



KOSOVAR INSTITUTE FOR POLICY RESEARCH AND DEVELOPMENT

Policy Brief 2010/6

The actual causes of Kosovo's institutional crisis

Prishtina, November 2010

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Published by



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1. Introduction:

After the declaration of the advisory opinion of the International Court of Justice (ICJ) on the legality of Kosovo's unilateral declaration of independence in accordance with international law, the country entered its final and most important phase of the state-building process. The positive opinion of the ICJ¹ on Kosovo, propelled the General Assembly of UN to approve a resolution which calls for dialogue between Prishtina and Belgrade². Despite the fact that this dialogue is perceived differently by both sides, in reality there is a silent agreement that the talks will start with primary focus on topics of common interest instead of more politically slanted issues such as that of missing persons. Within Kosovo, besides the preparations for a dialogue with Belgrade, authorities kept making crucial decisions on issues such as the privatization of the publicly-owned, as well the most profitable enterprise in the country – Post and Telecommunications of Kosovo (PTK) - the strengthening of the election reform, the approval of the law on population registration as well as Kosovo's budget for the year 2011. However, a series of political and institutional events, most of which were unplanned but not unpredictable, stopped these processes plunging the country into a governmental and political crisis.

Even though Kosovo was scheduled for early elections on February the 13th of 2011,³ what happened next in Kosovo's political scene drove the country into extraordinary elections, set for December 12th, 2010. With these hasty actions, Kosovo's young democracy remains in a testing phase. The election process has become hostage to these developments, while even the main institution responsible for its organization, the Central Election Commission (CEC), has declared that it cannot guarantee a qualitative process of elections set on December 12th, 2010.⁴

In this short analysis, the Kosovar Institute for Policy Research and Development (KIPRED) reviews the current situation and the eventual consequences, considering that all recent political and institutional developments in Kosovo have led to the Government's dismissal and the dispersion of Kosovo's Parliament. KIPRED, in this policy brief, reveals the differences between the excuses and the actual reasons that led to this institutional crisis.

¹ Advising Opinion, *Accordance with international law of the unilateral declaration of Kosovo's independence*, International Court of Justice, July 22nd 2010

² "Secretary-General Welcomes General Assembly Resolution on Kosovo Independence", Secretary General, United Nations, September 13th 2010, <http://www.un.org/News/Press/docs/2010/sgsm13093.doc.htm>

³ "Elections for Kosovo's Parliament will be held on February 13th 2011", The Office of the President of Kosovo, October 15th 2010, <http://www.president-ksgov.net/?page=1,6,1401>

⁴ Statement made by the Head of CEC, Valdete Daka, as reported in the daily newspapers Koha Ditore, Zëri, and Express on October 18th 2010.

2. Adherence to the Constitution

Immediately after the approval of the resolution on Kosovo in the General Assembly of the UN, on September 24th 2010, the Constitutional Court of the Republic of Kosovo declared that it had taken a decision on the complaint filed by 32 members of the Kosovo Parliament about the constitutionality of President Fatmir Sejdiu holding two positions, being the President at the same time as being the leader of the Democratic League of Kosovo (LDK) party.⁵ In the notice from the Constitutional Court, the President of the Republic was said to have seriously violated the constitution because he had held on to a political position, meaning that of the leader of the LDK. As a consequence, on September 27th, 2010, President Fatmir Sejdiu submitted an irrevocable resignation from the post of the president of the country, prioritizing this way his position as LDK's first man.⁶ In accordance with the constitution, the Speaker of Kosovo's Parliament, Jakup Krasniqi assumed the duties of the President.

The decision of the Constitutional Court was no surprise, since Kosovo's Constitution explicitly states that the President of the Republic cannot practice any function in a political party.⁷ Consequently, media statements and various political interpretations that followed the president's resignation and the decision of the Constitutional Court as reasons for the governmental and institutional crisis in Kosovo do not stand. These statements, launched from the two former partners of the governing coalition PDK – LDK, can be seen only as political gestures for gaining political points from the electorate and as a start of the pre-electoral campaign in Kosovo. In this line of reasoning, the Constitutional Court's decision and the resignation of President Sejdiu were only excuses for the institutional crisis, and not actual causes of it.

One of the actual causes of the crisis originates very early on, with the very creation of the governing coalition. The consequences, which are only being felt now, were founded on the fact that both parties of the governing coalition PDK-LDK governed based on an anti constitutional agreement. Initially, this agreement violated the Constitutional Framework for Provisional Self-Government in Kosovo,⁸ and later on after June 15th, 2008, it also violated the Constitution of the Republic of Kosovo,⁹ since both state that Kosovo's President cannot practice other political functions.

According to the agreement of the governing coalition, achieved on January 7th, 2008, PDK got the Prime-Minister post, one deputy minister and 7 ministers. On the other hand, LDK got the President's post, one deputy Prime-Minister and 5 ministers.¹⁰ That the President's post was part of the agreement is proved by the fact that Fatmir Sejdiu resigned his post, so he could be voted by both LDK and PDK MPs for his second mandate, of five years, during the same session when the Parliament approved the governing cabinet. Even then, Sejdiu was keeping his post as the leader of LDK, with the

⁵ Media announcement by Constitutional Court of the Republic of Kosovo <http://gjk-ks.org/?cid=1,28,193>

⁶ Statement made by the President of the Republic of Kosovo, Dr. Fatmir Sejdiu, September 27th 2010, <http://www.president-ksgov.net/?page=1,6,1360>

⁷ The Constitution of the Republic of Kosovo, Article 88, paragraph 2.

⁸ Constitutional Framework for Provisional Self-Government in Kosovo Article 9.2.7

⁹ Constitution of the Republic of Kosovo, Article 88, paragraph 2.

¹⁰ Meanwhile, the number of ministers has increased since new ministries have been founded.

assistance of the main actors of international community, by inventing the formulae of “freezing” this post.

On June 15th 2008, when the Constitution of the Republic of Kosovo came into effect, the political debate about the constitutionality of double positions of the President was intensified. However, this debate was silenced as a consequence of a consensus between the parties in power and the international community, continuing this way the already established “tradition” of governing in Kosovo in semblance to the UNMIK period, when the agreements between the political specter and the Special Representative of Secretary General (SRSP) were above any practical or legal norms.

The coalition parties were aware that the agreement was against the constitution, and this was proved on October 18th, 2010 when deputy-prime minister Hajredin Kuçi, deputy Leader of PDK, publicly declared that him and his party had attempted to stop the process of the submission of the request to the Constitutional Court by the 32 MPs.¹¹ Interventions of the kind in the institutions’ work, whose independence is warranted by the constitution, along with the creation of practices of making arrangements between political parties that override the highest legal act in the country, as long as the international factor doesn't mind, are the main reasons of the fragility of democracy in Kosovo. These are also the reasons behind the caused institutional crisis.

3. Between causes and excuses

A) PTK’s Privatization

After Fatmir Sejdiu’s resignation from the post of President of the country, LDK started acting differently within the governing coalition. Both parties of the coalition had been supportive of the policies and priorities composed together, especially on the policy of financing the major project of the highway Morinë-Merdare, which was going to get the necessary supplemental funds from PTKs privatization.

PTKs privatization overcame the setting of local agenda, becoming a topic addressed by the US Secretary of State, Hillary Clinton during her visit in Kosovo on October 13th, 2010. According to their media statements later on, both parties of the governing coalition had promised Secretary Clinton that Kosovo’s Parliament would ratify the Government’s strategy on PTKs privatization in the very next scheduled session of Parliament.

On October 14th 2010, in Kosovo’s Parliament session, LDK requested that the ratification of the government’s strategy on PTKs privatization be removed from the order of the day. Since LDKs request was not approved, the Speaker of the Parliament, under the pressure and continuous influence of the Prime Minister, rapidly put this strategy to a vote. The direct pressure of the leader of the executive on the work of the legislative once again proved the fragility of democratic governing that exists in Kosovo.

Jakup Krasniqi, the Speaker of the Parliament, violated the rules of procedure by declaring the strategy as ratified, with only 47 votes pro, 2 against and 1 abstention. The necessary quorum to vote was not fulfilled, since LDK's MPs had started to leave the

¹¹ A statement made by Hajredin Kuçi in “Zona e Debatit” (Debate Zone) program on Klan Kosova TV, October 18th 2010.

sessions and had already removed their cards from the electronic voting system.

Even though this mistake was amended by Mr. Krasniqi immediately the next day when he hastily canceled the voting, PDKs haste to approve the strategy for PTKs privatization left ample room for interpretation.

As a consequence of this situation in the Parliament, LDK found an excuse to leave the governing coalition. LDK's reason was being omitted and also ignored from their coalition partner , PDK, in major projects in Kosovo. This action by LDK was also a belated response to the Zanzi-Bar affair of November 2009, when PDK had declared that it would expel LDK from the coalition and that it would make a coalition with Behxhet Pacolli's New Kosovo Alliance (AKR) and Nexhat Daci's Democratic League of Dardannia (LDD), even without consulting any of these parties.

After this political stalemate, on October 15th, 2010, Acting President Jakup Krasniqi declared early parliamentary elections to be held on February 13th, 2011,¹² in agreement with most political subjects in the country. This way, the deadline would provide enough time for political parties, as well as the CEC, to make due preparations.

The steps undertaken by both parties after LDK's resignation from the governing coalition continued to harm Kosovo's young democracy as well as the state-building process. LDK used the PTK privatization strategy as an excuse to withdraw from the coalition, while PDK rushed to urge extraordinary elections in order to benefit from the created crisis. With an election date set for February 13th 2011 and a head of party that had to resign from the post of the President of the state, LDK wanted to play an opposing role against PDK for the remaining four months. This party, therefore, attempted to distance itself from the major defects of the governing party with its partner PDK during the 2008-2010 period. The departure of LDK 's ministers was not just a violation of the coalition agreement, but also a violation of governance practices since the ministers that quit their jobs immediately did not even wait for their eventual replacements to actually hand over their posts.

Furthermore, LDK, as member of the governing coalition, was a co-writer of the strategy on PTKs privatization. Thus, LDK could have channeled all the remarks regarding the strategy during the discussions of the governmental working groups. Therefore, the strategy for PTKs privatization was more of an excuse than an actual cause for the dissolution of the governing coalition.

Both the writing of the strategy for PTKs privatization, and the other major project of the construction of the Morinë –Merdare highway were two of the most criticized projects by the civil society and the opposition for the lack of transparency. Kosovo's government kept these two projects closed off and away from the eye of the public and the civil society. The continuous critiques for lack of transparency, also put forth in Kosovo's Assembly, got a silent treatment from both parties in power.

The Privatization Agency of Kosovo (PAK) and the Ministry of Transport and Post-Telecommunication (MTPI) were assessed as two most closed and non-transparent

¹² "Elections for Kosovo's Parliament to be held on February 13th 2011", The office of the President of Kosovo, October 15th 2010 , <http://www.president-ksgov.net/?page=1,6,1401>

public institutions.¹³ MTPTs contract with the selected company for the construction of the highway Morinë-Merdare has not been made public, specifically to civil society and the media, despite specific requests made by both these parties in accordance with the law on access to official documents. The process has been evaluated as one of the most non-transparent processes, especially since the government did not initiate any sort of debate, public or closed, in relation to these two major state projects. Even the parliamentary debates were marginalized and not sufficient.

The mere fact that the government had the support of the international actors for these projects sufficed for their continuation, despite the vociferous critique of the public opinion. Therefore, lobbying in Kosovo was proven to be unsuccessful if not supported by the international factor. In other words, the very moment that the government has the support of the most powerful Quint countries, it is impossible for the citizens to lobby for any eventual change of policies or decisions.

The international community has continued to have an intrusive approach in the policy development and decision-making in Kosovo even after the country's independence. This approach has affected the country's institutions in decreasing their feeling of responsibility and accountability. When it came to large projects, the leaders of these institutions have shown more accountability toward the Quint countries than their own voters. Therefore, a lack of transparency and accountability as a consequence of dependence on the international factor is another reason for the crisis in question.

B) Kosovo's Budget for 2011

PDK, as the only party left in power, indicated that if Kosovo's Budget for 2011 was rejected, this would be an indicator of an institutional crisis. Various reports of pro-Government media have emphasized that Kosovo's Parliament is lacking the political climate to approve this budget. Furthermore, in many addresses, Prime Minister Thaçi himself had mentioned the budget's approval as a reason to find what he calls "a constitutional solution to the institutional crisis".

According to the parliamentary groups discussions and the Law on Public Financial Management and Accountability, there are two options for the solution of the budget problem.

The first option is to have extraordinary elections in which case the Parliament is dispersed and the budget is not discussed until the gathering of the next Parliament, elected in these elections. The first months of government, the budget would be automatically covered according to the first months of the previous fiscal year.¹⁴ This option, which has already been decided on after the no-confidence vote and the decision to make the election date on December 12th 2010,¹⁵ would have not been necessary if the government would have gone to early elections on February 13th, 2011. Furthermore, had this been the case, Kosovo's Parliament would have the right and the responsibility to

¹³ Index of Institutional and publicly-owned enterprises transparency in Kosovo, Speak Up Movement, Prishtinë, July 2010

¹⁴ Law on Public Finance Management, article 24

¹⁵ Kosovo's Parliament Disperses, the Parliament of Republic of Kosovo, November 3rd 2010, <http://www.assembly-kosova.org/?cid=1,128,3502>

approve Kosovo's Budget for the year 2011, according to prior preparations.

Theoretically, none of the parliamentary groups represented in Kosovo's Parliament had been against the budget's approval.¹⁶ This was because, according to the budgetary calendar, the budgetary hearings had been held between August 23rd and September 3rd, 2010, while the complaints from budgetary organizations had been addressed from September 24th till the 28th. All the budgetary arguments were in favor of early elections, meaning, that the budget would be approved and that governing would proceed until February 13th, 2011. This way, there would be no discrimination of municipalities, who have been developing autonomous processes and normal consultations in the Municipal Assemblies but which will now not be taken into consideration until the election of the new Parliament. . Another argument that went in favor of elections on February 13th, 2011, and not the ones on December 12th 2010, is the flaws of automatic cover, in which case every month gets 1/12 of the previous year's budget, including planned sums for capital projects. These projects could have been financed and finalized, or their needs could be completely different from the previous years.

The only argument in favor of extraordinary elections vis-à-vis the budget was the Government dysfunction, considering that six ministries that were governed by LDK were left without ministers. Even if the Prime Minister would not fill these ministerial posts, despite the fact that he had the mandate to do such a thing, this argument is weak because all the ministries had already been through all the steps of the foreseen process in the budget circular, which according to the current law, is issued by the Ministry of Economics and Finance by April 30th of the current fiscal year.¹⁷ Budgetary issues were not obstacles for the elections on February 13th, in fact they were an argument in favor of these elections and an argument against extraordinary elections. In conclusion, the budget of the year 2011 was used as an excuse for the institutional crisis, while it was a sufficient reason for the country not to go to extraordinary elections, and instead hold elections on February 13th 2011 as planned.

4. Conclusions

The decision of the Constitutional Court and the resignation of President Sejdiu, despite being served to the public opinion as reasons for institutional crisis were, in fact, only excuses for this crisis. These acts served as an excuse for LDK to decisively withdraw from government, in an attempt to avoid the political responsibility for bad governing, while it did not even respect procedures of waiting the handover of ministers' duties.

LDK used the strategy for PTK's privatization as an excuse to leave the governing coalition, despite the fact that this party has been an essential part in writing this strategy. Therefore, the strategy for privatization did not cause the institutional crisis, but served only as an excuse used to avoid political accountability.

PDK used Kosovo's budget for the year 2011 as an excuse to claim a deep institutional crisis and to vote AKR's motion for extraordinary elections. However, an analysis of budgetary issues shows clearly that the budget was a mere excuse for extraordinary

¹⁶ Informal discussions of KIPRED with members of Kosovo's Parliament, October 2010

¹⁷ Law on Public Finance Management, article 20, paragraph 3

elections. Therefore, the budget will not be approved until the consolidation of the next Parliament, which was uncalled for since all budgetary preparations had been done much earlier on and all political parties in Parliament were in favor of voting the budget.

In conclusion, the essential causes which caused the crisis were in fact the continuous violation of the Constitution, starting from the two governing coalition partners, PDK and LDK, continuing this way an inherited practice from the UNMIK period when political bargains were above all judicial norms.

As a matter of fact, the PDK-LDK coalition was made with a specific purpose – for the declaration of independence, and after February 17th2008 it had to expire in some way. This was also due to the fact that after the ratification and implementation of the Ahtisaari Package and the consolidation of institutions, which was the primary responsibility of the coalition, the international community lost interest in maintaining this coalition.

This was noticed in the *Zanji-bar* affair, which was the peak of distrust created as a consequence of a failed *coup d'état* initiated by PDK who wanted to make fundamental changes in the governmental coalition, changes which would have had a domino effect and spread to the main state institutions.

This agreement, which in itself contained the division of leading posts, but not an actual governing program, was the cause of the asphyxiation of the parliamentary life in the country, damaging the parliamentary democracy. This damage, which was affected by the lack of inner democracy within all political subjects represented in Kosovo's Parliament, contributed to the sustenance of the coalition through infusions by leaders from PDK and LDK and their personal agreements. Consequently, Kosovo's Parliament has only served to approve the government's decisions, their legitimacy thus being put to question. This disobedience of the democratic and state order, which is one of the main and most often mentioned remark in the Progress Report for Kosovo by the European Commission for the year 2010, is also, as a matter of fact, the main reason for the institutional crisis.