

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

**Pillar III (OSCE) Report 07/2006  
On the Monitoring of the Assembly of Kosovo  
14 October 2006 – 31 December 2006**

**Highlights**

- **Minister of Health addresses Assembly in response to ORA interpellation motion**
- **Assembly adopts a declaration condemning the holding of the referendum on the constitution of Serbia in Kosovo**
- **Assembly debates on the Auditor-General's report on the Assembly of Kosovo factual findings and establishes an ad hoc Investigative Committee**
- **Presidency hesitates to accept a proposal with regard to the representation of Mr. Bislim Hoti in the Presidency**
- **Assembly votes on the appointment of Ombudsperson and Principal Deputy Ombudsperson but the validity of the vote is questioned**
- **Assembly adopts 2007 Kosovo Consolidated Budget**

This forty-ninth 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 new 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.

During the reporting period, the Assembly held six regular plenary sessions, on 19-20 October, 27 October/3 November, 16/17/20 November, 30 November, 14/18 December and 20-23 December, as well as six Presidency meetings, on 16 October, 2 November, 9 November, 24 November, 11 December and 18 December. All ten Committees and the Subcommittee on Human Rights, Gender Equality, Public Petitions and Claims held meetings during the reporting period.<sup>1</sup> Pillar III (OSCE) monitored the plenary sessions and Presidency meetings, as well as 28 out of 52 Committee

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<sup>1</sup> The Committee for Budget and Finance met on 16 and 24 October, 8, 21, 23 and 29 November, 5 and 13 December while the Committee for the Rights and Interests of Communities and Returns met on 16, 24 and 26 October, 1, 13, 20 and 24 November. The Committee for Judicial, Legislative and Constitutional Framework Matters met on 25 October, 6 November, 4 and 19 December while the Committee for Security met on 17 October, 22 November, and 13 December. The Committee for Public Services, Local Administration and Media met on 19 October, 1 and 7 November, and 19 December while the Committee for Health, Labour, Social Welfare and Missing Persons met on 31 October, 7 November, and 5, 12 and 19 December. The Committee for Economy, Trade, Industry, Energy, Transport and Telecommunications met on 16 and 25 October, 7, 10, 14 and 28 November, 5, 12 and 26 December while the Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning met on 17, 25 and 31 October, 7, 13, 21 and 29 November, and 5 December. The Committee for Education, Science, Technology, Culture, Youth and Sports met on 17 October, 20 November, and 19 December while the Committee for International Cooperation and EU Integration met on 9 November. The Subcommittee for Human Rights, Gender Equality and Public Petitions and Claims met on 18 October, 8 and 22 November, and 13 December. The Committee for Economy, Trade, Industry, Energy, Transport and Telecommunications, on 20 October 2006 held a public hearing of the draft law on amending the law 2004/8 on energy, and the draft law on amending the law 2004/9 on energy regulator. The Committee for Education, Science, Technology, Culture, Youth and Sports, on 29 November, held a Public Hearing on the implementation of the Law 2002/2 on Primary and Secondary Education. The Committee for Public Services, Local Administration and Media, on 5 December, held a Public Hearing on the Draft Law on Transformation of Private Real Estate Possessors into Owners.

meetings, one meeting of the subcommittee for Human Rights, Gender Equality and Public Petitions and Claims, all meetings of the Investigative Committee and two public hearings.<sup>2</sup>

## 1. Overview

**The 19-20 October plenary session of the Assembly of Kosovo** was chaired by President of the Assembly Kolë Berisha (LDK) and by Member of the Presidency Mr. Xhavit Haliti (PDK).

- Eighty-six and sixty-six Members of the Assembly were present, respectively, at the 19 and 20 October plenary session.<sup>3</sup>
- Main agenda items of the 19-20 October plenary session:
  - Questions to the Government for oral answers
  - Debate on the security situation in Kosovo (Minister of Internal Affairs Fatmir Rexhepi delivered a statement, followed by parliamentary group leaders, a plenary debate and Minister Rexhepi's closing statement.)
  - ORA interpellation motion to Minister of Health (See below the section entitled "Interpellation".)
  - First Reading of the Draft Law on Value Added Tax (The draft law was endorsed in principle with 33 votes in favor and 28 votes in opposition.)

**The 27 October/3 November plenary session of the Assembly of Kosovo** was chaired by President of the Assembly Kolë Berisha (LDK) and by Member of the Presidency Mr. Naim Maloku (AAK).

- Seventy-five and eighty-eight Members of the Assembly were present, respectively, at the 27 October and 3 November plenary session.
- Main agenda items of the 27 October/3 November plenary session:
  - Questions to the Government for oral answers
  - Review of the report of the Office of the Auditor-General on the Assembly 2004-2005 factual findings (All parliamentary group leaders delivered statements, followed by a plenary debate and approval of the proposal to form an *ad hoc* Investigative Committee. See below the section entitled "Establishment of ad hoc Investigative Committee".)
  - Review of the Telecommunications Regulatory Agency 2005 work report (The item was postponed.)

**The 16, 17 and 20 November plenary session of the Assembly of Kosovo** was chaired by President of the Assembly Kolë Berisha (LDK) and by Member of the Presidency Mr. Gazmend Muhaxheri (ORA).

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<sup>2</sup> Committee for Budget and Finance on 16 and 24 October, 8, 21, 23 and 29 November, 5 and 13 December; Committee for the Rights and Interests of Communities and Returns on 16, 24 and 26 October, 1, 13 and 20 November. Committee for Judicial, Legislative and Constitutional Framework Matters on 25 October, 6 November, and 19 December; Committee for Security met on 17 October, and 22 November; Committee for Public Services, Local Administration and Media on 1 and 19 December; Committee for Health, Labour, Social Welfare and Missing Persons on 31 October, and 12 and 19 December; Committee for Economy, Trade, Industry, Energy, Transport and Telecommunications on 16 October, and 12 December; Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning on 17 October; Committee for International Cooperation and EU Integration on 9 November; Subcommittee for Human Rights, Gender Equality and Public Petitions and Claims on 13 December; Public Hearing on the implementation of the Law 2002/2 on Primary and Secondary Education; and Public Hearing on the Draft Law on Transformation of Private Real Estate Possessors into Owners

<sup>3</sup> Unless otherwise indicated, the figures given are the ones announced by the President of the Assembly or Chairperson at the beginning of each day.

- Eighty-eight, eighty-one and seventy-nine Members of the Assembly were present, respectively, at the 16, 17 and 20 November plenary session.
- Main agenda items of the 16, 17 and 20 November plenary session:
  - Questions to the Government for oral answers
  - Second Reading of the Draft Law on Internal Audit  
(The draft law was approved with 69 votes in favor and two votes in opposition.)
  - First Reading of the Draft Law on Transformation of Private Property Possessors into Owners  
(The draft law was endorsed in principle with 73 votes in favor and two votes in opposition.)
  - First Reading of the Draft Law on Notary  
(The draft law was endorsed in principle with 64 votes in favor and three votes in opposition.)
  - First Reading of the Draft Labor Law  
(The draft law was endorsed in principle with 63 votes in favor and four votes in opposition.)
  - Review of the Telecommunications Regulatory Agency 2005 work report  
(See below the section entitled “Telecommunications Regulatory Agency 2005 work report”).)
  - Review of the recommendation of the Committee on Judicial, Legislative and Constitutional Framework Matters on the appointment of Ombudsperson and Principal Deputy Ombudsperson  
(The item was postponed. See below the section entitled “The appointment of Ombudsperson and Principal Deputy Ombudsperson”).)
  - Review of the report of the Committee for Health, Labor and Social Welfare with regard to the monitoring of the implementation of the Law on Health  
(Ms. Fatmire Mulhaxha-Kollçaku (ORA), the Committee Chairperson, made a presentation, followed by a plenary debate and approval of Committee’s recommendations. See below the section entitled “Monitoring of the implementation of laws”).)
  - Review of the draft proposal of the Presidency with regard to official travels abroad  
(The item was postponed.)

**The 30 November plenary session of the Assembly of Kosovo** was chaired by President of the Assembly Kolë Berisha (LDK) and co-chaired by Member of the Presidency Mr. Xhavit Haliti (PDK).

- Eighty Members of the Assembly were present at the 30 November plenary session.
- Main agenda items of the 30 November plenary session:
  - Questions to the Government for oral answers
  - First Reading of the Draft Law on Kosovo Consolidated Budget and Authorised Expenditures from 1 January – 31 December 2007  
(The draft law was endorsed in principle with 50 votes in favor and 26 votes in opposition.)

**The 14 and 18 December 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).

- Sixty-nine and sixty-eight Members of the Assembly were present, respectively, at the 14 and 18 December plenary session.
- Main agenda items of the 14 and 18 December plenary session:
  - Questions to the Government for oral answers
  - First Reading of the Draft Law on the Memorial of former President of Kosovo Ibrahim Rugova

- (The draft law was withdrawn by the sponsor.)
- First Reading of the Draft Law on State Aid  
(The draft law was endorsed in principle with 45 votes in favor and 24 votes in opposition.)
- First Reading of the Draft Law on Illegal Construction  
(The draft law was endorsed in principle with 57 votes in favor and no votes in opposition.)
- First Reading of the Draft Law on Apiculture  
(The draft law was endorsed in principle with 61 votes in favor and one vote in opposition.)
- Review of the recommendation of the Committee on Judicial, Legislative and Constitutional Framework Matters on the appointment of Ombudsperson and Principal Deputy Ombudsperson  
(See below the section entitled “The appointment of Ombudsperson and Principal Deputy Ombudsperson”.)
- Second Reading of the Draft Law on Pressure Equipment  
(The draft law was approved with 67 votes in favor and one vote in opposition.)
- Second Reading of the Draft Law on Amending the Law No. 2004/49 on Patents  
(The draft law was approved with 59 votes in favor and two votes in opposition.)
- Second Reading of the Draft Law on Road Traffic Safety  
(See the second paragraph under “Voting process”.)
- Review of the Kosovo 2005-2015 Draft Spatial Plan  
(The item was postponed.)
- Discussion on the European Commission report on Kosovo  
(The item was postponed.)

**The 20-23 December plenary session of the Assembly of Kosovo** was chaired by President of the Assembly Kolë Berisha (LDK) and co-chaired by Members of the Presidency Mr. Sabri Hamiti (LDK) and Mr. Gazmend Muhaxheri (ORA).

- Eighty-three, eighty-one, sixty-one and seventy-one Members of the Assembly were present, respectively, at the 20, 21, 22 and 23 December plenary session.
- Main agenda items of the 20-23 December plenary session:
  - Questions to the Government for oral answers
  - Second Reading of the Draft Law on Kosovo Consolidated Budget and Authorised Expenditures from 1 January – 31 December 2007  
(The draft law was approved with 65 votes in favor and seven votes in opposition.)
  - Second Reading of the Draft Law on Protection of Plants  
(The draft law was approved with 59 votes in favor and two votes in opposition.)
  - Second Reading of the Draft Law on Promotion of Breast-Feeding  
(The draft law was approved with 60 votes in favor and two votes in opposition.)
  - First Reading of the Draft Law on Prevention of Infectious Diseases  
(The draft law was endorsed in principle with 62 in favor and no votes in opposition.)
  - First Reading of the Draft Law on Amending the Law No. 2002/9 on Labor Inspectorate  
(The draft law was endorsed in principle with 41 votes in favor and 25 votes in opposition.)
  - First Reading of the Draft Law on Amending the Law No. 2003/4 on Liquidation and Reorganisation of Legal Persons in Bankruptcy  
(The draft law was endorsed in principle with 56 votes in favor and one vote in opposition.)
  - Review of the proposal with regard to the transfer of funds in the Ministry of Labor and Social Welfare  
(The proposal was approved by a majority of votes in favor and no votes in opposition.)
  - Debate on the postponement of the status settlement negotiations  
(The item was postponed as the Unity Team members were not present at the session and had declared that there was no need for such a debate as there were no further developments in the negotiation process.)

- Debate on the energy situation  
(Mr. Bajrush Xhemajli (PDK) delivered a statement, followed by Minister of Energy and Mines, parliamentary group leaders and several other Members of the Assembly.)

## 2. Parliamentary Practices and Proceedings of Assembly Sessions

### Agenda

- At the beginning of 27 October plenary session, Mr. Alush Gashi (LDK) proposed that the report of the Office of the Auditor-General (OAG) on the Assembly 2004-2005 factual findings should be removed from the agenda arguing that it was incomplete and did not offer any recommendations to the Assembly and should therefore be first completed and reviewed by the Budget Committee. Mr. Jakup Krasniqi stated that PDK parliamentary group was not in favor of removing the OAG report from the agenda and called on the LDK parliamentary group “to be in service of the rule of law and fight against corruption”. Ms. Gjylnaze Sylja (AAK) stated that the Assembly should be the example of transparency but added that Mr. Gashi’s proposal should be put to a vote as the OAG report did not contain any recommendations. Ms. Teuta Sahatqija (ORA) argued that according to the Rules of Procedure the agenda could be amended only upon a proposal made in writing prior to the beginning of the plenary session, adding that the agenda item in question could not be removed as there was no proposal submitted in writing. The President of the Assembly proposed a short break in order for the parliamentary group leaders to agree on the matter. But, Mr. Gashi insisted that his proposal should be put to a vote, adding that other parliamentary groups had the right to express their opinions. The President of the Assembly therefore called for a vote on Mr. Gashi’s proposal to remove the OAG report from the agenda of that day’s session, which was approved with 48 votes in favor, 30 votes in opposition and nine abstentions.
- At the beginning of the 14 December plenary session, Mr. Hajredin Kuçi proposed on behalf of PDK that the first reading of the Draft Law on the Memorial of former President of Kosovo Ibrahim Rugova should be removed from the agenda with the justification that PDK was in favor of a more inclusive law on former presidents rather than case by case laws. The President of the Assembly called for a vote on the PDK parliamentary group’s proposal, which was rejected with 35 votes in favor, 48 votes in opposition and six abstentions.  
*The new 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 (emphasis added) to the President an amendment to the agenda, which should be put to a vote.” The LDK and PDK parliamentary groups made verbal proposals, in accordance with the previous Rule,<sup>4</sup> which is no longer in force, and which allowed amendments to the agenda to be proposed verbally. Even after the revision of the agenda-setting provisions at the 1-2 June 2006 plenary session, Members of the Assembly continued to propose amendments to plenary session agendas in writing and verbally. New provisions, which require that the amendments to plenary session agendas are proposed in writing, should be consistently adhered to in order to avoid confusion or discontent among Members of the Assembly.*

### Urgent matters

- At the beginning of 19 October plenary session, Mr. Jakup Krasniqi (PDK) proposed that the Assembly should *urgently* issue a declaration condemning the holding of the referendum on the constitutions of Serbia in the territory of Kosovo, which included Kosovo as a part of Serbia in

<sup>4</sup> The previous Rule 23.1 provided that “[a]t the end of each session the President of the Assembly or another Member of the Presidency shall propose the agenda for the next session. This proposal shall be deemed approved, unless one or more parliamentary groups or . . . six Members object to it.”

its preamble. All other parliamentary group leaders supported Mr. Krasniqi's proposal. The President of the Assembly therefore called the Assembly to vote on Mr. Krasniqi's proposal, which was approved by a majority of votes in favor, and he called on parliamentary group leaders to draft a text of the declaration which would be formally approved by the Assembly later during the session.<sup>5</sup>

*Rule 29.1 provides that "[a]t any plenary session, any Member, in agreement with the President of the Assembly, may propose that the Assembly should immediately consider an urgent matter. If the President of the Assembly is satisfied that the matter merits the Assembly's immediate attention, he/she shall permit the Member concerned to put his proposal to the Assembly, and then put it to a vote." Thus, it was within the President of the Assembly's discretion to allow Mr. Krasniqi to put forward his proposal as well as to call the Assembly to vote on it.*

### Procedural motions

- At its 16 October meeting, the Presidency discussed a proposal submitted by seven Members of the Assembly<sup>6</sup>, on 10 October, calling the Assembly to organise a referendum on the independence and sovereignty of Kosovo. In their proposal, the Members reasoned that the "affirmation of people's will through a referendum would avoid any discontent in and outside of Kosovo as well as an imposed, arbitrary or unilateral decision with regard to Kosovo's status." The Presidency rejected the proposal with the justification that the referendum on independence could not be organised as there was no legislation on referendum and that it was outside Assembly's competencies. On 19 October, the Members in question submitted to the Committee on Judicial, Legislative and Constitutional Framework Matters a procedural motion claiming that the Presidency had violated Rule 23 in that it did not include their proposal in the agenda of the 19-20 October plenary session. At its 6 November meeting, the Committee concluded that there had been no violation of Rule 23 in that the proposal of the Members in question was not included in the agenda of the 19-20 October plenary session.

*Under Chapter V of the Constitutional Framework, which defines the responsibilities of the Provisional Institutions of Self-Government, the Assembly of Kosovo does not have the authority to call for a referendum. Moreover, the Constitutional Framework does not recognise the legal institution of referendum at all. Therefore, the Presidency's decision not to include the proposal in question for discussion in the Assembly and the conclusion of the Committee on Judicial, Legislative and Constitutional Framework Matters were in compliance with the Constitutional Framework.*

- At its 6 November meeting, the Committee on Judicial, Legislative and Constitutional Framework Matters discussed a motion submitted by Mr. Ferid Agani, on 11 September, claiming that Rule 29.2 had been violated at the 6 September plenary session in that the For Integration's proposal for adoption of a Declaration on the role of the Assembly in the process of status settlement was not put to a vote *as an urgent matter*. The Committee concluded that there had been no violation of Rule 29 in that the For Integration's proposal was not put to a vote at the 6 September plenary session.

*Under Rule 29.2, which provides that "[t]he Assembly shall decide on the proposals of parliamentary groups regarding urgent matters", the Assembly should have been given an opportunity to vote upon For Integration's proposal to adopt a declaration in question.*

- On 23 November, AAK parliamentary group leader, Ms. Gjylnaze Sylja, submitted to the Committee on Judicial, Legislative and Constitutional Framework Matters a procedural motion claiming that the Presidency had violated Rule 6.5 in that it did not include her parliamentary group's proposal on the adoption of a draft resolution on Kosovan diaspora in a plenary session

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<sup>5</sup> See below under "Declaration against the holding of the referendum on the constitution of Serbia in Kosovo", for more details.

<sup>6</sup> Mr. Emrush Xhemajli (LPK), Mr. Ferid Agani (PD/For Integration), Mr. Gjergj Dedaj (PLK/For Integration), Mr. Xhelal Canziba (PDK), Mr. Emin Krasniqi (PDK), Mr. Xhevat Bislimi (PDK) and Mr. Mazllom Kumnova (AAK).

agenda.<sup>7</sup> At its 4 December meeting, the Committee discussed the motion and concluded that the Presidency had violated Rule 6.5.

*Rule 6.5 provides that “[t]he Presidency shall ensure that any substantial motion supported by six or more deputies of the Assembly is placed on the agenda of the plenary session of the Assembly within three working weeks of securing this degree of support.” The Presidency, however, has not yet included the AAK proposal in a plenary session agenda. Therefore, the conclusion of the Committee on Judicial, Legislative and Constitutional Framework Matters was in compliance with Rule 6.5.*

*Rule 30.8 provides that “[a] motion to challenge the application of the Rules of Procedure can be made by an individual Member. This motion is submitted to the Committee on Judicial, Legislative and Constitutional Framework Matters, which shall express its recommendation in the first Assembly plenary session to follow (emphasis added).” The Committee has only distributed in writing its conclusions with regard to above-mentioned procedural motions to Assembly Members’ mailboxes instead of presenting them at the first plenary session following the submission of each motion to the Committee, as required by Rule 30.8. Several plenary sessions have already passed and the Committee has not yet presented its conclusions at a plenary session. Nor was the Committee’s conclusion with regard to Mr. Emrush Xhemajli’s (LPK) procedural motion, submitted to the Committee on 23 June 2006, ever presented at a plenary session.<sup>8</sup> Previous monitoring report has noted a case when the Committee on Judicial, Legislative and Constitutional Framework Matters had presented verbally its recommendation with regard to a procedural motion at the plenary session.<sup>9</sup> The Committee on Judicial, Legislative and Constitutional Framework Matters should therefore consistently adhere to Rule 30.8.*

#### Declaration against the holding of the referendum on the constitution of Serbia in Kosovo

- During the 19 October plenary session, Mr. Jakup Krasniqi read aloud the text of the declaration condemning the holding of the referendum on the constitution of Serbia in Kosovo, which was agreed upon by all parliamentary group leaders. The text of the declaration reads as follows “(a) the Assembly of Kosovo considers this act of Serbia as a constitutional aggression against Kosovo; (b) the Assembly of Kosovo expects the European Union and Contact Group countries to treat it as a unilateral act of Serbia without an effect on Kosovo’s political status; (c) the referendum of Serbia in Kosovo is illegal to Kosovo and has no legal effect. Holding of this referendum in Kosovo causes insecurity among citizens of Kosovo. We call on Serb citizens of Kosovo to become integrated in civic, political, public and institutional life in Kosovo; (d) the Assembly of Kosovo is confident that a possible postponement of the recognition of Kosovo’s independence and sovereignty would complicate democratic processes in Kosovo and region. The people of Kosovo are sovereign and should decide about its own fate.” The President of the Assembly called for a formal vote on the declaration, which was approved by a majority of votes in favour and no votes in opposition.

*This was in compliance with Rule 2, which states that a declaration is “a general policy statement voted upon and approved by the Assembly (emphasis added).”*

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<sup>7</sup> On 6 July, the AAK parliamentary group submitted to the Presidency a request to include in a plenary session agenda the proposal on adoption of a draft resolution on Kosovan diaspora. At its 26 July meeting, the Presidency discussed the AAK request and decided to postpone it for a later stage in order to allow more time for consultation between parliamentary groups, but the proposal had not been discussed thereafter. See Pillar III (OSCE) Report 05/2006 on the Monitoring of the Assembly of Kosovo, the section entitled “Agenda”, for more details.

<sup>8</sup> See Pillar III (OSCE) reports 05/2006 and 06/2006 on the monitoring of the Assembly of Kosovo, sections entitled “Procedural motions.”

<sup>9</sup> At the 19 December 2005 plenary session, Mr. Hydajet Hyseni (PDK), Chairperson of the Committee on Judicial, Legislative and Constitutional Framework Matters, presented the recommendation of the Committee with regard to a procedural motion submitted by ORA parliamentary group. See Pillar III (OSCE) Report 10/2005 on the monitoring of the Assembly of Kosovo.

### Interpellation

- At the 20 October plenary session, the Assembly discussed the ORA interpellation motion for the Minister of Health with regard to the state of affairs in the health system of Kosovo. The President of the Assembly reminded Members that, under the new Rule 25, the parliamentary group proposing the interpellation debate had the right to open the debate with a ten-minute statement and to close the debate with a five-minute statement, while the time allocation throughout the remainder of the debate would reflect each parliamentary group's representation in the Assembly. Ms. Fatmire Mulhaxha-Kollçaku (ORA) delivered an opening statement criticising the Government for causing a crisis in the health system and not being able to offer qualitative medical services to patients and properly handle the strike of medical staff. Minister of Health Sadik Idrizi reported on the situation of health system in Kosovo, stating that the infrastructure in public medical institutions had improved in the past couple of years, decentralisation of public medical institutions had been completed and that the licensing of private medical institutions had already started. He continued that he acknowledged that there were still difficulties in the health system, such as the lack of some medicine and small budget allocated to the Ministry of Health, which does not allow the Ministry to increase the salaries of medical staff. Several Members from various parliamentary groups made statements before the debate was concluded by Ms. Mulhaxha- Kollçaku.

*This was in compliance with the new Rule 25.6.*

### Distribution of Documents

- The Draft Law on Value Added Tax was distributed to Members of the Assembly on 28 September. Thus, the draft law was distributed 16 working days prior to its first reading at the 20 October plenary session. The Draft Law on Transformation of Private Real Estate Possessors into Owners was distributed on 12 October; the Draft Law on Notary was distributed on 18 October; and the Draft Labor Law was distributed on 19 October. Thus, the draft laws were distributed, respectively, 23, 17 and 16 working days prior to their first reading at the 16 November plenary session. The Draft Law on Kosovo Consolidated Budget and Authorised Expenditures from 1 January – 31 December 2007 was distributed on 13 November. Thus, the draft law was distributed twelve working days prior to its first reading at the 30 November plenary session. The Draft Law on the Memorial of former President of Kosovo Ibrahim Rugova was distributed on 27 October; the Draft Law on State Aid was distributed on 10 November; the Draft Law on Apiculture was distributed on 13 November; and the Draft Law on Illegal Construction was distributed on 15 November. Thus, the draft laws were distributed, respectively, 33, 23, 20 and 18 working days prior to their scheduled first reading at the 14 December plenary session. The Draft Law on Prevention of Infectious Diseases was distributed on 30 October; the Draft Law on Amending the Law No. 2002/9 on Labor Inspectorate was distributed on 24 November; and the Draft Law on Amending the Law No. 2003/4 on Liquidation and Reorganisation of Legal Persons in Bankruptcy was distributed on 27 November. Thus, the draft laws were distributed, respectively, 38, 19 and 16 working days prior to their first reading at the 22 December plenary session.

*This was not 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. With the exception of the Draft Law on Kosovo Consolidated Budget and Authorised Expenditures from 1 January – 31 December 2007, all other draft laws during the reporting period were reviewed in first reading after three working weeks from the dates of their distribution. The Assembly is still having difficulties reviewing incoming draft legislation according to the timeframe set forth in its procedural rules, despite the fact that it has begun to hold plenary sessions more frequently.*

### Legislative process

- The Draft Law on Internal Audit was approved six months after its first reading on 17 April. The Draft Law on Pressure Equipment and the Draft Law on Amending the Law No. 2004/49 on Patents were approved over two months after their first reading on 9 October. The Draft Law on Road Traffic Safety was scheduled for approval eight months after its first reading on 16 March. The Draft Law on Promotion of Breast-Feeding was approved well over six months after its first reading on 1 June. The Draft Law on Protection of Plants was approved well over three months after its first reading on 31 August. The Draft Law on Kosovo Consolidated Budget and Authorised Expenditures from 1 January – 31 December 2007 was approved less than one month after its first reading on 30 November.

*Rule 35.6 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 (emphasis added), unless an extension is approved by the Assembly.” The Assembly committees submitted their recommendations to most of the above-mentioned draft laws considerably exceeding the deadline set forth in Rule 35.6, without asking the Assembly to extend the deadline. The Assembly committees could consider accelerating the review of draft legislation in order to meet the deadline set forth in the Rule above. The delays in reviewing and approving incoming draft legislation emphasize the need for a better planning of the legislative agenda between the Assembly and Government.*

### Voting Process

- On 27 October, 17 November, 18 December and 20 December, the Members of the Assembly from opposition parties walked out from the plenary hall leaving the sessions without a quorum. In each case, the President of the Assembly closed the plenary sessions due to the absence of a quorum. A quorum was present for all voting at the plenary sessions under review.  
*This was in compliance with Section 9.1.32 of the Constitutional Framework and Rule 31.1, which provide that a majority of the Members of the Assembly must be present in order for decisions to be taken.*
- On 18 December, during the second reading of the Draft Law on Road Traffic Safety, Mr. Ibush Jonuzi, the Chairperson of the Functional Committee (Committee for Economy, Trade, Industry, Energy, Transport and Telecommunications), explained that there were 242 amendments proposed to the draft law in question, which had been divided by the functional committee into four groups: (I) 182 amendments proposed by the functional committee, (II) 49 amendments jointly proposed by the functional committee and Budget Committee, (III) ten amendments proposed by Ramadan Kelmendi (LDK) and (IV) the last amendment No. 242, which included 116 sub-amendments of technical nature. He further proposed that the Assembly should vote *en bloc* on each group of amendments in order to save time. Minister of Transport and Telecommunications Qemajl Ahmeti stated that he agreed with the amendments proposed by the respective committees as they were not changing the substance of the draft law in question. Mr. Alush Gashi (LDK) stated his parliamentary group supported first two groups of amendments. Ms. Gjylnaze Sylja likewise stated that AAK parliamentary group supported first two groups of amendments and proposed that those two groups be voted *en bloc*. Ms. Teuta Sahatqija (ORA) stated that her parliamentary group did not support the proposal to vote *en bloc* on amendments and proposed that all amendments should be voted upon individually. Mr. Hydajet Hyseni (PDK) likewise stated that he disagreed with the proposal to vote *en bloc* on amendments reasoning that it would change the methodology of reviewing legislation in second readings. Ms. Nekibe Kelmendi (LDK) stated that the Rules of Procedure did not prohibit *en bloc* voting on amendments and that the Assembly should only decide with a formal vote on whether to vote *en bloc*. Mr. Ramadan Kelmendi (LDK) stated that first two groups of amendments could be voted *en bloc* but proposed that his amendments should be voted upon individually, adding that he wished to justify them. Mr. Nazim Jashari (ORA) argued that the

amendments could not be voted *en bloc* as they were substantially different from one another. On behalf of the PDK parliamentary group, Mr. Jakup Krasniqi proposed that either the draft law should be returned to the sponsor or amendments should be voted upon individually. The President of the Assembly proceeded calling for a vote on the proposal to vote *en bloc* on the first two groups of amendments, which was approved by a majority of votes. The PDK parliamentary group then walked out from the plenary hall leaving the session without a quorum. In the absence of a quorum, the President of the Assembly closed the plenary session and the second reading of the Draft Law in question was postponed.

*Rule 37.2 provides that “[a]mendments shall be considered individually in the order in which they arise in the text of the draft law, unless a group of amendments have an impact on other articles (emphasis added). In such case they can be considered where they first arise in the text, and may be the subject of a single vote. It shall be for the President of the Assembly to decide where this applies. The lead committee shall also determine the order in which amendments should be considered pursuant to their substantial nature when they arise at the same place in the text.”* The argument that was made during the second reading of the draft law in question was not that the amendments all have an impact on each other, but that individual vote on such a large number of amendments would consume a lot of time.

*Rule 61 provides that “[d]epartures from the provisions of the Rules of Procedure may be decided upon the decision of two-thirds of the Members of the Assembly present, unless such a departure is incompatible with provisions of the Constitutional Framework.”* A decision to vote upon amendments *en bloc* would not violate any provision of the Constitutional Framework. The Assembly could therefore take a decision to depart temporarily from Rule 37.2, provided that the proposal receives the support of two-thirds of the Assembly Members present as required by Rule 61.

*Section 9.1.36 of the Constitutional Framework and Rule 37.1 provide that “[t]he Assembly shall in the second reading consider a draft law together with any amendments proposed by the committee(s) or by individual (emphasis added) or group of Members of the Assembly or by the Government. The sponsor of the amendment is entitled to justify his/her proposal upon request.”* Mr. Ramadan Kelmendi had therefore the right to ask for his amendments to be voted upon individually and justify them.

#### Monitoring of the implementation of laws

- On 11 October, the Committee for Health, Labor and Social Welfare submitted to the Presidency a report on the monitoring of the implementation of the Law on Health and requested that the report should be included for debate in the agenda of the next plenary session.

At the 16 October Presidency meeting, when the Committee report was discussed, Mr. Sabri Hamiti (LDK) stated that the Committee should discuss the report with the Minister of Health at one of its meetings, adding that there was no need to discuss the report in the plenary session. Mr. Mahir Yağcilar (6+/KDTP) likewise stated that there was no need to discuss the report in the plenary session, adding that it was sufficient if the report would be only distributed to Members of the Assembly. Mr. Xhavit Haliti (PDK) stated that there was no reason to debate on the report in the plenary session, arguing that the Assembly should not debate on the work of one of its bodies. The Presidency referred the report back to the Committee for Health, Labor and Social Welfare.

On 20 October, at the continuation of the plenary session that began on 19 October, Mr. Alush Gashi (LDK) stated that his parliamentary group welcomed the report on the monitoring of the implementation of the Law on Health submitted by the Committee for Health, Labor and Social Welfare, insisting that the report should be distributed to all Members of the Assembly and debated in a plenary session. The Chairperson, Mr. Xhavit Haliti (PDK), stated that the Presidency believed that “it is not right to debate ourselves based on a report of our committee, but that the debate should be held in relation to the Government”.

At its 9 November meeting, the Presidency decided to include the report in question in the agenda of the next plenary session scheduled to be held on 16 November.

On 20 November, at the continuation of the plenary session that began on 16 November, the Assembly discussed the report on the monitoring of the implementation of the Law on Health and approved the recommendations made by the Committee for Health, Labor and Social Welfare with a majority of votes in favor.

*Rule 53.1 provides that “[e]ach committee shall, within the scope of its authority, have the right to monitor the implementation of a law by the Government or respective ministry.” Rule 53.1 furthermore specifies that “[i]n order to fulfil the authority given above, the committees shall: (a) make recommendations for measures to be taken in concrete situations, among others, and (d) report in writing and orally once a year at an Assembly plenary session (emphasis added).” This was the first report on the monitoring of the implementation of a law prepared by the Committee for Health, Labor and Social Welfare during 2006. No other committee reported to the Assembly during 2006 on the implementation of laws within their scope of authority.*

*The Presidency’s decision of 16 October denying the Committee the right to report orally to the Assembly with regard to its report on the monitoring of the implementation of the Law on Health was not in compliance with Rule 53.1. Later discussion of the report and approval of the recommendations of the Committee for Health, Labor and Social Welfare on 20 November was in compliance with Rule 53.1.*

#### Establishment of *ad hoc* Investigative Committee

- After the Auditor-General’s (OAG) report on the Assembly 2004-2005 factual findings had been removed from the plenary session agenda on 27 October, at the LDK parliamentary group request, PDK and ORA parliamentary groups walked out from the plenary hall as a sign of protest and left the session without a quorum. As PDK and ORA parliamentary groups refused to participate in the work of the Assembly unless the OAG report was reintroduced for discussion in a plenary session, the Presidency met on 2 November and decided that the 27 October plenary session with the same agenda should be continued on 3 November. At the beginning of the session on 3 November, the President of the Assembly announced that the Presidency had agreed a day earlier that a vote on the establishment of an *ad hoc* Investigative Committee should be called after the conclusion of the debate on the OAG report. Mr. Alush Gashi (LDK) stated that the Budget Committee or a separate body established by the Assembly could verify the OAG findings, adding that LDK was committed not to interfere in the investigations carried out by the judiciary. Mr. Jakup Krasniqi (PDK) stated that his parliamentary group had requested two years ago the establishment of an *ad hoc* Investigative Committee to look into mismanagement of public funds in the institutions but that the request had been outvoted by the governing coalition, adding that such governance could hardly guarantee economic development or social welfare for its citizens. He further stated that the OAG report had confirmed the abuse of public funds in the Assembly and proposed again that an *ad hoc* Investigative Committee should be established by the Assembly to verify the OAG findings. Mr. Naim Maloku (AAK) stated that the OAG report had shown that in some cases the Assembly budget was used for personal purposes and that AAK condemned those cases. He added that his parliamentary group was committed to good governance and effective management of public funds and would support any initiative which contributes to better functioning of the Assembly. Ms. Teuta Sahatqija (ORA) proposed that the Assembly should establish an *ad hoc* Investigative Committee to inquire into all cases of financial mismanagement and recommend the procedure for prevention of similar cases in the future, submit the OAG report to the public prosecutor, request an auditing of the Assembly from 2002 to 2005, and that the Assembly funds used for personal purposes should be returned to the Assembly budget. Mr. Numan Balić (For Integration) likewise proposed the establishment of an *ad hoc* Investigative Committee to verify the OAG findings. After the statements on behalf

of parliamentary groups had been delivered and all Members of the Assembly wishing to speak had done so, the President of the Assembly called for a vote on the establishment of the ad hoc Investigative Committee to verify the OAG findings within the deadline expiring on 31 December 2006, which was approved by a majority of votes in favor. The President of the Assembly then called a short break for the parliamentary group leaders to propose their members to the Investigative Committee. After the break, the President of the Assembly announced that parliamentary group leaders had agreed upon the following composition: Mr. Ferid Agani (For Integration/PD), Committee Chair, Mr. Lutfi Zharku (LDK), first vice-chair, Mr. Husnija Bešković (6+/Vakat), second vice-chair, Mr. Naser Osmani (LDK), Mr. Ali Sadriu (LDK), Ms. Besa Gaxherri (LDK), Mr. Shaban Halimi (LDK), Mr. Nimon Alimusaj (LDK), Mr. Gazmend Muhaxheri (ORA), Mr. Mazllom Kumnova (AAK), Mr. Gani Koci (PDK), Mr. Afrim Arzuallxhiu (PDK), Mr. Safete Hadërgjonaj (PDK) and one SLKM member<sup>10</sup>, and called for a formal vote on the composition of the Investigative Committee, which was approved by a majority of votes in favor.

*The ad hoc Investigative Committee was established in compliance with Rule 50, which provides that “[t]he Assembly may establish an ad hoc committee . . . to investigate a specific issue. When the Assembly decides to establish such a committee, its decision shall include the composition, procedures and timeframe of the ad hoc Committee.”*

#### Telecommunications Regulatory Agency 2005 work report

- On 17 November 2006, at the continuation of the plenary session that began on 16 November, the Assembly debated on 2005 work report of the Telecommunications Regulatory Agency (TRA). At the beginning of the debate, Mr. Anton Berisha, TRA Head, presented the report to the Assembly, followed by Mr. Ibush Jonuzi, the Chairperson of the Committee for Economy, Trade, Industry, Energy, Transport and Telecommunications (Functional Committee), who made few recommendations with regard to the TRA work. Mr. Alush Gashi stated that his parliamentary group welcomed the TRA report and called on the Government to offer support to TRA in carrying out its duties effectively. In his statement, Mr. Jakup Krasniqi (PDK) criticized TRA for not being able to ensure qualitative services to the citizens and stop the activities of illegal mobile telephony operators in Kosovo. He further proposed that the Assembly should remove the TRA Board. Ms. Gjylnaze Sylja (AAK) stated that her parliamentary group supported the TRA as well as the recommendations of the Functional Committee. Mr. Genc Gorani (ORA) encouraged the TRA to intensify its activities against illegal mobile telephone operators and proposed that the TRA should report more frequently to the Functional Committee. Mr. Gani Koci (PDK) proposed that the Assembly should vote on the removal of the TRA Board. Mr. Sabri Hamiti (LDK) countered that the Law on Telecommunications stipulated different procedures for the removal of TRA officials, according to which it was the Minister of Transport and Telecommunications who recommends the removal of a TRA Board member to the Government, which afterwards makes such a proposal to the Assembly for approval. He added that those Members of the Assembly who were not satisfied with such a removal formula could initiate a procedure to amend the Law on Telecommunications. Ms. Sylja stated that according to sections 7.5-6 of the Law on Telecommunications, the TRA Board itself had the authority to remove a Member upon a two-thirds vote of the Board members, which should subsequently be subject to review by the Assembly. Mr. Xhavit Haliti (PDK) countered that the Assembly had the right to remove the TRA Board as the Assembly had initially endorsed the appointment of Board members. Mr. Krasniqi insisted again that the PDK proposal on the removal of the TRA Board should be voted upon by the Assembly. The President of the Assembly proceeded calling first for a vote on the recommendations of the Functional Committee, which were approved with 46 votes in favor and 15 votes in opposition. He then called for a vote on the PDK proposal to remove the TRA Board, which was rejected with 21

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<sup>10</sup> Ms. Snežana Milić was later proposed by SLKM to serve on the Investigative Committee.

votes in favor and 24 votes in opposition. At that point, the PDK parliamentary group walked out of the plenary hall.

*Sections 7.5-6 of the Law on Telecommunications stipulate that “upon a two-thirds vote of the members, the Board shall remove a member on the grounds of professional incompetence or misconduct. Any removal pursuant to paragraph 5 shall be subject to review and agreement of the Assembly.” The Law on Telecommunications however does not regulate the removal of the entire TRA Board. According to the sections above, the initiative for the removal of even one TRA Board member must come from the Board itself and then be reviewed and agreed upon by the Assembly.*

*Rule 33 of the Assembly Rules of Procedure provides that “a draft law may be introduced for discussion to the Assembly by . . . a Member of the Assembly, supported by five Members that have signed the draft law or a parliamentary group,” among others. The PDK parliamentary group has the right to propose amendments to the Law on Telecommunications in order to address the issues raised above.*

#### The appointment of Ombudsperson and Principal Deputy Ombudsperson

- On 16 February 2006, the Special Representative of the UN Secretary General (SRSG) promulgated Regulation 2006/6, On the Ombudsperson Institution in Kosovo, granting the Assembly of Kosovo the authority to appoint the Ombudsperson and Principal Deputy Ombudsperson as well as three other Deputy Ombudspersons. Pursuant to the promulgation of the regulation in question, the Assembly Committee for Judicial, Legislative and Constitutional Framework Matters drafted the procedural rules on the appointment of Ombudsperson and Principal Deputy Ombudsperson, which were adopted by the Assembly at the 15 June 2006 plenary session. Following the adoption of the procedural rules, the Committee for Judicial, Legislative and Constitutional Framework Matters established the Recruitment Panel<sup>11</sup> to process the applications and recommend nominations for Ombudsperson and Principal Deputy Ombudsperson to the Assembly for selection.

On 17 November, at the continuation of the plenary session that began on 16 November, Mr. Sadudin Berisha, first vice-chairperson of the Committee for Judicial, Legislative and Constitutional Framework Matters, reported to the Assembly on the procedure and work of the Recruitment Panel with regard to the appointment of Ombudsperson and Principal Deputy Ombudsperson. Mr. Berisha further announced that the Panel unanimously proposed the following nominations for the Ombudsperson – Mr. Hilmi Jashari, Mr. Ibrahim Makolli and Ms. Diana Toska, and for the Principal Deputy Ombudsperson – Mr. Palë Bala, Mr. Ljubinko Todorović and Mr. Habit Hajredini. He continued that the voting should be conducted by secret ballot and that if neither nominee received an absolute majority of votes (at least 61 votes) in any of the two rounds, the vacancy should be re-advertised. Ms. Zlatica Kujundžić (Serb Democratic Party/ SDS) asked the Assembly to postpone voting on the appointment of the Principal Deputy Ombudsperson for the next plenary session in order to allow her party more time for consultations. LDK, AAK, ORA, 6+ and For Integration parliamentary group leaders however proposed that the two appointments should be postponed for the next plenary session as the PDK parliamentary group was not present at the session. So, the Assembly postponed the item for the next plenary session.

At the 14 December plenary session, Mr. Berisha presented again the nominations recommended by the Recruitment Panel and explained the procedure for the appointment of Ombudsperson and Principal Deputy Ombudsperson. The Assembly then proceeded to vote on the nominations by secret ballot in compliance with the procedure. In the first round of voting, the result for Ombudsperson was as follows: Mr. Hilmi Jashari – 6 votes, Mr. Ibrahim Makolli – 41 votes and Ms. Diana Toska – 30 votes, and two ballots were announced as “invalid”, presumably

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<sup>11</sup> Members of the Recruitment Panel were: Ms. Nekibe Kelmendi (Chair/LDK), Ms. Nergjivane Dauti (PDK), Ms. Gjylnaze Sylja (AAK), Mr. Nazim Jashari (ORA), Mr. Dragiša Krstović (SLKM), Mr. Husnija Bešković (6+) and Mr. Numan Balić (For Integration).

abstentions. The voting result for Principal Deputy Ombudsperson was as follows: Mr. Palë Bala – 27 votes, Mr. Habit Hajredini – 17 votes, and Mr. Ljubinko Todorović – 26 votes. After the voting result of the first round had been announced, the Chairperson gave the floor to Mr. Berisha to further explain the procedure. Mr. Berisha explained that as neither nominee received the absolute majority of votes in the first round, the Assembly should proceed to the second round of voting with two nominees for each post, who received the highest number of votes. In the second round of voting, the result for Ombudsperson was as follows: Mr. Ibrahim Makolli – 41 votes and Ms. Diana Toska – 34 votes, and three ballots were announced as “invalid”. The voting result for Principal Deputy Ombudsperson was as follows: Mr. Palë Bala – 37 votes and Mr. Ljubinko Todorović – 32 votes, and nine ballots were announced as “invalid”.

After the result of the second round of voting had been announced, some Members of the Assembly pointed out that there was a discrepancy between UNMIK Regulation 2006/6 and the procedural rules approved by the Assembly with regard to the number of votes required for the appointments to be valid. Mr. Berisha explained that Section 6.2 of Regulation 2006/6 stipulated that the Ombudsperson and Principal Deputy Ombudsperson shall be appointed by the Assembly through a vote having the support of majority of Members of the Assembly meaning at least 61 votes, but, he added, that procedural rules approved by the Assembly stipulated that a nominee for Ombudsperson, respectively Principal Deputy Ombudsperson, with the highest number of votes received in the second round shall be considered as appointed. Mr. Berisha further stated that the Regulation had precedence over procedural rules approved by the Assembly, adding that therefore the appointments could not be considered as valid. Mr. Hydajet Hyseni (PDK), the Chairperson of the Committee for Judicial, Legislative and Constitutional Framework Matters, stated that according to the legal principle – the new act derogates the old act – procedural rules approved by the Assembly take precedence over Regulation 2006/6 as these rules were approved later, adding that the Ombudsperson and Principal Deputy Ombudsperson should therefore be considered as appointed. On behalf of the LDK parliamentary group, Mr. Alush Gashi (LDK) proposed that the Presidency should clarify such a discrepancy with the UNMIK Office of The Legal Advisor and inform the Assembly accordingly. The Chairperson then called for a vote on Mr. Gashi’s proposal, which was approved by a majority of votes in favor.<sup>12</sup>

*Section 6.2 of Regulation 2006/6, On the Ombudsperson Institution, stipulates that the Ombudsperson and Principal Deputy Ombudsperson shall be appointed by the Assembly of Kosovo according to open and transparent procedures by a vote having the support of a majority of the Members of the Assembly, which means the support of at least 61 Members of the Assembly. On the other hand, according to the procedural rules on the appointment of Ombudsperson and Principal Deputy Ombudsperson approved by the Assembly, the Ombudsperson and Principal Deputy Ombudsperson shall be appointed by a simple majority of Members of the Assembly. The legal principal - *lex posterior derogat lex anterior (the new act derogates the old act)*, which regulates the hierarchy of legal acts, applies to the acts of the same legally binding effect. In this case, the procedural rules approved by the Assembly represent a sub-legal act as they derive from Regulation 2006/6 itself. The Regulation therefore takes precedence over the rules in question. As a result, the vote for the appointment of Ombudsperson and Principal Deputy Ombudsperson that took place at the 14 December plenary session cannot be considered valid as neither nominee received the support of the majority of Members of the Assembly as required by the above-referenced section.*

#### Questions to the Government for oral answers

- At the 19-20 October plenary session, four out of five questions received responses. At the 27 October plenary session, all questions were postponed for the next plenary session due to the absence of a quorum. At the 16/17/20 November plenary session, five out of six questions

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<sup>12</sup> The SRSG provided a legal interpretation to the Presidency outside of this reporting period and will be covered in the next monitoring report.

received responses. At the 30 November plenary session, three out of five questions received responses. At the 14/18 December plenary session, two out of four questions received responses. At the 20-23 December plenary session, one out of three questions received responses. The President of the Assembly responded that questions that received no response within two plenary sessions would be published in the bulletin of the Assembly. At the 19-20 October and 30 November plenary sessions, Mr. Hydajet Hyseni (PDK) raised again the issue of a question that he had submitted to the Minister of Local Government Administration a long time ago, which had not yet received a response, and insisted that he should receive a response. At the 30 November plenary session, Minister of Local Government Administration Lutfi Haziri finally responded to Mr. Hyseni's question.

*The question period was carried out by the Assembly in compliance with the new Rule 26 on "Questions to the Government for oral answers", which provides that the agenda of each session shall include a period 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.*

*Mr. Hyseni had first submitted his question on 8 August 2005, when the previous Rule 26 on questions to the Government for oral answers was in force. On 13 June, after the revision of Rule 26 at the 1-2 June 2006 plenary session, Mr. Hyseni re-submitted his question, but received no response until the 30 November plenary session. Under new 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." The Assembly of Kosovo bulletin does not contain a section on questions that have been submitted to the Government and therefore no pending questions have ever been published. The publication of questions of Members that had not received responses in the Assembly bulletin could raise the accountability of the Government in relation to the Assembly.<sup>13</sup>*

### **3. Equal Access and Participation of Communities**

- On 4 December 2006, Mr. Bislim Hoti (IRDK/Egyptian) sent a letter to the Presidency informing it that he would serve on the Presidency from 1 January 2007, according to the agreement reached by IRDK, KDTP and Vakati in December 2004 with regard to the representation of non-Albanian and non-Serbian communities in the Presidency.<sup>14</sup> At the 11 December meeting, when the Presidency discussed Mr. Hoti's letter, Mr. Ramë Buja (PDK) stated that Mr. Hoti could not be a member of the Presidency as he was a member of the AAK parliamentary group. Mr. Sabri Hamiti (LDK) reasoned that since Mr. Hoti was not a member of the 6+ parliamentary group, he could not be a member of the Presidency, and that other Members of the Assembly who were not part of the KDTP, Vakati and IRDK agreement could have objections. Mr. Gazmend Muhaxheri (ORA) countered that Members of the Assembly belonging to non-Albanian and non-Serbian communities had the right to decide on their representation in the Presidency. He reasoned that the agreement reached by KDTP, Vakati and IRDK should be respected as they represented the majority of Members of non-Albanian and non-Serbian communities, respectively eight out of twelve. In the end of the discussion, some members of the Presidency stated that the issue needed to be further clarified.

At the beginning of the 14 December plenary session, Mr. Xhevdet Neziraj (IRDK/Egyptian) asked the President of the Assembly to explain why the issue of the representation of Mr. Bislim Hoti (IRDK/Egyptian) in the Presidency had not been included in the agenda of that day's

<sup>13</sup> See Pillar III (OSCE) reports 03/2006, 04/2006, 05/2006 and 06/2006 on the Monitoring of the Assembly of Kosovo, sections entitled "Questions to the Government for oral answers."

<sup>14</sup> On 2 December 2004, KDTP (Turkish party), Vakati (Bosniac party) and IRDK (Egyptian party), representing eight out of twelve Members of the Assembly from non-Albanian and non-Serb communities, had reached an agreement according to which they would be represented in the Presidency based on a yearly rotation plan, under which Mr. Džezair Murati (6+/Vakati) would serve on the Presidency during the first year, followed by Mr. Mahir Yağcılar (6+/KDTP) during the second year and Mr. Bislim Hoti (IRDK) during the third year. As agreed, Mr. Murati had already served on the Presidency in 2005 and Mr. Yağcılar had been serving from January 2006.

plenary session, adding that according to the agreement reached by Vakaf, KDTP and IRDK in December 2004, Mr. Hoti had the right to serve on the Presidency during the third year of its mandate. The President of the Assembly responded that the issue was still in procedure. Mr. Neziri argued that according to the Constitutional Framework, Members belonging to non-Albanian and non-Serbian communities had the right to decide on their representation in the Presidency. Mr. Hajredin Kuçi (PDK) argued that the representation of Mr. Hoti in the Presidency would mean double representation of the AAK parliamentary group as IRDK was part of this group. Mr. Bujar Dugolli (AAK) countered that according to the Constitutional Framework Mr. Hoti had the right to be represented in the Presidency as a Member of non-Albanian and non-Serbian communities, regardless of the fact that he was a member of the AAK parliamentary group. Ms. Teuta Sahatqija (ORA) likewise stated that non-Albanian and non-Serbian communities had the right to decide among themselves who would represent them in the Presidency without any interference. Mr. Kuçi argued again that "the Assembly functioned based on two groups - parliamentary groups and committees, and not ethnic, religious or any other groups". Ms. Nekibe Kelmendi (LDK) stated that the Assembly should respect the agreement reached by three largest non-Albanian and non-Serbian communities and not interfere in it. The President of the Assembly reiterated that the issue was still in procedure and would be decided upon soon.

At its 18 December meeting, the Presidency discussed again the issue of the representation of Mr. Hoti in the Presidency and decided to seek a legal interpretation on the matter from the UNMIK Office of The Legal Advisor.<sup>15</sup>

*Section 9.1.7 (f) of the Constitutional Framework provides that "[o]ne Member of the Presidency shall be appointed from among the members of the Assembly belonging to parties having declared themselves representative of a non-Kosovo Albanian and non-Kosovo Serb community. The method for appointing this latter member shall be determined by members of the Assembly belonging to these same communities." Furthermore, Section 9.1.8 provides that "[t]he Assembly shall endorse these appointments by a formal vote." The Presidency therefore has no role in approving or rejecting an agreement reached by non-Albanian and non-Serbian communities with regard to their representation in the Presidency. Moreover, the Assembly's role is only to endorse such an agreement by a formal vote without interfering in the internal agreement of other communities. Mr. Bislim Hoti was proposed to serve on the Presidency as a representative of the Egyptian community not as a member of the AAK parliamentary group. His parliamentary group affiliation is therefore irrelevant in this case.*

#### Motions challenging adopted laws on the basis of their effect upon vital interests of communities

- The Presidency reviewed the response of the Committee for Health, Labor and Social Welfare to the motion of the Group for Integration challenging the Law on the Termination of Pregnancy, on 25 August 2006, and proposed that a Special Panel should be established to deal with it. The Special Panel, however, has not yet been established.<sup>16</sup>

*Under Section 9.1.41 of the Constitutional Framework and Rule 40.3, "[i]f the Presidency fails to submit a consensus proposal within five days, a special Panel consisting of representatives of the two sides and one member, who shall preside, designated by the SRSG shall automatically be seized of the matter. The Panel shall within five days issue a decision (emphasis added) recommending that the Assembly reject the motion . . . or provisions at issue, or that the Assembly adopt the law with amendments that the Panel shall propose." A Special Panel should be promptly established to deal with the For Integration's motion.*

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<sup>15</sup> The SRSG provided a legal interpretation to the Presidency outside of this reporting period and will be covered in the next monitoring report.

<sup>16</sup> See Pillar III (OSCE) Reports 05/2006 and 06/2006 on the Monitoring of the Assembly of Kosovo, for more details.

#### **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 sessions. The Assembly of Kosovo has a website ([www.kuvendikosoves.org](http://www.kuvendikosoves.org), [www.skupstinakosova.org](http://www.skupstinakosova.org), [www.assemblyofkosovo.org](http://www.assemblyofkosovo.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.

ENDS.