

The issue of the new President is looming over the election results

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Introduction

The President is the head of state and represents the unity of the people of the Republic of Kosovo, states Article 83 of the Kosovo constitution. The next President who shall embody this unity has to be appointed no later than April 6-th, as the six-month mandate of the current Acting President Vjosa Osmani will come to an end.¹ Ms. Osmani assumed the role of the Acting President in November 2020, following the resignation of the then President Hashim Thaçi due his indictment from the Specialist Court.²

Amidst the institutional deadlines for electing the President, Kosovo's economy has contracted for 5.6% in the first nine months of 2020,³ the vaccination of the population has not started yet, there are ongoing trials of senior KLA figures in Hague that could have a destabilizing effect and the international partners of Kosovo, US and EU expect the newly formed government to continue the dialogue with Serbia. When talking about government formation and the election of the president, it is important to keep in mind these challenges and Kosovo does not have time to lose in institutional blockades.

In the recent campaign this February two political parties have come forward with their candidates for the post of the President of the Republic. It is unusual for political parties to campaign with nominees for the post of the President in elections, since the latter is elected by the Parliament and not the popular vote. However, since the general elections aligned with the election of the President, both LVV and AAK made public their nominees for the post of the President. AAK, despite of low chances to win the elections, pushed forward their leader and former PM Ramush Haradinaj as a candidate, hoping to become a king-maker if Vetëvendosje fails to gather sufficient support for the election of the President. LVV on the other side is hoping to secure enough votes to elect Vjosa Osmani, the former Speaker of the Parliament and the current Acting President.

Before becoming the Speaker of the Parliament, Ms. Osmani led the LDK list in the previous elections held in October 2019, which she lost for a very slim margin to LVV. However, one year after, in 2020, Vjosa Osmani left LDK due to deep disagreements about the vote of no-confidence for the Kurti government. Her opposition to the party leadership led to her dismissal from the LDK leadership board. Soon after, she established the "Citizen Initiative", and joined LVV 2021 electoral list with 15 candidates for MP.

In the elections of the 14th of February 2021, LVV managed to win a landslide victory 48.85%, leaving behind PDK with 17.41%, LDK with 13.08% and AAK with 7.43%.⁴ These results are preliminary and do not account for the voting from the diaspora which might change the

¹ According to the Constitution of Kosovo, if the President is absent, the President of the Assembly serves as an Acting President for no longer than 6 months.

² "Kosovo's President HashimThaci resigns to face war crime trial" *Deutsche Welle*, 5 November 2020

³ "The COVID-19 Crisis in Kosovo" OECD, Newsletter, 31 January 2021.

⁴ Komisioni Qendror i Zgjedhjeve, Zgjedhjet e Parakohshme për Kuvendin e Republikës së Kosovës 2021. (Accessed at: <https://rezultatet2021.org/sq/parl/r> , 24 February 2021.

percentage a bit in favor of LVV. ⁵Despite the landslide victory, LVV will need to build broader consensus in the election of the President, which requires a 2/3 quorum in the parliament.

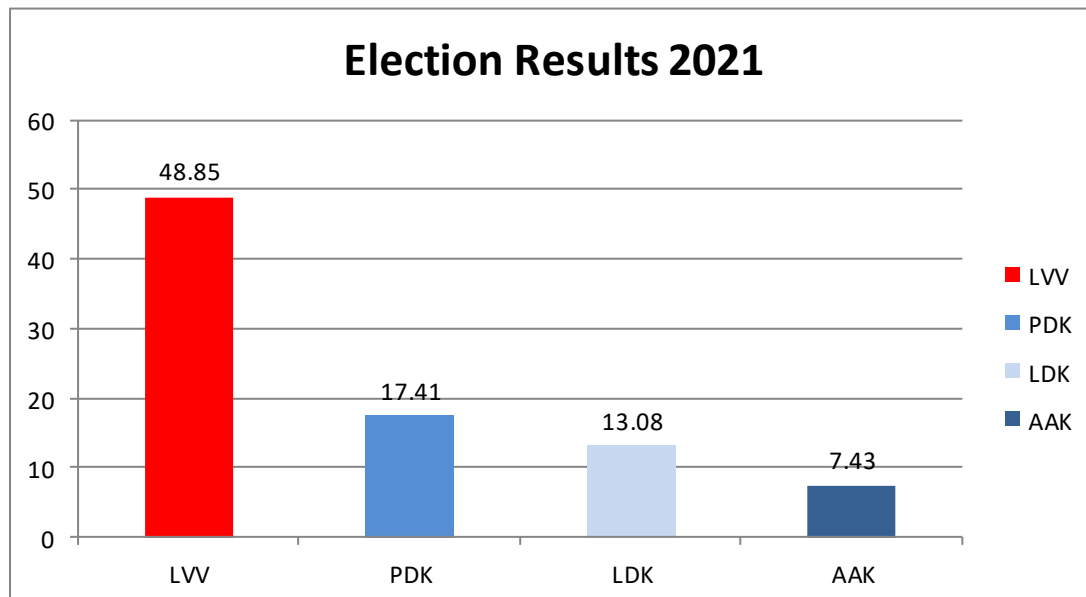


Figure 1. Election results as of 24.02.2021. Not including the diaspora vote which has yet to be counted by the Central Election Commission

The Quorum, the Unconstitutional Presidents and the election of Jahjaga and Thaçi

Election of the President has been a mammoth’s task for many ruling coalitions’ in the past. The election of previous presidents was often marred by backroom deals and votes in exchange of positions in diplomatic missions outside of Kosovo.⁶ In the past, two presidents were declared unconstitutional, Fatmir Sejdiu from the LDK and Behxhet Pacolli from AKR.⁷

In the case of Fatmir Sejdiu the Court had ruled that Sejdiu’s dual role as the President of his party LDK and President of the country was in violation of the constitution.⁸ Sejdiu, a legal scholar himself, declared he was convinced he did not violate the constitution. The resignation of Sejdiu led to the break-up of the PDK and LDK coalition in 2010.

In the elections of December 2010, PDK and AKR formed a government with Hashim Thaçi as a Prime Minister. The ruling coalition elected Pacolli as a President only to be declared unconstitutional afterward by the Constitutional Court due to the lack of quorum and breaks between rounds. This ruling would set a new standard to how Presidents are elected in Kosovo.

⁵ There are also 20 reserved seats for the non-majority communities, 10 of which are for the Serb community and the rest for the other communities, namely Roma, Ashkali, Egyptian (4 seats), Bosnian (3 seats), Turks (2 seats) and Gorani (1 seat).

⁶ “‘Pazari’ për shitjen e votës dhe shpërblimi nga Thaçi pas zgjedhjes President”, *Panorama.al*, 6 July 2016. See also “Election of Kosovo's president ruled illegal”, *BBC*, 28 March 2011.

⁷ “Kosovo President Resigns After Court Ruling” *Radio Free Europe*, 27 September 2011

⁸ “Kosovo president resigns after losing constitutional court case”, *Deutsche Welle*, 27 September 2010.

According to the interpretation of the Court in 2011, the President needs to be elected with a 2/3 quorum in the Assembly, at least for the first two rounds of voting. The CC in 2011 interpreted the quorum, as the quorum of all MPs (present or absent), which practically made it harder for coalitions to elect a ceremonial president, than a prime minister. This interpretation forced the biggest parties to seek bigger coalitions in order to secure the 80 votes necessary for the quorum.⁹

After the failure of the PDK-AKR coalition to elect a President in 2011, the international community stepped in and proposed a neutral compromise candidate, Atifete Jahjaga, a former major general in the Kosovo Police, previously unknown to the public. Jahjaga was elected as a president in the first round of voting with 80 votes, becoming the first woman President in Kosovo.¹⁰ Jahjaga became a president with the votes of PDK, AKR and LDK.

After Jahjaga's mandate was over, Hashim Thaçi was elected in 2016, in the third round with 70 votes from the coalition of PDK and LDK. Thaçi, the former two-time Prime Minister, was a Deputy Minister in the LDK led government of Isa Mustafa. LDK had gained the Prime Minister position in the ruling coalition, despite being the junior coalition partner and PDK had the Speaker of the Parliament and was promised the President after the term of was Jahjaga finished.

The election of the next President of Kosovo: two possible scenarios

The six-month mandate of the current Acting President Vjosa Osmani, is set to end on the April 6. After the constitutive session of the Assembly, the latter will have 30 days to elect a new president. The mandate of the interim president can be prolonged for another 30 days, making the new deadline the **6th of May 2021**.¹¹ As we have mentioned earlier, due to the interpretation of the Constitutional Court in 2011, the ruling coalition will need to have at least 80 MPs present in the first two rounds of voting. There are two simple scenarios, one where the President is elected and one where the President is not elected, what is however far less simple, are the ramifications of not electing a president. A failure to elect a President would lead to early elections, putting Kosovo in an institutional crisis with four governments in two years, while caretaking governments would rule without parliaments and much executive power.

Scenario 1: The President is elected

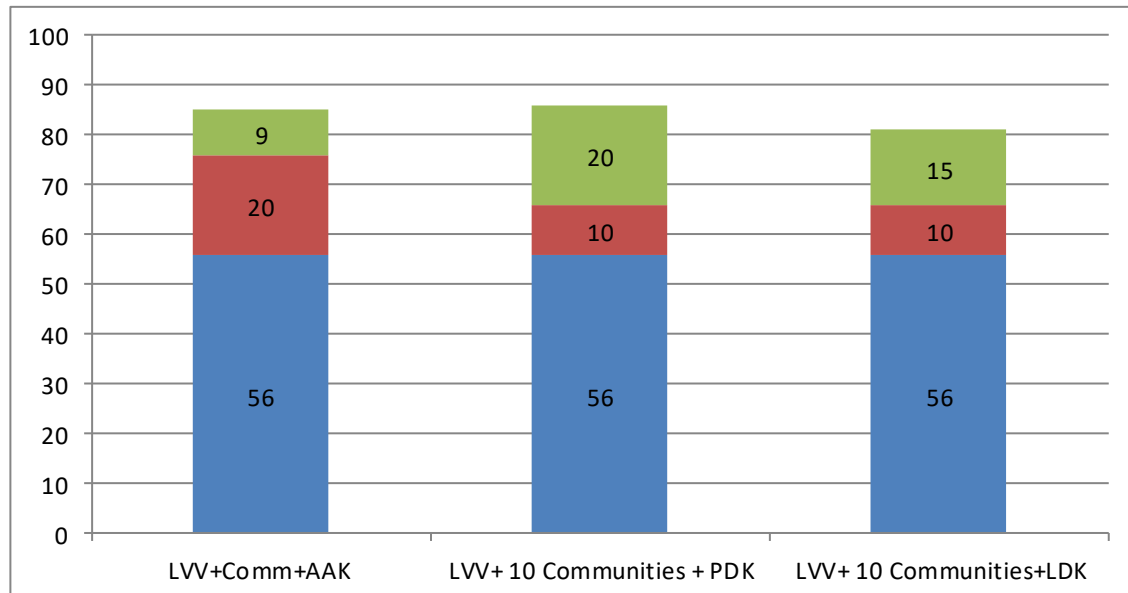
In this scenario LVV would manage to elect the President within the constitutional deadlines. The choices of LVV are **Vjosa Osmani, a bipartisan candidate, or a candidate from LDK or PDK**. With the current election results, it is expected that LVV will gain 56 seats in the parliament. As a result, LVV could easily elect the President with the support of either LDK or PDK, should this be the aim.

⁹ See "Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President" Case No. KO 29/11. 30 March 2011.

¹⁰ "Kosovo elects female police chief as new president" Deutsche Welle, 8 April 2011.

¹¹ For an elaboration of the procedure to elect a president see "Decision of the Constitutional Court of Kosovo and Early Elections: Legal Analysis and Possible Scenarios", Balkan Policy Research Group, 18 January 2021

In the debate on the president LDK and PDK have remained so far silent, but they certainly will enter the discussion depending on the negotiations with LVV. Following the defeat in the elections, Isa Mustafa and the leadership of LDK resigned, paving the way for the party to reform under a new leadership. The new leadership opens a window of opportunity to cooperate with LVV and create a quorum as to not block the election of Osmani. LDK does not necessarily need to vote for Osmani, enabling the quorum with their presence would be sufficient for the election of Osmani in the third round.



As for electing a President with PDK, it is unlikely that the latter will vote Osmani. If the President is voted with the votes of PDK, LVV would have to opt out for a new bipartisan candidate or one from PDK. Before the fall of the Hoti government PDK was very vocal naming the future president and possibly enter the Hoti government.¹² However since the fall of the government, PDK's hopes for naming the President seemed to have taken a toll and the party has remained silent on proposing a candidate.

If LVV would turn to AAK for the President, it would need all 20 votes from the ethnic communities. However, the cooperation with AAK is unlikely as they would want to elect Haradinaj as a President and would need all the 20 votes from the communities. Besides the option of cooperation with LDK, AAK, or PDK, there is also a fourth option, where a number of MPs from all opposition parties would come to the session creating the necessary quorum required for the first two-rounds of voting.

Scenario 2 the President fails to be elected

If the new composition of the Assembly fails to elect the President, the country will undergo new extraordinary elections.¹³ This would mean that Kosovo would have two election processes in a period of six months and four governments in two years. This option is the least favorable option for all parties involved. The opposition parties need time to reform, reflect and re-organize. LVV in

¹² "Hoxhaj: Kandidati për president duhet të jetë nga PDK-ja", *Evropa e lirë*, 2 December 2020.

¹³ Article 86, Par. 6 of the Constitution states "If none of the candidates is elected as President of the Republic of Kosovo in the third ballot, the Assembly shall dissolve and new elections shall take place within forty five (45) days."

the other side as the ruling party would fail in their first important task as a government despite having a historic majority in the parliament.

If the new election happens LVV could win a bigger majority which would make the opposition parties weaker. Or it could lose percentage points, further fragmenting the parliament and making the formation of the next government and election of the president even more complicated. The Kosovar citizen on the other hand might be too weary to go through a new cycle of national election and government change, and the general turn out might be lower.

Concluding remarks

Political parties should avoid any scenario that puts the country in another election cycle, Kosovo needs stability and a government able to push for reforms. The ruling and opposition parties cannot lose too much time in institutional blockades, since the country needs a government that manages the health and economic effects of the pandemic and implement a vaccination plan.

The government needs to deliver on the dialogue with Serbia and cooperate closely with the U.S. and EU partners, it needs to serve as a stability anchor due to the vulnerability posed by the Specialist Chambers and their indictments. Kosovo sets to lose a lot of time it does not have if government fails to elect a President, therefore all parties involved should seek a compromise and elect a president who represents the unity of the people.

Policy Notes

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