

Establishing Protection Mechanisms for Bureaucrats

The Case of the Independent Oversight Board of Civil Service of Kosovo*

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Abstract

This article discusses the position and powers of Kosovo's Civil Service Oversight Board, mainly from a legal perspective. The article describes the reforms undertaken upon the Board and the civil service in Kosovo, while illustrating the central pillars of concern in regard to both the international presence and domestic institutions in Kosovo. The article then explains the three reforms and reviews each of the main legal changes the Board and the civil system have experienced, respectively. The last section of the article comprises an institutional review of the powers and the position of the current framework on the Civil Service Oversight Board, while allowing a part of the article to question its independence and pluralism. The article culminates with policy suggestions that would make the work of the Board, and the entire civil service, more independent and accountable to its mission.

A. Introduction

The creation of a body of independent bureaucratic personnel, composed of professionals and career-oriented staff, presents governments with numerous challenges. Hegel characterizes the civil service as “the link between universal and particular interests which constitutes both the concept of the state and its inner stability”.¹ He further describes the main function of the civil service as “subsum-

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1 Hegel in M.W. Spicer, ‘Note on Origins: Hegel, Weber, and Frederician Prussia’, *Administrative Theory & Praxis*, Vol. 26, No. 1, 2004, pp. 97-98.

ing the particular under the universal” by “the continued execution or maintenance of past decisions, existing laws, regulations, organizations for the securing of common ends, and so forth”.² Hegel’s compatriot Weber holds a slightly different view; he designated bureaucracy as “in this sense formally the most rational known means of carrying out imperative control over human beings” and it is “capable of attaining the highest degree of efficiency”.³

In modern democracies, bureaucracy expressly becomes a mechanism for solving problems. In this regard, Lindblom recognizes that: “For each category of problems, a bureaucracy stands ready to provide an appropriate category of solutions through an appropriate set of standardized skills”.⁴ Many countries have undertaken the reform of public administration to create this solution mechanism. The concept of civil service is distinct from other aspects of governmental service, As Armstrong once acknowledged, the civil service can be distinguished from other groups of services “because they work for public and not for private purposes. The distinction is a bit blurred at the edges, but for my present purposes it is clear enough.”⁵ This distinction offers important challenges for the nations still dealing with the legacy of communist or authoritarian governments. As Collins argues: “In East and Central Europe a [...] number of Countries are experimenting with various kinds of both transitional as well as permanent policy apparatuses.”⁶ In post-communist countries, the newly elected governments that have tried to create a specialized civil-service system have had the option of two antagonistic approaches: on the one hand, a civil-service system based on political- or governmental-oriented management, and on the other, a civil-service system based on a purely merit-oriented personnel management system.⁷ Kosovo, with its newly formed democratic government, has not been exempted from this difficult process. Many concerns relating to the reform of public administration touch the issue of civil service in Kosovo, specifically the questions of politicization and professionalism.

One may justly say that the meaning of civil service varies from country to country, and therefore, for some, civil service is merely “a political term which has

- 2 Hegel in M.W. Spicer, ‘Note on Origins: Hegel, Weber, and Frederician Prussia’, *Administrative Theory & Praxis*, Vol. 26, No. 1, 2004, p. 98.
- 3 Weber in M.W. Spicer, ‘Note on Origins: Hegel, Weber, and Frederician Prussia’, Vol. 26, No. 1, 2004, p. 98.
- 4 C.E. Lindblom, *Politics and Market: The World’s Political-Economic System*, Basic Books, Inc., Publishers, New York, 1977, p. 27.
- 5 W. Armstrong, ‘The Fulton Report: The Tasks of the Civil Service’. *Public Administration*. Vol. 47, Issue 1, 1969, p. 4.
- 6 P. Collins, ‘Civil Service Reform and Retraining in Transitional Economies: Strategic Issues and Options’. *Public Administration and Development*. Vol. 13, No. 4, 1993, p. 330.
- 7 Mainly, these paradigms have accompanied civil service reforms in almost all post-communist countries in Eastern Europe, where, as Meyer-sahling argues, despite the fact that they tried to establish professional civil service there was a clear tendency to interfere in the management and appointment of personnel. J. Meyer-sahling, ‘Civil Service Reform in Post-Communist Europe: The Bumpy Road to Depoliticisation’. *West European Politics*. Vol. 27, No. 1, 2004, pp. 71-103.

fairly different connotations”.⁸ Hence, in this context, the difference in meaning relates largely to the categories of personnel (working in different public and administrative institutions) which are included and, therefore, listed within the civil-service cluster. To put it differently, for some countries, even the military and secret service personnel are considered part of the nation’s civil service. For some others, as in Kosovo, the term was used abstractedly, therefore, all persons working in public institutions and paid out of the consolidated budget were considered to be civil servants.⁹ Whatever the term ‘civil service’ might mean in a larger application, this article limits the definition to the specific applicable provisions in Kosovo’s laws and regulations.

After the conflict, the United Nations (UN) Security Council issued Resolution 1244 establishing an internationally administered supervision for Kosovo.¹⁰ The transitional administration, the United Nations Interim Administration Mission in Kosovo (UNMIK), had the authority to develop the “provisional self-governing institutions” of Kosovo.¹¹ In this regard, the experiences of the international civilian presence in Kosovo greatly influenced the developments within the civil-service system – especially the design of the protection mechanisms for civil servants. Even the ‘after-independence’ civil service structures continued to be influenced not only by the past, but also, in some degree, by the region’s tendencies. This article, therefore, will explain the functioning and competences of the Independent Oversight Board of Kosovo, its evolution, and its role in protecting the civil service de-politicization.

To start with, it is worth noting that researchers use different means and methodologies to assess civil-service independence, and such elements as the appointment process, personnel management, and personnel promotion represent just some of the points that differentiate civil-service systems.¹² Given these differences, one may argue that the legal guarantees which regulate the procedures relating to “selection, recruitment and promotion” of bureaucrats precondition the level of professionalism of a specific civil service system.¹³ Moreover, for some, the legal protections from political influence for civil servants directly relate to the two main problems of civil administration – first, “the problem of

8 Z. Sevic & A. Rabrenovic, ‘Depoliticisation of the Public Administration: Towards the Civil Service’. Paper Presented at the NISPAcee Annual Conference, Prague, 18-20 March 1998, available at: <www.nispa.sk/news/sevic.rtf>, pp. 1-2.

9 See UNMIK Regulation 2001/36 on the Kosovo Civil Service, of 22 December 2001.

10 UN Doc. S/RES/1244 (1999) of the 10 June 1999, para. 10. Moreover, De Wet argues “*that resolution effectively transferred all legislative, executive, and judicial matters to the special Representative of the United Nations secretary-general for Kosovo (the special representative)*”, see E. De Wet, ‘The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of Eulex’. *The American Journal of International Law*, Vol. 103, No. 1, 2009, pp. 83-84.

11 See M.J. Matheson, ‘United Nations Governance of Post-conflict Societies’. *The American Journal of International Law*. Vol. 95, No. 1, 2001, pp. 76-85.

12 M. Hacek, ‘The Relationship between Civil Servants and Politicians in a Post-Communist Country: A Case of Slovenia’. *Public Administration*. Vol. 84, No. 1, 2006, pp. 165-184.

13 F. Cardona, ‘Building a Civil Service System’, *Sigma/OECD*, September 2002, p. 3, available at: <www.oecd.org/dataoecd/37/30/38736319.pdf>.

instability,” and second, the problem of “administrative quality”.¹⁴ To further the independence of the civil service, some have recommended that “a legal remedy before a court or other independent institution should be available to public officials for the protection of their rights in relation to their employer”.¹⁵ Another justification for greater protection of the civil service from political interference relates to the discretion of the relevant executive departments – namely, that the executive departments in many cases function as “judges and party”.¹⁶ Finally, political parties use the civil service sector as a tool to attract political support, as Shepherd’s argument of “public welfare employment” illustrates.¹⁷ In other words, in exchange for positions in civil service, incumbent political parties call for political support. In many countries, this exploitation of the civil service sector in order to generate jobs has decreased wages (in the public sector), making it impossible to attract high-quality professionals to civil service, and, therefore, reducing the overall policy performance of the given administration.¹⁸

Thus, against this background, many countries have developed a number of policies and have adopted laws designed to prevent the use of civil service for individual-political profits. Here again, the relevance becomes apparent of the need for an independent body charged with the review of potential civil servants according to standards required by the law and given the authority to identify malpractice. The Independent Oversight Board for Civil Service in Kosovo (hereinafter ‘the Board’) has been chiefly established to create a balance between political appointees and civil servants. Designed to guarantee civil servants an appeal mechanism, it protects their rights against politically motivated employment decisions. Kosovo’s Board has undergone three reforms. The UNMIK developed the first structure of the Board in 2001; it lasted until 2008. The UNMIK administration played a large hand in the Board’s second platform, with input from the then-provisional self-governing institutions. Kosovo implemented the third reform after the new Constitution of Kosovo came into force. This Board reports to the institutions of Republic of Kosovo, and remains extant in 2010.

- 14 T. Verheijen & A. Rabrenovic, ‘Politico-administrative relations in Central and Eastern Europe: an irresolvable stalemate?’ Paper Prepared for the NISPACEE Annual Conference, Sofia 25-27 March 1999, p. 12, available at: <unpan1.un.org/intrdoc/groups/public/documents/nispacee/unpan005792.pdf>.
- 15 See the Committee of Minister of Council of Europe, ‘Recommendation No. R(2000)6 of the Committee of Ministers to member states on the status of public officials in Europe’. Adopted by the Committee of Ministers on 24 February 2000 at the 699th meeting of the Ministers’ Deputies, para. 17.
- 16 M. Herbiet, ‘The Organization of the Civil Service in States Governed by the Rule of Law’. European Commission for Democracy Through Law (Venice Commission), CDL(1994)025e-restr, Strasbourg, 9 May 1994.
- 17 G. Shepherd, ‘Civil Service Reform in Developing Countries: Why Is It Going Badly?’ Paper presented at the 11th International Anti-Corruption Conference 25-28 May 2003, Seoul, Republic of Korea.
- 18 G. Shepherd, ‘Civil Service Reform in Developing Countries: Why Is It Going Badly?’ Paper presented at the 11th International Anti-Corruption Conference 25-28 May 2003, Seoul, Republic of Korea.

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This article focuses on the role, competences, and the development of Kosovo's Independent Oversight Board. However, it also addresses the following questions. First, would an independent body, the Independent Oversight Board, help Kosovo's goal of establishing a professional civil-service system? If yes, how? How do other regional governments address the protection of the rights of civil servants? Lastly, is it necessary to establish independent boards, such as the Independent Oversight Board, to tackle the issue? After discussing the general institutional design of the Board, this study will attempt to measure the Board's independence. This requires an examination of the means by which the Assembly appoints Board members. Because of the social cleavages in Kosovo, particular attention should be given to the composition of the Board in terms of the pluralistic system of representation.

Most concretely, this paper will analyse the development of the Board since its inception in 2001 and address all three reforms of the Board. It will review the legal basis, competences, and the Board's actual profile, which, for the most part, developed after Kosovo's declaration of independence and the entry into force of the Constitution of Kosovo.

B. Independent Oversight Board of Kosovo: Origins and Importance

After the UN Security Council adopted the Resolution 1244, the UNMIK established a civilian administration in Kosovo, with the goal of building provisional and self-governing Kosovar institutions. Next, having consulted both majority and non-majority political representatives in Kosovo, the UNMIK adopted the United Nations Constitutional Framework for Self-Government. This established the provisional institutions of Kosovo while at the same time defined their competence and mandate. The Constitutional Framework acknowledged the right of provisional institutions in Kosovo to both administer and promote the development of a professional civil service.¹⁹ Moreover, the Constitutional Framework specified that Kosovo's civil service should be a professional, pluralistic, and merit-based personnel system.²⁰ Therefore, as an interim solution, the Ministry of Public Services had the authority to develop policies and regulations to establish and protect a professional, multi-ethnic, accountable, and impartial civil-service system.²¹

Drafted with the help of international experts, the law on civil service precisely defined the principles, the scope, and the mechanisms of Kosovo's civil service.²² The law established an Independent Oversight Board for Kosovo (hereinafter the

19 Regulation No. 2001/9 on Constitutional Framework for Provisional Self-Government in Kosovo, chapter 5, para. 1, sub-para. m, and para. 2, sub-para 2.

20 Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, section 4, para. 1, 2, 3 and 4. In this case we use the term pluralistic to describe proportionate representation of non-majority communities in civil service.

21 Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, Annex IX, para. i, ii and iii.

22 Sigma, 'Kosovo Public Service and the Administrative Framework Assessment'. May 2008, available at: <www.sigmaxweb.org/dataoecd/48/31/41637624.pdf>.

Board) as an independent unit within the Ministry of Public Services.²³ Although the positioning of the Board within the ministry was designed only as a temporary solution, it lasted until February 2008. After two years, its status underwent review with the intent to transform it into an independent body reporting only to the Assembly.²⁴ Many have argued that the relationship of the Board to the ministry preconditioned the then-Board to become dependent on daily politics, thereby diminishing its impartial role. At that time, the Board had been designed to be directly responsible to the Minister of Public Services.²⁵ The ministry allocated the Board's budget from the ministry's funds, and the government had the authority to approve the Board's rules of procedure.²⁶

The Board's composition was required to reflect the multi-ethnic character of Kosovar society, having been composed of seven members appointed by the special representative of the secretary general (hereinafter the SRSG) after consulting with the prime minister of Kosovo.²⁷ Therefore, at least two members of the Board had to be representatives of the communities and at least one of them had to be an international expert in the related field.²⁸ Given the tendency of the international civilian presence to persuade communities to participate and influence the decision-making process within the then-provisional self-governing institutions, Kosovars welcomed the requirement for proportional representation on the Board. This standard, however, evolved into a 'mandatory requirement' for the Board's future composition as well as other independent offices in Kosovo. Despite the intentions of the initial Board's designers, the appointment procedure did not secure a Board membership that reflected a high level of professionalism and impartiality. For example, a report by the Venice Commission drew the attention of the Bulgarian authorities when it argued that the appointment process of the members of the Bulgarian civil service commission were too politicized and, therefore, not recommended as a model.²⁹ For Kosovo, in consideration of the SRSG's overall responsibilities, some could perceive the SRSG's appointment of the members of the Board as a tendency to control the behaviour of the then-provisional self-governing institutions. Nonetheless, it appears upon review that

23 Regulation No. 2001/36 on the Kosovo Civil Service, section, 7, paras. 1 and 2.

24 Regulation No. 2001/36 on the Kosovo Civil Service, section 7, para. 2.

25 Regulation No. 2001/36 on the Kosovo Civil Service, section 7, para. 2.

26 Regulation No. 2001/36 on the Kosovo Civil Service, section 7, para. 3, and section 9.

27 Regulation No. 2001/36 on the Kosovo Civil Service, section 8, paras. 1 and 2. Special Representative of the Secretary General as by the Constitutional Framework of Kosovo was the final authority in Kosovo. For more see Regulation No. 2001/9 on Constitutional Framework for Provisional Self-Government in Kosovo, chapter 8.

28 Regulation No. 2001/36 on the Kosovo Civil Service, section 8, paras. 2.

29 The report acknowledges that: "The appointment of its members consequently appears to be a highly political process. Given that its structure and activities are also determined by a Council of Ministers regulation, it is doubtful whether this body enjoys the necessary independence from the political authorities." See European Commission for Democracy Through Law (Venice Commission), 'Draft Opinion on the Draft Civil Service Act of the Republic of Bulgaria'. CDL(1999)014e-restr, Strasbourg, 19 March 1999, on the basis of the appended comments by Michel Herbiet and Kaarlo Tuori.

the SRSG's influence over the Board, on the one hand, and the government's influence, on the other, had different – and therefore conflicting – aims.

The then-Board members could only be dismissed by the SRSG after consultation with the prime minister.³⁰ All civil servants had the right to be part of political parties (at least not actively), trade unions and other interest groups, which again confirmed the pluralistic tendencies of the civil-service system.³¹ However, an overriding concern for the civil service led to constant engagement in the activities of the political parties. This, in turn, led to the need to develop rules to identify and limit the kinds of political activities in which a civil servant might participate.³² For example, they prohibited certain civil servants from participating in some categories of activities, for example, they could not take part in such industrial actions as hunger strikes.³³ For as long as a civil servant remained employed in a given governmental sector, such restrictions limited their freedom of expression and association. This is quite fundamental, and Herbiet has also expressed this concern, contending that the “Freedom of association and the right to join trade unions, along with the criteria governing the latter's representativeness, have caused many problems in connection with different countries' civil service legislation”.³⁴

As discussed, the original function of an oversight panel in many civil-service systems centers on the protection of the civil servants' rights and civil-service principles. As relates to Kosovo's first Board, its main function was to hear and decide upon the appeals of civil servants (or civil-service candidates) of the decisions of public institutions.³⁵ Moreover, the Board had the power to verify whether department heads had been appointed in accordance with the civil service standards.³⁶ In this regard, the Board could overrule the decision of the employing authority, and – in the case when its decision had not been implemented – notify the SRSG and the prime minister.³⁷ This indicates that the Board had not been designed to be merely a ‘review mechanism’ or solely an inquiry commission that could propose – but not issue – final decisions. As a rule, the Board could annually assess whether the competent authorities had addressed its recommendations and, if the board found instances of implementation failure, it could notify the SRSG and the prime minister (the “compliance assessment procedure”).³⁸ Fur-

30 Regulation No. 2001/36 on the Kosovo Civil Service, section 8, para. 6.

31 Regulation No. 2001/36 on the Kosovo Civil Service, sections 4 and 5.

32 ECMI (2002) ‘Kosovo/a Civil Society Project: Tenth Meeting: Justice, Human Rights, and Law and Order’. ECMI Report No. 39, available at: <www.ecmi.de/download/report_39.pdf>.

33 Regulation No. 2001/36 on the Kosovo Civil Service, section 5, para. 2. At that time, the civil servants that were part of the police forces, correctional institutions, emergency services and other civil servant declared by the government as essential, could not engage themselves into hunger strikes.

34 M. Herbiet, ‘The Organization of the Civil Service in States Governed by the Rule of Law’. *European Commission for Democracy Through Law* (Venice Commission), CDL(1994)025e-restr, Strasbourg, 9 May 1994.

35 Regulation No. 2001/36 on the Kosovo Civil Service, sections 10, para. 1, sub-para. a.

36 Regulation No. 2001/36 on the Kosovo Civil Service, sections 10, para. 1, sub-para. b.

37 Regulation No. 2001/36 on the Kosovo Civil Service, sections 12, para. c.

38 Regulation No. 2001/36 on the Kosovo Civil Service, sections 13, para. 3.

thermore, the civil service law specified that the permanent secretaries and/or chief executive officers should be bound by the Board's decision.³⁹

In addition, the Board had the authority to assess the level of public-institution compliance with the law on civil service; specifically, it could review the employment records, observe the process of recruitment and promotion, carry out interviews with officials in order to assess whether their behaviour was in compliance with the principles of civil service, and scrutinize disciplinary procedures undertaken by the authorized public institutions.⁴⁰

However, the Board did not have the authority to review the appointment process of high-ranking civil servants appointed by the Senior Public Appointments Committee (SPAC).⁴¹ This lack of authority diminished the Board's role as an overarching institution empowered to secure compliance with the civil-service law and protect the professionalism of the civil service. People generally perceived the recruitment procedure in the civil service to have become politicized, in part because the public could not distinguish between the Board's and the SPAC's area of authority.⁴²

In most cases, the Board served as an appellate body. Thus, a civil servant was first required to exhaust all legal remedies available within the institution concerned; only after doing so could he/she appeal to the Board.⁴³

The Board became operational only at the end of 2005, which significantly hindered its operations considering the large backlog of cases waiting to be addressed. Throughout this time, many public figures have criticized the Board's ability to function. Since 2005, all of the European Commission's progress reports have had a common denominator in regard to the Board's functioning and, specifically, the civil-service system in Kosovo. Namely, the European Commission has stipulated that civil servants remain vulnerable to political influence, primar-

39 Regulation No. 2001/36 on the Kosovo Civil Service, sections 11, para. 3.

40 Regulation No. 2001/36 on the Kosovo Civil Service, sections 10, para. 1, sub-para. c and section 13, para. 1, sub-paras. a, b and c.

41 Regulation No. 2001/36 on the Kosovo Civil Service, sections 10, para. 2. It should be noted that Senior Public Appointments Committee was the competent body to appoint the permanent secretaries and chief executive officers of the independent executive agencies. The then-SPAC was established by the UNMIK regulation on executive branch and was composed of 10 members, among which, the prime minister, three ministers (one at least from the non-majority communities and one minister under whom the appointee would be responsible to), three eminent citizens and three international experts both appointed by the SRSG. For more see Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, Annex I, point E.

42 See Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2006 Progress Report'. Commission of the European Communities, SEC (2006) 1386, Brussels; Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2007 Progress Report'. Commission of the European Communities, SEC(2007) 1433, Brussels.

43 Regulation No. 2001/36 on the Kosovo Civil Service, sections 11, para. 2, sub-para. a.

ily due to the interim design of the Board.⁴⁴ The strategy for public administration reform of Kosovo has also expressed the same concerns.⁴⁵

Given these difficulties, the international civilian presence in Kosovo's first attempt to design an independent body to establish a professional civil-service system in Kosovo – in short – failed. Several factors contributed to this failure. First, establishing the Board as a unit of the Ministry of Public Services and directly responsible to both the Minister and the government made it vulnerable to political influence. Second, its membership determined that the prime minister should have a say in the appointment of the Board's members, and, as one could reasonably expect, these appointments involved politically affiliated persons. Third, the effective functioning of the Board depended upon the ministry's budget. As a consequence of this budget dependency, the Board lacked financial control and could not hire sufficient staff; this hindered the Board's abilities to inspect and participate in the selection procedures.⁴⁶ Fourth, the Board's inability to review the decisions of the SPAC regarding the appointment of permanent secretaries and chief-executive officers diminished its role as an overall guarantee of the civil service's professionalism. Fifth, the Board's role was mainly to review and recommend rather than to decide and execute. In other words, this meant that the Board had the authority to provide professional expertise but had to rely on the SRSG's and prime minister's choices when carrying out the Board's decision. Sixth, although the Board had been designed as a temporary institution subject to change after two years (i.e., two years from 2001), it did not even become fully operational until four years after its inception (i.e., in 2005).⁴⁷ The Board's status did not change until 2008 (the second reform of the Board). All these arguments, so far, had addressed the need to reform the Board.

44 Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2006 Progress Report'. Commission of the European Communities, SEC (2005) 1423, Brussels; Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2006 Progress Report'. Commission of the European Communities, SEC (2006) 1386, Brussels, and Commission Staff Working Document: 'Kosovo under UNSCR1244/99 2007 Progress Report'. Commission of the European Communities, SEC(2007) 1433, Brussels.

45 See Strategy for Public Administration Reform in Kosovo 2007–2012, 15 February 2007, available at: <www.fridomks.org/media/01%20Draft%20Strategjia%20RAP.pdf>.

46 See the Independent Oversight Board Annual Report 2007, available at: <www.ks-gov.net/kpmk/document/english/publications/Report_2007.pdf>.

47 The board, in its annual report of 2005 and 2007, acknowledged that its work is hindered mainly because of two reasons, first, because not still all the vacant positions for the Board member are filled, and second, because of the lack of personnel. See Independent Oversight Board of Kosovo, Annual Report 2005, available at: <www.ks-gov.net/kpmk/document/english/publications/Report_2005.pdf> and <www.ks-gov.net/kpmk/document/english/publications/Report_2007.pdf>.

C. The After-Independence Board

In 2007, the government issued a decision to establish a group of experts to assist in the transformation of the Board into an independent body.⁴⁸ Only ten days after the declaration of independence,⁴⁹ the government adopted the regulation reforming the Independent Oversight Board. The new regulation amended the existing rules that had governed the Board since its inception. The new regulation represented what this paper refers to as the second reform of the Board. This reform addressed some of the anxieties surrounding the independence of the Board. To many, the reform aimed to ensure the Board's independence from the executive.⁵⁰ To others, the Board's reform served as part of a continuous process of the transfer of powers from UNMIK to provisional self-governing institutions (although planned much earlier than executed). Unlike Kosovo's example, the transformation of public service management in some Organisation for Economic Co-operation and Development (OECD) countries results from the countries' necessity to cope with market needs.⁵¹ In Kosovo, however, these reforms were not designed to increase the efficiency of the civil service *vis-à-vis* market demands.

This reform established the Board as an independent body responsible only to the Assembly of Kosovo,⁵² with a budget granted directly from the consolidated budget of Kosovo upon the Assembly's approval.⁵³ Other budgetary needs could be outsourced. More importantly, the new regulation stipulated that the salary of the Board members would equal that of the members of the Supreme Court of Kosovo.⁵⁴ However, because of the extended function of the Board, it might have been beneficial if the immunities and privileges of the Supreme Court judges had been extended to the members of the Board.

The second reform introduced a noteworthy new and moderate procedure for the appointment of the Board members. The number of Board members remained the same—seven. However, the reform gave the Assembly the responsibility to

48 The Government Decision No. 110/07, dated 15.2.2007, for more see the official website of the Independent Oversight Board, available at: <www.ks-gov.net/kpmk/>.

49 Kosovo declared independence in 17 of February 2008, after going through an international administration that started on July 1999. See Kosovo Declaration of Independence, (17 Feb. 2008), available at: <www.assembly-kosova.org/?cid=2,100,45>. Up until the entry into force of the Constitution of Kosovo on 15 June 2008 the UNMIK authorities might have adopted regulations and issued decisions to overcome the institutional gap.

50 Sigma, 'Kosovo Public Service and the Administrative Framework Assessment'. May 2008, available at: <www.sigmaweb.org/dataoecd/48/31/41637624.pdf>.

51 See Organization for Economic Co-operation and Development (1996) 'Integrating People Management into Public Service Reform'. Paris: OECD Publication; and Organization for Economic Co-operation and Development (1998) 'Emerging Trends in Public Employment Management'. Paris: OECD Publication.

52 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 7, paras. 1 and 2.

53 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 7, paras. 3 and 4.

54 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 7, para. 5.

appoint board members only after a fair and public competition.⁵⁵ To this end, the Assembly established an ad hoc committee to review nominees.⁵⁶ However, the ad hoc committee selected its nine members according to a rather complicated formula. Two members came from the political party and/or coalition holding the largest number of seats in the Assembly.⁵⁷ Two others came from the political party and/or coalition holding the second-largest number of seats in the Assembly.⁵⁸ Three other members came from the political parties/coalitions holding the third-, fourth- and fifth-largest number of seats in the Assembly, respectively.⁵⁹ The two remaining members of the ad hoc committee came from the representatives of the ethnic communities in the Assembly, with at least one representing the Serbian ethnic community.⁶⁰ In turn, the ad hoc committee had the authority to recommend at least two candidates for each vacant position on the Board for the Assembly's approval.⁶¹ Unlike the previous appointment procedure for Board members, which had been carried out mainly by the SRSG, the second reform assured – at least formally – the independence and professionalism of the Board's membership. The pluralistic composition of the committee ensured that the nominees fit some – if not all – political parties and, by extension, interest groups. In other words, this policy limited political pressure on personnel management, promotion, and dismissal in general.

Since the Board membership had to reflect the multi-ethnic character of Kosovo, at least two members had come from the non-Albanian communities.⁶² Board members served five-year terms that could be renewed only once.⁶³ Board members could be dismissed by the Assembly, either by a proposal of the majority of the Board members or by the motion of a member of Parliament, but only when certain criteria had been met.⁶⁴ Unlike the first Board, the second Board had the authority to issue its own rules and procedures, which were not subject to the

55 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2.

56 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2.

57 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2, sub-para a.

58 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2, sub-para b.

59 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2, sub-paras. c, d and e.

60 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2, sub-paras. f and g.

61 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 3.

62 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 4.

63 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 5.

64 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 8.

government's approval.⁶⁵ This gave the Board autonomy to direct its own internal affairs.

The Board's function remained similar from the first to second incarnations. As such, the Board had the authority to decide civil servants' appeals of decisions made by public institutions, to determine whether the appointments of department-heads complied with civil service regulations, and to assess annually the level of compliance of public institutions with civil service law.⁶⁶ However, the new regulation required that the Board provide an annual report to the Assembly.⁶⁷ Still, the Board did not have the authority to review the appointment process undertaken by the Senior Public Appointments Committee (SPAC).⁶⁸

The appeals procedure remained largely the same, including the conditions relating to the appellant's right to access the Board. However, the reform did change how the addressee implemented the Board's decisions – specifically when the addressee failed to implement the decision. The reform directed the Board to report the case to the Assembly, and, in turn, the Assembly would forward the notification to the government. This reform helped the Board use the Assembly to pressure the government regarding the execution of the Board's decisions. Furthermore, the Board's decision constituted the final administrative verdict – subject only to the Supreme Court's judicial review⁶⁹ – a standard recommended by the Venice Commission.⁷⁰

From a regional perspective, almost all Balkan countries appear to face similar problems concerning how the decisions of the competent body are executed, regardless of the fact that the decisions of the given body are final and only the court has the authority to review them.⁷¹

Although the reform certainly changed the Board, some reservations regarding its independence and functioning from there on out remained. First, the Board members could be dismissed easily. Second, the new regulation did not establish

65 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 9.

66 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 10, para. 1, sub-paras. a, b and c.

67 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 10, para. 1, sub-para. d.

68 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 10, para. 2.

69 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 11, para. 6.

70 European Commission for Democracy Through Law (Venice Commission) 'Comments on the Draft Civil Service Law of the Republic of Armenia'. CDL (2001) 25, Strasbourg, 2 March 2001, on the basis of comments by Kaarlo Tuori.

71 Ladi, Stella and Ruso-Dragoumis Evi, (2007) 'Study on Institutional Renewal and Good Governance in BSEC Member States'. Athens: International Centre for Black Sea Studies; Sigma (2008) 'Albania Public Service Assessment May 2008', available at: <www.sigmaxweb.org/dataoecd/47/5/41635923.pdf>; Sigma (2009) 'Albania Public Service Assessment May 2009' available at: <www.sigmaxweb.org/dataoecd/31/33/43912621.pdf>; Sigma (2008) 'Croatia Public Service Assessment May 2008' available at: <www.sigmaxweb.org/dataoecd/48/0/41637118.pdf> and Sigma (2008) 'Montenegro Public Service Assessment May 2008' available at: <www.sigmaxweb.org/dataoecd/48/56/41637731.pdf>.

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clear rules concerning the qualifications and professional background required for appointment to the Board. This allowed the appointment of many political nominees.⁷² Third, overlapping competences between the Department for Civil Service Administration – under the Ministry for Public Administration – and the Board remained.⁷³ The new regulation did not establish clear limits between the Board and other authorities within the civil-service system.

Therefore, people viewed the second reform of the Board as a mere legal requirement with which to upgrade and transform the civil service review system. However, an examination of the reforms of civil service management programs in other nations illustrates that governments undertake civil-service reform for two main reasons. First, the reforms usually address some of the existing efficiency problems of the civil service – an issue both closely related to the level of professionalism in the civil service and tied to the market orientation of the given country. Second, the reforms address the problem of responsiveness of public administration *vis-à-vis* public necessities and market demands in general. However, the second reform of the Independent Oversight Board of Kosovo was unrelated to all of these reasons.

D. A Constitutional Independent Oversight Board: Explaining the Third Reform

Kosovo undertook the third reform of the Board as part of a comprehensive public administration reform package. Beginning in 2007, the public administration reform addressed many issues, including the reform of the civil-service system and the functional review and institutional design of ministries.⁷⁴ The reform of the civil-service system in part reflected a need to overcome the ‘after independence’ challenges of institution-building, but also reflected European standards. Therefore, Kosovo, with a national goal of European-Union membership, had to deliver some concrete results. A country’s administrative ability to respond to European Union requirements, on the one hand, and meeting ‘the administrative standards’, on the other hand, are considered as conditions for integration into

72 See Sigma, ‘Kosovo Public Service and the Administrative Framework Assessment’. May 2008, available at: <www.sigmaweb.org/dataoecd/48/31/41637624.pdf>. For example European Commission progress report for Kosovo noticed that: ‘There have been cases of political interference in appointments to key civil service positions (including senior civilian positions within ministries, boards of publicly-owned enterprises, Ombudsman’s office, Constitutional Court).’ For more see Commission Staff Working Document: ‘Kosovo under UNSCR1244/99 2009 Progress Report’. Commission of the European Communities, SEC(2009) 1340, Brussels, p. 8.

73 See Sigma (2008) ‘Kosovo Public Service and the Administrative Framework Assessment’. May 2008, available at: <www.sigmaweb.org/dataoecd/48/31/41637624.pdf>.

74 See Strategy for Public Administration Reform in Kosovo 2007–2012, 15 February 2007, available at: <www.fridomks.org/media/01%20Draft%20Strategjia%20RAP.pdf>.

the European Union.⁷⁵ Thus necessary, Kosovo reformed its civil-service system again in 2010, for the third time.

To that end, the Assembly adopted several laws, among them, the law on civil service, the LIOB, and the law on civil-servant salaries. The new law on civil service offered a different and narrow concept of the civil service, making it clear that persons working within the institutions of the central and local administration,⁷⁶ including the administrative personnel of the judiciary, would have the status of civil servants.⁷⁷ In the previous UNMIK regulation, the scope of the civil service law was overly broad, including different categories of personnel.⁷⁸ In contrast, the present law on civil service excluded certain categories of public employees from the list of civil servants, including, “the teaching staff, [...] the medical staff [...], Police Officers [...], Customs Officers [...], Members of the Kosovo Security Force, political appointees and all the persons appointed in positions by political appointees”.⁷⁹

According to Ridley, changes in law will not directly address the behavior of civil servants; therefore, “reform of laws is a starting point, but is only a means to an end and it is taking a great risk to think that is sufficient”. Therefore, although we have lobbied for more changes in terms of legislation, it remains to be seen whether the reforms of the civil-service system in Kosovo would change the partisan behavior of the civil service.

In this regard, Shepherd argues that “Politicians/political parties have a legitimate interest in being able to exert some influence over the bureaucracy”; he then concludes that precisely this legitimate interest makes the incumbent party think that they might “fill certain senior posts in the government on the basis of political/partisan criteria as well as merit”.⁸⁰ On the other hand, Trendafilova acknowledges that the institutional bond of the government with civil service bodies and their accustomed political interference lead to an increase in the parti-

75 See R.M. Rutgers P. Schreurs, ‘Briefly Noted From Europe: Discovering The European Idea of Public Administration’. *Administrative Theory & Praxis*. Vol. 22, No. 3, 2000, p. 623.

76 Moreover, the law prescribes that the civil service includes but is not limited to [...] the administration of Assembly, the administration of the Office of the President, the Office of the Prime Minister and ministries, executive agencies, independent and regulatory agencies and municipal administrations’, and even [...] the administrative personnel employed by the judiciary is part of the Kosovo civil service and subject to this law and relevant applicable legislation’. Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Art. 1, para. 2.

77 Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Art. 3, para. 6.

78 The UNMIK regulation provided that ‘For the purposes of the present regulation: (a) “Civil servant” means any employee of an employing authority, whose salary is paid from the Kosovo Consolidated Budget, except for: (i) members of the Board; (ii) exempt appointees; and (iii) members of the Kosovo Protection Corps.’ See Regulation No. 2001/36 on the Kosovo Civil Service, Section 1, para. a.

79 Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Art. 4, para. 1

80 G. Shepherd, ‘Civil Service Reform in Developing Countries: Why Is It Going Badly?’ Paper presented at the 11th International Anti-Corruption Conference 25-28 May 2003, Seoul, Republic of Korea, p. 23.

san-behaviour of the administration.⁸¹ Precisely, these conflicting views describe the tensions inherent in today's regional civil service institutional reform.

All told, this section of the analysis will mainly focus on the design of the Independent Oversight Board of Kosovo, which constitutes one of the guarantees that protects the merit-based, professional civil-service system. The necessity for depoliticization and the "lack of legal instruments to safeguard civil servants against political abuse" mark the process of civil service reform in Central and East European countries.⁸² The link between politics and civil service is always either fostered or impeded whenever the 'new rules of the game' come into existence.⁸³ Therefore, this paper will both assess the third reform of the Board and build a model with which to examine its level of independence and pluralism. In the case of independence, we will prescribe an institutional situation free from direct control and exempt from biased choices and decisions. In this context, this paper defines pluralism as an institutional situation where the representation of diverse views, interests, and backgrounds is required.

We measure the level of independency and pluralism by assessing each of following points: a) the relationship of the Board with the Assembly, government, and other relevant institutions; b) the appointment and dismissal of the Board members and Board members' mandates and related immunities (if applicable); c) the composition of the Board; d) the decision-making procedures and the decisions and their rank and execution; e) the funding of the Board; f) the bulk of powers and functions attached to it; and g) the scope of its right to regulate its internal affairs.

In almost every Balkan country, civil-service system reform entailed the establishment of an appellate body that would serve both as a guarantee of the protection of civil-servant rights and as a mechanism to protect the overall principles of civil service. For example, in Albania, the Civil Service Commission performs this function.⁸⁴ In other countries, including Montenegro,⁸⁵ Serbia,⁸⁶ Croatia,⁸⁷ Slovenia,⁸⁸

81 T. Trendafilova 'Managing the Civil Service Roles, Mechanisms and Capacities: Central Capacity and Line Ministries'. Paper presented on the workshop on 'Building a professional Civil Service in Kosovo', held in Prishtina, 26-27 June 2008, co-organized by Sigma and the Ministry of Public Services of Kosovo, available at: <www.oecd.org/dataoecd/35/49/40975348.pdf>.

82 M. Verheijen in Hacek, 'The Relationship between Civil Servants and Politicians in a Post-Communist Country: A Case of Slovenia', *Public Administration*, Vol. 84, No. 1, 2006, p. 166.

83 L. Rouban, 'Public Management and Politics: Senior Bureaucrats in France', *Public Administration*, Vol. 85, No. 2, 2007, p. 475.

84 See Law No. 8549 on The Status of The Civil Servants, Art. 5; and, Sigma (2009) 'Albania Public Service Assessment May 2009' available at: <www.sigmaweb.org/dataoecd/31/33/43912621.pdf>.

85 See Law on Civil Servants and State Employees, Official Gazette of Montenegro No. 50/08 of 19 August 2008, Art. 112; Sigma (2008) 'Montenegro Public Service Assessment May 2008' available at: <www.sigmaweb.org/dataoecd/48/56/41637731.pdf>.

86 See Law on Civil Servants Official Gazette Of RS, No. 79/05, Art. 142; and Sigma (2008) 'Serbia Public Service Assessment May 2008' available at: <www.sigmaweb.org/dataoecd/49/1/41637841.pdf>.

87 See Civil Servants Act, Official Gazette no. 92/2005, Art. 65, and Sigma (2007) 'Croatia Public Service Assessment May 2007' available at: <www.sigmaweb.org/dataoecd/30/6/39671133.pdf>.

88 See Civil Servants Act, Official Gazette of Slovenia, No. 020-05/98-20/8, Art. 35.

Bosnia,⁸⁹ and Macedonia,⁹⁰ either bodies acting as independent units within the given civil service agencies or independent commissions responsible to the government perform this function.

Nevertheless, the enactment of the Constitution of Kosovo essentially initiated the third reform of the civil service Independent Oversight Board. The Constitution of Kosovo defines the principles that govern the civil service of Kosovo. The Constitution proclaims that the civil-service system should be built upon and should reflect the diversity of the people of Kosovo and should also respect the principle of gender equality.⁹¹ Moreover, the Constitution proclaims that an independent oversight board shall ensure the application of the principles governing the civil service and should “itself reflect the diversity of the people” of Kosovo.⁹² In accord with the Constitution, the Law on Civil Service of Kosovo (hereinafter ‘LCS’) prescribes that an independent oversight board will review the legality of the civil service management.⁹³ The LCS sets that the Board, as an appellate body, has the authority to review and decide on the appeals of civil servants of every level.⁹⁴ Note here that, under previous legislation, the Board did not have the authority to decide on the appeals of civil servants at the managerial level.⁹⁵ The LCS establishes that the Board has the authority to review, upon a civil servant’s request, every issue related to the appointment, promotion, dismissal, and disciplinary procedure of the employee.

To better shape the Board’s role within the civil-service system and to finalize the third reform of the Board, the Assembly adopted a special law to regulate the organization and the functioning of the Board. The Law on Independent Oversight Board (hereinafter LIOB) establishes it as an autonomous institution that reports only to the Assembly.⁹⁶ Here, the law clearly determines that the Board shall be responsible only to the Assembly, and does not permit a vertical relationship with any other institution. However, a set of provisions helps specifically explain the relationship of the Board with the government and other institutions. The Board should be composed of seven members and should reflect the multi-ethnic character of Kosovo.⁹⁷ The Board’s composition aids us in measuring the level of pluralism within the Board. Therefore, the LIOB, in addition to requiring a proper representation of the non-majority communities on the Board, also asks

89 See Law on Civil Service in the Institutions of Bosnia and Herzegovina, Art. 63, Sigma (2008) ‘Bosnia and Herzegovina Public Service Assessment May 2008’ available at: <www.sigmaweb.org/dataoecd/48/13/41636302.pdf>.

90 See Law on Civil Servants, Official Gazette of the Republic of Macedonia” No. 59/2000, Art. 112; and Sigma (2008) ‘Former Yugoslav Republic of Macedonia Public Service Assessment May 2008’ available at: <www.sigmaweb.org/dataoecd/48/48/41637503.pdf>.

91 Constitution of the Republic of Kosovo, Art. 101, para. 1.

92 Constitution of the Republic of Kosovo, Art. 101, para. 2.

93 Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, Art. 9.

94 Law No. 03/L –149 on the Civil Service of the Republic of Kosovo, Arts. 21, 78, 81 and 82.

95 Therefore, the Board did not have the authority to decide on the issues related to the appointment and dismissal of the permanent secretaries and chief executive officers.

96 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 3.

97 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 4, paras. 1 and 2.

for proper representation of other under-represented groups, specifically women.⁹⁸ As a result, at least two out of seven members of the Board must come from the non-Albanian majority and two others must be women.⁹⁹ However, this requirement does not make a difference for the ethnic minorities in Kosovo. The representatives of the Serbian community (as the largest group of ethnic-minorities in Kosovo) do not have a reserved place in the composition of the Council. Consequently their representation is conditioned on agreement with other ethnic-minorities' representatives.

Essentially, the Constitution of Kosovo requires the Board to reflect its multi-ethnic character. The Constitution ensures that gender equality forms one of the republic's fundamental values.¹⁰⁰ The LCS also requires that the ethnic minorities should have a fair and proportional representation in civil service institutions and public administration at both the local and central levels.¹⁰¹ Moreover, this equitable representation within civil service institutions is often understood to mandate that at least 10% of the positions within the central civil service at the central level will be filled with persons belonging to ethnic-minorities in Kosovo.¹⁰²

Many believe that these affirmative actions for ethnic minorities conflict with the principle of non-discrimination. However, in the European practice, the so-called 'positive measures' constitute special categories of protection that help ethnic minorities or under-represented groups enhance their participation in public life. In this context, the Constitution of Kosovo affirms that the principle of non-discrimination and equal protection would not prevent the imposition of measures directed toward advancing and protecting the rights of individuals and/or groups that are, for the time being, unequal.¹⁰³ However, such a measure would be applied only until the purpose of the concerned measure was achieved.¹⁰⁴ Thus, the Constitution of Kosovo recognizes the possibility of an exemption from these principles if it would directly benefit the individual and/or under-represented group. In this case, both the minorities, in terms of ethnicity and women, are not considered to be equitably represented.

It is worth noting that the Venice commission found that the "the apportionment of posts between the majority and the minority or minorities, and their allocation within the majority or the minorities, are in fact governed by different princi-

98 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 4, para. 2.

99 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 4, para. 2.

100 Constitution of the Republic of Kosovo, Art. 101, para. 2, and Art. 7, para. 2

101 Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Art. 11, para. 2.

102 Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Art. 11, para. 3.

103 Constitution of the Republic of Kosovo, Art. 24, para. 2.

104 Constitution of the Republic of Kosovo, Art. 24, para. 2.

ples".¹⁰⁵ This means that, in some countries, these measures ensure, at least formally, an equitable representation of the ethnic minorities in public institutions. This is the case with neighbouring Macedonia, where the Constitution prescribes the right of equitable representation of ethnic minorities in public institutions, and especially in their representation in the civil service.¹⁰⁶ However, whether one might, at the same time, both ensure the application of affirmative measures and apply rigorously the merit-based principle in the selection procedure for civil servants remains unclear.¹⁰⁷ It seems that the Law on Civil Service of Kosovo, on the one hand, and the law on the oversight board, on the other, sometimes conflict. Therefore, if the law on the oversight board requires that the composition of the Board fairly reflect both ethnic minorities and women; the law on civil service requires that access to civil service positions should be based on the principles of merit, professionalism, non-discrimination, and equitable representation.¹⁰⁸ However, these conflicting requirements can only be fulfilled with the intention of guaranteeing the representation of under-represented groups in civil service institutions (of which the Board is one). Nevertheless, the practice in other countries shows that the segregationist systems (in civil service) have made it possible to retain under-represented groups in the minimum level of influence.¹⁰⁹ Thus, here again, the logic of setting formal, equitable quotas becomes evident. Equitable representation would not only structure the Board's composition to reflect a multi-ethnic and multi-gender character, but it would also frame the Board as a reflection of different interests and views. We argue in this paper that the Board's

105 See European Commission for Democracy Through Law (Venice Commission) (1998) 'Summary Report No. 010/95 on Participation of Members of Minorities in Public Life'. CDL-MIN (98) 1 rev., Strasbourg, 27 February 1998. In the same report, it is acknowledged that affirmative action's fall into three categories, namely: 'a) Substantive enforcement of the right to maintain one's existence or at least one's cultural, linguistic and religious distinctiveness; b) Measures to ensure equality of results between the various groups (particularly in the numerical composition of certain bodies), and; c) Measures to ensure genuine equal opportunity for members of minority groups.', p. 6.

106 See T. Jordanoska, Snezana, 'Report No. T-02-2006 on Constitutional, Legal and other Measures Aimed at Promoting the Equitable Representation of Communities in the Civil Service and the Experience from the Ombudsman Office', presented at the UniDem Campus Trieste Seminar 'Positive Discrimination and Access to Civil Service' 6-9 February 2006. European Commission for Democracy Through Law (Venice Commission), CDL-UDT(2005)005, Strasbourg.

107 See European Commission for Democracy Through Law (Venice Commission), 'Opinion on the Draft Law on Civil Service in Governmental Institutions of Bosnia and Herzegovina'. CDL-AD(2002)004, Strasbourg, 14 March 2002, on the basis of comments by Kaarlo Tuori.

108 See Law No. 03/L -149 on the Civil Service of the Republic of Kosovo, Art. 11, para. 1.

109 Recently, Neubauer asserted that: '[...] data on distribution of the highest-ranking women civil servants (a hierarchical level that have a major impact on decision-making in the organization) in different fields of action in the European Union member states and Bulgaria, Romania, Iceland, Liechtenstein and Norway reveal that factors, such as gender segregation in work and in education keep the majority of women at the edge of decision-making in basic functions, economy and infrastructure, while they are better represented in socio-cultural functions.' Neubauer in Neubauer, Violeta (2006) 'Report No. T-02-2006 on Equal Representation of Women and Men in the Civil Service: The Slovenian Experience', presented at the UniDem Campus Trieste Seminar 'Positive Discrimination and Access to Civil Service' 6-9 February 2006. European Commission for Democracy Through Law (Venice Commission), CDL-UDT(2005)004, Strasbourg, p. 5.

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reflection of the concept of pluralism remains sometimes inadequate. For example, in Montenegro, the Appeal Commission is composed of six members, and at least one of them should be a representative of the trade union.¹¹⁰ The composition of Kosovo's Board, in this case, would be more plural and inclusive.

Analysing the appointment procedure for the Board members offers another way to assess the Board's pluralistic structure. If the appointment of Board members involves more than two different 'stake-holders', then the Board's composition would be more plural in terms of representation of diverse interests, choices, and views. This brings us to the assessment of the appointment procedure for the members of the Independent Oversight Board, paying particular attention to two different concerns. First, one must consider whether the appointment procedure would reflect a pluralistic Board; second, would the appointment procedure bring to the surface any political relationships between the Board and the government and the Assembly, so as to allow observers to draw conclusions about its dependence and/or independence. Let us look at this from an analytical perspective.

E. The Appointment and Composition of the Board

The present LIOB makes clear that it is the Assembly that appoints and dismisses Board members. On the other hand, the Board is also directly responsible only to the Assembly and, as such, should report annually to the Assembly.¹¹¹ The Assembly of Kosovo, should, after launching a public competition for a vacant position in the Board – according to its rules of procedure – establish an ad hoc committee to review the candidates' applications.¹¹² The ad hoc committee, after reviewing the candidates' applications, will propose at least two candidates for each vacant position on the Board to the Assembly for approval.¹¹³

However, the law does not specify whether the ad hoc committee should be composed of representatives of different political parties and representatives of different ethnic communities. The earlier UNMIK regulation did require that the ad hoc committee – responsible for proposing a list of candidates for Board membership to the Assembly for approval – should be composed of representatives of different political parties, including the representatives of political parties coming from ethnic communities.¹¹⁴ The current law seems to disregard the pluralistic approach of the earlier regulation, in which the inclusion of representation for different interests and groups was mandatory. Therefore, the present law both decreases the scope of the ad hoc committee and diminishes the mechanisms designed to secure the independence of the Board. However, per the Constitution

110 Law on Civil Servants and State Employees, Official Gazette of Montenegro No. 50/08 of 19 August 2008, Art. 113.

111 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 19.

112 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 6, paras. 1 and 2.

113 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 6, paras. 3 and 4.

114 See Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, section 8, para. 2, sub-paras. a, b, c, d, e, f and g.

of Kosovo, at least one member of an ad hoc committee should come from the deputies representing the ethnic communities.¹¹⁵

On the other hand, since the Board has the authority to review appeals from civil servants working at the local level, the appointment procedures for Board membership should, in addition, take into account the views of local representatives. In the Republic of Albania, for example, the Parliament appoints the members of the Civil Service Commission from a list of nominees proposed by different institutions. Each of the involved bodies should propose to the Parliament for approval at least three nominees for each available position. Thus, the government of Albania could propose two nominees, the office of the Auditor General could propose one, and the Assembly of Local Representatives could propose two nominees.^{116 117} In Montenegro, at least one of the members of the Appellate Commission should come from the trade union.¹¹⁸ In Slovenia and Serbia, the review of the civil service complaints has been divided into two and three different bodies, respectively. In Slovenia, three different appellate commissions review the appeals: the appellate commission of the government, the appellate commission of other state bodies, and the appellate commission of the representatives of municipalities.¹¹⁹ The institutions within which these commissions work make the appointments. In Serbia, there are two appeals commissions, namely, the Judicial Appeals Commission and the Appeals Commission of the government. For civil servants working in the judiciary and the prosecution, the Supreme Court of Serbia and the Public Prosecutor jointly appoint the Judicial Appeals Commission members.¹²⁰ The latter has the authority to review the appeals of the civil servants working in the judicial and prosecutorial institutions. In contrast, the government of Serbia elects the members of the Appeals Commission upon the proposal of the Manager of the Human Resource Management Service.¹²¹

Although one may see many differences in terms of structure and institutional design, the main argument in this case remains that all regional legislations provide for a range of interested parties to be involved in the candidate selection process. Therefore, the more limited participation of stakeholders in the process of appointment of the Board members in Kosovo illustrates a standard of neglect.

In fact, the appointment procedure pre-conditions a partisan – rather than professional and impartial – Board. In this regard, Mulgan once acknowledged that a

[p]oliticized appointment processes [. . .] will encourage politicized actions on the part of the public servants. In particular, politicized appointments will undermine the traditional political neutrality of career public servants and

115 Constitution of the Republic of Kosovo, Art. 77, para. 3.

116 See Law No. 8549 on The Status of The Civil Servants, Art. 5, para. 2.

117 See Law No. 8549 on The Status of The Civil Servants, Art. 5, para. 2.

118 Law on Civil Servants and State Employees, Official Gazette of Montenegro No. 50/08, Art. 113.

119 See Civil Servants Act, Official Gazette of Slovenia, No. 020-05/98-20/8, Arts. 35 and 36.

120 See Law on Civil Servants Official Gazette Of RS, No. 79/05, Art. 151.

121 See Law on Civil Servants Official Gazette Of RS, No. 79/05, Art. 151.

their capacity to give ministers advice that is free and frank [or ‘frank and fearless’ in the Australian version].¹²²

Mulgan’s analysis is right-on; proper functioning of a professional civil service requires political neutrality. Arguably, Foster acknowledges that: “Were British politicians to start to rely on outside advisers, political appointees or on a *cabinet* of personally selected advisers, the bureaucratic-political relations would have changed fundamentally”.¹²³

Considering the relationship of the Assembly with the government outside of the legal setting, it should be easy for each coalition government in Kosovo to control and politically influence the Board. Issues to be addressed include the Board’s composition and appointment procedures, the pluralism within the Board, and the independence of the Board. Therefore, within each point, we hypothesize political tensions and antagonism between the principles of independence and political influence.

On the other hand, in terms of personal-related privileges and immunities, a member of the Independent Oversight Board of Kosovo, unlike his or her counterparts in Albania, is not granted special immunity and, therefore, does not hold institutional privilege. In Albania, the members of the Civil Service Commission enjoy the same immunities and privileges as the members of Albania’s Supreme Court do.¹²⁴ This could provide another institutional assurance of the independence of Kosovo’s Board. Taking into consideration the immunities and privileges of the political bodies, such as ministers, the Board members have an unfavorable position.

As far as the mandate is concerned, the members of the Board are appointed for five-year terms and are eligible for re-appointment for only one additional term.¹²⁵ The members of the Board elect their chairperson, who is tasked with the responsibilities of managing and coordinating the activities of the Board.¹²⁶ The chairperson plays an important role when it comes to the appointment of review panelists because the chairperson has the authority to appoint the review panels.¹²⁷ Members of the Board shall not be part of any political party and should similarly not exercise any other function that is incompatible with his or her position.¹²⁸

Upon the receipt of a proposal to remove a member from the Board, either by the majority of the Board members or the permanent committee of the Assembly

122 Mulgan in C. Eichbaum and R. Shaw, ‘Revisiting Politicization: Political Advisers and Public Servants in Westminster Systems’. *International Journal of Policy, Administration, and Institutions*. Vol. 21. No. 3, 2008, pp. 341.

123 C. Foster, ‘The Civil Service Under Stress: The Fall in Civil Service Power and Authority’. *Public Administration*. Vol. 79, No. 3, 2001, p. 739.

124 See Law No. 8549 on The Status of The Civil Servants, Art. 5, para. 3.

125 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 7, para. 1.

126 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 8, paras. 1 and 2.

127 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 8, para. 3.

128 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 7, para. 2.

and/or a number of parliament members, the Assembly may dismiss a given Board member.¹²⁹ This means that the Assembly of Kosovo, with the majority of votes, is the only body that might dismiss the members of the Board. However, the Assembly may not dismiss any member of the Board if the list of certain conditions is not complete.¹³⁰

F. Functions of the Board

The Board has three principal responsibilities. First, the Board has the authority to review and decide, as an appellate body, civil-servant appeals of decisions of the employee's given employing-institution (against both central and local institutions).¹³¹ Second, the Board ultimately decides (as a final administrative body) whether the appointments at the managerial level comply with the Law on Civil Service.¹³² Third, the Board supervises the implementation of the Law on Civil Service by public institutions.¹³³

However, in terms of local self-government principles, the Board's authority to review and decide the appeals of civil servants at the local level seems problematic. In fact, two major concerns emerge. The first relates to the influence that the government might have on the Board and its members. The local representatives could view the Board as a means through which the government may influence civil administration at the local level. Second, as the practices of other countries demonstrate, the procedure for the appointment of the Board members could be improved by involving representatives of local institutions. Therefore, in this case, one cannot easily conclude that the Board is protecting the civil-service system and not diminishing the independence of local institutions. One may argue that establishing a central body empowered to review and decide the aforementioned issues would be more effective, and, therefore, recommendable. However, sometimes the Board's authority conflicts with the autonomy of the local administrations. In Slovenia, an Appellate Commission consisting of representatives of local administrations has the authority to review the appeals of the local civil servants. This provides an additional guarantee of the local administration's autonomy.¹³⁴

The Independent Oversight Board of Kosovo also has the authority to review and decide upon the appeals from civil servants working within the judiciary administration. Therefore, the threat remains of possible government influence over

129 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 9, para. 1.

130 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 9, para. 1, sub-para. 1, 2, 3, 4, and 5.

131 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 10, para. 1, sub-para. 1.

132 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 10, para. 1, sub-para. 2.

133 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 10, para. 1, sub-para. 3.

134 See Civil Servants Act, Official Gazette of Slovenia, No. 020-05/98-20/8, Art. 35, para. 2, sub-para. 3.

the civil service working for the courts and prosecution offices, as is the case with the local administration. As a consequence, here again, the solutions provided by neighboring countries prove valuable. For example, Serbia has established the Judicial Appeals Commission, appointed by both the Supreme Court of Serbia and the public prosecutor, consisting of civil servants employed by the judiciary and prosecution.¹³⁵ This body reviews the complaints arising from the judicial civil service. The government, in this case, does not have any possible means of exerting political influence on the administration of the judiciary. In the case of Kosovo, considering the above issues, the influence of the government over the civil service of the judiciary remains possible. This, however, would undermine the principles of separation of powers and an independent judiciary.

Next, one can argue that the Board “for the purpose of carrying out its functions” may access and examine every written record relating to appointment, promotion, and dismissal, as well as materials relating to the disciplinary procedures.¹³⁶ Moreover, the Board has the authority to pursue interviews with civil servants at both the local and central levels.¹³⁷ However, the law on the oversight board has unnecessarily prescribed that the Board should preliminarily notify the concerned managing-civil servant as to the purpose and reason of their visit or request, including the types of records and the names of the civil servants that they are willing to interview.¹³⁸ This provision, therefore, impedes – rather than facilitates – the Board’s functioning. In one case, if a member of the Board wants to interview a civil servant who has already appealed to the Board – he or she should first notify the managing officer coordinating the interview. Therefore, precisely the managing officer of concern may be subject to the civil servant’s appeal. Thus, this creates the possibility that the managing officer might exert his or her influence and undermine the interview and the allocation of necessary information.

Another noteworthy function relates to the duty of the Board to verify the appointments, recruitments, and promotions of the senior/managing officers of the civil service of Kosovo. For this purpose, the Board should appoint at least one of its members to assess whether the appropriate committee has followed the procedure for appointment, recruitment, and promotion of civil service members.¹³⁹ To verify compliance, the Board, upon the recommendation of its member who participated in the procedure as an observer, shall decide whether the committee acted in compliance with the rules and principles of the civil service.¹⁴⁰ The Board, under the earlier UNMIK regulation, had been exempted from reviewing and contesting the decision of the Senior Public Appointment Committee

135 See Law on Civil Servants Official Gazette of RS, No. 79/05, Art. 151.

136 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 11, para. 1, sub-para. 2.

137 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 11, para. 1, sub-para. 3.

138 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 11, para. 2.

139 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 16, para. 1, sub-para. 1.

140 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 16, para. 1, sub-para. 2.

(SPAC had the authority to appoint the senior officer of the civil service). Under the present law, the Board has the authority to review the appointment of every senior officer of the civil service in Kosovo. In this regard, the Board should make recommendations to the institution, and, if the latter does not comply with it, then the Board should notify the Assembly and the prime minister.¹⁴¹ However, the law does not determine if the civil servant, the appointment of whom the Board considers not in compliance with the rules of the law on civil service, should continue to enjoy the position contested by the Board. Therefore, the law requires the Board's presence in the senior-officer appointment process; if the need to assure that the appointment process complies with the law on civil service drives this participation, then, in the case when the Board views that the person had been appointed against the rules, it continues his or her mandate. The absence of an explicit provision in the law means that if the Board considers that an appointment had violated the rules of the law on civil service, then the appointment would not be legally binding. This, however, puts the supervisory function of the Board into 'general terms'.

On the other side, the Board is responsible for annually reviewing and observing a sample of the employment-related records from the public institutions, and those institution's promotional, recruitment, and disciplinary-related materials.¹⁴² When necessary, the Board recommends necessary improvements to the institution concerned, and – if the institution does not comply within a reasonable period – the Board has the authority to address the issue to the Assembly.¹⁴³ This process reaffirms the Board as the responsible body that shall secure proper implementation of civil service law in Kosovo.

The Board, as described, is an appellate body; its decisions are final. Therefore, every civil servant, before filling an appeal in the Board, must first exhaust all relevant measures within the concerned institution.¹⁴⁴ For example, Kosovo's civil service law determines that each institution should set up "Disputes and Grievances Appeal Committees", which have the authorization to settle grievances and employment-related disputes.¹⁴⁵ However, the decisions of these committees might be the subject of the Board's review. Any civil servant may appeal any of the decisions of the specific committees involved.¹⁴⁶ A panel of three Board members, appointed by the chairperson of the Board, reviews and decides the appeals.¹⁴⁷ However, one can argue that the chairperson, through his or her authority in the process, may present a source of bias, and therefore could prejudice the outcome of a decision. Because of the multiple political affiliations and

141 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 16, para. 2.

142 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 17, para. 1, sub-paras. 1 and 2.

143 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 17, paras. 2 and 3.

144 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 3, sub-para. 1.

145 Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Arts. 81 and 82.

146 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 1.

147 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 2.

sources of partisanship within the Board's composition, the chairperson could encourage the Board to act in a partisan manner (by always constituting a committee composed of 'politically preferred members'). Therefore, the provision of other methods of appointing panel members becomes necessary. Moreover, the law governing the Institutional Oversight Board neither requires that the composition of the review panels reflect the multi-ethnic composition of the Board nor does it require that the composition of the review panels reflect the gender balance of the Board. The law governing the Board's operation hinders the ability of the Board to secure the participation of all Board members in the decision-making process. For example, the chairperson may prefer to establish review panels that repeatedly consist of the same members. Here again, the authority of the chairperson provides some uncertainty about the proper functioning of the Board for the best interests of Kosovo's civil service.

One may note that the Board, in exceptional circumstances, might decide to review the appeal of a given civil servant, even if the latter did not exhaust all internal measures available. In this case, the appellant must provide evidence that the use of internal measures would endanger his or her position within a given institution.¹⁴⁸ The Board also has the authority to review as case as a body of first instance if the institution concerned has failed to deliver a decision within 30 days.¹⁴⁹

As we have argued above, the Board's authority to decide a given issue only requires the review panel to assess the formal or procedural aspects of a case. However, in cases when the review panel must substantively assess a given appeal, then both parties would have the opportunity to get involved in the panel's proceedings and to present evidence and witnesses.¹⁵⁰ Therefore, the Board's authority to review appeals and make decisions does not only relate to the procedures themselves, but also addresses substantive issues relating to the rights of the civil servants.

G. Decisions of the Board

As the final instance of the civil service appeal mechanism, the Independent Oversight Board makes the final decision. In terms of administrative law, other administrative bodies may not contest this decision. The Board, in panels consisting of three Board members, reviews the civil servants' appeals. Therefore, the review panel, when reviewing a given appeal, must issue a decision within 60 days after it completes its proceedings for the issue concerned.¹⁵¹

148 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 3, sub-para. 1.

149 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 3, sub-para. 1.

150 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 3, sub-para. 3.

151 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 12, para. 3, sub-para. 5.

The Board's decision constitutes the final administrative verdict and no administrative institution may review it.¹⁵² However, this provision assures that the Board's decision remains untouchable by the government, ministries, and other local institutions, and provides additional assurance of the Board's independence. However, this is a very common practice in the region.

One might ask whether, in practice, people can appeal the decision of the Board and also whether ordinary courts might review it. The Law on Independent Oversight Board of Kosovo (hereinafter 'LIOB') prescribes that a given person might open an administrative conflict in the jurisdictionally authorized court against the decision of the Board.¹⁵³ Kosovo's legislation recognizes this right only at the level of the Supreme Court of Kosovo, i.e., local or regional courts may not review decisions of the Board but the Supreme Court of Kosovo may review them. Therefore, any party who believes that the Board's decision has infringed upon his or her rights may appeal that decision to the competent court within 30 days. The Venice Commission also recommends this standard: specifically, it requires:

The legal protection of civil servants themselves belongs to the juridical guarantees of a democratic *Rechtsstaat*. Thus, it is important that they have the right to appeal their dismissal from civil service to a court [...]¹⁵⁴

However, the appeals procedure in the courts might not prevent the execution of the Board's decision, which should take place within 15 days of receipt.¹⁵⁵ This leads to the question, if the addressee will not execute the decision of the Board within the period set by the law, what procedure will assure its execution? The LIOB specifies that the non-implementation of a decision is a serious violation of the civil service obligation and duties.¹⁵⁶ The Board is required to notify the prime minister and the managing officer of the person responsible for the implementation of the decision.¹⁵⁷ The notification delivered by the Board calls for the direct managing officer to open a disciplinary procedure for the responsible person for the failure to implement the decision.¹⁵⁸ However, in the earlier UNMIK regulation, the Board first delivered notification to the Assembly of Kosovo and then the Assembly itself transmitted it to the government. This, in addition to serving as a natural communication between the Assembly and the Board, provided an additional tool for the then-Board to pressure the government to carry out the decision. In contrast, the present law obliges the Board to communicate the failure to execute a decision only to the prime minister. The Board must provide

152 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 13.

153 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 14.

154 European Commission for Democracy Through Law (Venice Commission) 'Comments on the Draft Civil Service Law of the Republic of Armenia'. CDL (2001) 25, Strasbourg, 2 March 2001, on the basis of comments by Kaarlo Tuori, para. 9.

155 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 13.

156 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 15, para. 1.

157 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 15, para. 2.

158 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 15, para. 3.

the Assembly with a list of the decisions that have not been implemented.¹⁵⁹ As a result, the Assembly does not function as a tool with which to pressure the government, instead, it is only informed about the issue.

In some cases, the municipal court may award compensation for the damages caused by the decision to the civil servant involved. The court then may require the person who contested the implementation of the Board's decision to pay the procedural expenses and other related expenses.¹⁶⁰ In this case, the law insists that the implementation of the Board's decision should be the personal responsibility of the responsible civil servant. The logic of the law is considered 'just', however the institutional responsibility should also be required, especially in terms of material compensation.

H. Budget and the Board's Internal Affairs

The law governing the oversight board determines that a specific budget line within the Budget of Kosovo shall fund the Board.¹⁶¹ However, the law does not specify which institution decides the annual budget of the Board. Nor does it specify whether the institution that approves the budget of the Board (in this case, the Assembly) may limit the requested amount. Therefore, this abstract formulation of the provisions of the law would endanger the budgetary independence of the Board, forcing the latter to rely on the government's annual budget. In previous years, the then-Board reported many financial difficulties that impeded its proper functioning.¹⁶² Therefore, to support the independent functioning of the Board, the law should have determined that the Assembly should solely approve the Board's proposed budget. This would have ensured that the Board's annual budget would be designed to meet its needs. However, the law allows the Board to receive funding from external donors, provided that the funding would not influence the Board's independence in any way.¹⁶³ Nonetheless, legislators have recognized that the Board may be influenced by budgetary means. Given this situation, one could simply argue that the Assembly should, in practice – although not directed specifically by statute, designate the budget as the Board proposes. This would not provide a guarantee; it merely would allow for an independent budget line in Kosovo's national budget. The Assembly should follow the same approach for Board members' salaries. The law specifies that their salary level should be in accord with the law on salaries of civil servants.¹⁶⁴ However, here again, the earlier UNMIK regulation provided that Board members received

159 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 15, para. 5.

160 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 15, para. 4.

161 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 21, para. 1.

162 Sigma, 'Kosovo Public Service and the Administrative Framework Assessment'. May 2008, available at: <www.sigmaxweb.org/dataoecd/48/31/41637624.pdf>; Independent Oversight Board Annual Report 2007, available at: <www.ks-gov.net/kpmk/document/english/publications/Report_2007.pdf>; and Independent Oversight Board Annual Report 2008, available at: <www.ks-gov.net/kpmk/shqip/publikimet.htm>.

163 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 21, para. 2.

164 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 21, para. 3.

the same salary level as did members of the Supreme Court of Kosovo.¹⁶⁵ Although the Board, as compared to the previous regulation, exercises the same group of functions, the present law does not offer these financial guarantees. The present law does provide the Board with a secretariat to assist in the execution of its duties.¹⁶⁶ The Board prescribes its own rules of procedure and code of ethics.¹⁶⁷ Therefore, the Board itself regulates its internal affairs without the approval of the Assembly. This confirms that the Board may design its rules and its procedures without external interference.

I. Conclusion

In addition to delivering some general information about the civil-service system in Kosovo, this article reviewed the institutional development of the Independent Oversight Board and each of the three reforms of the Board. It has discussed the impact of the international civilian presence on both the transformation of and the existing design of the Board. The first section of the article described the institutional structure of the Board and its role and responsibilities as an independent unit within the ministry of public administration. The second part reviewed the changes delivered by the second reform of the Board and argued in favour of its level of pluralism and independence. It identified the relationship of the Assembly to the Board and noted its main deficiencies. The third part of the article explained the existing Board and identified potential problems regarding both pluralism and potential threats to its independence. This analysis argues that the constitutional design may have, in part, determined the level of pluralism within the Board and preconditioned its diverse membership.

To draw these conclusions, we first addressed whether the appointment process will precondition the Board's position *vis-a-vis* the government. In this case, we studied the appointment process and compared it with the regional approaches. Therefore, we conclude that the appointment process did not, as such, prevent the Board from being politically influenced. Additionally, the article assessed whether the composition of the Board might present an option that would make it more accessible for different interests, choices, and backgrounds. In this case, we argued that the choices of legislators may introduce a level of bias in the appointment process. In conclusion, the article argued that the existing rules of appointment and the composition of the Board, on the one hand, and the possibility for a partisan affiliation within the Board, on the other hand, conflicts with the principle of professional civil service, autonomy of local administration, and the principle of separation of powers. That being said, the third reform does not address the need for a modern civil service system, based on merits and professional values.

165 Regulation No. 2008/12 amending UNMIK Regulation 2001/36 on the Kosovo Civil Service, Section 7, para. 5.

166 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 20.

167 Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, Art. 22.