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**IMPOSING AN ELECTORAL SYSTEM.**

**THE CASE OF KOSOVO**

By

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# IMPOSING AN ELECTORAL SYSTEM

## The case of Kosovo

### Introduction

After the election of the first provincial Assembly in Kosovo, a deadlock of three months affected the new elected institution, which was able to elect the President and the Government only at the beginning of March, after a difficult power sharing agreement was reached between the three main Albanian parties.

Whereas most of the analyses – such as the ones published by Radio Free Europe, International Crisis Group, UNMIK newsletter Focus Kosovo – blame the unrealistic expectations of Albanian leaders in general and of Rugova in particular, in my opinion the origin of the deadlock has to be found in the electoral system imposed by internationals. In this essay, I will analyse in detail, with the help of three tables that I realised elaborating OSCE data, the three main components of the electoral system: the formula chosen to allocate the 100 not reserved seats (paragraph 2), the 20 reserved seats (paragraph 3), and the gender quota (paragraph 4). The aim is to demonstrate how all these elements worked against the biggest Albanian parties and especially LDK. Eventually, I believe that this electoral system has contributed in a decisive way to generate the crisis that affected the new born institution.

### 1. The context

The United Nations Security Council Resolution (UNSCR) 1244 of 10 June 1999 authorises the “Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which [it] can enjoy substantial autonomy within the Federal Republic of Yugoslavia”.<sup>1</sup> The resolution specifies that main task of the international civil presence is “organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections”.<sup>2</sup> In the following agreements among the international organizations present in Kosovo, all electoral matters have been delegated to the Organization for Security and Cooperation in Europe (OSCE), under the overall responsibility of the Special Representative of Secretary-General (SRSG).

The first step in the foundation of this interim administration has been the establishment of municipal administrations and of the holding of local elections in October 2000. The second and more intricate step was the creation of a central authority. After complex consultations and negotiations, on 15 May 2001 SRSG Hans Haekkerup promulgated the “Constitutional Framework for Provisional Self-Government” (Constitutional Framework).<sup>3</sup> The Constitutional Framework establishes the main institutions that are going to take progressive government responsibilities until a final agreement about the final status of the province will be reached. The most important and the only direct-elected institutions is the Assembly, who, among other things, is in charge to elect the Presidency of the Assembly, the President of Kosovo, and the Government. The powers of all these bodies are quite limited and the SRSG retains a wide and intrusive authority.

The Assembly, whose mandate is of three years, is composed by 120 elected members, 20 of which are reserved for minorities (see paragraph 3). Previous electoral systems adopted in the province have not been taken into consideration, when the electoral system for the 100 not-set-aside seats has been chosen.<sup>4</sup> Neither the preference of the three main Albanian parties for a

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<sup>1</sup> UNSCR 1244, point 10.

<sup>2</sup> UNSCR 1244, point 11.c.

<sup>3</sup> UNMIK Regulation 2001/9.

<sup>4</sup> After the provincial parliament was dissolved, in 1992 Albanian parties decided to elect an alternative parliament and carried on semi-clandestine elections not recognized by Belgrade. The electoral system adopted in this occasion was a mixed member majoritarian (MMM). 100 seats were allocated in single constituencies with a first-past-the-post system and 42 additional ones were distributed proportionally to all the parties passing a 3% threshold. 13 seats were reserved to Serbian and Montenegrin parties, who did not participate to the polling and were left vacant. See:

direct representation in single districts has been considered by OSCE, which argued that, given the absence of up-to-date population data, such a system would be unfeasible. An alternative proposal of Albanian parties to create constituencies based on Kosovo's 30 municipalities has been rejected. Eventually, they were forced to accept the system put forward by OSCE, in order not to delay the elections.<sup>5</sup>

## 2. The not reserved seats

The electoral system finally agreed upon for the 100 not reserved seats is a pure proportional system, with the whole province considered as a single electoral district. There is no threshold and the electoral formula for the allocation of the seats is the pure Saint-Laguë system.

Beside the official explanation that single member constituencies were not feasible due to the absence of up-to-date data due to the movement of population, several factors determined the decision of OSCE to choose the pure proportional system. In fact, it is true that the voter lists were inadequate, but this was due to two different motives. First, the many flaws of the first process of civil and voter registration conducted between May and July 2000 by Joint Registration Task (JRT), a joint body composed by UN and OSCE staff. JRT was affected during its short existence by serious mismanagement and grave lack of coordination and consequently the lists suffered large number of technical problems and inaccuracies. Second, the registration campaign was boycotted by the Serbian and by the other minorities for security and political reasons. A new registration campaign was necessary before the vote for the Assembly could take place in November. Not knowing how many Serbs and Romas were going to register this time and where, the decision to adopt the proportional system appeared to be the most appropriate to guarantee a fair representation of such ethnic groups.

Generally speaking, the proportional system is universally considered the best one to deal with post-conflict situation, because it is inclusive, allows the majority of the voter to be represented in the parliament, favours the women and minorities candidates, and, making it very difficult for a single party to govern alone, pushes towards the creation of coalitions. However, there are different kinds of proportional system and the literature shows as different versions of it has been adopted in post-conflict situations, like in two large scale UN missions in Namibia (1989)<sup>6</sup> and in Cambodia (1992-93)<sup>7</sup>, and – without external intervention – in South Africa for the first democratic elections (1994)<sup>8</sup>. Ultimately, in the Spring 2001, East Timor, under the United Nations temporary administration, has adopted mixed member proportional (MMP) system without threshold. These examples show that there is not a standard system, but different variations are chosen according the local situation. In every formula there is a certain inevitable degree of disproportionality, often considered to be necessary in order to ensure the governability.

In Kosovo, the electoral system adopted to distribute the not reserved seats enforces the highest possible degree of proportionality. Indeed, the district magnitude is the maximum one, there is not threshold, and the Saint-Laguë is the most proportional allocation formula of seats.<sup>9</sup>

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Maliqi, 1998, p. 39. On 22 March 1998 the election were repeated in a very tense atmosphere and the smallest Albanian parties decided to boycott them. See: Loza, 1998, p. 31.

<sup>5</sup> ICG Balkan Report no. 120, 2001, p. 5.

<sup>6</sup> The adoption of the pure proportional representation system in Namibia was not straightforward as usually presented and at a certain point the UN Institute for Namibia advised all political parties to reject this system because it would excessively fractionalise the Constituent Assembly. Eventually, none of the chief mechanisms to reduce the number of the parties in the legislative body – as the threshold – was adopted. Reynolds, 1997.

<sup>7</sup> In Cambodia a closed party-list has been adopted. The allocation of seats is effected on the basis of the Hare electoral quotient and the remaining seats according to the greatest remainder formula.

<sup>8</sup> The country used a *de facto* single nationwide constituency for the conversion of votes into seats, and no threshold for representation was imposed. The Droop quota was used to apportion seats, and surplus seats were awarded by an adaptation of the largest remainder method. Reynolds and Reilly, 1997.

<sup>9</sup> This formula is very rarely used because favours the small parties in the allocation of the seats and produces 'too proportional' results. Farrell, 2001, p. 77.

All these three elements favour the small parties in the distribution of the 100 not set-aside seats, making it extremely easy to enter in the parliament with a small support, and push towards the fragmentation of the political spectrum in the Assembly.

In fact the system chosen is a province-wide version of the method previously used in municipal elections of October 2000, but with two important differences: it is a closed-list system, because it does not allow the voter to express a preference for the Municipal Assembly, and there are seats reserved for minorities.<sup>10</sup>

### 3. The reserved seats

The Constitutional Framework precisely defines how the twenty reserved seats for the additional representation of non-Albanian communities are going to be allocated (Art. 9.1.2 (b)). Ten of them are distributed to the Serbian community; four to the Roma, Ashkali and Egyptian communities; three to the Bosniak community; two to the Turkish and one to the Gorani community. The seats are distributed among all the candidates or the parties representing a single community according to the proportional system used to allocate the not set-aside seats.

Because of the maximum degree of proportionality in the allocation of the not set-aside seats, non-Albanian parties obtained 15 seats out of 100 (12 Serbs, 1 Gorani, 1 Turk, 1 Ashkali). Eventually as tab. 1 and tab. 2 demonstrate, without the additional seats only three small minority parties would be excluded from the representation in the Assembly. However, if this was the case, we can reasonably suppose that those parties would have formed alliances in order to improve their chances of getting into the provincial parliament.

What it is introduced here is a positive discrimination that implies a strong element of disproportionality in favour of the non-Albanian communities. How this positive discrimination works in practise is illustrated by tab. 2. As the index is showing, Koalicija Povatrak (KP) (+6.99%) and Vatan (+2.18%) are the biggest beneficiaries, while the two main Albanian parties LDK and PDK are deeply disadvantaged (-5.98% and -4.03% respectively), It is interesting to remark as the other Albanian parties do not appear to suffer in the same scale. On the contrary, the smallest of them still have a positive index.

**Table 1: Distribution of the not-set-aside seats**

Political party	Albanian Vote (%)	Votes (%)	Not-set aside seats	Diff. (%)
LDK	53.78%	45.65%	47	+1.35%
PDK	30.28%	25.70%	26	+0.30%
KP (Serbian party)	–	11.34%	12	+0.66%
AAK	9.22%	7.83%	8	+0.17%
VATAN (Gorani and B.)	–	1.15%	1	-0.15%
LKÇK	1.30%	1.11%	1	-0.11%
KDTP (Turkish party)	–	1.00%	1	0%
PSHDK	1.15%	0.98%	1	+0.02%
PD	0.67%	0.57%	1	+0.43%
LPK	0.66%	0.56%	1	+0.44%
IRDK (Roma, Ashk., E.)	–	0.50%	1	+0.50%
<b>Total</b>	–	96.39%	100	–
<b>Level of disproportionality<sup>11</sup></b>				<b>1.23</b>
<b>Effective number of parliamentarian parties<sup>12</sup></b>				<b>3.23</b>

<sup>10</sup> UNMIK Regulation 2000/39.

<sup>11</sup> The Gallagher (least squares) index of disproportionality is derived as follows: square the vote-seat differences for each party (ignoring ‘others’); sum the results; divide the total by two; take the square root. This index makes comparable different electoral systems, measuring their disproportionality. The higher is the figure, the greater is the disproportionality. Farrell, 2001, pp. 153-74.

<sup>12</sup> The Laakso/Taagepera index of effective number of parties is based on the number of parties and their sizes. The index is derived as follow: one divided by the sum of the square percentage seats for each party represented in the parliament. Ibid., p. 159.

**Table 2: Combined distribution of the seats**

Political party	Votes (%)	Not set-aside seats	Set-aside seats	Total seats	Seats (%)	Diff. (%)
LDK	45.65%	47	–	47	39.67%	-5.98%
PDK	25.70%	26	–	26	21.67%	-4.03%
KP (Serbian party)	11.34%	12	10	22	18.33%	+6.99%
AAK	7.83%	8	–	8	6.67%	-1.16%
VATAN (Gorani and B.)	1.15%	1	3	4	3.33%	+2.18%
KDTP (Turkish party)	1.00%	1	2	3	2.50%	+1.50%
IRDK (Roma, Ashk., E.)	0.50%	1	1	2	1.67%	+1.17%
PDASHK (Ashkali)	0.43%	0	2	2	1.67%	+1.24%
LKÇK	1.11%	1	–	1	0.83%	-0.28%
PSHDK	0.98%	1	–	1	0.83%	-0.15%
PD	0.57%	1	–	1	0.83%	+0.26%
LPK	0.56%	1	–	1	0.83%	+0.27%
BSDAK (Bosniak party)	0.37%	0	1	1	0.83%	+0.46%
PREBK (Roma party)	0.34%	0	1	1	0.83%	+0.49%
<b>Total</b>	<b>97.53%</b>	<b>100</b>	<b>20</b>	<b>120</b>	<b>100%</b>	<b>–</b>
<b>Level of disproportionality</b>						<b>7.51</b>
<b>Effective number of parliamentarian parties</b>						<b>4.08</b>

Why this element of disproportionality has been introduced is easy to understand. It has been considered as a necessary tool to reassure the non-Albanian communities – and particularly the Serbian one – that their presence was not going to be symbolic, but substantial. As a combined result, KP has 22 seats (18.33% of the seats), which gives this political force a decisive weight in the Assembly. So far, however, the overrepresentation of the Serbian community has failed to show the maximum effect. Had Serbs voted massively, they would have achieved easily 25 seats (20.83% of the seats), strengthening further their contractual power in the parliament.

In this situation an Albanian party to govern alone needs to get one seat more than one half of the Assembly, or 61 out of 120 seats. This means that it needs to get a support of around 59% of the Albanian votes in order to have a tiny majority in the legislature. In the same way, it becomes almost impossible to achieve the qualified majority of two-thirds of the members (80 seats), which is requested by the Constitutional Framework in two cases: the election of the President of Kosovo in the first two rounds (Art. 9.2.8) and the proposal to SRS of any amendment of the Constitutional Framework (Art. 14.3). In practical terms this means not only

that a coalition is the most likely outcome of the election, but that this coalition must be a broad one.

In my opinion, the reserved seats, created as a device to include all the communities in the administration of the province, are not going to ease the ethnic confrontation, but they exasperate the fragmentation of the legislature and ultimately contribute towards freezing the political discourse according to ethnic lines.

#### **4. The gender quota**

The latest component of the electoral law is the one that has most captured the attention of the press and of foreign analysts: the gender quota. Interestingly enough, the quota system is not spelled out clearly in the Constitutional Framework that in Art. 9.1.3 (e) states “geographical and gender requirements [...] for the purpose of the elections to the Assembly may be specified by the SRSG on the recommendation of the Central Election Commission”. Keeping in mind that all other aspects of the electoral system are thoroughly ruled by the regulation, we can imagine that this point was particularly thorny and that electoral engineers chose to enforce it at a later – and more discrete – time.

Eventually, the formula adopted has been the same as the one previously chosen for the municipal election in October 2000. On this occasion, every party list “shall include at least thirty percent of female candidates in the first fifteen candidates. Within the first fifteen candidates on each candidates’ list, at least one female shall be placed among the first three candidates, and at least one female shall be placed in each full set of three candidates thereafter. This rule shall not apply to those lists comprised of less than three candidates” (Art. 4.2).<sup>13</sup> The main difference between the Municipal system and the central one is that in the former the list is open and that the voter can express one preference. In that instance, the unexpected outcome was that voters massively expressed preference in favour of male candidates. In such way, all the female candidates systematically were demoted in the list and only a small percentage of them was elected. This phenomenon is not new or confined to patriarchal societies, as the case of Norway demonstrated,<sup>14</sup> but its scale took internationalists by surprise. Therefore, the will of United Nations and OSCE to increase the representation of female candidates to a target of 30% has been the main reason to adopt the closed list versus the open list system.

What is the origin of this gender policy through electoral law? According to Htun, “the major factor driving the quota trend is pressure from the organized women’s movement, which gained visibility and legitimacy in the process surrounding the United Nations’ Fourth World Conference on Women in Beijing” in 1995.<sup>15</sup> This pressure gained momentum in the following years and different quota systems have been adopted in South America, among whom the most efficient is the Argentinean.<sup>16</sup>

However, in Kosovo the gender quota has not been spontaneously adopted after a debate involving political parties, local organizations, and citizens, but it is external forces which have imposed it with little consideration of the local opinion. It is relevant here to mention that a few weeks before the head of the United Nations Transitional Administration in East Timor, Mr. Viera de Mello, proposed to National Council the introduction of a gender quota aimed to achieve the target of 30% of members in the Constituent Assembly. East Timorese leaders rejected the UN proposal in March 2001, but accepted to field a consistent number of female candidates. The outcome of August 2001 elections was remarkable and 24 members out of 88 are female (27.27%).

Understandably, the enforcement of the quota system has provoked strong criticism from Kosovar male politicians and women’s group alike. They accused United Nations and OSCE of

<sup>13</sup> UNMIK Regulation 2000/39 is valid only for one year (section 8). This means that a new regulation has to enter into force before next local election in the autumn.

<sup>14</sup> Since the preference has been introduced in Norway, the percentage of women elected has dropped consistently. See on this point “The Effect of Electoral Systems on Women’s representation” on IDEA website.

<sup>15</sup> Htun, 1998.

<sup>16</sup> Jones, 1999.

hypocrisy as they imposed rules that exist in few Western countries.<sup>17</sup> Similar reactions have been generated abroad.<sup>18</sup> One of the most stringent critics is that quantity does not necessarily imply quality, and that the female candidates selected in such way may be unqualified pawns in the political game, or they may be marginalized by their male colleagues because of their imposed inclusion in the lists.<sup>19</sup> Furthermore, if gender quota is introduced to mirror better the society, the logical consequence is that other quotas must be introduced to represent adequately other categories such as disabled, young, and old people.

For the purpose of this essay, it is interesting to see how the system works in practise. As was easy to forecast, all the parties indistinctively have implemented the rule at the minimal level allowed.<sup>20</sup> For this reasons, of 14 parties represented in the Assembly, only the biggest six have female candidates (tab. 3). If we consider that out of these six, three of them are minority parties which largely benefited from the reserved seats, it is evident that the burden of the quota is mainly upon the shoulders of the three biggest Albanian parties, especially – once again – LDK and PDK. Keeping this in mind, it is very likely that in the future male candidates excluded by the leaderships of those parties in order to make room for female candidates will be tempted to run as independent or will create bogus lists, increasing the fragmentation of the Assembly.

**Table 3: Female members of the Assembly by party**

Political party	Votes (%)	Seats	Women	Women (%)
LDK	45.65%	47	15	31.91%
PDK	25.70%	26	8	30.77%
KP (Serbian party)	11.34%	22	7	31.82%
AAK	7.83%	8	2	25.00%
VATAN (Gorani and B.)	1.15%	4	1	25.00%
KDTP (Turkish party)	1.00%	3	1	33.33%
IRDK (Roma, Ashk., E.)	0.50%	2	0	0
PDASHK (Ashkali)	0.43%	2	0	0
LKÇK	1.11%	1	0	0
PSHDK	0.98%	1	0	0
PD	0.57%	1	0	0
LPK	0.56%	1	0	0
BSDAK (Bosniak party)	0.37%	1	0	0
PREBK (Roma party)	0.34%	1	0	0
<b>Total</b>	<b>97.53%</b>	<b>120</b>	<b>34</b>	<b>28.33%</b>

Everything considered, if we compare this system with the municipal one, we will see that in order to enforce the quota, the voter choice has been minimized and s/he can no longer express her/his preference. This decision has been taken despite the fact that voters clearly demonstrated their understanding of the system and their inclination to express the preference.<sup>21</sup> With a closed-list, the opportunity to test the real strength of the candidates is not present

<sup>17</sup> Wood, 2001.

<sup>18</sup> McElroy, 2001.

<sup>19</sup> In order to investigate properly on the real impact of the female candidates in the Assembly, it is necessary that a comparative research based on the same method used by Cohen to analyse the impact of the *amateur delegate* in Yugoslavia in his excellent chapter on “Politics as an Avocation: Legislative Professionalization and Participation”. See: Cohen, 1983.

<sup>20</sup> Any vacancy must be filled by the next eligible person of the same gender. UNMIK Regulation, no. 2001/33, Art. 4.8.

<sup>21</sup> As demonstrated by the survey conducted by IFES, 2000.

anymore and the ranking is the outcome of non-transparent internal negotiations among party leaders.

## Conclusions

As has been demonstrated, all the components of the Assembly electoral system work jointly towards the fragmentation of the Kosovo party system and towards the creation of weak coalitions. If on one side it is highly positive that women and minorities are represented in a largely inclusive legislature, on the other side we must consider the negative aspects of the present system.

After the results of the municipal elections the year before, international electoral designers had a clear picture of the electoral strength of the different Albanian parties and deliberately created a system whose undeclared purpose is to avoid that – in a still unclear future of the province<sup>22</sup> – strong institutions with a wide popular support could act against the will of the international institutions and threatened the *status quo* of the protectorate.

It is evident that the system has been thought to avoid that LDK could govern alone. While in local election LDK got 57% of support in the province, few months later it was easy to predict that a similar result was impossible to be achieved again. First, because Serbs boycotted local elections, this was the outcome of a mainly Albanian vote. Second, after LDK started to govern alone most of the municipalities, the support of its electorate eroded. Once in power, its local leaders made the same mistakes, previously committed in by PDK. Namely, their administrations rapidly appear affected by clientele and by the same arrogance of their predecessors. To be fair, whichever Albanian party is administering Kosovar institutions must face unsolvable problems. Hence, the awful economic situation, the high rate of unemployment, and enormous structural problems are making the Albanian electorate impatient and irritable with their politicians. The lower Albanian turnout during the past elections can be partially explained in this way.

The outcome searched by electoral engineers was achieved, but it generated two important negative consequences. The first being is the deadlock that blocked the work of the Assembly from the December to end of February. The LDK leader, Rugova, despite he got 53.78% of the Albanian vote, not only was unable to govern alone, but had its possible options restricted to just three: a coalition with the Serbian KP plus other small parties, however, this was equivalent to a political suicide<sup>23</sup>; a large and weak coalition including all the Albanian parties excluding PDK, but this was unfeasible due to the opposition of AAK to participate without PDK; or a grand coalition with PDK and AAK. Due to the arch-rivalry of the two main Albanian parties and their leaderships, it is not surprising that a comprehensive agreement of sharing power took long time. Especially considering the vacuum of power generated by the sudden departure of the SRSG Hans Haekkerup and of the Head of OSCE mission Daan Everts.

In this situation, LDK had not incentives to speed up the negotiation with PDK, which could result in an agreement that was going to penalize more the party. On top of that, the very nature of the present institutions is still hollow and the real government is steady in international hands, so Rugova had not need to rush. The deep frustration of LDK leadership for the outcome generated by the electoral system might be a further element behind the lack of will to compromise demonstrated during this period.

The second negative consequence is the very nature of the grand coalition among the three Albanian parties. On one side, this freezes the polarization of the political discourse according ethnic lines, both contributing to the lack of differentiation and accountability among the main Albanian parties. On the other side, this unification of the position will accelerate the coming confrontation between the international administration and the Albanian majority, when

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<sup>22</sup> ICG Balkan Report no. 124, 2002.

<sup>23</sup> During the first session of the Assembly LDK voted together with KP in order to elect 5 members out of 7 of the Presidency, when PDK decided to boycott the procedure. For a very short period international observers deceived themselves thinking that this was the beginning of a coalition. Vinogradov, 2001.

the local elected representatives will act as a united front and will start to push for an effective government and not a hollow one.

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