

**Organization for Security and Co-operation in Europe  
MISSION IN KOSOVO**

**The Implementation of Civil Service Legislation in  
Kosovo**

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## LIST OF ABBREVIATIONS

Assembly of Kosovo	Assembly
Independent Oversight Board for Civil Service of Kosovo	Board
Law on Civil Service of Kosovo	Civil Service Law
Law on Independent Oversight Board for Civil Service of Kosovo	Law on IOBCSK
Ministry of Agriculture, Forestry and Rural Development	MAFRD
Ministry for Communities and Returns	MCR
Ministry of Culture, Youth and Sport	MCYS
Ministry for Economic Development	MED
Ministry of Education, Science and Technology	MEST
Ministry of Environment and Spatial Planning	MESP
Ministry of Finance	MoF
Ministry of Health	MoH
Ministry of Infrastructure	MoI
Ministry of Internal Affairs	MIA
Ministry of Justice	MoJ
Ministry of Labour and Social Welfare	MLSW
Ministry of Local Government Administration	MLGA
Ministry of Public Administration	MPA
Ministry of Trade and Industry	MTI
Organization for Security and Co-operation in Europe	OSCE

## **EXECUTIVE SUMMARY**

This report provides an overview of the implementation of the Law on Civil Service of Kosovo (Civil Service Law) with special attention to the issuance of secondary legislation by the government and establishment of the implementing bodies foreseen by this Law. The report also assesses the functioning of the civil service oversight mechanisms foreseen in the Law on Independent Oversight Board for Civil Service of Kosovo (Law on IOBCSK).

All assessed ministries and the majority of assessed municipalities have established implementation bodies as foreseen by the Civil Service Law. However, the secondary legislation implementing the Civil Service Law is yet to be finalized. The process of converting civil servant contracts into open-ended letters of appointment has only been completed in 67 per cent of assessed ministries and 62 per cent of municipalities, despite a July 2011 deadline for the process to be concluded.

Members of non-Albanian communities continue to be under-represented in the central-level civil service, falling two per cent short of the required 10 per cent level of representation. By contrast, at the municipal level Kosovo Albanians, Kosovo Bosniaks and Kosovo Serbs are often proportionally over-represented in those municipalities where they constitute a numerical minority, while Kosovo Turks and Kosovo Gorani are only slightly under-represented. Disproportionate under-representation of Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities remains an issue of concern.

The Independent Oversight Board for Civil Service of Kosovo (Board) is an appeal mechanism for civil service foreseen by the Law on IOBCSK. The Board was initially established by UNMIK Regulation 2001/36 and has been functional under the Ministry of Public Services since 2004. However, there remain discrepancies in interpretation of the relevant legal provisions by different implementing bodies and full execution of the Board's decisions is yet to be attained.

To fulfil the government's legal obligations and finalize the process of civil service reform, the Organization for Security and Co-operation in Europe (OSCE) recommends that Kosovo institutions issue secondary legislation required to implement the Civil Service Law. Furthermore, central and local level institutions should take appropriate measures to increase representation of communities that are under-represented in the implementing bodies of the Civil Service Law and more broadly in the civil service in Kosovo. The OSCE also recommends better definition of the Board's mandate in the current law that would provide clear parameters to institutions employing civil servants with regard to executing the Board's decisions.

## 1. INTRODUCTION

A well-functioning public administration is one of the cornerstones of a democratic society. The civil service, at the central or local levels of public administration, is the core public provider of services for the people, and its effectiveness impacts directly upon the ability of residents to access their basic rights. Completing the reform of Kosovo's public administration is thus inherently linked to internationally recognized standards of good governance, the rule of law and human rights.

As part of broader public administration reform, reforms to the civil service are outlined in the Civil Service Law which entered into force in 2010.<sup>1</sup> While the Civil Service Law provides the key parameters of a functioning civil service, it foresees implementation details of the civil service reform process to be set by secondary legislation and to be implemented by new bodies envisaged by the Civil Service Law.

This report assesses the status of civil service reform in Kosovo with regard to the implementation of the Civil Service Law and the Law on IOBCSK. It does so by: a) providing an overview of the status of issuance of the required secondary legislation by respective ministries; b) assessing the status of establishment of the implementing structures in the civil service, both at local and central levels, mandated in the civil service as stipulated in the Law; and c) assessing the status of implementation of the legal provisions regarding the Board and its functioning.

Where applicable, the report looks into the status of compliance with legal provisions regarding gender and the representation of different communities.

The report primarily focuses on central and local level institutions responsible for the implementation of the legal framework regulating the civil service to help them in identifying its status and current challenges by offering concrete recommendations. It can also inform the work of international organizations engaged in the process and will serve as a tool for future OSCE activity planning.

The report is based on data collected through interviews with officials from select central and local level institutions conducted between February and June 2012. Research and analysis was also conducted on the issuance of secondary legislation implementing the Civil Service Law. Information on the establishment of implementing bodies of the Civil Service Law was gathered by OSCE through interviews with officers from administration and personnel departments in 34 municipalities and 12 ministries.<sup>2</sup> Data on community and gender representation in the civil service were collected by the OSCE during in-person interviews with relevant officers<sup>3</sup> from 29 municipalities<sup>4</sup> and 15 central-level institutions<sup>5</sup>. Finally,

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<sup>1</sup> Law No.03/L –149 on the Civil Service of Kosovo, 9 July 2010.

<sup>2</sup> The municipalities of Zvečan/Zveçan, Leposavić/Leposaviq, and Zubin Potok were not included in this assessment due to the fact that they do not apply the Civil Service Law.

<sup>3</sup> The officers interviewed were those responsible for civil service recruitment, e.g. the Director of Administration or the Head of Personnel.

<sup>4</sup> Moreover, the percentage representation of community members in numerical minority in Glllogoc/Glogovac, Kaçanik/Kaçanik, Malishevë/Mališevo, Parteš/Partesh and Viti/Vitina was considered too small to be statistically relevant (0.20 per cent of the total municipal population or below).

data regarding the implementation of the Law on IOBCSK<sup>6</sup> were drawn from the annual reports of the Board, statistical data from the Secretariat of the Board, and interviews of representatives of central and local level institutions where Board decisions are still pending execution<sup>7</sup>.

Section 2 of this report assesses the extent to which the Civil Service Law has been implemented through the issuance of required secondary legislation, as well as through establishment of personnel units, *ad hoc* committees for admissions procedures, and disputes and grievances committees at the central and local levels. The section reviews the planned process of converting civil service contracts into open-ended letters of appointment. It also provides a brief overview of community and gender representation in the civil service which is the subject of a dedicated report linked to this publication.<sup>8</sup> Section 3 reviews the work of oversight mechanisms and the challenges hindering the full implementation of the Law on IOBCSK. Sections 4 and 5, respectively, present conclusions and recommendations to relevant actors, based on the report's findings.

## 2. LAW ON CIVIL SERVICE

The Civil Service Law entered into force on 9 July 2010. It defines which public officials are considered “civil servants”, and regulates the terms and conditions of their employment, including their rights and obligations, disciplinary measures that can be taken against them, and procedures for their dismissal. The Civil Service Law aims to ensure that the civil service is composed of impartial, professional and accountable civil servants and that the composition of the civil service reflects core principles of multi-ethnicity and gender equality.<sup>9</sup> While providing for a merit-based system of appointment and promotion<sup>10</sup>, the Civil Service Law also provides for diversity of the civil service by requiring short-, medium- and long-term positive action measures aimed at enhancing the representation of under-represented groups, in order to promote and ensure the human rights of all in Kosovo.

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<sup>5</sup> The central-level institutions surveyed were: the Office of the Prime Minister (OPM); the Ministry of Agriculture, Forestry and Rural Development (MAFRD); the Ministry for Communities and Returns (MCR); the Ministry of Culture, Youth and Sport (MCYS); the Ministry for Economic Development (MED); the Ministry of Education, Science and Technology (MEST); the Ministry of Environment and Spatial Planning (MESP); the Ministry of Finance (MoF); the Ministry of Health (MoH); the Ministry of Internal Affairs (MIA); the Ministry of Infrastructure (MoI); the Ministry of Justice (MoJ); the Ministry of Local Government Administration (MLGA); the Ministry of Public Administration (MPA); and the Ministry of Trade and Industry (MTI).

<sup>6</sup> Law no. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, 16 August 2010.

<sup>7</sup> Personnel officers of ten municipalities (Gjilan/Gnjilane, Viti/Vitina, Mitrovicë/Mitrovica, Skënderaj/Srbica, Deçan/Deçane, Junik, Prishtinë/Priština, Lipjan/Lipljan, Obiliq/Obilić, Podujevë/Podujevo) and two government ministries (MoH and MLSW) were surveyed based on the fact that Board decisions were pending execution in these offices at the time of drafting.

<sup>8</sup> This report is published in conjunction with the OSCE Report *Representation of Communities in the Kosovo Civil Service*, February 2013, <http://www.osce.org/kosovo/99601>.

<sup>9</sup> Law on the Civil Service of Kosovo, Article 3(1).

<sup>10</sup> Ibid. Articles 3(2) and (9), 11(1), 18(1), and 26(2) and (4).

## 2.1 Issuance of Secondary Legislation Implementing the Law on Civil Service

For its implementation, the Civil Service Law requires the drafting of secondary legislation, the establishment of specific implementing bodies discussed in chapter 2.2 of the report<sup>11</sup>, and the drafting of an annual report on the state of the civil service. Although the Civil Service Law specifically defines the issues to be regulated by secondary legislation, in some cases it does not specify which institution is responsible for its issuance.<sup>12</sup> However, a reasonable interpretation is that the Ministry of Public Administration (MPA) is responsible for issuing such secondary legislation not specifically delegated to another institution.<sup>13</sup>

The Civil Service Law requires the adoption of a range of secondary legislation within either six months or one year from the date at which it entered into force, depending on the issue.<sup>14</sup> The Civil Service Law foresees implementing secondary legislation in the following areas: procedures for equal opportunities, appeal procedures, recruitment, probation period, job description, performance appraisal, disciplinary procedures, working hours and attendance, annual leave procedures, personnel notes, and termination of work. It also requires the MPA to issue, within six months, secondary legislation on communities' representation in the civil service.

As at December 2012, a total of 21 pieces of secondary legislation have been issued by the MPA and the government.<sup>15</sup> However, further secondary legislation needs to be

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<sup>11</sup> Implementing bodies, as discussed in chapter 2.2: Personnel Units, an Ad hoc Committee for Admission Procedures, Disputes and Grievances Appeal committees, and Disciplinary Commissions.

<sup>12</sup> Law on the Civil Service of Kosovo: Article 28(5) relocation of civil servants; Article 66(1) specific aggravating circumstances for disciplinary measures; Article 70(4) procedures for functioning of the disciplinary commissions; Article 79(2) basic rights of civil servants under investigation; Article 82(5) procedures for appointment, competences and procedures of the disputes and grievances appeal committee; Article 88(3) procedures of the dismissal of officers in the senior management positions; Article 92(3) procedures for management of the cases of early retirement.

<sup>13</sup> Ibid. Article 6(2.2) has delegated a general competence to the MPA to propose acts and issue sub-legal acts in the area of civil service.

<sup>14</sup> Ibid. Article 11(4) and (5) (the secondary legislation to be issued within six months) and Article 104 (secondary legislation to be issued within one year).

<sup>15</sup> Government Regulation 6/2011 on the Civil Servants Leave; Government Regulation No. 6/2010 on Procedures of Appointment to Senior Management Position in Civil Service; Government Regulation No. 20/2012 on Voluntary Work of Civil Servants after Retirement; Government Regulation No. 31/2012 for Care Procedures for Civil Servants due to Physical or Mental Disability or Health Problems; Government Regulation No. 13/2012 on Conditions for Restrictions on the Right to Strike in Specific Services in Civil Service; Government Regulation No. 06/2012 on Senior Management Positions in the Civil Service of the Republic of Kosovo; Government Regulation No. 05/2012 on Classification of Jobs in Civil Service; Government Regulation No. 08/2012 for Redundant Civil Servants; Government Regulation No. 13/2012 for Early Retirement of Civil Servants; Government Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results; MPA Regulation 2/2010 on the Recruitment Procedures in the Civil Service; MPA Regulation 3/2010 on Job Description; MPA Regulation 4/2010 on Proportional Representation of Communities; MPA Regulation 5/2010 on Working Hours; MPA Regulation 6/2010 on Transfer of Civil Servants; MPA Regulation 7/2010 on Civil Servants Appointment; MPA Regulation 1/2011 on termination, suspension, and ending of employment in civil service; MPA Regulation 2/2011 on probationary period in civil service; MPA Regulation 3/2011 on the Civil Servant's Files and Central Register; MPA Regulation

issued in order to regulate areas such as working hours and compensation for civil servants of the Assembly of Kosovo (Assembly) specifically; procedures for implementing special capacity-building programmes and career advancement; and on positions that cannot be filled by foreigners<sup>16</sup>.

### **2.1.1 Assembly Civil Servants**

While the Civil Service Law outlines employment conditions for the civil service as a whole, it also foresees specific conditions for civil servants working in the administration of the Assembly, specifically in relation to working hours and compensation. Before the new Civil Service Law entered into force, these conditions were detailed by Regulation No. 2007/02 on the Status of Civil Servants in the Assembly<sup>17</sup>, issued by the Presidency of the Assembly. However, the Civil Service Law foresees the issuance of a special act by the Presidency which will supersede the Regulation No. 2007/02.<sup>18</sup> As at December 2012, that act had not yet been approved by the Presidency of the Assembly.

### **2.1.2 Admission to the Civil Service**

Within six months of the Civil Service Law entering into force, the MPA was required to issue secondary legislation regulating the basic conditions of admission for civil servants, including recruitment, probationary periods, job descriptions, and procedures for ensuring equal opportunities.<sup>19</sup> To this point, the MPA issued regulations with regards to recruitment procedures, appointments, probation period, and job description for the civil servants.<sup>20</sup> However, as at December 2012, it had yet to issue secondary legislation on equal opportunities.

### **2.1.3 Working Hours and Attendance**

The Civil Service Law states that the issues of working hours and attendance must be regulated by secondary legislation issued by the MPA.<sup>21</sup> In addition, where shift work is required, shift patterns must be established by the employing institution in accordance with secondary legislation issued by the MPA.<sup>22</sup> The MPA has addressed these matters accordingly.<sup>23</sup>

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4/2011 on Disciplinary Procedures in Civil Service; MPA Regulation 5/2011 on procedures for solving disputes and complaints.

<sup>16</sup> Law on Civil Service, Article 13(3).

<sup>17</sup> Administrative Direction No. 2007/2 implementing UNMIK Regulation no. 2001/36 on the Kosovo Civil Service, 21 February 2007.

<sup>18</sup> Law on Civil Service, Article 3.

<sup>19</sup> Law on Civil Service, Article 11(5).

<sup>20</sup> MPA Regulation No. 02/2010 on the Procedures for Recruitment in the Civil Service, 20 September 2010; MPA Regulation No. 07/2010 on Appointment of Civil Servants, 21 December 2012; MPA Regulation No. 02/2011 on the Probation Period of the Civil Servants, 21 March 2011; MPA Regulation No. 03/2010 on Job Description, 20 September 2010.

<sup>21</sup> Law on Civil Service, Article 11(5).

<sup>22</sup> Ibid. Article 36(4).

<sup>23</sup> MPA Regulation No. 05/2010 on Working Hours, 20 September 2010.



#### **2.1.4 Civil Servants Registry**

The Civil Service Law foresees the establishment of a Central Civil Servants' Registry, and commissioned the MPA with regulating the content and management of personnel files, as well as maintaining the files in the registry.<sup>24</sup> To that end, the MPA issued a Regulation<sup>25</sup>, which determines the content and management of civil servants' personnel files. In practice, the database that existed before the Civil Service Law entered into force has still been in use, and since June 2012 the government has not adapted it to meet the requirements of the Civil Service Law and Regulation No. 03/2011.<sup>26</sup> The MPA reported that it had engaged an expert to assess the current register and the requirements of Regulation No. 03/2011, and to develop recommendations for the MPA to update the current system in line with the new legal framework.<sup>27</sup>

#### **2.1.5 Retirement**

The Civil Service Law establishes the general rule that all civil servants will retire at the age of 65<sup>28</sup>; the terms and conditions for managing cases of early retirement must be regulated by a sub-legal act.<sup>29</sup> However, the Civil Service Law allows for unpaid voluntary work for retired civil servants up to the age of 70,<sup>30</sup> which must also be further clarified by a separate regulation. In this regard, the government adopted Regulation No. 13/2012 on Early Retirement for Civil Servants and Regulation No. 20/2012 on Voluntary Work of Civil Servants after Retirement.<sup>31</sup>

#### **2.1.6 Hiring of Senior Management**

The Civil Service Law states that the MPA must establish a "Criteria Assessment Commission" tasked with the appointment of senior management, and issue a regulation detailing the procedures for hiring such persons.<sup>32</sup> In addition, secondary legislation is required to regulate performance appraisals and the dismissal of senior management officers.<sup>33</sup> To this end, the government issued Regulation No. 06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service of Kosovo<sup>34</sup> and Regulation No. 06/2012 on Senior Management Positions in Civil Service<sup>35</sup>.

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<sup>24</sup> Law on Civil Service, Article 8(6).

<sup>25</sup> MPA Regulation No. 03/2011 on the Civil Servants' Files and Central Register, 21 March 2011.

<sup>26</sup> Information provided by the officials of the Department of the Civil Service Administration of the MPA.

<sup>27</sup> Ibid.

<sup>28</sup> The Law on Civil Service, Article 91(1).

<sup>29</sup> Ibid. Article 92(3).

<sup>30</sup> Ibid. Article 13(4).

<sup>31</sup> Government Regulation No. 13/2012 on Early Retirement for Civil Servants, 20 June 2012 and Regulation No. 20/2012 on Voluntary Work Of Civil Servants After Retirement, 15 October 2012.

<sup>32</sup> Law on Civil Service, Articles 15(2) and 15(4).

<sup>33</sup> Ibid. Articles 76(2) and 88(3).

<sup>34</sup> Government Regulation No. 06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service of Kosovo, 4 October 2010.

<sup>35</sup> Government Regulation No. 06/2012 on Senior Management Positions in Civil Service, 2 April 2012.

### **2.1.7 Career Development**

The Civil Service Law also requires the government to issue a regulation determining the conditions for implementing special capacity-building programmes, the transfer of officers, the conditions and procedures for civil servants' career advancement, and detailed procedures for implementation of the performance appraisal process.<sup>36</sup> To this end, the government issued Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results.<sup>37</sup> According to central level officials, a regulation determining the conditions for implementing special capacity building programmes is currently being drafted.<sup>38</sup>

### **2.1.8 Dismissal, Reassignment and Redundancy of Civil Servants**

The MPA was tasked with issuing procedures for dismissal from the civil service<sup>39</sup>, which it did through Regulation No. 01/2011 on the Termination, Suspension and Ending of Employment in Civil Service<sup>40</sup>. In addition, the rights and entitlements of redundant civil servants, including their salaries and training, were to be regulated through secondary legislation issued by the government, following a proposal by the MPA and the Ministry of Finance (MoF).<sup>41</sup> To that end, the government issued Regulation No. 08/2012 on Redundant Civil Servants.<sup>42</sup> The Civil Service Law also envisaged the issuance of secondary legislation on the reassignment of civil servants<sup>43</sup>, which is set through Regulation No. 06/2010 on the Transfer of Civil Servants issued by the MPA<sup>44</sup>.

### **2.1.9 Disabilities**

The Civil Service Law foresees a regulation on civil servants whose employment has come to an end as a result of physical disability or poor health arising from the exercise of their official duties.<sup>45</sup> This issue has been regulated through Government Regulation No. 31/2012 on Care Procedures for Civil Servants Due to Physical or Mental Disability or Health Problems.<sup>46</sup>

### **2.1.10 Grading**

The Civil Service Law foresees a regulation to define the number of grades assigned to each functional category and the standards and procedures for grading each job according to the terms established in the job description.<sup>47</sup> These issues are addressed

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<sup>36</sup> Ibid. Articles 16(3), 27(4) and 34(5).

<sup>37</sup> Government Regulation No. 19/2012 on Civil Servant's Performance Appraisal Results, 20 September 2012.

<sup>38</sup> Information provided by officers from the Legal Department, MPA. Interviewed on 2 April 2012.

<sup>39</sup> Law on Civil Service, Articles 87(4).

<sup>40</sup> Regulation No. 01/2011 on the Termination, Suspension and Ending of Employment in Civil Service, 21 March 2011.

<sup>41</sup> Law on Civil Service, Article 32(4).

<sup>42</sup> Government Regulation No. 08/2012 on Redundant Civil Servants, 8 May 2012.

<sup>43</sup> Law on Civil Service, Article 28.

<sup>44</sup> MPA Regulation 06/2010 on Transfer of Civil Servants, 21 December 2010.

<sup>45</sup> Law on Civil Service, Article 84(4).

<sup>46</sup> Government Regulation No. 31/2012 on Care Procedures for Civil Servants Due to Physical or Mental Disability or Health Problems, 14 December 2012.

<sup>47</sup> Law No. 03/L -149 on Civil Service, Article 24(2).

in Regulation No. 05/2012 on Classification of Posts in Civil Service issued by the government.<sup>48</sup>

### **2.1.11 Leave**

According to the Civil Service Law, civil servants are entitled to both annual leave and special leave<sup>49</sup>; their terms and conditions are to be established through secondary legislation adopted by the government following a proposal by the MPA and the MoF.<sup>50</sup> The Civil Service Law further provides for the MPA to regulate the procedure of annual leave.<sup>51</sup> However, the government issued Regulation No. 06/2011 on the Civil Servants' Leave<sup>52</sup>, which has provided for both the terms and conditions of leaves and their procedure, thus infringing upon the responsibilities of the MPA.

### **2.1.12 Right to Strike**

A civil servant's right to strike is recognized by the Civil Service Law<sup>53</sup>, however conditions limiting the right to strike for specific services within the civil service have been outlined in Government Regulation No. 30/2012 on Conditions for Restrictions on the Right to Strike in Specific Services in Civil Service.<sup>54</sup> These services include the maintenance of water supply, electricity supply, security services and air traffic control.

### **2.1.13 Employment of Foreigners**

Admission to the civil service is open to both Kosovo residents and foreigners. However, the government is required to specify the core functions that are restricted only to residents of Kosovo.<sup>55</sup> The government is yet to do so.<sup>56</sup>

### **2.1.14 Annual Reporting**

The Civil Service Law requires the government to report to the Assembly at least once per year on the state of the civil service.<sup>57</sup> To date, no such report has been issued; however, there reportedly exists a draft report on the state of civil service, which is being produced by the Department of Civil Administration in the MPA and will be sent to the government before being submitted to the Assembly.<sup>58</sup>

## **2.2 Establishment of Implementing Bodies at the Central and Local Levels**

The Civil Service Law and its corresponding secondary legislation foresee several implementing bodies responsible for the overall management of the civil service which include the admission, disciplinary and appeal procedures for civil servants.

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<sup>48</sup> Government Regulation No. 05/2012 on Classification of Posts in Civil Service, 2 March 2012.

<sup>49</sup> Ibid. Articles 39(1) and 40(1).

<sup>50</sup> Law on Civil Service, Article 40(2).

<sup>51</sup> Ibid. Article 11(5).

<sup>52</sup> Government Regulation No. 06/2011 on the Civil Servants' Leave, 23 June 2011.

<sup>53</sup> Law on the Civil Service of Kosovo, Article 48(2).

<sup>54</sup> Government Regulation No. 30/2012 on Conditions for Restrictions on the Right to Strike in Specific Services in Civil Service, 14 December 2012.

<sup>55</sup> Law on Civil Service, Article 13(3).

<sup>56</sup> Information received from the officials of the Legal Department of the MPA.

<sup>57</sup> Law on Civil Service, Article 6(1).

<sup>58</sup> Director of Civil Service Administration Department, MPA, interviewed on 4 April 2012.

### 2.2.1 Personnel Units

Effective functioning of Personnel Units, foreseen by the Civil Service Law, is vital for the overall management of civil servants from the point of their entry into the civil service until the end of their employment. Article 7 of the Civil Service Law makes reference to Personnel Units as implementing bodies responsible for the development and management of human resources' policies and procedures. Duties assigned to this unit include matters such as appeals, resignation, dismissal, disciplinary measures, preventive suspension and retirement.<sup>59</sup>

At central level institutions, 12 assessed ministries<sup>60</sup> reported having established Personnel Units.<sup>61</sup> At the local level, 27 out of the 34 assessed municipalities reported having established Personnel Units.<sup>62</sup> Out of the 7 municipalities which have not established this body, two stated that they believe the creation of a Personnel Unit for an administration as small as theirs is not necessary. In those municipalities, the director of administration is in charge of all personnel matters.<sup>63</sup> The Personnel Unit usually includes the head of personnel, while the number of staff assigned to the unit varies from a minimum of one to a maximum of three persons.

### 2.2.2 Ad hoc committee for Admission Procedures

The Civil Service Law states that the recruitment of civil servants to career and non-career positions is to be conducted by an admission committee, which will be established on an ad hoc basis. This is foreseen in Article 18 of the Civil Service Law on basic criteria for admission to the civil service. The responsibilities and composition of this committee are further elaborated in secondary legislation implementing the Civil Service Law, issued by the MPA.<sup>64</sup> According to this regulation, the ad hoc committee, i.e. the Selection Committee of Civil Service, is a temporary body established after the beginning of the recruitment process, which is dissolved when that process is finalized.<sup>65</sup> The gender balance and a diversity of communities should be reflected within the committee's composition.<sup>66</sup>

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<sup>59</sup> Law on Civil Service, Articles 21, 67, 69, 86, 87, and 91.

<sup>60</sup> These 12 ministries were selected for closer assessment in order to give a representative picture of the implementation of the civil service laws after the recent reforms.

<sup>61</sup> Ministry of Public Administration (MPA), Ministry of European Integration (MEI), Ministry of Education, Sciences and Technology (MEST), Ministry of Health (MoH), Ministry of Infrastructure (MoI), Ministry of Communities and Return (MCR), Ministry of Culture, Youth and Sports (MCYS), Ministry of Environment and Spatial Planning (MESP), Ministry of Kosovo Security Force (MKSF), Ministry of Foreign Affairs (MFA), Ministry of Labor and Social Welfare (MLSW), Ministry of Agriculture, Forestry and Rural Development (MAFRD).

<sup>62</sup> Officers from municipal administration department (personnel managers, administration directors and personnel officers), Gračanica/Gračanicë, Obiliq/Obilić, Mamuša/Mamushë/Mamuša, Malishevë/Mališevo, Štrpce/Shtërpçë, Ranilug/Ranillug and Parteš/Partesh municipalities, interviewed between 27 February and 19 April 2012.

<sup>63</sup> Officers from municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Ranilug/Ranillug and Parteš/Partesh municipalities, interviewed between 27 February and 19 April 2012.

<sup>64</sup> Regulation No 02/2010 on Recruitment Procedure of Civil Service.

<sup>65</sup> Ibid. Article 7(6).

<sup>66</sup> Ibid. Article 7(1).

At the central level, all ministries assessed reported they had established ad hoc committees for staff recruitment and consistently ensured gender balance and communities' representation.<sup>67</sup>

At the local level, 31 of the 34 assessed municipalities reported having established an ad hoc committee on admission procedures, since the Civil Service Law was passed. Among the three municipalities that have not established the ad hoc committee<sup>68</sup>, the admission procedure had only just started in Gračanica/Graçanicë while in Fushë Kosovë/Kosovo Polje and Mamuşa/Mamushë/Mamuşa no job vacancies had been published since the Civil Service Law entered into force. With regard to gender representation, all but one municipality<sup>69</sup> reported that men were in the majority in these committees. With regard to community representation, six municipalities reported that members of communities in numerical minority are not part of the ad hoc committee for admissions procedures.<sup>70</sup> According to officers from these municipalities, this is either due to a lack of qualified civil servants belonging to those communities in a given municipality or because of an absence of such communities in that municipality.<sup>71</sup>

In contrast with other bodies foreseen by the Civil Service Law, findings show that at the local level communities are best represented in the ad hoc committee for admission procedures. Twenty-eight municipalities reported a representation of community members in numerical minority in the composition of the ad hoc committee for admission procedures.<sup>72</sup>

### **2.2.3 Disputes and Grievances Appeal Committees**

Article 82 of the Civil Service Law foresees that disputes and grievances appeal committees serve as appellate bodies for civil servants in every institution that employs them. These committees operate on a two-year mandate and are composed of high-ranking civil servants. Their composition must represent the diversity of Kosovo society as well as gender diversity.<sup>73</sup> These criteria are reaffirmed through secondary

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<sup>67</sup> In the Ministry of Health, the lack of communities' representation in managerial positions means that their representation in the ad hoc committee could not be guaranteed during the recruitment of managerial positions. According to MoH personnel unit, the legal framework does not require the representation of communities in the above committee in circumstances such as these, provided their lack of representation is justified in a separate report. This exception is regulated by Article 7(2) of MPA Regulation No. 02/2010 on the Recruitment Procedure in Civil Service.

<sup>68</sup> Officers from municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Mamuşa/Mamushë/Mamuşa, Gračanica/Graçanicë and Fushë Kosovë/Kosovo Polje municipalities, interviewed between 27 February – 19 April 2012.

<sup>69</sup> In Štrpce/Shtërpçë women represent a majority in ad hoc committee for admission procedures, according to the municipal officer interviewed in February 2012.

<sup>70</sup> Officers from municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Hani i Elezit/Đeneral Janković, Parteš/Partesh, Junik, Glogovac/Glogovac, Podujevë/Podujevo and Malishevë/Mališevo municipalities, interviews, 27 February – 19 April 2012.

<sup>71</sup> Regulation No. 02/2010 on Recruitment Procedure in Civil Service issued by MPA, Article 5.

<sup>72</sup> Communities in numerical minority in 14 municipalities are not represented in dispute and grievance committees, while they are not part of the disciplinary commissions in 16 municipalities.

<sup>73</sup> Law on the Civil Service of Kosovo, Article 82(3).

legislation issued by the MPA, which also sets the required number of committee members.<sup>74</sup>

At the central level, 12 assessed ministries reported establishing disputes and grievances appeal committees composed of two members each with a two-year mandate as committee members, and a third member appointed on a case-by-case basis.<sup>75</sup> In addition, it is reported by the ministries that were assessed that the committees are gender-balanced and represent the diversity of Kosovo's communities. At the local level, all but one of the assessed municipalities reported establishing disputes and grievances committees.<sup>76</sup> With regard to the number of civil servants appointed to sit on these committees, all but one reported having appointed two permanent members and one member on an ad hoc basis as envisaged by Article 9 of the Regulation No. 04/2011 on Disciplinary Procedures in Civil Service.<sup>77</sup> However, communities in numerical minority in 14 out of the 34 assessed municipalities were not represented on the disputes and grievances committees.<sup>78</sup> According to municipal officials, the most common reason for non-compliance was either lack of qualified civil servants belonging to those communities in a given municipality or because of the absence of such communities in that municipality. With regard to gender representation, out of the 33 municipalities that established dispute and grievance committees, five reported the committees did not reflect gender diversity in their composition.<sup>79</sup>

Overall, the disputes and grievances appeal committees have been established in all assessed ministries and in the vast majority of municipalities; however, the compositions of some committees still do not comply with legal requirements to reflect the diversity of Kosovo society and, in particular, the gender diversity can be improved in a number of municipalities.

#### **2.2.4 Disciplinary Commissions**

The Civil Service Law requires that every Kosovo institution that employs civil servants must have a disciplinary commission in order to undertake disciplinary action in cases of "serious violations" of the Civil Service Law and related secondary legislation.<sup>80</sup> The procedure for the functioning of the commissions and their composition is regulated by Regulation No. 04/2011 on the Disciplinary Procedures in the Civil Service of MPA.

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<sup>74</sup> Regulation No. 05/2011 on Procedures for Resolving Disputes and Complaints issued by MPA.

<sup>75</sup> MPA, MEI, MEST, MoH, MoI, MCR, MCYS, MESP, MKSF, MFA, MLSW, and MAFRD.

<sup>76</sup> During the assessment period, in Obiliq/Obilić municipality, the dispute and grievance committee had not been established yet after the expiration of the mandate of the previous one. Source: Personnel Manager, Obiliq/Obilić municipality, interviewed on 12 March 2012.

<sup>77</sup> Municipal Officer, Dragash/Dragaš, interviewed in February 2012.

<sup>78</sup> Officers from municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Shtime/Štimlje, Lipjan/Lipljane, Prishtinë/Priština, Pejë/Peć, Junik, Gjakovë/Đakovica, Suharekë/Suva Reka, Parteš/Partesh, Kamenicë/Kamenica, Kačanik/Kaçanik, Hani i Elezit/Đeneral Janković, Ferizaj/Uroševac, Mitrovicë/Mitrovica, Gillogovc/Glogovac municipalities, interviewed between 27 February and 19 April 2012.

<sup>79</sup> Municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Prizren, Dragash/Dragaš, Parteš/Partesh, Ferizaj/Uroševac and Skenderaj/Srbica municipalities, interviewed in February 2012.

<sup>80</sup> Law No. 03/L –149 on Civil Service, Article 70.

At the central level, 12 assessed ministries reported establishing disciplinary commissions.<sup>81</sup> The commissions are required to be composed of two members of the civil service with a two-year mandate and a third member of the civil service appointed on a case-by-case basis, and to ensure equal representation of communities and genders, as required by the Civil Service Law.<sup>82</sup> One ministry reported that some communities' representation could not always be ensured in the commission due to their lack of representation in the ministry as a whole.<sup>83</sup> However, Regulation No. 04/2011 requires that members of the disciplinary commissions "present the diversity of Kosovo society, including gender diversity."<sup>84</sup> At the local level, all but one of the municipalities reported establishing disciplinary commissions.<sup>85</sup> With one exception, in all other municipalities these commissions are composed of two permanent members with a two-year mandate and one ad hoc member.<sup>86</sup> However, in 16 municipalities, the legal requirement for the commission to represent the diversity of Kosovo society was not fulfilled.<sup>87</sup> Out of this group, two municipalities are in the process of fulfilling this legal obligation by choosing ad hoc members of the disciplinary commission from a community in numerical minority in the municipality.<sup>88</sup> With one exception, all other municipalities that have established disciplinary commissions reported that they reflect gender diversity<sup>89</sup>, and that their members – including the chairperson – all have superior education in accordance with the Civil Service Law, which provides that "members of the disciplinary commission shall be appointed from the ranks of Civil Servants with superior education".<sup>90</sup> The obligation to establish disciplinary commissions is fulfilled in all but one municipality. However, while the legal requirement on gender diversity is adhered to in all of the municipalities except for one, the composition of disciplinary commissions did not reflect community diversity in more than half of the assessed municipalities.

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<sup>81</sup> MPA, MEI, MEST, MoH, MoI, MCR, MCYS, MESP, MKSF, MFA, MLSW, and MAFRD.

<sup>82</sup> Law on Civil Service, Article 70(3).

<sup>83</sup> MoH.

<sup>84</sup> Regulation No. 04/2011 on the Disciplinary Procedures in the Civil Service of MPA, Article 9(4).

<sup>85</sup> Obiliq/Obilić municipality reported it was in the process of establishing the commission after expiration of the mandate of the previous one. Source: Personnel manager, interviewed on 12 March 2012.

<sup>86</sup> The disciplinary commission is composed of five members (three from majority communities and two from communities in numerical minority in the municipality). Source: Officer, Dragash/Dragaš, interviewed in February 2012.

<sup>87</sup> Officers from municipal administration department ( personnel managers, administration directors, heads of personnel units and personnel officers), Junik, Dečan/Dečane, Gjakovë/Đakovica, Prizren, Suharekë/Suva Reka, Rahovec/Orahovac, Malishevë/Mališevo, Ranilug/Ranillug, Parteš/Partesh, Kamenicë/Kamenica, Kačanik/Kaçanik, Hani i Elezit/Đeneral Janković, Ferizaj/Uroševac, Gillogovc/Glogovac, Podujevë/Podujevo and Skenderaj/Srbica municipalities, interviewed between 27 February – 19 April 2012.

<sup>88</sup> In cases involving civil servants from communities in numerical minority, these two municipalities make efforts to have an ad hoc member who belongs to a community in numerical minority. Source: Official, Rahovec/Orahovac and Skenderaj/Srbica municipalities, interviewed in February 2012.

<sup>89</sup> Official from municipal administration department, Ferizaj/Uroševac municipality, interviewed on 15 March 2012.

<sup>90</sup> Law on Civil Service, Article 70(3).

## 2.3 Communities' and Gender Representation in the Civil Service

### 2.3.1 Representation of Communities

\* *The representation of communities in the civil service is covered in more detail in the OSCE Report Representation of Communities in the Kosovo Civil Service*<sup>91</sup>

Based on the underlying principles of non-discrimination, equal opportunities and equal representation, the Civil Service Law states that all communities and their members have a right to fair and proportional representation in the civil service of central and local level institutions.<sup>92</sup> To achieve this, ten per cent of central level positions must be reserved for members of non-Albanian communities, while at the municipal level the number of reserved positions must be proportionate to the number of members of each community in numerical minority residing in the respective municipality.<sup>93</sup>

The MPA issued secondary legislation<sup>94</sup> within the required six-month period to regulate implementation of the Civil Service Law provisions.<sup>95</sup> In addition to reiterating the above thresholds, this regulation (Regulation No. 04/2010) further specifies that, at the central level, at least ten per cent of senior posts must also be reserved for non-Albanian communities<sup>96</sup>, while at the local level the requirement was again proportionality.<sup>97</sup>

According to the MPA, representation of non-Albanian communities in the civil service at the central-level institutions was 7.85 per cent at the end of the first quarter of 2012, roughly 2.00 per cent short of the required 10.00 per cent. Speaking of non-Albanian communities, although the Civil Service Law does not require that representation of a particular community be proportionate to the size of that community in Kosovo, a comparison of MPA disaggregated statistics with recently published census data<sup>98</sup> showed that Kosovo Ashkali, Kosovo Egyptians, Kosovo Gorani and Kosovo Roma were proportionally under-represented, while Kosovo Bosniaks, Kosovo Serbs and Kosovo Turks were proportionally over-represented<sup>99</sup>. The MPA could not provide data on the seniority of positions, which meant that an assessment of the number of communities' members in "functional positions" was not possible.<sup>100</sup>

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<sup>91</sup> A more detailed report assessing the implementation of legal provisions regulating the representation of communities in the civil service is published by the OSCE as a separate publication. See OSCE Report *Representation of Communities in the Kosovo Civil Service*, *supra* 8.

<sup>92</sup> Law on Civil Service, Articles 5(1)(1.2), 5(1)(1.9), 11(1) and 11(2).

<sup>93</sup> *Ibid.* Article 11(3).

<sup>94</sup> Regulation No. 04/2010 on Procedures for the Fair and Proportional Representation of Communities not in the Majority in the Civil Service of Kosovo, issued by MPA, 20 September 2010.

<sup>95</sup> *Ibid.* Article 4(1)(1.2).

<sup>96</sup> *Ibid.* Articles 5(1)(1.2) and 6(12).

<sup>97</sup> *Ibid.* Article 6(1)(1.2).

<sup>98</sup> Kosovo Agency of Statistics, *Kosovo Population and Housing Census 2011: Final Results*, 2011.

<sup>99</sup> For further details on all statistical data please refer to the OSCE Report *Representation of Communities in the Civil Service*, *supra* note 91

<sup>100</sup> Official of the MPA, MPA premises, interviewed in June 2012.



According to the MPA, the 10 per cent threshold applies only to the civil service as a whole, and not to each individual institution.<sup>101</sup> However, in order to better understand the relative distribution of communities across different institutions, the OSCE undertook a series of interviews with 14 ministries and the Office of the Prime Minister.<sup>102</sup> Of these, only four met or were above the 10 per cent threshold; five were between 6 and 10 per cent, and six were below 6 per cent. The gap between the most representative institutions and the least representative was very wide: in the Ministry for Communities and Returns (MCR), non-Albanian communities occupied 41.66 per cent of civil service positions; in sharp contrast, they occupied just 1.49 per cent of positions in the Ministry of Economic Development (MED), 1.56 per cent in the MTI, and 2.50 per cent in the MoF. While slightly higher levels of communities' representation might be expected in those ministries that deal specifically with communities' issues, in many institutions communities' representation remains well below their proportional share of the population and cannot reasonably be said to be "fair and proportional".

As noted above, municipal-level representation of communities must be proportionate to the number of members of each community in numerical minority residing in a given municipality. In 18 of the 29 assessed municipalities<sup>103</sup> the percentage of civil servants from communities in numerical minority at the municipal level was in proportion to, or above, the total number of communities present in the municipality. In terms of proportional representation of specific communities, Kosovo Albanians were over-represented in two of the three municipalities in which they are not in majority; and Kosovo Bosniaks were over-represented in six out of eight, with the exceptions of Pejë/Peć and Prizren. Kosovo Serbs were proportionally or over-represented in all municipalities where they are not in majority. However, Kosovo Turks were under-represented in six out of seven municipalities, and Kosovo Gorani were under-represented in both municipalities where they are in numerical minority. It should be recalled that these figures only take account of communities in numerical minority at the municipal level; as non-Albanian communities now constitute the majority population in certain municipalities, e.g. Kosovo Serbs in Gračanica/Graçanicë or Kosovo Turks in Mamuša/Mamushë/Mamuša, their representation across the municipal civil service as a whole is higher than these figures suggest.

Despite these positive examples, Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities were consistently and disproportionately under-represented in all municipalities where they were present, with very few exceptions; in many municipalities they did not occupy a single civil service position. Representation was very low even in municipalities where those communities were present in relatively large numbers, and which were otherwise in compliance with the Civil Service Law.

### **2.3.2 Representation of Women and Men**

The legal and regulatory framework for guaranteeing equal representation of men and women in the civil service is less extensive than the one regulating fair and proportionate representation of communities. However, the Law on Gender Equality

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<sup>101</sup> Director of Civil Service Administration Department, MPA, interviewed on 13 September 2012.

<sup>102</sup> For the list of interviewees see *supra* note 5.

<sup>103</sup> For the methodology regarding municipalities see *supra* note 2.

states that public institutions must adopt “legal and affirmative measures” to ensure equal participation of both women and men, and specifies that equal participation is considered to have been achieved in cases where it reaches 40 per cent.<sup>104</sup>

However, this legal requirement was not reiterated in the Civil Service Law, which refers only in very general terms to the principles of non-discrimination on the grounds of gender and of equal opportunities for participation in civil service for both women and men. These provisions were also not expanded in any secondary legislation.

Statistics provided by the MPA indicated that municipal structures as a whole were broadly in compliance with the 40 per cent minimum requirement for equal gender representation, at 41 per cent. Although representation at central level institutions was slightly lower, at 36 per cent, it was still only a few percentage points below the legal requirement.<sup>105</sup>

While positive, these figures are not broken down by institution or municipality, seniority of position, or ethnicity, making it impossible to differentiate between municipalities in terms of their relative compliance or to assess the position of women and men within the civil service hierarchy. Moreover, the lack of disaggregation by ethnicity meant that it was not possible to tell whether women from some communities faced the problem of twofold discrimination, e.g. on the grounds of both their ethnicity and their gender. This more detailed information is a pre-requisite for any genuine assessment of equal participation of men and women in the civil service; without it, it is not possible to highlight problematic areas or institutions, or to implement suitable positive action measures to redress potential shortfalls.

## **2.4 Conversion of Contracts of Civil Servants**

The new Civil Service Law establishes the rule of permanent civil service contracts if the set conditions are fulfilled as indicated in the Civil Service Law.<sup>106</sup> Within a year after it enters into force, the Civil Service Law provides for the conversion of civil service employment contracts into open-ended letters of appointment. It also outlines conditions for the conversion process which, based on satisfactory performance over a two year period and dependent on the nature, function and duties of the position, shall be converted into an open-ended appointment. Others who do not yet meet the above criteria will be evaluated under the same conditions once they have functioned for two years as a civil servant.<sup>107</sup>

At the central level, out of the 12 ministries assessed, four ministries had not completed the process of converting qualifying contracts into letters of appointment.<sup>108</sup> In MAFRD, the letters of appointment were already prepared, but awaited the signature of the Permanent Secretary.<sup>109</sup> In MESP, the letters of

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<sup>104</sup> Law No. 2004/2 on Gender Equality, Articles 3(1) and 3(2), 7 June 2004.

<sup>105</sup> Official of the Ministry of Public Administration, Ministry premises, interviewed in June 2012.

<sup>106</sup> Law on the Civil Service of Kosovo, Article 1(1) in relation to Article 1(2).

<sup>107</sup> Ibid. Article 96 in relation to Article 97(1).

<sup>108</sup> MESP, MoH, MFA, and MAFRD. Information received on 20 June 2012.

<sup>109</sup> Personnel Officer, MAFRD, interviewed on 20 June 2012.

appointment were expected to be given once the regulation on internal organization of the MPA is approved.<sup>110</sup> In the MoH, the process had not started as at June 2012.<sup>111</sup>

At the local level, of the 34 assessed municipalities, 11 have not completed the conversion of civil servants' contracts into open-ended letters of appointment.<sup>112</sup> Furthermore, the assessment shows that in one municipality the civil servants' contracts have been extended for an additional three years<sup>113</sup>, while in another case the process of conversion has not started yet.<sup>114</sup> The remaining 21 municipalities have reported that they replaced the civil servants' contracts with open-ended appointment letters as foreseen by the Civil Service Law. However, only the municipalities of Klinë/Klina and Kamenicë/Kamenica reported completing the conversion within a year as required by the Civil Service Law. (i.e. by 25 June 2011); the other 18 municipalities successful in doing so reported that they have completed the process since then.

The secondary legislation required to regulate the conversion of civil servants' contracts into open-ended letters of appointment was completed in 2012 with issuance of the Regulation No. 05/2012 on Classification of Jobs in the Civil Service issued by the government.<sup>115</sup> In the municipalities and ministries which have yet to complete this process, public administration officers blamed the lack of this regulation for the delay in replacing civil servants' contracts. However, lack of that regulation apparently did not prevent those ministries and municipalities that have offered civil servants open-ended contracts from doing so. In June 2012, the MPA reminded all public institutions that employ civil servants to take all the necessary measures to convert civil servants' contracts into open-ended letters of appointment as foreseen by the Civil Service Law.<sup>116</sup>

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<sup>110</sup> Personnel Officer, MESP, interviewed on 20 June 2012.

<sup>111</sup> Personnel Officer, MoH, interviewed on 20 June 2012.

<sup>112</sup> Officers from municipal administration department (personnel managers, administration directors, heads of personnel units and personnel officers), Gračanica/Gračanicë, Prishtinë/Priština, Deçan/Deçane, Gjakovë/Đakovica, Klokot-Vrbovac/Kllokot-Vërbovc, Glogovc/Glogovac, Mitrovica/Mitrovicë, Kaçanik/Kaçanik, Hani i Elezit/Đeneral Janković, Podujevë/Podujevo and Novo Brdo/Novobërdë municipalities, interviewed between 27 February and 19 April 2012.

<sup>113</sup> Personnel Officer, Dragash/Dragaš municipality, interviewed on 8 March 2012.

<sup>114</sup> The conversion of civil servants' contracts has not commenced yet since the municipality was not able to carry out the performance evaluation of the administration's civil servants at the end of the year as foreseen by Article 97.1 of the Law No.03/L-149 on Civil Service. Source: Personnel officer, Obiliq/Obilić municipality, interviewed on 12 March 2012.

<sup>115</sup> Government Regulation No. 05/2012 on Classification of Posts in Civil Service, 2 March 2012.

<sup>116</sup> Memo issued by the MPA addressed to General Secretaries, Mayors and to the Executive Directors, dated on 08 November 2011.

### **3. LAW ON INDEPENDENT OVERSIGHT BOARD FOR CIVIL SERVICE OF KOSOVO**

The Civil Service Law defines the Board as an independent institution that “supervises the legality of the management in the civil service”.<sup>117</sup> The overall functioning of the Board is further regulated by the Law on IOBCSK.<sup>118</sup>

This section analyses the implementation of the Law on IOBCSK by considering whether all the regulations and laws specified in the Law on IOBCSK have been adopted, and whether the Board is able to properly carry out its three statutory functions. These functions are: adjudicating appeals filed by civil servants against their employing authorities; determining whether the appointments of senior civil servants are done in accordance with relevant rules; and supervising the implementation of rules and principles of the civil service.<sup>119</sup>

#### **3.1 Implementation of the Law and adoption of internal regulations**

In order to be implemented, the Law on IOBCSK requires the Internal Oversight Board to adopt three internal regulations. In addition, one new law is to be adopted by the Assembly to clarify three internal regulations: rules governing the overall work of the Board<sup>120</sup>; rules of procedure regarding the Board’s complaint procedures<sup>121</sup>; and the Board’s Code of Ethics.<sup>122</sup> However, no time limit was specified in the Law on IOBCSK for this implementation. The Board has met these requirements by drafting and adopting the internal regulations and the Code of Ethics. In addition, a Law on Salaries of Senior Officials is foreseen to be adopted to set the salary level for the Chairperson and members of the Board<sup>123</sup>; however, the Law on IOBCSK did not specify which institution would be responsible for the drafting this law. By December 2012, this law had still not been adopted, resulting in Board members disputing their salary scale.

#### **3.2 Adjudicating Appeals from Civil Servants**

The Law on IOBCSK provides for the Board to adjudicate appeals filed by civil servants against their employing authorities when civil servants feel that their rights have been violated.<sup>124</sup>

In general, the Board has been adjudicating appeals from civil servants in accordance with the relevant new laws and internal regulations since their adoption. Decisions

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<sup>117</sup> Law on Civil Service, Article 9.

<sup>118</sup> Law no. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, 16 August 2010.

<sup>119</sup> Ibid. Article 10.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid. Article 12.

<sup>122</sup> Ibid. Article 22.

<sup>123</sup> Ibid. Article 21.

<sup>124</sup> Ibid. Article 10(1.1).

based on these new rules have been issued within the legally provided time limit. However, the impact of the Board's decisions is limited, as central and local level institutions have often failed to implement these decisions. In fact, the non-execution rate was 23 per cent in 2011<sup>125</sup> and 40 per cent in 2010.<sup>126</sup> At the time of the drafting of this report, 106 decisions cumulative since 2007 have not been implemented<sup>127</sup>. All of these decisions have been pending execution by central- and local level institutions for more than a year past the legal deadline for execution.<sup>128</sup> This delay puts into question the impact of any subsequent execution, especially if the decision involves the reinstatement of civil servants.

According to the interviewed officers<sup>129</sup>, there are a number of reasons why they have failed to comply with the Board's decisions. Firstly, they are largely unsatisfied with the Board's justification for its decisions and therefore refused to execute them.<sup>130</sup> Yet most of them did not contest those decisions by initiating a formal court proceeding as prescribed by the Law on IOBCSK.<sup>131</sup> Secondly, lack of finances, particularly when a local institution receives a decision after the approval of its budget is another reason for lack of compliance. Thirdly, although the Law on IOBCSK states that an appeal of the Board's decision in court should not delay the execution of the decision until the court rules otherwise. Awaiting the conclusion of court procedure is sometimes cited by employing authorities as a reason for non-execution.

The Board has consistently informed the Prime Minister<sup>132</sup> and the Assembly<sup>133</sup> of all non-executed decisions. Nevertheless, the failure to execute a decision by the Board

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<sup>125</sup> Kosovo, Independent Oversight Board for Civil Service, *Annual Report 2011*, March 2012, p. 17.

<sup>126</sup> Ibid. p. 23.

<sup>127</sup> Since 2007, the Board has dealt with 917 cases, out of which 390 decisions requires remedial action from employing authorities. Kosovo Independent Oversight Board for Civil Service, *Annual Report 2009, 2010 and 2011*.

<sup>128</sup> Four of the decisions dated from the first part of 2012, 43 from 2011, while the rest dated prior to 2011. Source: Secretariat staff, Independent Oversight Board for Civil Service of Kosovo, Prishtinë/Priština, Provision of statistical data, 7 May 2012.

<sup>129</sup> This report assessed the ten municipalities (Gjilan/Gnjilane, Viti/Vitina, Mitrovicë/Mitrovica, Skenderaj/Srbica, Deçan/Decane, Junik, Prishtinë/Priština, Lipjan/Lipljan, Obiliq/Obilić, Podujevë/Podujevo) and two government ministries (MoH and MLSW) where Board decisions were pending execution at the time of drafting. A series of interviews and follow up telephone and email correspondence with personnel officers took place between 27 February and 19 April 2012.

<sup>130</sup> Municipal officers have indicated that they dispute the reasoning used by the Board in determining the appeal in their respective municipality. In addition, the municipality of Junik issued a letter (Nr. 01/30) to the Board on 11 August, 2011 stating that it refused to execute the Board's decision (nr. 02/153/2011, issued on 12 July, 2011). The municipality subsequently agreed to execute this decision (letter dated 30 July, 2012, Nr. 01/56) after the constitutional court's judgement reaffirming the decision of the Board as "final and executable" (case no. KI 50/12, dated 16 July, 2012). Source: Personnel Officers from Gjilan/Gnjilane, Mitrovicë/Mitrovica, Podujevë/Podujevo, Skenderaj/Srbica municipalities, interviewed between 27 February and 19 April 2012.

<sup>131</sup> Law on Independent Oversight Board for Civil Service of Kosovo, Article 14.

<sup>132</sup> Procedure prescribed in Law on Independent Oversight Board for Civil Service of Kosovo, Article 15(2).

<sup>133</sup> Ibid. Article 15(5).

has rarely resulted in punitive action against the person in charge, as envisaged by the Law on IOBCSK.<sup>134</sup>

Although the Law on IOBCSK stipulates that a civil servant has the right to initiate an execution procedure before the municipal court to enforce a non-executed decision<sup>135</sup>, this provision is not implemented uniformly by municipal courts. Sample decisions from the Municipal Court of Prishtinë/Priština have shown that different judges have so far applied the Law on IOBCSK differently, purportedly due to a conflict between the Law on IOBCSK and the Law on Executive Procedure.<sup>136</sup> Some judges treat the decisions of the Board as execution titles; others consider them to be only partially executable since, according to an interpretation based on the Law on Execution Procedure, a decision of the Board is an “administrative decision”<sup>137</sup> and as such is only executable when it entails a “monetary obligation”.<sup>138</sup> Consequently, some civil servants who brought their non-executed Board decisions forward to the municipal court were reinstated while others were not.<sup>139</sup>

In February 2012, the Supreme Court issued an opinion reaffirming the latter position, stating that only the Board’s decisions in relation to financial compensation are executable, while decisions involving reinstatement of civil servants are not.<sup>140</sup> Complainants that did not feel that their appeals have been adequately resolved under these circumstances brought their complaints forward to the constitutional court in order to seek a final clarification. In a landmark decision, the constitutional court ruled in favour of the complainant stating that the Board’s decisions “are final and executable in administrative procedure”.<sup>141</sup>

The lack of mechanism to enforce the Board’s decisions, as well as inconsistent interpretations of the Law on IOBCSK by Kosovo courts, are the main challenges that prevent the Board from fulfilling its role in adjudicating appeals from civil servants. Based on the *lex specialis* legal doctrine, a law governing a specific subject matter overrides a law which only governs general matters. In this case, the Law on IOBCSK specifically defines the conditions of execution which should override other general

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<sup>134</sup> As at October 2012, the OSCE is aware of only one instance in which punitive action was taken against the person in charge due to the non-execution of an IOBCSK decision. In the Decision issued by the Municipal Court of Kaçanik/Kacanik (Decision nr. 47/10) ruling against the municipality of Kaçanik/Kacanik, the Director of the Department of Education was found guilty for not executing the Board’s decision. He received a conditional prison sentence of three months which would be executed if the accused commit another violation in the period of one year, which includes not executing the Board’s decision. This court judgement was issued on 24 June, 2011 based on the Board’s decision issued more than 2 years earlier on 21 April 2009.

<sup>135</sup> Law on Independent Oversight Board for Civil Service of Kosovo, Article 15(4).

<sup>136</sup> Law No. 03/L-008 on Executive Procedure, 2 June 2008.

<sup>137</sup> Ibid. Article 13.

<sup>138</sup> Ibid. Article 24(1)(b).

<sup>139</sup> Decision E.nr.1070/2011, dated 20 December 2011, issued by the Municipal court of Prishtinë/Priština regarding Board decision Nr. 02/92/11 stated that the Board’s decision is an executable title and ordered the employing authority to reinstate the complainant. On the other hand, decision E.nr. 523/2011 dated 7 July, 2011, issued by the Municipal court of Prishtinë/Priština has ruled against the reinstatement of the complainant stating that the Board’s decision to reinstate civil servant is not executable.

<sup>140</sup> Supreme Court opinion Agj.nr.136/12 issued on 20 February 2012.

<sup>141</sup> Constitutional court judgements in the following cases: No. KI 129/11 (dated 17 July 2012), KI155/11 (dated 20 July 2012), KI 04/12 (dated 20 July 2012), KI 47/12 (dated 16 July 2012), KI 50/12 (dated 16 July 2012).

laws such as that of the Law on Executive Procedure. Although the recent constitutional court's decision is expected to increase the number of IOBCSK's decisions that are effectively executed, the provision in the Law on IOBCSK should be better defined in order to reinforce the executable nature of the Law on IOBCSK to allow for the prompt resolution of labour disputes in the civil service.

### **3.3 Monitoring the Appointment of senior civil servants**

One of the key functions of the Board is to ensure that hiring of civil servants at the management level is carried out in accordance with existing rules and procedures.<sup>142</sup> Overall, data collected by the OSCE shows that the Board has been granted full rights to monitor and observe civil service recruitment procedures.

In 2011, the Board monitored all 43 recruitment procedures for the hiring of senior civil servants<sup>143</sup>; in eight of those recruitments, at least one violation was observed and resulted in the recommendation for remedial actions.<sup>144</sup> While most of those recommendations were adopted, two cases of non-compliance were reported to the Assembly and the Prime Minister as prescribed by the Law on IOBCSK.<sup>145</sup> However, no further implementation mechanism or punitive actions are required by the Law on IOBCSK to ensure the implementation of these recommendations.

Although the majority of the Board's recommendations in the appointment process have been adopted, the lack of punitive measures on non-execution of the Board's recommendations is creating a negative institutional legacy, a trend of getting away without consequences despite failing to implement recommendations from independent institutions and therefore paves the way for future non-execution of Board's recommendations.

### **3.4 Supervising the Implementation of Civil Service Rules and Principles**

Since the adoption of the Law on IOBCSK, the Board has conducted 203 visits<sup>146</sup> to central and local levels institutions to supervise the implementation of the newly adopted civil service legal framework. During each of these visits, an average of three civil servants have been interviewed.<sup>147</sup> The Board's main findings from the visits and recommendations are summarized in its annual report submitted to the Assembly. Nevertheless, there is no further implementation mechanism specified in the Law on IOBCSK in case of non-implementation of these recommendations.

According to data collected, the Board did not encounter difficulties in accessing the workplace or the personnel files of civil servants to determine if the relevant rules for civil servants were complied with in the cases at hand. However, the lack of an

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<sup>142</sup> Law on Independent Oversight Board for Civil Service of Kosovo, Article 10(1.2).

<sup>143</sup> Information provided by a member of the Independent Oversight Board for Civil Service, Prishtinë/Priština, email correspondence on 4 May 2012.

<sup>144</sup> Ibid.

<sup>145</sup> Law on Independent Oversight Board for Civil Service of Kosovo, Article 16.

<sup>146</sup> *Supra* note 143.

<sup>147</sup> *Supra* note 143.

implementation mechanism continues to hamper its ability to fully carry out its mandate as regulated by the Law on IOBCSK.

#### 4. CONCLUSIONS

The issuance of secondary legislation and the establishment of implementing bodies as foreseen by the Civil Service Law are necessary to promote good governance, the rule of law and human rights, as well as the required levels of community and gender representation in the civil service.

Although many of the issues have already been regulated by secondary legislation, further regulations are required in order to fully implement the Civil Service Law. Areas yet to be defined by secondary legislation include: the working hours and compensation for civil servants of the Assembly; procedures for the implementation of special capacity-building programmes; career advancement; and specification of the core positions that cannot be filled by foreigners.

With regard to the establishment of bodies responsible for implementing the law, at the central level, the assessed ministries have reported they fulfilled their obligations under the Civil Service Law. At the local level, most municipalities have also reported meeting their obligation to establish the required implementation bodies.

All assessed ministries and the majority of assessed municipalities have reported establishing personnel units to manage their civil service administrations. There is a sense among those municipalities that have yet to establish these units that the units would overburden their administrations. The Civil Service Law, however, clearly states that every institution that employs civil servants must have a personnel unit, which does not leave any discretion for the institutions to decide whether or not the unit is necessary.

Furthermore, all assessed ministries and most municipalities have reported establishment of other implementation bodies foreseen by the Civil Service Law – such as the ad hoc committee for admission procedures, the disputes and grievances appeal committees, and the disciplinary commissions. However, in many municipalities, these bodies did not proportionately represent communities residing in the municipality, even though secondary legislation explicitly provides that the municipality can seek representatives from other civil service institutions in the event of a lack of qualified candidates.<sup>148</sup> The most common reason cited by municipal officers for non-compliance with this legal requirement was the lack of qualified applicants from the communities in numerical minority, as well as that the percentage of those communities' members present in certain municipalities was too small to be statistically relevant.

With regard to representation of communities in the civil service<sup>149</sup>, at the central level representation of non-Albanian communities was two per cent short of the required ten per cent threshold. Moreover, non-Albanian civil servants were

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<sup>148</sup> Regulation No. 05/2011 on Procedures for Resolving Disputes and Complaints, Article 5(4).

<sup>149</sup> For a more detailed assessment please refer to the OSCE Report, *Representation of Communities in the Civil Service*, *supra* note 91.



concentrated in ministries that were specifically mandated to address communities' issues (e.g. the MCR), but were disproportionately under-represented in ministries dealing with wider social issues such as economics or transportation. Encouragingly, at the municipal level almost two thirds of assessed municipalities were in compliance with their obligations to ensure that the number of civil servants from communities in numerical minority was proportional to their representation in the municipality. Although Kosovo Turks and Gorani were generally under-represented, Kosovo Albanians, Kosovo Bosniaks and Kosovo Serbs were more often over-represented. Of particular concern, however, was the disproportionate and widespread under-representation of Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities at all levels of the civil service.

With regard to gender representation, statistics provided by the MPA indicated that both central and local level institutions were almost in compliance with their legal obligation of ensuring that women represent at least 40 per cent of civil service employees, with 36 per cent in central level institutions and 41 per cent in municipal institutions.

Conversion of civil servants' contracts into open-ended letters of appointment is still an ongoing process in a significant number of institutions. At the central level, in four ministries, the process of conversion of contracts is not yet completed. At the local level, the conversion of civil service contracts into open-ended letters of appointment has reportedly been accomplished in 62 per cent of assessed municipalities, although not often within the required timeframe. The conversion of contracts is being done according to the Civil Service Law, which seems to provide a sufficient basis for the replacement of civil service contracts with open-ended letters of appointment. However, the absence of a regulation on job classification which clarifies the process, which has since been approved in March 2012, had delayed the process of contract conversion in a number of municipalities. As the new legislation established the rule of permanent civil service contracts, delays in the conversion of civil servants' contracts into open-ended appointment letters might result in the extension of civil service contracts that lack a valid legal basis (see *supra* note 2.4).

The independent body responsible for adjudicating civil servants' complaints under the Civil Service Law is facing substantial challenges. The lack of a Law on Salaries for Senior Officials has hindered the functioning of the Board. The lack of a sanctioning mechanism for non-compliance of the Board's decision means that employing authorities have little incentive to execute the Board's decisions. The ambiguities presented in the current Law on IOBCSK vis-à-vis the Law on Executive Procedure leads to different courts applying the Civil Service Law and Law on IOBCSK differently. This combined with the long court procedure and lack of financial means of public institutions to subsequently reinstate or compensate wrongfully dismissed civil servants, prevents complainants in receiving a satisfactory recourse in a timely manner. In most cases, remedial actions recommended by the Board during recruitment procedure for senior civil servants were adopted. The Board is also able to access personnel information of civil servants at their workplace. However, in both cases, there is no sanctioning mechanism that would ensure that these recommendations are adopted by employing authorities. Unless these deficits are remedied by reinforcing the executable nature of IOBSCK decisions in the Law

on IOBCSK, the Board is stymied in its role to “supervise the legality of the management in the civil service”<sup>150</sup> and poses an obstacle to fully safeguard the rights of civil servants and thus hinders the well-functioning of Kosovo’s public administration.

## 5. RECOMMENDATIONS

To central level institutions:

- Issue the remaining secondary legislation required by the Civil Service Law, especially with regard to:
  - equal opportunities in admission to the civil service;
  - procedures for the implementation of special capacity-building programmes, and career advancement; and
  - specification of the core positions that cannot be filled in by foreigners.
- Offer civil servants who fulfil the conditions set by the Civil Service Law open-ended letters of appointment in central level institutions where this process is still not finalised, in accordance with Article 96 of the Civil Service Law.
- Where a particular community or gender is under-represented in the civil service at the central level, adopt corrective measures to enhance representation, in accordance with Article 11 of Regulation No. 04/2010.
- Accelerate the finalization of the law on salaries for senior officials to fill in the legal gap currently existing for the IOBCSK and other public institutions.
- Submit the government’s report on implementation of the Civil Service Law to the Assembly on an annual basis, as required by Article 6(1) of the Civil Service Law.

In particular, to the Assembly of Kosovo:

- Liaise with the MPA to ensure the prompt adoption of the law on salaries for senior officials in order to eliminate the current legal gap.
- Provide clarification to the Law on IOBCSK by better defining the mandated authority of the IOBCSK, and eliminate ambiguities that exist between the Law on IOBCSK and the Law on Executive Procedures.
- Oversee the implementation of the Law on IOBCSK and initiate necessary amendments based on the results of that oversight activity, e.g. providing for punitive measures or other implementation mechanisms deemed necessary to enforce the Board’s decisions.

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<sup>150</sup> Law on Civil Service, Article 9.

- Working hours and compensation for civil servants of the Assembly to be issued by Assembly Presidency.

To local level institutions:

- Establish personnel units in municipalities where those structures do not exist, in accordance with Article 7 of the Civil Service Law.
- In case of a vacancy, each municipality should establish the ad hoc committee for admission procedures.
- Establish the disputes and grievances appeal committees and the disciplinary commissions in municipalities where those bodies do not exist, in accordance with Articles 18, 70 and 82 of the Civil Service Law.
- Improve the composition of disciplinary commissions with regard to community diversity in those municipalities where this is not the case, in accordance with Article 9(4) of Regulation No. 04/2011.
- Improve the composition of disputes and grievances appeal committees with regard to gender and communities representation in those municipalities where this is not the case, in accordance with Article 82(3) of the Civil Service Law.
- When applicable, invite civil servants who belong to communities, working in other institutions to be part of the disputes and grievances committees, in accordance with Article 5 of Regulation No 05/2011.
- Where a particular community or gender is under-represented in the civil service at the municipal level, adopt corrective measures to enhance representation, in accordance with Article 11 of Regulation No. 04/2010.
- Offer those civil servants who fulfil the conditions set by the Civil Service Law open-ended letters of appointment in municipalities where this process is still not finalised.

Raise awareness among civil servants of their rights and responsibilities stipulated in the various provisions of the Civil Service Law and implementing regulations, emphasizing the importance of following the requirements and procedures specified in these laws.