



December 20, 2018

To: Mr. Philip S. Kosnet
Ambassador of the USA
Pristina

Dear Mr. Ambassador,

I am writing to you, as a contributor and supporter of many positive processes in the Republic of Kosovo, to inform you about the non-appointment by the President of the Republic of Kosovo, Hashim Thaçi, of members of the Central Election Commission, resulting in an utterly dysfunctional Commission for several months now, thus seriously endangering the overall and meaningful functioning of parliamentary and democratic life in our country.

The Central Election Commission of the Republic of Kosovo is a constitutional, independent and permanent body. As such, despite facing difficulties at the beginning of its operation, this institution, through its professionalism, has successfully completed work on several election processes in the Republic of Kosovo, which have been assessed very positively by credible national and international organizations.

As you may know, because of non-action by the President in accordance with his duties clearly set out in the Constitution, the Central Election Commission has since 27 March 2018 been totally dysfunctional for the following reasons. Extraordinary elections for the Assembly of Kosovo were held on 11 June 2017. The results were certified by the CEC on 8 July 2017. After the completion of the election process for the Assembly of Kosovo on 8 July 2017, the President, contrary to article 61.4 of the Law 03/L-073 on General Elections in the Republic of Kosovo, has failed to nominate new members of the Central Election Commission, representatives of the parliamentary groups that won in the recently completed elections. Through public communications and communication of the Office of the President had with the CEC, it was reported that, in keeping with article 61, paragraph 3, letter (a) of the Law 03/L-073, the old composition of CEC, since in the meantime regular local elections were announced, would have its mandate automatically extended for up to ninety days (90) after the certification of elections, regardless of the fact that these were local and not general elections.

Be it as it may, local elections were held on 22 October 2017, whereas this process was completed on 27 December 2017. According to the above, the latest due date, legally speaking, according to article 61, paragraph 3, letter (a) of the Law 03/L-073 on General Elections (if we take for granted the interpretation that the automatic extension is valid also in the case of the announcement of local elections) for the appointment of the members of the Central Election Commission would be 27 March 2018. But, even after this deadline, the President has undertaken no action to fulfil his

legal and constitutional obligation, acting thus in full contravention to article 83 and especially article 84, paragraph 2 of the Constitution, according to which: "[The President] *guarantees the constitutional functioning of the institutions set forth by this Constitution*".

Realizing that the President was dragging on this process intentionally beyond all legal time limits, the Parliamentary Group of the Democratic League of Kosovo (hereinafter: the PG of LDK), certified as a pre-electoral coalition "Lidhja Demokratike e Kosovës – Aleanca Kosova e Re" [the Democratic League of Kosovo – the New Kosovo Alliance], on 6 April 2018 officially submitted to the President of Kosovo the names of its two candidates nominated to become members of the Central Election Commission.

On 23 April 2018, the Office of the President of Kosovo, namely the head of the Department for Legal Issues and International Relations, through a letter addressed to our Parliamentary Group, acknowledged the receipt of our nominations and asked us to amend our proposal with additional documentation pursuant to the Administrative Instruction of the Presidency no 03/2017 of the Office of the President.

When it was assumed that all administrative procedures had been completed in the Office of the President of the Republic of Kosovo, and the appointment and the swearing-in ceremony of new members of the Central Election Commission was expected (moreover some of the people nominated by parliamentary groups were invited by telephone from the Office of the President for the swearing-in ceremony), the President of Kosovo, without prior notice to the parliamentary groups with which he had been in contact regarding the nomination/appointment of the Central Election Commission members, with the intention of further delaying this process in a bid to preserve the old composition of the Central Election Commission which guaranteed to the governing coalition – part of which is the PDK, that is the party the President had led until he was elected to this position – the majority in the CEC, rather than the new composition based on the number of parliamentary groups which emerged from the last election, the President, that is, referred the issue to the Constitutional Court on 7 June 2018 (apparently after news that the Constitutional Court lacked the quorum for decision-making), in the form of a request for interpretation of article 139, paragraph 4 of the Constitution which governs the distribution of places/seats between parliamentary groups in the CEC!

Finally, on 3 December 2018, the Constitutional Court of the Republic of Kosovo issued its Resolution which declared inadmissible the Referral/request of the President for interpretation of article 139, paragraph 4 of the Constitution of the Republic of Kosovo. Regardless of this, the President of Kosovo only on 13 December 2018, through his administration, asked parliamentary groups, including the Parliamentary Group of the Democratic League of Kosovo, to nominate only one candidate each for membership in the Central Election Commission, thus acting in clear violation of the formula laid down in the Constitution on the distribution of places, which has been continuously applied since the establishment of the CEC in 2008.

Therefore, the Democratic League of Kosovo avails itself of this opportunity to inform you that the LDK considers the request of the President addressed to the LDK Parliamentary Group, according to which our Group is entitled to nominating only one (1) candidate for membership in the CEC, as unjust and without grounds on relevant acts govern this issue.

The LDK considers this move by the President simply a tendency, without legal and constitutional grounds, to guarantee a majority in the CEC to the governing coalition, part of which the country's President unfortunately still feels, damaging and violating the constitutional right of two other political entities that have emerged from the last parliamentary elections, the Democratic League of Kosovo and Vetëvendosje.

The Democratic League of Kosovo considers that the issue of distribution of places/seats in the CEC for political entities representing the Albanian majority in the Assembly of Kosovo is clearly regulated by the Constitution and as such has been implemented since the entry into force of the Constitution, namely since the establishment of the CEC. Therefore, this issue is not and cannot remain an issue for anyone's will or wish to determine the number of places/seats political entities are entitled to in this important institution, and this is true for also for the country's President, whose role and duties in this process are clearly set out in the Constitution and the Law No. 03/L-073 on General Elections in Kosovo.

In this regard, the Democratic League of Kosovo considers that, on the basis of the results of the elections for the Assembly of Kosovo that were held in 2017, pursuant to relevant legal and constitutional provisions governing representation in the CEC, as well as in the spirit of the interpretation of the Constitutional Court regarding parliamentary groups in the Assembly of the Republic of Kosovo (Case No. KOU9/14), the six places/seats foreseen in the Central Election Commission for political entities representing the Albanian majority should be distributed to the three political entities which had been certified to participate in the elections, took part in the elections and as such emerged from the 2017 elections, namely: the coalition PAN, the Vetëvendosje party, and the coalition that the LDK represents. Therefore, each of these entities is entitled to two (2) members in the Central Election Commission.

Any other interpretation by the Office of the President is arbitrary, unfounded and utterly political. This for the fact also that nobody, especially not the lawgiver, could foresee the non-appointment by the President of the CEC members for a time period in excess of a year, the establishment of new parliamentary groups in the meantime, including the fictitious/artificial fractioning of the political entities that had been certified, participated in the elections and are at present governing the country as a sole coalition. There is no sense, therefore, that seats in the CEC be distributed according to the formula presented by the Office of the President also for the fact that during the mandate of a legislature, parliamentary groups can be created, dissolved, created, dissolved for the umpteenth time, for which then the country's President would have to secure representation in the CEC, resulting in a totally unstable CEC; dysfunctional too.

In conclusion, as one of the three political entities with a right to representation in the Central Election Commission, through its parliamentary group, pursuant to article 139.4 of the Constitution of the Republic of Kosovo, stating:” *Six (6) members shall be appointed by the six largest parliamentary groups represented in the Assembly, which are not entitled to reserved seats. If fewer groups are represented in the Assembly, the largest group or groups may appoint additional members ...*” and article of the Law No. 03/L-073 On General Elections in Kosovo, on the basis of the results of elections for the Assembly of Kosovo of 11 June 2017, certified by the Decision of the Central Election Commission dated 8 July 2017 with no 1233/2017, which were forwarded the same day to the institution of the President by the Central Election Commission, and based on the Report/Transcript from the inaugural meeting of the Assembly of Kosovo in August/September 2017, which clearly relates the verification of the mandates and the

parliamentary groups in accordance with the election results, the Democratic League of Kosovo will submit to the President of the Republic of Kosovo the names of its two candidates/nominations for the Central Election Commission, expecting and believing that the President will reflect and will respect the relevant legal and constitutional provisions in the spirit of representing unity and not as a person who causes and deepens divisions and inter-institutional and inter-party distrust in the Republic of Kosovo.

In case this does not materialize, the Democratic League of Kosovo, judging the actions of the President as totally political and in violation of the Constitution and the laws of the country, fully determined to defend its right to adequate representation in the Central Election Commission in accordance with the Constitution, will refer the issue to the competent body for the protection of constitutionality and lawfulness in the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo.

Looking forward to our future cooperation.

Best regards,

Isa Mustafa 

President of the Democratic League of Kosova