

June 2021

ALBANIA: IMPEACHMENT OF THE PRESIDENT, SUBJECT TO THE MEANING OF "SERIOUS VIOLATION"

Analysis and Scenarios

The impeachment of President Ilir Meta has caused quite a vortex in Albania. All attention is now turned to the Constitutional Court, as it will have the final word on whether President Meta will be dismissed or will remain in office. The Court will also need to determine the meaning of the "serious violation" of the Constitution, in the absence of a constitutional and legal definition. What will happen after the ruling is quite uncertain as well. Different scenarios might work, while the whole process will be a remarkable political and legal challenge.

SUMMARY

On 9 June 2021, the Parliament of the Republic of Albania impeached President Ilir Meta.¹ This is the second time the Socialist Party attempts to dismiss the President; in 2019, MPs from the Socialist Party accused President Meta of violating the Constitution by cancelling local elections, and an Inquiry Commission was established to investigate and report on its findings. Before issuing its report, the Inquiry Commission requested an opinion from the Venice Commission. The Commission concluded that although the President had exceeded his constitutional competences by cancelling local elections, his violations may not meet the established criteria for an impeachment.² This time, the allegations are not related to any concrete legal act issued by the President. Instead, the accusations refer to the President's various statements made prior to and during the general elections.

104 out of 122 MPs voted in favour of the President's dismissal.³ The latter denied all accusations, insisting on the lack of legitimacy of the Parliament to do so.⁴ On 14 June 2021, the Parliament forwarded its decision to the Constitutional Court, which shall rule on the impeachment, within 3 months. While it is clear that the Constitutional Court may either rule against the impeachment, or

¹ U.S.News, "Albanian Parliament Impeaches President for Vote Comments", 9 June 2021, at <https://www.usnews.com/news/world/articles/2021-06-09/albanian-parliament-impeaches-president-for-vote-comments>

² Venice Commission Opinion, 14 October 2019, at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)019-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)019-e)

³ U.S.News, "Albanian Parliament Impeaches President for Vote Comments", 9 June 2021, at <https://www.usnews.com/news/world/articles/2021-06-09/albanian-parliament-impeaches-president-for-vote-comments>

⁴ In February, 2019, MPs from the Democratic Party and the Socialist Movement for Integration gave up their mandates, while trying to overthrow the government. Until then, the Parliament has been functioning with 122 out of 140 MPs, whereas the absolute majority are supporters of the Socialist Party. The President and his supporters claim that such composition of the Parliament leaves the latter with no political or moral legitimacy to initiate the dismissal. Moreover, Meta argues that the current Parliament is in a post-election transition period, with its mandate ending in September 2021, which is why it is not eligible to conduct any investigation activities.

dismiss the President, what happens after remains quite unsure. Also, the Constitutional Court will have to work with unclear constitutional and legal provisions. For instance, there is no definition of the “serious violation” of the Constitution for which the President can be dismissed. In absence of such provisions, the Constitutional Court may seek the opinion of the Venice Commission before ruling.

The Constitutional Court will either have to work intensely and rule as soon as possible, or everything will be delayed until September. Considering all circumstances, the second option seems more probable. However, the issue is that if Ilir Meta is still President when the new Parliament is constituted in September, he will have to mandate the candidate for the formation of the new government, Edi Rama. This will surely be an unfavourable situation for both parties, following the impeachment, and new political crises may ensue.

It appears that the dismissal of President Meta will be a quite lengthy process with an uncertain ending. This would be a result of the:

- lack of constitutional and legal clarity, and
- lack of precedents to rely on, as this is the first case to happen in Albania since the fall of communism.

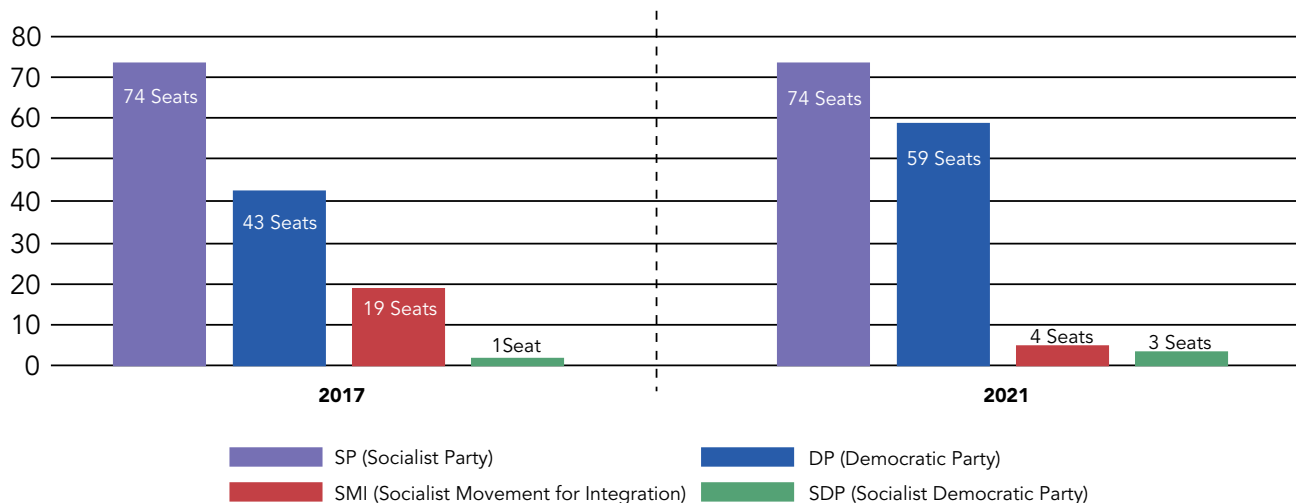
Hence, various interpretations, debates, analyses, and recommendations are already being brought up, as everyone eagerly awaits to see how this process will unfold.

A BRIEF BACKGROUND TO THE STORY

The pre-election period in Albania was quite hectic. Just two days prior to the elections, the leader of the Socialist Party and Prime minister in Office Edi Rama, announced that they would initiate the impeachment of President Meta, if he would not resign after the elections.⁵ Weeks before, the President had promised his resignation himself, if Edi Rama would win 71 mandates.⁶ Yet, although Rama won 74 mandates, Meta refused to resign, claiming that the votes were manipulated. This is not the first time President Meta throws such accusations against Rama. Prior to the election, he had even threatened that the people would take the streets if Rama attempted to manipulate the elections. In the end, the Socialist Party (SP) won the elections, and, once again, secured 74 seats in the Parliament, while the results were quite different for the opposition.

⁵ Gazetaexpress, “Edi Rama paralajmëron lëvizjen e radhës ndaj presidentit Meta: Ka dy skenarë” [Edi Rama warns the next move against president Meta: There are two scenarios], 23 April 2021, at <https://www.gazetaexpress.com/edi-rama-paralajmeron-levizjen-e-radhes-ndaj-presidentit-meta-ka-dy-skenare/>

⁶ BalkanWeb “Ilir Meta: Jap dorëheqjen më 26 prill, nëse Edi Rama fiton 71 mandate pa prekur votat!” [Ilir Meta: I will resign on 26 April, if Edi Rama wins 71 mandates without interfering with the votes!], 1 March 2021, at <https://www.balkanweb.com/ilir-meta-jap-doreheqjen-me-26-prill-nese-edi-rama-fiton-71-mandate-pa-prekur-votat/>



On 30 April, a few days after winning the elections, the Socialist Party submitted a request to the Parliament to initiate the impeachment of President Meta. They claimed that Meta made politically biased statements, prior to and during the election campaign. They accused him of inciting violence and therefore, violating the Constitution.⁷ To investigate President Meta's actions, the Parliament established an Inquiry Commission which – as many expected – concluded that the President had seriously violated the Constitution, and proposed his dismissal.⁸ Among others, the Commission states that "[...] the President has acted in contradiction with his role and constitutional functions as the head of the State and as the representative of national unity."⁹ Taking into account such violations, the Commission also concluded that Meta "cannot continue to exercise his role as President".¹⁰ Hence, on 9 June 2021, the Parliament approved the Commission's report and impeached the President of the Republic.

Unless he resigns from the position, Ilir Meta will continue to act as President, while waiting for the ruling of the Constitutional Court.

⁷ AA "Partia Socialiste kërkesë Kuvendit të Shqipërisë për shkarkimin e presidentit Meta" [The Socialist Party requests the Parliament of Albania to impeach President Meta], 3 May 2021, at <https://www.aa.com.tr/sq/ballkani/partia-socialiste-k%C3%ABrkes%C3%AB-kuvendit-t%C3%AB-shqip%C3%ABris%C3%AB-p%C3%ABr-shkarkimin-e-presidentit-meta/2228103>

⁸ Final Report of the Investigative Commission, May 2021, at <https://www.parlament.al/Files/Lajme/Dokument/RAPORT%20P%C3%8BRFUNDIMTAR%20I%20KOMISIONIT%20HETIMOR.pdf>

⁹ Ibid.

¹⁰ Ibid.

PROCEDURE FOR THE DISMISSAL OF THE PRESIDENT

The procedure for the dismissal of the President of the Republic of Albania is established by:

- 1. ARTICLE 88 (2) (3)** of the Constitution¹¹
- 2. ARTICLES 109** and **112** of the Rules of Procedures of the Parliament¹² and
- 3. ARTICLES 61-63** of the Law on the Organization and Functioning of the Constitutional Court in Albania.¹³

The procedure for the dismissal of the President flows through the stages presented below. The first step is the MPs’ request for the impeachment of the President. The procedure continues in the Parliament which, upon voting on the impeachment, transfers the case to the Constitutional Court. If it decides to continue with the judicial review of the case, the Court shall then rule on the impeachment. The impeachment should receive the majority of the votes, which is 7 out of a total of 9 judges.¹⁴ However, in the case at hand, the Constitutional Court is in the process of hiring new judges to complete its composition. Meanwhile, the Court functions with only 7 judges in its composition, so 5 votes will be needed for the dismissal.¹⁵

¹¹ Constitution of the Republic of Albania, at: http://www.pp.gov.al/web/kushtetuta_2016_1082.pdf

¹² Rules of Procedure of the Parliament of the Republic of Albania, at: <https://www.parlament.al/Files/sKuvendi/rregullorja.pdf>

¹³ Law on the Organization and Functioning of the Constitutional Court of Albania, at: http://www.gjk.gov.al/web/ligj_per_organizimin_dhe_funksionimin_e_gjykates_kushtetuese_2016_1667.pdf

¹⁴ Law on the Organization and Functioning of the Constitutional Court, Article 72 (2)

¹⁵ One judge in 2018, and another one in 2019, were dismissed from the Constitutional Court, leaving the latter with only 7 judges. One of the 7 remaining judges is an acting judge, given that her mandate had ended since 2017. Out of the total of 9 judges of the Constitutional Court, three of them are elected by the President, three from the Parliament, and three others from the Supreme Court. The three new judges (including the one replacing the acting judge) are to be elected by the Supreme Court. The latter has already opened the procedure for applications, in accordance with the Law. Unless any expedited procedure for the election takes place, considering the three-month period during which the Court has to issue a final ruling, it seems that the Court will have to work on this case with the current incomplete composition.

PARLIAMENT

<p>PROPOSAL</p> <p>No less than 35 MPS (1/4) initiate the impeachment by submitting a request to the Parliament.</p> <p>The request is presented in written to the President of the Parliament</p>	<p>No less than 35 MPS (1/4) initiate the impeachment by submitting a request to the Parliament.</p> <p>The Commission issues a report within 15 days proposing the establishment of a Commission of Inquiry</p> <p>No later than 7 days, the Parliament votes on establishing the Commission of Inquiry</p> <p>The Commission of Inquiry prepares a report proposing the dismissal of the President</p> <p>The Parliament approves the report of the Commission of Inquiry and impeaches the President, which requires the votes of (2/3) the majority in the Parliament</p> <p>Within 5 days after the vote, the President of the Parliament submits the impeachment before the Constitutional Court</p>	<p>CONSTITUTIONAL COURT</p> <p>The majority of the Court's members vote for transferring the case to a plenary hearing</p> <p>Within 3 months, the Court rules on the impeachment</p>
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CONSTITUTIONAL COURT’S RULING – WHAT ARE THE ALTERNATIVES?

The Constitutional Court shall rule on the impeachment within 3 months. The Court will not close the case even if the President in office decides to resign prior to the Court’s ruling.¹⁶

With respect to the ruling, the Constitutional Court may:

- A** Uphold the impeachment; in such a case, the Constitutional Court concludes that the President has seriously violated the Constitution, and rules on his dismissal from office. The ruling enters into effect on the day it is issued, and it is immediately published in the Official Gazette.
- B** Repeal the impeachment; in this case, the Constitutional Court concludes that there was no violation of the Constitution and Ilir Meta remains in office.
- C** Fail to rule; this may happen if the Court lacks the votes of the majority of its members. In this case, the whole procedure becomes invalid and the President remains in office.

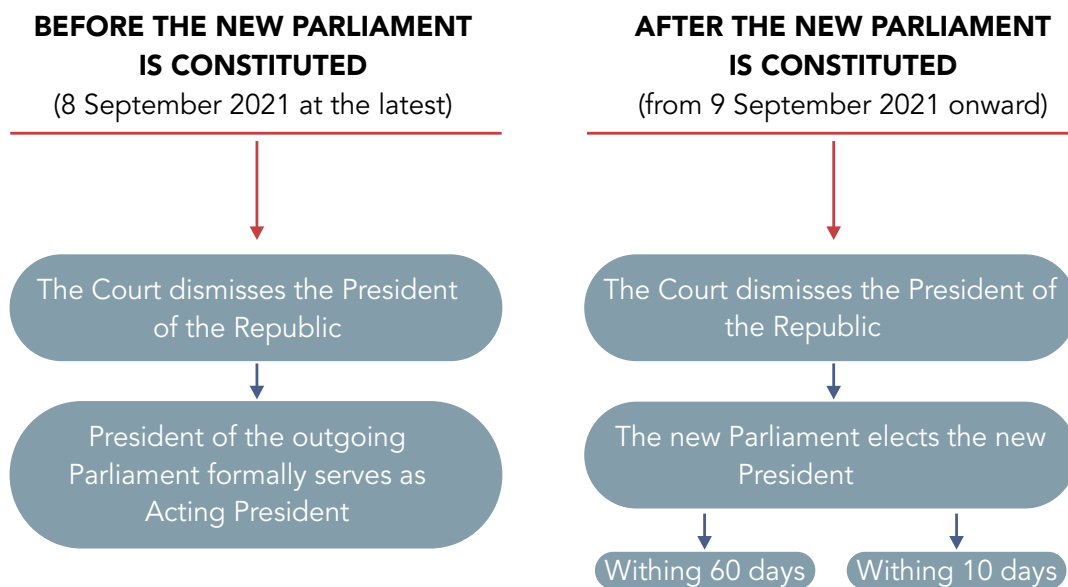
One of the struggles of the Constitutional Court will be to decide whether the President has “seriously” violated the Constitution. Since neither the Constitution, nor any other law define the notion of a “serious violation”, it is very likely that the Constitutional Court turns to the Venice Commission for an opinion on the matter.¹⁷

¹⁶ Law on the Organization and Functioning of the Constitutional Court, Article 63 (3)

¹⁷ Ekonomia Online “Tre variantet e vendimit për Metën, Kushtetuesja mund t’i drejtohet edhe komisionit të Venecias” [Three alternatives for deciding on the Meta’s case, the Constitutional Court may turn to the Venice commission], 16 June 2021, at <https://ekonomiaonline.com/globi/tre-variantet-e-vendimit-per-meten-kushtetuesja-mund-ti-drejtohet-edhe-komisionit-te-venecias/?fbclid=IwAR0hR2egfhtHYD-DX2Fc62LxxSpXF8pVM3FwlKfcdAvRVqK2IXDGIffWVg6l>

WHAT HAPPENS AFTER THE RULING? – KEY SCENARIOS

Scenarios **B** and **C** as above, produce clear outcomes. On the other hand, what happens after the Court upholds the impeachment (**A**) remains quite unknown. Neither the Constitution, nor any other law directly regulate the process and the timeline for the election of the new President, after the dismissal of the President in office. Moreover, there are no previous precedents to rely on either. The Parliament's mandate coming to an end will hinder the procedure as well. Even though its mandate officially ends on 9 September 2021, the Parliament can convene only until 8 July 2021, 60 days prior to the end of its mandate.¹⁸ Therefore, it appears that the process and timeline for the election of the new President will depend to a certain degree on the date of the Court's ruling.



If the Constitutional Court would rule before the new Parliament is constituted, the outgoing Parliament could not elect the new President.¹⁹ Therefore, one solution would be for the President of the Parliament to formally serve as Acting President, for a maximum of 60 days. In this respect, there is some similarity of this procedure with that of Kosovo's, in the sense that even in Kosovo, the President of the Assembly is foreseen to act as President of the Republic.²⁰ If in the meantime, the new Parliament is constituted, the new President of the Parliament shall take over the position automatically, until the new President is elected. For the

Election of the President

First three Rounds - **84 VOTES**
Fourth and Fifth Round - **84 VOTES**

If the election of the President fails in all five rounds:

- ▶ Dissolution of the Assembly
- ▶ New Elections in 45 Days
- ▶ New President is elected with 71 Votes

¹⁸ Constitution of the Republic of Albania, Article 65 (4)

¹⁹ Constitution of the Republic of Albania, Article 65 (4)

²⁰ Balkans Policy Research Group "Kosovo's Constitutional Court Review and Snap Elections: Legal Analysis, and Scenarios", 19 January 2021, at <https://balkansgroup.org/en/kosovos-constitutional-court-review-and-snap-elections-legal-analysis-and-scenarios/>

election of the new President in the first three rounds of voting, 84 votes are needed. Thus, the Socialist Party could use the 60 days period to build consensus with the other political parties. If the President is not elected in the first three rounds, the fourth and the fifth round require only 71 votes. In this respect, the Socialist Party will not need a consensus, as it has the sufficient votes with 74 seats in the Parliament.

However, it seems more probable that the Court does not rule until after the new Parliament is constituted; especially if the Court first seeks for an opinion of the Venice Commission. If so, in the absence of explicit constitutional and legal provisions, it is unclear under what timeline will the new Parliament elect the new President. The Parliament will have to rely on other provisions that do not regulate, per se, the election of the new President after the dismissal of the one in office, but that could work in the case at hand.

In this respect, The Parliament has to choose between different procedures in electing the new President:

- Apply Article 91 (1) which establishes that "when the position of the President is vacant, the President of the Assembly replaces him and exercises his competences", for a maximum of 60 days. This entails that the Parliament will elect the new President **within 60 days**. This option may give more time to the parliamentary parties to build by-partisan consensus.
- However, the Parliament may choose to apply Article 91 (2) which determines that "If the President is unable to exercise his duty for more than 60 days, the Parliament, with 2/3 of all MPs, decides on transferring the case to the Constitutional Court, which will affirm the inability to act as President. In case the inability is proven, the position of the President is vacant, and the election of the new President starts **within 10 days** from the day the inability is confirmed". This article refers only to the "inability of the President to exercise his duty" and has no reference to the case of the dismissal of the President. However, commonly, both the "inability" and the "dismissal" require a ruling of the Constitutional Court, for the President's mandate to end. In both cases, the mandate of the President ends prematurely. As such, the Parliament could apply the same procedure for election of the new President, following the potential Constitutional Court's ruling on the impeachment.

CONCLUSION

The Constitutional Court will struggle to define the notion of a “serious violation” of the Constitution. The Court will need to establish a threshold to determine what amounts to a “serious violation” of the Constitution. The Court will also need to determine the key relevant factors to be taken into account when assessing whether the Constitution was “seriously” violated. Hence, it is very likely that the Court will seek an opinion from the Venice Commission, which will inevitably delay the procedure and the ruling on the impeachment.

Another struggle will be the process and the timeline for the election of the new President, if the Court upholds the impeachment. While all the options and alternatives as above are to be taken into account as working scenarios, this matter will inevitably be subject of further interpretation by relevant judicial, legal, and political institutions in Albania. Whatever and whenever it happens, the new composition of the Parliament would need a consensus for the election of the new President. Following years of political tensions in Albania, the election of a President that unites all is of high importance, and a consensus between MPs could serve such a purpose.

Undoubtedly, the case at hand has exposed constitutional and legal gaps that increasingly hinder the process. Hence, the Constitutional Court’s ruling in this case will also set the ground for improved rules on the procedure for the election of the President, and serve as a precedent for future cases. As it has happened now in practice for the very first time in Albania, this case will most likely raise the need for future possible amendments of the Constitution and/or relevant laws, in order to fill the current gaps, and to prevent future institutional crises.

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The Policy Forum (a Think-Tankers High-level Advocacy Forum) committed to enhancing the dialogue between the civil society and the institutions.

The Kosovo Serbia Policy Advocacy Group (a forum for Cross-Border Civil Society Cooperation) that aims to communicate, promote and enhance dialogue toward full normalisation between Kosovo and Serbia, and their societies.

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