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PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

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Recent Legal Developments and Reform Strategies in the Administrative System

The law in force in Kosovo has three different sources: pre-war Yugoslav law, laws prepared by UNMIK[1] and adopted/imposed by the SRSG, and laws prepared by the new Kosovo administration (mostly with the assistance of international experts), adopted by the Kosovo Assembly and promulgated by the SRSG. To clarify this difficult legal situation, UNMIK adopted Regulation 1999/24, which defines the law applicable in Kosovo as: (a) the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued in accordance with those regulations; and (b) the law in force in Kosovo on 22 March 1989. This regulation also specifies that, in case of conflict, the Regulations and Subsidiary Instruments issued by the SRSG are to take precedence. As an exception, Yugoslav legislation adopted after March 1989 may be applied if it is not discriminatory and if it is the only legislation covering the given subject matter. Finally, the regulation specifies that the SRSG is the highest authority to clarify and interpret legislation.

This legal settlement has led to an incoherent legal system. The incoherence of the existing administrative legal framework is also due, in part, to the limited attention paid by the international community to the previously existing legal and institutional framework and to the prevailing legal culture. The legal system of Kosovo, derived from the overall Yugoslav legal system, was, despite its socialist bias – especially with regard to financial and economic legislation – European continental and rooted in the Austrian legal tradition. This is to say that there was a fairly clear distinction between public and private law. However, probably due to the common law background of many of the international consultants parachuted into Kosovo after the 1999 war, the legislation enacted by UNMIK was often drafted according to common law standards and practices and based on common law principles, which made it difficult for the Kosovars to understand its logic and apply it. In addition, laws drafted according to the continental legal tradition also show some degree of incoherence, most likely due to inadequate co-ordination between experts and donors.

The resulting fragmented – and sometimes inconsistent and contradictory – legal framework, coupled with persisting weak enforcement capacities, hampers adequate implementation and puts an additional burden on the PISG when it is reviewing the existing legal framework and attempting to make it more coherent and aligned with general European standards. In addition, administrative bodies have been created in legal forms/structures which are not covered by the legislation on administrative organisation in force. This situation creates difficulties in view of the reporting lines and the accountability of such bodies, and it reduces the transparency of the administration.

The Kosovarisation of institutions has continued since the last report and is almost completed. Preparations and planning for the handover of UNMIK responsibilities at the end of its mandate, following a political settlement, have intensified. These preparations, which have remained a top priority for UNMIK and its international and local partners, are carried out by means of five technical working groups, namely on rule of law, governance, civil administration, legislation, economy and property rights. Preparatory work has also started on a post-UNMIK constitutional arrangement and elections.

The process is still suffering, however, from the limited administrative capacity of the local structures that are taking over responsibilities. There are only a limited number of well-trained Kosovars, since the education system was almost non-existent for several years, and of this limited number only a small group of persons seems to be willing to join the civil service under the current conditions. However, there are a number of outstanding managers in the administration who can lead the process.

The Kosovo Standards Implementation Plan has been replaced by the European Partnership Action Plan, approved by the government in August 2006. The 109 standards goals contained in the original Implementation Plan have all been incorporated in the Action Plan, but the actions agreed in 2004 have been updated and revised to reflect current challenges and to respond to both the standards goals and European Partnership priorities. As a result, the Agency for European Integration[2], is now the main co-

[1] Since June 1999 the province of Kosovo has been governed by the UN Interim Administration Mission in Kosovo (UNMIK).

[2] The Agency for European Integration (AEI) is part of the Prime Minister's Office and is responsible for co-ordinating government activities in terms of approximation with relevant EU practices and legislative activities as

ordination body within the Provisional Institutions on standards, and the European Partnership Action Plan is the main guiding tool for Kosovo's European integration process. In addition to the eight existing co-ordinating groups on standards, nine new working groups were established by a Government Decision of November 2006 to co-ordinate the process of implementation of the PAR Strategy and Action Plan.

An inter-ministerial working group was set up by the previous Prime Minister in October 2005 to foster the development of a PAR strategy. The government then decided to create an expert working group (GERAP), which included civil servants and other local experts, to develop the PAR strategy and an action plan. A Capacity-Building Strategic Plan was adopted in 2005 by the government; to promote and monitor the implementation of this plan, a unit was created in the Prime Minister's Office. In 2006 the government reorganised this unit and transformed it into the Centre for Donor Co-ordination, the head of which responds directly to the Prime Minister.

GERAP finalised an "Analysis of the Actual Situation of the Public Administration in Kosovo" on 22 December 2006. Based on this document and on intensive consultations carried out by the co-ordinators of the sub-working groups of GERAP within the PISG, the Strategy on Public Administration Reform was prepared. The Strategy, covering a five to seven-year period, was co-ordinated with the Kosovo Development Strategy and Plan (KDSP). The KDSP, which is included as a separate section, provided inputs on PAR. The PAR Strategy and Action Plan was drafted in conformity with other existing strategies and action plans, such as the European Partnership Action Plan, the Anti-corruption Strategy and Action Plan, annual working plans of various institutions, etc. By its Decision of 28 February 2007, the government transferred competencies and implementation responsibilities of the Strategic Action Plan for PISG capacity-building from the Prime Minister's Office to the Ministry of Public Services/ Department of Civil Service Administration (MPS/ DCSA).

The work on the current Strategy was carried out, for the first time since the start of the Kosovarisation, on the Kosovo Government's own initiative and not that of the international community. This can be taken as an indicator that politicians and the administration are willing to take ownership of the reforms.

As mentioned above, the PAR Strategy is accompanied by a detailed Action Plan, where special emphasis is given to the identification of priority fields where medium-term actions are needed, i.e. in the next one to two years. It is envisaged that these priorities, during the first three months, will be prioritised in the form of projects. The MPS should then organise a number of consultations with stakeholders to promote the Strategy. The MPS has drafted a proposal on public information. The PAR Strategy and the Action Plan were approved by the Kosovo Government on 21 March 2007**.**

While it is evident that a number of required activities are regular activities of institutions, as foreseen by the Kosovo Consolidated Budget (KCB), a number of projects must be supported by donors, and it is estimated that good co-operation with the KDSP will ensure the presentation of the priority projects to the donors' conference in 2007. Detailed cost estimation for all activities of the Action Plan has been completed by the Ministry of Public Services. It should be underlined that the scope of these documents does not include local self-governments.

The PAR Strategy has set the following list of activities and priority actions:

- Development and approval of basic legislation in the area of public administration;
- Development of a unitary accounting system in line with international accounting standards to ensure the accurate recording of income and expenditure and to train personnel in using the system;
- Functional review of institutions and implementation of recommendations;
- Establishment of the Agency for Information Society;
- Development of the Strategy for Communicating with the Public, including implementation of the law for access to official documents and identification of government services provided on the Internet;
- Setting in place of mechanisms to monitor the implementation of legislation.

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well as with EU norms and standards within the framework of the Stabilisation and Association process (SAp). The AEI is directly accountable to the Prime Minister.

The Department of Civil Service Administration (DCSA) in the MPS is the central institution for managing, co-ordinating and reporting the progress of implementation of public administration reform. In a reduced format, the GERAP's mandate was extended on 2 May 2007 to support the MPS in the implementation of the PAR Strategy and Action Plan. The working group is supposed to regularly report on progress in implementation to the government. The European Commission will be informed of progress through the established system for reporting, monitoring and evaluation.

Some of the actions in the PAR Action Plan aimed at improving the policy-making and law-drafting process are: standardisation of the format for the elaboration of legislation; preparation of an all-inclusive programme for the development of legislative policies; functionalisation of mechanisms to monitor the implementation of legislation; elaboration of an action plan to eliminate legal collision; establishment of a council of experts and policy advisors at the national level for the development of policies and legislation.

A project to carry out a functional review of the central-level institutions in Kosovo, financed by DFID, is currently in the tendering procedure. Implementation of this project is expected to start by June 2007. The project will include horizontal and vertical reviews. It is foreseen to start with the Prime Minister's Office and three ministries (MPS, the Ministry of Finance and Economy (MFE), and the Ministry of Labour and Social Welfare (MLSW). The PAR Strategy includes plans to start a functional review of institutions at local level in 2009; donor support for this review will be required.

There has been progress regarding the legal administrative framework and the Kosovarisation of institutions. Further improvements may be expected, according to the adopted strategic documents and action plans. However, the incoherent legal framework and the legal impossibility of building a permanent professional civil service (both problems mainly fostered by and created under the auspices of the international community) – together with the legacy of a general education system that was destroyed in the late 1980s – will require great efforts and commitment on the part of the Kosovars as well as better co-ordination on the part of donors. Only then will it be possible to establish an appropriate administrative environment and a professional civil service.

Administrative Legal Framework

With regard to the public administration, the legislation is not yet complete, although some progress has been made since the last assessment, in particular the adoption of the new Law on Administrative Procedure.

There are now over 100 legal and by-legal acts (including regulations and UNMIK administrative instructions, laws adopted by the Kosovo Assembly and promulgated by the SRSG, regulations adopted by the Kosovo Government, and administrative instructions of PISG) regarding the public administration, which should be rationalised.

The Constitutional Framework for the Provisional Institutions of Self-Government (UNMIK Regulation 2001/9) sets out the principles of good governance, e.g. transparent administration respecting the rule of law and possibility for redress as well as equal access to employment in public bodies. However, not all legislation that is necessary to implement these constitutional principles in an appropriate way is in place. The group of experts responsible for drafting the new Constitution of Kosovo has been established by the Kosovo Unity team.

The previous Kosovo Assembly had already adopted an extensive legislative programme. The Law on Public Administration is included in the government's legislative programme for 2007 and is expected to be approved by the end of this year (PAR Action Plan). It is intended to replace the UNMIK Regulation 2001/19 on the PISG.

The Law on Administrative Procedure was promulgated by the SRSG, together with Regulation 2006/33 of 13 May 2006. This new law sets out several principles of good administration, such as legality, equality, proportionality, objectivity, impartiality, sustainability, predictability, publicity, subsidiarity and maintenance of a fair balance between public and private interests. The impact of this law in the public administration's operations is not yet visible because its implementation is neither systematic nor supported by training and public campaigns. To improve legal certainty and transparency for citizens and businesses with regard to administrative procedures, it is still necessary to review all special

administrative procedures in place and abrogate them as far as possible. The Law on Administrative Procedure provides the possibility of addressing the courts after all administrative remedies have been exhausted.

The Law on Administrative Disputes has been adopted by the Kosovo Assembly and is waiting to be promulgated by the SRSG.

The Government of Kosovo has approved, and is implementing, Administrative Instruction No. 08/2006 on Measures to Increase Efficiency of Public Administration, including measures for the improvement of procedures on assessment, transfer and promotion of civil servants.

Several laws are in place to strengthen integrity systems and accountability in order to fight corruption; some have been implemented, e.g. Law on the Ombudsperson (adopted in 2000). This law was changed in February 2006 to enable the "Kosovarisation" of the position of Ombudsperson; the Ombudsperson must now be a Kosovar, and he/she is elected by the Assembly for four years. Since February 2006 the Ombudsperson is to report directly to parliament. However, as the Assembly has not yet made an appointment, the former Deputy Ombudsperson, a Kosovar, is still the "acting" Ombudsperson.

Civil Service Regulations

Based on the Constitutional Framework (chapter 2), a Civil Service Law (CSL), prepared by international experts, was promulgated by the SRSG on 22 December 2001 (UNMIK Regulation 2001/36). The Civil Service Law sets out a contract-based employment system, with a contract length of up to three years (which may be extended).

The CSL is applicable to all employees paid by the Kosovo Consolidated Budget (KCB), i.e. it includes the staff of municipalities. It contains mainly definitions and governing principles for the civil service. It establishes two institutions – an Independent Oversight Board (IOB) and a Senior Public Appointments Committee (SPAC) - and defines in some detail their remit and procedures. The law includes a short Code of Conduct.

Although the CSL provides for a multi-ethnic civil service, it does not provide operational criteria to help interpret this objective. Unlike the continental tradition and also the previous Law on Public Employment, the CSL does not provide any regulation regarding the basic requirements for becoming a civil servant, categories or positions in the civil service, or basic structures and components of the salary system.

UNMIK/REG/2001/36 stipulates the non-discrimination right of individuals. At the same time, UNMIK/REG/2001/19 calls for a proportionate representation of the non-majority community. Both of these principles are important and necessary for Kosovo. However, adequate implementation of these – partly conflicting – principles needs further guidance to avoid unintended politicisation or damage to the merit principle.

On its own, the Civil Service Law could not be implemented; implementation, except for SPAC activities, could only start more than a year later, when the law had been complemented in early 2003 by Administrative Direction no. 2003/2.

Administrative Direction no.2003/2 of 25 January 2003**,** supplementing the CSL, provides details on recruitment, career development, personnel records and conditions of employment, as well as disciplinary measures. In line with the CSL, the Direction applies to all staff employed by a public authority – including municipalities – and paid from the Kosovo Consolidated Budget (KCB). It excludes members of the Independent 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 CSL (UNMIK/REG 2001/36, section 1).

A thorough review of civil service legislation and further work on the administrative legal framework are now envisaged. This task has been included in the PAR Strategy and Action Plan and entails:

- Elaboration of a draft Law on the Public Administration, which is foreseen to be completed by June 2007 and approved by the end of the year;

- Elaboration and approval of a new draft Civil Service Law – which is supposed to be adopted by the end of 2007;
- Approval of the draft Law on Salaries in the Civil Service, which is foreseen by the end of 2007;
- Elaboration of the draft Law on Other Employees in the Public Administration, which is expected to be completed in 2008.

The initial new draft Civil Service Law has been prepared following wide consultations to ensure that it is in conformity with acceptable principles and standards; further donor support will be necessary to improve the quality of the draft law.

The current Regulation and Direction governing the civil service include some dysfunctional regulations, which should be addressed by the new legislation, e.g. the limited contractual relationship (three years), which can be renewed on the discretionary proposal of the direct superior; the distribution of responsibilities between the IOB and the DCSA; and insufficient disciplinary procedures and regulations on transfer and redeployment, which require the consent of individual employment authorities.

Human Resources Management

Human resources

The Department of Civil Service Administration (DCSA) in the Ministry of Public Services exercises the central management function for public employment in Kosovo. The DCSA has the task of developing and supervising the implementation of policies to achieve a multi-ethnic, non-partisan, professional and accountable civil service, as well as developing and co-ordinating the implementation of policies for training and capacity development of the civil service (UNMIK Regulation 2001/19, Annex IX). The tasks of the department include responsibility for the salary system and for the supervision of staff numbers.

The DCSA currently has 23 staff members; the position of director is again vacant, although at the time of the Sigma mission the recruitment procedure was underway. A total of 18 staff members have university degrees. The planned budget for 2007 does not permit the recruitment of additional staff. The DCSA expects to have 34 staff in 2008. There are three divisions (Human Resources Management, Civil Service Policy, and Salary System); 15 of the current 23 staff members work in the salary division. As part of the PAR Strategy and Action Plan, it is foreseen to establish a central unit for the development and implementation of human resources policies and for the development of specific standards for human resources units (PAR Action Plan, actions 1.3.1 and 2).

The DCSA has the right and the obligation to check if ministries and other public bodies implement the Civil Service Law in a correct manner, i.e. if job descriptions and classifications are comparable across institutions and if recruitment and promotion criteria and procedures are respected. However, in practice these tasks are not performed in an appropriate manner. The reason may not simply be a lack of skills and capacity but also insufficient power or willingness of the DCSA to impose equal application of the CSL. In practice, the DCSA seems to limit its monitoring role mainly to checking whether recruitment procedures are properly applied. Recently the MPS drafted an Administrative Instruction on the Registration of all Disciplinary Measures by Institutions. According to this instruction, all institutions will be obliged to report to the DCSA any disciplinary measures they undertake against their staff.

Despite the tasks assigned to the DCSA, the civil service legislation provides – in principle – for decentralised human resources management, i.e. every institution is to recruit its own staff and provide job descriptions and classifications for the posts within the institution. The appointing authority in ministries is the permanent secretary, and in executive agencies it is the chief executive officer of the relevant agency.

Personnel sections were created in all ministries, municipalities and other civil service employment authorities in 2004. These sections are in charge of organising, guiding and monitoring recruitment procedures. Personnel officers have received some training in HRM methods and techniques. It was reported that regular meetings of personnel officers are held to exchange views and to harmonise procedures and standards.

The Kosovo Institute for Public Administration (KIPA) is providing continuous "generic" training, including on basic issues, for human resources staff in ministries. An EAR project supporting the Ministry of Justice has a component on human resources training, and is currently engaged in a training-the-trainers programme in the area of human resources.

Overall, even though awareness of the role and relevance of DSCA activity has increased, there has been little progress in the development of HRM capacities in the DCSA and in the HRM units in ministries, and further improvement is crucial. The DCSA lacks leadership; for whatever reason, the directors of the DCSA change very often. This could be one reason why the DCSA does not really assume its role as central HRM body and efficiently lead and monitor the development of a professional, impartial, and ethnically balanced civil service.

The current decentralised human resources management set-up – without any real central management capacity – does not ensure the application of homogeneous standards across the civil service, but rather leads to the fragmentation of the system and to unjustifiable variations in the classification of similar positions and in recruitment requirements among the various institutions and authorities.

The transfer of responsibility for the implementation of the capacity-building strategy from the Prime Minister's Office to the DSCA and the new responsibility of the DCSA in co-ordinating implementation of the PAR Strategy constitute additional workloads for the department, which has neither a good reputation nor sufficient skilled staff; apparently the DCSA does not even have the necessary political backing. Moreover, the repetitive changing of the director of the DSCA is a serious problem; stability, continuity and capacity are crucial for the development and implementation of the PAR Strategy.

Budgeting and control of staff numbers

According to UNMIK Regulation 2001/19, Annex IX, the Ministry of Public Services administers the civil service payroll and payment system for the entire civil service. The Ministry of Finance and Economy (MFE) has no clear responsibility regarding public service pay (UNMIK/REG 2001/19, Annex II). The MPS also has a monitoring function to ensure equal pay for similar positions across the public service. However, neither increased skills nor political support for the DCSA will suffice to efficiently implement this task, especially since human resources management is fully decentralised, including job classifications and appraisals.

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 implemented across the civil service. Positions with similar job titles are classified at different levels. These positions may have similar job contents, which would make the classification wrong, but they may also have different job contents and the classification could be right while the job title would then be wrong. Administrative Instruction 2003/7 of May 2003, issued by the MPS, should have remedied this, but the administration never fully complied with this instruction. The issue of titles and grades is expected to be addressed by the Law on Salaries and the respective by-laws, which are included in the legislative plan of 2007 and also foreseen in the PAR Strategy.

Over 28% of the overall Kosovo budget is dedicated to wages and allowances of the public administration (which includes civil servants and other public employees).

Despite all of these difficulties, staff numbers are controlled by the DCSA, and the KCB budget allocated to personnel is transparent (although 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. As is common in the region, a considerable number of positions foreseen in the systematisation are not filled; however, as a considerable number of these "vacant" positions are usually not funded by the budget, they only represent the aspired staffing but not a realistic staffing plan.

Following a Note of Understanding between the Kosovo Government and the IMF, a staff cut of 10%, i.e. about 1500 staff, will have to be implemented over the next three years. A sub-working group has been set up to develop a plan for implementing these cuts. The MPS has issued Administrative Instruction 2006/12 on the Measures for Freezing the Recruitment of Civil Servants in Public Administration Bodies. According to this instruction, measures to freeze the recruitment of civil servants are not to be applied to the following categories of public administration bodies: Kosovo Police Service (KPS) – excluding the

civil staff and security service officials employed by the KPS, judges, doctors, education staff (teachers, professors), customs inspectors, Tax Administration inspectors, auditors in the General Auditors Office, and staff in the newly established ministries (Ministry of Justice and Ministry of Internal Affairs). Continual monitoring of the implementation of this administrative instruction is to be carried out by the MPS/DCSA. The targeted reduction in staff could be unrealistic, considering that the services excluded from this process are important and may even need to recruit more staff

According to the report of 13 March 2007 issued by the DCSA, the total number of civil servants at central and local levels is 70,205. Staff records are kept – one for the payroll system and another for HRM purposes – by the DCSA in the MPS, and by individual organisations. A variety of software is used by various organisations to keep staff records. The type of information kept varies, and that information is sometimes incomplete or inaccurate. In the absence of a reliable general register, it does not seem possible to verify whether the objective of reducing staff will be achieved. For instance, a DCSA report of June 2006 indicated a total of 67,454 public employees, whereas the payroll of July 2006 included 71,068 salaries[3]. The figures provided by the DCSA suggest that more salaries are paid than there are staff employed. The DCSA has suggested that this is because budgetary organisations are slow to notify the termination of staff contracts. In these circumstances, salaries paid in error should be retrieved; in practice, this rarely happens. To remedy this situation, several measures for the creation of a single and interactive salary system are proposed in the PAR Action Plan (actions 1.4.1-7).

Most Kosovo Serbs employed in the PISG continue to receive salaries from Belgrade and reject the salaries that are paid to them by the PISG (which are lower). It was stated that there could be some pressure to do this and that other top-ups – related to other minorities in Kosovo – also exist.

Remuneration system and pay determination

The salary system was thoroughly analysed in 2004 under a CARDS project; however, the drafting of a new salary law and/or the elaboration of a new job classification system never really started. This was more likely due to the lack of capacity and political will in the MPS to clean up the very messy system than to the reason given by MPS, i.e. that "the project's recommendations [were] too theoretical and impossible to implement". The development of a new pay and grading system remains one of the priorities of the human resources component of the PAR Strategy.

The salary system currently applied is based on a basic salary multiplier (32.25 EUR in 2007, the same value as in 2006), to which coefficients ranging from 4 to 10 (coefficient 3 was abolished in 2007) are applied, depending on the position. Coefficient 4 represents routine jobs, such as cleaners or security guards, and coefficient 10 represents a head of department position in a ministry. Currently there are about 70 different salary levels in Kosovo due to the fact that every institution creates – apparently without any sanctions or control – all kinds of coefficients between 4 and 10.

There are now a total of 53 multipliers applying to a total of approximately 37,000 staff. In addition, there are approximately another 37,000 staff on fixed salaries, but the situation here is further complicated, with 66 different levels of fixed salaries.

For some positions, salaries are set outside the coefficient system, e.g. senior jobs in the judiciary, where judges and prosecutors in district courts have a monthly salary of about 480 EUR, whereas the position of a legal clerk who prepares judgments for a judge is classified with a coefficient of 6.5, i.e. ca. 201 EUR. The salary of the President of the Supreme Court is around 570 EUR, and the salary of a permanent secretary is fixed at around 700 EUR. There are no clear criteria for determining these non-coefficient salaries, which results in some arbitrary decisions and unbalanced situations.

The salary system does not allow for salary progression, and neither performance nor experience is taken into account. The average compression ratio between the lowest and highest salaries, excluding permanent secretaries, is not even 1:3, which is very compressed (1:6 – and in advanced transition countries 1:7 or 1:8 – would be more appropriate). The system provides for some salary supplements, e.g. for overtime and shift work, hazard pay, a special supplement for jobs where corruption is a risk, and performance pay for customs officers. The payment of supplements is not consistent across the civil service. In some

[3] Data from the *Report on the Status of the Public Administration in Kosovo* (GERAP – February 2007)

ministries, managers may also have additional benefits, e.g. the use of a ministry car, a mobile phone for private use, and/or free electricity. Administrative Instruction no. 08/2006 on Measures to Increase the Efficiency of the Public Administration intends to unify the compensation for overtime, rates for expenses of mobile and fixed telephones, other benefits, the transfer and promotion of civil servants, etc.

The variation in salary levels due to the variation in the classification of positions is distorting the system. It has already proven to be a serious obstacle for the introduction of a new job classification and salary system. In addition, it will hamper the restructuring and streamlining of the administration in the event that staff have to be redeployed through transfers and secondments. The same comment is valid for special allowances.

Different status and missions of the staff and working conditions

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 are civil servants (sections 5.2, 5.3) and defines their tasks.

All public employment contracts, including those of civil servants, are limited to a maximum duration of three years, while renewal of the contract is possible on undefined terms. In any case, some of the ministries issue contracts for one year while others issue two-year contracts. The probationary period when entering the civil service is for three months. The situation of limited contracts led at the end of 2005 to a non-renewal of the contracts of nearly all permanent secretaries and chief executive officers and to direct appointments of "acting" officials to these positions, without respecting the recruitment procedures, thereby circumventing the Senior Public Appointments Committee (SPAC, see below)[4]. To rectify this situation, the government approved Administrative Instruction no. 09/2006 on Implementing Procedures for the Operation of the Senior Public Appointments Committee of Kosovo (SPAC). The SPAC has therefore intensified its work in appointing new permanent secretaries and chief executive officers of agencies. An administrative instruction on Disciplinary Procedures for Permanent Secretaries and Chief Executive Officers has been drafted but has not yet been approved. This instruction sets up procedures and foresees the establishment of a disciplinary board to decide on the breaches made by permanent secretaries and chief executive officers.

Political direct appointments (i.e. "exempt appointees", who are not covered by the CSL) are foreseen for the recruitment of advisors to ministers, members of the Assembly, and the President of Kosovo. The SRSG may also make a direct appointment for a transitional period.

As stated above, the merit system is not ensured, and working conditions, including salaries, can be very different depending on the ministry or institution in which a civil servant works. The current civil service legislation, the management framework and implementation arrangements do not help rationalise and equalise civil service conditions across the administration.

Social rights and fundamental freedoms

The Constitutional Framework, Civil Service Law, and 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 the civil service (as a rule, ethnicity will be self-determined by the employees themselves; some active measures are recommended to improve representation of minorities.

The Civil Service Law guarantees the right of civil servants to belong to political parties and other political organisations; it vaguely 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

[4] As the remit of the Independent Oversight Board (IOB, see below) does not include senior management positions, for which recruitment is carried out through a centralised procedure via the SPAC, some of the non-renewed staff initiated court proceedings. Some of these staff won their cases; however, this did not mean that they were automatically reintegrated into the civil service.

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 CSL guarantees the right to be a member of a trade union. It restricts the right to strike or to any other action that 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 of the government does not seem to be in line with ILO Conventions, allowing that – for the time being – these Conventions may not be binding on Kosovo authorities.

The Independent Trade Union of Administration Civil Servants was established in the summer of 2006. It covers employees who declare to be members of this trade union and who are working in the administration of the civil service and are paid out of the Kosovo Consolidated Budget. It does not include professionals working in the health system, teachers, police officers, etc. Actually this trade union has branches (trade union associations) in all ministries and municipalities. The total number of members to date is around 1,400. The assembly of this trade union adopted its statute in May 2006. Since its establishment the trade union has been having some difficulties, mainly in being admitted by the government as a partner. The trade union has no budget. It had been agreed that the membership fee would be 0.5% of the gross salary of each member, but this has not yet been implemented. The trade union has recently entered into discussions with the relevant services of the government to set up the mechanisms for implementation of the transfer of the membership fee from members to the trade union's budget.

Public servants make compulsory contributions of 5% of their gross salary to the Pensions Savings Trust (the regulation foresees up to 15%). The government meets its obligation by making an equivalent contribution for each worker. However, the operation of the Trust is not transparent. Staff may request information on their contributions and entitlements, but receipt of this information takes a long time and often the information is not provided at all.

There is no proper health insurance yet, although public servants have the right to medical leave and maternity leave.

In accordance with the Prime Minister's Decision of 2 November 2006, all of the co-ordinators of human rights units in all ministries were actively engaged in the preparation of the report of the Kosovo Government on the International Covenant on Economic, Social and Cultural Rights (ICESC).

According to the report of ICESC, the high-level priority activities for 2007 consist of the finalisation of the Human Rights Strategy and of the Strategy for Integration of Roma, Ashkali and Egyptian communities – in co-operation with the Council of Europe, the Office of the UN High Commissioner for Human Rights, and the OSCE – and the drafting of a manual compiling all of the recommendations and requests derived from international conventions in this area.

Education and vocational training policy

The Kosovo Institute for Public Administration (KIPA) was created in 2003 by UNMIK/DIR 2003/25 to provide systematic civil service training. It is established as an executive agency within the Ministry of Public Services. The mandate of KIPA covers the whole civil service, i.e. municipality, agency and ministerial staff. Since October 2003, KIPA has its own premises and equipment. In the spring of 2007 the Institute has 16 staff. Training courses/modules are developed on all horizontal issues (this year, due to budget constraints, the number of modules was reduced to 72 training modules from 86 last year) in legal drafting, including impact assessment, budget and finance, IT, general administration, general management, HRM and specific municipal issues. KIPA has delivered a considerable amount of training in its first years of existence, including some training for municipalities. In 2006 KIPA realised 53 training programmes over 420 days, with 1691 participants. Training courses last on average about three days. KIPA has created a network of trainers; 130 Kosovar trainers have been certified.

KIPA also offers some initial training for new recruits, although this training is not obligatory. KIPA defines its mandate in a very limited way as "generic training" and therefore still refrains from providing training to meet specific needs, e.g. specific training for ministries or training to adapt to new legislation. KIPA envisages embarking on consultancy for ministries; however, even in the medium term its in-house expertise to undertake such an endeavour seems to be too limited.

The mid-term training programme for the period 2007-2009 has been prepared. Implementation of the 2007 training plan began in January and is being carried out by local and international trainers.

According to the PAR Strategy, one of the priority actions is the development of a strategy for the training of civil servants. For the time being, however, there is no training strategy in Kosovo; the drafting of such a strategy is said to be the responsibility of the DCSA. KIPA sees its role only in the implementation of the strategy; it nevertheless follows its own judgment when setting its training objectives and priorities. This lack of co-operation may lead to incongruent human resources management development policies.

At the same time, KIPA has in fact developed a strategy for its institutional development, which includes basic training components and specific training. At the end of 2005 KIPA started with the programme of e-learning, which continued throughout 2006; seven e-learning moderators have been certified. KIPA is also trying to develop itself as a think-tank institution in the area of public administration, and last year it organised a regional conference in this area.

KIPA has been supported by the OSCE in the past. Recently the EAR has provided the main support to KIPA. KIPA has also co-operated with the United Nations Development Fund for Women (UNIFEM) in creating a network of trainers on issues of gender equality.

The training of civil servants on EU affairs has continued, with the assistance of the EAR/CARDS projects. The first draft of the Strategy for Training of Civil Servants in European Affairs has been prepared. The responsibility for training in EU affairs lies with the Agency for EU Integration, but for the time being there seems to be no – or very limited – co-ordination regarding these training activities

The process of selection of the 10 students of the fourth generation of the "Young Cell Scheme" for studies in EU affairs at master's level in western European universities is continuing. Difficulties have been encountered by these students when trying to return to – or enter – the civil service after having graduated. On the one hand, it seems that there is not enough will and commitment on the part of the government to reinstate or engage these graduates in the civil service. On the other hand, the salaries are not attractive. In addition, as already indicated above, according to the Civil Service Law, contracts cannot be longer than three years. In spite of this fact and in contradiction with this maximum three-year duration, before commencing their studies these students had signed a contract with the Permanent Secretary of the Prime Minister's Office, which obliged them to work in the civil service for a specified period of time (two-five years) following their studies.

Training delivered outside KIPA in the context of various TA projects is considerable. Training directly linked to improving knowledge and skills needed in the daily work seems to be less frequent and is insufficient.

KIPA needs to strengthen its credibility and its role as the main provider of in-service training in Kosovo so as to ensure the consistency of the training delivered with the overall institution-building and administrative development goals. It will need to review existing training materials and may need to create a library of such materials (including those derived from TA projects). It should make a serious attempt to co-ordinate donor activities in training in order to make efficient use of donor funds to avoid duplication or irrelevant training. KIPA should concentrate on practice-oriented in-service training. It may in the medium term, if its expertise can be increased, extend its activities in order to advise administrative bodies on horizontal administrative issues. It should avoid becoming an academic institution. Moreover, it needs to increase its training activities for the municipalities. In addition, KIPA should find a way of having its training activities properly and independently evaluated with regard to relevance, applicability, quality of trainers, etc. rather than by participants in order to ensure the quality and impact of training measures.

Recruitment policy and career development

The CSL establishes a position system with employment contracts. As indicated above, the duration of contracts is limited to up to three years, depending on the decision of the recruiting authorities; however, these contracts may be extended. Conditions for extension are not provided in the CSL or the UNMIK Direction. The draft civil service law, which is currently being prepared, foresees a career-based system.

Only the recruitment of senior positions is carried out centrally. The Senior Public Appointments Committee (SPAC) is regulated in UNMIK/REG 2001/19, Annex I E (Regulation on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo), in the Civil Service Law (UNMIK/REG 2001/36) and in the Implementing Procedures for the Operation of the Senior Public Appointments Committee of Kosovo (Administrative Instruction no. 09/2006) with regard to its composition and procedures. The SPAC has 10 members: the Prime Minister, three ministers, three "eminent citizens" and three international experts. The secretariat of the SPAC has been moved to the Prime Minister's Office. The SPAC is responsible for the selection and appointment of top management, namely permanent secretaries of ministries and chief executive officers of executive agencies (UNMIK/R 2001/19, and UNMIK/REG 2001/36). It has been acknowledged that, despite sophisticated procedures and centralised recruitment, these top positions are politicised. However, the Prime Minister ordered in 2006 that experience as a civil servant is a *sine qua non* requirement for recruitment to these positions. The respective minister may then choose between the three top candidates selected by the SPAC. This new requirement (together with the new instruction on implementing procedures) should ensure professionalism despite political affiliation. Several sources indicated that SPAC had improved significantly in the past year and a half, and so there are reasons to believe that merit may gradually outweigh political affiliation as the main recruitment criterion.

Recruitment principles are stated in the CSL. The merit system is explicitly designated for recruitment at entry and promotion levels. The law also calls for non-discrimination. With the enactment of the Administrative Direction no. 2003/02 implementing UNMIK Regulation 2001/36, recruitment procedures for open competition have been established, as well as some rules to ensure proportional representation of ethnic communities. However, in practice these procedures are not always followed, and recruitment and promotion decisions are not necessarily taken according to the merit principle. Not all personnel units have sufficiently trained staff, and the DCSA lacks the capacity to ensure appropriate implementation. In municipalities in particular, the civil service shows a general lack of professionalism in implementing transparent, non-politicised and ethnically balanced procedures, including in the areas of recruitment and promotion.

The Administrative Direction no. 2003/02 includes a section on career development dealing with transfer for service reasons, performance assessment, training and promotion. It is stated that promotion should be based on merit and decided upon by multi-ethnic and gender-balanced panels. However, as contracts are only issued for three years, career development is not feasible in practical terms. Open competition for promotion is the rule; however, in exceptional cases, direct appointment is possible with the approval of the permanent secretary.

Once again, it must be emphasized that a major flaw in the current civil service system is the contractual arrangement whereby contracts are limited to three years' duration and can be renewed. As no criteria are given for renewal, it becomes an arbitrary decision of the superior. The civil service is thus further exposed to politicisation and nepotism, without any credible safeguards. The reason given for this three-year rule – namely the unclear status of Kosovo – does not hold, as the territory will have to be administered no matter what its final status will be. In any case, reasonable and clear criteria for non-renewal should be provided.

Ethnicity and gender aspects

Many initiatives have been undertaken by UNMIK and other international institutions to implement UNSCR 1244 and the Constitutional Framework and to foster ethnic reconciliation. The Civil Service Law and the Administrative Direction to implement the law already provided a sufficient base to foster minority recruitment. In addition, in 2004 the Anti-Discrimination Law was adopted[5]. This law was aimed at preventing and combating discrimination, promoting effective equality and enforcing the principle of equal treatment of the citizens of Kosovo under the rule of law.

The Office of Good Governance (OGG) under the Prime Minister, in co-operation with its international and local partners, has prepared a training programme on the Anti-Discrimination Law, which is envisaged to be carried out in 2007. The OGG has also drafted an Administrative Instruction on the

[5] Anti-Discrimination Law no. 2004/3; Regulation no. 2004/32 of 20 August 2004 on the promulgation of the Anti-Discrimination Law adopted by the Assembly of Kosovo

Institutionalisation of Human Rights Units in Ministries The aim of this instruction is to foster implementation of internationally recognised human rights standards and to support the human rights units in ministries as sustainable and long-term institutions; these units have as one task the monitoring of the implementation of recommendations of the Ombudsperson.

The UNMIK target is 18% minority representation. This target has still not been reached. According to the DSCA's report of March 2007, the overall percentage of representation in the civil service is as follows: Albanian 61,872 (88.13%); Serbian 4,755 (6.77%); Turkish 690 (0.98%); others 2,167 (3.08%). The distribution among ministries remains rather uneven. It is worth emphasizing that some progress has been made in terms of the representation of minorities at central level. At present, at central level, minorities constitute 11.2% of the civil service, whereas the representation of minority communities in municipalities is as follows: administration 26.85%; education 37.70%; and health 22.1%.

The qualification structure is as follows: superior education 17,616 (25.10%); higher education 14,280 (20.34%); secondaryy school education 30,797 (43.86%); and primary school education 6,261 (8.91%).

In all of the reports available to Sigma, there is no information according to which conclusions may be drawn on the number of disabled persons employed in the public administration.

On the basis of IMF recommendations, the government has placed a freeze on further employment, and consequently it is harder to increase the number of civil servants in the PISG coming from minority communities. However, the government is making efforts to encourage the involvement of members of minority communities in the PISG. To this end, MPS has drafted an action plan for the advancement of the position of minorities and their inclusion within the PISG. This plan has accomplished the following:

- Ongoing visits to minority community dwellings by ministers and ministry officials in October and November 2006, aimed at encouraging minority inclusion in the PISG[6];
- In November 2006, the MPS carried out an assessment of the existing state of affairs and of the obstacles to the employment of minorities. Questionnaires were sent to all ministries. On the basis of information provided by the responses to these questionnaires, recommendations have been prepared, with the objective of promoting and advancing the position of minorities.

To further increase this number, all open competitions have been advertised in Serbian newspapers and on Serbian television, covering the entire territory of Kosovo. Also, each open competition advertisement has been explicitly written to give to minorities the advantage of employment. More work is needed in terms of increasing the number of representatives of minority communities in Kosovar institutions, in particular judges and prosecutors.

It remains especially difficult to hire representatives of the Serbian minority as salaries in the public service are relatively low, and it seems that higher remuneration and long-term job security are still offered by parallel structures operating in ethnic Serb-dominated areas of Kosovo. Safety problems and ethnic pressures are also presented as difficulties to be faced.

The representation of women at the professional level in the public sector has further improved. In each municipality, the position of Municipal Gender Officer was established in 2003. Similar positions were also introduced at the executive level in some ministries. Implementation of the Law on Gender Equality is in progress. The following are some of the activities that have been undertaken by the government, specifically by the Gender Equality Agency (GEA):

- The first implementation phase of the Strategy for increasing the number and enhancing the position of women in the PISG 2006-2015 has commenced. The GEA is currently carrying out a

[6] The Government of Kosovo continues to hold on trust the funds of salaries refused by Serbian civil servants. A simplified procedure for the return to their previous positions has been introduced after claims were made concerning procedural delays at municipal level. After the sensibilisation campaign, through visits by ministers, the MPS received requests for salaries by Serbian employees. As a result, 51 Serbs have returned to their previous positions and have received their wages in a timely manner. Also, the MPS has received requests from the municipalities of Dragash and Rahovec for the replacement of those who had refused to work for the PISG with other minority members who have expressed readiness to work and to integrate.

survey of the existing situation regarding the position of women in the PISG, and this survey will be published soon.

- In December 2006, a two-day workshop on gender equality was organised in municipal offices, and the Inter-Ministerial Council for Gender Equality is drafting a work plan for 2007 and elaborating a reporting method.
- In accordance with the Law on Gender Equality and based on a Government Decision, the Inter-Ministerial Council for Gender Equality has been established. A regulation setting out the duties and responsibilities of the Council has been promulgated as well. The Inter-Ministerial Council holds regular monthly meetings in preparation for the elaboration of the Kosovo Programme for Gender Equality.

The Strategy for increasing the number and enhancing the position of women in the PISG 2006-2015 was drafted to serve as an affirmative measure aimed at ensuring the higher representation of women in a leading structure. This strategy is designed to encourage women to continually build their capacities and professional potential and to promote within the PISG the drafting of appropriate policies and programmes to increase the number of women and to improve the position of women employed in the PISG.

However, despite all of these efforts, Kosovo still has a mixed record of hiring women at senior levels and in managerial positions in the public sector.

The gender structure in the civil service is as follows: male 44,824 (63.40%) and female 25,076 (35.71%).

Of the 392 management positions in the civil service (heads of division and above), only 78 (19.89%) are held by women. Since 2002, when SPAC took over responsibility for permanent secretary appointments, only one female permanent secretary has been appointed and one female chief executive has been appointed. Of the 332 management positions at municipal level (deputy director and above), only 26 (7.83%) are held by women, most of them heads of department. There is only one female CEO in the municipalities. Of the 724 management positions overall, a total of 104 women hold management positions (14.36%) in Kosovo's public administration.

For several years now, the international community has set gender equality as a policy priority. It should be assessed whether this priority – in the Kosovo context – diverts attention from more urgent matters.

With regard to the use of minority languages, the Law on the Use of Official Languages was approved by the Assembly of Kosovo on 27 July 2006 (Law no. 02/L-37) and promulgated by UNMIK Regulation 2006/51, dated 20 October 2006. The present law is accompanied by 10 administrative instructions for its implementation, covering such matters as: monitoring of implementation mechanisms; use of official languages in the municipalities of Kosovo; administrative sanctions in case of violation of language law provisions; duties of the Unit on Monitoring of Languages at central level; and establishment of language units in all ministries. Furthermore, all ministries and the majority of municipalities have simultaneous translation equipment (even though in some cases they are not operational), web pages are functioning in Albanian and Serbian languages in several municipalities, and KIPA has held training for municipalities providing general knowledge on professional translation.

Ethics and anti-corruption policy in the public sector

The Civil Service Law states basic principles and includes a Code of Conduct. The prevention and fight against corruption is part of the PAR strategy and has also been included in some of the TA projects. Conflict of interest is briefly addressed in the civil service legislation. Politicians and other senior officials (721 in total) have to disclose their assets. Asset declarations must be delivered each year (by the end of March or 30 days after taking up duty; they are not accessible to the public. The Kosovo Anti-Corruption Agency is in charge of controlling asset declarations. In 2005 an Administrative Instruction (02/2005) was issued and a Code of Conduct adopted to define the role and function of political advisers to the Prime Minister, ministers and deputy ministers.

The Civil Servants' Code of Conduct No. 01/2006, approved by the Government on 15 May 2006, is being implemented. For its practical implementation, the Ministry of Public Services, in co-operation with OSCE, conducted an information campaign and provided training related to the Code. Booklets, leaflets,

pens and posters were published, with the contents of the Code of Conduct for Civil Servants provided in all official languages.

For the purpose of implementation of the Anti-Corruption Law[7], the Prime Minister's Office has appointed an officer to maintain/manage the list (catalogue) of gifts received or given by/to institutions and other senior officers of the PMO. Also, such action is underway in other ministries through the appointment of an officer to maintain the gift list. The receipt of gifts is possible only in representation situations (e.g. gifts from visitors), and each gift may not exceed in value 50 EUR; the total value of all gifts received in one year may not exceed, 100 EUR, and no more than ten gifts may be accepted per year. An Anti-Corruption Inter-ministerial Group has been given the mandate to draft policies and strategies for the fight against corruption and to report on the implementation of anti-corruption measures in their respective ministries.

The Kosovo Anti-Corruption Agency was established in 2006 and started operations in February 2007 with a very modest budget and reduced staff (10 staff members). The director is selected by the Assembly of Kosovo and submits an annual report to the Assembly. Currently, the Agency's main purpose is to increase the awareness of citizens of their rights and to create trust between citizens and the Agency.

Fighting corruption within the public administration is one of the objectives of the PAR Strategy and Action Plan. The main priority actions in this area are: (i) drafting of clear administrative guidelines, (ii) establishment of institutional mechanisms for avoiding nepotism in the recruitment and promotion of civil servants and for auditing and controlling the public administration; (iii) drafting of simple, citizen-friendly, procedures for obtaining public services and (iii) providing simple ways for denouncing corruption.

Accountability

The Civil Service Law states that civil servants are bound by the Code of Conduct for Civil Servants. The Code does not contain any sanctions or procedures; i.e. it does not have any implementation provisions. This flaw was rectified by the implementing Direction (UNMIK/DIR 2003/2) to the CSL, which regulates disciplinary issues under Chapter VI, "Conduct and Discipline", and under Chapter VII, "Violations as to Conduct, Penalties and Disciplinary Proceedings". However, the Direction does not specify that the *ne bis in idem* principle does not apply to disciplinary measures. What is more worrisome is that it does not seem to provide for judicial review, but only for an administrative appeal before an appeals commission.

Disciplinary boards and claims committees have been established and are functioning in all ministries, and at municipal level they have been established in 26 municipalities.

For the judiciary, the Kosovo Judiciary Council is in charge of disciplinary measures (including for recruitment and promotion). The Council has 11 members. A similar council for prosecutors is envisaged.

A Code of Conduct for Judges and Prosecutors has been adopted and is being implemented.

Regarding the judicial system**,** Kosovo Correctional and Probation Services are implementing the Code of Conduct. In 2006, 59 disciplinary actions were taken for the Kosovo Correctional Service (against staff) as a result of violations of the Code of Conduct. Respective investigations were carried out and cases were referred to a disciplinary panel.

With regard to the police system**,** the Senior Police Appointment and Disciplinary Committee (SPADC) is functioning, continuously, on the basis of UNMIK Regulation 2005/54. At present, the KPS Standard Professional Unit (SPU) is dealing with all disciplinary cases and will continue to do so until the training of the Kosovo Police Inspectorate (KPI) concludes in September 2007. The KPI will then be able to take over investigations on serious offences by KPS officers.

Civil servants are not liable to pay compensation for any damages they have caused, either by reimbursing the government for the cost of compensating an aggrieved party or through direct liability.

[7] Law no. 2004/34

Performance appraisal

Article 15 of Administrative Instruction Measures for the Increase of Efficiency in Public Administration (No. 08/2006,), provides that on a three-month basis, every civil servant is to be evaluated by his/her direct supervisor for work performed. Based on these three-month periods, a yearly evaluation is to be performed by the direct supervisor. This instruction further states that evaluation procedures for work performance should be followed in conformity with the rules in force for the evaluation of work performance (Administrative Instruction no. 2003/08 on the Procedure of Evaluation of Work Performance, as well as other procedures in force). .

Despite all regulations, performance appraisal is usually carried out in a rather formalistic way, and usually all appraisals show good marks. Superiors seem to have little backing to submit more realistic appraisals. It remains to be seen whether the new Instruction (No 08/2006) will change this practice.

However, three-monthly appraisals already constitute in principle too heavy a workload and are unrealistic. Within the context of Kosovo's public administration, i.e. where performance appraisals have little impact on salaries or promotion (given the legal and budgetary framework), three-monthly appraisals seem to be no more than a very heavy bureaucratic workload for superiors and produce very little actual impact. This is especially the case since the results of performance appraisals are not even mentioned as a criterion to be taken into account for promotion. It remains to be seen – but it seems unlikely – whether current appraisals will be used to support the necessary staff cuts (see above).

Independent Oversight Board

The Independent Oversight Board (IOB) was established in accordance with UNMIK/REG 2001/36 and is empowered to hear and decide on appeals against decisions of employing authorities. The IOB is carrying out assessments of compliance with civil service legislation and may provide recommendations. Compliance assessments should be done once a year in all ministries. The IOB usually verifies whether its recommendations have been implemented. Civil servants appointed by the SPAC are outside the jurisdiction of the IOB. The IOB is also in charge of monitoring the elections of presidents of municipalities.

The IOB is located within the Ministry of Public Services. The Board is organised as an autonomous unit within the ministry and reports directly to the minister. However, with the agreement of the SRSG and the Prime Minister, a working group has been established to examine the issue of removing the IOB from the MPS and placing it under the Kosovo Assembly. This reorganisation is planned to be regulated by the new Civil Service Law. As stated in Sigma's previous assessment report, this decision would seem to go against the principle of separation of powers, as the IOB provides – as concerns the civil service – an administrative review prior to a possible judicial review.

Copies of all IOB reports are sent to the Prime Minister and to the SRSG; reporting to or informing the DCSA on its findings is not foreseen (UNMIK/REG/2001/36). The IOB Board consists of seven members (four Albanians, two from minorities and one international member), but for the moment two members are no longer sitting on the Board. It is very important to emphasize the fact that due to the expiration of employment contracts of two board members on 24 February 2007, the IOB has not conducted any procedure to resolve appeals due to a lack of legality in making decisions. The IOB has a secretariat but it is not directly subordinated to the IOB but is part of the hierarchical structure of the MPS.

In 2006, the IOB received 186 claims, 124 of which were judged as being within the remit of the IOB. In addition, 135 claims from previous years were settled. Of these resolved claims, 30 (24%) were approved, 22 (17%) were approved partially, and 53 (42.7%) were refused, whereas 19 claims (15.3%) were rejected or withdrawn by submitters. All appellants were of Albanian nationality. The main reasons for the appeals were as follows: 51 appeals were for non-renewal of the labour contract and 19 appeals were for interruption of the labour contract.

The number of appeals is increasing, and every day 4-8 new appeals are received, objecting to non-renewal of the employment contract due to the restriction of budgetary funds (i.e. implementing the Government Decision that was made following the recommendation of the World Bank and the IMF).

The IOB has carried out 57 monitoring visits in ministries and municipalities and issued 51 recommendations. The IOB has also conducted four regular visits to employing authorities in the civil

service and two additional visits, at the request of the Prime Minister, to the Gjilan municipality and to the Ministry of Culture, Youth, Sport and Non-Residential Affairs; following these visits the IOB has issued recommendations.

Despite the fact that the IOB does not have any instruments to ensure that its decisions are implemented, its recommendations are usually heeded.

The distribution of responsibilities between the IOB and the DCSA is unclear for both institutions. Both institutions claim the more or less exclusive right to carry out inspections regarding the implementation of the CSL. Neither institution has sufficient staff to actually carry out such inspections in an appropriate manner. The competences of the IOB and of the DCSA need to be clarified in order to avoid overlapping and to improve co-ordination.

An appeal to the court against decisions of the IOB is possible. Special administrative courts do not exist; administrative disputes are adjudicated by a special chamber for administrative issues within the Supreme Court. Proceedings are said to be long and enforcement of judgments remains difficult. A new Law on Administrative Disputes has been adopted by the Assembly, but it is still awaiting promulgation by the SRSG.

Giving to the IOB the responsibility for both the review of administrative decisions and the election of presidents of municipalities – i.e. at the same time as it deals with issues concerning the executive and the legislature – should be reconsidered.

Ombudsman

The Ombudsperson's Office was "Kosovarised" as from January 2006. At the same time, the remit of the Office was limited to institutions of the PISG. A Kosovar Ombudsperson has not yet been appointed by the Assembly. UNMIK institutions are for the time being not under the remit of any Ombudsperson or Ombudsperson-like institution. It is envisaged to establish a human resources advisory panel to exercise the Ombudsperson function for UNMIK institutions, consisting of three international judges appointed by the SRSG.

The number of staff in the Ombudsperson's Office has been reduced to 46 since the last Sigma assessment report, when there were 56 staff. It has four regional offices and three sub-offices in minority-populated areas. Municipalities have established internal mediation, but this instrument is not yet fully operational.

For the time being, the Ombudsperson is neither institutionally nor financially independent, i.e. the Ministry of Finance can, for example, cut off its budget. This situation should be remedied by a new law, which is currently in preparation.

Acceptance of the Ombudsperson institution continues to increase. However, some ministries and local authorities still refuse to give information, respond to requests or follow the Ombudsperson's recommendations. Under the previous legislation (providing for an international Ombudsperson), the Ombudsperson had the right to initiate disciplinary procedures and to pursue ministries before the court to disclose information, etc. This right has been eliminated since the institution was Kosovarised, which leaves the Ombudsperson with no means to force ministries to provide information.

Complaints sent to the Ombudsperson regarding inefficiency and impunity are increasing in the main critical areas: the judicial system and the administration. With regard to the judiciary, even though the Ombudsperson's Office still does not have its remit, the acting Ombudsperson nevertheless tries to mediate with the Ministry of Justice and the courts. It has been reported that the situation at municipal level is even worse than at central level. Poor implementation and lack of training regarding the Law on Administrative Procedure was mentioned as one relevant reason for the large number of complaints. Around 20% of the complaints come from the Serbian community (which represents 8% of the population).

Conclusions

The public institutions in Kosovo, in their current format, have been imposed by the UNMIK and the international community. The result is a patchwork plagued by problems, which hampers the coherence and manageability of the system.

Kosovo seems to have clearly taken the route towards Europe, and the emerging government, which is a proper Kosovar government, is making considerable efforts to harmonise existing legislation with European standards and to reorganise and operate its public institutions on the basis of common European values and approaches.

However, as demonstrated by the incapacity of parliament to agree on an Ombudsperson or the inability of the government to appoint a more permanent head of the Department of Civil Service Administration (DCSA), serious further efforts will be necessary to transform the parliament of Kosovo into a responsible and representative body and to root professional values in the civil service.

The Kosovo civil service is politicised and lacks administrative capacity and professionalism. This is mainly due to the complex and difficult legal and institutional environment, a system that is based on three-year contracts, low salaries, and the lack of capacity to implement legislation and to co-ordinate civil service management. Misunderstandings on what professionalism in the civil service means and the absence of a proper training strategy should also be mentioned.

Politicisation and nepotism remain, in spite of some isolated efforts to improve the situation. The civil service legislation – which does not regulate clearly the disciplinary issue and does not provide criteria for the renewal of contracts – does in fact foster politicisation and nepotism, as the non-observance of the merit and impartiality principles is not really sanctioned, and management decisions tend to be discretional, if not clearly arbitrary.

Prospects for the development of a cohesive civil service are hampered by salary levels that differ among ministries and allowances that are not provided on a consistent basis across the civil service. In particular, merit-based employment, performance appraisals, ethics and accountability are yet to be institutionalised effectively.

Recruitment and in particular the retention of qualified staff are still to some degree adversely affected by competition from the distorting effects of the salaries and conditions offered by international agencies, although their presence has continued to diminish.

Due to the politicisation of the civil service and to the contract system, low salaries and weak motivation schemes, turnover in the civil service is high. Consequently, institutional and human capital is wasted and effective knowledge management is poor.

The new PAR Strategy and Action Plan provide a comprehensive and integrated framework that could improve the situation, provided that realistic priorities are defined, adequate resources are made available, institutional capacities are increased and persistent efforts are engaged. However, this would also depend on some essential conditions: clear political commitment, support at the highest level, and qualified and permanent leadership.

Recommendations

- Concentrate efforts on implementing the PAR Strategy and Action Plan;
- Further review and harmonise the administrative legal framework in accordance with the prevailing legal culture so as to ensure coherence, promote transparency and legal certainty, and prevent corruption; review, simplify and rationalise the enormous quantity of laws and by-laws regulating the public administration, which currently emanate from different entities and use different legal approaches;
- Ensure that the institutional set-up is adapted to a reviewed administrative legal framework so as to clarify administrative structures and improve administrative accountability, making it more sustainable by Kosovo's own resources and increasing accessibility to the citizen;

- Finalise the new draft civil service law, ensuring that it is in line with general standards and apt to promote a professional and impartial civil service, and that it properly balances the principle of merit and that of representativeness; replace the three-year contract duration with a system that provides conditions for stability, as stability is a precondition for professionalism;
- Establish civil service terms and conditions of employment that support the attraction and retention of skilled staff and promote the development of a professional civil service and institutional capacity-building; in particular, adopt and implement a new salary system;
- Develop a better understanding of what professionalism means and consequently promote stability in the civil service, including in managerial positions;
- Further develop the capacity of the training institution to co-ordinate all training activities and to develop and systematically deliver general in-service training as well as tailor-made training for individual institutions, so as to promote professional development and training at all hierarchical levels in the public administration, including at municipal level; the integration of training in the law implementation process should be systematic;
- Strengthen a single central capacity responsible for the policy proposal and management of the civil service, and endow it with sufficient legal powers to ensure homogeneous management standards across the administration;
- Ensure that fundamental principles related to the public administration system are set out in the future Constitution, creating a clear and solid basis for future development;
- Finally, give the main responsibilities for the governance system, to political institutions in Kosovo, limiting the role of international organisations to monitoring and support and concentrating on promoting the effectiveness of the governance system.