

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

**MONITORING REPORT OF THE PERFORMANCE
OF THE ASSEMBLY OF KOSOVO**

July 2013

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
1. INTRODUCTION	5
2. LEGISLATIVE FUNCTION	5
2.1. Legislative planning	5
2.2. Legislative process	5
3. OVERSIGHT OF EXECUTIVE	6
3.1. Oversight of implementation of laws	6
3.2. Interpellation motions	7
3.3. Questions to the government	7
3.4. Plenary debates	8
4. OVERSIGHT OF INDEPENDENT INSTITUTIONS	8
5. PUBLIC CONSULTATIONS	9
6. CONCLUSIONS	10
7. RECOMMENDATIONS	10

LIST OF ABBREVIATIONS

IMC	Independent Media Commission
KCCH	Kosovo Council for Cultural Heritage
KSC	Kosovo Science Council
OSCE	Organization for Security and Co-operation in Europe Mission in Kosovo
PAK	Privatisation Agency of Kosovo
RoP	Rules of Procedure
RTK	Radio Television of Kosovo

EXECUTIVE SUMMARY

The report assesses the performance of the Assembly of Kosovo in 2012 for compliance with its Rules of Procedure. During the assessment period, the OSCE Mission in Kosovo (OSCE) noted an overall positive trend regarding the compliance of the Assembly proceedings with the Rules of Procedure, but also observed some challenges regarding the legislative process, oversight of the executive and oversight of independent institutions, as described below.

The Assembly's compliance with deadlines in legislative review has noticeably improved, but Assembly committees nevertheless had difficulties in scrutinizing draft legislation in a timely manner. Assembly committees routinely submit amendments to draft legislation well after the deadline, which is not in compliance with the Rules of Procedure. In addition, the Assembly and the government need to improve their co-ordination in terms of legislative planning. The Assembly's performance in conducting oversight of the government has not noticeably improved. Assembly Committees oversaw implementation of only a third of those laws scheduled for oversight in the Assembly's 2012 work programme. In 2012, the Assembly plenary session continued to make active use of the oversight instruments of interpellations, verbal questions and debates. Importantly, Committees and the Plenary session refrain from following up on the government's implementation of their recommendations expressed in oversight reports, interpellations, and debates. This detracts from the effectiveness of the oversight efforts.

The Assembly continues to review annual reports of independent institutions, routinely endorsing these reports. The Assembly failed on several occasions to appoint senior officials of independent institutions in a timely manner. This undermines the effectiveness of independent institutions.

Assembly committees continue to consult the public through public hearings in the draft law review and oversight processes. The number of hearings held varies year over year. Conduct of public hearings is in line with Assembly's Rules of Procedure but should be improved to meet international best practices.

1. INTRODUCTION

The report is drafted in accordance with the terms of reference for UNMIK Pillar III for Institution Building (OSCE) Monitoring of the Assembly of Kosovo. The objective of the monitoring mechanism is to observe and report upon the proceedings and deliberations of the Assembly with respect to compliance with the Rules of Procedure (RoP), adopted by the Assembly on 29 April 2010.

The report covers the period from 1 January 2012 to 31 December 2012 and assesses the performance of the Assembly in the following areas: legislative process, oversight of executive, oversight of independent institutions as well as consultations with the public. It also provides brief reference to the findings of the assessment of the performance of the AoK during 2011.

Data analysed in the Report is gathered through the regular OSCE monitoring of the AoK. In 2012, OSCE monitored all 43 regular plenary sessions as well as all 44 Presidency meetings. Additionally, the OSCE also monitored the meetings and public hearings of six partner committees, specifically the Committee on Legislation; Committee on Education, Culture, Youth, Sports, Public Administration and Media; Committee on the Rights and Interests of Communities; Committee on Human Rights, Gender Equality, Missing Persons and Public Petitions; Committee on Security, Internal Affairs and Oversight of Kosovo Security Force; and Committee on Oversight of Public Finances.

2. LEGISLATIVE FUNCTION

2.1. Legislative planning

In 2012, in its legislative programme, the government had planned to submit to the Assembly 105 draft laws, but it actually submitted only 91 draft laws, of which seven were returned for further revision. It should be highlighted that over 20 draft laws had been submitted to the Assembly in December 2012 and therefore could not be processed. Specifically, 12 draft laws had been submitted only in the last week of December, when the Assembly was in recess and had therefore no time to act on them. The delayed submission of draft laws was therefore justifiably criticised by the Assembly Presidency, which instructed all Assembly committees not to include any draft legislation in their annual 2013 work plans beyond 20 October 2013.

Similarly, in 2011, the government had committed to submit to the Assembly 143 draft laws, but managed to submit only 94, of which more than 20 draft laws were submitted in the last quarter of 2011, making it difficult for the Assembly to process them in timely manner. The annual legislative agenda still remains a dictate of the executive branch and its implementation requires better co-ordination and planning by the two branches of the government.

2.2. Legislative process

In 2012, the Assembly approved 69 laws, of which roughly two-thirds were approved past the deadline required by article 57.6 of the rules of procedure, which provides that “a functional committee shall present to the Assembly a report with recommendations on the draft law no later than two months after the first reading.”

Causes for delays in the review of draft laws by Committees include lack of technical expertise and expert support, disputes between central and local institutions, delays in submission of amendments by main committees, etc.¹ The adoption of a vast majority of laws was delayed and the Assembly committees should strive to review the draft laws within the required timeframe.

In current legislature, the Assembly increased efforts in initiating legislation. Altogether, the Assembly committees and members proposed seven pieces of legislation, which represents a notable improvement over the previous legislature during which only two laws were initiated by Assembly members.²

3. OVERSIGHT OF EXECUTIVE

The plenary session remains the key forum for oversight of the executive by the Assembly. The Assembly RoP provide several tools for oversight, including reports on implementation of laws, verbal questions, interpellations and debates that can be used in the session to hear ministers and discuss government policy. During the reporting period, the Assembly utilized these oversight tools as explained below.

3.1. Oversight of implementation of laws

In 2012, the Assembly adopted seven committee reports with recommendations on the oversight of implementation of laws.³ This represents a decline in comparison to the previous year, during which the Assembly had adopted 11 committee reports on oversight of implementation of laws.⁴ Moreover, the Assembly committees failed to meet the target of 2012 Assembly work program in this regard, which had foreseen the oversight of implementation of 22 laws in 2012.

¹ As an example, it can be noted that the Law on National Park “Bjeshkët e Nemuna/Prokletije” and Law on National Park “Sharr/Šar” were adopted by the Assembly after one year of delay due to the disputes between local and central institutions. Concretely, the respective Committee on Agriculture needed more time to settle the disputes between municipalities of Pejë/Peć and Deçan/Dečane and Ministry of Environment and Spatial Planning regarding these two laws.

² Seven pieces of legislation initiated by the Assembly: draft law on members of the Assembly, initiated by sub-committee on rules of procedure; draft law on Protection of Journalistic Sources, initiated by Ms. Alma Lama (*Self-determination* movement) with the support of six other members of the Assembly; the draft law on Amending and Supplementing the Law on Academy of Science and Arts, initiated by Mr. Ramë Vataj (PDK) with the support of forty other members of the Assembly; the draft law on Amending and Supplementing the Law on Mines and Minerals, initiated by the Committee on Economic Development; the draft law on Security Commissioner, initiated by the Committee on Internal Affairs; the draft law on amending the Law on Pensions Fund, initiated by the Budget Committee; and the draft law amending the War Veterans Law, initiated by *Self-determination* movement. In the previous legislature, only two laws were initiated by Assembly members – Law on Former Political Prisoners and Law amending and supplementing the Law on Public Financial Management and Accountability.

³ In 2012, the following committees performed law oversight: Committee on Labour, Health and Social welfare monitored the implementation of the Law on Labour Inspectorate and Law on Labour; Committee on Economic Development, Trade and Industry monitored the implementation of the Law on Expropriation of Immovable Property, Law on Protection of Competition and Law on Energy Efficiency; Committee on Budget monitored the implementation of the Law on prevention of money laundering and financing of terrorism; and Committee on Foreign Affairs monitored the implementation of the Law on Kosovo’s Foreign Diplomatic Services.

⁴ There were a considerable number of laws, whose implementation was being overseen by various committees and expected to be finalised during 2013.

The Assembly RoP, specifically article 73 provides that “each committee shall, within the scope of its authority, monitor the implementation of a law by the government or respective ministry.” The same provision furthermore specifies that “in order to fulfill this authority, the committees shall: (a) perform controls and studies of the effectiveness of the laws in force, their implementation and make recommendations for measures to be taken in concrete situations; (b) produce a list containing technical details of the law, (c) exercise control over the overall activity of relevant ministry; and (d) report in writing and verbally once a year to the Assembly in a plenary session.” In 2012, only 4 out of 13 committees complied with the above-referenced provision.

Furthermore, it should be highlighted that adoption of reports with recommendations represents in most cases the end of law oversight process, because committees take little or even no actions to follow up on implementation of those recommendations. In 2012, it was solely the Committee on Human Rights that had begun applying the follow-up of implementation of its recommendations.⁵ Although Assembly recommendations are not legally-binding for the government, the committees are encouraged to follow-up on implementation of their recommendations stemming from law oversight process in order to require higher accountability from the executive and improve implementation of laws in practice.

In the framework of strengthening oversight function, two Assembly committees – Committee on Security, Internal Affairs and Oversight of Kosovo Security Force and the Committee on Human Rights, Gender Equality and Petitions have commenced to exercise financial oversight of their line ministries and governmental agencies. This is a notable improvement as it is the first time that Assembly committees initiated financial oversight over the government.

3.2. Interpellation motions

The Assembly had discussed four interpellation motions during 2012 on issues of missing persons, privatization process, export tax and foreign policy, which were carried out in compliance with article 44 of the Assembly Rules of Procedure.⁶ Two out of four motions resulted in sets of recommendations to the government adopted by the Assembly. Nevertheless, even in this case, the adoption of recommendations by the Assembly represented an end to the process, because sponsors of the motions did not take any actions to follow up on implementation of those recommendations.

3.3. Questions to the government

In 2012, members of Assembly had submitted 160 questions to the government for verbal response, of which 117 received responses by either the Prime Minister or relevant ministers.

⁵ The Committee on Human Rights had organised a public hearing to follow up on implementation of its recommendations stemming from the report on oversight of implementation of the Law against domestic violence. The committee report was adopted by the Assembly in 2011.

⁶ Article 44 of the Assembly RoP provides that “A parliamentary group, namely six (6) or more Members of Assembly may file a motion of interpellation to debate an issue related to the work of the Government or a Ministry. An interpellation motion shall be submitted in writing and include concise formulation of the issue, justification for the motion, the name and authorized signature of the parliamentary group in question and text of the motion proposed for voting.”

However, 43 questions remained unanswered due to the absence of ministers and were published in Assembly bulletin.⁷

Question time, during the reporting period, was carried out by the Assembly in compliance with article 45 on “Questions to the government for verbal response”, which provides that the agenda of each session shall include a period of up to 60 minutes for members’ questions to the government. According to Assembly Rules of Procedure, if a question has not been answered within two consecutive plenary sessions, it is published in the Assembly Bulletin for the information of the public. The absence of the government during question time created difficulties to the Assembly in managing properly the question periods. In addition, delays in response caused questions to lose their relevance. However, the Assembly does not possess any mechanism to compel ministers to respond to questions posed by members of the Assembly.

3.4. Plenary debates

In 2012, the Assembly held eight debates, requested mostly by the opposition.⁸ During these debates, the Assembly discussed various government policy issues, such as children’s rights, pensioners’ rights, missing persons, the security situation, privatization process, etc. On four instances, the Assembly adopted sets of recommendations for the government during plenary debates. Even though Assembly recommendations are not legally-binding for the government, the plenary debates still remain the preferred tool for opposition to hear the ministers and seek response on different government policies. However, there were no actions from sponsors of plenary debates to follow up on implementation of adopted recommendations.

4. OVERSIGHT OF INDEPENDENT INSTITUTIONS

In 2012, the Assembly deliberated on 29 annual work reports of independent institutions for the previous year. The Assembly endorsed all those annual reports with the exception of the 2011 annual report of the Privatization Agency of Kosovo (PAK), which was rejected on the grounds of poor quality. Whilst, in 2011, the Assembly endorsed 27 annual work reports of independent institutions and rejected two.⁹

In this regard, it should be stressed that even where the Assembly does not endorse reports by independent institutions, it may not sanction those institutions, because the applied legal framework does not envisage any follow-up procedure or penalties in such cases. Adequate penalties in these cases should be identified and added to laws establishing those institutions.

In 2012, appointment of senior officials of independent institutions remained a challenge for the Assembly resulting in significant delays in appointments.¹⁰ Two seats on the RTK board, one seat on the IMC Council and one seat in the constitutional court remained vacant for

⁷ For the reference, in 2011, 124 questions were submitted to the government for verbal response, of which 106 received responses and 18 were published in Assembly bulletin.

⁸ Note that in 2011, the Assembly held seven debates.

⁹ In 2011, the Assembly had rejected the annual 2010 reports of the Central Election Commission and the Kosovo Competition Commission. The reports in question were rejected on the grounds of poor quality.

¹⁰ OSCE Report *The State of Independent Institutions in Kosovo* (July 2012), <http://www.osce.org/kosovo/92050?download=true>.

more than eight months due to failure of the governing coalition and the opposition to reach a consensus on proposed candidates.

The most striking cases of delay are the appointment processes of board members of the Kosovo Council for Cultural Heritage (KCCH) and Kosovo Science Council (KSC). Pursuant to the Law on Cultural Heritage, the KCCH consists of seven members appointed for a three-year mandate by the Assembly, respecting the ethnic composition in Kosovo. On 2 November 2007, the Assembly had appointed all seven KCCH members, whose mandate expired in November 2010 and who were not replaced. Thus, the KCCH as a decision-making body has been operating with four members whose mandate had expired-for more than two years. However, as of mid-2012, the KCCH has no members at all and is therefore un-operational. On the other hand, the KSC has not been able to operate without its members for two years. On 8 March 2012, the Committee on Education, as reporting committee, rejected government-proposed candidates for the Kosovo Science Council on the grounds of inadequate qualifications.¹¹ There have been no other attempts hence to appoint new members of the KCCH or the Science Council. Therefore, the Assembly in coordination with the government should strive to complete pending appointments in timely manner in order for the independent institutions to be able to operate without difficulties.

5. PUBLIC CONSULTATIONS

The Assembly committees conducted 30 public hearings in 2012, significantly fewer than in 2011¹². At public hearings, committees invite representatives of civil society and independent institutions to comment on a matter before the committee. Public hearings are held in line with the Assembly Rules of Procedure.¹³ The preparation, conduct and follow-up of public hearings are, however, often not in line with the provisions of the Assembly's "Manual on the Oversight Function of Parliamentary Committees"¹⁴ and international good practice.¹⁵ As in previous years, public hearings held by committees focused on gathering views of the public in the review process of draft laws proposed by the government. In addition, a number of hearings focused on the oversight of adopted laws. Participation in public hearings remains the only opportunity for civil society and interest groups to offer their contribution in the legislative and oversight processes of the Assembly.

In September 2012, the Assembly launched its civil society database, which provides an opportunity to the interested civil society organizations (CSOs) to register their contact data and information on their fields of activity and expertise that could be used by the Assembly when planning and issuing invitations for public hearings and consultations.¹⁶ The objective of this tool is to increase opportunities for participation of the civil society organization in the

¹¹ Kosovo Science Council is an independent body established by the Assembly based on the Law No. 2004/42 on Scientific Research Activities, as promulgated by UNMIK Regulation 2005/8, 23 February 2005. On 12 July 2007, members of the Council were proposed by the government and appointed by the Assembly, with mandate of four years. The Council is composed of 15 members and all positions are vacant as of July 2011.

¹² In 2011, the Assembly committees conducted 68 public hearings. See 2011 Assembly activity report, http://www.assembly-kosova.org/common/docs/Aktiviteti_legjislativ_i_Kuvendit_2011.pdf

¹³ Article 65 (4) of Rules of Procedure of the Assembly of Kosovo, 29 April 2010.

¹⁴ In particular, Committees rarely respect the manuals recommendation to give one week's notice for every public hearing held. Assembly of Kosovo, *Manual on the Oversight Function of Parliamentary Committees*, Pristina, June 2012, pp. 17-18.

¹⁵ OSCE Mission in Kosovo, *Co-operation of the Assembly of Kosovo with Civil Society*, Prishtinë/Priština, March 2013, pp.9-16, <http://www.osce.org/kosovo/100446>

¹⁶ The database is a communication tool between the Assembly and civil society.

legislative review and oversight processes of the Assembly committees. Since the public call for registration, over 60 organizations have registered. It is recommended that committees continue to regularly consult civil society and the public through hearings and ensure that these hearings are prepared and implemented in line with good practices, to ensure decision-making is pluralistic and accountable towards the public.

6. CONCLUSIONS

The Assembly of Kosovo continues to strive to improve compliance with the Rules of Procedure. However, during 2012 a number of obstacles and inconsistencies were observed. The deadlines in the legislative review process were not fully met. The lack of co-ordination of the Assembly and the government in terms of legislative planning continues to present a challenge in this regard.

The Assembly's performance in conducting oversight of implementation of laws has deteriorated compared to 2011. The committees failed to implement the 2012 Assembly work program in this regard, because they managed to conclude only six law oversight processes out of 22 planned.¹⁷ A big challenge for effective oversight is the lack of follow-up by Assembly on the government's implementation of its recommendations expressed in oversight reports, interpellations and debates.

Nevertheless, in 2012, two committees initiated for the first time financial oversight of their line ministries and governmental agencies, which is a notable improvement. The Assembly's performance in terms of oversight of independent institutions continues to be hampered by a lack of sanctions available for non-performance. Committees exhibit a disregard for the needs of independent institutions under their purview in terms of appointment to senior positions, which hampers the effectiveness of these institutions. Assembly committees did consult the public through public hearings in the draft law review and oversight processes, which is a positive development.

7. RECOMMENDATIONS

1. The Assembly Legal Department and Office of Legal Affairs of the government should consider holding regular meetings in order to better coordinate planning and implementation of legislative agenda.
2. The committees should strive to review the draft laws within the required timeframe in order to increase the effectiveness of the legislative process.
3. The committees should increase their efforts in overseeing implementation of laws and budgetary spending of line ministries in order to ensure the accountability by the executive.
4. The committees as well as sponsors of interpellation motions and debates are encouraged to follow up on implementation of Assembly recommendations by the executive.

¹⁷ See the link providing access to the 2012 Assembly work programme: http://www.assembly-kosova.org/common/docs/Programi_i_punes_se_Kuvendit_per_vitin_2012.pdf

5. The Assembly Presidency in co-ordination with the Office of Prime Minister should increase efforts in completing pending appointment of members to independent institutions/regulatory agencies in timely manner.
6. The committees are encouraged to continue fostering participation of civil society in their work.