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Is Kosovo's young democracy growing well?

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The [June 2014 elections in Kosovo](#) have led to a political deadlock that is now freezing the young country. Despite a marked decline in election fraud, both contenders for the premiership are seen as 'key personalities of organised crime'. The picture is sombre and yet heralds new opportunities, argues **Andrea Lorenzo Capussela**: "the crisis is the result of ill-conceived and malfunctioning institutions and the apparent breakdown of the intra-élite pact, which opens opportunities but entails also risks".

A Western diplomat recently conceded that '[industrial fraud](#)' took place during Kosovo's 2010 parliamentary elections, about which the international community '[closed its eyes](#)': according to the (plausible) calculation of an opposition politician I then spoke to, fraud determined the allocation of about one third of the parliamentary seats. Less and lesser fraud was observed during the general elections held on 8 June 2014. But they opened a serious political crisis, which illuminates the gap that still separates – I argue in a [forthcoming book](#) – the formal political institutions of Kosovo from its real governance system.

Election Results

Party	%	Seats	2010 results
PDK	30.4	37	32.1% (34)
LDK	25.2	30	24.7% (27)
Vetëvendosje	13.6	16	12.7% (12)
AAK	9.5	11	11.0% (12)
New 'Serb' party	5.2	9	2% (8) † †
Nisma	5.1	6	n.a.
AKR	4.7†	-	7.3% (8)
Other minorities' parties	<4†	10	<4% (14) †
Other Kosovo Serb parties	<2†	1	<3% (5) †



† The 5 per cent threshold does not apply to minority parties.
‡ In 2010 minority parties ran also for the 100 non-reserved seats, obtaining seven overall.

The elections did not alter the balance of power significantly, as Table 1 illustrates. [PDK](#) – which governs Kosovo since 2008, allied first with [LDK](#) and then with [AKR](#) – immediately declared victory. But on the following morning LDK, [AAK](#) and Nisma – a new party founded by a PDK grandee, who had left the party shortly before the elections – announced the intention to form a government together. Kosovo's only left-wing, non-élite party, [Vetëvendosje](#), offered them its external parliamentary support (option 1 in Table 2 below). But the embassies of the main Western powers asked them to forgo it – because in exchange Vetëvendosje demanded a suspension in the implementation of the [agreement on north Kosovo](#) that Belgrade and Pristina have reached in April 2013, pressed by the forceful mediation of the EU – and led them, by necessity, to turn to the new 'Serb' party instead (option 2). The three-party alliance and Vetëvendosje nonetheless form a blocking majority that can prevent PDK from retaining power. The latter responded confusedly. It tried to break the alliance (option 3), stimulated individual defections from it (option 4), and eventually proposed a grand coalition (option 5). This seemed also the West's preferred solution, but the alliance adamantly rejected it.

In parallel, PDK pursued a different strategy. As the constitution allows only two attempts to elect a government, after which the parliament must be dissolved, this party claimed (unwarrantedly) to be entitled to *both* attempts: this would prevent others from taking power, and would produce either a PDK-led cabinet – if enough alliance defectors will support it, fearing to lose their seats – or, more probably, fresh elections. This strategy is lucid but complex, however, and although both arbiters of this delicate phase – the president and the constitutional court – have assisted it no premier-designate has yet been nominated.

Political Scenarios



Political options	Seats
1. LDK-AAK-Nisma alliance, Vetëvendosje and minorities	64[†]
- alliance	47
- Vetëvendosje	16
- minorities [*]	1 (4-6)
2. LDK-AAK-Nisma alliance, 'Serb' party and minorities	61[†]
- alliance	47
- 'Serb' party	9
- other minorities [*]	5 (0)
3. PDK, AAK, 'Serb' party and minorities	61[†]
- PDK+AAK	37
- 'Serb' party	9
- other minorities [*]	4 (1)
4. PDK, allies, 'Serb' party and minorities	61[†]
- PDK	37
- individual defectors from alliance parties	10 [‡]
- 'Serb' party	9
- other minorities [*]	5 (0)
5. Grand coalition	68/79[†]
- PDK+LDK or PDK+LDK+AAK	67/78
- minorities [*]	1/1 (0-12)

^{*}Indicates the minimum support required to reach a majority, if any (1 implies that none is needed, for minority participation is required by law in any government, and, consequently, governing coalition); in brackets, an indication of the likely (additional) minority support is provided, the two numbers can therefore be added.

[†] Assumes the minimum required support by minorities (see above), underestimating some coalitions' likely strength.

[‡] Minimum required support, assuming that the tenth Kosovo Serb deputy and five of the ten deputies representing the other minorities shall remain in opposition.

Source: Kosovo Central Election Commission, author's elaboration



With the possible exception of the first one, none of these five options portends improvements in the quality of governance. Suffice it to say that a 2010 Council of Europe report – the so-called 'Marty' report, whose findings have recently been 'largely confirmed' by an *ad hoc* EU investigation – describes both contenders for the premiership as 'key personalities of organised crime', quoting evidence that includes two leaked Western intelligence reports. The continuities with the non-transparent practices observed in Kosovo since its independence seem equally clear. The leading faction of Kosovo's élite, assembled around PDK, has again used two formally impartial authorities as tools for its strategies: the constitutional court, in particular, has once more proved to be a significant proximate cause of Kosovo's governance problems. And the West has again placed its own short-term priorities – an agreement that, albeit important, is anyway unlikely to receive real implementation in the near future – above the objective of favouring the maturation of Kosovo's democracy, for which the autonomy of its political parties is a precondition.

Nonetheless discontinuities have also emerged. A deep rift has opened in the élite, separating PDK from the three-party alliance. And, by consequence, in each realistic scenario – options 2, 3 and 4 – the next government would depend on the decisive support of the new 'Serb' party. But while its predecessor, SLS, was a loyal associate of the Kosovo Albanian élite, this party appears to be tightly controlled by the Serbian government: thus Pristina would *de facto* become politically dependent on Belgrade.

This paradoxical outcome would be the result of several factors, contingent and structural. The decline in election fraud, on one hand, which reduced the élite's control over the balance of power (PDK's crucial ally AKR missed the 5 per cent threshold by only 2,533 votes, or 0.3 per cent of the valid ballots, whereas Nisma surpassed it by 978: with inverted results no crisis would have emerged). And, on the other, Vetëvendosje's stable strength; firm international opposition to it; and the changed political orientation of the Serb minority, following the agreement on north Kosovo. The rift splitting the élite might be of a structural nature too, because a grand coalition would seem a preferable outcome for most of its factions. Should they persist in eschewing it, this would probably be due – assuming rationality – to irreconcilable differences on the sharing of rents (from corruption, for instance, or from the control over the distribution of public transfers). This, in turn, would signal that Kosovo's social order is more fragile – has less 'dynamic stability' and 'adaptive efficiency', in the language of one literature on the political economy of development – than it previously appeared.

Thus a period of heightened competition might follow, between the old leading faction and its challengers, which could lead to a similar wave of political violence as that observed in 1999–2000: a PDK candidate was assassinated soon after the elections, ominously, and more recently a former opposition parliamentarian shot a KLA veteran, killing him. Undesirable though such a conflict may be, however, if such factions fail to find a fresh equilibrium among themselves the political system might begin to open up, for the élite as a whole is likely to become more exposed to the pressure and demands of the citizens.

Naturally, neither intra-élite conflict nor having Kosovo's government dependent on Belgrade's are in the West's interests. And as fresh elections would be the only way to avert both outcomes – for a grand coalition seems unlikely, and intra-élite conflict could better be contained within the bounds of the electoral process – the West might choose to assist PDK's strategy. Its deputy leader – a third 'key personality of organised crime' – hinted at this objective convergence of interests when he declared that he expected 'additional intervention by our Western friends' to solve the crisis.

Repeat elections would pose a strategic dilemma for the élite, concerning the only variable in this complex game that its factions can largely control: election fraud. Though they will be tempted to resort again to the blunt methods they used in 2010, the electorate will expect elections as fair as in June, and in case of a regression it might be readier to protest than it was in the past. The international community – which recently applied considerable pressure on the élite to avert excessive fraud – might also influence their calculations: but renewed pressure is unlikely to be sufficiently credible, for the West presumably considers violent intra-élite conflict a graver danger than widespread election fraud. If their activism shall rise, therefore, the progressive

forces of Kosovo's society might have greater and more benign influence than external intervention over the evolution of the political institutions.

In early August, nine weeks after the elections, the *Economist* quoted a Kosovo Serb politician as saying that nobody '[has a clue what is going on](#)'. Since then the crisis deepened. Vetëvendosje and the alliance reached a formal agreement, apparently against the wishes of the West. But the focus shifted on the appointment of the speaker of parliament, which is deadlocked. A [mistaken](#) and [unmotivated](#) judgement of the constitutional court, based on an already unreasonably rigid provision of the constitution, gave PDK the exclusive power to propose a candidate for that post. But PDK lacks the votes to elect a speaker: hence the deadlock, which paralyses the institutions and for which the constitution offers no solution. After two failed attempts, the 'constitutive' session of the parliament is now scheduled for 2 October, or 16 weeks after the elections.

Naturally, the court could reverse its position and solve the deadlock, but it too is probably paralysed: despite an illegal attempt to extend the term of some of its judges (see the postscript below), it now [apparently lacks a quorum](#). Fresh elections seem inevitable if none of the contending factions shall act responsibly. But who will take the fateful step of dissolving a freshly elected parliament outside of the constitution? With what democratic legitimacy?

The picture is sombre, therefore, for the crisis is the result of ill-conceived and malfunctioning institutions and the apparent breakdown of the intra-élite pact, which opens opportunities but entails also risks. The crisis produced one genuinely positive development, however, for the constitutional court is seemingly losing the trust of public opinion. This remark might seem paradoxical: discredit, conversely, might bring an end to the subversion of a crucial institution, and it is only if they shall demand an impartial guardian of the rule of law that Kosovo's citizens will get it.

Post scriptum. The legality of the extension of the constitutional judges' term – which was reportedly supported by EU officials in Kosovo – is the subject of a [debate on this blog](#), between a Kosovar jurist and former government official and myself. Although the issue is not without interest (see the comments to the last post), legality is only one aspect of the problem. The judges in question are the three foreign ones whom my former employer, Kosovo's international supervisor, had appointed in 2009. The official record shows that – I note in a recent [essay](#) – they did nothing to prevent the court from being captured by Kosovo's élite since its first infancy: they all voted in favour of several literally indefensible decisions, and the US jurist who recently resigned from the court – depicted to Kosovo's public as a hero of judicial independence – is precisely the judge who apparently led his two foreign colleagues down this route (see pp. 15–18 and 34–35 of my essay). The most relevant questions, therefore, are what can be done to improve the performance of this court, whether the presence of foreign judges will assist its maturation, and, if so, why these three judges were not replaced, considering their past performance.

Note: This article gives the views of the author, and not the position of LSEE Research on SEE, nor of the London School of Economics.

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