

3.2 Human resources management

3.2.1 Human resources

The Civil Service Law of 2001 lacks detail, but an Administrative Direction of 2003 provides more structure

The *Civil Service Law* was imposed by the SRSG on 22 December 2001. (UNMIK/REG/2001/36). The law contains mainly definitions and governing principles. In addition it establishes an Oversight Board and a Senior Public Appointments Committee, and defines in some detail their remit and procedures. Finally the law includes a short Code of Conduct, which however does not seem to be enforceable, and lacks sanctions. Although it provides for a multi-ethnic civil service, the law does not give any operational criteria to help interpret this objective. Unlike the continental tradition and the particular tradition of the region, the law does not provide any regulation of basic requirements to become a civil servant, of categories or positions in the civil service or basic structures and components of the salary system. The law was supplemented with the Administrative Direction No.2003/2 of 25 January 2003, which offers some detail on recruitment, career development, personnel records and conditions of employment, as well as on disciplinary measures.

The law applies to all staff employed by a public authority – including municipalities - and paid out of the Kosovo Consolidated Budget (KCB). It excludes members of the Oversight Board, exempted appointees and members of the Kosovo Protection Corps. Exempted appointees are directly appointed advisors to politicians, and international and other personnel appointed and assigned to a ministry by the SRSG to enhance the effectiveness of the executive branch. Personnel working in public, state and socially owned enterprises are not covered by the law (UNMIK/REG 2001/36; section 1).

The law establishes a position system with employment contracts. Contracts are limited to a three year period; however, they may be extended. Conditions for extension are not provided in the law or the UNMIK direction.

The Department of Civil Service Administration (DCSA) at the Ministry of Public Services provides the central management function for public employment in Kosovo.

The Ministry of Public Services has to develop a multi-ethnic, impartial, professional and accountable civil service

DCSA has the task to develop and oversee the implementation of policies to achieve a multi-ethnic, non-partisan, professional, and accountable Civil Service, as well as to develop and coordinate the implementation of policies for training and capacity development of the civil service (UNMIK/REG/2001/19 Annex IX).

Chapter 2, section 2 of UNMIK/REG/2001/36 stipulates a general non-discrimination principle defined as follows: “*Non-discrimination: no discrimination, direct or indirect, based on sex, race, colour, language,*

religion, political opinion, national, ethnic or social origin, association with a national community, property, birth, disability, family status, pregnancy, sexual orientation or age". As worded, Non-discrimination is thus a right granted to individuals.

On the other hand, positive discrimination mechanisms are provided for in the executive Branch of Self-Government institutions in Kosovo (UNMIK/REG/2001/19, section 4, point 4.1): "*Members of the Civil Service shall be recruited from all the communities of Kosovo on the grounds of professional qualification, competence and merit after a fair and open competition. The non-majority community representation in the composition of the Civil Service at all levels shall be closely proportionate to the representation of non-majority communities in the Assembly*".

While the non-discrimination principle provides a protective right to individuals, the implementation mechanism, in some areas of administration at least, provides an apparently conflicting collective right (of positive discrimination or affirmative action) to communities. This would seem to be unworkable in practice or undesirable as policy, for several reasons. First, the absolute protection (provided to individuals) from discrimination by the law may lead to conflict in particular recruitment decisions with the near-absolute rights of the prescribed communities to be proportionally represented in public employment. Second, it may be impossible in particular cases to find applicants who meet both the merits test and the representation test provided. Thirdly, linking the representation of communities to proportional representation of ethnicity in the Assembly, rather than in the community at large, would seem likely to provide a recipe for a Civil Service which is unstable, politicised, and possibly 'unrepresentative' of the community at large.

Independent oversight of senior recruitment is envisaged...

... but has not been established

According to UNMIK/DIR 2003/2, human resources management is decentralised, i.e. every institution recruits its own staff and provides job descriptions for these posts. The law also requires the creation of Personnel officers in all employing authorities; DFID is assisting them. However, the Senior Public Appointments Committee (SPAC) as regulated in UNMIKR 2001/19 Annex I E (Regulation on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo), and in the *Civil Service Law* (UNMIKR 2001/36) with regard to its composition and procedures, is charged with the selection and appointment of top management, i.e. permanent secretaries of ministries and chief executive officers of the executive agencies (UNMIKR 2001/19 Art. 5.1 and UNMIK/REG 2001/36 sect 1 j). It has been acknowledged that despite sophisticated procedures and centralised recruitment, this group is politicised.

An independent Oversight Board is located within the Ministry of Public Services. This Board will be an autonomous unit within the Ministry of Public Services, and will report directly to the Minister of Public Services. A copy of all such reports shall be sent to the Prime Minister,

and the SRSG. (UNMIK/REG/2001/36 Chapter III, section 7, 7.1, 7.2) is foreseen by the law, but had not been established by October 2003. This Board is empowered to hear and determine appeals against decisions of employing authorities (UNMIK/REG 2001/36, Section 10). In October 2003 the staff of the secretariat to support the Board was appointed, including one international staff member.

The current management setup does not ensure that homogeneous standards are applied across the civil service. It has led to unjustifiable distinctions in salaries and recruitment requirements among the different institutions and authorities. The variation in salary-levels and requirements distorts is likely to become a difficulty if there is a need to redeploy staff via transfers and secondments.

3.2.2 Budgeting control of staff numbers, remuneration content, pay determination system

According to UNMIK/REG 2001/19 Annex IX the Ministry of Public Services administers the civil service payroll and payment system for the entirety of the civil service. The Ministry of Finance has no clear responsibility regarding public service pay (UNMIK/REG 2001/19 Annex II). According to a study on the pay and grading system carried out under the responsibility of the EAR, salary levels differ among ministries. The task of the Ministry of Public Services includes a monitoring function so that equal pay for the same kind of position could be ensured. However the capacity of the DCSA does not suffice to efficiently implement this task, especially since each institution freely manages its staff, including job descriptions and evaluations. Formal Job Descriptions, which are the basis for the classification of a position, are not provided in a comparable format, and there is no common framework for job titles across the civil service. There exist staffs with similar titles in jobs at different levels. An Administrative Instruction (2003/7; May 2003, issued by the Ministry of Public Services) should have remedied this, but by the end of 2003, the DCSA had not received all job descriptions in the new format.

Salary levels differ among ministries

Despite all these difficulties, staff numbers are closely controlled by the DCSA, and the KCB budget allocated to personnel is transparent (though the classification of individual positions is not). If the required recruitment procedures are not followed, the DCSA may refuse to pay the person's salary. There are currently a number of positions in the civil service which are not filled so that the budget allocated to salaries is not fully spent, and cannot be used to supplement salaries.

The total staff under the civil service law was 63,690 on the payroll in November 2003, excluding police but including health and education; 12,000 staff, included in this number work in the reserved powers (chapter 5 of the Constitutional Framework-Regulation 2001-9). The latter receive a supplement to their KCB salaries from UNMIK. Kosovo Serbs, employed in the PISG often also receive a second salary from Belgrade.

UNMIK continues to implement down-sizing of the international staff

International staff members, consisting of professional staff, support staff and UN volunteers, are being gradually reduced, but may still account for approximately 400 professionals, 400 support staff and 200 UN volunteers. UNMIK has announced that it will continue to implement its downsizing strategy in line with the approved budget for the Fiscal Year July 2003 to June 2004, which provides for a reduction of approximately 5 per cent over the previous budget and the abolition of 139 international and 301 local staff posts. The present approved budget is \$315 million, with \$117 million allocated to military liaison officers, contingent-owned equipment and civilian police, \$145 million for international and local civilian staff and United Nations Volunteers, and \$53 million for operational costs.

In addition to the UNMIK international staff, there are a great number of foreign consultants working in the Kosovo administration who are paid from different multilateral or bilateral co-operation schemes.

The present salary system is based on a basic salary multiplier to which coefficients ranging from 3 (since July 2003) to 10 are applied according to the position. Coefficient 3 represents routine jobs, such as cleaners or security guards and coefficient 10 represents a Head of Department position in a Ministry. New job titles are being introduced but not fully implemented. These new job titles will lead to the creation of many intermediate coefficients to further differentiate the salary levels. Currently there are 69 different salary levels in Kosovo.

In December 2003 the base (multiplier) for the calculation of the salary was 31€. For some positions, salaries are set on an individual basis, e.g. senior jobs in the judiciary. The salary of a Permanent Secretary is fixed at around 600€. For the judiciary special multipliers of 12 to 18 have been introduced.

Following unrest, salaries were significantly increased in 2003

Following social unrest, salaries for health and education staff were increase by 20 % and the highest multiplier for these sectors was fixed at 12 in July 2003. At the same time low-paid staff in the whole civil service had a 20% salary increase which resulted in raising the lowest multiplier from 2.5 to 3. These pay raises were coupled with a "recruitment freeze" for the remainder of the year to accommodate the cost in the budget.

The current salary system does not allow for salary progression at a given job level, and neither performance nor experience is taken into account. The average ratio between lowest and highest salary, excluding permanent secretaries is 1 : 3, which is rather compressed.

The payment of special allowances is not provided consistently, which further distorts the

The current system includes some allowances, e.g. for overtime and shift work, hazard pay, special allowance for staff working in jobs where corruption is a risk, performance pay for Customs officers, and a labour market allowance which was limited to end of 2003. The payment of allowances is not consistent across the civil service. In some ministries managers may also have the use of a ministry car and/or a mobile

system phone for private use.

Implementation of the proposed new salary system would remedy most of the flaws identified

The proposed new salary system would remedy most of the flaws of the current system. The distortion due to special allowances would also have to be addressed. Whether or not the new salary system will be implemented remains to be seen: the PISG would need assistance to reclassify existing positions, and to introduce the system in conjunction with a process to match current employees with post requirements.

3.2.3 Different status / missions, working conditions

The scope for discretionary extensions of employment contracts is likely to be problematic

The civil service law does not differentiate between civil servants executing public authority powers and support staff. The law on the executive branch of the PISG (UNMIK/REG 2001/19) states however that permanent secretaries of ministries and chief executive officers of ministries are civil servants (sections 5.2, 5.3) and defines their tasks. However, as all employment contracts are limited to three years, but discretionary extension is available on undefined terms, extension of employment contracts potentially involving politicisation and nepotism at all levels of the civil service, is the probable consequence.

Political direct appointments (i.e. “exempt appointees” not covered by the law on civil service) are foreseen for the recruitment of advisors to ministers, members of the Assembly, and the President of Kosovo. The SRSG may also appoint directly for a transitional period.

As stated above, working conditions, including salaries, can be very different depending on the ministry or institution in which a civil servant works. The current Civil Service Regulation, together with the management framework and the implementation arrangements, does not help rationalise and equalise civil service conditions across the sector.

3.2.4 Social rights and fundamental freedoms

Fundamental social rights are provided

The Constitutional Framework, the Law on Civil Service, and the Administrative Direction to implement the Law on Civil Service guarantee fundamental rights, in particular access to employment in the public service. The Direction (UNMIK/DIR/2003/2) provides further detail for implementing the requirement of fair representation in civil service.

Section 10 stipulates:

“10.1 All employing authorities shall monitor and implement procedures to ensure multi-ethnic representation and gender balance within their ministry, municipality or executive agency, in accordance with section 3.3 and may utilize the following affirmative action measures as needed:

- (a) Active recruitment: making special efforts to identify and solicit job applications from under-represented populations, especially internally displaced persons and refugees;*
- (b) Addressing results of long-term discrimination: developing on-the-job training programs for commonly disadvantaged populations to enhance their ability to apply and compete for promotions; and*

(c) Addressing discrimination by ensuring that personnel understand anti-discrimination policies and have access to adequate grievance procedures.

10.2 Other affirmative measures may be made, provided that they are compliant with European and international standards, and that:

(a) They do not reduce minimum professional standards for job eligibility solely to facilitate the greater representation of commonly disadvantaged populations in Civil Service;

(b) They do not exclude specific ethnicities or genders from the open and merit-based competition for specific position(s) that do not have a legitimate ethnic or gender criteria as a qualification for the post; and

(c) Ethnicity will be self-determined by the employees themselves.

10.3 The Ministry will develop an administrative instruction containing further criteria and procedures for implementing and monitoring fair representation in the Civil Service at all levels.”

The Law on Civil Service guarantees the right of civil servants to belong to political parties and other political organisations; it forbids “active involvement” in political activity (UNMIK/REG 2001/36, section 4). Whether or not this restriction is in line with common practice in EU member states will depend on the interpretation given to “active involvement” by the employing authorities and the court in the future, as this notion is not sufficiently defined in the current legal texts.

In section 5 the law on Civil Service guarantees the right to be a member of a trade union. It restricts the right to strike or to any other industrial action if this may disrupt essential services. In the same section it gives an unrestricted right to the Government to declare a service as being essential: this unlimited discretion may not be in line with ILO Conventions, allowing that, these Conventions may not bind Kosovo authorities.

3.2.5 Education and vocational training policy

Training for staff of the JIAS departments was provided by the OSCE Institute for Civil Administration and the Department of Public Services. This training focused on technical skills such as computer and language training, often targeted to the municipalities and mainly supply driven. It was not really based on an assessment, coordinated across JIAS departments, of what was needed to build accountable ministries.

Up to now training was mainly carried out on an ad hoc basis. Due to a lack of co-ordination of the donor community regarding the training delivered, a certain training fatigue exists among senior staff.

The Kosovo Institute for Public Administration (KIPA) has been created in

The Kosovo Institute for Public Administration (KIPA) was created in 2003 based on UNMIK/DIR 2003/25 to provide systematic civil service training. It is established as an executive agency within the Ministry of Public Services. OSCE training materials and equipment are to be transferred to the KIPA. Since October 2003 the KIPA has access to

2003, with a broad mandate

premises and equipment. The chief executive and about 10 staff were appointed, of which 7 are permanent trainers. The mandate of the KIPA covers the whole civil service, i.e. municipality, agency and ministerial staff.

3.2.6 Recruitment policy and career development

Recruitment principles are stated in the Civil Service Law (section 2). It calls for merit entry, promotion and assignment; the law also call for non-discrimination. However, as no concrete procedures were proposed by the DCSA and responsibility for recruitment was assigned to the ministries, the principles were not always implemented.

Some progress towards a merit-based professional civil service has been made since the enactment of the Administrative Direction No 2003/02 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service. The Administrative Direction establishes recruitment procedures for open competition taking into account community proportional representation. Except for top management posts (see 3.2.1 on SPAC), recruitment is not centralised, which could lead to different standards as discussed above.

Three years contracts make career development and stabilisation impossible

Contracts are only issued for three years which makes career development unfeasible in practical terms. The Direction includes a section on career development (Chapter II) which includes transfer for service reasons, performance assessment, training and promotion. It is stated that promotion should be based on merit and that promotion should be decided upon by multi-ethnic and gender- balanced panels. An open competition is the rule, however, in exceptional cases, with approval of the permanent secretary, direct appointment is possible.

The PISG, as from 1 July 2003, established a "recruitment freeze" for the remainder of the year, in order to fund a 20 per cent increase in salaries for civil servants in the health and education sectors (see above). A committee chaired by the Office of the Prime Minister was established to review the implementation of the freeze, including taking decisions on exemptions, which will apply to recruitment of minorities and civil servants for reserved areas.

Politicisation of recruitment appears to be rising

UNMIK has received several reports that established recruitment procedures are not being followed and that the civil service is being increasingly politicised. Whether or not the Independent Oversight Board, once operational, will be able to counter this development remains to be seen.

In most municipalities, the civil service shows a general lack of professionalism in implementing transparent, non-politicised and ethnically balanced procedures in areas such as recruitment.

3.2.7 Ethnicity and gender aspects

Many initiatives were undertaken by UNMIK and by other international institutions to implement UNSCR 1244 and the Constitutional Framework and to foster ethnic reconciliation. The Law on Civil Service and the Administrative Direction to implement the law provide a sufficient base to foster minority recruitment, even though the Ministry of Public Services has not yet issued the implementing Administrative Instruction.

Minority community members represent less than 10 per cent of civil servants at the central level: this is far short of the 18 per cent target.

In a report on UNMIK of 15 October 2003, the UN Secretary General reported to the Security Council that the Kosovo minority community members still constitute less than 10% of the civil servants employed within the structures of the Provisional Institutions at the central level. This representation is close to their proportion of the population but far short of the UNMIK 18% representation target. The greatest disparity exists in senior positions, as less than 2% of such positions are held by minority-group civil servants. Kosovo Serbs constitute on average 12% and non-Serb minorities 3.3% of all municipal employees.

The UNHCR/OSCE¹ provides overall more positive numbers. Its report of March 2003 states that the compliance with the guidelines on minority employment within the civil service has significantly increased. According to this source 13% of employees are minorities in the central level civil service (an increase from less than 6% at the beginning of 2003), and 19% of those in management positions are minorities. In some structures of the PISG, such as the MEST (27%) and the Office of the Prime Minister (16.5%) numbers are especially high. Others, such as the Ministry of Finance and Economy (0% minority staff) seem not to have made any effort. With regard to minority communities' employment in municipal structures, data submitted by 23 municipalities show that in total figures, 3,352 staff employed by different municipalities identified themselves as Kosovo Serbs and 1,014 as members of other communities, while 11,969 employees were Kosovo Albanian.

Recruitment of minority staff has proved difficult, mainly because of the availability of better employment options

Despite an outreach programme, ("Community Proportional Representation", initiated by the Office of the Prime Minister), and the subsequent dramatic increase in the number of applications, no significant increase in the number of minority staff has been observed. This is mainly because most applicants withdrew their applications and, of those selected, none accepted the post. Feedback from applicants indicated that the main reason for their withdrawal/non-acceptance was the higher remuneration and long-term job security offered by parallel structures now operating in ethnic Serb dominated areas of Kosovo.

Gender equality was imported by the

The Secretary General's report states also that the representation of women at the professional level in the public sector had improved during the past 12 months. In each of the 30 municipalities, a position of

¹ UNHCR/OSCE, Assessment of the situation of ethnic minorities in Kosovo, March 2003, pp. 37-39

international community as an issue.

Municipal Gender Officer had been established as a senior civil servant, funded under the KCB. Similar positions have also been introduced at the executive level in six ministries. In order to strengthen efforts for the achievement of the gender equality goals, an Inter-Ministerial Working Group on Gender Equality was established under the coordination of the Office of the Prime Minister, and a Gender Equality Commission has been operating in the Assembly. A draft law on gender equality has also been introduced in the Assembly. However, despite such provisions, Kosovo still has a mixed record of hiring women at senior levels and managerial positions in the public sector.

The employment of women in the administration has, historically, not been an issue in former socialist countries. However, the international community has introduced a new focus on Affirmative Action as a policy matter, which contributes to the complexity of the institution-building process.

3.2.8 Ethics and anti-corruption policy in the public sector

Minimal progress has been made.

The Law on Civil Service states basic principles and includes a Code of Conduct. An Anti-Corruption Strategy has been developed; however, it has never been finalized or approved; a law covering the fight against corruption is being drafted. Conflict of interest is briefly addressed in the Civil Service Law. Politicians have to disclose their assets.

3.2.9 Role model of top management

Long-term reform is not supported, ...

Top management in the Kosovo administration is selected and appointed based on an open competition by the Senior Public Appointments Committee. Despite the elaborate procedure top positions are often filled taking mainly into account political affiliations.

Nevertheless, a few individuals of this management group promote reform. However, there is not much genuine political support for the few reformers that exist. In addition, the contract duration of only 3 years is detrimental to a real long-term reform commitment, salaries are very low, and alternative better-paid job opportunities for qualified staff are manifold, given the still overwhelming presence of international organisations distorting the labour market.

... or is undermined by external factors

Finally, the reform in Kosovo is mainly driven by the international community and this jeopardises the local ownership of reforms. Despite efforts of some committed local reformers, it seems difficult for the Kosovo elite to ensure that the reforms led by the international community respect the inherited legal and administrative culture.

3.2.10 Accountability, assessment of personnel

The basis for Disciplinary action is

The Law on Civil Service states that civil servants shall be bound by the civil service code of conduct. This code does not contain any sanctions

uncertain

or procedures; i.e. it does not have any implementation provisions. The Implementing Direction (UNMIK/DIR 2003/2) to the law on civil service regulates disciplinary issues under Chapter VI Conduct and Discipline and under Chapter VII Violations as to Conduct, Penalties and Disciplinary Proceedings. The provision does not clarify the situation concerning disciplinary measures, the taking of which does not necessarily exclude a separate criminal court procedure for the same or a related offence (that is to say, it should be made clear that the *ne bis in idem* principle does not apply). But what is more worrisome is that it seems not to provide for judicial review, but only for an administrative appeal before an appeal commission.

Civil servants are not liable to pay compensation for damage they have caused, either by reimbursing to the Government the cost of compensating an aggrieved party or through direct liability. However, as the SRSG has a very broad mandate and can intervene directly in most cases, the real impact of this situation may be marginal under the current Constitutional arrangements.

Performance Appraisal has been envisaged, but not implemented

Performance appraisal is foreseen in the Implementing Direction (Section 12), however, there are no unified procedures envisaged or unified criteria for such an appraisal. According to the Direction, the appraisal has to be carried out annually and each Ministry will develop its own procedures. Section 12 states also that the appraisal has to be formally discussed with the superior and endorsed by the next higher manager.

Under Section 14, Promotion, the results of appraisal is not mentioned as a criterion to be taken into account. For the time being performance has no impact on promotion or salary. The proposed new salary scheme would give some weight to performance.

3.2.11 Assessment

UNMIK has suffered various internal and external difficulties in establishing a civil service

UNMIK has encountered some difficulty in establishing the foundations for a civil service. Part of the problem was the lack of an adequate institutional and regulatory framework to ensure the transfer of responsibilities to the Kosovar authorities. Moreover, many of the Kosovar staffs of the JIAS departments were political appointees, most of whom were dismissed with the dissolution of the JIAS structure: this reduced the chances of some continuity in the civil service and of building institutional memory when setting up the PISG.

It is unfortunate that UNMIK had begun the process of staffing the civil service so late and therefore had little time to build the capacity of Kosovo institutions and their personnel. UNMIK personnel were more preoccupied with their day-to-day operational role, and did not or could not pay sufficient attention to involving and training their local counterparts. In addition, the quality, qualifications and experience of UNMIK personnel seems to have been uneven.

The development of a cohesive Civil Service is hampered by salary discrepancies

Prospects for the development of a cohesive civil service are hampered by salary levels which differ among ministries, allowances which are not provided on a consistent basis across the civil service. Merit-based employment, minority representation, performance appraisals, ethics, independent oversight, discipline and accountability are yet to be institutionalised effectively.

Recruitment and retention are adversely affected by the competition from, and the distorting effects of the salaries and conditions offered by international agencies.

3.2.12 Recommendations

1. The general administrative legal framework, including the Civil Service Law, needs to be reviewed, amended, adopted, and fully implemented. It should be ensured that any new legislation is coherent with the legal culture of the region, to facilitate future co-operation between Kosovo and its neighbours. Priority should be given to the Administrative Procedures Law (the responsibility of UNMIK) to stop further proliferation of different procedures in the administration, and to reflect the existing administrative organisation and structures.
2. Once the civil service is equipped with a legal framework enabling stabilisation, systematic training for all levels of civil servants has to be urgently developed. This training should include knowledge transfer, in particular, regarding new legislation and its application, law drafting, policy analysis and evaluation, as well as management skills.
3. The difference in salaries may seriously hamper the development of a cohesive civil service: a new salary system, along with more extended career development prospects, should be introduced as soon as possible to support sustainability of reform. Serious consideration should be given to devising mechanisms for reducing the gap between salaries of local staff depending on whether they work in the reserved or transferred powers.
4. The development of a reliable justice system both for administrative and civil law should be given more attention.

3.2.13 External assistance

DfID has carried out a large HRM project since early 2002 of about £2 million. It contained the training of all staff in HRM units and Training for Trainers programme in HRM for about 30 future trainers. The project has been extended until summer 2004 to support the Independent Oversight Board.

The OSCE continues with some training, but will eventually merge its activities fully with the KIPA.

The EAR commissioned a review of the Kosovo pay and grading system, including a proposal for a new system to be delivered early 2004.

The EAR is tendering a project to support the KIPA with a Training of Trainers programme; the project should be awarded in February.

A fast track training scheme is being carried out with the lead in the Prime Ministers Office. The scheme will reach about 70 young professionals; the programme lasts for 2 years, one of which will be graduate studies in an EU Member State graduate school, or in the College of Europe.