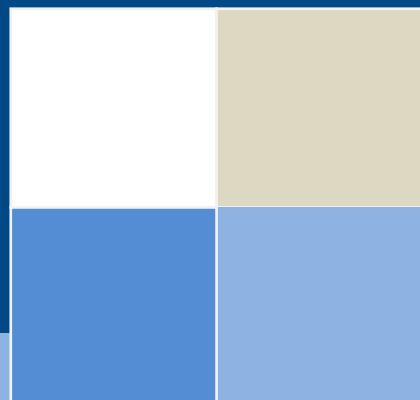


Policy Analysis - No. 02/2012

On the defence of professionalism of bureaucrats:

A discussion upon the protection mechanisms of
civil service in Kosovo



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On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo

I. A background on the topic

In general, a professional civil service system and independent functioning of bureaucracy is reliant upon mechanisms (both internal and external) as well as institutions that are able to set up and assure the application of best personnel management practices. That being said, it is important for countries aiming to remodel their public administrations to adopt policies that attempt enhancing the independence of institutions authorized to decide questions of personnel within civil service. Thus, this Policy Analysis has a two-fold aim. First, it briefly presents an overview of the bodies within Kosovo civil service that are authorized to protect the civil service system independence and professionalism, namely, internal mechanisms and the Independent Oversight Board. And second, this Policy Analysis goes on to explain the problems and challenges that these bodies face while performing their entrusted functions. In the end, we deliver a number of policy solutions aiming to enhance as well as develop the protection mechanisms for civil servants.

II. Protection mechanisms of the civil service in Kosovo

There are two main antagonist approaches that countries in transition have adopted to build a civil service system. The first civil service model functions on the basis of a political-oriented management, whereas the second is based on merit-oriented personnel management.¹ Of course, on 2007, the Strategy of Public Administration Reform in Kosovo has, in part, lunched discussions concerning which civil service and personnel management model can be applied in Kosovo. That said, in 2008, through the adoption of a number of laws and policies related to the civil service system in Kosovo, a civil service system that aimed to set a balance between a politically-controlled and merit-based model was established. Certainly, as we will argue in the following section, within the current civil service system, the dominance of political parties and leaders over personnel-related decisions is very apparent.²

¹ For more see Dren Doli, Fisnik Korenica & Artan Rogova (2010) 'Establishing Protection Mechanisms for Bureaucrats: The Case of the Independent Oversight Board of Civil Service of Kosovo'. European Journal of Law Reform. Vol. 12: no. 1, p. 113. Moreover, as many authors argue, these approaches have accompanied civil service reforms in almost all post-communist countries in Eastern Europe, despite the fact that they tried to establish professional civil service there was a clear tendency to interfere in the management and appointment of personnel. J. Meyer-sahling, 'Civil Service Reform in Post-Communist Europe: The Bumpy Road to Depoliticisation'. West European Politics. Vol. 27, No. 1, 2004, pp. 71-103.)

² For example, only from November 2006 to November 2007 the number of civil servants in Kosovo increased for 1465. See Sigma (2008). Kosovo Public Service and the Administrative Framework Assessment. Retrieved February 14, 2012, from <http://www.sigmapublicservice.org/dataoecd/48/31/41637624.pdf>, p. 4.

On the other hand, it should be noted that several arguments explain why establishing protection mechanisms for civil servants are important for Kosovo. The first argument notes that legal provisions that regulate the procedures for “selection, recruitment and promotion” of civil servants are significant vis-a-vis the level of professionalism of the concerned civil service system.³ Therefore, a preliminary assessment of the system independence is done through analyzing whether legal provisions regulating the civil service can guarantee such mechanisms. Moreover, another argument speaks about the relationship between the instability of civil administrations as well as quality of the administration.⁴ Thus, well established mechanisms that are able to guarantee the application of the principles of merit and professionalism within public administration of Kosovo simultaneously precondition the quality of decisions and efficiency of the administration. Establishing protection mechanisms within the civil service, on the other hand, rules out the possibility that the incumbent political parties utilize the civil service sector as a tool to attract political support.⁵ In Kosovo, as well as in many countries, the use of the civil service sector to employ political friends is continuously hindering the possibility of attracting high-quality professionals to civil service, reducing performance of the administration and overburdening the national budget. That said, in the following section we argue why the current design of civil service protection mechanisms is inadequate to ensure a civil service system that is based on the principles of merit and professionalism.

According to a preliminary assessment, the after independence civil service system in Kosovo was shaped after and reflects the need of Kosovo to both overcome the institution-building challenges and respond to EU integration requirements.⁶ However, for the purpose of our assessment, we will focus on three important issues, namely, the appointment, dismissal, and promotion of civil servants. It should therefore be noted that these three distinct elements demonstrate the extent to which the law on civil service has modelled mechanisms that ensure the integrity of civil service system.

A) Recruitment Model

Controlling the recruitment of civil servants is one of the most important issues that determine the extent to which political parties and/or politicians can utilize the system for their own political party benefit. The current system of civil service in Kosovo has applied a decentralized employment model. That said, the Personnel Units, which play the role of the central management body within each institution, are authorized with the overall management and development of civil servants.⁷ According to this model, the recruitment of the civil servants is done by those Units in cooperation

³ See F. Cardona, ‘Building a Civil Service System’, Sigma/OECD, September 2002, p. 3, available at: <www.oecd.org/dataoecd/37/30/38736319.pdf>.

⁴ T. Verheijen & A. Rabrenovic, ‘Politico-administrative relations in Central and Eastern Europe: an irresolvable stalemate?’ Paper Prepared for the NISPACEE Annual Conference, Sofia 25-27 March 1999, p. 12, available at: <unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan005792.pdf>.

⁵ G. Shepherd, ‘Civil Service Reform in Developing Countries: Why Is It Going Badly?’ Paper presented at the 11th International Anti-Corruption Conference 25-28 May 2003, Seoul, Republic of Korea.

⁶ Dren Doli, Fisnik Korenica & Artan Rogova) (2010) ‘Establishing Protection Mechanisms for Bureaucrats: The Case of the Independent Oversight Board of Civil Service of Kosovo’. European Journal of Law Reform. Vol. 12: no. 1, p. 125.

⁷ Law on the Civil Service of the Republic of Kosovo, No. 03/L –149 (2010). Art. 7.

with the Ministry of Public Administration.⁸ The evaluation of the candidates for a given vacant position in the service is done by an ad-hoc committee established by the general secretaries, Mayors of municipalities and/or the CEO of a given institution.⁹ As we evidence in the following section, there are two critical moments that show that the recruitment procedure is based on personal and politically/biased mechanisms. The first argument relates to the role of general secretaries, Mayors and/or CEO-s in the recruitment process. Thus, due to the provisions of the law, the general secretaries of ministries, CEO-s of executive agencies, and heads of administration in municipalities are authorized to manage the recruitment process in their respective institutions. Moreover, the appointment and dismissal of general secretaries and other heads of executive institutions directly by the Government disregards the preliminary hypothesis that the recruitment of new civil servants (based on the discretion of general secretaries) is only based on the principles of merit and professionalism. The second argument, especially relates to the role that the Government has vis-a-vis recruitment within executive institutions. Thus, the law on civil service requires an approval by the Government for every career position in the civil service, whereby indirectly controlling the functioning of the internal ministerial units and human resources management.¹⁰

B) Dismissal of Civil Servants

On the other hand, the civil servants, excluding the general secretaries and/or CEO-s, can be dismissed on the grounds of poor performance and/or violation of the code of conduct.¹¹ First, a civil servant can be dismissed only after two consecutive negative performance assessments, conducted by the civil servant supervisor.¹² Second, a civil servant can be dismissed by a disciplinary commission established by the general secretary, Mayor or CEO of the concerned institution which could assess that the violation of the code of conduct and the violation of the obligations of the civil servant has occurred.¹³ Here again, the law on civil service fails to provide sufficient guarantees for civil servants from dismissal. Both, the performance appraisal system as well as the violation of the code of conduct are based on subjective/personal rather than a list of criterions. This provision of the law certainly becomes a discretionary device in the hands of general secretaries as Government appointees within ministries, and mayors, as political agents within local institutions.

C) Promotion, demotion and performance evaluation model

As to the promotion and performance appraisal of civil servants, here again the law on the civil service determines that administrative units are authorized to carry out the performance evaluations which, among others, determine whether the civil servant is eligible for promotion. As we have

⁸ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 18, para. 8.

⁹ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 18, para. 7.

¹⁰ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 12, para. 3.

¹¹ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 87, para. 1.

¹² Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 87, para. 3, and Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 33, para. 2 and 3.

¹³ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 70, para. 1 and 2.

explained, the results of the performance evaluation specifically affect civil servants status within administration in different ways. Put it differently, they determine whether a civil servant should be dismissed, whether he/she needs further training, and whether the individual civil servant has sufficient capabilities to carry out temporary positions in the state administration.¹⁴ That said, due to the absence of a centralized promotion and performance evaluation mechanism, both instruments remain under personal discretion of the civil servants direct supervisor or head of institution, which have certain political background or origins.

		TEC				NEC				CPC			
Year		08	09	10	11	08	09	10	11	08	09	10	11
CL	No	46	22	10	27	6	7	1	11	16	9	19	21
	No	22	14	19	21	32	6	5	6	40	29	22	28
		DG				SP				TAP			
CL	No	11	11	5	11	1	1	0	2	0	0	0	3
	No	11	8	2	6	0	0	0	0	0	0	1	4
Legend													
(Unilateral) Termination of the employment contract							TEC						
Non Renewal/Non-continuation of the employment contract							NEC						
Challenge the procedures followed during the public competition call							CPC						
Demotion in grade and title							DG						
Suspension from the position within civil service							SP						
Transfer to another position							TAP						

¹⁴ Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, art. 34, para.1.

To support this argument, we have analysed the complaints against the decisions of both central level and local level institutions submitted to Independent Oversight Board, a body that decides civil servants' complaints against employing authorities. A total of 11 ministries (CL) and 11 municipalities (LL), selected on random basis, have been included in our analysis. Thus, as evidence suggests, from 2008 to 2011, the number of submissions that challenge the decisions of ministries and municipalities is especially higher when it comes to decisions related to recruitment (CPC) and dismissal of civil servants (TEC, NEC) (see Table 1, columns: TEC, NEC and CPC). The same holds true with regard to the complaints submitted against the decisions related to performance evaluation and demotion of civil servants (DG) (See table 1, column DG), and this pattern is particularly expressed in central level institutions (CL).

Moreover, the results show that there is a clear relationship between the increasing number of complaints and the legal framework that permits the use of discretionary powers in personnel-related decisions by general secretaries of the ministries and mayors of the municipalities.

III. The Independent Oversight Board

It should however be noted that the Independent Oversight Board for Civil Service in Kosovo (henceforth 'the Board') has been largely established to balance and control political appointments within civil service. The Board is designed to serve as an appeal mechanism, aiming to protect the civil servants' rights against 'politically motivated employment decisions'.¹⁵ Since 2001, the Board has undergone three major reforms. It was UNMIK that developed the first construction of the Board back in 2001 and 'played a large hand' in the Board's second configuration in 2008.¹⁶ After the independence, Kosovo Constitution and the Law on Independent Oversight Board designed the current composition of the Board. According to the Constitution, an independent oversight board shall ensure the application of the principles governing the civil service and ought "itself reflect the diversity of the people" of Kosovo.¹⁷ On the other hand, the law on civil service determines that the Board constitutes the final administrative mechanism competent to review and decide the appeals of civil servants against the decisions of employing authorities. Moreover, the Board has the authority to review every issue related to the appointment, dismissal, promotion and disciplinary procedure undertaken by employing authorities. The decisions of the Board are final, and can be appealed only to the Supreme Court of Kosovo. However, there is no mechanism that ensures the implementation of the decisions of the Board. The law, therefore, does not require from the given institutions to ensure that the decisions of the Board are implemented properly and within the time limit determined by the Board. The notification of the Assembly as well as the Government about the organizations that are not implementing the decisions of the Board is the only mechanism that has been provided as a way to guarantee the implementation of the decisions of the Board. Except its main function as an appellate mechanism, the Board is vested with two other responsibilities. First,

¹⁵ See for more: Dren Doli, Fisnik Korenica & Artan Rogova (2010) 'Establishing Protection Mechanisms for Bureaucrats: The Case of the Independent Oversight Board of Civil Service of Kosovo'. European Journal of Law Reform. Vol. 12: no. 1, p. 116.

¹⁶ Ibid., p. 116.

¹⁷ Constitution of the Republic of Kosovo, Art. 101, para. 2.

it ultimately decides and assesses whether the appointment of general secretaries and chief executive officers is in compliance with the principles of the civil service. Second, the Board is authorized to supervise the implementation of the law on civil service.

At this point in this discussion, it should be noted that the role the Board can play vis-a-vis the protection of civil service independence is seminal.

		DA			DR			DPR		
Year		09	10	11	09	10	11	09	10	11
IQ	No	16	20	40	15	24	15	3	8	10
	No									
IL	No	18	43	31	7	36	46	3	11	3
	No									

		W			DI			DNI		
Year		09	10	11	09	10	11	09	10	11
IQ	No	0	0	1	7	15	40	10	7	8
	No									
IL	No	0	0	1	3	30	24	23	24	18
	No									

Legend

Decisions that approve/reaffirm the right of the individual and annul the decisions of public authorities

DA

Table 2 (explaining the number of decision of the Independent Oversight Board from 2009-2011).

Decisions that reject the complaints as inadmissible DR

DR

Decisions that reject the complaints as procedurally inadmissible

DPR

Withdrawal of complaints

W

Number of decisions implemented by public authorities

DI

Number of unimplemented decisions

DNI

To measure the role the Board plays to control the decisions of the central and local level institutions, we have analysed civil servants' complaints submitted to the Board from 2008 to 2011, against a number of selected ministries and municipalities (11 ministries and 11 municipalities) (see table 1 and 2). In addition, for each institution we have monitored only 6 categories of complaints, namely, complaints related to the dismissal of civil servants on different basis (see table 1: column

TEC and NEC), appeals that challenge the procedures followed during the public competition call (see table I: column CPC), appeals against the decisions concerning demotion in grade and title (see table I: column DG), and appeals related to suspension from the position within civil service and transfer of civil servants (see table I: columns SP and TAP). As evidence suggests, the decisions of the Board that revoke the verdicts of those civil service employing authorities from 2009 to 2011 is continuously increasing (see table 2: Column DA). This is particularly true when it comes to central level institutions. In the same time, the number of complaints directed to both local and central level institutions is increasing mainly in times of elections (see table I and 2). Moreover, due to the absence of a mechanisms that ensure the implementation of the decisions of the Board, as shown in table 2, the number of decisions that are not implemented by central and local level institutions is a particular concern (table 2: column DNI). In particular, the refusal of municipal authorities and central level institutions to implement the decisions of the Board is affecting both the Board's integrity and independence.

To that extent, it is equally important to scrutinize the level of institutional independency of the Board. To this aim, we will assess both the appointment and composition of the Board, and review the mechanisms that ensure that its decisions are properly implemented.

The Board consists of seven members of which, two must come from the non-Albanian majority and two others must be women. The members of the Board are appointed and dismissed by the Kosovo Assembly with the majority of votes of its members that are present and vote. That being said, it is important to note that the appointment and dismissal of the Board members is entirely related to the coalition and/or political parties that have the majority of seats in the parliament, that is to say the governmental coalition in the parliament. Of note is the fact that the political majority in Kosovo has been careful in deciding which individuals are appointed to this position, in particular having regard the competencies of the Board.

According to the law on Independent Oversight Board, the Assembly is authorized to establish an ad-hoc committee to review the applications, and propose to the Assembly for approval at least two candidates for each vacant position on the Board. It should be noted that, with the previous UNMIK regulation, the ad-hoc committee of the Assembly consisted of 9 representatives of five biggest political parties represented in the Assembly and two representatives of political parties of ethnic communities living in Kosovo. The then composition of the ad-hoc committee of the Assembly prevented the dominance of incumbent-government political parties over the appointment of the Board members. However, the current design disregards the pluralistic approach of the earlier UNMIK regulation, in which, as we argued, the representation of different political groups was mandatory and produced a more credible and plural selection of the membership. Therefore, the current model 'both decreases the scope of the ad hoc committee and diminishes the mechanisms designed to secure the independence of the Board'.¹⁸ The members of the Board are appointed for a five-year term and can be reappointed only for one additional term.

¹⁸ See Dren Doli, Fisnik Korenica & Artan Rogova (2010) 'Establishing Protection Mechanisms for Bureaucrats: The Case of the Independent Oversight Board of Civil Service of Kosovo'. European Journal of Law Reform. Vol. 12: no. 1, p. 130-131.

Considering the above, it should however be noted that the current legal framework permits the governing parties in Kosovo to control and influence the composition of the Board. Moreover, this is particularly true when it comes to the Board's appointment procedures and mechanisms that ensure the implementation of its decisions. Last, the reliance of internal protection mechanisms on the discretion of general secretaries of ministries, mayors of municipalities and/or CEOs of independent agencies is hindering the establishment of a professional and merit-based civil service system in Kosovo.

IV. Policy Recommendations

- 1) Given the evidence that the recruitment, promotion and dismissal procedures are under the full control of general secretaries of ministries – and having regard to the fact that such general secretaries most often follow politicized patterns – it is important to reform the personnel policy, in light of introducing an integrated system of recruitment, promotion and dismissal that fits with the aims of merit, impartiality and professionalism. This new system should foresee a substantial weight to the professional education evaluation of candidates, offering sufficient space for measuring the professionalism of candidates by independent, non-political and qualified assessors.
- 2) It is indispensable that the composition of the Ad-Hoc Committee that selects the members of the Independent Oversight Board be plural, exclusive of partisan/political control. This said, the composition of the said Committee should not be under the rule of the political parties or one single ruling political party, thereby offering space that the selection of the IOB members be done on basis of impartiality and integrity.
- 3) It is crucially important that the IOB utilize its competence to oversee the impartiality, professionalism, merit and integrity of the general secretaries of ministries, in order to save the objectivity of the performance and to protect them from partisan interference. To take this over, the IOB should establish a monitoring department with sufficient administrative capacity to oversee the general secretaries' impartial performance and to report on their integrity. On the other hand, given the crucial role that the IOB has on the civil service system integrity, the IOB should be allowed a far more credible budget to be capable of addressing its functions more properly.
- 4) As evidenced in our observation, many of the decisions of the IOB face either opposition or lack enforcement. It is necessary that a credible mechanism of assuring the execution of the IOB decisions be introduced in the Law on IOB. We recommend that the Law introduce a mechanism whereby the decisions of the IOB, if not executed within a specific time and if there has been no appeal to the court of jurisdiction, be automatically submitted to the law-enforcement division of the relevant territorially-authorized municipal court. The relevant

court would then ipso iure execute the IOB decision independently, adding that the government should have no authority on this entire process.

- 5) It is crucially important that the IOB, utilizing its regulatory competence, adopt a set of guidelines specifying the strict criteria on basis of which the appeals and/or the decisions on recruitment, promotion and dismissal should be taken. This set of criteria should substantiate the principles on merit, professionalism, impartiality and integrity of the civil service system.

Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.

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