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AUDIT REPORT
ON
SPECIAL SERVICE AGREEMENTS AND EMPLOYMENT
CONTRACTS FOR SPECIFIC TASKS

Non-Statutory Audit

Prishtina, November 2017

The Auditor General of the Republic of Kosovo is the highest institution of economic and financial control which, according to the Constitution and domestic laws, enjoys functional, financial and operational independence.

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The reports produced by the National Audit Office directly promote accountability as they provide a base for holding managers' of individual budget organisations to account. We are thus building confidence in the spending of public funds and playing an active role in securing taxpayers' and other stakeholders' interests in enhancing public accountability.

Performance audits undertaken by the National Audit Office are independent, objective and reliable reviews that assess whether government actions, systems, operations, programs, activities or organizations operate in accordance with the principles of economy¹, efficiency² and effectiveness³ and whether there is room for improvement.

The Auditor General has decided on this Report "Special Service Agreements and Employment Contracts for Specific Tasks" in consultation with Assistant Auditor General Vlora Mehmeti, who supervised the audit.

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¹ Economy - Principle of economy means minimising the cost of resources. The resources used must be available in a timely manner, in the right quantity and quality and at the best price possible

² Efficiency - The principle of efficiency means getting the most out of the available resources. It has to do with the link between the resources involved and the outcome given in terms of quantity, quality and time.

³ Effectiveness - The principle of effectiveness implies achievement of predetermined objectives and achievement of expected results.

TABLE OF CONTENT

Executive Summary.....	5
1 Introduction.....	8
1.1 Audit Problem.....	8
1.2 Audit Objective.....	9
1.3 Audit Criteria.....	9
1.4 Audit Scope and Methodology.....	10
2 Audit results.....	13
2.1 Prerequisites required for the functioning of the SSA/ECST.....	13
2.2 The monitoring system of the SSA by MPA.....	14
3 Management of staff under SSA/ECST by budget organizations and results achieved	16
3.1 Needs assessment and planning.....	16
3.1.1 The trend of engaging officials under SSA/ECST.....	18
3.2 Implementation of Legal Requirements.....	22
3.2.1 Applying simplified recruitment procedures.....	22
3.2.2 Engagement under SSA for specific tasks or duties.....	23
3.2.3 Exceeding the legal deadlines.....	24
3.2.4 Applying Personal income tax and pension contribution.....	25
3.3 Reporting and monitoring of services provided by officials engaged with SSA/ECST.....	27
4 Conclusions.....	29
5 Recommendations.....	30

List of Abbreviations

AFS	Annual Financial Statements
BO	Budget Organisation
ECPT	Employment Contract for Specific Tasks
HR	Human Resources
KAI	Kosovo Agricultural Institute
LCS	Law on Civil Servants
LOR	Law on Obligational Relationship
LL	Law on Labour
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MCYS	Ministry of Culture, Youth and Sports
MESP	Ministry of Environment and Spatial Planning
MoI	Ministry of Infrastructure
MPA	Ministry of Public Administration
NAO	National Audit Office
NMSP	Natural Monuments of Special Importance
OE	Economic Operator
SSA	Special Service Agreements

Executive Summary

An efficient and effective public service system helps state institutions to provide quality public services to citizens and businesses. Taking into account that public spending should be based on accountability, effectiveness and transparency principles, the National Audit Office carried out an compliance and performance audit related to engagement of employees under a Special Service Agreement/Contract for Specific Tasks.

Engaging employees under agreements with agreements/contracts in 2016 marked an increasing trend in most Budget Organizations compared with 2015, and thus increased their financing costs, so based on this, the National Audit Office was motivated to cover this audit.

In order to carry out the work more effectively and meet institutional objectives and demands of the citizens, in addition to the number of allowed employees, Public administration bodies may also engage other officers under specific agreements / contracts for specific duties and tasks. Officers for specific tasks and duties should be engaged based on proper planning of needs and monitoring of results. During the recruitment of officers for the implementation of selected projects, they are required to comply with legal requirements to ensure that the most meritorious candidates are selected. Electronic and written media as well as audit reports published by the National Audit Office have raised concerns when it comes to increasing trend of such agreements and failing to comply with legal requirements.

The audit objective was to assess whether the competent bodies within the Ministry of Public Administration have created prerequisites to allow Budget Organizations to have proper management of Special Service Agreements/Contract for Specific Tasks. We have assessed whether Budget Organizations have previously identified the need for engaging experts and whether they have installed oversight mechanisms. Further on, if conclusion of these Special Service Agreements/Contract for Specific Tasks are in compliance with legal requirements.

The subject of the audit are the central and local level institutions, namely: Ministry of Public Administration, Ministry of Culture, Youth and Sports, Ministry of Environment and Spatial Planning, Ministry of Agriculture, Forestry and Rural Development and Ministry of Infrastructure, including Municipalities: Ferizaj, Peja, Gjilan, Prizren, Suhareka, Prishtina. The audit involves the management of agreements/contracts and the related risks for the period 2015-2016.

Through this audit, we aim to promote transparency and enhance accountability to the responsible authorities regarding the management of Special Service Agreements/ Contracts for Specific Tasks and provide recommendations for improvement.

Overall Conclusions

The Ministry of Public Administration did not draft secondary legislation/procedures for this type of engagement through whereby engagement procedures would be defined more thoroughly. In the absence of these procedures, Budget Organizations (hereinafter referred to as BOs) have concluded special service agreements without any single criteria or procedures ensuring that they are managed in line with the principle of transparency, equity and competition. Further on, the Ministry of Public Administration did not yet set up a clear system of monitoring and reporting for BOs, which would assist in assessing performance and results achieved for this type of engagement.

The audited Ministries and Municipalities engaged employees under a Special Service Agreement/Contract for Specific Tasks without proper planning and formal monitoring of their performance. Reporting for staff involved under SSA/CST was not complete and accurate. The engagement of employees under the agreement/contract in 2016 increased compared with 2015, thus increasing the financing costs for these agreements. €3,903,597 were spent by the audited institutions for this type of agreement for 2015/2016. Compared with 2015, spending on this type of engagement in 2016 at the central level increased by 55%, while at the local level increased by 76%.

Furthermore, engagement through agreements in most cases has not been done in compliance with legal requirements. Most of those engaged under agreements covered regular positions and services/works that had to be contracted out through procurement procedures rather than for specific jobs or tasks. The simplified recruitment procedures have not been applied at all or properly, the legal deadlines foreseen for the engagement period have been exceeded in almost all audited cases. Further on, personal income tax and pension contribution have not been applied for most of the agreements.

The Ministries did not install reporting and monitoring mechanisms through which the results would be documented and serve as a basis for decision-making. The audited institutions have partially reported on engaging officials under Agreements/employment contracts for specific tasks. In cases where there were reports, they did not provide a complete picture of the performance and the activities performed. In absence of documentation of specific performance reports, we could not assess whether the ministries/municipalities have been able to improve institutional performance by engaging this staff.

Key Recommendations

Our recommendations are given to the responsible institutions that are divided by field.

We recommend the Ministry of Public Administration to:

- Ensure that it has taken the required actions to draft secondary legislation in the field of civil service in Kosovo that regulates the procedures of engaging staff under Special Service Agreement;
- Draft monitoring plans and reports that would include organizations applying these agreements in order to produce effective results during decision-making; and
- In cooperation with the Ministry of Finance to review cases where Organisations have engaged staff with agreements for regular positions. Depending on the need for regular staff to review them and where it is required to find a solution within the legal framework.

We recommend the Responsible Ministers and Mayors to:

- Ensure that they have identified the needs for engaging employees with this type of agreement, carry out assessment and planning for engaging employees by agreement at the beginning of each year and their inclusion in the annual plan;
- Ensure that the engagement of officials under a Special Services Agreement/Employment contract for specific tasks is only done in specific cases when a particular project or work cannot be carried out with the current staff within the institution, instead an expert in a specific field is required;
- Ensure full and accurate reporting for staff engaged under SSA/ECST;
- Engagement under agreement or contract for specific tasks is done in line with the legal requirements to ensure that the engagements are made through a competitive and transparent process, the engagement period is done within deadlines foreseen by law and apply the source withholding of Personal Income Tax and Pension Contribution;
- Ensure that they have put in place a reporting and monitoring mechanism for those engaged under a specific service agreement/contract for specific tasks within the organization, use key performance indicators to reflect the outcome of the activities and services provided; and
- Ensure that required actions for executing the hygiene, security and similar maintenance services have been taken to contract them out through public procurement procedures.

Response of the parties involved in audit

The Ministry of Environment and Spatial Planning, the Ministry of Public Administration, the Ministry of Culture, Youth and Sports, the Ministry of Agriculture, Forestry and Rural Development and the Municipality of Prizren agreed with the audit findings and recommendations. We did not receive any response from: Ministry of Infrastructure, Municipality of Prishtina, Municipality of Ferizaj, Municipality of Gjilan, Municipality of Peja and Municipality of Suhareka. We encourage the institutions involved in this audit to make every effort to address the recommendations given.

1 Introduction

Good Human Resource Management (hereinafter: HR) in the public sector has a particular impact on creating an effective public administration and good governance in the public service.

HR Management is a process that is related to the entire organization, i.e. it is of particular importance to an organization as its effect is felt in any of its links, so organizational performance can be influenced by HR management practices.

In order to carry out their functions in the interest of citizens and the state, Public Administration Bodies in addition to the allowed number of employees, may engage experts from different fields and enter into specific/agreements/contracts.

The purpose of entering into Special Services Agreements (hereinafter: SSA) and the Employment Contracts for Specific Tasks (hereinafter: ECST) is to engage other persons for temporary tasks which cannot be carried out by regular employees. This includes the work of certain experts, occasional tasks requiring special technical knowledge, work in providing educational and training services, etc.

This report examines how Public Institutions in Kosovo manage the SSA/ECST as well as the related risks and therefore it is organized in two parts:

- Procedures and prerequisites for regulating the SSA/ECST and the oversight system, and
- Managing staff with SSA/ECST from budget organizations and outcomes achieved.

The National Audit Office decided to carry out this audit in order to hold responsible persons into account for how public money is used and reported, while safeguarding the interests of citizens.

1.1 Audit Problem

Even by all Government's efforts in advancing the public service system, our financial audits performed on Budget Organizations indicate weaknesses in applying legal requirements and procedures in staff management and their compensation. This is particularly evident in engaging employees under SSA/ECST without applying recruitment procedures and hiring them without any proper analysis on the need for specific services.

As problem indicators we have relied upon reports from the audit of the Financial Statements covering central and local level institutions carried out by the National Audit Office (hereinafter: NAO) including the report “Financial Performance and Services Provided in Municipalities for 2015”⁴. As irregularities identified in these reports are:

- The high number of employees under SSA/ECST without any proper analysis or planning for the necessity of their engagement and the assessment of the benefits from these engagements; and
- Shortcomings in adhering to procedural legal requirements such as: exceeding legal deadlines, more than six or four months, failure to apply withholding tax on personal income and pension contribution, non-documentation on using simplified recruitment procedures for selection of engaged persons as well as covering regular staff positions through SSA/ECST.

1029 such agreements were concluded at the local level for 2015. For these contracts, written and electronic media have discussed quite much.⁵

1.2 Audit Objective

The audit objective is to assess whether the Legal Department - LD and the Department of Civil Service Administration - DCSA within the Ministry of Public Administration have put in place regulatory prerequisites to enable Budget Organizations to properly manage the Special Services Agreement/Employment Contracts for Specific Tasks. We have assessed whether these organizations have previously identified the need for engaging experts and have installed oversight mechanisms. Further on, if the conclusion of these Special Services Agreements/Employment Contracts for Specific Tasks is in compliance with legal requirements.

To respond to the audit objective we have asked the following audit questions:

- Are the necessary prerequisites for SSA been created and is MPA’s oversight system operational, if not why and how can it be improved?
- Are SSA/ECST being managed in line with the legal framework of the respective Ministries/Municipalities and whether the appropriate outcomes from these engagement have been produced, and if not why, and how it can be improved?

1.3 Audit Criteria

The audit criteria used in this audit derive from local legislation, respectively Law on Labour and Law on Civil Service in Kosovo. The Labour Law foresees that, apart from open-ended period

⁴ Financial Performance and Services Provided in Municipalities 2015 - Comparative and Performance Indicators, - DISCUSSION PAPER

⁵ <http://koha.net/?id=4&l=133718>; <http://www.insajderi.com/miliona-euro-per-kontrata-mbi-veper/>

contracts, contracts may be concluded for a certain period of time, including contracts for specific tasks and duties (ECST).

We will assess the identification and fulfilment of the objectives of the institutions and/or the demands of the citizens, with the focus on reporting and monitoring of the officials engaged under SSA/ECST.

- MPA should create prerequisites (secondary legislation) to allow Budget Organisations to have proper management of the Special Services Agreement in place;
- The BOs should plan and evaluate the resources needed to achieve the organization's objectives
- The BOs through its internal mechanisms should ensure that all procedures for engaging staff under SSA/ECST and should monitor their work;
- The engagement of officials under SSA/ECST should be made for a certain period of time not more than six, or four months;
- The engagement of officials should be made only in those cases where specific relevant field expert work is required. Their engagement should be fully in compliance with the legislation in force⁶;
- The employer should apply withholding tax on personal income and pension contribution⁷ for all employees under SSA/ECST; and
- The BOs should establish a clear reporting system for the staff engaged under SSA/ECST in order to evaluate and justify the engagement of this staff.

1.4 Audit Scope and Methodology

The audit scope includes both central and local level institutions for 2015 and 2016.

At the central level we have included five (5) Ministries: the Ministry of Public Administration (MPA), the Ministry of Culture, Youth and Sports (MCYS), the Ministry of Environment Spatial Planning (MESP), the Ministry of Agriculture, Forestry and Rural Development (MAFRD) and the Ministry of Infrastructure (MoI).

At the local level we have included six (6) Municipalities: Ferizaj, Peja, Gjilan, Prizren, Suhareka and Prishtina.

The selection of institutions to be audited was done based on the largest number of officials engaged under the SSA/ECST for the audit period and the positions for which the officials were engaged.

⁶ Law no.03/L-149 on Civil Service of the Republic of Kosovo; Law No.03 / L-212 on Labour and Law no. 04/L-077, on Obligational Relationships.

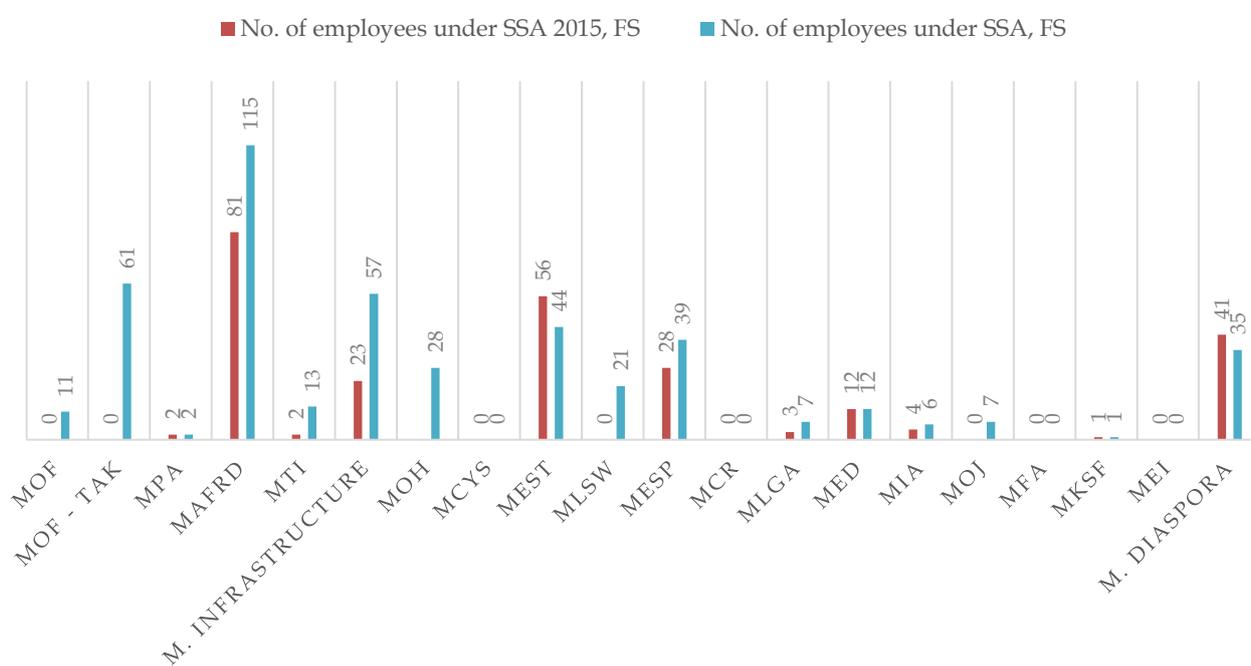
⁷ Law no.05/L-028 on Personal Income Tax

The MPA was selected due to the responsibility for the legal framework and not for the purpose of staff engaged in this Ministry.

As a basis of our analysis we used the Treasury/Suppliers Register for 2015-2016, NAO audit reports for the Annual Financial Statements (hereinafter: AFS) 2015 and the reporting of the BOs in the AFS for 2016 for the number of staff engaged under SSA/ECST.

In the graph below we have presented the number of engagements under SSA as reported in the Annual Financial Statements (AFS) between 2016/15 for Ministries and Municipalities. It is worth mentioning that in some cases when we presented the zero figure (0) in the following graphs for staff engaged under SSA is that these Budget Organizations have not reported the number of officials engaged under SSA in the AFS, so for illustration we have presented the data reported in the AFS by the BOs.

Graph 1. Number of employees under SSA for Ministries for 2015 and 2016



Graph 2. Number of Employees under SSA/ECST for Municipalities for 2015 and 2016

From the graphs above we can see that both ministries and municipalities have a rather downward trend and somewhere an increasing trend of staff engaged under SSA from 2015 to 2016. These trends served us when selecting individual samples for further testing.

In order to carry out the audit, we have used different methods to answer audit questions. Within this audit, we focused on:

- Analysing current legislation;
- Conducting interviews with responsible officials in relevant institutions;
- Assessing whether the institutions have previously carried out the identification and evaluation of the needs for engaging experts under SSA/ECST
- Analysing the SSA/ECST as well as the manner of payments made based on these agreements/contracts
- Analysing which sectors having the highest number under SSA/ECST
- Assessing how institutions monitor the processes of engagement of officials under SSA/ECST; and
- Assessing the extent to which the engagement of officials under SSA/ECST has impacted on improving the performance of the institutions and improving the quality of work in the relevant Ministries/Municipalities.

2 Audit results

Considering all developments towards a better management of human resources, setbacks are evident when it comes to the implementation of the SSA/ECST. Failure to assess needs for specific services or tasks, failure to plan and failure to apply legal requirements when entering into such agreements has not ensured the public administration that such engagements have improved the performance and quality of services for citizens.

This chapter presents the main audit findings related to the Ministry of Public Administration responsible for securing the legal basis and other public institutions at the central and local level selected for audit.

2.1 Prerequisites required for the functioning of the SSA/ECST

The engagement of experts from different fields is regulated by the Law on Civil Servants, Labour Law and the Law on Obligational Relationships. In order to regulate the engagement procedures under SSA more thoroughly, MPA should develop secondary legislation and procedures that would in detail regulate the manner of engaging under SSA.

The Ministry of Public Administration did not draft the procedures (secondary legislation) whereby the procedures of engaging officials under this type of agreement would be determined more thoroughly. In absence of these procedures, Budget Organizations have entered into special services agreements without any specific criteria or procedures which would ensure that their management was carried out while adhering to the principle of transparency, equality and competition.

The MPA provided written explanations to several Budget Organizations on how to engage employees under SSA. However, this way of providing explanations as much as it can help the process, cannot be a viable solution and does not provide consistency in the implementation of these agreements.

Determination of the conditions for entering into SSA is done according to the Law on Obligational Relationships (hereinafter: LOR), which implies public announcement by the Institution and the implementation of a simplified recruitment procedure. However, there is still no specific regulation that sets out the cases of these engagements, but it results from the nature of the services (purposes) that are carried out in line with the principles established by this law.

The rights and obligations established between the parties, compensation, responsibility, eventual disputes and other issues are managed and handled in line with the LOR. These tasks under special agreements do not have a pre-determined coefficient for work compensation but this is the result of direct negotiation between the parties upon receiving of applications based on the principles established by the LOR.

For all employees in the public sector, whose status is not regulated by the LCS, the Law on Labour (hereinafter: LL) applies. According to the LL⁸, for specific tasks and duties it is allowed to enter into a contract between the employer and the employee for a period no longer than 120 days within one year. When the employment relationship is established, the employer is obliged to announce a public vacancy. For the best implementation of these contracts, the Ministry of Labour and Social Welfare drafted the sample contracts, which can be found on the Ministry's website. The law in question does not foresee producing any other sub-legal act how these contracts should be handled.

2.2 The monitoring system of the SSA by MPA

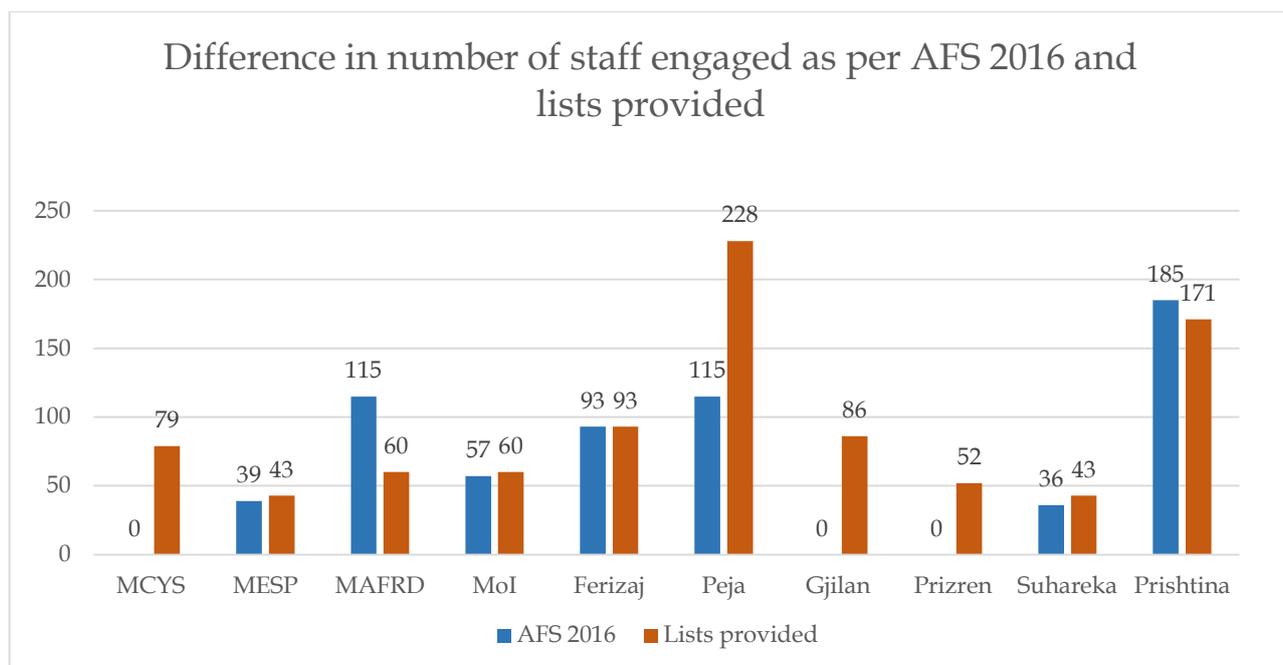
The monitoring should provide a systematic and periodic collection of information starting from the planning stage of the projects. This would enable that the results, processes and experiences are documented and used as a basis for decision making and as a process of learning. The purpose of the monitoring is to measure and evaluate the performance of the employees in relation to the works executed.

MPA did not yet establish a clear monitoring system of the staff engaged under SSA within the budget organizations, nor has it prepared monitoring reports. Based on an interview with the responsible officer within the MPA at the beginning of 2017, the MPA drafted a questionnaire sent to all central and local level institutions to collect data on number and positions of those engaged under SSA. After completing this data, the MPA will prepare a summary/information report for the Government and the Assembly.

The MPA initiative to provide data on the number and positions of those engaged under SSA is appreciated, however, this indicates the lack of general information in the public administration on how and for what are the employees hired under special services so far.

Data reporting for officials engaged under SSA/ECST from the ministries and municipalities that we have audited is not accurate and complete. This because Budget Organizations in their reporting in the AFS of 2016 have presented a number that does not match the number in the lists provided to us during this audit. Therefore, we consider that ministries and municipalities were not effective in reporting issues related to the SSA/ECST. These differences are presented in the graph below.

⁸ Law on Labour no. 03/L-212, Article 8 and Article 10, point 2.3

Graph 3. Differences between AFS and Lists of BOs

From the graph above we can see that MESP, MoI, Peja and Suhareka in the AFS have presented a lower number of those engaged in comparison to the lists provided. While the MAFRD and the Municipality of Prishtina in the AFS have presented a larger number of those engaged than the lists provided. MCYS, Gjilan and Prizren Municipality did not report at all on the AFS when it comes to the engagement of this staff, while the Municipality of Ferizaj is the only BOs that the same data reported in the AFS and has offered to us.

3 Management of staff under SSA/ECST by budget organizations and results achieved

3.1 Needs assessment and planning

Needs assessment is a systematic process for defining and addressing needs. The Need may be a desire to improve current performance or to amend a shortcoming.⁹ Needs assessment is part of the planning process that is often used to improve individuals, education, training, organizations or communities. It can be an effective tool to clarify problems and identify appropriate interventions or solutions.¹⁰

Needs assessments are effective only when they are focused on the end result and provide concrete evidence that can be used to determine what tools are needed to achieve the outcome to be more effective in achieving the desired results.¹¹

For 2015/2016, the Ministries/Municipalities, respectively the personnel units, did not assess the needs for the staff to be engaged under special services. HR units in the Ministry in the annual plan had only planned the regular positions to be manned.

Ministries in their budget requests for 2015 and 2016 requested an increase in number of positions for regular staff. According to the officials of these institutions due to the lack of approving the number required for the increase of regular staff by the Ministry of Finance, the ministries have engaged staff under SSA. However, in some ministries even though staff increased for a certain number, they had also engaged officials under SSA more than the required number.

The central level - Ministries

The MAFRD in 2015/2016 engaged 52 respectively 62 employees under SSA. Employees were engaged in the Departments as well as in its subordinate institutions, the Kosovo Agricultural Institute (KAI), the Agency for Agricultural Development (AAD) and the Kosovo Forestry Agency (KFA). MAFRD sent a request to the Ministry of Finance for the approval of 50 regular positions for 2015 and 98 for 2016. As these positions were not approved, the Ministry engaged the above mentioned number of employees through the agreement. Also, through a letter, it requested from other BOs to transfer any officer to MAFRD according to the possibilities and expression of their interest. This request was positively responded only by the MCYS, from which one officer has been transferred.

⁹ <http://www.adprima.com/needs.htm> Kizlik, B., "Needs Assessment Information", ADPRIMA, last access 16 October 2010

¹⁰ Fulgham, S. M. & Shaughnessy, M. (September–October 2008). Q & A with Ed Tech Leaders: Interview with Roger Kaufman. *Educational Technology*. pp. 49–52.

¹¹ Kaufman, Roger, Alicia M. Rojas, Hannah Mayer (1993). *Needs Assessment: A User's Guide*. Englewood Cliffs, New Jersey: Educational Technology Publications, Inc. p. 4.

MESP under the Decision of the Government of Kosovo¹² of 2009 has taken on board the protection of the Natural Monument of Special Importance (NMSP) "Gadime Cave". Since that year, the Ministry has consistently requested to increase the number of regular officers for managing this monument of nature. Because of the non-approval, MESP manned these positions by engaging officials under SAA. Out of the total nine (9) officials employed in this monument, eight (8) of them were engaged under SSA. In addition to the abovementioned engagements, MESP engaged officials under SAA also in other positions such as: legal, financial, procurement, etc., which are not related to a particular field of expertise but covered regular positions.

MoI, during budget planning for 2016, requested an increase in the number of regular officials for 30 positions. Although the required positions were manned with regular staff, the Ministry also engaged 60 other employees under SSA. Of all engaged officials under SSA, 18 of them had the Examiner/Questioner position¹³ while the rest of the staff members covered positions such as: Administrative Officer, Road Project Officer, Financial Officer, Policy Coordinator, Public Information Officer, Axis Weighing Officer etc.

MCYS drafted the HR annual plan for 2016, but did not foresee engaging staff under SSA. Despite some requests from the Director, the MCYS did not identify and assess the needs at the ministry level for engaging experts under SSA for 2016. The Director within MCYS made 14 requests for recruitment of employees under SSA during 2016. The staff engaged under SSA in MCYS for 2016 is 79 and mainly deployed in three departments: 18 employees in the Department of Culture, 47 employees in the Heritage Department and 14 employees in the MCYS administration. Employees were mainly engaged in positions for: tourism, legal, financial, archiving, sketching, museum archaeologists, archaeologists, cleaners, social assistants and consultants.

Local Level

For 2015/2016, Municipalities, i.e. personnel units did not identify and assess the needs in advance for staff to be engaged under specific services. Municipalities i.e. personnel units in annual plans did not include staff engagement under SSA/ECST. In the Municipality of Gjilan, Prizren and Suhareka, municipal departments by written request addressed to the Mayors for allowing the engagement of officials under SSA/ECST. After the deliberations, the Mayors have approved the requests and made a decision/ conclusion on engaging officials under SSA/ECST for a certain period of time.

Issues related to the management of officials engaged under SSA are presented in the chapters below.

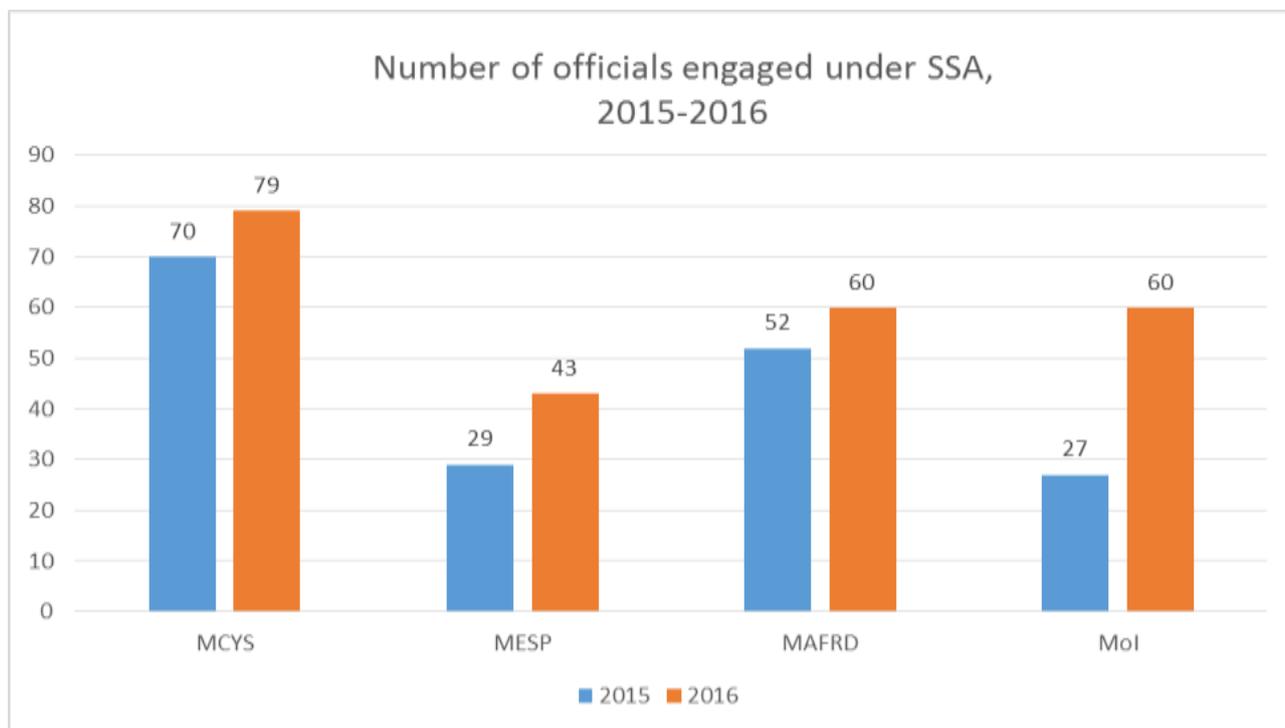
¹² Decision of the Government of Kosovo no.04/57 dated 13.03.2009

¹³ Based on the Law on Driving License (no.05-L-064) and the Administrative Instruction (AI no.08/16 Article 3, point 2.) the position of examiner/questioner should not be a civil servant since June 2016.

3.1.1 The trend of engaging officials under SSA/ECST

Audit analysis have shown that engaging employees under SSA/ECST has an increasing trend from 2015 to 2016, thus increasing the costs for financing these agreements. The trend of increasing the number of engagements under SSA is presented in the following graphs.

Graph no.4 Central Level - Ministries



From the graph above we see that MoI had the highest increasing trend of 55%, MESP 33%, MAFRD 14%, while the lowest was MCYS with 12%.

MCYS, although it had a lower trend compared with 2015, remains one of the ministries with the largest number of employees engaged under SSA. Engagements within this ministry covered regular positions in departments within the Ministry and subordinate institutions such as: Philharmonics, Museum, National Theatre, Shota Ensemble, Archaeological Institute etc.

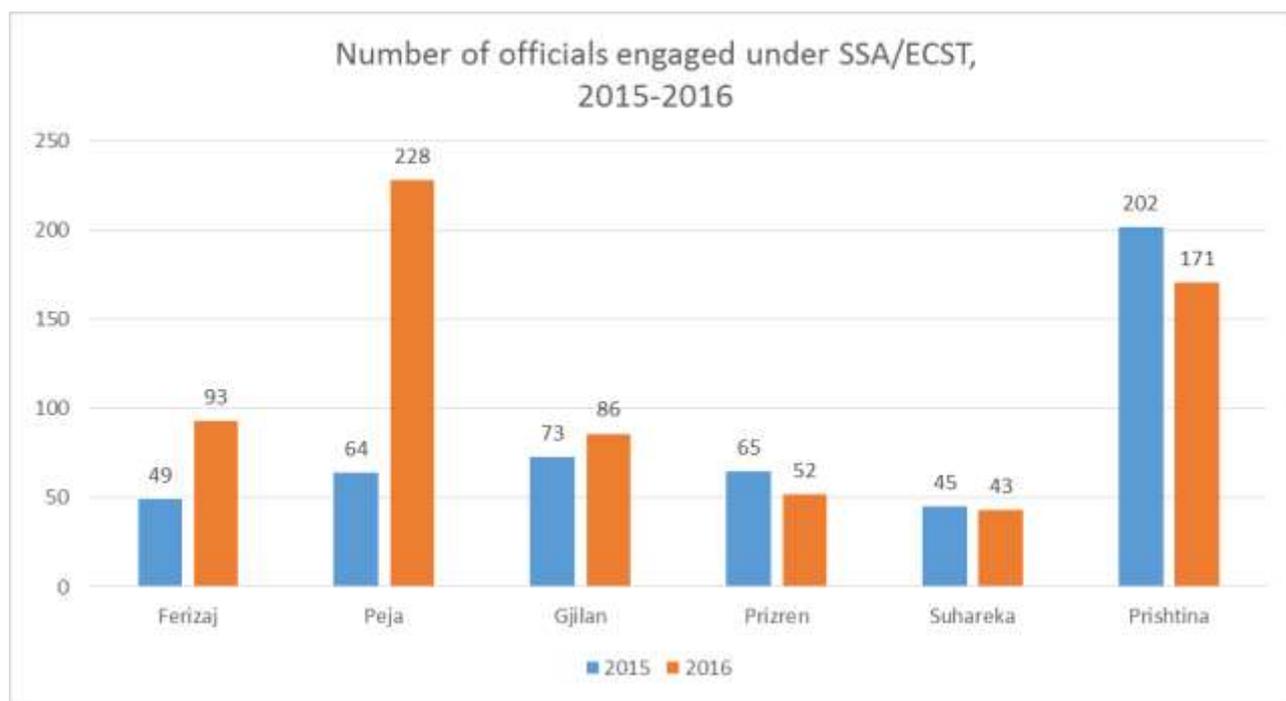
In MoI, with entry into force of the Law on Driver License¹⁴ in June 2016, has partly influenced the increasing trend of engaged officials. By this law, employees in the positions of Examiners do not have the status of civil servant, therefore the Ministry manned these positions with officials engaged under SSA. Therefore, the Department of Vehicles and Driver Licenses had a significant number of engaged officials of 18 officials or close to 30%. While the rest of the staff covered regular positions in most MoI departments.

¹⁴ Law on Driving License (no. 05-L-064) and Administrative Instruction (AI no.08/16 - for Examiner, Article 3. point 2)

In MESP, the engagement of officials under SSA was due to the lack of approval of the increase in number of regular staff as well as the ad hoc cases for regular positions which they cannot plan, such as: maternity leave; unpaid leave, suspension of officials etc.

According to MAFRD, due to non-approval to increase the number of regular staff, these positions have been manned with SSA. Officials are of different profiles to provide professional/administrative support to the departments within the Ministry and its subordinate institutions.

Graph No.5 - Local Government - Municipalities



From the above graph we noticed that the Municipality of Peja had the largest increasing trend of 257%, Ferizaj 90%, Gjilan 18%, while the declining trend was in municipalities, Prizren 25%, Prishtina 19% and Suhareka 5%.

The increase of the engagement within the Municipality of Peja, was affected by the payment of 162 employees for maintenance of hygiene and security of facilities in the Directorate of Education, Administration, Culture and Health and Social Welfare. These employees were contracted out through an economic operator, but the Municipality in December 2015 terminated the contract with the EO and continued to pay employees through SSA until the end of 2016 because the case was under court proceedings.

Prishtina Municipality despite the downward trend, remains one of the municipalities with the highest number of employees engaged under SSA. For two years, this municipality within the Department of Education through the SSAs hired 46 employees in the kitchen for preparing food and service in preschools. Further on, considerable number was engaged in various cultural activities, different bands for Prishtina liberation day, Diaspora Day, 28th of November, year-end

holidays etc., in duration of 1-3 days. Further on, the rest of the engagements were distributed to most of the municipal departments for carrying out tasks such as: software developer for e-kiosk, for registration of subsidies, PARATUS project developer for FMC, surveyor and property registrars, registrars of illegal constructions, registrars, professional associates etc.

In the municipality of Ferizaj, employees were engaged in almost all Departments and performed the tasks foreseen under regular positions. In the municipality of Gjilan, for two years 37 employees were engaged in the Department of Education in position of a Guard which should have been contracted through procurement procedures. The rest of the employees covered regular positions as well as in cases when the work-load increased in a given season.

In municipality of Suhareka, five (5) guards at the “Casablanca” camp in Shiroka have been engaged for two years after the withdrawal of Swiss and Austrian KFOR, because camp assets were donated to the Municipality. The guards were engaged by the Municipality until the settlement of the ownership of the camp (SOE “Damperi” Suhareka), the ownership of the factory has to be regulated between the Privatization Agency of Kosovo (PAK) and the Government of Kosovo. The rest of the employees mainly covered the regular job positions.

Due to the increase in the work-load at certain periods of the year, Municipality of Suhareka and Prizren engaged staff in Health / Physician positions, Fire-fighters and Forest Guard.

The Municipality of Prizren although having a declining trend, regular positions were manned in the different Departments for the two years, and 10 officials were engaged in the “Task Force on Implementation of the Law on Treatment of Constructions without permits” at the Department of Urbanism and Spatial Planning under a Decision approved by the Mayor.

In Table 1 and 2, we have presented the number of employees under SSA/ECST in the audited institutions for 2015 and 2016 in relation to the number of officials allowed by the Law on Budget.

Table no. 1 - Central level-Ministries

No.	Institution	Year	No. of official allowed under Law on Budget	No. of current officials	No. of officials under SSA	No. of officials under SSA against the number of officials allowed by Law on Budget (%)	SSA paid in 2015 and 2016, Total value (in €)
	a	b	c	d	e	f=e/c	g
1	MCYS	2015	654	624	70	10.7	249,313.00
		2016	674	640	79	11.7	373,808.00
2	MESP	2015	293	287	29	9.9	49,575.00
		2016	335	317	43	12.0	69,525.00
3	MAFRD	2015	323	308	52	16.1	206,526.00
		2016	354	347	60	16.9	247,632.00
4	Mol	2015	266	266	27	10.2	69,770.00
		2016	296	294	60	20.3	202,904.00
Total per two years							1,469,053.00

From the table we noticed that in the four audited ministries for 2015 and 2016, the number of engagements under SSA increased and the total value of payments for these two years amounted to €1,469,053. These ministries have increased their annual expenditures for SSA while the total expenditures of ministries during 2015 was €575,184 in 2016 expenditures were €893,869 or an increase of €318,685. Around 55% more budget have ministries spent on this category over the previous year. The average monthly salary for this staff in 2016 was around €307 or €3,693 per year.

By comparing the number of officials engaged under SSA in relation to the number of positions allowed by the Law on Budget 2016, we noticed that MoI had 20.3% officials engaged under SSA, MAFRD 16.9%, MESP 12.8% and MCYS 11.7%.

While in 2015 MAFRD had the largest percentage of 16.1%, MCYS 10.7%, MoI and MESP around 10%.

The purpose of engaging of officials under SSA within the Ministries was mainly to cover regular positions and not engage experts in a particular field, staff who should be engaged for a certain period of time and for a task that is not covered by regular positions.

Local Level - Table no.2

No.	Institution	Year	No. of officials allowed under Law on Budget	No. of officials under SSA	No. of officials under ECST	No. of officials under SSA against the number of officials allowed by Law on Budget (%)	No. of officials under ECST against the number of officials allowed by Law on Budget (%)	SSA paid in 2015 and 2016, Total value (in €)
	a	b	c	d	e	f=d/c	g=e/c	
1	Ferizaj	2015	2377	49	0	2.06	-	60,615.00
		2016	2387	93	0	3.90	-	159,139.00
2	Peja	2015	2225	64	0	2.88	-	75,168.00
		2016	2225	228	0	10.25	-	560,448.00
3	Gjilan	2015	2448	0	73	-	2.98	219,428.00
		2016	2448	12	74	0.49	3.02	235,652.00
4	Prizren	2015	3101	40	25	1.29	0.81	69,840.00
		2016	3101	28	24	0.90	0.77	83,086.00
5	Suhareka	2015	1309	26	19	1.99	1.45	44,975.00
		2016	1309	27	16	2.06	1.22	41,098.00
6	Prishtina	2015	4725	202	0	4.28	-	412,887.00
		2016	4725	171	0	3.62	-	472,208.00
Total per two years:								2,434,544.00

From the table we noticed that¹⁵, in six audited municipalities for 2015/2016 the engagement under SSA/ECST¹⁶ has in some cases declined and in some others increased. The budget spent for two years for the audited municipalities is €2,434,544. These municipalities increased their annual expenditures for SSA/ECST, whereas during 2015 the total expenditures in these municipalities was

¹⁵ The number of officials engaged under SSA/ECST is based on the lists provided by the audited entities

¹⁶ The Municipality of Prishtina, there is no data on the number of employees under SSA and ECST, but they all classify them as SSA, but in the tested samples we found that there are officials engaged under ECST.

€882,913, whilst in 2016 it was €1,551,631 or an increase of €668,718. Around 76% more budget has been spent by municipalities in 2016 for these agreements compared with 2015.

By comparing the number of officials engaged under SSA/ECST in relation to the number of positions allowed by the 2016 Budget Law, we noticed that the Municipality of Peja had over 10% officials engaged under SSA/ECST, Ferizaj around 4%, Prishtina 3.6%, Gjilan 3.5%, Suhareka 3.3% and Prizren 1.7%. While for 2015, the Municipality of Prishtina has the highest percentage of engaged officials with 4.3% in against the allowed number by budget, Suhareka 3.4%, Gjilan 3%, Peja around 3%, Prizren and Ferizaj 2.1%.

Within the municipalities, the purpose of engaging officials under SSA/ECST was mainly to cover regular positions, increase seasonal work-load, and fail to outsource services through public procurement for security and maintenance services.

3.2 Implementation of Legal Requirements

The fulfilment of the legal requirements by BOs for SSA/ECST, the establishment of the employment relationship in the central and local administration institutions within the Republic of Kosovo, is regulated by LCS and LL. Under these laws, the engagement of experts from different fields for a limited period of time is allowed. These appointments are made for a period of time shorter than six, or respectively four months.

In order to assess whether officials engaged under SSA/ECST at central and local level institutions for 2015 and 2016 has been made in line with the legal requirements, we have selected and tested a certain number of samples and the audit results are presented in the following subchapters.

3.2.1 Applying simplified recruitment procedures

Before concluding a contract with an individual, it is necessary for the Budget Organization to apply simplified recruitment procedures as required by the LOR. The application of simplified recruitment procedures would ensure the Organization that the principle of transparency, equality and competition is being considered. Further on, the application of these procedures would ensure the public administration that the most eligible candidate was selected.

Most of the Ministries we audited did not apply simplified recruitment procedures for engaging officials under SSA. A better situation was in MESP, which for the two years for the position "Tourist Guide" at the Natural Monuments of Special Importance (NMSI) "Gadime Cave" applied simplified recruitment procedures. From September 2016, MESP started applying simplified recruitment procedures for other positions for engagement under SSA. Further on, MAFRD for some officials engaged under SSA in 2016 applied simplified recruitment procedures.

Out of the six audited municipalities, only the municipalities of Suhareka and Prizren in all the tested samples applied simplified recruitment procedures. Further on, the municipality of Peja partially for some positions applied simplified recruitment procedures. For 2015/2016 the

municipalities of Ferizaj, Gjilan and Prishtina in none of the tested samples applied simplified recruitment procedures for engaging officials under SSA/ECST.

Failure to apply simplified recruitment procedures from public institutions resulted in non-compliance with the principle of transparency, equality and competition. Further on, it did not ensure that the most meritorious candidate was selected.

3.2.2 Engagement under SSA for specific tasks or duties

Employees should be engaged only in those cases where relevant field expert is required. However, both at the central and local levels, there were just few cases when experts from specific areas were engaged under SSA. Most of the cases were to cover regular positions. Further on, there were cases where for some works, contracts were concluded although they should have been contracted through the procedures arising from the Public Procurement Law.

Central level – Ministries

In MESP, one employee was engaged under SSA in the position of Integrated Hydrology Expert. While in MAFRD three officials within the Kosovo Agricultural Institute (KAI) were engaged in expert positions for microbiology and food technology as well as chemistry experts which by the Ministry were considered as experts of the respective field. While the rest of the staff members engaged in the audited ministries covered regular positions such as: Financial Officer, Support and Special Projects Officer, Tourist Guide in “Gadime Cave”, Officer for Support in Legal/Administrative Matters, Procurement Officer, Information Officer, Senior Training and Capacity Building Officer, Senior Vineyard Officer, Direct Payments Officer, Technical Inspector, Archiving Officer, assistant in the human resources sector, Examiner/Questioner, Traffic Engineers, Road Project Officer, Policy Coordination Officer, Officer for Measuring Axle Weights, Lawyer, Receptionist, different officials in the field of marketing, finance, culture, sports, cleaners, guards etc.

Local level

The Municipality of Prishtina engaged employees in different positions such as: Programmer - software developer for E-kiosk, for registration of subsidies, for PARATUS project for Family Medicine Centres, Expert of Monitoring, Digitalizing and Restructuring of Facilities. In the children cultural centre, a Choreographer was engaged as an expert in the relevant field. Further on, the municipality engaged different bands in daily or weekly timeframes for various cultural manifestations: for the day of liberation of Prishtina, Diaspora Day, 28th of November, holidays of the end year etc.

The Municipality of Prizren within the Department of Urbanism and Spatial Planning, under the decision approved by the Mayor, established a “Task Force on the Implementation of the Law on Treatment of Illegal Constructions” where 10 experts from the respective field were engaged. Further on, the Municipality of Suhareka engaged an expert on the information system for the unification of the street addresses “Aris”.

Other employees under SSA/ECST were engaged in different Municipal Departments and covered Regular positions such as financial, procurement, civil status, IT, personnel, market inspectors, capital projects supervisors, water supply maintenance officers, etc.

For services/works that should have been contracted out through the Public Procurement Law in several municipalities, these services were covered under SSA/ECST as:

- The Municipality of Peja after termination of the contract with EO in December 2015, under the decision of the Mayor, 162 existing employees for maintenance of hygiene and security of facilities within the Department of Education, Administration, Culture and Health and Social Welfare have been paid until the end of 2016 through special service agreements. Payments for these officials continue to be made in this form in 2017 because the case is under court proceedings
- The Municipality of Prishtina engaged 46 employees in the kitchen for preparing and servicing food for preschool institutions for two consecutive years
- The Municipality of Gjilan engaged 37 officials within the Department of Education in the position of a Guard of Facilities for two years.
- The Municipality of Suhareka for five years engaged five (5) guards at the “Casablanca” camp in Shiroka after the withdrawal of Swiss and Austrian KFOR, because camp assets were given to the municipality as donation. The guards were engaged by the Municipality until the ownership of the camp is resolved (SOE “Damperi” Suharekë).

Due to the increase of the workload in certain periods of the year, the Municipality of Gjilan, Suhareka and Prizren engaged staff in health sector/Physicians, Firefighters, and Forest Guards.

Covering regular positions with employees through agreement and failure to develop procurement procedures for services that can be provided by economic operators, other than indicating failure to comply with legal requirements, also indicates inadequate management of human resources.

3.2.3 Exceeding the legal deadlines

Engaging employees for specific tasks and duties under the laws in force is foreseen to be made for a certain period of time, not more than six, or four months respectively. This is because for the long-term tasks or duties, the laws have foreseen the employment of regular employees and which are subject to another legal arrangement.

The audit revealed that in most of the samples tested both at the central and local level, public institutions exceeded the legal deadlines for SSA/ECST.

Exceeding of legal deadlines were presented in tabular form for central and local level.

Table 3. Central level – Ministries

Years	MCYS	MESP	MAFRD	MoI
2015	22	8	14	6
2016	23	10	14	10

The majority of staff engaged under SSA have exceeded legal deadlines over six (6) months. In some institutions, officials were engaged since 2010-2012. For 2015 and 2016 the vast majority of this staff have been engaged for 24 months. The signing of contracts has been made in different times and differs from one ministry to another. Contracts were mainly signed for one, three to six months (1, 3 to 6) and were repeated up to 12 times within a year.

It is worth mentioning that in three Ministries: MESP, MAFRD, and MoI, most of the employees had the agreements extended in 2017. While MCYS, in December 2016, issued a decision stating that any further engagement under SSA from January 2017 will be made based on needs assessment, by public competition and simplified recruitment procedures.

Table 4. Local level- Municipalities

Years	Ferizaj	Peja	Gjilan	Prizren	Suhareka	Prishtina
2015	8	4	10	4	5	7
2016	15	12	12	2	2	23

In all audited municipalities we have found exceeding of legal deadlines over six, respectively four months for the engagement of officials under SSA/ECST. A better situation was in the Municipality of Suhareka and Prizren where exceeding of legal deadlines were found only in two cases from the tested samples. The agreements were signed in different durations and differs from one municipality to another. Agreements were mainly signed in the period of one, three to six months (1, 3 to 6) and were repeated several times within a year.

3.2.4 Applying Personal income tax and pension contribution

The Law on Personal Income Tax requires from each employer withholds the tax on the taxable salaries paid to his employees, including payments for professional, technical, management, financial, payment for service contracts, payments for performances of actors, musicians, athletes, addicted agents etc. during each period of the payroll for which their income is paid“.

An overview of the personal income tax and pension contributions is presented in Tables 5 and 6.

Table 5. Central level - Ministries

Years	MCYS	MESP	MAFRD	MoI
2015	Yes	No	No	No
2016	Yes	No	Partially	Partially

Payment of Personal Income and Pension Contributions at the central level was partly implemented by ministries for officials engaged under SSA. MCYS paid personal income tax and pension contribution for two years. While MoI started to pay in February 2016, and MAFRD in April 2016. In addition to the abovementioned ministries, MESP did not apply withholding tax on personal income and pension contribution for two years.

Table 6. Local level- Municipalities

Years	Ferizaj	Peja	Gjilan	Prizren	Suhareka	Prishtina
2015	No	Yes	No	Yes	No	Yes
2016	No	Yes	No	Yes	No	Yes

Payments for Personal Income Tax and Pension Contributions were partially implemented by the municipalities. The Municipality of Peja started to pay withholding tax and pension contribution in line with the deadlines set by law. Municipality of Prishtina, paid withholding tax and pension contribution for 2015 with two months of delay, while the Municipality of Prizren did not make any payments in 2015 but these payments were made with delay in 2016 with penalties. Unlike the abovementioned municipalities, the Municipalities of Ferizaj, Gjilan and Suhareka did not make such payments to officials engaged with SSA/ECST for two years.

Failure to adhere to the legal deadlines by the Ministries/Municipalities for the payment of Personal Income Tax and pension contributions for officials engaged under SSA/ECST, except for indicating non-compliance with the legal requirements had an impact on both the budget and the officials engaged.

3.3 Reporting and monitoring of services provided by officials engaged with SSA/ECST

The monitoring should provide a systematic and periodic collection of information starting from the planning stage of the projects. This would enable that the results, processes and experiences are documented and used as a basis for decision making and as a process of learning. Monitoring is a process of following-up the work, results or products by comparing them with the plan or forecast.

Public institutions should establish key performance indicators related to the services or activities that will be carried out by the staff engaged under SSA/ECST. Reporting on the performance of the engaged staff for service provided is one of the performance monitoring components.

Through reporting, management of all levels of institutions is informed about the progress of meeting the contract objectives in this case for the SSA/ECST.

Responsible officials of the Ministries/Municipalities have claimed that engagement of staff under SSA/ECST has impacted on improving performance at these institutions but we have not been provided with any comparative report that reflects the previous and current situation of the institutions or any analysis which would point out this positive change. Central/local level institutions have mainly reported with general reports by not using key performance indicators reflecting the outcomes of the activities to measure the services provided under the SSA/ECST. In absence of documentation on specific performance reports, we could not assess whether the Ministries/Municipalities have been able to improve the institutional performance by engaging this staff.

The Ministries/Municipalities generally have not prepared regular monitoring reports for staff engaged under SSA/ECST, an action that would enable documenting the results achieved and would enable the management to make appropriate decisions.

Central level - Ministries

- In the MAFRD, based on the report prepared by the Ministry on the engagement of officials under SSA, management has assessed that officials are of different professional profiles. These officers carry out daily work and engagements same as other regular officials such as: performing administrative work, providing expertise and professional advice, managing activities deriving from the department work plan, identifying and analysing sectorial issues, reporting on activities undertaken.
 - In the MESP, they drafted monitoring reports where the staff engaged under SSA was assessed positively within NMSI "Gadime Cave". If the engagement of officials in this monument would not be extended, then the cave would be damaged even more and it would be unusable for different visitors.
 - In MI, the staff engaged in the Examiner/Questioner position, monitoring and evaluation reports have been drafted on a monthly basis. These reports describe the monthly activities of the staff engaged expressed in figures/numbers for testing candidates for the theoretical
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and practical part of the driving license test. Further on, these reports highlight the fact that their engagement has been made in accordance with the intended purpose. As far as person engaged as Legal Officer in MoI is concerned, a positive evaluation of the performance shown in the field of aligning three laws¹⁷ with EU directives that regulate the traffic sector. In this assessment report, it was requested to initiate recruitment procedures for open-ended period engagement for this Legal Officer based on the results shown and the great need that the ministry has for experts familiar with EU legislation.

- MCYS for the officials engaged under SSA did not produce monitoring and evaluation reports to describe the activities they carried out.
- In MCYS, officials engaged under SSA did not prepare written reports to reflect the work they performed for the engaged period. However, in the three ministries, MESP, MAFRD and MoI, the situation is different because those engaged under SSA in some cases reported partially and individually in certain periods for the work they had performed. While for the rest of those engaged, they reported to their supervisors at departmental level with general reports without using any key performance indicators. In the audited Ministries, there were no working reports for the engagement period within the payment files of the staff engaged.

Local level

- In the municipalities of Prishtina, Peja and Suhareka in the payment file for the two years, the monthly working report was also attached which in some cases drafted by an employee or direct supervisor and approved by the responsible officials. The working reports stated that the engaged officers carried out their duties was done in line with the agreements/contracts.
- The Municipality of Prizren for 2015 had no working reports on the services provided by the engaged officials but in 2016 monitoring and evaluation reports were drafted on a monthly basis which were attached to the case for payment processing.
- In Municipalities of Gjilan and Ferizaj, there were no working reports drafted by employees or their supervisors in any of the payments tested. However, it is worth mentioning that the Municipality of Ferizaj with our request after the completion of field work sent the working reports drafted by the supervisors of the engaged officials. These reports were drafted only after our request and most of them were drafted in 2017 in a generalised form.

¹⁷ Law (no. 05/L-064) on Driving License, Law (no. 05/L-088) on Road Traffic Rules and Draft Law on Vehicles

4 Conclusions

Considering all developments towards a better management of human resources, setbacks are evident when it comes to the implementation of the SSA/ECST. Failure to assess needs for specific services or tasks, failure to plan and failure to apply legal requirements when entering into such agreements has not ensured the public administration that such engagements have improved the performance and quality of services for citizens.

The Ministry of Public Administration did not draft secondary legislation/procedures for this type of engagement through whereby engagement procedures would be defined more thoroughly. In the absence of these procedures, Budget Organizations (hereinafter referred to as BOs) have concluded special service agreements without any single criteria or procedures ensuring that they are managed in line with the principle of transparency, equity and competition. Further on, the Ministry of Public Administration did not yet set up a clear system of monitoring and reporting for BOs, which would assist in assessing performance and results achieved for this type of engagement.

The audited Ministries and Municipalities engaged employees under a Special Service Agreement/Contract for Specific Tasks without proper planning and formal monitoring of their performance. Reporting for staff involved under SSA/CST was not complete and accurate. The engagement of employees under the agreement/contract in 2016 increased compared with 2015, thus increasing the financing costs for these agreements. €3,903,597 were spent by the audited institutions for this type of agreement for 2015/2016. Compared with 2015, spending on this type of engagement in 2016 at the central level increased by 55%, while at the local level increased by 76%.

Furthermore, engagement through agreements in most cases has not been done in compliance with legal requirements. Most of those engaged under agreements covered regular positions and services/works that had to be contracted out through procurement procedures rather than for specific jobs or tasks. The simplified recruitment procedures have not been applied at all or properly, the legal deadlines foreseen for the engagement period have been exceeded in almost all audited cases. Further on, personal income tax and pension contribution have not been applied for most of the agreements.

The Ministries did not install reporting and monitoring mechanisms through which the results would be documented and serve as a basis for decision-making. The audited institutions have partially reported on engaging officials under Agreements/employment contracts for specific tasks. In cases where there were reports, they did not provide a complete picture of the performance and the activities performed. In absence of documentation of specific performance reports, we could not assess whether the ministries/municipalities have been able to improve institutional performance by engaging this staff.

5 Recommendations

We recommend the Ministry of Public Administration to:

- Ensure that it has taken the required actions to draft secondary legislation in the field of civil service in Kosovo that regulates the procedures of engaging staff under Special Service Agreement;
- Draft monitoring plans and reports that would include organizations applying these agreements in order to produce effective results during decision-making; and
- In cooperation with the Ministry of Finance to review cases where Organisations have engaged staff with agreements for regular positions. Depending on the need for regular staff to review them and where it is required to find a solution within the legal framework.

We recommend the Responsible Ministers and Mayors to:

- Ensure that they have identified the needs for engaging employees with this type of agreement, carry out assessment and planning for engaging employees by agreement at the beginning of each year and their inclusion in the annual plan;
- Ensure that the engagement of officials under a Special Services Agreement/Employment contract for specific tasks is only done in specific cases when a particular project or work cannot be carried out with the current staff within the institution, instead an expert in a specific field is required;
- Ensure full and accurate reporting for staff engaged under SSA/ECST;
- Engagement under agreement or contract for specific tasks is done in line with the legal requirements to ensure that the engagements are made through a competitive and transparent process, the engagement period is done within deadlines foreseen by law and apply the source withholding of Personal Income Tax and Pension Contribution;
- Ensure that they have put in place a reporting and monitoring mechanism for those engaged under a specific service agreement/contract for specific tasks within the organization, use key performance indicators to reflect the outcome of the activities and services provided; and
- Ensure that required actions for executing the hygiene, security and similar maintenance services have been taken to contract them out through public procurement procedures.