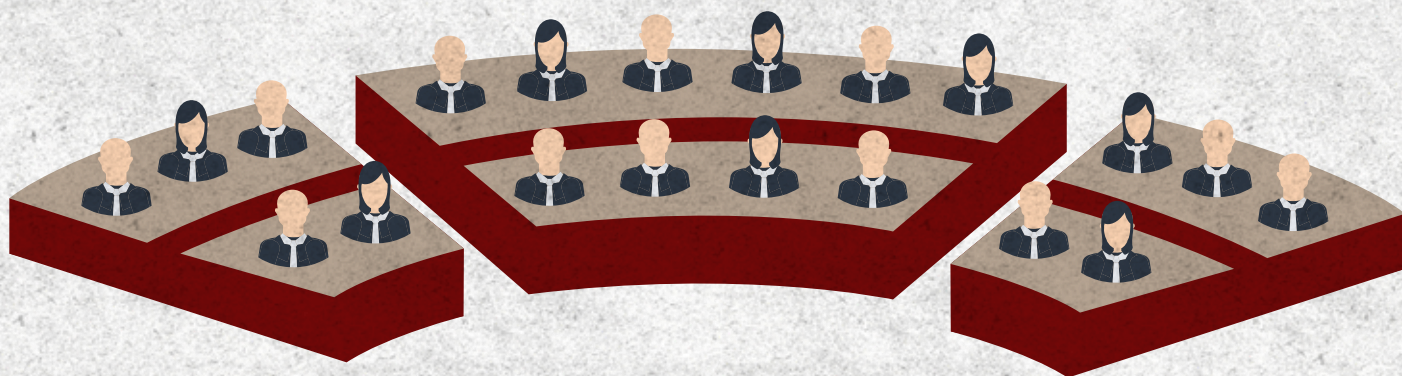


POLICY BRIEF

OVERCOMING THE CHALLENGES OF THE ASSEMBLY OF KOSOVO THROUGH THE ADOPTION OF THE NEW RULES OF PROCEDURE



DECEMBER, 2019

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INTRODUCTION

In recent years, the Assembly of the Republic of Kosovo has faced serious challenges that have impacted and degraded its reputation and decreased public trust in this institution.¹ These challenges have undermined the normal functioning of the Assembly and have hampered the fulfilment of its constitutional mandate. From the outside, the extreme polarization of the political scene has reflected in the sharpening of discourse among the Members of the Assembly and the use of non-parliamentary language. From the inside, the situation has been deteriorated by the poor management of the Assembly, the use of non-parliamentary practices and non-compliance with the Rules of Procedure.

In the last two legislatures, the Assembly did not have a clear plan for how it would organize its activities. The Presidency of the Assembly has not convened regularly to schedule plenary sessions and to consider issues which have previously been referred to parliamentary committees. The elusion from the procedures provided from the Rules of Procedure for the review of draft laws have been frequent, whereas parliamentary oversight mechanisms have not been effectively used. Members of the Assembly have abstained from exercising their constitutional mandate, by not attending committee sessions and meetings, and by not voting despite being present at the session.

Most of these challenges could be overcome if the Assembly had its internal rules more advanced, which would be drawn up by identifying the defects encountered and good parliamentary practices.

In this regard, KDI has analysed the major defects of the current Rules of Procedure of the Assembly, has identified key challenges based on continuous monitoring, and has tried to provide solutions on how to address them. Through this brief analysis, we aim to bring the urgent need for the adoption of the new Rules of Procedure to the attention of the Members of the Assembly of the new legislature.

¹ "Kosovo public opinion survey 2019". NDI. Accessed on 08.10.2019, at: <https://www.ndi.org/sites/default/files/NDI%20Kosovo%20Public%20Opinion%20Poll%202019.pdf>



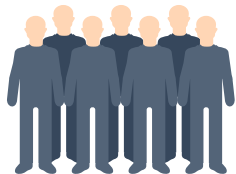
UNSUCCESSFUL ATTEMPTS TO ADOPT THE NEW RULES OF PROCEDURE

The current Rules of Procedure of the Assembly has been adopted in 2010 by the Third Legislature, and it has served for all subsequent legislatures. Attempts to adopt the new Rules of Procedure have not been successful for four years now. This effort did not produce the intended result due to the lack of consensus among political entities regarding the content of the new Rules of Procedure, but also due to successive political crises that have interrupted the process.

The draft Rules of Procedure that was drafted by the functional Committee in the sixth legislature addresses a large part of the shortcomings of the current Rules of Procedure. However, despite the work that has been done in this regard, lack of political will to advance this process, this consolidated version was not even endorsed by the Committee on Legislation itself who drafted it. The biggest disagreement was for the establishment of the Conference of Presidents, as a new body that would take over some of the existing powers of the Presidency of the Assembly and would further strengthen the role of the heads of parliamentary groups in relation to that of the Vice-Presidents of the Assembly. The dissolution of the sixth Legislature in August 2019, once again interrupted the process of the adoption of the new Rules of Procedure.



WHAT PROBLEMS COULD A NEW RULES OF PROCEDURE ADDRESS?



The poor organization of the work of the Assembly has resulted in the failure of the sessions due to the lack of quorum, inability to make decisions, overloading the agenda with many items.

Citizen representation

Members of the Assembly of Kosovo are the only representatives at the central level who are directly elected by the citizens. Members of the Assembly must protect the interests of citizens and commit to the public good. This way they fulfil the representative role of the Assembly. This role cannot be fulfilled if the Assembly does not hold regular sessions, does not review the issues listed on the agenda, if members of the parliament do not attend the sessions, and if they do not vote when they attend the sessions.

a) Organization of the work of the Assembly

The Presidency of the Assembly is responsible for the administrative functioning of the Assembly;² the duties of which include the preparation of the work program of the Assembly, review and preparation of the agenda of the meetings of the Assembly, preparation of work calendar, and other administrative tasks.³ The Presidency of the Assembly throughout the sixth legislature has fulfilled its duties to a

minimum. Regular scheduling of plenary sessions, from a simple administrative matter, has become a challenge that undermines the fulfilment of its role. Plenary sessions are not scheduled on Thursdays as recommended by the Rules of Procedure of the Assembly and as has been the practice so far. Scheduling the sessions on other days has interfered with the agenda of the parliamentary committees and the individual planning of the Members of the Assembly. Furthermore, the sessions have not been scheduled at regular intervals, making it impossible for the Assembly to hold any sessions for a long time. The poor organization of the work of the Assembly has resulted in the failure of the sessions due to the lack of quorum, inability to make decisions, overloading the agenda with many items.

In order of a better organization, the new Rules of Procedure of the Assembly should oblige the Presidency to prepare the monthly calendar of sessions and the issues that would be discussed. Preparing the monthly calendar would avoid holding committee meetings and sessions at the same time. Such an obligation would minimize the failure of sessions

² Constitution of the Republic of Kosovo. Article 67, point 6

³ Rules of Procedure of the Assembly of Kosovo. Article 15, adopted on 29.05.2010, accessed at: http://www.kuvendikosoves.org/Uploads/Data/Files/6/Rr_K_RK_29_04_2010_1_EDbu8aqXYd.pdf

due to failure to timely notify the Members of the Assembly of working hours. On the other hand, the practice of scheduling new sessions without completing previous sessions has also hampered the progress of the proceedings. This issue could be addressed by the new Rules of Procedure, establishing a procedure for the cases where a new session could be initiated and the practice of scheduling another session without completing all the previous session items would not be possible. To avoid cases where the proceedings of the unfinished session interfere with the next scheduled session, the Presidency of the Assembly should reduce the agenda of a plenary session and not load the agenda with more than 20 items for discussion.

b) Lack of quorum and non-voting

In addition to poor planning of proceedings, a major contribution to the disruption of parliamentary life has been the lack of a quorum in the proceedings of the Assembly. This results in a non-participation in voting despite the fact that the Members of the Assembly were present at the session. The statistics of the sixth legislature show that out of 134 sessions held during this legislature, including the continuation of sessions, 45% of them were postponed due to lack of quorum to vote on the issues that were foreseen. On the other hand, based on the data on participation of the Members of the Assembly, according to KDI statistics, the total number of absences throughout the legislature is 2,137 in 134 sessions. This disregard of the Members of the Assembly for plenary sessions, the benefit of a per diem without full participation in the proceedings of the Assembly, comes from the lack of sanctioning of these actions by the current Rules of Procedure of the Assembly.

In addition to their monthly salary, Members of the Assembly are also paid extra for their participation in plenary sessions, for at least two sessions held within a month. When a third session is held within the same month, Members of the Assembly are not paid for that

session. In many sessions that have failed to take place due to lack of quorum, more than half of the Members of the Assembly were signed on the participation lists. These lists also serve to calculate the per diem of the Members of the Assembly. In order to avoid paying the per diem for the Members of the Assembly who do not attend the sessions until the end, the new Rules of Procedure should establish continuous monitoring of participation in sessions of the Members of the Assembly. Also, for any absence in sessions, the Members of the Assembly must be deducted a percentage of their monthly salary.

In this context, the non-participation in voting of the Members of the Assembly when they are present in the sessions should also be addressed. Participation of the Members of the Assembly in sessions and in any process that takes place in the Assembly is a constitutional and legal obligation. Law on Rights and Responsibilities of the Deputy, Article 40.1 obliges the Members of the Assembly to participate in plenary sessions and in meetings of other assisting bodies of the Assembly in which they are members. They are obliged to participate and express their views by voting. In cases where this obligation is breached, the new Rules of Procedure should establish sanctions, whether through financial compensation or other restrictive measures.



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The law-making process

Review and adoption of laws is one of the basic functions of the Assembly. This process has not been in line with established parliamentary rules and best practices. The Assembly has been under pressure from the Government to adopt a number of laws through accelerated procedures, undermining the public consultation process. This rush to adopt laws has produced legislation that is defective in content and difficult to implement in practice. As a result, laws are often subject to amendments. Of the total number of laws adopted, about 45% of them had to undergo a supplement/amendment at least once.⁴

a) Procedures for adoption of the Law on the Budget of Republic of Kosovo

Avoidance of the procedures established in the Rules of Procedure of the Assembly for reviewing draft laws is often practiced by the Assembly. In order to avoid the Rules of Procedure, at least 2/3 of the Members of the Assembly present in plenary sessions must agree. Thus, in addition to shortening deadlines, draft laws do not even pass to standard procedures.

The Assembly of Kosovo has traditionally shown negligence in reviewing one of the most important draft laws, the one on Budget. The adoption and revision of the budget in an accelerated procedure has now become a practice, leaving no room

for this draft law to be subject to constructive parliamentary debate and necessary consultations with the public. Considering that this law defines the state budget expenditure plan for one fiscal year and should reflect the needs of the citizens, this form of hasty approval creates the possibility for inappropriate budget planning. There are 34 independent institutions that do not interact with the Government when drafting the budget, and reviewing it in the Assembly is the opportunity for these institutions to discuss and submit their budget requests for next year to the line committees. Reviewing this draft law with accelerated procedures makes it impossible to hold hearings on the budgetary requirements of these institutions and other budget organizations overseen by the Assembly.

The new Rules of Procedure should specify the cases where avoidance of the regular deadlines for reviewing the legislation should be applied, but not the procedures and the time limit to be followed for the adoption of laws. In this context, a special procedure for reviewing the Draft Law on the Budget should be set out in the Rules of Procedure. It is more than necessary for the adoption of the draft budget to be done within the time limit set by the Law on Public Financial Management and Accountability, and at the same time be subject to proper parliamentary debate and to consider the requests and needs of citizens.

⁴ List of laws, available on the web site of the Official Gazette of the Republic of Kosovo. Accessed 07.10.2019, at: <https://gzk.rks-gov.net/LawInForceList.asp>



The new Rules of Procedure should specify the cases where avoidance of the regular deadlines for reviewing the legislation should be applied, but not the procedures and the time limit to be followed for the adoption of laws.

c) Organizing public hearings

On the other hand, the lack of public consultation and no broader involvement of stakeholders in the legislative process have been repeatedly criticized by the European Commission in its Report on Kosovo. The number of public hearings for reviewing draft laws is in large disproportion to the number of laws adopted by the Assembly. The Rules of Procedure should clearly specify the obligation for Parliamentary Committees to organize public hearings for each draft law that falls within their scope with the aim of involving and consulting as many stakeholders as possible in the legislative process.

b) Proposal of amendments of draft laws in session without passing through committees

Amending the draft laws at the second reviewing stage in the plenary session is another practice applied by the Assembly of Kosovo in contradiction with its Rules of Procedure. Proposal for amendments has been foreseen to be made during the review of the draft law in the committees and not during the second reviewing session, although this is not strictly specified. The use of this legal loophole by the Members of the Assembly has damaged the spirit and harmonization of draft laws regarding budgetary implications, the principle of equality, approximation with EU legislation and it creates a basis for contesting its constitutionality. This can be addressed through the new Rules of Procedure of the Assembly by means of legal provisions that would explicitly prevent the Assembly from applying such practice.



Parliamentary oversight

The function of parliamentary oversight is one of the foundations of democracy. Through this function, the Assembly holds the government accountable on behalf of citizens, ensuring that government policies and actions are efficient and in line with the needs of the public. The parliamentary oversight mechanisms established in the current Rules of Procedure of the Assembly of Kosovo have been used extensively, especially by members of opposition political entities. However, their use has not been sufficiently effective as a result of the Government's disregard for the Assembly. Lack of mechanisms obliging ministers to answer parliamentary questions of the Members of the Assembly, their rare presence in plenary sessions when dealing with issues that fall within their scope, failure to respond to invitations by parliamentary committees to report on their meetings, non-implementation of resolutions, recommendations and reports adopted by the highest legislative institution, best reveal the fragility of the legislative in relation to the executive.

a) Parliamentary questions

Parliamentary questions are among the most common mechanisms used by the Members of the Assembly to solicit accountability or more information from the executive. Despite the interest of Members of the Assembly in asking parliamentary questions, in many cases, they did not get any answer. According to data from the previous legislature, 42% of parliamentary questions have not been answered by the executive. Often, the members of the cabinet were not present at the hearing, thereby disregarding the Assembly.

Absence of ministers in sessions and delays in answering questions asked by the Members of the Assembly, made them lose their relevance, and in some cases, Members of the Assembly have refused to ask questions because of the absence of respective ministers. Although it is difficult to force ministers to answer questions of the Members of the Assembly through the Rules of Procedure of the Assembly, the Assembly may use the measure of individual motion of no confidence in ministers who are not accountable to the Assembly.

b) Overseeing law enforcement

Overseeing law enforcement and preparing reports are the responsibility of parliamentary committees. In practice, parliamentary committees do not prioritize this responsibility and do not arrange adequate resources. The Assembly has consistently failed to meet its minimum objectives in terms of monitoring the enforcement of laws, both in the planning and implementation of oversight activities. From the practices of the previous legislature, parliamentary committees disproportionately reflected their roles and responsibilities in their work plans. For illustration, only one monitoring report of law has been approved through the previous legislature. The Rules of Procedure should specify the way the committees work in this regard, by adopting a consistent and practical methodology that would serve parliamentary committees in exercising oversight of law enforcement.

c) Overseeing independent institutions

The oversight of 34 independent institutions that report directly to the Assembly continues to be done superficially. Reviewing annual work reports is the only mechanism by which the Assembly oversees these institutions. Even when the Assembly has not adopted the reports of independent institutions, they have not been sanctioned because the applicable legislation does not provide for any restrictive measures in such cases.

The Assembly makes recommendations based on the flaws identified in the annual reports, but it has no penalty mechanism for not implementing the recommendations. As a result, a considerable number of recommendations are being repeated year after year and still remain unimplemented. The Assembly has delayed the selection of the members of the

boards of independent institutions, thus adversely affecting their functionality. Furthermore, the appointment of board members was politically influenced.

In addition to the reform envisaged for the rationalization of a large number of these independent agencies/institutions, restrictive measures should be established in the basic laws regulating the functioning of these institutions and this procedure should be included in the new Rules of Procedure. Reports that are not approved by the Assembly due to the poor performance of these bodies and failure to implement the recommendations given by the Assembly should be accompanied by penalties for their leaders. Following the approval of the reports and recommendations issued by the National Audit Office, Parliamentary committees should establish mechanisms that enable them to exercise control over the relevant institutions in relation to the implementation of recommendations.



In addition to the reform envisaged for the rationalization of a large number of these independent agencies/institutions, restrictive measures should be established in the basic laws regulating the functioning of these institutions and this procedure should be included in the new Rules of Procedure.

