Kosovo assessment report 2014

OECD

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PUBLIC ADMINISTRATION REFORM

ASSESSMENT

OF

KOSOVO*

APRIL 2014

2 Rue André Pascal
75775 Paris Cedex 16
France

mailto:sigmaweb@oecd.org
Tel: +33 (0) 1 45 24 82 00
Fax: +33 (0) 1 45 24 13 05

www.sigmaweb.org

ASSESSMENT OVERVIEW AND RATIONALE

Kosovo is in the process of Stabilisation and Association Agreement (SAA) negotiations with the European Union (EU). To meet its obligations under the SAA and implement the necessary reforms, Kosovo requires a capable public administration. Public administration reform (PAR) is therefore among the medium-term reform priorities set in the European Commission's (EC) Feasibility Study for the SAA. Reform priorities are discussed and agreed between the EU and the Government of Kosovo through the Special Group on PAR, which was set up in June 2013.

Following discussions with the EC, SIGMA gave priority in its 2014 assessment of Kosovo to areas of PAR and, in particular, those areas where actual reform was being implemented or planned. This report covers the period from April 2013 to March 2014.

Each assessment area is presented in a separate thematic report which includes a brief description of the state of play and recent developments. This overall assessment is followed by a more detailed analysis with conclusions.

SIGMA's 2014 assessment of Kosovo focused on:

- LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT – This assessment concentrated on the progress made in implementing key reforms in the areas of General Administrative Law and Organisation of Public Administration, and Public Service and Human Resources Management. Key reform challenges for the Government are the implementation of civil service reform, finalisation of the reorganisation of the public administration, job classification reform, and strengthening of independent oversight bodies.

SIGMA, working in co-ordination with the EC's Directorate-General for Enlargement (DG ELARG), has developed a draft set of principles of public administration, designed to define key requirements for good public governance and to serve as a basis for measuring progress over the years. The 2014 assessments were used to pilot these draft principles concerning the above topic.

The principles of public administration are due to be released in November 2014.

LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT

KOSOVO
APRIL 2014

1. State of Play and Main Developments since the Last Assessment

1.1. State of Play

The legislative framework is in place but is incomplete. Civil Service primary legislation is in accordance with EU principles, but shortcomings emerge particularly in regulating administrative procedures, public liability, internal administrative appeal procedures and administrative court procedure; and the accountability of public bodies. Central policy design, co-ordination and monitoring are weak, leading to varying implementation practices of legal requirements, complex and fragmented organisation of public administration and a highly decentralised human resource management system. These are the main obstacles to successful implementation of the ambitious reforms envisaged.

Oversight institutions are being strengthened, yet the Government's responses to the Ombudsperson's recommendations remain low. The Judiciary does not have sufficient capacity to handle administrative cases. State administrative structures are in place, but the efficiency of the administrative apparatus is limited with a wide range of small units in ministries and numerous autonomous bodies without clear accountability arrangements.

The Civil Service is a single, unitary system, including local government, but its horizontal scope does not include some key state institutions. The implementation of the job classification system and the salary system set out in the Civil Service Law (CSL), have been postponed until the classification process is finalised.

1.2. Main Developments since the Last Assessment[1]

To support the implementation of court reforms, which came into force in January 2013, the first three special judges were nominated to resolve administrative law disputes on the first level in the Administrative Law Department of the Pristina Basic Court.

To improve access to information, the Law on Office Work Administration has been adopted by the Parliament.[2] The Law enacts among other things, the obligation to register acts and documents that are important to safeguard access to information.

The Law on Information Society Government Bodies was adopted by the Parliament.[3] It consolidates responsibilities in the field of information and communication technology. For the implementation of the Law, the Agency for Information Society was created and an online electronic system was established to facilitate and simplify application procedures.

To simplify administrative procedures, the Law on Permits and Licence System was adopted by the Parliament.[4] It provides a basis for the establishment of the registry for permits and licences issued from central institutions and aims to reduce bureaucratic "red tape".

The Government finished reorganisation of ministries by the adoption of regulations on the internal organisation of all ministries.

All ministries have completed job classification proposals, but this process is moving more slowly in agencies and independent bodies[5]. All municipalities have sent their proposals to the Ministry of Public Administration (MPA).

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[1] April 2013.
[2] Law No. 04/L-184, adopted on 25 April 2013.
[3] Law No. 04/L-145, adopted on 18 April 2013.
[4] Law No. 04/L-202, adopted in 21 November 2013.
[5] In the meeting held in December 2013, the PAR Special Group established the date of 31 May 2014 as the new deadline for the finalisation of the job classification process, but it has since been postponed again, to June 2014.

GENERAL ADMINISTRATIVE LAW AND ORGANISATION OF PUBLIC ADMINISTRATION

2. Analysis

Policy and Strategy

1: Good administration is acknowledged as the policy objective underpinning the delivery of public services and the conduct of administrative supervisory proceedings.

The policy for good administration is identified as a Government priority and outlined in the Government Program, Government Annual Work Plans, Annual Legislative Program, Medium-Term Policy Priorities[6] and in the Public Administration Reform (PAR) Strategy 2010-2013. Policy documents establish citizen orientation, increasing the quality of the public administration's [7] functioning, and the elimination of administrative obstacles as main policy aims of the Government. Special emphasis is on improvement of the business environment, e.g. elimination of excessive licence and permit requirements[8].

The Legislative Program 2013 (annexed to the Annual Work Plan of Government 2013) included several reform initiatives for underpinning good administration, such as draft laws on the system of licences and permits, inspectorates, administrative inspection, the protection of personal data, and administrative procedures. However, several of these initiatives re-appear in the Legislative Program 2014, which suggests that the Government is lagging behind its set reform agenda.

The PAR Strategy 2010-2013 (and the related Action Plan for 2012-2014) address good administration issues, but do not address the development of public services in a systematic way.

Increasing transparency in and citizen access to the decision making process, and zero tolerance against corruption are also identified as aims of the Government[9]. Anti-corruption policy is outlined in the Anti-Corruption Strategy 2013-2017 and the Anti-Corruption Action Plan 2013-2017, with procurement as one of the priority areas.

The Government's judiciary policy highlights strengthening the independence of the Judiciary, increasing its effectiveness, reducing backlog and improving access to justice as its main aims. There is a policy inconsistency in that the Declaration of Medium-Term Policy Priorities 2014-2016 concentrates on criminal justice and does not mention resolving administrative disputes[10]. None of the policy documents mention the institution of the Ombudsperson. Several draft laws relating to issues of courts, such as the Law on Justice Academy, amendments and supplements to the Law on Courts, the Law on Ombudsperson and the Law on Kosovo Judicial Council, were originally planned for adoption in 2013 but have been deferred to 2014[11]. Kosovo Judicial Council has elaborated several policy instruments and is planning to address the issue of the high backlog of cases[12].

Good administration, openness, transparency and access to just and fair court procedures are acknowledged generally in the planning documents as policy objectives of the Government. The general policy on public services is outlined in the Government Program, but it is not translated into practical reform efforts in the PAR Strategy and the Legislative Program.

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[6] *Declaration of Medium-Term Policy Priorities 2014-2016.*

[7] The *Strategy for Electronic Governance 2009-2015* and respective *Action Plan 2009-2015* has been adopted.

[8] *The program of the Government of the Republic of Kosovo 2011-2014; Action Plan of the Economic Vision of Kosovo 2011-2014.*

[9] *The program of the Government of the Republic of Kosovo 2011-2014.*

[10] *Declaration of Medium-Term Policy Priorities 2014-2016.*

[11] *Legislative Program 2013 and Legislative Program 2014.*

[12] *National Backlog Reduction Strategy*, August 2013.

Legal Framework

2: The requirements for good administration are enacted in legislation on administrative procedure.

There has been a Law on Administrative Procedure (LAP) in place since 2005. The Laws on State Administration and Civil Service stress the importance of citizen orientation. Ministers are required to ensure their ministry provides reliable, transparent, accountable and non-discriminatory services[13].

There is no consistency in referencing LAP in other legislation. Some laws refer to it (e.g. Law on Access to Public Documents, Law on Tax Administration and Procedures). Others do not, instead repeating issues that are regulated in LAP or containing unnecessary derogations from it (e.g. Laws on Environmental Protection, Social and Family Services). There have been long delays in modernising administrative procedures, which suggests that LAP and the implementation of important European principles of good administration remain of only secondary importance. The main shortcomings of LAP are:

- The scope of the Law is too narrow as it concentrates on administrative acts, leaving other forms of administrative activities unregulated or insufficiently regulated;

- The Law remains fragmented. Essential issues are formulated wrongly, e.g. administrative discretion, or are completely missing, e.g. the requirement for prompt and timely administrative action;

- Simplification tools are missing or poorly regulated, for example the use of Information Technology tools;

- Principles to guarantee participation of persons and citizen orientation are underdeveloped, e.g. access to files, active assistance of parties. There are some general rules on taking a decision that may affect an indeterminate or large number of people[14], but the regulation remains fragmented;

- Principles of good legal drafting are not applied; for example, text is not logically structured nor formulated in a simple and clear manner.

The LAP is in place, but it is neither coherent nor complete, and its shortcomings limit its effectiveness in promoting the European principles of good administration[15].

3: The right of the individual to access public information is enacted in legislation.

All legal acts are published in the Official Gazette in three languages: Albanian, Serbian and English.

The Constitution gives everyone the right of access to public documents and there is the General Law on Access to Public Documents (LAPD)[16] The Law on the State Administration stresses the importance of openness and transparency. Regulations provide that the work of the Government shall be, as a rule, public[17].

The legislative framework defines access to public information[18]. Public information is broadly defined and requests for information are handled promptly with minimal formalities. Information is provided in the form requested by the applicant, and access to information is free unless prescribed by law. In addition, all government information is considered as public unless there are compelling public or private interest reasons to classify it. Such reasons are in line with good European standards and ensure a fair balance between interest in disclosure and in keeping information confidential. Where documents include classified material, public authorities are required to release the non-classified portion of the

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[13] Article 9 (1.4) of the Regulation No. 02/2011 on the area of administrative responsibility of the Office of the Prime Minister and Ministries.

[14] E.g. Article 35, (3),(4), Article 47, (1).

[15] SIGMA Paper No. 23 (1998), "Preparing Public Administrations for the European Administrative Space".

[16] Article 41 of the Constitution.

[17] Regulation on the Rules of Procedure no 09/2011.

[18] Regulation No. 02/2012/MF for Fees on Access to Public Documents, the LAPD.

document, unless a partial releasing would be considered misleading. However, there is a need for guidelines regarding the interpretation of grounds for non-disclosure as they contain undefined legal norms that give very broad discretion. The law is also not completely clear as to who decides on non-disclosure[19].

There are also other shortcomings in the legislation. In 2013 the Law on Office Work Administration (LOWA) was adopted, including the requirement to register acts and documents (defined in LOWA). However, there is no requirement for public organisations to be pro-active in disseminating information and not all public official documents are required to be registered in the document registry or to make the document registry available online. Definitions of public and official documents differ in LAPD and LOWA. Most importantly, there is no centralised supervisory authority that can make prescriptions and impose sanctions for failure to disclose.

Rules for the preservation and destruction of documents are enacted in LOWA (except deadlines for the preservation of documents). There is no law regulating the establishment and administration of databases.

The LAPD establishes the right of access to public information. The system for submitting requests for access to public documents is functioning and there are regulations which help to guarantee the right in practice. However, there are shortcomings, especially the absence of a centralised supervisory body with the power to make prescriptions and impose sanctions at the failure of disclosing information.

4: The legislation ensures: (a) enforcement of administrative acts, and (b) everybody's right to redress in case of violation of his/her rights by public authorities.

The general procedure for the enforcement of administrative acts is enacted in LAP[20]. Principles applicable to general administrative procedure are given effect in enforcement procedure. Individuals subject to the enforcement of administrative acts are advised of timelines, procedures and reasons for enforcement, and are given adequate time (except in prescribed cases of urgency affecting public interest) to respond.

However, there are no regulations covering what coercive measures and means a public authority can use to implement administrative acts; the costs of implementation of administrative acts; or penalty payments for failure to comply with legislative requirements.

Several norms of the Constitution stipulate the right to compensation. There are legal provisions covering the individual's right to compensation in respect of damage caused by illegal and irregular procedures by the State, and the liability of civil servants for incompetence, negligence or unlawful act. Although mentioned in the Law on Administrative Conflict (LAC), there is no general law regulating the arrangements for requesting, calculating or adjudicating compensation claims. Case-law of the Court of Justice also demands the possibility of compensation where administrative, public, legislative[21] and judicial authorities[22] have acted outside the law.

Regulation on the enforcement of administrative acts is easily accessible, but has gaps. There is no general regulation on public liability that is coherent, complete and logically structured.

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[19] According to Article 84.2(j) of LAP an administrative act has to be signed by the manager of the administrative body.

[20] The enforcement of a decision in administrative procedure, by which is foreseen an obligation in money, is regulated in the Law on Enforcement Procedure. In addition, the draft Law on Inspections provides for follow-up inspections.

[21] E.g. the EU directive giving rights to private persons has not been harmonised in time (e.g. cases C-6 and 9/90) Francovich [1991] ECR I-5375).

[22] E.g. see case-law of ECHR on reasonable time limit or when the court of a Member State has not asked (obligatory) for a preliminary ruling (e.g. Case C-244/01 Köbler [2003] ECR I-10239; C-173/03 Traghetti del Mediterraneo SpA [2006] ECR I-05177).

5: Mechanisms to oversee, check and control public administration are enacted in legislation.

The Judiciary, Ombudsperson, Auditor-General and Independent Oversight Board (IOB) have a constitutional status. Their sphere of competence, methods of operation and matters related to organisational, personal, financial and managerial independence are regulated in the Law on Courts, Law on Ombudsperson, Law on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo and the Law on Independent Oversight Board for Civil Service of Kosovo.

Control exercised by Parliament over the Executive is based on rules enacted in the Constitution and Rules of Procedure, such as the instruments of interpellations, verbal questions and debates, monitoring implementation of law by the Government or Ministry, and preparing a relevant report.

Rules on horizontal supervisory control over the legality and purposefulness of civil servants in subordinate agencies are enacted in the Constitution, Law on the State Administration of the Republic of Kosovo, Law on Civil Service, Law on Independent Oversight Board for Civil Service of Kosovo and the Law on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo.

Procedural rules on internal administrative remedy and the challenge procedure and administrative court procedure are established in law with the Constitution guaranteeing right to fair and impartial trial and legal remedies.

The internal administrative appeal procedure is regulated in the LAP[23]. Time limits to submit a request for review or an appeal are reasonable although some shortcomings remain[24].

The Law on Administrative Conflicts (LAC) regulates administrative court procedures, which are based on inquisitorial principles, and allows challenge to higher courts. The time limits to submit a challenge are reasonable. However, the law foresees several unrealistically quick deadlines for the courts which are difficult to meet. Despite the fact that there might be objective reasons for breaching time limits, failure by the judiciary to comply with the law seriously undermines the image of the courts[25]. Furthermore, the Law lacks logical structure and format, has inconsistencies in the definition of 'administrative act', and contains procedural choices that are questionable from a human rights perspective, e.g. the obligation for a private party to bear their own costs despite the outcome of the procedure.

Laws regulating fundamental principles of oversight over public administration are in place, though the regulations on internal administrative appeal procedure and administrative court procedure contain shortcomings that undermine the protection of fundamental rights and freedoms.

Institutional set-up

6: Institutional set-up and resources of public administration guarantee observance of the principle of good administration.

The Ministry of Public Administration has responsibility for identifying the priorities and co-ordinating the process of public administration reform, as well as for developing standards for information technology services.

There are no rules promoting the delegation of decision making competence, with some regulations explicitly requiring sign off by the head of the administrative body. There is also no requirement in LAP for public authorities to identify named officials with responsibility for decisions. The Law on the State

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[23] Articles 126-136.

[24] Good Administration through a Better System of Administrative Procedures. A SIGMA assessment of the current Law on Administrative Procedures and proposals for enhancing the administrative practice in Kosovo* by a better regulatory framework for the relationship between citizens and the public administration, October 2012, pp. 5, 37, 45. http://www.sigmaweb.orghttp://www.sigmaweb.org/publications/Comments_LawAdminProceduresKosovo_JN_Oct2012_Eng%20%20.pdf

[25] E.g. Article 47 for issuing the adjudication/decision.

Administration stresses in several articles the importance of co-operation between administrative bodies[26], but the supporting regulations (Article 58(2)) have yet to be adopted.

There is insufficient data available to show whether administrative authorities make the internal institutional and procedural arrangements necessary to ensure enforcement of the administrative acts issued by them. There is also no data on public liability to indicate whether sufficient funds are allocated for compensation or if these payments are made promptly.

The LAPD requires public authorities to appoint a special civil servant or unit to implement the legislation on public information. The Office of the Prime Minister reports annually on exercising the right of access to public documents.[27]

However, there is no central independent administrative authority to supervise and monitor how the rules on access to information work in practice and/or act as the guardian of openness and transparency with the necessary powers and resources. These tasks are divided between different institutions. This makes it hard to estimate the adequacy of necessary human and financial resources and explains why no information is available on the number of prescriptions made or court statistics on imposing penalties.

The 2013 Law on Information Society Government Bodies provides for supervision of processes and mechanisms of electronic governance by the Agency for Information Society (under the Ministry of Public Administration). Supervision over the administration of databases to ensure that they are properly managed and controlled is not yet established.

The institutional set-up and resources to guarantee observance of the principle of good administrative procedures are fragmented. The absence of an effective centralised supervisory and co-ordinating body for public services and for supervision over public information is a shortcoming that undermines implementation of the principle of good administration.

7: Oversight mechanisms constitute coherent and comprehensive system of control comprising external supervision as well as internal supervision with the aim of ensuring legality and accountability of public administration and protection of fundamental rights.

The Law on the State Administration outlaws duplication and overlap of competences. In 2012 OSCE observed some weaknesses in the Assembly`s oversight of the Executive, particularly with regard to following up on the Government's implementation of their recommendations expressed in oversight reports, interpellations and debates[28].

Since January 2013, administrative law disputes have been decided by three specialist judges in the Administrative Law Department of Pristina Basic Court[29]. This administrative department also has a Fiscal Division. There is also an administrative department in both the Appeal and Supreme Courts. The Kosovo Judicial Council (KJC) decides the number of judges for each court on the basis of workload and budget.

The backlog is continuing to rise despite the National Backlog Reduction Strategy 2011-2012. KJC set out the new National Backlog Reduction Strategy in August 2013 to "guide the development of policies, internal regulations, procedures, standards, and implementation initiatives, interventions, and activities".

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[26] For example, Article 18 (1.4), Article 51(2), Article 55.
[27] *http://www.kryeministri-ks.net/repository/*
[28] *Monitoring Report of the Performance of the Assembly of Kosovo,* OSCE 2012.
[29] Until then administrative disputes were resolved by the Supreme Court.

Figure 1. Backlog of cases in appeal courts and basic courts in 2013
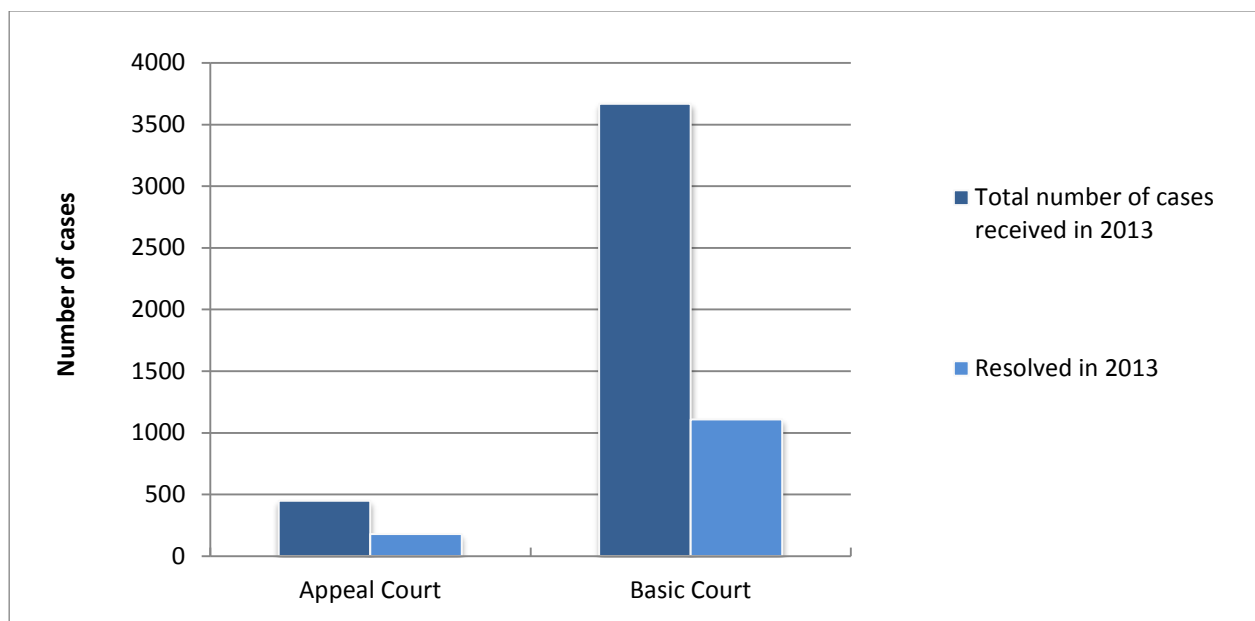
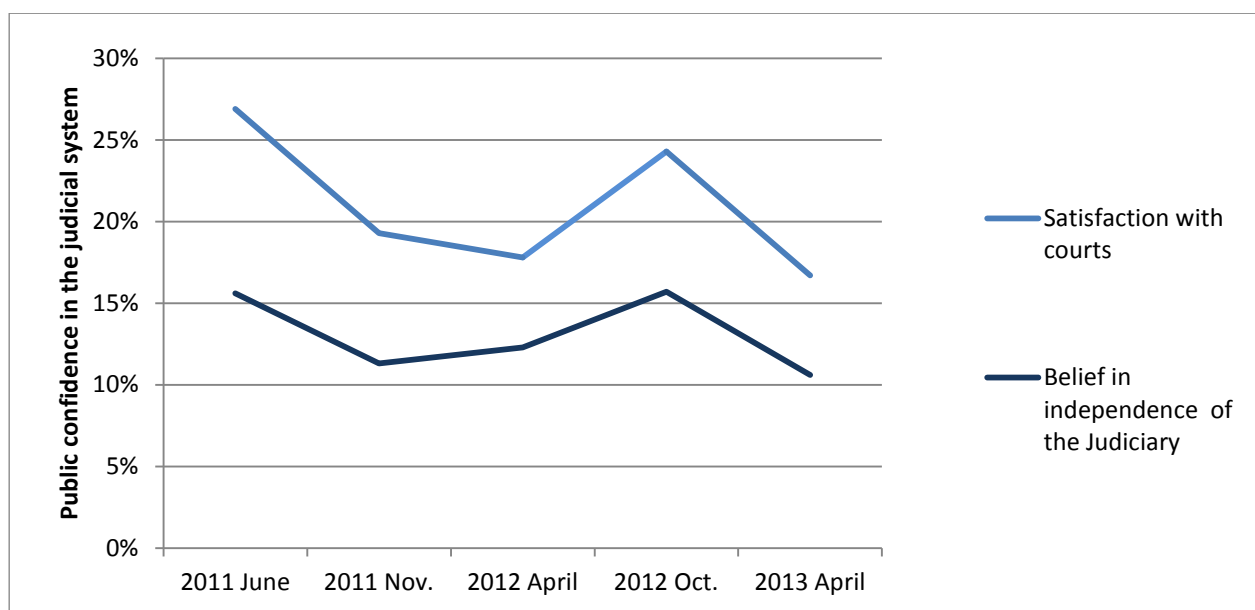The continuing backlog in resolving administrative disputes is damaging public confidence. Both satisfaction with courts and belief in the independence of the Judiciary is at a very low level. Belief in the independence of Judiciary has further deteriorated in the last few years.

Figure 2. Public confidence in the judicial system

Rules regulating status and the functioning of the courts and judges (resolving administrative disputes), and organisational and financial arrangements generally meet key standards enacted in international legal acts. International organisations, however, have highlighted shortcomings relating to the probationary period of new judges and to the composition of the KJC[30] that may have a negative effect on the independence of the court system. In addition, the annual budget proposal for the KJC and the courts (except the Constitutional Court) is subject to Government modification before approval.

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[30] *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, OSCE 2012.

However, if changes are made, the Council's originally recommended budget goes to the Assembly which should minimise the risk of negative influence of the Executive branch over the Judiciary. More positively, salaries of judges are comparable with other State branches (i.e. level of salary is related to the salary of ministers), and cannot be reduced during the term of office.

Rules regulating the status and functioning of the Ombudsperson, and his or her organisational and financial arrangements, meet key standards enacted in international legal acts. The Ombudsperson institution is a member of the International Ombudsman Institute. The Ombudsperson Institution of Kosovo (OIK), the only National Human Rights Institution (NHRI) in Kosovo, is not accredited by the International Co-ordinating Committee (ICC) of NHRIs. Its membership request is still pending as Kosovo is not a member of the United Nations. The salary of the Ombudsperson is equal with salaries of Deputies. The number of complaints to the Ombudsperson has increased by 23% in 2013, which illustrates increasing confidence in the institution.

Figure 3. Complaints to the ombudsperson in 2012 and 2013
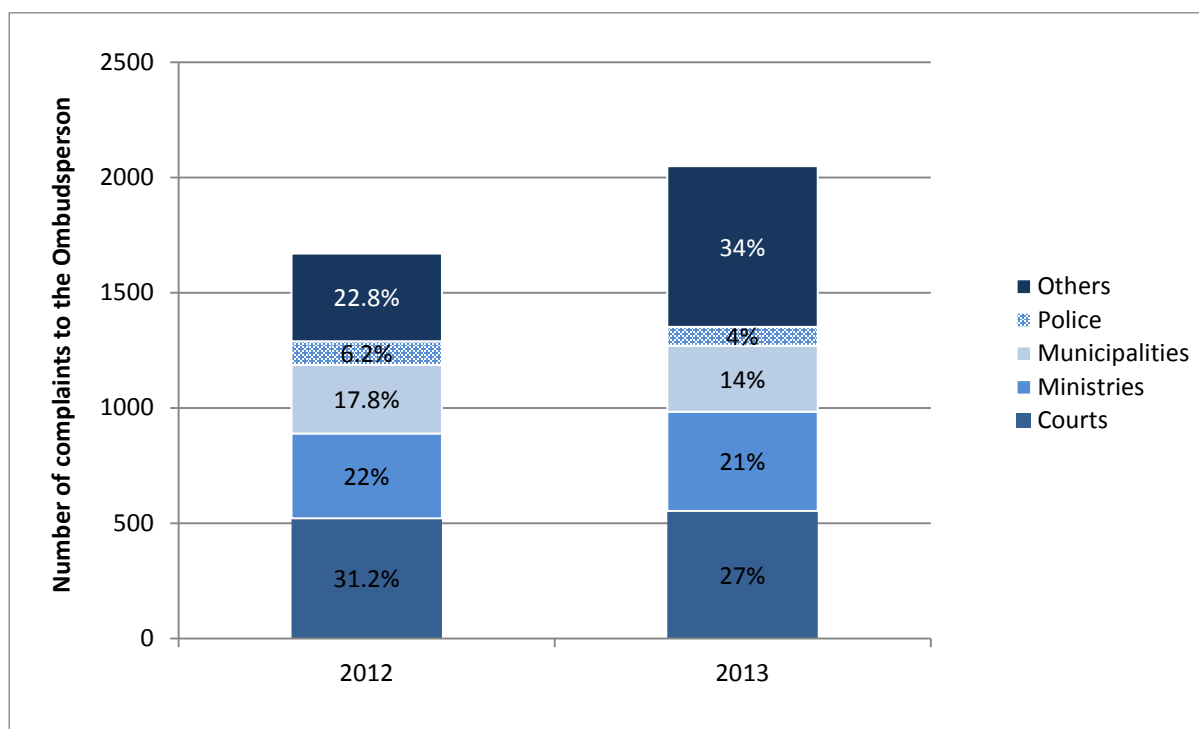
Source: Ombudsperson Office

There remain shortcomings in implementation of recommendations by the Ombudsperson and there is no survey data available on reliability of responses. In 2013, the Government responded to 12 out of 50 Ombudsperson recommendations[31].

There are rules in place on horizontal supervisory control but there is insufficient information to make clear conclusions whether this control takes place in practice in all areas. There are a range of inspectorates in Kosovo with responsibility to supervise the activities of another authority that is in a co-ordination relationship. Their legal status differs. Some are inspectorates, e.g. the Labour Inspectorate and Police Inspectorate. Some are agencies, e.g. the Anti-Corruption Agency and National Agency for Protection of Personal Data. Also the level of independence, financing model, sufficiency of budget etc. is different[32].

Key internal and external oversight mechanisms are in place to ensure legality and accountability of public administration and protection of fundamental rights. However, the Ombudsman function is relatively new and insufficiently embedded in the administrative culture to be fully effective.

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[31] Ombudsperson Office.
[32] For example, *The State of Independent Institutions in Kosovo*, OSCE 2012.

Practices

8: The principle of good administration is put into practice by: (a) training of civil servants, (b) monitoring of practices, (c) use of information technology, and (d) active communication

The Division for Monitoring Legislation Enforcement, Legal Support and Inter-Institutional Co-operation of the Ministry of Public Administration has responsibility for identifying problems with enforcement of normative acts. There is, however, no clear monitoring system of the implementation of legislation on administrative procedure, although Administrative Instructions on Standards for the Drafting of Normative Acts and on Setting out the Form, Content and Procedures for Costing of New Policy Initiatives, as well as a draft Law on Normative Acts adopted in 2013, contribute to improving the situation.

There is evidence of support for one-stop-shop solutions as well as more general use of information technology. For example, the 2013 Law on Information Society Government Bodies consolidates responsibilities in the field of ICT and establishes the Agency for Information Society. The 2013 Law on Permit and Licence System provides for the registry of permits and licences issued from central institutions. There is also a Government Portal which allows access to certain services. However, quality of public services delivery is uneven due to insufficient accuracy of the general policy in this field and a lack of guidance.

There are standards for the ethical conduct of civil servants and also a programme of systematic training for civil servants of all levels on the principle of good administration. The main training capacity in Kosovo is KIPA, which delivered relevant training in 2013 in areas such as public communication, administrative procedures, administrative justice, Law on Protection of Personal Data, ethics and anticorruption. There were 611 participants (from senior managers to administrative staff) who scored the training very positively (average mark, 4.6 out of 5).

Several public authorities have published leaflets to help the public understand their rights and obligations in administrative procedures, such as the Tax Administration, Customs Administration, Ministry of Labour and Social Welfare, and the Kosovo Judicial Council. The LAPD requires public authorities to make key information available. A visit to the Tax Administration office in Pristina confirmed that relevant forms and leaflets were available in the reception room. During SIGMA interviews several authorities expressed their readiness and willingness to engage in public awareness raising activities but referred to the lack of resources.

All public authorities are obliged to maintain official web-page(s) displaying contact information, information on public services offered by the authority and the legal acts on the basis of which the authority works[33] . This task falls to designated officials – normally the Communication Officer. There is no information about control checks to establish whether a web-page(s) is accurate, up-to-date, and written in simple and understandable language.

There is an integrated portal [34] that centralises basic information on public power and references to the web-pages of public authorities[35].

Despite the requirements and the use of ICT solutions, the number of requests for access to public documents produced by the OPM and the ministries has slowly increased.

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[33] LAPD, Administrative Instruction No. 03/2011 on the Web Page of Public Institutions.
[34] *www.rks-gov.net/en-us/pages/fillimi.aspx.*
[35] Legal basis: Administrative Instruction No. 02/2011 on the Government Portal of the Republic of Kosovo.

**Figure 4. Requests for access to public documents and responses
(Office of the Prime Minister and ministries)**
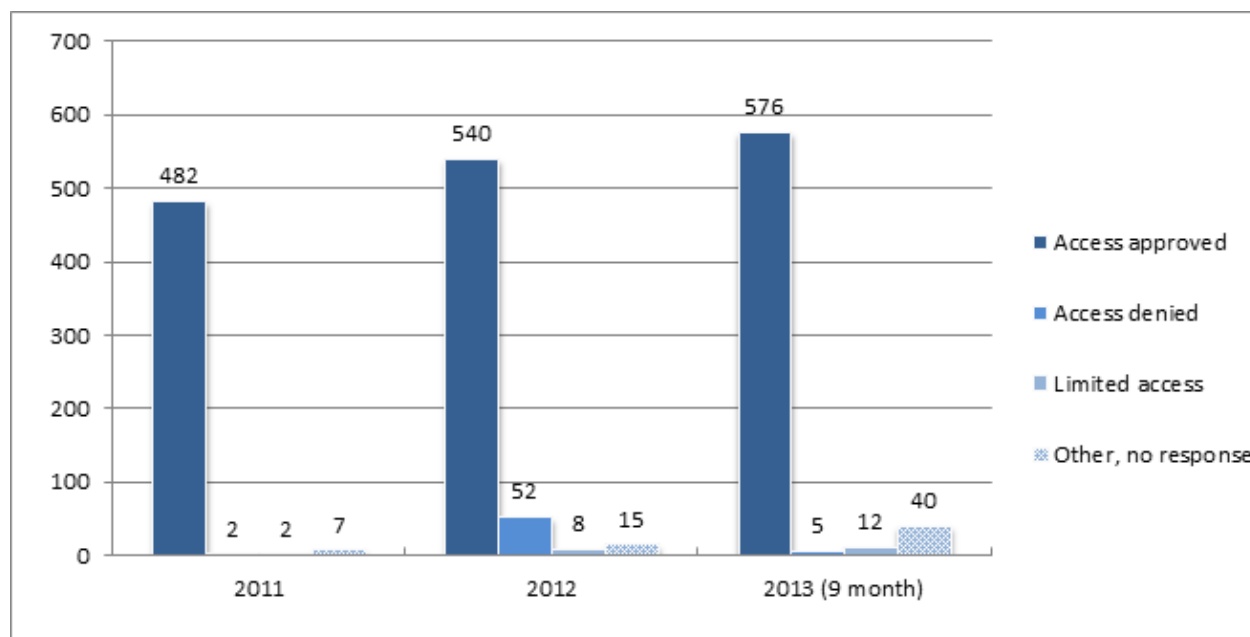
In the first nine months of 2013 there were more requests than in the whole of 2012. Most of the requests are solved positively.

There is no information on any standard arrangements to guarantee that reforms and changes in the law and practice of public authorities affecting the general public are accompanied by public awareness campaigns. These depend on responsible institutions, e.g. the KJC has approved the Implementation Plan for the new Law on Courts that also included information on an awareness campaign[36].

The basics – training, use of information technology, publication of information – are in place. Monitoring and improving pro-active communication to raise the awareness of general public is weak.

9: Working conditions of judges resolving administrative disputes support correct adjudication of cases within reasonable time.

Since January 2013 there have been three judges resolving administrative law disputes on the first level in the Administrative Law Department of Pristina Basic Court[37]. The KJC has not yet systematically analysed the workload of these judges (which includes substance and degree of difficulty of complaints, and average time-limits), although early indications are that the number of judges is insufficient as the number of incoming cases is larger than the number of resolved cases in 2013.

Judges resolving administrative disputes on the first level are supported by two people – one legal secretary and one clerk. Supporting staff are civil servants. The overall turnover rate of support staff in the courts was not high in 2013 – 1.37% (21 left the service). A lack of professional support is also marked as a weak point by the European Bank for Reconstruction and Development (EBRD).

Judges and their staff have access to the necessary IT tools, e-mail, internet[38] and literature[39] to be up to date with developments in legal matters. However, not all judges have enough (English) language skills to make use of the literature.

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[36] Kosovo Judicial Council. *Annual Report 2012*, pp. 21-22.
[37] Until then administrative disputes were resolved by the Supreme Court.
[38] In March 2012, the KJC approved the "Strategy for Information and Communication Technology (ICT)" for 2012–2017.

The Kosovo Judicial Institute (KJI) organises training for judges and support staff. In 2013 this covered legal matters as well as technical and other skills (e.g. legal writing and reasoning).

Figure 5. Kosovo Judicial Institute training volume in 2013

Training provided by the KJI in 2013	No. of trainings	No. of participants[40]
Continuous training	112	1 136
Advanced training	31	444
Training for administrative staff of courts	5	121
Basic training (for candidates for judges)	16	19

Source: Kosovo Judicial Institute

According to the EBRD analysis, the decisions of courts are at a low level of quality and not predictable, which is partly caused by the non-professionalism of judges[41]. According to interviews, training has been of adequate quality but insufficient. Resources allocated for training in 2014 are 55% higher than training spending in 2013. A system of feedback (evaluation) of the participants on the quality of the training is in place.

The working conditions of judges are appropriate and there is a system of training for judges and support staff, however, the available professional capacities in the system are insufficient.

The Policy Framework

10: There is a defined policy for the organisation of national public administration

The Constitution of Kosovo[42], the Law on State Administration (LSA), and other general regulations on public administration[43] provide the legal basis for the organisation of the public administration. The legislation defines five types of administrative bodies:

- Highest state administrative authorities: the Government as a whole, the Prime Minister, deputy prime ministers and ministers;

- Highest state administrative bodies: the Office of the Prime Minister and ministries;

- Central state administrative bodies (CSAB): the subordinate bodies of the state administration performing non-ministerial tasks or other administrative tasks;

- Local state administrative bodies (LSAB): municipal bodies of the state administration;

- Independent state administrative bodies (ISAB): legal entities established to perform activities of state administration requiring a high degree of independence.

Although the legal basis exists, some confusing terminology does not clearly distinguish between the various types of administrative bodies. In practice, CSAB and ISAB are sometimes created without regard to the functional criteria on which the appropriate type of organisation should be based. To remove inconsistencies in the LSA, a concept paper for its amendment was adopted in December 2012[44]. The

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[39] GIZ: "Statute books and a commentary on the law currently applicable in Kosovo are being compiled together with Kosovar experts. /.../ In the context of support for legal resources, the compilation of statute books on Kosovar administrative law has more or less been completed." *http://www.giz.de/en/worldwide/21117.html.*

[40] Continuous training, advanced training and training for administrative staff is organised at the KJI for judges, prosecutors and other professionals identified by the KJI; thus the number of trainings reflects the number of trainings within the program and not the number of trainings only for judges.

[41] *The EBRD Judicial Decision Assessment for Albania, Bulgaria, Bosnia and Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Romania, Serbia and Slovenia*, 2012, see pp. 11, 15, 16, 35 (concerns civil disputes).

[42] The constitution directly created five independent institutions: Ombudsperson, Auditor-General, Central Election Commission, Central Bank and Independent Media Commission.

[43] The Law on State Administration of the Republic of Kosovo (Law no. 03/L-189) – the LSA; Regulation no. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

[44] Concept document on the drafting of a Law on Independent Bodies of the State Administration, 2012.

main reason for the proposed amendments was to ensure better regulation of independent institutions. Several options were proposed in the paper, but there has been no legal regulation in this regard since then.

The structure for the organisation of the public administration is shown in Figure 6 below. The judiciary is not included. This assessment covers the institutions in the blue boxes only.

Figure 6. Structure for the organisation of public administration
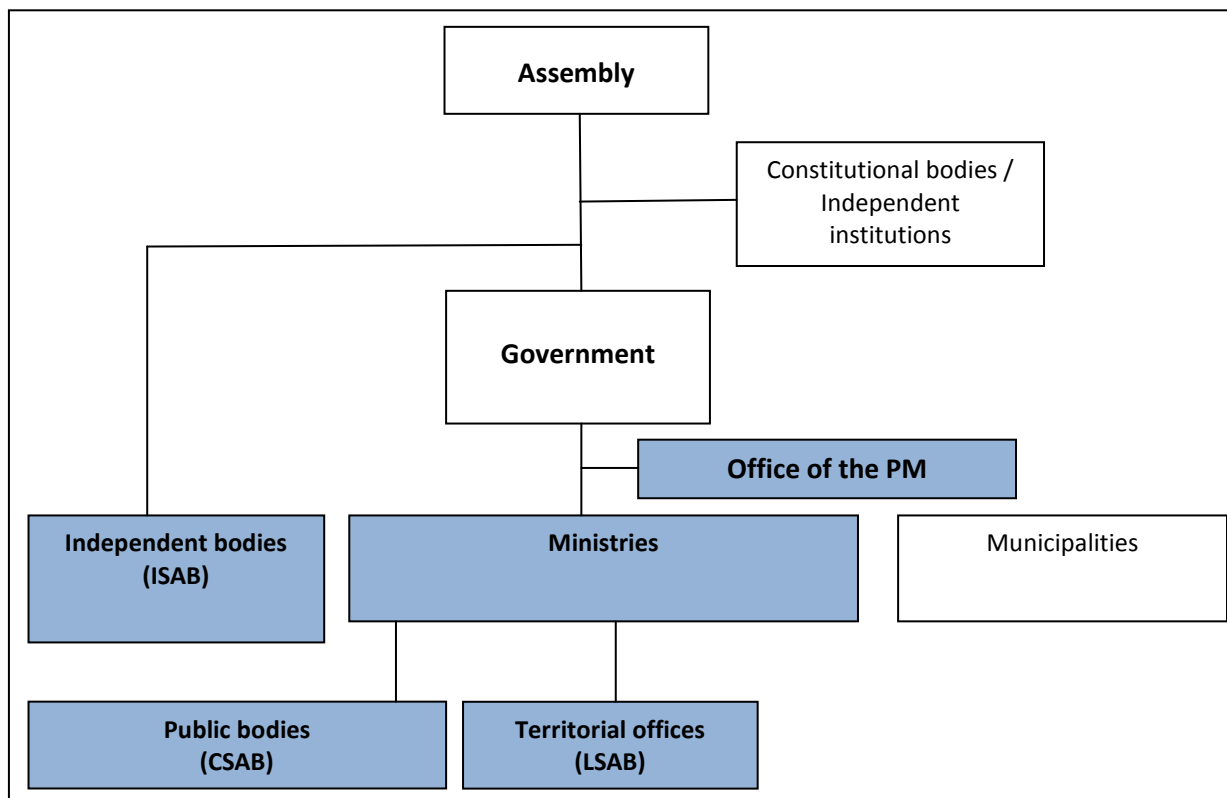
Sources: Budget of Kosovo 2013; OSCE (2012) The State of Independent Institutions in Kosovo; Lists of executive agencies and independent bodies received during the assessment mission (February 2014); Annual reports of the Kosovo Auditor General.

In comparison with some small EU countries, Kosovo has a fragmented system of ministries, comprising 19 ministries and one minister without portfolio[45]. Some of those ministries have very small dimensions, in terms of both resources and services delivered. This situation was noted in 2008 during a functional review of Kosovo's public administration[46]. Since that functional review, the number of ministries has increased by one ministry and one minister without portfolio.

There is, generally, a culture of self-managed institutions with weak horizontal policies. In addition, the international presence is still very strong in Kosovo, and has contributed to the non-systemic creation of different autonomous agencies and independent bodies. As a result, the state administration has grown on the basis of ad hoc criteria, resulting in a fragmented structure mainly composed of micro-institutions.

Despite the fact that the Government Programme 2011-2014 had proclaimed as priorities "reorganizing public administration in Kosovo according to international best practices" and "implementing recommendations of the Government's Functional Review...", no significant reorganisation results were achieved in 2013. The new PAR Strategy has set as one of its strategic objectives the "reorganization of the executive and its subordinated bodies in accordance with the approved recommendations of the

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[45] This number can be compared to 14 ministries in Austria, 15 in Belgium, 18 in Denmark, 12 in Finland, 15 in Ireland, 13 in the Netherlands [OECD (2009), *Government at a Glance*).

[46] Report of the Functional Review and Institutional Design of Ministries – FRIDOM (November 2008): Preliminary report with 20 recommendations for improving the organisation of the Government of Kosovo and its component portfolios, *http://map.rks-gov.net/userfiles/file/FRIDOM/Fridom_en/Whole_of_Government_Reviews/WoG_review_Final_eng.pdf* .

functional review and relevant normative acts"[47]. However, the PAR Strategy does not identify an alternative model to orient this reorganisation. In accordance with the Strategy, a sub-working group on "Public Administration Organisation" has been established and is holding regular meetings[48], but without concrete results yet. Apart from this sub-working group, there is no a permanent body gathering the relevant stakeholders[49] to share views, coordinate actions and draft policies in this area.

The MPA, with its Department for Public Administration Reform Management (DPARM), is not in a position, and does not have sufficient capacities and leadership available, to act as the driver of the reform. As some EU reports have pointed out, the MPA "is insufficiently staffed to pilot these key reforms effectively" and "has very little capacity to influence the Government's political agenda … and it does not obtain sufficient political support"[50].

There is no clear and coherent policy for the organisation of the public administration and the structure of the state administration is fragmented and inefficient. The PAR Strategy has set objectives in this area and a sub-working group on public administration organisation has been created, but without concrete results. Apart from this working group, there are no arrangements in place to gather the relevant stakeholders to build a common understanding to drive the reform.

The Regulatory and Management Framework

11: The independence of regulatory agencies, appeal boards and other relevant public bodies is guaranteed.

There are more than 30 independent ISAB in Kosovo. Systematic legal regulation of independent bodies does not exist. Some of these bodies were established on the basis of direct constitutional provisions, while others were established by special legislation adopted by the Assembly on the basis of a general legal foundation set by the Constitution[51].

The legal basis for the regulatory agencies and other independent bodies is well established and, in most cases, complies with good international standards. In fact, many of these bodies were established on the initiative of international donors. However, according to an OSCE report[52] of 2012, "one-third of these agencies have pending laws or secondary legislation to complete their legal framework", which hampers their capacities and effectiveness. In addition, some legal provisions have not been fully implemented. The practical capacities of some of these independent bodies[53] have been challenged by long delays in the appointment of the chief executive and board members. For instance, according to the OSCE, in 2012 "two seats on the RTK[54] board (and) one seat on the Independent Media Commission council … remained vacant for more than eight months, due to failure of the governing coalition and the opposition to reach a consensus on proposed candidates"[55].

The financial model of ISAB is not uniform, but the legislation ensures the direct submission of budget requests to the Assembly. There is also independence regarding the appointment and dismissal of senior

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[47] Three sub-objectives are mentioned: (1) Government institutional reorganisation in accordance with the Law on Government and the Law on State Administration (following their approval) and in accordance with the approved recommendations of functional reviews; (2) drafting and approval of strategic development plans for the executive branch and its subordinated organs for medium-term institutional reorganisation planning; and (3) drafting and approval of personnel plans in accordance with internal institutional organisation.

[48] This group has met four times: 07.8.2012, 06.3.2013, 18.7.2013 and 28.10.2013.

[49] The Ministry of Public Administration (MPA), Office of the Prime Minister (OPM), the Ministry of Finance (MoF), the Ministry of Local Government Administration (MLGA) and the Ministry of European Integration (MEI).

[50] European Commission (October 2012), *Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo*.

[51] Article 142 of the Constitution.

[52] OSCE (2012) *The State of Independent Institutions in Kosovo*, p. 14.

[53] E.g. Independent Media Commission (IMC) and Privatisation Agency of Kosovo (PAK).

[54] Radio Television of Kosovo (RTK).

[55] OSCE (July 2013), *Monitoring Report of the Performance of the Assembly of Kosovo*.

staff. The conditions for appointment and dismissal are determined according to merit-based criteria and are defined by law. The procedures are not identical for all bodies, but the Assembly usually plays a key role in the process, formally limiting possible Government interference but not excluding political influence by the relevant parliamentary committee. In addition, senior staff mandates are usually fixed-term with limited reappointment and subject to defined conditions, which helps to preserve unbiased behaviour. Regarding human resources, the Government retains some of the minor responsibilities for those independent bodies staffed with civil servants.

Regulatory agencies and other independent bodies report to the Assembly, normally by submitting an annual report to the relevant parliamentary committee. Often these committees do not have technical capacity to assess the reports, which results in a situation whereby they are unable to provide adequate feedback and policy guidance to these institutions.

Besides the usual constitutional bodies and regulatory authorities, some other public bodies in Kosovo have been defined as independent from the Government and report directly to the Assembly[56]. The total number of bodies reporting to the Assembly (30) is excessive compared to some small EU member states. It is not clear why some of these institutions are accountable to the Assembly instead of the Government, when taking into consideration their functions.

Regulatory agencies and other independent state administrative bodies are well established, but the lack of detailed regulations hampers their work in some cases. Their independence is also generally preserved in terms of the appointments of the chief executive and board members and financial resources. Protracted delays in the appointment of senior staff have harmed the effectiveness of some bodies.

12: The professionalisation of bureaucracy is clearly demarcated by stating what levels and positions are under merit and what others are under political criteria, both in ministries and national public bodies.

At the level of legal regulation, the professionalisation of the senior bureaucracy is guaranteed. The LSA states that all positions in ministries and state administrative bodies defined as civil service positions by regulations on internal organisation and systematisation of positions, including the positions of secretaries general, are to be occupied by civil servants, in accordance with the Civil Service Law (CSL)[57]. It also states that political advisers are not to carry out managerial or other administrative duties of the ministry[58]. Regulations on the internal organisation of ministries define political and professional positions as well as the number of politically appointed staff, who are usually placed in the minister's cabinet.

The CSL makes a distinction between the appointment of career and non-career civil servants. Career (permanent) positions in all institutions are open to all candidates, with the exception of management positions, which are filled through the promotion of civil servants. If no internal applications are received, or if the applicants at the end of the competition are considered to be unsuitable, then admission to the management position is open to all citizens. Appointment to non-career (fixed-term) positions is open to all candidates without exception.

The selection of senior managers in institutions of the executive branch is managed under the supervision of the Council on Senior Management Positions, which is responsible for "ensuring the quality and the integrity of the procedures"[59]. Each selection process is conducted through a Criteria

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[56] E.g. Academy of Sciences and Arts, Agency for Management of Memorial Complexes, Advisory Board for Protection of the Environment, Independent Commission for Mines and Minerals, Kosovo Council for Cultural Heritage, Legal Aid Commission and National Council of Science.

[57] Articles 41 and 47 of the LSA.

[58] Article 35/4 of the LSA.

[59] The Council is made up of seven members appointed by the Prime Minister: one deputy prime minister who acts as chairperson, three ministers (MPA, MoF and Ministry for Communities and Returns), one deputy minister and three secretaries general or their equivalent.

Assessment Commission (CAC), made up of three secretaries general, one university professor and one member of civil society, set up under the supervision of the MPA. The CAC shortlists three candidates and the relevant minister[60] selects the successful candidate.

The Independent Oversight Board for the Civil Service of Kosovo (IOB) works to ensure that the hiring of civil servants is carried out in accordance with regulations. The IOB monitors the hiring procedures for senior positions and issues recommendations when it observes violations[61]. These recommendations are a positive feature in helping to increase the application of the merit principle.

The legal regulation clearly distinguishes professional and political positions and promotes the professionalisation of senior management positions.

Institutional set-up

13: The internal structure of ministries and public bodies is coherent and adequately harmonised.

The LSA is intended to allow public bodies to autonomously develop their own structures according to common but very general patterns. According to the LSA, the internal organisation in ministries should be structured on four levels (minister, secretary general, departments and divisions), while other state administrative bodies are structured on two levels (directorates and sections). Although envisaged in the PAR Strategy and Action Plan, secondary legislation to define general standards on the internal organisation of ministries and state administrative bodies[62] was not adopted in 2013. During last year the Government only adopted the regulations on the internal organisation of ministries[63]. The main horizontal functions are in place in each ministry, e.g. legal departments, departments of finance and general services, and divisions of internal audit, public procurement and public relations.

The regulations promote flat and horizontally coherent structures of ministries and public bodies. However, an analysis of those structures in practice, in terms of effectiveness and efficiency, shows them to be cumbersome and unnecessarily fragmented. On the micro-level, it has been observed that the internal structure of ministries is harmed by "organisational sprawl": some ministries have units with very few employees[64], far from the classical and healthy benchmark of six to eight positions per unit. Moreover, the number of units is generally too large, creating an excessive span of control by the secretary general to whom these units are accountable, for example, 18 divisions in the Ministry of Foreign Affairs and 17 in the Ministry of Finance. All ministries, except one, have more than eight units[65] reporting directly to the secretary general (see Figure 7 below). This large span of control is more likely to create difficulties in view of the traditionally centralised style of decision making.

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[60] Or the chairperson in case of ISAB.

[61] "In 2011 the Board monitored all 43 recruitment procedures for the hiring of senior civil servants; in eight of those recruitments, at least one violation was observed and resulted in the recommendation for remedial actions", [OSCE (2013), *The Implementation of Civil Service Legislation in Kosovo*].

[62] Articles 17 and 34 of the LSA.

[63] Except for the Ministry for the Kosovo Security Forces.

[64] Three to four employees per sub-unit in the Ministry of Diaspora, Ministry of Health, and Ministry of Trade and Industry.

[65] Eight units is usually considered by organisation experts to be the superior limit for the span of control of a top management position.

Figure 7. Data on employees and units of central structures[66] of ministries and OPM

Ministries (by number of employees)	Employees[67]	Units (departments)	Sub-units (divisions)	Employees per sub-unit
Ministry of Justice	297	11	23	13
Ministry of Environment and Spatial Planning	297	13	31	10
Ministry of Infrastructure	266	15	30	9
Ministry of Labour and Social Work	213	13	36	7
Ministry of Finance	210	17	39	5
Ministry of Internal Affairs	198	14	37	5
Ministry of Public Administration	192	14	20	10
Ministry of Education, Science and Technology	178	13	32	6
Ministry of Agriculture, Forestry and Rural Development	167	14	38	4
Ministry of Foreign Affairs	144	18	29	5
Ministry of Economic Development	144	13	29	5
Ministry of Local Government	141	10	26	5
Ministry of Health	124	11	32	4
Ministry of Trade and Industry	110	13	27	4
Ministry of Communities and Returns	86	9	18	5
Ministry of Diaspora	66	7	20	3
Ministry of European Integration	N/A	N/A	N/A	N/A
Ministry of Culture	N/A	N/A	N/A	N/A
OPM	105	N/A	N/A	N/A
Total	**2 938**	**205**	**467**	**6**

Source: Regulations on internal organisation, February 2014. The number of units includes the cabinet, office of the secretary general and departments. All organisational structures have been grouped in two levels despite their other possible titles. Internal units are usually departments and sub-units are usually divisions.

At the macro-level, as shown in the FRIDOM Report[68] (see Figure 8 below), Kosovo has a comparatively high expenditure for general public services[69], which is an indicator of a large administrative apparatus, while it has significantly lower expenditure in providing services to citizens (e.g. social protection).

Figure 8. Comparison of percentage of expenditures in general public services and in social protection in new EU Member States and in Kosovo

	New EU members average	Kosovo	Difference
General Public Services	14	24	**+10**
Social Protection	32	19	**− 13**

Source: Adapted from FRIDOM Report (2008)

The internal structures of ministries have been harmonised according to general guidelines provided in the legislation. However, there is a tendency to create small units, leading to "organisational sprawl".

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[66] Employees without CSAB and LSAB.

[67] Without LSAB or CSAB (see section 2.1).

[68] Functional Review and Institutional Design of Ministries 2008-2010, funded by DFID.
   http://www.cpmconsulting.eu/cpm-portfolio/project-references/kosovo/project-reference-76

[69] General public services include executive and legislative organs; financial, fiscal and external affairs; basic research; transfers of a general character between different levels of government; foreign economic aid; general services, and public debt payments.

14: There are institutional arrangements to ensure the delivery of national public services across all parts of the territory.

Ministries and central bodies work in the territories through a network of Local State Administrative Bodies (LSAB)[70], covering one or more municipalities. The LSAB are completely within the sphere of individual line ministries, which can decide on their establishment based on the ministry's own logic. Such an approach opens the possibility for every central administrative body to create its own network of LSAB. Joint LSAB may be established for a particular territory by agreement between several ministries.

The fact that there is neither a clear and coherent policy nor a pattern for the deconcentration of the national administration has resulted in a situation whereby each ministry and institution has created its own territorial network. Ministries and central state administrative bodies (CSAB) establish their territorial offices without reference to any coherent horizontal criteria. In practice, each central body has structured its territorial network in a different way: five LSAB in the case of the Agency for Emergency Management; seven LSAB for the Ministry of Education, Science and Technology; eight regional centres for the Ministry of Health; and 12 regional offices for the Tax Administration. The Ministry of Labour and Social Work has a very dense network of territorial offices (31 employment offices, seven offices for vocational training and seven pension offices).

There are neither administrative regions nor similar divisions of Kosovo that could serve as a basis for designing a more coherent organisation of territorial offices of central bodies. Neither the MPA nor any other central institution has set policy in this area, thereby missing the opportunity to rationalise structures and clarify service delivery to citizens, while reducing costs and enhancing synergies among the various national public bodies in the territory.

In practice, local self-governments play a very significant role in service delivery across the whole territory of Kosovo. The LSA provides the legal basis for a wide transfer of state competencies to local government units[71]. Decentralisation policy has been implemented in recent years through the Action Plan for Implementation of Decentralisation 2008-2010, with the "devolution of competencies and resources" to local units set as one of the strategic goals. After a few years of implementation however, according to opinions gathered during this assessment, the central government is not fully satisfied with the level of performance of local governments in some of the policy areas that have been decentralised.

There is no common approach to territorial structures by the various ministries and bodies. Each body uses its own "administrative map" to organise its territorial services.

Accountability and Delivery

15: Accountability of autonomous and semi-autonomous public bodies is promoted.

No specific law regulates executive agencies in Kosovo. The legal basis for these administrative bodies can be found in the LSA, which defines them as Central State Administrative Bodies, subordinated to a particular ministry or, in exceptional cases, to the Office of the Prime Minister (OPM). These bodies perform tasks connected with activities of a preparatory, advisory or "scrutinising" nature, as well as administrative tasks to relieve the respective ministry of routine and highly specialised work[72].

Kosovo currently has 68 CSAB, usually referred to as "agencies" or "executive agencies" - concepts which have not been defined by the LSA. These bodies constitute the largest category of administrative bodies in Kosovo. Only five ministries[73], out of 19, do not have CSAB under them. According to the law, CSAB

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[70] On the basis of Article 24 of the LSA.

[71] Article 25 of the LSA: "State administration competencies shall be delegated to municipalities unless there are legal or other overriding reasons requiring that other state administration bodies carry out these competencies directly…"

[72] Article 23 of the LSA.

[73] Ministry of Local Government Andministration, Ministry of Diaspora, Ministry of European Integration, Ministry of Foreign Affairs, and Ministry of Communities and Returns.

should be subordinated to the OPM only in exceptional cases but eight of them are currently under the Prime Minister, without any clear, rational reasons related to their functions (see Figure 9 below). The institutional subordination of CSAB is even confusing in some cases. For instance, the Kosovo Diaspora Agency, which does not belong to the Ministry of Diaspora, is mentioned as being part of the OPM on the website of the Ministry of Foreign Affairs but is not mentioned on the OPM website, and it was not identified as belonging to the OPM in the data provided by the MPA during this assessment.

Figure 9. The 68 Central State Administrative Bodies (CSAB) by Ministry, February 2014

Ministry[74]	Central State Administrative Bodies
Office of the Prime Minister	1. Agency on Gender Equality 2. Kosovo Agency of Statistics 3. Agency of State Archives 4. Kosovo Food and Veterinary Agency 5. Secretariat of Security Council 6. Interministerial Water Council 7. Commission on Investigation of Aeronautic Accidents and Incidents
Ministry of Public Administration	1. Agency of Information Society 2. Kosovo Institute for Public Administration
Ministry of Justice	1. Agency for Administration of Sequestrated or Confiscated Assets 2. Correctional Service 3. Probation Service
Ministry of Finance	1. Customs 2. Tax Administration 3. Financial Intelligence Unit 4. Central Procurement Agency
Ministry of Internal Affairs	1. Civil Registration Agency 2. Kosovo Police 3. Police Inspectorate 4. Kosovo Centre for Public Safety, Education and Development 5. Emergency Management Agency 6. Kosovo Forensics Agency
Ministry of Environment and Spatial Planning	1. Kosovo Environmental Protection Agency 2. Kosovo Cadastre Agency 3. Kosovo Agency on Protection from Radiation and Nuclear Safety 4. Hydrometeorology Institute of Kosovo 5. Institute for Spatial Planning
Ministry of Health	1. Kosovo Agency of Medicinal Products and Equipment 2. National Institute for Public Health 3. Health Financing Agency 4. Health Inspectorate
Ministry of Culture, Youth and Sports	1. National Museum of Kosovo 2. Kosovo Institute for Protection of Monuments 3. Kosovo Archaeological Institute 4. Regional Cultural Heritage Centres (seven) 5. National Theatre of Kosovo 6. Ballet Ensemble 7. National Ensemble of Songs and Dances "SHOTA" 8. Philharmonic and Opera of Kosovo 9. Kosovo Film

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[74] The ministries without CSAB have not been included. See previous footnote.

	10. Gallery of Arts of Kosovo
	11. Cinematography Centre of Kosovo
	12. Library for the Blind "Syriyne"
	13. National Library of Kosovo "Pjeter Bogdani"
Ministry of Infrastructure	1. Road Transportation Agency
Ministry of Labour and Social Welfare	1. Executive Body of Labour Inspectorate
Ministry of Trade and Industry	1. Agency for the Support of Private Sector Development
	2. General Accreditation Directorate of Kosovo
	3. Kosovo Metrology Agency
	4. Kosovo Standardisation Agency
	5. Business Registration Agency of Kosovo
	6. Industrial Property Agency
	7. Market Inspectorate
Ministry of Education, Science and Technology	1. Kosovo Accreditation Agency
	2. National Qualifications Authority
	3. Kosovo Inspectorate of Education
	4. Institute of History
	5. Pedagogical Institute
	6. Albanological Institute of Kosovo
	7. National and University Library
Ministry of Economic Development	1. Geology Agency of Kosovo
	2. Kosovo Agency of Energy Efficiency
	3. State Museum of Crystals and Minerals
Ministry of Agriculture, Forestry and Rural Development	1. Forest Agency of Kosovo
	2. Agency for Agricultural Development
	3. Kosovo Agriculture Institute
	4. Department of Payments
	5. Wine Institute of Kosovo

Source: List received from the MPA during the assessment mission

There are no strong and clear criteria for establishing central state administrative bodies. According to the LSA, the CSAB are established by law. They are usually created on the initiative of line ministries, sometimes without full consideration of other options and without the full participation of horizontal ministries, such as the MPA and the MoF. In many cases the CSAB do not perform the role of real "executive agencies", as usually understood by the public management community. Many CSAB are not autonomous bodies "at arm's length from the control of politicians, outside the hierarchical control of traditional vertically-integrated line ministries"[75]. Most of them function as an ordinary department within a ministry, with no managerial freedom, no clear goals agreed with the parent ministry, and no contract/programme. They function outside the principal/agent paradigm. The only clear difference is that they usually report to the minister and not to the secretary general. This set-up is dysfunctional, creating "parallel ministries" and enhances opportunities for political interference in day-to-day management.

The CSAB accountability is weak, for several reasons. First, the law only foresees "supervision" over the legality of the CSAB and their internal management, without mentioning any monitoring of the achievements and results of the agencies. Second, this supervision is fragmented, as the legality is supervised by the line ministry and internal management by the MPA. Third, the capacities of ministries to oversee the performance of their agencies are weak, as they do not have specialised units or personnel dealing with objective setting and performance assessment. In addition, some of the CSAB,

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[75] Definition provided by World Bank (2009), *GET Brief: Arms Length Bodies.*
http://siteresources.worldbank.org/EXTGOVANTICORR/Resources/3035863128560135160 6/ArmsLengthAgencies.pdf

such as the Food and Veterinary Agency, are dysfunctionally subordinated to the OPM instead of being assigned to the relevant policy ministry. This situation makes their accountability even more difficult, as the OPM has no technical capacities to act as the principal for such technical bodies.

The number of CSAB has continually grown in recent years, now reaching the disproportionate number of 68. Ten of these bodies are very small, with 10 staff or even fewer. The MPA keeps a register of all state administration bodies.

Central State Administrative Bodies (CSAB) are regulated, but the legislation does not adequately define their accountability. Their parent institutions often do not require result-based accountability from them. Most of these bodies do not function as real "executive agencies" but rather as internal units of ministries. Their number has grown to a disproportionate level and some CSAB are very small.

16: There is a commitment to the delivery of citizen-centric public services.

The delivery of citizen-focused public services is an underdeveloped practice in Kosovo's public administration. Techniques of quality improvement are not being used fully, although some initiatives to improve the delivery of public services were introduced in 2013.

Better communication with citizens and their increased participation is included as an objective in the PAR Strategy and Action Plan[76]. The main aim in this respect is to achieve a "reorganised system for communication and increase of participation of citizens in the process of drafting policies, legislation and decision making".

Under the auspices of UNDP and on the basis of a concept paper developed by the MPA in December 2102, it was intended to introduce the National Quality Management Program in the public administration[77]. Several training activities included in this Program were organised in 2013. However, taking into account the limited capacities and lack of an adequate institutional structure, the introduction of the CAF model[78] has been put on hold.

A feasibility study was carried out regarding the establishment of six one-stop-shop offices in Kosovo. Some administrative bodies, such as the Tax Administration, have taken steps to improve service delivery to citizens, through development of electronic services. No central unit promotes citizen-centric approaches and techniques for public service delivery.

Regarding overall satisfaction of citizens with public services, according to the UNDP perception survey Mosaic 2012[79], the average satisfaction level was 0.1 points on a scale from +100 (very satisfied) to -100 (very dissatisfied). This result indicates that, on average, citizens have a neutral opinion of public services, as the average respondent was between "somewhat satisfied" and "somewhat dissatisfied" with public services in general. Compared to 2009, the satisfaction level has slightly decreased (from 3.5 points in 2009).

There is no corporate policy regarding user-orientation and quality of public services. However, some state bodies have taken steps to improve service delivery.

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[76] Under *Sub-objective 4.3.* Office for Communication in the OPM "…sets out standards for governmental communication and communication with citizens".

[77] UNDP (2013), *Outline – Kosovo National Quality Management Program*.

[78] Common Assessment Framework (CAF), a European quality management instrument for the public sector: *http://www.eipa.eu/en/topic/show/&tid=191*

[79] Survey on the reported satisfaction level with 26 different public services. The Satisfaction Index (SI) was calculated by assigning numeric values to reported satisfaction levels as follows: very dissatisfied (-100), dissatisfied (-50), satisfied (+50), and very satisfied (+100). This methodology treats the responses "no answer" and "refuse to answer" as missing values. The index can range from -100 to +100 points. Values that approximate 0 signify that there are an equal number of respondents who are satisfied and those who are dissatisfied with the specific service or institution.

http://www.lr.undp.org/content/dam/kosovo/docs/Mozaik/Kosovo_Mosaic_2012_Eng_735317.pdf

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

2. Analysis

Human Resource Management policy and strategy

1: Policy and managerial documents establish core values for professional civil service which are aligned with European administrative law principles and civil service core values.

The main policy documents, including the Public Administration Reform (PAR) Strategy 2010–2013 and Action Plan, the Programme of the Government 2011–2014, and the Declaration of Medium-Term Policy Priorities 2014-2016, are closely aligned with European administrative law principles. They are also in line with civil service core values: separation between public and private spheres, separation between politics and administration, recruitment and promotion based on merit, individual accountability, sufficient job protection and level of pay, and clearly defined rights and duties of civil servants.

Those principles and core values are also enshrined in the Constitution[80], as well as in the main laws, including the Law on Civil Service (CSL), that govern the public administration in the country.

Policy and managerial documents are in agreement with administrative law principles and with European civil service core values.

2: Vision and policy options to develop and sustain the professional civil service are defined in the relevant policy document and its action plan, and they are disseminated within the public administration.

The PAR Strategy[81] sets out an overall vision for the public sector within which the civil service reform priorities are defined. Those priorities are relevant to and coherent with the overall reform framework, and they are expressed in terms of civil service professional capacity and outputs[82]. At the operational level, the Strategy focuses on setting the foundations for attaining that general goal, through a series of relevant and coherent sub-objectives and activities. These activities which comprise the completion of the legal framework, the implementation of transparent criteria and tools for job classification, recruitment, performance appraisal, promotion and salaries, and a strong emphasis on capacity building of civil servants.

However, the Strategy lacks an in-depth diagnostic of the civil service in Kosovo, which would help to justify the objectives proposed, define them in a more specific and measurable way, and set more realistic timelines. This shortcoming is closely related to the scarcity of available data and robust indicators on the civil service. Furthermore, not all of the activities related to civil service reform are accompanied by accurate information on financial costs and financing sources.

The elaboration of civil service policy documents involves the main governmental stakeholders. Measures in place to support the implementation of civil service reform include capacity building and training of the staff of HRM units. Information, awareness raising and mobilisation initiatives targeted at civil servants to enhance PAR comprehension are not in place.

A comprehensive strategy for civil service reform has been developed as part of the PAR Strategy and addresses the organisation of the civil service, its capacity and expected outputs. However, it lacks an in-depth analysis of the current situation of the civil service, fails to set realistic timelines and does not indicate whether sufficient capacities and resources will be allocated to the reform.

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[80] *http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf*
[81] The PAR Strategy is implemented through the Action Plan, approved in May 2012 and covering the period 2012-2014.
[82] The priorities are aimed at building an ethical, transparent, accountable, professional, impartial, independent and merit-based civil service that is oriented towards citizens and businesses.

3: Primary and secondary civil service legislation establish the legal status of civil servants and the scope of the Civil Service, ensuring that a uniform system is in place.

The contents of the Civil Service Law (CSL), passed in May 2010, are in line with European civil service core values. The CSL is one of the central pieces of the existing legislative framework on the organisation and functioning of the civil service and on the rights and duties of civil servants[83]. The majority of laws and by-laws that make up the current civil service legal framework were adopted between 2010 and 2012. They regulate the scope of the civil service, the legal status and classification of civil servants, their rights and duties, as well as human resources management principles and procedures, which are based on the principle of merit.

In these early stages of implementation of the new legal framework, differences in interpretation mean that there is a need for clarification in some areas, according to a report by the Assembly[84]. Some of these differences stem from a degree of ambiguity in the CSL in defining the scope of the civil service, especially concerning public employees performing support functions[85].

From an organisational perspective, the CSL aims to set up a single body of civil service across state levels, including national and local administrations. Out of a total of 76 764 public employees, 18 270 (24%) are under civil service regulations[86]. The bulk of public employment, with some exceptions, comes under sector and labour law, without merit regulations, including some professional groups performing key state functions[87]. In the case of independent bodies, the Law on the State Administration (LSA)[88] allows those bodies to choose whether or not to be under civil service regulations, in accordance with the law that established the body[89]. In addition, other ambiguities relate to the approval of internal organisation and the classification of jobs[90].

On the other hand, some single key HRM procedures are regulated in various laws and by-laws, complicating their implementation and leading to confusion in some cases[91]. The Draft Legislative

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[83] The Law on the State Administration, the Law on Local Self-Government, and the Law on Administrative Procedure regulate the overall organisation and functioning of the public administration and the civil service in Kosovo.

[84] In 2013, the Committee for Education, Culture, Youth, Sports, Public Administration, Local Government and Media of the Assembly of Kosovo issued a "Report on Monitoring of implementation of Law on Civil Service" in which the following problems were identified: "Main problem regarding full implementation of the Law on Civil Service is collision between different laws…" and "By-laws issued for the implementation of this Law are not in compliance with the Law on Civil Service."

[85] The CSL defines civil servants as "persons employed to exercise public administrative authority based on ability and capacity, who participate in policy making and implementation, monitoring the implementation of administrative rules and procedures, ensuring their execution and provision of overall administrative support for their implementation", while those in charge of technical functions in specific sectors are public employees, "the personnel employed … to carry out support and maintenance work are not civil servants". However, non-professional personnel employed in the education and health systems is neither expressly mentioned in the CSL nor in sectoral regulations.

[86] Ministry of Public Administration – MPA (2013), p. 6.

[87] The CSL excludes from the civil service some professionals in charge of key state functions: police officers, customs officers, correctional officers as well as judges and prosecutors. The Kosovo Security Force (KSF), teaching staff of the education system and medical staff of the health service are also excluded. The situation of other public employees in the above-mentioned sectors is not always clear, e.g. non-professional staff employed in the education and health systems are not expressly mentioned in the CSL or in sectoral regulations.

[88] Article 26, LSA.

[89] For example, officials employed by the Energy Regulator are not civil servants (Article. 7 of the Law on the Energy Regulator), while others are, e.g. officials in the Kosovo Aviation Authority.

[90] The LSA states that the proposals on internal organisation, including the number and level of job positions, are to be adopted by the head of the independent body, in consultation with the Ministry of Finance (MoF) and the MPA (Article. 33.5). This requirement is consistent with Article 12 of the CSL, which states that the Government will approve civil service positions for the institutions of the Executive (thus, not for independent bodies). However, under the CSL the Government is to approve, following approval by the MPA and MoF, "the organisational structure and grade for each job position" for all public administration institutions (Article. 7). The same procedure is foreseen in Regulation no. 5/2012 on the classification of jobs.

[91] For example, career development is regulated in the CSL, in the LSCS and in several regulations: Regulation no. 02/2010 on recruitment procedures in the civil service; Regulation no. 21/2012 dealing specifically with career promotion, although the administrative procedures are basically the same as those for external recruitment; Regulation no. 19/2012 on assessment of working results, Regulation no. 05/2011 on procedures for resolving contests and complaints, and Regulations no. 06/2010 and no. 06/2012 related to senior managers.

Programme for 2014 includes the amendment of the CSL to clarify some of these issues. The amendment of the Law on the Salaries of Civil Servants (LSCS) is also foreseen, but only concerns minor technical issues.

Furthermore, the legislative framework includes laws on anti-discrimination and gender equality, the contents of which are fully reflected in the CSL. With regard to labour relations, the CSL gives civil servants the right to belong to trade unions, to strike and to participate and be represented in civil service management bodies. The Law on Labour, passed in November 2010, complements these provisions, and its scope includes the public sector. Legal provisions and tools related to civil service integrity and the fight against corruption are in place[92] and are aligned with international good practice. They cover managers' responsibilities, incompatibilities and conflicts of interest, declaration of assets and gifts, restrictions on secondary employment and post-employment. Corrupt behaviour of public employees – public officials, civil servants or others – is criminalised in the Penal Code[93].

The civil service regulatory framework is in place and is fully aligned with the EU civil service core values. Some ambiguities and gaps lead to uncertainties during the implementation of this legislation.

Civil service and HRM institutional set-up

4: Political responsibility for the professional civil service is clearly established.

Political responsibility for civil service policy design and evaluation, and for directing and monitoring its implementation, is formally established and clearly assigned to the Ministry of Public Administration (MPA)[94]. In 2013, the MPA assumed a more prominent role in the overall management of the PAR Strategy, taking over the Chairs of the Interministerial Commission for PAR (IMCPAR) and the PAR Working Group[95]. However, these changes have failed to accelerate the pace of civil service reform.

As shown below in Figure 1, the internal structure of the MPA is fairly fragmented.

Figure 1. Comparison between KIPA and DCSA with other MPA units and bodies, by number of jobs
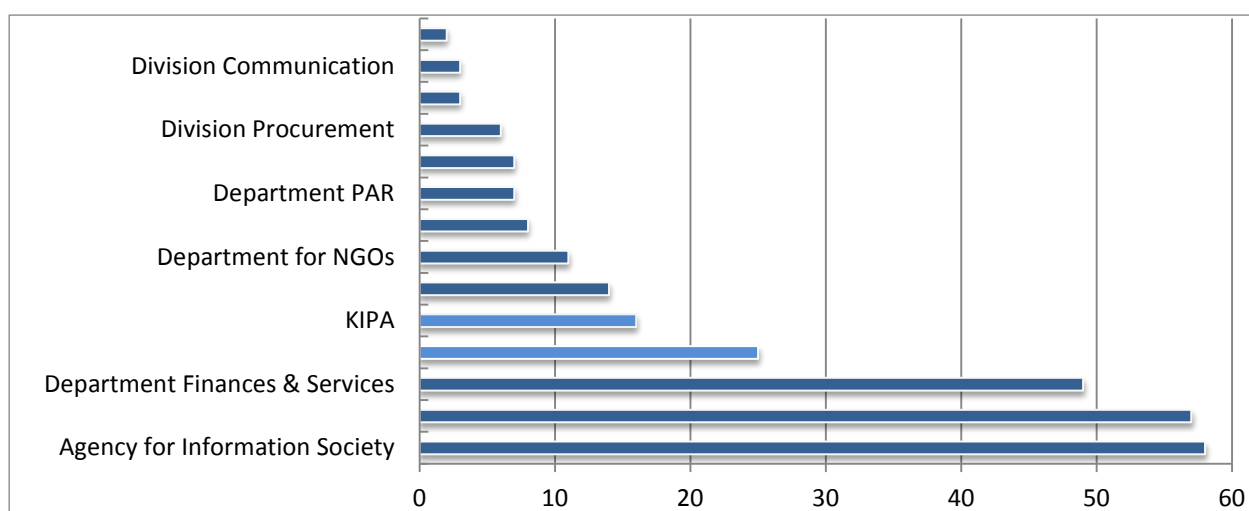
Source: Regulation no. 41/2013 on internal organisation and systematisation of jobs in the Ministry of Public Administration

At the present time, 14 different organisational units report directly to either the Secretary General or the Minister. The distribution of the number of jobs among the five main policy areas under the MPA's

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[92] CSL, Law no. 02/l-28 on the administrative procedure (Articles 29-34), Law no. 3/L-151 on declaration and origin of property and gifts, Law no. 4/L-151 on prevention of conflict of interest, and Law no. 2004/34 on anti-corruption actions.

[93] Law no. 04/l-129 on amending and supplementing the Criminal Code no. 04/l-082, Articles 315-316, 422-437.

[94] CSL, further developed in Regulations no. 02/2011, no. 41/2013, regulations on the internal organisation of ministries and public bodies, Law no. 03/L-40 on Local Self-Government, and Law no. 03/L-192 on the Independent Oversight Board (IOB).

responsibility clearly prioritises the Agency for Information Society (58 jobs) and the Department of Engineering Standards and Building Policies (57) rather than the Department of Civil Service Administration (25) and the Kosovo Institute of Public Administration – KIPA (16). On the other hand, KIPA is not yet fully recognised as the main stakeholder in policy design and implementation of training in some key areas of the PAR Strategy.

The Office of the Prime Minister (OPM) and the Ministry of Finance (MoF) are also key stakeholders with regard to civil service policy. The latter is responsible for budget allocations to cover wages and salaries, and the former provides support to the Council of Senior Management Positions. Other state administration authorities and public bodies responsible for horizontal policies, in fields such as European integration, the fight against corruption, the protection of the rights of communities or gender equality, must co-ordinate their civil service activities with the MPA, although in some cases they launch their own initiatives without involving the MPA, at least in the early stages[96]. The Ministry of Local Government Administration (MLGA), on the other hand, is responsible for promoting the development of the civil service in municipal administrations, while taking into account the responsibilities of the MPA[97]. The MLGA would like to play a more prominent role as co-driver of the reform in this area.

Finally, the participation of staff representatives in the decision making and control processes related to personnel management, although foreseen in the legal framework, remains limited.

Overall responsibility for the civil service is formally assigned to the MPA. However, despite the MPA's more prominent role with regard to the PAR governing structures, it does not have adequate capacities to drive civil service reform and to ensure the efficient coordination of the reform at an operational level.

5: A central co-ordination unit, sufficiently empowered and capable to lead, support and monitor the implementation of the values, policy, laws and homogeneous managerial standards of the civil service is in place.

Within the MPA, the Department of Civil Service Administration (DCSA) acts as the central co-ordination unit for civil service policy design, implementation, monitoring and evaluation. However, continuous changes in the position of the Head of the DCSA, as well as quantitative and qualitative shortages in the department's staff, have hampered its capacity to co-ordinate reforms at an operational level.

The DCSA is in charge of human resources management, professional development policies, salary policy, the HRM information system (HRMIS), and payroll management. Of the 25 staff of the DCSA, 15 are devoted exclusively to payroll and HRMIS administration. Only 10 persons are available to deal with policies in the HRM area, which is a very low number, both when considering their responsibilities and the workload connected with civil service reform and when compared to the number of employees in other areas of the Ministry (e.g. 10 jobs in the HRM unit or nearly 60 in the Agency of Information Society). Moreover, their professional profiles – a majority of lawyers and economists– do not include specialisation in human resources management[98].

Although some progress has been made, there is no comprehensive roadmap for the implementation of civil service reform at an operational level, led by the DCSA and implemented through HRM units in ministries and public bodies. Instead, the reform is being addressed in a purely administrative way, by dealing separately with each new regulation, routinely ensuring compliance with HR procedures and reacting to problems as they arise[99].

By the end of 2013, steps had been taken concerning HRM planning but they were restricted to the recruitment of civil servants. At the initiative of the DCSA, HRM units elaborated admission plans, which

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[96] For example, the Twinning Light Project in this area.
[97] Regulation no. 02/2011 on the areas of administrative responsibility of the Office of the Prime Minister and ministries, appendix 12.
[98] According to information provided during the interviews.
[99] According to the explanations received during the interviews.

were sent to the DCSA for approval in January 2014. Pending the full implementation of the new HRMIS, the basis of available information for planning at central level is still weak, and in many aspects the DCSA must rely on data provided by the HRM units themselves[100]. Overall, the information and data on the civil service is scarce, difficult to obtain from the current information systems, and not adequately organised and analysed for policy making and management purposes.

In relation to support for HRM units in the reform areas, during the first semester of 2013, the DCSA and KIPA organised training on the regulations that had been approved in 2012 on the classification of jobs, promotion, and salary allowances and compensations. In the second semester, KIPA also organised courses on the assessment of training needs.

Some progress has been achieved in HRM planning. The low number of staff and their lack of specialisation make it difficult for the DCSA to guide, coordinate and monitor the implementation of civil service policy. These weaknesses, especially in such a decentralised system, create risks of inconsistent application of the civil service reform.

6: All administrative bodies have HRM units with sufficient capacity to manage the workforce under their administrative supervision in accordance with the standards established by the CS-CCU.

HRM units exist in all ministries and central administration bodies that manage their own personnel. At the local level, the MLGA confirmed[101] that almost all local governments have already appointed their Head of Personnel[102]. The functions of HRM units include HR planning, staff development and training as well as "ensuring the implementation" of selection, recruitment, performance appraisal, career development, grievance handling and disciplinary procedures. In fact, HRM units do not manage most of these procedures directly, but through *ad hoc* internal committees. In those cases, the HRM units provide technical and administrative support, and supervise compliance with administrative procedures. Their approach is compliance-oriented, and strategic perspectives are lacking[103].

In most ministries, the head of the HRM division reports directly to the Secretary General, despite the fact that HRM divisions are part of the Department of Finances and General Services. This direct reporting of HRM units reflects the strong implication and influence of the Secretary General in key HR procedures. The majority of HRM units that SIGMA met during this assessment reported a number of staff between one and six – usually lawyers – in addition to the head of the Division, and some staff members have extensive experience in the HRM area.

Although the degree of decentralisation of HRM is high, there is no formal co-ordination forum between the DCSA and HRM units other than quarterly meetings. The communication between the DCSA and HRM units is constant and fluent, although mostly *ad hoc* in order to clarify doubts or resolve punctual management problems. Formal co-ordination channels between HRM units in ministries and personnel units within subordinate agencies and other public bodies do not exist.

The majority of public bodies have HRM units. However, they are focused on ensuring the proper implementation of administrative HR procedures and lack strategic orientation. Co-ordination between the HRM units and the DCSA, as well as between these units and other personnel units of public bodies attached to ministries, is not organised in a systematic way, although regular communication does occur.

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[100] However, the administration and management of the current personnel files by those units should improve (IOB 2012, p.35), taking into account the fact that the completion of the HRMIS will still take several years.

[101] During interview.

[102] Foreseen in Law no. 03/L-40 on Local Self-Government.

[103] According to the explanations received during panel interviews.

HRM practices, methodologies and tools

7: Selection, recruitment and promotion of civil servants are based on merit and equal competition.

The merit principle is explicitly designated for recruitment at entry and promotion levels for all civil service positions. Admission to civil service non-management positions is open to all candidates. The same applies to promotion procedures related to non-management positions, although in those cases a phased process takes place, restricted first to the unit where the vacancy has arisen and then to the whole institution. If no suitable candidate applies, the process becomes an open recruitment procedure[104]. Management and senior management positions[105] are filled through promotion processes, although in the absence of suitable candidates an open recruitment process can be conducted[106].

According to the MPA, 75% of vacancies were filled through recruitment processes, either external (57%) or from inside the civil service (18%). The remaining 25% of vacancies were filled through horizontal transfers[107].

Figure 2 analyses recruitment processes. The first column shows the proportion of external candidates, candidates from the same institution, and candidates from other civil service bodies. The second column demonstrates that candidates from the same institution attain much better results (success rate of 11%) when compared to their proportional representation among the total number of applicants (6%).

Figure 2. Origin of applicants and successful candidates in civil service recruitment processes in 2012
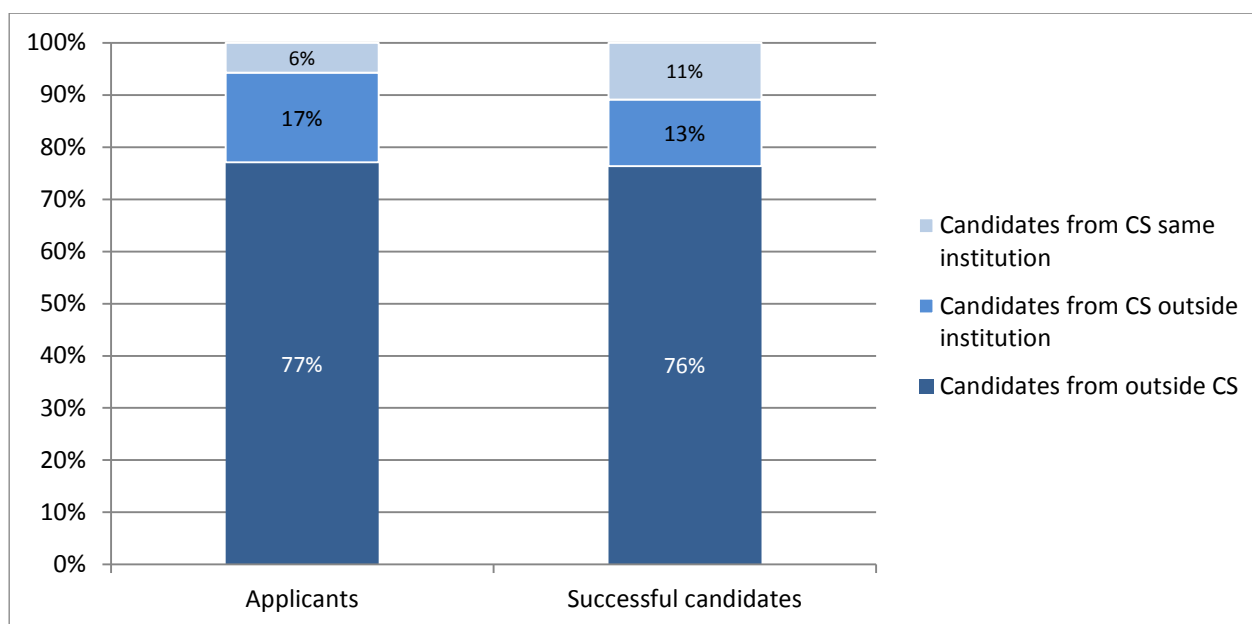
Source: MPA, Report on the State of the Civil Service 2012, May 2013

The average number of applicants per vacancy is 13.2, although it varies substantially among categories, sectors and institutions. With regard to the announcement of vacancies, the sample reviewed for this assessment included sufficient details on job characteristics, functions and professional profiles, although the processes of job descriptions and job classification is still underway. Nevertheless, the public dissemination of vacancies through Government websites is scarce according to our analysis, carried out over several weeks in January and February 2014.

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[104] Promotion in the civil service (Regulation no. 21/2012) is currently only vertical, since the system of lateral promotion based on performance appraisal and salary steps is not yet in place, which may help to explain some of the anomalies identified by the IOB in "tailor-made" recruitment processes.

[105] Senior manager positions are subject to specific regulations, namely Regulation no. 06/2010 and Regulation no. 06/2012.

[106] Regulation no. 02/2010 on recruitment procedures in the civil service, Article 4.4.

[107] MPA Annual Report for 2012.

Selection committees of the civil service (SCCS) are established for each selection and promotion procedure on an *ad hoc* basis, with the same composition and functions in both cases[108]. The committees have an internal composition and are directly responsible to the Secretary General or an equivalent position in each institution, which appoints the SCCS members. This circumstance could affect the impartiality of the procedures. The application of common selection and promotion criteria and common standards among ministries and other public bodies is not ensured. Although the regulations establish general guidelines for written and oral examinations[109], it is up to the SCCS to decide on the specific contents and the grading of each exercise. The supervision of the process is in the hands of each HRM unit. The DCSA does not play a significant role, other than the distribution of an instruction on the examination contents and advice to any HRM units that request it.

According to a regulation in the CSL, "candidates who have reached the maximum number of points … shall be appointed to the civil service[110]". However, the Secretary General could influence the process, either through the appointment of SCCS members or when taking the final selection decision.

Unsuccessful candidates have the right to appeal to internal commissions, set up on a semi-permanent basis and composed of civil servants who receive specific training on their functions. The recruitment process represented the greatest number of appeals presented to those internal committees in 2012, although the overall share of appeals settled in favour of civil servants was less than 10%[111]. Unsatisfied parties are entitled to complain to the Independent Oversight Board (IOB). As shown in Figure 3 below, the "dispute of vacancies" was the third subject receiving most appeals to the IOB in 2012, after "salaries, compensations and allowances" and "employment termination". Respect of the Board's decisions – which are final administrative decisions that senior managing officers should execute within 15 days – is limited, although the enforcement rate shows a positive trend[112].

The selection and appointment procedures for senior managers in institutions of the executive branch are defined in a somewhat confusing and cumbersome regulation[113]. The Council on Senior Management Positions is responsible for "ensuring the quality and the integrity of the procedures". The Council is made up of seven members appointed by the Prime Minister: one deputy prime minister who acts as chairperson, three ministers (MPA, MoF and Ministry of Community and Return), one deputy minister, and three secretaries general or the equivalent.

Each selection process is conducted by a Criteria Assessment Commission (CAC), made up of three secretaries general, one university professor and one representative of civil society, which is set up under the supervision of the MPA. The minister or chairperson of the recruiting institution appoints two of the members. The CAC shortlists three candidates, and the minister or chairperson chooses the successful candidate, allowing for some political influence at the final stage.

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[108] The selection committees of the civil service (SCCS) prepare the shortlist of candidates, organise the selection examinations, assess results, and propose the final selection list and the successful candidate. The committees are composed of five civil servants all of whom, except for one, occupy higher positions than the vacancy to be filled. One member must belong to the HRM unit of the institution, three must also work within the institution (two of whom work within the unit where the vacancy has arisen), while the last member must have relevant knowledge in the job area.

[109] Written and oral examinations are compulsory in selection processes and also in promotion processes, with the exception of promotion to positions within the same functional category and only one grade higher than the position occupied by the applicant. Seniority criteria are expressly excluded in promotion procedures.

[110] Article 40 of the CSL.

[111] MPA (2013), p. 19.

[112] 19% of IOB decisions were not enforced in 2012, compared to 23% in 2011 and 40% in 2010. Source: *IOB Annual Report 2012* and OSCE Report, *The Implementation of Civil Service Legislation in Kosovo*, February 2013.

[113] Recruitment of senior managers is regulated in the Law on Civil Service and in the regulation no. 06/2010 "on the procedures for appointment to senior management positions". Important matters such as the management of the list of potential candidates and the pre-evaluation method remain unexplained. It is not clear either who is responsible for the appointment of members to the Criteria Assessment Commissions in charge of each recruitment process, beyond the two appointed by the recruitment institution. Procedures for resolving complaints of candidates applying to senior management positions are not included in this by-law, but in the regulation no. 6/2012 "on senior management positions".

Figure 3. Average yearly number of complaints received by the IOB between 2010 and 2012
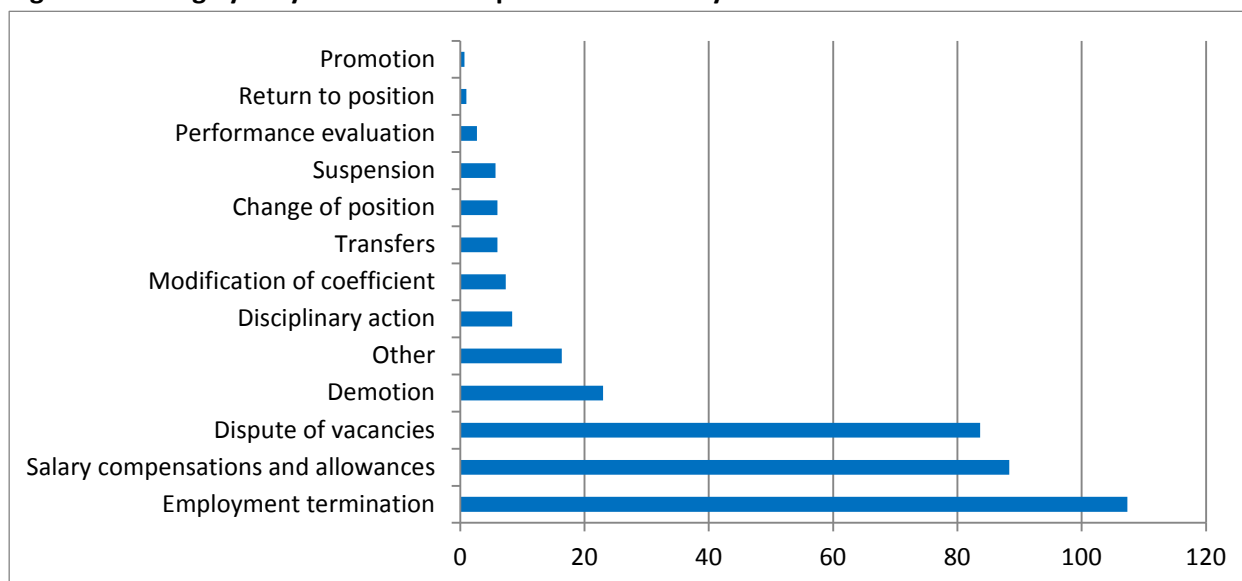
Sources: Independent Oversight Board, Annual Reports 2010, 2011 and 2012

Merit and open competition are formally protected in recruitment processes. The ad hoc nature of the selection committees and their composition may lead to inconsistent implementation criteria.

8: Training and continuing professional development are recognised in institutional practices as a right and a duty of civil servants. They are organised on an equity basis, cover all the main training needs of the civil servants, and are related to regular performance appraisals.

Training and capacity building of civil servants is clearly prioritised in policy documents related to civil service reform, and progress has been made in developing a coherent conceptual and methodological framework for a training policy, aligned with international practice. However, implementation is still problematic in some areas. Multi-annual and annual training plans prepared by KIPA[114], in co-ordination with the DCSA and HRM units, cover all civil service institutions and are based on training needs assessments that follow common methodological guidelines[115] in accordance with international standards. The plans target three types of needs: strategic, operational and individual. Training offered by KIPA focuses only on "horizontal training", which is defined as "training of a general character", rather than specialised training.

Generally, courses are open to all civil service bodies and no tailor-made training is offered to specific institutions. Any specialised sectoral training is usually self-managed by each organisation, although KIPA may give advice and overall guidance. According to KIPA, they have coordinated training activities with other public bodies regarding legal affairs, budget management, municipal affairs and human resources. However, in other areas, such as European integration, parallel needs assessment initiatives have been conducted and training strategies have been drafted without the involvement of KIPA and/or the DCSA, although these bodies participate in the implementation phase[116].

There is no comprehensive training programme for senior and medium-level managers, only individual training modules on leadership, strategic management, change management, policy development, etc. The majority of training courses organised by KIPA have a duration of between two and four days. Courses in budget and finance, and in municipal affairs, have the largest share of trainees and training

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[114] A draft law on KIPA's mission and organisation has been drafted, but has not been included in the legislative programme for 2014. It attributes to KIPA responsibility for drafting and proposing the training strategy to the MPA and for its implementation.

[115] MPA – DCSA (December 2010), *Methodology Manual for Training Needs Assessment*.

[116] This has been the case for instance with the Twinning Light Project KS 10 IB OT 01 TWL on "Assessment of the Capacities and Strengthening of the Key Kosovo Structures for the EU *acquis* Transposition and Policy Co-ordination".

days, while training in HRM has the smallest share, with a sharp decrease in 2013 due to the cancellation of courses on the new performance appraisal system[117]. Induction training for the new civil servants is also offered. Access to training activities is not regulated in terms of the annual number of training hours per civil servant, compulsory or voluntary attendance[118], compatibility with working hours, etc.

In 2012, KIPA trained 2 337 civil servants, only 13% of the total number of civil servants[119]. The impact of KIPA horizontal training is therefore quite limited. Finally, a complete system of monitoring and evaluation of training activities has not yet been set up. Questionnaires are distributed to each trainee to measure his/her degree of satisfaction, but no assessment is made of either individual achievement or the impact of training on the work performance. KIPA annual reports do not include time series of indicators on courses organised, number of participants, etc. They are descriptive in nature, lacking analysis of aspects to be improved or problems to be addressed.

A comprehensive, well-articulated and efficiently implemented training policy has still been only partially achieved, although important steps have been taken to set up short- and medium-term planning cycles, design adequate training needs assessment methods, and set up a network involving all of the relevant stakeholders. Tailor-made courses that are adapted to specific reform priorities of public bodies as well as public management courses for senior managers across civil service institutions are not in place.

9: Performance appraisal is fair, transparent and linked to career development, flexible remuneration, prescribed training and disciplinary measures, including dismissal.

Individual performance appraisals are conducted according to the procedures established under the mandate of the United Nations Interim Administration Mission in Kosovo (UNMIK) mandate. They should be carried out yearly by managers, using a standardised form and on the basis of work objectives set at the beginning of the evaluation period. Civil servants evaluated have the right to see a copy of the appraisal, which is afterwards presented to the manager's superior for approval. Civil servants who disagree with the appraisal can complain to internal appeals commissions.

In 2012 the appraisals covered 80% of all civil servants. The DCSA has established neither common criteria nor standards, nor any specific training for managers on the performance appraisal system. The setting of annual work goals is not yet widespread. The IOB consistently reports that performance appraisal is sometimes applied in a formal, "fictitious way"[120]. In principle, performance appraisal results should be taken into account for the identification of training needs, but KIPA confirmed that they are not yet considered as a relevant input in the drafting of training plans.

The evaluation of senior managers is subject to a different system[121], which is based on annual performance goals set by the minister or the highest official of the institution. A positive evaluation leads to continuity in the position and to the possible attribution of salary steps. Poor results lead to the initiation of a "poor performance procedure", conducted by the Performance Investigation Commission. This Commission is composed of two representatives from among the members of the Government and one representative from among the secretaries-general or equivalent positions, and it is thus controlled by the Government[122]. The poor performance procedure may lead to the redeployment of the senior manager or the application of disciplinary measures.

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[117] As the new performance appraisal system has not been initiated yet, the training had to be postponed.
[118] A draft regulation is under preparation on mandatory training and examinations, addressed to senior managers, managers, inspectors, and civil servants dealing with EU integration matters and administrative procedures. It regulates the process of certification of knowledge in those areas, as foreseen in sub-objective 10.4 of the PAR Action Plan.
[119] MPA (2013)
[120] IOB (2013)
[121] Established in Regulation no. 06/2012.
[122] Articles 10-12, Regulation no. 6/2012.

The new performance appraisal system for non-management positions, established in the CSL[123] and developed in Regulation no. 19/2012, will be implemented once the process of job classification has been completed. The system aims to enhance work performance and to identify professional development needs, including training. Appraisal results, if positive, will have consequences for horizontal and vertical promotion as well as for transfers. If negative, the appraisal may lead to disciplinary measures, demotion or even dismissal. Civil servants have the right to appeal, internally and to the IOB. Some aspects of the new system, such as the definition of professional and individual competencies and the forced distribution quotas in appraisal levels, which are to be applied within each institution, raise doubts and even reluctance among some of the managerial civil servants met during the assessment mission.

The current system of performance appraisal of civil servants is still the system that was established by UNMIK in early 2000. It is implemented in a rather formalistic way and has no direct consequences on professional development and salaries. The new system included in the CSL has not been implemented due to the incomplete job classification process.

10: The remuneration system of civil servants, based on a job classification system founded on professional competence, merit and level of responsibility, is transparent and fair. Salaries are paid accordingly and in due time.

The salary system currently applied is the system set out in an UNMIK instruction issued in 2000, based on coefficients that follow a general scale that ranks up to 10 grades, from less qualified jobs to management positions. However, the coefficients are freely chosen, adapted and allocated to jobs by each ministry, without reference to central, homogeneous criteria based on the level of responsibility, competence and merit. This, related to the lack of a unified catalogue of jobs, can lead to unbalanced situations and comparative grievances across the public administration, as stated by interlocutors from various public bodies interviewed during this assessment. Indeed, an analysis of the expenditure on wages and salaries for the total number of jobs in a sample of public organisations, including ministries, executive agencies and independent bodies, shows remarkable differences in salaries between institutions[124], and even sharp increases in some cases, especially between 2010 and 2012. This variability in salaries among public bodies, combined with the lack of horizontal promotion, leads to high turnover rates across public sector institutions, according to managers interviewed from various public bodies.

Compared to the private sector, according to the Kosovo Agency of Statistics[125], average public salaries in "general public services", in "public order and security" and in the area of "environment" are slightly higher than the average net monthly salary in the private labour market. However, in some specific sectors and in highly qualified jobs, salary supplements aimed at retaining key staff are allocated. These supplements create distortions in the salary system and sometimes are not aligned with the working conditions[126].

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[123] Articles 33 and 34 of the CSL.

[124] The sample includes: the OPM; ministries (MPA, MoF, Ministry of European Integration, Ministry of Trade and Industry, Ministry of Culture, Youth and Sports, Ministry of Environment and Spatial Planning, Ministry of Education, Science and Technology, Ministry of Justice, Ministry of Internal Affairs); executive agencies (including Customs, Tax Administration, KIPA, Kosovo Statistical Agency, Cadastral Agency, and National Institute of Public Health); independent state bodies (such as the Anti-Corruption Agency and Office of the Auditor Genera), and regulatory agencies for telecommunications, energy, water and waste, and media).

[125] Kosovo Agency of Statistics, *Kosovo Labour Force Survey 2012*, p. 17.

[126] For example, tax inspectors working in the Tax Authority are assigned an allowance for "specific work conditions", defined in Article 7 of Regulation 33/2012 as those conditions that "may pose a threat to the health and life of civil servants". The Cadre Fund and the Young Cell Scheme also aim to address this problem.

The new salary system for civil servants, established by law and specific by-laws[127], can only be implemented once the new classification of jobs has been completed. The system includes four functional categories and 14 salary grades related to the job position. In addition, up to 12 salary steps may be granted to the incumbent within each category and grade[128] on the basis of proven results. The objective is to achieve a more equitable, fair and transparent remuneration system, based on homogeneous criteria, such as the level of responsibility, complexity, qualifications and professional experience.

No significant incidences have been reported concerning payroll management, and salaries are paid in due time.

The lack of a unified catalogue of jobs and the absence of common guidelines on the allocation of salary coefficients can lead to comparative grievances across civil service institutions. Salary supplements are applied in some sectors, further distorting the overall salary framework. Implementation of the new salary system is conditional on the completion of the job classification process.

11: Disciplinary procedures, appeal procedures and criteria for termination of employment are in line with the set of civil service core values and principles, and they are uniform across the whole civil service.

Disciplinary procedures, appeal procedures and criteria for termination of employment, including adequate guarantees, are regulated in the CSL and various by-laws[129]. Disciplinary commissions, made up of civil servants appointed by the highest administrative officer of each institution for a two-year period, have not yet been established in all institutions. According to the IOB, the level of compliance with regulations in this area is low: "Main administrative officials have often appointed members of disciplinary committees based on nepotism, political and obedience basis. … Arbitrary decisions are often taken in relation to disciplinary liability without processing them through the personnel manager and disciplinary committee." [130].

Senior managers may be subject to disciplinary proceedings following the decision of the minister or the highest public official to whom they report on the basis of professional incompetence, misconduct or a criminal offence. Disciplinary commissions, set up on a case-by-case basis, are appointed by the Government upon the proposal of the Prime Minister[131]. As shown in Figure 3, it is worth noting that the number of complaints to the IOB related to the termination of employment continues to be high, whereas complaints regarding disciplinary actions are rare[132].

Criteria and procedures for disciplinary processes have been formally established, but the practices are not fully compliant.

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[127] Established by Law No. 03/L -147 on Salaries of Civil Servants (CSL), Regulation no. 03/2010 on job descriptions, Regulation no. 05/2012 on job classification in the civil service, Regulation no. 09/2012 on standards of internal organisation and systematisation of jobs in the state administration, and Regulation no. 33/2012 on allowances to salaries and other compensations for civil servants.

[128] With the exception of senior management positions and the lower grade of the technical-administrative category, for which up to five salary steps can be granted.

[129] Regulations no. 04/2011 on disciplinary procedures for civil servants, no. 01/2011 on termination, suspension and ending of employment of civil servants, and no. 06/2012 on senior management positions.

[130] IOB (2013), pp. 31-32.

[131] According to Regulation no. 6/2012 on senior manager positions, special disciplinary commissions are appointed on a case-by-case basis by Government decision, upon the proposal of the Prime Minister. The composition of these commissions includes one deputy prime minister, the minister responsible for public administration, the minister responsible for communities, and two other members from among secretaries general or equivalent positions.

[132] This situation is consistent with the information provided by HR managers during the assessment mission, in the sense that there are very few disciplinary processes and they are mostly for minor violations.

12: Measures and tools for promoting integrity and preventing corruption in the civil service are implemented.

Chapter VII of the CSL establishes principles and terms for the professional conduct of civil servants, updating and bringing into law the provisions contained in the Code of Conduct that was approved under the UNMIK mandate. There are no specific training activities on ethics, but this issue is included in a 12-day training course for new civil servants organised by KIPA.

A breach of rules governing civil servants' integrity may be dealt with by an internal disciplinary commission, insofar as it is a serious violation of the civil servants' code of conduct, and by the judicial system. The limited data available on disciplinary measures does not permit the identification of isolated cases related to breaches of integrity rules.

The Anti-Corruption Agency (ACA), set-up by the Anti-Corruption Law passed in 2005, is responsible for corruption prevention, awareness raising and education, as well as for law enforcement, including the proceeding of criminal charges to the Public Prosecutor. The Agency oversees and manages the declarations of assets and gifts of managerial civil servants at both central and local levels. It also monitors conflicts of interest in those cases[133].

Tools to promote integrity and prevent corruption in the civil service have been partially implemented. Training of civil servants in this area is not widespread.

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[133] The Law no. 04/L-151 on conflicts of interest does not mention explicitly the heads of personnel of municipalities, but the law on the declaration of assets and gifts does so.