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Relationship between the President of the Republic of Kosovo and the Assembly in general and in particular in the time period 2011-2016

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Abstract. The Constitution of the Republic of Kosovo in its basic provisions has defined the form of government and separation of state powers, as a fundamental principle of democracy, where the President of the Republic of Kosovo is not part of any of the state powers, but the constitutional powers he exercises affect that he has connections with all state powers. This paper addresses the relation of the President of the Republic of Kosovo with the legislative power, including the exercise of some of his constitutional powers, namely the convening of the constitutive session of the Assembly, the dissolution of the Assembly and the annual speech of the President in the Assembly of the Republic of Kosovo. The above-mentioned competencies, in addition to the theoretical aspect, are also analyzed in the practical aspect when these constitutional competencies of the President were materialized by President Jahjaga during the mandate 2011-2016. Also, the political stalemate and the actions taken by the President, Mrs. Atifete Jahjaga for his overcoming, criticisms and recommendations of the European Commission in the Progress Reports regarding the political stalemate in the country. since the declaration of Kosovo as an independent state in 2008, it has managed to complete a full constitutional mandate, five years, unlike its predecessors and successors until 2019. Therefore, this paper aims to elaborate the exercise of some constitutional powers and the practice of one of the most important constitutional institutions in the Republic of Kosovo, that of the President of the Republic of Kosovo.

Keywords. President, Assembly, constitutional powers

Introduction

The principle of separation and exercise of state power implies the independent exercise of legislative, executive and judicial power, where the competencies of each power are defined and regulated by the highest legal and political act of the country-constitution (Kadriu, 2006, p. 237). The Constitution of the Republic of Kosovo acted in the same way, which implemented in Article 4 the principle of separation of state powers and at the same time defined the competencies of each state power (Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo with amendments XXVI, 2008). Parliament is part of the organization of the state, which in the constitutional doctrine is said to be a sovereign body (Omari, L. & Anastasi, A., 2010, p. 195).

The Constitution of the Republic of Kosovo in Article 4 has determined that the President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country inside and outside and the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, in accordance with this Constitution. The functions of the President of the Republic, which guarantee the constitutional and legal functioning of state institutions, are mainly those competencies, which are related to the constitutional and legal functioning of the highest institutions of legislative, executive and judicial power (Susuri, 2019, p. 371). Regarding the legislative power and its function, the President of the Republic of Kosovo has the following competencies:

- announces the elections for the Assembly of Kosovo and convenes its first meeting;
- promulgates the laws approved by the Assembly of the Republic of Kosovo;
- can initiate a proposal for laws from his / her field of activity,
- has the right to return for review of adopted laws, if he considers that they are harmful to the legitimate interests of the Republic of Kosovo or one or more of its communities. The right to reinstate a law can be exercised only once;
- addresses the Assembly of Kosovo at least once a year regarding his / her field of activity.

In the following I will elaborate some of the above constitutional powers in particular their exercise during the period 2011-2016.

Research Methods

The research methodology in this paper will be oriented to the use of historical, descriptive method and analysis of legal acts and judgments of the Constitutional Court of the Republic of Kosovo.

Research Results and Discussion

Convening of the constitutive session of the Assembly by the President of the Republic of Kosovo

"The President of the Republic of Kosovo announces the elections for the Assembly of Kosovo and convenes its first meeting" (Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008)¹, thus defines one of the powers of the President in Chapter V of the Constitution of the Republic of Kosovo, which chapter with its content sanctions the institution constitutional of the President.

Since this competence of the president is related to the legislative power, then it would be meaningless if such a competence of the President would not be constituted in the chapter of the Constitution of the Republic of Kosovo which defines the institution of the Assembly of the Republic of Kosovo, ie this the latter contains this competence of the President, defined as follows: "The President of the Republic of Kosovo convenes the first session of the Assembly" (Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008).

The competence to convene the constitutive session originates from the monarchical system and through this competence the President of the Republic exercises direct influence in the work of the legislative power (Tadej, D., & Ales K., 2016, p. 2).

In addition to the Constitution of the Republic of Kosovo, this competence of the President is regulated by the Rules of Procedure of the Assembly of Kosovo, which stipulates that "the Constituent Assembly is convened by the President of the Republic of Kosovo within

¹ Article 84 paragraph 3.

thirty (30) days from the date of the official announcement of the election result ” (Assembly of the Republic of Kosovo, Rules of Procedure of the Assembly of the Republic of Kosovo, 2010)², so here, in addition to the competence of the President to convene the constitutive session, the time limit within which the President must exercise this competence is determined. Further, from this provision of the Rules of Procedure of the Assembly of the Republic of Kosovo, it results that this competence of the President of the Republic is a dependent competence which as such is exercised only after the certification of the official result of the parliamentary elections by the Central Election Commission and not preliminary results which are not definitive and as such may vary.

During the constitutional mandate of the president, Mrs. Atifete Jahjaga, since the parliamentary elections were held only once, which means that she exercised the power to convene the constitutive session only once and that after the announcement of the official results for the parliamentary elections by the Central Election Commission on July 4, 2014 (Central Election Commission, 2014), the President called the session. The first constitutive session of the Assembly was held on July 17, 2014 and was followed by major irregularities starting from the division of seats by political forces, continuing with the determination of which was the largest parliamentary group, which at the same time would be the main problem, which would be solved through the interpretation of the Constitutional Court, another problem was the boycott of the session and the abstention by the deputies.

That the determination of the parliamentary group during this session was made in contradiction with the constitutional provisions was also proved by the interpretation made by the Constitutional Court of the Republic of Kosovo on this issue, which elected the President and Deputy Presidents of the Assembly proposed by a post-election coalition that was considered as the largest parliamentary group and declared unconstitutional (Judgment in case no. KO 119/14-Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo, 2014, p. 2). As a result of which the Constitutional Court of the Republic of Kosovo had previously imposed the interim measure and suspended the work of the legislature and the function of the President and Deputy Presidents of the Assembly of the Republic of Kosovo (Decision of interim measure in case No. 119/14-Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo, 2014) while it needed more than one month to decide on the subject matter of this referral, which it declared unconstitutional in those circumstances that the meeting and the procedure followed after the suspension of the constitutive session of 17 July 2014, due to lack of quorum had violated the constitutional provisions in terms of the proposal of the President of the Assembly from the largest parliamentary group and his election by a majority vote of all members of the Assembly, which means that that day in the session the candidate for President of the Assembly was not proposed by the largest parliamentary group, which according to the interpretation of the Constitutional Court is the largest parliamentary group. It was the Democratic Party of Kosovo that emerged victorious from the parliamentary elections and not the post-election coalition formed between the Democratic League of Kosovo, the Alliance for the Future of Kosovo and the Social Democratic Initiative known as Nisma, which was a post-election coalition, while in terms of majority. The votes of all deputies should be said that in this session Democratic Party of Kosovo deputies were not present and Self-determination Movement deputies, despite being present at the session, they abstained.

² Article 7.

Further, constitutional violation according to the Constitutional Court had also in decision no. 05-V-001, taken during the constitutive session of 17 July 2014 both in terms of procedure and content due to the fact that it was not the largest parliamentary group that proposed the Speaker of the Assembly therefore as a result, this decision was even worthless.

As a result of the above-mentioned constitutional violations, the Constitutional Court had considered that the President and Deputy Presidents of the Assembly had not been elected and as such the constitutive session of 17 July 2017 had not ended, therefore the Assembly had to elect the President and Deputy Presidents in accordance with the Constitution. Article 67 par.2, in conjunction with Article 64 par.1 and Chapter III of the Rules of Procedure which are applicable in relation to these articles and in addition to their application, now the election of the President of the Assembly had to be done in accordance with the judgment of the Constitutional Court (Judgment in case no. KO 119/14-Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo, 2014, p. 42). That the decision of the Constitutional Court was respected during the continuation of the constitutive session is also proven through the right given to the largest parliamentary group to nominate the candidate for President of the Assembly, specifically the Democratic Party of Kosovo. But even during the continuation of this session, it was not possible to elect President and Deputy Presidents of the Assembly, this is because the candidate proposed by the Democratic Party of Kosovo for President of the Assembly failed to get the majority of votes of all deputies. Thus, neither the judgment of the Constitutional Court regarding the first constitutive session had the effect of overcoming the political stalemate.

After the June parliamentary elections, several attempts were made to constitute the Assembly and enable the start of the Government formation process. Disputes over which party should have the right to nominate the President of the Assembly had sent the country into a political blockade (European Commission, European Commission Personnel Working Document: Progress Report 2014 for Kosovo (for the period October 2013 - September 2014), 2014, p. 8), due to the impossibility of establishing institutions, the President of the Republic of Kosovo, Mrs. Atifete Jahjaga had intervened in accordance with her constitutional powers but while maintaining her neutrality.

As a result, the President of the Republic of Kosovo held several rounds of meetings with the leaders of political parties during which it can be said that she had the role of mediator, a role which she failed to exercise successfully as these meetings did not yield concrete results in resolving the political stalemate. During all this political blockade that went through the process of constituting the Assembly and the Government, the President of the state tried to fulfill her unifying role and after all these last alternative efforts according to the constitutional provisions to resolve this political stalemate, the president had to announce new elections, but did not announce the latter, as a new Co-Government Agreement was signed.

With the achievement of this agreement, the institutional crisis that had been created in the Republic of Kosovo for several months was unblocked and the achievement of this agreement meant that the conditions were created to call the continuation of the constitutive session again, which happened on the same day when the agreement was reached (Ended the constitutive meeting of the Assembly of the Republic of Kosovo held on December 8, 2021, 2014) where by a majority of votes the President and Deputy Presidents of the Assembly were elected, who were voted in a package, and the constitution of this institution was completed. Thus, the constitutive session convened by the President of the Republic of Kosovo after the announcement of the official results, although held several times, due to irregularities and the

failure to reach a consensus between political forces, gave results in the constitution of the assembly only after six months.

The competence of the President for the dissolution of the Assembly of the Republic of Kosovo

The dissolution of Assembly represents a parliamentary institution that means the end of the term of parliament before the expiration of the regular term for which it was elected. Most constitutions recognize the institution of premature dissolution of parliament and at the same time define the procedures for dissolution. The main circumstances that affect the dissolution of the parliament are: conflicts between the president and the parliament, the budget vote, deep parliamentary crises, etc. The effects of the premature dissolution of the parliament are (Bajrami, 2005, p. 138): the end of the mandates of the deputies; the end of the term of the government, which continues to work in resignation, until the election of the new government and the announcement of early parliamentary elections.

The constitutional competence of the President of the Republic for the dissolution of the Assembly is one of the most important presidential competencies, the exercise of which directly affects the existence of the legislative body, which is directly elected by the people, in which sovereignty is found. Therefore, the Constitution presents the Assembly as the most authentic expression of the sovereignty of the people (Anastasi, 2004, p. 128). It follows that the exercise of this power should be taken care of, in order to avoid the possibility that the President of the state as a neutral body to alienate the relations of balance with the bodies entrusted with the political leadership of the country.

The Constitution of the Republic of Kosovo stipulates that the regular mandate of the Assembly of the Republic ends with the end of the four (4) year term, but this regular constitutional mandate is not always terminated by the Assembly, as a result of situations that may arise which influence the legislature to be dissolved, and thus to end its term before the end of the regular term. The Assembly of the Republic of Kosovo is dissolved (Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008): 1. if the government cannot be established within sixty (60) days from the date when the President of the Republic of Kosovo appoints the candidate for Prime Minister; 2. if two thirds (2/3) of all deputies vote in favor of dissolution, the Assembly shall be dissolved by a decree of the President of the Republic of Kosovo; 3. if the President of the Republic of Kosovo is not elected within sixty (60) days from the date of the beginning of the president's election procedure³.

This constitutional regulation clearly defines that the first two forms of dissolution of the Assembly of the Republic of Kosovo are made by decree of the President of the Republic of Kosovo, in which case he exercises one of his constitutional powers, which is a dependent competence, as that the issuance of the decree for dissolution of the Assembly of the Republic depends on the fulfillment of certain conditions. Further, it is important to elaborate the situation when the Assembly of the Republic of Kosovo can be dissolved by the President of the Republic of Kosovo, after the successful vote of no confidence in the Government of the Republic of Kosovo, so in this situation the Constitution while using the verb "may" implies that the President of the Republic of Kosovo is not obliged to dissolve the Assembly of the Republic of Kosovo if a vote of no confidence against the Government takes place.

³ Article 82 paragraph 1.

During the time when the country was ruled by the President, her Excellency Mrs. Jahjaga, the Assembly of the Republic of Kosovo during 2014 was unable to exercise its powers, especially the legislative function, as a result of parliamentary obstruction used by the opposition, which obstruction was manifested through the boycott of parliamentary sessions, the procrastination of the parliamentary debate through long speeches, the procrastination of the adoption of laws, especially the one on the transformation of the Kosovo Armed Forces into the Army of the Republic of Kosovo, extra-parliamentary pressures through protests, all these influenced this institution to include the parliamentary crisis. As the Assembly of the Republic did not have the necessary majority to vote on the laws, especially for the adoption of laws where a qualified majority of two thirds was required, a majority that was impossible to secure, as a result the decision-making process in the Assembly of the Republic of Kosovo was blocked. Thus, since the position did not have the necessary votes in the Assembly of the Republic to carry out its work, and the opposition on the other hand did not have the necessary votes to overthrow the Government of the Republic, the Assembly of the Republic, with ninety (90) votes in favor, four (4) against and three (3) abstentions, decided on the dissolution of the fourth legislature (Assembly of the Republic of Kosovo, Transcript of the extraordinary plenary meeting of the Assembly of the Republic of Kosovo, 2014). Following the dissolution of the Assembly of the Republic, President Jahjaga, in accordance with her constitutional competencies, had announced early parliamentary elections.

The above-mentioned forms of obstruction that were applied by the deputies of the Assembly of the Republic of Kosovo, were also part of the criticism and recommendations in the Report of the European Commission of 2014 (European Commission, European Commission Personnel Working Document: Progress Report 2014 for Kosovo (for the period October 2013 - September 2014), 2014), which among other things recommended that the new legislature that was elected after the parliamentary elections held on June 8, 2014, to avoid failures in reaching a quorum and boycotts of plenary sessions, the latter had been numerous in the fourth legislature, which resulted in delays in decision-making and adoption of legislation. Therefore, the new Assembly, according to this commission, should focus on minimizing the political crisis.

So, as I pointed out above, the parliamentary crisis is expressed through the blocking of the Assembly in the exercise of its functions as well as in the election of the Government. Even in Kosovo, the parliamentary crisis appeared through the blocking of the functions of the Assembly of the Republic during 2014, which resulted in the dissolution of the Assembly and the holding of early elections, continued even after the elections. The main cause for the situation created after the elections was the lack of an absolute winner and thus the lack of a parliamentary majority, which resulted in the impossibility of forming Kosovo institutions for six (6) months. In this period, in addition to the parliamentary crisis, the institutional crisis also appeared. As a result, the President of the Republic of Kosovo, her Excellency Mrs. Atifete Jahjaga within 2014 risked to exercise its competence twice for the dissolution of the Assembly of the Republic of Kosovo, but the second dissolution during 2014 did not happen as political parties reached political agreements and thus in December 2014, was created parliamentary majority necessary for the constitution of the institutions of the Republic of Kosovo.

Delays in the constitution of the Assembly after the 2014 elections had slowed down the reform process in Kosovo. Violent obstruction of the last plenary sessions by the opposition deputies has negatively affected the functioning of the Assembly, such actions are contrary to European values, therefore, the Assembly of the Republic of Kosovo should be more efficient and act in accordance with its regulations. It had to urgently appoint the competent members of

the regulatory and supervisory bodies, in order to ensure the proper functioning of the state administration, through non-political, transparent and merit-based selection processes (European Commission, Progress Report 2014 for Kosovo (includes the period from October 2014 - September 2015), 2015, p. 6).

In conclusion, it is worth noting that the European Commission had harsh criticism regarding this delay created in terms of the constitution of institutions, where among other things it stressed that the failure to constitute the new legislature in time and in the right way had been a step backwards for the state of Kosovo (European Commission, European Commission Personnel Working Document: Progress Report 2014 for Kosovo (for the period October 2013 - September 2014), 2014, p. 9).

Address by the President to the Assembly of the Republic of Kosovo

The Constitution of the Republic of Kosovo, one of the presidential powers, provides for the obligation of the President of the Republic of Kosovo to address the Assembly of the Republic of Kosovo, with a speech regarding his activity, at least once a year, which means that the President may address the Assembly of the Republic more than once a year due to the fact that this provision limits only the minimum and leaves open the possibility for the President to address the Assembly of Kosovo more than once a year. It is thought that this competence of the President to address the Assembly with a speech and not to any of the other institutions is not accidental as long as the President is elected by the same institution to which he addresses at the end of each year, ie the Assembly.

Competence to address the Assembly with an annual speech regarding its scope should not be understood in any way as an obligation that the President has to report or to give responsibility to the Assembly for his work, as he is independent in performing his duties and functions by the Assembly and does not bear political responsibility to this institution. This means that the annual speech of the President of the Republic in the Assembly is purely informative in nature.

In principle, no parliamentary debate takes place after the president's speeches.

The President of the Republic of Kosovo Atifete Jahjaga had respected this competence throughout her term where regularly every year end she addressed the Assembly of the Republic of Kosovo with her annual speeches, regarding her activity.

President Jahjaga exercised this constitutional competence for the first time on December 8, 2011. In this speech she had stated that during her visit to Brussels she had asked for the way to be opened for Kosovo's membership in the European Union, she had also asked the roadmap for visa liberalization, as well as the dialogue with the Republic of Serbia, which was the only way to normalize relations between the Republic of Kosovo and the Republic of Serbia, as two independent states, emphasized that Kosovo was an independent state with international subjectivity and considered as an achievement the recognition of Kosovo by eighty-five (85) countries of the world in its full territorial integrity, within its existing borders, therefore as a result of this fact she called on Serbia to give up its claims territorial integrity it had towards Kosovo (Assembly of the Republic of Kosovo, Transcript of the plenary session of the Assembly of the Republic of Kosovo, 2011). Furthermore, she addressed the creation of conditions for economic development and the rule of law throughout the country, especially in the northern municipalities, the establishment of a rule of law, the fight against corruption and organized crime through the establishment of the Anti-Corruption Agency and that it would also engage in the successful completion of electoral reform. During this direction, regarding its scope, she addressed other points, but it should be noted that the President at a certain

moment also addressed the Serbian community where, among other things, she had stated that they are equal citizens of the Republic of Kosovo with guaranteed, constitutional and legal rights (Assembly of the Republic of Kosovo, Transcript of the plenary session of the Assembly of the Republic of Kosovo, 2011, p. 7).

The annual leadership in 2012 in the Assembly of the Republic of Kosovo was characterized by the boycott of this session of the Assembly by the parliamentary group of Democratic League of Kosovo, as according to them President Jahjaga was not respecting at all the political agreement they had concluded earlier for the election of the latter to this position in 2011, according to which agreement she had ended her presidential term, after being elected for a transitional period. Despite the absence of the opposition, President Jahjaga addressed the Assembly of the Republic, presenting her work as President in relation to her field of activity towards the membership of the state of Kosovo in the European Union, the United Nations, NATO and in other international mechanisms, including the regional and international security mechanisms of Europol, Interpol. Since Kosovo had received the roadmap for visa liberalization, in this regard it had established the National Council for European Integration.

To fight corruption on the basis of constitutional authority, President Jahjaga had established the National Anti-Corruption Agency, at the International Women's Summit he had demanded that raped women be recognized as victims of war, and then addressed the Assembly of the Republic regarding its scope and achievements in the field of infrastructure, implementation of the project National Road "Ibrahim Rugova" with own funds. She also addressed her for carrying out her activity for the ongoing dialogue between Kosovo and Serbia for the normalization of relations between these two independent states (Assembly of the Republic of Kosovo, President Jahjaga delivered her annual address to the Assembly, 2012).

In her annual address to the Assembly of the Republic of Kosovo held in 2013, the President, among other things, assessed as successful the holding of municipal elections throughout the country, elections that had proven responsibility, organization and smooth running of the electoral process, also reported also for the ongoing dialogue between Kosovo and Serbia, which was expected to conclude with the Agreement on the Normalization of Relations between the aforementioned countries. She further mentioned the efforts she had made for the membership of the state of Kosovo in international organizations, where developments regarding the membership in the European Union were made after the European Union had started the negotiations for the Stabilization and Association Agreement (Assembly of the Republic of Kosovo, Transcript of the plenary session of the Assembly of the Republic of Kosovo, 2013).

President Jahjaga's annual address to the Assembly of the Republic in 2014, is one of the shortest speeches during her term, as the state of Kosovo during the second half of 2014, was in crisis. While she considered the maturity that the citizens had shown in the parliamentary elections that were held that year in the entire territory of Kosovo to be achieved, on the other hand there was harsh criticism regarding the six-month political crisis, which she described as a "dark spot of the latest history of Kosovo". She further mentioned the fifty-two (52) recommendations of the European Commission, for visa liberalization, the efforts made for the signing of the Stabilization and Association Agreement, the risk of violent extremism for the security of Kosovo, deep reforms and commitments to establish of the Special Court " (Assembly of the Republic of Kosovo, Annual speech of the President of the Republic of Kosovo in the Assembly, 2014).

In the direction of the Assembly of the Republic of Kosovo regarding its constitutional scope at the end of 2015 during its mandate, the opposition had boycotted the session of the Assembly of the Republic and as a result she had held her speech only with the deputies present that were those of the position. Part of its direction for the Assembly of the Republic of Kosovo were issues from its constitutional scope such as the economic development of the state of Kosovo, the rule of law, the fight against crime, the signing of the Stabilization and Association Agreement, the work that had been done and should have been done for visa liberalization and at the very end of this speech she did not forget to emphasize that "it was an honor and privilege to be President of the Republic of Kosovo" (Assembly of the Republic of Kosovo, Annual speech of the President of the Republic of Kosovo in the Assembly, 2015)

From all the annual directions held in the Assembly of the Republic of Kosovo by President Jahjaga, it is noticed that it has been reported mainly in relation to its scope of activity: rule of law; fighting corruption and organized crime; membership in the European Union and other international mechanisms; membership in regional and international security mechanisms, such as Europol, then for the Kosovo-Serbia dialogue; visa liberalization, etc.

Conclusion

- During the term of office, the President of the Republic of Kosovo, her Excellency Mrs. Atifete Jahjaga in the period 2011-2016, was more active in exercising competencies in relation to the legislative power, starting from the dissolution of the Assembly of the Republic, the announcement of early parliamentary elections and the convening of the constitutive session of the Assembly of the Republic, the latter was associated with irregularities, their histories and society through political stalemate.
- The lack of an absolute winner and the lack of a parliamentary majority, which did not come out of the early elections, produced consequences in the manifestation of parliamentary decisions for six months in a row.
- The failure to form the new parliamentary legislature in the right time and manner after the parliamentary elections held in 2014, was a step backwards for the state of Kosovo
- It was also recommended for the legislature to avoid boycotting plenary sessions, to minimize failures in the impact of the quorum produced by the consequences in the late adoption of important laws and decisions. This recommendation from the European Commission, based on the knowledge of the previous legislature, the fourth, which had those who had these irregularities.
- At the same time emphasizing that the election of political stalemate was avoided through the judgment of the Constitutional Court of the Republic of Kosovo, which will serve in the future for the constitution of the Assembly.
- In relation to the legislative power, the President Atifete Jahjaga states that she has managed to successfully materialize her competence.

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