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THE CHALLENGES OF PUBLIC ADMINISTRATION REFORMS IN KOSOVO IN THE CONTEXT OF EUROINTEGRATION PROCESS

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Abstract: *The phase of transition and the ambition for EU membership has caused the administration and the Government of Kosovo to act differently, allowing it to address a variety of issues that have brought Kosovo's state administration closer to the European family. Kosovo has not remained indifferent to its claim to join the EU, therefore it has undertaken the public administration reform. The results of the reform are being felt slowly. Problems in administration reform over the past few years have been; political influence on public administration recruitment and independent decision-making, size of administration, lack of professionalism, etc. The objectives of this paper consist of a) reflecting the real situation of the public administration reform process, b) analyzing the results of the administration reform over the years, c) analyzing the harmonization of legal acts and the transformation of the public administration of Kosovo with acts legal and EU policies. The research methods used in this study were normative, analytical, and statistical methods. Reforming and modernizing the public sector remains one of Kosovo's most pressing challenges on the road to EU membership.*

Keywords: *Reform; Public Administration; Civil Servants; EU; Kosovo*

INTRODUCTION

The reform of public administration in Kosovo is "a crucial part of the state-building. With the administrative reform, the government aims to modernize its public administration, to strengthen its capacities and to make it more efficient and accountable" (Batalli 2012, 5). Kosovo has gone towards European integration; it has been proven with the European Commission Report for Kosovo in 2020, where at least Kosovo has fulfilled criteria formally for visa liberalization for free travel in Europe.

The state administration of Kosovo faces a series of challenges that are necessarily related to the ability of this state apparatus to fulfill its obligations towards the citizens of Kosovo and to managed realize the reform process in public administration. As one of the main pillars for the implementation of government policies and the realization of state goals, the public administration must go through the reform process to improve the provision of public services and to be in line with a higher standard fulfillment of duties and obligations provided by laws, regulations and other strategic documents that regulate the work of civil servants in public administration. Among the most common problems that public administration faces in transition societies are those related to communication with citizens and transparency. The state administration of Kosovo faces these problems as well as many others. Kosovo's state administration is relatively new, and it still has to go through various reform processes to reach European standards for the functioning of the state administration. Given that EU membership is one of the main strategic goals of the Republic of Kosovo, it is anticipated that the current challenges that characterize public administration need to be addressed.

CHALLENGES AND PROBLEMS OF THE STATE ADMINISTRATION IN KOSOVO

The state administration in Kosovo is determined by a large number of employees. Data from 2016 show that there is a large number of employees in the agencies of the Assembly, the Government, as well as across different ministries. According to data, this level of government employed about 31,694 people during 2016. Most civil servants at this level are employed in various government agencies. In March 2017, approximately 80% of civil servants, respectively 14,888 employees out of 18,000, have their positions harmonized with the job catalog and are classified according to regulation no. 05/12, which was approved in early 2015. The percentage of civil servants as a percentage of total employment in the public sector has decreased slightly: from 23.9% in 2014 to about 20% in 2016. According to GAP, the total number of public and civil servants is 91,281, respectively 47,555 at the central level and 43,726 at the local level (GAP 2015).

At the level of the European Union (EU), despite the state's internal regulation, only Sweden and (formerly) the United Kingdom has a larger number of ministries than Kosovo, respectively Sweden 23 and the United Kingdom 24 government departments. At this level, Denmark with 5.6 million inhabitants has the same number of ministries as Kosovo. At the regional level, only Albania has the same number of ministries as Kosovo, while Bosnia and Herzegovina (at the Federation level) has 16 ministries, Macedonia 14 ministries and 7 ministers without portfolio, Montenegro 16 ministries, and finally Serbia 16 ministries and 2 ministers without portfolio (GAP 2015).

A study conducted by GAP found that many divisions are consisting of two employees, one division head, and one employee in that division. Even worse, there is separation with an employee who due to the existence of separation is the head of the division. In addition to this negative feature, the distribution of civil servants across departments, divisions, and agencies is not commensurate with the tasks that a department, division, or agency has. For example, the Department of Public Administration Reform, as a key structure in the Ministry of Public Administration (MPA) and the entire public administration, has seven employees, while the Agency for Information Society has 58 employees. Another challenge of the civil service in Kosovo is to increase diversity. There seems to be a growing consensus that pursuing diversity can enhance key public service values, such as honesty, transparency, and impartiality. By integrating minority groups, the hope is that government can impose policy effectiveness, social cohesion and efficiency will be achieved. According to data from 2016, most senior management positions in ministries and executive agencies are held by Albanian men.¹ In Kosovo, the public sector continues to be more attractive for employment, because in the public sector are higher salaries than in the private sector, and employment in the public sector is more secure and attracts further possibilities through connections. Based on the Balkan Policy Research Group study (2020), until 2019 in Kosovo, employment in the public sector continue to be high (p. 64) (Figure 1).

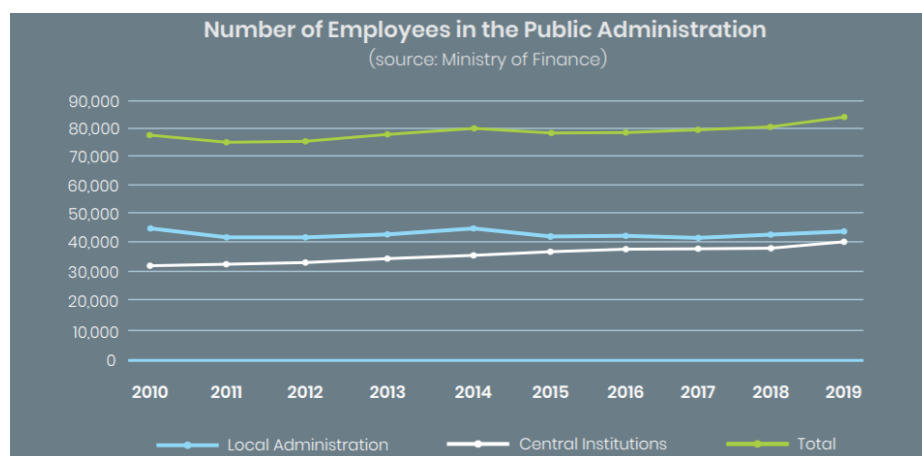


Figure 1: Number of Employees in the Public Administration (Source: Ministry of Finance/Kosovo 2017)

Kosovo has public administration with enormous members and this causes the budget to shrink. In that sense, Kosovo needs:

an efficient public administration for social developments, economic growth, and poverty reduction. The Government of Kosovo remains committed to supporting maximum modernization of the administration.

¹ Open Data Portal, Republic of Kosovo. Retrieved from: <http://opendata.rks-gov.net/> (11 September 2019).

The fulfillment of such objectives is done through the basic dimensions of electronic governance such as e-services, e-democracy, e-management, and e-trade (Batalli 2012, 24).

Based on the last European Commission's Report for Kosovo (2020), instances of political influence on recruitments to senior civil service positions and non-merit-based recruitments continue to undermine citizens' trust in the public administration. *Ad hoc* policy-making, in cases influenced by special interests, remained an obstacle for inclusive and evidence-based policy-making. These issues were among the central concerns expressed by citizens during the campaign for the legislative elections in October 2019. It is of utmost importance that Kosovo institutions ensure integrity and transparency in recruitments in the public service (European Commission's Report 2020 for Kosovo, 14).

THE INSTITUTE OF ADMINISTRATIVE SILENCE

Doctrinal approaches to administrative silence will often be underpinned by assumptions about whether the wider public interest is better served by prioritizing the interests of the administration or those of the individual (Gordon 2008, 39-35). In administrative law, the administrative silence is a special institution, in which, with the request of a party to the administrative matter, a competent body has not issued its decision and does not hand over the decision to the party within a legal timeframe during which a party has the right of appeal if the request is rejected. But the silence is final and the party may seek judicial protection from a competent court if the body of the first instance remains silent and where the party has no right of appeal. Administrative silence is not a form of ruling on a case but a legal invention under which it is clear that the competent administrative body has denied the claim of the citizen, without resolving it within the time provided by the law (Batalli 2017, 140). Administrative silence is, in fact, the legal fiction of administrative law, a situation caused legally. According to it, the application filed with public administration bodies, outstanding in a certain period, is considered as denied or accepted. There is an administrative silence when the public administration organ is silent *de facto*, i.e. does not adopt a relevant decision within the legal time that has been set, while it is expected to do so, and the law has anticipated that such a *de facto* silence means a positive or negative response, equating it with a positive or negative decision, as per the approved regulation (Çani 2014, 2).

ADMINISTRATIVE SILENCE IN THE PAST AND PRESENT

Historically, administrative silence was considered a refusal. However, on 12 December 2006, the Parliament and the Council of European Union brought about the directive 2006/123/EC in which, in the declaration of the reasons of this directive, it is explained that one underlying difficulty for a party dealing with public administration:

(...) are complexity, length and legal insecurity of the administrative proceeding". For this reason, by following the example of particular modernism and the initiatives of the good administrative practice undertaken by the Committee and the national level, the principles of administrative simplifications must be defined, among others (...) introduction of the authorization principle implied by the competent authorities after a certain period has passed (SIGMA 2012).

For these reasons, for a modern administration and a more simplified procedure to the party, the European Parliament and the Council with their directive are determined for the positive character of the administrative silence.²

The old Law of the Administrative Procedure of Kosovo 2007 (abolished in 2016) foresaw the administrative silence in article 130, paragraph 2: "In the case of non-action by the administration (non-issuance of the act and the complete silence), the administrative appeal is made within 60 days from the day of submission of the request for initiation of the administrative proceeding".

Administrative appeal against the administrative silence within the time limit is made as a result of the impact of the judicial security principle which aims at the defense of the legal relations created and their complete non-encroachment (Baraliu and Stavileci 2014, 326). According to the old Law on Administrative Procedure 2007, the parties have been granted the right to file a complaint in the court against the administrative silence following the Law on Civil Procedure in power (Law on Administrative Procedure, article 131, paragraph 2, 2007). In the old Administrative Procedure Law of Kosovo (APL), administrative silence had a negative (denying) character, whereas by the new Law No. 05/L -031 on the General Administrative Procedure approved on the 21 June 2016 which entered into force in 2017, the

²The text of the article 13 paragraphs 3 and 4 of the Directive says as follows: "3. the authorization procedures and formalities will assure applicants that their application will be processed as soon as possible and, in any case, within a reasonable time frame which was set and published in advance. The time period will commence only when the whole documentation has been submitted. When this is justified by the complexity of the issue, the time period may be extended only once by the competent authority for a limited time frame. Its extension and duration will be justified accordingly and the applicant will be notified before the deadline of the original period. 4. Failure to respond within the fixed time or extended time frame in accordance with the paragraph 3, the authorization will be considered as given. However, there may be other modalities, where justified by the reasons of touching the public interest including the legitimate interest of the third parties".

administrative silence institute took on positive (approving) character as stipulated by the article 100, paragraph 1 of Kosovo APL No. 05/L-031:

If the party has requested for the issuance of a written administrative act and the public organ does not inform the party on the administrative act within the initial time, it does not inform the party on the extension of the deadline or the act within the extended deadline, according to the article 98 respectively 99 of this Law, the request made by the party will be considered as accepted entirely and the administrative act requested by the party will be approved.

On the other hand, there is an ambiguity in article 133, paragraphs 1-4, as contradictory to the article 100, paragraph 1 (contradictory to the article 100) which puts forward that:

The complaint against the administrative silence is processed directly by the supreme organ. The supreme organ immediately asks the competent organ to present, without any delay, the whole case file and a written report on the reasons for the administrative silence. Initially, the supreme organ will review if the complaint is valid and, only if the complaint is accepted, it will review the request of the party, as it has been submitted to the competent organ. The supreme organ will decide on the request based on the case file or if it is necessary to conduct an additional administrative review or it will order the competent organ to conduct administrative reviews and notify it of the results of the review. Unless otherwise set forth by law, the supreme organ will resolve the issue by one of its final acts.

The Republic of Kosovo has delayed the adoption of the aforesaid EU Directive related to the administrative silence in its internal administrative legislation. After the approval of the new Law on the aforesaid general administrative procedure, the new commentary of law as an obligatory part of the law draft has not yet been realized, consequently, the lawmaker is obliged to clarify the controversy between article 100 and 133 through authentic interpretation. It is thought that article 133 shall specify the exemplary cases (it must have exclusive character) on which administrative acts or circumstances the supreme organ will decide on by its final act regarding the complaint against the administrative silence, so that this controversy of the legal provisions or the collision on the new law on the general administrative procedure of Kosovo (Law on the General Administrative Procedure, article 100 and 133, 2016b) is solved.

THE DEGREE OF PROFESSIONALISM OF THE OFFICIALS WORKING IN THE STATE BODIES

The civil service system in Kosovo has institutionalized the EU principles of administration in breadth and depth. Sustainability questions will also be addressed in each section. Although professionalism in public administration is a key EU requirement, Kosovo still has problems with appointments, promotions, training of civil servants, equal representation, and review of complaints filed by civil servants. One of the requirements that SIGMA assesses is whether the scope of public service is clearly defined and implemented in practice to establish policies and legal frameworks for professional public service. Concerning this requirement, civil service policies and legal frameworks have been established. Also, the 'Strategy for Modernization of Public Administration 2015-2020' (SMAP) has been adopted, together with an action plan (SIGMA 2017).

There are 7 principles closely related to the professionalism of the civil service of the state administration for which SIGMA reports. The first principle is that the scope of the public service is appropriate, clearly defined, and implemented in practice. The European Commission and SIGMA pay special attention to the adoption and implementation of civil service laws. Kosovo was the last country in the Western Balkans to adopt a Civil Service Law in the spring of 2010. According to the SIGMA report for 2017, the horizontal scope of the Civil Service Law is well defined and includes ministries, presidential administration, the Prime Minister and Assembly, executive agencies, regulatory bodies, and independent institutions and local governments (SIGMA 2017).

The second principle requires that policies and legal frameworks for a professional and coherent public service be established and implemented in practice. It also requires that the institutional structure enable sustainable and effective human resource management practices throughout the public service. SIGMA argues that the overlap in the mandates of some laws and bylaws leads to confusion in some cases. For example, job classification and some aspects of career development in the civil service are regulated by the Civil Service Law and the Law on Salaries of Civil Servants, as well as by the partial overlap of bylaws in these same areas (SIGMA 2017). Public service professionalism is ensured by good management standards and human resource management practices. The values of the indicators that assess Kosovo's performance under this key requirement are presented below.

The third principle relates to public service professionalism and in particular to human resource management good practices related to recruitment. Compared to neighboring Balkan countries in terms of attitudes towards merit promotion, Kosovo has one of the lowest scores out of 7 countries (Meyer-Sahling 2012, 49).

In 2016, the Independent Monitoring Commission (IMC) canceled 144 out of the 248 (58%) appointments to senior civil service positions he observed during his term in office. These cancellations were due to legal and procedural violations. Most were related to deadlines, publication of notices with different criteria for similar positions, selection committees, and written and oral tests. The number of IMC complaints regarding recruitment doubled between 2013 and 2016 (105 complaints were filed in 2013 and 205 in 2016). The average number of applicants for vacancies is adequate, although data on applicants who meet the requirements and are considered eligible are not available. Internal recruitment, however, is much less competitive (2-3 applicants) than external ones (22-29 applicants), regardless of category (SIGMA 2017). Figure 2 shows the trend of recruitments, exits, and complaints during the years 2011-2014 where we saw an increase in trend.

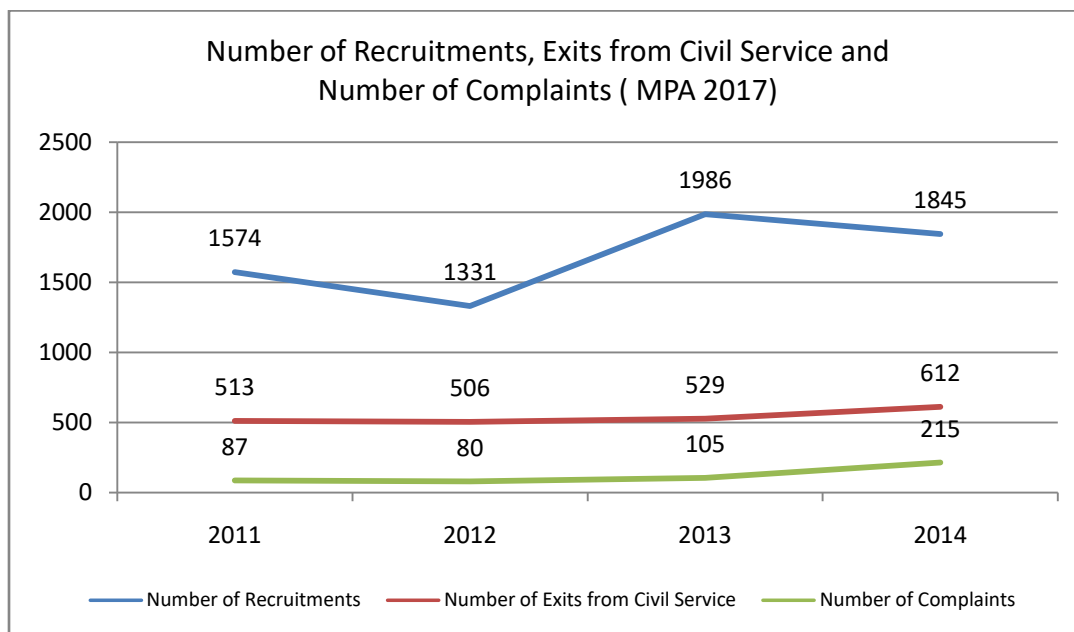


Figure 2: Number of Recruitments, Exits from CS and Number of Complaints (Source: Ministry of Public Administration/Kosovo 2017)

The research shows that compared to neighboring Western Balkan countries, the performance review mechanism is implemented less consistently and (relatively) less in Kosovo and Montenegro. The review is conducted annually by the supervisor and is mainly related to the training needs analysis although in practice it is also used to inform salary reward decisions and career advancement (Meyer-Sahling 2012). The legislation sets out clear reasons for individual dismissals from the civil service. Dismissal is possible through a disciplinary measure, due to violation of the code of conduct or

other regulations, or due to criminal charges. After two consecutive assessments of poor performance, dismissals can be initiated through a disciplinary procedure.

Finally, civil servants can also be dismissed during restructuring processes, but the legislation does not provide detailed criteria for dismissals in cases of restructuring, closure, or amalgamation of public institutions. Dismissals due to disciplinary proceedings decreased significantly between 2015 and 2016, from 52 to 10, and termination of employment due to dismissal of positions remained very low. However, the number of complaints against the IMC against dismissal proceedings increased by 24% between 2013 and 2016 (SIGMA 2017). Taking into account the factors analyzed above, the value for the indicator 'Meritocracy and effectiveness of recruitment of civil servants' is 3. The value for the indicator 'Termination based on employment merit and reduction of civil servants' is also 3 (SIGMA 2017).

Figure 3 shows attitudes towards non-discretionary dismissal in the region and how Kosovo is compared to neighboring countries. Kosovo has the lowest result among the 7 countries and a result that is below average. This is in line with the previous results presented above which show that Kosovo has high levels of free discharge. Therefore, civil servants are expected to have negative attitudes towards non-discretionary dismissal.

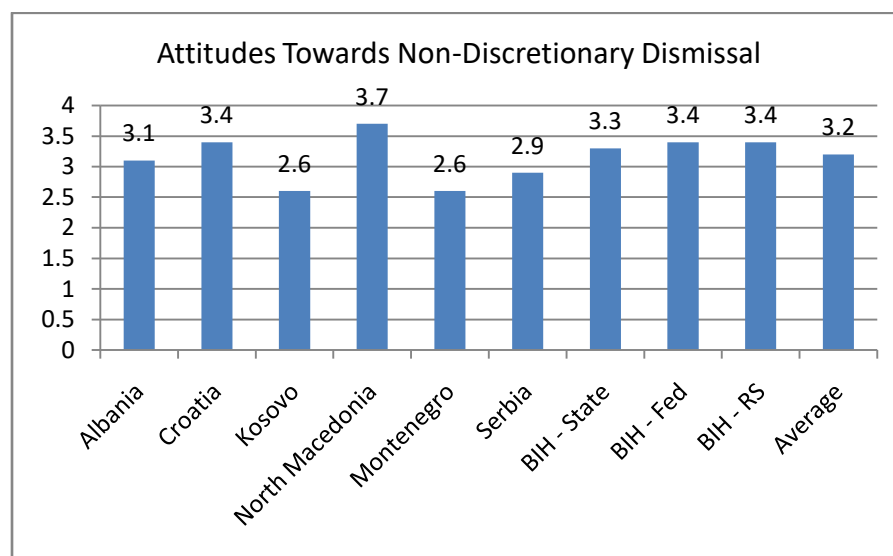


Figure 3: Attitudes towards Non-Discretionary Dismissal (Source: Meyer-Sahling 2012)

The open competition systems and merit recruitment are essential to conducting civil service management that embodies the principles of openness, fairness, professional competence, and political neutrality. Merit recruitment is supposed to improve the work of the public administration. Compared to other countries in the region, Kosovo's recruitment system is considered less capable of delivering merit-

based employment results. A study conducted by Meyer-Sahling in 2012, revealed discrepancies in interviewing internship and agency practices, as well as their ability to examine applicants (Meyer-Sahling 2012).

The fourth principle of SIGMA requires that direct or indirect political influence in senior management positions be prevented. The review of the institutions and agencies of the Assembly and the central bodies of the 2016 Ministry of Public Administration has identified cases in which senior management functions are exercised by political appointees in some agencies reporting to the Assembly and also in some agencies reporting to the Government. The regulations on selection procedures for senior management positions do not provide sufficient safeguards to prevent potential political influence. A Senior Management Council established not in the Civil Service Law (CSL) but in secondary legislation, is responsible for directing and overseeing the appointment system. The functions of the Council include the formulation of job descriptions, as well as ensuring the appropriateness of recruitment methods. Despite its competencies, technical support for the Council is not provided by the MPA, but by the Secretariat of Government Coordination in the Office of the Prime Minister, which has no technical expertise in the civil service and HRM (SIGMA 2017).

The fifth principle requires that the remuneration system of public servants is based on job classification and that it be fair and transparent. The current salary structure in the civil service is still that set out in a UNMIK guideline issued in 2000. In the absence of true job classification, however, many institutions have allocated job coefficients using homogeneous criteria based on responsibility and competence. Therefore there is no guarantee of equal pay for equal work for basic salaries/positions. Supplements and compensations in some cases have been allocated without following clear criteria, although the implementation of uniform control in this regard is improving. Salary tables are not publicly known.

The sixth principle requires ensuring the professional development of public servants. This includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit. Although the European Commission Report on Kosovo assesses the professional development of civil servants, it also states that the Kosovo Institute for Public Administration has a very limited budget for staff training in all institutions (SIGMA 2017).

In the European Commission Report on Kosovo, in the part of public administration reforms, the issue of performance evaluations is also discussed. According to this Report, performance appraisals have increased in use, but their impact on career advancement in civil servants continues to be lower, or even more difficult to determine.

The Government of Kosovo adopted the Civil Servants Training Strategy 2016-2020 in May 2016. Despite this, KIPA's (Kosovo Institute for Public Administration) lack of capacity to provide ongoing training remains a weakness that has not been

addressed by the approved 'Training Strategy' (SIGMA 2017). Figure 4 shows that there are still a large number of civil servants who have not participated in any activity organized by KIPA. 49% of civil servants stated that they did not attend any training. Despite this, compared to other countries in the Western Balkans, Kosovo has similarly positive attitudes towards regular training. Kosovo's result is the same as the average (Meyer-Sahling 2012).

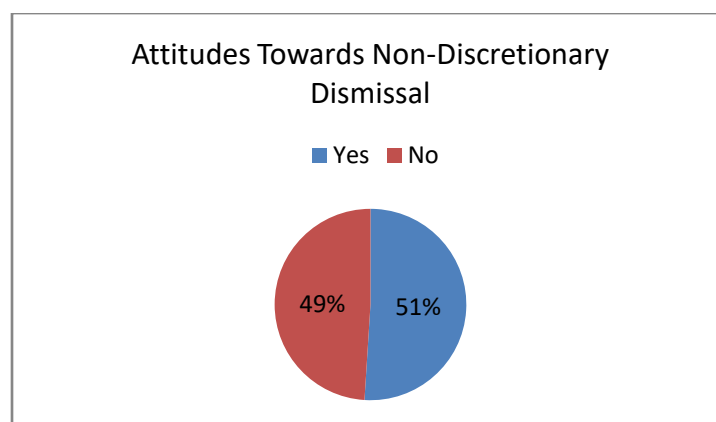


Figure 4: Did you participate in the Training Organized by the Kosovo Institute of Public Administration Earlier? (Source: Ministry of Public Administration 2015)

Out of 5 types of training offered in 2016, training in 'European Union' offered the most courses (26) while training in 'Information Technology' offered the smallest number of courses (8). The training in 'Administration and Legislation' had the highest number of participants for the number of courses offered while 'European Union' and 'Information Technology' had the lowest. However, Kosovo may feel good about the education of civil servants (Figure 5). Based on last research studies from the Balkan Policy Research Group in Kosovo (2020), until 2019, 18.903 civil servants were with high education or 68 percent.



Figure 5: Educational Qualifications of Civil Servants in 2019 (Source: Ministry of Public Administration 2019)

THE LEVEL OF POLITICIZATION OF STATE ADMINISTRATION SERVICES

According to Van der Meer *et al.* (2007), the politicization of the civil service system refers to the number of political appointments, political conduct, and political sensitivities of civil servants (pp. 34-39). The relationship between professionalism and politicization is the opposite. High politicization of the civil service threatens the professional status of civil servants (Rouban 2003). Therefore, it can be argued that the difficulties of improving the professionalism of the civil service are closely related to the politicized character of the public administration.

The politicization occurs through two ways: policymaking and the appointment of civil servants often based on party criteria and lack of professional criteria (increasing the role of politicians in the civil service) or through reorganizing the role of civil servants as voters and citizens (increasing their role as political agents) (Rouban 2003).

Considering the case of Kosovo, the most widespread problems are related to the increasing role of politicians in the civil service. In particular, the two main issues facing the public administration in Kosovo that relate to the politicization of the civil service are political discretion and the lack of standards for appointments. Much of the discretion exercised in employment/appointment is inherited from the communist regime (Rouban 2003). The recruitment process in Kosovo remains decentralized and discretionary. Even with the new Civil Service Law, great freedom/discretion will remain present. In particular, the new law led to the creation of new mechanisms that create a high degree of discretion for the appointment and dismissal of general secretaries of ministries and chief executive officers of executive agencies (Doli 2012).


In Kosovo, the highest position in the ministry is that of a secretary-general. Permanent secretaries are formally appointed by a commission comprising the Prime Minister, ministers, senior officials, and civil society representatives. In practice, however, this Commission meets only once in a few years, which means that the permanent secretaries were appointed simply based on temporary contracts. This is just one example of the discretion exercised (Meyer-Sahling 2012). In addition to political discretion in employment, the Government exercises a high discretion in dismissing workers. The Law stipulates that civil servants can be dismissed only due to poor performance of duty or violation of the code of conduct. A disciplinary commission set up by the secretary-general of the relevant ministry assesses the violation of the code of conduct and the violation of the obligations of the civil servant. Civil servants have the right to appeal decisions but still, the procedure allows discretion in the hands of the secretaries-general, who are simply politically appointed. Similar levels of discretion are exercised in the case of senior civil servants (Doli 2012).

CONCLUSION

Based on this research, it can be concluded that the state administration in general faces problems in the civil service, organization, modernization, and accountability. The findings show that the civil service has a high number of employees, is inefficient, lacks training, and is not representative in terms of minority representation. Furthermore, in terms of organization and modernization of public administration, despite some developments, the challenges remain obvious, especially in terms of providing services efficiently and involving the opinions of citizens. Ultimately, accountability remains the biggest problem. The state administration has problems with lack of transparency and this is mostly due to high levels of corruption, nepotism, politicization, conflict of interest, and discretion in employment/appointments.

The lack of sufficient control of officials and agencies/actors of the state administration as well as the inefficiency of the judicial system only worsen the situation and impair the normal functioning of the state. Continuous professional training and development of state administration staff is crucial in individual performance, personal but also professional development, it also guarantees the success of state administration in general.

Also, a concern remains the lack of a law on the Government which is part of the high authorities of the state administration, although this law has been drafted and has not yet been approved by Parliament. The issuance of this law would more precisely regulate the organization of the Government, especially when it comes to the establishment and dissolution of ministries which since the mandate of the Prime Minister by Parliament he can at any time establish or dismiss certain ministries without having to be approved by Parliament.

Kosovo is harmonizing the organization, structure, and operations of the administration with EU standards and the social and economic changes that are taking place in Kosovo. It is worth mentioning that during this process special attention should be paid to the context of Kosovo, and specific needs related to the specifics of its administration, and not necessarily to adapt identical measures as in other countries, without sufficiently adapting to the circumstances and the context in which Kosovo finds itself as a new state. Kosovo has managed to sign the Stabilization and Association Agreement with the EU, which is considered the greatest achievement on the road to EU integration, although the results of the public administration reform are dim. This is evidenced by the progress reports for Kosovo in recent years, where Kosovo is criticized for political influence in the functioning of public administration, corruption, nepotism, overload of administration, simplification of administrative procedures, etc. 

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Statement of human rights:

This article does not contain any studies with human participants performed by any of the authors.

Statement on the welfare of animals:

This article does not contain any studies with animals performed by any of the authors.

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