

2021

Human Resource Management in the Kosovo Police: A Gap Analysis

CIDS report No. 2 2021



CENTRE FOR INTEGRITY
IN THE DEFENCE SECTOR

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The Centre for Integrity in the Defence Sector (CIDS) promotes integrity, anti-corruption measures and good governance in the defence sector. Working with Norwegian and international partners, the Centre seeks to build competence, raise awareness and provide practical means to reduce risks of corruption through improving institutions and through education and training. CIDS was established in 2012 by the Norwegian Ministry of Defence and was officially appointed as NATO's Department Head in the new discipline area established through the Building Integrity Programme in 2013. The Centre is now an integral part of the MOD. The views expressed in this report are those of the Centre.

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FOREWORD

CIDS is proud to publish CIDS Report nr. 2/2021, report “Human Resource Management in the Kosovo Police: A Gap Analysis”.

The Centre for Integrity in the Defence Sector (CIDS) has prepared this analysis of the system of human resource management (HRM) of the Kosovo Police (KP) at the request of Kosovar authorities. The study is based on a review of relevant international documents, official documentation prepared by the Kosovo Government and two rounds of over 25 interviews with i.a. members of the Kosovo Police, the Kosovo Academy for Public Safety (KAPS) and the Kosovo Police Inspectorate (KPI). The KP is one of the most trusted institutions in Kosovo. While international observers and CIDS have noted positive developments and measures that have been introduced, nonetheless work still remains to ensure sustainable progress. This report proposes a number of improvement measures in the system of human resources

management in the police. Some of the weaknesses identified are related to previous decisions made by political authorities and, as such, are not due to the police themselves. Several of the recommendations included in the report must therefore be considered by the Ministry of Interior, the Council of Ministers and Parliament.

CIDS is happy to receive feedback to the report.

Oslo, 3. June 2020



Per A. Christensen
Director

Executive summary

The main findings and recommendations can be summarized as follows:

The wording of article 55 of 2012 Police Law, gives the Director General the authority to issue regulations related to police work. Even if the primary legislation sets limits for this authority, it still seems difficult to avoid that he can also make decisions that go beyond technical, operational policing. An institution which regulates itself makes external oversight, including civilian and democratic control difficult, if not impossible, to achieve. Therefore, we recommend that the following measures should be adopted:

- The way in which the police are regulated should be changed in accordance with the Law on State Administration. We recommend that article 55 of the 2012 Police Law be amended so that authority to regulate the work of the police is vested in political authorities, especially the MoI. Political interference in operational policing must be avoided.
- Primary and secondary legislation should be the main instruments for regulating the system of police HRM, police management and police work. The use of administrative instructions should be reduced to a minimum and only to address operational issues and not issues that affect citizens' basic rights.
- All police-related legislation should regularly be published in the official gazette as well as on publicly accessible websites.
- The capacity of the Ministry of Interior to formulate policies for and to control the police should be significantly strengthened. Careful consideration should be given to setting up a separate unit, possibly a Department for Police Matters at the Ministry.
- Guidelines should be prepared for how the ministry can ensure the management of the police without at the same time engaging in the day-to-day operation of police work.

Overall, structural and demographic features of the KP may make it difficult to fully make effective use of police personnel. To address this situation, we recommend that the following measures be implemented:

- The current police structure, including i.a. the size and number of regional directorates should be reviewed

in order to liberate resources for operational policing. The geographical organization of the police should be adapted as far as possible to the organization structure of prosecuting authorities and courts. Decisions about the future structure of the police must also take into account relevant international agreements¹

- The age structure of the police should be reviewed with a view to developing measures that allow more efficient and flexible use of police personnel.
- Opportunities to find alternative ways of protecting physical infrastructure, rather than by using police, should be explored.

Existing legal frameworks and especially promotion practices do not fully protect the merit principle or promote a high-performance culture. Current arrangements entail a risk that police officers in conflict situations may be loyal to superiors rather than to professional standards. Moreover, there is a need to further increase the share of women at all organizational levels in the police. We therefore recommend that the following measures be implemented:

- Police legislation should be reviewed to ensure better clarification and protection of the merit-principle in all decisions regarding employment, promotion, dismissal and other relevant aspects of police HRM. A piece of secondary legislation should be adopted, which sets out a more detailed framework for dismissal of the highest police officers based on poor performance.
- Wherever appropriate in employment and promotion processes, a system with essay-type written exercises and competency-oriented interviews should be introduced as one of the means to measure analytical and communicative skills of the candidates and not only their ability to memorize facts which is the case today. All questions and tasks should be generated by computers and given to candidates in a random manner.
- The objectivity of promotion processes should be enhanced by increasing the weight of the performance appraisal results and participation in relevant training activities to e.g. one third of the total score. At the same time, the current performance appraisal exercises should be made more reliable and credible.

¹ See the Brussels Agreement regarding the establishment of a Regional KP Directorate in Mitrovica North.

- The significance of the different assessment criteria for determining a candidate's overall score in the recruitment processes, must be established by assigning each criterion a fixed – not as now partly variable – percentage.
- The appointment of “acting” staff in higher positions should be reduced and used only to address exceptional temporary circumstances. The remuneration for those holding positions in an “acting” capacity should be based on rank, not on position, and immediate steps should be taken to fill these positions following the proper promotion procedure.
- In order to enhance legal certainty and transparency in the recruitment processes all interviews should be video recorded. The legal basis for and content of such a measure must be carefully prepared.
- In order to achieve better representation of both sexes in the KP, especially in more senior positions, women who are sufficiently qualified should be given precedence over equally well-qualified men in recruitment and promotion processes should they achieve the threshold of 70 per cent.

The system of performance appraisal in KP requires changes. CIDS recommends a review of the existing system that could lead to positive impact in the HRM system. A system with performance dialogues should be considered introduced.

In order to increase the institutional benefit of competency building activities, CIDS recommends that the impact of current trainings be evaluated, and based on this, a competency building plan be developed. The plan should include short-term training activities as well as opportunities for further education.

Issues related to police integrity are at present inadequately regulated. The upcoming Regulation on Integrity may be a way forward to address current deficiencies. The widespread practice in which police officers also work outside the police, creates great risks of conflicts of interest. Giving police officers access to subsidiary sources of income should never be a substitute for decent remuneration. Therefore, we recommend that the following measures be implemented:

- Access to work outside the police should be comprehensively regulated.
- Careful consideration should be given to how any loss of subsidiary sources of income can be compensated for by improving ordinary pay and working conditions.
- Matters like conflict of interest, risks of corruption,

protection of whistle blowers, declaration of assets, acceptance of gifts, etc. should be regulated in primary legislation if they affect the rights and duties of individuals.

- Systematic training measures should be developed for police officers in the area of integrity.

To sum up, working conditions for police of all categories of personnel suffer from some significant deficiencies. Many police officers complain about a poor working environment. While guaranteed by the Law on Police, police officers do not have health and social insurance. There are significant differences in access to economic and other benefits between police officers and civil servants even if they perform the same functions and may be exposed to the same risks when performing their service duties. This may undermine an officer's motivation and the quality of his/her work. Moreover, it is problematic that there is no special retirement age for police officers. The current age structure of the KP makes efficient and flexible utilization of the police force difficult. Finally, a major concern in the KP is the lack of legal aid for police officers who face a series of interrogations by KPI when they have used force in the performance of their duties.

Therefore, the implementation of the following measures is recommended:

- Undue differences in access to various types of benefits between uniformed and civilian personnel should be brought to an end.
- Steps should be taken to ensure police officers access to health and social insurance.
- Findings and recommendations from work environment surveys must be followed up. The Kosovo Police may need reinforced assistance from health expertise experienced in dealing with physical and mental injuries and stress inflicted on police officers in the performance of service.
- Steps should be taken to lower the retirement age of KP officers and introduce associated pension rights.
- Arrangements should be in place to ensure that police officers in cases where this is well justified have their legal expenses covered.
- The Law on the State Advocacy Office should be considered amended so that KP are responsible for ensuring that police officers receive legal assistance with the necessary specialist expertise, in addition to the legal services provided by the State Advocacy Office

1. Introduction

The Centre for Integrity in the Defence Sector (CIDS) has prepared this analysis of the system of Human Resource Management (HRM) of the Kosovo police (KP) at the request of (then) Minister of Internal Affairs (MoIA) of Kosovo. The study is based on a review of relevant international documents, official documentation prepared by the Kosovo Government and two rounds of over 25 interviews with members of the Kosovo Police, the Kosovo Academy for Public Safety (KAPS) and the Kosovo Police Inspectorate (KPI). Interviews were also conducted with staff connected to the EU project on Kosovo Police Reform, to the OSCE as well as the Parliamentary Committee on Internal Affairs, Security and Oversight of the Kosovo Security Force. The interviews were conducted during the period 18-28 June 2019 and subsequent meetings and interviews took place from November 2019 to the end of January 2020. The meetings were held under the Chatham House Rule, according to which information disclosed during a meeting may be reported by those present, but the source of that information may not explicitly or implicitly be identified. The report also relied on participatory observation by local team members in processes of security related decision-making in Kosovo.

The KP is one of the most trusted institutions in Kosovo, after the Kosovo Security Forces (KSF), and KFOR.² International observers note positive developments in police work in Kosovo. The EU Commission observes that police officers are relatively well trained and equipped and have access to modern IT infrastructure.³ We have also noted that civil society representatives praise the KP for its cooperation and responsiveness when it comes to measures related to gender-based violence during the Corona pandemic.⁴ However, as this report will show, further work should be done to ensure sustainable progress in the KP.

The paper is based on the notion that the police in their efforts to fight crime, are obliged to protect constitutional values and the fundamental rights of citizens. Thus, policing is expected to be performed with a high degree of legitimacy, legality, accountability and professionalism. Police HRM must ensure efficient management of the police workforce, but its responsibilities do not stop there. It must develop and protect the role of the police as an important public institution, which in highly developed European states has the task of protecting fundamental, constitutional values such as democracy, individual rights, the rule of law, and the public interest. The system of police HRM will be analysed based on widely recognized international standards.

² See public opinion surveys by Kosovo Security Barometer (KSB) and National Democratic Institute (NDI)

³ EU Progress Report 2019, p. 33.

⁴ See, https://prishtinainsight.com/pandemic-lays-bare-the-flaws-in-kosovos-domestic-violence-response/?fbclid=IwAR2ozRjPdms3cuSNQPQmej6Gz6bP8K_QRSx-McZnf8c1pf59JUOf3gDskfU.

2. Sources of International Standards for the Police.⁵

All international treaties that concern human rights are of direct relevance to the police and policing. States are obliged to protect and promote human rights under the Universal Declaration of Human Rights, which embodies civil, political, economic, social and cultural rights, and which is proclaimed as a common standard for all peoples and all nations. As a consequence, the legal and constitutional frameworks of states have to conform to international legal obligations. In relation to policing, this means that states have to secure political accountability and legal supervision of the police. Moreover, states must ensure lawful and humane policing, an obligation which clearly affects the ways in which police organisations are managed, regulated and held accountable to judicial and civil authorities.

Specific legal instruments have been drawn up in the field of anti-corruption. Interpol launched the “Global Standards to Combat Corruption in Police Forces / Services”; the UN adopted the “UN Convention against Corruption” and the Council of Europe adopted the “Twenty Guiding Principles for the Fight against Corruption and the Criminal Law Convention on Corruption”.

The Council of Europe’s “Declaration on the Police” was adopted in 1979. Part A of the Declaration is entitled “Ethics” and consists of 16 Articles. Article 1 of the Declaration requires a police officer to fulfil the duties the law imposes on him by protecting his fellow citizens against violent, predatory and other harmful acts, as defined by law. Article 2 requires a police officer to act with integrity, impartiality and dignity, and to refrain from and oppose all acts of corruption. Article 3 prohibits ill-treatment under all circumstances. It states that a police officer is under the obligation to refrain from carrying out any order or instruction involving such measures. This is reinforced by Article 4, which requires a police officer to carry out orders properly issued by his hierarchical superior and to refrain from carrying out any order he knows, or ought to know, is unlawful. Other articles address, inter alia, issues of personal liability.

The Council of Europe Code of Police Ethics, adopted in 2001, is a “soft” law - not binding on member states. However, it is regarded as a good instrument, as it lifts the level of police ethics from the individual to the institutional level. The Code of Police Ethics has a number of articles on i.a. qualifications and recruitment of police personnel and of police accountability. According to Article 22, Police Personnel, at any level of entry shall be recruited on the basis of their personal qualifications and experience. Article 25 says that recruitment procedures shall be based on objective and non-discriminatory grounds, that steps must be taken to recruit men and women from various sectors of society, including minority groups with the overall objective of making police personnel reflect the society they serve.

In its strategic framework to support security sector reform⁶, which applies to all law enforcement organs, including the police, the EU emphasizes that security players must operate within a clear and unambiguous legal framework approved by the national legislator, including effective civilian control. The EU Framework underlines that for a security sector to be deemed legitimate it must i.a. apply good governance principles of transparency and openness. Application of these principles are important to prevent arbitrary decision-making. According to the EU framework, “Recruitment and promotion procedures and appointment to senior positions in the security structure should be based on clearly defined, publicly available criteria. [...] Information should be public, so as to enhance transparency and understanding. Limitations to openness and transparency may be justified on grounds of clearly defined public policy (e.g. data protection) but should always be kept at a minimum.”⁷

The standard (norm) of civilian control is mainly applied to the military. For the police international sources often use the term “police supervision”. The reason may be that police can be national, municipal, regional, militarised or non-militarised, etc. This variety of organizational patterns makes it difficult to set up clear-cut standards. That’s why DCAF for example tends to refer to “accountability” of the police to parliament, government, mayors, etc. According to

⁵ See Monica den Boer and Changwon Pyo (2011): *Good Policing: Instruments, Models and Practices*. Asia-Europe Foundation, Singapore. At: https://www.hss.de/fileadmin/media/downloads/Publikationen/110323_Good-Policing.pdf

⁶ Joint Communication to the European Parliament and the Council (JOIN(2016) 31 final)
⁷ Ibid, p.5.

Article 5 of the Council of Europe Code of Police Ethics the police shall be accountable to the state, the citizens and their representatives, and be subject to efficient external control.

However, the OSCE Code of conduct on politico-military aspects of security, article VII, stipulates that, “**democratic political control** of military, paramilitary and internal security forces as well as of intelligence services and the **police** to be an indispensable element of stability and security” and that effective guidance be provided for “by constitutionally established authorities vested with democratic legitimacy”.

The UK Democratic Audit explicitly uses the term “civilian control of the armed forces **and police**” (<https://democraticaudituk.wordpress.com/our-work/democratic-audit-reports/the-2012-audit/2-5-civilian-control-of-the-military-and-police/>)

Similarly, in France, the Mol is in charge of the police through the National Security Directorate. Comparable arrangements are found in all European countries.

As a conclusion we can undoubtedly say that there is a democratic requirement that the police be under effective control of the government. This model is taken for granted in European democracies, even if the form of this subordination varies across countries.

In terms of the EU *acquis communautaire*, the EU Negotiating chapter 24 on Justice, Freedom and Security broadly defines the commitments that EU prospective member states must embrace when it comes to the police and security forces. The rationale is that since the creation of the area of justice, freedom and security in which goods, persons, services and capitals move freely, operational cross-border police

cooperation is more than ever essential in contributing to an effective Security Union.

The EU specialised agencies, such as Europol, CEPOL, Frontex, EU-Lisa, EMCDDA, EASO, and Eurojust, play a crucial role in supporting operational cooperation between Member States’ law enforcement authorities. They contribute to the assessment of common security threats, they help to define common priorities for operational action, and they promote and facilitate cross-border cooperation and prosecution.

The contents of the *acquis* in the areas covered by negotiating chapter 24 can be summarised as:

- **Current Member States:** Regulation (EU) 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* by already Member States came into force in November 2013. Evaluations under this mechanism have been carried out since January 2015.
- **Future Member States:** The cross-border cooperation among future Member States requires a strong and well-integrated capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards. Among these standards appears to be the distinct subjection of the police to civilian democratic control.

A professional, reliable and efficient police organisation is of paramount importance. The most detailed part of the EU’s policies on justice, freedom and security is the Schengen *acquis*, which entails the lifting of internal border controls in the EU. However, for the new Member States substantial parts of the Schengen *acquis* are implemented following a separate Council Decision to be taken after accession.

3. Kosovo Police Legislation

Article 2 of the Kosovo Law on Police (2012) lists a set of guiding principles for policing in Kosovo. These are as follows:

1. fair and equal treatment of all persons;
2. respect for human rights and fundamental freedoms;
3. neutrality and impartiality regarding persons' political views and affiliations;
4. integrity, honesty and accountability in public service;
5. transparency - providing information to the public and being open to public;
6. legitimacy, suitability and proportionality;
7. commitment to employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner, by reflecting the multi-ethnic character of the Republic of Kosovo and by recognizing the principles of gender equality and human rights foreseen by the Constitution.

At the same time, police officers shall exercise their authorisations and perform their duties in a lawful manner, based on the Constitution, on other applicable laws, and on the police Code of Ethics.

In particular, point 7 above reflects a principle that is directly linked to staff management. It calls for a combination of merit-based management of the police and ethnic representation, a balance which may not always be easy to attain.

A striking feature of the legal framework is that the secondary police legislation has not been publicly available and could only be obtained on request in accordance with the 2015 Law on Access to Public Documents. Therefore, no legal certainty is possible if regulations remain unpublished. As such, it is not enough to make them available upon request. In consolidated democracies, all legislation, either primary or secondary, is published in the official gazette as well as on official websites. In the final phase of the work on this report, CIDS was informed that regulations are now announced on the police website. The problems suggested here thus seem to be solved.

As discussed below, in Kosovo it is common to regulate the police by means of "Administrative Instructions".⁸ However, with regard to the principle of legality in the performance of police duties, Article 2.2 of the Law on the Police does not mention Administrative Instructions or other pieces of secondary legislation, as part of the legal framework for the police. In addition, Articles 56, 57, and 58 may create further uncertainty as to which legal provisions actually remain in force. This situation is conducive to uncertainty about what rules actually apply to police work and to the rights and duties of police officers as these conditions are currently regulated by Administrative Instructions.

The main pieces of secondary regulations governing the police are known as "administrative instructions" which according to Article 55 of the 2012 Police Law are issued by the Director General of the police. This provision gives the Director General the authority to regulate issues that are not limited to, but go beyond strictly operational policing such as the use of force and firearms, the management of personal data, and disciplinary issues. This suggests that the authority to issue regulations on the above-mentioned topics should have been vested in a higher, politically led level of the government. In comparison the same article of the Law on Police, article 55, gives the minister of the interior powers to regulate topics with presumably lesser calibre and lower political impact (except the expenditure of reserved funds of the police, which is indeed political). The more powers in drafting acts and policy vested in the Ministry (always in consultation with KP) will increase the healthy interaction between government and police structure.

The legal arrangements outlined above make the Kosovo Police to some degree a self-regulated institution. This situation makes effective control as well as effective democratic and civilian oversight over the police difficult. The existence of a police inspectorate does not significantly remedy this state of affairs but may mitigate possible negative effects in individual cases.

⁸ "Administrative Instruction" is an UNMIK government inherited terminology which is interchangeable with secondary legislation. During the UNMIK years, Kosovo legally had two main types of legal acts: a) 'Regulations', which had the status of statutory law, but that were adopted by the UN Special Representative of the Secretary General (SRSG) instead of by the Assembly of Kosovo. b) 'Administrative Instructions', which had the status of secondary legislation. The use of this terminology remains extensive. The terminology of legal instruments should be clarified.

However, the problems outlined above may be largely remedied by the new law on State Administration, which was adopted and entered in force in 2019, Law No. 06/L – 113 on Organization and Functioning of State Administration and Independent Agencies. The main rule in this Law is that a ministry is fully responsible for regulating and controlling the work of subordinate bodies within its area of responsibility. Moreover, it follows from the Law that special legislation, including the Police Act, must be amended and brought into line with the law on State Administration by the end of 2021.

Key provisions of the law are summarized below:

- The Law defines the KP as an Executive Agency, i.a. as an institution to which the law applies. (Art.12.1).
- Article 10 of the Law stipulates that “the Minister shall be accountable to the Government and Assembly for the activity of the entire ministerial system in the area of state responsibility provided by the relevant legislation” (Art 10.1)... “[The Minister] shall supervise the activity of agencies in the relevant area of state responsibility, in accordance with this Law” (Art 10.2) Article 11 states that “The Ministry is responsible for developing public policies, for leading, coordination, control and oversight of the entire ministerial system within the respective area of responsibility”.
- Article 29 defines the means of management and supervision of Agency which, according to this provision, is conducted through: performance management system and specific instruments of management and supervision (Art 29.1).
- The transitional provisions of the Law (Art 53) make it explicit that “Special laws regulating executive, regulatory and independent agencies defined in annex of this Law shall be aligned with this Law by 31 December 2021.”

The fact that the police have largely regulated themselves without substantial involvement by superior authorities, is probably also related to the fact that the Ministry of Interior has very limited resources and no separate unit to deal with policy issues relating to the police, regarding i.a. its functions, priorities, performance, organization and personnel management. As a consequence, it is very difficult for the Ministry to support the Minister in fulfilling tasks outlined in article 5 of the Law on Police, i.a. “to develop policies and to support the preparation and implementation of legislation.”

In order to be able to implement the law on state administration, the Ministry of the Interior should start work as soon as possible on significantly strengthening its capacity to regulate and control the work of the Ministry's subordinate bodies, including the police. Given the size of the police and the importance and complexity of its work, careful consideration should be given to setting up a separate unit, possibly a Department for Police Matters at the Ministry. It must be emphasized that the Ministry should provide general policies for and oversight over police work and not engage in operational policing. Guidelines should be prepared for how the ministry can ensure the management of the police without at the same time engaging in the day-to-day operation of police work.

Finally, there are some additional legal issues that need to be addressed. Article 128.1 of the Constitution states that: “1. *The Police of the Republic of Kosovo shall be responsible for the preservation of public order and safety throughout the territory of the Republic of Kosovo.* Article 128.2 determines that “*The Police shall be professional and reflect the ethnic diversity of the population of the Republic of Kosovo.*” Thus, the constitutional understanding of the Police is first and foremost as a body to protect public order and safety. The Constitution is not concerned with police protection of the fundamental, individual or collective rights of citizens, beyond the generic mandate for all security sector institutions contained in article 125.2 of the Constitution.

Article 22 of the Constitution introduces almost all the international conventions on human rights into the Kosovo legal order, but this cross-reference would not be enough to shape a police model which is of service to the community, as it will depend on legal interpretations.

Given the formalistic interpretative approach of Kosovar courts and other state authorities, it seems necessary to make an explicit textual link in the Kosovo Constitution between, on the one hand international human rights' standards and conventions and on the other hand the duty of the Kosovo Police to protect these standards. The emphasis on public order is to some extent redressed by article 10 of the 2012 Law on Police by including, within the duties of the police the obligation “*to protect human rights and fundamental freedoms of all citizens*”, an inclusion that should be welcomed, as it obliges the police to safeguard basic values in a democratic state.

However, as already indicated, this commitment should be secured/addressed in the Constitution, and not only in ordinary legislation. The silence of the Kosovo Constitution when it comes to the protection of fundamental rights makes the current legal protection of human rights weak. The 2012 Law on Police makes two references to “human rights and fundamental freedoms”. One is in article 2, that requires the police to merely “respect” human rights and fundamental freedoms. The other one is in article 10, which implies a stricter obligation for the Police, namely to “protect” these rights and freedoms.

Summing up, given the wording of article 55 of 2012 Police Law gives the Director General the authority to regulate issues that are not limited to, but go beyond strictly operational policing A self-regulated institution makes external oversight, including civilian and democratic control difficult, if not impossible, to achieve. Therefore, we recommend that the following measures should be adopted:

- **The way in which the police are regulated should be changed in accordance with the Law on State Administration. We recommend that article 55 of the 2012 Police Law be amended so that authority to regulate the work of the police is vested in political**

authorities, especially the Mol. We emphasize that the Ministry’s role must be strategic by establishing general guidelines and policies for the work of the police. Political interference in operational policing must be avoided.

- **Primary and secondary legislation should be the main instruments for regulating the system of police HRM, police management and police work. The use of administrative instructions should be reduced to a minimum and only to address operational issues and not issues that affect citizens’ basic rights.**
- **All police-related legislation should regularly be published in the official gazette as well as on publicly accessible websites.**
- **The capacity of the Ministry of Interior to formulate policies for and to control the police should be significantly strengthened. Careful consideration should be given to setting up a separate unit, possibly a Department of Police Affairs at the Ministry**
- **Guidelines should be prepared for how the ministry can ensure the management of the police without at the same time engaging in the day-to-day operation of police work**

4. Organisation and Functioning of the Police

The organisation of KP is defined in articles 32-43 of the Law on Police. The Police are organised at central and local levels (article 32). The General Police Directorate is the headquarters, which is responsible for the whole of the police. The local level includes the Regional Police Directorates (RPDs), responsible for the regions, including specified municipalities, Police Stations, which are responsible for local policing within each municipality, and police sub-stations, if any, are responsible for local policing within specific areas of a municipality. When considering the division of the Kosovo Police into territorial jurisdictions, the government is legally obliged to consider factors such as the size of the region, the number of inhabitants, the level of crime, the geographical position, and significant buildings, roads and other infrastructure.

Although the overarching organization of the police is not within our direct mandate, organizational issues became topics during the work on the report. During the data collection, we were made aware of allegations that the current organizational structure entails negative consequences, e.g. that purely administrative tasks demand police resources, which otherwise could have been used to solve key police tasks.

Moreover, the engagement of more than 600 Police Officers to secure official facilities places unwarranted burden on the KP to the detriment of fieldwork. The Government tasks the KP to provide unlimited security for government facilities, including foreign embassies. Consequently, the KP is compelled to provide facility surveillance and security by

redeploying police officers who would be better engaged in the interest of the whole citizenry by protecting life, health, property, public safety and ensuring respect for human rights and freedoms.

Another problem is the age profile of Police officers: some 1300-1500 KP members are over 55 years old. This means that for a relatively large proportion of the police force, there are limitations to the types of tasks it can be assigned.

Overall, the structural and demographic features of the KP may make it difficult to make fully effective use of police personnel. To address this situation, we recommend that the following measures be implemented

- **The current police structure, including i.a. the size and number of regional directorates should be reviewed with a view to freeing up resources for operational policing. The geographical organization of the police should as far as possible be adapted to the organization structure of prosecuting authorities and courts. Decisions about the future structure of the police must also take into account relevant international agreements⁹**
- **The age structure of the police should be reviewed with a view to developing measures that allow more efficient and flexible use of police personnel.**
- **Opportunities to find alternative ways of protecting physical infrastructure, rather than by using police, should be explored.**

⁹ See the Brussels Agreement regarding the establishment of a Regional KP Directorate in Mitrovica North.

5. The Human Resource Management Function

The HRM function is attached to the Deputy General Director of Resources (article 9 of the Regulation (MIA) No. 02/2017 on the Internal Organization and Systematization of Working Positions of Kosovo Police). Under his authority there is a department of human resources (article 21). According to this provision, its main responsibilities are

- to develop policies to achieve efficiency and effectiveness in managing human resources within the Kosovo Police;
- to implement non-discrimination policies for the personnel within the Police, including reasonable gender representation in all fields, and to ensure that the personnel structure reflects the multi-ethnic character of Kosovo;
- to ensure that the personnel recruitment is based on professional qualifications, competencies and merits and carried out through fair and transparent competition procedures;

- to design and implement a management information system so that all decisions are based on accurate data;
- to assist and advise the Deputy General Director of Resources in determining and implementing training programs and the development for all police officers and in support of the police personnel;
- to make strategic planning for human resources; to collect information and intelligence from all sources available.

There is also a training division (article 23), which is responsible for the design and implementation of professional training, a directorate for professional standards (article 31) for preparing guidelines on how to conduct police investigations, and an internal disciplinary committee (article 34).

6. Personnel Structure

The Police have three categories of staff (article 44): 1) Police Officers who take an oath and have the right to exercise police authority; 2) Civilian personnel performing administrative and support services and 3) Police Cadets.

The Police is 9449-strong according to the systematisation: 8301 positions are reserved for police officers and 1148 for

civil servants. Human Resource Data, as from June 2019, show that there are 8977 employees, of which 7949 are police officers and 1028 are civilian staff. About 85 % (7633) of police personnel are male, while 15 % (1344) are only female. Approximately 84 % are of Albanian ethnicity, while 16 % are of other ethnicities:

Ethnicity	Uniformed		Total Uniformed	Civilian		Total Civilian	Total
	F	M		F	M		
Albanian	853	5778	6631	286	631	917	7548
Serbian	100	866	966	50	34	84	1050
Turk	7	60	67	5	3	8	75
Bosnian	29	166	195	6	7	13	208
Roma	1	14	15	1		1	16
Ashkali		18	18		1	1	19
Egyptian		8	8				8
Circassian		6	6				6
Gorani	1	35	36	1	2	3	39
Montenegrin	1	2	3				3
Croat	1	2	3	1		1	4
Macedonian	1		1				1
Total	994	6955	7949	350	678	1028	8977

Table 1: Personnel composition in Kosovo Police

7. Main Features of the Police on Career and Mobility

The KP operates as a career-based public authority, where first-time recruitment is made to positions at the bottom of the police hierarchy and officers then move up through the ranks. There is a possibility to employ civil servants or support staff to specific posts.

The career-based system offers a degree of predictability when it comes to HR planning; it enables the police leadership to determine how many people routinely will exit the system at any given period of time and organise recruitment procedures regularly (e.g. every year). Since it is not possible to go to the market to recruit someone to a specific post, the police must rely on continuous training, the experience acquired by officers while performing their duties, and the quality of its performance appraisal system to further develop its expertise. However, the KP are facing challenges in developing effective arrangements for performance appraisal and professional development functions. Please see below.

Pursuant to Administrative Instruction No. 02/2018 on Work Relations, deployment or transfer of the police personnel to a senior leadership position in the Police, such as: directors of departments, directors of divisions, directors of directorates in central and regional level, regional deputy directors of Police, commanders of police stations and

substations, is made by a decision taken by the General Director of Police. The exception is the deployment and appointment of commanders to Police stations and substations in municipalities where Kosovo Serbs are the most numerous ethnical communities. In this case, appointments are made by the Minister of Internal Affairs (Article 42 of the Law on Police).

Article 38 of Administrative Instruction 2/2018 lays down that *“the direct appointment to leading vacancies is contrary to the principle of merits and procedures determined by this regulation and other acts into force is not allowed”*.

Deployment or transfer of police officers from the rank of captain up to the rank of colonel, who work in departments, divisions, directorates of the central and local level (regional directorates), depending on the working position, may be carried out upon the proposal of directors of departments, divisions or regional directorates, whereas the approval of those transfers is made by the Police General Director, while the directorate of personnel issues the decision.

The KP General Director has a discretionary right to appoint or transfer any police officer from one position to another if the legally foreseen criteria are met, regardless of level, position or rank.

8. Recruitment, promotion, and dismissal

8.1. RECRUITMENT TO THE HIGHEST POSITIONS

According to article 2 of the law of the police, “commitment to employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner” is a guiding principle for the Kosovo Police. However, this principle is not mentioned in articles 37 and 38 regulating appointments to top positions in the police. According to article 37 the Prime Minister shall appoint the Police Director General upon recommendation of the Minister of the Interior through the Cabinet of Ministers. The Deputy Director General is appointed by the Minister of Interior on proposal of the Police Director.

Article 37 also stipulates that candidates for the position of the General Director and Deputy General Director/s of the Police shall be selected and nominated by a commission established by the Minister of Interior. An administrative instruction (No. 13/2012 MIA) adopted by the Minister of Interior, regulates the establishment of and decision-making procedures of the commission. The instruction states i.a. that the commission shall prepare a written assessment of the applicants, rank them and provide a written justification for the ranking. The written proposal is sent to the Minister.

While the preparation of proposals for appointment are regulated by an administrative instruction, the legal framework includes no provisions on how and on what basis the final appointment decisions will be made. For example, there are no stipulations that the Minister of Interior is bound by the Commission’s recommendation on who should be appointed General Director of the Police, or on how he should proceed if he/she does not agree with this proposal. He/she is under no obligation to state his reasons in writing why he/she might come to a different conclusion. The same types of gaps in the legislation are also found in the appointment of Deputy Directors

Overall, the merit-principle is not fully clarified and protected in the legal framework regulating selection and appointments to the highest positions in the Kosovo Police. Consequently, the existing arrangements are not fully aligned with international standards and may make professionalisation of the police force difficult.

External oversight bodies of KP have repeatedly criticized what they describe as politicization of the police. According to them, the current arrangements for the appointment of members of the senior police management may suggest that senior leadership in KP represent the political or personal interests of the Prime Minister and /or the Minister of Internal Affairs. Certainly, the Kosovo Police is repeatedly ranked as one of the most trusted institutions in Kosovo. However, there are different views regarding the selection of candidates and the employment process within the police. According to Pointpulse Report of 2017 “*although the majority believes that an open and public competition precedes employment, they also see political connections, pulling strings and bribery as issues that seemingly still present major challenges to a fair and merit-based recruitment process... Moreover, the risk of political influence on the police is believed to be quite high, given that a vast majority of the respondents feels that the Kosovo Police is politically influenced indeed, with particular emphasis on the operational work of the institution*”¹⁰. Likewise, the European Commission 2016, 2018 and 2019 Kosovo Reports repeatedly state that “*the Police capacity for combating organized crime is good. However, the police are still subject to corruption and political pressure, which hinder the investigation of organized crime*” - and as such should be taken seriously, though appointments are made in accordance with the formally established procedures.

Arrangements for the appointment of police officers to positions for which they do not hold the necessary rank are problematic. The Police Inspection Report on Human Resource Management finds that “in every department there are cases where duties are carried out by employees holding inadequate ranks... and that in cases of acting position holders, there has been an increase in the number of cases where terms for the acting capacity have been exceeded.”¹¹ Also, the Auditor General’s 2017 Report states that 375¹² Police Officers continue to hold positions that do not match ranks given.¹³

¹⁰ Pointpulse Report, The Citizens’ Opinion of the Police, 2017

¹¹ Inspection Report No. 4/2018, Human Resource Management in Kosovo Police, 2016, pages 4 and 12.

¹² This number may have been significantly reduced in 2019 due to reorganization and new ranks.

¹³ Auditor General’s Report (2017)

The Internal Regulation of the Kosovo Police included until 2009 an article stipulating that “Assigned acting officer shall be of the same or higher rank”. The repeal of this provision bears the mark of being an attempt to “legalise” the practice where officers with insufficient rank hold higher positions. However, this arrangement involves a breach of professional criteria, i.a. because allowances are not allocated according to professional merit. Moreover, the practice is contrary to article 38.3 of Administrative Instruction 2/2018, which clearly establishes that: “The direct appointment in leading vacancies is infringement of the principle of merits and procedures determined by this regulation and other acts into force is not allowed”.

Officers who have insufficient ranks for the positions they are holding in an acting capacity, are paid on the basis of the position actually held, not the rank. This practice is against the payroll regulation (and the career system), according to which the base-salary coefficient for police staff depends on the rank, not on the position. Exercising *de facto* duties pertaining to higher ranks without having been properly promoted to the relevant ranks, as well as being paid a position-based remuneration, is against the law and poses a risk of having positions occupied by individuals who fall short of meeting the required legal criteria. The practice also results in increased spending that may strain the police budget. Moreover, these arrangements may foster loyalty to the superiors allocating extra-legal benefits rather than to the law and make it difficult to enforce Article 13 of the Law on Police containing provisions on how police officers should deal with illegal orders.

8.2. APPOINTMENT OF POLICE OFFICERS

The Law on Police does not regulate recruitment of other officers than the Director General and the Deputy director generals. Apart from the provision of article 2 of the law of the police, that employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner” is a guiding principle for the Kosovo Police, this principle is also not further elaborated when it comes to ranks below the top two tiers mentioned above, which means that merit-based recruitment is not a sufficiently anchored in primary legislation. However, pursuant to articles 7 and 8 of the Administrative Instruction No. 02/2018 on Work Relations in the Kosovo Police, the identification of new vacancies or filling vacancies is done by

the Department of Human Resources upon approval by the General Director, based on the needs of the organization, according to the Police Organisational Structure and the list of authorized personnel. The announcement of the competition is done through public information in the media at least for 3 days in a row in official languages.

The Administrative Instruction, which is issued by the General Director of the Police, lays down more demanding requirements for entering the Police than the primary law itself does. This makes the system fragile. Here, Parliament must have the final say by adopting primary legislation, defining the type of police the country needs and the rules to apply to recruitment to and promotions within the Police.

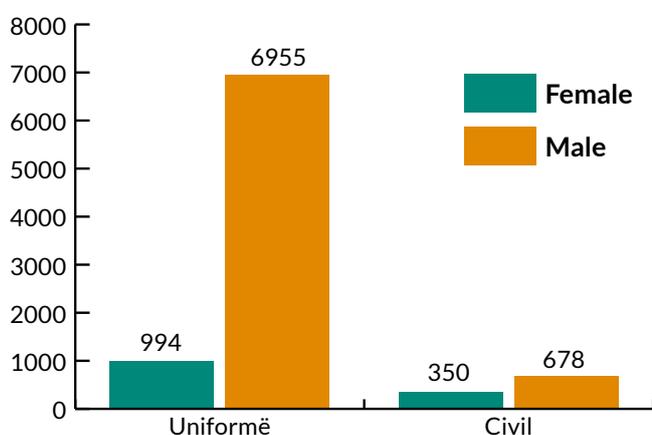
The Director of Human Resources appoints the head and members of the Selection Committee. The Committee is responsible for the entire recruitment and selection process as well as for the management, review and evaluation of applications and responds to the candidates’ appeals. The Committee consists of at least three members and shall have balanced representation of gender and ethnic minorities. The panels for testing candidates are appointed by the Director of the Division of Personnel and Administration. The panel consists of at least three members. Testing procedures take place in the following order: a Written test; a Physical skills test; an Interview; a Psychological test; a Medical examination and a Background check.

Upon completion of the procedure, the Section of Recruitment and Selection publishes the final results that are valid for two years for the candidates for police cadets. The minimal score required for a candidate to enter the list of final results is 70 % of the total possible score. Depending on the Kosovo Police needs for police officers, candidates will be invited according to their scoring order in the final published list. After signing the employment contract, new recruits are requested by the Selection and Recruitment Section to attend the basic induction training for the general Police.

Overall, recruitment procedures for entry levels are transparent and rigorous. The number of applicants is high. In the last job advertisement for police officers in 2018 there were 17,620 applicants for 300 vacancies, with about 17 % having a university education. Kosovo Police have used video recordings at certain stages of testing when necessary.

It is worth noting that despite numerous efforts, including gender-based affirmative action in job advertisement and facilitation, the women's share remains low, especially in police staff (12.5 %), while among civilian staff the proportion is higher (34 %). The Law on Gender Equality states that equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensuring a minimum representation of 50 % for each gender, including their governing and decision-making bodies.

Chart 1: Gender representation in the Kosovo Police



Furthermore, according to the Association of Women in Kosovo Police (AWKP), low salaries and harsh working conditions are often used to explain the low number of women in the Police Force, but prevailing gender stereotypes create additional barriers. Recognising the gender gap, in the vacancy announcement of April 2018, the Police Director General issued a decision for the implementation of special temporary affirmative measures, in order to guarantee equal gender rights, promote gender equality and increase the share of female police officers. As a result of this affirmative action, all women who met the requirements and passed the 70% threshold score, were hired. In the 54th class, the percentage of female police cadets was 31.79%.

Recruitment of civilians (especially civil servants) seems to be unwieldy for the Police. The complaint is that the recruitment process takes too long and that the police have very little control over the process. However, the composition of recruitment panels shows that three out of five panel members come from the Police. The provisions in the civil service regulations that contributes most to prolonging the selection process are those that apply to

transparency, and, which should ensure that everyone has an equal chance in the competition, i.a. through mechanisms for appeals. Dissatisfaction with the duration of the procedure for the employment of civil servants seems to suggest that there is an insufficient awareness of the practical implications of the principles of meritocracy, transparency and professionalism.

With regard to the legislation governing employment of civil servants, there are serious concerns about the risk it poses for the merit principle. In short, the selection is based on a written test (70 % of the total score), quality of application (20 %) and an interview (10 %). There are two potential risks related to the written test: 1) It carries too much weight in the overall assessment (especially vis-à-vis the interview which amounts to just 10%); 2) It is structured as a multiple-choice exam and, as such, is suited to assess mainly candidates' ability to memorize facts. Other competencies, such as analytical skills or the ability of a person to communicate well in writing, are impossible to assess under the current arrangements. In addition, assessing the 'quality of application' is an approach that is unconventional for the public sector institutions. It seems to imply that a candidate who meets the minimal requirements is automatically inferior to someone whose CV indicates higher level of education or more experience. As far we are aware, there is nothing in HRM theory and practice that supports this notion. Surpassing education and/or experience requirements does not guarantee better performance.

However, these provisions are part of the primary civil service legislation and, as such, are outside the KP control. Still, KP officials should be aware of the limitations found in the civil service legislation and the risk they pose to the merit principle.

8.3. PROMOTION

Promotions are regulated by Administrative Instruction No. 01/2019 for the Promotion Procedure for Police Officers, based on Article 45 and Article 55 of the Law on Police. Promotion processes may take place twice a year.

According to the regulations, the General Director of Police establishes a Promotion Committee for every promotion process. The Director of the Human Resources Department proposes, and the General Deputy Director of Resources

determines the composition of promotion committees. The Committee functions under the authority of General Director of the Police. Members of the Committee are at least one rank higher than the police officers examined for that rank. The Committee is responsible for ensuring that the promotion procedure is conducted in a transparent, objective and non-discriminatory manner, in compliance with law(s), the mentioned administrative instruction, and other internal acts.

All police officers who have at least five years of service, including the basic training for police officers at the Kosovo Academy for Public Safety can participate in promotion procedures, provided that they were not subject to disciplinary or criminal reactions. The promotion procedure begins with the announcement of vacancies by the Department of Human Resources. The vacancy announcement is published on the bulletin boards of police units at the central and local levels and is placed on the official Kosovo Police intranet website. There are two types of promotion procedures. The first one involves a competitive procedure and covers police ranks up to the level of major while the second one is entirely discretionary (the Director General makes a decision) and applies to the ranks of LT Colonel and Colonel. Both procedures are performed in an opaque manner and neither meets the requirements for qualification-based promotions.

Under the preparation of this report, CIDS' experts were made aware of opinions inside the police as well as among outside expert observers, that some key positions in the Police, have not always been filled on the basis of the candidates' qualifications, but on the basis of alleged connections to political and para-political structures. One of the repeated examples referred to - which is also discussed in the media - was the position of Head of Economic Crimes Department. The position is now occupied by another person.

Connections-based as opposed to merit-based recruitment is incompatible with impartial administration of justice. It makes public officials dependent on the goodwill of those who have facilitated their employment. Ultimately, loyalty not professional objectivity and neutrality may be what is expected of them.

A) Promotion to ranks below LT Colonel

The promotion for the ranks below LT Col is based on three criteria: written test score (50 % of the total score), interview

with the panel (40 %) and performance appraisal results (10 %). It is important to note that the only fixed percentages of the three above is the one applying to performance appraisal; the other two are variable.

Interviews are conducted before a three-member panel. The formal regulation seems to address the issue of potential conflict of interest on the part of panel members, (i.e. the candidate may ask for removal of a panel member prior to the start of procedure) as well as irregularities in the implementation of the procedure (i.e. a candidate may walk out of the room if he/she spots something irregular).

The current arrangement is potentially problematic for at least two reasons: a) variable percentages leave room for manipulation (i.e. the decision on the distribution of percentages between the written and oral part of the testing could be adapted to whatever may be in favour of possible "preferred candidates"); b) the low specific weight given to the candidates' actual performance (10 %), sends a message that, being effective at work is almost irrelevant when it comes to promotions. It is true that current performance appraisal practice is somewhat discredited – primarily because of managers' lavish approach to allocation of grades – but this is an issue that must be addressed by significantly improving the reliability of performance appraisal system and not by reducing the importance of performance in promotion processes.

Written tests are based on multiple-choice questions. Such tests are generally problematic as they offer very little insight into a person's practical abilities to meet job-related challenges. If properly prepared, such tests can represent a useful first step in filtering out those who fail to meet minimum criteria for promotion, but not much more than that. Competency-based interviewing does not take place which should be seen as an important oversight.

B) Promotion to ranks of LT Colonel and Colonel

Decisions on promotion to the ranks of LT Col or Colonel are almost entirely left to the discretion of the Director General. In practice, the DG receives a list of names (coming from the heads of divisions/directorates) which he then considers for promotion. In that way, the DG is bound to make a choice from the list of people submitted to him, but otherwise it is his/her prerogative to make any decision he/she finds appropriate. According to the feedback received during our interviews, people are promoted almost solely on the basis

of rank. The candidates' skills, performance and abilities seem to be of little significance in this process. But since the decisions are not justified in writing it is impossible to know which factors have been decisive. The current arrangements may not meet the criteria for merit-based promotions.

CIDS' interviews leave an impression that members of the KP may consider non-merit based promotion as natural and inevitable. The answers may indicate the existence of an informal, domestic decision-making culture, according to which top leaders are expected to make, if not all, so at least most decisions. Contributions from subordinates, or the scrutiny or review by external bodies are not always considered natural or necessary, nor are comprehensive justifications for the decisions being made. If this observation is correct, there is a tension between the informal decision-making culture and formal norms expressed in public regulations.

After a long interruption, the rank promotion resumed in 2018 with increased intensity, and for the first time since 2008 there have been promotions to senior management ranks such as Major and Colonel. Since positions are rank-rather than competency-based, often a Department or Directorate obtains Police Officers of adequate rank, but who are not specialized in the relevant field. This practice reduces the possibility that the promotion system strengthens the professionalisation of police functions where the need for specialized expertise is high. Thus, in promotion processes much seems to revolve around the distribution of economic benefits, and less around police needs.

8.4. DISMISSAL

Grounds for termination of employment affect the overall working conditions of police officers and other public officials. As senior police officers are exposed to risks of politicization and favouritism, objective grounds for dismissal procedures protect the wider constitutional order and rule of law. Sufficient job security and protection against unfair dismissal allow senior police officers to fulfil their duties impartially and to be responsive both to the government of the day and to citizens.

Police work sometimes involves situations in which police officers may need to contravene the political instructions of their superiors in order to protect the rule of law and ensure

that the use of coercive power is proportional. In operational activities, the police owe first and foremost loyalty to the criminal law enforcement system, not to their political superiors. Thus, conditions and terms of termination of office should be in place that provides sufficient protection for officials in case of politically driven removal from office.

The Law on police, article 39, regulates the issue of possible reasons for dismissal of the General Director and Deputy General Directors of police. The law does not allow dismissals for reasons other than achievement of retirement age, termination of mandate, judicial procedures, incapability to exercise the duty, and poor documented performance. Of these criteria, it is especially dismissal following poor performance that requires attention and discussion.

In Kosovo, civil servants may be dismissed after just one negative performance appraisal, which may be conducive to arbitrariness given the widely recognized weaknesses of the performance appraisal system currently in place, see section 9 below. While acknowledging that dismissal of civil servants after repeated negative performance appraisals is justifiable, SIGMA considers the current arrangement in Kosovo problematic; it is unfair and may give incentives for politically motivated dismissals.¹⁴ Similar charges have been made in Kosovar media regarding dismissal of leading police officers. It is claimed that allegations of inadequate performance have been used to cover up a politically motivated act.

In August 2020, the Kosovar government adopted a regulation (no. 15/2020) on i.a. rules for performance appraisal and discipline for senior management employees' in state institutions. However, the police are exempted from this regulation. We believe there is a need to clarify the rules of dismissal laid down in Article 39 of the Law on police. To reduce the risk of these provisions being abused, CIDS will propose that a piece of secondary legislation be adopted, which i.a.

- Specifies the purpose of the provisions to be, for example, to promote good performance.
- Clarifies in more detail the content of the terms "documented" and "poor performance" as a ground for dismissal. It is important to avoid formulating reasons for dismissals too vaguely without defining the terms.

¹⁴ SIGMA Analysis of the professionalisation of the senior civil service and the way forward for the Western Balkans, SIGMA paper no. 55 2018, p. 70, available at, [analysis-of-the-professionalisation-of-the-senior-civil-service-and-the-way-forward-for-the-western-balkans-sigma-paper-55-may-2018.pdf](https://www.sigma.int/analysis-of-the-professionalisation-of-the-senior-civil-service-and-the-way-forward-for-the-western-balkans-sigma-paper-55-may-2018.pdf).

- Establishes a system for monitoring the performance of senior police officers. The objective of this system should be to provide senior police officers with work-related feedback enabling them to take corrective measures after the first negative feedback to improve their performance. Dismissal should only be considered if attempts to achieve improvements following the first negative assessment have not been successful. The monitoring period must cover a sufficient period of time, at least one year.
- Determines the procedures to be followed when a dismissal case is initiated. Poor performance should be considered a disciplinary matter, and therefore be dealt with in a disciplinary procedure in accordance with requirements in the Law on Administrative Procedures. This means that the official who is the subject of allegations of poor performance has the right
 - to be made aware of the charges against her/him,
 - to be assisted by a legal counsel,
 - to be given a fair hearing,
 - to be given access to the documents including the evidence against her/him, and
 - be given reasons for the final decision, which shall be challengeable before either an administrative or a general court.

In other words, a decision on dismissal due to poor performance, cannot be made overnight, if it is to be prepared in accordance with well-established legal principles and generally recognized standards of good governance.

- Lay down rules of transparency. Dismissals of senior police officers are matters of public interest. As soon as a decision on dismissal has been made in accordance with the disciplinary provisions of the Law on Administrative Procedures, which are summarized in the bullet point above, the relevant Kosovar authority should inform the public as to why and how it has determined that the legal requirement of “documented poor performance” has been met.

Overall, legal frameworks and especially promotion practices do not fully protect the merit principle or promote a high-performance culture. The current arrangements entail a risk that police officers in conflict situations may be loyal to superiors rather than to professional standards. Moreover, there is a need to further increase the share of women at all organizational

levels in the police. We therefore recommend that the following measures be implemented:

- **Police legislation should be reviewed to ensure better clarification and protection of the merit-principle in all decisions regarding employment, promotion, dismissal and other relevant aspects of police HRM. A piece of secondary legislation should be adopted, which sets out a more detailed framework for dismissal of the highest police officers on account of poor performance.**
- **Wherever appropriate in employment and promotion processes, a system with essay-type written exercises and competency-oriented interviews should be introduced as one of the means to measure analytical and communicative skills of the candidates and not only their ability to memorize facts which is the case today. All questions and tasks should be generated by computers and given to candidates in a random manner.**
- **The objectivity of promotion processes should be enhanced by increasing the weight of the performance appraisal results and participation in relevant training activities to e.g. one third of the total score. At the same time, the current performance appraisal exercises should be made more reliable and credible.**
- **The significance of the different assessment criteria for determining a candidate’s overall score in recruitment processes, must be established by assigning each criterion a fixed – not as now partly variable – percentage.**
- **The appointment of “acting” staff in senior positions should be reduced and used only to address exceptional temporary circumstances. The remuneration for those holding positions in an “acting” capacity should be based on rank, not on position, and immediate steps should be taken to fill these positions following the proper promotion procedure.**
- **In order to enhance legal certainty and transparency in recruitment processes all interviews should be video recorded. The legal basis for and content of such a measure must be carefully prepared.**
- **Women who are sufficiently qualified should be given precedence over equally well-qualified men in recruitment and promotion processes should they achieve the threshold of 70 per cent.**

9. Performance Appraisal

Pursuant to the Administrative Instruction 08/2018, the Police employees undergo regular periodic performance evaluations with a view to increasing the work quality and improving the employee's professional capabilities. Supervisors are to assess the performance at least once a year. The assessment is done at the end of each calendar year. Results of the employee's performance evaluation are recorded in the personal dossier of the official. They are taken into consideration in case of future advancement, promotion and disciplinary procedures.

Performance appraisal is mandatory for all staff, but its practical value for the organisation is limited, by judging from the low specific weight it carries in promotion (i.e. individual performance is given 10 % of the total score). As for the technical side of the performance appraisal exercise, there is a general perception expressed during the above-mentioned interviews, that the format used is fine. However, CIDS also noticed a lack of trust in the current system, mainly for two reasons. Firstly, and this is the main explanation, there is a tendency for managers to give the highest scores irrespective of an officer's actual performance. Secondly, there is a perception that if there is a conflict or disagreement between a manager and a subordinate the latter can be punished by being wrongfully given a low score.

The main purpose of a sound performance appraisal scheme should be to enhance organisational and individual learning and performance, by i.a. supporting efforts

- To assess competency needs
- To prepare plans for competency building
- To support transfers and secondments
- To develop career plans

A sound performance appraisal scheme should include a regular performance dialogue between superiors and subordinates about the objectives of the organization and the importance of each individual official in achieving these objectives.¹⁵ Such an arrangement may give employees a stronger sense of playing important roles within the organisation and thereby stimulate their creativity and commitment. The purpose, content, use and control of performance dialogues should be laid down in specific guidelines or regulations.

The system of performance appraisal in KP requires changes. CIDS recommends a review of the existing system that could lead to positive impact in the HRM system. A system with performance dialogues should be considered introduced.

¹⁵ See SIGMA, Francisco Cardona, "Performance Related pay in the Public Service in OECD and EU Member States, April 2007, p. 6, available at <http://www.sigmaxweb.org/publications/38690351.pdf>

10. Training and Professional Development

Based on Administrative Instruction 08/2018, with the aim of increasing the professional skills, career development, increase efficiency and the keeping of high working standards, the police staff are obliged to participate in training organized by the Police. In addition to training, the police staff can also be authorized to participate in educational programs inside and outside the country, provided that these programs are important for the Kosovo Police. The KP's current annual training budget is EUR 270,000 but for the time being the lion's share of this amount goes to airplane tickets and per diem of those who attend training abroad.

The training function is housed in the Training Division. It consists of two directorates: one in charge of basic police training and the other that deals with training support, specialised and advanced courses. The Division addresses professional development needs of all categories of staff in the KP. Basic training refers to training of cadets and police staff in areas like first aid and basic traffic regulations. All other courses are considered to be 'special and advanced training' and they are organised either internally (from KP's own resources) or via bilateral arrangements with foreign partners (e.g. ICITAP).

A Training Needs Analysis (TNA) is regularly conducted. The main data-collection method involves interviews with individual managers. In the past, this was more of a formality, but it seems to have improved in the last few years. The

list of training needs is now more credible and the KP is gradually starting to discard training proposals from foreign partners if they are not on the list of training needs. As already noted, current regulations do not envisage a link between performance appraisal and training needs, which is a shortcoming. In addition, individual officers do not seem to be sufficiently aware of their own needs for further professional development. Support from the international partners is helpful, but not sustainable as a solution in the long run.

There is an organisational unit exclusively devoted to evaluating the quality of training. The KP has expressed a desire to have training accredited by the Kosovo Agency for Accreditation, but so far no such measure has been implemented. Standard post-training evaluation of activities is carried out regularly, but there is no impact evaluation despite the fact that there seems to be an understanding that it is needed. There are indications that the cooperation between the KP and the Public Safety and Security Academy is not optimal at least in the present time.

In order to increase the institutional benefit of competency building activities, CIDS recommends that the impact of current trainings be evaluated, and based on this, a competency-building plan be developed. The plan should include short-term training activities as well as opportunities for further education.

11. Integrity and Ethics

Integrity building is a fairly recent development within KP. These matters are dealt with within the Division for professional standards, a unit under the direct responsibility of the Deputy DG for operations. Presently, the main focus of the Division is to develop secondary legislation to regulate matters like conflict of interest, risks of corruption, protection of whistle blowers, declaration of assets, acceptance of gifts, etc. However, these matters, should be regulated in primary legislation if they affect the rights and duties of individuals.

At the moment, the Division is using the platform of the Kosovo Anti-Corruption Agency to carry out their day-to-day work. The Division for professional standards intends to carry out an assessment of corruption risks in individual work posts.

Article 49 of the Law on Police forbids the conflict of interest, i.a., via employment or participation in any business activity, except if authorised by the Police Director General. The KP systematically allows police officers to do other jobs outside their working hours. Access to ancillary occupations is used to compensate for low police salaries. The matter is inadequately regulated. Thus, the risks of conflicts of interest and corruption is high.

The KP has developed the Kosovo Police Integrity Plan (2018-2019) and is also in the process of developing Regulation on Integrity. This Integrity Plan (already outdated) acknowledges that one of the sensitive areas that requires further improvement is HRM, especially the recruitment processes. In accordance with the Law on Police, the KP adopted the Kosovo Police Code of Ethics in 2015.

The application of the Code of Ethics is in fact problematic. The Kosovo Police Inspectorate (KPI) is entrusted with a

wide range of inspection powers to access police stations and departments, to interview police officers irrespective of their rank, to collect information on the performance of duties, to investigate disciplinary complaints, and to supervise the application of the Code of Ethics. However, the operational capacity of KPI is very much dependent on the quality of its cooperation with the KP and the prosecution and the judiciary. While improved coordination with these institutions has been a core goal for the KPI, inter-institutional cooperation between KPI and the KP remains relatively poor.¹⁶

Overall, issues related to police integrity are inadequately regulated. The upcoming Regulation on Integrity may be a way forward to address current deficiencies. The widespread practice in which police officers also work outside the police, creates great risks of conflicts of interest. Giving police officers access to subsidiary sources of income should never be a substitute for decent remuneration. Therefore, we recommend that the following measures be implemented:

- **Access to work outside the police should be carefully regulated.**
- **Thorough consideration should be given to how any loss of subsidiary sources of income can be compensated for by improving ordinary pay and working conditions.**
- **Matters like conflict of interest, risks of corruption, protection of whistle blowers, declaration of assets, acceptance of gifts, etc. should be regulated in primary legislation if they affect the rights and duties of individuals.**
- **Systematic training measures should be developed for police officers in the area of integrity.**

¹⁶ EULEX Compact progress report (2016-2017) pg.17

12. Social Benefits, Pensions and Legal Aid

Article 46 of the Law on Police established that police officers should enjoy the same rights as other citizens, with only the limitations established in this law. Likewise, the same provision states that the social and economic rights of police officers shall be the same as those of other civil servants (e.g. to organise in professional organisations, appropriate salary, social insurance, legal aid, health care and other social benefits), but they are not allowed to go on strike.

There are, however, blatant differences in access to benefits between the police and civilian staff in the KP, although they exercise many of the same functions in administration, positions of directors, etc. Civilian staff do not enjoy the same benefits as police officers, e.g. civilians are not covered in terms of hazardous duty as police officers are, though there are cases where they are subject to the same hazardous conditions, e.g. during field operations involving civilian staff.

It must be noted, that such differences result from the different laws that apply to these two categories of employees, as the civil servants are governed by the Law on Public Servants, which does not apply to police officers. Due to the different legal regulations, some benefits cannot be granted to civil servants. The police have repeatedly put forward proposals to put police officers and civil servants working in the police on an equal footing legally, but the differences still persist.

Furthermore, although the Administrative Instruction No. 05-2017 for Violations, Measures and Disciplinary Procedures in Kosovo Police attempts to unify the disciplinary measures of KP employees, with respect to civilian staff it is the Law on Civil Service that prevails and defines the levels of appeal for civil servants. Accordingly, the civil servant must exhaust two levels of appeal in KP, before the right of appeal can be referred to the Civil Service Oversight Board, and only afterwards can the appeal be pursued before a Court of Law.

At the moment, police officers do not have health- and life insurance, due to the failure to implement a national health insurance scheme. While social and economic rights, including social security and health benefits, are guaranteed

to all police personnel by the Law on Police, the Government has still to appropriate financial resources for this purpose.

The KPI Report on Human Resource Management for 2018, focusing on matters related to Occupational Safety and Health suggest that many police officers experience a poor work environment. Approximately half of the interviewed policed officers said they were dissatisfied with working conditions, approximately 38 % were dissatisfied with work motivation, and 61 % with their well-being within the Police.¹⁷ Wages, work conditions, early retirement conditions, and career development are rated as the most negative factors in the survey results.¹⁸

Based on Administrative Instruction No.02 / 2018 on Employment, Standard Operating Procedures of the Directorate of Health Services, paragraph VIII - Reimbursement of medical treatment costs due to injury/ illness on duty or illness of a particular kind, the Kosovo Police supports all costs related to these medical treatments. Special health cases are regulated by the Standard Operating Procedures of the Directorate of Health Services SOP-DP-1.01, paragraph E - Medical Leave for Special Health Cases. Also, with regard to injury/illness on duty or illness of a specific kind, the Directorate of Health Services offers a paid sick leave under Article 58 Medical Leave, point 3 of Administrative Instruction No.02/2018 on employment relationship with the Kosovo Police. In the event of Injuries to Police Officers as a result of their participation in police operations, they are entitled to rehabilitation, regulated by Article 72 point 2 of Administrative Instruction No.02/2018 on employment relationship with the Kosovo Police.

Article 48 of the Law on the Police regulates with some detail the expenses' compensation to the family of a police officer deceased in the line of duty, including a family pension.

Despite being the most recently created police force in the Western Balkans, it is estimated that average of its officers is the highest in the region.¹⁹ Currently between 1300-1500 KP members are over 55 years old. The police trade union

¹⁷ Inspection Report No. 4/2018, Human Resource Management in Kosovo Police, Prishtinë, 11 October 2018, page 26.

¹⁸ Inspection Report No.4/2018, Human Resource Management in Kosovo Police, page 5.

¹⁹ Avdiu, P. & Perteshi, S. Report "Assessment of Police Integrity in Kosovo", Kosovar Centre for Security Studies (KCSS), November 2015, https://www.washingtonpost.com/wp-srv/aponline/19991016/aponline130810_000.htm

has voiced well-founded concerns that a large number of police officers, due to their age, are unable to perform many types of police service. In the same vein, we noted above that the current age structure of the KP makes efficient and flexible utilization of the police force difficult. Currently, the police are subject to the general pension rules for Kosovar citizens and obtain pension rights at the age of 65. However, the situation is different for the Kosovo Security Forces (KSF). KSF members retire at the age of 55 and receive a pension that represents between 60 and 70 percent of their previous salary. There is no good reason why the police in pensions matters are treated in an entirely different way than the Kosovo Security Force (KSF).

The introduction of a pension scheme for the police involves major costs. But the costs that result from today's age structure and the consequences it brings are also considerable. A careful calculation and weighing of different types of costs should be made with a view to lowering the retirement age of KP members and introducing associated pension rights.

A major concern in the KP is the lack of legal aid for police officers who face interrogations by KPI when they have used force in the performance of their duties. If a lawsuit is filed against a police officer while performing his/her duties, he/she must pay for the defence counsel on his/her own. Additionally, if any police officer is aggrieved, the officer must pursue legal action, including hiring a lawyer, on his/her own. In fact, police officers do not enjoy legal protection while performing their official duties. This significantly reduces people's motivation to perform to the best of their ability when they are doing police duty.

Summary: Police working conditions for all categories of personnel suffer from some significant deficiencies. Many police officers complain about poor working conditions. While guaranteed by the Law on Police, police officers do not have health and social insurance. There are significant

differences in access to economic and other benefits between police officers and civil servants even if they perform the same functions and may be exposed to the same risks when performing their service duties. This may undermine an official's motivation and the quality of their work. Moreover, it is problematic that there is no special retirement age for police officers. The current age structure of the KP makes efficient and flexible utilization of the police force difficult. Finally, a major concern in the KP is the lack of legal aid for police officers who face a series of interrogations by KPI when they have used force in the performance of their duties.

Therefore, the implementation of the following measures is recommended:

- **Undue differences in access to various types of benefits between uniformed and civilian personnel should be terminated.**
- **Steps should be taken to ensure police officers access to health and social insurance.**
- **Findings and recommendations from the work environment surveys must be pursued. The Kosovo Police may need reinforced assistance from health expertise experienced in dealing with physical and mental injuries and stresses inflicted on police officers in the performance of service.**
- **Steps should be taken to consider lowering the retirement age of KP officers and introduce associated pension rights.**
- **Arrangements should be in place to ensure that police officers in cases where this is clearly justified have their legal expenses covered.**
- **To amend the Law on the State Advocacy Office should be considered in order that KP are responsible for ensuring that police officers receive legal assistance with the necessary specialist expertise, in addition to the legal services provided by the State Advocacy Office.**

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Norwegian Government Security and Service Organisation

06/2021

S-1034 E. ISBN: 978-82-7924-109-6