

The Kosovo elections' aftermath has taken an unexpected turn. Less than 48 hours after outgoing prime minister Hashim Thaci declared the PDK's election victory, the largest opposition parties (LDK, AAK and NISMA, with the support of VV – Vetevendosje), announced their intention to form an anti-PDK political block, offering an alternative majority and putting forward former Kosovo Liberation Army leader Ramush Haradinaj as prime minister. Would this move be constitutional?



Cartoon by www.koha.net

If the President nominates Haradinaj, she breaks the institutional practice, if she doesn't, she breaks a basic principle of democracy

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Once the preliminary results of June 8 parliamentary elections in Kosovo were published and the country passed an important test of its democratic consolidation, a new bigger challenge has emerged.

To my surprise, the opposition parties, which I've continuously criticised for not co-operating during the election campaign, have reached a post-election coalition. The Democratic League of Kosovo (LDK), the Alliance for Future of Kosovo (AAK) and the newly established Initiative for Kosovo (Nisma) have agreed to form the government, nominating Ramush Haradinaj of the AAK for Prime Minister.

Their agreement has been backed by the Vetevendosje (Self-Determination) movement, which said it would vote for the government whilst remaining in the opposition. The four parties are likely to have more than the necessary majority of 61 parliamentary seats to form the government, although the mandates are yet to be appointed by the Central Election Commission. But will they be able to form the government? The answer to this question is much more complicated than it may seem.

Article 95(1) of the [Kosovo Constitution](#), which regulates the election of the government, reads as follows:

After elections, the President of the Republic of Kosovo proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government.

In Kosovo's political system, it is virtually impossible for a party or a coalition to win the majority, mainly due to highly diverse political scene and the guaranteed representation of the ethnic minorities in the Assembly. So what happens if no party or coalition can win the majority in the Assembly? The common principle of parliamentary democracies is to resolve such issues through post-election coalitions, where more political parties that have similar policy ideas make joint governing programmes and form the parliamentary majority which is needed to form the government. This was the case of Kosovo too. Former Presidents have created an institutional practice to nominate a candidate from the party that won most of the votes in the elections for Prime Minister, giving the candidate 15 days to form a majority in the parliament. This year, however, this is not such a straightforward procedure.

The Democratic Party of Kosovo (PDK) of Hashim Thaci won the election with 31% of the votes. Other parties signed a deal which guarantees them the needed parliamentary majority to form the government. All of them said they would not join Thaci in a coalition, as they have their own, through an agreement that could be easily labelled as an anti-Thaci deal. The question that emerges is whom should the President give mandate to form the government, now that Thaci is the winner of the elections but the others have the parliamentary majority.

Reading the constitutional provisions from the perspective of a political scientist, and not a lawyer, the answer seems pretty simple: the coalition that has reached the parliamentary majority gets the mandate. Cases when the largest parties remain in opposition are quite common in parliamentary democracies. For Kosovo, however, lawyers have a different opinion.

In an independently published Commentary of the Kosovo Constitution, authored by two judges of the constitutional court, it is argued that the term 'coalition' in Article 95(1) should be understood only as pre-election coalition, emphasising the importance of the verb 'win' in this provision and linking the formation of the government directly to the election results (Cukalovic and Hasani 2013, p.454). According to the authors, if two or more parties reach a post-election coalition, it simply does not count when it comes to their right to forming a government, as those parties did not run with a single candidate list and single programme in the elections.

In my view, the definition of coalitions in such a way is arbitrary and selective. The political science tells us that in parliamentary democracies coalitions can be reached both before and after elections. The two academic articles that are cited to back this interpretation, [Golder](#)

(2006) and [Debus](#) (2009), indeed do almost the opposite – they speak of both pre and post election coalitions in parliamentary democracies. Furthermore, a post-election coalition will be necessary also for the winning party, the PDK, as they simply do not have the majority to form the government.

Whether Kosovo's President Atifete Jahjaga will nominate the post-election coalition or the winning party to form the government remains unknown. Article 84(14) of the Constitution that regulates the powers of the President is explicit in defining that the President 'appoints the candidate for Prime Minister for the establishment of the Government after proposal by the political party or coalition *holding* the majority in the Assembly.' The two articles, 95(1) and 84(14) are controversial to say the least, with the former using the verb 'win' and the latter the verb "hold".

If the President would nominate Ramush Haradinaj, she would break the unwritten institutional practice as well as one of the interpretations of the Constitution, which is very likely going to be challenged at the Constitutional Court. If she would end up nominating Hashim Thaci, who would most likely fail to form a government, as he has no potential partners left in the parliament, she would break the fundamental principle of democracy – the majority rules. The tensions between the two blocs are reaching the ceiling, making an intermediary solution highly unlikely. Almost everybody is convinced that new elections would bring more or less same results. So, are they worth it?

The wind of change is in the air, but there is still plenty of time for it to blow away as quickly as it blew in

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The mood shifted dramatically in Prishtina yesterday afternoon. Until then the capital had lacked a post-election "buzz."

That was before word slowly started to trickle from person to person that an anti-PDK coalition of three opposition parties (LDK, AAK and NISMA) had been orchestrated with AAK's Ramush 'Rambo' Haradinaj as its proposed premier.

Within a matter of hours, Prishtina's ears were assailed by the cacophony of car horns and fireworks that always accompanies any kind of party-political coup in Kosovo.

The atmosphere differed from Sunday night's celebrations though. The usual party-coordinated tribalism of fireworks and party flags streaming from the windows of cars with over-revved engines was contrasted with a collective emotion that was quieter, more honest, even bordering on nonpartisan. As I walked down Mother Theresa Boulevard late last night, it was packed with pedestrians promenading with smiling faces, stopping every few steps to greet friends of every party persuasion with full-bodied handshakes.

Given that today marks the 15th anniversary of the liberation of Prishtina, it is fitting that last night's euphoria felt more like that of liberation than victory.

And it is not yet a victory for anyone. Acting prime minister Hashim Thaci and PDK are unlikely to go out without a fight. The party's vice chairperson, Margarita Kadriu, is also editor of *Kosova Sot*, one of the country's highest-circulation dailies.

Ever since coalition rumours began to spread, the paper's website has been full of headlines declaring "the West's" alarm at the prospect of a coalition of opposition as well as the supposed unconstitutionality of any such alliance.

In reality, almost everyone in "the West", from the US ambassador to EU officials in Brussels, are going on the record as saying they will be happy to work with any democratically elected government in Kosovo.

The constitution issue is slightly more complicated though. For a start, all publicly issued opinions on the matter appear to be coloured by the allegiances of whoever is giving them.

It does not help that there is some ambiguity in the constitution. It does not explicitly state what the government may or may not be composed of. Instead it references "the political party or coalition that has won the majority in the Assembly necessary to establish the Government."

The question many people are asking is, does that coalition need to have been formed before the elections? PDK, naturally, are arguing yes and saying that if a coalition with Thaci at its head is not formed they will request a second round of elections.

The wind of change is in the air, but it is too soon for the 69.29% of voters that did not cast their ballot in favour of PDK to become complacent, there is still plenty of time for that wind to blow away as quickly as it blew in.

This post was also published on [Kosovo 2.0](#)

The unwillingness of the political parties to agree on the constitutional procedure is likely to lead to a serious institutional vacuum

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The opposition parties made a pact to refuse any offer put forward by Thaci to them as a group or individuals and to arrange a redistribution of the posts. They propose Haradinaj for prime minister and Isa Mustafa for the post of the speaker of the parliament and the presidential post in 2016, when Kosovo's president mandate expires.

At least for now, the new opposition coalition is determined to stand together even in the case elections are to be repeated soon. And yet, it is not unthinkable to expect moves from one side to the other in the course of the coming weeks.

The PDK and the opposition parties disagree fundamentally on the interpretation of the constitutional procedure for the formation of the government. The constitution's vague provisions do not help, in a moment when the new state and its young democracy are going through a challenging legal and political process.

Thaci's PDK insist that they are the winners and that the President should give them the mandate for the formation of the government, a view that the Constitutional court is likely to share. The opposition block claim to have secured more votes and expect the president to mandate them. The constitution is unclear on other issues, about the winner of the elections, about what exactly constitutes majority, and more importantly, who is given the second chance to form the government.

The Constitution allows the president to give the mandate twice if the first attempt fails; in that case the President has to call new elections, to be held within 20 days. The PDK insists in their right to exercise both mandates to form the government. They maintain that the country should go to new elections in case a PDK-led government cannot be formed. Others suggest that the opposition should be given the second chance, and that the winning party's failure to form a government should not in itself lead to new elections.

Traditionally, legal disputes were solved through political arrangements master-planned at foreign embassies. Kosovo citizens no longer want that to happen. As D4D's Leon Malazogu put it: "The US and the EU no longer have a say in the formation of our government, [...] but this news is a double-edged sword, as it tests our political maturity – we are now left to our own mercy".

Unwillingness of the political parties to agree on the procedure will likely cause a serious institutional vacuum that can dangerously involve the post of the president.

Source : London School of Economics blog Research on South Eastern European Parliament

<http://blogs.lse.ac.uk/lsee/2014/06/11/kosovo-elections-has-everything-changed/>