

Parliamentary Oversight of the Security Sector in Kosovo

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Ohrid, 06 April 2009

EXECUTIVE SUMMARY

In line with its mandate and with principles of democratic oversight of the security sector, the OSCE Mission in Kosovo has been promoting an effective parliamentary oversight and accountability of the Ministry of Internal Affairs (MoIA) and the Kosovo Police Service (KPS).

From a good governance perspective, the police service, like any other public institution, should be subject to some basic principles such as accountability, transparency and participation. The OSCE Mission strongly believes that enhancing parliamentary oversight of the Kosovo Police Service contributes to the establishment of a transparent and effective democratic system.

The OSCE Mission has played an important role in the area of parliamentary oversight of the security sector by assisting the Assembly of Kosovo on issues of budget cycle, legislative processes, and policy development. By undertaking a Professional Development Programme on Parliamentary Security Oversight, the OSCE Mission has considerably contributed to the strengthening of the oversight role of the Assembly of Kosovo in the field of security and public safety.¹

I. PRINCIPLES OF PARLIAMENTARY OVERSIGHT OF SECURITY

Parliamentary oversight is key to the establishment of an effective democratic system, based on transparency and at the benefit of the whole population. Oversight should be included in all core activities of the Assembly: involvement in the budget cycle, legislative processes, discussions on policy development and regular contacts with the electorate.

Basic oversight techniques are the use of questions, interpellations and motions, the organization of public debates, hearings and visits, scrutinising the budget and draft legislation and reviewing existing legislation.

¹ Interview with Naim Maloku, previous Committee chairperson.

Definitions

Oversight means watchful and responsible care and/or regulatory supervision. Related to oversight of the police, the Assembly has a crucial role to play, since it is responsible for its correct functioning. To achieve this, the Assembly not only has to control the government as well as the police, it also has to develop a close relationship and good co-operation with the police forces, based on the legal framework that regulates these relations².

These relations between the Assembly and the police need to be based upon basic principles, e.g.:

- In a democratic society, public authorities have the legitimate monopoly over the use of force;
- The police is directly accountable to the legitimate democratic authorities;
- The Assembly holds accountable the Executive for the development and implementation of the police policy;
- The Assembly authorizes and scrutinizes the budget and the expenditures related to the police;
- Principles of good governance and the rule of law apply to all three branches of government and therefore also to both the police as well as the Assembly;
- Police officers are individually accountable to judicial courts for violations of laws;
- The police and judicial systems are by definition politically neutral.

In a democratic society, the police services should always be accountable to the three branches of government, the Legislative, the Executive and the Judiciary. The Executive exercises direct control over the central and local level and determines the budget of the police forces and its priorities. The Legislative exercises parliamentary oversight by passing and reviewing laws that define, guide and regulate the police services and their competencies, and by adopting the necessary budget. Whereas the police is directly accountable to the respective Minister(s), and the Minister(s) in question are in turn accountable to the parliament. With the exception of investigative committees, civil servants (e.g. police officers) can never be directly accountable to the parliament.

² For more information on this topic see DCAF “Parliamentary Oversight of the Security Sector – Principles, Mechanisms and Practices”, Lausanne, 2007

The external oversight structures should also include bodies such as ombudspersons or parliamentary committees for petitions, for example, which can investigate peoples' complaints. The Judiciary should monitor the police and prosecute the wrongdoings of police officers through civil and criminal proceedings whenever necessary. A strict separation between the Judiciary, the Executive and the Legislative should be secured at all times.

Role of the Assembly in police policy

A comprehensive police policy is part of a general security and public safety policy that involves all the relevant players and all aspects of security and public safety. As far as the role of the Assembly is concerned, the police policy debate consists of four phases: policy development, decision-making, implementation, and evaluation.

- *Policy Development.* Although the task belongs primarily to the government, the Assembly through its relevant committees should contribute to the security policy development.
- *Decision-making.* The decision-making phase could be used by the Assembly to promote the principle of public participation in decision-making through the organization of public hearings. The Assembly can give its consent to a new policy or legislation proposed by the government. However, in most cases the Assembly will suggest changes, resulting in a final document based on a broader consent. In the phase of decision making, the Assembly will have a decisive voice, through budgetary appropriation. It is important that the Assembly assures that the approved policy contains clear milestones for future reference during the implementation and evaluation phase.
- *Implementation.* Through field visits and contacts with civil society groups, representatives of the security forces, contacts with the Judiciary and the Executive, the Assembly evaluates the real impact of the approved policy.
- *Evaluation.* While scrutinizing the expenses, the Committee will evaluate the results and take it into account while discussing next year budget.

The Assembly is a key player when it comes to promoting the public support and ensuring the legitimacy of the policy finally adopted. Transparency is of utmost importance for gaining this legitimacy. Therefore, debates have to be public as much as possible, the agenda of the meetings should be made public in a timely manner, and the Assembly should take care that concerns and values of society are properly translated and discussed. As deputies do not always have the time to make a proper analysis about the perception of the electorate, independent institutions and local NGOs can play an important role in representing the voice of the public.

III. OSCE SUPPORT TO KOSOVO ASSEMBLY COMMITTEE ON SECURITY

Based upon the Constitutional Framework, Paragraph 9.1.18 and the Rule 48.2.b) 10 of the Assembly Rules of Procedure, in the plenary session held on 14 September 2006, the Assembly of Kosovo adopted the proposal by the Committee on Emergency Preparedness to transform and rename this parliamentary body into “Committee on Security”. The recommendations by the Committee followed a nine months training programme by the OSCE Mission, the so-called Professional Development Programme on Parliamentary Security Oversight. This programme had also been supported by the Geneva based Center for the Democratic Control of Armed Forces (DCAF). The background for the training programme was to enhance the capability and competencies of the Assembly to become an active partner in the oversight of the security sector. One of the aims of the Professional Development Programme on Parliamentary Security Oversight was to consolidate the regional contacts, and move Kosovo significantly forward on the important issue of oversight of the security sector. For this reason, the OSCE Mission hosted a Parliamentary Regional Conference on Police Oversight in June 2006, for example.

In his recommendation speech for the establishment of a new committee the chairperson of the former as well as the renewed committee, Mr. Naim Maloku stated: “The competencies in the field of security are being transferred at a fast rate from the international community to the local authorities. With the help of the OSCE and DCAF and the support of the Assembly Presidency and the President of the Assembly, the committee has done series of visits since last December, as part of the training programme on taking responsibilities and control over the security segments. This capacity was inexistent in the Assembly of Kosovo until now.”

Following a short debate in which all parliamentary groups supported the motion, the Assembly decided to rename the committee into “Assembly Committee on Security”. Furthermore, the Assembly voted to endorse the terms of reference of the new committee providing it with comprehensive oversight competencies over the police, intelligence and other security actors.

In general, committees involved in police oversight are responsible amongst other things for matters related to the size, structure, organization, financing and functioning of the police actors. The Committee on Security has been mandated to give advice and make recommendations to the Assembly of Kosovo on legislation, decisions and governmental practices concerning the security of the population and the use of force by the state actors.

More particularly, the Committee on Security is responsible for:

- parliamentary oversight of internal security;
- compliance with the Constitutional Framework;
- safety of minorities, refugees and freedom of religious activities;
- oversight of police and direct liaison with the internal inspectorate of police for initiating investigation against police members;
- budgetary policies of police and security;
- international co-operation in the field of security, co-operation and co-ordination of activities of security institutions under the auspices of international institutions, analysis of reports of international institutions of security as well as the national council of security;
- issuing recommendations for the Assembly for further decisions.

The OSCE Mission continued its support to the newly established committee in different fields of activity such as organizing a training course on parliamentary control of the intelligence sector or continued facilitation of regional co-operation and sharing of best practices. OSCE supported the development of specific Rules of Procedure for the Committee on Security, based upon best practices in other countries and in particular in former conflict areas, review of the police and ministry budget and planning and review at Committee level of the policies of the Ministry. During the whole process OSCE assisted in ensuring the transparency and openness of the activities of the Committee and avoided possible interference by the Committee in the Executive responsibilities of the Government.

IV. LESSONS LEARNED AND CHALLENGES AHEAD

The overall assessment of the work of the Committee on Security is rather positive, considering that this was its first mandate. Moreover, its performance should improve in the future, but the assistance of external organisations continues to be valuable. Areas for potential improvement are manifold.

The OSCE will continue to assist the Committee on Internal Affairs and Security in the newly-mandated Assembly of Kosovo. The Committee is poised to meet numerous challenges in the near future, and its close co-operation with the police is vital. The consolidation of the progress achieved in the field of police oversight is a highly challenging agenda facing the incoming Committee on internal Affairs and Security.

It is in the interest of OSCE to observe the aforementioned developments closely and see how they affect the Committee. The OSCE will take an active role in assisting the new committee, as well as coordinate the work of DCAF-paid staffers. The OSCE assistance will revolve around providing training, helping to organize public hearings and other events, and increasing regional co-operation.