

3 Governance & Public Administration

3.1 Key elements of the administrative environment

3.1.1 Administrative culture, law implementation and enforcement capacity

The Yugoslav administrative tradition provides a legal framework.

When the UN entered Kosovo it was not a 'law-free-zone: zone': Kosovo had inherited the Yugoslav administrative culture and with it a long tradition of administrative law, but the legacy of past decades of authoritarian rule, coupled with the fact of a parallel administration set up by the Albanian majority to circumvent the Serb administration during the last years of the Milosevic regime, left an administrative culture that seemed to be governed by personal relationships and marked by general distrust towards State institutions.

UNMIK was required to restore Rule of Law

UNMIK was charged with restoring/establishing the rule of law and international democratic standards. However, international staff in charge of developing a new legal framework, and new machinery for implementation of the law, often lacked adequate knowledge and experience for this task. This has resulted in a very fragmented and often inconsistent legal framework, based on different legal traditions from other countries and cultures.

In addition an institutional structure has emerged which is not reflected in the new legislation, and *vice versa*.

Administrative capacity is weak

Capacities to implement and enforce the law are seriously hampered by this legal framework, consisting of old Yugoslav legislation, later UNMIK rules, and new, often inconsistent, Kosovo legislation. In addition, the administrative capacity of the PISG is still weak: this is at least partly due to the fact that the international advisors have missed the opportunity to train their local counterparts during the JIAS phase. Finally, implementation and enforcement is also hampered by unclear responsibilities of various institutions, and a weak judiciary.

Furthermore, the Kosovar administrative system, supported by the international community, is developing in a direction which is different from the prevailing administrative system in Serbia and Montenegro.

There is little evidence of any plan to reconcile these diverging systems at any time in the near future, except for the adoption of the *acquis* in the areas where it applies, which would at least provide a common framework of “European” values and approaches.

3.1.2 Administrative legal framework and civil service

The "administrative legal framework" is here defined as all laws and by-laws necessary to ensure that the administration as a system functions in line with generally accepted principles, e.g. rule of law, transparency, accountability, and legal certainty. This implies that the administrative legal framework also includes, besides general administrative laws such as the Law on Administration, Law on Administrative Procedures and legislation covering redress and appeal, laws regulating the general management systems of the public administration. The most important of these laws are: the law on civil/public service, the organic budget law, laws on financial control and internal audit, and as external audit. In addition, it encompasses such laws as freedom of information, data protection legislation, law on the ombudsman, law on conflict of interest, and other “annex” legislation which is intended to ensure the implementation of accepted administrative principles.

In all the SFRY successor countries, a basic element of the normative framework is the so-called “Rule Book” which specifies the internal arrangements of State and Government bodies (including Ministries). Each body has its own Rule Book which has to be approved by the Government. This usually defines the workplaces in the bodies, job descriptions, professional and other requisites for job placement, numbers of civil servants and employees, as well as other issues arising from the specific or general laws. Where a civil service law is in place, the Rule Book usually specifies which positions are to be occupied by civil servants. The legal foundation for the rulebook is usually in the relevant Law on Administration or the Civil Service Law.

In this chapter only general administrative laws, some aspects of the Law on Civil Servants, and some “annex” legislation, will be discussed, as the other main components of the administrative legal framework (regarding public procurement, public expenditure management, financial control and internal/external audit) are discussed in the relevant sections elsewhere in this Assessment.

The current administrative legal framework of Kosovo is rather fragmented

The administrative legal framework of Kosovo is for the time being rather fragmented. The law in force has three different sources, namely pre-war Yugoslav law, law prepared and adopted/imposed by the SRSG, and laws prepared by the new Kosovo administration (mostly with the assistance of international experts) and 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 there under; and (b) the law in force

in Kosovo on 22 March 1989. This Regulation determines also that in case of conflict the Regulations and Subsidiary Instruments issued by the SRSG shall take precedence. As an exception, 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.

Legislation enacted by UNMIK often reflects Common Law practices

The incoherence of the administrative legal framework is due, in part, to the little attention paid by the international community to the existing legal and institutional framework. The legal system of Kosovo, as derived from the overall Yugoslav legal system, is continental and rooted in the Austrian legal system. However, as many international staff and in particular of a number of international lawyers with a Common Law background were heavily involved in the legislative activities of UNMIK, legislation enacted by UNMIK was often drafted according to Common Law practices and based on Common Law principles.

The pre-existing (Yugoslav) legal system could have offered a workable base for developing alignment with general European standards, as is happening elsewhere in the region.

The Constitutional Framework states the basic principles for the work of the Government (Chapter 2). A new Civil Service Law, prepared by international experts, was promulgated by the SRSG on 22 December 2001 (UNMIK Regulation 2001/36). Some experts voiced reservations about the structure, quality and implementability of the draft, however it was adopted because that was a condition for a major donor (DFID) project to support civil service development. The Civil Service Law sets out a contract-based employment system based on a contract length of three years, which may be extended. The law is applicable to all employees being paid by the Kosovo consolidated budget (KCB), i.e. it includes staff of municipalities.

New laws on Public Administration were not passed by the end of 2003

The PISG and the newly elected Kosovo Assembly adopted a large legislative programme, including a Law on Public Administration and amendments to the Law on Administrative Procedures. However, as of the end of 2003, new legislation in the above areas was not passed by the Assembly. As a consequence the laws regulating these areas are still the pre-1989 Yugoslav laws. These could provide a workable base for administrative activity, but implementation is difficult due to a lack of qualified staff and the changes in institutional structures and responsibilities, which are no longer in line with the legal provisions. In addition, ordinary laws adopted within the current constitutional framework tend to incorporate their own, specific procedures. This contributes to the proliferation of different procedures in the administration.

With the support of the international community, the legal/administrative system in Kosovo has evolved since 1999 in

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directions which distance it from the system in Serbia and Montenegro. As time passes, the gap is widening between the two systems, making their technical reconciliation more and more costly and, in the final analysis, unlikely.