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*Ex officio*

Case No. 582/2017

**REPORT WITH RECOMMENDATIONS  
THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO**

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*

**Addressed to:**

- **President of the Assembly of the Republic of Kosovo**
- **The Committee on Legislation and Judiciary,**
- **The relevant Committee on Human Rights, Gender Equality, Missing Persons and Petitions**
- **The Secretary General of Assembly of the Republic of Kosovo**
- **General Directory for Legal and Procedural Affairs**

Prishtina, on 12 September 2017

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## PURPOSE OF REPORT

1. In the Albanian and Serbian language versions of the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: the “Regulation”), Article 86 of the Regulation, titled “Unfinished business”, states that: At the end of the term of the Assembly, all items of business entrusted to it shall be deemed *finished* (emphasis added). In inter-institutional communications with the Ombudsperson, legal officials of the Assembly have claimed that the words “*finished*” as used in this provision should be treated as equal to “*cancelled*”. According to this interpretation, all unfinished business at the end of a mandate cannot be renewed at the beginning of the next mandate but must be restored to the first step.
2. This report has four main purposes:
  - (1) To argue that words “finished” according to linguistic logic and based on the context, should not be interpreted as equal to “cancelled”;
  - (2) To argue that the words “finished” if correctly interpreted, make the issue to be undetermined of how a new Assembly should handle unfinished business from the previous Assembly
  - (3) To argue that, based on the principles of democracy and legislative efficiency, and in accordance with practices of the European Parliament, the Regulation should be supplemented to give each new Assembly the right, with the decision of the Presidency, to continue unfinished business of the previous Assembly, instead of returning all these businesses to the first step.
  - (4) To provide the Assembly with concrete recommendations for regulating this issue, based on the above mentioned arguments.

## LEGAL GROUNDS

3. According to Law no. 05/L-019 on Ombudsperson, the Ombudsperson among others, has these competences and responsibilities:
  - “to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination” (article 18, par. 1, subparagraph. 5);
  - “to publish notifications, opinions, recommendations, proposals and his/her own reports” (article 18, par. 1, subparagraph. 6);
  - “to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo” (article 18, par. 1, subparagraph. 7);
  - “to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation”

(article 18, par. 1, subparagraph. 9).<sup>1</sup>

- “The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo” (article 18, par. 3).
4. By submitting this report to the competent institutions, as well as its publication in the media, the Ombudsperson intends to perform these legal responsibilities.

## ARGUMENT

### A. How should the words “finished” be interpreted in Article 86 of the Rules of Procedure of the Assembly of the Republic of Kosovo?

5. In the versions of the Albanian and Serbian language of the Regulation, Article 86, which has the title “Unfinished”, states that: “At the end of the term of the Assembly, all items of business entrusted to it shall be deemed *finished*” (emphasis added).
6. Before analysing the main issue of how the words “finished” should be interpreted, the Ombudsperson wishes to draw attention to a noticeable discrepancy between the official versions of the Regulation - those in Albanian and Serbian language - and the English version.
7. Unlike official versions, the version of Article 86 in the English language stipulates that: “At the end of the term of the Assembly, all items of business entrusted to it shall be deemed *unfinished*” (Emphasis added). This means that the key words of this provision (“finished” in Albanian and Serbian language, “unfinished” in English), not only are not equal in the three versions of the Regulation but are also *completely contradictory and contradicts each other*. This serious discrepancy appears to have been inherited from the previous edition of the Regulation, where there is the same discrepancy between the language versions of the provision in question (see the Rules of Procedure of the Assembly of 2005, as amended and supplemented in 2006, Article 63, in all three language versions)
8. If the Regulation of 2005 was still in force, then the English version would prevail over versions of the Albanian and Serbian language. The reason is that that edition of the Rules of Procedure was issued before the declaration of Kosovo's independence and was published in the then Official Gazette of the United Nations Mission in Kosovo (UNMIK) (see Rules of Procedure of the Assembly (2005), Rule 64). At the entry part in the UNMIK Official Gazette, it is stipulated that: “The English version is an official version of UNMIK's regulations and administrative instructions. In case of conflict between the English version and versions in Albanian or Serbian language, the meaning of the English

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<sup>1</sup> Although the Regulation of Assembly does not have the status of legislation, the amendments to the Regulations recommended in this Report may contribute to "harmonization of legislation with international standards on human rights and freedoms and their effective implementation", while these amendments would strengthen the efficiency of the Assembly in implementing the Ombudsperson's recommendations.

version would prevail.” According to this principle, the version of the Rules of Procedure in English, according to which unfinished business at the end of the mandate would be considered “*un*finished”, would have the advantage.

9. However, with the proclamation of Kosovo's independence, the English language lost its supremacy in the interpretation of legal acts. Taking into account Article 5, par. 1 of the Constitution of the Republic of Kosovo (“Official languages in the Republic of Kosovo are Albanian and Serbian language”) and Article 5 par. 4 of the Law no. 02/L-37 on the Use of Languages (“All Laws Adopted by the Assembly of Kosovo shall be issued and published in the official languages” and versions in the official languages shall be equivalent<sup>2</sup>), the Ombudsperson acknowledges that, with regard to the current edition of the Regulation, issued in 2010, the Albanian and Serbian language versions prevail over the unofficial version of the English language.
10. In addition, at the entry part of any volume of the Official Gazette of the Republic of Kosovo, it is stated that: “In case of discrepancies between the language versions of legal acts published and released in the Official Gazette of the Republic of Kosovo, priority will be given to the official languages in accordance with the Constitution of the Republic of Kosovo”. The Rules of Procedure of the Assembly as a legal act is published in the Official Gazette (see article 87). Therefore, for this reason too, the Ombudsperson assumes that, based on official versions of the Regulation, at the end of the term of the Assembly, all items of business entrusted to it shall be deemed “finished” and not “unfinished”.
11. However, the Ombudsperson considers that the meaning of the words “finished” in the context of Article 86 of the Regulation remains a controversial issue which has not yet been sufficiently clarified.
12. This issue was highlighted in the case of initiating the process of selecting five Ombudspersons deputies, pursuant to Law no. 05/L-019 on the Ombudsperson. According to this Law, “The Ombudsperson makes proposal for deputy Ombudspersons” and “The Ombudsperson proposes to the Assembly at least two (2) candidates for election of one (1) deputy” (*ibid.*, Article 10 , paragraphs 2 and 3).
13. In accordance with these provisions, the Ombudsperson, on 10 March 2017 addressed to the Assembly a list of candidates proposed for the position of the Deputy Ombudspersons. The Assembly could not vote on these proposals before it was dissolved on 10 May 2017. After the dissolution of the Assembly, the Ombudsperson on 17 May 2017 got informed through the official electronic mail by the Legal Office of the Assembly, in which it was alleged that, pursuant to Article 86 of the Regulation, the examination of the proposed candidates is considered a finished job and therefore the

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<sup>2</sup> As noted in footnote 1, the Assembly's Regulation does not have the status of the law however; the Ombudsperson considers that the purpose of this provision of the Law on the Use of Languages was to regulate the interpretation of all acts adopted by the Assembly. Therefore, the spirit of the Law leads us to the conclusion that the Regulation should be interpreted according to the versions of the Albanian and Serbian language, by being equally valid these two versions.

Ombudspersons' for the deputy Ombudsperson "... must be reprocessed upon the constitution of the new Assembly, the Sixth Legislation".

14. According to this interpretation of Article 86, the words "finished" are treated as equal to "cancelled". In other words, all unfinished items of business at the end of the mandate of the Assembly cannot be continued at the beginning of the next mandate. They are considered completely cancelled and should be resumed from the first step.
15. This interpretation of Article 86 of the Regulation may have serious consequences on the capacity of the Ombudsperson in fulfilling his constitutional and legal responsibilities. In addition to the nomination of candidates for deputies of the Ombudsperson, the Ombudsperson also has the authority to "make recommendations . . . to the Assembly . . . on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination" (Article 18, par. 1, sub-par. 5) and, in particular, "to recommend promulgation of new Laws in the Assembly [and] amendments of the Laws in force" (Article 18, par. 1, sub-par. 7).
16. The Ombudsperson exercises these competencies regularly. For example, in the calendar year 2016, the Ombudsperson sent a total of nine recommendations to the Assembly, none of which were implemented, while six are awaiting implementation and three are not implemented at all. *See* the Ombudsperson's Annual Report 2016, no. 16, p. 193. According to the Interpretation of the Legal Office of the Assembly, all steps undertaken to implement these nine recommendations, including those six recommendations that are already pending for implementation, are now considered "finished" items of business and as such should be cancelled and resumed after the constitution of the new Assembly. Hereby, the proposed interpretation of Article 86 of the Regulation risks causing long delays in the implementation of the Ombudsperson's recommendations.
17. However, the Ombudsperson considers that this interpretation is incorrect. The word "finished" should not be interpreted as equal to "cancelled".
18. Initially, the Ombudsperson observed that, according to linguistic logic, the fact that an item of business is considered "finished" in an Assembly mandate, does not *necessarily* mean that the new Assembly cannot resume those items of business where the previous Assembly has finished. The issue on how to handle unfinished items of business in the following Assembly is left open by Article 86 of the Regulation.
19. This fact gets further confirmation from the specific language used in Article 86, particularly with the use of the concept of *trust*. Article 86 states that at the end of the mandate, "All items of business entrusted to [the Assembly] are considered finished". The concept of trust to the Assembly, in this context, has two related meanings.
20. Firstly, the items of business entrusted to the Assembly are those competencies that the *Constitution and the law* entrust to it. In this sense Article 86 aims to emphasize that, after the end of the mandate, the items of business that the Constitution and the law have entrusted to the Assembly must end, except in three specific cases, which are explicitly mentioned in Article 86: "in the case of [1] laws adopted by the Assembly and forwarded

for promulgation, or the [2] petitions and [3] items of business that do not require a decision by the Assembly “(*ibid.*, Article 86).

21. Only in these three cases, an Assembly which mandate has expired may continue to exercise the competencies entrusted to it under the Constitution and the Law: i.e. even after the end of the mandate, the Assembly may exercise the competence to promulgate the laws that, before the end of its mandate, it had approved and forwarded; it can accept petitions from citizens; and can do all the other items of business for which there is no need for the MPs who have finished their mandate to make a decision. In these three cases, the Assembly may continue to exercise its competencies, in accordance with Article 14, par. 2 of the Regulation, which stipulates that: “The Assembly shall suspend its activity one day prior to the start of election campaign. ***During the election campaign the Presidency of the Assembly shall continue its work in order to keep the continuation of Assembly’s activity***” (Emphasis added).
22. Whereas, in all other cases other than these three, Article 86 of the Regulation foresees that an Assembly that its mandate has expired has also finished its right to exercise its constitutional and legal competencies until it is resolved and a new Assembly is established.
23. However, according to this interpretation, Article 86 does not address the issue whether the Assembly, in a new legislature, has to resume all unfinished items of business at the first step. Article 86 only stipulates that the Assembly, in most cases, cannot continue its work after its mandate expires. What happens with these items of business after the start of another term is an issue that Article 86 does not address.
24. The second meaning of the concept of “trust” used in Article 86 of the Regulation is the trust that the people have given to the Assembly by voting. This concept of trust is expressly used in another part of the Regulation, respectively in its Annex 3, the Code of Conduct of the Members of the Assembly, Article 1: “Members have a duty to uphold the law and to act on all occasions ***in accordance with the public trust placed in them***” (Emphasis added). In this sense, Article 86 of the Regulation stipulates that, with the exception of the three above mentioned cases, the unfinished items of business of a legislature whose mandate has expired should be suspended until the Assembly again gains the trust of the people by means of elections. However, once again, according to this interpretation, Article 86 leaves undetermined the issue of how these unfinished items of business should be treated in the new legislature.
25. The Rules of Procedure of the European Parliament provide strong support to this interpretation. This Rules of Procedure confirms the fact that considering of items of business as “finished” at the end of a mandate does not necessarily mean that these items of business cannot be extended at the beginning of the next term.
26. In this regard, the Rules of Procedure of the European Parliament stipulate that: “At the end of the last part-session before elections, all Parliament's unfinished business shall be deemed to have lapsed, subject to the provisions of the second paragraph” (*ibid.*, Article 229, par. 1), while second paragraph stipulates 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” (*ibid.*, Article 229, par. 2). These two paragraphs, together, show that there is no contradiction to determine (1) that unfinished items of business will be considered finished with respect to a mandate of the Assembly, but, at the same time, (2) that such items of business may be reopened at a later date, after the start of the next mandate.

27. For this reason, the fact that Article 86 stipulates that unfinished items of business are deemed to have been finished at the end of the mandate does not necessarily mean that these items of business should be considered permanently cancelled. How these items of business should be treated in the new legislature is an issue that Article 86, at present, leaves unanswered.

**B. How should Article 86 of the Rules of Procedure of the Assembly of the Republic of Kosovo be supplemented to regulate the manner in which unfinished items of business are handled at the start of a new legislature?**

28. If Article 86 really leaves the issue of how a new Assembly should deal with the unfinished items of business of the previous legislature unanswered, then an important question arises: How should the Regulation be supplemented in this regard? Should the Assembly be allowed to continue unfinished items of business where they were left, or should the Assembly, in any case, resume these items of business from the first step?
29. Firstly, we can see that the second option, which obliges the Assembly to resume any items of business from the first step, comes at very high cost from the point of view of legislative efficiency. Such an obligation, if imposed, would have the effect that draft laws that have almost passed the entire review process at Assembly committees are cancelled, and begin from the first step in the new legislature. Also, in the case of the election of members of independent institutions or agencies and various boards, all candidates should be proposed, and in some cases also interviewed before the commissions, as well as debated and considered again.
30. Hereby, the obligation to resume any items of business from the beginning risks delaying the work of the Assembly as well as hampering the well-functioning of other institutions awaiting its decisions, including the Ombudsperson. Given this risk, the obligation for the Assembly to return all items of business in the first step at the beginning of the new legislature could only be justified if there are good reasons for such an obligation.
31. Can it be argued that the principles of democracy constitute such reasons? According to such an argument, it may be thought that, as long as the mandate of the previous Assembly is over and the people give the mandate to a new Assembly, the old Assembly, with all its items of business, loses its democratic grounds given by people. It can therefore be argued that full respect for democratic principles requires that, whenever the people mandate a new Assembly, unfinished items of business of the last legislature are considered expired and can no longer be continued.



32. Ombudsperson considers this reasoning as erroneous. Initially, it can be noticed that in all democratic countries is not considered as a violation of democratic principles the fact that a law is adopted and enters in force in a legislature, continues to be in force even following the conclusion of the mandate and constitution of the new legislature. If there was no such continuity, all new legislatures would need to approve all previous laws so these laws could continue to be implemented. This would be absurd.
33. In the Republic of Kosovo, there is continuity not only for laws adopted in different legislatures following the declaration of independence in 2008, but also for laws adopted prior to declaration of independence. For instance, Law No. 02/L-37 on Use of Languages cited above remains in force, even though it is officially considered as UNMIK Regulation. Our legal system has treated these laws as valid, even though they were adopted not only in previous *legislatures*, but also in a previous *regime*. Applicability of laws issued as UNMIK Regulations is not non-democratic because current Assembly has full competence to amend, supplement or repeal these old laws, in those cases where current members of parliament consider as necessary.
34. The same reasoning applies to unfinished items of business of an old legislature: it cannot be considered as a non-democratic practice if a newly constituted Assembly has the right to continue with the unfinished items of business of the previous legislature, because, members of parliament would have the full competence to decide which items of business would continue and which would commence from the first step.
35. In fact, Ombudsperson considers that the obligation of the Assembly to return all unfinished items of business in the first step not only is not in compliance with democratic principles, but would constitute a violation of those principles. According to the democratic principles, an Assembly elected by people should have a wide competence to decide how to address each item of business remaining from the previous legislature. It should have the right to decide for all such items of business, or continue the work where it was left or cancel it and commence from the beginning.
36. As noted above, European Parliament follows such a practice. Rules of Procedure of the European Parliament determines that: “At the end of the last part-session before elections, all Parliament's unfinished business shall be deemed to have lapsed, subject to the provisions of the second paragraph” (*ibid*, Article 229, par. 1), but “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” (*ibid*, Article 229, par. 2).
37. Conference of Presidents of European Parliament, same as the Presidency of the Assembly of Republic of Kosovo, is composed of the president of legislature and representatives of various parliamentary groups. See Rules of Procedure of European Parliament, Article 26 and Rules of Procedure of the Republic of Kosovo, Article 12.
38. The example of the European Parliament is a strong precedent in support of the idea that the unfinished items of business of the old legislature may reopen in a new legislature. In accordance with this practice of the European Parliament, and based on the principles of

legislative efficiency and democratic principles, the Ombudsperson finds that the most reasonable way of handling unfinished items of business is that the Presidency of the new Assembly has the right to decide, at the request of various commissions and institutions, to continue the work in the new legislature, instead of resuming them from the first step.

## **CONCLUSIONS AND RECOMMENDATIONS OF OMBUDSPERSON**

### **A. Conclusions of Ombudsperson**

39. Based on the above assessment, the Ombudsperson finds that:

- (1) Article 86 of the current Rules of Procedure of the Assembly questions the issue of how a newly elected Assembly should deal with unfinished business from the previous legislature;
- (2) Full respect for the principles of legislative efficiency and democracy requires that the Presidency of the Assembly be competent to decide, at the request of various commissions and institutions, to continue unfinished business from the old legislature, rather than resume these items of business from the first step.

### **B. Recommendations of Ombudsperson**

40. Based on these conclusions, and in accordance with Article 135, par. 3 of the Constitution of the Republic of Kosovo and Article 16, para. 4 of the Law no. 05/L-019 on Ombudsperson, the Ombudsperson recommends to the Assembly of the Republic of Kosovo to:

- (1) Explicitly clarify that Article 86 of the Rules of Procedure of the Assembly does not decide the issue of how a newly elected Assembly should address unfinished business from the previous legislature; and
- (2) Supplement the Rules of Procedure of the Assembly of the Republic of Kosovo to determine that the Presidency of the Assembly, at the beginning of each legislative body, will have the right to decide, at the request of various commissions and institutions, to continue unfinished items of business from the previous legislature, rather than resuming these items of business from the first step.

In compliance with Article 132, paragraph 3 of the Constitution of the Republic of Kosovo (“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”) and Article 28 of the Law No. 05/L-019 on Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, . . . must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”). Please inform us about the action that you will take regarding this issue.

Respectfully,

Hilmi Jashari  
Ombudsperson