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Unity Team reports to the Assembly of Kosovo

The Investigative Committee

Interview with Naim Maloku,  
Chairperson of the Assembly Committee on Security

## EDITORIAL



On 2 February 2007, President Martti Ahtisaari, the Special Envoy of the Secretary-General of the United Nations for the future status process for Kosovo, presented his comprehensive proposal. The presentation of the proposal and the subsequent further consultations on the text are the final phase in the Kosovo status process, prior to a decision by the U.N. Security Council.

As Kosovo is preparing for its future status, cautious preparations have started for a four-month transition period in which Kosovo's institutions will receive more powers, responsibilities and obligations and the EU-led International Civilian Office (ICO) will oversee the implementation of the settlement: 'Administratively and politically this double challenge goes beyond anything Kosovo has ever managed before', stressed Mr. Torbjorn Sohlstrom, the personal representative of Mr. Solana, EU Foreign Affairs Coordinator, and Head of the Kosovo European Special Representative / ICO Preparation Team.

All members of the Assembly of Kosovo have received the full text of the "Ahtisaari package" and debated it within their political parties and the Assembly. The proposal includes detailed provisions on the rights of minority communities, protection of cultural heritage, decentralization, and other issues related to the future status of Kosovo.

Of immediate impact on the functioning of the Assembly will be "Annex 12", outlining the legislative agenda for the transition period following the adoption of the UNSC resolution. Also directly relevant for the work of the Assembly is "Annex 1" on constitutional provisions, preparing the ground for the establishment of a "Constitutional Committee" that will draft a constitution to be adopted by the Assembly of Kosovo.

Prioritizing the Assembly's workload, building political consensus and adequate planning to provide for additional human resources will determine how well the Assembly of Kosovo is able to function in the months ahead.

This edition of the ASI Newsletter addresses key questions on how to strengthen the legislative capacity of the Assembly, the process of policy setting and implementation of legislation. In this publication, one can find information on the most important developments in the Assembly during the months of December 2006 and January 2007. In addition, members of the Assembly review the work achieved by the Assembly during the last two months. The Newsletter also includes an overview of recent support programs to the Assembly. We hope you find the information useful.

*Franklin De Vrieze,*  
*Assembly Support Initiative Co-ordinator.*

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# The Time Has Come for Open Voting

*Kolë M. BERISHA, President of the Assembly of Kosovo*

Secret or open voting? Which option is more useful, which option is more democratic? This question has long been subject to heated debate among political and intellectual circles, political researchers and practitioners alike. The topic is particularly relevant in societies and countries in transition. This is perhaps due to the importance that secret voting had during totalitarian times, when the government depended on the secret vote to prevent people from voting against its position.

However, times have changed. Our approach should change with them, and if necessary so should our method of voting. First, I would like to stress that the aim of this piece is to encourage informed and well-formulated opinions on this issue. Given the circumstances in Kosovo this debate will be unavoidable and in our parliamentary practice, we will have to address this key issue.

Our institutions and their respective bodies—both those who draft and adopt legal and sub-legal acts and those who implement them in practice—are faced with the question of what method of voting (secret or open) is more democratic.

Austria, as a country with a democratic tradition and among the many other countries that had to go through a transition phase, has given much significance to open voting. For instance, article



53.1 of the normative act regulating the work of the Bulgarian National Assembly states: “The National Assembly may, for certain issue, decide to apply secret voting”. This act does not dictate the method of voting for specific issues, but leaves it up to the Assembly to decide. Further, in Paragraph 2, Point 2 and 5 of the same article, it is stated: “Open voting is conducted by raising the hand, and one by one, by using electronic system wherein the names of the members and the votes are displayed on the screen

through electronic voting system”. A similar solution is also applied in the Czech Republic. Provision 76.2 states: “The voting results printed by using voting equipment shall be the indicator of how each MP voted.” Poland’s Article 188, Section 2, Chapter 3 states a similar idea.

Irrespective of the practices in other countries, we must scrutinize the strengths and weaknesses of both voting methods on their theoretical merits prior to determin-

ing which one is best for the Assembly of Kosovo.

History has shown that the practice of secret voting is advocated by the following undemocratic characters:

a) The voter who has neither the civic, human nor intellectual courage to openly demonstrate his/her determination or the determination of the entity to which he belongs on an issue put to vote. He/she is not ready to confront the potential pressure coming from various interest groups. He/she wants to be “friends with everyone”, does not want to “break relations with anyone” and wants to be able to say to every candidate separately and on every issue put to vote, “I voted for you,” “I voted for your proposal.”

b) The irresponsible voter, who misuses the trust given to him/her by the electorate by always voting in service of his/her personal interest or in the interest of the groups—clans, ideological, religious, racial, gender or local-provincial groups—with which he/she is affiliated. He/she never or very rarely votes to the benefit of the electorate who gave its trust to the party to which he/she belongs and to whom the party then bestowed its trust.

The electorate and the entity that they represent are unable to control these two categories

of MPs. A secret vote ensures that they will never be able to know whose interests these MPs are defending, which political entity they are representing in reality and whose programme they intend to implement.

On the other hand, through open voting, the MP first of all proves his/her loyalty and sincerity towards the electorate or entity to which he/she belongs. He/she proves his/her civic, human and intellectual courage by openly expressing his ideas. It is then up to the electorate to determine if his/her vote on specific issues is in line with their ideas. This method of voting thus enables the electorate to control the representative for whom they have voted through the electoral process.

In an open voting system, the citizens would know precisely how their representative voted. This would encourage the MP to be more active, more responsible and more efficient and force him/her to define his/her position and defend his/her vote. This system is transparent—one of the desired qualities of democracy.

Clearly the benefits of open voting are huge. Indeed, the practice of open voting in countries with developed and consolidated democracies is the strongest verification of this assertion. Why shouldn't we follow this model?

Perhaps, we should take advice from the Romans who said *Festina lente*, or "hurry slowly," in reaping the benefits from democracy.

## Assembly President Berisha speaks to the first Assembly session of 2007

*Honored colleagues,*

I do not mean to worry you about the process that awaits us. In no way! But I want to point out that what is required from us is only responsible work, greater awareness and consciousness on the processes.

In this regard, I would like to say to you that during the coming months, the Assembly will be faced with various challenges, many of which will be difficult. The Assembly is about to take decisions, perhaps the difficult ones, the ones that shall determine and define clearly the fate of Kosovo, the fate of our children and the fate of our grandchildren.

I would like to remind that this Assembly shall soon, perhaps in the next session following consultations with the political parties, in the regular constitutional procedure determine the criteria and decide on the approval of the Constitutional Committee to draft the new Constitution, the first Constitution of an Independent Kosovo.

I want to voice out that the Assembly, shall too, very soon be dealing with the issue of symbols such as a national anthem and other symbols of a future state of Kosovo.

Soon we shall have in front of us for discussion the so called "Martti Ahtisaari Package" and it will be up to us, the

Assembly, to provide the right response.

Soon, a large number of laws and draft laws that regulate different aspects of life in the new circumstances in a independent and sovereign Kosovo will be in front of us to be discussed and approved. The Committees will require updates. Despite how hard these tasks may be, we shall easily accomplish them if we are united, if we are responsible, and if we truly believe in this country, this land, as we have declared everyday. After prior consultations, the Assembly if needed, shall be capable to act according to the role, competencies and the mandate it gained from people.

Therefore, honored colleagues parliamentarians, Prime Minister Ceku, Deputy prime Minister Haziri, ministers and deputy ministers, people of this sacred and precious land, I appeal to you, not only as the President of the Assembly of Kosovo, but also as your col-

league, friend and co-citizen. I ask from you, until the process for the definition of the status is settled, until we make our own constitution, until we have to have local and central elections and establish the first government in the Independent Kosovo, let us leave aside conflicts, our party's or clan's interests, as well as ideological interests, etc (which in some other circumstances would be normal). Allow me to repeat the ascertainment: there are 99 links that unite us, and only one, a smooth one that divides us!

Therefore I invite you together, the position and the opposition, the majority and the minority to be responsible; to be united in the decision-making; responsible to the historic role we have been given today. For the sake of what is said and what is not said, for the sake of today and tomorrow, I wish us success and a commitment to good work!

*Pristina, 11 January 2007*



# “The Assembly will have to pass status implementing legislation, while also continuing with its current work load”

*Ambassador Werner Wnendt, Head of the OSCE Mission in Kosovo*



The year 2007 will certainly be an important one for Kosovo. In light of the future status settlement, the changing character of the International Community presence and an enhanced drive toward European integration and implementation of the Standards (which are also European Standards), Kosovo is facing new challenges and new opportunities.

What many see as the main upcoming challenge is the status settlement and the work related to it. The issue of Kosovo's future is at the centre of attention in Vienna, Brussels, New York and many other capitals. We expect that the settlement will bring a

sustainable and viable vision of the future of Kosovo. However, the compromise requires political consultations on both national and international levels. All Kosovo's people – politicians and society as a whole – should stay committed to the values of democracy and tolerance, as they shape the path to social stability, economic development and integration into the international system.

Another task for Kosovo, together with the implementation of the status package, is the transition process. Even though the modalities of the future international presence and transition of power to local authorities need to be discussed further, it is widely expected that the main responsibility for Kosovo's future will be transferred to the hands of the PISG. The International Community will maintain its presence. The role of the European Union, as well as Kosovo's links to Europe, are expected to strengthen. And Kosovo is one of the priorities of the present EU Presidency. The EU at present is continuing its preparation for deploying an International Civil Office and European Security and Defence Policy (ESDP) Mission in Kosovo.

The future of Kosovo and the development of its democratic institutions is also one of the

top issues on the agenda of the current OSCE Chairmanship. Our goal is to ensure that Kosovo continues its path towards a democratic and developed society, which creates equal opportunities for all. The OSCE Mission in Kosovo will maintain its supporting role in creating conditions on the ground that would facilitate the conclusion and implementation of the future status settlement.

Our institution building activities will focus mainly on good governance, assisting both central and local institutions of governance. We also need to continue our efforts aimed to build positive conditions for the development of a multiethnic society and strong rule of law. This Mission will be focused on capacity building and on educating and empowering people so they can actively participate in governance. Our field presence is an important tool to ensure that we reach out to all communities in Kosovo and that we are able to provide assistance on all levels of governance.

One of the successful initiatives of OSCE, aimed at building capacity and empowering the political elites in Kosovo, is the Assembly Support Initiative.

At the end of this year, the 3-

year mandate of the Assembly of Kosovo ends and according to the current legislation, parliamentary elections should be held. By that time Kosovo needs a set of electoral laws and regulations, as well as technical preparation related to organizing the election. Actually, the Assembly's 2007 mandate will be the most important and challenging to date. This will be increasingly evident in the next few months, when the status settlement will be delivered. The Assembly will have to pass status implementing legislation, while also continuing with its current work load.

OSCE and its ASI partners will continue to support the Assembly in their responsibilities, serving the people of Kosovo. Some of these activities include increased cooperation with regional and other European legislatures, increased links with European political parties and continued harmonization of Kosovo laws with EU standards.

Despite the many challenges that we are facing, I hope that 2007 will turn out to be a successful one for Kosovo and its people. The OSCE stands ready to provide continuity, expertise and assistance in order to ensure that Kosovo continues its path towards a multiethnic, modern and democratic society.

# The Investigative Committee: new experience on the establishment of state institutions

*Dr. Ferid Agani,*

*Chair person of the Investigative Committee of the Assembly of Kosovo, Member of the Justice Party (PD), Member of the Parliamentary Group "For Integration".*



On November 3, 2006 the Assembly of Kosovo established the Investigative Committee on the findings of the Auditor General of Kosovo. The facts found by this report indicated serious deficiencies in the performance of the highest bodies of the Assembly.

In accordance with the Assembly Rules of Procedure, the Investigative Committee consisted of fourteen members, reflecting the political forces within the Assembly of Kosovo. The inauguration meeting of the Committee was held on November 13, 2006. The work of the Investigative Committee was supported by the Assembly of Kosovo, the OSCE Mission in Kosovo, NDI and USAID, as well as the EAR-project in support of the Kosovo Assembly.

From the outset, the Committee was faced with the lack of a

Law on Parliamentary Investigative Procedures. As a result, the Investigative Committee was lacking legal power to compel relevant individuals to come before the Committee in order to testify. Another aggravating circumstance was the parallel development of the criminal inquiry procedure of Prishtina District Court toward the four officers of the Kosovo Assembly. This fact required the Investigative Committee to be careful and not to interfere in the process of the Court Procedures.

The Assembly of Kosovo was lacking any experience in parliamentary inquiry procedures. The two Investigative Committees established during the previous mandate of the Assembly did not finalize their work. Initially, this imposed the need for the Investigative Committee to start drafting the crucial documents upon which the Committee members would perform its activities.

Following the drafting and adoption of its Rules of Procedure and its Work Plan, the Committee identified its objectives and a defined methodological framework with which to accomplish them. It was decided that investigative procedures towards relevant officers would be carried out through an invitation to give feedback in writing on certain questions, followed by possible invitations for oral

evidence if certain issues remained unclear. That is why there were processed invitation forms to provide written statements, invitation forms to provide oral evidence as well as instructions to the Committee members for their participation in the hearing session. The administrative Secretariat, assigned by the administration of the Assembly, continuously supported the work of the Investigative Committee.

Following the identification of the list of relevant officers as well as the definition of key questions for them, the first hearing session took place on November 24. The first invitations for providing their written statements were sent on 6 December, 2006. A number of officers responded to the invitation properly and within the set deadline. The Committee continued its work by reviewing received answers as well as continued sending new invitations for written answers or for oral evidence.

In the meeting on 16 January 2007, the Investigative Committee adopted a framework draft of the final report and also made a decision to hold two hearing sessions before the end of its mandate. With the exception of the hearing session with the Auditor General of Kosovo, which was closed to the public, the Investigative Committee's work was open during its whole course of work.

The performance of the Investigative Committee was marked by open and constructive debates as well as a spirit of full consensus in decision making. Based on the dynamic pace of its work, the Investigative Committee is on track to submit its final report before January 31, 2007 with respective conclusions and recommendations to the Assembly of Kosovo. I hope that these recommendations will help in the prevention and elimination of the circumstances that resulted in the initial fact findings.

In my personal view, the work of the Investigative Committee was a positive experience in the process of establishing functional, efficient and effective state institutions. The Justice Party (PD) as the chair of the Investigative Committee and the representative of the Parliamentary Group "For Integration", demonstrated that the democratic potential of the Assembly does not exist only within the big Parliamentary Groups but also within other political and parliamentary entities. I accepted the trust vested in me by the Assembly's to chair this Investigative Committee, as a sign of appreciation for my principled political involvement during the two previous years and as a demonstration of the willingness of the Assembly to promote new and more democratic practices within its parliamentary work.

# “The Assembly should play a role in building security mechanisms.”

*Interview with Mr. Naim Maloku, chairperson of the Assembly Committee on Security*

*Mr. Maloku, as the chairperson of the Assembly Committee, what are the key activities that took place before the establishment of the Security Committee?*

Naim Maloku: The OSCE sponsored a training project for the Committee, that greatly assisted the development of the committee. The (former) Committee for Preparedness and Emergency had a limited authority and a limited scope. We participated in the training project for the Committee, which lasted six months and included visits of the Committee throughout Kosovo, to the Police School in Vushtrri, to Slovenia, and to Macedonia in order to share experiences and establish communication with counterpart committees. There were also visits from a parliamentary expert from France, who dealt with security issues. He came here with the support of the European Agency for Reconstruction – a consortium of four European parliaments.

*What are the new terms of references of the Committee?*

Naim Maloku: The scope of the Committee’s work was approved in the Assembly of Kosovo. The scope of the Committee for security includes the exercise of parliamentary oversight authority over security segments in Kosovo – Kosovo Police Service, KPC,



and other segments that will be established in the future. The Committee is now in charge of reviewing the laws that come to the Assembly of Kosovo from the Ministry of Internal Affairs. Currently, we have two procedural laws, one for the personal number and the law on personal names. We are expecting the law on police. A member of our Committee took part in the Working Group for drafting the law. We are also expecting

the law on small firearms and the law on the intelligence service of Kosovo. However, the Committee is now responsible for reviewing the draft laws, which was not the case before.

*What is the key legislation for the current term?*

Naim Maloku: The Assembly of Kosovo is waiting to receive the draft law on police. We are at the stage of public hear-

ings before the Committee of all security segments. So far, we have concluded three hearings: the hearing for the police standards directorate of Kosovo, the hearing for the department for preparedness and emergency and the hearing for the KPC.

All these activities, as well as the support of the OSCE, aim to prepare the Committee for the assumption of its duties, reviewing of two draft laws such as the draft law on the Kosovo police and the draft law on the Information Service of Kosovo. Both of these are draft laws are pending due to the introduction of Ahtisaari’s package and perhaps the new Constitution of Kosovo.

*What are the most important issues related to the oversight of government in the field of security?*

Naim Maloku: It is the oversight of the KPS. We have established good communication with KPS and I hope that at this stage that Kosovo is in we devote more attention to the efficiency of the Kosovo Police Service.

*What is the role of parliament in the development of the security sector in the future?*

Naim Maloku: The Assembly should serve as a mechanism to control and provide oversight through this or other committees that will be estab-

lished. However, during this phase of Kosovo's development, the Assembly should also play a role in building security mechanisms. We do not have the intelligence or information service of Kosovo yet. This issue is pending, and the Assembly through the committee must be involved in the approval of the law and the selection and appointment of the head of agency. We are in the process of doing this. The establishment of the Anticorruption Agency has passed through the Assembly along with the appointment of the director of Anticorruption Agency. We expect to hold hearings on the Agency before the Committee in order to see where the establishment of this structure stands and see the potential obstacles that stand before the Kosovo institutions.

*What do you see as possibilities for regional parliamentary cooperation in the field of security?*

Naim Maloku: We have established a better communication channel with Macedonia and with the parliamentary committee for security and defense of Macedonia. We have established good communication with the parliamentary committee for the control of secret services of Slovenia through our visit to Slovenia. We are expecting to pay another visit by the end of February to Bosnia and Herzegovina. Through these visits we are attempting to establish communication channels with counterpart committees and by means of these communication channels to try and further influ-

ence the strengthening of cooperation with security segments within the region. This issue is not only important for combating organized crime but also for the sake of cooperation between the security segments within the region. The deputy Minister of Internal Affairs accompanied us during the visits that the parliamentary committee made to Macedonia and Slovenia and will accompany us during upcoming visits Croatia and Bosnia and Herzegovina. The Committee team will include the Deputy Minister of Internal Affairs of Kosovo so it can establish direct communication with Ministries of Internal Affairs of the countries we visit. We have not established yet a communication channel with Montenegro, but we expect to establish one very soon. With regards to conferences dealing with the parliamentary oversight of security segments, we have taken part in numerous international conferences that included participants from Montenegro, Albania, Bosnia and Herzegovina and we hope these contacts lead to the creation of good communication channels in the future.

*How do you assess regional parliamentary cooperation on specific issues such as control of the private security industry and the field of preparedness and emergency?*

Naim Maloku: Within the Committee we have established a group of five members who have been involved in the drafting of the law on private security firms. This group plans to visit Bulgaria very soon and also plans to

visit Germany and Great Britain. Using the knowledge we gain from these visits we will draft a law on private security firms. We think that in April, together with the non-governmental organization "KIPRED", we will organize an international regional conference on "Parliamentary oversight of security segments", and we will invite all regional parliaments to Kosovo. This will be carried out with the goal of strengthening regional cooperation in the field of security.

*How do you assess the impact of regional parliamentary conferences on security oversight which will be held this year?*

Naim Maloku: We will gather experiences from countries in the region, which is very important for us. We are at the stage where we do not have all the security mechanisms established and the establishment of communication channels with these regional countries will be of great help. We are interested in creating communication channels between ministries of internal affairs and other security segments. It is very important for us to learn from the experiences that these countries have in the parliamentary oversight of security because we are in the initial phase of assuming the responsibilities as a Committee and Assembly. We are aware of the fact that we can not compare with more advanced countries such as France, Germany, Great Britain but we will also see where the region is and we will try to avail ourselves of some of their opportunities.

*How do you perceive the support of the OSCE for the Committee?*

Naim Maloku: Without the OSCE we would have not been able to establish the Committee and would have not been able to be in the phase in which we are in now. The assistance of the OSCE has been irreplaceable and I think that we will have the support of the OSCE during the phase in which we will support the draft laws that are important for Kosovo and also for building security capacities that we currently have in Kosovo.

*What are the fields in which there can be improvements within the Committee that can be supported by external partners/organizations?*

Naim Maloku: DCAF is conducting a training of the staff of our Committee. This is a two year training project conducted by DCAF, and the Committee will have a permanent staff that following the completion of this project. We are interested in the support of the OSCE to determine the approach that we should have towards existing security services in Kosovo. There are several intelligence services in Kosovo that are not legal and do not exercise control over Kosovo institutions. These services exist and have their own structures and now that we are expected to build an intelligence service we should identify our approach towards these services. In this regard we need the help of the OSCE to learn from the experiences of countries that have had a similar past like Kosovo.



# United EU should lead on Kosovo solution

*Joost Lagendijk, Member of the European Parliament and rapporteur of the recent EP report on Kosovo.*



The EU Member States must be united in their support for a limited sovereignty of Kosovo. Independence is the only way forward. This will grant Kosovo the desperately needed access to international financial organisations and will allow it to realise its European prospects. In order to maintain the multiethnic character of Kosovo and to safeguard the interests and security of the Serb population and of other ethnic minorities Kosovo's sovereignty should be limited under international monitoring. These are the basic convictions behind the draft report I presented to the European Parliament on the future of Kosovo and the role of the European Union.

The Member States should

firmly stand behind President Ahtisaari, not only behind his proposal on paper, but also behind his further statements on the future settlement. This would ensure that the transition to independence would take place in an orderly fashion. Very important in this respect will be the way in which Member States recognise a future independent Kosovo: this should be done multilaterally, jointly and based on a new UN Security Council resolution.

The EU has a special responsibility on the Balkans and particularly in Kosovo. The EU regularly pronounced its commitment to future EU integration of the region. Europe should therefore be the greatest contributor to the future international presence in Kosovo. Independence would be an important step, as it would permit the EU to deploy its instruments and intervention mechanisms.

The current situation in Kosovo is not good. Since 1999 civil servants of the UN have governed the region. Meanwhile local politicians are bickering and infighting, because they do not have the responsibility over their own country. There is hardly any economic development. Unemployment is high. Companies do not invest in Kosovo as long as there is uncertainty concerning the future status. For the EU it is difficult realise development projects: there is no official government to pass

contracts with.

In an independent Kosovo, the Kosovars must show responsibility. So far, Kosovo-Albanian politicians have had only one major policy aim: independence. This makes them blind for the real problems. Kosovo-Serbian politicians do not participate in the institutions for provisional self-government, set up by the UN. They would like to, but the Serbian government has told them not to, as cooperation would mean recognition of Kosovo as a sovereign state.

But according to me the Serb minority in Kosovo will gain from a final settlement. Because the final settlement must provide strong guarantees for the rights of minorities, particularly by means of viable decentralisation measures, and for the protection of cultural and religious sites. To guarantee this, the international community preserves the possibility to intervene on a number of vital areas.

This limitation on Kosovo's sovereignty should last until the UN Security Council will decide to transfer the entire sovereignty to the Kosovars. But the Kosovars, both Albanians and Serbs, must do straight away as much as possible 'themselves'. International staff will no longer replace the local administration, but only assist it. The security remains guaranteed by NATO, but Kosovo must establish itself also a small

armed force, under KFOR's strict control and with limited scope and capability, in which all ethnicities should be represented.

For Serbia the loss of Kosovo is difficult to cope with. Milosevic, and also his democratic successors, have done everything possible to boost the importance of Kosovo for Serbia. Also in the recent election campaign the Kosovo-factor was used by a number of candidates. But opinion polls show that the voters have other priorities: their standard of living, the security in the streets and the possibility to travel to Europe. Kosovo and Serbia have eventually the same aim: EU membership. Therefore they must cooperate, and as soon as the status issue is cleared, this becomes possible.

Just like independence is the only workable option is for Kosovo, EU Membership is the only option for Serbia's future. We must do everything to promote this. President Tadic underlined that the extradition of Mladic to the International Tribunal for the Former Yugoslavia and EU membership are the two priorities for the coming year. His party has booked an excellent result in the elections. We must support Serbia where we can. Gradual integration of the countries of the western Balkans in the EU must be a priority for Brussels. Only this way we can prevent further balkanisation of the Balkans.

# From Capitol Hill to Kosovo

*Polly Trottenberg, Legislative Director for U.S. Senator Barbara Boxer of California (USA). She visited Kosovo in December 2006 upon the invitation of the National Democratic Institute (NDI)*



My introduction to Kosovar politics came at a busy time, late December 2006. The Kosovo Assembly, like the U.S. Congress, was trying to finish up its work on the budget and go out for the holidays. The parties were fighting and one of the minority parties had walked out, denying the majority party a quorum. By the end of the week, with a lot of urging by the international community, the parties came together and approved a budget nearly unanimously, which is more than the U.S. Congress can say for itself.

From the American perspective, this is politics as usual. Our constitutional and political culture is designed for constant confrontation, but when the parties fail to cooperate on important matters, they are eventually punished by the voters.

However, the current Kosovo electoral system, with its

“closed lists” is not yet what we in the U.S. would consider representative democracy with voters voting for individual candidates who run for office. And it is not year clear how easily the voters can express their will at the ballot box. The Kosovo electoral system is also very centralized – there are no geographic districts as yet and UNMIK has imposed a requirement that 30 percent of each list be women and 20 seats be reserved for ethnic minorities

And with its eight-member “Presidency,” along with a Prime Minister and President, the Assembly’s structure is convoluted for a country as small as Kosovo. In addition, the Assembly lacks transparency: the Presidency sets much of the legislative agenda behind closed doors, Members’ votes are not recorded, and copies of bills and amendments are not easily obtained.

On the plus side, the Assembly’s debates are public, as are Committee hearings, and the country has a robust press corps that covers the Assembly’s activities fairly extensively. The Assembly has already created a set of procedural rules, and has started to develop a professional Assembly staff, although they currently lack the basic tools of legislative work – a drafting office, a research office, even a computer network. Furthermore, there is not a long-

standing tradition of public policy training and internships, although those efforts are now underway.

Assembly Committees are beginning to engage in oversight of the executive, but there is no mechanism to force the executive branch to implement what the Assembly passes and no clear way of matching legislative dictates with financial resources. In our discussions about oversight, the Kosovo Assembly staff was especially interested in the tools that U.S. congressional staff use – subpoena power, the Freedom of Information Act, and government whistleblower protection laws. We also discussed how with single-party rule in the U.S. the last six years, congressional oversight has atrophied, with serious policy and budgetary consequences.

There is particular urgency for the Kosovo Assembly to improve its transparency and policy-making abilities since once the country’s status is resolved, possibly within the next month or two, they will be tasked with rapidly passing a comprehensive legislative package – a constitution, creation of municipal boundaries, election law, minority protection and an independent judiciary.

I was rather astounded when I learned that the UN would expect the fledgling Kosovo Assembly to tackle the list

above in a matter of a few months and would likely not grant independence until they did. It is unfathomable in the American political context that a new country, still formalizing its Assembly and political parties, would address such profound issues so quickly, but less so in Europe where so many post-Communist countries have emerged and rapidly adopted the European model.

And I sense in the international community a desire for Kosovo to decide everything about its future government and electoral system quickly and with finality, which I worry may not ensure all the public debate and consensus-building that is required. For example, from the American perspective, the decision to permanently create ethnic and gender quotas within the Assembly is a profound one and worthy of much public debate and I heard anxiety from many Kosovars about these quotas.

I do hope the international community, which has done remarkable work in Kosovo, will help ensure that Kosovo becomes a truly representative and transparent democracy with “open lists” and geographic districts, and that as their democracy solidifies, that Kosovars will have the flexibility to reconsider and refine their governmental and electoral systems as needed.

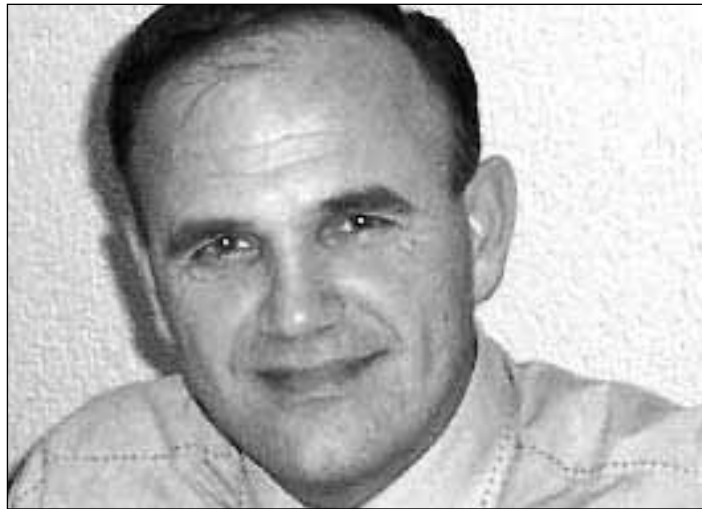
# The Kosovo Budget and the Challenges Ahead

*Nazim Jashari, Member of the Assembly of Kosovo, ORA Reformist Party*

A short time ago, the Assembly of Kosovo voted for the Kosovo Consolidated Budget for 2007. This approved budget of the Provisional Institutions of Self Government did not differ much from the budgets of previous years; there was almost the same amount as the previous year, the same methodology of financial management, the same amount of income from customs and almost the same allocation in spending agencies.

This passiveness in budget planning in the circumstances when the current budget incomes hardly ensure the minimum of functioning of the institutions would be totally unimaginable in a country with a normal governance and an accountable policy towards the citizens. In order to ensure wide public support, the Government in such a country would have undergone large reforms in the fiscal legislation to ensure more income and amortize the dissatisfaction of the affected social strata which might endanger the stability of the country.

Thus the Kosovo Government made no effort to improve more significantly the layer of incomes, but was satisfied with this inert system due to the first of all because of the lack of professional capacities of the sectorial responsible ones thus consequently causing a full dependence and unquestionable submission towards the international officers who supervise the work of the Ministry of Economy



and Finance, be them UNMIK, IMF or World Bank officials. .

The same passiveness is transferred to the Assembly when the draft budget for 2007 is brought for voting, without ensuring the minimal number of the parliamentarians to have the required quorum to pass the law. This resulted in having the first vote on the draft budget fail, as many representatives from the opposition who had many principle remarks on the allocations or the lack of seriousness during processing in its approval in the Budget Committee, did not take part in establishing the required quorum to enable the voting as the Kosovo Constitutional Framework defines.

It should be noted here that UNMIK who has the main word in administering Kosovo, for many reasons does not have any considerable sensitivity towards the public boiling point in the country. The main reason behind this is that UNMIK officials

are satisfied with the level of support ensured by the local institutions in administering Kosovo, as long as the social peace is preserved satisfactorily according to them. However, during the last year we have had several protests by health and education workers. These protests ended up the way they started; without accomplishing the objectives announced by the organizers to qualitatively change the situation of these two professional groupings.

The Kosovo Consolidated Budget had a large impact as it amortizes the overall social dissatisfaction. This may not last long unless a more fair reallocation of income in the public sector is urgently made including here at PTK, Pristina Airport and KEK which despite the continuous losses stands better with salaries in comparison to the other employers in the public sector.

If the economic situation does

not improve following a decision on status, there is a risk that all accumulated dissatisfaction will soon explode in a uncontrolled manner.

In last year's budget expenditures, it is worth noting the Government's effort to raise the receipts in budget expenditures for 2006 resulting thus in saving several millions Euros, specially in the budget line "Goods and services," which seemed to be reflected in raising the means in "Capital Expenditures" for 2007. Nevertheless, it remains behind the level of savings that should be made by our institutions keeping in mind the bad socio-economic situation in Kosovo.

In the new phase we are approaching as a society, after the settlement of final status the budgeting process should be greatly improved. Preparations should be made in advance, and the discipline in implementing the legal provisions related to the process of drafting the budget should be higher, by punishing officials who violate these norms, always in accordance with the Law on Public Finance Management. What actually never ever happened despite the large number of violations. Above all there should be personal changes and better qualified people than the current ones who are exercising their powers thus laying all the hopes in some miracles from God to happen in order to improve the financial flow in the country.

## Recent developments in the Assembly of Kosovo During December 2006 and January 2007

### *Assembly Committee on Security conducts hearing on emergency preparedness*

As part of the ongoing hearings by the Assembly Committee on Security on the government's readiness in emergencies, a hearing was organised on 6 December 2006 with the Ministry's Department of Emergency Management, and on 23 January 2007 with the Kosovo Protection Corps. During the discussions it became clear that further actions need to be taken by both the Assembly and the Government, especially in light of recently promulgated Law on Natural Disasters. The committee has, among other actions, planned a hearing with the Office of Public safety in March, and has asked the Ministry's Department of Emergency Management to report back to the committee within six months, on the implementation of the law on natural disasters.

### *President of the OSCE Parliamentary Assembly visits Kosovo*



A delegation of the OSCE Parliamentary Assembly, headed by its President Goran Lennmarker, visited Kosovo on 12-13 December 2006. The delegation, including Ambassador Andreas Nothelle and Mr. Roberto Battelli, conducted a meeting with the President and Presidency of the Assembly of Kosovo as well as with the Heads of Parliamentary Groups. The importance of parliamentary oversight over the government and the vital role of independent institutions in a democratic society were specific topics of discussion.

General political developments concerning the status process and the expected additional workload for the Assembly in terms of reviewing pieces of key legislation needed to implement the status settlement were also discussed. During their two-day trip, the delegation met the President of Kosovo and representatives of the independent institutions, including the Ombudsperson and the Anti-Corruption Agency.

### *Assembly approves Kosovo Budget for 2007*

For the last sessions of 2006, the Assembly of Kosovo had to deal with a number of challenging issues. The walkout by

the Democratic Party (PDK) and subsequent lack of a quorum threatened the adoption of the 2007 Kosovo Consolidated Budget (KCB). The President of the Assembly scheduled an extra session for 23 December, requesting all coalition MPs to be present, and the KCB was approved with 65 votes in favour. The result implied that LDK members, despite their ongoing internal struggle, remain united in support of the Governing coalition. PDK harshly criticised the government, including accusations of corruption, lack of expertise, inadequate allocation of funds as well as lack of sensitivity towards social problems and poverty.



### *Assembly debates energy situation*

On 21 December 2006 the Assembly conducted an extensive policy debate on the energy situation. Minister of Energy and Mining Et'hem Ceku made a presentation at the beginning of the debate. The Assembly members from the opposition strongly criticised the government and UNMIK for bad energy policy and planning. The debate was dominated by the members of the opposition but several Assembly members from the coalition also spoke.

### *Assembly approves two candidates for the Media Appeals Board*

During the plenary session on 11 January 2007, the Assembly approved in a pro forma act two resident candidates for the Media Appeals Board. The Media Appeals Board (MAB) is the third body of the IMC, which consists of the Office of the IMC, the IMC Council and the MAB. The candidates were designated beforehand by the Supreme Court of Kosovo. With

65 votes in favour, six opposed, and five abstentions, both candidates, Mr. Avdi Dinaj (a judge at the Supreme Court) and Mr. Anton Nokaj (the president of the Prishtinë/Priština District Court), were approved to be the new resident members of the Media Appeals Board. Pursuant to the Law on the Independent Media Commission (IMC), the Media Appeals Board is comprised of three members, one international and two local members. While the international member is appointed by the Special Representative of the Secretary General, the two local members are designated by the Supreme Court and later appointed pro forma by the Assembly. With the appointment of the two new MAB members the formal establishment of all three bodies of the IMC is finalised.

### *Committee on Rights and Interests of Communities conducts field visits*



During December 2006 – January 2007 the Assembly Committee on the Rights and Interests of Communities (CRIC), led by Mr. Randel Nojkić (SLKM), visited several municipalities to collect first hand information on returns, community rights and integration processes in the municipality. Visits took place in Klinë/Klina, Novo Brdo/Novobërdë and Ferizaj/Uroševac. The visit was part of a project implemented by the OSCE to enhance the efficient functioning of the Committee on the Rights and Interests of Communities.

### *New member of Assembly Presidency representing "Other Communities"*

On 11 January 2007 the Assembly plenary endorsed Mr. Bislim Hoti (Egyptian community) to be the new member of the Assembly Presidency. The replacement of this seat in the Assembly Presidency, as agreed among "other communities" representatives in December 2004, takes into account the principle of rotation between communities. Because Mr. Hoti belongs to the New Democratic Initiative



of Kosovo (IRDK) and is part of the AAK Parliamentary Group, some Assembly members opposed the replacement, claiming that it would affect the balance of power within the Presidency. After the UNMIK Legal Office, based upon the Constitutional Framework, clarified that the seat in the Presidency is reserved for other communities independently of their political affiliation, Mr. Hoti was confirmed as the new Member of the Presidency.



### *Assembly Committee organizes a public hearing on the VAT Law*

On 17 January 2007 the Assembly Committee on Budget and Finance organized the public hearing on Value Added Tax (VAT). The print media representatives, the Press Council of Kosovo as well as the Association of Professional Journalists of Kosovo and the Association of Independent Electronic Media in Kosovo, businesses and other NGOs attended the hearing. The Committee was informed about the latest EU Directive on VAT, which specifically allows for reduced VAT rates for the supply of books, newspapers and periodicals. OSCE stated the reasons as to why print media should be exempt from VAT, quoting examples from the region and Europe. The VAT exemption for print media is one of the main recommendations that the OSCE Representative on Freedom of Media made in his produced report last year.

# Guidelines streamline drafting legislation

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It is essential for Kosovo Institutions to establish a streamlined methodology in the process of drafting legislation or amending legislation with the aim that all actors within the Kosovo Institutions will use the same system for drafting laws. Presently the Kosovo Institutions are using different models while drafting laws. Different international experts give different inputs in the drafting process. Also, civil servants within the Kosovo institutions were already trained in drafting legislation based on EU models or US models. The aim is not to develop one model which can be used to develop legislation, but to develop common sense within the drafting process. This common sense should leave space for creativity and craftsmanship for each lawyer, however within a certain framework with common tools.

The Guidelines on Drafting Legislation will help legislative lawyers to play a responsible role in the processing of drafting laws and will apply good practices. Lawyers and policy makers in different professional areas are able to understand the position of the legislative lawyers in the legislative process. Each lawyer should understand that law can only be created on the basis of a power entrusted (rule of law). Executive organs are bound by law, executive action may only be executed through legislation. Legislative lawyers should know that law has a scarcity value: Law should meet the expectations in the general public. Guidelines will improve the quality of laws and quality requirements are important to safeguard lawfulness and implementation. The law should be enforceable; the law should be simple, clear and accessible. The principles of subsidiary and proportionality should be safeguarded.

It is clear that a proposal of law is written in legal language that relates to the broader legal system in which the law will be incorporated. The wordings, terms and concepts that are used in a proposal of law must be coordinated with the content of other laws and the broader legal system to which these laws belong. It is important that this requirement of coordination is fulfilled, because otherwise the new law may easily introduce legal uncertainty in the legal

system. In fact such a law may even lead to inequality and other injustices once it is applied.

The importance of guidelines -different than strict rules- is that it leaves the lawyers, the drafters space for creativity. Initially, as a basis, the legislative lawyer must be able to speak fluently the legal language and have a thorough understanding of the law. The legislative lawyer should read all case laws, legal magazines and follow all legal and legislative developments.

Legislative lawyers must be aware that in the legislative process many other languages are spoken: the languages of policymakers, economists, politicians, scientific professionals, every-day-language of the people. It is essential that the legislative lawyer understands this process and that he or she learns to think and communicate in other languages than the legal language. The various actors to the legislative process who do not speak the legal language all have their legitimate position in the legislative process.

The development of a legal framework which meets EU standards is a major concern in central and eastern European countries, and this not only to foster economic development but also to ensure the good future of the citizens. To achieve these goals, it is important to create a sound institutional structure, to dispose of

staff qualified in law drafting, to set up efficient procedures for co-ordination and consultation, and to ensure that the possible impact of new legal instruments is assessed before they are adopted.

An EU financed program: the SIGMA OECD Program, provides support to partner countries in their efforts to modernize public governance systems. SIGMA has been requested by several of its beneficiary countries to assist them in this extremely difficult task to set up efficient and effective structures and procedures for law drafting. SIGMA developed a checklist to provide countries with an additional means for self assessment. This checklist offers means for evaluating structures, procedures and techniques for preparing and drafting legislation, and for identifying methodologies that may be helpful when changes are under consideration. Law drafting comprises two stages: policy development, and preparation of the legislative text to give effect to the policy adopted. The checklist is primarily concerned with the latter.

The checklist draws upon experience gathered in OECD and central and eastern European countries. In particular, it takes into account the context of the approximation of law with regard to EU integration. The checklist is designed to provide a practical tool for all those in charge of setting up or revising the drafting

process. It therefore covers not only questions concerning the laws itself, but also organizational and staffing issues. The organization of the drafting process -including adequate staffing- is the crucial basis for the production of good legal instruments. In addition, it has proven to be important to undertake a variety of verifications during both the policy development process and the drafting process.

The checklist covers the following topics: Policy Checks, Law Drafting Organization, Drafting Primary Legislation, Drafting Secondary Legislation, Specific Verifications of Draft Legislation, Publication of Legislation. The checklist relates to the legal framework as a whole, including drafting personnel, instruments for verifying drafts, support of computer technology and its document management systems, and consultation procedures. It also relates to the drafting of primary and secondary legislation, and suggests issues for consideration on procedures, assignment of tasks, timing, and parliament's role in preparing both types of legislation.

The checklist reflects principles of good decision-making that are in use in OECD Member countries to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary,

and making government actions more transparent. But they have to be applied within a broader legal management system that includes elements such as information collection and analysis, consultation processes, and systematic evaluation of existing regulations.

#### The Checklist:

1. Is the problem correctly defined?

The problem to be solved should be precisely stated, giving clear evidence of its nature and scope, and explaining why it has arisen.

2. Is government action justified?

Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. Is lawmaking the best form of government action?

Lawmakers should carry out, early in the lawmaking process, an informed comparison of a variety of lawmaking and non-lawmaking policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

4. Is there a legal basis for lawmaking?

Lawmaking processes should be structured so that all lawmaking decisions respect the "rule of law"; that is, responsibility should be explicit for ensuring that all laws are authorised by higher level laws and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.

5. What is the appropriate level (or levels) of government for this action?

Lawmakers should choose the most appropriate level of government to take action, or, if multiple levels are involved, should design effective systems of coordination between levels of government, for example at municipality level.

6. Do the benefits of lawmaking justify the costs?

Lawmakers should estimate as much as possible the total expected costs and benefits of each proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, lawmakers should make transparent the distribution of the costs and benefits across social groups.

8. Is the law clear, consistent, comprehensible, and accessible to users?

Lawmakers should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. Have all interested parties had the opportunity to present their views?

Lawmakers should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties.

10. How will compliance be achieved?

Lawmakers should assess the incentives and institutions through which the law will take effect, and should design responsive implementation strategies that make the best use of them.

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# Laws without legislative policies or preliminary assessments

*Kujtim Kërveshi, Senior Political Advisor to the Minister of Justice.*



Following the establishment of the Provisional Institutions of Self-Government in Kosovo, hundreds of generic normative acts have been compiled and proposed. Most of these draft acts have been subject to a thorough control of their content from the UNMIK Office of Legal Affairs, prior to their publication. Many of these proposed acts may be found in the drawers of this Office. Initially, local lawyers, other experts and million-Euro projects assisted the Government and the Kosovo Assembly in compiling draft laws in the areas falling under the responsibilities of our institutions. Over all these years, our institutions have compiled and adopted various draft acts, however many are not being implemented and as such this has a direct impact on the low level of rule of law.

UNMIK Regulation No. 2005/15 and the Government Rules of Procedure 2005/1 established that the Office for Legal Services and Support (OLSS) within the Office of the Prime Minister (OPM) would review all legislation to be submitted to the Assembly. Proposals concerning legal acts would be proposed by both the Ministries and the OLSS/OPM, while the Assembly of Kosovo would be the highest legislative body in the country – a responsibility that derives from the Constitutional Framework of Kosovo.

The compilation of a draft legal act is the easiest stage as it involves only the drafting of provisions. Difficulties arise only when the draft legal act is implemented, especially in our case when there are no legislative policies in place and no studies related to that legislative draft act. The European Union, based on indications from practices of recently integrated countries, has mainly focused on the implementation of laws rather than their quantity. But should the drafting of legislation depend upon form and not content? In cases when there is no legislative policy in place, what can be the outcome of that draft legal act? In practice, this means that the draft act will not be implemented or will be implemented lamely as it is in our case.

Funding should be provided in order to ensure the success

of a draft legal act. Planning of expenditures should not be done on an ad hoc basis, on the contrary, it should be based on an advanced and detailed prediction of the budgetary costs necessary for the implementation of the draft legal act, especially prior to the compilation of that draft act. Otherwise, in our country we waste our time, energy and human resources by using them mistakenly. The phenomenon we are analysing in this article derives from the establishment of our institutions. It has accompanied all the governments that have received a mandate from the Assembly. The Assembly has continued to adopt laws in the same manner, despite the above-mentioned deficiencies.

Moreover, we need to acknowledge the fact that citizens trust in a process or in an institution if that process and institution are transparent in their actions. Institutions that compile draft legal acts and those which execute court decisions by enforcement means tend not to be transparent in their work. In our case, you can rarely find draft acts characterised by sufficient transparency, where citizens and interest groups, and even representatives of institutions have been informed of the contents and social relationships that the draft legal act will regulate.

When a law is compiled without policy development, its

content do not include the positions of decision-makers per se. Without the development of legislative policies, there is a permanent risk of compiling legislation that might not be necessary and compiling draft acts that contain serious problems for their implementation. This not only burdens the work of the judicial system and rule of law but contributes to the deterioration of judicial security.

The lack of serious development of operational legislative policies in our institutions for the time being makes an intra-institution consultations process impossible. Due to lack of communication and coordination, two legal institutes can be regulated in two different ways by two different institutions. If approved as such and promulgated, laws containing these kind of deficiencies can prevent Kosovo citizens from enjoying their rights guaranteed under the law. Kosovo needs to implement a rule of clear and direct provisions without conditions on all issues.

Our institutions approve the “legislative agenda,” which often resembles a wish list in which we can rarely answer what exactly is meant to be regulated with the contents of the draft act. The only information usually known is the titles of laws, however, later on titles often do not reflect their contents. Instead of having titles determined by



an approved legislative policy, the opposite is happening in our system. The majority of countries in our region are in no better situation. In our region, draft acts are being compiled on an ad hoc basis and with many deficiencies. Therefore, there should be debate on whether the Government needs a "legislative agenda" at all and whether the Assembly should follow this wish list? Practice has shown that this method of working has not been beneficial.

In addition to what was mentioned above, for which our executive is chiefly responsible, our Assembly as well does not take into account draft laws that tend to be an approximation of local legislation towards EU legislation. As a result, laws that have nothing to do with the EU *acquis communautaire* are handled in the same way as those directly in line with European Union norms. This issue should be put forward as one of the most important in the future. Intra-institutional co-operation will be necessary

for the functionality of the Assembly itself in the process of adopting a systematic body of laws for Kosovo.

Furthermore, our institutions are unable to improve this situation due to a lack of human resources. A large number of legal officers work in the compilation of draft legal acts, however, very few of them who consult materials in the EU official languages. This way they are able to make approximation of local legislation with EU legislation and best international practices. Moreover, there are few who possess refined techniques for legal drafting, thinking and reasoning.

In conclusion, we can concisely define the problem that our institutions face by noting the lack of sufficient ideas, lack of proper assessment and poor implementation of legislation, which arises due to improper planning and determination, as well as from low level of professionalism in all of the law enforcement institutions.

## *New OSCE Senior Advisor to the President of Assembly*



On 17 January 2007 the new OSCE Senior Advisor to the President of Assembly, Ms. Liia Hanni, assumed her responsibilities. Ms. Liia Hanni is a former parliamentarian from the Republic of Estonia. From 1990 to 1992 she was a member of the Supreme Council (transitional Parliament), member of the Congress of Estonia and member of the Constitutional Assembly. From 1992 to 1995 she was Minister in the Government of Estonia

responsible for privatisation and chairperson of the Board of the Privatization Agency. From 1995 to 2003 she was a member of parliament and chairperson of the Constitutional Committee (1999 -2002) and vice-chairman of the Estonia-EU Joint Parliamentary Committee, participating in the consultations of the European Constitutional Convention. Most recently she worked as Program Director of "E-Governance", responsible for the development of e-democracy programs in Estonia. Being part of the Office of the President of the Assembly, Ms. Liia Hanni will interact with the NDI/USAID Advisor to the President of the Assembly and the EU-funded project in the Assembly.

## *New Report on Implementation of Kosovo Assembly Laws*

On 26 January 2007, the OSCE Mission released its third report on the Implementation of the Kosovo Assembly Laws by the executive branch of the Provisional Institutions for Self Government (PISG) in Kosovo. On the same day a press conference was held, in which the Head of Mission and representatives from the Department of Human Rights and Rule of Law presented the report. The primary aim of the report is to analyse the extent to which laws passed by the Kosovo Assembly are being implemented through subsidiary legislation. The main scope includes Assembly laws passed in 2005, but also includes a follow-up from the two previous reports, covering 2002 - 2004. The report also addresses issues surrounding implementation such as publication of laws, hierarchy of laws, law drafting and parliamentary oversight.



# Laws without policy

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Bad policies produce bad laws. Bad laws in turn produce more bad policies, bad decisions and bad actions. But laws made without policies are even worse. In the old days policies decided by the party were left to the lawyers to be codified. Today the burden on lawyers is even greater. They are doing the same work either without any policy guidelines or with only a word or two from the ministers. Yet the gaps in the current system of law-making do not stop here.

A crucial gap in the current system of law-making within the ministries is that the ministries lack policy formulation capacities, particularly with regard to analytical and inclusive aspects. Lawyers, more often start their work from scratch, without the necessary guidelines for their work.

Legislative priorities are made mechanically and always in a rush without the necessary analysis and brainstorming. Because proposals are often based on subjective assumptions, efforts are made to rush

all proposals onto the legislative agenda. Thus, the agenda remains without critical evaluation and reflection. Proposals to make new laws are not looked at critically nor is there the proper engagement to prioritize them.

Another deficiency relates to a lack of flexibility in approaching the legislative agenda. Rather than serving as a guiding document for the ministries, the agenda is perceived as a rigid document with which the relevant ministries must comply. In most of cases, if a ministry is convinced of the pointlessness of a draft-law, it can only ignore its duty to prepare the draft, defy the decision of the government and make the entire process of constructing the legislative agenda seem futile. In the worst case scenario, the ministry may proceed in preparing a needless or even harmful draft-law.

There is a great lack of attention paid to policy formulation. Also missing is the policy analysis necessary to fuel the law before it is approved. Furthermore, there is no division of power between the analysts (i.e. political appointees, civil servants or contractors) in policy making and the lawyers who are meant to codify public policy into legal language. Often there is a lack of analysis of budgetary implications as well.

Frequently laws are copied from one, or even worse, several models thus resulting in dysfunctional, unnatural and

controversial laws. Beyond that, there is a lack of proper implementation of the laws that are passed and the relevant oversight of their effects. Due to an increased preoccupation with drafting laws, the success of a ministry is measured by the number of draft laws it prepares. This results in greater pressure to produce more laws without paying attention to their quality and impact.

Alternatives to legislation are not taken into account. No one seems to see the range of policy tools that could be used to address a problem. Drafting a new law is just one of several ways to achieve governmental policy objectives and laws should be used only when they are superior to more cost-effective mechanisms.

Drafting legislation is a task for much more advanced legal experts than are generally available in Kosovo. It is not a process that can be undertaken by any lawyer, because the skills necessary to effectively convert policy into legally enforceable normative rules are not acquired through legal education or through the course of ordinary legal practice. Legal drafting is a specialized skill demanding particular knowledge and relevant experience: knowledge of all laws, implementation probability, meticulous writing technique, language usage, overall legal techniques and traditions theoretically and comparatively.

In order to improve some of

the deficiencies in the current process of law-drafting, a set of measures should be put in place. First of all, there should be a reformulation of the process so that we may have a preparation of policy alternatives (green paper), adequate consultations and the decisions for action policy, then finally the legal drafting as such.

Similarly, the process of creating the legislative agenda should be improved. The legislative agenda cannot be drafted within a few hours, without any critical input and without flexibility. Ministries need to develop significant policy-setting capacities to ensure consensus-building before legal drafting through a flexible legislative agenda that is continuously updated and reworked.

It should also be noted that the preparation of draft laws is not the job of ordinary lawyers housed within certain ministries, but rather of a central institution that develops draft-laws of the policies in ministries.

Overall, these changes are not easy and the consequences, least of all the budgetary implications, entail a large-scale conceptual change in the attitudes toward the social objectives to be achieved and the legal approach toward achieving them.

*The article is based upon the recent KIPRED research paper on "Laws without policy: waste, dead letter and futility".*

*See: [www.kipred.net](http://www.kipred.net)*

# Transparency:

## Improving Parliamentary Procedure & Sharing Information for Members

Dale E. Archer, Legislative Advisor to the Assembly of Kosovo/NDI



**trans-par-en-cy** –noun, plural -cies.

1. Also, **trans-par-ence**. The quality or state of being transparent.
2. Something transparent, especially a picture, design, or the like on glass or some translucent substance, made visible by light shining through from behind.<sup>1</sup>

What is transparency? This is a challenging issue which is even more difficult to describe or explain. In 1964, U.S. Supreme Court Justice Potter Stewart tried to describe in another equally challenging free speech issue – obscenity. Justice Stewart said, “I shall not today attempt further to define the kinds of material I understand to be embraced.... **But I know it when I see it**, and the motion picture involved in this case is not that.”<sup>2</sup>

What does transparency look like? Like any conceptual

challenge, we seek examples to prove or disprove what transparency is, and even what transparency is not. The Assembly of Kosovo’s Rules of Procedure attempt to address openness in Kosovo’s parliament. Rule 65 adopts Annex No. 1 which contains Rule 1(e). This rule says, “Members shall be as open as possible about all the decisions and actions that they take. They shall give reasons for their decisions and restrict information only when the wider public interest clearly demands it.” Rule 1(d), also in Annex No. 1, hints at transparency: “Members are accountable for their decisions and must *submit themselves to such scrutiny* as is appropriate to their office.”<sup>3</sup> Therefore, it seems just the decisions and actions of Members would prove transparency. Will this decision be transparent? Was that action open to scrutiny? Will a closed committee hearing be transparent? If applied to the definition above and to have transparency in parliament, it would seem that actions and decisions must be transparent to prove transparency.

The National Democratic Institute, in cooperation with its Assembly Support Initiative (ASI) partners, assisted the Assembly in developing the Assembly Standards Plan (ASP) in 2006 which received Assembly approval in June. The ASP outlined several items which would further enhance

the transparency of the Assembly, including agenda (Rule 23), interpellation (Rule 25), and question period (Rule 26). These changes improved the efficiency of such important processes in the Assembly. These amendments clarified and streamlined how the agenda can be amended by Members; how interpellation is planned, including adoption of time limits; and, how question period is organized, especially the regular addition to question period to every plenary session agenda. However, even with these improvements to the executive oversight role of the Assembly, Members may still not have the information on the work of the Assembly they need on a regular basis.

The Assembly’s Rules of Procedure guarantee Members’ rights to information. In Rule 1.1(d) and Rule 8.1 of Annex No. 2 of the Rules, “Each Member of the Assembly *has the right to be informed on the work of the Assembly* and to express his or her opinions on certain issues. These opinions may be expressed to the Chairmanship of the Assembly, directly or through questions raised, or at debates in sessions of the Assembly.”<sup>4</sup> This rule guarantees Members will have the information. However, it begs the question by what tool or mechanism are Members provided this information on a regular basis? Currently, how do Members know how many

draft laws, motions, resolutions, declarations, questions to the Government and interpellation requests are pending and unresolved before the Assembly? How do Members know when committee reports are submitted to the Assembly for consideration and debate? How do Members know when reports from the Government are submitted to the Assembly? The Rules of Procedure currently provide no regular mechanism whereby Members may exercise their right to information. This “right” seems similar to guaranteeing that Members will be supplied with Internet access but have no wireless network, modem, or computer in which to access the Internet.

Other parliaments and legislatures regularly publish what are commonly called order papers or order sheets. These publications are also referred to as calendars of business, orders of the day and journals. Simple changes to the Rules of Procedure could adopt the publication of an order paper for the Assembly. This order paper would provide Members with information heretofore not explicitly required by the Rules. Publication of Assembly information<sup>5</sup> on a regular basis would greatly improve the transparency of the Assembly. An order paper would define and showcase the work of the Assembly and be a transparent tool of information.

Another reference in Rule 8.1 of Annex No. 2 states, "Each Member of the Assembly has the right ... to express his or her opinions on certain issues."<sup>6</sup> How is this done without being limited to specific agenda items? How do Members express their opinions which are *not related* to specific draft laws or motions? The Rules allow Ministers of Government to make statements during any Assembly plenary session.<sup>7</sup> Rule 28 for

Ministers' statements begs the question—why aren't Members also guaranteed a mechanism whereby they may express their rights to opinions on certain issues? The Assembly's Rules of Procedure do not reserve time for Members and even parliamentary groups to make statements. Another simple change to the Rules of Procedure could adopt guaranteed and reserved time on the agenda for Members and parliamentary groups to

express their opinions during plenary sessions.

As the issue of transparency is debated further, there are available tools of transparency that could be adopted within the Rules of Procedure. It would seem the only quantitative results would be to open the procedural and policy-making processes of the Assembly and ensure the actions and decisions of Members are transparent before

constituents, the public and media. Transparency may be difficult to describe, but as Justice Stewart pointed out—*we'll know it when we see it.*

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<sup>1</sup> *Dictionary.com Unabridged (v 1.1), Based on the Random House Unabridged Dictionary, Random House, Inc. 2006.*

<sup>2</sup> *Jacobellis v. Ohio, 378 U.S. 184, 197 (1964)*

<sup>3</sup> *Assembly of Kosovo, Rules of Procedure, approved May 20, 2005, as amended June 1, 2006; Rules 1(e)-(d) of Annex No. 1 provided by Rule 65*

<sup>4</sup> *Assembly of Kosovo, Rules of Procedure, approved May 20, 2005, as amended June 1, 2006; Rule 1.1(d) and Rule 8.1 of Annex No. 2 provided by Rule 65*

<sup>5</sup> *Assembly of Kosovo, Rules of Procedure, approved May 20, 2005, as amended June 1, 2006; Rule 8.1 of Annex No. 2 provided by Rule 65*

<sup>6</sup> *Assembly of Kosovo, Rules of Procedure, approved May 20, 2005, as amended June 1, 2006; Rule 8.1 of Annex No. 2 provided by Rule 65*

<sup>7</sup> *Assembly of Kosovo, Rules of Procedure, approved May 20, 2005, as amended June 1, 2006; Rule 28, Statements by Ministers*

# A long path towards the appointment of Ombudsperson

*Floriana Shala, Assembly Monitor, OSCE Mission in Kosovo*



In the beginning of 2006, after consultation with the Assembly of Kosovo and the Government, the Special Representative of the Secretary General (SRSG) of the UN Interim Mission in Kosovo transferred the responsibility for the continuing operation of the Ombudsperson Institution. Regulation 2006/6 subsequently promulgated granted the Assembly the right to appoint the Ombudsperson and Principal Deputy Ombudsperson, as well as three other Deputy Ombudspersons.

Pursuant to the promulgation of the regulation, the Assembly, respectively the Committee for Judicial, Legislative and Constitutional Framework Matters (hereinafter, the Legislative Committee) in cooperation with the OSCE Department on Human Rights and Rule of Law, drafted the Rules of Procedure on the appointment of Ombudsperson and Principal Deputy Ombudsperson. The measure was adopted by the Assembly on 15 June 2006.

The Legislative Committee

established a panel, where each parliamentary group had been represented, in charge of the recruitment process. With high degree of professionalism, the panel interviewed 19 applicants for the post of Ombudsperson and Principal Deputy Ombudsperson. After the interviewing phase, the panel proposed to the Assembly, in accordance with the previously adopted Rules, three nominations for each of the two posts. The nominees for Ombudsperson were Mr. Hilmi Jashari, actual Acting Ombudsperson of Kosovo, Mr. Ibrahim Makolli and Ms. Diana Toska, while the nominees for Principal Deputy Ombudsperson were Mr. Ljubinko Todorović, actual Deputy Ombudsperson, Mr. Habit Haredini and Mr. Pal Bala.

At the 17 November plenary session, Mr. Sadudin Berisha, first vice-chair of the Legislative Committee, reported to the Assembly with regard to the recruitment process and procedure on the appointment of Ombudsperson and Principal Deputy Ombudsperson. He noted that the two appointments should be conducted by secret vote and that if neither nominee received an absolute majority of votes in any of the two rounds, the vacancy should be reissued. Later, Ms. Zlatica Kujundžić, member of the Serb Democratic Party (SDS), asked the Assembly to postpone the appointment of the Principal Deputy Ombudsperson in order to allow them more time for consultation.

The Assembly nevertheless postponed both appointments due to the boycott by the largest opposition party from that plenary session.

At the 14 December plenary session, the Assembly voted in two rounds, by secret ballot, on the nominations in questions, but neither nominee had received the absolute majority of votes in any of the two rounds. After the voting results had been announced, a discussion arose with regard to the number of votes required for the appointments to be valid. Some Members of the Assembly noted that there was a discrepancy between UNMIK/Reg/2006/6 and Assembly Rules in this regard. Section 6.2 of the UNMIK regulation stipulates that Ombudsperson and Principal Deputy shall be each appointed by a vote having the support of a majority of the Members of the Assembly, which means at least 61 votes. On the other hand, the Assembly Rules stipulate that Ombudsperson and The Principal Deputy shall be each appointed by a majority of Members present and voting. Therefore, the Assembly decided to clarify this issue with the UNMIK Office of Legal Affairs.

On 9 January, the SRSG sent a letter to the President of the Assembly explaining that “the vote for appointment of Ombudsperson and Principal Deputy Ombudsperson that took place on 14 December cannot be considered conclu-

sive since the majority of votes required for the appointment was not achieved.” Furthermore, the letter suggested that “the Assembly should . . . repeat the voting with the candidates proposed by the Legislative Committee until the requirement for an absolute majority of votes is achieved.”

At 11 January plenary session, the Chairperson Mr. Xhavit Haliti (PDK) informed the Assembly that the Presidency had proposed the re-advertisement of both posts prior to receiving the SRSG’s letter as the first letter sent by the Head of the UNMIK Office of Legal Affairs did not recommend further steps to be taken after the voting result had been declared invalid. Such a decision by the Presidency turned out to be in conflict with the recommendation made later by the SRSG to repeat the voting with the same candidates. Therefore, the Assembly decided to postpone further processing of the appointments of Ombudsperson and Principal Deputy Ombudsperson until the final interpretation has been provided to the Assembly by the Office of the SRSG.

The provision of a final interpretation by the Office of the SRSG will enable the Assembly to take further steps in finalizing the appointments of Ombudsperson and Principal Deputy Ombudsperson, which will hopefully lead to a successful result, unlike the first time.

# Support to the Assembly of Kosovo during December 2006 and January 2007

*Franklin De Vrieze, OSCE Mission in Kosovo.*

## *Support to the Investigation Committee*

Following the Assembly plenary debate on the Auditor General's report on the Assembly on 3 November 2006, the Assembly created an Investigation Committee, chaired by Dr. Ferid Agani and proportionally composed of all parliamentary groups in the Assembly. The Assembly mandated the Committee to conclude its work by 31 January 2007 and deliver a report with recommendations. On 29 - 30 January 2007, the Investigation Committee gathered for a two day retreat to finish the Committee's final report. During the two days, the Committee went through the draft report, line by line, building consensus on final conclusions. OSCE financed and assisted the retreat, held in Mitrovica. The Committee gave their report, in Albanian and Serbian, to the Assembly Presidency on 9 February 2007. An English translation was prepared by NDI and OSCE.

The conclusion of the Committee's mandate came after two months of work, which included the collection of written and oral testimony from a list of selected individuals. Though the Committee worked without a legal framework since the draft law on investigative committees is pending, more than half the individuals contacted did respond, including members of the Assembly Presidency. The Committee worked with the Auditor General, to better understand her methodology and the process through which she reached her conclusions. The Committee also worked with the International Prosecutor to make sure the Committee's work did not interfere with the ongoing criminal investigation. This is the first time an investigative committee within the Assembly of Kosovo has successfully fulfilled its mandate and the Committee will provide valuable lessons learned for the law on investigative committees and for future investigative committees.

## *Support to the Committee on Security*

As part of the OSCE support to the Committee on Security, a working group on Private Security Industry within the Committee on Security was formed. At the first meeting of the working group on 19 December 2006, the Assembly members discussed the findings of the OSCE consultant on private security legislation and the direction that the future law should take. It was agreed to further explore the experience of Bulgaria, a country that has heavily regulated the private security sector in the past four years, in light of the EU-membership. On 19 January, the Chairperson of the Committee on Security gathered all international and local organizations assisting the work of the Committee to coordinate the work and review a draft Committee annual plan for 2007. Participants included the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF), EAR-Consortium of four parliaments, KIPRED and OSCE.



## *Support to the Committee on Education*

From 3 to 9 December 2006, the OSCE sponsored and organized a visit by the Assembly Education Committee to Irish education institutions in Dublin to help the Committee gain first hand experience of the Irish legal and administrative system of qualification and quality assurance. The visit assisted on-going work to draft a Law on Qualifications and to develop a Kosovo Qualifications Framework. On 24 January 2007, the OSCE participated in a meeting of the Assembly Committee on Education, aimed at looking at the support OSCE can provide for the Committee in finalizing the Draft Law on Qualifications.

## *Support to the Committee on Rights and Interests of Communities*

A delegation of the Committee for Rights and Interests of Communities (CRIC) together with Assembly legal staff visited Strasbourg on 19 to 22 December 2006 and met with various interlocutors who addressed the implementation of the Framework Convention for the Protection of National Minorities, the current situation and respect for human rights, the engagement of European institutions in the preparation of a future Kosovo Constitution, the implementation of the European Social Charter and Charter for Minority or Regional Languages and issues related to the European Commission against Racism and Intolerance. This study visit was part of the OSCE project to ensure efficient functioning of the CRIC. The project also assists the CRIC in preparing a number of field visits to municipalities throughout Kosovo.

## *Support to the parliamentary groups*

The third round of the internship programme with the parliamentary groups started on 2 October 2006 and lasted until the end of the year. The third group of student-interns has



been organizing conferences on a topic of interest to the parliamentary groups, in addition to the other support given to the groups. On 11 December 2006, PDK Parliamentary Group held a conference on "What electoral system does Kosovo need". On 15 December 2006, ORA parliamentary group held a conference on "Youth Action Plan and Empowerment of Youth". On 18 December 2006, the parliamentary group For Integration organized a conference on minorities and the media. On 19 December 2006, the AAK parliamentary group held a conference on higher education. On 22 December 2006, the LDK parliamentary group organized a conference on the integration of marginalized groups within society. Conferences constituted the closure of the third round of the internship program. The fourth round started on 1 February 2007. Student-interns are assisting all parliamentary groups as well as, for the first time, the women caucus. This project is an important part of the OSCE support to strengthen parliamentary groups, a project which started in 2005. Regular interaction and cooperation has been organized with the NDI-sponsored student-interns working with the Assembly Committees and Secretariat.

### *Support to Library and Documentation Unit in the Assembly*

The Assembly of Kosovo, the National and University Library and the EU-funded Project "Further Support to the Assembly of Kosovo" have begun a joint cooperation project of establishing a modern and functional library and documentation unit in the Assembly of Kosovo. On 9 January 2007, Mr. Kole Berisha, President of the Assembly of Kosovo, Dr. Sali Boshota, Director of the National Library and Mr. Hugues de Courtivron, Team leader of the Project, signed a Memorandum of Understanding (MoU) to establish the conditions of this cooperation. The MoU will provide the Assembly with professional and concrete training for the librarians. The MoU will also provide support for the establishment of electronic access to international reviews and journals, as well as data bases. The possibility for Members and staff to get accurate and quick information through the Library and Documentation Service will enhance the ability of

the Assembly to examine and to amend the laws, as well as to oversee the Executive branch.

### *Assembly Presidency and Committee for International Cooperation and EU Integration visit Paris and Brussels*

The Committee for International Cooperation and EU integration Committee is having the complex task to discuss policies related to EU integration in a time when all eyes are looking at the future status of Kosovo. As the Assembly needs to strengthen the professional capacities of the Members and civil servants of this Committee, a working visit to Brussels and Paris took place from 14 till 19 January 2007. The Kosovo Assembly members met their counterparts in Brussels and Paris to share thoughts on the relations between the legislative and executive powers in terms of the approximation and harmonization of EU standards in legislation and policy. Accompanied by two legal officers from the Assembly Secretariat, the Members elaborated upon the relation between the various standing committees and EU affairs committees in the French and Belgian parliaments in terms of EU standards legislation and policy.



From 28 till 31 January 2007 the President of the Assembly, members of the Assembly Presidency and the Secretary General conducted a working visit to Paris. Discussions with the President of the French "Assemblée Nationale", parliamentarians and civil servants focussed on the management of the legislative process, and more specifically, the establishing of the agenda in consultation with the Government, the presidents of the legislative committee and the presidents of the Parliamentary Groups, the management of the Plenary Session and the role of the Presidency in the development of the Institutional Communication of the Assembly with the Civil Society and in the development of International Relations of the Assembly. Both study visits were organized by the EU-funded project "Further Support to the Assembly of Kosovo" and the OSCE Mission in Kosovo.

## ASI Mission Statement

The Assembly Support Initiative (ASI) is the inter-agency coordination mechanism of democratization programmes in support of the Assembly of Kosovo, seeking to strengthen and professionalize the Assembly of Kosovo. The work of ASI focuses on a democratic political culture based upon acknowledge of and respect for democratic rules of procedure, transparency and accountability to the public, developing and implementing a legislative agenda, oversight over the Executive, respect for the multi-linguality and participation in regional and inter-parliamentary contacts.

ASI partners work to bring resources together, share information and coordinate programs while identifying needs in direct interaction with the Assembly. As coordinator of the ASI, the OSCE Mission in Kosovo liaises with all ASI partners and calls regular coordination meetings in consultation with Assembly representatives. A regular ASI Newsletter informs a broad domestic and international public on the developments in the Assembly of Kosovo as well as the ASI support programmes.

### *Currently participating in ASI:*

*Friedrich Ebert Stiftung (FES), Friedrich Naumann Stiftung (FNSt.), Konrad Adenauer Stiftung (KAS), East West Parliamentary Practice Project (EWPPP), European Agency for Reconstruction (EAR) in cooperation with the Consortium of the parliaments of France, Germany, Belgium, Slovenia and the Institut International de Paris la Defense, United States Agency for International Development (USAID) in cooperation with the National Democratic Institute (NDI), United Nations Development Program (UNDP) in co-operation with the Inter-Parliamentary Union (IPU), OSCE Mission in Kosovo and the Assembly of Kosovo*



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The views expressed by the contributors to this Newsletter are their own and do not necessarily represent the views of the Assembly, OSCE Mission in Kosovo or the ASI partner organisations.

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