

# (Un) Professionalism in the Foreign Service of Kosovo: a set of recommendations to consider

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## (Un)Professionalism in the Foreign Service of Kosovo: A set of recommendations to consider

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## NON TECHNICAL SUMMARY

Throughout the years, the Ministry of Foreign Affairs and Diaspora (MFAD) of Kosovo has expanded in number, lacked transparency in its recruitment, and it has been involved into multiple scandals in the recruitment process. Nepotism in the diplomatic service has greatly hampered the proper functioning of Embassies and Consulates at a time when Kosovo most needed international recognition. This policy analysis tackles the concerns about Foreign Service recruitments process, through providing an exhaustive map of Kosovo's current legislation, and identifies the main challenges in the recruitment process, by offering a set of policy and legislative recommendations. The paper it has focused on the status of diplomatic staff in missions and the relationships between the current legislative framework and the Law on Public Officials (LPO), which defines this category as civil servants with a special status. The analysis concludes that the admission to the Foreign Service, as per the existing laws and bylaws is not merit-based. The general and special conditions for admission, although part of the legislation, are not sufficiently regulated. It is worrying that a politically appointed minister decides about the selection committee's and the interview panel's composition. In addition, it is still unknown why the three best candidates should be nominated for each vacant post, while the minister selects one of them only. This practice contradicts the principle of merit.

Overall, several fundamentals should be considered: determination of diplomatic ranks, consular ranks (may also be those that are currently in the law of FS) together with determination of the rules, criteria, length of duration in the civil service and the procedure which ensures transparency and merit, for obtaining the initial diplomatic rank from civil servants who have been admitted to the MFAD. The grading system should be adjusted in such a way as to specify whether it allows for moving from one grade only to another grade (1+1), or to multiply grades.

# **(UN) PROFESSIONALISM IN THE FOREIGN SERVICE OF KOSOVO: A SET OF RECOMMENDATIONS TO CONSIDER**

## **INTRODUCTION**

Irrespective of their size and political systems, states establish a Foreign Service (hereinafter FS) they execute their foreign policy. Foreign Service Officers (FSOs) play undoubtedly a “sacred” role for their own country, by carrying out their diplomatic and consular duties. The FS’s representation is essentially an extended link of a state’s domestic policy, and this is crucial especially for post-conflict states and newly established ones, such as Kosovo.

The Ministry of Foreign Affairs (MFA) of Kosovo was established following the country’s declaration of independence in 2008. As such, the ministry embodies the emergence of the country as an entity enjoying international recognition. Upon the inauguration of the Kurti I Government, in the beginning of 2020, and in order to reduce the number of ministries, the Ministry of Diaspora (MD) joined the MFA. Both have been united under the Ministry of Foreign Affairs and Diaspora.

Since its foundation in 2008, 10 ministers have been enrolled in the MFAD for 14 years, because of unstable and short-lived governments in Kosovo’s recent political history. Yet, their lack of replacement for such a long period indirectly implies that the MFAD failed to exercise its functions, considering that the timespan a certain minister is in service is crucial, for avoiding the emergence of a nepotistic and clientelist-based system based within the ministry.

On several occasions, the MFAD, a key institution for the promotion of Kosovo in the international arena, turned into a comfortable nest harboring the militants belonging to the ruling political parties. At present, the country has a fragile image in the international community with weak diplomatic standards. In fact, political parties in power usually take advantage of the FS, by promoting internally affiliated members lacking a diplomatic background. Such a scenario does not benefit from the current FS’s legislation having serious loopholes, which tolerate abuses in the recruitment process. Kosovo’s law on the FS, along with other regulations and administrative instructions, outlines the challenges and options for maneuvering diplomatic positions on political favors and clientelist practices. Furthermore, the process of amending and supplementing the legislation on the FS proved to be counterproductive. In this light, every government in Kosovo has profited from the legal voids, by using its power to pack the country’s diplomatic missions with party affiliates.

This policy analysis tackles the concerns about the FS’s recruitment process, by providing an exhaustive map of Kosovo’s current legislation, identifies the challenges in the recruitment process, and offers a set of policy and legislative recommendations.

## **I. A BREAKDOWN OF KOSOVO’S FOREIGN SERVICE LEGISLATION**

The legislation on Kosovo’s FS and diplomacy presents a hierarchical structure. At the top, there are the constitutional principles that set out the provisions guiding the FS, followed by relevant laws of the Assembly, and by other regulations and administrative instructions issued by the MFAD.

The Constitution of the Republic of Kosovo establishes the basic principles regarding the making and the implementation of state foreign policy. The Constitution stipulates that the

President of the Republic “represents” and “leads the foreign policy of the country”.<sup>1</sup> In addition to this, the Constitution also grants the President the power to form Kosovo’s diplomatic and consular missions in consultation with the Prime Minister, and to appoint and dismiss the heads of diplomatic missions according to the proposal of the Government.<sup>2</sup>

The Constitution of Kosovo sets out an institutional triangle where the leading role in foreign policy is exercised by the President, the Assembly through oversight, and the implementation phases by the Government<sup>3</sup>. This institutional setup constitutes a model of interdependent control and balance, which seeks not to allow for a one-institution monopoly. In addition to the constitutional provisions, Kosovo’s FS is regulated mainly, but not only, by laws on foreign affairs<sup>4</sup> and the law of the civil service of Kosovo<sup>5</sup>. These acts constitute the primary legislation on the FS, whose substance must follow the principles set forth in the Constitution. In addition to primary legislation, five bylaws<sup>6</sup> form the FS’s legislation.

Kosovo’s Foreign Service comprises diplomatic missions, and consular missions. Its institutional setup is as follows: Ministry of Foreign Affairs, General Directorate, Ministry structure, Diplomatic Academy, and missions. Regarding the diplomatic missions, according to the law, they are divided into two types, 1) diplomatic missions, including embassies and permanent missions in international organizations, and 2) consular missions, comprising consulates general, consulates, sub-consulates and consular offices.<sup>7</sup> This policy paper focuses on the status of diplomatic staff in missions and the relationship between the current framework and the Law on Public Officials (LPO), which defines this category as civil servants with a special status.

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<sup>1</sup> Constitution of the Republic of Kosovo, article 84. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

<sup>2</sup> Constitution of the Republic of Kosovo, article 84, paragraphs 24 & 25.

<sup>3</sup> Constitution of the Republic of Kosovo, article 65, paragraph 12.

<sup>4</sup> Law on Foreign Service of the Republic of Kosovo. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

Law on the Ministry of Foreign Affairs and Diplomatic Service of Republic of Kosovo *ibid*.

Law No.03/L-207 Amending and Supplementing of Law No.03/L0-44 for Ministry of Foreign Affairs and Diplomatic Service of the Republic of Kosovo *ibid*.

Law on Consular Service of Diplomatic and Consular Missions of the Republic of Kosovo *ibid*.

<sup>5</sup> Law No.06/L-114 on Public Officials, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839>

<sup>6</sup> a) Regulation on Foreign Service, a legal instrument approved by the Government of the Republic of Kosovo. Available at: <https://mfa-ks.net/ministria/539/rregulloret/539>

b) Administrative Instruction 01/2012 on Supplementing and Amending Administrative Instruction No. 2009/2 on Procedures for the Nomination of Candidates for Consuls and Consular Mission Officers, a legal plan approved by the then MFA; (*ibid*.)

c) Administrative Instruction 02/2012 on Completion and Amending the Administrative Instruction No. 3/2009 on Nomination Procedures for Candidates for Diplomatic Mission Officers, a legal instrument approved by the then MFA; (*Ibid*.)

d) Regulation No. 02/2010 on Civil Service Recruitment Procedures, a legal instrument approved by the Ministry of Public Administration (MPA); and (*ibid*.)

e) Regulation No. 07/2010 on the Appointment of Civil Servants of the Republic of Kosovo, a legal instrument approved by the MPA. (*ibid*.)

<sup>7</sup>The Assembly of Kosovo. Law no. 03/L-122 on the Foreign Service of the Republic of Kosovo, Article 8. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

## II. ADMISSION IN THE FOREIGN SERVICE

The current regulation setting the legal basis for the admission of diplomatic personnel is the Law on FS, although the same refers to the Law on the Ministry of Foreign Affairs and Diplomatic Service and the legislation in force<sup>8</sup>. The Law on the Ministry of Foreign Affairs and the Diplomatic Service together with its amendment stipulates a few criteria only for the admission as an ambassador and as a head of a mission; worth mentioning the quota of at least 50 % of appointments must be made by the incumbent members.<sup>9</sup> The application for admission is regulated both by the Law on Foreign Service and by the law on the Ministry of Foreign Affairs and the diplomatic service, with the latter distinguishing between general admission requirements<sup>10</sup> and special requirements (knowledge, , skills).<sup>11</sup> As for the procedure of appointment of ambassadors and heads of missions, this is regulated directly by the law, with the Ministry of Foreign Affairs (MFA) verifying the fulfillment of general requirements. Concerning with the knowledge defined through special prerequisites, this is done by the Committee on Foreign Affairs of the Assembly of the Republic of Kosovo, by holding closed hearings for the proposed candidate. After the hearing, the Commission reports its results in confidence to the President, the Prime Minister and the Minister of Foreign Affairs.<sup>12</sup> The report is consultative in nature and it does not oblige the President to enforce it.<sup>13</sup> The rules are uniform and do not make a distinction about the ambassador and the head of mission being already a member of the FS or an individual outside the FS.

**The appointment of (other) officials in diplomatic missions** is based on the administrative instruction no. 3/2009 on the procedures for the appointment of candidates for officials of the diplomatic mission, supplemented by Administrative Instruction no. 02/2012. This instruction lays down a solid foundation for admission by setting the selection criteria<sup>14</sup> and the necessary documentation to be submitted during the application.<sup>15</sup> The competition procedure is open and is announced for each vacancy. The evaluation is done in two phases. The first one is about assessing the fulfillment of the conditions and documents required in the announcement (short list). The second phase is about the written evaluation with candidates needing to get at least 51% points to continue with the other stages of the competition. The Selection Commission is in charge of the short-listing process and the written test's evaluation. It has three members holding leading positions in the MFAD, and it is formed by the minister, and it is set up *ad hoc* for each vacant position. After the shortlist and the written test, an oral interview, takes place. This is carried out by the interviewing panel assessing the fulfillment of the criteria and the knowledge,

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<sup>8</sup>The Assembly of Kosovo. Law no. 03/L-122 on the Foreign Service of the Republic of Kosovo article 20.

Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

<sup>9</sup>The Assembly of Kosovo. Law no. 03 / L-207 on amending and supplementing Law no. 03 / L-044 on the Ministry of Foreign Affairs and the Diplomatic Service of the Republic of Kosovo, Article 1 (amending Article 6 of the Basic Law) and 2 (amending Article 7 of the Basic Law). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2519>

<sup>10</sup>The Assembly of Kosovo. Law no. 03 / L-207 on amending and supplementing Law no. 03 / L-044 on the Ministry of Foreign Affairs and the Diplomatic Service of the Republic of Kosovo, Article 1 (amending Article 6 of the basic law) paragraph 6.1. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2519>

<sup>11</sup> Ibid. paragraph 6.2

<sup>12</sup> Ibid, paragraph 7.2

<sup>13</sup> Ibid, paragraph 7.5

<sup>14</sup>Ministry of Foreign Affairs, Administrative Instruction 02/2012 on supplementing and amending administrative instruction no. 3/2009 on the procedures for the appointment of candidates for officials of the diplomatic mission, article 4

<sup>15</sup> Ibid, paragraph 3.4

as well as the skills required by the law on the FS.<sup>16</sup> The panel consists of a senior representative and a senior official of a relevant office of the Ministry, a Permanent Secretary of the Ministry; an external expert, and a representative of the non-majority community, all of them appointed by the Minister.<sup>17</sup> The evaluation of both the written and the oral test have equal points, i.e. 50% of each part. After passing the written and the oral evaluation phase, a list is drawn up and it contains the names of the candidates scoring higher in both the evaluation stages. The interview panel particularly recommends a list of at least three (3) candidates for each vacant post to the Minister.<sup>18</sup> The latter decides about the appointment.<sup>19</sup>

At present, the admission to the FS, as per the existing laws and bylaws, is not merit-based. The general and special conditions for admission, although part of the legislation, are not sufficiently regulated. Besides that, the assessment of knowledge via both a written and an oral test is weighed equally. Yet, this is inappropriate and inaccurate for all positions of diplomatic missions' officers. The written test and the modalities for carrying out the interview are left to the full discretion of the selection committee. As for the preparation of the exam, it is mentioned that the ministry engages a professional institution. However, neither the form of engagement is regulated, nor is the role of this institution during the exam itself. Significantly, it is doubtful that the body carrying out the written test and the oral interview is not the same. This circumstance deepens further the possibility of a comprehensive assessment. In addition, it is worrying that a politically appointed minister decides about the selection committee's and the interview panel's composition. In addition, it is still unknown why the three best candidates should be nominated for each vacant post, while the minister selects one of them only. This practice contradicts the principle of merit.

For the **appointment of officials in consular missions**, the rules of Administrative Instruction No. 01/2012<sup>20</sup> are applicable. Its legal basis is the Law of Foreign Service and the Law on the Ministry of Foreign Affairs and the Diplomatic Service of the Republic of Kosovo. The same legal principles apply for the officials of diplomatic missions.

### III. CAREER SYSTEM IN THE DIPLOMATIC AND CONSULAR SERVICE

As for the diplomatic career in the diplomatic service, this is regulated through diplomatic ranks as per the law on foreign service,: ambassador; minister; advisory minister; advisor; first secretary; second secretary; third secretary; attachés. With a look at the consular ranks these are: consul general; consul; deputy consul; consular agent. The same law also equates the evaluation of grades, which is as follows:

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<sup>16</sup>The Assembly of Kosovo. Law no. 03 / L-122 on the foreign service of the Republic of Kosovo, article 19. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

<sup>17</sup>Ministry of Foreign Affairs, Administrative Instruction 02/2012 on supplementing and amending administrative instruction no. 3/2009 on the procedures for the appointment of candidates for officials of the diplomatic mission, article 6.3

<sup>18</sup> Ibid, article 8

<sup>19</sup> Ibid, article 9

<sup>20</sup>On supplementing and amending Administrative Instruction No. 2009/2 on the procedures for appointing candidates for directors and other employees of the consular mission



**Table 1: evaluation of grades**

Consular grade	Equivalence	Diplomatic grade
General Consul	↔	Advisory minister or advisor
Consul	↔	First secretary or second;
Deputy Consul	↔	Second secretary or third;
Consular Agent	↔	Third secretary or attaché. <sup>21</sup>

An equal value of ranks' system is established in order to provide the transition from a diplomatic grade to a consular one, and vice versa. The only condition mentioned by the law is that these must be equivalent. As table one shows, the transition from the same diplomatic position is not regulated at all, just as the procedure for moving from a diplomatic rank to a consular post, and vice versa. The law on FS and its bylaws do not provide the necessary regulation of a merit-based principle that must be ensured during the transition of diplomatic staff in the same and different ranks. Additionally, there is a lack of a legal protection that must be provided to the staff in case of complaints.

Regarding the (vertical) advancement, this process is regulated according to the grading system and the ranks mentioned above. Three elements are crucial for moving from a lower grade to a higher one: 1) service time, 2) qualification, and 3) evaluation of performance at work. About 1) *service time*, two relevant aspects measure this point. The first one is applicable to the FSO already holding a certain diplomatic or consular rank for at least one year. He or she has, thus, the right to apply for a higher rank. As for the second, this is applicable for FSOs not having a diplomatic or consular rank, but who has fulfilled a year of service in the ministry. This said he or she has the right to apply for a diplomatic or consular rank.<sup>22</sup>

As for the qualification, there are no criteria in the regulation on how this is done in the practice, and how this element influences the final assessment for obtaining a degree. With a look at the third element, i.e. the evaluation of results at work, although mentioned in the law, this is not regulated in terms of its impact in the grading process.

In practice, the Commission for Degrees and Discipline freely assesses the three elements mentioned above on a case-by-case basis.<sup>23</sup> Persons applying for either one or more degrees are not evaluated, in writing or orally to demonstrate skills and merit, and whether it is sufficient to express interest when applying for a promotion.

The body assessing the criteria for awarding a rank is the Commission for Degrees and Discipline (hereinafter CDD), which, in addition to awarding ranks, also decides on discipline measures in the FS.<sup>24</sup> It consists of the Secretary General, the Director General, two ambassadors / *chargés d'affaires* / heads of mission in service, a representative from the Office of the President, a representative from the Office of the Prime Minister and a representative from the

<sup>21</sup> Ibid, Article 27

<sup>22</sup> Government of the Republic of Kosovo, Regulation NRC - no. 04/2014 on supplementing and amending Regulation no. 02/2009 Foreign Service, Article 6 paragraph 1.1 and 1.2

<sup>23</sup> Interview with former secretary of MFAD, August 2021

<sup>24</sup> The parliament of Kosovo. Law no. 03 / L-122 on the foreign service of the Republic of Kosovo, article 30. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

non-majority community.<sup>25</sup> CDD conducts the entire procedure and confirms the award of one or more ranks to the FS.

The final decision on awarding a certain grade is made by the minister after the reporting and approval of a grade by the CDD. Degrees do not have any fixed time limit, and they become valid only when individuals are assigned to serve in diplomatic and consular missions. This process is laid down (but more at the level of principles) in the regulation for the FS, leaving a great discretion to the minister in terms of decision-making in cases of re-appointment. Therefore, it allows in the practice for the possibility of a considerable influence of the minister as a political appointee.<sup>26</sup>

The main point of discussion is how to regulate the case when there are more members of the FS having the same ranks, than the vacancies effectively available. In addition, it is to figure out what rule or procedure is followed to appoint officials for these positions.

Another debatable mechanism of the career system is the transfer, parallel movement and promotion following the proposal of the General Director after an evaluation of the results at the ministry or in the FS, by the manager directly.<sup>27</sup> Although it was foreseen that this issue would be settled by the regulation on the FS, in the practice this act and its amendment have almost not completely adjusted the procedure of transfer, movement within the category and promotion.

### III. TERMINATION OF EMPLOYMENT IN THE FOREIGN SERVICE

The employment relationship in the FS is as a rule *permanent* and *career-based*, except when the appointment of ambassadors and heads of missions is settled outside the civil service. Even though the FS is built on the career system, the duration of FSOs in diplomatic missions is 4 years, or more, if so required to meet the needs of the Ministry and at the discretion of the Minister of Foreign Affairs.<sup>28</sup> The 4 year-term above is standard for almost all positions in consular and diplomatic ranks, except for a consular agent and honorary consul being indefinite. Yet, whether the discretion of the minister to change the mandate is defined by the law and regulations, it is not specified whether this also refers to either its shortening or extension.

The law also regulates the termination of the mandate, because of an early withdrawal from diplomatic missions for work needs in the MFAD, upon request of the diplomatic representative individually, following a negative work evaluation of the diplomatic representative, for violation of provisions of this law and sub-legal acts in force, and when required by the receiving state.<sup>29</sup>

The President of Kosovo can decide to end the mandate of an ambassador and head of a diplomatic mission, whereas the Minister of Foreign Affairs has the same competence for all other diplomatic representatives. Yet, the procedure of early termination of the mandate is regulated neither in the law nor in the bylaws.

Such a situation gives great power to both the President and the Minister of Foreign Affairs, while undermining objectivity and transparency. To start with, the “withdrawal for work needs in the Ministry of Foreign Affairs”, does not specify how the procedure begins, who makes the assessment, and who asks the President for the early termination of the mandate of an

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<sup>25</sup>Government of the Republic of Kosovo, Regulation no. 02/2009 Foreign Service, Article 13 paragraph 1

<sup>26</sup> Ibid, Article 9.

<sup>27</sup> Ibid, Article 21, paragraph 1.

<sup>28</sup>The parliament of Kosovo. Law no. 03 / L-122 on the foreign service of the Republic of Kosovo, Article 22. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

<sup>29</sup>The parliament of Kosovo. Law no. 03 / L-122 on the foreign service of the Republic of Kosovo, Article 23. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2615>

ambassador and/or head of mission. The same applies to other diplomatic representatives, whose mandate's termination is decided by the minister as mentioned above. As for a "negative evaluation of the work of the diplomatic representative", this is by no means regulated in terms of the procedure followed and the engendered legal effects. Especially, what is considered a negative assessment, and whether it is sufficient for this assessment to be for a year or more, needs of further specification.

An issue of concern is also the impact of a negative evaluation within the mandate in the diplomatic mission or even in the employment relationship in general. The other reason is the violation of the provisions of this law or other legal and sub-legal acts in force. In this latter case, it is not specified who verifies about this circumstance and what is the procedure and the competent body. The last reason is when a member of the FS is required to be expelled by the receiving state. This cause is regulated in Article 9 of the Vienna Convention. Other reasons that lead to the termination of the status of a member of the FS are when leaving voluntarily, losing the ability to act, conviction by a final court decision for a criminal offense is issued, and when serious violations against the Civil Service rules and Regulation on FS are committed<sup>30</sup>.

Even for these reasons, the procedure and the body competent for ascertaining the facts above are not regulated.

## VI. FOREIGN SERVICE AS PART OF THE PUBLIC SERVICE

The new Law No.06 / L - 114 on public officials (hereinafter LPO), adopted in February 2019, brought many changes and a profound reform in the public service, both in terms of horizontal and material scope, including the foreign service. This law initially treats professional employees of the FS as civil servants with a special status, subject to the law of public officials and a special law but under the condition that the special law must be in accordance with the principles set out in the LPO.<sup>31</sup> The special law may regulate only these elements of the employment relationship differently from LPO such as special or additional conditions for recruitment; specific rights or obligations other than those provided by the LPO; special rules for career development according to the rank system; professional development and training needs; transfer and systematization of FSOs.<sup>32</sup> Each of these elements will be analyzed below by proposing concrete solutions that may be relevant during the drafting of the new legislation on the FS.

**Special and additional conditions for recruitment** should be regulated in such a way as not to reduce the standard conditions and criteria set out in the LPO, but only in those cases where any additional and different conditions from the LPO are required. Considering that members of the FS must have a high degree of professionalism and integrity, additional requirements for recruitment can be the following: not being a member and not being active politically for at least the last two years before recruitment, having passed the test before being appointed, and have succeeded in the knowledge testing at least one foreign language are important elements to be considered.

Since members of the FS are initially admitted to the professional category of civil service as civil servants in the MFAD, the additional conditions set out above must be established in the early stages of personnel planning.

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<sup>30</sup> Ibid, Article 25

<sup>31</sup> The parliament of Kosovo. New Law No.06 / L - 114 on public officials, article one paragraph 1. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839>

<sup>32</sup> Ibid, Article 1, paragraph 2.

**Additional rights and duties different from those defined in the LPO-** Given the nature of the FS, its members should have some additional rights and duties, in addition to the standard ones defined in the LPO.

As additional **rights** of a member of the FS can be considered the status of career diplomat in the country where he or she is accredited, the right to obtain a personal diplomatic rank; and to hold positions in the MFAD, in diplomatic missions or consular posts, in accordance with the diplomatic rank, skills and professional experience. Besides that, benefiting from the immunities and facilities granted by the status of diplomat, in accordance with international acts and law, during the period when appointed to the diplomatic mission or consular post is a right to be recognized and granted. Other recommendations concern the right to benefit from qualifications and training conducted by the MFAD, receiving special financial treatment, in accordance with its status; and holding and using a diplomatic passport in the exercise of official functions.

As additional **obligations** of a member of the FS can be considered the protection of the interests of the state and of its citizens in the state or organization, where he/she is accredited and performs his/her functions; to exercise honestly and correctly the entrusted functions and tasks, in accordance with the local and international legislation. When needed, the FS should take full responsibility for the legality of actions during the performance of duty and, if not convinced about the legality of the orders and the implemented decisions, it should notify the superior levels thereupon. In addition, not being part of a political party and not participating in any political activity, as well as not making public statements contradicting the foreign policy of the Republic of Kosovo should be considered as key obligations. Furthermore, respecting the laws of the state where accredited, not interfering in the internal affairs, and not exercising any commercial activity should be crucial elements too.

**Special rules for career development according to the rank system** - since the FS is rank system-based, the LPO deliberately leaves the possibility for this to be regulated by a special law. Therefore, the rank system in the FS is different from the classification system and the career system in the civil service. Otherwise said, several fundamentals should be considered: determination of diplomatic ranks, consular ranks (may also be those that are currently in the law of FS) together with determination of the rules, criteria, length of duration in the civil service and the procedure which ensures transparency and merit, for obtaining the initial diplomatic rank from civil servants who have been admitted to the MFAD. The grading system should be adjusted in such a way as to specify whether it allows for moving from one grade only to another grade (1+1), or to multiply grades. Similarly, the main criteria for promotion should be the duration of the minimum period for a certain grade; the evaluation of results at work; the professional qualifications; and the evaluation of knowledge and skills. Therefore, for each criterion mentioned above, the weight and the way of evaluation should be determined beforehand. In addition, the minimum period (in years) for each diplomatic or consular rank, the scale of work evaluation, the professional qualification scale, and the assessment of knowledge methodology (through either the written or oral test, or both) should be determined.

At the same time, a minimum threshold for obtaining a certain grade should be established, and the promotion procedure should be based on competition, transparency, meritocracy, and other civil service principles. The composition, mandate, work procedure and decision-making of the body conducting the evaluation should be defined. Accordingly, the transition from a diplomatic to a consular rank should be specified. Besides that, an *ad hoc* body in charge of deciding about the transition should be established.

What's more, being a very sensitive issue, the awarding of new ranks should take place when necessarily needed only, and it should be in proportion to the vacancies as these are identified by the FS. Also, special and additional conditions for the rank of "ambassador" should be established, and plain appeal procedure and administrative/judicial protection should be adopted as well. Finally, law should determine the authority awarding the final degree.

**Professional development and training needs** - considering that the FS functions according to the closed career system as regulated by a special law, special attention should be paid to the professional development, by providing a continuous system of needs' identification and additional trainings that differ from the regular civil service training. Particularly, the latter should be done on a regular basis during the evaluation of work results for each member of the Foreign Service. Nevertheless, it might also take place on an *ad hoc* basis, when additional training is needed in certain areas. As for the trainings' arrangement, this should be more oriented towards the obligatory and long-term ones, combined with a mentoring system. In this regard, training should not remain just an obligation to be attended. Rather, it should be looked at as a part and parcel of the general grading system and the career system in the FS.

**Transfer and systematization of employees** - is another element which can be regulated differently by a special law for the FS. In this respect, the regulation should not imply the establishment of rules being less favorable than those in the LPO. Regarding the transfer, in addition to the rules set out in the LPO, this might be regulated, with a special law, in a way that the competence for transfer can be given to the Minister of the MFAD knowing that the transfer is possible within the members of the FS only.

Another issue for discussion is whether the transfer is to be carried out for a longer period, or if it remains as defined in the LPO. As for the systematization part above, this is more complex, because it combines between systems of civil servant level with those diplomatic-consular ranks; especially when the latter are individual grades. The dilemma arises when the mandate in the diplomatic service ends, and FSOs return to the MFAD. A way to solve this dilemma would be the determination of the equivalence of an individual grade (diplomatic and consular) with a certain class of civil service, where this element is known to be determined by law or sub-legal act. In addition to the balance, the procedure for obtaining a position by an employee having an individual rank should be regulated. Especially if there are no vacancies within the MFAD. Therefore, in this case the following options can be considered: 1) the establishment of a system with each vacancy being equivalent to a certain class of civil service; 2) the consent of the civil servant to be transferred to a lower grade, than the equivalent grade; 3) if no vacancies are available, the placing of the civil servant on a waiting list until a vacancy, namely the appointment to a foreign mission, is available. In this case, he/she will be entitled to receive the same salary and benefits, as if he/she would be working in a rank of a designated civil service.

## CONCLUSION AND RECOMMENDATIONS

Throughout the years, the MFAD has expanded in number, lacked transparency in its recruitment, and it has been involved into multiple scandals in the recruitment process. Nepotism in the diplomatic service has greatly hampered the proper functioning of Embassies and Consulates at a time when Kosovo most needed international recognition. The multiple sets of laws, Regulations and Administrative Instructions around the Foreign Service show fundamental shortcomings in key principles, with poor definitions and interpretations on the most important aspects, which should be properly ruled. Particularly, the absence of proper mechanisms assessing the necessary criteria should be urgently designed and implemented. In addition, the

contradiction between the bylaws on Kosovo's Foreign Service and the Law of Civil Servants leads inevitably to an overall disorganized recruitment system. This ill-fated constellation provides room for maneuvers and for politically motivated bargaining, by clearly damaging the prestige of Kosovo's diplomatic service. In addition, the current legislation provides ambiguous criteria for a candidate to meet, in order to apply for a position in the Foreign Service. The requirements set forth in the legislation are rather simple in content and define general and impractical conditions.

All considered, the policy recommendations for a normative and procedural improvement of the Kosovo's Foreign Service are the following:

- reducing the quota of politically appointed ambassadors and heads of diplomatic missions from 50% to 30%;
- determining the procedure, deadlines, and competence for the appointment of ambassadors and heads of missions
- strengthening the mechanisms of admission to the FS, by applying the rules set out in the LPO and additional conditions in the special law;
- defining competitive and transparent rules and procedures ensuring meritocracy when obtaining a grade, in order to regulate the grading system taking into account individual grades;
- identifying precisely and clearly the additional rights and duties to those each civil servant has, as per the LPO;
- establishing additional rules for professional development and for a system of continuous training of members of the FS;
- adopting additional rules for the transfer and systematization of employees in the FS taking into account the system of individual ranks;
- determining the criteria, reasons and procedures for exclusion from FS pursuant to the law on FS;
- applying the LPO's rules for disciplinary procedures in the FS;
- changing the wage and reward system, by focusing more on the cost of living in the receiving state and avoiding fixed costs, as they currently exist;
- Depriving the Minister of Foreign Affairs of powers on the promotion of Foreign Service civil servants and, thus, leaving this competence to the Commission of Degrees and Discipline within the MFAD. Besides that, the members of the Commission from the Office of the President, the Office of the Prime Minister and the representatives of non-majority communities should be civil servants and non-political staff.

## **Policy Analysis**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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