Over 10 years Parliamentarism in Kosovo

Author: Kosovo Democratic Institute

Short analyses of public policies: "What went wrong?"
Series of brief policy analysis
What Went Wrong?

Over 10 years of Parliamentarism in Kosovo
Copyright © 2013 Forum 2015. 
Author: Kosovo Democratic Institute (KDI)

The views expressed in the analysis do not necessarily represent the views of the Kosovo Foundation for Open Society (KFOS).

Translated into English language by:
Arben Gashi

Translated into Serbian language by:
Qerim Ondozi

English version edited by:
Sara Nicole Baxley

Cover page comic by:
Jeton Mikullovci

Published by:
Forum 2015 – KFOS’s operational project
Imzot Nikë Prela nr. 13
10 000 Pristina
Kosovë

For more information email to:
info@kfos.org
or visit the webpage:
www.kfos.org
**CONTENT**

Introduction .......................................................................................................................................................... 5  
Assembly of Kosovo according to the Constitutional Framework and its relations with the SRSG ................. 7  
The political structure of four (4) legislatures of the Assembly of Kosovo ....................................................... 8  
The Assembly as supervising body and balancing between the powers .......................................................... 13  
Assembly, an orchestra orchestrated by the government .................................................................................. 13  
Assembly as a lawmaking body ....................................................................................................................... 19  
Laws without a debate – just to have them; ........................................................................................................ 19  
Assembly as a representative body .................................................................................................................. 18  
Citizens without a voice – parliamentarians for themselves .......................................................................... 23  
Parliamentary committees and their functioning ............................................................................................ 27  
Opportunity for additional per diems ............................................................................................................. 27  
The role of parliamentary groups in the Assembly of Kosovo ........................................................................ 31  
Flirtation opposition-position and the opposition from street ....................................................................... 31  
Managing bodies of the Assembly .................................................................................................................. 35  
The role of the Assembly Presidency and Deputy-Presidents in the decision-making processes of the Assembly ......................................................................................................................... 35  
Election and dismissal of the President of the Assembly .............................................................................. 36  
Open and Transparent Assembly? .................................................................................................................. 39  
Citizens see little of what’s being cooked .......................................................................................................... 39  
Actions of Assembly in relation to the Constitution ...................................................................................... 41  
The Assembly sometimes breaches the Constitution and other time walks on it ....................................... 41  
Election of President the “Achilles’ heel” in the Assembly of Kosovo ............................................................... 45  
Administration of the Assembly ..................................................................................................................... 49  
International assistance to the Assembly and its effects .............................................................................. 51  
Conclusions ....................................................................................................................................................... 53  
Recommendations: .......................................................................................................................................... 58  
THE LIST OF INTERVIEWED PERSONS: ...................................................................................................... 61  
BIBLIOGRAPHY ............................................................................................................................................. 61
The history of Kosovo’s Assembly as a democratic institution is young. Following the war in 1999, Kosovo underwent two transitions. One, the transition towards establishing its independent status and, two, a post-communist transition from a fifty year-long monist system to a parliamentary system. The realization of Kosovo’s independent status was dependent on meeting specific democratic prerequisites, in accordance with the United Nations Security Council Resolution 1244 (UNSCR), approved on June 10, 1999. The international administration instated by this resolution was structured as a temporary governing body aimed at creating the appropriate conditions for resolving the status of Kosovo as an independent nation. In addition to UNSC Resolution 1244, the other documents that served as the legal basis for the creation and functioning of the Kosovo Assembly were: the Rambouillet Agreement, the Constitutional Framework, the Rules of Procedure of the Assembly of Kosovo and (after April 2008,) the Constitution of the Republic of Kosovo.

The role of international administration in Kosovo can be divided into four main phases: the first phase, from June 10, 1999 until the establishment of temporary self-governing institutions; the second phase, after the establishment of self-governing institutions, a supervised period of functional self-governing; the third phase, the timeframe during which institutions aimed to define Kosovo’s final status; and, the fourth phase, from Kosovo’s declaration of independence on February 17, 2008 until the termination of internationally supervised independence in September 2012.

Since its establishment in 2001, the Assembly of Kosovo has been internationally administered. However, after approving the Ahtisaari Plan and the declaration of independence, international administration was downgraded to international supervision. International supervision formally ended in September 2012.

Nevertheless, one has to distinguish between this institution’s administration during the UNMIK period and the International Civilian Office’s (ICO) supervisory mission with a number of executive competences.\(^1\) While under UNMIK administration, the Assembly was ruled by the supreme authority of the UN Special Representative of the Secretary General (SRSG), and as such could not adopt any law, regulation, or other legislative act without his final approval. The ICO’s “control” on the other hand was much lighter. This meant that there was broader consultation and coordination between Kosovo authorities and the ICO to ensure that domestic institutions’ decisions did not contradict any of the ICO’s attitudes and principles.

The competencies and mandates of international missions in Kosovo (UNMIK and ICO) affected the parliamentary activities in Kosovo through administrative control and censorship. For this reason, parliamentary

---

1 International Civil Office
activities during this phase can be considered as an exercise of democracy rather than democratic action in itself. This distinction between exercise and action may be made since the international administration maintained the authority to repeal the decisions or laws of the Kosovo Parliament. Thus, this phase of parliamentary governance served to legitimize the fait accompli rather than establishing new facts.

That this supervised self-governing phase lasted more than one decade evidences that the Assembly of Kosovo, aside from facing the challenges of its institutional establishment and operation, also encountered challenges associated with important decision-making processes, such as formulating its declaration of independence followed by challenges related to state building.

In 2010, the development of the parliamentary system experienced growing pains in Kosovo. These growing pains were felt by citizens’ outrage based on the perception that their votes had been abused during the general elections electoral process in December 2010. Citizen discontent jeopardized the legitimacy and credibility of the Assembly of Kosovo, as well as other representative bodies of government. The period of parliamentary growth underlines the importance of citizens’ participation in free, fair and equal elections for the development of a democratic parliamentary system.

Since 2006, the Kosovo Democratic Institute (KDI) is the only domestic non-governmental organization that has closely monitored the work of the Assembly of Kosovo. During this time, KDI has issued many reports and analyses of Assembly activities. With the support of the Kosovo Foundation for Open Society, within the Forum 2015 framework, KDI has prepared this analysis that studies the challenges encountered in establishing the Assembly of Kosovo, operating as a democratic institution, demonstrating and implementing its constitutionally founded authority, of representing citizens’ interests and maintaining its integrity within the domestic political system.

2 Arsim Bajrami – Parliamentarian of the Assembly of Kosovo from PDK, personal interview.
3 Albin Kurti – Parliamentarian of the Assembly of Kosovo and at the same time President of the Self-Determination Movement (SDM), personal interview.

4 Ardian Gjini – Parliamentarian of the Assembly of Kosovo from the Alliance for the Future of Kosovo (AFK), personal interview.
ASSEMBLY OF KOSOVO ACCORDING TO THE CONSTITUTIONAL FRAMEWORK AND ITS RELATIONS WITH THE SRSG

The United Nations Interim Administration Mission in Kosovo (UNMIK), overseen by the UN Special Representative of the Secretary General (SRSG), was responsible for interim international administration and was mandated with executive, legislative and judicial powers.

According to the UNSC Resolution 1244, UNMIK was assigned the duty of assisting domestic representatives in creating the Provisional Institutions of Self-Government (PISG) in which the Joint Interim Administrative Structure (JIAC) was established to engage all political groups and ethnic communities living in Kosovo. In 2001, the SRSG approved one of Kosovo’s most important documents to date “the Constitutional Framework of Kosovo;” this document was the most significant legal act after the UNSC Resolution 1244. The Constitutional Framework differed from other UNMIK regulations by its inclusion of domestic experts in its drafting process and formal approval by the JIAC prior to being signed by the SRSG. This document, engaged (for the first time) Kosovo in the process of initiating self-governing activities for its development as a democratic institution, with international supervision. The Constitutional Framework established an important legal basis that recognized the people of Kosovo’s right to self-government at both central and local levels, established by free and fair elections.

Chapter 9 of the Constitutional Framework regulated the political role of the Kosovo Assembly, wherein it was defined as the highest representative and lawmaking institution of the interim self-government in Kosovo. As such, the Assembly had several responsibilities, overseen by UNMIK, which, in the majority of cases, were relegated to municipal assemblies in Kosovo.

Although the Constitutional Framework defined the Assembly of Kosovo as the highest lawmaking institution in Kosovo, the same document also recognized the SRSG as the highest authority governing all segments of life, even lawmaking activities. The legislative authority of the SRSG within the Kosovo Assembly as well as its right to issue regulations without first consulting the Assembly of Kosovo, resulted in the unusual legislative situation in which Kosovo’s highest representative and law-making body was subordinate to UNMIK.

Kosovo’s subordinated position of self-governing created a dualistic power structure within its legal system. Further complicating this governing structure, were the applicability of laws prior to the repeal of Kosovo’s autonomy in 1989 and those that followed that were not discriminatory. This legal structure created an unprecedented situation in which there were three legal orders simultaneously applicable in Kosovo, both de facto and de jure.

The SRSG’s powers were not limited to the lawmaking

sphere only; they included the right to dissolve the Assembly, to declare new elections if the interim self-government institutions were found to contradict the UNSC Resolution 1244 or be incompatible with the SRSG’s responsibilities as defined in the Resolution.\(^6\)

There are known cases in which the Assembly of Kosovo approved laws or resolutions that were subsequently repealed by the acting authority of the SRSG or were dismissed and never signed or declared. One example is Mr. Michael Steiner’s (SRSG) immediate repeal and the UN Security Council’s denial of the Assembly’s Resolution opposing the agreement between Skopje and Belgrade on the Macedonia/Yugoslavia border. The repeal claimed that the Assembly of Kosovo did not have the competency to adopt such a document. The SRSG also demonstrated its supreme authority by refusing to sign laws adopted by the Assembly of Kosovo. The SRSG refused to sign about 32 laws during the second legislature of the Assembly of Kosovo alone. During this period, the strength of the Assembly and the scope of its work were quite limited. Comparatively, during the second phase of international administration, there was an international civil representative responsible for interpreting the laws, but he did not execute the powers conferred to him.\(^7\)

However, since the declaration of independence and adoption of the Constitution of the Republic of Kosovo, the complications resulting from the subordinated power structure seem to be a thing of the past. Domestic institutions are trying to establish legal order in all of Kosovo by concentrating the lawmaking processes within the Assembly, which is the only institution with legislative power in the country.

The political structure of four (4) legislatures of the Assembly of Kosovo

The Constitutional Framework, and later the Constitution of the Republic of Kosovo, designated the Assembly as the lawmaking institution directly elected by the citizens.\(^8\) The Assembly has 120 parliamentary seats elected by secret ballots, based on open lists. The seats in the Assembly are divided across all political parties, coalitions, citizen initiatives and independent candidates proportional to the number of valid votes in the Assembly’s elections. Twenty of the 120 seats are reserved for representatives of minority communities in Kosovo.

\(^6\) Chapter 8, paragraph b of the Constitutional Framework; can be found at: http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2001regs/RA2001_09.pdf

\(^7\) Jakup Krasniqi, President of the Assembly of Kosovo, personal interview.

\(^8\) Article 63 of the Constitution of the Republic of Kosovo, can be found at http://www.kryeministri-ks.net/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf
The First Legislature of the Assembly of Kosovo (2001-2004)
The inaugural session of the Assembly of Kosovo was held on December 10, 2001. Although there were vast differences in the elections results due to the tense political environment and the influence of international institutions, political parties created a broad coalition between the Democratic League of Kosovo (LDK), the Democratic Party of Kosovo (PDK), the Alliance for the Future of Kosovo (AAK), DCAP and the minorities.

This broad coalition ensured a qualified majority in the Assembly with a total of 83 parliamentary seats, or 69.2% of the total Assembly seats. The opposition won 37 parliamentary seats from ten political parties, or 30.8% of the Assembly’s composition. The significant parliamentary majority by the coalition party members decreased the magnitude of the oppositions’ role in the Assembly and made Assembly sessions quite difficult.

Votes with an increase of 3% from the 2001 elections. The AAK received the third highest number of votes. An anomaly was the Citizen List, “Ora,” that despite being established less than three months before the parliamentary elections, won 6.26% of the votes of the Kosovo electorate.

Following the election, there was an unnatural political agreement established between the LDK (Ibrahim Rugova), governing coalition, and the AAK (Ramush Haradinaj). In fact, this agreement marked another important milestone for the evolution of Kosovo’s parliamentary system. This coalition is notable because it created a parliamentary climate within the Assembly of Kosovo that, for the first time, was comprised of a governing parliamentary body and an opposition body.

Third Legislature (2007-2010)
The November 17, 2007 elections determined the composition of IIIrd legislature of the Assembly of Kosovo. Its constitutive session was held on January 4, 2008. These elections altered the percentages of the political parties within the Assembly of Kosovo. The PDK won the most seats in parliament (37) followed by LDK with 25 parliamentary seats. Because the threshold was increased from 3% to 5%, the citizen movement “ORA” did not win any seats within the Assembly. However, the Alliance for New Kosova, despite participating in the elections for the first time, won 13 seats in the Assembly of Kosovo.

Due to the political processes of Kosovo during that time, especially the process of resolving the political status of Kosovo, and notwithstanding the strong rivalry, political party members again agreed to establish a coalition between the two largest political parties PDK and LDK and other representatives from minority parties. This coalition comprised a considerable majority in the Assembly of Kosovo and, with this, made it nearly impossible for the opposition party representatives outside of the governing coalition to act or effect action within the Assembly.
Nevertheless, this coalition did not manage to terminate its regular governing mandate since it was established on a shaky foundation. The foundation proved shaky with the Constitutional Court’s ruling (and subsequent dismissal) of President Sejdiu for breaching the Constitution by holding both the position of President of Kosovo and the position of the head of LDK at the same time. The Court’s ruling created new circumstances, based on which, the LDK decided to withdraw from the governing coalition. This decision drove the country towards an institutional crisis that resulted in the termination of the third legislature one year before fulfilling its mandate and the Assembly holding early parliamentary elections on December 12, 2010.

The Fourth Legislature (2011 - ongoing)
The IV-th legislature of the Assembly of the Republic of Kosovo was elected by early parliamentary elections on December 12, 2010 and a partial repetition of the electoral process on January 9 and 23, 2011 due to irregularities cited by the Central Election Commission.

The first session of the IV-th legislature of the Kosovo Assembly convened on February 21, 2011. Compared to the previous legislatures of the Assembly of Kosovo, major political party representation changed little. The largest political party in the country, the PDK, has fewer parliamentary seats compared to the 2007 elections; out of 37 seats, it now holds 34. The political party with the second highest number of seats was again the LDK, with 27 seats in the Assembly of Kosovo.

The Self-Determination Movement, prior to these elections, was a movement comprised of institutions mainly recognized for its objecting attitudes towards the legal-constitutional order and the institutions based on the comprehensive document (The Ahtisaari Plan) of the President Marti Ahtisaari. The decision to run in the elections seems to have been striking for the Movement since it won 14 seats in the Assembly of Kosovo.

The same cannot be said for the ANK, which campaigned with a pre-election coalition including the Justice Party (JP), the Social-Democrat Party (SDP), the group of experts E15, and other small parties, and won only eight seats of the 13 this party held during the previous legislature.

Not only did the political party structure of the Assembly of Kosovo in the IV-th legislature change, but elected party representatives also changed from the previous legislature. Out of 120 parliamentarians, only 37 were re-elected. With 83 new parliamentarians, new difficulties were introduced in the Assembly of Kosovo and it became difficult to continue the work of the previous legislature. Based on records of countries with consolidated parliamentary systems, legislature changes usually do not exceed 1/3 of the general number of parliamentarians.9

PDK, the Coalition for New Kosova and other political party members among the non-majority communities agreed to a governing coalition. Meanwhile, LDK, SDM, and AAK comprised the opposition. The structure of the coalition and the minimal difference in numbers be-

---

tween the coalition and its opposition resulted for the first time in the representatives of the governing coalition having fewer votes than those of the political opposition. In this context, the leader of Self-Determination Movement expressed his deep regret that while the opposition parties have the popular vote, the governing coalition (and Kosovo) continues to be governed by a government of minority.\textsuperscript{10}

\textsuperscript{10} Albin Kurti – Parliamentarian of the Assembly of Kosovo, at the same time President of the Self-Determination Movement (SDM), personal interview.
The structure of the Assembly of Kosovo during the four legislatures

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kosovo Democratic Party (DPK)</td>
<td>26</td>
<td>30</td>
<td>37</td>
<td>34</td>
</tr>
<tr>
<td>Democratic League of Kosovo (DLK)</td>
<td>47</td>
<td>47</td>
<td>25</td>
<td>27</td>
</tr>
<tr>
<td>Self-Determination Movement (SDM)</td>
<td></td>
<td></td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Alliance for the Future of Kosovo (AFK)</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>SLS</td>
<td></td>
<td></td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>ANK* / KKR</td>
<td></td>
<td></td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>DDL-ADCP**</td>
<td></td>
<td></td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>KP (Coalition Returning)</td>
<td></td>
<td>22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vatan</td>
<td>4</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>KDTP (Kosovo Democratic Turkish Party)</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>NDIK (The New Democratic Initiative of Kosovo)</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>AADPK (Ashkali Albanian Democratic Party of Kosovo)</td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>NMLK (National Movement on Liberation of Kosovo)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KPM (Kosovo People Movement)</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BPDAK (Bosniak Party of Democratic Action in Kosovo)</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>JP (Justice Party)</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>RUPK (Roma United Party of Kosovo)</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>ADCP (Albanian Demo-Cristian Party)</td>
<td>1</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UNIKOMB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SLKM</td>
<td></td>
<td></td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Ora</td>
<td></td>
<td></td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>DSB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SDS KIM</td>
<td></td>
<td>2</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>BSK</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GIG</td>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>PDAK</td>
<td></td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>PLK</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>SDA</td>
<td></td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>VAKAT</td>
<td></td>
<td>2</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>SNS</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>NDS</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>SKMS</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>JSL</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>ND</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>SNSD kim</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>PAI</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

* In elections of 2007 ANK run alone, while in the elections of 2010 (NKC) had a pre-electoral coalition with the group of experts E-15, DSP, JP and some other smaller parties.

** ADCP in elections of 2007 run in a coalition together with the DDL, while in elections of 2001 run alone.
THE ASSEMBLY AS SUPERVISING BODY AND BALANCING BETWEEN THE POWERS

Assembly, an orchestra conducted by the Government

The Constitution of the Republic of Kosovo defines Kosovo as a democratic republic based on the principle of sharing powers, checks and balances. The Government of the Republic of Kosovo is responsible for implementing state laws and policies and is subordinate to the parliament. Further, the mandate of parliamentary control is not limited to supervising the work of the Government, but also includes supervision of other public institutions, which, based on the Constitution and laws, report to the Assembly of Kosovo.

The control and parliamentary supervision of the executive branch is exercised through democratic means. The more common means of supervision are exercised by parliamentary questions, inquiries, review of the governmental work reports, establishing special committees to monitor and enforce governmental measures in the field, investigation committees, motions for votes of confidence, etc.

Until now, evidence suggests that the Assembly of Kosovo is not very effective in exercising its supervising function. During the first legislature mandate, the vague role of parliamentary control was primarily due to the lack of parliamentary experience as well as its broad governing coalition. During the second mandate and, especially after the change in leadership and initiation of institutional reform, supervision mechanisms by the opposition increased and to some extent, the supervisory role of the Assembly was strengthened. The third legislative mandate saw a governing coalition by the two biggest political parties in the country that was strong enough to realize its supervisory role. However, the number of seats this coalition held negatively impacted parliamentary power and mechanisms for government supervision. The political structure of the IV-th legislature saw a positive change and strengthening of its supervisory role of the government by the Assembly. The very small difference in the number of seats held by the governing coalition and the opposition resulted in (for the first time in Kosovo parliament’s new history) a parliament with a fairly consolidated governing coalition and opposition. This obviously influenced the dynamics of the Assembly of Kosovo’s work and increased its supervisory activities.

Regular evaluation reports by the European Commission (EC) Office in Kosovo continue to express concern regarding the relations between the Assembly of Kosovo and the Government. The EC report for 2008 stated, “There is little or no interaction between the Government and Assembly aside from when the Government submits legislation to the Assembly.”

11 Constitution of the Republic of Kosovo, Article 4, item 1 and 4, is found at: http://www.kushtetutakosoves.info/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf

12 NEW MANDATE, NEW OPPORTUNITIES, Evaluation of the work of the Assembly of Kosovo and recommendations for further development, Published in 2008, p. 16.

The 2011 EC evaluation of the relationship between the Government and Assembly did not improve. It again stated that the Assembly supervision of the executive branch should be strengthened. “Representatives of the Government do not attend the plenary sessions on regular basis. Also, the requests by the Assembly on written reports from the Government are not fulfilled sufficiently.”

The 2012 Feasibility Study on Kosovo addressed this problem more clearly. This report states, “the Assembly needs to strengthen its supervising capacities of the executive branch through improved revision of the legislation and monitoring the implementation of policies and laws.”

Additionally, the Special Representative of the European Union and Head of the ICO Office, Pieter Feith, in his speech before the Foreign Affairs Committee on February 12, 2009, criticized the Kosovo institutions for their lack of sufficient improvement. He claimed that the Parliament of Kosovo is not involved enough in decision-making and that too many decisions are determined only by the Government without significant involvement of the Parliament.

The poor parliamentary control and the executive branch’s tendencies to transform the Assembly of Kosovo into an unconditional legitizer of Government’s decisions, has resulted in a weak Assembly. As such, even after the termination of international supervision, the Assembly of Kosovo has neither realized its constitutional responsibilities nor strengthened its supervisory capacities. In a normal situation, the governmental influence of Assembly work may be due to the support offered by its parliamentary majority. However, in Kosovo, there are instances when the Government has influenced parliamentarians to change their vote in cases where the Government perceived the Assembly vote as unfair.

The December 7, 2011 Assembly session provides an example of the aforementioned instance; the Assembly adopted a motion of the Self-Determination Movement concerning reciprocity measures with Serbia and, one month later, on January 20, 2012 at the request of the parliamentary group of PDK, adopted a counter-motion on the same issue. Another example of Government influence in the Assembly was in the session of October 4, 2012. Parliamentarians belonging to the governing

---


15 Feasibility Study on Kosovo 2012, is found at: *http://www.meiks.net/repository/docs/Dokumenti_punues_i_Komisionit_Evropian_mbi_SF_per_MSA_mes_BE-se_dhe_Kosoves.pdf*

16 Zijadin Gashi, February 13, 2009. Kritikat e Feithit (s’)

---

17 Adriatik Kelmendi – personal interview.

18 Transcript from the plenary session of 12.07.2011, is found at: *http://www.assembly-kosova.org/common/docs/proc/proc_s_2011_12_07_10_3884_al.pdf*

19 KDI, monthly report on monitoring the work of the Assembly of Kosovo; September 2012. During this session, parliamentary groups presented two requests. The first was presented by the head of the largest parliamentary group, PDK, calling for a
coalition left the plenary session to strategically endanger the quorum and interfere with the voting process (based on worries regarding the oppositions’ votes) related to privatization in Kosovo. These actions were not only unprecedented, but also demonstrate the political immaturity and the lack of integrity of parliamentarians who compromise both their rights as parliamentarians and their independence both of which breach their mandate of parliamentary work as guaranteed by the Constitution of Kosovo.

KDI monitoring reveals that Assembly representatives’ feel constant pressure from the executive branch. These pressures may be seen in instances when parliamentary representatives voted for the amendments based on the Government’s instruction, which occurred more recently in the session of April 20, 2012 concerning amendments to the Draft-Law on Big Hoqa. The vote for the resolution (which was in contradiction with the Rules of Procedure of the Assembly) and the second, requesting respect for the procedural norms articulated by the President of the Assembly - Jakup Krasniqi. Non-acceptance by the President of the Assembly and the breach of the Rules of Procedure, which requires voting on all proposals of the parties in the coalition, encouraged a boycott of the session by parliamentarians of PDK (except Mr. Fatmir Limaj), other parliamentarians of the parties in power (except one parliamentarian of ANK, Muhame! Mustafa), and the entire government cabinet.

Article 70, item 1, of the Constitution of the Republic of Kosovo: “Parliamentarians of the Assembly are representatives of the people and are not subordinated to any obligatory mandate.”

At this plenary session, while voting on amendments of the Draft-Law on Big Hoqa, parliamentarians of the Kosovo Assembly received documents with instructions on how to vote for each amendment. These documents included the written text of each amendment being voted upon followed by a “YES” or “NO,” recommendation for each parliamentarian how to vote.

Conversely, Government cabinet Ministers’ hesitation to respond to the parliamentary representatives’ questions, their rare presence in the plenary sessions, failure to respond to invitations to report at plenary meetings, and ignoring the recommendations or attitudes offered by the Assembly clearly suggest the inability of the Assembly to exercise its constitutional powers of supervising the executive branch.

Unfortunately, this demonstrates that parliamentary capacities still lack permanent and sustainable supervisory powers. This lack of parliamentary supervision may be due to the lack of understanding of parliamentary control as a constitutional function.
Parliamentary control through the parliamentary questions
Interpellation as an instrument of parliamentary control is not effective. Based on the Government cabinet’s peripheral answers to parliamentary representatives, cabinet members’ absence from the plenary sessions, the number of parliamentary questions that are ignored or whose importance is not recognized by the government cabinet proves that constitutional competencies of Kosovo’s representative institutions are not being exercised according to the political framework. Instead of acting as a supervisory political body, the parliamentary questions are used by the political parties in power to enable Ministers to promote their work or plans for the future. In this way, parliamentary questions act to further bolster the power of the Governmental cabinet rather than balance its powers. Moreover, parliamentary questions are strategically directed to Ministers based on each parliamentarian’s position; parliamentary representatives usually ask Ministers belonging to their party or to the parties of coalition partners.

Parliamentary control through parliamentary motions
The Assembly Rules of Procedure regulate parliamentary motions. Similarly, the Assembly of Kosovo has used interpellation, as a mechanism of supervising the executive branch, very little. Notably, during the first legislature 2001-2004, and until June 2006, there has been only one parliamentary motion in the Assembly of Kosovo. In the current legislature, the numbers of parliamentary motions and other initiatives for parliamentary control of the government have increased. However, in the majority of cases, the parties of the governing coalition have voted against motions, which contribute to decreasing the importance of this democratic instrument.

Investigation committees
Investigation committees are included in the spectrum of mechanisms the Assembly of Kosovo has available to supervise the executive branch. The modest number of investigation committees created by the Assembly since its establishment suggests little implemented parliamentary control. Although the Law on Parliamentary Investigation was only recently adopted in 2010, historically, the Assembly of Kosovo had the legal power to create investigation committees on specific issues. This power was regulated with the Assembly Rules of Procedure adopted in 2005. Notably, despite the Assembly of Kosovo functioning for more than one decade, this supervisory instrument has only been used in three cases.

The first investigative parliamentary committee was established to investigate the March 2004 turmoil. Although this committee initiated several meetings, the nature of the issue under investigation, the political situation and other circumstances resulted in this committee terminating the investigation and failing to report to the Assembly of Kosovo. The second investigative
committee\textsuperscript{22} was established to examine the findings of the Auditor General in 2005, which disclosed Assembly leadership’s financial abuses. There was a good level of cooperation between the members of the committee and the political parties of the Assembly (both by governing and opposition groups), which resulted in a final report being submitted to the Assembly with specific recommendations for review and approval.\textsuperscript{23} The last committee, established by a decision of the Assembly of Kosovo on March 28, 2013 was formed to evaluate the billing practices used for citizen’s electricity use during the month of January 2013.

Parliamentary supervision by the parliamentary committees

Parliamentary committees act as a very important element in the process of supervising the executive branch and ensuring the Assembly’s competency for managing issues as related to relevant Government Ministries. Ministers have rarely expressed willingness to respond to invitations of the parliamentary committee to report on certain issues. The irresponsibility of Ministers and their unwillingness to report to the Assembly has created difficulties for the parliament to complete their work and effectively fulfill their legal responsibilities.

Negligence of Ministers is not the only reason for the Assembly’s insufficient parliamentary supervision of the government. Other causes negatively affecting parliamentary supervision are committees’ excessive workload; committees are often required to supervise activities from three different Ministries simultaneously. Responsibilities of parliamentary committees include reviewing numerous draft-laws from Ministries, organizing public hearings, monitoring the implementation of laws, field visits and support and coordination for many other activities. The situation is further burdened by the fact that the personnel supporting committee work are limited in number and capacities. The committees have support from only a small team of officials who are responsible for the organization and management of all committee activities. Therefore, due to the overburdened state of committees and the limited support of professional personnel, the range and quality of the committees’ supervision of the executive branch is not satisfactory. Additionally, the delegation of parliamentary groups based on their political affiliation rather than their professional expertise and capacity negatively impacts the effectiveness of the committees for supervising executive branch activities.

\textsuperscript{22} The investigative committee on the factual findings of the Auditor General in the Assembly of Kosovo (Report of the Auditor General dated July 3, 2006), was established on 11.03.2006, with a decision of the Assembly of Kosovo. The committee had to investigate the period between 1 July, 2004 – 31 March, 2006.

\textsuperscript{23} Report of the investigative committee was reviewed and approved at the plenary session of the Assembly of Kosovo held on 02.22.2007.
ASSEMBLY AS A LAWMAKING BODY

Laws without a debate – just to have them;

One of the main functions of the Kosovo Assembly is lawmaking. The Constitutional Framework initially regulating the procedure for issuing legislative acts was a complicated procedure for adopting and declaring the laws. Later, after the Constitution of the Republic of Kosovo was implemented and powers of domestic institutions were transferred, procedures for issuing legislative acts and Assembly powers describing its legislative role were clarified.

Until now, parliamentary practices show that about 99% of draft-laws voted on by the Assembly come from the Government of Kosovo, despite the fact that the Constitution and other laws in Kosovo confer the right of legislative initiative to the President of the Republic, to the parliamentary representatives, or a collective citizen initiative (a minimum of ten thousand)\(^24\) For 12 years of parliamentary life, this constitutional right has only been used five times by the parliamentary committees and only once by a collective citizen group.\(^25\)

Also, the nominal involvement of citizens, civil society and other interest groups during the initial phases of drafting the draft-laws has continually resulted in legislation having huge gaps and, in some cases, being unimplementable in practice. The poor quality of laws adopted by domestic institutions is also evidenced by the fact that out of 98 draft-laws adopted during the 2013 Assembly,\(^27\) 65 (or 60%) have been amendments to existing laws, some of which were adopted in 2011 and 2012, or already amended several times.

24 Constitution of the Republic of Kosovo, Article 79, is found at: [http://www.kushtetutakosoves.info/?cid=1,255](http://www.kushtetutakosoves.info/?cid=1,255)
25 Citizen initiatives on amending the Law on Local Self-Government was undertaken with the initiative of KDI and other nongovernmental organizations. Despite the fact that this initiative was conducted in accordance with the Constitution of Kosovo, which requires over 10 thousand citizen signatures to initiate an amendment to a law, the Assembly of Kosovo (Presidency) decided not to proceed with this initiative based on the justification that no law has been adopted outlining the procedures on how a citizen initiative is implemented within the Assembly of Kosovo.
26 Albin Kurti Parliamentarian in the Assembly of Kosovo, at the same time President of the Self-Determination Movement (SDM), personal interview.
27 Assembly’s Work Program for 2013.
location of the hearing should be related to the issue the draft-law addresses.

The EC Progress Report on Kosovo for 2008 also highlights the lack of participation of the civil society within the Assembly of Kosovo in the drafting process of legislation. This report stated, “parliamentary representatives have weak links with their election areas and there is a lack of effective participation of civil society in the legislative process.”

The EC report on Kosovo in 2011 expressed similar concerns: “public hearings are sporadic and civil society is not effectively involved in any parliamentary debate. There is no institutional platform that enables a regular dialogue between the Assembly and civil society organizations.” Furthermore, in the same report, there are critiques of the Assembly’s lawmaking process and harmonization with European legislation. “The capacity of the Assembly for monitoring and research still remains weak. The legislative procedure needs to be strengthened to ensure inter-sector expertise. The Office on Legal Affairs, Standardization and Harmonization lacks personnel, thus weakening the effective and detailed review of the legislation. The capacity of the Assembly for ensuring the compatibility with European norms needs to advance in an effective manner.”

Despite the EC remarks, the Assembly of Kosovo did not address the issues effectively and did not resolve the problem concerning the capacities and willingness of Assembly members to adopt legislation in full compliance with acquis communitaire. This was mentioned by the Feasibility Study on Kosovo for 2012 wherein strategies were sought to increase the legislative capacity of the Assembly, particularly the Assembly’s Department on Legal and Procedural Issues. The legislative procedure needs to be strengthened to ensure inter-sector expertise and compliance with the acquis.

---

31 European Commission Feasibility Study on Kosovo 2012, is found at: http://www.meiks.net/repository/docs/Dokumenti_punues_i_Komisionit_Evropian_mbi_SF_per_MSA_mes_BE-se_dhe_Kosoves.pdf
Citizens without a voice – parliamentarians for themselves

The basic criterion of a democratic parliament is to act as a representative body of the people. Essentially this means that the parliament should embody the people’s will expressed by electors together with the political parties who act on behalf of the people. The direct, popular election of a lawmaker is a fundamental principle of a representative democracy and enforces the legitimacy of legislature.

How representative is the Kosovo Assembly?
Currently, in its electoral system, Kosovo uses the proportional system with open lists in a single electoral area. Citizens of Kosovo may vote for one political party, or a certain coalition, with the possibility of voting for five candidates within the same political party.

In this electoral process, the elector does not directly elect representatives from where he lives and therefore, might not protect interests related to problems of the area. Instead, voters elect a political subject. This system may result in smaller municipalities not having a representative. Conversely, this system has also created over-representation in some municipalities in which geographically small municipalities with few inhabitants have more representatives than other larger and more highly populated municipalities.

Kosovo is a single electoral area wherein parliamentarians can receive votes from around Kosovo. Such an electoral system may impede real and sincere communication between the electors and the elected people (electorate-parliamentarian). The EC Progress Report for 2008 confirms that communication between the elected representatives and their voters is lacking. The report expressly stated, “Members of the Assembly have weak ties with their electoral areas.” This concern was also addressed by the International Crisis Group (ICG) who claimed, “Irresponsibility of parliamentarians before the electorate is increased by the existence of a single list of proportional representation, which means there cannot be direct responsibility before the electorate.”

Alongside the representative role of the Assembly of Kosovo, the Constitutional Framework and, later, the Constitution of the Republic of Kosovo and other laws in force contribute to the overall composition of this institution. According to the document of President Ahtisaari incorporated in the Constitution of Kosovo, Kosovo has applied a measure of positive discrimination for minorities. Although the non majority communities in Kosovo only comprise 5-7% of the general population, in every legislature, irrespective of the votes received, minority representatives hold almost 20%, or ¼, of the total number of seats in the Assembly of Kosovo. Moreover, the Law on General Elections in Kosovo obliges the political parties to include at least 30% women in their

---

candidates lists, which means that in practice the real competition between political subjects is only for about 60 or 70 seats of the Assembly. The reserved seats, the gender quota, the lack of democracy within the political parties, and the abuse of citizens’ votes impact the representative role and contribute to the present democratic and structural deficit within the Assembly.

This system applied in Kosovo, compared to regional and European parliamentary systems, has produced a parasitic democracy in which parliamentarians receive political power from means other than election results. Although this political climate is a result of compromises and political concessions responding to the political circumstances of Kosovo, it has negatively impacted democracy and the concept of a parliamentary system.

Also, the Assembly of Kosovo’s system of elections has had two other important contributing factors: the party leaders’ dictates for preparing the lists of parliamentarians running for office and the manipulation of votes. The manipulation of votes means that a number of parliamentary representatives unfairly hold office. If the composition of the last legislature of the Assembly is compared to previous legislatures, the decline in quality, stagnation of political growth, the decline of intellectual debate, and recline of professional growth become obvious. The decline in capacity reduces parliamentary accountability and responsibility to the electorate and the citizens in general.

---

36 Ardian Gjini, Parliamentarian of the Assembly of Kosovo (AFK), personal interview.
37 Arsim Bajrami, Parliamentarian of the Assembly of Kosovo (PDK), personal interview.
38 Jakup Krasniqi, President of the Assembly of Kosovo, personal interview.
39 Jakup Krasniqi, President of the Assembly of Kosovo, personal interview.
Opportunity for additional Per Diems

As essential mechanisms in the parliamentary structure, the parliamentary committees serve many important functions in the legislative process, in the control and balancing of executive power, as well as for ensuring the transparency of governance and other political processes. The Constitutional Framework, the Rules of Procedure of the Assembly and the Constitution of the Republic of Kosovo establish and regulate the parliamentary committees’ role and legislative activities. The Assembly of Kosovo, based upon the proposal of the presidency, in the IVth legislature rendered the decision on reducing the number of parliamentary committees from sixteen to thirteen. Out of these committees, four were permanent and nine were functional committees.

The scope of work of these committees depends on the field they cover. That parliamentary committees in the Assembly of Kosovo are overloaded is evident in the fact that some committees cover activities from three different Government Ministries. The compressed legislative agendas mean that the parliamentary committees often neglect their other functions by not exercising these responsibilities or by improvising to justify the non-implementation of their legal and constitutional mandate. The review of all draft-laws from sponsoring Ministries, organization of public hearings, monitoring of laws’ implementation, field visits and other activities require strong support from parliamentary personnel and good coordination of activities. A small team of two to three officials available to the parliamentary committees for assisting the organization and management of all the committee’s activities has not guaranteed implementation of the mandate of these important bodies of the Kosovo Assembly.

The role of committees as supervisors of the Executive branch does not end once laws are passed, but should continue throughout the mandate of the committee. The parliamentary committees should ensure that the laws adopted are adequately implemented and that Ministries and departments are held responsible for reporting on the activities and progress achieved.

To date, the Assembly of Kosovo has adopted 497 draft-laws. A considerable number of the laws adopted regulate (for the first time) certain social norms, while the other portion of laws have replaced regulations and other administrative acts adopted by the UNMIK administration in Kosovo. Although the legislative structure in Kosovo continues to become more complete, there remains an extraordinary challenge concerning the practical implementation of the adopted legislation. Executive institutions at the central and local level still do not show full willingness to implement all the legal provisions from the legislation adopted. This often times is not only due to a lack of willingness of institutional officials to implement laws, but often there is also a lack of professional capacities for interpretation and
implementation of legal provisions.

Lacking a comprehensive strategy for the rule of law, as well as the lack of political willingness, Kosovo institutions, including the Assembly of Kosovo, continue to ignore the process of practical implementation of adopted laws. Adopting numerous laws without being concerned with implementation is increasingly seen as an incorrect approach to governance that further impedes strengthening the rule of law in Kosovo.40

The EC Progress Report on Kosovo for 2008 found that: “the Assembly has a lack of capacities to ensure effective supervision of the implementation of laws.”41 Similar criticisms were repeated in the reports for 2009, 2010 and 201142 and further identify the challenges for implementing the laws within many central sectors of the country, such as: state administration, efforts for preventing corruption and implementation of the laws protecting human rights and freedoms.

Recurrent noncooperation between line Ministries creates additional difficulties for parliamentary committees in the process of monitoring the implementation of laws. Until now, there did not exist a practice of submitting bylaw acts within the Legal Department of the Assembly of Kosovo. To ensure better coordination and implementation, the Assembly of Kosovo should oblige the Executive official to inform the Assembly, especially the functional committees, about every bylaw act issued. In order to strengthen the rule of law and efficient monitoring of its implementation, it is necessary to establish regular and frequent contacts between the legal offices of Ministries, the Legal Office of the Prime Minister, and the Legal Department of the Assembly of Kosovo.43

That parliamentary committees continue to be subject to party agendas may also contribute to the poor quality of their work. There are many known cases in which a parliamentarian from the opposition party of the sponsoring Minister has chaired the parliamentary committee. Often a committees’ party orientation has had disabling impacts on the committees’ mandate and functioning in the real sense.44

Furthermore, the non-efficiency of parliamentary committees’ work has affected the small number of committees functioning in the Assembly as well as the small number of committee members. In the previous legislatures there were 16 parliamentary committees, while in the last legislature this was reduced to 13, without

40 The Role of the Assembly in the Monitoring Process of Law Implementation, publication of KDI, is found at: http://kdi-kosova.org/publications
43 Rinor Beka NDI, personal interview.
44 Avni Zogiani, Executive Director of the Organization "Qohu," personal interview.
increasing the efficiency of their work. Distribution of the parliamentarians across several committees and the number of members of every committee rarely exceeds 11 members, which means that a parliamentary committee may review draft-laws and render decisions with only six members present. Reviewing and rendering decisions with six members impacts the quality of laws. The Assembly should aim to reduce the number of committees and increase the number of committee members to at least 20. This would improve the quality of debate, the quality of draft-laws and other acts recommended by the parliamentary committees.

45 Ismet Krasniqi, Secretary of the Assembly of Kosovo, personal interview.
THE ROLE OF PARLIAMENTARY GROUPS IN THE ASSEMBLY OF KOSOVO

Flirtation opposition-position and the opposition from street

Parliamentary groups reveal the organized expression of parties and political formations within the Parliament. Regulations of the Parliament define rules on their autonomous establishment and organization, notwithstanding the existence and legal regime of political parties. The parliamentary party groups are a main tool for transforming campaign promises into a legislative reality and informing political party policies.\(^4^6\)

Political circumstances, the short-term interests of political subjects and the lack of internal party democracy has resulted in a limited role of parliamentary groups (in 12 years of plural life in Kosovo) in creating strong foundations capable of establishing a truly representative and competent lawmaking and supervising institution. The unnatural coalitions between the political parties, the lack of a debate culture within the Parliament, the lack of respect for the differing opinions, the diminished impact of oppositional parties and unwillingness for providing alternatives to solve problems are some of the contributing factors that characterize the role of parliamentary groups in the development of Kosovo’s parliamentary system.

Lacking a parliamentary majority to elect the President of Kosovo and the Government of Kosovo after the parliamentary elections in 2001, there was, for almost two months, a parliamentary crisis averted only after the agreement by political party leaders to establish a broad coalition. The broad coalition ensured a system of co-governance by sharing the Ministerial positions and widening the political consensus. This did not have a very positive influence on establishing the foundation for building institutions based on the principle of sharing the powers and controlling each other. The broad coalition resulted in weak oppositional parliamentary groups and excluded the function of political control of the government, which transformed the Assembly into merely a lawmaking institution.

The second parliamentary elections resulted in a coalition that created conditions and opportunities for a functioning parliamentary oppositional group. While there was healthy cultivation of an opposition spirit, the Vienna talks concerning the final status of Kosovo impeded development of a parliamentary system.\(^4^7\) The Unity group established to lead these talks was composed of the leaders of the political parties comprising the majority and opposition, which consequently marginalized the role of Assembly in this process and reduced the power and importance of parliamentary groups included.

After the third parliamentary elections, due to the ongoing political processes in Kosovo, especially as relat-


\(^4^7\) Jakup Krasniqi, President of the Assembly of Kosovo, personal interview.
ed to solving Kosovo’s final political status, the biggest parties in the country agreed to an unnatural governing coalition. The numbers of parliamentary members in this coalition made it nearly impossible for the opposition to participate effectively in parliamentary groups not included in the governing coalition.

The fourth legislature established a governing coalition between the PDK and the Coalition for New Kosova as well as other political subjects from non-majority communities in Kosovo. Meanwhile, the LDK, SDM and AAK created the opposition coalition. The structure of the coalition and the minimal difference in numbers between the ruling party and opposition reflected, for the first time in the history of Kosovo’s parliamentary system, the number of seats held by party members in the parliament; this resulted in fairly strong ruling and opposition coalitions.

However, the opposition parliamentary groups experienced a serious handicap due to the heterogeneity of the parties’ programs and interests. These groups, with few exceptions, were not able to create a strong opposition. LDK, with a long history of governing the country, has not adapted well as the opposition group. The Self-Determination Movement has an agenda that has eliminated the opportunity to motivate an opposition block because of its known political attitudes contesting the basic documents on regulation in Kosovo. This stance cannot be accepted by the LDK and AAK since they participated in implementing the policies of those documents, particularly the Ahtisaari Document. On the other side, the AAK has continually created expectations that it will join with the government party.\textsuperscript{48} This has contributed a fragmented and handicapped opposition that struggles to generate important initiatives that elicit a vote of confidence of the Government of Kosovo.

During these years of functioning parliamentary groups there have been instances when a parliamentary group (of a bigger party) included parliamentarians of smaller parties that did not have a sufficient number of members for establishing a parliamentary group. However, a distinctive feature of the III\textsuperscript{rd} legislature was that approximately 11 parliamentarians from different political parties changed their party alignment or parliamentary groups. Some parliamentary members chose to return to previous party alignment, some decided to change their party, while still others decided to fulfill its mandate as independent parliamentarians.\textsuperscript{49}

The lack of sufficient professional assistance and advice to the members in parliamentary committees contributes to the fact that role of these groups has not been strengthened. Many parliamentarians have their first professional job as a parliamentary representative and act in parliamentary committees without any profes-

\textsuperscript{48} Avni Zogiani, Executive Director of the Organization "Qohu," personal interview.

\textsuperscript{49} Scorecard January-July 2010, Publication of KDI, p. 15, is found at: http://kdi-kosova.org/publications/Parlamenti2010_Final.pdf
ional support. The structure of the parliamentary groups is also problematic; parliamentary groups usually meet only five or ten minutes before a plenary session, during which time members receive instructions on how to vote. Internal debate and expertise is generally lacking.\textsuperscript{50}

After more than a decade of political and plural life in Kosovo, the IV\textsuperscript{th} legislature has introduced a new form of activism and opposition reactions by parliamentary representatives in the form of protests and demonstrations. The Self-Determination Movement introduced this form of opposition; since this movement’s establishment, it has valued protests and demonstrations as an important method of reaction used to object to the form of governance in Kosovo. Alternatively, other parliamentary members and groups have opted for intra-institutional mechanisms to express their attitudes and reactions to decisions and the form of governance.

\textsuperscript{50} Rinor Beka – NDI, personal interview.
MANAGING BODIES OF THE ASSEMBLY

The role of the Assembly Presidency and Deputy-Presidents in the decision-making processes of the Assembly

The Assembly Presidency assists the work of the Assembly by determining the agenda of the plenary sessions. The Presidency of the Assembly reflects the political and ethnic composition of the Assembly including minority groups as determined by the quota requirements for non-majority representation. The Presidency of the Assembly plays an important role for harmonizing potential dissatisfaction of any political representatives before the plenary session begins. The existence of this official body within the Assembly may be seen as a harmonizer of parties’ attitudes. Consequently, a simple amendment of the Constitutional Framework was made with the purpose of instructing opposition parties to present differing attitudes to the Presidency of the Assembly. This has been the only justification for amending the Constitutional Framework (which has occurred twice concerning the same issue).

The Presidency of the Assembly, although acting only as an assisting institutional body, has always been perceived by representatives as an important body within the Assembly. In the first constitutive session of the Assembly of Kosovo on December 10, 2001, the Assembly elected only five members to the presidency compared to the fourth session on March 4, 2002, during which PDK nominated two members from its own party. In response to the request of AAK, that it also be represented in this institution, as a fourth party, the Constitutional Framework was amended increasing the number of members of the Presidency of the Assembly from seven to eight. In the inaugural session of the second legislature, seven members of the Presidency were elected, and parties representing the Serbian community had not nominated a parliamentarian for the Presidency of the Assembly. In the third legislature, on January 9, 2009, the Presidency was composed differently. The parliamentary group of AAK requested that the Constitutional Framework be amended and the number of members of the Presidency be increased from eight to nine allowing the fifth most highly represented political party the right to representation in the Presidency of the Assembly as well. This request was granted by other political parties and the SRSG, Joachim Rucker.

Problems with electing the Presidency of the Assembly ceased after the declaration of independence and implementation of the Constitution of the Republic of Kosovo. This document outlined a new composition of the Presidency of the Assembly with a total of six members, the president and five deputy presidents. The composition and election of the members was determined according to the following procedure: The President of the Assem-

---

51 Arben Gashi, Parliamentarian of the Assembly of Kosovo from LDK, personal interview.
52 Two from LDK, two from the Serb party “Returning” and one from other communities.
53 Minutes of plenary session, March 4, 2002, is found at: http://www.kuvendikosoves.org/
54 Minutes of plenary session, December 3, 2004, is found at: http://www.kuvendikosoves.org/
bly is nominated by the largest parliamentary political party; three deputy presidents are nominated by the next three largest parliamentary political parties; and two deputy presidents are reserved for representation of the non-majority communities, one from the Serbian community and one from other communities. Their election is determined by a majority of votes of all parliamentarians. Election and dismissal of the President of the Assembly Legislatures of the Kosovo Assembly did not only face the problem of the composition of its Presidency but, often the position of the President of the Assembly itself was part of the political bargains between partners of the governing coalition. The Assembly of Kosovo has until now had three presidents. The first president of the Assembly, Nexhat Daci, was elected by the LDK in December 2001 and reelected for the second mandate in December 2004. Mr. Daci’s leadership was criticized for not respecting the democratic procedures. Procedural breaches during his leadership have been proven in the regular reports conducted by the domestic and international monitoring and supporting organizations. On March 10, 2006, in response to pressure from international offices in Kosovo, Mr. Kolë Berisha from the LDK replaced Mr. Daci. During the mandate of Mr. Berisha, the Assembly amended the Rules of Procedure and made opportunities for parliamentary debate possible. Following the third parliamentary elections, Mr. Jakup Krasniqi was elected the new president of the Assembly. During the first month of Mr. Krasniqi’s presidency, the Assembly of Kosovo engaged in significant political developments of adopting laws from the “Ahtisaari Package,” the declaration of Independence of Kosovo, application of new state symbols, etc. Mr. Krasniqi was reelected president of the Assembly in the fourth legislature (constituted in February 2011) as well. During Mr. Krasniqi’s presidency of the Assembly, he witnessed willingness of parliamentarians to debate and respect for the rules as outlined in Assembly regulations. However, despite Mr. Krasniqi’s affiliation with the PDK (the largest political party in the Assembly), his divergence from and critical attitude towards the Government’s policies grew increasingly apparent during the fourth legislature, especially during 2012. The non-willingness of his party (PDK) to nominate Mr. Krasniqi for the position of President of Kosovo, a position very much desired by Mr. Krasniqi, seems to have been the first rift between him and the PDK party. This rift became apparent in Mr. Krasniqi’s public disagreements with his party during preparations for plenary sessions. Domestic and international organizations have expressed criticism of the work and approach of the Presidency of the Assembly in all legislatures. The closed nature of the presidencies’ meetings (not open to the public), ambitions for leadership, misunderstanding the role of the Assembly Presidency by its members have all contributed to making it the most

55 Constitution of the Republic of Kosovo, Article 67, is found at: http://www.kushtetutakosoves.info/?cid=1255
bureaucratic body within the Assembly of Kosovo from its first legislature. Exalting the position of the President of the Assembly is a result of a misunderstood concept regarding the role of the President by those having presided in this position. This has created competition for leadership between the President of the Assembly, the President of the state and the Prime Minister in Kosovo. This exaltation is also derived from personal egos and egocentric ambitions of those presiding within this institution since its first legislature. This has caused the role of presidency and of the President of Assembly to frequently deviate from its administrative mandate.

56 Agron Halitaj, Journalist, personal interview.
57 Arsim Bajrami, Parliamentarian of the Assembly of Kosovo from the Democratic Party of Kosovo, personal interview.
58 Eqerem Kryeziu, Parliamentarian of the Assembly of Kosovo from the Democratic League of Kosovo, personal interview.
OPEN AND TRANSPARENT ASSEMBLY?

Citizens see little of what’s being cooked

The Assembly of Kosovo has made progress in respect to its transparency; however, there are still big challenges. The initiation of publishing electronic votes, which started 3 years ago, has been one of the biggest achievements concerning transparency. Publication of transcripts and minutes of plenary sessions, as well as the participation of certain organizations in monitoring the sessions and meetings of Assembly’s committees, have problems, despite the Assembly of Kosovo previously sending informative emails on the committee meetings to all organizations and individuals who previously subscribed. Publication of draft-laws during the reviewing phase has been another achievement of the Assembly of Kosovo but which, in practice, has encountered numerous difficulties due to the fact that draft-laws are not updated.

However, notwithstanding these achievements, the Assembly of Kosovo has much work to do towards achieving complete transparency. The following presents some of the areas in which the Assembly of Kosovo lags behind regarding transparency.

Meetings of the Presidency of the Assembly of Kosovo: Although civil society organizations have requested (for several years) to participate in the meetings of the Presidency of the Assembly, these organizations continue to be denied participation. Since the meetings of the Presidency of the Assembly discuss and render decisions on important issues, it is crucial that civil society organizations are allowed to participate in these meetings.

No full broadcasting of the Assembly’s sessions: The Radio and Television of Kosovo (RTK) broadcast the Assembly sessions until 5PM only. After this time, the broadcasting stops and citizens are not informed on any further developments. It is imperative that RTK broadcasts the full sessions of the Assembly of Kosovo. Civil society has made a longstanding request that the Assembly have its own broadcasting channel, which would also broadcast meetings of the committees. Establishment of at least one web channel of the Assembly would improve information sharing with citizens concerning its work and, at the same time, might improve the performance of parliamentarians.

Financial transparency: Although basic financial information is widely available, the website of the Assembly of Kosovo does not contain any financial reports prepared by the administration of the Assembly.
A lack of transcripts of committee meetings:
Although transcripts and minutes of the meetings of the plenary sessions are published, there are few prepared transcripts of the committee meetings; and, in many cases publication of meeting minutes is done very late. The lack of transcripts and minutes typically results in transmission of incomplete information to citizens regarding the developments in the Assembly.


**ACTIONS OF ASSEMBLY IN RELATION TO THE CONSTITUTION**

The Assembly sometimes breaches the Constitution and other time walks on it

Within eight months, the Constitutional Court of the Republic of Kosovo rendered two very important decisions concerning the political and legal system by dismissing two presidents of the country. Thus, Kosovo has set a precedent in the sphere of constitutionalism and legality protection.

The first case dealt with the judgment of the Constitutional Court of Kosovo on September 22, 2010, wherein it found that Mr. Fatmir Sejdiu had breached the Constitution by holding the position of President and that of President of the LDK. This decision followed a procedure initiated by the Constitutional Court and two parliamentarians of the Assembly, Driton Tali and Naim Rrustemi, and was supported by other parliamentarians. Following this decision, Mr. Sejdiu resigned from the position of President and his party withdrew from the governing coalition. This caused an institutional crisis and required early parliamentary elections.

The second case concerned the judgment on March 30, 2011, in which the Constitutional Court discharged the newly elected President of Kosovo, Mr. Behxhet Pacolli; the Court deemed the decision of the Assembly to elect Mr. Pacolli as President of Kosovo to be unconstitutional. This decision responded to the 34 parliamentarians of the LDK and AAK who sought a court opinion surrounding the procedures for electing the President of Kosovo.

This Court ruled: “Decision of the Parliament of Kosovo in relation to the election of the President of Republic of Kosovo on February 22, 2011 is unconstitutional since it contradicts the requirements of Article 86 of the Constitution of the Republic of Kosovo and the democratic principles embodied therein.”

This decision judged the Assembly as a violator of the Constitution of Kosovo and forced Mr. Pacolli to resign, once again creating a potential institutional crisis. A crisis was averted due to the agreement between three political leaders, Thaçi–Mustafa–Pacolli, for electing the president and commitment to constitutional and election legislation reform.

The constitutional relationship between the Assembly of Kosovo and the Constitutional Court is not limited to evaluating the constitutionality of the position of President and the procedures for his election, but also includes evaluation of the constitutionality of legislation adopted by the Assembly.

In just over a one-year period of time, the Constitutional Court found the content of three laws to be unconstitutional. The Constitutional Court rendered judgments determining the unconstitutionality of the Law on Rights and Responsibilities of the Parliamentarians,

---

59 Decision of the Constitutional Court, is found at: http://www.gjk-ks.org/repository/docs/ko_29_11_agj_om_shq.pdf
60 Constitutional Court of Kosovo on December 8, 2011 has rendered a decision in favor of the request of the Ombudsperson of the Republic of Kosovo, a request that was initiated by 11 non-government organizations, wherein a repeal of the articles of the Law on the Rights and Responsibilities of Parliamentarians was requested. In the request, it was portended that the Law on the Rights and
the Law on Banks, Micro-Financial Institutions and Non-Banking Financial Institutions, and the Law on Health.\textsuperscript{61}

This underscores the lack of professional and research capacities within the Government and Assembly of Kosovo and, especially, the weaknesses of the Committee on Legislation and Judiciary capacities, which has a mandate to evaluate the constitutionality and legality of laws adopted in the Assembly. The number of laws in contradiction to the Constitution may be even greater if different actors would subject the laws to interpretation by the Constitutional Court. The Assembly of Kosovo, in cooperation with parliamentary groups, should suggest urgent measures for increasing the professional capacities of drafting and amending the draft-laws so that the highest representative institution of the country avoids adopting unconstitutional acts that seriously threaten the basic rights and freedoms of Kosovo citizens. Also, other institutions should insist on integrity in drafting legal norms to avoid the pressures placed on legislative governmental bodies by different interest groups or political circles.

The Constitutional Court also ruled on the delicate issue related to the mandate of parliamentarians, especially as related to their immunity. The Constitutional Court of Kosovo explained in a judgment that parliamentarians of the Parliament of Kosovo do not have immunity on the actions that exceed the scope of their office. The Court provided its decision based on a request of the Government of Kosovo submitted on July 20, 2011 concerning the immunity of parliamentarians, the President and members of the Government of Kosovo. This decision followed the debates surrounding the issue of immunity of the parliamentarian, Fatmir Limaj, who was accused of war crimes. In the published decision, the Court explained that all these positions are privy to functional immunity surrounding the actions and decision rendered within the respective scope of responsibilities of their office. The Court ruled: “parliamentarians do not enjoy immunity from criminal prosecution on the actions and decisions rendered outside of their scope of responsibilities. These deal with the criminal prosecution of criminal offences committed before the beginning of their mandate and during their mandate as parliamentarians.”\textsuperscript{63}

\textsuperscript{61} Is found at: http://gjk-ks.org/repository/docs/gjk_ko_97_12_shq_.pdf
\textsuperscript{62} Is found at: http://gjk-ks.org/repository/docs/gjkk_ko_97_12_shq_.pdf
ELECTION OF PRESIDENT THE “ACHILLES’ HEEL” IN THE ASSEMBLY OF KOSOVO

Since the constitution of the first legislature of the Assembly of Kosovo, there have been challenges surrounding the election of the President of the country that threaten the integrity of the Assembly of Kosovo. The history of the parliamentary system in Kosovo has seen six voting rounds within the Assembly of Kosovo to elect the President of the country, with the exception of the last case, when Atifete Jahjaga was elected. In all other cases, none of the Presidential candidates were elected in the first round of voting, but required three rounds of voting. The first election of Fatmir Sejdiu as President on February 10, 2006 achieved 80 votes, or 2/3, but this number was not reached in the two first rounds of voting even though the opposition had, in principle, supported the nomination of Mr. Sejdiu.

The first elections for the President of Kosovo were held on December 2001, with only one candidate, the president of LDK, Ibrahim Rugova, who ensured 47 seats in the first legislature of the Assembly of Kosovo. After the failure to elect the President of Kosovo in the first round, since 2/3 of parliamentarians’ votes were not achieved, a second round of voting was conducted one month later on January 10, 2002. Still, the elections did not achieve to elect the President. Anticipating that the President of Kosovo would not be elected in a third round of voting, LDK entered into a coalition with PDK and AAK. On March 2, 2002, the Assembly of Kosovo elected Ibrahim Rugova as the President of Kosovo, including an agreement for the elected Prime Minister and government Ministers. This type of “package” voting for the President and Prime Ministers breached the rules surrounding the election of the President but avoided criticism since there were no other candidates for President and a large parliamentarian coalition. After the second parliamentary elections, the Assembly of Kosovo, in the constitutive session held on December 3, 2004, elected Ibrahim Rugova as President of Kosovo for the second time. This time, Ibrahim Rugova was not the only candidate for President; the PDK also nominated a candidate – Ramë Buja. Since the competition was with counter-candidates, the President of the Assembly, Nexhat Daci, contended that the rules for electing the President were again breached and that the President of country be based on the candidate who received the most votes. The parliamentary opposition refused this proposal and it was decided to proceed according to the rules in force. This time voting did not occur as a “package;” therefore, this election was deemed to be the first time the President of Kosovo was elected. The President of Kosovo was elected in the third round of voting.

Mr. Rugova served only one half of his mandate due to his death on January 21, 2006. According to rules of the Constitutional Framework, the President of the Assembly of Kosovo replaced him until the election of a new president. On February 10, 2006, the Assembly elected Agron Demi, Executive Director of the GAP Institute; The role of Assembly in Governance; the Assembly of Kosovo according to the Constitutional Framework and the Ahtisaari Package, 2007.

64 Agron Demi, Executive Director of the GAP Institute; The role of Assembly in Governance; the Assembly of Kosovo according to the Constitutional Framework and the Ahtisaari Package, 2007.
Fatmir Sejdiu, from the LDK, as the new president of country. Fatmir Sejdiu was also elected after the third round of voting in which he received 80 parliamentary votes surpassing the 61 votes required.

At the time it was not legally clear whether Mr. Sejdiu should continue the mandate begun by Mr. Rugova, or whether he would begin a full mandate. However, based on the agreement between the PDK and LDK in the coalition, it was decided that the position of the President of Kosovo be voted as well. In the session held on January 9, 2008, Fatmir Sejdiu resigned from the position of President to run again for a new mandate. His opposition was the AAK parliamentarian, Naim Maloku, who received the 25 necessary signatures from the party for candidacy. The presentation of Mr. Maloku as a counter-candidate terminated the voices seeking a vote-in a package including the President, Prime Minister and the government Ministers. The President of Kosovo was elected after the third round of voting with 68 parliamentary votes.

Judgment by the Constitutional Court confirming that as President of country, Mr. Sejdiu had breached the constitution, by simultaneously holding the position of head of the LDK and the position of President, compelled him to resign on September 27, 2010. His resignation was followed by his party, the LDK, abandoning the governing coalition, the dismissal of the government, and finally, early elections on December 12, 2010.

The IV-th legislature was established by the elections of December 12, 2010 following a complicated process initiating its mandate. The fourth legislature was established after the coalition parties determined that Mr. Behxhet Pacolli was the only candidate for the position of President even though he did not receive sufficient votes in the first two rounds of Presidential elections. Based on this political situation, PDK sought a procedural motion to respectively pause elections and consult within its parliamentary group while the opposition parties had abandoned the session. Although they sought this motion, the parliamentarians began the initiative of PDK’s presidential nomination of Hashim Thaçi without waiting for the ruling of the president of the Assembly or submitting the proposal to a vote. In this case, the president considered that the Constitution and Rules of Procedures were being breached since this pause was requested to exercise pressure on the PDK’s parliamentarians. After this pause, in the third and final round of voting, Behxhet Pacolli was elected President. In this round, Pacolli was elected with 62 votes for; four against and one abstention.

However, not more than 35 days after the election of Mr. Pacolli as President of the Republic of Kosovo, the

65 Transcript of the plenary session of February 22, 2011 is found at: http://kuvendikosoves.org/common/docs/proc/trans_s_2011_02_22_15_al.pdf
Constitutional Court dismissed him, ruling the manner of election as unconstitutional. After the ruling of the Constitutional Court, the Assembly of Kosovo, in an extraordinary session, on April 7, 2011 elected the new President of Kosovo. The former Deputy Director General of Kosovo Police, Atifete Jahjaga, for the first time in the history of Kosovo’s parliament, received the 80 necessary parliamentary votes in the first round of voting. It is well known that these votes were ensured after previous agreements made between the three political parties: PDK, LDK and ANK with the aim of avoiding an institutional crisis and having again hold parliamentary elections.

These political actors agreed to immediately begin a process of amending the constitution and electoral legislation by changing the process of electing the President of country directly by the citizens. Although more than two years have passed since the establishment of specific committees addressing these issues, their work has remained at a standstill, without any logical and practical meaning and embroiled with personal and political caprices of the political leadership in country. This contributes to the possibility that past problems in the Assembly of Kosovo will not be resolved.

---

66 Scorecard January – July 2011, p. 5 / Publication of KDI, is found at: http://kdi-kosova.org/publications/FletnotimiCL012011.pdf
Regulations of the Assembly of the Republic of Kosovo define the role of the Administration of the Assembly as a body that provides professional, administrative and technical support to the needs of Assembly, its Presidency, Committees, parliamentary groups and the Assembly’s parliamentarians. Based on these regulations, the administration should be the driving force of administrative processes and efforts.

It should be understood that the administration of the Assembly and the development of this institution in general has undergone an evolutionary process of development. This administration in its infancy stages was overseen by a secretariat and a foreign citizen (French) nominated by the UNMIK administration, whose mission was to establish a functional administration and support other bodies of the Assembly. As time passed, the secretariat and the staff was “Kosovarized,” but the challenges for strengthening the capacities of this institution and, especially, the recruitment of staff based on merit, remained the biggest challenge.

In the second chapter of the EC Progress Report for 2010, “the Political Criteria, Democracy and the Rule of Law,” presented reflections on the current state of all the highest institutions in Kosovo. The EC ranked the Assembly of Kosovo as the most important institution needing strengthened capacities.

Out of six remarks and suggestions the European Commission has raised on the Assembly of Kosovo, three of them deal exclusively with the Administration of Assembly. In the report, the EC bases its recommendations on the assessment that efforts for strengthening the capacities for effectively harmonizing domestic legislation with that of the European Union have been impeded and require improved management of human resources by the secretariat of Assembly, transparency based on merits during the recruitment of staff and the transfers of qualified personnel.

Politicization of recruitment of administration staff of the Assembly has negatively impacted cooperative teamwork between organizational units. The recruitment of staff from within political circles, while ignoring the professional qualifications of recruited staff, sent a signal to the European Commission that the concern surrounding the management of human resources by the secretariat of Assembly and the transparency based on merit during recruitment of staff is legitimate. This continually points to a lack of needed and necessary professional capacities of staff for supporting the parliamentary committees and other bodies within the Assembly of Kosovo and to a great extent ensures that this institution cannot competently fulfill its constitutional mandate.

67 Regulation of the Assembly of Kosovo, Article 80 item 1, is found at: http://www.assembly-kosova.org/common/docs/Rr_K_RK_29_04_2010_shqip.pdf

INTERNATIONAL ASSISTANCE TO THE ASSEMBLY AND ITS EFFECTS

International assistance to the Assembly of Kosovo began with the establishment of this democratic institution in 2001. Because Kosovo had no parliamentary tradition, international assistance was provided across many dimensions, especially for outlining parliamentary rules, procedures and increasing the capacities of the Assembly’s administration. However, since the Assembly of Kosovo lacks experience, in several cases, the Assembly has allowed international organizations to take the lead on certain issues resulting in a mixture of parliamentary procedures and practices. In the initial phases, OSCE provided a significant role in assistance and served as the third pillar in UNMIK’s mandate. NDI, a consortium of four parliaments (German, French, Belgian, and Slovenian) sponsored by the EU, was engaged, UNDP and, later, the German organization, GIZ, and the twin project supported by the European Commission and implemented by the National Assembly of Hungary contributed to the development of Kosovo’s Assembly administration. Parliamentary practices of the American Congress and the Canadian parliamentary system were provided by the NDI in addition to the practices provided by the OSCE and the consortium of four governments. These international organizations’ huge differences have created a mixed system in the Assembly of Kosovo and impeded the Assembly from establishing a unique and appropriate model for Kosovo. This has also happened because of the overall lack of will of the presidency of Assembly for determining a clear vision concerning which model they would like to follow. The lack of such a vision has resulted in the supporting organizations imposing agendas according to their programs and projects. With regards to international support of the Assembly of Kosovo, the donor coordination of providing assistance has been a problem for almost twelve years. The President of Assembly, Jakup Krasniqi, claims that in some instances, this has resulted in the same official of the Assembly being trained twice on the same issue with different models and approaches and causing more confusion than assistance for increasing capacities. He also states that there should have been a more careful harmonization of projects. Despite mechanisms within the international organizations preventing overlap, USAID, NDI, OSCE and UNDP, and the German and British Governments’ foundations have assisted a lot the same work of Assembly.

During more recent years, this approach has begun to change and every donor has started to channel its assistance into different aims. Additionally, it should be noted that during the last years there has been assistance to the Assembly from domestic nongovernmental organizations.

---

69 Rinor Beka NDI, personal interview.

70 Jakup Krasniqi, President of the Assembly of Kosovo, personal interview.
The basis for establishing the Assembly of Kosovo as an institution with democratic prerequisites began after the installation of international administration in Kosovo in accordance with UNSC Resolution 1244, adopted on June 10, 1999.

Competencies and mandates of the international missions in Kosovo (UNMIK and later ICO) required that the parliamentary system in Kosovo during this period be a controlled and censured parliamentary system. Because initial international supervision had authority which in every case and situation had the power to repeal decisions and laws adopted by this institution, parliamentary life was characterized more as an exercise of democracy than a democratic action. This kind of parliamentary system aims more to legitimize parliamentary institutional acts, than for drafting and creating new parliamentary actions.

The authority of the SRSG to determine laws adopted by the Assembly of Kosovo and the right to issue regulations without the approval of the Assembly, created an unusual situation in the lawmaking practices by transforming the highest representative and lawmaking body of Kosovo’s political system into a subordinate institution of UNMIK.

After more than a decade of the functioning, the Assembly of Kosovo has faced challenges in its institutional establishment, challenges surrounding very important decisions such as the declaration of independence, followed by other challenges in state building. However, even after the declaration of independence and termination of international supervision, the Assembly of Kosovo is still in a search of its identity capable of exercising its constitutional competencies. A superficial parliamentary control, a lawmaking process without the necessary consultation of the public, with little representation of the citizens’ interests and, on the other side, the strong tendencies by the country’s executive branch to transform the Assembly of Kosovo into a legitimizer, by any condition, of its decisions, has continued to inhibit the realization of the Assembly as the most supreme institution in the Kosovo.

The weak parliamentary supervision

Government Ministers’ hesitation to respond to parliamentary questions, their absence in plenary sessions, their tendency to ignore invitations to report at parliamentary meetings and their lack of willingness to acknowledge the recommendations and attitudes arising from the Assembly are all factors that have created impediments for exercising its constitutional competencies of supervising the activities of the executive branch of government.

Although the number of parliamentary motions increased during the last legislature, parties of the governing legislation (in most of cases) did not manage to
adopt the motions presented, despite the support witnessed in Assembly votes. That parliamentary motions and supporting votes have not resulted in adoption of legislature presented in these motions further reduces the significance of parliamentary supervision as a democratic instrument.

The parliamentary life in Kosovo still lacks a permanent and sustainable system of parliamentary control because of the lack of understanding of parliamentary control as a constitutional function irrespective of political positioning, either in the governing party or opposition within the Assembly.

**Lawmaking**

Many domestic and international actors continue to criticize the quality of laws adopted by the Assembly of Kosovo. The majority of laws are translated from neighboring countries with the tendency of adapting them to domestic needs and realities of Kosovo. The lack of emphasis on the need for drafting and adopting more elaborate and specific laws to Kosovo contributes to the poor quality of laws. The methods of drafting and adopting laws tend to be more routine-like than a well-analyzed process of drafting laws addressing a specific needs.\(^1\)

Non-inclusion of citizens, the civil society and other interest groups in the frame of government since the early phases of writing draft-laws continually produces defective legislation and, in some cases, produces laws that are non-implementable in practice. The poor quality of laws being adopted by domestic institutions is also evidenced by the fact that out of 98 draft-laws adopted during the 2013 Assembly,\(^2\) 65 (or 60%) have been amendments of existing laws, some of which were adopted in 2011 and 2012, or already amended several times.

**Monitoring of laws**

The focus on having numerous laws without concern for their implementation is now understood as an incorrect approach that challenges the efforts towards strengthening the rule of law in the Republic of Kosovo. Parliamentary committees non-serious approach towards this process and the lack of professional support resources has caused the monitoring of laws' implementation to be neglected. Even in those cases in which committees have conducted monitoring activities, the work and final reporting have been superficial.

**The (Non) Representative Assembly**

Application of a proportional election system of open lists with a single electoral area wherein citizens do not directly elect the representative for the area in which they live, has produced an Assembly in which some mu-

---

\(^1\) Albin Kurthi Parliamentarian in the Assembly of Kosovo, at the same time President of the Self-Determination Movement (SDM), personal interview.

\(^2\) Assembly's Work Program for 2013.
nicipalities are not represented at all, while others are over-represented.

Kosovo, as a single electoral area in which parliamentarians do not always share a residential area with their electorate, has impeded real and sincere communication between the electors and the elected (electorate – parliamentarian).

Constitutional and legal acts are other contributing factors to the “representative” role of the Assembly. Kosovo, according to the President Ahtisaari document, has applied a measure of positive discrimination to minorities living in Kosovo. Although the non-majority communities in Kosovo make up only 5-7% of the general population, they hold almost 20%, or ¼, of the total number of seats in the Assembly of Kosovo. If we add to this the fact that the Law on General Elections in Kosovo obliges political parties to include at least 30% women in their candidate lists, then this practice increases the real competition between political parties for only 60 to 70 seats in the Assembly of Kosovo.

The reserved seats, the gender quota, the lack of democracy within the political parties and the abuse of citizens’ votes in the elections all contribute towards reducing the representative role of the Assembly of Kosovo.

Parliamentary committees

Parliamentary committees in the Assembly of Kosovo are overloaded since many committees cover the activities of two or three Government Ministries. Conversely, the compressed legislative agendas have caused the parliamentary committees to neglect other functions, including negligence of exercising some of their powers or improvising to justify the non-implementation of their constitutional and legal mandate.

The situation is made more difficult by the fact that personnel supporting the work of committees are very limited in number. The small teams of two to three officials available for supporting the organization and management of the committees’ activities has not guaranteed implementation of the mandate of these important bodies within the Assembly of Kosovo.

The large number of parliamentary committees working in the Assembly compounded by the small number of members in each parliamentary committee has contributed to the inefficient efforts of the parliamentary committees. The distribution of parliamentarians across several committees and the number of committees means that a committee can review the draft-laws and render decisions with only six members present. The review of draft-laws and rendering of decisions with only six members may contribute negatively to the overall quality of laws and decisions arising from these
bodies of the Assembly.

Parliamentary groups

Political circumstances, the short-term interests of political subjects and the lack of internal party democracy have resulted in parliamentary groups’ limited role in creating strong foundations for a capable representative, lawmaking and supervising institution during the 12 years of plural life in Kosovo. The unnatural coalitions between political parties, lack of parliamentary debate culture, lack of active opposition and respect for differing opinions and unwillingness for providing alternatives to problems are some of the conditions that have limited the role of parliamentary groups in developing the parliamentary system in Kosovo.

The lack of sufficient professional assistance and advice to the members in the parliamentary committees contributes to the fact that the role of parliamentary groups has not been strengthened. Many parliamentarians have their first professional job as parliamentary representatives of the Assembly of Kosovo and act in parliamentary committees without any professional support. The structure of the parliamentary groups is also problematic; parliamentary groups usually meet only five or ten minutes before a plenary session during which time members receive instructions on how to vote. Internal debate and expertise is generally lacking.

Presidency of Assembly

The Presidency of the Assembly, although acting only as an assisting institutional body, has always been perceived by representatives as an important body within the Assembly. Moreover, the closed nature of the Presidencies’ meetings, ambitions for leadership and misunderstandings regarding the role of this Assembly body its members have all contributed to making the Presidency of the Assembly the most bureaucratic body within the Assembly of Kosovo from its first legislature.  

Exalting the position of the President of the Assembly is a result of a misunderstood concept regarding the role of the President by those having presided in this position. This has created competition for leadership between the President of the Assembly, the President of the country and the Prime Minister in Kosovo. This has caused the role of presidency and of the President of Assembly to frequently deviate from its administrative mandate.

Transparency

The Assembly of Kosovo has made progress in respect to its transparency; however, there are still challenges. Although basic financial information is widely available,
the website of the Assembly of Kosovo does not contain any financial reports prepared by the administration of the Assembly. Even in cases in which the financial reports are requested according to the law providing access to public documents, the available report does not contain detailed information.

Although for several years civil society organizations have requested participation in the meetings of the Presidency of the Assembly, these organizations continue to be denied such participation and meetings of the Presidency of the Assembly remain closed to the public.

The Radio and Television of Kosovo (RTK) broadcast the Assembly sessions until 5PM only. It is very important that RTK broadcasts full sessions of the Assembly of Kosovo until a new broadcasting solution is found. Civil society has made a longstanding request that the Assembly of Kosovo have its own broadcasting channel, which would also broadcast meetings of the committees. Establishment of at least one web channel of the Assembly of Kosovo would improve information sharing with citizens concerning the work of the Assembly and, at the same time, might improve the performance of parliamentarians of Kosovo.

The lack of transcripts of committee meetings is an issue and in many cases the publication of meeting minutes is done very late. Normally, the lack of transcripts and minutes results in transmission of incomplete information to citizens regarding the developments in the Assembly.

**Administration**

Politicization of the recruitment of administration staff of the Assembly has negatively impacted cooperative teamwork between organizational units. The recruitment of staff from within political circles, while ignoring the professional qualifications of recruited staff, sent a signal to the European Commission that there is clearly a legitimate concern surrounding the management of human resources by the secretariat of Assembly and transparency based on merit during recruitment.

This continually witnesses a lack of needed and necessary professional capacities of staff for supporting the parliamentary committees and other bodies within the Assembly of Kosovo and to a great extent ensures that this institution cannot competently fulfill its constitutional mandate.

**International assistance to the Assembly**

Because of no parliamentary tradition in Kosovo, international assistance was provided across many dimensions, especially for outlining parliamentary rules, procedures and increasing the capacities of the Assembly’s administration. However, since the Assembly of Kosovo lacks experience, in several cases, the Assembly has allowed international organizations to take the lead on
certain issues resulting in a mixture of parliamentary procedures and practices.75

Parliamentary practices of the American Congress and the Canadian parliamentary system were provided by the NDI in addition to the practices provided by the OSCE and the consortium of four governments. These international organizations’ huge differences have created a mixed system in the Assembly of Kosovo and impeded the establishment of a unique and appropriate model for Kosovo. This has also happened because of the general lack of will of the presidency of Assembly for determining a clear vision concerning which model Kosovo would like to follow. The lack of such a vision has resulted in the supporting organizations imposing agendas according to their programs and projects.

**Recommendations:**

**Supervision:**

- The Assembly of Kosovo should develop meaningful debates on issues vital to the country and render decisions in accordance with the constitutional competencies it has;
- The Government should increase its willingness for responding to parliamentary questions;
- Ministers should respond to invitations to report to the parliamentary committees;
- Parliamentarians should seek information from the Government not only through the parliamentary questions but through requests in written reports as well;
- Parliamentarians and parliamentary groups should use the instrument for parliamentary supervision of the Government through the parliamentary motions more often.
- The Assembly should increase its supervising role to Independent Agencies as well to report to this institution.

**Lawmaking:**

- The Assembly of Kosovo should increase its professional capacities for supporting the parliamentarians during the phases of drafting and amending the draft-laws;
- The Assembly should allocate a considerable amount of its budget to engage experts in assisting the parliamentary committees in amending the draft-laws;
- Parliamentary committees should organize public hearings in order to involve and consult a greater number of actors in the lawmaking process of every specific draft-law falling within their scope of activities.
- The Assembly should implement wider consultations with civil society organizations, interest groups and citizens in the process of drafting the legislation;
- The Assembly of Kosovo should be more active in leading legislative initiatives.

---

75 Rinor Beka NDI, personal interview.
Monitoring of laws implementation:

- The Assembly of Kosovo should, through its bodies, report the willingness and readiness for monitoring implementation of laws and invoking the obligation of the institutions whose competency it is to implement the laws;
- The material and professional support to parliamentary committees in the field of monitoring implementation of laws should be increased;
- Parliamentary committees should engage in the process of monitoring implementation of laws in a more comprehensive manner, by engaging in the field to more closely see objective challenges certain laws face during the practical implementation;
- Regular communication should be established between the parliamentary committee and the line ministries to enable the executive to inform the Assembly, especially the functional committee, on every bylaw act issued.

Representation:

- In order to have a more just representation of the citizens of Kosovo in the representative institutions, Kosovo should be divided into several electoral areas instead of one single (unique) electoral area;
- In order for the Assembly to avoid producing a parasitic democracy, where the parliamentarians receive their political strength outside of the electoral result, the reserved seats to non-majority communities in Kosovo, as provided for in the constitutional provisions, should be transformed in the guaranteed seats;
- In order to advance communication between parliamentarians and the electorate and to increase the level of representation and participation of the public in the country’s political life, the Assembly of Kosovo should draft a plan on opening offices for parliamentarians in all regions in which they reside.

Parliamentary committees:

- Increase the professional assistance for parliamentary committees in the field of lawmaking;
- In order to increase the quality of debate and quality of draft-laws as well as other acts recommended by the parliamentary committees for adoption, the Assembly of Kosovo should find practices and forms of reducing the number of committees and increasing the number of members within a committee so that the threshold can be at least 20 members in every committee;
- Parliamentary groups should assign their parliamentarians to parliamentary committees according to their professional qualifications.

Parliamentary groups:

- Increase the professional assistance to parliamentary groups;
- Increase meetings of the parliamentary groups and
develop debates and consulting.

Transparency

- Meetings of the plenary sessions should be broadcasted after 5PM. The creation of a TV channel of the Assembly of Republic of Kosovo where the plenary sessions and the committees’ meetings would be broadcasted is recommended. This program could broadcast works of the Assembly through the internet;
- Maintain public financial reports on expenses of the Assembly of Kosovo (with detailed data);
- Meetings of the Presidency of Assembly should be opened to include the participation of domestic civil society organizations. Further, Presidency of the Assembly of Kosovo should publish transcripts from its meetings;
- Prepare and publish transcripts from the meetings of parliamentary committees;
- Timely publication of minutes from the meetings of parliamentary committees.

Presidency of Assembly

- The role of the Presidency of the Assembly should be limited only to the exercise of competencies provided for by the Regulation of the Assembly;
- Strengthen the role of heads of parliamentary groups for determining the parliamentary agendas.

Election of President

- Taking into account the fact that the stability of the position of the country’s President has been strongly reflected in the entire institutional stability and in order for this position to be free from political “bargains” of parliamentary political subjects, the election of President by direct voting from citizens remains the only alternative.
THE LIST OF INTERVIEWED PERSONS:

Adriatik Kelmendi – Koha-vision
Arben Gashi – Parliamentarian of Assembly, PG DLK
Agron Demi – Executive Director of GAP Institute
Agron Halitaj – Journalist, Tribuna
Albin Kurti – President of Self-Determination Movement
Ardian Gjini – Parliamentarian, Head of PG AFK
Arsim Bajrami – Parliamentarian, PG DPK
Avni Zogiani – Executive Director of Organization Çohu
Berat Buzhala – Parliamentarian of Assembly of Kosovo
Goran Marinkovic – Parliamentarian of Assembly of Kosovo, PG Common Future
Eqrem Kryeziu – Parliamentarian of Assembly of Kosovo
Jakup Krasniqi – President of Assembly of Kosovo
Nexhat Daci – Former President of Assembly
Ramush Haradinaj – President of the Alliance for the Future of Kosovo
Ramush Tahiri – Political Adviser to the President of Kosovo
Rinor Beka – Parliamentary Program Manager, NDI

BIBLIOGRAPHY

Constitutional Framework, is found at: http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2001regs/RA2001_09.pdf
Constitution of the Republic of Kosovo, is found at: http://www.kryeministriks.net/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf
New Mandate, New Opportunities, Evaluation of the work of the Assembly of Kosovo and recommendations for further development, Published in 2008, p. 16
European Commission Progress Report 2010, p. 10 and 11
Feasibility Study on Kosovo 2012, is found at: http://www.meiks.net/repository/docs/Dokumenti_punues_i Komisionit Evropian mbi SF per MSA mes_BE-se_dhe_Kosoves.pdf

Zijadin Gashi, February 13, 2009. Kritikat e Feithit (s’)

61
Transcript of the plenary session of 12.07.2011, is found at: http://www.assemblykosova.org/common/docs/proc/proc_s_2011_12_07_10_3884_al.pdf
KDI – Monthly report on monitoring the work of the Assembly of Kosovo – September 2012, is found at: http://kdi-kosova.org/al/publikime.php#2010pub
The Work Program of Assembly for 2013

Feasibility Study on Kosovo by the European Commission 2012, is found at: http://www.meiks.net/repository/docs/Dokumentipunues_i_Komisionit_Evropian_mbi_SF_per_MSA_mes_BE-se_dhe_Kosoves.pdf


The Law on General Elections in Kosovo, is found at: http://kuvendikosoves.org/common/docs/ligjet/2008_03-L073_al.pdf

The role of Assembly in the process of monitoring implementation of laws – Publication of KDI, is found at: http://kdi-kosova.org/publications

Towards Development of International Standards on Democratic Legislatures – NDI 2007

Minutes of plenary sessions, is found at: http://www.kuvendikosoves.org/

Decision of the Constitutional Court, is found at: http://www.gjk-ks.org/repository/docs/ko_29_11_agj_om_shq.pdf

Agron Demi, The Role of Assembly in Governance – Assembly of Kosovo according to the Constitutional Framework and the Ahtisaari Package, 2007

Scorecard January - July 2011 p. 5; Publication of KDI, is found at: http://kdi-kosova.org/publications/FletnotimiCL012011.pdf

Regulation of the Assembly of Kosovo, Article 80, item 1, is found at: http://www.assembly-kosova.org/common/docs/Rr_K_RK_29_04_2010_shqip.pdf