

REGULATION NO. 2001/36

UNMIK/REG/2001/36

22 December 2001

ON THE KOSOVO CIVIL SERVICE

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo, UNMIK Regulation No. 2001/9 of 15 May 2001 on A Constitutional Framework for Provisional Self-Government in Kosovo, and UNMIK Regulation No. 2001/19 of 13 September 2001 on the Executive Branch of the Provisional Institutions of Self-Government In Kosovo,

Recognizing that the Provisional Institutions of Self-Government have responsibilities regarding the Kosovo Civil Service for which legislation is urgently needed,

Taking into account that the Provisional Institutions of Self-Government are not able to immediately take action on this urgent issue and that the Special Representative of the Secretary-General shall take into consideration their views when communicated,

For the purpose of establishing a legal and administrative framework to facilitate the functioning of an effective and impartial civil service in Kosovo, based on merit, and reflecting the multi-ethnic character of Kosovo,

Hereby promulgates the following:

Chapter I

Definitions

Section 1

Definitions

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.

(b) “Civil Service” means the Kosovo Civil Service, the subject of the present regulation.

(c) “Employing authority” means any Provisional Institution of Self-Government (PISG) and any organ or agency thereof, any municipality and any organ or agency thereof, and any of the independent bodies or offices listed in chapter 11 of UNMIK Regulation No. 2001/9, provided that the foregoing entities are employing authorities only in respect of employees whose salaries are paid from the Kosovo Consolidated Budget.

“Employing authority” shall not include public, state and socially owned enterprises.

(d) “Executive agencies” means the executive agencies established pursuant to UNMIK Regulations Nos. 2001/9 and 2001/19.

(e) “Exempt appointee” means any individual appointed by:

- (i) a minister, a member of the Assembly, or the President of Kosovo, to serve as a political appointee in the capacity of adviser; and
- (ii) the Special Representative of the Secretary-General to serve for a transitional period, including without limitation individuals appointed pursuant to section 6.2 of UNMIK Regulation No. 2001/19,

which individuals shall not be considered as part of the Civil Service.

(f) “Government” means the Prime Minister and ministers as provided in UNMIK Regulation No. 2001/9.

(g) “Ministries” means ministries of the Executive Branch established pursuant to UNMIK Regulations Nos. 2001/9 and 2001/19.

(h) “Permanent Secretary” means the Permanent Secretary of a ministry referred to in UNMIK Regulation No. 2001/19.

(i) “PIO” means a Principal International Officer assigned by the Special Representative of the Secretary General to the Provisional Institutions of Self-Government to serve for a transitional period.

(j) “Senior public appointee” means:

- (i) Permanent Secretaries of ministries;
- (ii) Chief executive officers of executive agencies; and
- (iii) Such other senior posts as may be designated by the Special Representative of the Secretary-General for appointment by the Senior Public Appointments Committee as provided in Annex I, paragraph E of UNMIK Regulation No. 2001/19. Senior public appointees are civil servants within the meaning of the present regulation.

(k) “SPAC” means the Senior Public Appointments Committee established in accordance with section 2.1 and Annex 1, paragraph E of UNMIK Regulation No. 2001/19 and the present regulation.

Chapter II

The Civil Service

Section 2

Governing Principles

2.1 The Civil Service shall be governed by the following principles:

(a) Equity: fair and equitable treatment of civil servants and others, in accordance with the law;

(b) Political neutrality and impartiality: loyal service to the institutions of government without fear or favour, and irrespective of political views or affiliations;

(c) Integrity: no misuse of official position or information for one’s own or others’ personal gain; no misuse of information or attempt to mislead others; and, except in accordance with official duties, no use or disclosure of information acquired as a result of an official position;

(d) Honesty and accountability: demonstrably proper use of public resources and demonstrably proper exercise of authority;

(e) Transparency: ensuring that government processes are open to public scrutiny, except as provided by law;

(f) Merit: entry, promotion and assignment within the Civil Service shall be only by means of fair, open and competitive procedures, based on objective, job-related criteria;

(g) Non-Discrimination: no discrimination, direct or indirect, based on sex, race, colour, language, religion, political opinion, national, ethnic or social origin, association with a national community, property, birth, disability, family status, pregnancy, sexual orientation, or age; and

(h) Inclusiveness: recruitment at all levels in the Civil Service shall reflect the multi-ethnic character of Kosovo and the need for equitable representation of all the communities in Kosovo.

2.2 Civil servants shall act in accordance with these principles in their dealings with government officials, fellow civil servants, and members of the public.

2.3 Government officials shall act in accordance with these principles in their dealings with civil servants.

Section 3

Terms of Employment

3.1 Detailed provisions concerning recruitment procedures and terms of employment for civil servants shall be set out in a subsequent administrative direction. Such administrative direction shall include, *inter alia*, the following requirements:

- (a) That available positions be widely advertised in the Albanian and Serbian languages;
- (b) That employing authorities shall establish panels of three (3) or more persons, with equitable representation of communities in Kosovo, to review applications for positions, and short-list, interview and select candidates;
- (c) That employment in the Civil Service shall be governed by written contracts of employment;
- (d) That employing authorities shall provide civil servants with annual written performance evaluations;
- (e) That the confidentiality of personnel records shall be safeguarded, and that civil servants shall have the right to review the records applicable to them;
- (f) Providing the rates of pay for overtime work and the prohibition of compulsory overtime work of more than a prescribed number of hours per week;
- (g) Setting out the leave entitlements of civil servants, including provision for the following types of paid leave: annual leave, leave for official holidays, sick leave, leave for occupational accident or illness, maternity and paternity leave, and compassionate leave, as well as provision for unpaid disability leave; and
- (h) The right of civil servants to a safe and healthy working environment.

3.2 The administrative direction shall specify the misconduct for which civil servants may be subject to disciplinary proceedings and the disciplinary measures that may be imposed.

3.3 Contracts of employment in the Civil Service shall be for a period of up to three (3) years, and may be extended.

Section 4

Political Activity

Civil Servants shall have the right to belong to political parties and other political organizations but shall abstain from active involvement in political activity.

Section 5

Industrial Action

5.1 Civil servants may belong to trade unions.

5.2 Civil servants employed with the police, correctional and emergency services, and any other category of civil servants whose services are declared by the Government to be essential, shall not strike or take any other industrial action, which may disrupt essential services.

Section 6 **Code of Conduct**

Civil servants shall be bound by the Civil Service Code of Conduct, attached as an Annex to the present regulation.

Chapter III **Independent Oversight Board for Kosovo**

Section 7 **Establishment of the Independent Oversight Board for Kosovo**

7.1 An Independent Oversight Board for Kosovo (hereinafter “the Board”) is hereby established.

7.2 The Board shall be an autonomous unit located within the Ministry of Public Services, and shall report directly to the Minister of Public Services. A copy of all such reports shall be sent to the Prime Minister and the Special Representative of the Secretary-General. The status of the Board shall be reviewed within two (2) years after its establishment, with a view to transforming it into an autonomous body reporting directly to the Assembly.

7.3 The budget for the Board shall be funded from the resources of the Ministry of Public Services.

7.4 The Board shall be provided with support staff to enable it to carry out its functions.

Section 8 **Composition**

8.1 The Board shall be composed of seven (7) members, appointed by the Special Representative of the Secretary-General in consultation with the Prime Minister. Board members shall be selected on the basis of competence, integrity and their commitment to establishing a politically impartial civil service in Kosovo that is based on merit and reflects the multi-ethnic character of Kosovo.

8.2 The composition of the Board shall reflect as far as possible the multi-ethnic character of Kosovo. To this end, at least three (3) of its members shall be appointed from the Kosovo Albanian community and at least two (2) members from among the non-Kosovo Albanian communities in Kosovo. For one (1) year after its establishment, one (1) member of the Board shall be an international specialist in the field of civil service management.

8.3 Of the original Board members, four (4) shall be appointed for two (2) years, two (2) shall be appointed for three (3) years, and the international specialist referred to in section 8.2 of the present regulation shall be appointed for one (1) year. Thereafter, Board members shall be appointed for periods of two (2) years.

8.4 While serving on the Board, members shall neither seek or accept elected office, nor take an active part in political activities.

8.5 The members of the Board shall elect one (1) member as the chairperson.

8.6 The Special Representative of the Secretary-General, in consultation with the Prime Minister, may terminate the appointment of any member of the Board solely on the following grounds:

- (a) The member's professional incompetence or misconduct;
- (b) Failure by the member to act in a manner consistent with the principles set out in section 2.1 of the present regulation; or
- (c) Conviction of the member for a criminal offence, the sentence for which is a prison term of six (6) months or more.

Section 9

Board Rules And Procedures

The Ministry of Public Services shall, subject to the Government's approval, set out the rules and procedures to be followed by the Board, including rules and procedures applicable to appeals pursuant to section 11 of the present regulation.

Section 10

Functions of the Board

10.1 The Board shall:

- (a) Hear and determine appeals against decisions of employing authorities in accordance with section 11 of the present regulation;
- (b) Determine, in accordance with section 12 of the present regulation, whether the appointments of civil servants at the level of heads of department are made in accordance with the principles set out in section 2.1 of the present regulation;
- (c) Provide, in accordance with section 13 of the present regulation, an annual assessment of employing authorities' compliance with the principles set out in section 2.1 of the present regulation; and
- (d) Provide an annual report to the Prime Minister and the Special Representative of the Secretary-General, in accordance with section 14 of the present regulation.

10.2 Civil Servants appointed by the SPAC, and those categories of civil servants excluded from the competence of the Board by a subsequent legislative issuance, are outside the jurisdiction of the Board.

Section 11

Appeals

11.1 A civil servant who is aggrieved by a decision of an employing authority in breach of the principles set out in section 2.1 of the present regulation may appeal such decision to the Board in accordance with the provisions of the present section. Each such appeal shall be heard by a panel of three (3) Board members, who shall act for the Board in connection with the appeal assigned to them.

11.2 The Ministry shall, with the approval of the Special Representative of the Secretary-General, prescribe the rules and procedures applicable to appeals under the present section. Such rules and procedures shall provide, *inter alia*:

(a) That before appealing to the Board, an aggrieved civil servant or applicant must exhaust the internal appeals procedures of the employing authority concerned, unless the Board excuses this requirement based on evidence of reasonable fear of retaliation, failure by the employing authority to resolve such internal appeal within sixty (60) days, or other good cause;

(b) That the aggrieved party and the employing authority shall both have an opportunity to present their positions to the Board in writing, which shall be made available to the opposing party;

(c) That, in cases involving disputes of material fact, both parties shall have the opportunity to appear together at a hearing before the Board, at which they may present evidence and witnesses for direct and cross-examination; and

(d) That in each appeal brought before it, the Board shall within ninety (90) days of the end of the appeal proceedings issue a written decision setting forth its determination and the legal and factual basis therefor.

11.3 Where the Board is satisfied that the challenged decision breached the principles set out in section 2.1 of the present regulation, it shall order an appropriate remedy by written decision and order directed to the Permanent Secretary or chief executive officer of the employing authority concerned, who shall be responsible for effecting the employing authority's compliance with the order.

11.4 Where the employing authority concerned does not comply with the Board's decision and order, the Board shall report the matter to the Prime Minister and the Special Representative of the Secretary-General.

11.5 A member of the Board who participated as a member of the panel concerning the appointment of a civil servant at the level of a head of department pursuant to section 12 (a) of the present regulation shall not participate in the appeal against such decision.

11.6 Nothing in the present regulation shall affect a civil servant's right to procedural review of a final administrative decision in accordance with the applicable law, provided that a decision appealable under the present section shall not be deemed final until the Board renders a decision on appeal hereunder.

Section 12

Review of Appointments at the Level of Heads of Department

For the purpose of reviewing the appointments of civil servants at the level of heads of department to determine whether they are made in accordance with the principles set out in section 2.1 of the present regulation, the Board shall:

- (a) Be represented by panels of three (3) Board members, who shall attend, as observers, meetings of any committee appointed to consider the recruitment or promotion of candidates to fill positions as heads of department;
- (b) Upon the recommendation of the relevant panel which acted as observer, determine whether the decisions of the committees referred to in section 12 (a) are made in accordance with the principles set out in section 2.1; and
- (c) Immediately inform the Prime Minister and the Special Representative of the Secretary-General, in writing, of decisions made by employing authorities, which are not in compliance with the principles set out in section 2.1.

Section 13

Compliance Assessment

13.1 For the purpose of providing an assessment of employing authorities' compliance with the principles set out in section 2.1 of the present regulation, the Board shall annually:

- (a) Review a sample of employment related records maintained by the employing authorities;
- (b) Observe directly a sample of employing authorities' recruitment, promotion and disciplinary procedures; and
- (c) As appropriate, interview persons at employing authorities responsible for decisions under examination by the Board.

13.2 Where the Board determines areas in need of improvement, it shall make appropriate recommendations to the Permanent Secretary or chief executive officer of the employing authority concerned, to the minister responsible and to the Minister of Public Services.

13.3 The Board shall assess the employing authorities' responses to its recommendations and, where an employing authority unreasonably fails to implement its recommendations, the Board shall report the matter to the Prime Minister and the Special Representative of the Secretary-General.

13.4 The Board shall endeavour to work cooperatively with the employing authorities in order to carry out its functions under the present regulation, and employing authorities shall

cooperate with the Board. Where an employment authority fails to so cooperate, the Board shall report this failure to the Prime Minister and the Special Representative of the Secretary-General.

Section 14

Annual Report

14.1 The Board shall make an annual report to the Prime Minister and the Special Representative of the Secretary-General, which shall include a report on its activities and:

(a) An assessment of the employing authorities' compliance with the principles set out in section 2.1 of the present regulation;

(b) Recommendations for improvements; and

(c) Such other matters as the Prime Minister or the Special Representative of the Secretary-General may request.

14.2 The Board's report shall be made publicly available in Albanian, Serbian and English.

Section 15

Powers of the Board

15.1 For the purpose of carrying out its functions under section 10 of the present regulation, the Board may:

(a) Visit any location where civil servants are employed;

(b) Obtain access to and examine written records relating to the recruitment, appointment, disciplinary procedures and promotion of civil servants or relevant to the hearing and determination of appeals; and

(c) Interview any civil servant or exempt appointee who may possess information of direct relevance to the carrying out of the Board's functions.

15.2 The Board shall give the Permanent Secretary or chief executive officer of the employing authority concerned reasonable notice of any visit or request for information, indicating the type of records to which it requires access, and the civil servants sought for interview.

Chapter IV

Senior Public Appointments Committee

Section 16

Appointment of SPAC Members

16.1 The composition of the SPAC shall be as provided under Annex 1, paragraph E of UNMIK Regulation No. 2001/19, including three (3) international persons and three (3)

eminent inhabitants of Kosovo to be appointed by the Special Representative of the Secretary General.

16.2 The term of appointments of SPAC members appointed by the Special Representative of the Secretary-General shall be two (2) years, renewable for a further period of two (2) years.

Section 17

Remuneration of SPAC Members

17.1 No compensation shall be payable to ministers or international members of the SPAC.

17.2 An honorarium may be paid to the three eminent inhabitants of Kosovo in an amount to be determined by the Minister of Public Services.

Section 18

Termination of Appointments

The Special Representative of the Secretary-General may terminate the appointment of any member of the SPAC appointed by him solely on grounds of professional incompetence or misconduct or after having been convicted of a criminal offence and sentenced to serve a prison term of six (6) months or more.

Section 19

Meetings and Voting

19.1 The SPAC Secretariat shall convene meetings of the SPAC as and when considered necessary by the Prime Minister.

19.2 The quorum for meetings of the SPAC shall be seven (7) members, including the minister under whose ministry the candidate for appointment is to serve, and at least one (1) member representing the non-Kosovo Albanian communities.

19.3 The Prime Minister shall chair the SPAC meetings. In exceptional cases where it is necessary for the SPAC to meet in the absence of the Prime Minister, the latter shall authorize one of the ministerial members of the SPAC to chair the meeting.

19.4 The SPAC shall make every effort to reach decisions at its meetings by consensus. In the event that the Chairperson determines that consensus cannot be reached, the matter shall be put to a vote. Appointments and other substantive decisions shall require the support of at least six (6) affirmative votes of the members present. In the event of a tie vote, the Chairperson shall have the deciding vote.

Section 20

Selection of Candidates for Appointment

20.1 Any vacancy to be filled by SPAC shall be widely publicized with details of the post, its location, job description, salary, duration of contract and a brief description of the qualifications, skills, expertise and personal qualities needed.

20.2 The applications for appointment shall be reviewed by a panel consisting of the Permanent Secretaries of the Ministry of Public Services and the ministry under which the candidate for appointment is to serve, and one eminent Kosovo inhabitant and one international member of the SPAC (both to be nominated by the Prime Minister). (Until the permanent secretaries are appointed, their functions shall be provisionally performed by the relevant PIO.) The panel shall set the criteria for the short-listing of candidates and shall prepare a list of not more than ten (10) candidates to be called for an interview.

20.3 The panel shall set the criteria for the interview of candidates and, on the basis of the interview conducted by the panel, the panel shall prepare a list of three (3) persons, in order of merit, whom it recommends to the SPAC for appointment. The panel may recommend fewer than three (3) persons for appointment if there is not a sufficient number of suitable candidates.

Section 21

Transparency And Good Governance

21.1 SPAC members shall evaluate candidates for senior public appointments fairly, on merit, and without bias.

21.2 If a SPAC member or panel member has any personal or professional relationship with any candidate, or is aware of any other circumstance that may affect or be seen to affect the member's impartiality, the member shall declare a conflict of interest and shall abstain from any involvement in the process of selection to the post for which the candidate has applied.

21.3 All matters relating to the selection and appointment of candidates shall be treated with the strictest confidentiality.

Section 22

Secretariat Services

The Ministry of Public Services shall provide the secretariat services to the SPAC and shall implement such measures as are necessary, including the issuance of instructions and guidelines, to facilitate the functioning of SPAC.

Chapter V

Final Provisions

Section 23

Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 24

Applicable Law

24.1 The present regulation shall supersede any provision in the applicable law, which is inconsistent with it.

24.2 UNMIK Regulation No. 2001/27 of 8 October 2001 on Essential Labour Law in Kosovo shall not apply to employment relationships in the Civil Service.

Section 25

Entry into Force

The present regulation shall enter into force on 22 December 2001.

Hans Haekkerup
Special Representative of the Secretary-General

ANNEX

THE CIVIL SERVICE CODE OF CONDUCT

1. Civil servants shall carry out their tasks reasonably, honestly, impartially, with integrity, and in accordance with the law.
2. Civil servants shall deal with the affairs of the public promptly, courteously, sympathetically and without bias or neglect.
3. Civil servants shall not misuse their official position for their own or others' personal gain.
4. Civil servants shall use public resources lawfully and efficiently, and only as authorized by the employing authority for which they work.
5. Civil servants shall not, except as necessary for official duties, use or disclose information acquired as a result of their official positions.
6. Civil servants shall not misrepresent or misuse information or attempt to mislead.
7. Civil servants shall not accept from any person, entity or group other than the employing authority for which they work, any money, gift, hospitality or benefit in connection with their official duties or contacts made or information acquired in connection therewith.
8. Civil servants shall not frustrate the policies of elected officials.
9. Civil servants shall, in carrying out their duties, respect human rights and freedoms and the rights of communities.
10. Civil servants shall carry out the instructions of their superiors except to the extent such instructions are contrary to law, human rights and freedoms, or the rights of communities.
11. Civil servants shall not take part in any political or other public activity which might compromise, or might be seen to compromise, their impartiality.