Prishtina. Retrieved 24 June 2014, from http://www.eueom.eu/files/pressreleases/english/preliminary-statement-in-kosovo-05112013_en.pdf

⁶⁹ Kosovo Central Election Commission. *Election data information*. <http://www.kqz-ks.org/>

⁷⁰ Ibid.

⁷¹ European Union Election Observation Mission Kosovo. (9 June 2014). *Preliminary Statement: Successful Election Day consolidates progress in democracy in Kosovo*. Retrieved 23 June 2014, from http://www.eueom.eu/files/pressreleases/english/eueom-kosovo2014-preliminary-statement_en.pdf

III. THE STATE OF THE RULE OF LAW IN KOSOVO AND BRIEF OVERVIEW OF THE ELECTORAL SYSTEM IN KOSOVO

The rule of law implies “a society governed by democratic values: not governed by the arbitrary rule of powerful men, nor the violent rampage of the dissatisfied.”⁷² An important principle of the rule of law in a democratic society is political pluralism and representative democracy, respect for human rights, exercise of government power to be open and democratic and consistent with constitutional and legal norms, and assurances that there exist effective legal remedies to challenge the abuse or misuse of power.⁷³

3.1 Legacy of Yugoslavia

In 1943, a new Yugoslavia was proclaimed by the Anti-Fascist Council for the National Liberation of Yugoslavia. The Socialist Federal Republic of Yugoslavia contained six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Slovenia and Serbia, and also two autonomous so-called provinces, Kosovo and Vojvodina. The new Yugoslav Constitution adopted in 1974 handed down a significant level of power to the republics and autonomous provinces, which made Kosovo a constituent republic in all but name.⁷⁴

Whereas Yugoslav socialism was different from Soviet communism, it followed a model of governance and judicial development similar to that of the Soviet Union. According to Dallara, no judicial control was exercised over constitutional or normative acts, and political

⁷² Kampelman, M. (1990) *he Rule of Law and Free Elections*. World Affairs, Vol. 153, No. 1, Charter for Democracy. Summer 1990 edition. pp. 13-15, World Affairs Institute.

⁷³ Ibid, p.14

⁷⁴ Bajrami, A. (2002) *E Drejta Kushtetuese – Libri II: E Drejta e Kosovës në Tranzicion*. Prishtinë, Universiteti i Prishtinës.

interferences in the judiciary were quite common.⁷⁵ However, judicial system although guaranteed during this time in the former Yugoslavia, including in Kosovo, never developed its independence vis-à-vis party influence and executive branch.⁷⁶ Many of the social challenges in the state were solved through party and other mechanisms, whereas the legal system was for less important matter or in many cases to suppress political dissidents. Party officials were granted full immunity, the system was marginalized and although there were Constitutional and Supreme Courts established, the level of institutionalization was very low.⁷⁷

After the breakup of Yugoslavia, the two remaining republics of Serbia and Montenegro formed a reduced federation, the Federal Republic of Yugoslavia. The first members to declare independence were Croatia and Slovenia in June 1991, to be followed by Macedonia in September 1991, then Bosnia and Herzegovina in 1992 after a three year exhausting war. Montenegro and Serbia declared their independence in May 2006, leaving Kosovo the very last country to declare its independence in February 2008.⁷⁸

Following the disintegration of Yugoslavia, in 1989, the Serbian Parliament adopted amendments which abolished Kosovo's autonomy that was guaranteed by the Yugoslav Federal Constitution. During these times, Albanians created a movement which was to function in a parallel structure and agreed on the declaration of a Republic of Kosovo. In the May 1992

⁷⁵ Dallara, C. *Judicial reforms in transition: Legacy of the past and judicial institutionalization in post-communist countries*. University of Bologna. Retrieved 29 July 2014, from http://amsacta.unibo.it/2810/1/Judicial_Reforms_in_Transition..pdf

⁷⁶ OSCE Mission in Kosovo. (January 2012) Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions. Retrieved 22 July 2014, from <http://www.osce.org/kosovo/87138?download=true>

⁷⁷ Dallara, C. *Judicial reforms in transition: Legacy of the past and judicial institutionalization in post-communist countries*. University of Bologna. Retrieved 29 July 2014, from http://amsacta.unibo.it/2810/1/Judicial_Reforms_in_Transition..pdf

⁷⁸ Bajrami, A. (2002) *E Drejta Kushtetuese – Libri II: E Drejta e Kosovës në Tranzicion*. Prishtinë, Universiteti i Prishtinës.

elections which were organized for the first time by parallel structures, the LDK⁷⁹ won 96 of the 100 seats and the main objective of the LDK was independence for Kosovo.⁸⁰ According to Hasani, the first multiparty elections were held in all Yugoslav republics and after independence they introduced multi-party system on constitutions.⁸¹

Soon after the Dayton agreement,⁸² the method of peaceful strategy was failing and the war of Serbia against Albanians in Kosovo quickly took a direction that shocked the world. On March 24, NATO started the bombing campaign against Yugoslavia and on June 10, 1999, the UN Security Council passed Resolution 1244, establishing United Nations Mission in Kosovo.⁸³

3.2 Legal and institutional framework

Kosovo's political system, after the independence of Kosovo, was established on the principles of parliamentary democracy and separation of powers. After the disintegration of Yugoslavia, the first change that any former Yugoslav countries had to face was to establish a legal system by removing any reference to the communist one.⁸⁴ According to the Constitution of the Republic of Kosovo, "Kosovo is a democratic Republic based on the principle of

⁷⁹ Democratic League of Kosovo

⁸⁰ Ibid.

⁸¹ Hasani, E. (2003). *Self-Determination, Territorial Integrity and International Stability: the Case of Yugoslavia*, National Defense Academy and Bureau for Security Policy, Vienna.

⁸² North Atlantic Treaty Organization: The Dayton Proximity Talks culminated in the initialing of a General Framework Agreement for Peace in Bosnia and Herzegovina. It was initialed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (FRY). The Agreement was witnessed by representatives of the Contact Group nations - the United States, Britain, France, Germany, and Russia - and the European Union Special Negotiator.

⁸³ The Resolution was passed by a vote of 14 in favor, no votes against. China abstained from the vote. Read more at: United Nations Security Council. (10 June 1999). Resolution 1244 (1999). Retrieved 12 July 2014, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

⁸⁴ Dallara, C. *Judicial reforms in transition: Legacy of the past and judicial institutionalization in post-communist countries*. University of Bologna. Retrieved 29 July 2014, from http://amsacta.unibo.it/2810/1/Judicial_Reforms_in_Transition..pdf

separation of powers and the checks and balances among them [...].”⁸⁵ After the proclamation of independence, all necessary institutions have been established including the Constitutional Court, which plays an important role in guaranteeing democratic principles.

The Constitution and the new laws passed after the independence of Kosovo for the first time defined the judicial branch as unique, independent and exercised by the courts, marking the greatest progress in ensuring the independence of this branch.⁸⁶ The Kosovo Judicial Council ensures “the independence and impartiality of the judicial system,” and the Kosovo Prosecutorial Council “is a fully independent institution in the performance of its functions in accordance with law.”⁸⁷

The legal framework in the area of the rule of law is quite complex. Kosovo uses the applicable legislation, which is the legislation from the former Yugoslavia, UNMIK legislation and the new legislation which has been adopted by the institutions of Kosovo before and after the independence.⁸⁸ As Kosovo participates in the Stabilization and Association Process with the European Union, it has established necessary coordinating structures that all legislation which is drafted and adopted in the Parliament is mainly in line with highest international human rights and EU standards.⁸⁹

Due to pressing rule of law challenges in Kosovo since the end of the war, legislative and judicial reforms included adopting and amending a number of laws, which aim to influence

⁸⁵ Office of the Prime Minister. *Constitution of the Republic of Kosovo*. Retrieved 12 July 2014, from <http://kryeministri-ks.net/zck/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ European Commission. (10 November 2012). *Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*. Brussels. Retrieved 24 May 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf

⁸⁹ Office of the President of the Republic of Kosovo. (07 November 2013). *National Strategy for European Integration*. Prishtina. Retrieved 19 May 2014, from [http://www.president-ks.gov.net/repository/docs/National Strategy for European Integration Kosovo 2020 ENG \(1\).pdf](http://www.president-ks.gov.net/repository/docs/National Strategy for European Integration Kosovo 2020 ENG (1).pdf)

the creation of predictability and legal certainty in Kosovo. Though, the judicial system in Kosovo went through a substantial judicial reform in 2012, by introducing a new court system, there are still many problems that remain regarding the independence of the system that has negative effect on the overall state of the rule of law and access to justice, but also lack of full implementation of this reform. The aim of the judicial reform is to create an impartial, independent, accountable and efficient judicial system⁹⁰. The court system in the northern part of the country has lacked functioning judiciary and in the last years is improving through the Dialogue on the normalization of relations between Kosovo and Serbia, which is facilitated by the European Union. According to an OSCE report on judicial independence in Kosovo, the report points to a number of shortcomings, including a legacy of strong executive influence, threats against judges and their families, unrestricted access to judges' offices, as well as court infrastructure and security arrangements which remain poor.⁹¹

One of the main priorities for Kosovo's progress in the European integration process is rule of law and the fight against organized crime and corruption. In 2012, the President of Kosovo established the National Anti-Corruption Council to improve the cooperation between rule of law institutions and civil society in the fight against corruption.⁹² Other than EULEX, EU mechanisms to help Kosovo on its efforts to consolidate the rule of law is also EU Structural Dialogue on the Rule of Law, a high level forum between Kosovo authorities and European Commission, which regularly assesses Kosovo's progress in the area of judiciary, fight against

⁹⁰ OSCE Mission in Kosovo. (January 2012) *Judiciary still not fully independent, concludes report by OSCE Mission in Kosovo*. Prishtina. Retrieved 8 June 2014, from <http://www.osce.org/kosovo/87178>

⁹¹ Ibid.

⁹² Office of the President of Kosovo. (23 May 2014). President Jahjaga's Speech at the National Anti-Corruption Council. Prishtina. Retrieved 28 July 2014, from <http://www.president-ksgov.net/?page=2,6,3385>

organized crime, and the fight against corruption and challenges in these areas at an early stage.⁹³ The European Union, as part of the Stabilization and Association Process allocates substantial financial assistance to Kosovo, through the Instrument for Pre-Accession Assistance (IPA), which is mainly aimed at strengthening the rule of law.⁹⁴

3.3 Rule of law assessments

As in most countries going through a transition, the rule of law in Kosovo remains still far from being consolidated. The European Union, as well as international and local watchdogs and think-tanks have published several assessments on the rule of law in the last decade.

According to a report of the European Commission, which regularly assesses Kosovo's progress on the rule of law, Kosovo needs to improve its capacities to effectively investigate and prosecute crime cases. In the area of the judiciary, authorities need to further implement the judicial reform, reducing the backlog of cases in the courts, establishing a track record to implement the reform and allocating sufficient budget to judiciary.⁹⁵ Although Kosovo has

⁹³ European Commission. (30 May 2012). Conclusions: Structured Dialogue on the Rule of Law with Kosovo. Brussels. Retrieved 15 July 2014, from http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120530_rol_d_conclussions_30_may.pdf

⁹⁴ European Court of Auditors. (2012). *European Union assistance to Kosovo related to the rule of law*. Special Report No 18. Retrieved 15 July 2014, from <http://bookshop.europa.eu/en/european-union-assistance-to-kosovo-related-to-the-rule-of-law-pbQJAB12017/>

⁹⁵ European Commission. (30 May 2012). Conclusions: Structured Dialogue on the Rule of Law with Kosovo. Brussels. Retrieved 15 July 2014, from http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120530_rol_d_conclussions_30_may.pdf

adopted modern legal framework in the area of the rule of law, effective implementation of the legislation remains an important challenge throughout all sectors.⁹⁶

The European Union rule of law mission in Kosovo, EULEX, has built a tracking mechanism for monitoring, mentoring and advising – MMA for rule of law in the country. The MMA aims to assist Kosovo executive, judicial authorities and law enforcement agencies in their progress toward sustainability, accountability, multi-ethnicity, freedom from political interference, and compliance with internationally recognized standards and European best practices.⁹⁷

Watchdogs such as the Freedom House, in the 2013 report, ranked Kosovo as a partially free country, while the European Union progress report for 2013 identified several setbacks for Kosovo's efforts to build strong and independent institutions of democratic governance.⁹⁸ According to the Freedom House corruption in Kosovo remains widespread, including the judiciary and law enforcement.⁹⁹ The EU report urged the national authorities to finalize the electoral reform launched in 2011, the same has not been finalized to date. The EU specifically raised the issue of the legal framework¹⁰⁰ for elections, and called on better reflection of EU best practiced and implementation to be in line with the international standards¹⁰¹.

⁹⁶ European Commission. (10 November 2012). *Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*. Brussels. Retrieved 24 May 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf

⁹⁷ EULEX. (March 2012). *MMA Tracking Mechanism: Monitoring, mentoring and advising*. Retrieved 11 July 2014, from <http://www.eulex-kosovo.eu/docs/tracking/MMA%20TM%20Website%202012%2003%20-%20Final.pdf>

⁹⁸ Freedom House. (2013). *Freedom in the World 2013: Kosovo*. Retrieved 24 May 2014, from <http://freedomhouse.org/report/freedom-world/2013/kosovo#.U9uOGfmSwYw>

⁹⁹ Ibid

¹⁰⁰ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

¹⁰¹ European Commission. (12 November 2011). *Kosovo 2011 Progress Report*. Brussels. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

Although, election credibility has been constantly questioned, as a result, there is an urge for legitimacy of the national institutions which must demonstrate the capacity to organize free, democratic and transparent elections. A recent USAID assessment identified elections as a potential flashpoint for conflict.¹⁰² In addition to this, the assessment addresses the need of rule of law programs in Kosovo to rebuild momentum. Unanimously, the assessments show the precarious level of the rule of law in Kosovo has made significant progress, but is far from being satisfactory. This is seen as a threat to reforms and sustainable development.¹⁰³ The 2010 general elections were marked by serious deficiencies and technical problems after allegations of widespread irregularities. This situation has later led to a reform process. Unfortunately, the electoral reform was later delayed and eventually deadlocked, after unsuccessful attempts to reform and address previous problems.¹⁰⁴

Albeit, the last municipal elections of 2013 and general elections of 2014 were administered with old legislation, they were conducted in a free, democratic and transparent manner. According to the final report of the European Union Election Observation Mission in Kosovo, “the 8 June 2014 early legislative elections were transparent and well-organized, and consolidated progress made in the 2013 municipal elections.”¹⁰⁵

¹⁰² USAID. (2012). *Kosovo Conflict Assessment: Breaking Down Invisible Walls*. Retrieved 24 May 2014, from http://pdf.usaid.gov/pdf_docs/pnaec930.pdf

¹⁰³ International Crisis Group. (19 May 2010) *The rule of law in independent Kosovo*. Europe Report N°204. Retrieved 19 July 2014, from [http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20In%20dependent%20Kosovo](http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20In%20dependent%20Kosovo)

¹⁰⁴ Office of the President of Kosovo, (May 2013). National Council for European Integration: Thematic Roundtable on Justice, Freedom and Security. Prishtina. Retrieved 19 July 2014, from http://www.president-ksgov.net/repository/docs/TRT_2_ENG.pdf

¹⁰⁵ European Union Election Observation Mission Kosovo. (9 June 2014). *Preliminary Statement: Successful Election Day consolidates progress in democracy in Kosovo*. Retrieved 23 June 2014, from http://www.eueom.eu/files/pressreleases/english/eueom-kosovo2014-preliminary-statement_en.pdf

The success of these elections were possible due to better preparations and coordination of institutions and rule of law mechanisms in place.¹⁰⁶ In addition, amendment of the “Criminal Code in 2012 increased the number of criminal offences related to elections and established heavier penalties with the aim of deterring electoral violation.”¹⁰⁷

IV. COMPARATIVE ANALYSIS OF VOTER PARTICIPATION IN DEVELOPED ECONOMIES AND TRANSITION ECONOMIES

The relationship between voter turnout and the state of the rule of law is complex and not very straightforward. Countries in which the rule of law is seen as consolidated have problems with low turnout. Many other countries where voter participation is high, in fact they have a weak rule of law. The purpose of a comparative analysis is to add a new perspective to the issue and place the rapport between the rule of law and voter turnout in Kosovo in its proper regional and much wider context.

This chapter analyses several countries, some with long and established tradition of democratic rule, some of the countries in the region with similar historic experiences embracing democracy and joining the EU, and some other countries with weak rule of law.

¹⁰⁶ Office of the President of Kosovo. (23 May 2014). President Jahjaga’s Speech at the National Anti-Corruption Council. Prishtina. Retrieved 28 July 2014, from <http://www.president-ksgov.net/?page=2,6,3385>

¹⁰⁷ European Union Election Observation Mission Kosovo. (9 June 2014). *Preliminary Statement: Successful Election Day consolidates progress in democracy in Kosovo*. Retrieved 23 June 2014, from http://www.eueom.eu/files/pressreleases/english/eueom-kosovo2014-preliminary-statement_en.pdf

4.1 Voter participation and rule of law in the Western and other European Countries (Italy and Germany)

Italy is a neighboring country and with considerable influence in the Balkans. While an established democracy and a member of the European Union, Italy still faces difficulties with voter turn-out, corruption and poor governance.¹⁰⁸ Italy is a unitary parliamentary republic with a bicameral system of the Chamber of Deputies and the Senate. Both the deputies and the senators are elected for a term of five years, but electors for the deputies should be citizens over 18 years old, while for senators the electors must be over 25 years age.¹⁰⁹ According to the Freedom House, Italian system has a high party pluralism, although its structure is very unstable. It has adopted several measures to strengthen anticorruption policy and improve accountability. In addition, its judicial system is undermined by influence and pending cases.¹¹⁰ As Figure 2 shows, average voter turnout in Italy is measured to be 61.55%.¹¹¹ Italy has a high voter turnout, although the turnout in recent years has slightly dropped. For European Parliament elections and specifically for referendums, the turnout is greatly lower.

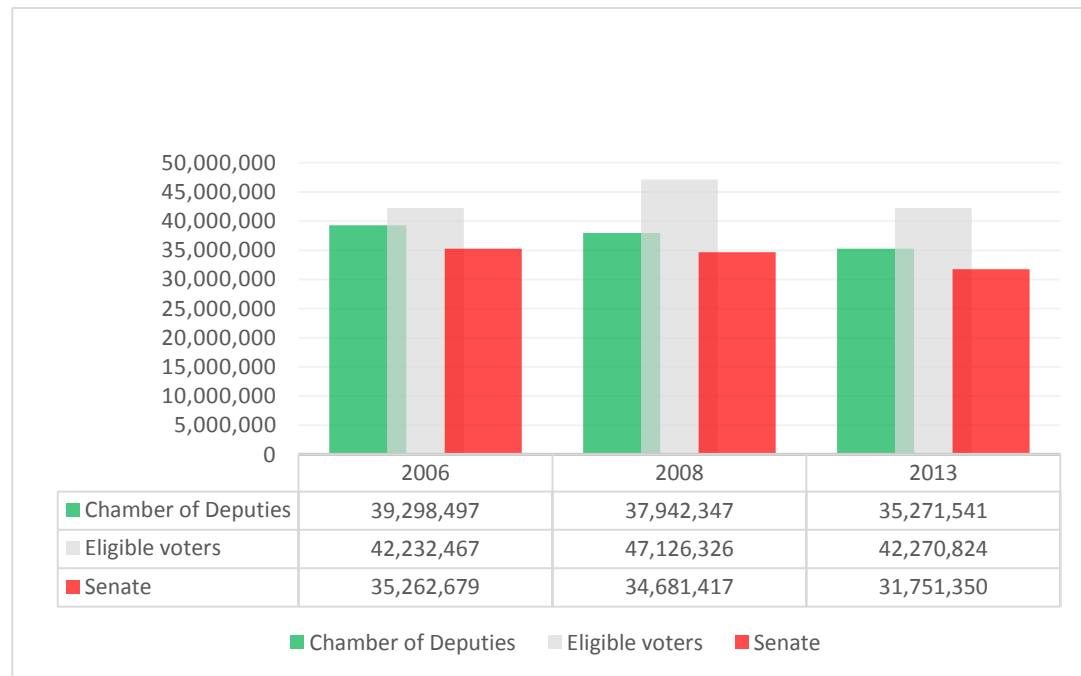
¹⁰⁸ Transparency international. (2013). *Italy country profile 2013*. Retrieved 24 July 2014, from <http://cpi.transparency.org/cpi2013/results/>

¹⁰⁹ Election Guide. *Democracy Assistance and elections news: Italy country profile info*. <http://www.electionguide.org/countries/id/107/>

¹¹⁰ Freedom House. (2014). *Freedom in the World 2014: Italy* <http://www.freedomhouse.org/report/freedom-world/2014/italy-0#.U94fyOOSwrU>

¹¹¹ Election Guide. *Democracy Assistance and elections news: Italy country profile info*. <http://www.electionguide.org/countries/id/107/>

Figure 2. Italy voter turnout. Source: Election Guide, Democracy Assistance and elections news: Italy country profile info.¹¹²



Germany is a federal parliamentary republic. As Germany’s parliament, the German Bundestag is a focal centre of the political life but also is its supreme democratic institution of state.¹¹³ According to the Freedom House, Germany is free of pervasive corruption, but pluralism is somehow constrained due to historic reasons. Media are independent and the rule of law in general prevails.¹¹⁴ Germany is a good example for the study because it absorbed rather successfully a former closed society, the East Germany. It is the largest and, arguably, the most

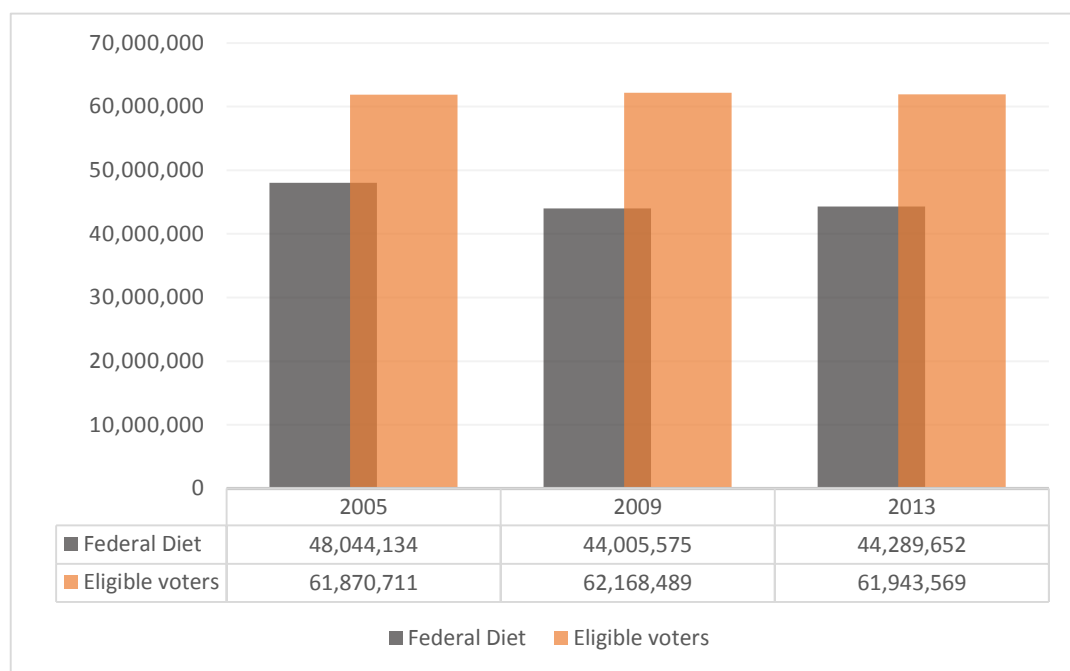
¹¹² Ibid.

¹¹³ Official webpage. German Bundestag. http://www.bundestag.de/htdocs_e/

¹¹⁴ Freedom House. (2013). *Freedom in the World 2013: Germany*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2013/germany#.U944zeOSwrU>

influential country in Western Europe¹¹⁵. It hosts many immigrants (134,231¹¹⁶) from Kosovo thereby exercising significant cultural influence over Kosovo. As figure 3 show, average voter turnout in Germany is measured to be at 84.82%.¹¹⁷ Germany has a high voter turnout for national elections, but half lower for European Parliament elections.

Figure 3. Germany voter turnout. Source: Election Guide. Democracy Assistance and elections news: Germany country profile info.



¹¹⁵ The Legatum Prosperity Index (2013) . Retrieved 2 July 2014, from <http://prosperity.com/#!/country/DEU>

¹¹⁶ Agjencia e Statistikave e Kosovës. (April, 2014). *Migrimi Kosovar*. Retrieved 16 July 2014, from <http://ask.rks-gov.net/>

¹¹⁷ Election Guide. *Democracy Assistance and elections news: Germany country profile info*. <http://www.electionguide.org/countries/id/82/>

4.2 Voter participation and rule of law in neighboring Albania and Serbia

Albania is a parliamentary republic. Kuvendi, as a unicameral Assembly is vested by the constitution with the legislative authority.¹¹⁸ It decides on domestic and foreign policy, approves and amends the constitution, elects the President of the Republic, the Prime Minister, the Supreme Court, and the Attorney General and his or her deputies. The prime minister is the head of the government, while the president has limited executive power.¹¹⁹ According to the Freedom House, two main parties in Albania are polarized and corruption is pervasive and the justice system is often subject to political influence.¹²⁰

As figure 4 shows, average voter turnout in Albania is measured to be 51.78%.¹²¹ In the recent decade, Albania experienced sharp drop of voter turnout from the 90s to the decade after the fall of communism, as it struggled with democratic standards, rule of law and political polarization.

Serbia is a parliamentary republic. The National Assembly is the supreme representative body and the holder of constitutional and legislative power in the Republic of Serbia. The National Assembly elects the government and decides on expiry of term of office of the Government and ministers security services.¹²² According to the Freedom House, corruption in Serbia remains a serious concern and minorities are unrepresented in the government. In

¹¹⁸Official page. *Kuvendi i Shqipërisë*. <http://www.parlament.al/>

¹¹⁹ Parliament of the Republic of Albania. *Constitution of the Republic of Albania*. Retrieved 11 July 2014, from http://www.parlament.al/web/pub/kushtetuta_perditesuar_15171_1.pdf

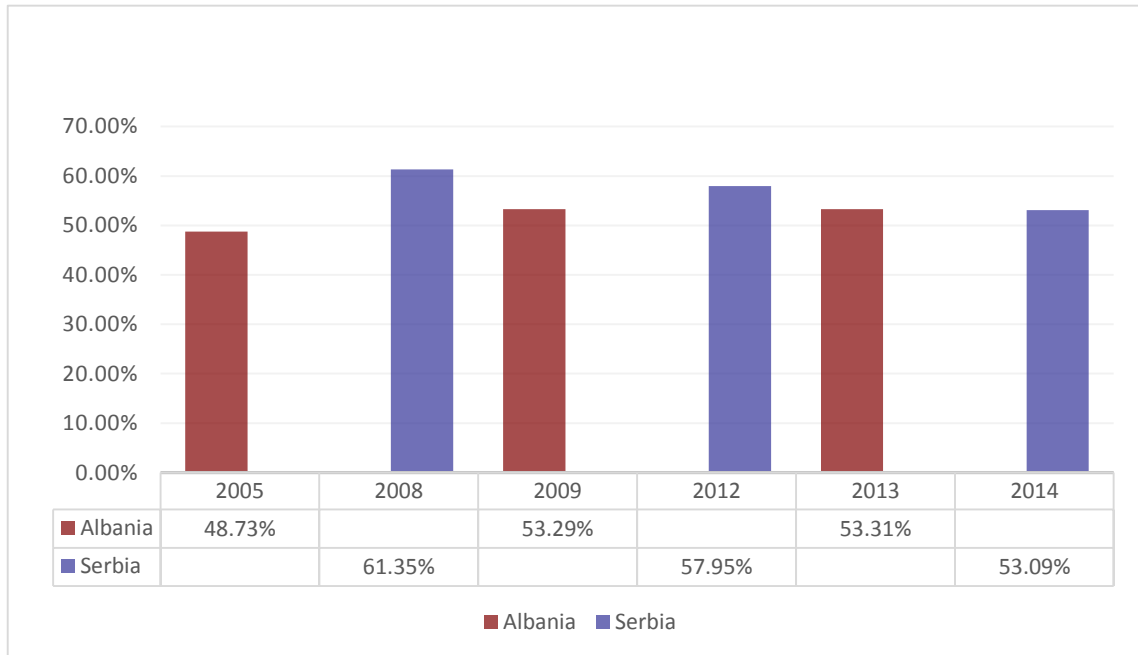
¹²⁰ Freedom House. (2014). *Freedom in the World 2014: Albania*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2014/albania#.U948GOOSwrU>

¹²¹ Election Guide. *Democracy Assistance and elections news: Albania country profile info*. <http://www.electionguide.org/countries/id/3/>

¹²² Official page. *National Assembly of Republic of Serbia*. <http://www.parlament.gov.rs/>

addition, judicial independence and accountability needs to be improved further.¹²³ As figure 4 shows, average voter turnout in Serbia is measured to be 53.73%.¹²⁴

Figure 4. Albania and Serbia voter turnout. Source: Election Guide, Democracy Assistance and elections news: Albania and Serbia country profile info.



4.3 Voter participation and rule of law in closed post-soviet societies (Belarus and Uzbekistan)

Belarus is a presidential republic. The Belarus Parliament is a bicameral chamber, which consists of the House of the Representatives and the Council of the Republic. The Government is accountable to the President of the country and its powers are determined by the

¹²³ Freedom House. (2013). *Freedom in the World 2013: Serbia*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2013/serbia#.U95T3uOSwrU>

¹²⁴ Election Guide. *Democracy Assistance and elections news: Serbia country profile info*. <http://www.electionguide.org/countries/id/242/>

Constitution of the Republic of Belarus.¹²⁵ According to the Freedom House, electoral law does not meet democratic standards and opposition is blocked from running for office. There is overall lack and transparency and accountability of the government and curtails press freedom and freedom of assembly. Judicial system is subject to executive influence.¹²⁶

As figures 5 shows, average voter turnout in Belarus is measured to be 84.34%.¹²⁷ Although, according to Freedom House, there are widespread irregularities in the election, and many have questioned legitimacy of balloting, as members of the central commission are aligned with the government.¹²⁸

Uzbekistan is a presidential republic. As a bicameral system of Parliament, Uzbekistan's Oliy Majlisserves as the Supreme Assembly with Senate as the upper house, while the Legislative Chamber as the lower house. The President is the head of state and executive power, and acts as the guarantor of the observation of rights and freedoms of citizens, the Constitution and the laws of the Republic of Uzbekistan.¹²⁹ According to the Freedom House, Uzbekistan is not an electoral democracy, opposition is suppressed and they cannot operate legally. Corruption is pervasive and freedom of speech and press are restricted. Judicial system is

¹²⁵ Official page. *The Belarus Parliament*. <http://www.belarus.by/en/government/parliament>

¹²⁶ Freedom House. (2014). *Freedom in the World 2014: Belarus*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2014/belarus-0#.U95V-eOSwrU>

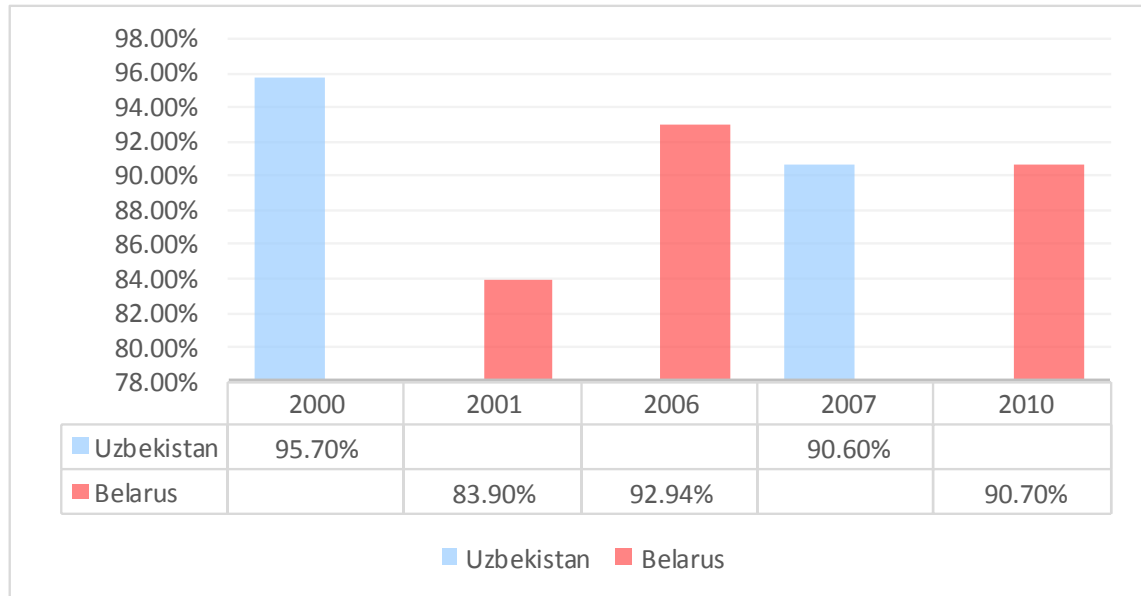
¹²⁷ Election Guide. *Democracy Assistance and elections news: Belarus country profile info*. <http://www.electionguide.org/countries/id/21/>

¹²⁸ Freedom House. (2014). *Freedom in the World 2014: Belarus*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2014/belarus-0#.U95V-eOSwrU>

¹²⁹ Official page. *Legislative Chamber of Oliy Majlis of Uzbekistan*. www.parliament.gov.uz/en/

under control of the President.¹³⁰ As figures 5 shows, average voter turnout in Uzbekistan is allegedly measured to be 89.18%.¹³¹

Figure 5. Belarus and Uzbekistan voter turnout. Source: Election Guide, Democracy Assistance and elections news.



V. THE RELATIONSHIP BETWEEN VOTER PARTICIPATION AND THE RULE OF LAW IN KOSOVO

To assess the relationship between voter participation and rule of law in Kosovo, several aspects shall be taken into consideration. They include whether the electoral system impacts upon a final voter turnout, the time of the year when elections take place, how often Kosovo holds elections, and most importantly what are the conditions that the state of rule of law if

¹³⁰ Freedom House. (2013). *Freedom in the World 2013: Uzbekistan*. Retrieved 24 July 2014, from <http://www.freedomhouse.org/report/freedom-world/2013/uzbekistan#.U95Y0uOSwrU>

¹³¹ Election Guide. *Democracy Assistance and elections news. Uzbekistan country profile info*. <http://www.electionguide.org/countries/id/229/>

providing to its citizens, to guarantee that their right to vote will be exercised and their votes will not be abused.

In June 2014, Kosovo held its early national elections. The European Union has congratulated Kosovo voters for their participation at the early legislative election. The EU has assessed that these elections were a step forward in consolidation of Kosovo's democracy that will take forward the work on all the key challenges including economic reforms and efforts to improve the Rule of Law¹³².

Credibility of elections associates immediately with the credibility of the new established government. In terms of democratic legitimacy of the decisions taken afterwards, the low voter participation does have potential repercussion, but in terms of democratic representation it's hard to argue contrary. Therefore, perception of the legitimacy of the government goes hand in hand with the way elections were organized and the voter turnout. How is the state of the rule of law in Kosovo providing the citizens with the possibilities of an active citizenry and trustworthy election process, will be examined in the fact and evidence analysis. Whether voter participation can substantially and proportionally impact the strength of the rule of law will be examined as well.

5.1 Work hypothesis

The initial hypothesis is that there is a relationship between voter participation and the state of the rule of law in Kosovo. Voter participation proportionally impacts upon the strength

¹³² European Union. (9 June 2014). *Statement on the Kosovo legislative elections*. Brussels. Retrieved 25 July 2014, from http://www.eu-un.europa.eu/articles/en/article_15118_en.htm

of the rule of law. Conversely, weak rule of law causes or fosters low voter turnout. The relationship between voter participation and the state of the rule of law in Kosovo appears direct. I will examine it to determine the extent it affects the state of rule of law. The working hypothesis will be subjected to additional questions: How does community participation relate to building strong democratic values in a state of rule of law? From a general perspective, Robert Putnam argues that declining electoral participation is merely the most visible symptom of a broader disengagement from community life. Like a fever, electoral abstention is even more important as a sign of deeper trouble in the body politic than as a malady itself.¹³³

According to this analytical concept, which was additionally developed by Russel Dalton, democratic processes are meaningless unless citizens participate in the deliberation of public policy, and their choices structure government action. Usually this presumes participation in free and fair elections that select government officials, but the range of political participation can be, and should be, much broader. Hence, the norm of political participation should be an essential element of democratic citizenship¹³⁴.

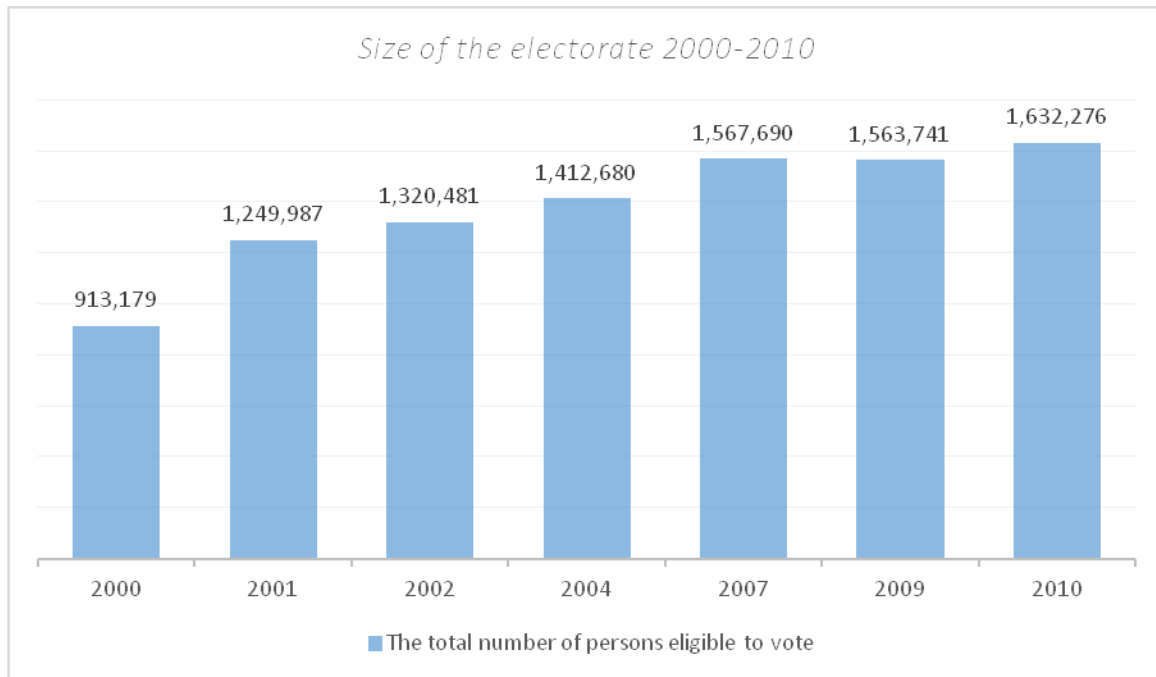
5.2 Evidence

The evidence supports a proportional relationship between the voter turnout and the state of rule of law. The evidence also shows major issues with regard to determining the correct dimensions of the electorate.

¹³³ Putnam, R. (2000). *Bowling Alone*. New York, Simon & Schuster.

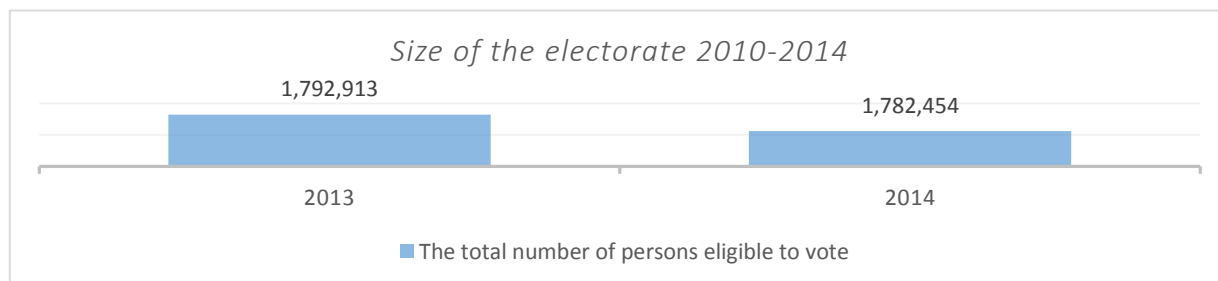
¹³⁴ Dalton, R. (2008) Citizenship Norms and the Expansion of Political Participation. *Political Studies*. Vol 56, 76–98. Political Studies Association.

Figure 6. Source: Institute Democracy for Development, *Deconstructing Election trends 2000-2010, Prishtina, September 2011*



Trends appearing from 2000-2014 show a dramatic increase of the eligible electorate, almost a double of it, which indicates that deceased individuals remain part of the electoral voting lists. It is noticeable a slight effort to cleaning the lists in 2009, even though that is not enough to have the system function accordingly.

Figure 7. Source: Central Election Commission of Kosovo



Findings of a report from the Institute Democracy for Development show that in 2010 the electorate was 75.6% larger than the one of 2000 elections. However, this does not correctly represent the number of eligible voters due to the fact that many deceased persons persistently appear in the voters list¹³⁵.

Table 1. Source: Institute Development for Democracy: Deconstructing Election Trends 2000-2010

Development of Electorate over the years		
2001 - 2000	336,8080	Registration of Diaspora and part of the Serb Community
2002 - 2001	70,494	
2003 - 2002	46,099	New registered voters with very little clean-up of deceased (the number of the deceased is accumulated
2004 - 2003	46,099	
2005 - 2004	51,670	

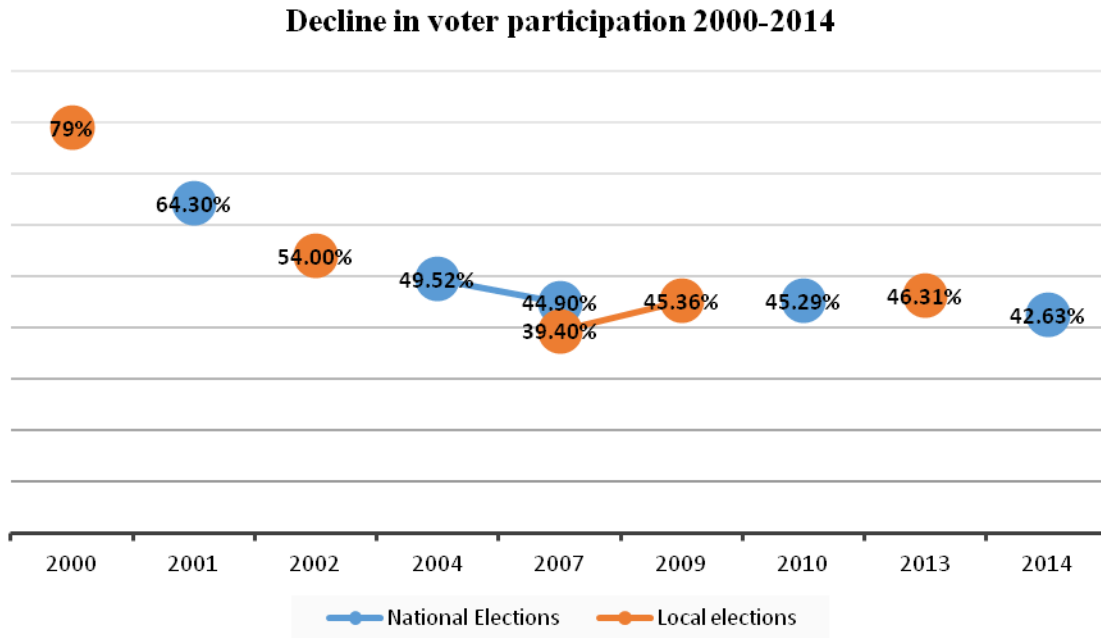
¹³⁵ Institute Democracy for Development. (September 2011). *Deconstructing Election Trends 2000-2010*. Prishtina. Retrieved 18 July 2014, from <http://d4d-ks.org/assets/2012/09/2011-09-22-Election-Deconstructing-Election-Trends-2000-2010.pdf>

2006 - 2005	51,670	over time, as the clean-up does not update the municipal civil registry)
2007 - 2006	51,670	
2008 - 2007	-1,975	Removal of the deceased in some municipalities
2009 - 2008	-1,975	
2010 - 2009	68,535	New Registered voters without clean-up of the deceased

The International Foundation for Electoral Systems (IFES) has measured an average voter turnout in Kosovo until 2010 to be 46.14%¹³⁶. Considering that the last two elections we measured with an average turnout of 44, 31 % for both (2013 election 46, 31 %, 2014 elections 42, 63%) shows a decrease of about 2% from this last measurement. 2007 marks the time when the major voter decline occurs, and that is still before the independence declaration.

¹³⁶ Election Guide. *Democracy Assistance and elections news. Kosovo country profile info*, Voter turnout data. <http://www.electionguide.org/countries/id/253/>

Figure 8. Source: Kosovo Central Election Commission. General Statistics



Factors that may have affected the turnout relate to the legitimacy and integrity of elections. The European Commission in their progress report for Kosovo 2013, emphasize the need for Kosovo to finalize the electoral reform process that was launched in 2011. It needs to ensure that the legal framework for elections better reflects best practice in the EU and that implementation is in line with international standards.¹³⁷ What's more important, this report highlights the very limited progress with regard to closing the court cases involving fraud during the national elections of 2010.¹³⁸

¹³⁷ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

¹³⁸ Ibid.

With the purpose of evaluating incremental relationship of the credibility and legitimacy of the elections with the state of rule of law in Kosovo, important observations are noted in an audit report by the European Court of Auditors. This audit found that the European Union assistance to Kosovo in the field of the rule of law has not been sufficiently effective. Moreover, the overall progress in improving the rule of law is slow, particularly with regard to the fight against organized crime and corruption, above all in the north of Kosovo¹³⁹. Very often rule of law has been seen as a mission impossible in Kosovo. However, generally the societal expectations for a successful fight against corruption and organized crime have been rising, especially following the spectacular raids and initiation of investigations by EULEX. The results in this aspect, however, have been minimal. By October 2010, the EULEX mission delivered verdicts only in 3 cases of organized crime and 4 cases of corruption.¹⁴⁰

In terms of government responsiveness towards enhancement of the rule of law, USAID assessed that poor government performance, such as delayed justice, local corruption, poor municipal services, and abusive police affects communities and statehood.¹⁴¹ In addition, USAID assesses that future assistance should capacitate Kosovo to run elections without any assistance, which in spite of several attempts in the past, has not yet been achieved.

¹³⁹ European Court of Auditors. (2012). *European Union assistance to Kosovo related to the rule of law*. Special Report No 18. Retrieved 15 July 2014, from <http://bookshop.europa.eu/en/european-union-assistance-to-kosovo-related-to-the-rule-of-law-pbQJAB12017/>

¹⁴⁰ Qosaj-Mustafa, A. (November 2010) *Strengthening the rule of law: the fight against corruption and organized crime*". KIPRED, Prishtina Retrieved 20 June 2014, from http://www.kipred.org/advCms/documents/40064_RoL_fight_against_corruption.pdf

¹⁴¹ USAID. (2012). *Kosovo Conflict Assessment: Breaking Down Invisible Walls*. Retrieved 24 May 2014, from http://pdf.usaid.gov/pdf_docs/pnaec930.pdf

5.2.1 Analysis of the evidence and conclusion

Evidence shows a strong connection between the state of rule of law, the overall organization of elections, and voter participation in Kosovo. Voter registration is crucial in the democratic context for political participation¹⁴². A municipal civil registry that has not been updated directly affects the final voter turnout. Inaccurate data, and an increase of the electorate due voting lists that have not been cleaned up, have contributed to what is seen as a decline in the voter turnout.

However, a clear definition of a voter turnout is difficult. A correct definition may be that ‘turnout’ is the absolute number of people voting in the election or is the share of the population that has cast its vote. But is this definition complete? The way Benny Geys illustrates it is that when ‘turnout’ is defined as a share of ‘the population’, a clear operationalization of this population variable is also needed. Whether a ratio of the number of voters to the entire population was taken, to the population of voting age, to the eligible population or to the number of people registered to vote?¹⁴³ Geys believes this affects the size turnout rates and thus, it may also affect the estimation results.

Consequently, the delay of the electoral reform was spotted as a failure of the government also at the Freedom House 2014¹⁴⁴ report giving Kosovo a rating of 4,75. Nonetheless, due to free and largely peaceful local elections in 2013, Kosovo’s rating for electoral process improved from 5.00 to 4.75, based on a scale of 1 to 7, with 1 representing the

¹⁴² López Pintor, R. et al. (2020) *Voter Registration and Inclusive Democracy: Analyzing Registration Practices Worldwide*. IDEA.

¹⁴³ Geys, B. (2005) *Explaining voter turnout: A review of aggregate-level research*. Electoral studies, Elsevier. Retrieved 24 May 2014, from

http://www.wzb.eu/sites/default/files/personen/geys.benny.328/electoral_studies_25_4.pdf

¹⁴⁴ Freedom House. (2014). Nations in Transit 2014: Kosovo. <http://www.freedomhouse.org/report/nations-transit/2014/kosovo#.U91pl-OSwrU>

highest level of democratic progress and 7 the lowest. The country has not yet managed to reach an agreement, and the reform is still to be discussed in the parliament. In addition, according to experts consulted by Transparency International within the framework of this answer, the electoral reform is unlikely to be substantial as key issues such as the creation of districts, and the establishment of direct presidential election are no longer being discussed¹⁴⁵. Facts show a top remaining challenge for Kosovo is the ability to organize free and fair elections that would contribute to advancement of the rule of law¹⁴⁶. This in turn might contribute to a higher voter turnout. A higher accountability of the elected officials towards their constituency would establish a more tangible relationship between the vote cast and the elected official. The stronger the accountability of the elected officials, the higher the voter participation. But the only way to establish a working relationship in this respect would be a strong rule of law.

5.3 Perceptions on the legitimacy of the institutions

Why citizens' perception on the legitimacy of institutions and the rule of law is of a significance importance? Pim Albers pointed out four conditions to be met for an adequate level of rule of law in a country. Albers argues that the first one is related to the judiciary. For a high level of rule of law there must be an independent and impartial judiciary. Secondly, rule of law needs a certain level of access to justice and the availability of some form of legal aid. Thirdly, it is important that citizens have some basic knowledge of the law. The last condition for rule of law described by the author is the necessity of freedom of speech, free press and freedom of

¹⁴⁵ Martini, M. (2014) *Kosovo: Overview of Political Corruption*. Transparency International. Retrieved 7 May 2014, from http://www.transparency.org/files/content/corruptionqas/Kosovo_Overview_of_political_corruption_2014.pdf

¹⁴⁶ European Commission. (30 May 2012). *Conclusions: Structured Dialogue on the Rule of Law with Kosovo*. Brussels. Retrieved 15 July 2014, from http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120530_rol_d_conclussions_30_may.pdf

assembly¹⁴⁷. Malone gives a deeper appreciation for the perception of the citizens, as according to him to understand citizens attitudes toward the law, not just the historical and contemporary context of the country shall be examined, but citizens' perception of that context as well¹⁴⁸.

As citizens understanding about the law and legitimacy of the institutions is critical, in Kosovo the general level of public awareness regarding the work of independent institutions is poor and access to information is limited. While there is also insufficient political support for the work of independent institutions results in diminished legitimacy and poor responsiveness by the executive.¹⁴⁹

There is a perception of an unchangeable local-international partnership in Kosovo, which directly affects on the general perception towards the legitimacy of the institutions and the national leadership, deriving from the national elections¹⁵⁰. This theory has been addressed in a policy brief of KIPRED which stresses the mishandling of election fraud to have led to people's diminished trust on the value of elections as a tool to bring about change. The international supervisor's inaction towards such breach of human rights during the elections, has also contributed to the creation of a public perception that there is a strong partnership between the illegitimate local political elite in power and the international stakeholders¹⁵¹.

There seems to be a big gap towards the confidence for institutions within the Kosovo population. Majorities of Kosovar Albanians and non - Serb minorities have a great deal/fair

¹⁴⁷ Albers, P. (2007) *How to measure the rule of law: a comparison of three studies*. Council of Europe. Retrieved 20 May 2014, from <http://www.coe.int/t/dghl/cooperation/cepej/events/onenparle/Albers251007.pdf>

¹⁴⁸ Malone, M. (2012) *The Rule of Law In Central America: Citizens' Reactions to Crime and Punishment*. Continuum International Publishing Group, New York.

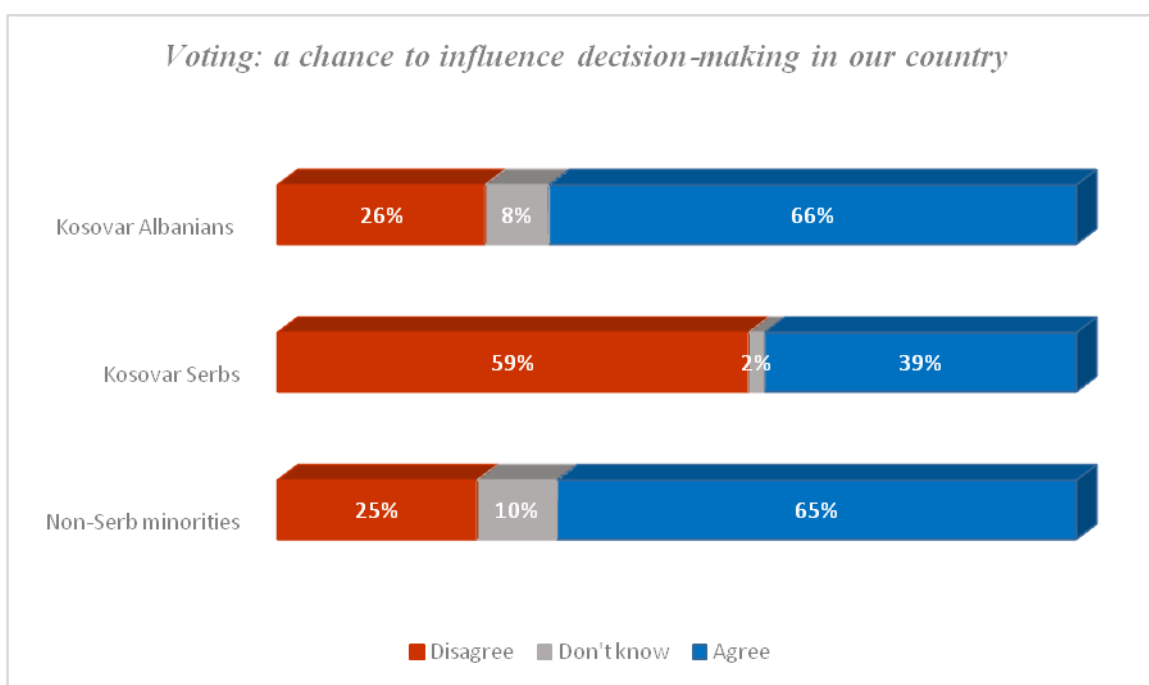
¹⁴⁹ OSCE Mission in Kosovo. (2012). *The State of Independent Institutions in Kosovo*. Retrieved 5 May 2014, from <http://www.osce.org/kosovo/92050?download=true>

¹⁵⁰ Deda, I and Kursani, Sh. (2012) *The unsupervised state: Internally divided, internationally half-legitimate*. KIPRED. Retrieved 21 May 2014, from http://pdf.usaid.gov/pdf_docs/pnaec930.pdf

¹⁵¹ OSCE Mission in Kosovo. (2012). *The State of Independent Institutions in Kosovo*. Retrieved 5 May 2014, from <http://www.osce.org/kosovo/92050?download=true>

amount of confidence in the Kosovo Police Service (89% and 78%), the media in Kosovo (80% and 57%), the municipal assemblies (68% and 67%), and the Kosovo Assembly (59% and 55%, respectively). While Most Kosovo Serbs do not have very much/no confidence at all in the Kosovo Assembly (98%), the courts in Kosovo (89%), The European Union Rule of Law Mission in Kosovo (EULEX) (88%)¹⁵². While for influencing decision making through voting in Kosovo, again, there is a big gap towards the general perception that voting is a powerful mean to achieve that¹⁵³.

Figure 9. Source: USAID, IFES. Post-election Public Opinion in Kosovo, January 2010



¹⁵² USAID. (January 2010). *Post-election Public Opinion in Kosovo*. Findings from an IFES January 2010 Survey. Retrieved 7 May 2014, from http://www.ifes.org/~media/Files/Publications/Reports/2010/Post_Election_Public_Opinion_in_Kosovo_2010.pdf

¹⁵³ OSCE Mission in Kosovo. (2012). *The State of Independent Institutions in Kosovo*. Retrieved 5 May 2014, from <http://www.osce.org/kosovo/92050?download=true> OSCE Mission in Kosovo. (2012). *The State of Independent Institutions in Kosovo*. Retrieved 5 May 2014, from <http://www.osce.org/kosovo/92050?download=true>

A more recent poll finds it very problematic that around 41% of the citizens feel that Kosovo Parliament does not mirror the society (with 27% feeling very strong about this). The share of the citizens who feel that the Parliament does not represent them is significantly higher than those who believe the opposite (17% of the citizens fully agree that the Parliament mirrors the society, whereas 13% of them partially or somewhat agree about this)¹⁵⁴.

5.4 The impact of corruption on the voter turnout

Reports show clearly that corruption has an impact on political and democratic life. Corruption erodes the trust of the citizens in elections and their ability to produce responsive and transparent institutions. Corruption can make citizens skeptical of not only those officials who engage in corruption, but of most or all public officials, whether or not they are guilty¹⁵⁵. In addition, this may cause a direct effect with citizens to stop considering elections as instrument of democracy that are worth their time and effort¹⁵⁶.

Notwithstanding, there are two contradictory views that respectively see corruption as a mobilizing agent or a poison for citizens' participation in elections¹⁵⁷. First view is that candidates by offering selective incentives or bribes to special interests energize supporters, disparage opponents and win new voters. This view basically contends that voters are basically bought off to participate. While, the other view that perceives corruption as a strong mobilizing agent, has a decisively different explanation for why corruption in the public sector might

¹⁵⁴ Democracy for Development Institute. (2013). *Translation of Trust: Perception of representation and Participation*. Prishtina. Retrieved 24 May 2014, from http://d4d-ks.org/assets/D4D_Elections_6_ENG_WEB1.pdf

¹⁵⁵ Anderson, Ch. and Tverdova, Y. (2003). *Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies*. American Journal of Political Science. Vol. 47, No. 1. Pp. 91-109. Midwest Political Science Association.

¹⁵⁶ Powell, B. (2000). *Elections as Instruments of Democracy*. London: Yale University Press.

¹⁵⁷ Stockemer, D. et al. (April 2012). *Bribes and Ballots: The Impact of Corruption on Voter Turnout in Democracies*. International Political Science Review, 34(1) 74-90.

increase turnout. This point of view contends that citizens want clean and accountable governments. If they do not find transparency and effectiveness they might turn out in higher numbers¹⁵⁸.

Corruption remains one of the main challenges faced by Kosovo. The country ranked 111 out of 177 countries assessed in the Transparency International's 2013 Corruption Perceptions Index; with a score of 33 out of 100, its performance is the second worst among the Balkan countries, only better than Albania¹⁵⁹. The World Bank Worldwide Governance Indicators also confirm Kosovo's poor performance in the control of corruption at a percentile rank of 30.14 (from 0 to 100), showing no significant improvement since 2003 when the first assessment was conducted¹⁶⁰.

The offer of goods, favors and money to attract voters took place during the penultimate local and general elections: 10 per cent of voters were approached at local elections 2009 and another 12 per cent at 2007 general elections¹⁶¹. More ballots cast than people registered to vote at three polling stations in Kosovo is one of the election law breaches, to follow with a voting turnout in a polling station exceeding the 100% turnout. As a result in January 2011, Kosovo held repeat voting in certain municipalities following evidence of fraud during the December 2010 general elections.¹⁶²

¹⁵⁸ Ibid.

¹⁵⁹ Martini, M. (2014) Kosovo: *Overview of Political Corruption*. Transparency International. Retrieved 7 May 2014, from

http://www.transparency.org/files/content/corruptionqas/Kosovo_Overview_of_political_corruption_2014.pdf

¹⁶⁰ World Bank. (2013). *Governance indicators 2013*. Retrieved 24 July 2014, from

<http://databank.worldbank.org/data/databases/rule-of-law>

¹⁶¹ United Nations Office on Drugs and Crime. (2011). *Corruption in Kosovo: Bribery as experienced by the population*. Vienna. Retrieved 22 July 2014, from https://www.unodc.org/documents/data-and-analysis/statistics/corruption/CORRUPTION_KOSOVO_Population.pdf

¹⁶² Freedom House. (2010). *Freedom in the World 2010: Kosovo*. Retrieved 24 May 2014, from

http://www.freedomhouse.org/report/freedom-world/2010/kosovo#.U91_jOOSwrU

According to Stockemer et al, corruption has an impact to voter turnout, which “implies very corrupt countries have 20 to 30 percentage points fewer citizens turning out at elections compared with countries with little corruption”.¹⁶³ Furthermore, corruption not only has an impact in the good governance and economic development, but it also prevents citizens’ participation at elections.

5.5 Electoral incentives on strengthening the rule of law

Elections, their administration and finally the turnout are essential to determining new legislatures, control governments’ decision and introduce new public policies. Given the importance and sensitivity of elections, incentives to motivating electors to cast their ballot “represent a product of electoral costs (in registering and voting), electoral choices (how many parties are listed on the ballot), electoral decisiveness (to what extent votes cast for each party determine the outcome for parliament and government), and perceptions of competitiveness of the election”.¹⁶⁴ Moreover, shall the voters encounter any restricted options, they will be less likely to participate in the election.¹⁶⁵

Reasonably, Alina Rocha Menocal argued that electoral system matter a lot as they alone can build incentives and can effect key areas of the governance. Besides, Menocal believes that electoral systems “shape calculations of politicians about policy choices, and they also provide different incentives to make narrow or more broad based appeals to the population, depending

¹⁶³ Stockemer, D. et al. (April 2012). *Bribes and Ballots: The Impact of Corruption on Voter Turnout in Democracies*. International Political Science Review, 34(1) 74-90.

¹⁶⁴ Norris, Pippa. (2003). *Do Institutions Matter? The Consequences of Electoral Reform for Political Participation*. Harvard University. Retrieved 20 June 2014, from http://www.hks.harvard.edu/fs/pnorris/Acrobat/Just_Crigler%20chapter.pdf

¹⁶⁵ *ibid*

among other things on whether the electoral system encourages the proliferation of political parties or not.”¹⁶⁶

Voter participation, is more likely to increase when the final outcome of the elections has more chances to make significant changes for the future of the municipality, or the country. Most often if a voter is aware that their candidate has no chances to be elected for office, what could potentially motivate them to vote? What happens in some electoral systems these “wasted votes” can count to the final substantial proportion of the total national vote. ¹⁶⁷

VI. CONCLUSIONS AND RECOMMENDATIONS TO ENHANCE CAPACITIES OF THE SYSTEM

Indisputably, a final conclusion is that voting is the most widespread form of active political participation among democracies worldwide, as it is considered as the most common form of political activity, civic duty, and socioeconomic status. With a credible election process the democracy can be realized, and the government can be held accountable for its actions. Shall there be accountability, there will be good governance and a state of rule of law.

The EU Office, together with its rule of law mission, the EULEX, plays the pivotal role in realizing the European agenda in Kosovo with the aim to promote Kosovo's approximation to the European Union. As a result, Kosovo urgently needs to finalize the electoral reform process that was launched in 2011. This ongoing process has kept the country ‘hostage’ and has prevented further democratic developments on its aspirations to join the big European family. Investing in

¹⁶⁶ Menocal, Alina Rocha. (2011). *Why electoral systems matter: an analysis of their incentives and effects on key areas of Governance*. Overseas Development Institute (ODI). Retrieved 27 July 2014, from <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7367.pdf>

¹⁶⁷ Institute for Democracy and Electoral Assistance – IDEA (2005). *Electoral System Design: The New International IDEA Handbook*. Retrieved 30 May, 2014, from http://www.idea.int/publications/esd/upload/Idea_ESD_full.pdf

the credibility of elections would enable growing a national identification and participation in the decision making. Kosovo needs to ensure that the legal framework for elections will reflect best practices of the European Union and also its implementation meets international standards¹⁶⁸. Therefore, maximizing this momentum for Kosovo to push forward the European agenda¹⁶⁹ through its national consensus-building mechanism¹⁷⁰, ought to be the focal priority of the newly government to be established soon.

Improving and enhancing the political culture to increase the representative democracy in Kosovo will be very challenging but not impossible. Creation of a stable electoral system and improving voting culture by reaffirmation of electoral incentives such as the electoral cost which deals in registering of the voters and the voting itself, electoral choices determining the parties listed on the ballot, and finally the electoral decisiveness which ascertains to what extent votes cast for each party determine the outcome for parliament and government. Once Kosovo has managed to establish a harmony between citizens and their government, it will be an indicator that local authorities are showing concrete preparedness for the European Integration.

After analysis of the following lead facts, these are the main recommendations that would be at the forefront to enhance the capacities of the system. Because an electoral justice system is a key instrument of the rule of law and the ultimate guarantee of compliance with the democratic principle of holding free, fair, and genuine elections¹⁷¹.

¹⁶⁸ European Commission. (12 November 2011). *Kosovo 2011 Progress Report*. Brussels. Retrieved 01 July 2014, from http://wbc-inco.net/object/document/10812/attach/ks_analytical_2012_en.pdf

¹⁶⁹ Ministry of European Integration. *The Task Force for European Integration*. Retrieved 29 July 2014, from <http://www.mei-ks.net/?page=2,211>

¹⁷⁰ Ibid.

¹⁷¹ UN Chronicle (2012). *Rule of Law and Democracy: Addressing the Gap Between Policies and Practices*. Retrieved 25 July 2014, from <http://unchronicle.un.org/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices/>

Recommendations

Passive voters or non-resident voters' Official data shows a number of 703,978 citizens living outside. A study conducted by Democracy for Development, showed that in the last national elections only 3,500 eligible Diaspora citizens on the voters list out of 300,000 to 400,000 voters for, were actually registered¹⁷². In this regard, some countries offer limited forms of dual nationality without extending too much by way of voting and parliamentary representation¹⁷³. As a result, their abstention always affects the final voter participation.

Voting lists are constantly poorly updated and late voters remain part of the lists, causing a big concern and ultimately affecting the voter turnout. Moreover, poorly administered and updated voting lists leave room for manipulation and election fraud.¹⁷⁴ Completion of the initiated process for civil registry of Kosovo which has been introduced to one central database for civil status data, merging the electronic data from the previous civil registry and civil status databases¹⁷⁵.

Annual update and estimate Kosovo population number to the census as it is foreseen with the Kosovo Agency of Statistics (ASK). Every year ASK will continue to evaluate the number of the population in the country context and municipal level, which simultaneously provides time

¹⁷² Freda, S. (June 2014). *Diaspora voting, it's harder than it looks. Kosovo 2.0*. Retrieved 29 June 2014, from <http://kosovotwopointzero.com/en/article/1235/diaspora-voting-its-harder-than-it-looks>

¹⁷³ Vertovec, Steven. (2005). *The Political Importance of Diasporas*. Migration Policy Institute. Retrieved 14 July 2014, from <http://www.migrationpolicy.org/article/political-importance-diasporas>

¹⁷⁴ European Union Election Expert Mission. (January 2011). *Final Report*. Retrieved 24 June 2014, from http://eeas.europa.eu/delegations/kosovo/documents/page_content/110125_report_eu_eem_kosovo_2010_en.pdf

¹⁷⁵ European Commission. (16 October 2013). *Progress Report for Kosovo 2013*. Retrieved 25 June 2014, from http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf

series of the demographic indicators on changes at the territorial level¹⁷⁶. Though, the last update was conducted in 2012¹⁷⁷, and Kosovo held two rounds of elections at both levels under these data (local elections 2013, national elections 2014).

Completion of the electoral reform that started in 2011, while Kosovo had an 18 month timeline for its completion.¹⁷⁸ The reform is yet to be completed with the formation of the new government. Also, repeated elections, recounts and delayed publication of results damage the credibility of the process and the legitimacy of the results.

¹⁷⁶ Agjencia e Statistikave e Kosovës. (April, 2013) *Vlerësim Popullsisë e Kosovës 2012*. Retrieved 6 May 2014, from <http://ask.rks-gov.net/>

¹⁷⁷ Ibid.

¹⁷⁸ Office of the Prime Minister of Kosovo. (06 April 2011). *Prime Minister Thaçi: We, the three leaders of our parties, PDK, LDK and AKR, have reached an agreement for a reformed Kosovo, a European Kosovo*. Retrieved 21 May 2014, from <http://www.kryeministri-ks.net/?page=2,9,1942>

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