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KOSOVO

PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

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Introduction

Currently the applicable law in Kosovo still has three different sources: pre-war Yugoslav law, laws prepared by UNMIK¹ and adopted/imposed by the Special Representative of the Secretary General of the United Nations (SRSG), and laws prepared by the new Kosovar administration adopted by the Assembly of Kosovo and promulgated by the SRSG. UNMIK Regulation 1999/24 clarifies the current hierarchy of legal sources defining the law applicable in Kosovo and specifies that the SRSG is the highest authority for the interpretation of legislation.

The above legal framework has led to an incoherent legal system. In addition, new regulations show some degree of incoherence, most likely due to inadequate co-ordination between experts and donors and to weak capacities of local institutions and the local administration to oppose the international community and present their own solutions adapted to their own legal traditions. A working group on legislative collision was created under a deputy prime minister to examine this complex situation.

The large number of laws, although impressive for the volume of work accomplished, raises some concern, as rushing to adopt laws without a proper discussion, consultation and co-ordination process has meant neglecting in some cases the quality and “hidden” consequences of those laws. This process is most likely to lead in the near future to a review of most of the laws.

Enforcement capacities remain weak due to the difficulties in understanding and implementing the legal puzzle, the atypical and fragmented administrative organisation, and the unclear reporting lines and accountability of administrative bodies.

The Kosovarisation of institutions has almost been completed and preparations for the handover of UNMIK responsibilities at the end of its mandate have intensified. At the same time, the increasing role of the EU is being prepared, notwithstanding the unclear phase-out of the United Nations Security Council Resolution 1244 of 1999. An International Civilian Office (ICO) is being set up, an International Civilian/EU Special Representative in Kosovo has been appointed, and the launch of EULEX Kosovo (European Union Rule of Law Mission) is currently being planned.

The Kosovarisation process is still suffering, however, from the limited administrative capacity of the local structures that are taking over responsibilities. In fact, in spite of the existence of a limited number of well-trained Kosovars and some outstanding managers in the administration, the reduced capacity to attract and retain qualified staff in the civil service is still hampering the efforts aimed at making the Kosovarisation process more effective and more rapid. In addition, the international community has not co-ordinated the technical assistance offered to Kosovo and sometimes duplications and contradictory recommendations have been observed. At the same time, the Kosovar administration lacks the capacity to properly direct and manage the technical assistance that is provided.

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

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The Kosovo European Partnership Action Plan 2008 (EPAP) has been drafted by the Agency for European Integration² as the main guiding tool for Kosovo's European integration process. It is expected that the Action Plan will soon be submitted to the European Commission for comments. Once the EC's comments have been received and eventually incorporated in the Action Plan, the Government of Kosovo will adopt it as an official document for guiding and monitoring the implementation of European Partnership recommendations.

In the meantime, the Government of Kosovo on 3 April 2008 approved the Plan on European Integration 2008-2010. According to this plan, the 18 existing inter-ministerial working groups (including the PAR working group) for co-ordination of the process of implementation of the EPAP will be restructured into six working groups. The six working groups will be oriented towards the chapters of the *acquis*: Governance (political criteria); Economy (economic criteria); Internal Market; Innovation (social cohesion); Infrastructure; and Agriculture and Fisheries. The Plan for European Integration also foresees the establishment of a mini-cabinet for European integration.

As a general conclusion, the public administration continues to be weak and politicised, despite the fact that few changes have occurred since the new government took office. It is clear that Kosovar priorities and efforts had been oriented towards the final definition of its status and no attention was therefore given to public administration and civil service reforms. As a consequence, the general situation with regard to the public service has not improved and in some areas it has even deteriorated. The low level of salaries is a consistent problem, which hampers efforts to create a professional civil service and to attract well educated and competent employees into the public sector. The high demand in the labour market from international organisations and the private sector for qualified staff, and the corresponding higher salaries offered, has left the public sector with employees who are qualified only at the lower levels. In the public sector there are limited possibilities for career advancement and the turnover is high, reducing the positive impact of training of public employees. Moreover, training capacity is still very weak and uncoordinated.

The fact that a large part of the new legislation has been "imposed" by the "Comprehensive Proposal for the Kosovo Status Settlement" and the way in which the legislation is being drafted and approved could reduce the sense of ownership as well as the commitment to its implementation. The capacity to assimilate all of the new legislation and implement it is a major concern in the context of the scarce resources, fragile institutions and weak civil service professionalism.

Administrative Legal Framework

With regard to the public administration, the legislation is not yet complete, and not much progress has been made since the last assessment.

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. The initial concept of the Law on Public Administration was prepared by the Legal Department in the Ministry of Public Services (MPS) in the framework of the PAR Action Plan. The law is intended to replace UNMIK Regulation 2001/19 on the Provisional Institutions of Self-Government (PISG), which regulates the competencies of each public institution.

The Law on Administrative Procedure was promulgated by the SRSB, 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. To improve legal certainty and transparency, 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. According to the Ombudsman, the approval of this important law was not associated with training and information campaigns, with the result that civil servants were not acquainted with the mechanisms and provisions of the law and the public rarely referred to this law

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 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.

in administrative procedures. Therefore, as the law has almost not been implemented, it is not possible to assess its intended positive impact in the functioning of the administration and in improving citizens' rights.

The Law on Administrative Disputes was adopted by the Assembly of Kosovo in 2006, but promulgation by the SRSB is still pending.

One issue that raises concern is the high number of administrative proceedings before the courts, especially before the Supreme Court of Justice, which is the only court invested with the right to judicially review all administrative proceedings. About 60% of the cases adjudicated by the Supreme Court were administrative proceedings³. The delays in reviewing the cases are long and hamper the effectiveness of administrative justice. Moreover, in the majority of cases the Supreme Court reviews only the procedural issues and not the merit of the case, before returning it to the administrative organ. Operating in this manner, in practical terms the court denies the parties the right to judicial review of their case, which becomes a vicious circle.

Several laws are in place to strengthen transparency, integrity systems and accountability in order to fight corruption, e.g. Law on the Ombudsperson (adopted in 2000, amended in 2006); Criminal Code and Criminal Procedure Code (2004); Anti-Corruption Law (2005); Law on Access to Official Documents (2003); and Public Procurement Law (2003).

1. Legal Status of Public Servants

1.1. Ordinary Legislation

The Civil Service Law (CSL), prepared by international experts, was promulgated by the SRSB on 22 December 2001 (UNMIK Regulation 2001/36). It is the main piece of legislation related to the civil service in Kosovo.

The CSL is applicable to all employees paid by the Kosovo Consolidated Budget (KCB), i.e. it includes staff of the central government, administrative staff of the Assembly, staff of municipalities, schools, hospitals, police, administrative staff of courts, etc. 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 for civil servants.

The law makes no distinctions in terms of the vertical scope of the civil service, which includes permanent secretaries (as the highest civil servants) and support and clerical staff. The civil service staff of the Assembly and the administrative and support staff of the judicial system are also subject to the CSL provisions.

Administrative Direction 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 and paid from the Kosovo Consolidated Budget (KCB).

In its current set-up the civil service scope in Kosovo is very broad. The variety of institutions and categories of employees makes it very difficult to effectively manage the civil service and to implement general and sectoral policies. In the future a distinction should be made between public employees and civil servants. Special statutes should regulate large professional categories of public employees, e.g. teachers, health sector staff and police, respecting the general principles of professionalism, merit, equal opportunity and non-discrimination for entry into the service. At the same time, the treatment should be different for the categories of employees covering ancillary and support services. A different set of management tools (for recruitment, promotion and career advancement, performance appraisal, etc.) should be used. It is not suitable to apply to certain categories of public employees the same rules that apply to the civil service.

On the other hand, the employment system established by the CSL limits the length of staff contracts to a maximum of three years and does not provide conditions for renewal. Therefore, decisions in this regard are quite arbitrary and do not provide enough protection to civil servants, which is also a reason for the high turnover and weak professionalism in the public service.

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

³ Source: Kosovo Judicial Council.

four new laws: Law on the Public Administration, Law on the Civil Service, Law on Salaries in the Civil Service, and Law on Other Employees in the Public Administration.

Some of these laws are also included in the legislative strategy for 2008 (Ahtisaari Package of Draft Laws).

Regarding the new Law on Civil Service, Sigma's support was requested mainly through the organisation, in co-ordination with the MPS, of relevant workshops and the provision of expertise.

In 2007 a number of sub-legal acts related to the civil service were issued by the government or the MPS. It is worth mentioning that the MPS issued the following administrative instructions:

- Administrative Instruction 2007/05 – MPS on Registration of Disciplinary Measures;
- Administrative Instruction 2007/01 – MPS on Determining Administrative Sanctions for Violating the Law on Language Use;
- Administrative Instruction 2007/03 – MPS on Measures for Achieving Gender Equality in Public Administration during 2007.

By the end of 2007 a draft administrative instruction on gifts and a draft law amending the law on administrative procedure had been prepared.

Direct political 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.

In addition, in 2004 the Anti-Discrimination Law was adopted⁴. This law aims to prevent and combat discrimination, promote effective equality and enforce the principle of equal treatment of the citizens of Kosovo under the rule of law.

1.2 Implementation

Several initiatives and activities have been undertaken by the PISG and UNMIK to implement the Constitutional Framework and other applicable legislation on the public administration and the civil service, e.g. to foster minority recruitment, ensure gender representation and non-discrimination. The MPS and IOB are in charge of the overall monitoring of the implementation of the relevant legislation on the civil service and the public administration. The Senior Public Appointments Committee (SPAC) is the main body responsible for ensuring implementation of legislation on senior civil servants (permanent secretaries and chief executive officers).

Based on the report of the Department of Civil Service Administration (DCSA) in the MPS of January 2008, the total number of civil servants in Kosovo is 71,670, which comprises 31,655 in institutions at central level and 40,015 at municipal level.

The ethnicity structure of Kosovo is made up of 88.44% Albanians, 6.28% Serbs, 1.12% Turks, and 2.76% others.

The gender structure is male 65% and female 35%.

The qualification structure is the following: university and post-university education 24.46%; higher education⁵ 19.26%; secondary school 45.40%, primary school 8.17%; and unspecified 3%.

On the basis of IMF recommendations, the government has placed a freeze on further employment, and consequently it is more difficult to increase the number of civil servants in the PISG coming from minority communities⁶. Recently, following Kosovo's unilateral declaration of independence, a number of Serbian

⁴ Anti-Discrimination Law 2004/3; Regulation 2004/32 of 20 August 2004 on the promulgation of the Anti-Discrimination Law adopted by the Assembly of Kosovo.

⁵ Higher education signifies two years of university studies, according to the old University of Pristina system.

⁶ There are no data available related to the implementation of the IMF recommendation (reducing by 10% the number of civil servants in three years). However, it was reported that such a target is unrealistic due to the fact that the main "employers" are excluded (e.g. teachers, doctors and police), and other sectors are still requesting more staff to fulfil certain tasks. Therefore, steps to improve the qualification structure and productivity would seem to be more reasonable. The fact is that, according to the data provided by the DCSA, the total number of civil servants increased from 70,205 (December 2006) to 71,670 (December 2007). Moreover, the numbers increased due to the recruitment of less qualified people (secondary and primary school education). The number of staff working under short-term contracts and services contracts is also not available.

civil servants, due to the pressure of the Serbian Government, decided to leave the civil service, despite the efforts that the Government of Kosovo made to retain them. Currently there are no statistics on the number of the Serbian civil servants who are no longer working or have suspended their employment relationship in the Kosovo civil service.

However, 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 an employment advantage.

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. In any case, the UNMIK target of 18% minority representation has still not been reached, and the situation has even worsened since Sigma's previous assessment, as minority representation has slightly decreased from 10.83% (2006) to 10.16% (2007).

To improve gender representation, the position of Municipal Gender Officer was established in 2003 in each municipality. Similar positions were also introduced at the executive level in some ministries. Implementation of the Law on Gender Equality is in progress. 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, and the overall situation has not improved since last year's assessment.

For several years now, the international community has set gender equality as a policy priority. The fact that the new Constitution mentions this issue several times reinforces this fact. It should be assessed whether this priority – in the Kosovo context – diverts attention from more urgent matters. The creation of special positions for gender issues in all institutions, even though two central bodies deal with the same issue (Agency for Gender Equality and Office for Good Governance), draws qualified human resources from other more important sectors at a time when the government is trying to reduce the overall number of civil servants.

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 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. The Unit for Monitoring of the Implementation of the Use of Official Languages within the MPS is responsible for monitoring implementation of the law. This unit reports that institutions at central level have established language units, which provide translations in the official languages Albanian – Serbian – English, as provided by law. During the period January-November 2007 in the central administration a total of 11,423 requests were made for the translation of documents (with 10,245 documents being translated on schedule). Between January and October 2007, of a total of 2,928 meetings, interpreters were requested for 2,375 meetings (MPS Annual Report for 2007). Although the Constitution recognises extensive rights of minorities to use their languages, clear financial forecasts do not exist, which raises a question regarding the future financial possibilities of institutions to implement these legal provisions.

2. Legality and Accountability

Legality, rule of law and equality are principles enshrined in the provisions of the Constitutional Framework.

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. However, the Direction (UNMIK/DIR 2003/2) to the CSL regulates disciplinary issues under Chapter VI, "Conduct and Discipline", and under Chapter VII, "Violations as to Conduct, Penalties and Disciplinary Proceedings".

The MPS has issued Administrative Instruction 2007/01 on Registration of Disciplinary Measures, which obliges all institutions of the civil service to report within ten days to DCSA all disciplinary measures undertaken. The implementation of this instruction has just begun and for the time being no data is available.

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.

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.

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.

The Ombudsperson's Institution plays an important role in protecting legality and human rights, but its action still has little impact and recognition, which is evidenced by the fact that, in spite of the "Kosovarisation" of the institution since 2006, the Ombudsperson has not yet been appointed by the Assembly (there has been an acting Ombudsman since 2006). Furthermore, 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.

The number of staff in the Ombudsperson's Institution has been reduced from 56 to 46 since Sigma's previous assessment report. While the majority of the staff base is of Albanian ethnicity, about 20% of staff members are of Serbian ethnicity and 5% of Turkish or Roma origin. The Ombudsperson's Office has four regional offices and three sub-offices in minority-populated areas. Municipalities have established internal mediation. For the time being, the Office is neither institutionally nor financially independent, i.e. the Ministry of Finance can cut off its budget. This situation should be remedied by a new law, which is currently in preparation.

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 Procedures was mentioned as one relevant reason for the large number of complaints.

The Ombudsperson's Office reports that 690 complaints were registered between 1 July 2006 and 30 June 2007. Of the 690 complainants, a total of 515 were Albanian, 124 Serbian, and 51 others.

The relations of the Ombudsperson with parliament need to be improved. In recent years parliament did not organize a single session to discuss the findings and recommendations of the Ombudsperson presented in the Institution's annual reports and other ad hoc reports. The same situation is expected with regard to the 2008 Annual Report, which is to be delivered to the Assembly in July.

3. Professionalism of the Civil Service

3.1 Selection and Recruitment

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.

However, there are some mechanisms to ensure the homogenous application of the law. The Department of Civil Service Administration (DCSA) in the MPS can refuse to include the recruited civil servant on the payroll if the institution did not respect all of the provisions regarding recruitment. Moreover, for managerial positions, there is a requirement in the regulations that representatives of the Independent Oversight Board (IOB) should participate on the recruitment panel.

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. The Forum of Personnel Managers was created and is being vitalised by the DCSA as a network of all human resources managers for sharing and disseminating information, discussing administrative issues and reporting problems. Three meetings of the Forum have already been held and the initiative is reported as encouraging.

The Civil Service Law (CSL) establishes a position system with employment contracts. 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 in the UNMIK Direction. 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 safeguards⁷. The pure position system does not seem to be the proper one for Kosovo, where the need for experienced and stable administration prevails over the necessity of an open system. The system with closed-end contracts in Kosovo creates instability in institutions, and it does not offer incentives to civil servants to improve their performance in view of a long labour relationship and career perspectives. In the event of the vacancy of a higher position, the existing civil servants do not enjoy any special right or preference compared to other candidates from outside the civil service.

Recruitment principles are stated in the CSL. The merit system is explicitly designated for recruitment at entry and promotion levels. With the enactment of Administrative Direction 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, despite the fact that the DCSA's position is now improving. 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.

Regarding recruitment procedures, sub-legal acts confer to the testing commission the right to decide on the structure of the test and the points corresponding to each component. This solution allows the commission to establish these balances in a manner that could lead to decisions favouring one candidate over the others.

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, 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 2006/09) with regard to its composition and procedures. The SPAC has 10 members: the Prime Minister, three ministers, three "eminent citizens" and three international experts⁸. Current vacancies in the UNMIK membership of SPAC and a vacancy of a representative of civil society need to be filled urgently. The SPAC is in the process of amending Administrative Instruction 2006/09, and this amendment is expected to be approved by the government. In 2007 the SPAC appointed three permanent secretaries and two chief executive officers (CEOs). Several cases relating to the suspensions of permanent secretaries/ CEOs are outstanding. Currently there are still two acting permanent secretaries and six acting CEOs⁹. The SPAC is currently reviewing three disciplinary cases.

The SPAC currently has a high political profile and includes representatives of civil society, which does not provide the best guarantees of an apolitical and professional recruitment process. Also, the SPAC has difficulties in organising meetings due to the quorum required (since November 2007 the SPAC has only met once, at the beginning of April 2008).

3.2 *Classification of the Civil Service*¹⁰

The Civil Service Law does not differentiate between civil servants executing public authority powers and support staff.

Despite the tasks assigned to the DCSA, the civil service legislation provides for decentralised human resources management, i.e. every institution provides job descriptions and classifications for the posts within the institution. The absence of a general classification of positions in the public administration and the inappropriate supervising mechanisms at central level make it possible for individual institutions to invent new positions and new denominations, leading to an uncontrolled salary level. The DCSA claims that all managerial positions have the same job classification, while admitting the existence of problems with regard to executive positions. However, the situation and examples in practice reveal distortions of the system.

⁷ According to the IOB Annual Report 2007, 69% of the complaints lodged by civil servants regard cases of termination or non-extension of contracts.

⁸ According to the new regulation, all SPAC members will be Kosovars.

⁹ The number of acting CEOs was increased due to the participation of a number of CEOs as candidates in the elections of 17 November 2007. Applicable rules oblige senior civil service staff to resign if they are electoral candidates.

¹⁰ More details are provided below in the section on the salary system and pay determination.

The Law on the Executive Branch of the PISG (UNMIK/REG 2001/19) indicates that the permanent secretaries of ministries and chief executive officers constitute the highest positions of top managers of the civil service in the respective ministries and agencies.

Deep concern has been largely reported related to the inconsistency and unfairness of the classification system. Given this situation, the development of an effective central management capacity and the creation of a proper classification for the civil service should be given priority, before any salary reform.

3.3 Rights and Duties

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. Unfortunately, the Constitution is less explicit in this regard. The Direction (UNMIK/DIR/2003/2) provides further detail for implementing the requirement of fair representation in the civil service (as a rule, ethnicity is to be self-determined by the employees themselves; some active measures are recommended to improve the representation of minorities.) Continuous visits to minority community dwellings by high political appointees aim to encourage minority staffing in Kosovar institutions. The Government of Kosovo continues to hold on trust the fund of salaries refused by Serbian civil servants. After the unilateral declaration of independence, despite the refusal of a number of Serbian civil servants to continue to perform their functions, they were only suspended with pay. To further increase minorities' representation, all open competitions have been advertised in Serbian newspapers (e.g. *Jedinstvo*) and on Serbian television (TV HERC, located in Shtpce) covering the entire territory of Kosovo. Each open competition advertisement has indicated, explicitly, that minorities are to be given the advantage for employment.

Public servants make compulsory contributions representing 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.

The Office of Good Governance (OGG) under the Prime Minister, in co-operation with its international and local partners, has prepared and implemented a training programme on the Anti-Discrimination Law. The O has also prepared the Administrative Instruction 2007/04 for Human Rights Units; one of the tasks of these units is the monitoring of the implementation of recommendations of the Ombudsperson.

Civil servants have the right to be trained in their area of work at the expense of the employing institution. They also have the right to be organised in trade unions so that their rights may be protected collectively.

3.4 Grievances

The Independent Oversight Board (IOB) is empowered to hear and decide on appeals against decisions of employing authorities. The IOB carries out assessments of compliance with civil service legislation and may provide recommendations (see more in section below on the IOB).

Administrative Direction 2003/2 of 25 January 2003, supplementing the CSL, provides details on disciplinary measures. It states that each employing authority is to establish disciplinary boards that will impose disciplinary measures, as provided by this regulation. Each employing authority is also obliged to establish appeals boards, which will decide on appeals against the decisions of the disciplinary boards.

Recently the MPS drafted an administrative instruction on the registration of all disciplinary measures by institutions. According to this instruction, all institutions are obliged to report to the DCSA any disciplinary measures that they have undertaken against their staff. This issue was addressed in the last meeting of the Forum of Personnel Managers, held in February 2008. Also, a new administrative instruction regarding disciplinary proceedings against permanent secretaries and CEOs is being prepared, giving to the SPAC the right to issue disciplinary measures. The principle that the appointing entity should also have the power to dismiss is being proposed.

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. As explained above, the Supreme Court has the right to examine the merits of the case, but in practice

the Supreme Court decides only on the procedure. In some particular cases, a civil servant was sent back and forward between the administrative institution and the court for five years without a final decision being made or executed. This practice prejudices the principle of effective justice and is a matter of concern with regard to the effective rule of law.

In practice very few cases presented to the IOB refer to the purely disciplinary measures (only 11 cases or 2.8% of all cases). However, in practice the institutions use an alternative solution, which is much more “effective” and less demanding in terms of the presentation of evidence – i.e. the termination of the contract. Although the main justification for termination of a contract is a budget cut, in practice termination or non-extension of a contract is also used also as a disciplinary measure.

3.5 Professional Independence from Politics

The Civil Service Law 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, and UNMIK Administrative Directive 2003/2, art. 28). “Active involvement” is understood as signifying the holding of a leading or paid position in a political party. In general this limitation is in line with other practices. The principle of impartiality of the work of a civil servant complements the restriction described above. The law states that department directors, CEOs and permanent secretaries should resign from their positions in the event that they become candidates in an election. In the case of other lower positions, the civil servant is suspended without pay for the whole duration of the campaign until the results of the election are publicised.

Based on this regulation, during the last elections in November 2007 a number of civil servants were removed from the payroll of institutions at central and municipal levels. The total number involved was 123 officials, which included permanent secretaries, chief executive officers, department directors, and directors of directorates in municipalities. Except for those higher civil servants mentioned above, the number of civil servants who actively participated in the elections numbered 3017, all of whom were suspended from the civil service.

The role and responsibilities of political appointees are stipulated by Administrative Instruction 2005/02 on Rights and Duties of Political Appointees and their Code of Conduct. In practice, however, the situation is not clear; the relationship between civil servants and politically appointees is in particular not clearly defined. In several cases political staff interferes with the duties of civil servants. The recent regulation on municipalities, which legalised an existing situation, will clearly damage the efficiency of institutions and the principle of impartiality in exercising public duties.

Despite all of the efforts, the civil service in Kosovo remains highly politicised and hindered by nepotism. In spite of the apparent legality in the recruitment procedure, it is nearly impossible to be employed without political or affiliated linkages. A positive sign was registered after the new government took office, when very few civil servants were replaced and staff turnover rates remained the same as in preceding periods. This might be a sign of the maturity of the government and an understanding of the importance of an impartial and professional civil service. However, it must be stressed that the international community was closely monitoring the situation and warned about the negative impact of possible attempts to replace civil servants for political reasons.

At local level the situation is much more worrying. . With the approval of the new decentralisation package a political director has been introduced into each department, thus duplicating the position of the existing director, who is a civil servant. The approval of such a position could be seen as a sign of political pressure against the civil servant. Since the approval of this package in November 2007 there have been contestations regarding this decision. The role of the civil servants concerned has thereby been marginalised and there are risks regarding the institutional memory. These positions have been created for a trial period of two years, and following an analysis of the positive and negative aspects a final decision will be made.

The creation of these positions hampers the overall civil service, because the same solution could be extended to the central government. Mixing political and professional staff for the implementation of the same objectives and with the same attributions not only creates a financial burden for the administration, but affects the quality of the service provided. The Government of Kosovo should carefully examine the situation and take the necessary measures to redress the regulation.

3.6 Integrity

The Civil Service Law states basic principles regarding the integrity of civil servants and includes a Code of Conduct. In 2005 Administrative Instruction 2005/02 was issued and the Code of Conduct was adopted, defining the role and function of political advisers to the Prime Minister, ministers and deputy ministers. 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 (731 in total) have had 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.

The Kosovo Anti-Corruption Agency (KACA) was established in 2006 and started operations in February 2007, with a very modest budget and reduced staff (actually 15 staff members). The director is selected by the Assembly of Kosovo and submits an annual report to the Assembly. The first annual report of the Agency was submitted to the Assembly on February 2008 and is available on the Agency website¹¹. 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. In 2008 the Agency has been allowed to increase the staff to 35 civil servants and the budget allocated fulfils the Agency's needs. Training its staff is a need and a priority for the KACA.

The KACA reported in its Annual Report 2007 that for 202 positions of senior government officials a declaration of assets to the KACA would have been required. 198 (98%) senior officials in such positions did in fact declare their assets; the remaining four positions were not filled.

14 officials (8 from the parliament and 6 from the judiciary) belonging to minorities refused to disclose their assets to the Agency. In accordance with the legislation, the KACA asked the employing authority to retain 20% of the official's salary until the declaration was completed. Failure to do so would result in the official's dismissal. Regarding such a dismissal, there are some practical problems in the case of elected officials, i.e. members of parliament. In practice they cannot be dismissed by the parliamentary administration.

The Civil Servants' Code of Conduct 01/2006, approved by the government on 15 May 2006, is now being implemented. For the practical implementation of the Code, the Ministry of Public Services, in co-operation with the OSCE, conducted an information campaign and provided training related to the Code. Booklets, leaflets, pens and posters were produced, with the contents of the Code provided in all official languages.

For the purpose of implementation of the Anti-Corruption Law (2004/34), the Prime Minister's Office (PMO) 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. Similar actions are underway in other ministries, with 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 MPS is currently drafting an administrative instruction on gifts.

The draft Law on Declaration and Origin of the Property of Senior Public Officials is in the approval procedure in the Assembly. This draft law provides in greater detail the procedures for declaration and verification of assets, monitoring system, sanctions, etc. The draft Law on Preventing Conflict of Interest in Exercising Public Function is also being prepared.

Fighting corruption in 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 (iv) simplification of procedures for denouncing corruption.

The KACA maintains the confidentiality of all denouncements and of all information received from civil servants. Therefore some cases of whistle-blowing have been registered.

The KACA in its annual report provides that during 2007, a total of 124 cases were reported of suspicion of corrupt acts in public institutions, of which 36 cases were denouncements against government officials and

¹¹ www.akk-ks.org.

35 against public officials in courts. The KACA sent 47 cases to the Prosecutor's Office¹²; according to the KACA's calculations, the damages resulting from these cases totalled 30 million EUR.

The KACA has investigated 15 cases of conflict of interest. The Agency is developing close co-operation with other entities, especially with the Financial Intelligence Unit and the police.

In spite of the improving capacity of the KACA and some efforts of the MPS, integrity in public service is still a huge problem in Kosovo, undermining the trust of citizens and damaging the rule of law.

3.7 Salary System and Pay Determination

The salary system currently applied is based on a basic salary multiplier (32.25 EUR in 2008, the same value as in the last five years), to which coefficients ranging from 4 to 10 are applied (coefficient 3 was abolished in 2007), depending on the position. Coefficient 4 represents routine jobs, such as those of cleaners or security guards, and coefficient 10 is applied to 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. In this system the coefficient is not used and the salary levels are set as a fixed amount, according to the hierarchy or the position. In the health, police and education sector the system of fixed salaries is applied¹³.

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 ranging between 393 EUR for judges in minor offense courts and 667 EUR for the President of the Supreme Court; the salary of a permanent secretary is fixed at about 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. Administrative Instruction 2006/08 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 current government has undertaken a number of measures aimed at decreasing expenses in the public administration. These include several decisions taken on 22 January 2008 by the government, which provide that ministry vehicles can be used only for official use and only within working hours, except for the vehicles of the Prime Minister, deputy prime ministers, ministers, deputy ministers and permanent secretaries. It was also decided to limit the use of mobile phones and representation expenses. With a few exceptions, it seems that these measures are not being consistently implemented.

A draft administrative instruction on the harmonisation of coefficients across the civil service was sent for approval by the previous government but was not adopted. It is expected to be submitted to the new government.

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.

Salary systems based on coefficients need strong control mechanisms that are not in place in Kosovo for the moment. The coefficient cannot be increased for certain categories of civil servants because of the snowball effect that is generated. It is difficult to calculate the financial bill of a salary reform based on a coefficient increase. For this reason the institutions and the government have found an alternative remedy for the salary level – the application of supplements. It is much easier to insert a supplement for a category of civil servants or even for specific positions. These supplements are also used to compensate somehow the effects of

¹² KACA Annual Report 2007.

¹³ Data provided by the Director of Budget in the Ministry of Finance and Economy.

inflation (according to IMF the inflation in Kosovo was 1.5% in 2006 and 2% in 2007). Supplements are distorting the system, because in some cases supplements are equal to or even higher than the basic salary. According to the Ministry of Finance, several categories of public employees are shifting from a coefficient-based system, to a fixed + supplements system, and the coefficient system is now becoming the exception. The government should undertake urgent measures and abolish the coefficient system or at least link the coefficients to a very strict job evaluation process.

The issue of titles and grades is expected to be addressed by the Law on Salaries and the respective by-laws, which are foreseen in the PAR Strategy.

3.8 *Job Description and Job Evaluation*

Despite the tasks assigned to the Department of Civil Service Administration (DCSA) in the Ministry of Public Services (MPS), 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 DCSA has the right and the obligation to check whether 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, mainly due to the DCSA's lack of capacity. For instance, the Human Resources Sector is comprised of just one official and one assistant.

Formal job descriptions, which are the basis for the classification of a position, are not provided in a comparable format, and no common framework for job titles is 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 2003/07 of May 2003, issued by the MPS, should have remedied this, but the administration never fully complied with this instruction.

3.9 *Performance Appraisal*

Article 15 of Administrative Instruction 2006/08 on Measures to Increase the Efficiency of the Public Administration provides that, on a three-monthly basis, every civil servant is to be evaluated by his/her direct supervisor for work performed. Based on these three-monthly periods, a yearly evaluation is then 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 2003/08 on the Procedure of Evaluation of Work Performance, as well as other procedures in force).

Despite all of the 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.

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.

Evaluation of the performance of permanent secretaries and CEOs is carried out on an annual basis by a sub-committee established by the SPAC. Based on the evaluation made by this sub-committee, the contracts of permanent secretaries and CEOs may be extended. Prior to the recent elections, all permanent secretaries were asked to complete their annual appraisal forms and to ask their ministers to comment on them. (Since they still have no personal objectives, this appraisal has necessarily been an assessment in terms of general skills, which is not very satisfactory).

The performance appraisal should be seen more in the context of management by objectives. Due to this system of a quarterly appraisal process, the public administration in Kosovo is characterised by the setting of short-term and spontaneous objectives. Consequently, the whole system needs to be thoroughly reviewed so that it may become a useful management tool.

3.10 Promotion and Mobility

Administrative Direction 2003/02 includes a section on career development dealing with transfers for service reasons and with the promotion of civil servants. 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.

The Government of Kosovo has approved, and is implementing, Administrative Instruction 2006/08 on Measures to Increase the Efficiency of the Public Administration, including measures for the improvement of procedures on assessment, transfer and promotion of civil servants. Article 13 of this instruction provides for the possible transfer of officials of the public administration from one body to another at the same wage level and in accordance with his/her professional skills and with the applicable civil service rules related to the selection process.

However, the procedures for promotion and career advancement should be revised when drafting new civil service legislation so as to create incentives and thereby increase productivity and improve performance.

3.11 Training

The Kosovo Institute for Public Administration (KIPA), created in 2003 by UNMIK/DIR 2003/25 to provide systematic civil service training, 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 2008 the Institute has 12 employees; a total of 16 are foreseen in the structure. Since the elections of November 2007 KIPA was led by an acting director. The former director had to resign due to active participation in the elections at central level. The selection process of the new director was in the SPAC recruitment procedure at the time of Sigma's mission, and a decision on the appointment of the new director was adopted on 7 May.

The turnover of staff has been very high at KIPA (as in many other institutions in Kosovo) and qualified civil servants have left the institute over the years. One of the reasons for this might be the difficulties in communicating and in co-operating with the MPS, which have severely damaged the proper functioning of the institute. The current minister has a special concern regarding the proper functioning of KIPA, and a draft law under preparation aims to improve the organisation and functioning of the institute and to consolidate the training process.

KIPA offers induction training for new recruits, although this training is not obligatory, as well as general and specific training for civil servants and trainers. However, KIPA defines its mandate in a very limited way as "generic training" and it therefore still refrains from providing training to meet specific needs, e.g. specific training for ministries or training to adapt to new legislation. Since Sigma's last assessment, the activity of KIPA has even decreased, following the tendency of the previous year.

The mid-term training programme for the period 2007-2009 was prepared, and its implementation is being carried out by local and international trainers. The planned activities for 2008 are based on this programme.

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 the responsibility of the DCSA, which recognises that for the time being it does not have sufficient capacity and expertise to prepare the strategy.

Co-operation with the MPS was further damaged by the lack of political support provided to KIPA by the ministry. KIPA's budget decreased over the years from 500,000 EUR to 100,000 EUR for 2008. For the current Minister of Public Services, reinforcing KIPA is a key priority, but the foreseen support from the European Agency for Reconstruction (EAR) for 2008 and 2009 does not yet seem to have been confirmed.

In 2007 KIPA delivered two separate groups of training programmes: general training in six areas and specific training for trainers. General training (or standard training) was delivered in general management, budget and finance, legislation, human resources, general administration, and municipal issues. Statistics on the training process developed by KIPA in 2007 are as follows: participants – 1477 (compared to 1691 in 2006); certified participants – 1335; and training days – 203 (420 in 2006).

Besides training for the central administration, KIPA delivers training for municipalities. From January to November 2007, 13 training courses and 52 training days were delivered on municipal issues. The number of participants was 213, and 20 trainers were hired to deliver the training.

KIPA, in co-operation with the Ministry of Local Government Administration (MLGA) and Kosovo Foundation for Open Society (KFOS), organised training on legislation for three levels of municipal officials: chief executive officers, directors of departments and legal officers. The subjects of the training were the Law on Administrative Procedures, Law on Archives and the statutory order on office work. In addition, training on the Law on Access to Official documents was organised for municipal staff and staff of the MLGA. Altogether 76 officials were trained.

Due to the lack of experts to develop the programme on information technology, the training foreseen in this area was not organised.

During this period KIPA delivered some specific training in the following areas:

- Training of Trainers (TT) in Human Resources (18 trainers certified);
- TT in Public Procurement (53 trainers certified);
- TT in e-learning (3 trainers certified);

All of the above programmes were supported by TA projects.

Institutions in general do not pay the necessary attention to training activities. Sometimes they send to the training sessions civil servants for whom the training has no relevance or instead of sending managers they send civil servants in executive positions. In such cases not only does the training not achieve its objectives, but also financial resources are spent without any outcome.

The training of civil servants in EU affairs has continued, with the assistance of the EAR/CARDS projects. The European Training Strategy for Kosovo 2008-2010, which is part of the Plan for European Integration 2008-2010, was approved by the Government of Kosovo on 3 April 2008. The responsibility for training in EU affairs lies with the Agency for EU Integration (AEI), which explains in a way the needs and lack of capacity of KIPA. The AEI, supported by various donors, organised a number of training courses for civil servants on EU-related affairs and on project-cycle management. At the end of 2007 the AEI started to set up an electronic database on the delivery of training. This database will make it possible to co-ordinate and control the training delivered by the various institutions. In the first quarter of 2008, 300 civil servants were trained by the AEI on EU issues. Despite this training, there is no capacity in place to assess the impact of the training. Currently only the trainers carry out an evaluation of the training provided.

The training needs assessment process is carried out by the AEI on EU issues. In fact there is weak co-operation on the part of the AEI with either KIPA or the DCSA; the latter should co-ordinate all of the capacity-building processes throughout the administration.

The fourth generation of 26 students in the “Young Cell Scheme” for studies in EU affairs at master’s level in western European universities started their studies in September 2007. They are expected to return to Kosovo in September 2008 and to join Kosovo institutions.

These students represent a potential resource for the future development of the civil service in Kosovo, in particular for the participation of Kosovo in the EU integration process. In the meantime, efforts were made to integrate into the civil service the graduates of the previous generations funded by EAR/CARDS. Only 23 of the 61 returning students have integrated into the administration. Difficulties for these students to return to – or enter – the civil service after graduation have continued. On the one hand, the salaries are not attractive, and on the other, 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 to five years) following their studies. The present generation signed a contract incorporating acceptance of employment following their studies, even in municipalities.

The concept documents for the assessment of training quality have been developed and a structure to certify training participants is being established.

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

As training is not co-ordinated, nobody really knows which training has been delivered, which subjects have been treated, who was trained, where they are working or how much has been spent. 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. KIPA should concentrate on practice-oriented in-service training so as to avoid becoming an academic institution. Moreover, it needs to increase its training activities for municipalities. With the decentralisation reform, more and more competencies are being transferred to local authorities, and the capacity of municipalities is lacking. KIPA is already late in delivering training to municipalities and has thus left room for other institutions to organise ad hoc training. KIPA should also find a way of having its training activities properly and independently evaluated with regard to relevance, applicability, quality of trainers, etc. rather than being evaluated by participants; in this way it would ensure the quality and impact of training measures. In addition, all vacant positions at KIPA should be filled and a new director appointed as soon as possible. MPS should provide the financial resources that would enable KIPA to consistently run its activities.

3.12 Public Service Attractiveness

The civil service is still not attractive for qualified and experienced staff. Salary levels are low compared to the private sector. Qualified young civil servants still tend to remain in the civil service only the minimum time needed to acquire the experience and practice that will allow them to move to the private or international sectors. The payment of supplements is not consistent across the civil service and should not be encouraged. Administrative Instruction 2006/08 on Measures to Increase Efficiency in the Public Administration (art. 12) makes a reference to encouraging a special category of public servants, but such supplements are to be decided by the permanent secretary.

In general the labour market is distorted in Kosovo. The large presence of international organisations attracts and retains almost all qualified employees. The differences in salary levels are very consistent. The turnover in public institutions is very high, and is estimated at 70% for high managerial positions and 40% for executive positions¹⁴. This high turnover has a negative impact on the training of civil servants, because trained capacities do not remain in the civil service and institutions need to retrain other civil servants on the same general topics, thereby losing important financial means that could otherwise have been used for specialised training.

Surprisingly, there is a high percentage of applicants for each vacancy published¹⁵, which is explained by the high rate of unemployment that characterises Kosovo. Despite these high numbers, it is very difficult to recruit experienced and qualified staff.

4. Management of the Civil Service

4.1 Department of Civil Service Administration (DCSA)

The Department of Civil Service Administration (DCSA) in the Ministry of Public Services (MPS) exercises the central management function for the public service in Kosovo. The DCSA has the task of developing and supervising the implementation of policies to achieve a multi-ethnic, 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 DCSA is also responsible for co-ordination and reporting on the progress of public administration reform. The tasks of the department include responsibility for the salary system and for the supervision of staff numbers.

The DCSA currently has 26 staff members; the new director of DCSA was selected and took up duties in November 2007. A total of 22 staff members have university degrees. There are four divisions (Human Resources Management, Civil Service Policy, Salary System, and the recently established Division on Co-ordination and Monitoring of PAR). The head and two officers of the Division on PAR started working in November 2007. Fifteen of the current staff members work in the Salary Division. However, a change in the internal structure and an improvement in the internal systematisation of staff are expected. The distribution of civil servants in the divisions of DCSA is not homogeneous, and 11 civil servants cannot effectively cover the large areas and competencies that the civil service legislation has allocated to DCSA (it should also be taken into consideration the fact that three staff were added only last November). The lack of human resources and the limited capacities of existing staff, in addition to the absence of political support and stability at director level (a few directors have changed in the short period since DCSA was created), have

¹⁴ Data provided by the AEI.

¹⁵ For 10 published vacancies in the Anti-Corruption Agency, 200 candidates presented their applications.

contributed to the limited results of DCSA in recent years. In this regard, the situation will hopefully now improve.

The DCSA has the right and the obligation to verify whether the Civil Service Law is being properly implemented, 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.

Although the communication and co-ordination between DCSA and personnel units in other budgetary institutions is weak, recently progress has been made due to political backing and stabilisation of the management of DCSA. Since late 2007, three meetings of the Forum of Personnel Managers have been held. An administrative instruction formalising the creation of the Forum of Personnel Managers is expected to be approved soon. However, it must be stressed that the practice of issuing administrative instructions quite often creates other problems; as managers (mainly in municipalities) are not familiar with many of these instructions, they are not implemented.

Overall, even though awareness of the role and relevance of DCSA 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 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. All of these elements should be considered during the drafting of the new civil service law, a process in which the DCSA should be more actively involved.

4.2 *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 the decisions of employing authorities. The IOB carries 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 Senior Public Appointments Committee (SPAC) are outside the jurisdiction of the IOB. The new Constitution also provides for an independent oversight board to monitor the implementation of civil service legislation (art. 101, para. 2).

Up until February 2008 the IOB functioned within the MPS. The SRSG on 27 February 2008 issued Regulation 2008/12, which transfers the IOB directly under the Assembly's responsibility. This undertaking aims to ensure the independence of the IOB from the executive branch and to comply with the principle of separation of powers. Based on the new regulation, the IOB will annually report to the Assembly, and the Assembly will forward the IOB's report to the Prime Minister.

The IOB Board consists of seven members, appointed for five years (the appointments were previously for two years); the two members of minority groups and the other members of the Board are to be appointed from among the political parties represented in the Assembly. However, Regulation 2008/12 does not establish any kind of qualification or experience required for appointment as a member of the Board, and so political affiliation could be the rule in selecting the Board members. Looking at the expertise needed to perform the job properly, this seems to be a strange solution. The IOB Board has a secretariat that is directly subordinated to the IOB.

The IOB is facing difficulties related to its budget, which is very low, and the new regulation has caused confusion on the use of the budget allocated for 2008. The new regulation changed only the dependency of IOB, but left unresolved important issues that had affected the work of the IOB in the past. Beside the lack of staff for the secretariat, the IOB has difficulties in fulfilling all of the obligations derived from the legislation and especially the supervision of the recruitment process for managers. It was proposed that institutions report to IOB regarding recruitment, changing the existing provision obliging IOB to take part in the recruitment panel; however, this proposal was not incorporated into the new legislation. For IOB this activity is time-consuming and doubles their competencies, especially in the case where a complaint is lodged with IOB. There are also difficulties in implementing IOB decisions.

In 2007 the IOB received 384 complaints from civil servants. The nature of the complaints was as follows:

- termination of civil servants' contracts: 127 complaints;
- non-renewal of contracts: 138 complaints;
- recruitment procedure: 40 complaints;
- demotion: 11 complaints;
- material compensation: 26 complaints;
- suspension from duty: 5 complaints;
- others (change of post, work transfer, etc.): 37 complaints.

The ethnic structure of complainants was as follows: 378 Albanians; 2 Serbs; 4 others.

In 2007 the IOB considered 386 complaints (294 were received in 2007 and 92 had been received in previous years): 78 complaints were admitted; 33 cases were partially admitted; 60 cases were not considered; 193 were rejected; and 22 cases were resolved in another way. The IOB has been informed that 39 decisions were not implemented by the institutions concerned. The large number of appeals rejected or not considered is explained by the weak guarantees offered by the Civil Service Law to civil servants and in some cases by the lack of information provided to civil servants regarding their rights and duties.

During this period the IOB monitored the selection of 52 directors of departments at central level, 79 directors of departments at municipal level, and three other cases. During those selections the IOB made 25 recommendations, two of which were not considered.

In 2007 the IOB carried out 45 monitoring visits to central and local institutions where 170 recommendations were made to improve or redress unlawful situations. The consideration of those recommendations will be monitored during the first half of 2008.

Despite the fact that the IOB does not have any instruments to ensure that its decisions are implemented, its recommendations are usually heeded and progress has been made recently.

The distribution of responsibilities between the IOB and the DCSA is still unclear, as both institutions claim the more or less exclusive right to carry out inspections regarding the implementation of the CSL, even though neither institution has sufficient staff to actually carry out such inspections in an appropriate manner. This confusion could even increase now that the IOB is accountable to parliament, and the Minister of Public Services has mentioned the intention to create an administrative inspectorate. The situation needs to be clarified.

An appeal to the court against decisions of the IOB is possible. Special administrative courts do not exist and 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. In addition, the Supreme Court does not enter into the merits of the case, but only focuses on the legality of the case, even if it has competence to do both.

4.3 Staffing and Control

According to UNMIK Regulation 2001/19, Annex IX, the Ministry of Public Services (MPS) 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 Department of Civil Service Administration (DCSA) of 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.

Over 21% of the overall budget in Kosovo 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 Kosovo Consolidated Budget (KCB) 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 official's salary.

As mentioned above, in January 2008 the total number of civil servants in Kosovo was 71,670: 31,655 in institutions at central level and 40,015 at municipal level.

Following a Note of Understanding between the Government of Kosovo and the IMF, a staff cut of 10%, i.e. about 1500 staff, was supposed to be implemented over a period of three years, starting in 2007. 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 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, educational 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. Sigma's previous assessment stressed that under such conditions the targeted reduction in staff was unrealistic. Finally, the Ministry of Finance agreed with international organisations not to implement this measure.

Staff records are kept – one for the payroll system and another for HRM purposes – by the DCSA 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. 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 and also because some officials (around 600) are receiving two salaries (e.g. as political adviser and as university professor). MPS is implementing a project regarding the creation of a unique Human Resources Management Information System. This database is under construction and MPS expects to have it fully functional by October 2008. The system will provide consolidated data on employment in the civil service and will help to maintain accurate records.

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

4.4 Staff Representation

In section 5, the Civil Service Law (CSL) guarantees the right to be a member of a trade union. It restricts the right to strike or to perform any other action that might disrupt essential services. In the same section, the law 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 Kosovar authorities. Stating that the right to strike “*may be limited by law for specific categories of employees*”, the new Constitution is too open in this regard and will not improve the situation. For instance, it will be possible to establish that all public employees (or the whole civil service) do not have the right to strike.

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 from the Kosovo Consolidated Budget. It does not include professionals working in the health system, teachers, police officers, etc.; all of these categories are organised in separate trade unions, but there is a trend towards joining all of them together. Currently the Independent Trade Union of Administration Civil Servants has branches (trade union associations) in all ministries and in five municipalities. The extension of branches to other municipalities is underway. The total number of registered members to date is around 12,500 civil servants. The assembly of this trade union adopted its statute in May 2006. It had been agreed that the membership fee would be 1% of the gross salary of each member, but only recently has this decision been implemented following a memorandum signed with the MPS and the Ministry of Finance, allowing the automatic transfer of membership fees from members' salaries to the trade union's budget.

Trade unionism is weak in Kosovo, and proper conditions for a constructive and representative social dialogue should be developed.

5. Capacity to Reform and Sustainability of Reforms

The PAR Strategy and its Action Plan were approved by the Government of Kosovo on 21 March 2007 and were endorsed by the current government, not formally but by following the same objectives and activities.

The PAR Strategy and Action Plan were drafted in conformity with other existing strategies and action plans, such as the European Partnership Action Plan, the Anti-corruption Strategy and Action Plan, and annual work plans of various institutions.

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. within the next one to two years. In 2007 the MPS carried out a month-long information campaign to promote the PAR Strategy and Action Plan.

While it is evident that a number of required activities are the regular activities of institutions, as foreseen by the Kosovo Consolidated Budget (KCB), a number of projects must be supported by donors. Detailed cost estimation for all activities of the Action Plan has been completed by MPS. It should be underlined that the scope of these documents does not include local self-governments.

The government has created an inter-ministerial PAR commission, chaired by a deputy prime minister, as a high political body to follow and discuss PAR issues, and in view of the functional review of public institutions in Kosovo¹⁶. 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. A unit within the DCSA responsible for this task was established in November 2007, and the head of the unit and two officers were immediately recruited. Six sub-working groups were also established to co-ordinate and monitor the implementation of the PAR Strategy process¹⁷. The European Commission will be informed of progress through the established system for reporting, monitoring and evaluation of the European Partnership Action Plan, part of which is devoted to public administration reform.

All of these working groups should be supported by strong technical support from within the administration, and it is unlikely that the new PAR Division in the DCSA will have the capacity to co-ordinate and push the reform agenda forward. The MPS should take appropriate measures to increase the staff in this division along with capacity-building programmes.

Another area that needs special attention from the government is the legislative process. The Kosovar administration lacks qualified staff on law-drafting and on legislative techniques. Combined with the weak capacities in policy-making and planning, this situation has led to many incoherent legal acts that need to be reviewed. Also the rush of the government to approve important laws without a large consultation process and in some cases without consulting even the main stakeholders will make it necessary to carry out an early review of those laws. Such a review will adversely affect the stability of the legal framework and of the administrative procedures that are embedded in those laws. The government needs to improve the regulatory impact assessment process, because many laws are approved without properly sustained resources, and in some cases it is impossible to implement them¹⁸. It was reported that about 75% of the laws had not been implemented or were being poorly implemented.

Despite delays in the process of co-ordination of PAR affected by the transition of the government following the elections of November 2007, several actions to implement the PAR Strategy were undertaken. The legislative activities of the PAR Strategy were incorporated into the government legislative programme, and a working group to eliminate legislative collision was established. However, one reform gap is the lack of incorporation of the PAR engagements in the budgetary process of the government.

A project to carry out a functional review of central-level institutions in Kosovo, financed by DFID, is expected to start by April 2008. 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.

The full Kosovarisation of institutions is expected to be completed after the 120-day transition period following the declaration of independence of Kosovo. 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

¹⁶ Government Decision 2/269 of 29 August 2007.

¹⁷ Sub-Working Group on Human Resources, Management in Public Administration and Institutional Structures; Sub-Working Group on Communication; Sub-Working Group on the Financing of Public Administration; Sub-Working Group on e-Governance; Sub-Working Group on Anti-corruption; and Sub-Working Group on Policy and Legislation.

¹⁸ The Assembly has approved the new salary level of IOB members, but the government cannot apply the new salary levels because there are no financial means foreseen in the budget.

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.

6. Conclusions and Recommendations

Conclusions

6.1. Currently the public service and the legal administrative framework are inadequate, and weaknesses are too evident. Generally speaking, the situation could be described by the following main characteristics: poor professionalism, politicisation, lack of qualifications and motivation of civil servants, inconsistent and incoherent legislation, insufficient management and co-ordination capacity and mechanisms, undeveloped training and unclear institutional roles. In such conditions, it is not possible to say that legality is protected and that the rule of law is a common and general practice.

6.2. Since Sigma's previous assessment, the situation has not improved in general, and in some areas it has even deteriorated. The main reason for this is that the PAR Strategy and the Action Plan were not implemented, principally because political attention was almost totally devoted to the Kosovo status issue.

Recommendations

6.3. While recognising the urgency to adopt new legislation, this must be carried out without endangering good principles aimed at ensuring that the legislation responds to real needs, is embedded in the local legal tradition, involves stakeholders, is oriented towards clear and objectives and standards, and can be implemented. This will require time, which might not be compatible with political urgency, and therefore clear priorities should be defined and maintained.

6.4. The PAR Strategy and the related Action Plan must be implemented and adjusted to recent developments.

6.5. The new law on civil service should be prepared following the above-mentioned principles. It should support the development of a professional, impartial and merit-based civil service, and it must provide the legal conditions for increasing stability and motivating staff. It must be as simple as possible but sufficiently flexible to integrate the overall complexity of functions and situations that usually characterise civil services. It should also create conditions for improving mobility within the public administration as a way of rationalising human and budget resources, adjusting offer to demand. Secondary legislation should then be prepared, developing the main principles established by the new law on civil service.

6.6. Special attention must be paid to the senior civil service, with a view to improving its professionalism and reducing political interference in the appointment, dismissal and activities of these officials. Clear accountability lines and responsibilities of elected officials should be the other side of a well balanced political and administrative relationship.

6.7. The creation of a unitary salary system, based on a well structured and unified job classification, is required in order to ensure fairness and equity among civil servants. Moreover, it must provide conditions for attracting and maintaining qualified staff in the public administration, taking into consideration Kosovo's real capacities and possibilities.

6.8. Developing the capacity of the Ministry of Public Services – and mainly of its Department of Civil Service Administration (DCSA) – is a key issue. Without proper guidance, co-ordination and monitoring, the public administration will soon become fragmented and incoherent, even if it is unitary and coherent at the very beginning. The DCSA needs to have sufficient numbers of trained staff, the power to intervene, managerial tools – e.g. a proper register of civil servants – and assistance. At the same time, the capacities of HRM units in ministries must be reinforced.

6.9. Training should also be a key priority in developing Kosovo's public service. Considering the restrictions in recruiting new and better qualified staff, the solution is to increase the capacities and competences of existing civil servants. Thus, a training strategy must be developed and KIPA's capacity must be quickly developed to implement this strategy. KIPA should assume a clear role in improving the quality of public services so as to fulfil the needs of political institutions, citizens and business. An intense and enlarged training programme should be set up to enable the implementation of key pieces of legislation,

in close collaboration with the sectors responsible for this implementation. KIPA's role as training co-ordinator must also be clarified and recognised.

6.10. Along with a clear definition of the rights and duties of civil servants, a demanding disciplinary code, professional recruitment and competent management, training could also play a relevant role in improving ethics standards in the public administration and in fighting against the rampant corruption that is damaging the image of the public service.

6.11. Conditions for better social dialogue should be improved. Representativeness of trade unions should be discussed and clarified and the necessary conditions have to be developed to enable trade unions to play their role, in accordance with good international standards and practices.