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Civil Service Reform in Kosovo: A Debate on Concepts, Strategies and Developments

Shqipe Hajredini

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Group for Legal and Political Studies
"Rexhep Luci" str. 10/5
Prishtina 10 000, Kosovo
Web-site: www.legalpoliticalstudies.org
E-mail: office@legalpoliticalstudies.org
Tel/fax.: +381 38 227 944



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CIVIL SERVICE REFORM IN KOSOVO: A DEBATE ON CONCEPTS, STRATEGIES AND DEVELOPMENTS

I. Introduction

This report, in general, explains the development of the civil service in Kosovo and challenges that lie ahead. The civil service has been identified as an important and crucial element in defining the efficiency of the state institutions. When Max Weber stated that “political domination, in everyday life, means public administration”, he referred to the fact that law and order, the core state functions, are performed by civil servants.¹ Countries in transition face the task of establishing the basic foundations of a democratic society, for example, by adopting new constitutions, transferring power to elected representatives, creating multi-party systems, establishing favourable and competitive environments for free market operators, encouraging the development of civil society organizations, and promoting the independence of mass media.² These tasks demand a profound transformation of the state administration and its overall system of governance, and notably a reorientation of the civil service towards an impartial and professional policy body that ensures a less arbitrary use of public authority.³

This report, first, provides an overview of the legal and institutional transformation of the civil service in Kosovo from its establishment in 2000, examining the core principles and institutions under both, the United Nations Mission in Kosovo (UNMIK) interim administration, and those that characterised the post-independence landscape. With that aim, the first section of the report provides information about the creation of the civil service system, its tradition and reform. It also elaborates some general definitions of civil service and applies them to the case of Kosovo. The report, moreover, analyses the UNMIK legislation regulating the civil service and describes the bodies established to manage, supervise, monitor and train civil servants, focusing specifically on the then Senior Public Appointments Committee and Independent Oversight Board, as well as the Ministry of Public Services and affiliated agencies.

The second section then details the development of the civil service system after the independence of Kosovo, focusing on the key reforms introduced. It highlights changes in the legal framework and analyses the involvement of relevant institutions. Specifically, it asks what major legislative changes were introduced by the new framework, were the reforms necessary, what were the dimensions of these reforms, and how would they impact the current institutional set-up? The report will moreover analyse the ‘European agenda’ as one of the incentives for restructuring the civil service system in Kosovo. It then draws attention to the current regulatory framework on civil service; identifies its strengths and weaknesses, highlights the changes introduced in terms of the senior public appointments and oversight mechanisms, as well as career development and performance appraisal. Finally, the report focuses on the classification of positions within Kosovo civil service, explains the new performance evaluation model, highlights the main institutional challenges, and draws the attention of policy makers on apparent policy implications.

¹ Derlien, H.,-U., and Peters, B., G., (2008) ‘Public Sector Employment in Ten Western Countries. The German public service: between tradition and transformation’. Cheltenham: Edward Elgar Publishing, p.170.

² Kotchegura, A., (2008) ‘Civil Service Reform in Post-Communist Countries’. Hague: Leiden University Press, p. I.

³ Ibid.

II. Civil Service in Kosovo and its establishment

A) Definition of civil service and main concepts

Civil service is understood as “an institution of governance programmed by rules which are, by definition, reasonably stable over time and take on the character of roles, rules, norms and expectations about civil service attitudes, behaviours and functions in discharging state business”.⁴ Thus, the term ‘civil service’ refers not only to the state institutions and professional activities aimed at exercising the authority of state organs, but implies that they are organised with relevant structures and personnel aimed at allocating resources.⁵ In most countries, civil servants are found in authoritative areas of public activity, adopting policy decisions and providing political advice and/or controlling policy implementation. However, in some countries there is also a distinction between the ‘public service’ and the ‘civil service’, where the latter is understood as a subgroup of the former.⁶ If the public/civil service distinction is not observed, we either underestimate the size of the public service⁷ or shade “the qualitative difference between the larger public service including employees and labourers and the civil service proper with its particular status and function”.⁸ This paper will argue that, against this scale, Kosovo legislation regulating the civil service (post-independence law) adopts a narrower approach, which exempts several categories of public employees from application of the civil service law.

B) Kosovo Civil Service after 2000

The creation of an efficient, cost effective, accountable, and merit-based civil service turned out to be an extremely complicated task in all post-communist countries.⁹ With this in mind, one of the aims of the 1999 United Nations Security Council Resolution 1244¹⁰ on Kosovo was to establish the Provisional Institutions of Self Government (PISG) as democratic self-governing institutions (comprising legislative, executive and judicial branches). In May 2001, UNMIK promulgated a Constitutional Framework¹¹ which laid out the legal basis for establishment of PISG, and defined their responsibilities and powers.¹² It also elaborated the powers reserved to the Special Representative of the Secretary-General (SRSG).¹³ Regulation 2001/19 defined the exercise of executive authority by PISG,¹⁴ delineating the general principles of the civil service.¹⁵

⁴ Kotchegura, A., (2008) ‘Civil Service Reform in Post-Communist Countries’. Hague: Leiden University Press , p. 39.

⁵ Ibid.

⁶ Derlien, H.-U., and Peters, B., G., (2008) ‘Public Sector Employment in Ten Western Countries, The German public service: between tradition and transformation’. Cheltenham: Edward Elgar Publishing, , p.10

⁷ Ibid., at p. 10.

⁸ Ibid., at p. 10.

⁹ Kotchegura, A., (2008) ‘Civil Service Reform in Post-Communist Countries’. Hague: Leiden University Press, p. 11.

¹⁰ United Nations Security Resolution 1244 was adopted on June 10, 1999, authorizing an international civil and military presence in Kosovo and establishing the United Nations Interim Administration Mission in Kosovo (UNMIK). See UN Doc. S/RES/1244 (1999) of the 10 June 1999, para. 10.

¹¹, UNMIK Regulation No.2001/9 on Constitutional Framework For Provisional Self-Government adopted in 15 May 2001 (amended by UNMIK Regulation No.2007/29 and UNMIK Regulation No. 2002/9).

¹² See UNMIK Regulation No.2001/9 on Constitutional Framework For Provisional Self-Government, Chapter 8.

¹³ The Special Representative of the Secretary General was the final decision making body, and therefore according to the Constitutional Framework he/she was the final authority that could overrule every decision of PISG-s.

¹⁴ See Regulation No.2001/19 on the Executive branch of the Provisional Institutions of Self Government in Kosovo.

The intention was to establish a heavily de-politicized civil service system, tailored and modified to the needs of Kosovo. In order to achieve this, the drafters consulted several models of civil service organization and their institutional structures, notably the British system.¹⁶ Thus, in order to understand the rationale of the Kosovo framework, brief reference should be made to some of the distinctive features of the British system. The first important feature of the British civil service is its lack of public law basis;¹⁷ in other words, there is no legal definition of what constitutes public employment or what the concept of a civil service would imply.¹⁸ A second feature is that the concept of 'civil servant' is both narrower and wider than those of many other European countries, being confined to direct employees of central government departments (leaving aside the problem of defining what those are).¹⁹

In 2001, the SRSB adopted Regulation 2001/36 on the Kosovo Civil Service, which listed the basic principles of the civil service as: a) equity, b) political neutrality and impartiality, c) integrity, d) honesty and accountability, e) transparency, f) merit, g) non-discrimination and h) inclusiveness.²⁰ Within the meaning of the Regulation, a *civil servant* was any employee (working in a public institution), who is paid from the Kosovo consolidated budget.²¹ However, the regulation exempts some categories of employees (members of the Independent Oversight Board, political appointees and members of the Kosovo Protection Corps) from the civil service. The scope of civil service was overly broad, including several categories of public employees which were not specifically categorized. In addition, it did not differentiate between career civil servants or contracted civil servants, although, generally speaking, it applied a contract-based employment system for all categories of civil servants. The employment contract was for a period up to three years with the possibility of extension.

The highest positions within the civil service – those of permanent secretaries and chief executive officers – were directly accountable to the relevant minister and were responsible for managing and administering the civil service in the executive.²² They played a key role in ensuring that an effective and professional civil service was established, and were responsible for ensuring that recruitment of ministry and/or executive agency staff was based on professional qualifications, competence and merit, and was undertaken through fair and open competition. This implied that a permanent secretary or a chief executive officer could take instruction from government members, institutions or persons with authority over his/her ministry or executive agency. In addition, these provisions also implied that the posts of permanent secretary and chief executive officer can be carried out only by civil servants with professional qualifications that enabled them to adequately perform their functions.

¹⁵ Regulation No.2001/19 on the Executive branch of the Provisional Institutions of Self Government in Kosovo, art. 4.

¹⁶ Interview with Mr. *Alexander Borg-Olivier* Special Advisor to Prime Minister of Kosovo and Former -Chief of United Nations Mission in Kosovo (UNMIK) Legal Office, September 2010.

¹⁷ Derlien, H.,-U., and Peters, B., G., (2008) 'Public Sector Employment in Ten Western Countries, Public employment in Britain: from working in to working for the public sector?'. Cheltenham: Edward Elgar Publishing, p.19

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Regulation No.2001/36 on the Kosovo Civil Service, section 2, para.1, sub-para.a, b, c, d,e, f, g and h.

²¹ Regulation No.2001/36 on the Kosovo Civil Service, section 1.

²² Regulation No.2001/19 on the Executive Branch of the Provisional Institutions of Self Government in Kosovo, section 5, para. 2.

C) The Senior Public Appointments Committee

The role of the SRSB within the civil service was to monitor implementation of the regulation on the civil service and to ensure proper representation of communities. The idea was to create a civil service that was objective, effective and not politicized.²³ To that end, the legislation regulating the civil service established two important institutions: the Senior Public Appointments Committee (SPAC)²⁴ and the Independent Oversight Board for Kosovo. The latter was established to hear and determine appeals against decisions of employing authorities for all civil servants, excluding those appointed by SPAC.²⁵

The SPAC was set up as an independent body inside the Office of the Prime Minister, to appoint and dismiss senior civil servants within the executive.²⁶ These appointments included primarily the permanent secretaries of the ministries, chief executives and other posts determined by the SRSB.²⁷ The composition of the SPAC was interesting: it included 10 members, with the Prime Minister as chair, two ministers (one of whom was the Minister for Public Services), two ministers from non-Kosovo Albanian communities, three eminent inhabitants of Kosovo, and three international members. The three eminent inhabitants of Kosovo and three international members were appointed by the SRSB. Moreover, within this process the SRSB had final decision-making power over the termination of senior posts, including the dismissal of any SPAC member appointed by him.²⁸ The power of the SRSB sometimes facilitated decisions taken by the SPAC.²⁹

The voting system of the SPAC was not very well developed, and hampered its work and effective decision making. Even though decisions were supposed to be taken by consensus, this rarely occurred in practice. To reach quorum the SPAC needed seven members, including the second minister and at least one member representing the non-Kosovo Albanian communities.³⁰ Where quorum was not attained, the Prime Minister was supposed to postpone the meeting and agree on alternative date.³¹ Appointments and other substantive decisions required the support of at least six members present and voting. In the event of a tied vote, the Chairperson had the deciding vote.³² Since the member of non-Kosovo Albanian communities and any of the ministers were frequently absent showed how difficult it was for the SPAC to convene a meeting and therefore reach a decision on important matters. Such cases were manifest during the work of SPAC.³³

²³ Interview with Mr. *Alexander Borg-Olivier* Special Advisor to Prime Minister of Kosovo and Former -Chief of United Nations Mission in Kosovo (UNMIK) Legal Office, September 2010.

²⁴ Regulation No.2001/19 on the Executive branch of the Provisional Institutions of Self Government in Kosovo, section 2, para. 1, sub-para. e, and annex 1, point E, Regulation No.2001/36 on the Civil Service, chapter IV.

²⁵ Regulation No.2001/36, on the Kosovo Civil Service, chapter III, section 10, para. 1 and 2.

²⁶ Administrative Instruction 09/2006 implementing procedures for the operation of the Senior Public Appointments Committee of Kosovo, article 2, para.1, sub para. IV.

²⁷ Regulation No.2001/19 on the Executive branch of the Provisional Institutions of Self Government in Kosovo, section 2, para.1, sub-para. e, and Annex 1, point E, and point IV, and c.

²⁸ Regulation No.2001/36, on the Kosovo Civil Service, chapter IV, section 18.

²⁹ Interview with Mr. *Alexander Borg-Olivier* Special Advisor to Prime Minister of Kosovo and Former -Chief of United Nations Mission in Kosovo (UNMIK) Legal Office, September 2010.

³⁰ Regulation No.2001/36, on the Kosovo Civil Service, chapter IV, section 19, para.2.

³¹ Ibid

³² Regulation No.2001/36, on the Kosovo Civil Service, chapter IV, section 19, para. 4.

³³ See Transcript of SPAC meeting, May 2006.

The SPAC was quite useful at the start of the process, and developed gradually during implementation of the Constitutional Framework.³⁴ The initial phase of SPAC was characterised by selection and appointment of professional and less politicised senior civil servants. This was also a result of the international expertise offered.³⁵ The selection procedure was carried-out by a panel which reviewed the applications. The panel consisted of the Permanent Secretary of the Ministry of Public Services; the permanent secretary of the ministry, under which the candidate for appointment was to serve; one Kosovo inhabitant; and one international member of the SPAC. After review of the applications and an interview, the panel recommended three final candidates to SPAC.³⁶ The ministers had a say in the appointment but that was limited on the basis of objective criteria.³⁷

Guaranteeing transparency, one of the key principles on which the civil service was founded, was crucial to the work of SPAC. A fair evaluation of candidates for senior public appointments, on the basis of merit and without bias, was itself a challenge.³⁸ Further, priorities of the institutions were different from period where Kosovo had to fulfil international obligations which would at some degree deviate also the work of SPAC. ³⁹ Also, at a certain time frame a vacuum was created on the work of SPAC for the reason of not meeting the quorum.. Moreover, political pressure or attempts to interfere in the selection process were also noted in a several cases, mostly in the selection of permanent secretaries.⁴⁰

The performance review of civil servants was regulated through sub-legal acts. For senior positions (such as permanent secretaries or chief executives), procedures required that an evaluation be undertaken on an annual basis. The ministers were responsible for assessing their senior appointees after notification by the Secretariat of the SPAC. Usually this procedure lasted for 20 days, unless it took place at the end of the contract period, when it lasted 70 days. The procedures in question were long and in most cases did not end with a solution or decision. In addition, there were different procedures governing expiry of the contracts of permanent secretaries and chief executives, and their performance was not assessed and while it was only relevant for vacant posts, redeployment and acting positions.

However, certain procedures were not regulated by sub-legal acts,⁴¹ including the suspension and dismissal of senior post. There was only one indirect reference in the regulation that addresses suspension, which relates to the procedure governing acting positions: a minister could appoint an acting permanent secretary or chief executive, subject to the approval by SPAC within 30 days of the beginning of the absence, if a permanent secretary or chief executive “is suspended in accordance with the disciplinary procedures approved by SPAC”.⁴² However,

³⁴ Interview with Mr. *Alexander Borg-Olivier* Special Advisor to Prime Minister of Kosovo and Former -Chief of United Nations Mission in Kosovo (UNMIK) Legal Office, September 2010

³⁵ Interview with Ruzhdi Halili, Former-consultant on reformation of Public Administration in Kosovo, September 2010.

³⁶ Regulation No.2001/36, on the Kosovo Civil Service , chapter IV, section 20, para. 3.

³⁷ Interview with Mr. *Alexander Borg-Olivier* Special Advisor to Prime Minister of Kosovo and Former -Chief of United Nations Mission in Kosovo (UNMIK) Legal Office, September 2010

³⁸ Regulation No.2001/36, on the Kosovo Civil Service , Chapter IV, Section 21.1

³⁹ Ibid.

⁴⁰ See the decisions on the appointment of Senior staff, transcripts from the SPAC meeting, 20.08.2008

⁴¹ Administrative Instruction 09/2006 implementing procedures for the operation of the Senior Public Appointments Committee of Kosovo, and Regulation No.2001/36 on the Kosovo Civil Service.

⁴² Administrative Instruction 09/2006 implementing procedures for the operation of the Senior Public Appointments Committee of Kosovo, Article 18, para. 2, point. IV.

disciplinary procedures had not been adopted at the time, and there was no clear understanding of how disciplinary cases should be brought before SPAC. In fact, a relevant case did arise, when a permanent secretary was dismissed.⁴³ In this case, SPAC was faced with lack of legal backing and case of the dismissed Permanent Secretary was further continued in judicial process. Although several sub-legal acts were drafted, they were not approved due to the lack of quorum.

D) Independent Oversight Board

Another institution that deals with civil service assessment and works to ensure implementation of the Law on Civil Service is the Kosovo Independent Oversight Board (hereinafter, 'the Board'). The Board was initially established as an autonomous body within the Ministry of Public Service, on the basis of a number of sublegal acts,⁴⁴ and was composed of seven members with a multiethnic structure. The Board initially reported directly to the Minister of Public Services, even though its members were appointment by the SRSG in consultation with the Prime Minister.⁴⁵ The main functions of the Board were to hear and determine appeals against decisions of the employing authorities, to decide if the appointment of civil servants at the level of heads of departments was conducted in accordance with the law, to undertake an annual assessment of employing authorities, and to provide an annual report to the Prime Minister and SRSG.⁴⁶ Given the broad scope of the civil service, the Board had to deal with all categories of public employees, not merely with the executive branch. The only categories which were excluded from the Board's remit were civil servants appointed by SPAC.

The appeals process dealt mainly with complaints related to violation of job vacancy procedures, interruption of contracts, non-extension of contracts, degrading of position, compensation issues, and suspension.⁴⁷ Over the years, the number of cases had gradually increased.⁴⁸ The decisions of the Board were mandatory.

Initially, the Board was established as an independent unit within the Ministry of Public Service, a matter that raised questions of its independence. This was, mainly due to the fact that the Board was financially and institutionally dependent on the Ministry of Public Services. In 2008, however, with the amendments made to the legislation⁴⁹ the Board reported directly to the Assembly of Kosovo. Also the new law ensured that the salaries of the members of the Board were at least equivalent to some senior positions within Kosovo institutions. (i.e. the law determined that the salary level of the Chairperson of the Board should be equivalent to that of the President of the Supreme Court of Kosovo and the salary level of other members of the Board should be equivalent to that of a judge of the Supreme Court of Kosovo).⁵⁰ The members of the

⁴³ Interview with Former-Permanent Secretary, who required being anonymous, October, 2010.

⁴⁴ See Administrative Instruction No. 2003/2 implementing UNMIK Regulation no. 2001/36 on the Kosovo Civil Service; Administrative Instruction 2005/1 of MPS; Administrative Instruction 2005/2 of MPS, and Law No. 02L/28 on Administrative Procedure.

⁴⁵ Regulation No.2001/36, on the Kosovo Civil Service,, chapter III, section 8, para. I.

⁴⁶ Regulation No.2001/36, on the Kosovo Civil Service , chapter III, section 10, para. I, sub-paras. a, b, c, d.

⁴⁷ See Independent Oversight Board of Kosovo, Annual Report 2005, available at: http://www.ks-gov.net/kpmk/document/english/publications/Report_2005.pdf

⁴⁸ See Independent Oversight Board of Kosovo, Annual Reports 2005, 2006, 2007, 2008 and 2009, available at: <http://www.ks-gov.net/kpmk/>

⁴⁹ Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service.

⁵⁰ Ibid.

Board were appointed and dismissed by the Assembly of Kosovo. However, as with the previous regulation, the new legislation did not clearly specify the form or the power of the decisions of Board.

E) Efficiency and management in civil service structures (KIPA and DSAC)

The regulation on the civil service established a centralized management system, whereby the Ministry of Public Services (MPS) was responsible for “developing, and coordinating the implementation of policies for training and capacity development of the Civil Service”.⁵¹ On the other hand the Kosovo Institute for Public Administration (KIPA) was established. KIPA was responsible for training Kosovo civil servants. The legislation in force at the time did not provide clear terms for career development,⁵² and there was no relationship between education, performance appraisal and output and professional grade. That often resulted in decreased interest in civil service employment, limited creativity, low performance, and increased interest in secondary jobs.⁵³

In terms of output, KIPA from 2004 to 2006 organized 107 training programs, with a total of 5,863 participants.⁵⁴ However, KIPA has never been able to evaluate the impact of its training sessions. For example, in 2008, 91% of training topics were of the “standard” or “horizontal” type, which means that they were dedicated to civil servants employed in different organizations. Within the training package offered for 2008, only trainings in Public Procurement (PP) and Capital Public Investments (CPI) fell into the category of “necessary trainings”.⁵⁵ However, in the majority of cases practices and methods learned in trainings were not applied to their working

⁵¹ Regulation No.2001/19 on the Executive branch of the Provisional Institutions of Self Government in Kosovo, annex IX.

⁵² For more on information on sublegal acts which the Ministry of Public Services functioned see: Regulation No. 2001/36 on the Kosovo civil service regulates the employment and the terms of employment for civil servants in Kosovo. The Administrative Direction 2003/2, 25 January 2003 has been issued for the implementation of this Regulation. In this direction are prescribed the detailed provisions on the civil servants employment procedures and terms. Also, for the implementation of the administrative direction 2003/2 – implementation of the UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, the following Administrative Instructions have been issued: MPS/ DCSA Administrative Instruction No. 2003/01 recruitment procedures; MPS/ DCSA Administrative Instruction No. 2003/02 contract procedures; MPS/ DCSA Administrative Instruction No. 2003/03 probation period procedures; MPS/ DCSA Administrative Instruction No. 2003/04 disciplinary procedures; MPS/ DCSA Administrative Instruction No. 2003/05 appealing procedures; MPS/DCSA Administrative Instruction No. 2003/06 procedures of terminating the work relation; MPS/ DCSA Administrative Instruction No. 2003/07 job description procedures; MPS/ DCSA Administrative Instruction No. 2003/08 performance evaluation procedures; MPS/DCSA Administrative Instruction No. 2003/09 work and presence at work procedures; MPS/DCSA Administrative Instruction No. 2003/10 leave procedure; MPS/DCSA Administrative Instruction No. 2003/11 personnel files procedure; MPS/ DCSA Administrative Instruction No. 2003/12 equal opportunity procedures;

⁵³ See Report on the Status of Public Administration in Kosovo, prepared by Group of Experts for Public Administration Reform. Ministry for Civil Services, February 2007.

⁵⁴ Ibid.

⁵⁵ Report of Activities, Kosovo Institute for Public Administration, January 2009, p. 5, available at http://ikap.rks-gov.net/Default.aspx?PID=Publications&Default.aspx?PID=Publications&CID=IKAP_Raportet&LID=I&PCID=-I&PanID=BodyMiddle&CtlID=~/iaCtls/Raportet.ascx

places, as a result of the lack of monitoring mechanisms, evaluation procedures and punitive mechanisms.⁵⁶

The then legislation also established the Department for Civil Service Administration (DCSA), which acted within the Ministry for Public Services, was mandated to develop and supervise the implementation of policies related to the civil service. Both the Strategy for Public Administration Reform 2007-2012 and the Action Plan expands the role of the DCSA. These two documents, which set up the guidelines for reform of the public administration in Kosovo, were developed after a comprehensive analysis of the state of public administration in Kosovo. According to the strategy, the Department for Civil Service Administration should be the central institution responsible for managing, coordinating and reporting progress of the implementation of public administration reform. To achieve this aim, the department had to cooperate closely with all ministries and institutions tasked with implementing the action plan for reform implementation.⁵⁷

III. The Civil Service after Independence

The Declaration of Independence by Kosovo in February 2008 paved the way for adoption of Constitution of Kosovo,⁵⁸ Article 101 of the Constitution states that the composition of the civil service should reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.

The reform of the civil service envisaged in the Strategy for Public Administration Reform did include a general timeframe within which such reforms should take place. Bearing in mind the situation and the changes resulting from the transfer of competences to Kosovo institutions, the bulk of activities to be implemented during the first two years after approval of the document, namely in 2007 to 2008 were enormous.⁵⁹

Several priorities were identified: a) the development and approval of basic legislation in the area of public administration; b) development of a unitary accounting system in line with international accounting standards to secure the accurate recording of incomes and expenditures, and to train the personnel for using the system; c) to undertake the functional review of institutions and implementation of recommendations; d) establishment of the Agency for Information Society; e) the development of the Strategy for Communicating with the Public, including the implementation of the Law for access to official documents and the identification of

⁵⁶ However, Article 12 of the Administrative Instruction 2003/02 required the establishment of such bodies, see for more Report on the Status of Public Administration in Kosovo, prepared by Group of Experts for Public Administration Reform. Ministry for Civil Services, February 2007, p.22.

⁵⁷ Strategy for Public Administration Reform in Kosovo 2007–2012, 15 February 2007, p. 7, available at: <http://www.fridomks.org/media/01%20Draft%20Strategija%20RAP.pdf>.

⁵⁸ The Constitution of the Republic of Kosovo ratified on 9 April 2008 and entered into force on 15 June 2008. Comprehensive Proposal for the Kosovo Status Settlement (the so-called "Ahtisaari Plan") included constitutional provisions, rights of communities and their members, decentralization of local government, justice system, religious and cultural heritage, international debt, property and archives, Kosovo security sector, International Civilian Representative, European Rule of Law Mission, International Military Presence and legislative agenda. See Comprehensive Proposal for the Kosovo Status Settlement of 2007, UN Doc. S/2007/168/Add. I, 26 March 2007.

⁵⁹ See Strategy for Public Administration Reform in Kosovo 2007–2012, 15 February 2007, p. 7, available at: <http://www.fridomks.org/media/01%20Draft%20Strategija%20RAP.pdf>.

government services that can be offered through the Internet and; f) functionalizing the mechanisms that monitor the implementation of the legislation.⁶⁰

One of the main priorities of public administration reform was the achievement of European priorities.⁶¹ In order to orient Kosovo's aspirations towards the European perspective, from 2003 Kosovo institutions took on several related obligations through the Stabilization and Association Tracking Mechanism (STM). For their part, the European Union (EU) institutions, in accordance with EU legislation and having regard to the Copenhagen criteria, addressed the need to reform the civil service in their progress reports. Of note is the fact that in almost all of the reports concerning candidate countries⁶² emphasized the creation of a unified civil service; the strengthening of that service, notably its independency and professionalism; and the issue of public administration reform. For example the European Commission Progress Report for Kosovo (2008) highlighted that civil servants continued to be vulnerable to political interference, corruption and nepotism. The European Commission required that a new law on civil service be adopted, which enshrined the principles of a modern civil service, namely that of professionalism, impartiality and merit.⁶³ According to FIRDOM assessments, to implement a reorganization of the civil service across all governmental bodies, the civil service law and its subsequent bylaws, Kosovo institutions had to plan practical and financially sustainable instruments for outsourcing (privatising) certain non-core functions, and allow the staff to gain new qualifications, re-trained and transferred, as well as to take advantage of early retirement schemes.⁶⁴

On the other hand, several actions for civil service reform were also elaborated in the European Partnership Action Plan for Kosovo.⁶⁵ Among other things, this plan required the approval of basic laws for reforming administration, dividing institutional competences, and appointing people to senior positions. The challenges for reforming the civil service were also addressed in the European Commission Progress Report of 2009, which identified the establishment of a professional, accountable, accessible, representative public administration that is free from political interference as key European Partnership priorities. It was further noted that these were not fully guaranteed under the then system (UNMIK legislation),⁶⁶ and that the capacity of the Kosovo' public administration remained weak.⁶⁷ In addition to that, the low level

⁶⁰ See Strategy for Public Administration Reform in Kosovo 2007–2012, 15 February 2007, p. 7, available at: <http://www.fridomks.org/media/01%20Draft%20Strategija%20RAP.pdf>.

⁶¹ At that time a separate European Integration Agency was established within the Office of the Prime Minister. See Administrative Instruction 2006/06 and Administrative Instruction 2004/18.

⁶² See the Progress Reports of 2008 of Croatia, The Former Yugoslav Republic of Macedonia, Turkey, available at: http://ec.europa.eu/enlargement/pdf/press_corner/keydocuments/reports_nov_2008/croatia_progress_report_en.pdf;

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2695:FIN:EN:PDF>; and http://ec.europa.eu/enlargement/pdf/press_corner/keydocuments/reports_nov_2008/turkey_progress_report_en.pdf

⁶³ Sigma 'Kosovo Public Service and the Administrative Framework Assessment'. May, 2008, p. 3, available at: <http://www.sigmaweb.org/dataoecd/48/31/41637624.pdf>,

⁶⁴ The Whole-of-Government Review, November 2008, FRIDOM, available at: http://map.rks-gov.net/userfiles/file/FRIDOM/Rishikimi_i_Gjithe_Qeverise/Raportin_e_plote_mundeni_ta_shkarkoni_ne_formatin_20.pdf

⁶⁵ European Partnership Action Plan for Kosovo 2009, 2010, available at: http://www.mei-ks.net/repository/docs/EPAP_2009.pdf

⁶⁶ Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2009 Progress Report'. Commission of the European Communities, SEC(2009) 1340, Brussels.

⁶⁷ Ibid.

of salaries was a consistent problem, which hampered efforts to create a professional civil service and to attract well educated and competent employees into the public sector. However, another difficulty was related to the blur distinction between political appointments and civil servant associated with limited possibilities for career advancement and the high staff turnover.⁶⁸ Some of these concerns however reappeared in the 2010 Progress Report for Kosovo, although there was also evidence of some progress.

A) Towards reform: adoption of the new civil service system

The new Law on Civil Service (LCS) entered into force on June 2010, along with a new Law on Salaries of Civil Servants.⁶⁹ The LCS regulates the status of civil servants, the terms and conditions of their employment. The revised framework introduced a number of novelties compared to the UNMIK system. First, the scope of the LCS was narrowed and it included the employees of the administration of the Assembly, the Office of the President, the Office of the Prime Minister and ministries, executive agencies, independent and regulatory agencies and municipal administrations. A number of public employees have been excluded from the law⁷⁰ leaving space for other categories to be regulated with other acts, primarily with Labour law. Therefore, the new law excludes teaching staff, the staff of health institutions, police officers, customs officers, correctional officers and members of the Kosovo Security Force. The LCS also excludes political appointees of all institutions and personnel employed in the cabinets of public officials. These changes mean that the number of civil servants has been reduced by more than half. Second, the LCS defined the meaning of the civil servants, according to which, a civil servant is a public employee who exercises public administrative authority, participates in making and implementation of policies, in monitoring the implementation of administrative rules and procedures, and who ensures the implementation of the adopted policies.⁷¹

New provisions were also introduced on civil service principles, which state that civil servants shall perform their duties according to the principles of legality, non-discrimination, effectiveness and efficiency, accountability, impartiality and professional independence, transparency, and the equal opportunities for communities and women. The LCS moreover makes a clear distinction between civil servants and public officials: the former includes officials in elected positions in the institutions of public administration, while the latter includes officials appointed by elected officials to specific positions. It also makes a distinction between career civil servants and non-career civil servants: career civil servants are supposed to exercise their functions on a permanent basis,⁷² while non-career civil servants are only to exercise their functions for a maximum of two years.⁷³ This distinction in particular opens up the discussion on a number of issues, including promotion and recognition of the work experience.

⁶⁸ Sigma 'Kosovo Public Service and the Administrative Framework Assessment'. May, 2008, p. 3, available at: <http://www.sigmaxweb.org/dataoecd/48/31/41637624.pdf>.

⁶⁹ The Law on Salaries of Civil Servants entered into force at the same date as the Law on Civil Service (on 25.06.2010 both Laws were published in the Official Gazette).

⁷⁰ See Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art. 4.

⁷¹ Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art. 2, paras. 1 and 2.

⁷² Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art. 12, para.1.

⁷³ Ibid.

The main body responsible for policy orientation and implementation of civil service policies is the Government, through the Ministry of Public Administration.⁷⁴ Its responsibilities include: a) drafting and supervising the implementation of Civil Service policies; b) proposing legal acts and issuing sub-legal acts from the area of the civil service; c) determination of norms and standards for the functional organization of the institutions that are part of the civil service; d) to propose to the government policies concerning salaries and awards in the institutions of the public administration; and e) to develop the coordination, supervision and implementation of trainings, education and capacity building policies in the civil service of Kosovo.⁷⁵

According to the law, the process of recruitment and admission to the civil service is to be conducted in accordance with the principles of merit, professional capacity, impartiality, equal opportunities, non-discrimination and equal representation, and on the basis of public competition.⁷⁶ The Constitution and a number of laws included special provisions on communities' representation, which guaranteed that a minimum of 10% of positions will be reserved for persons belonging to non-majority communities. The procedure and threshold should be further regulated through secondary legislation, but the administrative instruction drafted by the MPA lacks provisions on representation of non-majority communities in the civil service.

The law also distinguishes between admission to the civil service for career and non-career civil servants. Admission to the Civil Service for career positions is open to all candidates, with the exception of management positions in all institutions,⁷⁷ which are filled through promotion of existing civil servants. If no applications are received from existing civil servants, or if the applicants are considered unsuitable at the end of the competition process, appointment to the management position is then opened up to all interested persons.⁷⁸ On the other hand, admission to the civil service for non-career positions is open to all candidates without exception. For management positions, admission is done through advancement of existing civil servants. By setting these criteria, there is less possibility of an external candidate being hired to a (senior) management position.

Several provisions regulate the employment relationship, probationary appointments, career development and procedures for advancement and performance, working conditions, civil servants' rights, principles and terms of civil servants' professional conduct, disciplinary measures and disputes management, suspension, termination and retirement. Moreover, all the issues mentioned above require additional regulation by sublegal acts. The main responsibility falls to the government⁷⁹ and the Ministry of Public Administration. In total, there were 19 sub-legal acts that should be passed by the government, and several other that fall within the mandate of the MPA. However, at the time of writing most of the acts had been adopted.⁸⁰

⁷⁴ The Ministry of Public Services after the entry into force of the Constitution and other relevant legislation has been transformed to the Ministry of Public Administration.

⁷⁵ Law No.03/L –149 on the Civil Service of The Republic of Kosovo, art. 6.

⁷⁶ Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art. 11, para. 1.

⁷⁷ Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art.18, paras. 3 and 6.

⁷⁸ Ibid.

⁷⁹ See Law No.03/L –149 on the Civil Service of the Republic of Kosovo, articles, 12.3, 13.3, 13.4, 15.4, 16.3, 18.10, 27.4, 32.4, 34.5, 40.2, 48.2, 53.3, 72.4, 75.5, 76.2, 84.4, 88.3, 92.3, 101.1,

⁸⁰ Interview with Senior Legal Officer in the Ministry for Public Administration, who asked to remain anonymous, October, 2010, and Interview with Director of the Legal Department in the Ministry of Public Administration, October, 2010.

B) Senior Appointments, Oversight and Management

Several concerns relating to the functioning of the SPAC arose in 2008 when the mandate of the international and civil society members of the SPAC expired. New civil society members were appointed with relative ease, but the appointment of international members was challenging in the context of the aftermath of the Declaration of Independence. In April 2008, the government passed a new Administrative Instruction⁸¹ which aimed to address the vacuum mentioned above by defining several procedures that were not covered by previous legislation. However, this legal act failed to address several unresolved issues,⁸² including SRSG involvement in the process of appointment senior civil staff and appointing persons to vacant positions.⁸³ By the end of June 2008, the SPAC consisted of ten members, including ministers in ex officio capacity, three prominent members of civil society in Kosovo, and three international members appointed by the SRSG. The Secretariat of the SPAC addressed this issue persistently with the Prime Minister, asking for the amendment of legal provisions.⁸⁴ Later, through approval of an UNMIK regulation⁸⁵ which terminated the mandate of the three (3) international members of SPAC, opened the way for Kosovo authorities to nationalize SPAC membership. However, this was not sufficient to resolve the gap. The government sought an interim solution to enable the SPAC to function by addressing a draft decision to the Assembly. However, the Assembly rejected this proposal, arguing that the SPAC should be regulated through the relevant laws (Law on Government and Law on Civil Service).⁸⁶ In 2009 SPAC could not convene a meeting as it did not have quorum, although the disciplinary sub-committees did convene as required by the Administrative Instruction.⁸⁷ When the mandate of a top appointee expired, ministers submitted a request for evaluation, but the issue stagnated as soon as the SPAC was required to sign a contract for renewal.⁸⁸

With the current Law on Civil Service, the SPAC has ceased to exist and a different procedure now regulates the appointment and the dismissal of the senior positions in the Kosovo civil service. The law establishes Council on Senior Appointments and the criteria assessment commission (as an ad hoc body) inside the Ministry of Public Administration. Moreover, details on the work of the commissions and procedures related to the appointment of senior managerial staff are regulated by secondary legislation. The law defines that senior management positions include those of General Secretary of the Office of Prime Minister, the general secretaries of ministries, and chief executives and equivalent positions in executive, independent and

⁸¹ Administrative Instruction No.11/2008 on Implementing Procedures of the Senior Public Appointments Committee, which establishes practical rules for the effective operation of the Senior Public Appointments Committee

⁸² Interview with Hajzer Salihu, Former-Director of SPAC Secretariat, October 2010.

⁸³ Interview with Hajzer Salihu, Former-Director of SPAC Secretariat, October, 2010.

⁸⁴ Interview with Hajzer Salihu, Former Director of SPAC Secretariat, October, 2010.

⁸⁵ Regulation No. 2008/20 amending UNMIK Regulation no. 2001/19, as amended, on the executive branch of the Provisional Institutions of Self-Government in Kosovo, foresees in Article 1.1 "Paragraph I (ii) (e) of Annex I to UNMIK Regulation No. 2001/19, as amended, regarding the appointment of the international members in SPAC shall be deleted." This Regulation entered into force on 01 July 2008.

⁸⁶ Periodical Reports of SPAC Secretariat to the Agency for the Coordination of Development and European Integration, Challenges for Office of the Prime Minister, internal document.

⁸⁷ Interview with Hajzer Salihu, Former Director of SPAC Secretariat, October, 2010.

⁸⁸ Interview with Hajzer Salihu, Former Director of SPAC Secretariat, October, 2010.

regulatory agencies. Thus the procedure for appointing senior management staff in the executive branch now falls under the strategic leadership and direction of the Council of Senior Management Positions.⁸⁹ The Council consists of seven members, including one deputy prime minister, the Minister for Public Administration, the Minister of Finance, Minister for Communities and Return and three other members from among the general secretaries or equivalent positions appointed by the Prime Minister.⁹⁰ On the other hand, the Ministry of Public Administration is responsible for providing administrative support in the establishment of the Criteria Assessment Commission. This Commission is made up of three general secretaries, one university professor from the relevant subject area and one member from civil society, and is responsible for reviewing the candidates' applications for vacant position and to propose three best candidates to the minister of public administration.⁹¹ After the completion of the procedure the Minister of Public Administration puts forward the candidate preferred by the head of the relevant institutions for approval to the government. If approved, the candidate is then appointed by the government to the relevant position for a three-year term.⁹²

Disciplinary action against a senior civil servant can be initiated through two procedures: a disciplinary procedure (where an official in a senior management position is suspected or accused of having committed a violation), or a procedure for poor performance. In both cases, a commission must be established by the Prime Minister on an ad hoc basis.⁹³ A disciplinary commission consists of five members, including one deputy Prime Minister, the Minister for Public Administration, one minister from the communities, and two members among the ranks of general secretaries or equivalent positions.⁹⁴ Disciplinary measures that could be adopted include: written remarks, transfer to another civil service position with fewer managerial responsibilities; downgrading and/or termination of the employment relationship.⁹⁵

On the other hand, the Independent Oversight Board is yet the final administrative authority responsible to review decisions of the employing authorities. The mandate and competences of the Independent Oversight Board have been entrenched through the Law on Independent Oversight Board.⁹⁶ The Board remains an autonomous body that reports directly to the Assembly of Kosovo,⁹⁷ and has the following functions: a) to review and determine appeals filed by civil servants against decisions of employing authorities in all institutions of civil service, b) to determine whether the appointments of civil servants at level of heads of departments are made in accordance with rules and principles set out in LCS, and c) to supervise implementation of rules and principles of the legislation related to Civil Service.⁹⁸ Furthermore, according to the

⁸⁹ Regulation No.06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service, art. 6, para. 1.

⁹⁰ Regulation No.06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service, art.7, para. 1.

⁹¹ Regulation No.06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service, art. 11, para. 1.

⁹² Regulation No.06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service, art. 14, para. 3.

⁹³ Law No.03/L –149 on The Civil Service of the Republic of Kosovo, art. 72.1.

⁹⁴ Law No.03/L –149 on The Civil Service of the Republic of Kosovo, art. 73.1, 73. 2.

⁹⁵ Law No.03/L –149 on The Civil Service of the Republic of Kosovo, art. 77.

⁹⁶ Law No.03/L-192 on Independent Oversight Board for Civil Service of Kosovo, promulgated by the Decree of the President of Republic of Kosovo No. DL-040-2010, dated 02.08.2010.

⁹⁷ Interview with Mehdi Geci, The Chairman of the Independent Oversight Board, October, 2010.,

⁹⁸ Law No.03/L-192 on Independent Oversight Board for Civil Service of Kosovo, art. 10, paras., 1.1, 1.2, 1.3

LCS, civil servants at the senior management level who are not satisfied with the decision of the disciplinary commission have the right to appeal before the Independent Oversight Board within 30 days from the receipt of the decision.⁹⁹ This provision strengthens the role of the Board and broadens the scope of its activity. The decisions of the Board are final administrative decisions and are to be executed by the senior managing officer or the person responsible at the institution.¹⁰⁰

On the other hand, the Revised Strategy on the Reform of the Public Administration in Kosovo¹⁰¹ stresses that several activities have been entirely completed and that further actions need to be carried out. One of the main objectives of the Revised Strategy is the reorganization of the executive in accordance with the LCS and the Law on Public Administration.¹⁰² Additionally, with the adoption of Strategic Development Plan,¹⁰³ KIPA aims to develop a framework for cooperation and coordination with other institutions with regard to civil service training. The current strategic objectives include: a) developing the capacity of civil servants to meet successfully the requirements of public administration reform and integration of the country into European Union, b) strengthening KIPA's role as a key institution for training of civil servants in Kosovo, and c) continuous improvement in the quality of training programs.¹⁰⁴ A new law on KIPA is still being drafted and yet it is not sure how would this law fits to KIPA's strategic objectives. Although DCSA will continue to function as the main body within the Ministry of Public Administration responsible for supervising implementation of policies on the civil service, the professional and technical capacities of this body will need be increased.

Lastly, new provisions in the Law on Civil Service explicitly stipulate the procedures relating to suspension and termination of employment in the civil service. Previously, these issues were regulated by sub-legal acts. The new law addresses several important issues, such as the categorization of civil servants, admission procedures, career development procedures, working conditions, disciplinary measures. All of these envisage the eventual establishment of a competitive and merit-based civil service. In the following section, we will focus on the process of the classification of positions within Kosovo civil service, explain the new performance appraisal model, and highlight the institutional challenges that the new system faces.

C) Coping with challenges: the job classification, performance appraisal and promotion of civil servants according to the new civil service system

The new civil service system in Kosovo is still being shaped. Currently, Kosovo civil service is undergoing the process of job classification and its impact on career development of civil servants can be enormous.

The law on the civil service acknowledges that career civil servants in Kosovo may be promoted to a higher functional category and/or to a higher grade within the same functional

⁹⁹ Law No.03/L –149 on the Civil Service of the Republic of Kosovo, art. 78.

¹⁰⁰ Law No.03/L-192 on Independent Oversight Board for Civil Service of Kosovo, art. 13.

¹⁰¹ Revised Strategy on the Reform of the Public Administration in Kosovo 2010-2013, has been approved on 15 September 2010 by the Government of Kosovo. It revised the actions foreseen in Strategy for Public Administration Reform in Kosovo 2007-2012,.

¹⁰² The Draft law on Public Administration is currently being discussed in the Commission for Public Administration of the Assembly of Kosovo.

¹⁰³ Strategic Development Plan 2010-2014, Kosovo Institute for Public Administration.

¹⁰⁴ Strategic Development Plan 2010-2014, Kosovo Institute for Public Administration.

category.¹⁰⁵ Pursuant to article 33 of the Law on Civil Service, the performance appraisal should be carried out at the end of the each year by every institution individually. It is the performance appraisal that determines if a civil servant can be considered eligible for a promotion or not. The performance appraisal aims to improve the efficiency and the quality of civil servants.¹⁰⁶

In Kosovo, from 2001 to 2012 civil servants performance assessment was conducted according to the Administrative Instruction on the performance procedures.¹⁰⁷ These assessments were mostly used for planning the training needs of civil servants and had no impact on the salaries and promotion of civil servants. However two years after the entry into force of the new law, a number of important sub-legal acts which regulate the performance appraisal procedure and promotion of civil servants have been adopted. Altogether these sub-legal acts have shaped the new civil service system and established a new performance and promotion model.

The first important regulation on classification of jobs in civil service defines the criteria and procedures for job classification, grades and grade steps for civil servants in central and local level institutions.¹⁰⁸ The law and the regulation divide the jobs in both central and local level institutions into four functional categories: high managerial level, managerial level, professional level and administrative-technical level. In general there are five criteria for job classification: a) accountability, b) complexity, c) interpersonal communication skills, d) qualifications, and e) professional experiences. In addition, the job classification in Kosovo becomes even complex if we consider that the law on salaries of civil servants determines 14 salary grades, each of which have five to twelve salary steps respectively.¹⁰⁹ Based on these grades, the regulation classifies three categories of jobs in high managerial and professional level, and four categories of jobs in managerial and administrative level. That said, there are three concerns that can make the job classification process, according to the regulation, challenging. The first relates to the existing high number of positions within Kosovo civil service. Therefore, the current model does not provide a clear format as to how existing position could be adapted to the new scheme. Second, the process of job classification mainly relies on individual institutions and subjective preferences. Though the process of job classification will be supervised and the positions will be finally decided by a joint ministerial committee, the risks that the process will be long and not result in a unified list of positions within state administration is extremely high. The third relates to the extent to which this regulation can bind other institutions outside the realm of the Government to undergo the same process. Thus, it can be problematic how the administrations of the judiciary, municipalities and independent regulatory offices and agencies, can classify their positions according to the government echelons.

The second important regulation relates to the senior management positions in the civil service of Kosovo. This regulation sets up performance assessment and disciplinary procedures, and decides conditions for dismissals of senior management position.¹¹⁰ Focusing on the performance assessment, the regulation states that each senior management officer shall agree upon a set of objectives for the coming year (in cooperation with the minister of the respective ministry), and the annual assessment will be based on these objectives. The annual assessment

¹⁰⁵ Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010). Art 26, para. I.

¹⁰⁶ Law on the Civil Service of the Republic of Kosovo, No. 03/L-149. (2010). Art 33, para. I.

¹⁰⁷ Administrative Instruction no. MPS/DCSA 2003/08 – Assessment of performance Procedures

¹⁰⁸ Regulation No. 05/2012 on Classification of Jobs in Civil Service, Art I.

¹⁰⁹ Regulation No. 05/2012 on Classification of Jobs in Civil Service, Art.6.

¹¹⁰ Regulation No. 06/2012 on Senior Management Positions in the Civil Service of Republic of Kosovo, Art.I.

of senior management officers, therefore, should be done in the end of the working year, and each Minister should be responsible that the assessments of the senior management officers are completed within the schedule settled in the regulation. If, during the assessment the Minister considers that the performance was not satisfactory, he should declare this in the commentary and initiate the poor performance procedures against the senior management officer. Moreover, the Minister, Prime Minister or the Council of Senior Management Positions may also initiate poor performance procedure against the senior management officer if he/she does not meet the performance objectives or violates the standards of professional conduct and the law.¹¹¹ If such allegations become noticed, the Prime Minister may appoint a Performance Investigation Commission entitled to prepare a written report on the performance of the senior management officer and determine the next steps that should be taken if the performance of senior management officer is unsatisfactory. In this particular case the dismissal of senior managers relies on (the findings of) the inquiry undertaken by the Performance Investigation Commission, which consists of two ministers and one general secretary, appointed by the Prime Minister. Here again, the regulation reinforces the assumptions that management of senior positions is subject to political control. In addition, the senior civil servants can be also dismissed through the inquiry of the Disciplinary Commission for Senior Management Positions. The composition of Disciplinary Commission for Senior Management Positions reflects the same political pattern. It consists of one deputy prime minister, the minister responsible for public administration, one minister from the communities and two members among the ranks of general secretaries or equivalent positions, and has the right to propose to the Government the dismissal of the civil servant. However, it remains to be evidenced if the work of these bodies will prove that merit and professional evaluation criteria can prevail over political preferences.

The third important regulation, on civil servants' performance appraisal defines the criteria and procedures for civil servants (excluding senior managerial level) performance appraisal.¹¹² This regulation specifies that the performance appraisal consists of two types of evaluation. First, the evaluation of the achievement of objectives, which constitute 60% of final appraisal results, and second, evaluation of the professional competencies demonstrated while implementing their objective (professional/managerial competencies and personal competencies) which constitute 40% of final appraisal results. Numbers from 1 (or 'poor') to 5 (or 'excellent') serve as the basis for the evaluation of the civil servant and the final appraisal result are calculated based on the average obtained in each of the above mentioned sections. According to the civil service legislation, only 'poor' appraisal is considered as negative appraisal. Two consecutive poor performance evaluations shall result in the immediate termination of the working relationship. However, the regulation introduces limits to the institutions as far as the appraisal results are concerned. For each of the three functional categories of civil servants in an institution (excluding senior managerial level), the final results of the performance evaluation cannot exceed 5% of the total number of civil servants appraised as 'excellent' (5), 15% as 'very good' (4) and no more than 30% appraised as 'good' (3).¹¹³ This provision of the law sets artificial quotas. These quotas may suggest that the performance appraisal process will not always be based on the model of performance required by the regulation, but, on the limits set by it.

¹¹¹ Regulation No. 06/2012 on Senior Management Positions in the Civil Service of Republic of Kosovo, Art.10

¹¹² Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results

¹¹³ Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results, Art.8.

According to the regulation, the direct supervisor of the civil servant should fill the form of performance appraisal based on the achievement of objectives and competencies of the appraised person. If the civil servant is not satisfied with the evaluation, he/she can submit a request to the senior administrative leader of relevant institution, furthermore the civil servant has the right to appeal if is not satisfied with the appraisal made.¹¹⁴ But, here again, the artificial quotas can limit institutions to appraise the civil servants work as fairly and equally as possible. This issue can become problematic even in terms planning the training needs of civil servants. According to the regulation, each evaluation should specify the area where the training is required, and the personnel unit should draft the training needs plan and send to Ministry of Public Administration/Department of Civil. In general, the regulation follows a set of principles of evaluation that are not necessary based on objective and measurable criterions. Artificial quotas for each institution can, in particular, risk the objectivity of this process. Lastly, a remaining challenge is related to the fact that 40% of the evaluation is based on the assessment of personal related skills, that mainly relies on subjective criterions.

Fourth, the Regulation on civil servant's career promotion defines the criteria and procedures for promotion.¹¹⁵ This regulation reiterates that the promotion of civil servant should be transparent and fair, based on merit and regulated procedure. The regulation requires that the announcement for promotion should first be done within the unit of the institution. If not enough candidates apply for the vacancy, it can be announced at the institution level.

In order to be promoted from a lower rank to a higher rank or from a lower functional category to a higher functional category the civil servant should spend a minimum time in their current rank (2 years in cases when the performance of civil servant is appraised excellent and 3 years when the civil servant is appraised good and very good), provided that their performance appraisal results must be good, very good or excellent. Moreover, they should fulfill the professional requirements, pass a written and oral test, and should not have been punished with any disciplinary measures in the last three years.¹¹⁶ However, considering that the promotion of the civil servants is an important element of the career of civil servants, the reliance of the promotion process only upon available positions, makes harder for talented civil servant to acquire positions they aim.

In general, the report showed that the new civil service system responds, in many areas, to the needs civil service system in Kosovo had. Regardless of the recent reforms, this part of the report identifies a number of challenges that Kosovo institutions can face during the implementation of the process of job classification and the new performance appraisal model. In addition to that, the report also shows that those challenges can impose the initiation of new reforms in these policy areas.

IV. CONCLUSION

This report has examined the process of creating and transforming the Kosovo civil service over the last decade. Establishing a professional and permanent civil service after a long period of non-inclusiveness and inexperience in public administration was not an easy task in Kosovo. Additionally the presence of the international community, which acted as an interim government

¹¹⁴ Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results, Art. 15.

¹¹⁵ Regulation No. 21/2012 on Civil Servant's Career Promotion

¹¹⁶ Regulation No. 21/2012 on Civil Servant's Career Promotion

during the pre-independence years, rendered the process even slower. This is due to the fact that experience and best practice differs from one system to another, and the development of the civil service system in Kosovo was not tailored according to the particular needs of Kosovo. In the earlier years, when the definition of civil service was very broad and including almost all public employees, without distinction, the civil service did not function effectively. The same rationale applied to cases of complaint and monitoring mechanisms, which were perceived as overly burdened with bureaucratic procedures.

The newly adopted package of civil service legislation has tried to overcome these past challenges, and brings new developments to a number of important areas. The notion of a civil servant and civil service has been narrowed (less than 50% fall under the category of civil servants), different status is categorized and there are now possibilities for regulation through special regulation or the Labour Law. A particularly important change was the distinction between career civil servants and non-career civil servants, which has opened up the discussion on a number of key dimensions, including promotions, employment relationship, etc. Another significant development was the exclusion of political appointees and personnel employed in the cabinets of public officials. However, before the package of civil service legislation can become fully operational a number of sub-legal acts have been passed.

With regard to senior appointments, the current framework did not reduce the scope for politicization of the civil service, although whether this is effective in the long run remains to be seen. An oversight mechanism was already in place under the pre-independence system, but has been further strengthened through entrenchment in legislation. In future, its work should be closely and frequently monitored and its accountability reviewed by parliament. One of the priorities of the current institutional training mechanism for civil servants should be capacity building and adequate training/profiling.

As to the classification of positions in the civil service of Kosovo, the report highlighted a number of concerns that make the job classification process challenging. The first concern related to the high number of positions within Kosovo civil service, for which the current model does not provide a clear example as to how specific positions could be adapted to new scheme. Second, the process of job classification relies on individual institutions and subjective preferences and the risks that the process will be long and not result in a unified list of positions within administration is extremely high. The third risk that the report identifies, relates to the extent to which this regulation can bind other institutions outside the realm of the Government to undergo the same process.

The new legal framework also defines a new model of performance appraisal. The report in particular determines that the artificial quotas (quotas determine how many civil servants can be evaluated as excellent in a given institution) can risk transforming the performance appraisal process into a subjective and artificial assessment.

Finally, in accordance with the European Agenda, the government and its respective institutions should take very seriously the recommendations to create a professional civil service in Kosovo. The new legal and policy framework regulating the civil service is a first important step this goal, but progress needs to continue over the coming years.

POLICY REPORTS

Policy Reports are lengthy papers which provide a tool/forum for the thorough and systematic analysis of important policy issues, designed to offer well informed scientific and policy-based solutions for significant public policy problems. In general, Policy Reports aim to present value-oriented arguments, propose specific solutions in public policy – whereby influencing the policy debate on a particular issue – through the use of evidence as a means to push forward the comprehensive and consistent arguments of our organization. In particular, they identify key policy issues through reliable methodology which helps explore the implications on the design/structure of a policy. Policy Reports are very analytical in nature; hence, they not only offer facts or provide a description of events but also evaluate policies to develop questions for analysis, to provide arguments in response to certain policy implications and to offer policy choices/solutions in a more comprehensive perspective. Policy Reports serve as a tool for influencing decision-making and calling to action the concerned groups/stakeholders.