Kosovo’s democracy at risk?

Party system volatility, government duration and institutional crisis in Kosovo
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Kosovo's democracy at risk?
Executive Summary

This study addresses three areas of concern for Kosovo’s democratic development: the stability and duration of governments, electoral volatility, and the duration of processes including the negotiation and formation of ruling coalitions after elections. Since independence in 2008, no government in Kosovo has lasted a full (four-year) term in office. This has led to concerns over Kosovo’s political stability and democratic consolidation. However, contrary to popular perceptions, Kosovo’s governments are relatively long-lived. Indeed, Kosovo’s governments since 2008 have fallen on the longer end of what is the average lifespan of a single continuous government in a European parliamentary democracy. Similarly, Kosovo’s electoral volatility as measured by the Pedersen index, while relatively high, falls within range of other of Europe’s transitioning democracies. As with these cases, it is the lower level of institutionalization of the party system that is chiefly responsible for the major electoral swings in recent years, including the dramatic success of some newcomer parties. Moreover, the growing apparent willingness of the Kosovo electorate to punish incumbents given the erosion of support for Kosovo’s two dominant parties, the Democratic Party of Kosovo (PDK) and the Democratic League of Kosovo (LDK), is a sign of the growing democratic maturity of Kosovar voters. As a result, the study concludes that neither the apparent short shelf-life of governments, nor the apparent electoral volatility represent threats for the consolidation of Kosovo’s nascent democracy.

The study raises warnings about the repeated trends towards political crisis which have followed elections in 2014 and most recently in 2017. In each case, parties and coalitions lacking a majority, but holding a plurality of parliamentary seats, have effectively blocked the process of
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government formation by relying on procedural defects proscribed in Kosovo’s constitution. These defects lie in particular with Article 67 of the Kosovo constitution and its interpretation by Kosovo’s Constitutional Court in a ruling in 2014. The article governs the procedure by which a newly constituted Assembly elects an Assembly chairperson after elections. Since the formation of government depends on the ability of the Assembly to come to full order, by giving the right of nomination of the Assembly chair exclusively to the party with most seats, the constitution has provided a means for the dominant party or coalition to improve its bargaining position by claiming the exclusive right to form the government. Showing how this practice lies in opposition with normal democratic practice and democratic principles, the report highlights the need for constitutional reform which would amend Article 67 either by revising rules in ways that would allow any party to nominate an Assembly chair, or to expunge the provision entirely from the constitution and transfer the rules to the Assembly’s internal rulebook. As the study notes, this would make Kosovo’s procedures in line with practices in most of Europe’s parliamentary democracies.

The study also draws attention to the need for parties to cooperate on jointly constructing the democratic culture of informal norms needed to govern critical processes during transitions of power. Given that the PDK has continuously been in power since Kosovo’s independence, Kosovo has not yet experienced a full transfer of power in which an incumbent party relinquishes control of the government. It also draws attention to the need for more policymaking capacities within political parties in order to orient bargaining over coalition formation towards programmatic goals and policy directions as opposed to the division of the spoils of political power, as has been the trend in recent years.
Introduction

Kosovo’s national elections of 2017 revealed three things about the evolution of Kosovo’s nascent democracy. First, that so far, Kosovo’s governments continue to be short-lived, with no government since independence having completed its full term in office without succumbing to early elections. Second, that voters in Kosovo seem less willing to support incumbent parties at the national level. Finally, that, as in 2014, Kosovo’s nascent democracy is prone to institutional crises, with the country’s politics coming to a full paralysis as parties are either unable to successfully negotiate the formation of a ruling coalition, or that the dominant party or coalition enjoys special veto power over any post-electoral coalition that does not include itself.

Are these processes harmful to Kosovo’s democratic development? This report argues that the first and second processes do not, on the face it, present a serious risk to Kosovo’s democracy, and should be seen as normal features of democratic politics. By contrast, the political blockade of governing institutions after elections presents the most risks in terms of the legitimacy and consolidation of democratic rule in Kosovo. This problem, however, is fixable and requires addressing a number of flaws in the design and interpretation of Kosovo’s constitution.

This report discusses the three issues outlined above at length. On the issue government tenure and stability, it relies on a number of comparative measures to show that governmental instability alone in parliamentary systems is not threatening to democracy. What may be a risk for fragile democracies, however, is that frequent changes in government may lead to policy weakness and weakening government effectiveness in addressing core problems of social and economic transformation. This potential risk and the dangers it carries is discussed at some length. On the
matter of electoral volatility, the report presents comparative measures of volatility by comparing Kosovo to the rest of the region. It argues that the nature of electoral volatility does not by itself present a threat to democracy given the underlying stability of the party system. What Kosovo has not yet experienced since independence, however, is a transfer of power which involves Kosovo's once dominant party, the Democratic Party of Kosovo (PDK), relinquishing its presence in government. Finally, the discussion turns to the issue of post-electoral institutional crises. It argues the urgency of addressing this relatively fixable problem in a consensual manner. Since the constitutional mechanisms allowing the dominant electoral party to block the formation of a new government kicks in only after elections (and only when the dominant party fails in finding governing allies), it is easily forgotten as an issue after governments are formed. Given that the rules allowing parties to exercise such blockages are neither in line with democratic principles nor the normal practice of parliamentary democracy, it risks engendering conditions for arbitrary behavior that undermines the political process and trust in electoral institutions by the public.
Background on Kosovo’s democratic development since independence

Kosovo’s post-independence constitution adopted in 2008 designates Kosovo as a parliamentary democracy with a unicameral Assembly with 120 seats elected via an open-lists, proportional system. 20 seats are reserved for parties representing ethnic (non-Albanian) minorities, ten of which are specifically reserved for Serbian minority parties. The constitution foresees the division of legislative and judicial authority across parliament and an independent judiciary. Executive authority rests with the government which is elected by and accountable to the Assembly. The constitution also designates an apolitical head of state in the figure of the President, who is elected by the Assembly with a five-year term.

As a case of democratization, Kosovo has few comparative counterparts, at least in Europe. As a region and new state that emerged out of the break-up of a communist-led regime, Kosovo shares certain features with Europe’s other postcommunist countries. But it is also partly distinct in that the state and its democratic regime emerged out of a period of severe repression, violent ethnic conflict, and extensive international statebuilding efforts (Skendaj 2014, Pula 2003). While the legacies of this past are important, when it comes to government formation and dissolution, the democratic political game in Kosovo has generally followed similar principles as in other democracies. Recent elections have been relatively free of major distortions, pressure, fraud, and violence.¹ And while external actors may play a

backstage role during negotiating phases of government formation, the direct influence of international missions on Kosovo politics has diminished over time. At the same time, independent observers have expressed concerns over the direction of Kosovo’s democratic development. For example, Freedom House gives Kosovo low ratings in measures of political rights, and characterizes Kosovo as a “transitional government or hybrid regime,” which is a step away from a semi- or fully consolidated democracy.\(^2\) In recent years, the country has exhibited alarming authoritarian tendencies, such as the jailing of oppositional leaders and intimidation and violence against independent journalists. However, the political system continues to remain relatively open and competitive.

In the aftermath of Kosovo’s declaration of independence in 2008, the United Nations’ Mission in Kosovo (UNMIK), the civilian administration set up in Kosovo after the conflict in 1999 under UN Security Council Resolution 1244, assumed a much reduced and marginal role. While the European Union Rule of Law Mission (EULEX) continues its operation since its establishment in 2008, its role is limited to institutional capacity-building and law enforcement activities and is less involved in Kosovo’s daily political affairs. In September 2012, the International Steering Group also ended Kosovo’s supervised independence with the closure of the International Civilian Office (ICO). The ICO was set up under the Ahtisaari agreement with the mandate of supervising its implementation by Kosovo authorities, and given veto powers in cases when Kosovo authorities acted in violation of its provisions. While five members of the Contact Group (United States, United Kingdom, France, Germany, and Italy), particularly that of

the US, continue to exert strong influence over political processes and actors in Kosovo through their local ambassadors, they have not gone as deeply as directing the downfall of governments.

Since ICO’s departure Kosovo has held two sets of national elections (2014 and 2017) and two sets of municipal elections (2013 and 2017). While flawed in certain ways, the conduct of elections themselves was relatively orderly and the electoral system maintained its relative openness. Indeed, the very fact of government volatility and the growing threats to dominant parties’ hold on power are a sufficient indicator that no ruling party has been able to fully monopolize the political system and the nascent state’s administrative apparatus to such a degree as to make electoral competition meaningless. With the fact that no single party has dominated Kosovo politics in a full majoritarian fashion, processes of coalition-building and coalition-formation have become vital to Kosovo’s political system. However, since 2014, this process has become increasingly cumbersome and prone to institutional crises. The following discussion looks at processes of government formation in Kosovo during 2014 and 2017 to demonstrate the problems that political actors have faced in the process of coalition-building and government formation.

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3 The PDK, the dominant party since 2008, has had extensive influence over the state apparatus in Kosovo, including appointments of political loyalists to the police, the judiciary, public enterprises, and independent agencies, as investigations and reporting by independent journalists reveal (see, for example, investigations by Preportr [http://preportr.cohu.org], Insajderi [http://www.insajideri.com] and the Koha Ditore daily). However, the PDK’s reach has not been deep and wide enough to lead Kosovo towards becoming a fully authoritarian party-state or what Way and Levitsky (2010) define as a “competitive authoritarian” regime in which incumbents enjoy extensive control over the state, economy and media in ways that inhibit meaningful political competition.
Slippery slope? Government duration and electoral volatility

Some observers express concern that Kosovo's governments are too short-lived. It is true that no government since Kosovo's declaration of independence in 2008 has completed a full (4 years) term in office as prescribed by Kosovo's constitution. Critics suggest that this undermines the capacity of governments to implement key policy goals and reforms, with time in power cut short. They also interpret this as a sign of political – and possibility deeply institutional – instability. However, these are not necessarily true – and indeed, may be signs of a maturing, electorally-based democratic system.

Political scientists acknowledge that, across democracies, a basic divide exists between presidential and parliamentary systems in terms of governmental stability (Lijphart 1999, Linz 1994). Presidential systems tend to be combined with majoritarian electoral systems which deliver more stable and long-lasting executives. By contrast, parliamentary systems are subject to greater political volatility and, thus, governments tend to be less stable and more short-lived. This is especially true as proportional electoral systems create the potential for more party fragmentation and the formation of governments resting on the ability of party leaders to forge coalitions with others.

Given the parliamentary structure of Kosovo’s democratic system, its use of a proportional electoral system, and a party system that has undergone relative volatility since independence, the existence of short-lived governments is

4 Linz (1994) and others argue out that, in developing states, presidential systems have been more threatening to democracy and more likely to lead to authoritarian government. Similar arguments are made for postcommunist states (Way and Levitsky 2010). This is an issue that, however, lies beyond the scope of this study. To avoid such complications, our cases of reference are always relatively consolidated and stable democratic regimes.
not a surprising development. Indeed, comparative data shows that short-lived governments are the norm in most parliamentary democracies. Using these comparative indicators, Kosovo's past governments have had longer tenures than average governments across both the established and the transitional democracies of Europe. Table 1 shows average government duration in Western and Central and Eastern Europe. When the Western European average of 636.7 days and the shorter Central and Eastern European average of 582.5 is compared to Kosovo's average government duration (since 2008) lasting 1,178 days, it emerges that Kosovo's governments are rather long-lived. A breakdown of days in office for governments in office since 2008 is provided in figure 1.

In any event, the comparative data show great variation between countries like Italy, where average governments last less than a year, and Ireland, with a much higher average of 935 days. Given this, it may be asked why countries with similar political systems show such great variation, with some being prone to more short-lived governments than others. Political scientists have offered a number of general explanations of the determinants of government duration in parliamentary democracies. An obvious explanation lies with the degree of party system fragmentation. Historically, the most stable governments in parliamentary systems have been those led and staffed by a single party. This, of course, entails that a single party win a clear parliamentary majority and that the leadership exercise sufficient disciplinary control over its MPs. But this is rarely the case in most parliamentary systems, where rule by coalition is virtually the norm. Fragmentation makes coalition-formation more difficult, particularly if parties diverge on fundamental ideological orientations or policy questions. As a result, the more fragmented a party system, the more difficult it is for party leaders to forge stable
coalitions that last through (most) of a full term in office.

Once in power, the stability of a government may depend on the number of parties included in the governing coalition. The greater number of parties accommodated in a governing coalition, the more likely disagreements over policy may lead a key coalition partner to withdraw, leaving the government with insufficient parliamentary support. Another alternative is for parties to form minority governments, in which a key party or group of parties decide to support a government even if they do not join the cabinet. One-third of all governments in Western and Central and Eastern Europe have been minority governments, suggesting that this is not an uncommon practice in parliamentary democracies (Keudler-Kaiser 2016). At the same time, minority governments may be less stable, as parliamentary allies can at any time join the opposition to “pull the plug” on the government. A related and contrasting problem is one identified by Dodd (1976), which he calls “surplus government.” Surplus governments contain more parties than are necessary to govern, which reduces available power and resources for coalition members by forcing member parties to “share the pie” of political power in ever diminishing ways. Surplus governments are liable to political subversion from the inside, as member parties seek to force elections to improve their own position and eject unnecessary parties from the coalition.

Through a quantitative analysis of Central and Eastern Europe’s transitioning democracies, a study by Somer-Topcu and Williams (2008) finds that the hazard ratio that expresses the likelihood of a government’s downfall is increased by the number of parties in government. As expected, most liable to collapse are minority governments, while majority governments are the most stable. They find less evidence of the impact of surplus government, with the duration of such governments longer than others and
second only to majority governments. They also find considerable evidence that economic instability, such as growing unemployment and inflation, also make governments more prone to collapse. Overall, they find that governments tend to be more prone to collapse after their second year in office, and the hazard rate increasing significantly for governments controlled by more than two parties.

<table>
<thead>
<tr>
<th>State</th>
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<td>Latvia</td>
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<tr>
<td>Finland</td>
<td>319.1</td>
<td>Romania</td>
<td>269.9</td>
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<tr>
<td>Belgium</td>
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<td>Lithuania</td>
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<td>578.5</td>
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<tr>
<td>Avg. Duration</td>
<td>636.7</td>
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<td>582.5</td>
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Table 1. Average government duration in Western and Central and Eastern Europe. Source: Somer-Topcu and Williams 2008.
Figure 1. Government duration in Kosovo since 2008 (number of days in office; days in office include “lame duck” period between date of loss of parliamentary support, elections, and the date of formation of a succeeding government).

The overall patterns observed in Somer-Topcu and Williams’ comparative analysis hold relatively well for Kosovo. To examine the importance of these causes the report will turn to a case discussion of the causes behind the downfall of the Thaçi I, Thaçi II, and Mustafa governments in 2011, 2014, and 2017. While case studies and quantitative analyses are premised on different methodological assumptions, the general quantitative findings outlined above can serve as a baseline for examining the causes behind the early collapse of Kosovo governments through a qualitative investigation (Gerring 2007, Mahoney 2008, Goertz and Mahoney 2012).

**Thaçi I government, 2008-11**

The first government of prime minister Hashim Thaçi was formed in 2008, in tandem with the negotiation process taking place for the status of Kosovo under the direction of former Finnish president Marti Ahtisaari. Up to that point, Kosovo was led by what was considered primarily a caretaker government under the leadership of the Alliance for the Future of Kosovo party (AAK) in coalition with the
Democratic League of Kosovo (LDK). The coalition between LDK and AAK, a much smaller party, was formed in 2004. The agreement included a power-sharing arrangement in which the leader of the LDK, Ibrahim Rugova, would be elected president, in exchange for the LDK’s support for a government led by AAK leader Ramush Haradinaj, former Kosovo Liberation Army (KLA) commander for the Dukagjin region in western Kosovo.

Haradinaj’s tenure was short-lived, given his indictment by the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague for alleged war crimes soon after his appointment. After Haradinaj’s surrender to the Tribunal, the government came under a succession of weak leadership from Haradinaj’s subordinates in the AAK. In 2006, with the status negotiation process ramping up, the government came under the leadership of Agim Çeku, a former Yugoslav army general and chief of the General Staff of the KLA in 1999.

With Kosovo still under the administration of UNMIK, the pre-2008 governments had a much more limited role in governance, and their primary function was to build consensus for international statebuilding, manage internal conflict between Kosovo’s rival political factions, and maintain political unity during the negotiations for Kosovo’s status. The AAK-LDK government also had a limited role in the status negotiations, which were led by a specially formed Unity Group which consisted of all parliamentary parties, including the opposition Democratic Party of Kosovo (PDK) led by Thaçi, and ORA led by Veton Surroi. As the status negotiations approached their conclusion, UNMIK head Joachim Ruecker scheduled parliamentary elections for November 2007. While the LDK had been the dominant

5 Haradinaj was tried and acquitted of all charges in April 2008. His case was retried and Haradinaj was declared not guilty for a final time by the ICTY in 2012.
party in Kosovo, its leader Rugova was suffering from illness and his death in 2006 dealt a deep blow to the party’s popularity as well as caused internal splits. As a result, Thaçi’s PDK captured 34 percent of the vote and emerged as the leading party.

Sticking to the general theme of political unity as Kosovo entered its phase of independent statehood, Thaçi made the unexpected move of creating a coalition with the LDK. Until then, the two parties had been seen as arch-rivals in Kosovo politics. Thaçi was also seen as penalizing the AAK for its unexpected alliance with the LDK in 2004. In exchange for Thaçi’s tenure as prime minister, the PDK supported the election of the LDK’s Fatmir Sejdiu as President of Kosovo. In combination, the PDK-LDK coalition left a weak opposition in the AAK, the newly formed Alliance for a New Kosovo (AKR) formed by businessman Behgjet Pacolli, and the LDK splinter party Democratic League of Dardania (LDD) which jointly controlled a third of the seats in parliament.

The PDK-LDK coalition ruled until its collapse in 2010. The collapse was precipitated by a Constitutional Court ruling that Sejdiu’s concurrent holding of the presidency and the chairmanship of the LDK violated the constitution, which forbids the President from concurrently holding other political offices. The Court’s decision forced Sejdiu to step down from the presidency. Rumors and unconfirmed reports suggested that Sejdiu’s removal was orchestrated by the PDK, whose allies sat on the benches of the Constitutional Court. In any event, the Court’s ruling infuriated leading members of the LDK, resulting in the party’s decision to terminate its coalition with the PDK. Snap elections were scheduled for December 2010.
**Thaçi II government, 2011-14**

The parliamentary elections of 2010 resulted in the PDK maintaining its lead as the dominant party, garnering 32 percent of the national vote. While the elections were marred by allegations of fraud, leading to the repetition of elections in a number of districts, they resulted in the formation of a new coalition between PDK and AKR as well as a number of smaller parties. As with the LDK, the agreement included a power-sharing arrangement whereby the AKR leader Pacolli would be elected President and Thaçi would carry on as prime minister. The agreement was implemented, but a complaint by the LDK and other opposition parties appealed Pacolli’s election as President to the Constitutional Court. The Court struck down Pacolli’s election as irregular due to the lack of the required quorum in parliament during the election procedure (LDK and the rest of the opposition boycotted the session during which Pacolli was elected).

This complication did not result in the AKR’s withdrawal from the coalition, with the party staying on and Pacolli appointed as deputy-prime minister.6 However, growing dissatisfaction with the government’s performance, including a number of failures on the international front (including visa liberalization with the EU) and the beginning of difficult and politically costly negotiations with Serbia under EU auspices, led Thaçi and the PDK towards feeling increasingly less committed to the coalition government. Facing the need for a renewed political mandate, the PDK engineered its own downfall by negotiating with the opposition LDK and AAK (the new and vocal parliamentary opposition in the Self-Determination Movement [Lëvizja

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6 Eventually, Atifete Jahjaga, a former senior police official and political unknown, was elected President. Jahjaga’s candidacy was offered as a choice and supported by the US ambassador Christopher Dell as a “compromise” solution to the political deadlock of electing a president.
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Vetëvendosje – LV] was not part of these negotiations). While Pacolli and his AKR party opposed dissolving the government of which they were a part, his party was too weak to stop the negotiations and could do little but watch as its larger governing partner worked to undermine its own government. PDK’s negotiations with the opposition resulted in the AAK proposing a motion of no confidence against the government in the Kosovo Assembly in May 2014. The motion was passed with the support of MPs from the PDK, LDK, and AAK.

Unlike the 2011 downfall which was the product of a breakdown of a political compact between the PDK and LDK, the 2014 dissolution was initiated by the ruling party itself. While the exact motives for Thaçi’s decision to undo the coalition and call early elections are not fully known, it is clear from his and the PDK’s behavior at the time that they believed that continuation of the coalition with Pacolli and AKR was politically damaging. Thaçi and the PDK leadership also likely calculated that by calling early elections they could contest them from a position of strength, rather than allowing support to shrink as popular expectations over the government’s performance grew enormously after independence, while economically and politically the country was stagnating. At the same time, accusations of corruption and abuse at high levels of government were becoming increasingly widespread from the opposition, independent media, international actors, and non-governmental observers, further harming the seemingly wide base of popular support the PDK enjoyed in 2007. The entry of LV in parliament in 2010 also

8 While charges of corruption at all levels of government became prevalent in Kosovo media, a few high profile cases that marred Thaçi’s period in government are worth highlighting. In 2009, Nazmi Bllaca claimed to be a former operative of
introduced in the Assembly a more vocal opposition that was less willing to bargain and compromise, complicating parliamentary proceedings and turning the Assembly increasingly into an arena of unadorned accusations and polemics rather than the largely ritualistic rubber-stamp body it had been for most of the 2000s (under UNMIK and the first Thaçi government).

**Mustafa government, 2014-17**

The circumstances leading to the downfall of the Mustafa government in 2017 were similar to that of the second Thaçi government. The renewed PDK-LDK coalition was established in 2014 after a significant period of institutional blockade and uncertainty after the 2014 elections. In 2016, Thaçi departed from government, where he had served as Deputy Prime Minister and Minister of Foreign Affairs, to become President. His election was in accordance with the PDK-LDK coalition agreement which stipulated that in exchange for leading the government, the LDK would

SHIK, the PDK’s clandestine information service, and to have carried out a number of politically motivated assassinations under orders by high level officials of the PDK. Bllaca became a protected witness and his case led to a number of investigations and trials by EULEX that are still ongoing (See, among others, “Nazim Bllaca, Kosovo’s Self-Styled Assassin: ‘I’m not Mad’,” Balkan Transitional Justice November 29, 2011 [http://www.balkaninsight.com/en/article/nazim-bllaca-kosovo-s-self-styled-assassin-i-m-not-mad ]; “Alleged connections between top Kosovo politicians and assassin investigated,” The Guardian, November 7, 2014 [https://www.theguardian.com/world/2014/nov/07/kosovo-hitman-inquiry-eulex-hashim-thaci ]). In 2010, Fatmir Limaj, who had served as PDK’s Minister of Transportation and Infrastructure, was charged with the embezzlement of public funds. The Limaj case also involved a contract between the Kosovo government and the Bechtel-Enka consortium for the construction of a $1 billion highway connecting Kosovo with Albania, one of the most expensive such projects in the Balkans, and the details of which were not disclosed to the public. In 2016, the public release of recordings of secret telephone conversations between high level members of the PDK revealed one of the PDK’s senior members, Adem Grabovci, as a key figure orchestrating the appointment of PDK loyalists in high level positions across the judiciary, boards of public enterprises, and independent agencies.

9 The conditions leading to the formation of the PDK-LDK coalition in 2014 are recounted in the below section.
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support Thaçi’s election to the presidency as the successor to President Atifete Jahjaga. After his election to the presidency, Thaçi resigned from his party position, leaving his wartime friend and ally Kadri Veseli, former leader of the PDK’s illicit intelligence gathering organization SHIK (Shërbimi Informativ i Kosovës – Kosovo Information Service), to lead the PDK. Serving as chairman of the Kosovo Assembly, Veseli had limited influence over the government, but remained a politically central figure due to his control over the PDK. In early 2017, Veseli began what was dubbed as a “hearing campaign” during which he held a tour of towns and villages across Kosovo, meeting citizens and raising concerns over the direction of the country and the government’s performance. With headline coverage provided by the state-controlled public broadcaster and a heavily scripted performance, astute observers noted that Veseli’s tour, more than a reaching out to constituents, seemed like a personal publicity campaign. That suspicion proved correct when in May, Veseli introduced a motion of no-confidence against the government in parliament. Facing a situation similar to the one AKR faced in 2011, Mustafa and the LDK could do little to stop the PDK’s move to abandon its governing partner. The motion passed with the support of all opposition parties as well as MPs from the PDK.

In 2017, PDK’s presumption of standing in a position of strength proved even less accurate than in 2014. It is difficult to know the exact motives that led Veseli towards ending the coalition with Mustafa and the LDK a full year before the government’s end of term. As with Thaçi in 2014, Veseli likely decided that the government’s growing unpopularity was damaging to the PDK and that elections would lead him to wresting control of the government from Mustafa. Rather than stay the course, Veseli may have believed that abandoning the government would place popular blame on the government’s problems squarely on
the current prime minister and his party, Mustafa and the LDK, and vindicate his party from a punishing electorate. But this tactical move did not pan out in the ways Veseli expected. Veseli’s creation of a grand coalition of the “war-wing” parties (i.e., parties whose leaders were once leading figures in the KLA), which alongside the AAK included the PDK splinter party Nisma (led by former KLA commander and former Thaçi associate Fatmir Limaj), came at the cost of Veseli conceding the coalition’s nomination for the premiership to Haradinaj. It is a sign of Veseli and the PDK’s realization of their declining support that they went this far to accommodate former rivals Haradinaj and Limaj and their respective parties, as well as nine other small parties in a coalition that, as it turned out, nearly risked the PDK’s removal from power. In the end, the gamble brought Veseli back to where he started, to the position of Assembly chairman, and his party’s power greatly diminished. The additional cost to this move was the PDK’s complete alienation of the LDK and its supporters. Feeling that the party had been backstabbed not once but twice by the PDK, a considerable part of the LDK’s leadership and its electorate became more vocally opposed to any future coalition with the PDK. Mustafa felt personally betrayed as he felt that the LDK had stuck to its end of the bargain by providing the votes Thaçi needed to enter the presidency. He also felt strongly that the government was on the right track and that much of the criticism was, rather than realistic, the result of opposition fervor, particularly by LV. Those in the LDK who had warned against a coalition with the PDK in 2011 and opposed the party’s support for a Thaçi presidency felt vindicated and became overnight heroes among the party’s supporters. In any case, the move limited the PDK’s options after the 2017 elections. With the LV and the LDK both declaring any future coalition with the PDK off limits, the party had no choice but to rely on numerous smaller parties to create enough of a base of support to maintain its hold on power.
Punishing incumbents? Tendencies in electoral volatility

The 2017 parliamentary elections brought a major electoral upset, as the once third largest parliamentary party, the opposition LV, emerged as the party with the largest share of the vote of any individual party (figure 2). LV’s emergence from a small opposition group to one that surpassed both the PDK and LDK in terms of popular votes and parliamentary representation would have been predicted by few only a few short years ago, when LV shifted its strategy from an oppositional social movement to a party entering the electoral fray. Founded by the long-time activist and charismatic Albin Kurti, under the chairmanship of Visar Ymeri the party has made efforts to evolve from an oppositional movement towards a modern, left-wing, social democratic party. More importantly, LV has never served in government, enhancing its reputation as a “clean” party that harbors political and programmatic goals for Kosovo rather than serving the narrow economic and financial interests of its leaders. LV’s surprise defeat of the LDK in local elections in the Municipality of Prishtina in 2013 and its leadership of the municipality under mayor Shpend Ahmeti has also helped build the popular credibility of LV as a governing alternative. The change in tone and message from an oppositional movement to a credible party of government was made symbolically visible as Kurti abandoned his informal dress by donning a full suit and tie during the 2017 campaign. Since 2008, in spite of successfully implementing the Ahtisaari plan, expanding Kosovo’s international recognition, making significant steps in building an institutional framework in support of Kosovo’s independent statehood, and maintaining a steady rate of economic growth, the PDK’s and LDK’s periods in government have also marked by sleazy corruption scandals, overblown promises, failed major policy initiatives, and slow
movement on international issues such as expanding Kosovo’s membership in international organizations, progress towards EU membership and especially obtaining the right for Kosovars to visa-free travel in Europe. These have created the opportunity for LV to offer itself as a more competent and uncorrupted governing alternative, while keeping with nationalist themes with regards to the 1998-99 war, the exercise of popular sovereignty, and Kosovo’s relations with Serbia and Albania. The increased support the party received in the 2017 elections is a sign that this strategy has paid off.

Figure 2. Vote share of PDK, LDK, and LV across three sets of elections. PDK vote share in 2017 calculated on the basis of the number of parliamentary seats distributed to the party as part of its larger multiparty coalition.

Kosovo voters’ apparent willingness to punish incumbents and undermine support for Kosovo’s traditional postwar parties may be interpreted both as a sign of growing democratic maturity, but also as a period of growing volatility of Kosovo’s party system after a period of relative stability in the 2000s. Political scientists define electoral volatility as the change in voting behavior between elections. The Pedersen index, first developed by Mogens Pedersen in
1979, is a common measure used to quantify net volatility in a party system, and measures aggregate change in the vote share between two elections across all parties (Pedersen 1979). Since 2000, Kosovo politics have been dominated by two major parties, LDK and PDK, stemming from the divisions of the 1990s over the so-called “passive” and armed resistance camps against Serbian rule, the former represented by the LDK, and the latter by the PDK as a political successor to the KLA. However, as the index shows (figure 3), this has not always secured the parties a stable electorate. Electoral volatility has been reasonably high, with the exception of the 2004 and 2014 elections. Some reasons for this are explored below.

The causes behind electoral volatility have been unique to transformations in Kosovo’s political system since the 2000s and after independence. The biggest upset came after the death of longtime LDK leader and Kosovo President Ibrahim Rugova in 2006. With Rugova’s death, the LDK fragmented, and a breakaway party emerged under the leadership of Nexhat Daci (the Democratic League of Dardania – LDD). While the LDD captured part of the LDK’s vote, in the 2007 elections the LDK still hemorrhaged a large part of its electorate, part of it lost to competitors, part lost from voters who may have been loyal to Rugova, but cared less for the party. Between 2004 and 2007, the LDK’s vote share fell by over 20 percentage points. Another surprise that year was the impressive performance of AKR, which was a new party with little history behind it, and could identify with little else than the name recognition of its founder, Pacolli, a Kosovar-Swiss multimillionaire émigré who returned to Kosovo in the 2000s to launch his political career. In 2011, the surprise performance were the results of LV, which also debuted strongly that year as an electoral force. While the 2014 elections largely reconfirmed the configurations of 2011, they also inaugurated the period of PDK’s decline. This decline was most dramatic in 2017,
with both the PDK and LDK losing significant shares of the vote, and LV nearly doubling its vote share.

Figure 3. Electoral volatility in Kosovo as measured by the Pedersen index.

Seen comparatively, the Pedersen index for Kosovo is not unusual by the standards of European democracies. While the volatility in 2007, 2011, and 2014 is higher than the West European average of 10.57, it is below the Central and Eastern European average of 28.32.\textsuperscript{10} At the same time, as analysts note, young democracies in particular typically face high levels of volatility. Party systems tend to be less stable and electorates more open to experimenting with different parties (Kitschelt et al. 1999). Seen in these terms, the dramatic changes in the Kosovo party structure are not atypical and may in fact be a sign of a robust democratic

\textsuperscript{10} The European regional averages are obtained from Svante Ersson, “Electoral volatility in Europe: Assessments and potential explanations for estimate differences,” paper presented to the 2012 Elections, Public Opinion and Parties (EPOP) Conference, Oxford University, September 2012.
Neither short-lived governments nor a rapidly changing party landscape represent threats to Kosovo’s democratic consolidation. We saw above that, taking European averages into account, Kosovo’s governments do not appear to be very short-lived at all. At the same time, while the party landscape is undergoing considerable change, the developments there may in fact be healthy for Kosovo’s democratic development. In particular, the expressed willingness of electorates to dislodge incumbents (even if incumbents remained in power) suggests a growing maturity of both the citizenry as well as of the party system. Parties are increasingly competitive for voters and seek to expand their electoral base, which requires broadening their message, willingness to accommodate change within the party, and openness towards negotiation and compromise with other political actors in the interest of governance and the pursuit of the country’s broader interests. Seen from this light, the apparent concerns that the issues of government durability and party system volatility seem rather misplaced as they are relatively speaking normal features of democratic development.
Figure 4. Gains and losses by select parties compared to the previous elections.
On the other hand, institutional crises in government formation have become what seem to be a common feature of Kosovo politics. Both 2014 and 2017 elections led to political deadlocks in government formation, with long periods of time elapsing from the elections to the formation of a new government. As the below discussion will show, in both cases the causes of these were political. In 2014, a constitutional challenge allowed the PDK to block the formation of an opposition-led government. The same mechanisms established by the Constitutional Court’s ruling in 2014 enabled the PDK and its allies to use procedural rules to once again block the formation of an alternative government. The below discussion recounts the events that led to the 2014 crisis and then again the 2017 crisis.
Institutional crises and their political origins

The paralysis which Kosovo politics succumbed to both in 2014 and 2017 seem like more serious threats to Kosovo’s democratic consolidation than either government duration or electoral volatility. The problem at hand in these cases appears to the formation of governments – that is, the politics of bargaining and negotiation which leads to governing coalitions of the majority. In 2014, it took six months for elections to produce a new government. The same pattern repeated in 2017, when Kosovo went three months without a government and in a state of full political paralysis.

Again, it is useful to start from a comparative perspective. Unlike the duration of governments in power, the duration of the formation of governments in democratic polities has received less attention from political scientists. Among those who have studied this question, Ecker and Meyer (2015) look systematically and comparatively at the determinants of government formation processes in Europe. They are particularly interested in uncovering what explains patterns in which the process of negotiating a new government takes exceedingly long periods of time. To do so, Ecker and Meyer statistically examine 297 government formation processes across 27 European democracies.

Ecker and Meyer’s analysis indicates that government formation processes took an average of 28 days in Western Europe and 29 days in Central and Eastern Europe. Their data shows that government formation processes on average took longest in the Netherlands (90 days), Austria (75 days), and Italy (42 days), with the longest data point being over 220 days (in the Netherlands).11 In Central and Eastern

11 Ecker and Meyer’s data does not include the case of the Di Rupo government in
Europe, the longest average is held by the Czech Republic (39 days). However, the overall averages show that there is no significant difference between Western Europe and Central and Eastern Europe in this regard. Ecker and Meyer further break down their data across two dimensions (presented in figure 5): the context in which the government formation process took place and how complex the bargaining process was. The first distinguishes between government formation between and after elections (inter- and post-election). The complexity of bargaining is expressed by the number of potential parties involved in the negotiation, assuming that more parties involve more claims over goals and policies to consider and accommodate in the coalition and therefore create greater complexity in bargaining (and may therefore take longer). Some regional differences emerge in this regard, with averages being higher for post-election government formation processes in Central and Eastern Europe (43 days) compared to Western Europe (18 days).

While representing average trends, these numbers provide a useful point of comparison to the process of government formation in Kosovo. It took 72 days for Kosovo parties to form a government after the 2010 elections. In this case, part of the delay was caused by the numerous and serious allegations of electoral fraud, which generated a number of recounts and prolonged the process of result certification, which is in any event slow in Kosovo. The negotiations between the dominant party, PDK, and the new AKR party which had swept into parliament for a coalition was comparatively swift. By contrast, in 2014 Kosovo went 184 days without a new government, and again 90 days without a new government in 2017. Compared to European averages, these are extremely long periods and place Kosovo

Belgium formed in 2011, which took 589 days to form, the longest on record for any democratic country.
in the rank of countries with long periods of government formation processes.

Figure 5. Breakdown of bargaining duration based on uncertainty and complexity in Europe. Source: Ecker and Meyer (2015).

As they are interested in the central determinants of the duration of government formation processes across a wide variety of cases, Ecker and Meyer focus on bargaining uncertainty and complexity, which they theorize as central in explaining why some governments take longer to form. They find that the uncertainty created after elections is conducive to longer periods of bargaining. For Western Europe, they find that a higher number of parliamentary parties also adds to the duration of government formation processes (though they do not find similar effects in Central and Eastern Europe). For Western Europe they also find that the combined effects of uncertainty, complexity and party polarization are strong determinants of longer periods of government formation. Their findings for Central and Eastern Europe are less conclusive.
In the case of Kosovo, it is no doubt that the uncertainty and the new relations of political force created after elections creates an environment conducive to prolonged periods of bargaining. However, thus far, Kosovo has not experienced a situation where a new coalition government was formed between elections, as each governmental downfall has been accompanied by the call for new elections. At the same time, while complexity is no doubt a factor in the bargaining process, in most cases it has been the allegiance of one (large or small) party to a coalition-in-waiting that has typically made the difference in the formation of governments. In 2007 and 2014, it was the LDK deciding to join the PDK in government; in 2010 and 2017 it was AKR joining the PDK or (in 2017) the PDK-dominated coalition that led to the formation of a government. In Kosovo, a further complicating factor in government formation is the constitutional requirement to include in government parties representing ethnic (non-Albanian) minorities. While these are for the most part very small parties that have been incorporated into government without great difficulty, their role can become important the more fragmented the vote share among larger parties. In 2017, the support of the Srpska Lista (Serbian List) party and its MPs was crucial for the ability of Ramush Haradinaj to form his government. However, as noted, in both 2014 and 2017, the dominant party and/or coalition was able to prolong the period of government formation (i.e., prevent the formation of an alternative coalition) through procedural means. There are two things to consider: first, what this procedural feature consists of and how it emerged; and second, why, regardless of procedural difficulties, has the formation of new governments become politically more difficult. Both of these require us to once again turn to case studies of the 2014 and 2017 elections and their aftermath.
2014 elections

The 2014 elections inaugurated the practice of constitutional blockades holding government formation processes hostage to the will of the dominant party. While the PDK’s vote share did not decline dramatically since the previous elections, no opposition party was willing to join the PDK in a post-election coalition. Its former partner AKR was wiped out of parliament as its vote share fell below the electoral threshold. A number of leading figures of the PDK, including Limaj and former chairman of the Assembly Jakup Krasniqi broke away from the party to form Nisma, while directing serious charges against Thaçi’s leadership of the PDK. Nisma entered parliament as a small parliamentary group. At the same time, the LV vote share increased sufficiently to indicate that its oppositional activity was effective in mobilizing votes. LV was particularly adamant about refusing to join any coalition which includes the PDK. At the same time, the LDK and AAK resumed their old alliance, and in June 2014 signed a coalition agreement together with Nisma. Under the agreement, LDK and Nisma would join a government under AAK’s Haradinaj as prime minister. In exchange, LDK would control the chairmanship of the Assembly as well nominate a new President after the completion of Atifete Jahjaga’s term in 2016.

Feeling isolated, Thaçi and the PDK could do little but invoke legalistic reasons as to why no government could be formed without them. The constitutive session of Kosovo’s new Assembly on July 17, 2014, provided the occasion. The first constitutive session after elections involves the verification of the mandate of new MPs, a swearing in ceremony, and the election of a new Assembly leadership (chair and deputy

chairs). The last step in particular is key in allowing the Assembly to proceed with its work under constitutional rules, including the election of a new government. During that session, as per normal procedure, the PDK parliamentary group nominated a chairman for the Assembly from their ranks. However, MPs from LDK, AAK and Nisma (the so-called LAN coalition), alongside those of LV, left the Assembly hall, leaving the PDK candidate without sufficient votes to become elected. The ceremonial presider of the constitutive session – which according to the constitution is the oldest MP in the Assembly (and in this case happened to be a PDK MP) – subsequently declared the meeting closed. Ignoring the presider’s call to adjourn the meeting, the opposition returned to the Assembly hall and continued their meeting without the presence of PDK MPs. With the second oldest MP now in charge of the proceedings, the opposition MPs voted LDK’s Isa Mustafa as chairman of the Assembly. In effect, the LAN coalition, with LV support, proceeded to implement their agreement and making their first step towards forming a LAN-led government. 63 MPs strong, LAN and LV had a sufficiently large parliamentary majority to form a government without the PDK.

Accusing LAN, LV and other MPs to have elected a chairman in an irregular fashion, the PDK moved to raise the issue of the chair’s election with the Constitutional Court. It did so by filing a complaint the following day. The Court immediately “suspended” Mustafa’s election to the chairmanship of the Assembly, effectively blocking any further work by the new Assembly. On August 26th, the Court issued its final ruling which determined that Mustafa’s election to the chairmanship of the Assembly was irregular and thus null and void. The ruling declared that the irregularities stemmed from a lack of quorum present in the Assembly meeting, that the nomination of the chair was not made by the largest parliamentary group, and that the Assembly must repeat its constitutive meeting following procedures defined in the
The ruling also made a number of strict interpretations of the constitution that were consequential both for the creation of a government in 2014 and became salient again in 2017. Because of their importance, these are described in some detail below.

A key element of the ruling involved a reading of Chapter IV, Article 67, of the Kosovo Constitution. The article defines the procedures for the constitution of the Assembly after general elections and the election of its leadership. Specifying that the Assembly elects a President and five Deputy Presidents, the most problematic was point 2 of Article 67 which states: “The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.”

In its ruling, the Court determined that in this case, “the largest parliamentary group” meant the party with the largest number of MPs (regardless of whether the party controls an absolute majority). The Court decided that in determining “the largest parliamentary group,” priority was given to electoral results and the resulting distribution of seats in the Assembly. “The largest parliamentary group” therefore simply meant the party or coalition with most seats in the Assembly. Quoting from the actual ruling,

The Constitution in its Article 64 (1) stipulates that when structuring the Assembly the seats are to be distributed in proportion to the number of the votes received in the elections to the Assembly. The distribution is done amongst parties, coalitions, citizens' initiatives and independent candidates proportionally to the results in the parliamentary elections. This means that parties, coalitions, citizens' initiatives and independent candidates are awarded the number of seats, equalized to the mandates of the Deputies,

that corresponds proportionally to the votes that they received in the elections, having in mind that these parties, coalitions, citizens' initiatives and independent candidates passed the threshold. *The Constitution prioritizes the election results as a criterion.*

Furthermore, the Court reiterated the position it had taken in a prior ruling on the meaning of “coalition.” That ruling was made in response to a consultation raised by President Jahjaga on the proper procedure of determining a victor in a set of elections given the lack of clarity on this in the Constitution. In that case, the Court ruled that a “coalition” was defined as a *pre-electoral* coalition that was registered as such in accordance with Kosovo’s electoral law (and thus contested the elections as a registered coalition). A *post-electoral* coalition formed by parties after elections did not satisfy constitutional requirements for counting as “the largest parliamentary group” and therefore did not enjoy the right of nominating the President of the Assembly. The ruling placed a serious procedural hindrance to the LAN coalition’s efforts to form a government and made the process of constituting Kosovo’s new Assembly entirely dependent on the willingness of the PDK to nominate an Assembly chair.

After the Court’s ruling in August, Kosovo spent six months in complete political deadlock, with the PDK unwilling to call an Assembly meeting and VLAN (the expanded coalition joined in September by LV) refusing to vote for PDK’s nominee or form a government with the party. Eventually, in December Mustafa and the LDK unexpectedly broke their

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ties with VLAN and signed a new coalition agreement with Thaçi and the PDK. While the agreement had Thaçi relinquish his position as prime minister to Mustafa, it involved giving control of both the Assembly and the Presidency to PDK. In April 2016, the Assembly elected Thaçi president, with the LDK casting the decisive votes.

**The Constitutional Court’s ruling of 2014 and the elections of 2017**

The Court’s ruling in 2014 was central in the dynamics that played out after the 2017 elections. While garnering most of the votes, the PDK-led coalition with AAK, Nisma, and nine other small parties (the so-called PAN coalition) had an insufficient number of MPs in the new Assembly to form a government alone. The LDK, feeling stabbed in the back after the PDK’s decision to drop its support for the coalition government, refused to join PAN in a new coalition under Haradinaj. LV was naturally disinclined to join any coalition with the PDK. This deepened polarization resulted in a new political deadlock.

For a while after the elections, there were signs that a LV-LDK coalition was in the works. While no deal was ever concluded between LV and LDK, the two parties jointly controlled a comfortable majority in the new Assembly that would have allowed them to create a government. However, relying on Article 67(2) and the Court’s interpretation of it in its 2014 ruling, PAN could hold the constitution of the new Assembly hostage indefinitely. It did so simply by refusing to nominate an Assembly chair, which it was entitled to do in accordance with this rule as the largest parliamentary group (as per the Constitution’s language and the Court’s interpretation of it). In essence, PAN held the formation of a new Assembly and government hostage until one of the other parties would decide to join it in a coalition. The situation carried on for another three months, with
parties refusing to budge, and PAN refusing to nominate an Assembly chair. The situation was finally resolved when AKR, part of the LDK’s grand coalition, broke away and joined PAN to give the new Haradinaj government a thin 61 seat majority in the Assembly.

While the Court’s 2014 ruling lies within a strict and literal reading of the law, the use of procedural mechanisms to produce a political deadlock that serves the goal of enhancing a party’s bargaining position over the formation of post-electoral coalitions brings to light the deeply problematic nature of the system that has been put into place. Constitutional and legal rules almost always contain gaps and ambiguities in dealing with the particulars of a given situation, which in established democracies are dealt with by actors following tacit norms that are generally respected by all political actors. The common example in this is the operation of the French semi-presidential system, the so-called system of co-habitation. While the French constitution does not mandate it, the President typically takes a back seat to the Prime Minister when parliamentary elections are won by the opposition and they gain control of the government. In theory the President enjoys sufficient constitutional authority to block all of the government’s initiatives, but in practice French Presidents bow down to the rule of the (parliamentary) majority and assume more ceremonial functions. In other parliamentary systems rules of government formation during transitions of power involve a variety of unwritten rules. In some states the head of state nominates an informateur, typically a senior or retired official or politician, to head the process of identifying and negotiating a coalition. The informateur does not lead the new government (something that falls on the formateur, appointed after the informateur has succeeded in setting up a coalition agreement), and sometimes does not become a member of the cabinet at all. Such informal norms governing the process of transfer
of power that are respected by political actors help direct coalition building and government formation in cases where constitutional rules are too rigid or when their direct application is meaningless. It is especially critical in parliamentary systems where no single party dominates, and where negotiating coalitions is a politically sensitive and crucial process that enables the will of the electorate expressed in purely quantitative preferences to translate into meaningful rule by parliamentary majority.\textsuperscript{18}

Kosovo’s parties have proven that they have not yet developed such informal norms, at least not those that are shared by all parties, that allow transitions of power to take place without generating political crises. The head of state also comes to play an important role during these periods of transition. In 2014, President Jahjaga’s turn to the Constitutional Court suggested that her office was uncertain about how to proceed in the situation of a political deadlock given Kosovo’s limited democratic experience. By doing so, Jahjaga proved unwilling to step in and set an example of what the President’s role as head of state was getting parties to negotiate a coalition agreement and oversee a peaceful transition in power. In 2014, President Jahjaga called a number of roundtables with all parties present. But such gatherings were meaningless exercises in public relations given that the ambiguity and uncertainty was over how to establish a government which excludes the largest parliamentary party, something that is a normal practice in most parliamentary democracies but new to Kosovo’s political system. In 2017, with Thaçi occupying the presidency, LV and LDK had no trust in the institution serving as a mediator in the process and the head of state seemed even more publicly distant from the post-electoral political developments. Alternative ways of organizing such

\textsuperscript{18} Majority rule is here defined simply as the party or coalition controlling at least 50\% + 1 of parliamentary votes.
informal norms also exist in theory. For example, political parties could separate the process of electing a leadership for the Assembly from the process of forming a government, allowing the largest parliamentary group ceremonial leadership in the Assembly (by the ritualistic election of a chair from its ranks, regardless of election results and eventual governing coalition). Alternatively, recognizing its lack of support in the Assembly, the largest parliamentary group could concede the chairmanship to the second largest group and support the nomination of a chair from its ranks, or settle on a senior political figure, regardless of the letter of the law.¹⁹ In other words, if respect for democratic institutions and the transition of power was their chief concern, there are a multiplicity of ways parties could have in theory developed informal norms that could manage situations like those in 2014 and 2017 and prevent the country from sliding into a political crisis. But since control of the chairmanship is typically part of the political bargain between parties forming a government – and also involves considerable power given the chair’s control over the Assembly’s legislative agenda – such informal arrangements seemed outside the bounds of possibility in Kosovo’s truculent political environment.

As a result, the failure of parties to institute certain informal norms that facilitate and manage the process of transition revealed how absurd and outright anti-democratic the existing rules were. In essence, in its present standing, by giving “the largest parliamentary group” the exclusive right to nominate an Assembly chair, Article 67(2) of the Constitution compels MPs to vote for the nominee of the largest parliamentary group regardless of their will. If these MPs do not vote for the largest parliamentary group’s nominee, the largest parliamentary party can simply block

¹⁹ Technically, it is not illegal for the largest parliamentary group to nominate a chair who is not from its own ranks.
the election of an Assembly leadership and paralyze post-electoral political life. This is precisely what PAN did after June 2017.

Put in more formal terms, the provision that only the largest parliamentary group has the right to nominate a chair for the Assembly goes against at least three basic principles of parliamentary government. First, it violates the principle of the equality of all MPs in the right to speech, legislative initiatives, and the right to nominate and be nominated. Second, it violates the principle of the MPs freedom to vote her or his conscience, by implicitly demanding that MPs of other parties vote for a nominee they do not approve of, simply because she or he is the nominee of the party with the exclusive right to nomination. And finally, the rule is in violation of the most basic parliamentary principle of the rule of the majority. The rigid interpretation put into place by the Constitutional Court directly prevents the exercise of majority rule in the Kosovo Assembly on the very basic issue of electing a chair. The practices put in place since 2014 have effectively given the power of procedural blackmail to any party or coalition that gets most votes as a means of forcing its way into government.20

Moreover, the procedure defined in Kosovo’s constitution has few parallels in other democratic countries. In most countries, the election of an Assembly chair is a matter

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20 International actors have contributed to the situation either by acts of commission or omission. In 2014, there were reports that the break-up of VLAN was partly the result of pressures from Western embassies who were particularly concerned about the inclusion of LV in government, which they viewed as a radical political organization (due to its methods of direct action, its frequent criticism of international meddling in Kosovo affairs, and its opposition to negotiations with Serbia). There was also little direct pressure on PDK to relinquish its hold on power after it became clear that the party did not have sufficient support to form a government. In 2017, it was the willingness of international actors to take no firm stand on the need for Kosovo actors to implement and follow democratic norms, and tolerate the PAN coalition’s holding of the political system hostage that helped legitimize PAN’s actions.
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determined by the parliament’s own rulebook, rather than spelled out in the country’s constitution. Such is the case in Germany, where the nomination of the chair of a newly constituted Assembly is not defined in accordance to party affiliation but simply as any nominee that receives the majority of votes. This facilitates the dominant party or coalition in choosing a chair without procedural hindrances or deadlocks. Similar arrangements are in place in Albania, Bulgaria, Croatia, Macedonia, Portugal, Slovenia, and Greece, among others, where the election of the head of parliament is considered a matter regulated by the parliamentary body’s internal rules rather than a constitutional matter. In the case of Kosovo, these flawed rules were carried over from the Constitutional Framework, the governing document used while Kosovo was still under UNMIK administration. At that time, the flawed nature of these rules remained unexposed because in all cases the largest party found a willing governing partner. Similarly, the rule was not a problem in 2010, when the PDK also faced no difficulty in finding a coalition partner. It is only when the largest party is unable to attract a coalition partner (or partners) that the Article 67(2) offers the means for instituting a political blockade. Given Kosovo’s fragmented party structure, such situations are bound to repeat themselves in the future, regardless of whether the party with control over the plurality is PDK or another.

In addition to the economic costs of political blockades and the time wasted in political bickering that takes time and energy away from legislative and policy initiatives that are needed in a fledging country and weak economy like Kosovo, the constitutional mechanism offered by Article 67(2) also risks delegitimizing democratic rule itself. Understood most simply as rule of the majority, the rule prevents the free negotiation of political pacts between contending parties after elections in the making of governing coalitions, and gives the party or coalition that
happened to receive the most votes undue power to force itself into any negotiation. The rule has already generated the expectation (unreasonable, by democratic standards and practice) that the party with the plurality of votes *always* enter government. This expectation, as the PDK and PAN cases have shown, can contribute towards deepening political polarization, “unnatural” coalitions between leaders and parties who in many voters’ eyes seem willing to accept any deal and negotiate with anyone – including a former political foe – that would get them into power, and weak and ineffective governance.

**Uncertainty and complexity in Kosovo’s government formation process**

Returning to Ecker and Meyer’s analysis of government formation processes in Europe, we see that uncertainty and complexity emerge in very different ways in Kosovo when a more contextual and case-based approach to the 2014 and 2017 crises is taken. The post-electoral uncertainty in the context of Kosovo’s democracy involves not only over the new relations of political force resulting from elections, but also uncertainty over rules of procedure. In 2014, this uncertainty was deeper and more serious than in 2017, when the Constitutional Court’s ruling had clarified the (questionable and skewed) rules in place. However, in 2017 political actors were uncertain about how to proceed if PAN did nominate a chair for the Assembly, and the nominee failed to receive sufficient votes. Would PAN continue nominating individuals, until there was no one left to nominate? Would it ultimately sit down and negotiate a transfer of power with LV and LDK? Or would by some undetermined procedure, the opposition somehow receive the right to make its own nomination? Would the Assembly simply dissolve itself and schedule new elections? These uncertainties no doubt made alternative negotiations
between LV and LDK more difficult, as there was no clarity if these negotiations, even if successful, would be meaningful. At the same time, given the animosities between the parties formed during the period of the Mustafa government (LV’s unfiltered criticisms of its policies and its particularly virulent opposition on the issue of border demarcation with Montenegro), their identification with opposing ideological camps (with LV identifying as a center-left, and LDK as a center-right party), both parties risked compromising part of their claim to political integrity by entering into a pact with the other (with potential electoral costs for both). Such risks were not worth taking if the actual chances of entering government were slim, and complex and difficult negotiations would in the end turn out to be a moot exercise – and the uncertainty over procedures certainly made it appear so. In the end, the uncertainty was alleviated partly by PAN MPs’ refusal to make a nomination during Assembly meetings.

The issue of complexity is no doubt critical in the Kosovo context as much as in any other parliamentary democracy. The growing number of parties with none able to win a clear (absolute) majority means that negotiations over forming governments will always be a complex matter. A growing concern about this process is that in Kosovo this process has become understood by political actors as largely one of the division of spoils of power (through the assignment of control of ministries and other political offices to individual parties), much more than negotiations over specific programs and policies to be implemented by the ruling coalition. Such a practice became institutionalized very early on – one might say as early as the 2004 elections when the LDK conceded the premiership to the much smaller AAK party, and again in 2007 when the PDK-LDK agreement split control between the parties of the chairmanship of the Assembly, the premiership, and the presidency. The inclusion of the presidency in such bargaining – nominally
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an apolitical office – is particularly unfortunate and has led towards the election of party leaders to the office – Sejdiu of the LDK, Pacolli of the AKR (in his short-lived bid), through Thaçi of the PDK. While according to the Kosovo Constitution the President is largely a ceremonial office, the fact that the President lacks credibility to intervene during political crises and is seen to carry a party-political baggage and bias seriously weakens institutional checks and balances.

Moreover, the complexity of political bargaining – with control of offices the chief object of such negotiations – has also led to a precipitous rise in the number of parties in government, the number of deputy premiers, the number of

Figure 6. Total number of high level political appointees in government.21

21 The information is based on the documents that D4D received upon its formal request addressed to the Prime-minister’s Office about this information. The political appointees include ministers, vice Prime-ministers, and vice ministers. In this calculation Prim-ministers are included as well. There where a single person held the vice Prime-ministers and that of a minister’s position, it was counted only the highest rank position. For Çeku and Thaçi I government, the data is from the day the government was voted. For the Thaçi II government, the vice ministers aren’t listed at all. The calculation for the Haradinaj government is from March 2018.
ministries in the cabinet, and the number of deputy ministers. With the current government of twenty-one ministries, the small country of two million boasts a cabinet larger than that of Germany. Including a total count of political appointees (without political advisors, who offer an additional layer of political appointments) since 2007 shows Kosovo experiencing a dramatic growth in all of these (figure 6). While this expanding array of persons appointed to political positions in government is partly the result of the patronage-based system of party control that has developed in postwar Kosovo (with each party or party faction having to satisfy the demands of its political clienteles for public sector jobs, contracts, pensions, etc.), it also poses a threat to the effectiveness of governance, control over expenditures, and the cohesion and unified direction of policy. For example, after the hastily negotiated coalition deal with the PDK in 2014, the Mustafa government spent the following year ordering up advisors and ministries to develop strategy documents that defined the government’s goals and policy priorities. In 2015, its first full year in power, the Mustafa government planned to produce 48 such documents outlining policies and goals yet to be implemented. Looking from the outside, one would have left with the impression that the government of Kosovo was a research and planning institute rather than an executive authority where parties are elected to implement programs and policies which they have developed and campaigned on prior to entering government.

22 For a comprehensive study of political patronage see data developed by the independent anti-corruption NGO Çohu (http://opendata.cohu.org/sq/patronazhi-politik).
24 Reliance on the government’s research and strategic planning capacities to develop policy is partly because of the weakness of Kosovo’s parties in their own
Conclusion and recommendations

Neither the apparently short duration of governments nor growing political volatility represent grave threats to Kosovo’s democratization. As the discussion showed, governments in Kosovo typically last longer than most governments in Europe. Short-lived governments are the norm in parliamentary systems. At the same time, political volatility in Kosovo is not new. Volatility was present in 2007, when Kosovo’s party scene was remade with the collapse of the LDK’s base of support after Rugova’s death. Volatility returned in 2017, with the rise of LV and the PDK’s increasingly worsening electoral performance. While the 2007 elections took place under distinct circumstances (the death of longtime party leader Rugova and the immanent declaration of Kosovo’s independence), they showed that Kosovo voters were willing to switch allegiances. The same pattern emerged in 2017, when popular support that used to flow towards LDK and PDK was diverted towards LV. While this study has not focused on electorates per se, one could also consider the effects on electoral trends of the coming of age of young demographic groups with little direct experience of the politics of the 1990s or early 2000s. These younger voters may be drawn by the energy and enthusiasm represented by LV, which also contribute to its expanding base of support. In any case, the growing threats to political control by incumbents, insofar as they are not met by efforts by governments to curtail oppositional activity, create the conditions for transfers of power and political competition that contribute directly to capacities of policy research and development. For instance, no Kosovo party has a party think-tank, and whatever policy ideas are there are the result of individual initiative or – more commonly – a response to international demand, with policies often the product of international technical assistance offered to satisfy those demands. This lends to the treatment of government by Kosovo parties primarily as a source patronage and the control and distribution of cabinet positions as a game of political musical chairs.
the consolidation of Kosovo’s parliamentary democracy.

A different pattern emerges when one looks at processes of government formation and the repeated patterns of crisis in 2014 and 2017. As the report noted, these crises are political in origin and artificial in their making, to the extent that they are the result of the misuse of constitutional rules, rather than the breakdown of norms of parliamentary democracy. They began with and involved the reinforcement of legal mechanisms allowing parties that are dominant but which lack majority support to paralyze political life as a means of enhancing their bargaining position in the government formation process. As the discussion noted, ultimately this recurring pattern is the result of a flawed constitutional design. In particular, Article 67(2) of Kosovo’s constitution and its interpretation by Kosovo’s Constitutional Court in 2014 has given the dominant party or coalition a permanent veto over the formation of any government which does not include it as a member. While in 2014 and 2017 the situation involved the inability of the PDK (and, in 2017, the larger PAN coalition) to find governing allies, in the future the rules and practices in place could produce a similar situation whatever the identity of the dominant party (or coalition). Kosovo is one of the few European countries where rules establishing the election of parliamentary leadership are spelled out in the constitution, whereas in most countries they are defined in internal parliamentary rulebooks. A clear solution would be for parties to work jointly to amend Article 67(2) either by rewriting the rule in ways that allows for any party to nominate the Assembly chair and any MP to become elected insofar as they have the votes of at least 50% + 1 MPs. Alternatively, the amendment can involve the rewriting of Article 67 in its entirety by assigning the regulation of the election of the Assembly leadership to the Assembly’s own Rules of Procedure. For instance, rules for the removal and replacement of an Assembly chair are currently defined in
the Assembly’s Rules of Procedure rather than in the constitution.

At the same time, it is clear from their object and outcome — bargaining over the Presidency as part and parcel of negotiations over the formation of governments, and the growing size of political posts in the executive since 2007 to accommodate an increasingly larger number of political appointees, the lack of clear governmental programs that define what coalition partners will do in government — that negotiations over the formation of governments have been less about programmatic goals than about sharing the spoils of power. While Kosovo’s party structure organized around pervasive patron-client relations have much to do with this, so does the lack of policy-making capacity lodged within political parties. All parties rely on the capacities of government to produce the strategic goals and specific policy platforms to implement while in power. This has turned actual governance into a game of improvisation that contrasts sharply with the resoluteness and single-mindedness that drives parties and leaders in their ambition for control over high political posts.

While there are structural causes behind this condition, the problem can be mitigated by focusing training and capacity-building efforts within the major parties. Parties should be encouraged to form policy research arms, and international support, such as by European and US party foundations and EU-level transnational party groups such as the European People’s Party and the Progressive Alliance of Socialists and Democrats. While some investment in party-level capacity-building have been made since the 2000s, these have evidently been insufficient in transforming the basic nature of political organization in Kosovo, have not been sufficient to consolidate ideologically and programmatic based positions across Kosovo’s political spectrum, and to create mechanisms within parties that allow for ideas and goals to
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transform into concrete policy proposals. Such specialization of party activity would not only contribute to the further professionalization of politics and the marginalization of clientelistic practices and “strongman” tactics, but would also expand the means that allow parties to engage in broader policy-based dialogue with members of civil society and shift polarization and competition away from an overemphasis on individual leaders towards organizationally-driven programs and goals.

To recap, the report’s chief recommendations are as follows:

• Kosovo parties must amend Article 67 of Kosovo’s constitution which allows a non-majoritarian party to control and potentially block the process of constituting an Assembly after elections. While amending the Article may appear against the short-term interest of the incumbent party wishing to hold on to power, or to the party hopeful of emerging on top in future elections, the defective procedure violates basic democratic norms and practice and inhibits processes of government formation, generating needless, wasteful, and largely artificial political crises as those witnessed in 2014 and 2017. Parties can either rewrite Article 67 in ways that allows any party to nominate an Assembly chair insofar as the nominee garners a majority of votes from MPs, or can do so by invalidating the article and placing rules governing the election of Assembly chairs in the Assembly’s rulebook following similar principles of nomination and election. The choice should be up to a multiparty committee that would rewrite these provisions on a consensual basis.

• Kosovo parties should be more cognizant of the need to be respectful of basic democratic norms during sensitive processes of transfer of power after elections. Peaceful transfers of power are normal and pervasive processes in
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democratic regimes. On the one hand, Kosovo’s limited democratic experience is partly to blame for the high uncertainty created particularly after elections overturn previously existing relations of political force. On the other, Kosovo’s parties have been often willing to take advantage of legal and normative vacuums to their advantage. This practice must end. In particular, Kosovo’s President must assume a more prominent role in overseeing the peaceful transfer of power, in part by facilitating negotiations over the formation of coalitions while not favoring any particular party. To strengthen the President’s independent institutional role, parties must in the future strive to avoid electing former party leaders as head of state, which includes avoiding the inclusion of the Presidency as part of coalition bargaining.

- Part of the problem in bargaining over coalitions after elections is the tendency to focus on the division of political spoils, including high level political posts, including their artificial expansion in order to satisfy various factions and clientelistic constituencies. While this practice has multiple causes, part of it can be alleviated by focusing attention on enhancing policy-building capacities within political parties. This would involve both parties and external actors (such as international and European party confederations, party-based institutes, agencies supporting democratic development, and local civil society) establishing internal policy-making by constructing research and policy development arms. In addition to making bargaining over coalitions focused primarily on agreement over key policy goals rather than the distribution of ministerial posts, this would also improve the efficiency of governance by reducing time spent by political actors on the setting of strategic goals and
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development policy on an “as you go” basis while in government. Political actors should use time in opposition to direct their political organizations towards building long-term strategic programs and policies rather than consider that these critical aspects of politics can be left to chance and improvisation and considered important only after the party has entered government.
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Kosovo’s democracy at risk? : party system volatility, government duration and institutional crisis in Kosovo / paper prepared by Besnik Pula. - Prishtinë : Demokraci për zhvillim, 2018. – 60 f. ; 21 cm. – (Series : Electrons and Political Parties ; 11)

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Democracy for Development (D4D) is a think-tank organization established in 2010 with the vision that democracy is a precondition for development. The founding members of D4D believe that democracy is both a means and ends for development and they have tasked themselves with a mission to research and reach out to a wider community of stakeholders to make this link apparent.

D4D’s mission is to influence the development of public policy to accelerate the socio-economic development of Kosovo, improve governance, and strengthen democratic culture in the country.

For more information about D4D’s activities please visit our website: www.d4d-ks.org.

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