KOSOVA DEMOCRATIC INSTITUTE

ACTING AS PRESIDENT BEYOND SIX MONTHS

The constitutional limit and continuity of the Presidency



"POLICY BRIEF"

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EXECUTIVE SUMMARY

The judgment in joined cases KO256/26 and KO258/26 clarified the status of the Assembly and the constitutionality of the decision to elect the Government, and set 6 October as the final deadline for electing the President. This development makes the question of the legal basis for exercising presidential responsibilities after the six-month limit expires more urgent.[1]



According to this analysis, her re-election as President of the Assembly on 9 September does not restart that period.

Article 90(3) expressly sets a six-month limit on acting as President. The six-month period that began when Albulena Haxhiu assumed these responsibilities on 4 April 2026 ends on 4 October. According to this analysis, her re-election as President of the Assembly on 9 September does not restart that period.

The deadline for electing the President and the limit on acting as President serve different purposes. The Court has identified dissolution of the Assembly and early elections as the consequences of failing to elect the President by 6 October. The judgment does not expressly determine the effect of the re-election of the President of the Assembly on the six-month period. Nor does the Constitution expressly identify another successor as Acting President after that period expires, or specify who may exercise presidential powers if the process fails. Expiry of the six-month period does not, in itself, automatically invalidate every subsequent act.

KDI calls on the Assembly and parliamentary parties to focus their efforts on ensuring that the President is elected and takes the oath of office by 4 October. At the same time, the institutions or other authorised parties should seek clarification from the Constitutional Court on the effect of the election of the President of the Assembly on the Acting President's six-month period, the exercise of powers after its expiry, and the status of acts adopted. This would provide the institutions and parliamentary parties with a common basis for action before these uncertainties become disputes over specific decisions.

1 KO256/26 and KO258/26, judgment of 29 September 2026, paragraphs 217 and 221–226 and points II, V and VI of the operative part.

1. THE INSTITUTIONAL SITUATION AND THE SIGNIFICANCE OF 4 OCTOBER

Albulena Haxhiu assumed office as Acting President on 4 April 2026, following the end of President Vjosa Osmani's term. This is therefore the starting point of the current period of acting as President. Six calendar months from that date will elapse on 4 October 2026.[2]

Following the failure to elect the President and the early elections of 7 June, the new legislature opened its constitutive session on 6 August. On 9 September, Albulena Haxhiu was re-elected President of the Assembly. On 13 September, she declared the Assembly constituted, although the Deputy President from PDK had not been elected. On the same day, the Assembly elected the Government led by Albin Kurti. Progress in these processes has shifted attention to the election of the President and the time remaining in the period of acting as President.[3]

In cases KO72/26 and KO74/26, decided on 25 March 2026, the Court linked the start of the procedure for electing the President, in circumstances where the Assembly had been dissolved and had not yet been constituted, to the constitution of the Assembly and the completion of the procedure within 60 days. The September judgment clarified how this rule applies when constitution of the Assembly is delayed: expiry of the 30-day deadline starts the time limits for electing the President and the Government. In the present case, the period starts on 8 August and ends on 6 October.[4]

The agreement of 31 August between LVV and LDK on Bekim Sejdiu's candidacy was opposed by at least six LDK MPs, and Sejdiu himself withdrew on 14 September. Although LDK had made further talks conditional on the Court's decision on the constitution of the Assembly, no concrete progress has yet been made.

On 14 and 15 September, PDK MPs submitted referrals to the Constitutional Court concerning the constitution of the Assembly and the election of the Government. The referrals were joined, and the Court decided on 23 September. The full decision was published on 29 September 2026.[5]

In its judgment, the Court found that the Assembly had been constituted in breach of the 30-day deadline. Nevertheless, it upheld the decision of 13 September to elect the Government, finding that it was not contrary to the Constitution (Article 95). The Court also established that the 60-day period for electing the President began on 8 August and ends on 6 October 2026. Under paragraph 226, if the President is not elected within this period, the Assembly is dissolved by operation of the Constitution, and early elections must be held within 45 days of dissolution.[6]

Although this determination settles the deadline and its consequences for the Assembly, the judgment itself does not expressly clarify the six-month limit on acting as President if the election of the President fails and elections follow. In this context, the applicants had raised the risk of exceeding the six-month limit in their reasoning for requesting an interim measure, but the Court did not clarify the matter. For the period that began on 4 April, 4 October falls two days before the deadline for electing the President. The question of presidential powers therefore arises during this interval and becomes even more significant if new elections must be called after 6 October.[7]

2 Presidency, official announcement of the assumption of office, 4 April 2026. Official announcement.

3 Radio Free Europe/Radio Liberty, reports on the sessions of 9 and 13 September 2026. On 13 September, the Assembly was declared constituted without the Deputy President from PDK, and the Government was elected with 62 votes in favour. For the legal requirements for the constitution of the Assembly, see case KO124/25, paragraphs 132, 133 and 145. Session of 9 September; Developments of 13 September.

4 Cases KO72/26 and KO74/26, paragraphs 161–162 and 182–185. Judgment. KO256/26 and KO258/26, paragraphs 219–224 and point VI of the operative part.

5 Radio Free Europe/Radio Liberty, 15 September 2026, report on the referral challenging the election of the Government and the Court's response on joining the referrals. Referral concerning the Government; Confirmation that the referrals were joined. KO256/26 and KO258/26, paragraph 19 on the decision taken on 23 September, and the opening page dated 29 September 2026. Published in the Official Gazette on 30 September 2026.

6 KO256/26 and KO258/26, paragraphs 217 and 221–226; points II, V and VI of the operative part.

7 KO256/26 and KO258/26, paragraph 69 on the applicants' allegation and paragraphs 218–228 on the Court's assessment. The operative part contains no express determination extending the six-month period under Article 90(3).

2. THE CONSTITUTIONAL FRAMEWORK AND THE STATUS OF THE ACTING PRESIDENT

Article 90 of the Constitution of the Republic of Kosovo expressly governs the temporary absence of the President. Paragraphs 1 and 2 provide for the voluntary transfer of responsibilities to the President of the Assembly or a determination by the Assembly of temporary incapacity. This situation differs from a vacancy following the expiry of a term, resignation or removal from office, since temporary incapacity does not, in itself, end the President's term.[8]

Paragraph 3 clearly provides that "The position of Acting President of the Republic of Kosovo may not be exercised for a period longer than six (6) months." Article 9(3) of the Law on the President repeats this limit and does not establish a line of succession after its expiry.[9]

Under Article 90, the President of the Assembly temporarily exercises the responsibilities of the President and remains an acting officeholder. An elected President serves a five-year term, which begins upon taking the oath before the Assembly, in accordance with Article 87. Election as President of the Assembly and assumption of presidential responsibilities therefore rest on two distinct legal bases.



8 Constitution, Articles 87, 90 and 91. Constitution.
9 Law No. 03/L-094 on the President, Article 9, paragraph 3. Law on the President.

3. THE MEANING OF THE SIX-MONTH LIMIT

3.1 The wording and purpose of the limit

The wording "may not be exercised" in Article 90(3) prohibits acting as President beyond the prescribed period. The six-month limit restricts the duration of service in an office; it is not merely a deadline for a procedural action. The Constitution does not expressly provide for an extension because of a lack of consensus, failure to elect the President or dissolution of the Assembly.

In case KO97/10, decided on 22 December 2010, the Constitutional Court considered Article 90 in the circumstances following President Fatmir Sejdiu's resignation. In paragraph 19, it linked the six-month limit to ensuring that the Assembly elects the holder of the office of President. This reasoning therefore supports applying the limit during a vacancy as well as in cases of temporary incapacity. However, since that case concerned the simultaneous holding of a political party position, the Court did not determine how powers would be exercised after the six-month period expired.[10]

The limit also serves a democratic purpose. The President of the Assembly is elected by a majority of all MPs, whereas the President is elected through the special procedure under Article 86. Allowing an acting officeholder to continue indefinitely would, in practice, enable the majority required to elect the President of the Assembly to replace the procedure for electing the President. Indeed, reading Articles 4, 16, 67, 86 and 90 of the Constitution together supports the six-month limit as a safeguard against precisely this circumvention and weakening of the norm.[11]

3.2 Institutional continuity and questions requiring clarification

The argument for continuing to act as President rests on the need for the uninterrupted functioning of institutions. The absence of an expressly designated successor could obstruct essential actions, including calling elections that would enable a way out of the crisis. On this view, incomplete regulation of a prolonged vacancy may justify a transitional continuation of responsibilities. However, this argument carries greater weight in relation to essential actions than to the indefinite continuation of all presidential powers.

This argument for institutional continuity also draws, to some extent, on the Court's reasoning in KO72/26 and KO74/26 and on paragraph 224 of the September judgment. However, the Court's setting of 6 October as the deadline for electing the President was not accompanied by an express determination extending the period of acting as President beyond 4 October. Such an implied interpretation would have to reconcile the need for continuity with Article 90(3) and KO97/10, specifying the basis, duration and limits of transitional authority. Continuity should nevertheless be seen as a reason to secure a timely constitutional solution, and should not in itself become authorisation for the officeholder to extend the period in office.[12]

The remedial deadlines set by the Court for the constitution of the Assembly in 2025 likewise do not automatically extend the six-month period. The case law on deadlines therefore helps distinguish a breach from its consequences, without resolving the substance of this issue.[13]

10 Case KO97/10, paragraphs 6–10 and 19. Judgment.
11 Constitution, Articles 4, 16, 67(2), 86(4,5) and 90(3). Constitutional provisions.
12 Cases KO72/26 and KO74/26, paragraphs 117–118, 157, 164 and 179–185. For the limit, see KO97/10, paragraph 19. Judgment. KO256/26 and KO258/26, paragraph 224. For the distinction between the deadline for election and the limit on acting as President, see the Constitution, Articles 82(1)(3) and 90(3).
13 Case KO124/25, paragraphs 140–145 and the operative part. Judgment.

3.3 Re-election of the President of the Assembly and separate periods of vacancy

The argument that the period restarts links acting as President to the term of the new President of the Assembly. Various actors have publicly expressed and defended this position, while the Presidency itself has referred to the transfer of responsibilities to the new President of the Assembly until the President is elected.

However, the link between the two functions identifies who holds the responsibilities; it does not automatically create a new six-month period within the same vacancy. Failure to elect the President and dissolution of the Assembly change the parliamentary situation, while the vacancy in the office of President continues. Restarting the period with each new President of the Assembly would allow repeated periods of acting as President through electoral cycles, without electing a President under Article 86.

The limit should not, however, be presented as a prohibition on the same person acting as President again during a separate vacancy. In its clarification of 1 April 2011 in KO29/11, the Court was asked about the starting point of the six-month period in light of Jakup Krasniqi's previous service. It confirmed that Kosovo had had an Acting President since 31 March 2011, following publication of the judgment annulling Behgjet Pacolli's election.

The 2011 clarification does not, moreover, provide a comprehensive rule for aggregating periods of acting as President. In the present case, the interpretation that re-election of the President of the Assembly does not automatically restart the period remains the one best supported by a systematic reading of the Constitution and the Constitutional Court's case law. The definitive effect of these circumstances nevertheless remains for the Court to determine if authorised parties submit a new request, either for clarification of the latest decision or by initiating a new case.



4. UNRESOLVED QUESTIONS AFTER EXPIRY AND INSTITUTIONAL CONSEQUENCES

4.1 The basis for acting as President and the absence of an expressly designated successor

The six-month limit confronts the institution of the President with a question that the Constitution does not expressly regulate: how will presidential powers be exercised if a new President has not yet been elected and sworn in?

The position against unilateral extension of the period rests on the wording and purpose of Article 90(3). However, the absence of an express mechanism after expiry creates uncertainty about who may lawfully exercise presidential powers and the limits on their actions. This uncertainty affects both routine constitutional decisions and the steps needed to resolve a potential new electoral crisis.

Furthermore, Article 90 does not provide for responsibilities to pass automatically to a Deputy President of the Assembly, the Prime Minister or any other institution after six months. Article 67(8) governs substitution for the President of the Assembly in the parliamentary role in the event of absence or inability to perform that role, but only within the functioning of parliament. Expiry of the six-month period also does not, in itself, terminate the term of the President of the Assembly, since the two functions rest on distinct bases.

Expiry of the six-month period does not, in itself, dissolve the Assembly. In the present case, the Court has linked dissolution to failure to elect the President by 6 October, under Article 82(1)(3). Until that deadline, the Assembly's obligation to elect the President remains in force. If it fails to do so, parliamentary elections must be called, a presidential power under Article 84(3). The effect of dissolution of the Assembly and the authority to issue the act calling elections are therefore two questions that must be distinguished.[14]

4.2 Powers at risk

With the election of the Government on 13 September, the designation of the candidate to form that Government has already been completed. Ambiguity and uncertainty over the Acting President's authority after the six-month period affect subsequent decisions, particularly constitutional appointments, the possible calling of elections, and responsibilities for external representation and security. Although the Government, courts and administration continue to exercise their powers under the respective legal provisions, a concrete obstacle arises when an institution's action also requires an act issued by the President.[15]

Legislative activity is not necessarily blocked in its entirety either. Article 80(5) of the Constitution provides that a law is deemed promulgated without the President's signature if the President does not decide to promulgate or return it within eight days of receipt. Applying this provision requires documented delivery and compliance with any legal prohibition or measure imposed by the Court. However, this mechanism cannot be extended as a general rule to presidential decrees or other decisions.[16]

Choosing another route to ensure continuity without a clear basis would create a precedent for future crises. Restarting the six-month period with each new President of the Assembly would lower the political cost of delaying the election of the President. Conversely, an unresolved interruption in the exercise of powers could make it harder to resolve the crisis, especially if new elections need to be called. This justifies preventive intervention before the period expires.

14 KO256/26 and KO258/26, paragraph 226; Constitution, Articles 82(1)(3), 84(3) and 86(6). Official source.
15 Constitution, Articles 84, 95, 104, 109, 114, 126 and 131. Constitutional powers.
16 Constitution, Article 80(2) and (5). For parliamentary challenges, see also Article 43(2) of the Law on the Constitutional Court. Promulgation rule.



4.3 Acts adopted during the disputed period

The officeholder continues to act as President beyond six months without a constitutional basis confirmed by the Constitutional Court, the acts issued risk being challenged for lack of competence, constituting what constitutional doctrine terms ultra vires acts. Nevertheless, they cannot all be declared invalid in advance. Constitutional review of acts under the applicable legislation requires a specific act, the appropriate avenue of review, and a determination of the temporal effects.

116(3) allows the Court to determine the effects of its decision differently from the general rule that it enters into force on the date of publication. In KO325/25, decided on 28 January 2026, the Court excluded retroactive effect in the circumstances of that case on grounds of legal certainty. The clarification in KO29/11 also distinguished the annulment of the President's election from its earlier effects. These cases demonstrate the importance of assessing consequences, but in no way guarantee protection for the acts of an Acting President after six months.[17]

17 Constitution, Article 116(3); case KO325/25, paragraph 147 and point III of the operative part; clarification in KO29/11, paragraph 10. Judgment.

5. THE NEED FOR CONSTITUTIONAL CLARIFICATION BEFORE THE DEADLINE EXPIRES

Following the judgment in KO256/26 and KO258/26, a request for clarification should focus on the relationship between the 6 October deadline for electing the President and the six-month limit that expires on 4 October. An answer would establish the basis for institutional action during this interval and, if the election fails, during the transition to early elections.

A new referral must meet the requirements of Article 113 and concern a matter within the Court's jurisdiction. The Court's case law, specifically KO79/18, has restricted the use of Articles 84(9) and 112 as a basis for general questions outside that jurisdiction. Preparation of the referral must therefore ensure that the matter can be examined on its merits.[18]

Where an actual conflict of competencies exists between institutions, it must be documented and submitted by an authorised party. Depending on the admissible subject matter, a referral may seek clarification of the effect of re-election on the six-month period, the authority for the Acting President's actions and decisions after expiry, and the consequences for specific contested acts.

Another option to consider is a focused request for clarification of the judgment in joined cases KO256/26 and KO258/26. Such a request should link the need for an answer to implementation of the 6 October deadline and the consequence of dissolution established by the Court, without treating it as a guaranteed avenue for examining every new constitutional question. The President of the Assembly, in her capacity as Acting President, may ask the Court to consider clarifying whether setting 6 October has any effect on the limit under Article 90(3); on what basis and within what limits presidential responsibilities may be exercised after 4 October; and who has authority to call elections if the Assembly is dissolved for failing to elect the President. The wording should seek an answer on competence and implementation of the judgment.

This option would draw on the Constitutional Court's practice in case KO29/11. Following the judgment of 30 March 2011, the President of the Assembly, Jakup Krasniqi, submitted a request on 31 March 2011 for clarification of its consequences. The Presidency and the Government also submitted a request and questions relating to the same judgment.[19]

Just one day later, in its clarification of 1 April 2011, the Court answered questions concerning the consequences of the judgment, emphasising that it could not go beyond its subject matter. This practice supports considering a narrowly framed request for clarification, without requiring a new case and interpretation. In the present case, an answer from the Court immediately after the 4 October deadline could clarify in advance the constitutional consequences and the institutional course to follow, thus avoiding renewed uncertainty about institutional powers and subsequent constitutional steps. Nevertheless, if the Court considers the Article 90 issue to fall outside the scope of the September judgment, a separate referral under Article 113 should be considered. The admissibility of either route remains for the Court to assess.[20]

The proximity of the two deadlines justifies submitting and prioritising the relevant request, with the aim of obtaining clarification by, or immediately after, 4 October, while respecting the applicable procedural time limits.

18 Case KO97/10, paragraphs 11–16; case KO79/18, paragraphs 65–78 and 83, decided on 21 November and published on 3 December 2018. Resolution on Inadmissibility.

19 KO29/11, Clarification of the Judgment, 1 April 2011, paragraphs 1–6 on the requests and procedure. Official source.

20 KO29/11, Clarification of the Judgment, paragraphs 8–9 and 16; KO79/18, paragraphs 65–78, on the limits of jurisdiction. The precedent for clarification does not guarantee the admissibility of a request concerning new subject matter. Official source.

6. CONCLUSIONS AND RECOMMENDATIONS

The September judgment established the Assembly's obligation to elect the President by 6 October and the consequence of failure. Regarding the limit on acting as President, KDI considers that Article 90(3) and the reasoning in KO97/10 support the position that the current period may not be extended unilaterally and does not restart automatically upon re-election of the President of the Assembly. The relationship between the two deadlines and the authority of the Acting President to issue acts potentially beyond the six-month limit remain questions requiring an answer from the Constitutional Court.

That answer must preserve the force of the constitutional limit while preventing a situation in which there is no lawful holder of presidential powers.

To address the findings of this brief, the Kosova Democratic Institute (KDI) makes the following recommendations:

- The Assembly and parliamentary parties should secure the nominations, support and successful conclusion of the session, and thus the election of the President, without delay. The aim should be to elect and swear in the new President, preferably before 4 October, to avoid potential uncertainty over the Acting President's continuing authority after 6 October, the final deadline for electing a new President.

- The President of the Assembly, in her capacity as Acting President, or other authorised parties should immediately consider submitting a focused request for clarification of the relationship between the two deadlines and implementation of the consequences of the judgment in KO256/26 and KO258/26. The request should address the Acting President's authority after 4 October and the power to call elections if the President is not elected by 6 October.

- The Constitutional Court should prioritise the relevant requests and examine them under an expedited procedure. Its assessment of admissibility and, where the conditions are met, the merits or any other measure should take into account the proximity of 4 and 6 October and the risk affecting acts that may be required to call new elections.


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