

# LEGAL FRAMEWORK FOR THE RECRUITMENT OF CIVIL SERVANTS IN THE CONTEXT OF KOSOVO

Lecturer Avni H. ALIDEMAJ<sup>1</sup>

## **Abstract**

*Public administration is the basic mechanism that ensures the good functioning of the state by providing services to citizens and exercising state power as well. Moreover, the administrative apparatus, according to the standards of the European Administrative Space, should be granted a certain level of independence from political institutions while conducting its administrative activity. For this reason, public administration reforms have always started with the professionalization of the civil service as the main pillar of the administrative apparatus. Initial measures to ensure the professionalism of the administration have been always undertaken in the field of meritocratic recruitment of civil servants as well as increase of their skills. States in transition and those emerging from the conflict continue to face the challenge of professionalizing the civil service as a consequence of the legacy of past systems. This paper explains the efforts undertaken in Kosovo for the professionalization of the civil service using: normative legal method, comparative and qualitative method, by focusing on the specific analysis of the legal framework for the recruitment of civil servants in Kosovo by comparing it with established practices which are often in conflict with the legal basis as a result of interference by political institutions.*

**Keywords:** public administration, civil service, meritocratic recruitment, political interference, civil service law, administrative review.

**JEL Classification:** K23

## **1. Introduction**

The public sector is an essential element in maintaining a country's social cohesion and prosperity, and the way it serves the state and society at large can be seen as a manifestation of social and political consciousness. Public administration and civil service are essential to the continuity of the social contract, as a mechanism that ensures the stability of a country's constitutional order. The proper functioning of democracy as well as the development of good governance is directly dependent on ethical and effective public administration.<sup>2</sup>

There is no universally accepted definition of civil service and civil servant. In some countries, civil servants are considered all state employees, as in the case of France where teachers and university professors are included in the list of civil service, while in the United Kingdom, the term civil service is more closely defined, especially after programs of the reform and modernization that have been undertaken in the last 30 years, in which case the expression civil servant applies only to administrative officials of the central level.<sup>3</sup> So in defining their civil services, different EU countries have applied different approaches influenced by the history they have gone through and modified by their development needs. Some states have applied the broad concept of civil service, which includes every civil servant, as part of the state's executive mechanism (France, the Netherlands, Ireland, Spain, Sweden), while others have limited the concept of civil service in the so-called "basic public administration" which means performing those functions that only the state has the legitimacy to perform by creating professional civil servants who exercise state power (Germany, Austria, United Kingdom, Denmark, Italy).<sup>4</sup>

The civil service is defined as an institution that mobilizes human resources, in the service of the state through a complex of rules transformed into a manifesto according to a special organizational design. The civil service, as an institutional structure, incorporates the obligation to

---

<sup>1</sup> Avni H. Alidemaj (PhDc) - Lecturer of Administrative Law, Public Sector Management Faculty, International Business College of Mitrovica (IBC-M), in Mitrovica, Kosovo, avnialidemaj70@gmail.com.

<sup>2</sup> Andrew Massey, *International Handbook on Civil Service Systems*, University of Exeter – UK, Edward Elgar Publishing, Inc., 2011, p.4.

<sup>3</sup> Ibid.

<sup>4</sup> Bajram Pollozhani, Ermir Dobjani, Esat Stavileci, Lazim Salihu, *E Drejta Administrative – aspekte krahasuese*, ASDRENI, Shkup 2010, p. 279.

create the values of the principle of the rule of law (*rechtsstaat*), values and principles that are manifested in the form of specific decision-making procedures. Efforts to establish the principles of the rule of law in many countries have also created a different institutional environment for civil servants, followed by different features of the civil service system. Moreover, this environmental complexity that affects the development of the civil service system is also influenced by specific political-administrative contexts.<sup>5</sup>

When the civil service is established according to the limited concept, civil servants exercise public authority and have legal powers to propose public policies and exercise regulatory activity. Defined in this way, the civil service represents the state in the totality of its relations in the public sphere and functions in compliance with the administrative and constitutional law of the state. In both cases, but especially in the limited concept, a range of conditions must be met in order for the civil service to be able to perform the assigned tasks. Thus, the civil service is formed as an institution that requires from its members a high degree of professionalism and integrity, including deep knowledge of administrative and constitutional law. Furthermore, civil servants must be subject to a range of legal conditions in order to be able to perform their functions and competencies legally, appropriately, efficiently and effectively in the field of administration. These conditions are related to rights and obligations, professional sustainability, protection from political interference and interest groups and selection according to the principle of meritocracy.<sup>6</sup>

All countries in transition, including Kosovo, face various challenges on their path to genuine consolidation of their political and administrative institutions. These challenges are especially quite complicated in those countries that have gone from a communist system to a pluralistic one, especially if they have gone through armed conflicts as well. This is exactly the case with Kosovo and some Balkan countries where the transition phase is quite long and accompanied by major challenges. There is a broad consensus that a consolidated and professional administration is the main pillar on which a consolidated state rests. However, the consolidation of the administration in the countries in transitions is one of the most difficult tasks of the government because the old (regressive) practices of functioning of administration cannot be so easily eliminated. Consequently, the administrative apparatus in Kosovo is facing numerous challenges such as: political interference in public administration, politicized recruitment of civil servants, inadequate and unsuitable training for civil servants and poor control mechanisms over administration. All this hinders the reform of public administration in Kosovo. Consequently, the administrative apparatus in Kosovo and its civil service is not distinguished for efficiency in implementation of law or even in providing services to the citizens.

It is more than obvious that Kosovo during its 20-year journey has faced many challenges, in which case the authorities have had to set priorities and focus on addressing them. However, Kosovo's ruling class has failed to set the right priorities for the state and society at large. It is a well-known fact that state institutions but also the state-building itself cannot be done without a professional public administration which operates efficiently and effectively. This should be the first priority that should be addressed, as solving this problem would pave the way for overall social development in Kosovo. Neglecting this fact, Kosovo institutions have been overcrowded with civil servants who do not have any academic and professional training to exercise administrative activity. Consequently, these (civil servants) have become a serious obstacle to any tendency of public administration reform that will concentrate into a raising of professionalism, efficiency and effectiveness of administrative apparatus. This is among the major reasons for the failure of efforts and resources intended to increase the professionalism of public administration in Kosovo.

---

<sup>5</sup> Jos C.N. Raadschelders, Theo A.J. Toonen, Frits M. Van der Meer, *The Civil Service in the 21<sup>st</sup> Century - Comparative Perspectives*, Palgrave-Macmillan, New York, 2007, p. 5-6.

<sup>6</sup> Bajram Pollozhani, Ermir Dobjani, Esat Stavileci, Lazim Salihu, *E Drejta Administrative – aspekte krahasuese*, ASDRENI, Shkup 2010, p. 280.

## 2. Legal basis for recruitment of civil servants in Kosovo

Within the framework of the public administration reform strategy in Kosovo, the reform of the civil service is generally foreseen through the Law on Civil Service, which entered into force in 2010.<sup>7</sup> This law abrogated UNMIK (United Nation Mission in Kosovo) Regulation No. 2001/36 for the civil service and introduced a certain innovation in the organization and functioning of the civil service aiming at professionalization and increasing its efficiency. According to the Law on Civil Service, the civil service system in Kosovo undergoes essential changes taking on hybrid attributes but with nuances of the career system in an effort to adapt to existing circumstances.

According to the newly adopted definition (Law), civil service is considered the administrative staff engaged in central and municipal administrative institutions, who implement policies in accordance with the rules and procedures provided. Moreover, the civil service is composed of impartial, professional and responsible civil servants who reflect multi-ethnicity and gender equality.<sup>8</sup> The abovementioned law stipulates that civil servants should be employed on the basis of merit and by undergoing a selection procedure clearly defined by law and bylaws. Thus, it is emphasized that the recruitment, organization, promotion and management of the Civil Service in Kosovo is based on the principle of meritocracy.<sup>9</sup> In accordance to the Law on Civil Service, the employees of the Administration of the Assembly of Kosovo are civil servants, in which case the specific conditions of their work are regulated by special acts of the Presidency of the Assembly. Furthermore, part of the civil service is also considered diplomatic and consular personnel, administrative staff sent abroad or employed in the Ministry of Foreign Affairs of Kosovo.<sup>10</sup>

Furthermore, civil servants are also considered civilian personnel employed in the Kosovo Police, the Kosovo Security Force, Kosovo Customs and the Kosovo Correctional Service, including administrative staff employed in the judicial and prosecutorial system.<sup>11</sup> Unlike UNMIK's legal framework, which defined civil service very broadly, the new Civil Service Law applied the opposite approach, excluding a large number of categories of employees from the civil service. In this way, the status of civil servant was denied to the teaching staff of the education system, the medical staff of the health system, creators and performers of art, police officers of the Kosovo Police, customs officials of Kosovo Customs, correctional officers of the Kosovo Correctional Service and members of The Kosovo Security Force, political appointees and all those appointed to positions by political appointees and members of their cabinets, from the cabinet of the President, the Speaker of the Assembly, the Prime Minister and the cabinets of the ministers. Their employment relationship is regulated by the Labor Law, special laws, collective agreements or particular regulations.<sup>12</sup>

Furthermore, the abovementioned law excludes from the civil service elected officials in electoral positions in public institutions and officials appointed by elected officials to certain positions, who are considered public officials, as well as all employees employed in cabinets of public officials. Civil servants are also not considered personnel employed by administrative institutions at central and municipal level, responsible for performing support and maintenance functions.<sup>13</sup>

The Law on Civil Service requires secondary legislation to be drafted for its implementation, special law enforcement bodies to be established, and that an annual report on the state of the civil service to be drafted. Although the Civil Service Law clearly defines the issues to be regulated by secondary legislation, in some cases it does not specify which institution is

---

<sup>7</sup> Law No.03/L-149 on the Civil Service of the Republic of Kosovo (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].

<sup>8</sup> Article 3.1, of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo (Official Gazette of Republic of Kosovo, No. 72/2010).

<sup>9</sup> Article 3.2 and 3.9 of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>10</sup> Article 3.3 and 3.4 of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>11</sup> Article 3.5 and 3.6, of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>12</sup> Article 4.1, of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>13</sup> Article 4.2, 4.3 and 4.4 of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

responsible for issuing it. However, a reasonable interpretation is that the Ministry of Public Administration is responsible for enacting secondary legislation that has not been specifically delegated to any other institution. The Civil Service Law provides for the implementation of secondary legislation in the following areas: procedures for equal opportunities, procedures of appealing, employment, probationary period, job description, evaluation of performance, disciplinary procedures, working hours and follow-up work, annual leave procedures and termination of employment. Based on the competence given by this Law, the Ministry of Public Administration has drafted over 20 bylaws that enable the implementation of the Law on Civil Service in Kosovo.<sup>14</sup>

However, it should be noted that the drafting of bylaws (secondary legislation), in order to implement the abovementioned law, has been followed by numerous delays which have directly affected the applicability of the law. Furthermore, the Ministry of Public Administration has not developed effective mechanisms for monitoring the implementation of legislation and in very rare cases applied sanctions in cases of non-implementation.

The Law on Civil Service in Kosovo has also defined the basic principles for selecting and recruiting candidates in the civil service, in which case admission to the Civil Service of Kosovo is to be done in accordance with the principles of merit, professional ability, impartiality, equal opportunities, non-discrimination and equal representation, on the basis of public competition and eligibility of the candidates to act. Among other things, communities and their members are guaranteed fair and proportionate representation in the civil service in the central and local public administration bodies. Moreover, within the civil service in central level institutions a minimum of 10% of posts should be reserved for persons belonging to non-majority communities in Kosovo and who meet specific employment criteria. At the municipal level for qualified members of non-majority communities in the municipality, the number of jobs will be reserved in accordance with the percentage representation of communities in the respective municipality.<sup>15</sup>

There are two categories of employees within the Civil Service of Kosovo: civil servants of career, who exercise the functions on a permanent basis to achieve the general institutional objectives; and non-career civil servants - who hold limited-term positions for up to two years, in order to implement certain projects, temporary replacement of permanent civil servants and in cases of work overload. The admission procedure for the positions of civil servants of career and non-career is the same in which case these positions must be approved by the government, upon the proposal of the relevant institution and the approval of the Ministry of Public Administration and the Ministry of Finance. Whereas, fixed-term appointments for a period of less than six months are made on the basis of contracts called "Special Service Agreements" which are subject to the Law on Obligations and for which a simplified recruitment procedure is applied.<sup>16</sup>

Recruitment of civil servants is done in accordance with the requirements set out in the General Staff Plan of the civil service. These requirements need to be based on the individual plans of the relevant institutions. The Department for the Administration of Civil Service within the Ministry of Public Administration is responsible for drafting this plan based on the requirements of the relevant institutions and authorizes requests for recruitment upon the needs articulated by the Personnel Units of the relevant institutions. The General Staff Plan in the Civil Service includes the number of positions proposed by various institutions, approved by the Ministry of Public Administration and confirmed by the State Budget. The recruitment procedure cannot be conducted for positions which are not foreseen in the General Plan and which have not been approved by the State Budget.<sup>17</sup>

The Department for Civil Service Administration (DCSA) in the Ministry of Public

---

<sup>14</sup> Organization for Security and Co-operation in Europe Mission in Kosovo, "The Implementation of Civil Service Legislation in Kosovo", Pristina, February 2013, page 7. Available online at: <https://www.osce.org/kosovo/99606?download=true> [Accessed April 3, 2020].

<sup>15</sup> Article 11 of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>16</sup> Article 12 of the Law No.03/L-149 on the Civil Service of the Republic of Kosovo.

<sup>17</sup> Article 5, Regulation No.02/2010, on Recruitment Procedures in Civil Service (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].

Administration is responsible for coordinating and managing the recruitment process in the civil service while the personnel units of the relevant institutions are responsible for implementing the recruitment process after the authorization given by DCSA.<sup>18</sup> Relevant institutions that need to recruit civil servants are requested to establish *ad-hoc* selection committees that conduct recruitment procedures. These committees are composed of members who have higher positions than those to be recruited but one of the members must be in the same position as the one being recruited. Selection committees are not permanent bodies as they are appointed after the commencement of the recruitment procedure and are dissolved after the completion of that procedure. They are responsible for managing the evaluation, preparing the shortlist of candidates, conducting tests, evaluating the results and proposing the final selection list for the successful candidate. The list of successful candidates has to be forwarded for appointment to the highest administrative manager of the recruiting institution who needs to fill in a certain positions.<sup>19</sup>

The Law on Civil Service has defined a new procedure for the appointment and dismissal of officials in senior management positions in the Civil Service of Kosovo. Based on the law, the Council for Positions of the Senior Level Management has to be established and the committee for evaluation of criteria (*as an ad-hoc bodies*) within the Ministry of Public Administration. Among others, data on the work of committees and procedures related to the appointment of senior management staff are regulated by bylaws. The law stipulates that senior management positions include those of permanent secretary of the Office of the Prime Minister, permanent secretaries of ministries, and chief executive officers in equivalent positions within independent executive and regulatory agencies. Therefore, the procedure for appointing senior management staff to the executive branch now remains under the direction of the High Level Steering Council.<sup>20</sup>

The Council consists of seven members, including a Deputy Prime Minister, the Minister of Public Administration, the Minister of Finance, a Minister from the minority communities and three other members from the ranks of permanent secretaries or equivalent positions appointed by the Prime Minister.<sup>21</sup> Whereas, the Ministry of Public Administration is responsible for providing administrative support in the establishment of the Criteria Evaluation Committee. This committee is composed of three permanent secretaries, a University Professor from the respective field and a member of civil society and is responsible for reviewing the requirements of candidates for the vacant position and proposing the three best candidates to the Minister of Public Administration. After the completion of the procedure, the Minister of Public Administration sends the name of the preferred candidate by the head of the relevant institutions for approval to the government. If approved, the candidate is appointed by the government to the relevant position for a three-year term. The general secretaries and their equivalent positions shall be elected from a list of civil servants listed in senior management positions according to the rules for categorizing positions determined by the Law on Civil Service. The Law on Civil Service and the Regulation on Procedures for Appointment to Senior Management positions determines that appointment to senior management positions in the Civil Service of Kosovo is based on the principle of merit, which means the appointment of the most senior and professional person for that senior management position.<sup>22</sup>

The Law on Civil Service has also defined the general requirements for employment in the civil service where it is emphasized that the civil service has the right to employ citizens of Kosovo who have full capacity to act, are in possession of civil and political rights, have the necessary

---

<sup>18</sup> Article 6 of the Regulation No.02/2010, on Recruitment Procedures in Civil Service (Official Gazette of Republic of Kosovo, No. 72/2010).

<sup>19</sup> Article 7 of the Regulation No.02/2010, on Recruitment Procedures in Civil Service.

<sup>20</sup> Article 6 of the Regulation No.06/2010 on the Procedures for Appointments to Senior Management positions in the civil service of the Republic of Kosovo (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].

<sup>21</sup> Article 7 of the Regulation No.06/2010 on the Procedures for Appointments to Senior Management positions in the civil service of the Republic of Kosovo.

<sup>22</sup> Article 4, 11 and 14 of the Regulation No.06/2010 on the Procedures for Appointments to Senior Management positions in the civil service of the Republic of Kosovo.

education and professional ability to perform executive, managerial or administrative functions. Furthermore, admission to the Kosovo Civil Service may take place up to one year before retirement age. While in accordance with the European principles of free movement of labor and non-discrimination, foreigners who possess the necessary qualifications for the job can be admitted to the Kosovo Civil Service. The government defined some basic state functions (related to state sovereignty), which can only be restricted to Kosovo citizens. The Kosovo Civil Service may allow the voluntary (unpaid) work of civil servants after retirement, up to the age of seventy. The manner of voluntary work is regulated by a Regulation issued by the Government.<sup>23</sup>

The current Civil Service System in Kosovo applies a decentralized model of employment as Personnel Units, which play the role of central management body within each institution, are authorized to develop and overall manage with the civil servants. According to this system, the recruitment and selection of civil servants is done by these units in close cooperation with the Ministry of Public Administration. Furthermore, the evaluation of candidates for vacant positions in the civil service is carried out by the temporary committees established by the permanent secretaries or the highest administrative directors of the respective institutions. Thus, two important moments show that the procedure of recruiting civil servants is built on mechanisms based on political and personal preferences. In connection with the latter, the first argument is based on the role of general secretaries and other senior executives of the relevant administrative institutions who are called upon to manage the recruitment procedures of civil servants. Whereas, the second argument has to do with the role of the Government of Kosovo in the recruitment of civil servants in central executive institutions, in which case each new position in the civil service must be approved in advance by the Government, which is controlling in this way the functioning of internal units of ministries and human resource management in these institutions.<sup>24</sup>

The public administration should not be seen only as a structure implementing laws, but also as a structure where policies are developed and proposed to decision makers. Therefore, a professional and effective public administration enables a good execution of policies (policy execution), as well as a mechanism whereby proposals for policies and programs are formulated for decision makers (policy formulation).<sup>25</sup>

In the meantime, Kosovo Parliament adopted the Law No. 06/L-14 on Public Officials, which should derogate the Law on Civil Service approved in 2010. However, after the complaint of many institutions in Kosovo, especially the Ombudsman, the law on public officials has been suspended by the Constitutional Court of Kosovo on the grounds of attempting to centralize decision-making within the civil service, including non-meritocratic recruitment. According to the legislation in power, the appointment, admission and employment criteria in the Civil Service of Kosovo are to a certain extent in favor of the principle of meritocracy, but the established practices are diametrically opposed to this principle. It is more than obvious that admission and promotion within the civil service is based on nepotism and political loyalty, in which case this service has become a safe haven for political party militants, who for their merits in political activities are rewarded with positions within civil service.

The alternation of power, whether municipal or central one, results with mobility in various positions of the civil service, generating the departure of a number of civil servants from this sector. This practice has significantly affected the professionalism of the civil service due to the hiring practices with candidates who do not meet the criteria provided by law and marginalize or dismiss the employees who have been already trained, in the meantime, to perform various administrative tasks. Furthermore, this practice discourages potential candidates who have the skills, knowledge and adequate education to apply within civil service of Kosovo.

<sup>23</sup> Article 13 of the Law No.03/L-149 on the Civil Service of Kosovo.

<sup>24</sup> Group for Legal and Political Studies, "On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo", Policy Analysis No. 02/2012, Prishtina, p. 5-6. Available online at: <http://www.legalpoliticalstudies.org/wp-content/uploads/2012/05/On-the-defence-of-professionalism-of-bureaucrats.pdf> [Accessed on April 3, 2020].

<sup>25</sup> GAP Institute, "Reforming Public Administration in Kosovo - Policy brief", Prishtina, 2015, p. 4. Available online at: [https://www.institutigap.org/documents/99892\\_Reforming%20Public%20Administration%20in%20Kosovo.pdf](https://www.institutigap.org/documents/99892_Reforming%20Public%20Administration%20in%20Kosovo.pdf) [Accessed on April 2, 2020].

In this way, the civil service in Kosovo remains overcrowded by incompetent officials who do not act as civil servants but rather resemble political officials responsible for implementing the political activities and daily agendas of political parties that have brought them to those positions.

### 3. Civil service recruitment practices

The core function of the bureaucracy is to implement or execute law and policy: it is thus charged with administering government business. This is why the bureaucracy is sometimes referred to as 'the administration', while the political executive is termed 'the government'. This distinction implies that a clear line can be drawn between the policy-making role of politicians and the policy implementing role of bureaucrats. Certainly, the vast majority of the world's civil servants are engaged almost exclusively in administrative responsibilities that range from the implementation of welfare and social security programs to the regulation of the economy, the granting of licenses, and the provision of information and advice to citizens at home and abroad. The sizes of bureaucracies are therefore closely linked to the broader responsibilities of government. Nevertheless, the image of bureaucrats as mere functionaries who apply rules and carry out orders issued by others can be misleading. In the first place, since much administrative detail is, of necessity, left to officials, civil servants may be allowed significant discretion in deciding precisely how to implement policy. Second, the degree of political control exercised over the bureaucracy varies greatly from state to state. Whereas state officials in China are subject to strict and continuous party supervision, in France and Japan their high status and reputation for expertise guarantee them a considerable degree of autonomy. Third, in their capacity as policy advisers, senior civil servants at least have the ability to shape the policies that they are later required to administer.<sup>26</sup>

One of the most common ways of exercising political control is to recruit the senior bureaucracy into the ideological enthusiasms of the government of the day. This effectively blurs the distinctions between politics and administration, and between politicians and public officials. Control is overtly accomplished through a system of political appointments. A spoils system was institutionalized in the USA by Andrew Jackson in the nineteenth century, when he replaced about 20 per cent of the federal civil service with his own men. When there is a new US president, the administration changes. Some 3,000 top posts are filled by political appointees, mostly in a rush between the election and the inauguration of the new president. Fewer than 200 of these appointments are likely to be made by the president personally; the others are made by senior executive officers, subject to presidential approval. In Germany, although the formal scope for making ministerial appointments is limited, the *Berufsverbot* (literally, the 'denial of access to a profession') system allows incoming ministers and governments to discard unwanted officials by retiring them on full pay and appoint more sympathetic ones in their place. However, covert politicization is more widespread. Creeping politicization has also become a feature of French administration. Approximately 500 senior posts are now filled at the discretion of leading government figures, and, since the 1980s, those appointed have usually had a highly partisan profile, or have been linked personally or politically with senior politicians. The French higher civil service therefore now resembles a patchwork of politicized clans, rather than a unified body standing above party politics.<sup>27</sup>

The attraction of a politicized senior bureaucracy is plainly that it ensures that there is a higher level of loyalty and commitment in such a group than would be likely amongst politically impartial civil servants. Moreover, those observers who believe that neutrality is always a myth, arguing that some kind of political bias is inevitable in the state bureaucracy, generally hold that a system of overt politicization is preferable to one of covert politicization. However, political commitment also brings serious disadvantages. In the first place, politicization strikes at the very

<sup>26</sup> Andrew Heywood, *Politics*, fourth edition, Palgrave Macmillan, 2013, p. 362-363.

<sup>27</sup> *Ibid.*

heart of the idea of a professional and permanent civil service. Once bureaucrats are selected on political grounds by the government of the day, or encouraged to share their ideological sympathies, their appointments become as temporary as those of their political masters. This, in turn, means that knowledge and experience are not accumulated over a number of governments, and that a change in administration brings about a major breach in the continuity of government.<sup>28</sup>

Based on the ongoing discussions and practices in the field of political and administrative studies, there is no clear division between administration and politics. The exercise of state power and the provision of services are features and functions of the administration. However, the administration is actively involved in drafting public policies and legislation, which in a way are political actions.<sup>29</sup> Thus, administrative officials are often selected in high administrative positions on the basis of political loyalty. In some countries these actions are legalized, while in some contexts it is done in contrary to the legal provisions. However, in countries with strong, efficient and effective administrative apparatus, a “strategic isolation” of public administration from political activities has been established, presuming that such a separation positively affects the functionality of public administration and civil service (the case of Italy, Germany, United Kingdom).

The Public Administration and the Civil Service in Kosovo are, to a large extent, politically influenced, given the recruitment on the basis of political interference on the one hand, and the promotion at civil service positions based on the political loyalty. Committees for evaluation of candidates do not apply the principle of meritocracy during the recruitment process as government institutions have a decisive say in the selection of candidates. This is not in line with the Venice Commission and European Principles, which decisively stipulate that those responsible for recruiting civil servants must have institutional independence in relation to political authorities. The current system in Kosovo supports political influence and intervention in the civil service. The politicization of the civil service in Kosovo takes place in several ways. Initially, government coalition partners share responsibilities for controlling the relevant ministries and management staff within these ministries. This is followed by the termination of the contracts of certain civil servants and the employment/advancement of other employees in exchange for their political loyalty and support.<sup>30</sup>

In order to assess the potential candidates for the civil service, committees are set up under the supervision of permanent secretaries, mayors or executive heads of institutions, which makes them crucial in the initiation and recruitment process. On the other hand, the practices prove that the permanent secretaries and chief executive officers of the institutions are appointed mainly on the basis of political will of the government. Therefore, indirectly, the government influences recruitment and appointments within the civil service. In the case of the appointment of a senior official, the government in particular takes the preferences of the head of the institution that will hire the senior official. This legal obligation is contrary to the principle of merit and professionalism, as the personal preferences of the political chief of the institution may prevail when it comes to the appointment of senior officials within the given institution. The government, therefore, plays an important role in appointing senior civil servants to each executive institution, and this limits the civil autonomy of the administrative institutions.<sup>31</sup>

According to the Independent Oversight Council of Civil Service in Kosovo, during the year 2017, 326 complaints against recruitment procedures in the civil service have been received. Also, the Council conducted 312 observation procedures related to the appointment process of senior civil servants. Out of 312 procedures that have been observed, the Council has approved as regular procedures 164 of them, while 148 promotion/recruitment procedures have been canceled due to the legal and procedural violations. In the process of monitoring the rules and principles of

---

<sup>28</sup> Ibid.

<sup>29</sup> Esat Stavileci, *Notions and Principles of Public Administration- Methodological aspects and contrastive analysis*, Academy of Science and Arts of Kosovo, Prishtina, 2005, p. 139.

<sup>30</sup> Dren Doli, “Discussion Paper: Kosovo Civil Service Reform”, Group for Legal and Political Studies, Prishtina, 2012, p. 21. Available online at: [http://www.mei-ks.net/repository/docs/Discussion\\_Material\\_Civil\\_Service\\_Reform.pdf](http://www.mei-ks.net/repository/docs/Discussion_Material_Civil_Service_Reform.pdf) [Accessed on April 6, 2020].

<sup>31</sup> Ibid.



implementation of civil service legislation during 2017, the Council monitored 81 institutions and drafted 523 findings involving violations of the provisions of the Civil Service legislation and gave a total of 523 recommendations to responsible officials and relevant administrative institutions. Based on the abovementioned data, the Council has found that public administration institutions have not managed to properly implement the provisions set by legal and sub-legal acts, regarding the conduct of recruitment procedures in the civil service, nor promotion procedures, including external recruitment as well.<sup>32</sup>

To the potential candidates with superior training in the field of public administration or other fields of social sciences it has become almost impossible to be recruited within the public administration on the basis of principle of meritocracy. Numerous cases have been registered where excellent candidates have undergone the recruitment process within municipal, central administrative institutions, executive agencies and independent administrative institutions and have resulted negatively, not achieving the goal of admission to the civil service. Moreover, candidates with inadequate education and in contrary to the criteria of the competition have been employed in the same positions. A number of young people (highly professional candidates) have no choice but to join the ruling political parties in order to gain the necessary political support for eventual employment after a while.<sup>33</sup>

Although sufficient staff has been trained at bachelor and master studies in the field of public administration in Kosovo, the vast majorities of them has ended up as employees in the private sector or are still unemployed. Despite 10-15 years of working experience in the administrative sector of international organizations operating in Kosovo, the majority of former employees have been hired by private sector due to the lack of access to the public institutions as a result of political interference. Long working experience as well as professional trainings obtained within international organizations (UN, OSCE, EULEX, ICRC, UNDP, UN-Habitat, etc.) has created professional structure of people with advanced knowledge on administrative activities. The aforementioned structure has been rejected by the political structure in Kosovo which created aversion against this particular category of the people.<sup>34</sup> Moreover, recruitment within civil service in Kosovo is best illustrated by the saying, *"Tell me when you are employed in the public sector, to show which political party has employed you."*<sup>35</sup>

However, in contrary to the legal provisions, the appointment to high positions continues to be extremely politicized and based on nepotistic practices. During April 2015, the Ministry of Public Administration appointed the Director of the Kosovo Institute for Public Administration out one of the three shortlisted candidates who showed the lowest test scores and had the least experience compared to the candidate who had achieved highest score, has 12 years of experience in the civil service and was a career civil servant.<sup>36</sup>

Thus, politics-administration dichotomy should not be of osmotic nature but rather of a symbiotic character (school of interaction). As long as civil servants are not distinguished from political officials, tangible and visible results in reforming the public administration in Kosovo will not be achieved nor the overall societal development.

#### 4. Conclusion

Every country in transition is trying to find the right path to recover from the past and to build new values and administrative institutions that help for long-term development. The

---

<sup>32</sup> Këshilli i Pavarur Mbikëqyrës për Shërbimin Civil, *"Raport i punës së Këshillit të Pavarur Mbikëqyrës për Shërbimin Civil të Kosovës për vitin 2017"*, Prishtinë 2018.

<sup>33</sup> Interview with Afrim Tahiri: Graduated in public administration, Master in Public Administration - Distinguished student who has applied for a job 22 times at different administrative institutions. The interview was conducted on March 27, 2020 in Vushtrri/Kosovo.

<sup>34</sup> Interview with Sadik Haxhiu: University Professor and former senior official of the Ministry of Public Services of Kosovo. The interview was conducted on March 24, 2020 in Prishtina/Kosovo.

<sup>35</sup> *Ibid.*

<sup>36</sup> Interview with civil servants of Ministry of Public Administration: The interview was conducted on March 6, 2020 in Prishtina/Kosovo.

organization and functioning of efficient, effective and politically impartial public administration is essential to the functioning of the state, as democratic governance rests on the pillars of a professional administration. So the main challenge of public administration in Kosovo and civil service in particular is to minimize political influence and fight unprofessionalism. In this way, given the political impact on recruitment, advancement, clean-up and increased mobility towards other sectors, the civil service in Kosovo suffers from a chronic lack of professionals who would be worthy bearers of extremely important processes through which the Kosovan society is going through. Therefore, exactly the principles of the German, British and Italian model of administration (strategic isolation of the administration from the politics) could provide a way out of this administrative stalemate in Kosovo. In this way, the negative effect of interference of political level on the recruitment and advancement of civil servants would be minimized.

Encouraged by some legal provisions of the law on civil service, the political and administrative level is endowed with excessive discretion in the selection and advancement of civil servants. This administrative discrepancy has caused a negative chain reaction in the functioning of the public administration in Kosovo. Thus, through the Law on Civil Service, an attempt has been made to reform the public administration, which has not been achieved even closely. Moreover, the will of the political leadership has gone so far that it has tried to completely centralize the recruitment of civil servants through new laws that have been suspended by the Constitutional Court of Kosovo.

The only way out of this situation is the de-politicization of public administration, which should begin with the establishment of independent administrative institutions that deal exclusively with the recruitment of civil servants, similar to the Civil Service Commission in the UK. In this way, there is a real possibility to hinder the political interference in public administration and consequently the degradation of the civil service in Kosovo.

Providing services to all citizens of Kosovo, establishing accountable and professional administration that is free from political interference is a key priority of European Integration Agenda. This has not yet been achieved in Kosovo because the public administration apparatus continues to be strongly influenced by the interests of political parties.

## Bibliography

1. Andrew Heywood, *Politics*, Fourth Edition, Palgrave Macmillan, 2013.
2. Andrew Massey, *International Handbook on Civil Service Systems*, University of Exeter–UK, Edward Elgar Publishing, Inc., 2011.
3. Bajram Pollozhani, Ermir Dobjani, Esat Stavileci, Lazim Salihu, *E Drejta Administrative – aspekte krahasuese*, ASDRENI, Shkup 2010.
4. Dren Doli, “*Discussion Paper: Kosovo Civil Service Reform*”, Group for Legal and Political Studies, Prishtina, 2012. Available online at: [http://www.mei-ks.net/repository/docs/Discussion\\_Material\\_Civil\\_Service\\_Reform.pdf](http://www.mei-ks.net/repository/docs/Discussion_Material_Civil_Service_Reform.pdf) [Accessed on April 6, 2020].
5. Esat Stavileci, *Notions and Principles of Public Administration- Methodological aspects and contrastive analysis*, Academy of Science and Arts of Kosovo, Prishtina, 2005.
6. GAP Institute, “*Reforming Public Administration in Kosovo - Policy brief*”, Prishtina, 2015. Available online at: [https://www.institutigap.org/documents/99892\\_Reforming%20Public%20Administration%20in%20Kosovo.pdf](https://www.institutigap.org/documents/99892_Reforming%20Public%20Administration%20in%20Kosovo.pdf) [Accessed on April 2, 2020].
7. Group for Legal and Political Studies, “*On the defence of professionalism of bureaucrats: A discussion upon the protection mechanisms of civil service in Kosovo*”, Policy Analysis No. 02/2012, Prishtina. Available online at: <http://www.legalpoliticalstudies.org/wp-content/uploads/2012/05/On-the-defence-of-professionalism-of-bureaucrats.pdf> [Accessed on April 3, 2020].
8. Jos C.N. Raadschelders, Theo A.J. Toonen, Frits M. Van der Meer, *The Civil Service in the 21<sup>st</sup> Century - Comparative Perspectives*, Palgrave-Macmillan, New York, 2007.
9. Këshilli i Pavarur Mbikëqyrës për Shërbimin Civil, “*Raport i punës së Këshillit të Pavarur Mbikëqyrës për Shërbimin Civil të Kosovës për vitin 2017*”, Prishtinë 2018.
10. Law No.03/L-149 on the Civil Service of the Republic of Kosovo (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].
11. Organization for Security and Co-operation in Europe Mission in Kosovo, “*The Implementation of Civil*

- Service Legislation in Kosovo*”, Pristina, February 2013. Available online at: <https://www.osce.org/kosovo/99606?download=true> [Accessed on April 3, 2020].
12. Regulation No.02/2010, on Recruitment Procedures in Civil Service (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].
  13. Regulation No.06/2010 on the Procedures for Appointments to Senior Management positions in the civil service of the Republic of Kosovo (Official Gazette of Republic of Kosovo, No. 72/2010). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> [Accessed April 2, 2020].