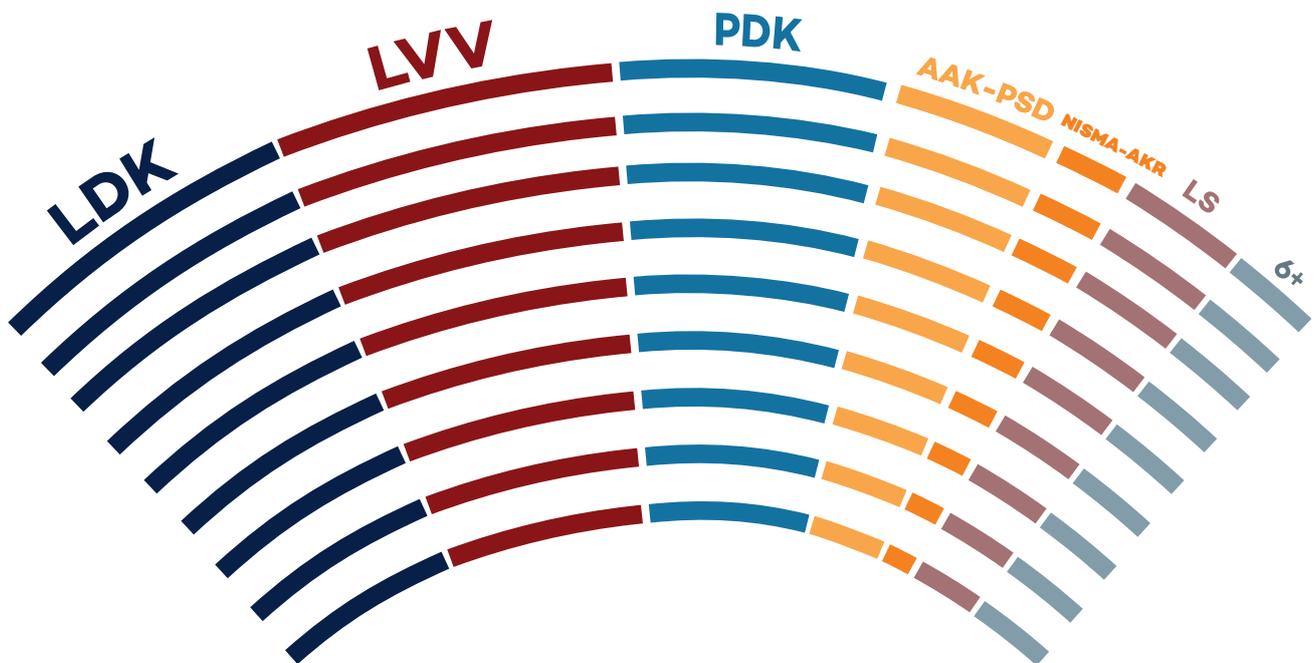


KOSOVO 2019: AVOIDING A POST-ELECTORAL CRISIS

A roadmap from certification to inauguration



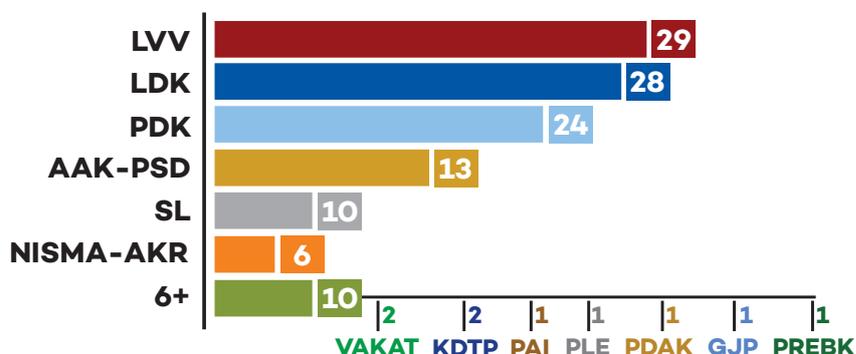
November 2019

Kosovo 2019: Avoiding a post-electoral crisis

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Kosovo held snap parliamentary elections on 6 October 2019. The result, formally announced on 27 November, produced a marked shift in the political landscape and in the 120-seat Assembly. Vetëvendosje won the elections and secured 29 seats, and LDK came second with 28 seats. PDK fell to third position with 24 seats. The party of Prime

minister Ramush Haradinaj AAK (with its coalition partner, PSD of Prishtina Mayor Shpend Ahmeti) earned only 13 seats, and NISMA-AKR coalition of Fatmir Limaj and Behgjet Pacolli barely reached the threshold and got 6 seats. Srpska List secured the 10 seats guaranteed for Serbs and became a key partner for the government. Other minorities earned 10 seats reserved for them. Vetëvendosje and LDK, with 57 seats, four short of an absolute majority, had engaged in talks to form a governing coalition weeks before the certification of results.



After the last two elections, the path from the results certification to the inauguration of the Assembly proved tortuous and very difficult. In 2014, the Assembly failed to constitute and vote its president for 6 months, and in 2017 the deadlock lasted 88 days. This time, the winning parties have a considerable number of seats that should help reach an agreement with others, with minorities only, or them and another Albanian party. The lengthy process of the certification of the results, which took 52 days from the election day, should serve as a wakeup call; there is no more time to waste and the procedural way ahead must take place smoothly.

In the past, political parties failed to constitute the Assembly because factionalism prevented working majorities. In 2014, the opposition rejected the candidate proposed by the leading party and the latter would not offer any other option. In 2017, the winner delayed the session while the opposition would fail show up. Historically, the process of forming a working Assembly has paralleled that of appointing a Government, and ultimately has been conditional upon agreeing on a coalition. This was possible, in part, because of loopholes in the Constitution and the Rules of Procedures of the Assembly that allowed for such abuses.

It is of the utmost importance that the old scenario does not take place again; **constituting the Assembly and forming a government are two separate processes.** The former is a direct democratic mandate stemming from the elections, and as such all parties and Members of the Parliament (MPs) are obliged to actively participate. The latter is a consequence of the elections and depends on securing a working majority to form it and implement its programme, passing laws and budgets. Governments may not be formed, but the Assembly has always to become functional following elections. This note reviews the process towards constituting

the next Assembly and Government, and proposes a calendar to expeditiously do so, with no delays¹. In fact, the Constitution stipulates a deadline for the establishment of the Assembly 30 days after the Central Elections Commission certifies the results. **This 30 day deadline is an absolute that cannot be postponed.**

The first step for the constitution of the new Assembly involves the President, Hashim Thaçi, who is constitutionally tasked with convening the inaugural session of the Assembly through a **Decree (1)**. Traditionally, this is done in consultation with the political parties ought to be present in the assembly, and should take place immediately after certification. The Assembly could decide to convene itself if the President fails to fulfil this formality and if the deadline of 30 days is threatened. **This procedural step should be completed with no delay in the following week** after the certification.

Immediately afterwards, the former President of the Assembly, Kadri Veseli, should convene a **Preparatory Meeting (2)** with representatives of the new parliamentary groups to prepare the inaugural (constitutive) session. This meeting must take place at least 5 days prior to the session itself, in order to give enough time for preparations. It should serve to set the agenda for the inaugural session, verify the quorum and mandates of the elected MPs, and decide on the seating arrangements, from largest to smallest parliamentary group. At this stage, the role of Veseli is vital to initiate a smooth constitution of the Assembly. Ideally, the Preparatory Meeting should take place soon (few days) after the President sets the date for the session. Thus, **former speaker should host the Preparatory Meeting no later than on 9 December, the second Monday after the certification of elections, to facilitate a speedy, orderly transition.**

The **Inaugural Session (3)** would then take place as decreed the next Monday, on 16 December, well within the legal time frame. Presided over by the oldest and youngest MPs present, it shall serve to formally launch the VII Term of the Assembly. All deputies will formally take an oath and receive their mandates, before the voting takes place. That day, the Assembly will elect its President and 5 Vice-presidents; 3 from the largest groups, and 2 coming from parties that represent minorities.² In practice, it means that Vetëvendosje will get to nominate one candidate for President and one for Vice-president, LDK and PDK will nominate a candidate each for vice-president, and so will Srpska List and another non-majority party.³ In case any of the candidates fail to get the majority, the acting President should request a new candidate proposal from the group until the positions are filled.

¹ This article describes the government creation process and because it involves the appointment of many officials, it does not deal with the gender of the appointees or those elected in the process regardless of the positions men and women will receive depending on political arrangements.

² Constitution of the Republic of Kosovo, Article 67

³ A ruling from the Constitutional Court from August 2014 determines how Article 67 must be read, specifying that the mention of parliamentary groups in that article must be read as the parties or pre-electoral coalitions that run for elections. See Case No. KO119/14 Constitutional review of Decision No. oS-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, AGJ 700/14, 17 July 2014, at, http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf

The proposing party, conversely, must be willing to offer candidates acceptable to the other groups in the assembly. **All parties have to understand that the inaugural session needs to take place under all circumstances, and thus they should refrain from boycotting it or abandoning it.**

The election of its leading organs marks the legal constitution of the Assembly, after which the formation of Government can begin. For this, the Constitution tasks President Thaçi to launch a **Round of Consultations (4)** with the parties present in the Assembly. **This process, which aims to identify the potential majority, should not take more than one or two days.** It should ideally take place the same week the assembly is constituted. A Constitutional Judgment from July 2014 mandates that the candidate is proposed by the largest parliamentary group, in this case Vetëvendosje.⁴ President Thaçi would then immediately **nominate a candidate for Prime Minister (5)** by Monday, 23 December 2019.

The President of the Assembly could then call a new session to vote on the new government, within 15 days after the President had nominated the candidate for Prime minister. **Vote on the composition of the new government (6)** could likely take place in early January 2020. Constitutionally, the candidate needs to get a majority of votes from the Assembly. As with the constitution of the Assembly, **all actors need to take that timeframe as a maximum, not a minimum.** If the candidate secures a majority (61 out of the 120 MPs), he or she will formally **become Prime Minister (7)**, and the new government can take over from the caretaker government in the following days. The new government must include at least one representative from the Serb community and one from the other non-majority communities.⁵ The latter offers no problem, as a number of parties representing minorities have showed willingness to work with the winning party. The former, however, involves engaging with Srpska List, since the coalition became the sole representative of the Serbs.⁶

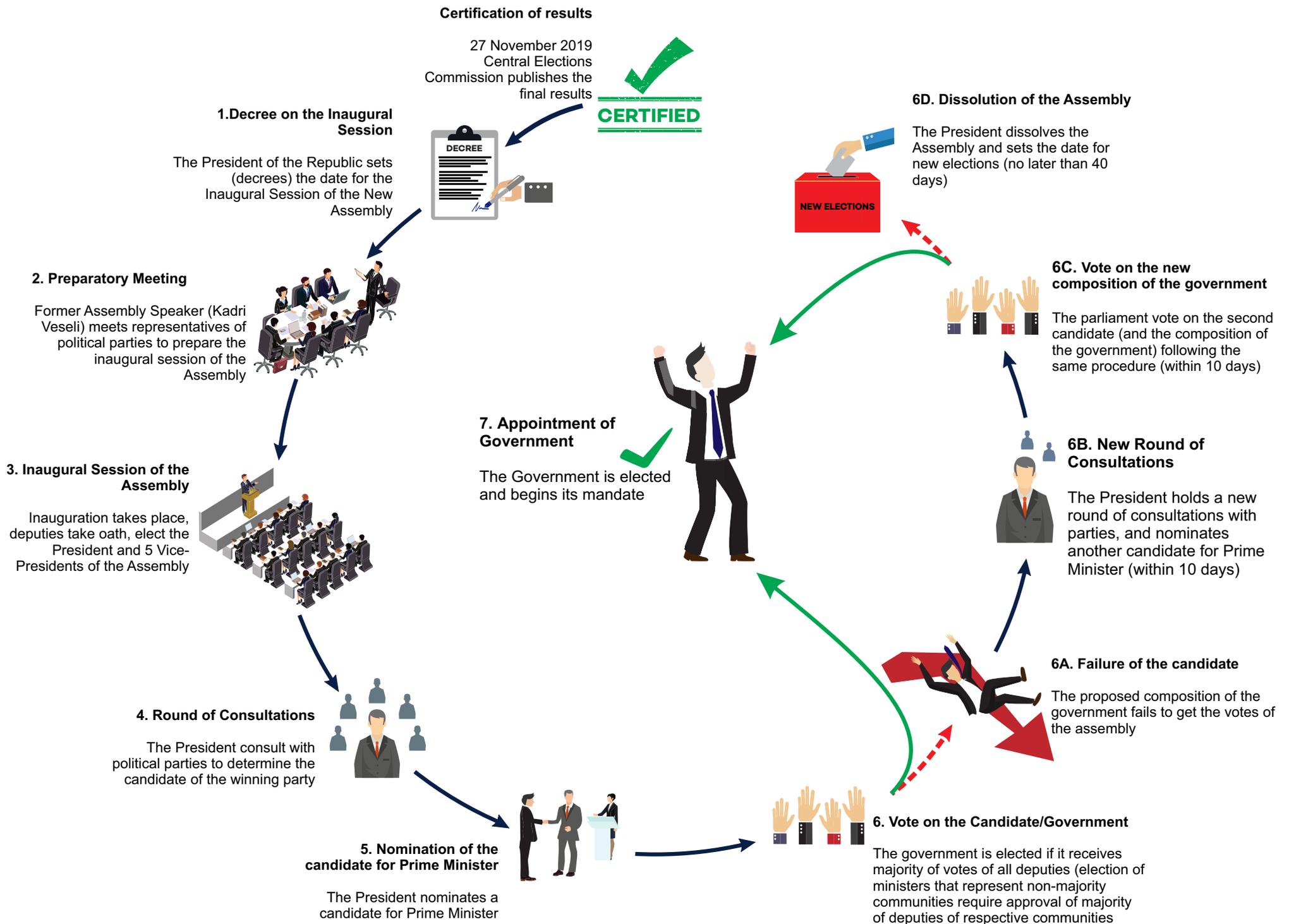
If, however, **the Candidate fails (6A)** to secure the votes, the President has to **nominate a New Candidate (6B)** within 10 days, following the same procedure. In that case, the President is not bound by the party with the most seats in the Assembly and has more room to propose a figure of consensus from the same or another parliamentary group. If that second candidate also fails to secure a majority, the President will issue a decree for **Dissolving the Assembly (6C)** and call for new elections. **These new elections should take place within 40 days, which would put them in early March 2020.**

All in all, **if the parties follow the proposed calendar, Kosovo would have a functional government in the first half of January 2020.** In the worst-case scenario, if neither the first nor the second candidate can secure a majority, and the parties abstain from boycotting the process, 150 days would have passed between first and second elections. Having a new election would be a devastating scenario for the country.

⁴ Case No. K0103/14 Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo, AGJ 671/14, 1 July 2014, at, http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_103_14_ang.pdf

⁵ Constitution, Article 96 (3)

⁶ In particular if appointed from outside the Assembly, Constitution, Article 96 (5)



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