

Democracy Plus

Progress on Assembly of Kosovo

July 2016, Prishtina



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**PROGRESS ON ASSEMBLY
OF KOSOVO**

(Input for European Commission's Kosovo report)

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Content

5	Problem Analysis	The Assembly ratifies the SAA and establishes the parliamentary committee on the SAA
	Lawmaking	
	Frequent avoidance of the Rules of Procedure and the rush at lawmaking	Changes from Last Year Reporting
	Parliamentary supervision	Recommendations
	Previous EC Progress Report Assessment	Bibliography
9	Progress and Regress	
	Non-adoption of the new Rules of Procedure of the Assembly	
	Draft-Law on the Assembly	
	Frequent avoidance from the Rules of Procedure during the process of drafting the laws	
	The violent disruption of plenary sessions	
	Insufficient cooperation between the Government and Assembly on harmonization of the legislation with that of the EU	
	Technical and administrative capacities	

Problem Analysis

2015 was the hardest year of the parliamentarism in Kosovo. Political differences and clashes among the parties in power and those in the opposition, resulted in the largest political crisis since the establishment of democratic institutions in the country. The objection of the opposition of the agreement on creating the Association/Community of the Serb-majority municipalities as well as of the Agreement on demarcation with Montenegro, were the main topics which caused extremely tensioned political and institutional climate. Blocking of plenary sessions with non-democratic means (teargas), improvisation of plenary sessions in alternative rooms, disregarding of parliamentary procedures, the adoption of draft-laws without a due parliamentary debate, exclusion of opposition members of the Assembly, arrests of opposition members of the Parliament, are some of the events which marked the work of the Assembly of Kosovo during 2015 and the beginning of 2016. The dynamics of such events was stopped after the decision of opposition political parties to boycott and not attend the works of plenary sessions.

Lawmaking

The political crisis has affected the dynamics of the work of Assembly, thus lowering the tempo. During 2015 only 34% of the legislative agenda was implemented. Out of a total of 137 draft-laws which were planned to be adopted during 2015, only 47 of them were adopted by Kosovo

Assembly¹. The biggest stalemate was noticed during the fall session of the work of Assembly, when the absolute majority of draft-laws foreseen remained un-reviewed. Similarly, for 2016 dynamics of plenary sessions and the dynamics of adopting draft-laws do not seem promising at all. In the legislative programme 87 draft-laws have been included to be adopted in 2016², while until the end of April none of them were approved in the second reading.

Frequent avoidance of the Rules of Procedure and the rush at lawmaking

The bad practice of adopting draft-laws in an accelerated procedure is not ending at the Assembly of Kosovo. Except the adoption of the draft-law on budget, accelerated procedures have been used as well when reviewing the budget and three other laws arising from the establishment of the Special Court. Contrary to parliamentary practices the amendments enabling the establishment of such a court, since the Assembly had once voted against them were returned to the Assembly for adoption. Such a bad parliamentary practice of avoiding the Rules of Procedure is impending at real reviewing of the legislation resulting finally with laws and documents with huge defects in

1 Raport i monitorimit të Punës së Kuvendit për vitin 2015, mars 2016

http://www.kdi-kosova.org/publikime/51-16032016-raporti-i-kuvendit-2015_final.pdf

2 Legislative Program 2016

http://www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITIN_2016_FINAL-BMK.pdf

their content and, in some cases, proving to be non-implementable in practice.

Parliamentary supervision

Another constitutional responsibility of the Assembly of Kosovo is parliamentary oversight or control, where the Parliament has stalled in fulfilling this function, especially in overseeing the work of independent agencies. The Assembly of Kosovo has not yet achieved to standardize the legislation which regulates the form of financing (incomes and per diems), the form of reporting and selection of members of leading bodies as well as the sanctioning on non-reporting and non-approval of the report of a certain agency.

In line with this, there have been problems of negligence of institutions in appointing members of the managing bodies of independent agencies or their politicization. Notwithstanding that lately an engagement of the government on proposing the members of many managing boards has been noted. However, the proposed names in the majority of cases are shared proportionally between the governing partners to rehabilitate their political militants and activists.

Previous EC Progress Report Assessment

In its Kosovo Report 2015, the European Commission had addressed a wide number of issues dealing with the work of Kosovo Assembly. The criticism addressed there initially dealt with the political crisis affecting the late constituting of the state institutions and then the violence used by the opposition to violently impede the work of the Kosovo Assembly. All these had an impact on lagging behind the reforms in Kosovo. *The violent impediment of latest plenary sessions by the opposition parliamentarians has negatively impacted the functioning of the Assembly. Such actions are contrary to the European values*³.

The report has also addressed the issue of nominating members of the managing bodies of independent agencies while seeking for their de-politicization. It was further stated in the Report that the Assembly “*should urgently nominate competent members of regulatory and supervision bodies in order to ensure the due functioning of state administration, through processes of nonpolitical selection, transparency and merits based*”⁴.

In this report it was also addressed as criticism the frequent practice of avoiding the Rules of Procedure to process draft-laws in an accelerated procedure. This has limited the possibility for parliamentary debate which, according to the report, was a worrying issue.

3 KOSOVO* 2015 REPORT http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf p.6

4 http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf p.6

Disrespecting the Rules of Procedures of the work of Assembly by often exceeding the time limits determined by the Rules of Procedure itself as well as the lack of regular plenary sessions, have affected for the parliamentary debate to get harmed.

In this context, criticism has also been addressed to the government. *There have also been breaches of the regulation by Government where the draft-laws submitted in the Assembly have been arbitrarily withdrawn. The regulatory framework of the Assembly should improve*⁵ it was further stated in this report.

It was also sought in the Report for the Assembly to empower its role in overseeing the executive and legislative process and that it should apply standards on consulting with the civil society.

More work was requested from the Assembly in improving the parliamentary control and balance control of budgetary expenses. *The Assembly should ensure the reports of the Office of Auditor General and the Ombudsperson. There should exist a mechanism ensuring the implementation of recommendations of the committee on supervising the public finance*⁶ was further stated in the report.

Supervision of the work of independent agencies and de-politicization of their managing bodies further keeps being addressed at the EC's report on Kosovo. *The Assembly should more directly supervise independent institutions, regulatory authorities, and agencies, based on*

*a clear mandate and with due reporting and accountability mechanisms. It should urgently address the delays on selecting members of the boards of these institutions and authorities, and to determine the mechanisms on their accountability. Nominations should be made based on professional qualifications and merits and not based on the political support*⁷.

The Assembly was also requested to empower the parliamentary committees which in their fields have Kosovo's endeavors to move towards its agenda on European reforms. A better presentation of draft-laws in order to ensure the harmonization of with *acquis* is needed.

At the end of this report, capacity building for the supporting professional staff of the Assembly's administration was also requested. *The administration of the Assembly should empower its technical capacities to support an effective policymaking and to improve the revision of draft-laws*,⁸ was written at the end of this report.

5 KOSOVO* 2015 REPORT http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf p.7

6 http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf p.7

7 http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf p.7

Progress and Regress

Non-adoption of the new Rules of Procedure of the Assembly

Although the Sub-Committee on Mandates, Immunities and Rules of Procedure since its IV legislature for more than two years had worked on drafting the new Rules of Procedure of the Assembly of Kosovo, such a document did not achieve yet to be adopted in the Assembly of Kosovo. This seems to have happened because the draft of the Rules of Procedure was opposed by some members of the Presidency fearing their "de-empowerment". The new draft Rules of Procedure had foreseen that the majority of competencies to be given to the new body of the Assembly of Kosovo, the Conference of Chairs, which would be composed of the heads of parliamentary groups and heads of the parliamentary committees.

Draft-Law on the Assembly

In the context of advancing the legal framework on the work and functioning of Assembly, this institution had taken the initiative of drafting the draft-law on the Assembly. Although there it was worked on for more than one year, the Assembly has still not managed to overcome the differences of parliamentary groups and other interests groups (civil society organizations) on whether the Assembly needs such a draft-law.

Frequent avoidance from the Rules of Procedure during the process of drafting the laws

The Vth legislature of the Assembly was also marked with the continuation of bad practices of lawmaking by avoiding the Rules of Procedure of the Assembly. Such a practice has already become a "normal" way of the lawmaking process. Such a bad practice was lately applied at the session of 19 February 2016 on the case of adopting the Draft-law on Amending the Law No.04/L-042 on Public Procurement of the Republic of Kosovo. Such a lawmaking practice installed by the country institutions is continually producing a weak legislation and hardly to implement in practice.

The Violent Disruption of Plenary Sessions

The usage of violent means (teargas) by the opposition political parties to block the work of the Assembly of Kosovo, had started at the session of 22 September 2015 and ended on the session of 26 February 2016, when the President of the Republic of Kosovo was elected. Such violent actions have not been repeated based also on the fact that since the session of 26 February 2016 the opposition political parties have boycotted the work of the Assembly of Kosovo.

Insufficient cooperation between the Government and Assembly on harmonization of the legislation with that of the EU

The Government and the Assembly still do not have sufficient cooperation in the field of harmonization of the legislation with that of the EU. The lack of capacities on verifying and confirming the compliance of country legislation with the EU's acquis, still remains one of the most serious problems in the lawmaking field.

Technical and administrative capacities

Although the EC has addressed the lack of Assembly's capacities, especially its technical capacities to support an effective lawmaking and improved review of the draft-laws, this issue has not yet received a specific option on how to be solved. Such capacities still remain partial and do not provide sufficient professional services to the Assembly's bodies.

The Assembly ratifies the SAA and establishes the parliamentary committee on the SAA

The only positive assesment compared to the previous year with regards to the Assembly of Kosovo was the adoption the Draft-law on Ratifying the Stabilization and Association Agreement between Kosovo on one side, and the European Union and the European Committee on Atomic Energy on the other⁹. In line with this the Presidency of the Assembly on 18 March 2016 decided to establish a Parliamentary Committee on the Stabilization and Association Agreement (SAA). The establishment of such a committee has been made with the purpose of implementing the SAA. The committee is composed of 16 parliamentarians composed with members of all the parliamentary groups in the Assembly.

Changes from Last Year Reporting

The issues raised by the European Commission to the Assembly of Kosovo, through the Progress Report for 2015, have not received the due response required from the Assembly. The non-adoption of the new Rules of Procedure of Assembly as well as the lack of building of technical and administrative capacities has caused lack of changes compared to last year in the sense of improving the lawmaking process. A progress worth to be reported, compared with the last EC's report on Kosovo, is the ratification of the SAA and the establishment of the parliamentary committee on the SAA.

⁹ http://www.kuvendikosoves.org/common/docs/proc/proc_s_2015_11_02_10_6184_al.pdf

Recommendations

- The Assembly should adopt the new Rules of Procedure, in order to improve the rules on proceeding;
- The parliamentary political parties should exclude violent means as a way of doing opposition and implementing political goals.
- The Assembly of Kosovo should increase the professional capacities of supporting the members of Parliament during the stages of drafting and amending the draft-laws;
- The Assembly should increase its capacities on verifying and confirmation of the compliance of country legislation with the EU's *acquis*;
- The Assembly should standardize the legislation dealing with the form of financing (incomes and per diems), the form of reporting and selection of the members of managing bodies of the Independent Agencies;
- The Assembly should incorporate in the Rules of Procedure the sanctioning on non-reporting and non-adoption of the report of a certain Independent Agency and Public Enterprise;
- In the process of drafting legislation, the Assembly should conduct wider consultations with civil society organizations, interest groups and the citizen.
- The Assembly of Kosovo should be more active on legislative initiatives;

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This report is part of a series of nine studies on Kosovo's progress on its European Integration path. In the past few years, Kosovo Foundation for Open Society has closely followed the progress of Kosovo towards the EU by supporting civil society organizations in monitoring the work of Kosovo institutions throughout the preceding year.

In this series, the tracking of achievements and failures of Kosovo in its European agenda is made possible through the work of nine NGOs with well-established expertise in their chosen topics. The recommendations in this report are to be used to advocate to the Kosovo and EU institutions, with the aim of strengthening civil society organizations impact in Kosovo's EU integration efforts and policymaking.