

UTILISATION OF SPECIAL SERVICE AGREEMENTS AND ACTING POSITIONS IN CIVIL SERVICE DURING 2016-2018

Are legal requirements respected in recruiting through special service agreements (SSA) and application of acting positions (AP) in civil service



UTILISATION OF SPECIAL SERVICE AGREEMENTS AND ACTING POSITIONS IN CIVIL SERVICE DURING 2016-2018

Are legal requirements respected in recruiting through special service agreements (SSA) and application of acting positions (AP) in civil service

March 2019

PREPARED BY: Visar Rushiti

Copyright©2019. Democracy Plus (D+)

All rights reserved. No part of this publication may be reproduced, stored or transmitted in any form or by any means electronic, mechanical, photocopied or otherwise, without permission of D+.

This publication has been supported by Kosovo Foundation for Open Society (KFOS). Views expressed in this publication are those of the author and do not necessarily reflect the views of KFOS.

CONTENT

MAIN FINDINGS	6
METHODOLOGY	8
LEGAL BASIS FOR SPECIAL SERVICE AGREEMENTS AND ACTING POSITIONS	9
SPECIAL SERVICE AGREEMENTS (SSA)	10
RECRUITMENT THROUGH SPECIAL SERVICE AGREEMENTS DURING 2016-2017.....	10
DURATION OF SSAS.....	20
FINANCIAL IMPLICATION AND REMUNERATION FOR SSAS.....	22
ACTING POSITIONS (APS)	25
DURATION OF APS.....	25
THE SOLUTION PROPOSED BY THE LAW ON PUBLIC OFFICIALS.....	30
REGULATION OF SSAS BY THE LAW ON PUBLIC OFFICIALS.....	30
REGULATION OF APS BY THE LAW ON PUBLIC OFFICIALS	32
CONCLUSIONS AND RECOMMENDATIONS	33
ANNEX 1: INSTITUTIONS WHICH HAVE NOT REPLIED TO THE REQUEST OF D+ FOR ACCESS TO PUBLIC INFORMATION	35

MAIN FINDINGS

- Contracts called “special service agreements (SSA)” or fixed-term appointments are very little covered in reports of public institutions. Neither civil society organisations have conducted sound and credible research so far;
- There have been 1,372 such contracts in 2016 and 2,906 in 2017 both in central and local level. Ministries with biggest numbers of such fixed-term appointment contracts have been: Ministry of Education, Science and Technology (MEST), Ministry of Agriculture, Forestry and Rural Development (MAFRD), Ministry of Infrastructure and Ministry of Environment and Spatial Planning (MESP);
- With regard to 2018, based on answers from 76 institutions (out of 132 requests), the number of such contracts has been 777. This number would have been much bigger if other 56 institutions would have replied to requests for access to information;
- With regard to municipalities, the biggest numbers of such contracts for the years 2016 and 2017 have been encountered in the municipality of Prishtina, Gjilan, Ferizaj, Peja, Prizren, Suhareka, Fushe Kosova and Gjakova;
- Central Election Commission (CEC) has recruited through fixed-term appointment contracts a number of 958 people to work in the Count and Results Center (CRS). However, even if this number is excluded from 2,906 such contracts for 2017, there is still an increase from 576 cases (or 42% increase) between 2016 and 2017;
- If we rely on the estimation that there are around 18,000 civil servants employed in the public administration at central and local level, and add to this number the 1,948 contracts for 2017 (excluded are the 958 cases/ contracts of CEC), it comes out that 10% from the number of people employed during that year have been recruited through short-term appointments or special service agreements;
- During 2016 and 2017, more recruitment cases have occurred through special service agreements (861 and 991 cases) rather than career civil servant positions (645 and 723 cases). Moreover, majority of such recruitments have occurred with no simplified recruitment procedure and lasted longer than six months in contradiction to the law;
- There have been cases during 2016 and 2017 when appointment acts foreseen for career civil servant positions have been granted to recruited people through special service agreement contracts and have been also included in the payroll in contradiction to the law;
- With regard to the duration of such contracts foreseen by law as six months contracts, based on written answers received from 76 institutions, in a number of 164 cases out of 777 the duration required by law has not been respected (84 have been found in the local level and 80 in the central level);

- Special service appointments or fixed-term contracts are not paid through coefficients in civil service; neither take part to salaries and perdiems budget line. Such contracts have different levels of payments to be paid through goods and services budget line. Levels of payments vary from 300 hundred euro the lowest to 500 hundred euro the highest as the most common levels of payments under such contracts. If we approximately calculate how much money from the state budget have been spent for such contracts, it comes out that between five to eight million of euro have been spent during 2016, between 10 to 17 million euro during 2017 and between three to five million euro during 2018;
- The state budget does not have a separate code or sub-code to the specific budget line through which all special service agreement contracts can be easily identified. Due to this shortcoming, the information provided related to the exact number of such recruitment cases, duration and purpose of the contract is totally up to the will of the institution;
- With regard to acting positions (AD), 122 cases with acting positions have been found in 2018. In such cases, either the acting civil servant keeps that position for years or the acting position is circulated among other civil servants. As a consequence, the position is not advertised as a vacant position according to the rule set by Law on civil service;
- In a number of cases, certain managerial positions are on purpose kept with acting civil servants in order to be able to count that period of acting as a working experience and thus achieving the working experience criterion and apply later for that specific position. Even though it is not clear if the period during which a civil servant is acting in a position is counted as a working experience, it is nevertheless recognized as such by many institutions;
- According to 76 written answers received from institutions, a number of 215 cases have been found as acting positions both in the central and local level. Out of 215 such cases, 171 have been found in the central and 44 in the local level. Then, out of 171 cases in the central level, 75 have been found to happen within the framework of the law whereas 96 other cases have been found as outside the law framework of three months;
- Law for public officials which abrogates the Law on civil service has left the special service agreements to be regulated by the Law on public procurement. Even though it remains to be seen how much this law solution will improve the situation in practice, it seems that there will be more transparency during the process because it will not be possible to conclude a contract of higher than 1,000 euro if it is not made public. This will make possible to monitor the exact amount of the contract, job description, duration of the contract and other associated elements which so far have not been made public;

METHODOLOGY

The research process has been mainly conducted through data analysis gathered through requests to public information and a number of interviews conducted with relevant people from a number of ministries. Moreover, the report is also based on the data provided by various ministries such as the Ministry of Public Administration (annual reports on the state of civil service), Ministry of Finance (annual financial reports), and Independent Oversight Bodies for Civil Service (annual reports) and State Audit Institution (performance and annual audit reports). For the purpose of data gathering, a number of 132 requests to public information have been submitted to 132 institutions both in the central and local level which employ civil servants. From 132 requests, 76 institutions have provided written answers as per the request whereas 56 other institutions have not answered to the request. The annex to this report shows the lists the 56 institutions which have not responded to the request.

LEGAL BASIS FOR SPECIAL SERVICE AGREEMENTS AND ACTING POSITIONS

Special service agreements (SAAs) or fixed-term appointments represent a way of recruitment with limited timeframe in civil service. SAAs are contracts concluded between the institution and one person who is a professional in a certain field and is assigned to provide that expertise for a period not longer than six (6) months. Law on civil service includes this element in the section of categories of employees in civil service. According to this law, “*fixed-term appointments of less than six (6) months shall be governed by contracts called special service agreements and shall be regulated by the Law on Obligational Relationships and a simplified recruitment procedure shall be applied*”¹. Besides this article, the respective law does not define it further and leaves it open for interpretations. Moreover, there is not any regulation or secondary legislation which regulates the simplified procedures to be followed in cases of concluding such contracts as specified by the Law on Civil Service.

On the other side, the Law on Obligational Relationships² does not consist of any article which specifies or clarifies this element. This law covers the principles and general rules for obligational relationships, conclusion of contracts and other elements that have to be taken into account by both the employer and the employee, but does not contain any dispositions which specifically govern the SAAs. Moreover, the Labour Law is another important piece of legislation when it comes to concluding a contract or establishing a working relationship. This law regulates the working relationship for all employees which in their status differ from civil servants governed by the Law on civil service. In relation to public sector and public employees, certain dispositions of this law are important also for the SAAs such as: types of contracts, contracts for specific work, public vacancies and advertisements which constitute obligations for every public institution to open a public vacancy each time it employs anybody and establishes a working relationship³.

In relation to the legal basis for acting positions (APs), the Law on civil service includes this element under the framework of replacing an absent civil servant. According to article 30, point 4 of the Law on civil service, “*if a position in the civil service remains vacant, acting civil servant in that position shall not be appointed for a period exceeding three (3) months*”⁴. This means that a civil servant who has a lower ranking can replace another civil servant of a higher ranking but the replacement period should not be longer or exceed three months.

1 Law no. 03/L-149 on Civil Service of the Republic of Kosovo, Article 12, point 4: <https://bit.ly/1D2CvaW>

2 Law no. 04/L-077 on Obligational Relationships: <https://bit.ly/2PUQfGJ>

3 Law no. 03/L-212 on Labour, Articles 8 and 10: <https://bit.ly/2jx6Pc3>

4 Law on civil Service, Article 30, point 4.

SPECIAL SERVICE AGREEMENTS (SSA))

Recruitment through special service agreements during 2016-2017

There is no accurate information for the number of recruitments through SSAs for in yearly or other periodical basis. Moreover, when it comes to classification of other elements associated to SSAs such as duration, exact cost, job description, etc, it becomes even more difficult due to the lack of data and information in this regard. However, certain institutions have started gathering some information related to SSAs for the past years of 2016 and 2017.

Ministry of Finance (MF) is one of the institutions which is providing some information related to SSAs through its annual financial reports for the past two years. MF has been able to gather such information based on the reportings of budget organisations, however, a number of institutions have not provided any data related to SSAs for their own institution. The fact that such institutions have not reported any data related to SSAs, it does not mean that they do not have any cases of SSAs. The following table provides some information related to the number of recruitments through SSAs for each budget organisation starting with the Assembly, the Government and Office of the President.



Ministry of Finance (MF) is one of the institutions which is providing some information related to SSAs through its **annual financial** reports for the past **two years**.

TABLE 1: Number of SSAs in the Government, Assembly and Office of the President

No.	Government	2016	2017
1	Office of the Prime Minister	28	N/R ⁵
2	Ministry of Finance	72	59
3	Ministry of Public Administration	2	23
4	Ministry e Agriculture, Forestry and Rural Develop.	115	102
5	Ministry of Trade and Industry	13	19
6	Ministry of Infrastructure	57	83
7	Ministry of Health	N/R	7
8	Ministry of Culture, Youth and Sports	N/R	63
9	Ministry of Education, Science and Technology	44	366
10	Ministry of Labour and Social Welfare	21	26
11	Ministry of Environment and Spatial Planning	39	54
12	Ministry of Return and Communities	N/R	N/R
13	Ministry of Local Governance Administration	4	1
14	Ministry for Economic Development	12	13
15	Ministry of Interior	6	6
16	Ministry of Justice	N/R	6
17	Ministry of Foreign Affairs	N/R	9
18	Ministry of Kosovo Security Force	1	5
19	Ministry of European Integration	N/R	3
20	Ministry of Diaspora and Strategic Investments	35	6
21	Ministry of Regional Development	N/R	5
22	Ministry of Innovationa and Entrepreneurship	N/R	N/R
Sub-total		452	857
23	Assembly	2	N/R
24	Office of the President	4	5
Total		458	862

Source: Ministry of Finance, Financial report 2017⁶

5 This means that the institution has NOT REPORTED (N/R) any SSAs for the respective year.

6 Ministry of Finance, annual financial report for 2017, p. 85 and 86: <https://bit.ly/2PSAGyK>

By analyzing the table as above, the first element noticed very easily is the increase of cases of recruitment through SSAs in between the two years, 458 in 2016 and 862 in 2017. The Ministry of Education, Science and Technology (MEST) has the highest number of recruitment cases through SSAs, 44 in 2016 and 366 in 2017. The second institution is the Ministry of Agriculture, Forestry and Rural Development (MAFRD) with 115 recruitment cases in 2016 and 102 in 2017. The Ministry of Infrastructure with 57 cases in 2016 and 83 in 2017, followed by the Ministry of Finance with 72 in 2016 and 59 in 2017 and the Ministry of Environment and Spatial Planning with 39 cases in 2016 and 54 in 2017.

However, what remains open for interpretation here is if these numbers are still valid and present in the ministries as above, meaning if the people recruited through SSAs for six months continue to be employed beyond six months or they have terminated their fixed-term contracts or they have shifted the employment relationship from fixed and short term contracts to indefinite acts of appointments? Among the ministries above, the case of the Ministry of Culture, Youth and Sports is a clear case of new recruitments through SSAs in 2017 because it has not declared any recruitment cases for 2016 whereas it has declared 63 new cases for 2017.

The second group of institutions in the central level which the Ministry of Finance has gathered some data and presented through the same source of information, is the independent institutions and agencies. Even though the number of such institutions with the status of budgetary organisations is more than 30, only 19 of them have reported recruitment cases to the Ministry of Finance for 2016 and 2017.



By analyzing the table as above, the first element noticed very easily is the increase of cases of recruitment through SSAs in between the two years, **458 in 2016** and **862 in 2017**.

TABLE 2: Number of SSAs in 19 independent institutions and agencies

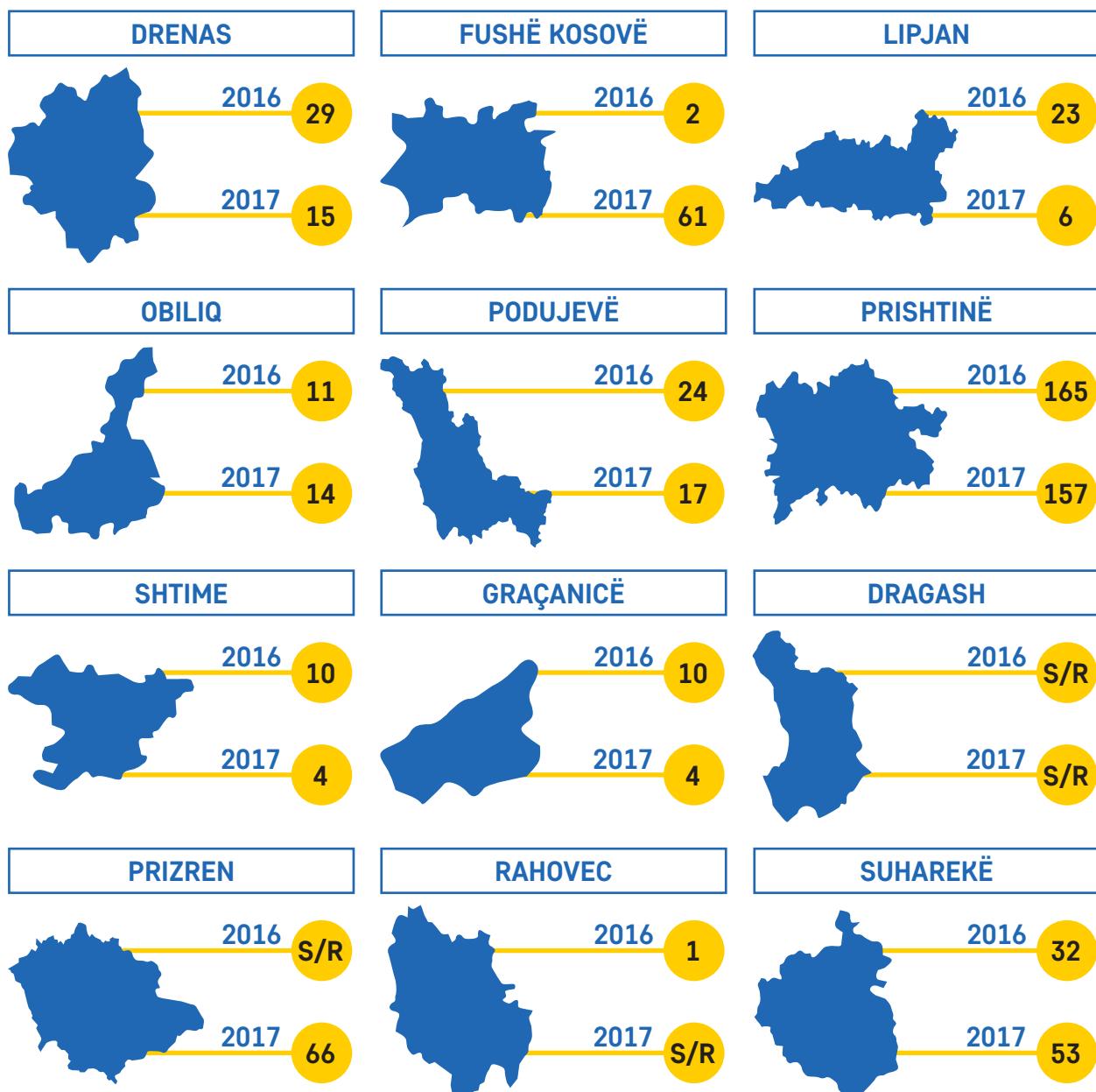
No.	Independent institutions and agencies	2016	2017
1	Academy of Science and Arts	N/R	1
2	Regulatory Authority for Electronic and Postal Telecommunications	1	1
3	Anti Corruption Agency	1	0
4	Privatisation Agency	20	N/R
5	Procurement Review Body	3	2
6	Constitutional Court	3	N/R
7	Competition Authority	N/R	1
8	Council for Cultural Heritage	4	N/R
9	Election Appeal and Complaints Mechanism	N/R	9
10	Kosovo Prosecution Council	11	N/R
11	State Agency for Personal Data Protection	N/R	3
12	War Memorials Agency	2	S/R
13	National Audit Office	6	4
14	Civil Aviation Authority	1	N/R
15	Independent Media Commission	2	5
16	Central Election Commission	54	958
17	Ombudsperson	1	8
18	Kosovo Judicial Council	41	8
19	Agency for Property Comparison and Verification	1	1
Total		151	1,001

Source: Ministry of Finance, Financial report 2017

One element which is also easily noticed in this group of institutions is the big increase of recruitment cases through SSAs between 2016 and 2017. From 151 such cases in 2016 up to 1,001 cases in 2017. The biggest difference in this number in between 2016 and 2017 is the number of recruitment cases through SSAs at CEC for 2017.

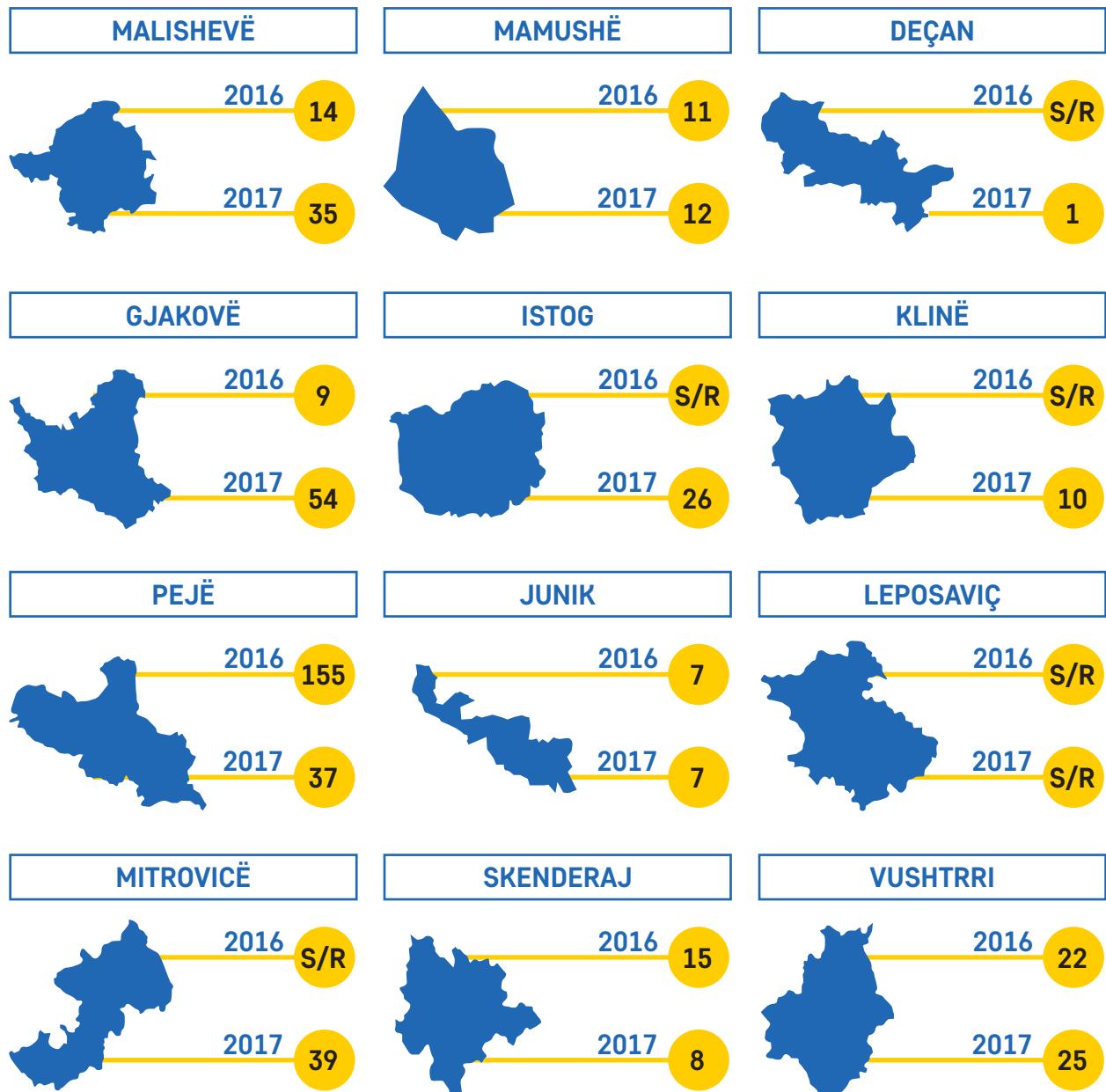
As said earlier, the 958 cases at CEC for 2017 occurred mainly because of general elections held in 2017 when CEC employed through SSAs a number of 958 people to work under a fixed-term contract at Count and Results Center located in

TABLE 3: Number of SSAs in the 38 municipalities

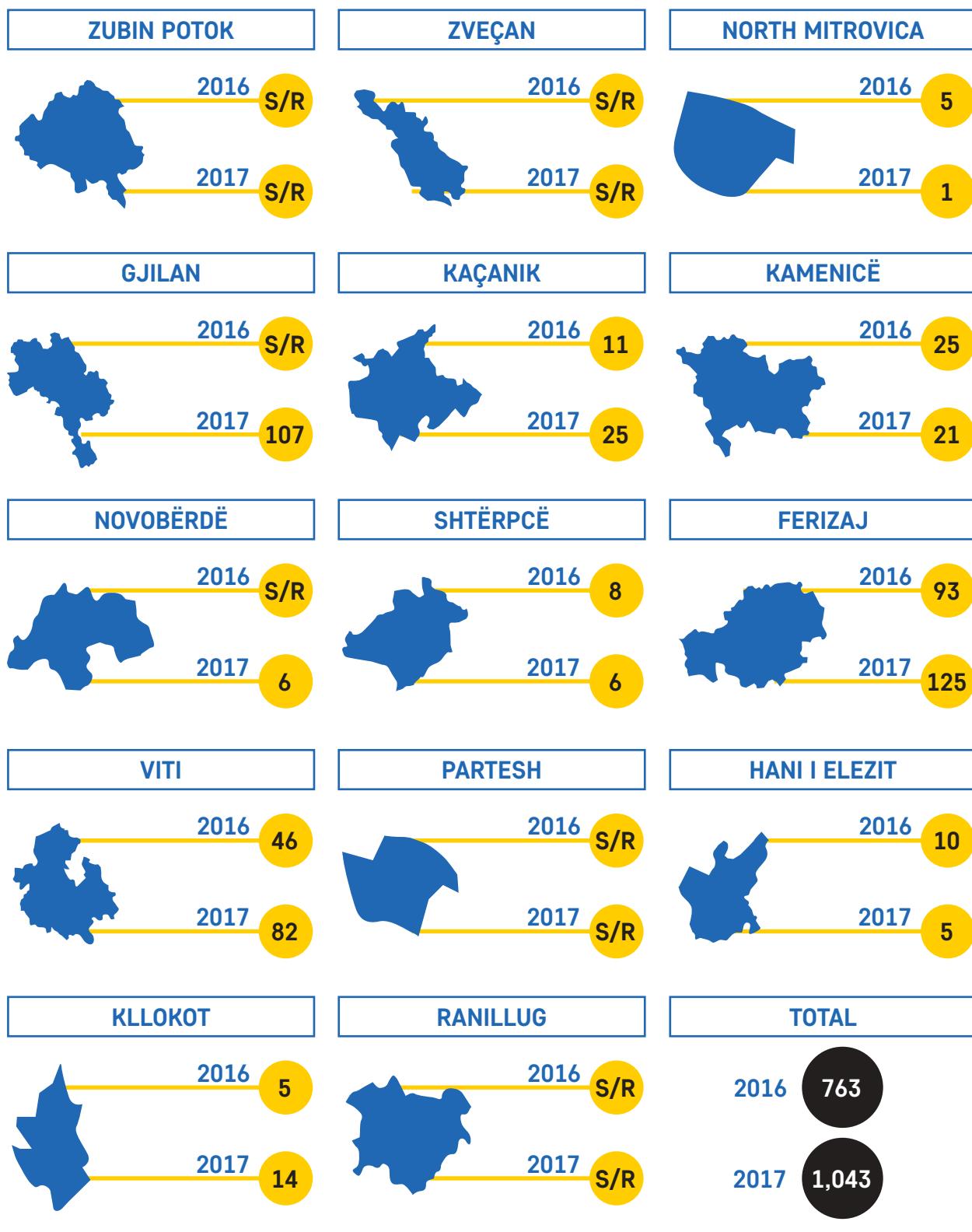


Fushe Kosova. The second institution is the Kosovo Privatisation Agency with a number of 20 recruitment cases through SSAs in 2016 whereas it has not declared any such cases to have happened in 2017.

The third group of institutions consists of the 38 municipalities including the municipalities in the north with the exception of the Mitrovica North. However, the three of them have not reported any such cases for 2016 and 2017.



UTILISATION OF SPECIAL SERVICE AGREEMENTS AND ACTING POSITIONS IN CIVIL SERVICE DURING 2016-2018



Source: Ministry of Finance, Financial report 2017

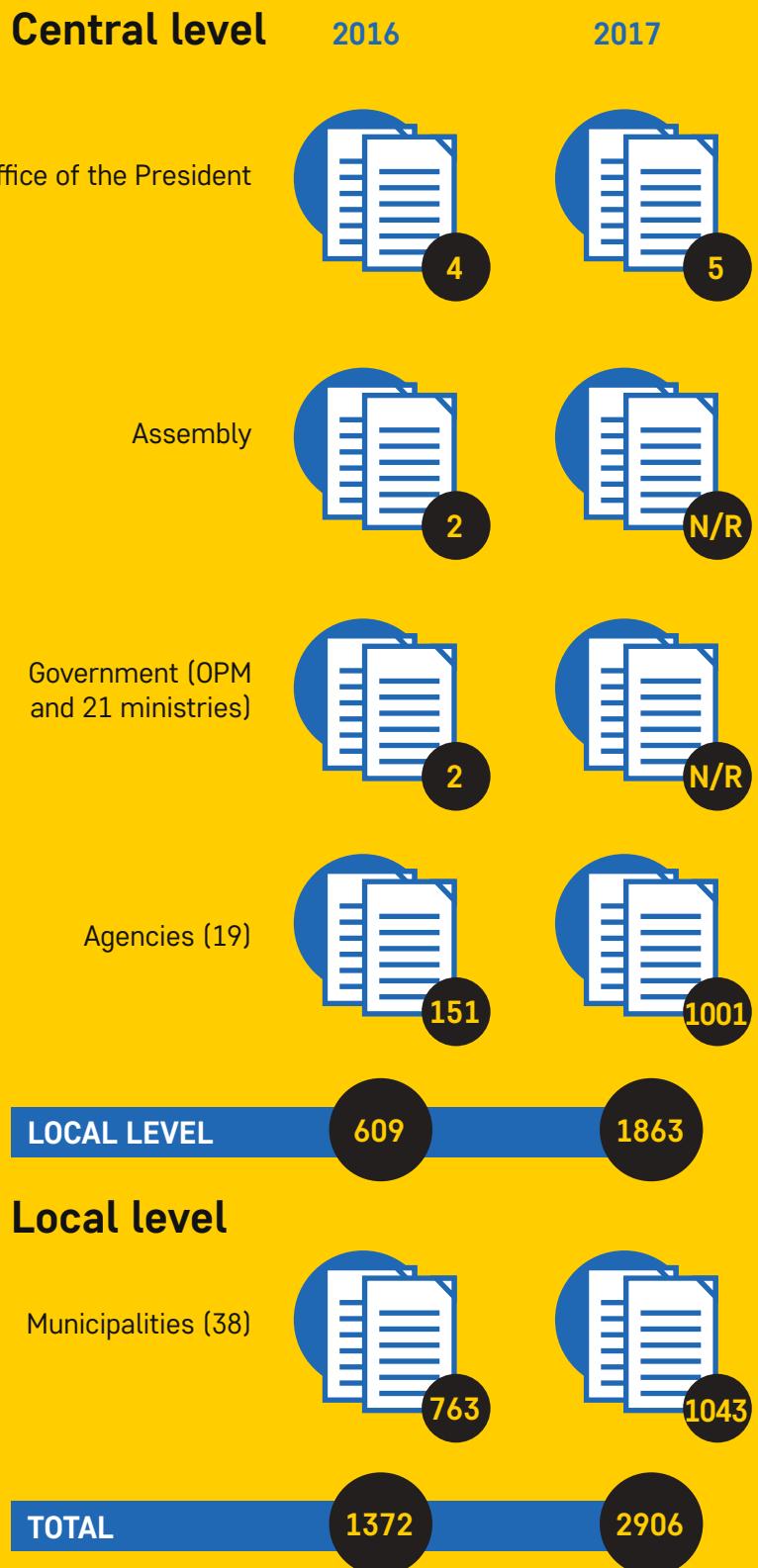
As with the two groups of institutions provided above, there is an increase of recruitment cases through SSAs also in the local level in between 2016 and 2017, from 763 to 1,043 cases in total. Municipalities with biggest numbers with recruitment cases through SSAs are: Prishtina with 185 in 2016 and 157 cases in 2017, Peja with 155 in 2016 and 37 cases in 2017, Ferizaj with 93 in 2016 and 125 in 2017 and Vitia with 46 in 2016 and 82 cases in 2017.

By putting together the three totals for the three groups of institutions for 2016 and 2017, it becomes clear that the number of recruitment cases through SSAs for 2017 has increased for more than 100% compared to 2016. Even when we exclude 958 cases of CEC from the total of 2,906 for 2017, it is again an increase of recruitment cases through SSAs by 42% in between 2016 and 2017.



By putting together the three totals for the three groups of institutions for 2016 and 2017, it becomes clear that the number of recruitment cases through SSAs for 2017 has increased for more than 100%

TABLE 4: Number of SSAs in the three groups of institutions for the two years (2016-2017)



By taking the number of 1,948 cases from the three groups of institutions for 2017 as a baseline (excluding the 958 cases of CEC), excluding the potential new cases in other institutions such as in Courts' administrations and Universities where civil servants may be employed and recruited through SSAs, and compare it with the total number of around 18,000 civil servants (career civil service positions with acts of appointments), it comes out that 10% of employees in the civil service during 2017 have been recruited through SSAs.

TABLE 5: Recruitment cases for career civil service positions and recruitment cases through SSAs for 2016 and 2017

Year	Recruitments for career civil service positions	Recruitments through SSAs
2016	 645	 861
2017	 723	 991

Source: reports on the state of civil service, MPA, 2015 and 2016

This data has been gathered from the Department for Civil Service Administration (DCSA) of the Ministry of Public Administration (MPA) according to reportings of institutions of both central and local level in Kosovo⁷. However, by comparing this data with the data provided by the Ministry of Finance, it is evident that this data provided from DCSA is much lower than that provided by MF. Also, the MPA report for the state of civil service in Kosovo has provided a separation of recruitment numbers through SSAs by functional categories of civil servants in the central and local level.⁸

⁷ Meeting/interview with Tefik Mahmuti, Department for Civil Service Administration in the Ministry of Public Administration (MPA), 11.02.2019.

⁸ Ministry of Public Administration (MPA), Department for Civil Service Administration, report on the state of civil service for 2017, published in May 2018, pp. 49-50: <https://bit.ly/2KBnUPd>

TABLE 6: Separation of SSAs according to functional categories in the central and local levels

Functional category	Central level	Local level
Senior level management	 0	 0
Management level	 0	 5
Professional level	 319	 384
Technical and administrative level	 114	 169
Total	433	558

Source: report for the state of civil service, 2017, MPA

A similar situation and trend has been raised by Independent Oversight Body for Civil Service through its annual reports for 2016 and 2017. According to the annual report for 2017, this institution has concluded that institutions of both central and local level have recruited through SSAs a number more than one thousand (1,000) people in positions which have been planned for career civil servant positions. A number of similar elements as provided above have been identified and raised also through the 2017 annual report such as: a large number of SSAs which took place during 2017

have been concluded without simplified recruitment procedures, duration of SSAs have not been respected in a large number of cases and recruitment processes through SSAs have been done for positions which are not specific where a special expertise is required. Moreover, the respective institution has concluded that a number of people recruited through SSAs have been granted the appointment acts and included in the payroll against the Law on civil service⁹. In the aspect of recruitment through SSAs without simplified recruitment procedures, it is worth specifying 104 cases¹⁰ in the Ministry of Culture, Youth and Sports and 32 cases in the Ministry of Labour and Social Welfare¹¹.

Duration of SSAs

In relation to the respect of six months duration for SSAs by institutions which have recruited people through SSAs, D+ has submitted 132 requests for access to public information in all institutions of central and local level. The question which has been posed to these institutions was: *what is the actual number of recruited/employed people through SSAs and what is their actual timeline or duration?*

According to answers from 76 institutions (56 other institutions have not answered to the request), 613 have been found within the time limit whereas 164 other SSAs have been found to exist beyond the time limit. These figures are shown for the central and local level in the following table.

TABLE 7: Recruited/employed through SSAs in 2018 within and outside the time limit set by law in the central and local level

Special service agreements	Total	Within time limit	Beyond time limit
Central level	342	262	80
Local level	435	351	84
Total	777	613	164

9 Independent Oversight Body for Civil Service, Annual report for 2017, p. 52: <https://bit.ly/2ClxMdc>

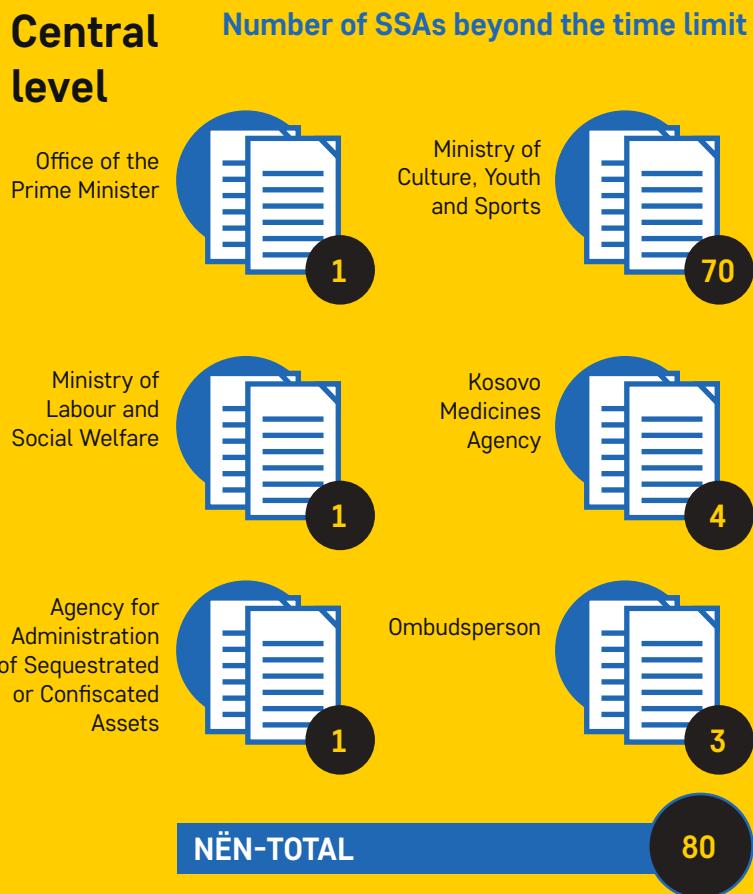
10 National Audit Office, audit report on the annual financial statements of the Minsitry of Culture, Youth and Sports for 2017, p. 17: <https://bit.ly/2UHB80Y>

11 National Audit Office, audit report on the annual financial statements of the Minsitry of Labour and Social Welfare for 2017, p. 15: <https://bit.ly/2Sl9Jk8>

The data shown in the table as above are those received from 76 institutions which have been willing to report and does not represent the real situation since other 56 institutions have not responded. However, the table below shows the number of SSAs by institution which has recruited-employed which have been found to exist beyond the time limit set by law.

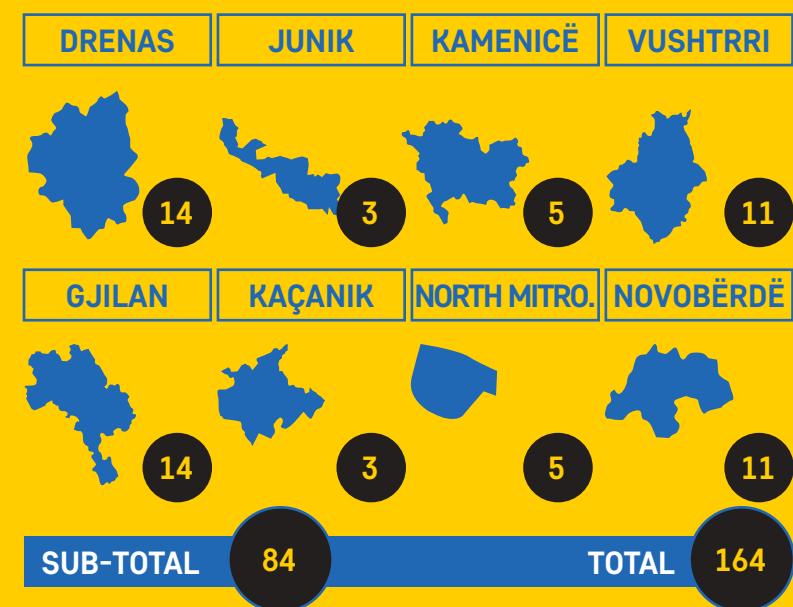
TABLE 8: Institutions of central and local level with SSAs for 2018 beyond the time limit

Central level



According to answers from 76 institutions (56 other institutions have not answered to the request), 613 have been found within the time limit whereas 164 other SSAs have been found to exist beyond the time limit.

Local level



Source: according to answers from requests for access to public information

Financial implication and remuneration for SSAs

Since SSAs are not renumerated through coefficients as civil servants with appointment acts, the financial implication to the state budget from SSAs concluded during 2016-2018 has been calculated through three scenarios. The figures for 2016 and 2017 are those provided by MF for both central and local level whereas the figures for 2018 are those provided by 76 institutions which have reported the number of SSAs during 2018. Moreover, also the figures provided by MF for 2016 and 2017 are not definitive because institutions could have declared less recruitment cases through SSAs since there is no code or sub-code in the state budget exclusively for SSAs. On the contrary, SSAs are registered under the general code called “contractual services” where numerous services are registered including translation services contracted by the institution¹².

The remuneration for a person recruited through SSA is not fixed for each institution and the remuneration is determined by each recruiting institution based on budget availability. However, it is already known that people recruited through SSAs normally receive a renumeration of 300 euro the lowest to 500 euro the highest which correspond to coefficients between 4.5 (302.42 euro monthly salary) and 8 (514.34 monthly salary).

Therefore, the financial implications of SSAs for 2016 and 2017 provided from MF and for 2018 provided through answers of 76 institutions have been calculated through three scenarios. The first scenario is calculated by using the lowest possible renumeration, that of 300 euro per month, the second scenario is calculated using a 400 euro renumeration per month whereas the third scenario is calculated using a 500 euro renumeration per month.

12 Meeting/interview with Xhevrat Zejnullahu, Deputy Director of Treasury and Shyqyri Hyseni, Director of Department for General Services and Finances, Ministry of Finance, date 12.02.2019.

TABLE 9: Financial implications of SSAs for 2016, 2017 and 2018 according to three scenarios**Scenario 1: year 2016 according to three renumerations**

SSAs	Renumeration	Financial implication in monthly basis	Financial implication in yearly basis
	300 €	411,600 €	4,939,200 €
1372	400 €	548,800 €	6,585,600 €
	500 €	686,000 €	8,232,000 €

Scenario 2: year 2017 according to three renumerations

SSAs	Renumeration	Financial implication in monthly basis	Financial implication in yearly basis
	300 €	871,800 €	10,461,600 €
2903	400 €	1,162,400 €	13,948,800 €
	500 €	1,453,000 €	17,436,000 €

Scenario 3: year 2018 according to three renumerations

SSAs	Renumeration	Financial implication in monthly basis	Financial implication in yearly basis
	300 €	233,100 €	2,797,200 €
777¹³	400 €	310,800 €	3,729,600 €
	500 €	388,500 €	4,662,000 €

13 Figures should be higher since 56 other institutions have not responded to the request of D+ for access to public information.

According to the calculations shown in the tables above, it becomes clear that between 5 to 8.2 million euro have been spent during 2016, between 10.5 and 17.4 million euro have been spent during 2017 and between 2.8 and 4.6 million euro have been spent during 2018 with SSAs. Moreover, if we add up the fact that most SSAs have been concluded not for the reason what they are supposed to and that a considerable number of them are beyond the time limit as required by law, it comes out that a large amount of budget has been spent from the state budget unreasonably.

ACTING POSITIONS (APS)

According to the Law on civil service, in case a civil servant position becomes vacant, the acting civil servant can not be appointed in that vacant position to act for a period no longer than three months. Normally acting positions are common in managerial positions, for instance: a director of department or directorate can be appointed as acting in a senior management position (General Secretary in a ministry or General Director in an agency), or a manager of a division (or of a sector in an agency) can be appointed as acting in the position of a director of a department in a ministry or directorate in an agency, etc.

In this regard, institutions of both central and local level usually have numerous positions with acting civil servants and either choose to keep the same people acting for longer than three months or rotate it among civil servants by three months each. This is against the Law on civil service because by keeping acting civil servants for longer than three months, institutions deny the right to apply for that position either internally or externally. In this way, institutions choose to keep these positions vacant or covered by acting civil servants for longer periods against the law. According to the report on the state of civil service for 2017, most of the decisions related to appointments of civil servants in acting positions have resulted to be against the Law on civil service¹⁴.

On the other side, according to the report for 2017 of the Independent Oversight Body for Civil Service, numerous irregularities have been found with acting positions. For instance, in a number of cases the position covered with acting civil servant has been exercised for a longer period with the purpose of achieving the working experience criterion in order to be able to apply for that specific position. Moreover, in a number of cases the acting civil servant has been appointed from another unit and not from the unit where the position has been vacant and also cases when acting civil servants have been appointed to positions of professional and technic-administrative categories against the law.¹⁵

Duration of APs

The reports referenced above do not contain data related to the number of APs according to institutions including the number of APs beyond the time limit. In order to have access to this data, D+ in the requests for access to public information has asked also about the number of APs in institutions of central and local level. In 132 requests to public information submitted, the question related to APs has been framed as: *what is the number of APs in your institution and what is their actual duration?* The number of answers to this question has been the same as the number of answers related to SSAs, 76 answers out of 132 requests.

According to answers from 76 institutions, a number of 215 cases of APs have been identified where 171 belong to central level and 44 to the local level. The following tables show the distribution of these figures in the central and local level by classifying them according to their duration.

14 Ministry of Public Administration (MPA), Department for Civil Service Administration, report on the state of civil service for 2017, published in May 2018, p.10: <https://bit.ly/2KBnUPd>

15 Independent Oversight Body for Civil Service, Annual report for 2017, p. 52: <https://bit.ly/2ClxMdc>

TABLE 10: Institutions of central level with APs within and beyond the time limit

Institution	Within time limit	Beyond time limit
Office of the Prime Minister		2
Ministry of Local Government Administration	3	2
Ministry of Agriculture, Forestry and Rural Develop.	1	3
Ministry of Diaspora and Strategic Investments	1	2
Ministry of Justice	3	
Ministry of Trade and Industry		11
Ministry of European Integration		3
Ministry of Internal Affairs	3	7
Ministry of Education, Science and Technology		4
Ministry for Return and Communities		2
Civil Registration Agency	6	5
Agency for Forensics		1
Agency for Emergency Management		6
Kosovo Police	11	4
Kosovo Police Inspectorate		
Ministry of Environment and Spatial Planning		7
Kosovo Correction Service	1	7
Ministry of Finance	3	
Ministry for Kosovo Security Force	3	
Ministry of Infrastructure	9	9
Ministry of Culture, Youth and Sports	5	1
Ministry of Labour and Social Welfare	1	2

Kosovo Employment Agency	2	3
Academy for Public Safety	1	1
Ministry for Foreign Affairs	2	1
Kosovo Medicines Agency	2	2
Ministry for Economic Development	4	
Ministry for Regional Development	2	1
Agency for Gender Equality		1
Kosovo Security Council Secretariat		1
Air Navigation Services Agency	2	
Kosovo Privatisation Agency		7
Academy of Justice		1
Kosovo Competition Authority	4	
Constitutional Court	1	
Council for Cultural Heritage	1	
Regulatory Commission for Public Procurement	1	
Procurement Review Body	1	
Elections Complaints and Appeals Panel	2	
Total	75	96

Source: according to answers from requests for access to public information

According to the table above, **39 institutions** in the central level have been identified as ones with APs and the number of APs beyond the time limit is higher **96** than those APs within the time limit of three months **75**.

TABLE 11: Institutions in the local level with APs within and beyond the time limit

Institution	Within time limit	Beyond time limit
Municipality of Drenas	2	3
Municipality of Istog	1	
Municipality of Junik		1
Municipality of Kamenica	1	2
Municipality of Shtime	1	
Municipality of Vushtrri	1	
Municipality of Ferizaj		2
Municipality of Gjilan	1	1
Municipality of Graqanicë		
Municipality of Hani i Elezit	1	1
Municipality of Kaçanik		2
Municipality of Mitrovica North		1
Municipality of Mitrovica	7	2
Municipality of Peja		3
University of Ferizaj		1
University of Prizren		3
Basic court in Gjilan		3
Total	18	26

Source: according to answers from requests for access to public information

According to the data shown in the table above based on the answers of institutions, the number of APs in the local level beyond the time limit is higher (26) than APs within the time limit (18). However, as also pointed out earlier in this report, also the number of APs either within or beyond the time limit is believed to be much higher but this is difficult to be proved since other 56 institutions have not responded to the request for access to public information.

TABLE 12: Number of institutions in the central and local level with APs within and beyond the time limit

Year 2018	Within time limit	Beyond time limit	Total
Central level	75	96	171
Local level	18	26	44



According to the data shown in the table above based on the answers of institutions, the number of APs in the local level beyond the time limit is higher **26** than APs within the time limit **18**.

THE SOLUTION PROPOSED BY THE LAW ON PUBLIC OFFICIALS

The Law on public officials drafted by the Ministry of Public Administration (MPA) has been approved by the Assembly of Kosovo on the 2nd of February 2019¹⁶. This law abolishes the Law on civil service and includes the two elements which originally come from the Law on civil service: the SSAs and APs¹⁷. The law has been published in the official gazette on the 11th of March 2019 while finishing this report and is expected to enter into force six months after it was published in the official gazette¹⁸.

Regulation of SSAs by the Law on public officials

According to this law, the SSAs concluded according to the Law on civil service and before this law enters into force, will be valid pursuant to the duration specified in the contract. After this period, SSAs will be concluded according to the Law on public procurement¹⁹. However, whereas the Law on civil service has defined a fixed-term of six months for the validity of SSAs, the Law on public officials does not define the duration of SSAs and the issue as such is left to be regulated under the Law on public procurement. According to the Law on civil service which defines a six month period for SSAs and Law on public officials which recognizes the validity of SSAs even after its entry into force until they expire according to the contract, it comes out that SSAs can be concluded until the mid-September 2019. Moreover, given that SSAs have duration of six months according to the law, it comes out that SSAs concluded until mid-September 2019 will be valid until mid-March 2020.

However, pursuant to the legislation on public procurement, it can be said that a number of elements related to SSAs are better regulated in comparison to the present regulation and practice and this can be summarized in a number of points:

- Given that SSAs today are very rarely published and concluded through the simplified recruitment procedures, the SSAs to be concluded according to the Law on public procurement will have to be public;
- Given that job descriptions of SSAs today are not known (since they are not public), the future SSAs will have to publish the job descriptions and the requirements for the specific positions. Their publicity will enable civil society organisations to assess whether the job description is for specific work (which can not be covered by existent civil service positions) or it is for a career civil servant position planned through the human resource offices;

16 Transcript from the plenary session of the Assembly of Kosovo, 02.02.2019: <https://bit.ly/2tl25Mg>

17 Meeting/interview with Naser Shamolli, Director of Legal Department at Ministry of Public Administration (MPA), date:12.02.2019

18 Law no. 06/L-114 on public officials: <https://bit.ly/1D2CvaW>

19 Law no. 06/L-114 on public officials, Article 84.

- Given that payment in monthly basis for a SSA is not transparent (unless SSAs are published), the payment for each SSA in the future will be published;
- Given that most SSAs today are concluded without being published, there is no competition among people to apply for. However, this is expected to be changed and competition to be involved after SSAs become public;
- Given that duration of SSAs is not transparent today since application to is not public, the SSAs to be concluded in the future through the Law on public procurement will be transparent in the duration aspect as well;
- Given that the appeal procedure is not possible today also due to the lack of transparency, the right and appeal procedure will be possible in the future pursuant to the Law on public procurement and that to the Procurement Review Body (PRB);

These are all good elements which can be mentioned at this stage based on the rules and procedures pursuant to the Law on public procurement. The SSA to be concluded though the Law on public procurement is expected at least to be public and their publicity will enable civil society organisations to monitor and report on the actual situation. However, the law is not the complete solution and especially if public institutions will strive to misuse them and consequently utilise SSAs for employment purposes as is the case with most SSAs today. Moreover, the undefined duration of SSAs according to the Law on public officials can become problematic because the public institutions can keep the individuals engaged through SSAs for longer periods. The Law on public procurement enables a contract to last until three years. Moreover, the present SSAs have a payment usually from 300 hundred euro the lowest to 500 euro the highest which correspond to coefficients 4 up to 8 whereas the value of a SAA contract (or payment for the SAA) in the future can be much higher than it is today.

Regulation of APs by the Law on public officials

In contrast to the Law on civil service which defines the replacement in civil service in case a position is left vacant for a period no longer than three months²⁰, the Law on public officials includes this element under the employment relationship in civil service and further details to that are expected to be defined by a sub-legal act approved by the Government. According to the Law on public officials, “a regular job position in the civil service may be filled in case there is a need for replacement or in case of temporary absence of a civil servant depending on the case for a period no longer than twelve (12) months”²¹. The regulation in this law which is new compared to the Law on civil service as long as the replacement is concerned relates to who is entitled to replace or be as acting position for three months. Whereas according to the Law on civil service the replacement or acting is done by another civil servant in the institution as such, the replacement of the civil servant according to the Law on public officials is to be done through new recruitment and the application procedure is to be conducted by the Unit on Human Resources in accordance with the rules defined for technical and administrative/supportive staff.

However, the element of replacement as above is at least not clear until the sub-legal act is drafted and approved by the Government because it is confusing how a career civil servant position with act of appointment which could be of professional or managerial category can be replaced through recruitment according to the rules and procedures for the category of technical and administrative/support staff. Moreover, according to the Law on public officials, the working relationship between the institution and the civil servant of the technical and administrative category is regulated by the labour law²². As far as duration of replacement is concerned in cases of vacant positions in civil service when one has to serve as acting in the other position, the Law on public officials defines a replacement period for no longer than one year. The one year duration is positive since it eliminates the problems that may come from the maternity leave (6 + 3 + 3), medical leave and other temporary absences of civil servants.

20 Article 30, point 4.

21 Law no. 06/L-114 on public officials, Article 32, point 4.

22 Law no. 06/L-114 on Public Officials, Article 79, point 2.

CONCLUSIONS AND RECOMMENDATIONS

The main conclusion of the report is about the fact that SSAs as fixed-term appointments and contracts are used mainly for employment purposes and not for the specific aim according to the law. Utilisation of SSAs for employment purposes is a violation of the law since it against the Law on civil service. Even though this report provides a set of real figures on the number of SSAs and APs in the public institutions, provision of complete data and information related to these two elements remains a challenge. For instance, due to the lack of data, it is impossible to verify whih SSAs are concluded for career civil service positions, what payment they have, what is their duration, etc. As has been pointed out also above, 56 out of 132 institutions have not responded to the request for access to public information forward by D+ according to the Law on access to public information.

Also, the fact that a budget organisation has not reported any SSAs for its own organisation does not necessarily mean that the institution does not have recruited people through SSAs. The recruitment through SSAs has become a problem in civil service because career civil service positions are filled by SSAs. Based on these conclusions, a number of recommendations can be given:



56 out of **132** institutions have not responded to the request for access to public information forward by D+ according to the Law on access to public information.

Recommendations

For Office of the Prime Minister:

- Prime Minister should take a decision which forbids the utilisation of SSAs for employment purposes in the public administration;
- Prime Minister through the same decision should ask from actual SSAs to terminate their contracts according to their validation and require from institutions not to shift the actual SSAs into acts of appointments;
- Prime Minister should also require through the same decision to create a separate budgetary code which is specific to SSAs in the send of the Law on public officials;
- Prime Minister should also requires through the same decision from ministries to report on the implementation of that decision;

For Independent Oversight Body for Civil Service:

- Independent Oversight Body for Civil Service should oversight according to its mandate all institutions which have recruited people through SSAs through monitoring of personnel files and not according to samples only;

For National Audit Office:

- National Audit Office should more often conduct performance audits on SSAs and this auditing should include a larger sample of public institutions;

For the Ministry of Finance:

- Ministry of Finance should report on the actual situation with SSAs each three months and not in annual basis only;
- Ministry of Finance should create a single and unique budgetary code for SSAs;

For the Ministry of Public Administration:

- Ministry of Public Administration should prepare an administrative circular for submission to all public institutions through which clarifies the conclusion of SSAs, especially in what cases a SAA can be concluded;

ANNEX 1: INSTITUTIONS WHICH HAVE NOT REPLIED TO THE REQUEST OF D+ FOR ACCESS TO PUBLIC INFORMATION

No.	Institutions
1	Assembly of Kosovo
2	Office of the President
3	Ministry of Education, Science and Technology
4	Ministry of European Integration
5	Ministry of Innovation and Entrepreneurship
6	Ministry of Environment and Spatial Planning
7	Ministry of Interior
8	Ministry of Trade and Industry
9	Ministry for Return and Communities
10	Ministry of Health
11	Agency for Agricultural Development
12	Kosovo Forestry Agency
13	Tax Administration of Kosovo
14	Central Procurement Agency
15	Treasury
16	Cadastral Agency

-
- 17** Forensics Agency
 - 18** Agency for Emergency Management
 - 19** Kosovo Police Inspectorate
 - 20** Kosovo Police
 - 21** Kosovo Statistical Agency
 - 22** Food and Veterinary Agency
 - 23** Accreditation Agency
 - 24** Agency for Property Comparison and Verification
 - 25** Anti-Corruption Agency
 - 26** Free Legal Aid Agency
 - 27** Civil Aviation Authority
 - 28** Railway Regulatory Authority
 - 29** Regulatory Authority for Electronic and Postal Communications
 - 30** National Bibliotheque 'Pjetër Bogdani'
 - 31** Court of Appeal
 - 32** Basic court in Prishtina
 - 33** Kosovo Prosecutorial Council
 - 34** Independent Media Commission
 - 35** Independent Commission on Mines and Minerals
 - 36** University of Gjakova 'Fehmi Agani'
 - 37** University of Prishtina
 - 38** Municipality of Deçan
-

-
- 39 Municipality of Fushe Kosova
 - 40 Municipality of Lipjan
 - 41 Municipality of Mamusha
 - 42 Municipality of Obiliq
 - 43 Municipality of Partesh
 - 44 Municipality of Suhareka
 - 45 Municipality of Graçanica
 - 46 Municipality of Klina
 - 47 Municipality of Kllokot
 - 48 Municipality of Leposaviç
 - 49 Municipality of Malisheva
 - 50 Municipality of Podujeva
 - 51 Municipality of Prishtina
 - 52 Municipality of Ranillug
 - 53 Municipality of Shtërpca
 - 54 Municipality of Viti
 - 55 Municipality of Zubin Potok
 - 56 Municipality of Zveçan
-

Katalogimi në botim – (CIP)
Biblioteka Kombëtare e Kosovës “Pjetër Bogdani”

342.98(496.51)”2016/2018”

Utilisation of special service agreements and acting positions
in civil service during 2016-2018 / prepared by Visar Rushiti. –
Prishtinë : Democracy Plus, 2019. – 37 f. ; 21 cm.

1.Rushiti, Visar

ISBN 978-9951-758-20-8



SUPPORTED BY:



Fondacioni i Kosovës për Shqëri të Hapur
Kosovo Foundation for Open Society
Kosovska Fondacija za Otvoreno Drustvo

ISBN 978-9951-758-20-8

A standard linear barcode representing the ISBN number 978-9951-758-20-8.