

Supporting Democratization and Reconciliation Process in the Western Balkans

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Fraudulent electoral process: How to foster free, fair and transparent elections in the Western Balkans

Introduction

Regulations and rules for free and fair election processes are the central pillars of democracy and an integral part of the Copenhagen criteria for the EU membership of the Western Balkan countries. Elections are considered a symbol of democracy, i.e. the major factor in the stabilization and democratization of a country as well as an important part of a democratic political process. The Western Balkans Strategy requires free and fair elections and emphasizes the necessity of the proper implementation of the recommendations concerning the electoral reform. Free and fair elections are one of the basic criteria of democracy. Yet, if the electoral system is not transparent and tracks of corruption are found in the process itself, then it is infeasible to have free and fair elections since democracy based on such an election may be fraudulent itself. The electoral legislation of the Western Balkan countries (WB6) needs to be in line with the legislation of the European Union. The EU condition influences the improvement of the electoral process and urges local actors to fight corruption, support greater transparency, and respect the voice of people exercising the fundamental right free from intimidation and violence. All six countries in the region have to address the OSCE/ODIHR recommendations.

In recent years, a number of scandals have been linked to unfair electoral processes in those countries which aspire to join the EU in the foreseeable future. Therefore, this policy proposal focuses on the fulfilment of the prior recommendations of the OSCE/ODIHR and the irregularities of the electoral process in the six of the countries that are driving towards the European Union. Specifically, we compare the deviations from “normal”

democratic electoral processes in Albania, Bosnia and Herzegovina, Kosovo^{*1}, Montenegro, North Macedonia and Serbia.

The first part of the document addresses the issues related to political parties’ financing and non-transparent funds used for their electoral campaigns. Citizens of these countries show a growing concern about the improper influence of financial means and corrupt practices linked to political parties. In addition to corruption-related issues, organized crime is an issue connected to the financing of political activities as well. Therefore, this policy proposal looks at the following principles in each country: a sufficient balance between public and private funding; fair criteria for the distribution of state contributions to parties; strict rules concerning private donations; a threshold on parties’ expenditure linked to election campaigns; complete transparency of accounts; and the establishment of an independent audit authority and meaningful sanctions for parties and candidates who violate the rules.

In the empirical section, we summarize the most common irregularities and the strategies used by the local actors in the WB6 countries during the electoral process for the purpose of winning elections. The focus includes bribes, management of the election centre, loss of electricity when counting votes, inconsistent vote-counting, threats to the administration, false promises to the youth, buying the votes of citizens in the country, as well as, members of the diaspora, having multiple election agents in the voting centres, and family votes. Such irregularities accompany the issue of electoral violations and undermine the inclusion of the electorate.

The final part of this policy proposal provides

¹ This name does not prejudice the status of Kosovo and is in line with UN Resolution 1244 and the decision of the International Court of Justice on Kosovo’s declaration of independence.

recommendations to address the problems witnessed in each of the countries. These issues must be tackled as a matter of urgency to ensure free and fair elections, prevent the loss of citizens' interest in political life and enhance trust in the political system.

Electoral campaigns: funding transparency as a challenge

Citizens in the Western Balkans identify corruption as the third most burning issue in the region.² Despite some positive changes introduced in the legal framework, regulation and oversight of party and campaign finance stand to be further improved in line with previous OSCE/ODIHR recommendations. In particular, the absence of reporting before an election day, deadlines for the publication of financial reports, and a requirement for the Anti-Corruption Agency's (ACA) oversight leads to a conclusion that there is a lack of effective control over campaign finances.

Regarding Kosovo's 2019 elections, the European Commission stated that the legal framework governing campaign and political party financing remains in need of substantial amendments in line with Venice Commission guidance and the best international practice. The Commission described the campaign as vibrant and competitive, allowing contestants to campaign freely in most parts of Kosovo, except in the Kosovo-Serb areas where the campaign environment was marred by intimidation against non-Srpska Lista candidates and supporters.

Transparency of funding in Serbia remains one of the stumbling blocks for democratic elections. According to the Serbian law on political activities, providing one million dinars is the ultimate amount of money that legal entities are able to donate to political parties. This extremely high donation amount presents a window of opportunity for fraud. Since this overcomes the real expenditures of political campaigns, it becomes questionable where the money is really used.³ Undoubtedly, the funding serves to attract voters to vote for a certain party or a coalition.

Montenegro, like all the other Western Balkans countries, follows almost identical "patterns of competitive authoritarianism"⁴ that reflect the porous state of its electoral legislative, thus making it suitable for all kinds of cases of abuse and misuse within the system. At the beginning of 2019, Montenegro was affected by a nationwide corruption scandal suitably called the

„Envelope Affair," which, to this date, is missing a proper, lawful epilogue. This is the case even after the ruling party-state official was caught on tape whilst taking an unregistered financial contribution, alleged to be used for the 2016 parliamentary election campaign. The state official in question remains free of any charges while the party received a minor misdemeanour fine.⁵ In applicable Montenegrin laws, such misdemeanours are in the form of financial and/or administrative fines as these are not identified as a criminal offence. One may conclude that in some cases, the citizens of WB6 would deem it more appropriate for a party or an individual to pay the foreseen fine as it would be comparably lower than receiving an unlawful contribution.

Even with the Parliament of Montenegro enacting the new Law on Financing of Political Entities and Election Campaigns in 2019, which succeeded the Law of 2015, serious shortcomings remain. The new Law still reflects many issues that stand in the way of the democratization of the Western Balkans.⁶ These are also continuously highlighted by the European Commission and its country reports, and in particular by the international standard bodies such as OSCE/ODIHR, Venice Commission Guidelines, Election Observation Mission reports, and Council of Europe Group of States against Corruption (GRECO) evaluations.

In North Macedonia, according to the ODIHR Special Election Assessment Mission⁷ that was tasked to observe the early parliamentary elections held in July 2020, the legal aspects of campaign financing need additional harmonization to avoid inconsistencies. The agencies that monitor the financing of the campaigns lack capacity in terms of budgeting and human resources. Most candidates in the elections regarded the interim reporting framework as burdensome and not sufficiently clear. There was inconsistent observation of the reporting obligations by the candidates, which resulted in an insufficient degree of transparency.

Vote market

The electoral process in democratic systems implies several core principles, among which free voting is highly ranked. Free and fair voting ought to be liberated from any form of oppression that could jeopardize one's right to vote. Thus, every act of coercion directed toward voters to give their vote opposite to their will is regarded as electoral fraud and a violation of people's right. In recent years, that practice occurred in all Western Balkan

2 Regional Cooperation Council (2018). "Balkan Barometer 2018: Public Opinion Survey". See: <https://www.rcc.int/pubs/66/balkan-barometer-2018-public-opinion-survey>

3 Law on political activities funding in Serbia. See https://www.paragraf.rs/propisi/zakon_o_finansiranju_politickih_aktivnosti.html

4 Bieber, Florian (2018). "Patterns of competitive authoritarianism in the Western Balkans", East European Politics

5 Marović, Jovana, Marić, Boris (2019). "Elections in Montenegro: Stuck in an Envelope", Politikon Network

6 Dorian Jano and Jovana Marović, How to Foster the Rule of Law in the Western Balkans: 10 Notes to Decision-Makers, Institute for Democracy "Societas Civilis" – Skopje, 2019

7 OSCE, Republic of North Macedonia early parliamentary elections, 15 July 2020 ODIHR Election Special Assessment Mission Final Report (2020), https://www.osce.org/files/f/documents/b/e/465648_2.pdf, accessed 15 April 2021

countries and emerged into a problem called vote-buying or vote bribery. Due to its practice, it has become evident that democratic values are undermined, the rule of law disrespected, and human rights overlooked.

Political parties have expanded their scope of methods on how to approach voters. Electoral clientelism, i.e. promising resources and services in exchange for political support, has been noted throughout the Western Balkan region and represents a well-established method by which political actors approach voters.⁸ Post-communist Albania's elections have always been contested and marred by irregularities, including alleged vote-buying and manipulation of ballot counts. Recently, the German Newspaper "Bild" published several taped conversations of the ministers involved in buying votes. The OSCE and ODIHR reports show the pressure exerted on public administration employees to demonstrate their political preference. Family voting and people with disabilities were not allowed to vote alone in the polling stations. Despite the ad hoc committee work, vote-buying is still ever-present in Albania. The publication of the wiretaps scandal from Voice of America (VoA) in February 2019, related to the implication of high officials of the ruling Socialist Party (SP) in criminal activities and vote-buying, set in motion what later became a serious political crisis. On 30 June, municipal elections were held in Albania. The series of wiretaps published by the German newspaper Bild demonstrated the "extent of the vote-buying activity by the Socialist Party" in the 2017 elections.⁹ The leaked taped conversations implicated not only state officials – members of the parliament, ministers, and Prime Minister Edi Rama himself – but also some criminal groups.

The culmination of the scandal was marked by the decision of the opposition parties to relinquish their mandates in the parliament.¹⁰ Not only did this slow down many EU reforms, but a large part of Albanians felt unrepresented by the remaining members of the parliament. More importantly, the absence of the opposition remained until June, when the municipal elections took place. Consequently, "in 31 of the 61 municipalities, mayoral candidates ran unopposed,"¹¹ while in 60 municipalities out of 61 in the country, the Socialist Party majority established its rule.¹² Combined with very low participation in elections, with only 21% of citizens voting, the questions concerning the regime's legitimacy became relevant. The lack of a meaningful choice in the local elections has put democracy in Albania into question. Although the elections were disputed, they were recognized as valid.

In Serbia, during the election process, political parties receive a list of recipients of social aid from the local self-government, i.e. the most financially disadvantaged, unemployed citizens. These people are underprivileged to such an extent that small financial help may convince these citizens to vote for a particular candidate or to not cast their vote at all. This form of abuse is often identified as "voting slaves". In order to preserve their job, voters are frightened and vote as they are instructed. The most common method is a phone call, masked as a survey, which actually includes techniques of abuse for propaganda-related purposes (push poll). Since the most influential section of the electorate are the elderly, due to regularly high election turnout, there are letters sent to pension recipients during the election campaign. These have already caused some suspicion due to potential misuse of public resources as well as of citizens' personal data.

The above-mentioned phenomenon indicates that, instead of regular democratic elections, peculiar "exchange of votes" often emerges. Elections suddenly transform into a competition where the winner that is more skilled at buying votes, is the one with links to the state budget and who emptied it in order to corrupt the voters. The recommendations are presented as a result of malpractice and non-democratic actions which were conducted during the recent elections. Electoral legislation ought to be more precise with explicit punishments for breaking the electoral law with suitable data protection rules in place in order to prevent the misuse of voters' data. Vote-buying and other types of electoral handouts are considered morally and ethically problematic, and so the act of breaking these laws should be punishable.

International election observers have repeatedly reported instances of vote-buying in Albania. Notably, the cases of Prosecution files 339/2017 (in Shijak, Albania) and 184/2016 (in Dibër, Albania) have gained international media exposure, in which senior party officials (including ministers, mayors and MPs) are suspected to have been involved in electoral fraud. As the aforementioned cases have not reached court or led to an arrest of the perpetrators yet, the citizens are concerned about Albania's breach of its rule of law commitments.

The Commission's 2020 report on Albania highlighted the importance of a swift and transparent investigation of alleged electoral violations but did not address the issue of vote-buying.¹³ Pursuant to the March 2020 Council Conclusions, the initiation of proceedings against those accused of vote-buying is one of the issues to be reflected

8 CRTA, Izbori 2020 - Izveštaj dugoročnih posmatrača, Beograd, 2020

9 G. Erebara, 'Albania Opposition MPs to Quit 'Mafia' Parliament, BalkanInsight, (2019), <https://balkaninsight.com/2019/02/18/albania-main-opposition-party-gives-up-its-parliamentary-seats/>, accessed 15 March 2021.

10 G. Erebara, 'Albania Opposition MPs to Quit 'Mafia' Parliament, BalkanInsight, (2019), <https://balkaninsight.com/2019/02/18/albania-main-opposition-party-gives-up-its-parliamentary-seats/>, accessed 15 March 2021.

11 OSCE, Republic of Albania local elections, 30 June 2019 ODIHR Election Observation Mission Final Report (Rep.), (2019), https://www.osce.org/files/f/documents/1/f/429230_0.pdf, accessed 15 March 2021.

12 U.S. Embassy in Albania. See: <https://al.usembassy.gov/our-relationship/official-reports/>

13 Albania 2020 Report. European Commission. See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

in the negotiating framework for accession negotiations with Albania.¹⁴

Furthermore, the General Affairs Council conclusions of March 2020 stated that the “negotiating framework will be adopted by the Council and has to reflect that Albania has successfully addressed all five key priorities such as the [...] initiation of proceedings against those accused of vote-buying” and the “initiation of proceedings and completion of first proceedings against high-ranking public officials and politicians.”¹⁵

Euronews Albania television reported that Albania’s 2021 parliamentary election season began amid violence and recriminations. Violence marred the already turbulent pre-electoral atmosphere after a shooting on Wednesday, 21 April 2021, in the city of Elbasan, which left one person dead and four injured. A day after, another instance of suspicion of vote-buying took place in Diber city. Similarly, the Prosecution started criminal proceedings against two persons after 500,000 leaflets and lists of names of voters were found in their car. Such actions jeopardize democratic practices in a country that is waiting to enter the EU bloc. Therefore, it is of high importance to provide stricter rules and harsher penalties for the perpetrators of vote-buying.

In Montenegro, like in other countries, the practice of vote-buying before elections is also present. In reports to the Prosecutor’s Office, some activists of the longest-ruling Democratic Party of Socialists, while having been accused of this practice, received only minimal sanctions.¹⁶ In Montenegro, the Criminal Law recognizes sanctions for criminal offences against voting rights which include impairing the right to vote, illegally influencing voters, and offering gifts and promises as bribes. Any form of a violation of these provisions may result in financial fines or custodial sentences ranging from three months to five years.

In North Macedonia, according to the OSCE/ODIHR¹⁷, consistent structural issues related to the voter register remain an issue. This entails a lack of standardization of data, absent harmonization and interoperability across institutions as well as unclear voter registration procedures.

Recommendations

1. The law should include specific provisions and sanctions that prohibit misuse of administrative resources for electoral gain;
2. Political entities should be obliged to keep all records and supporting documents such as invoices, receipts and banking statements for a time period longer than the current statutes of limitation;
3. Laws on the financing of the political parties should contain a broad and all-inclusive set of categories to make sure that all relevant categories of income and spending are reported;
4. Sanctions for political finance violations should include criminal sanctions in cases of significant violations, imposed against the party members who are responsible for the violation;
5. Greater transparency regarding the allocation of party funding for candidates should be sought in order to ensure that women are not disadvantaged within party lists.

14 Council of the European Union. See <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>

15 European Parliament, “Vote buying in Albania”, 2020. See: https://www.europarl.europa.eu/doceo/document/E-9-2020-006292_EN.html?fbclid=IwAR0FzJFT8mbbAWB8o9rQUfSSqz9xRqWR48oQdvxNA7QPmEyU7CKXdtAQHq0

16 Radio Free Europe (2021). “Prosecution is investigating the prime minister of Montenegro for vote selling”. See: <https://www.slobodnaevropa.org/a/tu%C5%BEila%C5%A1tvo-istra%C5%BEuje-poziv-premijera-crne-gore-za-prodaju-glasova/31076358.html>

17 OSCE, Republic of North Macedonia early parliamentary elections, 15 July 2020 ODIHR Election Special Assessment Mission Final Report (2020), https://www.osce.org/files/f/documents/b/e/465648_2.pdf, accessed 15 April 2021