

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

Pillar III (OSCE) Report 09/2005
On the Monitoring of the Assembly of Kosovo
22 October – 25 November 2005

Highlights

- **Assembly adopts a resolution “reaffirming the will of the people of Kosovo for an independent and sovereign state of Kosovo”**
- **Assembly approves initiative to draft new constitution for Kosovo**
- **PDK interpellation motion and ORA proposal for plenary debates left off Presidency agenda despite being submitted well before deadline**
- **ORA proposes extraordinary plenary session to discuss possible irregularities in decision to build Gërmeia administrative-protocol center and Assembly budget spending**
- **Formation of Assembly Committee on Security delayed**
- **Continued procedural difficulties and delays in passing of legislation and other important initiatives highlights need for more frequent holding of plenary sessions**

1. Background

This forty-first 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.

During the reporting period, the Assembly held one plenary session, on 17 and 21 November, and one regular Presidency meeting, on 1 November. All Committees and the newly-established Subcommittee on Human Rights, Gender Equality, Public Petitions and Claims held meetings during that period.¹ Pillar III (OSCE) monitored the plenary session and the Presidency meeting, as well as 26 out of 30 Committee meetings and two public hearings.²

¹The Committee for Judicial, Legislative, and Constitutional Matters met on 31 October and 7 and 14 November while the Committee for the Rights and Interests of the Communities and Returns met on 31 October. The Committee for Budget and Finance met on 27 October, and 2, 9 and 24 November while the Committee for Economy, Trade, Industry, Energy, Transport and Communications met on 25 October, and 1 and 8 November. The Committee for Public Services, Local Administration and Media met on 25 October and 10, 24 November while the Committee for Health, Labour, Social Welfare and Missing Persons met on 25 October, 1, 10 and 15 November. The Committee for Education, Science, Technology, Culture, Youth and Sports met on 25 October, and 9 and 14 November while the Committee for International Cooperation and EU Integration met on 27 October and 18 November. The Committee for Emergency Preparedness met on 26 October and 14 November while the Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning met on 2 and 8 November. The Sub-Committee for Human Rights, Gender Equality, Public Petitions and Claims met on 25 October, and 1 and 8 November. The Committee for Education, Science, Technology, Culture, Youth, and Sports held two Public Hearings: A public hearing of the Draft Law on Preschool Education on the 26 October and a public hearing on the Draft Law on Professional Education and Training on 7 November.

²The Committee for Judicial, Legislative, and Constitutional Matters on 31 October and 7 and 14 November; the Committee for the Rights and Interests of the Communities and Returns on 31 October; The Committee for Budget and Finance on 27 October, and 2 and 9 November; the Committee for Economy, Trade, Industry, Energy, Transport and Communications on 25 October and 1 November; The Committee for Public Services, Local Administration and Media on 25 October and 10 November; the Committee for Health, Labour, Social Welfare and Missing Persons on 25

2. Overview

The 17 and 21 November plenary session of the Assembly of Kosovo was chaired by President of the Assembly Nexhat Daci (LDK) on 17 November and until the break on 21 November and by Xhavit Haliti (PDK) after the break on 21 November.

- One hundred and four and 83 Members of the Assembly were present, respectively, on 17 and 21 November.³
- Main agenda items of the 17 and 21 November plenary session:
 - Approval of the Resolution on Kosovo as an Independent and Sovereign State (The resolution was approved by acclamation.)
 - Second reading of the Draft Law on Foreign Investments (The draft law was approved with 79 votes in favor.⁴)
 - Second reading of the Draft Law on Industrial Design (The draft law was approved with 72 votes in favor.)
 - Second reading of the Draft Law on Accreditation (The draft law was approved with 73 votes in favor.)
 - First reading of the Draft Food Law (The draft law was endorsed in principle with 74 votes in favor.)
 - First reading of the Draft Law on Publishing Activities and Books (The agenda item was postponed until the next plenary session. See the first point under “Representation of the Government at Plenary Sessions”.)
 - First reading of the Draft Law on Cultural Institutions (The agenda item was postponed until the next plenary session. See the first point under “Representation of the Government at Plenary Sessions”.)
 - Review of the proposal to begin the procedure to draft a Constitution of Kosovo (The proposal was adopted with 70 votes in favor and no votes in opposition.⁵)
 - Review of the proposal to form a Committee on Security (The agenda item was postponed. See “Formation of Committee on Security”.)
 - Review of the proposal to form an ad-hoc parliamentary committee to recommend to the Assembly the appointment of members to the Independent Media Commission Council (The proposal was approved with 79 votes in favor, six votes in opposition, and four abstentions.)
 - Response of the Prime Minister of Kosovo to the question of Member of the Assembly Ramadan Kelmendi (LDK) (See the first point under “Questions to the Government”.)
 - Response of the Prime Minister of Kosovo to the question of Member of the Assembly Berat Luzha (PDK) (See the first point under “Questions to the Government”.)

October, 1, 10 and 15 November; The Committee for Education, Science, Technology, Culture, Youth and Sports met on 25 October and 14 November; the Committee for International Cooperation and EU Integration on 27 October and 18 November; The Committee for Emergency Preparedness on 26 October and 14 November; the Committee for Agriculture, Forestry, Rural Development, Environment and Spatial Planning on 8 November; the Sub-Committee for Human Rights, Gender Equality, Public Petitions and Claims on 25 October and 8 November; public hearing of the Draft Law on Preschool Education on 26 October; and public hearing of the Draft Law on Professional Education and Training on 7 November.

³ These are the figures announced by the President of the Assembly at the beginning of the plenary session each day.

⁴ Unless otherwise indicated, the number of votes in opposition and abstentions were not announced. Since the electronic voting equipment was used, the entire voting result was shown on the display screen at the front of the plenary hall, but the numbers are not visible from the observers’ gallery in the back of the hall.

⁵ The number of abstentions was not announced and not visible from the observers’ gallery. See footnote 4.

3. Parliamentary Practices and Proceedings of Assembly Sessions

Agenda

- The agenda of the 17 and 21 November plenary session was not presented to the Assembly for approval at any time, whether at the end of the previous session or at the beginning of the session on 17 November. Similarly, the agenda for the upcoming plenary session was not presented to the Assembly for approval at the end of the session on 21 November.
This was in violation of Rule 23.1, which requires that the agenda for any plenary session shall be proposed by a Member of the Presidency and approved by the Assembly at the end of the previous session. “At 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.” As noted in all past reports from February 2004 onward, the setting of agendas has become extremely problematic since the Assembly began to hold plenary sessions on a monthly basis in February 2004. At its meeting before each plenary session, the Presidency does not even attempt to compile an agenda for the plenary session following the upcoming session, due to uncertainty about which items will be ready for review one month later. While the Rules have been amended to reflect the adoption of a monthly plenary system⁶, the provision requiring the presentation and adoption of each plenary session agenda at the end of the previous plenary session remains. If it is not feasible for the Presidency to propose a plenary session agenda one month in advance, the Assembly should consider amending the Rules appropriately. Moreover, if the Presidency is not able to present the agenda to the Assembly for approval at the previous session, as required by the Rules, the Presidency should – at the very least – present the agenda to the Assembly for approval at the beginning of the session in question. The Rules clearly state that while the Presidency proposes the agenda, it is ultimately the authority of the Assembly to approve or reject the agenda. However, it has become the practice that no time is allotted during the session for presentation of the agenda to the Assembly for approval, whether at the end of the previous session or at the beginning of the session in question. Any review of the agenda depends on a Member being given the floor to present an amendment to the agenda before the Assembly proceeds with the first agenda item. In many cases, the President of the Assembly or Chairperson has proceeded immediately with the first agenda item, leaving no opportunity for the Assembly to object to the proposed agenda.
- At the 1 November Presidency meeting, Mr. Gazmend Muhaxheri (ORA) mentioned that his parliamentary group had submitted on 25 October a proposal to hold a plenary session to discuss “the crisis in education in Kosovo”, as well as mismanagement of the Assembly budget, and asked why the proposal had not been distributed to Members of the Presidency and included in the agenda for that day’s meeting. Secretary of the Assembly Isuf Demaj responded that the materials for the Presidency meeting had already been distributed to Members of the Presidency when ORA submitted its request. The PDK parliamentary group had likewise submitted on 25 October a motion inviting Minister of Public Services Melihate Tërmkolli (LDK) to an interpellation (see the first point under “Interpellation”), which, similarly, was not included on the agenda of the plenary session or distributed to Members of the Presidency for consideration. *The Rules of Procedure do not specify a deadline for submitting materials for consideration at a Presidency meeting, nor has such a deadline been stipulated in any supplementary decision or instruction. Pillar III (OSCE) and Members of the Presidency have been told on different occasions that documents intended for consideration at a Presidency meeting should be submitted at least two or three working days prior to the Presidency meeting, in order to allow*

⁶ Rule 22.4: “The plenary sessions, under normal conditions, shall take place at least once in a month within a plenary week. The plenary week begins usually on Wednesday of the fourth week of each month and ends on Friday. The Presidency may depart from this order whenever it deems to be necessary.” Note that the Rules allow for plenary sessions to be held more frequently than once monthly.

time for the documents to be distributed to Members of the Presidency and be included in the agenda of the meeting. There is, however, no precise deadline that is universally recognized by Members of the Presidency and the administration. Both the proposal for a plenary debate and the interpellation motion were submitted five working days before the meeting, well in advance of any two or three-day deadline that has been cited in the past. The assertion that the documents were submitted after the other materials for the meeting had been distributed to the Members of the Presidency is not a valid justification for excluding items from the agenda and is tantamount to an arbitrary and unannounced change in the deadline. In order for the agenda-setting procedure to be more transparent, there needs to be a precise and consistent deadline, of which all Members are duly informed.

Rule 25 stipulates that the Presidency shall forward the interpellation motion to the Government “as soon as the text of the interpellation is received”. Not only was the interpellation motion excluded from the agenda of the 1 November Presidency meeting, but no regular meeting of the Presidency was called during the remainder of the reporting period⁷, resulting in substantial delay in the interpellation. The Presidency should hold a meeting without further delay in order to review the ORA proposal and the interpellation motion, as well as the proposal to hold an extraordinary plenary session (see next item).

- On 7 November, ORA parliamentary group submitted, together with 40 signatures of Members in support of the initiative, a motion to hold an extraordinary plenary session to discuss (1) the manner in which the decision to build the “Administrative-Protocol Center” in Gërmia Park was taken and (2) Assembly budget spending during the first half of 2005. As justification for the extraordinary session, the motion cites the imperative of determining whether there were procedural irregularities in the decision-making process and the allocation of Assembly funds for capital expenditures and other expenses. ORA likewise submitted a motion, citing Rule 7.2, requesting that the President of the Assembly call a Presidency meeting to review the motion for an extraordinary plenary session.

Under Rule 23.5, “[t]he Presidency shall . . . in response to a request by . . . not less than one-third, respectively 40 (forty) Members of the Assembly, convene the Assembly for an extraordinary session in order to deal with an urgent matter. The request shall state the matter or matters to be considered, and the reasons why they are considered urgent and important in such a way as to justify recalling the Assembly. In such cases, only the items of business that form the basis of the request shall be considered.” Rule 7.2 provides that “[t]he President of the Assembly must convene a meeting of the Presidency if a parliamentary group or five percent, respectively 6 deputies of the Assembly so demand.” No Presidency meeting was scheduled during the reporting period (ending 25 November) in response to this request.

Distribution of Documents

- The Draft Law on Publishing Activities and Books was distributed on 27 July; the Draft Law on Food was distributed to the Members of the Assembly on 14 September; and the Draft Law on Institutions of Culture was distributed on 6 October. Thus, the draft laws were distributed, respectively, 82, 47 and 31 days prior to their scheduled first reading on 21 November plenary session.

Scheduling the first reading of the draft laws on 21 November was not in compliance with 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. When the Assembly is holding plenary sessions only once per month, it is extremely difficult to schedule the first reading of each law no earlier than ten working days and no later than three working weeks from the day of its distribution, as required by the Assembly’s procedural rules. If, for instance, a draft law is submitted to the Assembly and distributed during the third week of a month and the plenary session takes place, as stipulated in the Rules of Procedure, during the

⁷ 22 October – 25 November 2005.

fourth week of a month, the draft law may not be considered in first reading during that same month, because Members of the Assembly would have not had ten working days to study the draft law prior to the first reading. If, then, the first reading is held during the fourth week of the next month, approximately five working weeks will have passed between the distribution of the draft law and its first reading, in violation of the Rules of Procedure. The maximum limit of three working weeks between distribution of a draft law and its first reading, which was added by the Assembly itself when revising its Rules of Procedure, is feasible only if the Assembly is meeting in plenary session every week or at least every two weeks.

Voting Process

- A quorum was present for all voting at the plenary session 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.*

Representation of the Government at Plenary Sessions

- After the first reading of the Draft Law on Food on 21 November, the Chairperson of the plenary session announced that the next two draft laws scheduled for first reading could not be presented because the relevant Minister (Minister of Culture, Youth, Sports, and Non-Residential Issues Astrit Haraqija) was not in attendance. Deputy Minister of Culture, Youth, Sports, and Non-Residential Issues Angjelina Krasniqi attempted to speak, indicating that she would present the draft laws in Minister Haraqija's place. The Chairperson replied that the Assembly had decided that Deputy Ministers cannot present draft laws at plenary sessions, arguing that Deputy Ministers could replace Ministers at meetings of the Government but not the Assembly. The Chairperson then proceeded to the next agenda item. *No provision of the Assembly's Rules of Procedure makes mention of the role of Deputy Ministers, whether to permit or to prevent their participation at plenary sessions. If the Assembly wishes to stipulate conditions on the participation of Deputy Ministers in Assembly meetings, it may ask the Committee on Judicial, Legislative and Constitutional Framework Matters to issue a legal opinion on this matter. In the absence of any relevant legal act of the Assembly, the issue is regulated only by the Government's Rules of Procedure. Article 77.2 of the Rules of Procedure of the Government provides that "[i]n case of absence of a Minister who has to present a draft law, he shall be replaced by the Deputy Minister, and in his absence by the Prime Minister, the Deputy Prime Minister or another minister appointed by the Prime Minister." It is not within the scope of this report on the monitoring of the Assembly to comment further on compliance of the Government with its procedural rules.*⁸

Questions to the Government

- On 13 July 2005, Mr. Ramadan Kelmendi (LDK) submitted three questions to the Prime Minister, regarding the reconstruction of Albanian houses in northern Mitrovicë/Mitrovica, the annulment of Administrative Instruction 2002/26 on the local administration of northern Mitrovicë/Mitrovica⁹, and the reconstruction of a mosque in northern Mitrovicë/Mitrovica. Mr. Kelmendi's request included a paragraph stating that it was based on Rule 26.4 of the Assembly's procedural rules and that he "hope[s] to receive an oral answer" to his question. On 8 September, Mr. Berat Luzha (PDK) submitted two questions to the Prime Minister, regarding the apparent suspension of the Law on Games of Chance and the operation of "Swiss Lotto" company. Mr. Luzha's question did not explicitly mention that he expected an oral answer but included a paragraph stating that the request was based on Rule 26 of the Assembly's procedural

⁸ See Pillar III (OSCE) Reports 01/2005 and 05/2005 on the Monitoring of the Assembly of Kosovo.

⁹ Mr. Kelmendi asked the Prime Minister when the Administrative Instruction would be annulled. The Prime Minister responded that the PISG currently does not have the competence to annul any acts passed by UNMIK.

rules, which deals exclusively with questions for oral answer. Both sets of questions to the Prime Minister were included in the 17/21 November plenary session agenda, as the last two items. The Prime Minister was not present at the plenary session when those items were discussed.¹⁰ Neither the Chairperson nor any other Member of the Assembly (except Mr. Luzha, see below) made any statement implying that the Prime Minister was expected to attend the plenary session in order to respond orally to the questions. The Chairperson noted that the Prime Minister was not present but announced that written responses had been provided to the questions and asked Mr. Kelmendi and Mr. Luzha whether they had comments on the responses. Mr. Kelmendi replied that he was content with the response he received, but Mr. Luzha stated that he was not satisfied with the response to his questions, adding that he had asked for an *oral* answer and complaining that the Government was neglecting its responsibilities to the Assembly.

Both Mr. Kelmendi and Mr. Luzha had requested oral answers to their questions. Although it was not explicitly stated in Mr. Luzha's request that an "oral answer" was required, the request nonetheless cited Rule 26, which deals exclusively with oral answers, not written answers. The Presidency, however, appears to have included the questions in the agenda with no expectation that the Prime Minister should present oral answers to the questions at the plenary session. The Prime Minister should have been asked to present oral answers to both sets of questions.¹¹

Interpellation

- On 25 October, PDK submitted an interpellation motion, including signatures of its Members, calling on Minister of Public Services Melihate Tërmkolli (LDK) to respond to allegations of violations of the Law on Public Financial Management, the Law on Public Procurement, and UNMIK Regulation 2001/36 on the Kosovo Civil Service. The interpellation motion further charged that there had been a "massive dismissal of civil servants, always with political motivations" since Ms. Tërmkolli became Minister. Despite being submitted well in advance of the deadline, the interpellation motion was not included in the agenda of the Presidency meeting on 1 November (see the second point under "Agenda") and so has not yet been forwarded to the Government.

Under Rule 25, "[a]t least ten (10) Members may file a motion to review a certain issue related to the work of the Government or ministry . . . The interpellation is put forward to the Presidency of the Assembly. As soon as the text of the interpellation is received, the Presidency of the Assembly shall submit it to the Government, which is obliged to review it within fifteen (15) days . . . The interpellation shall be included in the agenda within ten (10) days of receipt of the answer by the Government. If the Government does not reply to the interpellation within [fifteen days], it shall be placed as a last item on the agenda of the ongoing plenary session of the Assembly. If the Assembly is not in session, it shall be placed as the first item on the agenda for the next Assembly session. The Assembly cannot reject the inclusion of the review of interpellation in the agenda, with the exception of cases when it does not meet the formal conditions stipulated in paragraph 3 of this rule."¹² As noted earlier in this report, the Presidency did not forward the interpellation motion to the Government "as soon as the text of the interpellation [was] received", as required by Rule 25.

¹⁰ It was widely known that he was attending a meeting of the Kosovo negotiations team that afternoon, at the time that the questions were discussed at the plenary session.

¹¹ Under Rule 26.4, no Member may table more than two questions for oral answer on any day to a particular Minister, so the Prime Minister should not be required to answer all three questions of Mr. Kelmendi on the same day. More precisely, Mr. Kelmendi should have been instructed to limit his questions to two at a time for any particular Minister.

¹² Rule 25.3 stipulates that the motion shall be in writing and include: "a concise formulation of the issue dealt with by the interpellation, the suggested conclusion and justification, the full name of the Member who brought the interpellation before the Assembly, and the signatures of the Members supporting the interpellation."

Formation of Committee on Security

- On 10 October, the Committee on Emergency Preparedness submitted to the Presidency a request to “(1) accelerate the procedure of the formation of a parliamentary committee that would be engaged in the field of security and (2) clarify whether the Committee on Emergency Preparedness should continue to exist.” On 1 November, the Presidency discussed the committee proposal and concluded that it should be up to the Assembly to decide whether the Committee on Emergency Preparedness should be dissolved and replaced by a new Committee on Security, or if the Committee on Emergency Preparedness should continue to exist alongside the new Committee on Security. The Presidency issued a written conclusion stating that “(1) [The Presidency] supports the request of the Committee on Emergency Preparedness to form a Committee on Security; (2) [The Presidency] requests each parliamentary group to propose to the Assembly candidates for members of the Committee on Security, according to the number of members until now on the Committee on Emergency Preparedness; (3) Proposed candidates must possess knowledge about the field of security; and (4) Proposals should be sent to the Presidency of the Assembly by 10 November 2005.” The written Presidency conclusion made no mention of the question of whether the Committee on Emergency Preparedness would be dissolved, nor did it indicate that the issue remained to be determined by the Assembly in plenary session. When the Assembly met in plenary on 17/21 November, the Assembly had received committee member proposals from PDK (Mr. Sokol Bashota, Mr. Emin Krasniqi, Mr. Xhevat Bislimi), AAK (Mr. Naim Maloku, likewise proposed as chair of the committee, under the assumption that the Committee on Emergency Preparedness would be transformed into a Committee on Security), ORA (Mr. Ylber Hysa), and 6+ (Mr. Džezair Murati). No proposals were received from LDK or SLKM parliamentary groups.

At the 17/21 November plenary session, the Chairperson introduced the proposal and read aloud the names of the committee members nominated by each parliamentary group, and likewise naming on behalf of LDK Mr. Agim Krasniqi, Mr. Fadil Geci, Ms. Samije Zeqiraj, Mr. Fadil Kryeziu, and Ms. Qibrije Hoxha; and Ms. Vesna Jovanović on behalf of SLKM. The Chairperson of the plenary session added that the proposals for Committee Chairperson, First Vice-Chairperson, and Second Vice-Chairperson were, respectively, Mr. Maloku, Mr. Hysa, and Mr. Krasniqi. At the prompting of the Director of the Department of Legal and Procedural Support, the Chairperson added that since neither LDK nor SLKM had submitted proposals, the names of their members on the Committee on Emergency Preparedness had been added to the list by the Assembly administration. Mr. Alush Gashi (LDK) stated that there was “no need to provide false information”, arguing that while LDK supported the initiative to form a Committee on Security, the Assembly had never taken a decision to *dissolve* the Committee on Emergency Preparedness. He asked the Presidency to explain when such a decision had been taken and added that the Assembly administration had no place in appointing LDK members to the committee. Mr. Fatmir Sejdiu (LDK) stated that the Presidency had *not* decided on whether the Committee on Emergency Preparedness should be dissolved but rather had concluded that the decision rested with the Assembly. Mr. Sejdiu added that LDK would nominate its members to the Committee on Security only once it was clear whether the Committee on Emergency Preparedness would continue to exist. Mr. Jakup Krasniqi (PDK) expressed his agreement with Mr. Gashi that “decisions taken outside of the Assembly shouldn’t be presented as Assembly decisions” and added that if the Assembly decided that the Committee on Emergency Preparedness should continue to exist alongside the new Committee on Security, PDK would propose different names. Ms. Gjylnaze Sylja (AAK) recalled that the Assembly had agreed that AAK would hold the position of chairperson of the Committee on Emergency Preparedness and so if that Committee were to be *replaced* by the new Committee on Security, AAK should chair the new committee. Ms. Sylja likewise reminded Members that the Assembly had decided to reduce its number of committees from 19 to eleven and should respect that principle rather than increasing the total number of committees. Mr. Hysa (ORA) proposed that there should be a wider debate on the issue, noting that there had been a number of problems regarding the

formation of the committee. The Chairperson of the plenary session proposed that the agenda item should be postponed until an agreement had been reached between the Presidency and parliamentary groups.

The written conclusion of the Presidency, distributed to parliamentary groups, did little to clarify the fate of the Committee on Emergency Preparedness or to instruct parliamentary groups on how to proceed with the formation of the Committee on Security. As noted earlier, the Presidency had concluded in its meeting on 1 November that the Assembly should be the body to decide on the fate of the Committee on Emergency Preparedness, not the Presidency, so at the time that the conclusion was written, it was not known what would become of the Committee. Nonetheless, the document that was distributed to parliamentary groups made no reference to the conclusion reached at the Presidency meeting – that the Assembly would be asked to decide whether the Committee on Emergency Preparedness should continue to exist. It seems that the majority of parliamentary groups made their nominations under the assumption that the Committee would no longer exist, i.e. that it would be transformed into the new Committee on Security, as the names submitted by PDK, AAK, ORA, and 6+ corresponded precisely to the current members of the Committee on Emergency Preparedness. If those parliamentary groups had believed that the Committee on Emergency Preparedness would continue to exist, they most likely would have nominated different members to the new committee. Parliamentary groups should therefore not be expected to nominate members to the Committee on Security until the fate of the Committee on Emergency Preparedness has been determined.

When the membership and chairmanship of the Committee on Security is decided upon, it shall be recalled that under Section 9.1.22 of the Constitutional Framework and Rule 48.8, “at least one Vice-Chairman shall be of a different Community than the Chairman.” The tentative proposal of an AAK chairperson with vice-chairs belonging to ORA and LDK, as initially presented during the plenary session, would therefore be in violation of both the Constitutional Framework and the Rules of Procedure.

Resolution on Kosovo’s status

- On 10 November, the parliamentary group leaders, the Committee on International Cooperation, and the Committee on Judicial, Legislative and Constitutional Framework Matters reached an agreement on the text of the proposed Assembly resolution on Kosovo’s status.¹³ Prior to the plenary session on 17 November, the Assembly Presidency met to discuss a proposal to amend the resolution, concluding that a seven-member working group (two members from LDK, two from PDK, one from AAK, one from ORA, and one from 6+) should draft a new resolution and present it to the Assembly later that day. The President of the Assembly briefly convened the plenary session at noon in order to inform the Assembly of the developments thus far. At 3:00 pm, five hours later than the plenary session was originally scheduled to begin, the Assembly was reconvened. The President of the Assembly thanked all in attendance for their understanding and announced that after “forty-five days of work, without interruption”, an agreement had been reached on a text that had the support of all. Ms. Nekibe Kelmendi (LDK), member of the working group that drafted the text, read the text aloud in its entirety, after which all Assembly members present stood and applauded loudly in approval. The resolution “reaffirming the will of the people of Kosovo for an independent and sovereign state of Kosovo” was not formally voted upon by the Assembly but was widely understood to have been approved by acclamation.

The Rules of Procedure foresees that voting shall be carried out by a “show of hands, secret ballot, . . . electronic voting, or roll-call of each Member.” Approval by acclamation is not explicitly mentioned in the Rules as a manner of voting. Nonetheless, it was entirely clear that the resolution had the support of the vast majority of Members present.

¹³ See Pillar III (OSCE) Report 08/2005 on the Monitoring of the Assembly of Kosovo.

Proposal to draft a new Constitution

- On 21 October, the AAK parliamentary group submitted to the Presidency a proposal to draft a new constitution. AAK proposed that the working group responsible for drafting the constitution should be composed of parliamentary group leaders; the Committee on Judicial, Legislative, and Constitutional Framework Matters; and the Committee on Rights and Interests of Communities. The Presidency reviewed the proposal at its meeting on 1 November and included it on the agenda for the 17/21 November plenary session. At the plenary session, the Chairperson announced that the Presidency had decided to propose that the Committee on Judicial, Legislative, and Constitutional Framework Matters should draft the new constitution, in cooperation with the Government and UN OLA. Mr. Alush Gashi (LDK) stated that the LDK parliamentary group requested the creation of a new committee to draft the constitution. Mr. Jakup Krasniqi (PDK) replied that PDK supported the initiative to draft a new constitution but wished to remind Members that the negotiations team was already planning to form a committee to draft documents, including a new constitution, and suggested that the issue needed to be debated more thoroughly. Ms. Gjylnaze Sylja (AAK) stated that it should be the Assembly that drafts a new constitution, adding that the constitution should be ready *before negotiations*, in order to aid the negotiations team. Mr. Mahir Yagcilar (6+) expressed his parliamentary group's support for the initiative and desire to be represented in the working group charged with drafting the constitution. Ms. Teuta Sahatqija (ORA) stated that the new constitution should be treated as a non-partisan and essential issue and added that the Assembly had already committed itself to drafting a new constitution when it adopted the resolution on 17 November, so she did not consider it necessary to vote again. Mr. Fatmir Sejdiu (LDK) stated that he did not believe that the negotiations team would play a role in drafting a new constitution and agreed that the Assembly should form a special working group to draft the constitution but proposed that the Assembly could be asked to vote only on *the initiative* to draft a constitution, and that the Presidency could reach an agreement at a later time with the parliamentary group leaders as to the composition of the working group. The Chairperson called the Assembly to vote, and the proposal was approved with no votes in opposition. Mr. Alush Gashi stressed once more that the Assembly had at that point voted only on the initiative to draft a constitution, and that the composition of the working group would be decided upon later by the Presidency.

Electronic voting equipment

- The electronic voting equipment was used many times at the plenary session under review, as there were a large number of amendments proposed to the draft legislation in second reading. Throughout the course of the voting, the color system representing votes in favor, votes in opposition, and abstentions constantly changed. At the 17/21 November plenary session, votes in favor were represented first with pink, then orange, blue, light turquoise, green, and finally yellow.

This technical problem was cited in an earlier report, on the occasion of the first use of the electronic voting equipment during a plenary session.¹⁴ Each type of vote needs to be represented consistently with one color, in order to make the display of the voting results more clear. If, for instance, pink was initially used to indicate votes in favor, with green signifying votes in opposition, and the colors are later reversed, the result of the voting would then appear to be the exact opposite, in particular to those who can not see the numbers and must therefore rely on the colors.

¹⁴ See Pillar III (OSCE) Report 06/2005 on the Monitoring of the Assembly of Kosovo.

Procedural difficulties and delays under the monthly plenary session system

Pillar III (OSCE) monitoring reports have highlighted a number of procedural difficulties that have resulted since the Assembly began to hold plenary sessions on a monthly basis in February 2004.¹⁵ The comment under the “Distribution of Documents” section of this report emphasizes the difficulty of scheduling first readings of laws in compliance with Rule 35.1 under a monthly system of plenary sessions. Furthermore, the postponement of several items during the reporting period serves as a classic illustration of the delays that can easily result from the monthly system. The first reading of two draft laws, due to the Chairperson’s assertion that Deputy Ministers may not present draft laws at the Assembly, followed by the Assembly’s reluctance to extend the plenary session one more day in order to allow the relevant Minister to present the draft laws,¹⁶ will likely result in those draft laws being delayed by at least a month. The establishment of the Committee on Security was likewise postponed until the next plenary session, again translating into a probable delay of at least one month. Similarly, the failure at the 1 November Presidency meeting to review the PDK interpellation motion and the ORA proposal to hold two plenary session debates means that both motions will be delayed by at least one month. While the Presidency sometimes meets more than once per month, its regular meetings generally correspond to the plenary sessions, with extra meetings being scheduled only when required by circumstances.¹⁷ Still, no extra meeting was scheduled during the reporting period (ending 25 November) in order to review the ORA proposal of 25 October to hold two plenary debates, the PDK interpellation motion of 25 October, or the ORA proposal of 7 November to call an extraordinary plenary session, the latter two of which are by definition urgent requests. Furthermore, a number of provisions of the Rules of Procedure are simply incompatible with the monthly system of plenary sessions, such as Rule 35.1 (see the comment under “Distribution of Documents”) and Rule 23.1 (see the first item under “Agenda”). The Assembly might wish to seriously consider returning to a weekly system of plenary sessions, or at the very least holding plenary sessions every second week.

¹⁵ See, in particular, Pillar III (OSCE) Report 04/2004 on the Monitoring of the Assembly of Kosovo: “At the 4 May [2004] Presidency meeting, Mr. Hydajet Hyseni (PDK) stressed that the Presidency was “ending each plenary session with a procedural violation” by not presenting the agenda of the upcoming plenary session to the Assembly for approval. The President of the Assembly agreed that the Presidency should correct the practice. Mr. Hyseni added that it was difficult to propose the agenda one month in advance, and that the Assembly should perhaps adopt a system of holding plenary sessions every two weeks rather than on a monthly basis, as the Assembly had begun to do in February 2004. The President of the Assembly rejected the proposal, responding that the Presidency had adopted a decision to hold monthly plenary sessions. *As noted above and in previous reports, the Assembly has consistently failed to adhere to Rules 6 and 17 [current Rule 23] with respect to the adoption of plenary session agendas since it began to meet on a monthly basis in February 2004 . . . The accuracy of the statement that the Presidency adopted a decision to begin to hold plenary sessions on a monthly rather than a weekly basis is debatable, since not all Members of the Presidency agreed to the proposal and there was no formal vote.” Pillar III (OSCE) Report 05/2004 notes that the “monthly system of holding plenary sessions appears to complicate the scheduling of the first reading of draft laws. When the Assembly receives draft laws from the Government at such time that the Table Office is unable to distribute the draft laws to Members at least ten working days prior to the upcoming plenary session, the first reading must either be scheduled in violation of Rule 28.2 [current Rule 35.1] or more than one month after it is distributed, under the current monthly system.” Pillar III (OSCE) Report 02/2005 notes that the “general tendency of late in the Assembly has been to limit debate during the second reading to an absolute minimum, possibly due to the large amount of draft legislation under review at each monthly plenary session and the perceived need to rush through the second readings. In the past, when the Assembly held weekly plenary sessions, a typical agenda included two or three draft laws and more time and attention was devoted to each draft law, whether in first or second reading.” See also all other Pillar III (OSCE) Reports on the Monitoring of the Assembly of Kosovo dating after February 2004.*

¹⁶ At the end of the session on 21 November, the Chairperson proposed that the plenary session might continue on 22 November, in order make arrangements for the Minister to present the two draft laws in question. This suggestion was, however, met with by loud disapproval by Members of the Assembly, so the Chairperson announced that those draft laws would be included in the agenda of the next plenary session, which remains to be scheduled.

¹⁷ For instance, the Presidency nominally held two meetings in September (14 and 20 September), but only because Members had received materials for the 14 September meeting too late and decided at that meeting to suspend proceedings and meet at a later date (20 September).

4. Equal Access and Participation of Communities

- At its meeting on 31 October, the Committee on the Rights and Interests of Communities discussed the Draft Law on Radio Television Kosovo (RTK). Kosovo Bosniac and Gorani representatives on the Committee raised the objection that members of their communities are expected to pay RTK fees although there is no reception of RTK in the area of Kosovo in which they live. The Committee sent the Functional Committee¹⁸ written recommendations stating that Amendment 13 (which imposed a monthly broadcast fee of 3.5 Euros), proposed by the Functional Committee, violates the rights and interests of communities, and proposing that the Functional Committee should specify certain areas of Kosovo without coverage to be “exempted from the monthly fee until the technical conditions for RTK broadcasting are fulfilled”. The Committee on the Rights and Interests of Communities likewise proposed nine additional amendments to the draft law. The Functional Committee reviewed the recommendation to exempt certain areas of Kosovo from the monthly fees at its meeting on 10 November but promptly rejected it. It likewise rejected all but one amendment proposed by the Committee on the Rights and Interests of Communities.¹⁹
- At its meeting on 10 November, the Committee for Public Services, Local Administration, and Media decided to recommend to the Presidency that further review of the Draft Law on Language Use should be postponed until the Constitutional Framework is amended, reasoning that the Draft Law might be inconsistent with the amended Constitutional Framework or new constitution. The written recommendation later submitted to the Presidency, however, simply requested that the Committee should be allowed more time to review the Draft Law, given its great importance.

5. Access

During the reporting period, Pillar III (OSCE) received access to the plenary session, the regular Presidency meeting, and most Committee meetings. Pillar III (OSCE) and other observers, including parliamentary group assistants, were asked to leave the meeting of the Committee for Public Services, Local Administration, and Media after the Temporary Media Commissioner presented comments on the Draft Law on RTK at its meeting on 25 October. No justification was offered. Pillar III (OSCE) also received copies of documents considered by the Assembly and transcripts of prior plenary sessions.

6. Transparency

Radio Television Kosovo (RTK) provided live television coverage of the plenary session under review. Members of the public and institutional monitors were granted admission to the plenary sessions. The Assembly has a website (www.kuvendikosoves.org, www.skupstinakosova.org, 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.

¹⁸ The Committee for Public Services, Local Administration, and Media

¹⁹ The Functional Committee rejected seven of the nine amendments and endorsed one at its 10 November meeting. The final amendment was discussed and ultimately rejected at a later meeting, after seeking additional clarification from the Committee on the Rights and Interests of Communities.