

**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

**Pillar III (OSCE) Report 05/2007
On the Monitoring of the Assembly of Kosovo
24 September 2007 – 30 November 2007**

Highlights

- **Assembly endorses in principle the Draft Law on Use of State Symbols, the Draft Law on Ministry of Foreign Affairs and Diplomatic Service, and the Draft Law on Privileges and Immunities of Diplomatic and Consular Missions in Kosovo and International Military Presence**
- **Assembly approves the Law on Rights and Responsibilities of Members of the Assembly**
- **Assembly decides to continue its work during the election campaign**
- **Assembly adopts one amendment to its Rules of Procedure**
- **Assembly returns five draft laws to the Government for further revision**

1. Background

This fifty-fourth monitoring report is drafted in accordance with the Terms of Reference for UNMIK Pillar III for Institution Building (OSCE) Monitoring of the Assembly of Kosovo dated 26 November 2002 and is based on compliance with the revised Rules of Procedure adopted at the end of the plenary session on 20 May 2005, as amended at the plenary session on 1-2 June 2006 and 18 September 2007 plenary session.

During the reporting period, the Assembly held three plenary sessions, on 27 September, 18 October and 30 October/2 November as well as two regular Presidency meetings, on 11 October and 25 October. All ten Committees and the Subcommittee on Human Rights, Gender Equality, Public Petitions and Claims held meetings during the reporting period. Pillar III (OSCE) monitored the plenary sessions and Presidency meetings, as well as 28 out of 40 committee meetings and two public hearings.

2. Overview

The 27 September plenary session of the Assembly of Kosovo was chaired by Member of the Presidency Mr. Sabri Hamiti (LDK).

- Seventy-two Members of the Assembly were present at the 27 September plenary session.
- Main agenda items of the 27 September plenary session:
 - Questions to the Government for oral answers
 - First Reading of the Draft Law on Use of State Symbols
(The draft law was endorsed in principle with 68 votes in favor and one vote in opposition.)
 - First Reading of the Draft Law on Agricultural Inspectorate
(The draft law was endorsed in principle with 60 votes in favor and two votes in opposition.)
 - First Reading of the Draft Law on Final and Matura Exam
(The draft law was endorsed in principle with 67 votes in favor and no votes in opposition.)
 - First Reading of the Draft Law on Ministry of Foreign Affairs and Diplomatic Service
(The draft law was endorsed in principle with 68 votes in favor and no votes in opposition.)

- First Reading of the Draft Law on Status, Immunities and Privileges of Diplomatic and Consular Missions and their personnel, and International Military Presence in Kosovo (The draft law was endorsed in principle with 62 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Amending the Law on Civil Status Registry (The draft law was approved with 63 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Civil Status (The draft law was approved with 62 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Trade Societies (The draft law was approved with 63 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Habitation and Emplacement (The draft law was approved with 63 votes in favor and no votes in opposition.)
- Review of the recommendation of the Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning with regard to the Draft Law on National Parks (The recommendation was approved with 36 votes in favor and 21 votes in opposition. See below the second paragraph under “Legislative process”.)
- Review of the proposed amendments to the Rules of Procedure (The item was postponed due to the lack of a quorum.)

The 18 October plenary session of the Assembly of Kosovo was chaired by President of the Assembly Kolë Berisha (LDK) and Member of the Presidency Mr. Bislim Hoti (IRDK).

- Seventy-five Members of the Assembly were present at the 18 October plenary session.
- Main agenda items of the 18 October plenary session:
 - Questions to the Government for oral answers
 - First Reading of the Draft Law on Protection of the Environment (The draft law was endorsed in principle with 64 votes in favor and three votes in opposition.)
 - Review of the proposed amendments to the Rules of Procedure (The Assembly adopted only one out of eight amendments. See below section entitled “Revision of the Rules of Procedure”.)
 - Review of the recommendations of the Committee for Trade, Industry, Energy, Transport and Communications with regard to the UNMIK comments on the Law on Road Traffic Safety (All eleven recommendations were voted upon individually and adopted with majority of votes in favor.)
 - Review of the recommendations of the Committee for Public Services, Local Administration and Media with regard to the UNMIK comments on the Law on Amending the Law on Cadastre (All fourteen recommendations were voted upon individually and adopted with a majority of votes in favor.)

The 30 October/2 November plenary session of the Assembly of Kosovo was chaired by President of the Assembly Kolë Berisha (LDK) and Member of the Presidency Mr. Naim Maloku (AAK).

- Eighty and sixty-seven Members of the Assembly were present, respectively, at the 30 October and 2 November plenary session.
- Main agenda items of the 30 October/2 November plenary session:
 - Questions to the Government for oral answers (The item was removed from the agenda. See below section entitled “Departure from procedural rules”.)

- Debate on the Treaty for Friendship and Cooperation between Kosovo and Serbia offered by the Unity Team
(The item was removed from the agenda. See below section entitled “Departure from procedural rule”.)
- First Reading of the Draft Law on Parliamentary Inquiry
(The draft law was endorsed in principle with 53 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Amending Law No 2003/11 on Roads
(The draft law was approved with 65 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Rights and Responsibilities of Members of the Assembly
(The draft law was approved with 65 votes in favor and six votes in opposition.)
- Second Reading of the Draft Law on Prevention of Conflict in Exercising of Public Functions
(The draft law was approved with 56 votes in favor and no votes in opposition.)
- Second Reading of the Draft Law on Narcotic Medicaments, Psychotropic Substances and Precursors
(The draft law was approved with 63 votes in favor and no votes in opposition.)
- Review of the recommendation of the Committee for Education, Science, technology, Culture, Youth and Sport with regard to the Draft Law on Private Education
(The recommendation was approved with 54 votes in favor and one vote in opposition.)
- Review of the recommendation of the Committee for Health, Labor and Social Welfare with regard to the Draft Law on Labor, Draft Law on Strikes and Draft Law on Freedom of Association in Trade-Unions
(The recommendation was approved with 53 votes in favor and one vote in opposition.)
- Review of the recommendations of the Committee for Judicial, Legislative and Constitutional Framework Matters with regard to the appointment of the Ombudsperson
(The item was removed from the agenda. See below the section entitled “Departure from procedural rules”.)
- Review of the recommendation of the Committee for Education, Science, technology, Culture, Youth and Sport with regard to the appointment of members to the Cultural Heritage Council
(The recommendation was approved with 52 votes in favor and four votes in opposition.)

3. Parliamentary Practices and Proceedings of Assembly Sessions

Agenda

- At the beginning of the 18 October plenary session, Mr. Nait Hasani (PDK) requested to speak in order to propose an amendment to the agenda. The President of the Assembly responded that amendments to the agenda must be submitted in writing in accordance with Rule 23 and not verbally as Mr. Hasani wished to do. Mr. Hasani however insisted that he had the right to verbally propose an amendment to the agenda and to ask for his amendment to be voted upon. But, the President of the Assembly continued reading aloud the Rule 23.2 and reiterated that amendments to the plenary session agenda must be submitted in writing, and he proceeded to the next agenda item without allowing Mr. Hasani to propose his amendment verbally. At that point, Mr. Ilmi Ahmeti (LDK) likewise requested to speak about the agenda, but the President of the Assembly did not allow him to do so with the same justification.

The revised Rules 23.1-2 provide that “[t]he Presidency shall prepare a draft Agenda for the upcoming Assembly session and make it immediately available to the Members of the Assembly. At the beginning of the session the draft Agenda shall be deemed approved, unless one or more parliamentary groups or six (6) Members of the Assembly propose in writing to the President an amendment to the agenda, which should be put to a vote.” Rule 23 clearly stipulates that the amendment to the plenary session agenda must be submitted in writing and by at least six Members, not by one individual Member, otherwise the agenda is considered approved. Thus,

there has been no violation and the President of the Assembly responded correctly in not allowing Mr. Hasani and Mr. Ahmeti to propose verbal amendments to the agenda of the 18 October plenary session.

Urgent Matters

- At the beginning of the 18 October plenary session, the President of the Assembly announced that the ORA parliamentary group had submitted a proposal to discuss the hunger strike undertaken by members of the Education trade-union as an urgent matter in that day's session. He called for a vote on ORA's proposal, which was rejected with 36 votes in opposition and 30 votes in favor. The ORA parliamentary group members walked out of the plenary hall as a sign of protest against the rejection of their proposal.

The President of the Assembly called for a vote on ORA's proposal in compliance with Rule 29.2, which provides that "[t]he Assembly shall decide on the proposals of parliamentary groups regarding urgent matters".

Revision of the Rules of Procedure

- At the 18 October plenary session, the Assembly reviewed eight amendments to the Rules of Procedure proposed by the Presidency. The Assembly adopted only one out of eight amendments, which received 63 votes in favor and one vote in opposition. The adopted amendment to Rule 2 defines the Order Paper of the Assembly.¹ The first Order Paper was distributed to Members of the Assembly prior to the 30 October plenary session, as required in the Revised Rule 2.

Rule 58.1 stipulates that "[t]he Presidency shall keep the Rules of Procedure under review and may from time to time propose to the Assembly amendments that it considers necessary." The Presidency had therefore proposed amendments to the Rules of Procedure in compliance with the Rules itself. Furthermore, Rule 58.3 stipulates that the decision to amend the Rules of Procedure shall be made by the Assembly with the majority of votes of the Members of the Assembly, to wit, such a decision must receive at least 61 votes in favor. Seven amendments received less than 61 votes in favor and were therefore rejected.

The first Order Paper was printed and distributed to Members of the Assembly prior to the 18 October plenary session in compliance with the Revised Rule 2. Moreover, the Revised Rule 2 requires that the Order Paper is issued each business day to Members of the Assembly and posted on the Assembly's website, which has not been done yet. It is recommended that the Assembly to post the Order Paper on its website in order to make it available to Members, the public and the media, as set forth in the revised Rule 2.

Departure from procedural rules

- On October 25, the Presidency and parliamentary group leaders scheduled the next plenary session to take place on October 30 during election campaign period.² Mr. Sabri Hamiti (LDK) proposed that at the beginning of the 30 October plenary session the Assembly should utilize Rule 61 to take a decision to depart from Rule 5.2 in order to enable the Assembly to hold the plenary sessions during the election campaign. Other members of the Presidency and parliamentary group leaders agreed with Mr. Hamiti's proposal, and the proposal to depart from

¹ The adopted amendment adds the Order Paper of the Assembly to the Rule 2 ("Definitions") of the Rules of Procedure. The Order Paper is defined as "[t]he official document of the Assembly, which contains all business of the Assembly and is prepared, published and printed prior to each plenary session pursuant to these Rules, with the exception of the first sitting day of a new parliament and printed bi-weekly when the Assembly is not in session and issued each business day (Monday through Friday) in digital format to all Members of the Assembly and posted to the Assembly's website. Publication is authorized by the Secretary-General and made available to Members, public and media. Business of the Assembly includes but is not limited to motions, resolutions, declarations, draft laws, questions to the Government, interpellation requests, committee reports, annual reports of the Government, etc".

² The SRSB decided that the election campaign period would begin on Thursday 25 October 2007 at midnight and end on Thursday 15 November 2007 at midnight.

Rule 5.2 was included as the first agenda item of the 30 October plenary session. Subsequently, at the beginning of the plenary session in question, the President of the Assembly announced that 80 Members were present in the plenary hall and called the Assembly to vote on the proposal to depart from Rule 5.2, which was adopted with 53 votes in favor and two votes in opposition. LDK parliamentary group leader, Mr. Alush Gashi announced that he and other parliamentary group leaders had reached an agreement that questions to the Government and political debates should not be discussed in the Assembly during election campaign period in order not to interfere with the election campaign. Therefore, he proposed that two agenda items – questions to the Government and debate on the Treaty for Friendship and Cooperation between Kosovo and Serbia offered by the Unity Team – be removed from the agenda with the justification that these matters could interfere with the election campaign. Additionally, he proposed that the agenda item on the appointment of Ombudsperson be likewise removed from the agenda in line with the comments made by the OSCE, Office of the Council of Europe and Office of the UN High Commissioner for Human Rights. The President of the Assembly called for a separate vote on the removal of each of the three agenda items above proposed by Mr. Gashi, which were removed with majority of votes in favor.³

Section 9.1.4 of the Constitutional Framework provides that “the term of the Assembly shall be three years, commencing on the date of the inaugural session, which shall be convened within thirty days after certification of the election results”. Accordingly, the term of the Assembly is until 2 December 2007 as the inaugural session was held on 2 December 2004. But, Rule 5.2 of the Rules of Procedure stipulated that the Assembly shall suspend its proceedings from the first day of the election campaign, and that only the Presidency shall continue its proceedings in order to ensure the continuity of the Assembly of Kosovo, which did not allow the Assembly to meet during or after election campaign. Nevertheless, Rule 61 grants the Assembly the right to depart from the provisions of the Rules of Procedure provided that such a departure receives the support of two thirds of the Members of the Assembly present. The decision of the Assembly to depart from Rule 5.2 was procedurally compliant as it received the exact support required by Rule 61.

Distribution of draft legislation

- The Draft Law on Use of State Symbols and Draft Law on Agricultural Inspectorate were distributed to Members of the Assembly on 6 September. The Draft Law on Final and Matura Exam was distributed on 14 September. The Draft Law on Ministry of Foreign Affairs and Diplomatic Service and Draft Law on Status, Immunities and Privileges of Diplomatic and Consular Missions and their personnel, and International Military Presence in Kosovo were distributed on 18 September. Thus, the draft laws were distributed, respectively, 13, eight and six working days prior to their scheduled first reading at the 27 September plenary session. The Draft Law on Protection of the Environment was distributed on 3 October. Thus, the draft law was distributed nine working days prior to its first reading at the 18 October plenary session. The Draft Law on Parliamentary Inquiry was distributed on 10 October. Thus, the draft law was distributed 12 working days prior to its first reading at the 30 October plenary session.

The Draft Law on Use of State Symbols, Draft Law on Agricultural Inspectorate and Draft Law on Parliamentary Inquiry were reviewed in the first reading in compliance with the Rule 35.1, which requires that the first reading of the draft law shall take place no earlier than ten working days and no later than three working weeks from the day of its distribution. The first reading of the Draft Law on Final and Matura Exam; Draft Law on Ministry of Foreign Affairs and Diplomatic Service; Draft Law on Status Immunities and Privileges of Diplomatic and Consular

³ The item on the debate on the Treaty for Friendship and Cooperation between Kosovo and Serbia offered by the Unity Team was removed from the agenda with 52 votes in favor and four votes in opposition; the item on questions to the Government was removed with 39 votes in favor and eight votes in opposition; and the item on the appointment of Ombudsperson was removed with 46 votes in favor and 22 votes in opposition.

Missions and their personnel, and International Military Presence in Kosovo; and Draft Law on the Protection of Environment were however not held in compliance with the Rule in question. The previous monitoring reports noted that the Assembly had difficulties reviewing incoming draft legislation within the timeframe set forth in its procedural rules.⁴ It is recommended that the next Assembly convene the weekly system of plenary sessions, as was the practice during the first term of the Assembly, in order to process draft legislation in a more efficient and timely manner.

Legislative process

- The Draft Law on Amending Law No 46/2004 on Civil Status Registry and Draft Law on Civil Status were approved four months after their first reading on 31 May. The Draft Law on Trade Societies was approved over four months after its first reading on 10 May. The Draft Law on Habitation and Emplacement was approved over five months after its first reading on 16 March. The Draft Law on Amending Law No 2003/11 on Roads was approved two months after its first reading on 27 August. The Draft Law on Rights and Responsibilities of Members of the Assembly was approved seven weeks after its first reading on 14 September. The Draft Law on Prevention of Conflict in Exercising of Public Functions was approved over three months after its first reading on 12 July. The Draft Law on Narcotic Medicaments, Psychotropic Substances and Precursors was approved over four months after its first reading on 21 June.
The Draft Law on Amending the Law No 2003/11 on Roads and the Draft Law on Rights and Responsibilities of Members of the Assembly were processed by the Assembly committees in compliance with Rule 35.6, which provides that “[w]hen a committee has been designated to review a draft law, it shall report its recommendations to the Assembly no later than two months after the first reading, unless an extension is approved by the Assembly.” However, the committees submitted their recommendations to the rest of the above-mentioned draft laws exceeding the deadline set forth in Rule 35.6, without asking the Assembly to extend the deadline.
- At the 27 September plenary session, the Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning proposed that the Draft Law on National Parks be returned to the Government for further review. At the 30 October/2 November plenary session, the Committee for Education, Science, Technology, Culture, Youth and Sports proposed that the Draft Law on Private Education and Training be returned to the Government, and the Committee for Health, Labor and Social Welfare proposed that the three following draft laws - Draft Labor Law, Draft Law on Strikes and Draft Law on Freedom of Association in Trade Unions – be returned to the Government for further review.
Under Rule 35.3, “[t]he sponsor may withdraw the draft law during the first reading, before the procedure of voting in it in principle takes place.” By analogy, the committees referenced above should have proposed to the Assembly to return the draft laws in question to the Government in accordance with Rule 35.3. Moreover, Rule 35.7 provides that “[t]he functional or main committee may review the draft law in principle even before the first reading of the draft law takes place in plenary session.” If the committees had utilised Rule 35.7, they would have had the opportunity to notice earlier the deficiencies of draft laws in question and could have returned them to the sponsoring ministries during their first reading, rather than doing so much later. It is highly recommended that the next Assembly committees to utilize the opportunity of reviewing draft laws before their first reading in order to make the legislative process more effective.

⁴ See Pillar III (OSCE) reports 04/2007, 03/2007, 02/2007, 01/2007, 07/2006, 06/2006 and 05/2006 on the monitoring of the Assembly of Kosovo, section entitled “Distribution of draft legislation”.

Authentic interpretation of laws

- At the 24 September meeting, the Committee for Judicial, Legislative and Constitutional Framework Matters discussed the requests made by the Anti-Corruption Agency and Ministry of Transport and Communications for *authentic* interpretation, respectively, of the provisions of the Law Against Corruption and Law on Public Procurement. Mr. Hajredin Kuçi (PDK) and Mr. Ramadan Kelmendi (LDD) questioned the authority of the Committee to provide authentic interpretation of laws. Other members were likewise doubtful in this regard, and so the matter was postponed for the next meeting. At the 10 October meeting, the Committee for Judicial, Legislative and Constitutional Framework Matters again discussed the matter of the authentic interpretation of the provisions of the above-referenced laws, but Committee members were again doubtful whether it was within their authority to do so. As a result, the Committee could not proceed further with the matter.

The Rules of Procedure do not contain provisions which authorise the Committee for Judicial, Legislative and Constitutional Framework Matters to provide authentic interpretations of laws. The civil law acknowledges the authority of the legislative body to perform authentic interpretation of adopted laws, which is considered as an official interpretation of a law. But, such an authority of the legislative body needs to be clearly defined as a written norm in the act governing its work. In this context, the Rules of Procedure of the Assemblies of Slovenia, Croatia, Bosnia and Herzegovina and FYRoM include provisions explicitly regulating the authority of the Assembly and the procedure to perform authentic interpretation of laws. It is recommended that the next Assembly to regulate the issue of authentic interpretation of laws in its Rules of Procedure in order to avoid difficult situations similar to the one above.

Questions to the Government for oral answers

- At the 27 September plenary session, two out of six questions received responses. At the 18 October plenary session, none of nine submitted questions received responses. At each plenary session under review, the President of the Assembly or member of the Presidency chairing the session responded that questions that received no response within two plenary sessions would be published in the bulletin of the Assembly.

The question periods above were carried out in compliance with revised Rule 26.1 on “Questions to the Government for oral answers”, which provides that the agenda of each session shall include a period of up to 50 minutes for Members’ questions to the Government, with one minute for the question, three minutes for the Minister’s answer, one minute for a follow-up question, and two minutes for the response to the follow-up question.

Under revised Rule 26.11, “[i]f a question has not been answered within two plenary sessions, the question will be published in the Bulletin of the Assembly.” But the Assembly bulletins did not contain questions that have been submitted to the Government and therefore no pending question has ever been published until October 2007.⁵ The latest Assembly bulletin covering month of October includes a section containing questions of Members which had not received response from March through October 2007.

4. Access

- During the reporting period, Pillar III (OSCE) received access to the plenary sessions, regular Presidency meetings and Committee meetings. Pillar III (OSCE) also received copies of documents considered by the Assembly and transcripts of prior plenary sessions.

5. Transparency

- Radio Television Kosovo (RTK) provided live coverage of the plenary sessions under review. Members of the public and institutional monitors were granted admission to the plenary

⁵ See Pillar III (OSCE) reports 03/2007, 02/2007, 01/2007, 07/2006, 06/2006 and 05/2006 on the monitoring of the Assembly of Kosovo, section entitled “Questions to the Government”.

sessions. The Assembly of Kosovo has a website (www.assembly-kosova.org) containing biographical details of Members of the Assembly, information about the structure and functioning of the Assembly, copies of laws and resolutions adopted by the Assembly, along with other information, in Albanian, Serbian, and English.

MAIN RECOMMENDATIONS

- The next Assembly committees should utilize the opportunity of reviewing draft laws before their first reading, as allowed in Rule 35.7, in order to make the legislative process more effective.
- The next Assembly should regulate the issue of authentic interpretation of laws in its Rules of Procedure.

ENDS.