



Research Article

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Criminal Offenses against voting rights

Angelina Marleku-Ademi

“Don Bosco” School of Pristina, Kosovo

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Abstract

The right to choose as a political right dates back to the ancient times of humankind. The right to choose in its beginnings was in a narrow circle of people. It did not include the entire political, economic and social spectrum, but different groups, classes and interests. The saying can be that there were no real elections.

Even Kosovo, in the history of its political development, dates the right to universal and equal suffrage after the Second World War. However, those elections were never free and not even based on the will of citizens to be elected and to vote. The candidates for election were the favorites of the occupying and monist power. The monistic one-party system, as such, by itself could not offer even an approximate opportunity to hold free and democratic elections.

In fact, the right to free and democratic elections for the first time was sanctioned and implemented in the first elections for the Republic of Kosovo institutions (Constitutional Framework, 2001).

This paper aims to explore different aspects of the complex phenomenon of criminal offenses against voting rights, in order to raise the level of treatment of this phenomenon in Kosovo's society. The organization of free and democratic elections and their success is one of the key points of evaluation of new democracies, considering that free elections are the foundation of a democratic society. Conceiving that this process is related to the quality of life of the voter, to the perspective of society and the development of the country in general.

Keywords: Election, Democratic, Kosovo, Phenomenon, development, Justice.

1. Introduction

Until today, in criminal legislation and legal literature, we do not have any complete definition of the notion of criminal offenses against voting rights. This is because these criminal offenses in countries with developed democracies are either few or completely absent, as well as due to the fact that the authors of the criminal law in the scientific treatment of these criminal offenses have taken relatively little (Hajdari, 2015). A new and clearer definition of these criminal offenses has recently been made,

especially in the criminal codes of countries that have begun to deal with cases of violation, namely of violation of voting rights, as is the case with Kosovo (Salihu, 2014).

The violation of the right to run and vote based on the will of the individual with the right to vote, appears in every society where the application of the multi-party democratic system begins. Where there is a change in the value system, mainly after the changes from totalitarian systems to multi-party systems and in this period of change, democratic emancipation is missing.

In various cases, even in democratic societies with a multi-party system, a series of illegal actions are manifested during the election process. For this, the legislators have taken care to draft the Law on General Elections and on Local Elections, according to the specifics that characterize one and the other electoral process. In most of the democratic societies, such laws have had the right effect. Of course, if the preventive and sanctioning part of the law is respected and implemented, as it is necessary.

In order to have fair and legal elections, in addition to the implementation of the above-mentioned laws, they must be conducted according to international standards for elections where they must meet some basic, internationally recognized criteria and principles. They are universal principles and directives to promote authentic and democratic election processes. To be fair and transparent, the elections must respect the five basic rules: voting must be universal, equal, free, secret, and direct. All these principles together constitute the European electoral heritage.

Where the core of this European electoral heritage consists primarily of international norms. The convergence (comparison) of the legislations and practices of different countries contributes to the identification of common principles.

2. Criminal offenses against voting rights (general)

If we take a legal-criminal and historical view of criminal offenses against voting rights, as far as the history of these criminal offenses is concerned, we can say that the then legislation of the Autonomous Socialist Province of Kosovo was extremely clear and they were described punitive measures for the perpetrators of these criminal acts, but since at that time and in that system there were no democratic and multi-party elections where the voting process was accompanied by a formality and as such the voting process and election organization policies did not have importance because in that process the perpetrators of criminal offenses against voting rights were not the voters but the organizers of the elections themselves.

As in the past legislations, as well as in the current legal-criminal legislation, the legal consequences for perpetrators of criminal offenses against voting rights are extremely clearly conceived, although if we make a comparison with the legislations of states with consolidated democracies, it can be observed that a intervention is necessary, however, if the current legislation was respected, we would not have such a large number of perpetrators of criminal offenses and we would have a smooth running of the election process. From this finding, we can conclude that the whole handicap

is not just the lack of legislation, but we need an awareness of the citizens about the legal-criminal consequences that they will have in cases of committing criminal offenses against voting rights.

We encounter the right to choose in the first forms of democracy, in the Greek polis. However, the development of the elections, their form and content have continuously changed. Ancient Greece is often mentioned in political theory and in its history as the initial source of the right to vote. These elections take place in the early Middle Ages. Not accepting the principle of inheritance or force, since they were God's people, they elected an absolute chief by secret ballot (Haxhiu, 2013). The institution of the right to choose has historically been denied and limited. Denial and limitation were expressed in different forms and ways. The expansion of the right to vote changed dynamically during the French Bourgeois Revolution. The right to choose was initially recognized by the large owner class and not by the small ones. Later, in the constitution of 1791 and with the draft constitution of 1793, all men had the right to vote.

While in the USA before 1776, some American colonies enjoyed the right to vote, with the exception of Indians and slaves. During the 19th century, the right to vote began to expand. This came because of US policy becoming more and more inclusive. Again, the word gender was left out of the list. Women continued to be excluded from the vote.

The extension of the right to vote to include former slaves gave life to the long-simmering campaign for women's rights to vote. Finally, in 1920, the 19th Amendment to the US Constitution mandated that the vote should not be denied to anyone because of sex. Nevertheless, in reality, many black American women could not vote yet, because this sanction was not respected in all states. This exception continued until late in the 20th century, in fact it was precisely the civil rights movements that removed the poll tax as a criterion for voting. Today, in the USA, all citizens over the age of 18, native or naturalized, have the right to vote (Haxhiu, 2013).

In England, which is considered the cradle of parliamentarism, there was a limited number of voters until the electoral reform of 1832, while universal suffrage was achieved in 1928. While in Kosovo, the right to general and equal suffrage began before the Second World War. Although those elections were never free and democratic, where the candidates for election were the favorites of the monist government and the voters were officially forced to unknowingly and unintentionally imitate the formal voting. The citizens of Kosovo were then far away from free and democratic elections. The right to free and democratic elections for the first time was sanctioned and realized in the first elections for the institutions of the Republic of Kosovo. Therefore, by the right of general elections we understand a general right to participate in elections, it means the right of all citizens who have reached the age of majority regardless of race, religion, gender, ethnicity to vote (an active right) and to be elected (passive right) representatives in state decision-making bodies. This right in every country is sanctioned by the basic legal act (usually the Constitution) or in the laws that discipline the rules and principles of the electoral procedure. As such, they also mentioned the suggestions of specialized regional and international electoral

organizations, due to the importance of elections for the state order of a society, seeing the right to vote as the right to represent the will of citizens in the management of central and local institutions. The right to vote, namely the right to choose and to be chosen, is one of the basic human rights, guaranteed by the Constitution of the Republic of Kosovo as well as by the most important international legal acts. The Constitution of the Republic of Kosovo, in Article 45, establishes that: Every citizen of the Republic of Kosovo who has reached the age of eighteen, even on the day of the elections, enjoys the right to vote and be elected, except when this right is limited by decision judicial. Paragraph 2 of this act defines that: The vote is personal, equal, free and secret. Whereas, paragraph 3 determines that: State institutions support the opportunities for everyone's participation in public activities and the right of everyone to democratically influence the decisions of public bodies.

Meanwhile, the UN General Declaration on Human Rights, article 21 paragraph 3 has defined that: "The will of the people is the basis of state power; this will must be expressed in periodic and free elections which must be general and the voting must be equal, as well as by secret ballot or according to the relevant procedure of free voting".

The International Convention on Civil and Political Rights, article 25 (b) states that: "Every citizen has the right and the opportunity to vote and be elected during real and regular elections, with universal and equal suffrage and secret ballots, which ensure the free expression of the will of the voters". Finally, Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in Article 3 defines "The right to free elections and that everyone has the right to choose the government of their country with by secret ballot".

On the universal level article 25 (b) of the International Convention on Civil and Political Rights expressly sanctions all these principles, with the exception of direct voting. While on European level, it is Article 3 of the Additional Protocol of the European Convention on Human Rights, which expressly declares the right to periodic elections with free, and secret ballot (Article 3, the right to free elections) the right to direct elections has also been affirmed by the Strasbourg Court, at least indirectly (Summary of Decisions 1999-I, para. 64).

However, the constitutional principles, common to the entire continent, are not only sanctioned in international documents, on the contrary, they are often mentioned in more detail in the National Constitutions (Article 38.1 of the German Constitution, Articles 68.1 and 69.2 of the Spanish Constitution and Article 59.1 of the Romanian Constitution). Criminal responsibility is a condition that must be fulfilled in order to consider an offense as a criminal offense and to make it possible for the perpetrator to be sentenced to a criminal sanction.

The understanding of criminal liability in general also determines the criminal liability of perpetrators of criminal offenses against voting rights according to the Criminal Code of the Republic of Kosovo, which extends to the entire voting process, including the violation of the right to run for office, exercising the right to vote freely, abuse of office during elections, falsification of voting results and many other illegal

actions related to the electoral process and voting procedures. This reality makes of particular importance the need for education not only of citizens, but also for special training of judges and prosecutors regarding the sensitivity and methods of criminal offenses of this nature. Effective investigations and trials of election-related offenses not only ensure the accountability of those who are guilty of those offenses, but also help prevent these criminal offenses from being repeated in the future. Because if these cases are not dealt with in time, there will be a repetition of these crimes in the next elections.

Criminal sanctions are coercive measures against perpetrators of criminal offenses in general, which are defined in the Criminal Code of the Republic of Kosovo (CCRK), which also enables the efficient trial of all forms of criminal offenses of election manipulation. This Code remains the basis of criminal legislation for the sanctioning of illegal actions in elections, which has given special importance to these criminal acts, which are defined in articles 210-220. These articles sanction incriminating actions against all persons who in any way prevent voters from exercising their right to vote, undertake any corrupt activities to put someone in their service, use violence on the day of voting, vote several times (to the same voter), discover the secret vote, cheat in voting and destroy and falsify voting documents in various forms. Based on the forms of the criminal offenses of the elections that were previously committed in Kosovo, it turns out that this framework does not have shortcomings to define all the criminal actions related to the election process, therefore the legislator in the new Criminal Code has categorized these offenses under criminal offense against voting rights. The penalties foreseen in these legal provisions foresee fines, probation and effective imprisonment of up to five (5) years. Here the lawgiver has foreseen eleven forms of criminal offences. However, the effectiveness of laws depends precisely on their implementation.

During the research, I have encountered that the judicial system becomes an encourager of criminal offenses against voting rights, also with these actions there is an assassination of the justice system and a setback in Kosovo's overall development of the state. Since the law does not work in the area of criminal sanctions, the election process is a formality where the free will of the voter is violated and the abuses in the legislature of the country from which a surrogate of the executive is created are justified. As such, Kosovo's legislative and executive system will never be at the level of their duties and responsibilities. In this case, the crimes of electoral elections that went unpunished during the last elections would only stimulate other persons to be involved in the manipulation of votes during the next elections. Based on the importance that elections have for the state order of a society and the right to choose as a right or political freedom, every state must ensure, through sanction by law, the right of all citizens who have reached the age of majority regardless of race, faith, gender, ethnicity to choose (active right) and be elected (passive right) representatives in state decision-making bodies. The importance of respecting this political right has influenced a series of international acts and the experience of international organizations and institutions to establish a series of principles, rules and standards for regular and legitimate elections. To be considered democratic elections and

according to international standards, they must meet certain standards such as: free, fair and transparent elections. In this very important process, it is definitely necessary to pay special attention to criminal phenomenology, which deals with the study of the forms of presentation of criminality, its structure and dynamics, issues of criminal phenomenology have been dealt with many authors. Most of the authors, who have dealt with this problem, emphasize that it is a science on the manifestation of crime. In addition, criminal phenomenology also deals with crime establishing the manner of committing various crimes and recognizing the personality of the perpetrators (Halili, 2011).

The phenomenology of criminal offenses against voting rights is quite specific and this can be ascertained when looking at the cases administered in the criminal case files against the convicted in the respective courts. Different phenomena are easily observed and identified there, starting from social economic motives to cultural emancipation deficits.

The high degree of manipulation of elections is the result of stakes primarily for financial gain for certain individuals. For this, certain businesses spare no financial support and are ready to support non-transparent cooperation around the elections. Criminal offenses against voting rights could manifest in different forms, based on the judgments and evidence of the cases, individual and group perpetrators have been identified and from all the analyzes I have done, it can be concluded that there were also cases of family members who were implicated in obstructing the electoral process during all phases. But in most cases, it is the political subjects who have been interested and organized to manipulate the electoral process in favor of their favorite subject and candidate, this has been done in different forms, where one of the most frequent forms where the manipulation of votes was achieved through the commissioners who acted in their favor.

The study of the personal data of the perpetrators of criminal offenses in general, and of criminal offenses against voting rights in particular, has great criminal-political importance for the orientation of the state and society in general about the measures that would guarantee the efficient fight against these criminal offenses. In the continuation of this paper, we will talk about some of the basic personal characteristics of the perpetrators of criminal offenses against voting rights.

Age is an important characteristic of the criminal phenomenon. Numerous statistical data from judicial practice as well as from criminological research records show that criminal actions and behavior are carried out by people of different ages (Halili, 2011). However, according to statistics, the age of perpetrators of criminal offenses against voting rights varies from 20 to 45 years. The commission of a large number of criminal offenses against voting rights by persons of these ages is explained by the fact that persons of these ages are mostly engaged in official duties during the elections, therefore this group of persons were in a situation that more often to commit these criminal acts. In addition to age, gender is also an important characteristic of the criminal phenomenon. There is a general impression, based on the data of criminal statistics and judicial practice, that criminality is a typical phenomenon of the male gender (Halili, 2011). Such a high number of men committing criminal offenses

against voting rights is explained by the fact that in over 90% of the cases men are engaged as polling station commissioners, a position that favors them to commit these criminal offenses.

Well, according to the data, I have come to the conclusion that there are also female abusers of votes, where they mostly participate in the commission of crimes, such as: assistants, instigators and less as direct perpetrators or organizers of certain crimes. Regarding the educational level, we can conclude that we have different educational levels of vote abusers, from those with a very low educational level to high officials who exactly use the position they have to achieve their goals. The collection of data, confirm that the social situation, or poor economic conditions are factors that influence to a large extent that they often perform thoughtless actions even if they are illegal, precisely these situations and this category of individuals are sheltered by applicants who are candidates for important positions, who necessarily want to be in power using various means and methods just to realize their goals. Having to consider the results of notes and statistical data on criminality, the observing that some factors have a greater influence than others do yields results on the appearance of criminality, such as economic and social causes, the development of electronics, great technical achievements and a range of great transformations that have taken place in society. The more severe the social economic situation, in a society, the more predisposed is the opportunity to influence the commission of criminal offenses against voting rights and also the easier it is to find willing wills to influence voters and to the electoral bodies in the polling stations and in the process of counting the ballots. The standards for a dignified behavior in election campaigns depended a lot on the social and political context of a country. However, there are basic principles that are required to achieve free and fair elections. Elections are the result of a complex process that requires the participation of many factors, each with different roles and agendas. The stakes can be as high as the temptations to secure a certain victory through unethical and illegal means.

3. Criminal offenses against voting rights in Kosovo

Since the Republic of Kosovo is a new state and does not have much experience in organizing free elections, our country must make efforts to organize elections in accordance with international standards for the reason that our citizens have long aspired to express their free will in the electoral process and with their will to choose the legitimate representatives in local and central institutions. Consequently, every case of misuse of citizens' votes affects the loss of their trust in the electoral processes and the deterioration of citizens' lives. The temporary Criminal Code of Kosovo contained six criminal offenses related to elections. While the Criminal Code of the Republic of Kosovo, which entered into force on January 1st, 2013, contains 11 criminal offenses that protect the electoral rights of citizens. In contrast to the temporary Penal Code, the Penal Code of the Republic of Kosovo has added several new offenses and has toughened the penalties for criminal offenses against voting

rights, categorizing them as serious crimes. The new offenses sanction criminal acts at three stages throughout the election process, including criminal offenses that can be committed before polling day, during polling day and after polling day. Therefore, it can be concluded that the 11 criminal offenses that sanction criminal actions related to elections in the Criminal Code sufficiently define all actions and ways of committing these criminal offenses regarding the process of elections and voting rights in Kosovo. During the research, I have noticed a discrepancy in the data, where each of the responsible institutions has statistics that contradict each other, for this reason, it is therefore not possible to assess the exact progress or regression in solving these cases. In this direction, to demonstrate the high readiness of justice institutions, for the local elections of 2013, on the initiative of the Chief State Prosecutor, on September 18, 2013, a Memorandum of Cooperation was endorsed in between KPC, KJC, KP, CEC and EPCS. The purpose of this memorandum was to establish cooperation and coordination between justice institutions, in undertaking activities to successfully combat criminal offenses against voting rights, including the prevention of these criminal offenses that are against the law. Based on the positive legislation in Kosovo, the State Prosecution created an inter-institutional cooperation with all relevant justice institutions involved in the election process of November 3rd, 2013 (Memorandum of Cooperation between KPK, KJK, KP, CEC, and EPCS, 2013). The concrete results of this cooperation were witnessed throughout the 2013 election process. The number of people involved in the manipulation of votes has significantly decreased since the elections of 2010. This is proof that the adequate response of the justice bodies has a positive effect on all aspects, starting from establishing justice and sensitizing citizens about the risks and consequences they carry if they are involved in committing any of the 11 criminal offenses against voting rights. However, it must be stated that there is still a lot of work to be done in this direction, where the inter-institutional cooperation is considered a necessity. It is also very important to make people aware of the legal consequences that they will have in terms of involvement in the manipulation of elections. Some of the key factors that influence the commission of criminal offenses against voting rights are poverty, unemployment, difficult living conditions, where even on the basis of statistics, it is clearly observed that unemployed persons and those in difficult financial conditions constitute the largest number of the perpetrators of these crimes. This is explained in the difficult economic situation that we face every day, with the high level of unemployment, a situation that exerts negative effects, both in the social and individual aspects, where most of these people tired of the difficult economic situation in which state they are more predisposed to commit these criminal acts. Taking into account that the treatment of the cases of the past elections has been set as a priority of the justice bodies, a priority which has been established in the Cooperation Memorandum signed between the justice institutions, in practice such a thing does not result and precisely the impunity of these individuals who did not feel threatened by the justice system has influenced vote manipulators to continue committing criminal offenses against voting rights. Our country has constantly had significant problems with the organization and

smooth running of the elections, partly due to the inadequate response of the justice bodies. Although the legal framework enables the prosecution and trial of any type of crime related to the elections, there is a lack of will, coordination and commitment of the justice bodies which are competent to solve these cases and to bring to justice all the misusers of the elections, which, according to statistics, are not few in number, so that the citizens will regain their confidence in the electoral process and be sure that their vote will go to the right place. If we do not have a real cooperation between the bodies for the implementation of the electoral law, the bodies for the implementation of the public security law and the bodies for the implementation of criminal sanctions for the violators of the election regulations who manipulate the will of the voters, then the criminal offenses against voting rights are readily available.

4. Conclusion

Criminal offenses against voting rights produce numerous consequences. This situation spoils Kosovo's image in international perceptions and cooperation. In order to prevent criminal offenses against voting rights, the consolidation of the democratic system and the functioning of the rule of law, as well as a general reformation in the depoliticization of state institutions in the police, prosecution and courts, are of particular importance. From these changes, not only criminal offenses against voting rights would be reduced to extinction, but also the number of criminal offenses of other natures would be reduced, because the efficiency of the bodies of competent institutions to deal with crimes would increase. In the most efficient fight for the prevention of criminal offenses against voting rights, the criminal legislation and the functioning of the institution for the control of the implementation of the criminal legislation have a specific and special role. In Kosovo, there is still a need for more efficient functioning of state institutions and competent bodies for fighting crime of all forms. The tightening of punitive policies for criminal offenses against voting rights would have the effect of reducing them to their complete disappearance. These attitudes should be communicated to the public through written and electronic means of information. The factors that influence the commission of criminal offenses against voting rights, which were mentioned above should also be taken into account. Based on this, it can be concluded that with the increase in employment, the alleviation of poverty, the improvement of the economic situation, the creation of welfare and a higher standard of living, there will be a smaller number of perpetrators of criminal offenses against voting rights and their awareness of the consequences of committing these criminal offenses for individuals and society in general.

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