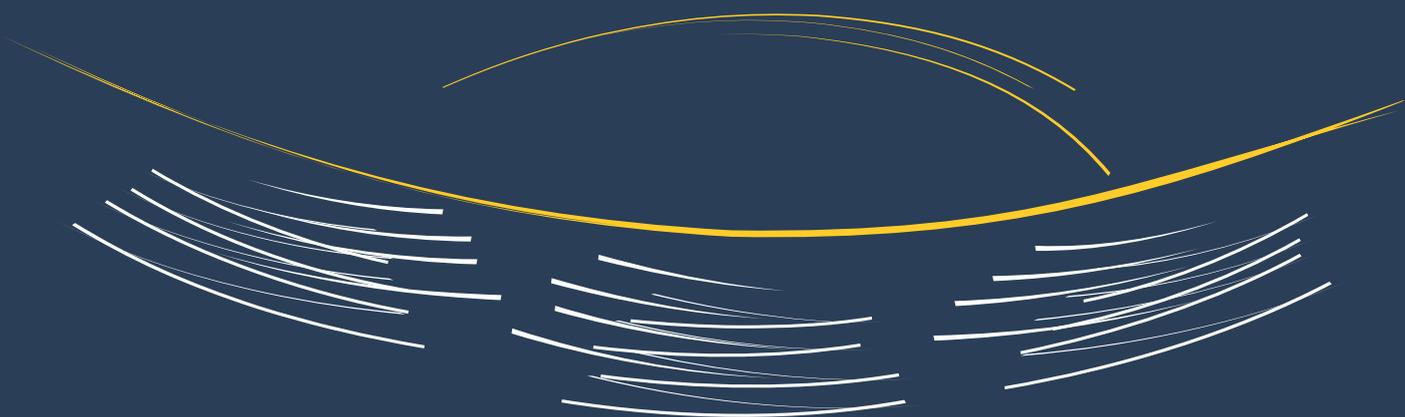


# **ASSEMBLY OF KOSOVO: INCREASING EFFICIENCY BY IMPROVING THE RULES OF PROCEDURE**





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## **ACRONYMS**

|              |                                   |
|--------------|-----------------------------------|
| <b>AAK</b>   | Alliance for the Future of Kosovo |
| <b>AKR</b>   | New Kosovo Alliance               |
| <b>CEC</b>   | Central Election Commission       |
| <b>CoP</b>   | Conference of Presidents          |
| <b>EU</b>    | European Union                    |
| <b>IMF</b>   | International Monetary Fund       |
| <b>IPU</b>   | International Parliamentary Union |
| <b>KDI</b>   | Kosovo Democratic Institute       |
| <b>LDK</b>   | Democratic League of Kosovo       |
| <b>LVV</b>   | Vetëvendosje Movement             |
| <b>MP</b>    | Member of Parliament              |
| <b>NISMA</b> | Social Democratic Initiative      |
| <b>PDK</b>   | Democratic Party of Kosovo        |
| <b>PQ</b>    | Parliamentary Question            |
| <b>PSD</b>   | Social Democratic Party of Kosovo |
| <b>PTK</b>   | Post and Telecom of Kosovo        |
| <b>RoP</b>   | Rules of Procedure                |

## EXECUTIVE SUMMARY

The Rules of Procedure (RoP) of the Assembly of Kosovo, in use since 2010, has become outdated and impedes the work of the parliament. The purpose of the RoP is to regulate the working procedures and rules of a parliament. These rules are considered a living document that constantly need to change and adapt to reflect the problems and needs that parliaments have. In Kosovo, the Assembly has not updated the rules and faces a number of difficulties in its daily work as a consequence. The failure of the Assembly to amend the RoP has contributed to repeated political crises over the last decade.

Since 2011, the Subcommittee of Mandates, Immunities and Rules of Procedure produced several drafts. In 2019, a new version passed the first reading, but soon fell off the agenda, becoming ‘unfinished businesses’ of the dissolved Assembly. The ruling parties and the opposition used gaps and loopholes in the Rules of Procedure (and the Constitution) to block the formation and obstruct the work and functioning of the parliament; making the legislative body inefficient and avoiding scrutiny of the government and agencies. There was no will to update the rulebook, and the Constitutional Court intervened on several occasions to fill the gaps.

The current Rules of Procedure falls short on numerous issues. The procedure for the election of the President of the Assembly leans towards first-past-the-post, and the RoP fails to define the process and set a clear timetable for the constitution of the assembly. The centralised decision-making of the Presidency promotes the will of larger political parties, excluding the rest. The presidency, not being inclusive, leaves parliamentary groups with limited say in daily issues. An unbalanced distribution of committees severely undermines the role of the opposition and limits the Assembly’s oversight capacities.

The legislative process has flaws too. The clause allowing departure from the RoP is often used to completely ignore standard legislative procedures, thus undermining the legitimacy and quality of Laws. Lacking clear provisions on the scope of and criteria for the accelerated procedure, laws are frequently passed with insufficient scrutiny or stakeholder participation. Members of Parliament (MPs) can propose amendments at any time during plenary sessions with no proper committee review. Sponsors can retract laws anytime, even during the second reading, after committees have reviewed amendments and texts had been agreed. The strict regulation with regard to ‘unfinished businesses’ regularly draws laws back to square one. Specific rules for key laws, such as the yearly budget, do not exist.

The Assembly has weak mechanisms to monitor the government, and other executive bodies. Committees still function on a free-for-all basis with no framework for regulating government oversight by the opposition. Ministers face no scrutiny or sanctions when they fail to show up for interpellations or underperform. Boards and public companies, and independent agencies are not scrutinised, and no mechanism exists to keep them accountable. The latest draft, proposed in 2018, attempted to regulate some of these issues, although it left others aside, and in some cases the proposed amendments faced strong opposition. The current rulebook also fails to establish a framework to hold MPs accountable, set clear rules for appropriate behaviour and sanctioning mechanisms for breaches of protocol.

Fixing all problems that Kosovo’s parliamentarism faces, requires constitutional review. There are limited chances it can happen anytime soon and political parties are not ready; this long and difficult process needs the broadest consensus. Yet, the Assembly cannot wait any longer; the new composition should review the Rules of Procedure soon to enhance its capacities, improve its legislative function and ensure more inclusive oversight of the Executive.

## RECOMMENDATIONS

The new Assembly should start the work on the new Rules of Procedure with urgency and pass a new version during the first year. The new document must reflect parliamentary developments in the last decade, and MPs should be open to amend specific questions or new problems that may arise in the future.

The Rules of Procedure requires a deep-rooted update and the following recommendations are some of the key elements that the Assembly must consider improving.

### **Election, Powers and Structure of the Presidency**

Establish a clear provision for the process of constitution of the Assembly, including the process, timeframe and election of its organs;

- Introduce and specify an automated mechanism by which the constitutive session is held, the latest thirty (30) days after the certification of the election results. The Assembly should exercise its role in convening the inaugural session before the 30-day deadline, independently of the willingness of other actors and institutions. The rule should clearly define the process without allowing discretionary powers; Mandate that the constitutive session is not adjourned, suspended or otherwise interrupted until the President and Vice-presidents are elected;
- Better regulate the Election of the President of the Assembly describing in detail the process of nomination and election. It should include, at least, the following elements:
  - A specific reference to the nomination corresponding to the largest parliamentary group, upon request by the chair of the constitutive session, as per the constitutional ruling,
  - The method of voting on the candidate (raised hand, electronically, closed urn, or other), and
  - A rule for the continuation of the process in the case of the rejection of a candidate, to ensure that the session is not adjourned until a President has been elected;
- Split the centralised presidency into two bodies:
  - The Presidency should be tasked with administrative and bureaucratic duties, directing plenary sessions and ensuring order and decorum, while it retains a similar composition to the current body,
  - The Conference of Presidents (CoP), composed of heads of Parliamentary Groups, should earn more weight, including deciding on political questions, i.e. the committee structure, advising on financial matters, setting the working plan, the calendar and the agenda for sessions, and advise the presidency on serious disciplinary issues.

### **Legislative Procedures**

- Clearly define, in specific terms, rules and conditions to use the Accelerated Procedure, with the aim to:
  - Limit the frequency by which Accelerated Procedure can be initiated,
  - Set requirements for laws that can follow Accelerated Procedure, and
  - Establish restrictions to key laws being initiated under Accelerated Procedure;
- Prohibit the use of Accelerated Procedure and deviation from the Rules of Procedure for the Law on Budget. Include specific provisions such as:
  - a deadline for the introduction of the law to the Assembly, and
  - a requirement for inclusive consultations at all stages of processing the law;
- Establish a rule that prohibits the retraction of Draft Laws after the first reading;

- Regulate the process of late amendments to ensure that:
  - the relevant committees will mandatorily review any amendment proposed in plenary session,
  - no amendments can be proposed during the second reading of the law;
- Make a distinction between quorum for discussion and quorum for voting:
  - The quorum for voting should require at least a majority of the votes of members of the parliament, however,
  - The quorum for discussion should be decreased to a third of the number of the deputies being present, with the aim of easing the work of the Assembly;
- Expand the regulation on the so-called ‘unfinished businesses’, to allow the new composition of the assembly to decide on laws pending at the end of the previous term. The Conference of Presidents should have the authority to recover laws and reprocess ‘unfinished businesses’, ex-officio or upon request of the relevant committees.

### **Oversight of the Government**

- Establish more stringent rules on the allocation of committees, including setting the minimum number of the committees. Design Committees on sectorial basis to allow the Assembly to establish a more sustainable oversight of the Executives;
- Pending on the balance of seats between the ruling parties and the opposition, the number of committees should always go in favour of the opposition. Formally guarantee that the opposition leads Committees for Oversight of Public Finances, Oversight of the Security and Intelligence, Foreign Affairs, EU Integration and other vital sectors;
- Regulate sanctioning mechanisms for the board of independent agencies, accountable to the Assembly when their performance reports are not approved (e.g. dismissal);
- Articulate mechanisms to advise on sanctions for the Boards of public companies and independent agencies that are dependent on the Government;
- Clearly outline the scope of Parliamentary Questions (PQs) to ensure that Members of Parliament put forward relevant questions. In addition, provisions should exist to oblige prime minister and ministers to answer them, even if the Parliamentary Question must be answered in another plenary sitting;
- Establish a rule to allow Members of Parliament (a number of MPs or a parliamentary group) to request a vote of confidence on the prime minister or minister after interpellations.

### **Accountability of Members of Parliament**

Include a Code of Conduct that clearly regulates and sets the framework for sanctioning mechanisms, including:

- A clear list of punishable behaviour (e.g. absence, improper language, etc.), including provisions already defined in the Law of Rights and Responsibilities of the Deputy;
- A clear definition of the scope of sanctioning mechanisms depending on the seriousness of the violation, which should vary from softer measures, such as expulsion from plenary sessions and committee discussions, to harder measures applied in parliamentary practices; and
- The authority tasked with imposing sanctions and enforcing the Code of Conduct, as needed.

## INTRODUCTION

The Rules of Procedure (RoP) is the document that organises the work of the Assembly. It determines its internal organisation as well as sets rules and the methods of work. More precisely, this procedural document establishes the organisation, the legislative functioning of the Assembly, its bodies, oversight role, and the rights and duties of the Members of the Parliament (MPs).<sup>1</sup> The RoP should help and lead the Assembly with procedural problems. However, in case of political problems arising from differing partisan priorities, the RoP alone cannot limit nor control the will and the consensus between the political parties that comprise the Assembly. The alleviation of political deadlocks depends on the bargaining of political parties, yet the RoP serves a pivotal role in maintaining the efficient functioning of democratic processes such as law making, oversight of the executive, financial control, and others.<sup>2</sup>

The RoP is a learning document, and it can be updated every legislation to prevent and better manage the challenges or crises that have transpired in the past. It is good practice for parliaments to revisit the RoP in every legislature. New problems that each legislature period faces require the RoP to be amended and adjusted to new circumstances. The Assembly however, did not do so; it has operated with the same RoP since 2010, when it was adopted. Between then and now, numerous attempts to revise it failed. During this period, the Constitutional court has ruled on many important aspects affecting the work of the Assembly, election etc., but the rulings have not been incorporated into the Rules of Procedure.<sup>3</sup>

For more than five years, or half the existence of independent Kosovo, the Assembly has been in the spotlight of national and international media attention as the epicentre of domestic political crisis. Contentious government policies and laws have divided the ruling and opposition parties. Disputes, inimical discourse and political animosities have repeatedly obstructed parliamentary work, weakened the institution and have created a climate of mistrust among political actors and the public. As a result many important agendas have been left incomplete or not progressed at all; the adoption of the new RoP, requiring broader consensus was periodically put aside.

The political parties and leadership of the Assembly were reluctant to improve the rules of the game. Conflicts between party leaders, coupled with the crises around the ratification of critical agreements, such as the Association of the Serb Municipalities and the Border Demarcation with Montenegro, further delayed the discussion on the RoP in the parliamentary agenda.<sup>4</sup> The 2015 political struggles led to an opposition boycott and the obstruction of the Assembly's work for months, including the use of teargas inside the Assembly.

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<sup>1</sup> Constitution of Kosovo, article 76

<sup>2</sup> International Parliamentary Union, *Parliament and Democracy in the Twenty-first Century: A guide to good practice*, 2006, at <https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice>

<sup>3</sup> Several rulings from the Constitutional Court from August 2014 determined that the mention of parliamentary groups must be read as the parties or pre-electoral coalitions that run for elections, which granted an automatic control of the appointment process to the largest group. See Case No. KO119/14 Constitutional review of Decision No. oS-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, AGJ 700/14, 17 July 2014, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_119\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf); and Case No. K0103/14 Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo, AGJ 671/14, 1 July 2014, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjkk\\_ko\\_103\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_103_14_ang.pdf)

<sup>4</sup> The Association of Serb Municipalities is foreseen by an agreement reached in April 2013 in the framework of the so-called Brussels Dialogue. Different interpretations on the scope and powers of the Association, as well as a Constitutional ruling delimiting its potential reach under the Constitution made implementation impossible. The Border Demarcation was a requirement of the visa liberalisation process, consisting on a delimitation of the border between Kosovo and Montenegro, which had previously remained imprecise. The resulting agreement became deeply controversial in Kosovo, as some critics claimed it amounted to a change of borders, and the Assembly was incapable of ratifying it for more than 3 years.

Extreme measures of this kind were repeated again in March 2018 for the same issue - the Border Demarcation with Montenegro.<sup>5</sup>

In early 2019, the Assembly passed a new draft of the Rule of Procedure on first reading. The sub-committee had prepared a new version of the RoP which improved some elements but failed to address all issues. Yet, the content of the draft was a compromise with parties more focused on obstructing each other than the substance. Many good elements were discarded during the work of the draft with all parties from the ruling and the opposition showing little interest to correct the shortcomings of the existing rules. The Rules of Procedure saw similar situations before; in the IV legislature (2010 – 2014) the RoP also passed first reading and under the V legislature (2014 - 2017) the adoption of the RoP was not even on the table. For ten years now, the Kosovo Assembly has kept a regulation that is widely considered insufficient.

Among its most prominent issues, which will be covered extensively below, the current RoP fails to set a clear process for the constitution of the Assembly and the election of its organs, does not regulate its work in detail, creates an imbalance of power within the parliament and debilitates checks and balances mechanisms, hindering the Assembly's oversight function. Planning and organisation are imperative for the legislative branch to be fully functional. Updating the RoP to avoid well-known, long-identified problems is key for the large number of draft laws that need to be processed, approved, and harmonised with the amendments in the Kosovo constitution and the European Union legislation.<sup>6</sup>

The practice of amending the RoP aims to increase the quality of the legislation process, promote accountability, increase transparency, and strengthen oversight and parliamentary control. Improvements on the RoP enhance the efficiency and work of committees and parliamentary groups. A new RoP would also improve the process of constituting and functioning of the parliament and other institutions. However, this reform largely remains dependent on the will of the political parties, MPs and that of the leadership of the Assembly.<sup>7</sup>

In an attempt to critically examine the path dependent trajectory of Kosovo's non-reformed RoP, this study moves through various parts. Firstly, it gives an insight into Kosovo parliamentary life and analyses the political reasons behind the delay of the draft RoP. Secondly, it draws out important gaps in the existing RoP vis-a-vis their status in the 2018 draft, as well as evaluates the remaining limitations in the 2018 draft through a synopsis of best-practices from the respective equivalent in Germany, Slovenia and Albania.

## METHODOLOGY

As a preliminary linguistic remark, the report indistinctively uses parliamentary terms specific to the Kosovar system (President of the Assembly, deputy) and terms with origin in the British parliamentary system, often used in social sciences (House Speaker, Member of Parliament). Generally British terms are employed in a comparative context, when analysing the systems and rules of other countries. In any case, if the term employed is specific of the national context and does not match that employed in the British parliamentary system, its correspondence will be provided to ease understanding.

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<sup>5</sup> CNN, *Opposition Party Sets Off Tear Gas in Kosovo Parliament*, 21 March 2018 at <https://edition.cnn.com/2018/03/21/europe/kosovo-parliament-tear-gas-intl/index.html>

<sup>6</sup> NDI, *New Mandates New Opportunities*, October 2008

<sup>7</sup> Under the current RoP the leadership of the Assembly consists of the Head of the Assembly and 5 Vice Presidents.

That said, the analysis of the Rules of Procedure has been constructed around a double qualitative approach. First, the study has engaged in a content analysis of numerous primary sources. It has drawn out and identified central issues from various legal documents; including the Rules of Procedure currently in force and the draft regulation of 2018, the Constitution, and the Law 03/L-111 on Rights and Responsibilities of the Deputy (Member of Parliament [MP]). Second, numerous interviews have been conducted with individuals involved in the procedures of drafting the new RoP, including members of the Subcommittee of Immunities, Mandates and Rules of Procedure of the Assembly, members of the working group, administrative staff and civil society experts who monitor the work of the Assembly. Drawing from both approaches, a set of thematic issues has been identified.

The study focuses its first and much of the second part on a case analysis of domestic issues. It also features a comparative examination of three case studies. In order to gain a better understanding of best-practices and offer a more nuanced discussion of principles (outside of the working group and the committee), the study compares the RoPs of the German Bundestag, the National Assembly of Slovenia and the Parliament of Albania with the current RoP of the Assembly and the proposed draft.

These case studies have been selected on the basis of sharing parliamentary governance based on a proportional electoral system, which makes the internal logic of their legislative chambers comparable. Furthermore, all have some additional features that led to their selection for the comparison. Germany is an established democracy with a long history of parliamentary stability. Slovenia is a regional country with a long, shared history and similar legal traditions and was the first of the republics from the former Yugoslavia to join the EU. Finally, Albania is a neighbouring country with close cultural ties whose Parliament has continuously reviewed and updated its Rules of Procedure since their adoption in 2004. Exceptionally other examples, such as the European Parliament, appear whenever they are relevant for the discussion.<sup>8</sup>

## **THE INEFFICIENCIES OF PARLIAMENTARISM IN KOSOVO**

### **1. The constant crisis and a decade without change**

Kosovo held four national elections between 2008, when it declared independence, and 2019 with no assembly fulfilling a full term.<sup>9</sup> Constant political crisis followed by customary snap elections have had serious consequences on the development of the country, leaving important legislative processes, reforms and policy agendas stuck at different stages and many initiatives incomplete or abandoned. In many aspects the political, constitutional and government crises have undermined democratic rules, political maturity and the bond between state institutions, political parties and citizens.

Much of the Kosovo political crises can be tracked back to the June 2014 elections. Subjected to power-sharing alliances as a result of the electoral system, parties struggled to find governing partners. The Democratic Party of Kosovo (PDK), the winner of the election scrambled to form a coalition with other ranking parties. On the other side, soon after elections, Isa Mustafa of The Democratic League of Kosovo (LDK), Haradinaj of The Alliance for the Future of Kosovo (AAK), Fatmir Limaj of the Social Democratic Initiative (then Initiative for Kosovo [NISMA]) and Kurti of Vetëvendosje Movement (LVV) struck a deal to form a coalition (VLAN) and jointly refused to cooperate with PDK.

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<sup>8</sup> In all cases, the RoPs currently in force are readily accessible in the respective websites, while the Draft of 2010 can be directly requested to the Assembly of Kosovo.

<sup>9</sup> Parliamentary elections took place in 2010, 2014, 2017 and 2019

VLAN elected a President of the Assembly with 83 out of 120 votes but the Constitutional court ruled this election unconstitutional.<sup>10</sup> The coalition was short lived and it took a further six months for PDK and LDK to reach an agreement to establish the government. This coalition was brokered with heavy involvement from the U.S. and Germany, against the will of the majority of the political parties and the public.<sup>11</sup>

Less than a year later, the unpopular PDK-LDK government presented two internationally sensitive agreements to the parliament, the Association of Serb Municipalities and the Border Demarcation with Montenegro, which kick-started another series of political disputes.<sup>12</sup> The political crisis spilled over from the election of 2014, and the irreconcilable positions on the agreements between the ruling coalition and opposition parties undermined the functionality of the Assembly. Thereafter, some unusual events unfolded in the Assembly, like the improvisation of the plenary sessions in alternative rooms, avoidance of parliamentary procedures, adopting draft laws without parliamentary debate, arrests of opposition members, and gas-masked security forces being deployed in the plenary hall.<sup>13</sup> Political conflicts between leaders over the rules turned into fighting over the external agendas, that is, international agreements between Kosovo and Serbia and Montenegro.<sup>14</sup> The crisis increased public dissatisfaction with the institutions, in particular over the newly formed PDK-LDK coalition, which was a factor in the mass migration towards Europe.<sup>15</sup>

The political polarisation was indeed a necessary precondition of the crisis, but it would not have been possible without rooted structural institutional problems that hinder the work of the Assembly.

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<sup>10</sup> According to the constitutional framework, the largest parliamentary group proposes the President of the Assembly, who is then elected by an absolute majority. The RoP from 2010 had not developed this procedure further, and there were differences as to how to interpret it, what constituted “the largest parliamentary group” and what would happen if the candidate was rejected. Facing these questions, the fledging coalition chose to constitute a single parliamentary group, which would automatically become the largest and thus the one proposing a President. This interpretation was accepted by the outgoing President, who is constitutionally tasked with preparing the constitutive session for the next term. However, the Chairperson of the constitutive session, which by virtue of age had fallen to a member of PDK, considered that the constitution of the parliamentary groups was a matter for the permanent Presidency, and thus could only be done after the election of the President. As a result, that item on the agenda was deferred, the next was the election of the President and PDK remained the “largest parliamentary group”.

At that point the ‘opposition’ abandoned the hall, and the session was adjourned due to lack of quorum. An ad-hoc session organised by the opposition took place shortly afterwards, constituting a new interim Chair for the session with the youngest deputy present (this time from LDK) and continuing with the proceedings. LDK, being the largest group present proposed a candidate, which in this case was approved with 83 votes (22 more than the 61 constituting an absolute majority, as required by Constitution). The Constitutional Court reviewed the case expeditiously and declared the constitutive session void. See Constitutional Court of the Republic of Kosovo, Judgment in Case No. KO 119/14, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_119\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf)

<sup>11</sup> Naim Rashiti, “The unwillingness of the political parties to agree on the constitutional procedure is likely to lead to a serious institutional vacuum” in *Kosovo elections: has everything changed?*, Research on South East Europe, London School of Economics, 11 June 2014

<sup>12</sup> The Association of Serb Municipalities is foreseen by an agreement reached in April 2013 in the framework of the so-called Brussels Dialogue. Different interpretations on the scope and powers of the Association, as well as a Constitutional ruling delimiting its potential reach under the Constitution made implementation impossible. The Border Demarcation was a requirement of the visa liberalisation process, consisting on a delimitation of the border between Kosovo and Montenegro, which had previously remained imprecise. The resulting agreement became deeply controversial in Kosovo, as some critics claimed it amounted to a change of borders, and the Assembly was incapable of ratifying it for more than 3 years.

<sup>13</sup> Democracy Plus, *Progress on Assembly of Kosovo*, July 2016

<sup>14</sup> Balakns Group interview with Western diplomat, March 2016

<sup>15</sup> BBC, *Leaving Kosovo: Exodus of young people as frustration soars*, 22 March 2015, at <https://www.bbc.com/news/world-europe-31967471>

Barely consolidated institutions, contested constitutional policies and majority-minority antagonisms are behind the empty chair cases and hostile speech that became the norm.<sup>16</sup> In this context of antagonism, the Assembly struggled to pass new laws as the legislative process slowed down. In 2015 only 34 per cent was implemented.<sup>17</sup> The situation slowly improved as the most controversial issues were put aside, but the ruling coalition never recovered, and with such mistrust between partners, it collapsed in spring 2017.<sup>18</sup>

No lessons were learned from 2014, and with no mechanisms to prevent new potential crises of this nature, Kosovo went through a similar situation after the subsequent elections of 2017.<sup>19</sup> This time, the Assembly failed on six occasions to conclude the constitutive session and appoint a president. The group that had the majority, PAN, insisted they had a candidate, just one, and refused to offer other options. The opposition however, rejected Kadri Veseli, the proposed candidate, and the majority delayed the procedure for three months until it secured votes for both the election of the President of the Assembly and the government. With no Assembly or functional government, Kosovo failed to ratify an agreement with the International Monetary Fund (IMF), which resulted in the loss of 16 million euros.<sup>20</sup> Once again, the failure of the RoP to define and stipulate the procedure for the constitution of the Assembly and elections of its organs, coupled by vague constitutional articles, allowed self-interested parties to take advantage of a regulatory vacuum in their favour.

In 2019 there was a new delay, although for once the Rules of Procedure were not to blame. A lengthy vote counting process, marred by constant motions and appeals led to a gap of almost 2 months between the elections on 6 October and the results' official announcement on 27 November. The inaugural session took place exactly one month afterwards, on 26 December; although with no agreement between the leading parties, the session unfolded smoothly, with the appointment of the presidency in due time. It happened accidentally and parties had not been prepared to meaningfully constitute new institutions. The work of the Assembly was kept hostage and was dysfunctional for months until Vetëvendosje and LDK reached an agreement to form a government on 3 February 2020<sup>21</sup>. This included replacing the speaker originally appointed, which constituted the Assembly 67 days after the certification of the results.

Over the years the Assembly has become more of a battlefield for political parties than a depository of national sovereignty. In many aspects it is not totally an exception case in the Western Balkans. The concept of deliberative democracy in the region is devalued by parties using fundamentally non-parliamentary methods of political bargaining. Ensuring "legitimate oversight and control of politics" exercised by (elected) politicians, has not fully taken root. In the Western Balkans, oversight and control is considered transactional, as a constant attempt of the opposition to replace the current government rather than promote accountability.<sup>22</sup>

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<sup>16</sup> BIEPAG, *The crisis of Democracy in the Western Balkans*, March 2017

<sup>17</sup> Democracy Plus, *Progress on Assembly of Kosovo*, July 2016

<sup>18</sup> Balkan Insight, *Mustafa Loses No-Confidence Vote in Kosovo*, 10 May 2017, at <https://balkaninsight.com/2017/05/10/third-kosovo-government-premature-collapse-05-10-2017-1/>

<sup>19</sup> The coalition of PDK, AAK and NISMA (PAN) won the election with 39 seats, 7 more than Vetëvendosje (32) and 10 more than the contending LDK-led coalition, who stood at 29. The resulting Assembly was thus broken into three sizable opposing factions, with a winner well short of the necessary majority.

<sup>20</sup> Radio Free Europe, *New IMF agreements fails. Kosovo losses 16m euro*, at <https://www.evropaelire.org/a/fmn-kosova-/28644699.html>

<sup>21</sup> DW, *Kosovë: Albin Kurti zgjidhet kryeministër i Kosovës*, 3 February 2020, at <https://www.dw.com/sq/kosov%C3%AB-albin-kurti-zgjidhet-kryeminist%C3%ABr-i-kosov%C3%ABs/a-52245971>

<sup>22</sup> BIEPAG, *The crisis of Democracy in the Western Balkans*, March 2017

Yet, Kosovo has its idiosyncrasies. As a young state, its unconsolidated institutions are more vulnerable to undemocratic attacks amid unclear procedures, rules and traditions. Not only do institutions fail to constitute and operate within basic democratic norms; essential parliamentary control practices fail to perform the most basic functions. Parliamentary Questions (PQs) are often used by parties in government to attack ministers or promote their own agendas. Those questions coming from the opposition either remain unanswered or do not receive substantial answers.<sup>23</sup> Member of the Assembly strictly remain loyal to their parties due to party discipline. Committees fail to fulfil their role for many reasons; limited working time, lack of quorums, lack of expert support and unprepared MPs in the meetings.<sup>24</sup> The Assembly fails to meet and implement agendas at large; it often lacks quorum and political parties bring unplanned issues to the agenda or engage in conflicting and endless debates.<sup>25</sup> The Assembly is used, at large, to promote party agendas that are developed elsewhere.

The state building agenda requires broad political compromises. The lack of political will in ensuring at least minimum of the consensus on major issues, i.e. the dialogue with Serbia, electoral reforms and foreign policy strategies, runs the risk of posing a significant hurdle to Kosovo's democratic consolidation in the near future. If all sides approach political discussion in bad faith, as seen in the last several years, not even the clearest RoP will fully help avoid the conflicts. Yet, one cannot expect a major change in the political discourse, but the rules of the game can be clearer, limit manipulation and help better sanction violations.

Updating the Rules of Procedure is a necessary step to make the Assembly more functional, inclusive and to manage political divisions between parties. It has the ability to produce a more coherent legislative procedure, more legitimate policies and potentially more stable governments. While an updated RoP does not counteract some of Kosovo's constitutional caveats, it promotes a legislative platform conducive to efficient and effective law-making. As such, the modification of the RoP not only safeguards the role of the Assembly as an independent legislative organ; it also reduces the probability of a legislative deadlock through well-versed rules and procedures.

## **2. The Roadblock, a judgment of the Constitutional Court**

The elections of 2014 and 2017 have shown that in the absence of accurate definitions and time limits in the RoP, long lasting blockades and delays can become a regular occurrence. The ambiguities in the Constitution and RoP dealing with the role and nature of political parties have had an adverse effect on the organisation within the Assembly. Practice has shown that parties have different and largely conflicting views on the definition of a parliamentary group, which determines who has the right to nominate the President of the Assembly.

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<sup>23</sup> Complaints about unsubstantial answers to Parliamentary Questions are common even in consolidated democracies, but even more in fledgling democracies that are still establishing a parliamentary tradition. According to the Kosovo Democratic Institute, 68 out of 216 questions were not answered in 2015, and the situation did not improve over the years. In 2019 96 questions went unanswered, from a total of 248 posed.

<sup>24</sup> NDI, *Pre-Election Assessment to Kosovo*, October 2019, at: [https://www.ndi.org/sites/default/files/Kosovo\\_Preelection\\_Statement\\_2009\\_ENG.pdf](https://www.ndi.org/sites/default/files/Kosovo_Preelection_Statement_2009_ENG.pdf)

<sup>25</sup> KDI, *Annual report of the monitoring of the Assembly of Kosovo for year 2016*, March 2015

Given the ambiguity in terminology, the parties were unable to compromise and resolve their disputes. President Jahjaga took the case to the Constitutional Court in 2014, requesting clarification on the interpretation of who had the right to form the government. The court ruling provoked contradictory reactions, with a majority disagreeing.<sup>26</sup> The post elections six-month gridlock ended with a ruling of the court that gave the exclusive right to elect the President of the Assembly and the Prime Minister to the largest pre-electoral coalition.<sup>27</sup>

Once again, in 2017 the elections resulted in a vacuum within the Assembly where the winning coalition PDK, AAK-NISMA did not take part in the consecutive convening sessions until they brokered a deal with New Kosovo Alliance (AKR) and formed a government with 61 votes. In this context, neither the Constitution nor the RoP set a binding deadline by which parliament is expected to vote on the election of the President of the Assembly (constitute the assembly), or at least this is how the parties interpreted it.<sup>28</sup> This process showed that the winning party/coalition can effectively block the Assembly until it gathers the necessary votes to elect the President of the Assembly, since no other parliamentary group can propose an alternative candidate, nor proceed with the formation of the government.

A year before the beginning of the crisis in 2014, the Assembly had considered a new draft Rules of Procedure. The draft of 2013 envisaged a clear procedure for the constitution of the Assembly and the election of the Prime Minister.<sup>29</sup> According to that version, “the candidate for President of Assembly shall be proposed by at least 15 deputies”, where, “the candidate will be selected with no debate and by secret ballot”, and “if no candidate has received the needed majority, a second round will take place, subject to a choice of the two candidates with the most votes in the first round”. Apart from the voting procedure and the right of candidature, the draft article also sought to enhance the transparency of the process by creating a “voting commission led by 5 deputies that reflect the proportional political representation of the Assembly”.<sup>30</sup> Had that draft been adopted, the crisis of 2014 could have been completely avoided and the dubious constitutional ruling would have never occurred.<sup>31</sup>

Unfortunately for the parliamentary system, the Constitutional judgement of 2014 left no room for the new Rules of Procedure to better regulate the election of the President of the Assembly and the government without constitutional changes. As the draft article 6 is no longer in concordance with the constitutional framework post-judgement, the Constitutional Court overruled any possibility of considerable change.

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<sup>26</sup> Experts criticised the ruling, as it prevented the opposition from presenting alternatives, enacting a de facto exclusive right of nomination to the largest group, even when an alternative working majority exists and can propose more feasible alternatives. The parties coming from opposition, for their part, continued to claim that, with an agreement that included almost 80 deputies, they constituted the largest parliamentary group, contrary to the interpretation made by the Court. See DW, *GJK shpall vendimin për zgjedhjen e kryeparlamentarit të Kosovës*, 26 August 2014, at <https://www.dw.com/sq/gjk-shpall-vendimin-p%C3%ABr-zgjedhjen-e-kryeparlamentarit-t%C3%AB-kosov%C3%ABs/a-17879633>

<sup>27</sup> Case No. KO119/14 Constitutional review of Decision No. oS-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, AGJ 700/14, 17 July 2014, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_119\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf);

<sup>28</sup> Even though the Constitution establishes a clear deadline (“the constitutive session [...] shall be held within thirty (30) days from the official announcement of the election results”) some interested interpretations have read the mandate as “the constitutive session shall be convened within 30 days... but it can be adjourned and reconvened at any later point”. It is worth noting that Kosovo is the only place where this interpretation is followed, even though most European constitutions have similar wordings. That might be an indicator of a generalised poor legal understanding and a lack of respect for the Law by some political parties.

<sup>29</sup> Balkans Group interview with Assembly expert, July 2017

<sup>30</sup> Draft Rules of Procedure 2013, Article 6

<sup>31</sup> Balkans Group interview with a Government official, August, 2017

Any new version of the RoP can at best offer some palliative treatment by establishing more precise and clearer definitions, but it cannot make the election of the President of the Assembly and the Prime Minister functional without further Constitutional Amendments.

### Unintended consequences of the Constitutional Judgment

Referring to the infamous ruling of 2014, the Constitutional Court noted that, not having access to the preparatory work for the Constitution it was obliged to take the Constitution itself at face value, according to its wording. Consequently, it came to the conclusion that ‘parliamentary group’, in the context of the constitutive session, means the party, coalition or independent list that ran for elections.<sup>32</sup> Thus, although such groups could change afterwards, parties cannot form a post-electoral coalition at that stage. It also found the continuation of the constitutive session with only part of the deputies present to be unacceptable.<sup>33</sup>

For these reasons, it found the process by which the prospective coalition intended to secure control of the Assembly unconstitutional. That reasoning, in the context, seemed rational and answered to the specific case (a group of parties that had run separately in elections forming an overnight coalition just prior to the constitutive session). However, it led to the conclusion that the party or coalition that obtains the largest number of votes in the elections has the exclusive right of proposing a candidate for President of the Assembly. For all intents and purposes, the selection of the President of the Assembly was turned into a majoritarian process, more in accordance with ‘first-past-the-post rules’ than with proportional representation. This is, in fact, the logic that produced a new deadlock in 2017.

Subsequent practice has made clear that the Constitutional ruling entailed a number of contradictions that undermine parliamentary logic. The first pre-election coalition or party not only has the exclusive right to elect the President of the Assembly, but also the right to nominate the candidate for Prime Minister. This is not part of this judgement. Yet, it is stated in another ruling from 1 July 2014 defining the process of appointing the Government at the request of the President.<sup>34</sup> Both judgements followed the same majoritarian logic, giving clear precedence to the largest party. The consequences of this tenet are multiple. In practical terms, that is the reason behind the rise of pre-election coalitions that has taken place since 2014. In a more theoretical analysis, the Court has somehow perverted Kosovo’s proportional electoral system with elements of a purely ‘winner takes all’ approach. In other words, the only thing that matters now is having one more seat than the next party, instead of being able to create a working majority or reaching agreements with other parties. Thus, taken as a whole, both rulings only served to introduce instability into the political system, as the Court turned the constitution of the Assembly and the formation of the Government into an automatism that utterly disregards parliamentary arithmetic.

At its root, the Constitutional judgment undermines Kosovo’s basic principles of power sharing. Instead of seeking to preserve the Assembly’s rule through majority consensus, the verdict introduced the principle of ‘rule of the first party/coalition’. It is particularly the court’s insistence of such principles that further exacerbates the potential for continued deadlock. As such, this interpretation of Article 95 of the Constitution is actually in contradiction with most elements of Kosovo’s parliamentary system. In a proportional system, the right to form a government is not interpreted in terms of the party or coalition that has won the most seats in elections, but as the group that has secured a majority in parliament.

<sup>32</sup> Case No. KO119/14 Constitutional review of Decision No. oS-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, AGJ 700/14, 17 July 2014, paragraph 116, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_119\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_119_14_ang.pdf);

<sup>33</sup> Ibid.

<sup>34</sup> Case No. KO103/14 Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo, AGJ 671/14, 1 July 2014, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjkk\\_ko\\_103\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_103_14_ang.pdf). However, there is a difference between both cases. Unlike the election of the President of the Assembly, according to the Constitutional Court, another party or coalition can propose a candidate for Prime Minister, but only after the candidate of the largest party has failed to reach the required majority.

### 3. The Prolonged delay and the fight over the Presidency

The failure to amend the RoP is not a question of lack of interest; the Assembly is well aware of the problems it faces in its daily work and in fact, has attempted to update the RoP on several occasions. A Sub-committee on Mandates, Immunities and Rules of Procedure dependant on the Committee on Legislation started working on drafting a new RoP prior to the 2014 elections. Over the years, it presented several drafts that consistently failed to gain approval. Some leaders of the parliamentary groups and particularly some of the vice presidents of the Assembly have opposed each attempt. Consequently, no new draft was ever passed.

In the period 2017 – 2019, one of the most contentious issues was the structure and powers of the presidency. With the existing rulebook, the Presidency of the Assembly organises the work of the parliament. It is composed of the President of the Assembly and 5 Vice-Presidents.<sup>35</sup> It prepares the agenda of the sessions, the working programme, and the calendar of the Assembly, deciding on the legislative agenda and the process of draft laws to the plenary. The Presidency also maintains external parliamentary relations and approves the draft budget.<sup>36</sup> As such, the Presidency exerts a high degree of control over the working of the Assembly.

The version of 2018 reduced the role of the presidency and created a new body, the Conference of Presidents (CoP). The CoP would be comprised of the President of the Assembly, the Vice-Presidents and the chairs of the parliamentary groups. The draft shifted some powers from the Vice-Presidents to this extended configuration. Thus, according to the draft, the CoP could be in charge of setting the agenda for the plenary sessions, the working calendar programme and legislative strategy, approving reports of the government, parliamentary committees and independent agencies. It would also propose the structure of the parliamentary committees, being able to propose new functional committees or changes to their composition.<sup>37</sup> The Presidency would retain a more technical role in comparison with its current configuration. CoP exists in many other parliaments, to ensure that the parliamentary groups have more power over the agenda, work and internal procedures of the Assembly (see Annex 1).

Considering this, there was high reticence to accept the power shift from the presidency to a new CoP. Unofficially, the presidency refused to seriously consider the new RoP. As a result, the draft found itself in a vague loop of deliberation whereby it never made it to the agenda, continuously delayed amid numerous interpellations and filibusterism until its final demise. Even though it passed the first reading, it was never scheduled for its second before the Assembly was dissolved. On the contrary, the Committee on Legislation rejected the draft and recommended it not be adopted in September 2018, and then dropped it from the agenda altogether.<sup>38</sup>

The proponents of the CoP argued that the new body did not uproot the powers of the Vice-Presidents, but it facilitated the internal organisation of the Assembly. The latest draft, however, had to compromise on the powers of both organs to keep the Conference of Presidents in the draft.<sup>39</sup>

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<sup>35</sup> However, there is a difference between both cases. Unlike the election of the President of the Assembly, according to the Constitutional Court, another party or coalition can propose a candidate for Prime Minister, but only after the candidate of the largest party has failed to reach the required majority. See Case No. K0103/14 Concerning the assessment of the compatibility of Article 84 (14) [Competencies of the President] with Article 95 [Election of the Government] of the Constitution of the Republic of Kosovo, AGJ 671/14, 1 July 2014, at [http://gjk-ks.org/wp-content/uploads/vendimet/gjkk\\_ko\\_103\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_103_14_ang.pdf)

<sup>36</sup> To find listed all the duties of the Presidency of the Assembly see Rules of Procedures of the Assembly of Kosovo, Article 15

<sup>37</sup> Draft Rules of Procedure 2018, Article 21

<sup>38</sup> Committee on Legislation, Mandates, Immunities, *Rules of Procedure of the Assembly and Oversight of Anti-Corruption Agency Report with amendments on the Draft Rules of Procedure of the Assembly of the Republic of Kosovo*, 19 September 2018

<sup>39</sup> Balkans Group interview with Vetëvendosje official, September 2017

The deliberations on the composition of the CoP showed the reluctance of the Presidency to accept sharing its current competences. The nature of the CoP in the 2018 draft remains controversial, and at the same time constitutes an important element for the administration of the parliament. As such, the issue will be revisited in latter parts of this study.

#### **4. Future perspectives, Constitutional reform or limited damage control**

The lack of clarity in the RoP has led to serious political, institutional, legal and constitutional crises. Although there is a broad consensus that the norms that regulate the election of the President of the Assembly, the mandate of deputies and the definition of the parliamentary group are not ideal, the intervention of the Constitutional Court in 2014 prevents any solution other than through constitutional amendments.

However, constitutional change is a long process that requires the broadest consensus among all political parties, and it must be a public, open process. Constitutional change requires a double majority, 2/3 of all MPs (80/120 seats) and 2/3 of those for minorities (14/20 seats). If the Assembly has been consistently incapable of agreeing on its internal rules for ten years now, the chances of it agreeing on amending the constitution are even lower. Furthermore, there is a fear that Serb representatives, fully controlled by Belgrade, will block any attempt or, even worse, will exact pricy concessions in return for their support.<sup>40</sup>

Thus, acknowledging the need to revisit the Constitution, considering the difficulties mentioned, it would be easier for the Assembly to finally agree on the review of the RoP. As long as the current text remains in force, chances are that every election will be followed by a crisis and political blockade. Even though the RoP cannot by itself reform the process of appointment of the President of the Assembly and the formation of government, it can outline time-frames and better define the procedures under the current constitutional order.<sup>41</sup> The following section extensively reviews the issues that such a detailed regulation should cover, categorised according to their thematic relevance.

### **ADDRESSING KEY ISSUES: A COMPARATIVE STUDY**

Currently, the lack of time limits for legislation review unnecessarily prolongs the law-making process and vague definitions spark needless debate among MPs. The rules in place give too much power to the Presidency and do not sanction ministers or MPs, which in turn results in weak and incoherent legislation. The new draft RoP has addressed some gaps of past practices in the Assembly and is an attempt to improve the legislative process by giving more concise definitions and time limits.

From a functional perspective, the draft RoP of 2018 sets a better time frame and agenda for the legislative process, somewhat improves mechanisms for parliamentary oversight, addresses the scope and eligibility of the accelerated procedure, introduces a better regulatory framework for MP code of conduct and increases the overall transparency of the Assembly. It also addresses some problems that have been evident in the law-making process throughout the various legislatures. In its entirety, the 2018 draft is seen as a more advanced document, addressing some of the key issues that have hindered productive legislative processes since 2010.

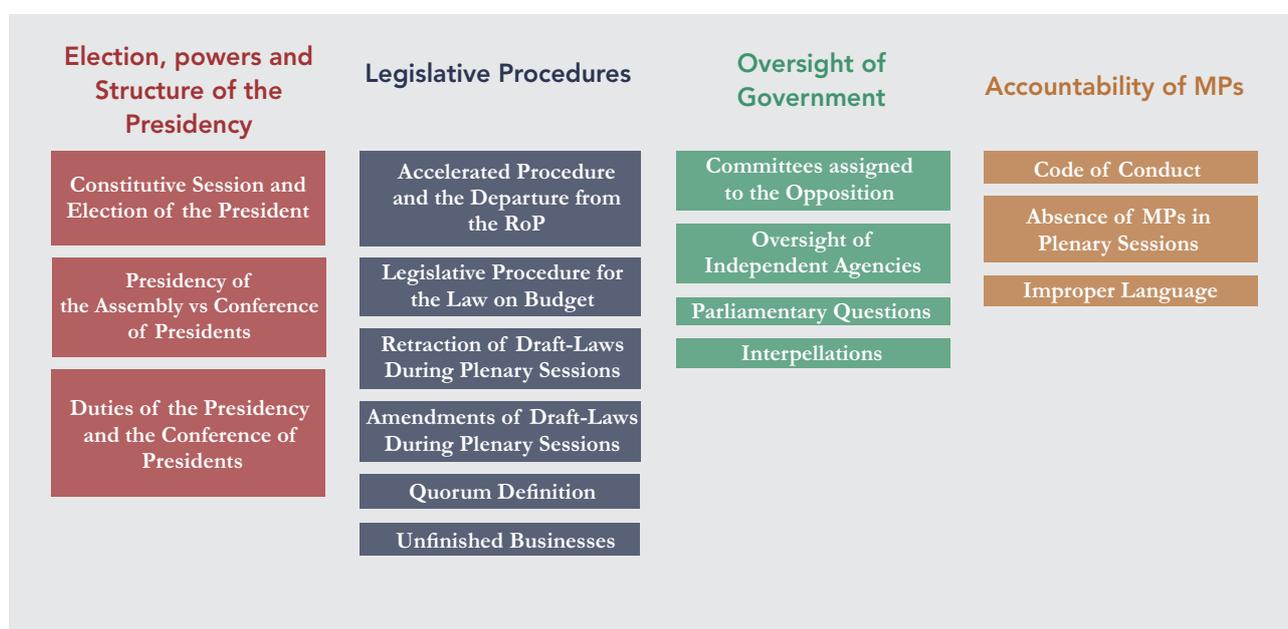
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<sup>40</sup> “Serb representatives may ask constitutional amendments to integrate the agreement on the Association of municipalities as it was agreed in Brussels”, Balkans Group interview with MP from LDK, April 2018

<sup>41</sup> For example, Article 67 of the Constitution of Kosovo and Article 12 of the Assembly RoP both deal with the Election of the President and Deputy Presidents of the Assembly on virtually the same terms. The RoP however, can the parliamentary procedures and time-frames by which the election of the president takes place.

However, the 2018 draft is also not to be considered comprehensive. It continues to fall short on some important aspects of parliamentary practice. It does not properly address refusals of Parliamentary Questions by Ministers, nor sanction the absence of deputies and refusals to take part in interpellations. Most importantly, the draft does not regulate the effective oversight of independent agencies nor ensure feasible oversight of the Government by the opposition through committee chairmanship.

The following section of the report provides an analytical examination of the most prominent issues in the Assembly that have surfaced as a direct result of an ill-defined RoP. In order to provide a systematic view of the current RoPs' limitations, the study examines central issues through four thematic aspects. Based on the interviews conducted, expert reports and the discussions in the working groups, BPRG has identified several issues that fall under **1) presidency structure, 2) legislative procedures, 3) oversight of the Government, 4) accountability of MPs**. The section presents an analysis of the current regulation, the draft of 2018 and the results of a comparative study.



## 1. Election, Powers and Structure of the Presidency

The election of the President of the Assembly remains perhaps the most critical hurdle in the RoP. Given the constitutional court rulings and the constitutional nature of the election of the President, the draft RoP requires amendments in order to address relevant developments. The constitutive session which elects the President directly impacts what has been outlined as the “Presidency Structure”. After all, the President, together with the presidency, make up the central authoritative body within the Assembly. As such, it is increasingly important to examine the process of election, the role and composition of the Presidency.

| Issues  | Shortcomings   | Status in Draft 2018 |
|---|--|----------------------|
| Election of the President of the Assembly                   | <ul style="list-style-type: none"> <li>- No deadline for the election of the President;</li> <li>- No sanctioning mechanisms for refusal to take part in constitutive session;</li> <li>- Does not reflect the constitutional interpretation of 2014;</li> </ul> | PARTLY ADDRESSED     |
| Presidency of the Assembly and the Conference of Presidents | <ul style="list-style-type: none"> <li>- Composition favours the largest parliamentary groups;</li> <li>- One sole centralised body with a heavily politicised composition;</li> </ul>   | ADDRESSED            |
| Duties of the Presidency and the Conference of Presidents   | <ul style="list-style-type: none"> <li>- Centralized power of the Presidency;</li> <li>- Competencies over both bureaucratic and political agenda hampers efficiency;</li> </ul>   | ADDRESSED            |

### 1.1 Constitutive Session and Election of the President of the Assembly

The election of the President continues to be one of the most problematic aspects of the constitutive session in the Assembly. With virtually no elaboration or clarification on what is considered to be a decisive procedural aspect of Assembly functioning, the current RoP simply states that “the Chairperson of the inaugural session shall request from the largest parliamentary group to propose a candidate for the President of the Assembly”.<sup>42</sup> This article, as the only sentence outlining the procedure for the election of the president, is responsible for promoting the conditions that have led to political misappropriation.

The 2018 draft, although it addresses one dimension of the current procedure for the election of the President of the Assembly, still falls considerably short. With the paragraph on the election procedure remaining the same, the updated article introduces only one new aspect. This revision states that “the constitutive session cannot be closed until the President of the Assembly has been elected”.<sup>43</sup> The addition of this paragraph addresses one crucial facet of the existing gap relating to arguably the most important parliamentary procedure. As elaborated in the contextual discussion of Kosovo’s past political deadlock, the RoPs’ failure to delineate the conditions and time-frames for the election procedure has allowed political parties to delay the constitutive session with no regulatory consequences. The new draft article seeks to tackle this discrepancy directly.

Regulating the election of the Speaker remains a decisive aspect of parliamentary practice. Similar to that of Kosovo, the election procedure is deemed equally consequential in other parliaments as well.

<sup>42</sup> Rules of Procedure of the Assembly of Kosovo, Article 12(2)

<sup>43</sup> Draft Rules of Procedure 2018, Article 11 (3)

Germany, Slovenia and Albania all have specific articles that outline the election of the Head in detail as to avoid procedural ambiguity.<sup>44</sup> In Germany, the RoP of the Bundestag establishes a run-off type of election through three ballots. This rule stipulates that “if a majority is not obtained in the first ballot, new candidates may be proposed for the second ballot, if a majority of the votes of the members of the Bundestag is still not obtained, a third ballot shall be held”.<sup>45</sup> The Albanian Parliament, on the other hand, employs a somewhat different approach to the election of its Speaker. The country’s parliamentary RoP introduces that “the candidate for Speaker of the Parliament must be proposed by at least 15 MPs”.<sup>46</sup> In addition, it adds that in cases when none of the candidates have won the necessary number of votes, it is proceeded to the second round where it is voted for two candidatures that received the highest number of votes”.<sup>47</sup>

Given its efficiency in ensuring the election of the President in the constitutive session, the run-off approach with multiple ballots remains a widely-used method by many legislatures. Though the German Bundestag and the Albanian Parliament examples of procedural mechanisms for the election of the President are useful, their application to the Assembly can be problematic due to the constitutional setup.

Two key problems remain in order to enhance the regulative framework. First, the draft RoP failed to incorporate the Constitutional Judgment on who gets to exercise the right to elect the President (which should go in Article 11 par. 2 of the draft RoP).<sup>48</sup>

If only the largest party or coalition that actually ran for elections can propose a candidate, the draft RoP should reflect this. In turn, adding much needed clarity to the process within the available constitutional framework would reduce the chances of a new crisis.

Second, the draft RoP still lacks mechanisms addressing the delay of the constitutive session. As seen in the past, the constitutive session failed to be held until the ruling coalition ensured that they had the majority of votes to elect their candidate as President of the Assembly. Taking into account the Article on the inaugural session of the Assembly (which is supposed to be convened within 30 days of the official announcement of the election results), the RoP needs to institute specific provisions that ensure that the constitutive session is held within that timeframe and not adjourned until the President has been elected.

In order to address these shortcomings, three key points must be covered. The deadline for the constitutive session after the certification of election results by the Central Election Commission (CEC) must be rigid and held without exceptions by the deadline of thirty (30) days. This entails that if both the president and the Assembly are unable to convene the session, as mandated in the constitution, an automated procedure of the inaugural session must be triggered.<sup>49</sup> As such, the rights of convening the constitutive session are not solely based on the discrepancy of the President or the political will of political parties. In this case, if the president fails to set the date for the constitutive session ten (10) days prior to the deadline, the outgoing presidency should be required to move forward with the preparatory meeting five (5) days before the thirty (30) day constitutional deadline. This helps remedy the pitfall of actor discretion in delaying the constitutive session and lessens the likelihood of an ensuing crisis.

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<sup>44</sup> With the exception of National Assembly of Slovenia, who has a more detailed procedure for the formation of a new legislature than the Election of the Head of the Assembly (see Chapter II: Constituting the National Assembly).

<sup>45</sup> Rules of Procedure of the German Bundestag, Rule 2(2)

<sup>46</sup> Rules of Procedure of the Parliament of Albania, Article 6 (1)

<sup>47</sup> Rules of Procedure of the Parliament of Albania, Article 6 (2)

<sup>48</sup> Rules of Procedure of the Assembly of Kosovo, Article 11

<sup>49</sup> Constitution of Kosovo, Article 66 (3)

While these proposals serve as a countermeasure to the delay of the constitutive session, the election procedure for the President of Assembly requires additional actions. The constitution and the judgment on the election of the President of the Assembly simply regulate the legal framework on exclusive rights of political parties to fill the position. They do not however, clarify the process of the election and the procedures required if the candidate proposed by the largest political party fails to secure the necessary majority. Within the constitutional framework, the RoP should clearly regulate this procedure. As witnessed in past legislatures, the candidate from the largest political party has often failed to secure the backing of sixty-one (61) MPs, a majority of all seats. A remedy could be to introduce a limitation so that the largest coalition or party cannot propose a candidate that already failed to obtain the trust of the chamber, or request from them a ‘short list’ of candidates for the Assembly to decide, instead of a single name. It should also clearly define how to proceed with the voting (if electronically, by raising hands or otherwise) and what would happen if the proposed candidate fails to pass the vote, so as to avoid a new blockade. If only one candidate is presented at a time, the chair of the session should immediately ask for a new nominee, which cannot be the same name already presented. Whatever the specific content, a straightforward process should transpire with no space for situations like that of 2017.

## **1.2. Presidency of the Assembly versus Conference of Presidents**

Understanding the scope of the legislative reform that the CoP brings is of utmost importance in the context of procedural efficiency. Although the question of the CoP has been confined to political debate relating to power-shifts; at its core, it also deals with a central issue: accountability. The importance of the CoP reform in this regard is two-fold: 1) the consequences of its political composition and 2) the distribution of the power of the Presidency.

Considering the contextual discussion on the CoP in earlier parts, this part seeks to analyse the relevance of this body in comparison to the other case-study RoPs. The RoPs of the German Bundestag, the National Assembly of Slovenia and the Albanian Parliament set out specific articles that outline the role of their central bodies. The German Bundestag has two central bodies with a different composition. One, the ‘Presidium’ is comprised of the President and the Vice-presidents of the Bundestag, whereas the second, the ‘Council of Elders’, also includes twenty-three other Members that are appointed by the parliamentary groups.<sup>50</sup> The National Assembly of Slovenia, considerably different, only has one centralised body, however, with a diverse composition. Its ‘Council of the Presidents of the National Assembly’ is made up of the President and Vice-Presidents of the National Assembly, the leaders of the parliamentary groups and the deputies of the national communities.<sup>51</sup> The Albanian Parliament’s RoP, similar to that of the Bundestag, establishes two central bodies: the ‘Bureau of the Parliament’ and the ‘Conference of Group Chairpersons’. The ‘Bureau of the Parliament’ consists of the President of the Parliament, Deputy Presidents, 2 secretaries for the budget and 4 secretaries, whereas the ‘Conference of the Group of Chairpersons’ is composed of the speaker and the heads of the Parliamentary groups.<sup>52</sup>

The political composition of the central bodies is a crucial aspect that RoPs should regulate. Most importantly, it is a question about whether agenda-setting and other duties should be centralised or shared among various bodies. The discussion on the CoP composition, in particular, addresses the issue of why balanced political distribution among central assembly bodies is important. In the case of Kosovo, the current RoP favours larger political parties.

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<sup>50</sup> Rules of Procedure of the German Bundestag, Rule 5 and Rule 6

<sup>51</sup> Rules of Procedure of the National Assembly of Slovenia, Article 21(2)

<sup>52</sup> Rules of Procedure of Parliament of Albania, Article 8 and Article 12

In this case, a single centralised body within the Assembly, subject to narrow political distribution, only de-legitimises the accountability of that entity. Seeing how the composition of the Presidency has a political nature, there is a need to examine ways in which the RoP can foster a more accountable and better functioning central body. Although parliamentary presidencies or bureaus are inherently political in nature (reflecting the political parties in legislature), there is a crucial trade off worth considering. As in the case of Slovenia, if one opts for a single central body, the composition of the Presidency should then include wider participation by members of parliament (chairs of groups, vice-presidents and communities). If one opts for a decentralised structure, as in the cases of Albania and Germany, with two central bodies, inclusive participation can be ensured through more restrictive membership ranging across various bodies.

The version of 2018, opting for a decentralised structure, kept the Presidency as defined in the Constitution, and created a Conference of Presidents that would have gathered the Presidency (President and Vice-Presidents) with the leaders of the parliamentary groups to discuss a number of issues. The General Secretary of the Assembly, although not a member of the CoP, would also be present. However, there was an important omission in the draft, as it did not regulate the decision-making process within the CoP, a relevant oversight considering the scope of competences it would have had. In principle, the CoP should act by consensus, but when that is not possible the RoP must clearly establish the process to follow. If a vote is required, the rules must make clear whether all votes are equal or weighted corresponding to the size of the respective parliamentary groups. Any future draft should reintroduce this dual structure, including specific provisions on decision-making.

### **1.3 Duties of the Presidency and the Conference of Presidents**

Arguably, the most critical aspect of the draft RoP 2018 is the erosion of power proposed by the shifting duties of the Presidency towards the CoP. As briefly argued above, the discussion on the CoP introduces a legislative trade-off on two levels, where the Assembly has to decide between one centralised body with wide political participation and two bodies with more restricted political participation. The trade-off is not simply a discussion on ensuring political participation, but at the same time also assessing whether the duties should be shared or remain consolidated in one body. The former is a question of accountability and representation, whereas the latter is about efficiency. Given that political participation has been discussed amply above in terms of the composition of the Presidency (and CoP), the following part assesses the duties of the prospective CoP of the Assembly.

In the framework set by the current RoP, the Assembly falls short on both political participation and efficient functioning.<sup>53</sup> Currently, the Presidency has authority over administrative, bureaucratic as well as political agenda-setting duties within the Assembly.<sup>54</sup> For many, the centralisation of duties within the Presidency as a single body has been seen as detrimental to the efficient and impartial functioning of the highest authoritative body. The shift and division of duties proposed by the draft RoP is thus seen as a remedy to the heavily consolidated power of the current Presidency. This shift moves the political agenda-setting authority to the CoP, whereas the Presidency retains authority over the administrative and bureaucratic aspects of the Assembly's functioning (budget, finances, etc.).<sup>55</sup>

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<sup>53</sup> See discussion in 1.2. for reference.

<sup>54</sup> Rules of Procedure of the Assembly of Kosovo, Article 15

<sup>55</sup> Rules of Procedure of the Assembly of Kosovo, Article 19 and Article 21

This two-body composition of the Presidency of the Assembly is also evident in the cases of Germany and Albania. In the Bundestag the Council of Elders and the Presidium share competences. The Council of Elders does not have binding decision-making power, yet serves an important role in ensuring that “agreement is reached among the parliamentary groups on the appointment of committee chairpersons and on the Bundestag’s work programme”.<sup>56</sup> The Presidium, for its part, has central decision-making authority. In Albania’s case, the Conference of Group Chairpersons has authority of the most important aspects of the decision-making competences, while the Bureau, with limited representation, only decides on the budget based on reports from the budgetary secretaries.<sup>57</sup> The National Assembly of Slovenia, unlike these two cases, has only one centralised presidency body with considerable political representation (see section 1.2). The Council of the President of the National Assembly has authority over a number of central law-making processes, such as reviewing proposals to adopt a draft law by the urgent procedure or to discuss a draft law by the shortened procedure, time allocations and the duration of sessions, among others.<sup>58</sup>

The draft RoP of 2018 follows the example of Germany and Albania, which in theory, constitutes a better functioning system than that of Slovenia. Although the National Assembly of Slovenia’s Council of the President ensures inclusive political representation in one centralised body, the condensed list of duties and responsibilities may impede the Presidency from maximising its efficiency. A two-body Presidency, with different duties and different levels of political representation, assures the systematised execution of tasks. In that sense, the latest draft, as said, favoured the Presidency, which would retain most of its competences, leaving the CoP with “discussing” the agenda, preparing the annual work plan of the Assembly, proposing the committee structure and approving the weekly calendar.

The new draft should revisit the balance between both institutions, clarifying the respective scopes and, in shared tasks, establish which body is proposing and which body is deciding, avoiding any unclear terms. Ideally, the CoP should have an advisory role in the budgeting process and be the ultimate authority in internal questions of the Assembly, such as the agenda, the weekly calendar and the annual work plan. In addition, it should decide on the structure of the committees upon proposal of the Presidency (and not the other way around), advise on disciplinary actions against MPs that have effects beyond the session or committee and decide on unfinished businesses at the beginning of the term.

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<sup>56</sup> Rules of Procedure of the German Bundestag, Rule 6(2) and Rule 6(3)

<sup>57</sup> Rules of Procedure of the Parliament of Albania, Article 11 and Article 12

<sup>58</sup> Rules of Procedure of the National Assembly of Slovenia, Article 21 (6)

## 2. Legislative Procedures

In terms of thematic relevance, a discussion about RoPs cannot hold as substantial without addressing the implications of law-making as a parliamentary process. A legislative procedure that is inclusive and structured serves as the backbone of accountable governance. Although Kosovo's current RoP has a chapter (XIII) dedicated to the "Law-Making Procedure", there are a number of issues that continue to hamper the Assembly's productivity. The specific problems identified in Table 3, which have become institutional barriers to effective law-making, are the result of expert debate on the issues relating to the current RoP, as well as the various concerns of members of the working group. The discussion below highlights the gaps in the current legislative procedure of the Assembly as a direct result of unclear RoP on aspects depicted in the table.

| Issues   | Shortcomings   | Status in Draft 2018 |
|--|--|----------------------|
| Accelerated Procedure and Departure from the RoP | <ul style="list-style-type: none"> <li>- No clear Article on conditions for Accelerated Procedure;</li> <li>- Weak and hard to implement laws;</li> <li>- Lack of committee and plenary debate;</li> </ul>           | PARTLY ADDRESSED     |
| Legislative Procedure for the Law on Budget      | <ul style="list-style-type: none"> <li>- No Article on the Law on Budget Procedure</li> <li>- Law on Budget procedure passed in an accelerated procedure</li> <li>- Absence of robust committee reporting</li> </ul> | ADDRESSED            |
| Retraction of Draft-Laws during Plenary Sessions | <ul style="list-style-type: none"> <li>- Laws discussed extensively only to be retracted;</li> <li>- Time and resources wasted debating and reporting on potentially retracted laws;</li> </ul>                      | NOT ADDRESSED        |
| Amendments of Draft-Laws during Plenary Sessions | <ul style="list-style-type: none"> <li>- Hampers efficiency of parliament;</li> <li>- Amendments not discussed properly in committees;</li> </ul>  | ADDRESSED            |
| Quorum Definition                                | <ul style="list-style-type: none"> <li>- Inefficient procedure to ensure quorum;</li> <li>- Inefficient functioning of plenary sessions</li> </ul>   | ADDRESSED            |
| Unfinished Businesses                            | <ul style="list-style-type: none"> <li>- Unnecessary delays in legislative processes</li> </ul>  | NOT ADDRESSED        |

### 2.1. Accelerated Procedure and Departure from the RoP

The Assembly of Kosovo has a history of passing laws in an accelerated procedure. The departure from the RoP similar to the procedure for the ratification of the Ahtisaari Package laws, although considered to be necessary, has become a regular occurrence within the Assembly. Urgent policy matters do sometimes require the departure from the RoP; however, explicit provisions should exist that regulate conditions under which such departure is justified.<sup>59</sup> Policies of vital interest that require swift action should be able to be implemented outside the confines of the RoP. The problem is that the Assembly has continuously circumvented the RoP in passing laws that demand more technical review and closer scrutiny.

The unclear distinction between the departure from the RoP and the accelerated procedure has resulted in numerous fast-tracked legislative procedures.

<sup>59</sup> OSCE, *Opinion on Draft Sections I-III of the Rules of Procedure of the National Assembly of Armenia*, April 2017, at <https://www.osce.org/odihr/313051>

The departure of the RoP is different from the notion of accelerated procedure insofar as the departure entails a complete deviation from the RoP (see Article 84). Although it is essential for a RoP to include articles on the accelerated procedure, the departure of the RoP is not seen as an integral part of such a procedural document (see Annex 1 for articles of departure from RoP).

In the case of Kosovo, the opposite is true. The current RoP regulates the departure from the rules, yet, completely fails to set the scope of the accelerated procedure. In the absence of a clear distinction with regulative checks, Kosovo Assembly deputies have utilised the departure from the RoP as a means to pass laws through a fast-tracked (accelerated procedure). Practically however, the utilisation of the departure from the RoP entailed the triggering of a legislative measure that completely disregards the RoP. With no articles on the accelerated procedure, deputies have triggered the complete deviation from the RoP (departure) in order to fast-track certain laws.

A significant portion of important legislation in the past few years has been subject to the departure from the RoP. The Law on Amnesty and laws related to the conditionality for visa liberalisation in the EU were approved in an accelerated procedure.<sup>60</sup> According to the KDI Assembly monitor of 2018, 11 laws were passed through the accelerated procedure.<sup>61</sup> Laws that are adopted through accelerated procedure do not undergo the necessary review and are often hard to implement. This method of law passing has also been used for laws related to the Specialist Chambers of Kosovo. Adopting laws without the regular parliamentary procedure of two readings and without necessary consultations with the public and interest groups renders those laws difficult to implement.<sup>62</sup> The RoP should not habitually allow the avoidance of entire parts of the law-making process.<sup>63</sup>

Currently, the RoP demands “departures from the RoP may be decided upon the decision of two thirds (2/3) of the Members of the Assembly present”.<sup>64</sup> A similar text was introduced in the 2018 draft.<sup>65</sup> In addition, it vaguely states that “departure may take place when it does not conflict with the provisions of the Constitution of the Republic of Kosovo and with European Standards”.<sup>66</sup> The unclear procedures regarding the departure of the RoP contained in the current RoP have allowed for the continued misuse of the accelerated legislative procedure. In principle, in a well-functioning and democratic legislative system, articles on the complete departure of the RoP should not exist. Instead, the RoP should clearly identify under what extraordinary circumstances deviation from the rules is allowed, as some procedures may require a slight departure, and then define precisely what such a deviation may entail.

In order to address the issues of the unclear departure provision in the current RoP, the 2018 draft outlines a number of criteria to regulate the accelerated legislative procedure. The draft RoP sets out to standardise a time-limit, as well as identify the eligibility criteria of laws for the accelerated procedure based on their content.<sup>67</sup>

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<sup>60</sup> KDI, *Scorecard, Assembly of the Republic of Kosovo I-IV/2013*, 2013

<sup>61</sup> KDI, *Monitoring Report of the Assembly's work for the year 2018*, March 2019

<sup>62</sup> KDI, *Annual report of the monitoring of the Assembly of Kosovo for year 2015*, March 2016

<sup>63</sup> Balkans Group interview with Parliamentary Expert, September 2017

<sup>64</sup> Rules of Procedure of the Assembly of Kosovo, Article 84

<sup>65</sup> Article 118 of the Draft 2018 remains unchanged from the version of 2010 currently in force.

<sup>66</sup> Rules of Procedure of the Assembly of Kosovo, Article 84

<sup>67</sup> Draft Rules of Procedure 2018, Article 46

It establishes that the first reading “of the draft law with an accelerated procedure cannot be done earlier than 48 hours from the dissemination, while the second review cannot be done earlier than 72 hours from the day of adoption in principle”.<sup>68</sup> In addition, it insists that at the request of “the Government or one quarter (1/4) of the total number of members, the Assembly shall review with an accelerated procedure draft laws related to: 1) national security 2) public health, and 3) European integration”.<sup>69</sup>

The draft RoP clearly sets out to regulate the scope by which a law can be adopted through the utilisation of the accelerated procedure. The time-frame requirement ensures that MPs have an opportunity to minimally familiarise themselves with the draft-law under the accelerated procedure. Although the time-frame does not provide for a comprehensive reading and amendment of the draft law under accelerated procedure, it introduces minimum requirements to counter weak legislation. Limiting the scope of draft laws that can be adopted through the accelerated procedure based on their content is also a robust amendment. In this context, only laws pertaining to vital state interests can be passed via the accelerated procedure to avoid the likelihood of a worsening crisis.

The updated RoP article on the accelerated procedure to review draft laws- even though subject to a better regulatory framework- still require additional scrutiny. The time-frame and content criteria do amend the most prominent issues relating to the accelerated procedure, but the substance of the article continues to face numerous challenges. Most importantly, it falls considerably short on establishing a clear outline that sets the scope by which this procedure can be triggered. A brief turn to the relevant articles of the Slovenian and Albanian RoPs helps to bring forth the remaining gaps of 2018 draft. The Albanian RoP has a more integrated regulation of the time-frame criteria. Not only does the article stipulate that a law under the accelerated procedure cannot be examined in the relevant committee or plenary session “less than one week from the date of submission”, but it also limits triggering the accelerated procedure to “no more than three laws over a 12-week work programme”.<sup>70</sup>

The accelerated procedure for the National Assembly of Slovenia, on the other hand, clearly sets out the content-specific criteria that define the eligibility of laws for accelerated procedure. The regulation insists that draft laws can be adopted through a shortened procedure only in the event of: “1) minor amendments to a law, 2) the cessation of the validity of an individual law or individual provisions thereof, 3) less demanding harmonisation of the law or with the law of the European Union and 4) amendments to laws related to proceedings before or decisions of the Constitutional Court”.<sup>71</sup> In addition, it requires that any draft law under the shortened procedure to be submitted to a relevant working body (committee) for minimal discussion.

The examples drawn from the Slovenian and Albanian RoP clearly identify some of the shortcomings of the current RoP and the last proposed draft. The remaining issues with the draft are two-fold. Firstly, while it delineates a minimal time-frame for minimum discussion, it fails to address the frequency by which the accelerated procedure is allowed to be triggered. Secondly, it lacks an outline of general requirements that laws must be subject to in order to fit the criteria.

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<sup>68</sup> Draft Rules of Procedure 2018, Article 46 (par 1)

<sup>69</sup> Draft Rules of Procedure 2018, Article 46 (par 2)

<sup>70</sup> Rules of Procedure of the Parliament of Albania, Article 28 (par 4) and Article 28 (par 5)

<sup>71</sup> Rules of Procedure of the National Assembly of Slovenia, Article 142. The RoP of the National Assembly of Slovenia has another Article (143) that sets out the framework for the Urgent Procedure (laws that coincide with the country’s vital interests).

## 2.2. Legislative Procedure for the Law on the Budget

One of the main and most important laws that the Assembly passes every year is the Law on Budget. The Law on Budget regulates the planning, preparation, adoption and execution of the budget of Kosovo. It has become a regular occurrence within the Assembly to approve the budget in an accelerated procedure. It is passed without deliberation and by avoiding the usual procedures and time frames that robust legislative processes require. This contributes to a budget that usually lacks necessary planning for proper distribution but is rather shaped by several interest groups or regions.<sup>72</sup>

In the current RoP, important legislative acts (such as the law on the Budget) are not subject to specific articles that ensure their adoption via regular legislative procedures. This runs the risk of a Law on Budget adopted through an accelerated procedure with no regulatory checks. Given their importance, budgetary-specific articles should always be included in a legislative RoP. The 2018 draft - decisively different from the 2010 RoP - introduces a mandatory regular procedure of two-readings and committee deliberation for the draft-law on the budget. The updated draft included Law on Budget specific articles that ensure a more accountable process along three lines: 1) two-mandatory readings and amendment processes, 2) committee revision and 3) stakeholder involvement.<sup>73</sup>

Law on budget-specific articles – although much more detailed – are also present in the cases of Germany, Slovenia and Albania. A uniform aspect of the three case-study RoP articles on the annual budget is their emphasis on committee review.<sup>74</sup> Similar to the articles defined in Kosovo’s draft RoP, the country comparisons exhibit that committee oversight over the annual budget is considered a foundational characteristic of legislative effectiveness. All three case-study RoPs, and the latest draft, highlight the importance of a specific mechanism that allows for stakeholder and public scrutiny.

The Slovenian and Albanian RoP, however, include a number of aspects that significantly enhance the legislative procedure concerning the annual budget. The Slovenian RoP, in particular, introduces a deadline for the submission of the draft state budget. This approach insists that the “the government submit the draft state budget for the following year by 1 October of the current year at the latest”.<sup>75</sup> The Albanian RoP institutes another layer of review of the budget law not seen in the other RoPs. It states that once a functional committee has been appointed to review and report on the budget law, the Economy and Finance Committee (permanent committee) then moves to review the report on an article by article basis.<sup>76</sup> In addition, it requires that an article by article review of the budget law be subject to a plenary sitting as well.

Both the introductory deadline and the article by article review of the budget law in the two cases provide for a more compelling procedure. While Kosovo’s draft RoP envisages an immense shift from the non-existent budgetary law articles in the current RoP, it could additionally benefit by incorporating aspects from the above-mentioned articles. As it is, the draft RoP touches upon the three most important aspects required when considering the annual budget law, namely, two mandatory readings, committee revision and stakeholder involvement.

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<sup>72</sup> KDI, *Annual report of the monitoring of the Assembly of Kosovo for year 2015*, March 2016

<sup>73</sup> Draft Rules of Procedure 2018, Article 72-74

<sup>74</sup> Rules of Procedure of the German Bundestag, Rule 95; Rules of Procedure of the National Assembly of Slovenia Article 158; and Rules of Procedure of the Parliament of Albania, Chapter III

<sup>75</sup> Rules of Procedure of the National Assembly of Slovenia, Article 158

<sup>76</sup> Rules of Procedure of the Parliament of Albania, Article 83

However, a willingness to consider a proposal deadline for the budgetary bill and potential article by article review in various stages would enhance the transparency of a legislative procedure that has been historically plagued by substandard practices.

### 2.3. Retraction of Draft-Laws during Plenary Sessions

In the current RoP the government can retract a draft law at any time before it passes the second reading in the parliament. Even though the retraction of laws is not addressed through an individual article in the RoP, it is briefly mentioned in the section dealing with the first reading of draft-laws.<sup>77</sup> It establishes that “sponsor(s) may withdraw the Draft-Law during the process of reading in the Assembly before the beginning of voting during the second reading”.<sup>78</sup> This, in many cases, leads to situations where functional committees work for months on draft-laws that are consequently arbitrarily withdrawn by the government.<sup>79</sup> The ability of the government and MPs to withdraw laws at any point hampers the efficiency of the parliament in the law-making process. The committees spend a considerable amount of time and resources on drafting laws that can be retracted for the simple reason that the government does not like the direction that debates on the draft are taking. For example, an early attempt at passing a Law on the Conflict of Interest, was withdrawn by the government because a specific article was against the personal interest of a senior official.<sup>80</sup>

The new draft regulation on this, does acknowledge the issue in an individual article called “retraction of draft laws or motions”, but doesn’t offer any substantial change to the current RoP. The draft, same as the current RoP, establishes that “a sponsor may retract a draft law during discussion in the plenary sessions before the beginning of voting procedures during the second reading”.<sup>81</sup> The failure to address the implications of the late retraction of draft laws will continue to exacerbate the existing issues. During the debate on the 2018 draft, a proposed amendment by an MP sought to address this caveat directly. The proposed amendment did not receive the necessary backing in the functional committee, but insisted that the article be re-named “retraction of draft laws” and outline that “sponsor(s) may retract draft-laws during discussions in the plenary session before the voting procedure in the first reading”.<sup>82</sup> This amendment would have been pivotal in addressing the major inefficiencies that arise as a direct result of the late retraction of laws. Committees and MPs would no longer be subject to month-long discussions and working groups to address specific laws which end up ultimately withdrawn prior to the second-reading voting.

Similar to the proposed amendment, the Slovenian and Albanian legislative procedures have clear regulations that address the issue of draft-law retraction. The Slovenian RoP dictates that “the proposer may withdraw a draft law or replace a draft law with a new one until the convening of the session of the National Assembly at which the discussion of the draft law begins”.<sup>83</sup> The Albanian Parliament’s RoP also insists that “the initiator of the bill may draw his/her draft until the moment when it is not voted in principle in the plenary sitting”.<sup>84</sup>

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<sup>77</sup> Rules of Procedure of the Assembly of Kosovo, Article 56 (5)

<sup>78</sup> Rules of Procedure of the Assembly of Kosovo, Article 56 (par 5)

<sup>79</sup> Democracy Plus, *Progress in the Assembly of Kosovo*, July 2016

<sup>80</sup> Balkans Group interview with Government official, September 2017

<sup>81</sup> Draft Rules of Procedure 2018, Article 67

<sup>82</sup> Draft Rules of Procedure 2018, Amendment 24 of Article 67

<sup>83</sup> Rules of Procedure of the National Assembly of Slovenia, Article 118

<sup>84</sup> Rules of Procedure of the Parliament of Albania, Article 72

Both cases reiterate the importance of retraction of draft laws only being acceptable prior to the vote in the first reading. Under the current RoP, if laws are subject to delayed retraction up until the vote in the second reading, parliament is faced with a work plan on a draft-law that might turn out to be unnecessary. As such, it is essential to amend the article on the retraction of laws similar to the ones outlined in the cases of Slovenia and Albania.

#### **2.4. Amendments of Draft-Laws during Plenary Sessions**

Despite the current RoP failing to clarify whether MPs are able to propose amendments during the second reading, this phenomenon has become parliamentary practice. The routine of proposing amendments during the second reading plenary session not only contributes to a lack of effective review, but also promotes heightened polarisation within legislative decision-making. Taking into account that amendments proposed during plenary sessions do not have the possibility of being reviewed in their relevant functional and permanent committees, their enactment can seriously undermine the legitimacy of the specific law.

The RoP needs to clearly prohibit last-minute-amendments that are not first filtered and reviewed in the leading committee and the four permanent committees. There are two particular advancements in the draft that directly seek to address the current gap when discussing amendments. Firstly, the new draft clearly underlines that “during the second reading in the plenary session, amendments cannot be proposed”.<sup>85</sup> The second aspect, while slightly different from the amendments during plenary sessions, addresses another important issue within the existing RoP.<sup>86</sup> The draft article dealing with the “review of draft-laws to change or amend an existing law” stipulates that, “in cases where a draft-law proposes the change or amendment of a law, only the proposed provisions can be subject to amendments”.<sup>87</sup> Both aspects in the draft RoP seek to address one of the key challenges in the existing RoP: unclear articles on the scope of amendments, which in turn, result in unwarranted legislative procedures.

The three-comparative case-study RoPs clearly address the issue of amendments through specific articles. The German Bundestag’s RoP, for one, identifies various phases that require amendments to be reviewed in committees prior to voting in plenary sessions. It underlines that amendments during plenary sessions need to be referred back to specific committees.<sup>88</sup> The National Assembly of Slovenia’s RoP, on the other hand, clearly specifies that while amendments can be tabled by anyone, the opinions on amendments are referred back to the working bodies. The Albanian Parliament RoP also, insists that “no amendments can be forwarded during the time of discussion in principle (plenary session)”.<sup>89</sup>

Two possible approaches to the question of amendments are of utmost importance here. First, similar to the German Bundestag, a system can be administered whereby each plenary session reading would be complemented by amendment review in respective committees. The second approach, in line with Slovenia’s, Albania’s and Kosovo’s draft RoP constitutes a procedure that requires parliamentary groups to discuss all possible amendments prior to the second reading.

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<sup>85</sup> Draft Rules of Procedure 2018, Article 70

<sup>86</sup> Rules of Procedure of the National Assembly of Slovenia, Article 129 and Article 130

<sup>87</sup> Draft Rules of Procedure 2018, Article 69

<sup>88</sup> Rules of Procedure of the German Bundestag, Rule 82 and Rule 85

<sup>89</sup> Rules of Procedure of the Parliament of Albania, Article 74 (3)

Both mechanisms are equally beneficial, however, in the cases of Slovenia, Albania and Kosovo, this approach requires rigorous coordination among parliamentary groups to channel their amendments through their representatives in specific committees. In Germany's case, plenary sessions allow MPs to table amendments which are later discussed in committee meetings, thus, requiring less rigid harmonisation of parliamentary group stances.

The Kosovo Assembly draft RoP articles on amendment of laws during plenary sessions, however, still constitute a substantial positive shift from the current RoP.

## 2.5. Quorum Definition

Unclear provisions on the definition of a quorum have continued to hinder the work of the Assembly. According to the latest KDI monitor, 2018 had seen an upsurge in decision-making deadlock as a result of a lack of quorum.<sup>90</sup> In the current RoP it is unclear whether an MP is considered to be present in the plenary session based on physical presence or voting. Currently, the RoP simply stipulates that a "quorum exists when more than half of the overall number of the members of the Assembly are present".<sup>91</sup> The procedure for verifying MP presence remains problematic. The current RoP highlights that, "presence of members of the Assembly in meetings shall be verified through the electronic system of voting, by raising hands or by roll-call".<sup>92</sup> In cases where electronic voting has served as the method for quorum definition, MPs have often simply failed to press a button.

Originally, the draft RoP section on quorum specifications was a copy and paste of the current RoP. It did little to address the key problems that have surfaced as a result of weak regulation. With the continued effort of an opposition MP however, an amendment was introduced that sought to add a layer of clarity. The amendment, introducing a critical definition established that "during plenary sessions, valid votes for quorums [are] counted [on the basis] of how many MPs are present physically, verified by the administration and the head of the Assembly". In addition, it adds that "MP votes, who are physically present in the session, but do not vote in any form, are counted as invalid votes for decision-making, but valid for the quorum".<sup>93</sup> The second part of the amendment specifically addresses the issue of a lack of quorum as a result of voting procedures for affirming the presence of an MP. In this context, the amendment allows quorum to be verified in terms of physical presence in the absence of MPs voting by ballot or raising hands.

The Albanian Parliament's RoP and the German Bundestag's RoP move in line with what has been addressed in the amendment discussed above. The two countries' RoPs specifically insist that a quorum is valid once half of the members of the legislative body are present at a plenary session.<sup>94</sup> Given these examples, physical presence at plenary sessions is a good benchmark for ensuring that sessions aren't consistently postponed. The National Assembly of Slovenia's RoP however, suggests a different method to determine a quorum. Here, presence at a session is established on the basis of three votes, the second immediately after the first, and the third after a pause of 10 minutes. If a quorum is not established after three votes the "chairperson suspends the session and determines when it will resume".<sup>95</sup> Taking into account the legislative culture in Kosovo, a simple physical presence (as in the cases of Albania and Germany) would be beneficial to ensure the needed quorums for the functioning of plenary sessions.

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<sup>90</sup> KDI, *Report on the Monitoring of the Work of the Assembly for the year 2018*, March 2019

<sup>91</sup> Rules of Procedure of the Assembly of Kosovo, Article 51 (1)

<sup>92</sup> Rules of Procedure of the Assembly of Kosovo, Article 51 (2)

<sup>93</sup> Draft Rules of Procedure 2018, Article 55 (4)

<sup>94</sup> Rules of Procedure of the Parliament of Albania, Article 55 and Rules of Procedure of the German Bundestag, Rule 45

<sup>95</sup> Rules of Procedure of the National Assembly of Slovenia, Article 83 (1)

Although the National Assembly of Slovenia's three-phase voting procedure for presence is a substantial provision in addressing the quorum question, Kosovar MPs have consistently proven to be negligent under such circumstances.

Through administering a procedure that ensures a quorum based on physical presence, the Assembly prevents the delay of plenary sessions and much needed parliamentary deliberation. There is however, an opportunity for more significant changes when discussing the nature and scope of quorums. In essence, there is a need for clear distinction between the quorum in decision-making (particularly voting) and the quorum for discussion. The quorum on decision-making must require at least a majority of the votes of members of the parliament (at least 61 votes), while the quorum on discussion can be decreased to 1/3 of the number of the deputies (at least 40 MPs to be present at the time of the discussion), with the aim of preventing obstruction of the work of the Assembly.

## 2.6. Unfinished Businesses

Article 86 of the Rules of Procedure currently in force stipulates that any businesses still pending at the Assembly by the end of its term shall be rendered 'unfinished', with the exception of petitions and items that do not lead to a decision. Considering that since Independence not a single Assembly has finished its term, with parliamentary terms averaging just 3 years, this regulation has provoked innumerable legislative delays. When snap election after snap election was called, the legislative agenda was thrown into disarray and draft laws had to be reintroduced from scratch no matter how far they had already advanced, often with the exact same text, unnecessarily consuming time and resources of the Assembly.

The treatment the current RoP gives to unfinished businesses is in fact common in comparative parliamentary law. Across Europe it is generally understood that the new legislative chamber is sovereign and thus unbound by the administrative steps taken by its predecessor. Both the RoP of the Bundestag and of the National Assembly of Slovenia include similar dispositions, even mentioning the same exceptions (Rule 125 and Article 154, respectively). However, the history of both parliaments is completely different from that of the Assembly. In Germany only 4 of the 19 parliamentary elections that have taken place since 1949 were called before the end of the previous term. Similarly, Slovenia has only had 3 snap elections since 1992, and in all cases they took place past the third year of the respective term of the parliament. In both countries' elections tended to happen with foreseeable regularity, thus allowing political parties to plan legislative initiatives in advance, a feature that has been absent from Kosovar parliamentary life since 2014.

Albania has a different approach to the matter, resulting from its specific history. In their Parliament, the conclusion of a term, be it with a regular call for elections or as the result of a snap election, do not entail the abandonment of ongoing legislative processes. On the contrary, the item remains on the agenda at the same procedural step the previous Parliament left it, as long as the sponsor does not withdraw the proposal. For that reason, after a change of government one of the first actions taken by the new government is reviewing all legislative proposals inherited from its predecessor in order to withdraw those that do not fall within the new political line. On this note, the RoP of the Parliament, despite constant review, does not include any specific mention to this issue. Article 26, paragraph 7, regarding the automatic inclusion of items pending from the previous quarterly work plan of the Parliament in the new one is used *mutatis mutandi*.<sup>96</sup>

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<sup>96</sup> BPRG interview with Legal expert of the Albanian Ministry of Foreign Affairs, 23 August 2019

The 2018 draft seems to follow this model without taking into consideration the context. In view of Kosovo's recent history, parliamentary practice and tradition, as well as the role of legal ambiguities in the political crises of the last years, this change of model seems problematic. First, because consolidated practice, as of now, is that any 'unfinished business' is disposed of and no longer valid, exactly the opposite to Albania. Second, because if the issue, it is not specifically and clearly regulated, whether that practice is still valid or not will become contentious as soon as a change of majority leads to a shift of legislative priorities.

The Ombudsperson already tackled this issue in 2017, and suggested adopting the model introduced by the European Parliament.<sup>97</sup> The RoP of the European Parliament follows the same logic as most other European legislative chambers, designating all pending issues at the end of the last session before elections as 'lapsed'. However, a second paragraph adds that "at the beginning of each parliamentary term, the Conference of Presidents shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such unfinished business".<sup>98</sup>

Since the latest draft RoP foresees the creation of a Conference of Presidents, it should be entrusted with deciding over this issue at the beginning of each term. Alternatively, depending on the balance of power, the Presidency could also have the competence, but that is a political decision that needs to be based on consensus. In any case, the new Rules of Procedure should not introduce a grey area where currently there is a clear mandate, even if it is not considered optimal. That calls for amendment, not for deregulation. Thus, the Rules of Procedure should make a specific mention to the so-called 'unfinished businesses', reproducing the current Article 86, with the addition of a second paragraph along the lines of that of the European Parliament. Unlike in Albania, the tradition in Kosovo is that the Assembly is not obliged by the decisions of a previous term, but that does not necessarily prevent it from taking over previous works and making them its own, if there is consensus.

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<sup>97</sup> Ombudsperson Institution, *Report with recommendations Ex-officio no.582/2017 in connection with Handling of unfinished business by the previous legislature, according to the Rules of Procedure of the Assembly of the Republic of Kosovo*, 12 September 2019, at, [https://oik-rks.org/wp-content/uploads/old\\_doc/ANG\\_ex\\_officio582-2017\\_raport\\_me\\_rekomandime\\_557956.pdf](https://oik-rks.org/wp-content/uploads/old_doc/ANG_ex_officio582-2017_raport_me_rekomandime_557956.pdf)

<sup>98</sup> Rules of Procedure of the European Parliament, Rule 229

### 3. Oversight of the Government

In order to have an efficient and effective law-making and implementation process, the RoP needs to impose mechanisms that ensure the Government's accountability vis-à-vis the Assembly. After all, a key constitutional jurisdiction of the Assembly is to oversee the work of the Government and other public institutions.<sup>99</sup> The

| Issues                                       | Shortcomings   | Status in Draft 2018 |
|--|--|----------------------|
| Committees assigned to the Opposition        | - Lack of committee mechanisms to exercise effective oversight of Government work plan;<br>- No exclusive rights of Opposition to chair committees -hinders impartiality of committee oversight; | NOT ADDRESSED        |
| Oversight Mechanisms of Independent Agencies | - No sanctioning or effective monitoring mechanisms for oversight of Independent Agencies  | NOT ADDRESSED        |
| Parliamentary Questions                      | - PQs used to voice opinions and offer platform to Ministers to discuss what they deem important;<br>- No provisions that oblige Government to answer questions;                                 | NOT ADDRESSED        |
| Interpellations                              | - Ministers not sanctioned to answer to interpellations;<br>- No measures against Government officials who fail to be accountable;   | NOT ADDRESSED        |

democratic instruments that the Assembly possesses to scrutinise the work of the Government, under the current RoP, have often had a limited impact. Almost all aspects of legislative oversight have fallen prey to government interference, thus, limiting the Assembly's capability in exercising its independent role in oversight.

#### 3.1. Committees Assigned to the Opposition

The committee system is the primary instrument of oversight that the Assembly has in scrutinising the implementation and proposal of laws by the Government. As noted by the International Parliamentary Union (IPU), "the most systematic method for oversight of the executive is by parliamentary committees which track the work of individual government departments and ministries, and conduct specific investigations into particularly salient aspects of their policy and administration".<sup>100</sup> At the most fundamental level, the discussion on committee oversight is one of distribution between ruling parties and the opposition. In order to have a well-functioning committee oversight system, the opposition should have an inherent right to chair specific committees that account for better checks and balances on the work of the Government. This should include both permanent and functional committees.

In the current RoP there is no provision that insists on giving the opposition exclusive rights to chair certain committees. On the issue of committee distribution, the RoP simply states that parliamentary groups are given rights to nominate chairpersons as per the agreements reached in the Presidency. In addition, it vaguely states that in reaching this agreement, the Presidency considers the proportionality of the seats in legislature.<sup>101</sup> Table 5 shows how the distribution of chairs in parliamentary committees since 2014 has favoured the parties in power disproportionately, especially in the period 2014 – 2017.

The case-studies RoP documents also fall short on addressing committee distribution, with the exception of the National Assembly of Slovenia. Both the German Bundestag and Parliament of Albania have RoP articles on committee distribution similar to those of Kosovo, where decision by their equivalent to the Presidency and proportionality in legislature are the only criteria used to decide on committee chairmanship.<sup>102</sup>

<sup>99</sup> Constitution of Kosovo, Article 65 (9)

<sup>100</sup> International Parliamentary Union, *Parliament and Democracy in the Twenty-first Century: A guide to good practice*, 2006

<sup>101</sup> Rules of Procedure of the Assembly of Kosovo, Article 63

<sup>102</sup> Rules of Procedure of the German Bundestag, Rule 58 and Rules of Procedure of the Parliament of Albania, Article 22

|  |   |  |
|--|---|--|
| 2014 - 2017  | Government (ruling parties)   | Opposition   |
|  | PDK - LDK - MINORITIES  | LVV - AAK - NISMA  |
|  | Committee on Budget and Finance   | Committee on Legislation, Mandates, Immunities, Assembly Regulations and Oversight of the Anti-Corruption Agency |
|  | Committee on European Integration   | Public Finance Oversight Committee   |
|  | Committee on Economic Development, Infrastructure, Trade and Industry                       | Committee on Internal Affairs, Security and Oversight of the Kosovo Security Force                               |
|  | Committee on Human Rights, Gender Equality, Missing Persons and Petitions                   | Oversight Committee of the Kosovo Intelligence Agency  |
|  | Foreign Affairs Committee   |  |
|  | Committee on Education, Science, Technology, Culture, Youth and Sport                       |  |
|  | Committee on Public Administration, Local Government and Media                              |  |
|  | Committee on Health, Labour and Social Welfare  |  |
|  | Committee on Rights and Interests of Communities and Returns                                |  |
| Committee on Agriculture, Forestry, Environment and Spatial Planning |   |  |
| 2017 - 2019  | Government (ruling parties)   | Opposition   |
|  | PDK - AAK - NISMA - MINORITIES  | LVV - LDK - PSD  |
|  | Committee on European Integration   | Committee on Legislation, Mandates, Immunities, Assembly Regulations and Oversight of the Anti-Corruption Agency |
|  | Committee on Economic Development, Infrastructure, Trade, Industry and Regional Development | Committee on Education, Science, Technology, Culture, Youth, Sports, Innovation and Entrepreneurship             |
|  | Committee on Public Administration, Local Government and Media                              | Committee on Budget and Finance  |
|  | Committee on Agriculture, Forestry, Rural Development, Environment and Spatial Planning     | Committee on Foreign Affairs, Diaspora and Strategic Investments   |
|  | Committee on Internal Affairs, Security and Oversight of the Kosovo Security Force          | Public Finance Oversight Committee   |
|  | Committee on Rights and Interests of Communities and Returns                                | Committee on Health, Labour and Social Welfare   |
|  | Committee on Human Rights, Gender Equality, Missing Persons and Petitions                   | Oversight Committee of the Kosovo Intelligence Agency  |

The National Assembly of Slovenia's RoP, on the other hand, introduces a different committee distribution. It imposes that the "leading positions and the majority of the seats on the Commission for Public Finance Control and on the Commission for Supervision of the Intelligence and Security Services are held by deputies of opposition groups".<sup>103</sup> The Slovenian case is a clear example of the RoP provisions that should be instituted in order to ensure that more efficient oversight is exercised by committees.

<sup>103</sup> Rules of Procedure of the National Assembly of Slovenia, Article 33(3)

The 2018 draft, relatively unchanged from the current RoP, simply shifts the rights of agreement from the Presidency to the CoP and continues to stipulate that the composition of committees should reflect the groups in the Assembly.<sup>104</sup> Both the current text and the proposed draft fail to address the issue of exclusive distribution of committees to the opposition, which in many ways, is considered central to ensuring more effective oversight of the Government. Thus, a new draft, following the Slovenian model, needs to reinforce, the presence of the Opposition in the committees. It should strengthen the requirement of proportionality (the chairs of committees should mirror, as much as possible, the composition of the Assembly), and require that the chair of certain key committees Oversight of Public Finances, European Integration and Oversight of the Kosovo Intelligence Agency belongs to the opposition. Since the CoP, as said earlier, is the most suitable forum to discuss this issue, it should act as the ultimate arbiter in cases of disagreement.

Currently in Kosovo, the Committee for Oversight of Public Finances is assigned to the opposition whereas the Committee for Oversight of the Kosovo Intelligence Agency is customarily given to the opposition in good faith (none of these are regulated by the RoP). Nevertheless, the RoP should cement additional checks and balances by formally guaranteeing that these two committees are chaired by the opposition. In order to ensure broader political support for the EU Agenda the Assembly should also give the chairmanship of the EU Integration committee to an opposition party. This is an EU recommendation applied by many countries of the Western Balkans.<sup>105</sup>

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<sup>104</sup> Draft Rules of Procedure 2018, Article 28

<sup>105</sup> BIEPAG, *The Crisis of Democracy in the Western Balkans*, March 2017

Safeguarding the committee oversight mechanisms by giving the opposition exclusive rights to certain committees should be an essential aspect that the RoP should regulate. Taking into account the existing framework used in Slovenia, the Assembly should sternly consider adding RoP provisions detailing what committees should be chaired by opposition MPs.

### 3.2. Oversight of Independent Agencies

The Assembly monitors and ensures parliamentary control over 30 independent agencies. The Independent Agencies are the Achilles heel of the Assembly, as there are no strong mechanisms to sanction the agencies, monitor and supervise their work, and as a result, the selection procedures for the boards of these public agencies are highly politicised.<sup>106</sup> A distinction is of crucial importance here. With regard to Assembly oversight, there are two types of independent agencies to be considered as noted by the IPU: 1) “agencies which are themselves designed to contribute to the oversight of government, such as the Ombudsman, Auditor General’s Office, etc.”, and 2) “agencies which carry out some of the executive and regulatory functions of the government itself”.<sup>107</sup> Taking into account that the latter are not part of the “parliamentary regime of oversight”, the question becomes how to “exercise effective oversight over them, when they do not form part of any government departmental structure”.<sup>108</sup>

In the current RoP, the Assembly has weak mechanisms to sanction Independent Agencies for the lack of work or progress shown. The respective committees assess the annual reports of independent institutions and pass them for approval to the plenary session. However, when committees deem the report to have not fulfilled the plausible criteria, then all it can do is not approve it and not pass it to the plenary session.<sup>109</sup> Not approving the reports is a meagre and ineffective parliamentary control over the Independent Agencies. The draft RoP, adds provisions on what committee reports on independent agencies should include, yet, it still lacks better sanctioning and monitoring mechanisms.<sup>110</sup> In terms of sanctioning mechanisms, the draft RoP adds a vague paragraph which states that “the relevant committee may recommend measures in accordance with existing laws”.<sup>111</sup> This vague regulation requires additional clarifications in order to ensure more effective oversight of independent agencies. While parliamentary oversight of independent institutions remains a widely debated topic in Kosovo, the case-studies RoPs have no articles that establish the role of parliament in scrutinising independent institutions.

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<sup>106</sup> In August 2016, the news magazine Insajderi published a series of leaked tapes called “Dosja e shefave”. The tapes demonstrated the corruption behind the selection of board members of independent agencies. More information at <http://www.insajderi.com/tag/dosja-e-shefave/>

<sup>107</sup> International Parliamentary Union, *Parliament and Democracy in the Twenty-first Century: A guide to good practice*, 2006

<sup>108</sup> International Parliamentary Union, *Parliament and Democracy in the Twenty-first Century: A guide to good practice*, 2006

<sup>109</sup> Rules of Procedure of the Assembly of Kosovo, Article 72

<sup>110</sup> Draft Rules of Procedure 2018, Article 88

<sup>111</sup> Draft Rules of Procedure 2018, Article 88 (3)

In line with the current laws and RoP, there are no sanctions that the Assembly can use against the board members of the independent agencies. Clear sanctioning mechanisms against independent agencies are crucial in order for better functioning public institutions. Two aspects should be included in the draft RoP in order to strengthen oversight. The oversight body responsible for instituting sanctioning mechanisms is determined by the role of the independent agency. If an independent agency is accountable to the Assembly and the annual report of an independent agency is not approved, the Assembly should initiate direct sanctioning mechanisms on the board (e.g. dismissal). On the other hand, if an independent agency is accountable to the Government of Kosovo, the Assembly should advise the government on the necessary steps and sanctioning mechanisms required against the board. In both cases, sanctioning mechanisms against the boards of independent agencies are central to ensuring effective legislative oversight.

### 3.3. Parliamentary Questions

Parliamentary questions are an important democratic instrument that foster checks and balances between the executive and the legislative branches. Parliamentary debate in Kosovo has always been subject to a culture of ineffective political bargaining. Plenary sessions are continually marred by partisan rhetoric as opposed to deliberation over the law-making process. This culture of inept debate has also overridden the effectiveness of oversight mechanisms such as PQs. Ministers that answer PQs generally do so with rather ambiguous and indirect answers. The PQs in the Assembly are not utilised as a good mechanism of control over the government by the parliament. Many times PQs were rejected or received answers when it had no importance, usually after the laws were passed.

In past practices, PQs have often been used by MPs from the governing parties to give ministers a chance to promote their work or their plans for the future.<sup>112</sup> Their questions are often close to sycophancy, whereas the questions from the opposition only receive peripheral answers.<sup>113</sup> Although the current RoP has a section dealing with PQs it fails to address two central issues identified above: 1) ensuring the relevancy of questions, and 2) sanctioning against government members who do not answer questions. Under the current RoP, the articles detailing the scope of PQs only focus on technical aspects such as time-frames and number of PQs per MP.<sup>114</sup> Instead of addressing the central issues, it has instead included new provisions on minister absences.<sup>115</sup> Although one would welcome amendments that address minister absences through disciplinary measures, the new provisions only propose soft measures to urge ministers to announce their absence beforehand followed by a public rebuke by the President of the Assembly.<sup>116</sup>

The RoP provisions on PQs from Germany, Slovenia and Albania provide significant insight on how the Assembly's current draft should be improved. Even though the aspects drawn from the various RoPs do not focus on one specific aspect of PQs, they offer a range of options which can be implemented in the current draft in order to account for a better regulatory framework. In the German Bundestag's case, the RoP fares well in addressing the issue of PQ relevancy. It establishes that "the questions shall relate to matters for which the Federal Government has direct or indirect responsibility".<sup>117</sup>

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<sup>112</sup> Balkans Group interview with PDK member of parliament, September 2017

<sup>113</sup> BIEPAG, *The Crisis of Democracy in the Western Balkans*, March 2017

<sup>114</sup> Rules of Procedure of the Assembly of Kosovo, Article 45

<sup>115</sup> Draft Rules of Procedure 2018, Article 82

<sup>116</sup> Draft Rules of Procedure 2018, Article 82 paragraphs 8 and 9

<sup>117</sup> Rules of Procedure of the German Bundestag, Annex 4

The National Assembly of Slovenia's RoP not only specifies that when MPs are not satisfied with an answer they may request that it is supplemented, however, the National Assembly can decide to hold a debate on the answer provided by the Government or anyone else.<sup>118</sup> The Parliament of Albania addresses the caveats of PQs directly through requiring and obliging members of government to answer to questions in the plenary sitting, within three weeks from the date of their submission.<sup>119</sup> The examples from the case-studies, addressing different aspects of regulating PQs, offer variations on frameworks that the Assembly of Kosovo can adopt.

Given that PQs are not an aspect where sanctions can be introduced against misuse, the draft RoP should be updated along other criteria. The RoP should clearly delineate the scope of PQs, barring MPs from voicing opinions, rather limiting them to asking relevant questions. In addition, provisions should exist that oblige ministers to answer MP questions and not dodge them, even if the PQ must be answered in another plenary sitting. Most importantly, as in the case of Slovenia, MPs should be entitled to scrutinise Government answers, insofar as they justify their reasons for the scrutiny and are relevant to the body/person responsible. Considering the state of the draft RoP as it stands, it does not address the inefficiencies that have been created as a result of unregulated PQs for years. If PQs are to stand as robust legislative oversight instruments, the draft RoP articles on questions needs to be amended and respected.

### 3.4. Interpellations

Interpellations, similar to PQs, are another oversight mechanism that the Assembly has over the Government. They ensure that Government officials are held accountable and are subject to legislative scrutiny. At its core, the discussion on interpellations is very much tied to the accountability of Government officials. Since they are instruments of direct scrutiny of a minister's or prime minister's work, the RoP is required to outline clear interpellation mechanisms to maximise their efficiency. The past term (2017-2019) saw a positive trend in government officials' presence in interpellations when summoned by the Assembly. Compared to past years, this positive shift can be linked to government officials' willingness to attend interpellations; however, this is only a partial view. Out of the 13 interpellations that have been called by parliamentary groups, 11 of them were intended for the Prime Minister (only 2 of them summoned Ministers).<sup>120</sup> In the past, unanswered interpellations were mostly those summoning Ministers to discuss issues relating to their work in their respective fields.<sup>121</sup> Regardless of this positive shift in this term, provisions on interpellations in the RoP still lack robust regulatory checks that ensure more accountability of government officials.

The article on interpellations in the draft RoP has seen no changes at all from the current RoP. Both the current RoP and the 2018 draft do little in setting up the regulatory confines of interpellations and instruments of parliamentary oversight. The 12 paragraphs on interpellations stipulate the technical aspects surrounding the time-frame of debates and the content of an interpellation motion.<sup>122</sup> An important aspect which relates to regulatory mechanisms to ensure the effectiveness of interpellations is specified by paragraph 8 (of the current article), establishing that the Prime Minister or Minister to whom the interpellation has been intended is obliged to present his or her opinion on the motion.<sup>123</sup>

<sup>118</sup> Rules of Procedure of the National Assembly of Slovenia, Article 240 and Article 246

<sup>119</sup> Rules of Procedure of the Parliament of Albania, Article 91(2)

<sup>120</sup> KDI, *Report on the Monitoring of the Work of the Assembly for the year 2018*, March 2019

<sup>121</sup> See past Reports on the Assembly by KDI, notably for 2015 and 2016

<sup>122</sup> Rules of Procedure of the Assembly of Kosovo, Article 44 and Draft Rules of Procedure 2018, Article 85

<sup>123</sup> Rules of Procedure of the Assembly of Kosovo, Article 44 (8)

Although this paragraph seeks to regulate the potency of an interpellation, it has not stopped Ministers in the past from disregarding such motions. Given the inefficiency of this paragraph in sanctioning government officials, the draft RoP should have been amended to address this gap. Instead, the draft RoP maintained the same approach to interpellations, with no effort of addressing issues that have arisen throughout different legislatures.

Though the case-studies RoPs do not differ immensely from that of Kosovo, they do provide some inspiration regarding how interpellations can be better regulated to hold government more accountable. In the same line as the Assembly, the articles on interpellations in the RoP of the Bundestag and the Parliament of Albania focus solely on the technical aspects detailing the rights of MPs in initiating a motion, as well as time-frames of the interpellation debate.<sup>124</sup> The National Assembly of Slovenia, in a somewhat more detailed approach, establishes a range of regulatory checks that seek to sanction government officials. Following the deliberations in the interpellations, the National Assembly of Slovenia's RoP gives exclusive rights to MPs to initiate two regulatory mechanisms: 1) a decision to assess the work of the Government on a specific field and 2) a no confidence vote for the Prime Minister or the Minister who was subject to the interpellation.<sup>125</sup>

As an instrument meant for direct oversight of the government, provisions relating to interpellations should inherently provide sanctioning mechanisms that parliament can use. If interpellations are not complemented by concrete measures (as in the case of Slovenia), they have no direct impact on addressing the failure of Government to adhere to its duties. This is where the 2018 draft falls particularly short. The legal framework for a vote of no confidence following interpellations can be regulated through the law on the government. While it does set up the technical confines on interpellation motions, it fails to offer the Assembly mechanisms to sanction ministers who do not appear when summoned, or who have consistently failed to reach specific policy targets.

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<sup>124</sup> Rules of Procedure of the German Bundestag, Rule 100 and Rules of Procedure of the Parliament of Albania, Article 96

<sup>125</sup> Rules of Procedure of the National Assembly of Slovenia, Article 253

## 4. Accountability of Members of Parliament (MPs)

Oversight of MPs, comparable to oversight of the government, is another central aspect that the RoP needs to regulate. If oversight tools for government scrutiny are vital, the Assembly also requires competent MPs to exercise their role diligently. The political polarisation that has been evident in past legislatures has created a culture of boycotts and hostility among deputies, reflected through both their absence in plenary sessions and improper language. In the past year alone there have been over 900 absences during plenary sessions: this includes boycotts from the opposition, but also from ruling parties.<sup>126</sup> The current RoP has various measures that seek to regulate MP behaviour in order to ensure the productive performance of the legislative process; however, they have consistently been overruled by partisan disputes.

| Issues                             | Shortcomings  | Status in Draft 2018 |
|------------------------------------|---|----------------------|
| Code of Conduct                    | - Annex on Code of Conduct focuses on general principles with no clear regulations as to what constitutes acceptable behaviour or what behaviour requires disciplinary measures;                                    | ADDRESSED            |
| Absence of MPs in Plenary Sessions | - Absence of deputies is not sanctioned or regulated effectively through the RoP;<br>- The RoP and the Law on Rights and Duties are not harmonised regarding financial sanctioning for absence in plenary sessions; | NOT ADDRESSED        |
| Improper Language                  | - No disciplinary measures against MPs who use profanity during plenary sessions;   | ADDRESSED            |

### 4.1. Code of Conduct

The Code of Conduct for MPs provides the fundamental provisions that define the principles and values they must uphold throughout their mandate. Clearly stipulated provisions on principles and actions, coupled by sanctioning or disciplinary measures, are prerequisites for a well-functioning regime. The current Code, annexed to the RoP, has failed to address any of these issues. As a result of vague content, the Assembly has regularly been subject to verbal altercations among MPs. The current code only identifies general values that MPs should adhere to, with no clear or detailed provisions that regulate acceptable norms.<sup>127</sup> In addition, this Annex has a strong focus on ensuring good conduct vis-à-vis material aspects, such as conflict of interests, paid advocacy and voting on matters that reflect financial benefits for MPs.<sup>128</sup>

The proposed annex for the 2018 draft sets up a new regulatory framework, noticeably more improved. From a case-study perspective, the updated Code of Conduct is as developed as that of the German Bundestag, while the Slovenian and Albanian parliaments have no specific provisions for a code of conduct. The latter, have been continuously urged by the international community to update their RoPs in order to include specific articles (or annexes) regulating the MPs code of conduct (with only Albania following through on the EU recommendations).<sup>129</sup>

<sup>126</sup> KDI, *Report on the Monitoring of the Work of the Assembly for the year 2018*, March 2019

<sup>127</sup> Rules of Procedure of the Assembly of Kosovo, Annex 3

<sup>128</sup> Rules of Procedure of the Assembly of Kosovo, Annex 3

<sup>129</sup> Group of States Against State Corruption (GRECO), *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors*, Council of Europe, February 2017, at <https://rm.coe.int/16806f333e>

In Kosovo's case, the updated annex covers a number of important issues, as well as adds a section on punitive measures that introduces a better regulatory framework. The new Annex 1, in addition to provisions on general principles and conflict of interests, introduces two specific articles that detail rules of conduct within the Assembly.<sup>130</sup> These two articles clearly identify what violations of the code of conduct are and what actions are considered to be breaches of these rules.

Most importantly, the updated annex sets a number of punitive measures for deputies who go against the conduct, as well as an authority for the implementation of the Code of Conduct. Article 13 describes three possible disciplinary measures if MPs are in violation of the rules: 1) report detailing the violation, 2) financial sanctions ranging from 10 to 30 per cent of the salary and 3) restrictions on taking part in delegations that travel outside of Kosovo.<sup>131</sup> The Sub-Committee on Mandates, Immunities and Rules of Procedure of the Assembly is tasked as the authoritative body that implements the code.<sup>132</sup> If the draft RoP, or a similar document, was to be approved by the Assembly, the dispositions regarding the conduct of deputies would stand as some of the most substantial amendments that have been introduced from the current draft. In theory, the updated provisions provide for a more integrated regulatory approach to the code of conduct; in practice, however, it requires that the Sub-Committee on Mandates, Immunities and Rules of Procedure remains vigilant in its role as implementing authority to sanction and ensure that MPs abide by the rules. Despite these difficulties, the systematisation of duties, obligations, breaches of discipline and sanctions was a very positive development, and a potential new draft should keep such a clear structure.

#### **4.2. Absence of MPs in Plenary Sessions**

The absence of MPs during plenary sessions and votes has been one of the most prominent obstructions hindering the work of the Assembly. Absence has been a continuous problem for many terms, but in the past two terms the problem has seriously aggravated. Oftentimes, there have been cases of absence in the Assembly in more than three plenary sessions on certain legislation. In many other cases plenary sessions in the Assembly have failed to be held due to lacking the necessary quorum. Furthermore, it has happened that at the beginning of a plenary session more than half of the MPs were present, but the number decreased during the session. One of the main reasons for such occurrences is that the MPs are present at the beginning of the session only to sign up on the list to benefit from remuneration fees.

The current RoP has a weak regulatory framework to address such issues, other than setting up sanctioning mechanisms against MPs who are absent during plenary sessions. The only provisions detailing the work of the MPs in relation to presence in sessions and committees is the remuneration annex specifying what conditions need to be met in order for MPs to receive additional payment.<sup>133</sup> While the annex establishes that additional remuneration is only applicable if MPs are present during the work of their respective committee, it does not introduce sanctioning mechanisms for absence from plenary sessions.<sup>134</sup>

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<sup>130</sup> Draft Rules of Procedure 2018, Annex 1, Article 7 and Article 9

<sup>131</sup> Draft Rules of Procedure 2018, Annex 1, Article 13

<sup>132</sup> Draft Rules of Procedure 2018, Annex 1, Article 11

<sup>133</sup> Rules of Procedure of the Assembly of Kosovo, Annex 4, Rule 3

<sup>134</sup> MPs are remunerated for participation in two plenary sessions within a month with a sum of approximately 250 Euro per session, up to two sessions per month. Consequently, there are incentives not to attend further sessions, since attendance is not remunerated and the sanctioning system for such absences is weak. This framework should be reviewed to ensure that absenteeism is not rewarded.

The 2018 draft remains unchanged in this regard, still lacking provisions that detail how the RoP regulates absence during plenary sessions and voting. Albeit financial sanctions are part of the draft RoP, they are limited to violations of the Code of Conduct (absence in plenary sessions is not included).

The German Bundestag and the National Assembly of Slovenia use financial sanctioning as a mechanism to monitor MP absence (the Parliament of Albania has no specific provisions on this). In the German case, the rights and duties of MPs are outlined in the “Act on the Legal Status of the Members of the German Bundestag”. Under section 14, members who fail “to enter their names in the register and to take part in a vote using vote cards bearing Member’s names” are subject to an increasing deduction from his/her expense allowance based on absences.<sup>135</sup> The National Assembly of Slovenia too, sanctions against MPs who do not have justified absences from a session on the basis of salary and allowance reductions.<sup>136</sup> A well-functioning chain of implementation and review is a pre-requisite to a regulatory framework centred on sanctioning. The Assembly is required to ensure that the sanctioning system is implemented in an impartial manner, and as a result, requires that authoritative bodies who enact the reductions do so through a systematised approach.

In order for MP absence to be regulated more comprehensively, the draft RoP requires a number of additions. Like Germany, Kosovo has a specific law on rights and duties of MPs set out to establish a standard for work within the Assembly.<sup>137</sup> In outlining a variety of principles and actions, the law has a specific article dealing with “restrictions on compensation”.<sup>138</sup> This article establishes that MPs are not entitled to financial compensation if their absences are not justified, in particular, monthly expenditures and remuneration for taking part in plenary and committee sessions.<sup>139</sup> The law, however, is not clear in specifying the chain of authority in implementing the sanctions against MPs who are absent during such sessions. As the argument in the case of Germany and Slovenia shows, the Assembly is required to institute an implementation mechanism that ensures that MPs are being sanctioned according to the law. In terms of the overall functionality of the directives, the RoP can specify the technicalities of the articles stipulated in the Law. Considering that a sanctioning mechanism exists in the law, the draft RoP should detail the conditions and criteria that apply to the financial compensations. Without clearly defined RoP provisions on this, the implementation of the law will continue to be overruled due to non-existent regulatory checks.

### 4.3. Improper Language

The use of appropriate parliamentary language is pivotal in promoting a legitimate debate within the Assembly. It has become custom to use words and phrases that are deemed insulting and inappropriate.<sup>140</sup> The public has witnessed slurs on the basis of gender and ethnicity including MPs calling each other derogatory names. Escalating tensions and the use of profanity have often shifted parliamentary debate into a competition between political parties in trading verbal accusations. Without clearly identified provisions on the sanctions relating to language, the deliberations during plenary sessions are subject to offensive language.

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<sup>135</sup> Act on the Legal Status of Members of the German Bundestag, Section 14

<sup>136</sup> Rules of Procedure of the National Assembly of Slovenia, Article 97

<sup>137</sup> Law Nr. 03/L-111 on Rights and Responsibilities of Deputy

<sup>138</sup> Law Nr. 03/L-111 on Rights and Responsibilities of Deputy, Article 19

<sup>139</sup> Law Nr. 03/L-111 on Rights and Responsibilities of Deputy, Article 19

<sup>140</sup> Gazeta Express, *Legjislatura e gjashte, e sharjeve dhe fyrrjeve [Sixth Legislature of scolding and insults]*, September 2017, at <http://www.gazetaexpress.com/lajme/legjislatura-e-gjashte-legjislatura-e-sharjeve-dhe-fyrrjeve-435427/?archive=1>

The present RoP tackles the issues related to improper language in general, but falls short on specific measures that would contribute to eliminating this phenomenon. The present RoP notes that in cases when non-parliamentary language, such as insults, threats, or the promotion of violence is used in the Assembly, the strictest course of action is to expel the deputy from the session until the speaker deems it necessary.<sup>141</sup> The 2018 draft however, introduces two mechanisms that address the issue of language within the parliament. The first is expulsion from the plenary session if an MP has been warned more than twice for their use of language.<sup>142</sup> The second, based on the Code of Conduct, which also includes a rule on derogatory language, establishes financial sanctions for MPs who resort to profanity within the chamber.<sup>143</sup> The updated mechanisms in the 2018 draft are a significant improvement from the current RoP. Deputies would be subject to specific disciplinary measures once they are using unacceptable language.

Language unfit for parliamentary use is seen as a crucial component in the case-study RoPs as well. In all three cases, the RoPs introduce disciplinary measures for improper language, ranging from suspensions to financial sanctions, or both. In the case of the German Bundestag and the Parliament of Albania, if MPs are seen to have used inappropriate language, the speaker can decide to suspend them for a specific period of time.<sup>144</sup> The National Assembly of Slovenia, on the other hand, deals with breaches of language not only in terms of expulsion/suspension from taking part in plenary sessions, but also imposes financial sanctions equal to one day of salary.<sup>145</sup>

Improper language can be eliminated only once policies and sanctions are established through the RoP. The draft RoP improved immensely from the current RoP, insofar as it introduces specific regulatory mechanisms in the form of disciplinary measures to address parliamentary language. However, one issue that has been debated in the working group could be considered as a possible amendment. It was proposed to cooperate with the Institute of Albanology to create a list of banned words and phrases in the Assembly and include it as an annex to the new RoP.<sup>146</sup> The idea was firmly rejected by some individuals claiming that list does not belong in the Rules of Procedures, and according to them this was part of a tendency to undermine the importance of the President of Assembly. This aspect should be considered by the Assembly in further discussions as to avoid the partisan bias in not sanctioning MPs.

## CONCLUSION

The current RoP of the Assembly of the Republic of Kosovo adopted in 2010 served its purpose to define the initial rules for the organisation and functioning of the Assembly and its working bodies. However, after ten years of implementation many deficiencies have been identified and new practices have taken shape. What remains clear is that an updated RoP is a pre-requisite for a better functioning legislative procedure in the Assembly. In order to avoid the procedural backsliding and departure of the RoP, there is an urgent need to pass a reformed document. The draft introduced in 2018 was just an attempt to do so.

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<sup>141</sup> Rules of Procedure of the Assembly of Kosovo, Article 41

<sup>142</sup> Draft Rules of Procedure 2018, Article 57

<sup>143</sup> Draft Rules of Procedure 2018, Annex 3, Article 13

<sup>144</sup> Rules of Procedure of the German Bundestag, Rule 38; and Rules of Procedure of the Parliament of Albania, Article 64 and Article 65

<sup>145</sup> Rules of Procedure of the National Assembly of Slovenia, Article 65

<sup>146</sup> Discussion in the working group, February 2018

Although even the content of the draft continues to lack a number of regulatory mechanisms, it provides a significant upgrade to the current RoP. In terms of presidency structure, the election of the President of the Assembly would now be required to be concluded in the constitutive session, limiting political parties from delaying the constitutive session for as long as they deem necessary. The introduction of the CoP has two key benefits: 1) ensures a more balanced political representation among the presidencies and 2) competency decentralisation. These aspects can be seen as considerable upgrades to the current RoP, both in terms of lowering the chances of another deadlock as a result of the election of the President, but also in terms of eroding power centralisation with limited representation.

In addition, the draft introduces the most substantial reforms in the context of legislative procedures. Setting up the confines of the accelerated procedure (which is absent in the current RoP), imposing a regular procedure for the law on the budget, addressing the shortcomings of the retraction and amendments of laws during plenary sessions, including delineating the quorum definition, which are all pivotal aspects that the draft RoP sets out to regulate. Although the individualised articles for each issue can be further regulated for a more optimal regulatory framework, they remain substantial. The sole exception in this field is the grey area left in the regulation of ‘unfinished businesses’, which has the potential to start new discussions regarding the status of draft laws and other works pending from previous terms.

A key thematic issue that continues to face challenges is the parliamentary oversight mechanisms that evaluate the work of the Government. Committees continue to be weakly regulated through the draft RoP, with no mention of opposition rights over chairmanship of core government oversight committees. The issue of independent agency regulation, which is a critical problem identified in public debate, continues to lack better tools and instruments for Assembly scrutiny and sanctioning. Similarly, PQs and interpellations, the main parliamentary instruments of evaluating government accountability, remain relatively unchanged, offering space for the same manipulation that is currently observed.

In terms of ensuring that MPs are held accountable and responsible to their duties, the draft RoP proposes a robust set of reforms through an updated code of conduct. In the draft RoP, the Code of Conduct no longer regulates just conflicts of interest and other aspects of financial gain, but introduces specific mechanisms that sanction MPs for violations of a detailed code of ethics. The draft, however, fails to address additional sanctioning mechanisms that are identified through the Law on Rights and Duties of MPs, in order to ensure harmonisation between the two binding documents.

Given that the RoP is a learning document which can be amended by the Assembly as it sees fit, this study insists that the latest version of the 2018 draft should be reconsidered, including those amendments that had been agreed upon. Although there are a number of gaps that still remain in the draft, it does address some of the critical hurdles that have characterised legislative functioning in Kosovo. Passing a new RoP which is a considerable upgrade from the current 2010 one allows future terms of the Assembly to further consolidate and build upon the absent provisions identified in this study.

ANNEX 1: COMPARATIVE TABLE – ROP OF THE ASSEMBLY OF KOSOVO (2010 AND 2018), GERMAN BUNDESTAG, PARLIAMENT OF ALBANIA AND NATIONAL ASSEMBLY OF SLOVENIA

| Issue   | Assembly of Kosovo 2010   | Assembly of Kosovo Draft 2018  | German Bundestag  | National Assembly of Slovenia   | Parliament of Albania  |
|---|---|--|---|---|--|
| <b>1. Election, Powers and Structure of the Presidency</b>  |   |  |   |   |  |
| Election of the President of the Assembly                   | Vague definition of what 'largest parliamentary group' entails (Art. 12);   | Constitutive session cannot be closed without the election of the President. Fails to address/include the constitutional court ruling on rights to elect President (Art.11);   | Run-off election with multiple candidates and three ballots. When majority is not obtained in first ballot, candidates are proposed until majority wins in third ballot. (Rule 2(2))  | No clear article detailing the rights and procedure for electing the President of the Assembly. Simply stipulates that the National Assembly gathers to elect the President. (Article 14)                   | Multiple candidates where the right for proposal can be initiated by at least 15 MPs. If no majority is ensured, it is proceeded to the second round where two candidatures with highest votes are voted on. (Article 6)   |
| Presidency of the Assembly and the Conference of Presidents | One body with composition of 6 members with priority given to largest parliamentary groups/coalitions and then smaller parties in electing Vice Presidents. (Article 13)  | Two bodies, one with the same composition as the old Presidency and the new CoP with the same composition as the Presidency including the heads of the parliamentary groups. (Article 21)  | Two bodies, the Presidium and the Council of Elders. The Presidium made up of President and Vice-Presidents of the Assembly, whereas, the Council of Elders is composed of the President, Vice-Presidents and 23 members of parliamentary groups. (Rule 5 and Rule 6) | One body only, the Council of the Presidents of the National Assembly made up of the President, Vice-Presidents and twenty-three other members that are appointed by the parliamentary groups. (Article 21) | Two bodies, the Bureau of the Assembly consists of the Speaker of the Assembly, Deputy Speakers, 2 secretaries for the budget and 4 other secretaries, whereas, the Conference of the Group of Chairpersons is composed of the Speaker and the heads of the Parliamentary groups. (Article 8 and Article 12) |
| Duties of the Presidency and the Conference of Presidents   | The Presidency has authority over proposing the number and composition of parliamentary committees, drafting the working agenda and dealing with administrative tasks such as approving the budget of the Assembly and leading the external relations (Article 15). | Decentralisation of authority where the Presidency has rights over the administrative and bureaucratic (draft law on budget, finances, etc.) aspects, and the CoP deals with the political aspects of agenda-setting and deliberation. (Article 19 and Article 21) | Council of Elders has no binding decision-making power- focuses on consensus building. The Presidium retains is the central decision-making body which deals with the most important issues within the Assembly. (Rule 6(2) and Rule 6(3)).                           | Council of the President of the National Assembly has authority over both political and administrative aspects of the Assembly work. (Article 21(6))  | The Bureau only decides on the budget of the Assembly based on reports from the secretaries on the budget, whereas, the Conference of the Group of Chairpersons maintains authority over the most important decision-making procedures. (Article 11 and Article 12)  |

| Issue  | Assembly of Kosovo 2010   | Assembly of Kosovo Draft 2018   | German Bundestag  | National Assembly of Slovenia  | Parliament of Albania   |
|--|---|---|---|--|---|
| <b>2. Legislative Procedures</b>                 |   |   |   |  |   |
| Accelerated Procedure and Departure from the RoP | No provisions on accelerated procedure, however, with a 2/3 vote the MPs can trigger the departure from the RoP, disregarding all procedural mechanisms. (Article 84)                           | Time-frame constraints on readings for laws under the accelerated procedure and content criteria for laws that fall under specific areas which are eligible for the accelerated procedure. (Article 46) | No clear rule on the accelerated procedure, however, has a rule on the departure from the RoP, which may be decided by a 2/3 majority in the Bundestag. (Rule 126)  | Content-specific (conditions that must apply) criteria for laws that are eligible for the accelerated procedure. In addition, there is a specific article for urgent matters that may also require the accelerated procedure (Article 142 and 143) | Strict time-frames that require laws to be examined in the relevant committee and plenary session, but also a limit on how many times MPs may trigger the accelerated procedures in the context of the Assembly's work plan. (Article 28) |
| Legislative Procedure for the Law on Budget      | No article outlining a standard procedure for the law on the budget.  | Requires standard procedure for the Law on the Budget with two-mandatory readings and amendment processes, committee revision and stakeholder involvement. (Articles 72-74)                             | Standard procedure for Budgetary and Financial bills requiring two-mandatory readings as well as continuous involvement of the Budgetary Committee. (Rule 95 and Rule 96)   | Standard procedure for the law on the budget with mandatory readings and committee and stakeholder involvement. In addition, sets a deadline by what date of the year the budget bill needs to be presented for the following year. (Article 158)  | Standard procedure similar to the others, however, adds another layer of review by requiring the Economy and Finance Committee (permanent committee) to review the draft budget on an article by article basis. (Article 83)              |
| Retraction of Draft-Laws during Plenary          | The sponsor may withdraw a draft-law during the process of reading in the Assembly before the voting in the second reading. (Article 56)  | Same as 2010 article. Sponsors may withdraw draft-laws until before the voting in the second reading. (Article 67)  | Not mentioned directly in the RoP.  | Draft-laws can be retracted until the convening of the Assembly in the first reading. (Article 118)  | The initiator of a bill may withdraw their draft until the moment when it is not voted in principle in the plenary sitting (first reading). (Article 72)  |
| Amendment of Draft-Laws during Plenary Sessions  | Amendments can be proposed in plenary sittings up until the third reading. (Article 59)   | Mps cannot propose any amendments during the second reading of draft-laws in the plenary sittings. (Article 70)   | All amendments proposed during plenary sessions are referred back to relevant committees for review. (Rule 82)  | Delivered opinions on amendments during plenary sessions are referred back to the working bodies. (Article 130)  | No amendments can be proposed/forwarded during the discussion in principle (plenary session). (Article 74)  |
| Quorum Definition                                | Quorum exists when more than half of the overall number of MPs is present. Presence of members is verified through the electronic system of voting, by raising-hands or roll call. (Article 51) | Quorum exists when more than half of the overall number of MPs is present. Presence of members is verified by physical presence at the plenary session. (Article 55)                                    | A quorum is decided upon in the Bundestag when more than half of the total MPs are present in the Bundestag. Does not stipulate a method or procedure on how to assess whether the quorum has been reached. (Rule 45) | Presence at a session (quorum) is established by a vote, if no quorum exists in the first vote, the vote can be repeated twice with a break of 10 minutes in between. (Article 83)   | Quorum for voting-procedures are determined when more than half of the total MPs are present and have voted in favour of a specific draft-law. (Article 55)   |
| Unfinished Businesses                            | At the end of the term any businesses pending shall be considered unfinished, except for petitions and items that do not require decision. (Article 86)   | Not described.  | Any item pending at the end of the electoral term is considered disposed of, except for petitions and items that do not require a decision. (Rule 125)  | Legislative procedures, as well as other decision-making procedures are terminated at the expiry of the term, except for petitions from voters or the National Council. (Article 154)  | Not described. Parliamentary practice is that pending items remain on the agenda of the next session, in accordance with the rules regarding the quarterly work plan of the Parliament set forth in (Article 27.7)                        |

| Issue  | Assembly of Kosovo 2010   | Assembly of Kosovo Draft 2018  | German Bundestag  | National Assembly of Slovenia   | Parliament of Albania   |
|--|---|--|---|---|---|
| <b>3. Oversight of the Government</b>        |   |  |   |   |   |
| Committees Assigned to the Opposition        | Committee composition is decided based on consultation within the Presidency according to the proportionality share of seats within the Assembly. (Article 63)    | Composition decided by deliberations in the Conference of Presidents based proportionally on the seats in the Assembly. (Article 28)   | Agreement reached among parliamentary groups in the Council of Elders. (Rule 58)  | The chairing positions and the majority of the seats on the Commission for Public Finance Control and on the Commission for Supervision of the Intelligence and Security Services are held by deputies of opposition deputy groups (Article 33.4)   | Committees are elected through an open voting procedure upon the proposal of the Speaker of the Assembly, according to the lists drawn in agreement with the presidents of the parliamentary groups. (Article 21) |
| Oversight Mechanisms of Independent Agencies | Relevant committees may only review annual reports of Independent Agencies and forward recommendations to the Assembly. (Article 72)                              | Committee recommendations need to follow specific criteria on reports from Independent Agencies. Additionally, the relevant committee may recommend measures in accordance with existing laws. | No rules detailing the role of the Assembly in exercising oversight over Independent Agencies.  | No articles detailing the role of the Assembly in exercising oversight over Independent Agencies.   | No articles detailing the role of the Assembly in exercising oversight over Independent Agencies.   |
| Parliamentary Questions                      | Technical aspects regarding the scope and procedures of parliamentary questions. No mention of sanctioning mechanisms or the relevancy of questions. (Article 45) | No substantial changes to the 2010 provisions on PQs. The addition only adds soft measures that require Ministers to announce their absence during PQ sessions. (Article 82)                   | Pqs are required to directly relate to matters for which the Federal Government has direct or indirect responsibility. No discussion of measures to address Government officials who do not answer PQs. (Annex 4) | Mps can insist answers to PQs be supplemented. In addition, the National Assembly can decide to hold a debate on the answer provided by the Government or anyone else. (Article 240 and Article 246)  | Government officials and individuals subject to PQs are required and obliged to answer questions in a maximum period of three weeks from the date of their submission. (Article 91.2)                             |
| Interpellations                              | Stipulates technical aspects such as time-frames and content of interpellations. (Article 44)   | No changes from the 2010 RoP. (Article 85)   | If the Federal Government refuses to reply to major interpellation in a three-week period, the Bundestag may decide to debate without the Federal Government if at least 5% of the members agree. (Rule 102)      | Two regulatory mechanisms following interpellation debate: 1) National Assembly may adopt a decision to formally assess the work of the Government or a Minister, and 2) at least 10 deputies may initiate a vote of no confidence for the Prime-minister or a Minister whose work has been assessed. (Article 253) | Introduces the technical aspects of interpellation and rights of initiating an interpellation. Distinguishes between interpellations and urgent interpellations. (Article 96 and 97)                              |

| Issue  | Assembly of Kosovo 2010   | Assembly of Kosovo Draft 2018  | German Bundestag   | National Assembly of Slovenia  | Parliament of Albania  |
|--|---|--|--|--|--|
| <b>1.Accountability of Members of Parliament</b> |   |  |  |  |  |
| Code of Conduct                                  | Vague Annex on Code of Conduct with emphasis on conflict of interest and provisions on material interests. (Annex 3)  | New Annex on Code of Conduct with a special emphasis on disciplinary measures if MPs do not abide by the general principles of ethics. Measures include the publication of reports detailing the violation, financial sanctions from 10 to 30% and restrictions on taking part in international delegations. (Annex 1)   | Clearly defined Annex on Code of Conduct with specific provisions on what ethics MPs should abide by and respect, in addition to coercive fines if MPs or members of the Presidium are found to have violated the Code of Conduct. (Annex 1)   | No Code of Conduct section.  | Code of Conduct as an annex to the Rules of the Procedure of the Parliament of Albania.  |
| Absence of MPs in Plenary Sessions               | No clear provisions of sanctioning mechanisms for absence during plenary sessions. Vague discussion on when MPs are entitled to remuneration, however, no clearly identified sanctioning mechanisms for absence. (Annex 3)<br>RoP also does not include reference to articles in the Law on Rights and Duties of MPs which sanctions against MP | Still lacks clear provisions on sanctioning MPs who are absent during plenary sessions and voting procedures. Although provisions in Annex 3 introduce sanctioning mechanisms on MP behaviour, they do so only with regard to violations of the Code of Conduct.<br>Still fails to reference and detail the sanctioning mechanisms and the authoritative bodies that implement the decisions of the Law on MP Rights and Duties. | The 'Act on the Legal Status of Members of the German Bundestag', under section 14, establishes that members who fail to enter their names in the register and to take part in a vote is subject to an increasing deduction from his/her expense allowance based on absences. (Act on the Legal Status of Members of the German Bundestag, Section 14) | Mps who do not have justified absences during a session are subject to sanctions on the basis of salary and allowance reductions. (Article 97)   | Code of conduct refers to disciplinary measures in the Rules of Procedure should an MP go against the code. Financial sanctions and expulsions from sessions are used as instruments to address violations.  |
| Improper Language                                | In cases when improper language is used (insults, threats or the promotion of violence), the President of the Assembly may adjourn the session or expel the MP. (Article 41)  | Mps who use unsuitable language can be expelled from the plenary session if warned more than twice for violation relating to use of language. In addition, foul language is also included in the code of conduct with specific sanctioning mechanisms. (Article 57 and Annex 3)  | In cases when a non-minor breach of order or failure to respect the dignity of the Bundestag, the Presidency may impose a fine of 1000 euros on a Member or a suspension may be issued. (Rule 37 and Rule 38)  | The chair may take the following measures if order at a session is violated:1) issue a warning, 2) withdraw the floor, 3) expel an MP from the session (Article 76) (See also Article 77-80) | The Code of Conduct sets out the scope of MP ethical behaviour in Parliament. It regulates the scope of improper language and discrimination to be avoided. The nature of violations are then evaluated and sanctioned as per Article 64 and 65 in the Rules of Procedure. |

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