



# **The Weakest Link of Kosovo's Democracy**

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## INTRODUCTION

It is beyond any doubt that new democracies suffer many shortcomings. They often happen as a result of wrong development directions; as a trend that does not ensure positive and quick changes in society; as constantly absent human capacity to move the society forward, or in worst cases, are presented with abusive actions towards rights, freedom and the property of citizens. All these actions, and not only these, come and go, interact but also incite one another, at the time when society failed to establish all mechanisms to avoid these phenomena. The only one that is constant and always accurate is the address of generator of these phenomena – governments mandated by citizens to run the country. When they assume this mandate in a correct and fair manner, we see a good start, but the practice shows that in new democracies abuses start with assumption of power.

So, which is the weakest link of the Kosovar democracy? In present edition we have brought articles written earlier, which target the weak link in the chain of the Kosovar democracy. And, as you can see, experts and those that critically judge this issue see different weak links in this chain. Even though, they have common denominator – those that bear the responsibility – occupiers of the “democratic” power of the country. There are several organizations and individuals that have published the articles we are bringing in this edition. We have carried out a retrospective of critical judgment, in the past two or three years, regarding some widespread phenomena in Kosovo that are considered to be the biggest obstructions to development of the country. In most cases, authors behind these articles possess expertise, experience and also research carried out beforehand.

This edition brings articles published before, but our aim is to summarize them in a single place, in order to ease the job of readers and users of these materials when they need to see what the civil critical thinking in Kosovo is regarding elaborated issues.

**Forum 2015**

## Post Bulgarian Plan– Beware of the last minute deal!

Luan Shllaku and Lumir Abdixhiku

***We all want electricity and a highway. We also wish profitable privatization. But, we should accomplish all this without abusing with economic potential of the country and the rule of law. These things should be done by heart, but also in style!***

The Government has started privatization of big publically owned enterprises and started carrying out two big investment projects, in infrastructure and energy. This marks a new period of development of the country when, on one side, there are plans to sell our biggest and most profitable assets and, on the other hand, big investment projects are initiated, which are to be paid by taxpayers money, such as the case of the highway Morinë – Merdar, and with the money of foreign private investors, in the case of investments in thermo-energy. This important development project should be viewed from two aspects, the economic one: (1) what are benefits of Kosovo from privatization and investment, and the rule of law (2) how transparent, responsible and based on applicable legislation was this process.

Below have been provided 10 moments showing that this entire process, which is characterized with unseen haste in privatization and great delays in investment in energy, misuses our economic potential and democratic rules that should accompany these big projects.

1

The thermo-energy project. Following the stubborn insistence of the past two governments, on negative scenarios of building the Power Plant Kosova e re, with the capacity of 2100 MW, as well as elimination of these scenarios, after the pressure of the civil society and some of international organizations, this project continues to produce negative modalities that do not suit Kosovo at all. Almost the same external actors, with exception of European Union, present us with even more damaging scenarios for the economy of Kosovo that violate relevant Kosovan, regional and European laws. It is about the dangerous tendency to establish monopoly in the energy market. What is going on?

Some international organizations that have been involved since the beginning in assisting us to better prepare this investment, have, through their transaction advisors, convinced (read: ordered!) the Government of Kosovo to give (read: give away!) the PP Kosovo B to the future owner of the PP “Kosova e re”. The Parliament of Kosovo was obedient and approved the request of the Government that the PP Kosova B be included in the tendering package as future property of the new owner. For the well-informed in economy and energy, this scenario is unbelievable because it causes an absolute monopoly in our electrical energy market and considerably reduces chances of receiving appropriate compensation from this investment. It can easily be seen that this monopoly is punishable by the Kosovo Law on Publicly Owned Enterprises, the Energy Union Treaty (Article 2b,e, Chapter IV, Article 18, a, b, Annex III, Articles 82 c, and 86, paragraph 2), signed in Athens in 2005, and its observation is rooted in the

Constitution of Kosovo and the Law on Competition of the European Union (Articles 101 and 102, of the Treaty on the EU Functioning). There is no doubt that the monopoly is strictly punishable also by the laws of the countries that are suggesting that we embark on this adventure.

2

The European Commission is already alarmed by such development. In June 2010, through the office in Kosovo, they informed the Kosovo Government that they are very concerned about these developments and that this will bear considerable influence on relations of Kosovo with the EU, its integrating perspective. This letter, addressed to the Prime Minister, reads as follows:

... "we consider that the Government decision is a step backwards in the process of European integrations and are concerned that Kosovo will not be able to live up to its obligations vis-à-vis the Energy Community Treaty, which means that it will remain non-compatible with the Aquis (the laws) of the EU."

... "this decision of the Government is isolating Kosovo from the rest of the region, by planting seeds for long-term problems, which will be difficult to get out from, legally and financially."

Other international organizations are adding to this monopoly by their actions. The World Bank has guaranteed to help Kosovo Government meet its obligations as super-guarantee of the contract that it is to conclude with the future owner, which grants him the exclusivity of energy purchasing, in full contradiction to free energy market that should, according to the Athens Treaty, be established as of 2015, and which Kosovo has the obligation to implement in full.

Knowing that the current Government has set integration in the EU as its top priority, the incitement of regressive developments in respect of this priority would be strange and unexplainable.

3

These transaction advisors suggest to the Government of Kosovo another economic miracle: for the Kosovan participation in this joint investment to be 25 %. Even the most banal calculations show that participation of the PP Kosova B, in co-ownership with the PP Kosova e re, should be evaluated much higher. (This is valid if laws are definitely violated and PP Kosova B is transferred to ownership of future monopolist owner of energy in Kosovo). Let us assess: PP Kosova B, with its production capacity of 600 MW, in the first five years (2011 – 2016), will be the only production potential– so it will carry out 100% of production on its own. Then, following the start of production by PP "Kosova e re" with 300 MW, participation of Kosova B in energy production will be 66%, and after four or five other years, around 2020, production of PP Kosova e re will be equal to the one of Kosova B – so it will be 50% – 50%. This means that in the first 10 years production of Kosova B will be domineering from 66 – 100% participation. So, how did transaction advisors set the value of only 25% of Kosovar ownership in this partnership!?



This is not the only assessment that should take place when participation of Kosovo is decided. At least three other components, that considerably increase our participation, should be added to the introduction of the PP Kosova B in tender package: (1) ensuring of the Sibofc lignite where Kosovo Government has until now invested over 120 million euro, (2) guaranteeing of the Kosovan market, according to which future owner will be given exclusivity in selling energy for next 20 years in the Kosovan market, and (3) existing infrastructure around power plants and excavation site that would reduce expenditures of building of the new PP. It is not difficult to conclude that all these are more worth than 25%, suggested to the Government to announce the tender that will come out soon. Having in mind that new investor would not invest for less than 51%, we can say that the Kosovan side should by all means achieve an agreement for a 49%, participation in this joint enterprise.

4

Highway Morine – Merdare, is the biggest investment project of Kosovo. The Government has decided to spend more than 1 billion euro for it, money of Kosovo taxpayers. Arguments in favour of this investment offered to citizens were mainly “patriotic” and ideological. Pathetic slogans such as: “... today we are giving our sweat to offer our children safe future through this corridor!” replaced completely explanations that should have been given to legitimate owners of this road, Kosovan taxpayers. We waited in vain to be told something more about the justification behind the construction of this road as the first priority, its cost benefit, analysis of turning back of this investment, and finally strategic impact in environment. Given that usually arguments, which are not closely linked to concrete law that is violated, are not important, we will provide such an argument: the Government failed to observe the Environment Strategic Assessment of the project for building the road, stemming from the Law no. 03/L-015 promulgated in the Official Gazette on 24 March 2009. More concretely, it has violated almost all articles and paragraphs of this law – Articles 7, 13, 16, 20, 21, 22, 24. Every paper ensured by the Ministry of Environment, which grants environmental consent in principle, is invalid, and far from obligations of the Government to fulfil this important law.

In order not to dwell into details of these violations, let us refer to the same situation in Rumania – construction of the Transilvanic highway, with the company Bechtel, which due to failure to carry out Strategic Assessment in the Environment, was subject to strict reprimand by the EU that stopped all investment it has promised to the Rumanian Government.

5

Given that governments, in order to justify their actions, present most frequently the opinion of credible international institutions or the one of our friends, we were not spared from this kind of argument in the case of the highway either. It was said that: “With this draft law we express institutional and legal commitment to membership in the IMF and the WB. Due to this reason and quick and efficient finalization for membership in these two organizations, I request the passing of this draft law, which is precondition for integration!”, and senior government officials also said that:

"The aim is that, together with the assistance of the World Bank, guarantee international standards and as foreseen by the WB to start the big project, the highway", The truth is quite different: the World Bank and the International Monetary Fund were highly critical of this project. The World Bank, in the document "Overview of public expenditures in Kosovo– June 2010, says:

"There are many arguments to conclude that the use of budget for capital investments is carried out on subjective rather than objective basis. As consequence, a lot of money was spent in projects that bring low economic benefit!"

"... the contract was concluded with a fixed price per unit, for a three year period, but the number of units (quantity) was not specified. Such contract should have the quantity defined, in order to reduce the risk taken by the Government"

"... annual expenditures (145+400+300+180) will oblige the Government to conduct significant cuts in other road projects, in capital investments and development plans. Road maintenance has dropped significantly and will continue in this trend."

6

Beginning of hyper capital expenditures made Kosovo redefine the need for management of public assets. Kosovo is spending more than it possesses. When you spend more than you have, you get in debt, and when you owe to somebody than you start bargaining with the property you have. And when the deal should be concluded quickly, due to constraint and in haste, then it becomes a last minute deal. Kosovo is faced with confronting trilogy: spending budget of 800- 900 million a year, highway amounting to one fourth of the GDP and the tendency to keep national assets. This is a luxury we cannot afford. We should either snip budget expenditures, or the highway, or national assets; in order to have more optimal output of economic performance in the end. We cannot have all three of them.

The highway and the hyper-spent budget made Kosovo plan a primary deficit of 226 million euro. European Union has set maximal limit of budget deficit for all its member states, with special emphasis on countries using Euro, limitations known under the second Maastricht criteria, which clearly stresses that the budget deficit of a country must not be higher than 3% of the GDP. In 2011 Kosovo plans to have a deficit of 5% of the GDP of the country. These parameters obviously constitute a violation of the most important financial rules of the European Union, by even exceeding limitation of 66%. Such deficit is the main reason behind the haste to sell public assets. This haste will consequently result in self-devaluation.

7

Approval of PTK privatization with the Law on Budget was done without covering the deficit. It is against the Law on Management of Publically Owned Enterprises 03/L-087 and as such it is a dualism in Kosovan legislation. Even if there was no violation of lawfulness, wide consensus is required when selling national assets because, at the end of the day, the assets and the fortune of the country are not property of this or any other Government. The fortune of Kosovo was either given by God or we inherited it;

therefore, they also deserve more noble treatment than burrowing issues. Selling for debt and in haste is confirmed also in the agreement with the IMF. On 7 July 2010, the Government of the Republic signed the first Memorandum with the IMF. The Memorandum was highly appreciated by Kosovans. Article 5, in page four of this document, says "...moreover we will proceed with the PTK privatization in order to ensure deficit funding". Article 11, on page 7, reads "...it is important that in order to cover the deficit, privatization should take place quickly...". The same page, Article 12, reads "if revenues from the PTK privatization are less than 300 million, then the Government will take measures to increase other budget revenues". Page 15, Table 1, row 13, provides the final value of the PTK and goes "privatization revenues are 300 million euro". Unfortunately, the Memorandum with the IMF is not the only one determining revenues of 300 million and with this the PTK value. There is a whole range of other public documents that have done the same thing. Medium Term Expenditure Framework, published in June 2010, provides accurately and clearly the same amount. Page 9 of the document reads "...with inclusion of the highway project, great financing gap is generated. This is why PTK is expected to be privatized by the end of 2010". Page 19, Table 6, row 11, determined the expected amount "...revenues from privatization: 300 million". The first draft budget of 2010 makes the same valuation. Now, if we have signed an agreement where we publically say in three articles that (one) we are selling to cover the deficit, (two) we are selling in haste and (three) we expect 300 million or maybe even less then we have done nothing else but the self-devaluation of the asset.

8

This brings us to the other non-optimal feature of this kind of privatization: failure of the market to determine its value. When selling hastily, ideas of setting the price by the market powers are unreal. Setting of the value of an asset by the market implies "ceteris-paribus" or keeping the influence of other factors zero. Market absorbs whatever you give to it. If you give to the market a well managed enterprise, without political interference, risk and haste free, then you get the best from the market, the realistic price. But, our country is not going through a period of par excellence image. Having said this, if you give to the market a badly managed enterprise, a risky market, an economy occupying the same level such as the one of Iran and Venezuela, a level of corruption similar to Djibouti and the Solomon Islands, a terrible image, a debt and an urgent need to cover the debt, then you have not been able to keep other factors at zero impact but you have produced serious barriers to achieving real market price; let us not say that you have done your utmost not to get it.

If selling of the PTK is a necessity of some philosophical orientation, which we doubt it is, since at the end of the day government policies carry out nationalization of assets instead of property through combination Telecom-Highway; then it is right for the selling to take place without haste, not only for the sake of covering the debt, and at a more convenient time. Moreover, in order to avoid the damage of asset self-devaluation, Kosovo should follow the example of Serbia in determining value minimal threshold, which is expected to be much higher than the planned 300 million.

9

The tendency to grant absolute majority to the PTK are unseen in regional practices. Macedonia holds around 38% of the telecom, Croatia 49%, Slovenia 68%, Serbia 49%, Bosnia 90%; only Albania owns little over 20%. Justification of the Government analysis on selling of 75% of shares is that "... all investors insist that majority of ownership be sold at the beginning". Frankly said, investors would insist on obtaining the PTK for free; but it is absurd to base actions on what investors insist.

We are not claiming that publically owned assets should not be transformed into possession of the private sector. The hope that a country in transition facing institutional problems and suffering from shortcomings and diseases of transitory and post-conflict processes may be able to produce an encouraging output, an economic development, would be ideological madness. It is as simple as that, public ownership in countries in transition is a barrier to businesses, a nest of corruption and nepotism and a growing self-suffocation. Public management is a bad skipper of our ship. Nevertheless, it would be equally mad if we give up our assets without gaining something in return or at least without taking part in their development journey. While the private sector should be the skipper of our ship, public property should be the cargo in this journey. Keeping of 49% of Telecom assets in public ownership, under private management would provide the country with dividends of almost the same level we are gaining now from public management, which is overwhelmed by serious problems of corruption, over employment and absence of motivation.

10

It is not late. The country should tackle the deficit. Kosovo is not able to get a loan because it has no crediting ranking, cannot generate additional income since it has no sufficient performing economy, and cannot expect financial assistance either, since it has spoiled badly relations with assistance providers. So, what now? This brings us to the situation we have to choose between selling of assets in haste or budgetary cuts. Let us say that the sound logic supports the latter. Cutting of expenditures may take place in salaries or in the highway.

The cut of 100 million in salaries would bring deficit to extreme limits, but, however, acceptable. At the end of the day, in economic sense, salary increase, as it is now, does not increase buying power of Kosovans since it has no reflection on inflation. On the other hand, highway cost seems to be unaffordable. In order to avoid selling of national assets and planned deficit, we have to look into contractual possibilities of stopping work for at least a year. If salary cuts cause social unrest, let us say the highway cut is less painful. We cannot risk the devaluation of all national assets, today the Telecom, tomorrow Energy and the day after tomorrow Trepça, three short term profitable assets for one long term profitable capital asset. Taking into account emergency needs of the country, such an assessment is hasty and not wise at all.

## Epilogue

Objectives of Kosovo are and should be major; nevertheless when your pockets are shallow pursuing of such objectives becomes risky. Management of public property is becoming risky too. This management reflects debts continuously caused by our country. The purpose of this analysis is good. By proving violations that take place, one helps Kosovan democracy. Many things may be corrected as well. The only thing that may not be said in this analysis is the one that is most frequently attributed to us: that we are against the development of Kosovo. It is quite the opposite. We want development for Kosovo, but it should take place in style! As it suits modern democracies and as it suits a country that is being build by many sacrifices and vicissitudes of its citizens.

The dire need of the country for development does not justify the abuse with its economic potential and the rule of law. These two dominating development pillars should go hand in hand.



## They should be tried!

Hasan PRETENI

It was Friday, in 2007, when Anti-Corruption Agency filed the first criminal charges against some doctors who were suspected being involved in corruptive affairs.

As per the idea of "ideal world", after three days, we started to check e-mails every morning waiting for an answer regarding the steps to be taken by Prosecution Office in relation to the case. We never received official information about further procedures. But, in fact after a year an indictment was raised against two doctors under suspicion of abuse of power and appropriation.

Despite this, we are in 2011 now and their trial has not started yet.

And this is one of many other cases!

In countries where there is no functioning of the law, corruption is quite present, or said differently corruption substitutes the law, where money helps you do anything. Every country bans corruptive actions by law, and this is valid in case of Kosovo too. But, is corruption being fought in the country, this is a big question mark!

As a person heading an institution that has the legal obligation to fight and prevent corruption through investigations in advance, I would like to see tangible results in the fight against corruption. I would not like to see corruption as part of organized crime, by deforming laws; I would not like to see postponement of cases related to suspicions about corruption if there is no need to do it.

It is very important to avoid any possibility that enables suspects of corruption gain time and the possibility of mediation or compromise.

I have said this many times and I will repeat again that there is corruption in Kosovo and the worst thing is that it does not pertain to low level, traffic police, municipal administration or similar, but it takes place at the part of tenders which involves millions. Currently, Kosovo is suffering from weak legal system in the area of procurement. We should not agree to seeing Kosovo continue to live with terrible favouring competition, where benefactors receive work without the tender being announced.

Kosovo immediately needs to create strong policies and take concrete steps in improving legislation in area of procurement. This should take place because according to Agency analysis it resulted that corruption genes in Kosovo absolutely derive from procurement and tender-mania.

Absence of trials and punishments of cases suspected to be corruptive actions allow for corruption and organized crime to have an influence on every walk of life. It is very painful that Kosovo has not carried out an analysis regarding the extent of damage corruption is causing to economic development, social situation, fair competition, moral or trust of citizens in state institutions.

Regarding the impact of corruption in economic development and improvement of social life, countries in transition serve as suitable environment for corruption.

Unfortunately, corruption found such terrain in Kosovo too and as such it is destroying the values on which economic development and quality of life depend.

Practical trend (out of papers) of corruption development is posing a great risk for Kosovan society to accept this phenomenon as something normal. According to a research, conducted by an international organization, great percentage of respondents answered that they are unable to be employed or carry out any job valuable for their life without using family connections or bribing somebody.

Though this is only their perception, nevertheless I believe that Kosovo institutions should engage in gaining greater trust from citizens. So, citizens should be made aware not to accept corruption as something without which nothing can be accomplished.

A few days ago, the Anti-Corruption Agency published forms of declaration of assets of senior public officials.

In a small place like Kosovo that emerged from a devastating war and with an undeveloped economy, with very low salaries in the public sector, it is strange to see so many millionaires. In one word, one might wonder how come so many people became millionaires in such a short period of time, when the fortune of dozens of people is bigger than the entire state budget and can this reality destabilize the state system?

Security and stability wise, it is beyond any doubt that corruption and organized crime are greatly related to these issues. To be safer, Kosovo needs to know whether there is corruption in security mechanisms; is their real power getting weaker vis-à-vis the power of the corrupt; whether appropriate technological equipment for security mechanisms is being purchased; whether there is corruption in institutions defending the territory of the country; whether there is a possibility that terrorism is financed from corruption money; can Kosovo be involved in a massive social dissatisfaction?!

Justice mechanisms need urgently to start actions and find out the destination of corruption money.

Given that money coming from corruption is out of the system of bank control, then many questions arise as to their use. They may be used to finance terrorism or by hired assassins. One million euro could be enough to pay hundreds of people who commit different criminal or terrorist acts for pay!?

These are questions we as a country ought to ask ourselves and think very seriously on how to approach corruption problem and urgently decrease its presence.

This could be achieved by obeying the power of law rather than the power of money and other connections. But, also with a greater efficiency of justice system institutions and materials of criminal charges for suspected corruptive acts should be covered by dust in archives only after they have been adjudicated.

(Author is Director of Anti-Corruption Agency)



## **Lack of Systematic Legislation for Judiciary, Process of Re-evaluation of Judges and Prosecutors and the Backlog Chaos in Courts**

**Kujtim Kerveshi**

### **Lack of systematic legislation for judiciary**

Lack of legal infrastructure in Kosovo is the main cause of lack of legal safety and creation of authoritarian interpretation the way bearers of the process feel in special moments or the way it is imposed by the process or persons carrying out the process. Lack of main legal infrastructure for re-evaluation of judges and prosecutors and systematic legislation in the area of judiciary such as the Law on Courts, the Law on Public Prosecutor's Office, the Law on Prosecutorial Council and the Law on Judicial Council, have caused big confusion among bearers of the process but also among judges and prosecutors, who are not part of institutions any more and those that have joined now.

This legal infrastructure was related to high political interests and immense political influence from the very first moments of preparing this legal infrastructure from 2004 onwards, until it was promulgated in 2010. Preparation of systematic legislation on judiciary should have been accomplished in 2006 (when Kosovan institutions did not have full powers in this area), but these laws were carried over to legislative strategies of each coming year, although after the declaration of independence institutions of the Republic of Kosovo faced no obstruction, as far as responsibility is concerned, to prepare this infrastructure.

Apart from these laws, our institutions, including the Government and Judicial Council, have not developed any legislation that refers to re-evaluation. On the contrary, this process was conducted based on UNMIK legislation, which was replaced/amended several times, and some provisions of regulations of 1999 caused obscurity during their application in respect of re-evaluation of judges and prosecutors in Kosovo. Furthermore, now that this process is completed and more than 60% of judges and prosecutors are new in their positions and will be evaluated following the completion of their three-year mandate, our institutions have not ensured the legislation and the institutions that will prepare re-evaluation process for new judges and prosecutors.

### **Background of the problem of lack of legislation**

The infrastructure of legislation on judiciary was partly composed of legislation as old as the period of former Yugoslavia, as well as legislation promulgated by UNMIK during the years of absolute administration of this sector by this mission, as well as regulations promulgated by the SRSG that transferred powers partly from this area to local institutions (Regulations 2005/52, 2005/53, 2006/26 etc).

Draft laws of judiciary were the object of several working groups<sup>1</sup> and donor contribution from 2004 onwards. Despite such long and painful treatment, in many cases the content of this legislation was interrelated to political compromise<sup>2</sup>, apart from the legal one.

Differently from the period before the declaration of independence, when local institutions depended on the will of the SRSG to promulgate legislation, approval of this infrastructure depends expressly and only on the will of local institutions, only unless there is a non-public agreement beyond the content of legal acts that "minimizes" the authority of our institutions contrary to provisions of the Comprehensive Proposal of Mr. Ahtisaari on the final settlement for Kosovo and the Constitution of the Republic of Kosovo.

Only in March 2010, the Government of the Republic of Kosovo approved the Law on Courts, which was submitted to the Assembly of Kosovo. In essence, it deals not only with organic issues of the foreseen reform but also with possible political indications that derive from constitutional obligations, but not only this. Whereas other laws, although there are promises that they will be approved in the Government – this has not happened yet. Months later, institutions were able to approve the Law on Public Prosecutor's Office, the Law on Judicial Council and the Law on Prosecutorial Council. But, re-evaluation was not covered by the applicable legislation in Kosovo and it is regulated by old UNMIK regulations that caused legal conflict in their application and absence of legal security for interested parties.

## Obstructions and procrastinations

Despite insistence for years and efforts to coordinate processes in this sector, such as re-evaluation of judges and prosecutors, as well as continuous professional education for judges and prosecutors<sup>3</sup>, absence of systematic legislation of judiciary posed obstruction for the beginning of every reform process of this sector in Kosovo.

## Consequences

As consequence of lack of preparation of this legal infrastructure in time, for years now:

- a) There was an absence of systematic acts of functioning of one of the main state branches, the judiciary
- b) The process of institutional reform could have not begun without this legislative infrastructure but it has started;

1 Initially they were assisted by projects of the USAID, NCSC as of 2004 onwards as well as the project "Help to justice sector" of the European Commission from 2006 onwards.

2 Political compromise in this legislation includes referring to provisions of Comprehensive Proposal of Mr. Ahtisaari on the final settlement of Kosovo as well as the UN Report on Kosovo of 2008 so-called "the 6 point plan", which, among other things, also advances further decentralization of power in the area of judiciary.

3 In relation to this, see other parts of this paper on bar examination and the process of re-evaluation of judges and prosecutors.

- c) Without this legal infrastructure in place, the judiciary is unable to reinforce the main mechanism of mutual institutional control;
- d) Without this infrastructure, judiciary remains helpless (at least on paper) to create safe legal environment and fight negative phenomena;

## The chaos of backlog of cases in courts

During the past two-three years the number of backlog of cases in courts has increased from 4% to 28%, depending on the level of the court. This increase causes great legal uncertainty, fear among investors to invest, especially in case of foreign investments and all this is connected to phenomena of other social problems and criminal phenomena of taking "of justice in the hands of the individual".

### Description and status

According to assessments conducted by institutions inside Kosovo and abroad, judiciary is considered to be the least effective institutional branch in Kosovo. Judiciary is faced with the backlog of 213.967 cases. Most of these cases have accumulated over years, but no progress was noticeable in the two past years regarding reduction of the backlog, quite the contrary, from 2007 until 2008 and from 2008 until 2009 there was an increase of pending cases.

From 2007 until 2008 there is an increase of pending cases for 9.93%, whereas from 2008, compared to 2009, the number of pending cases has increased for 15.18% in all regular courts. Whereas, the number of pending cases in all regular courts and in minor offense courts amounts to 287.907 cases (or in general 12.37% more pending cases than in 2008 in the same regular courts or minor offense courts). Apart from this, the number of pending cases in the Supreme Court has increased for 3.83% in 2009, as compared to 2008.

Compared to 2008, the number of pending cases in Commercial Court in 2009 has increased for 15.95%.

When it comes to district courts, the number of pending cases in 2008 increased for 27.42%, whereas in 2009 it increased for 4.95%.

Also in municipal courts in 2008 the number of pending cases increased for 12.47%, whereas in 2009 it increased 15.85%.

Whereas, finally, in minor offense courts, in 2009 there were 4.94% more pending cases comparing to previous year.

Taking into account statistics provided above, one may notice an increasing trend of unsolved cases despite institutional "commitment" to make justice a priority of institutional development in Kosovo.

## **Influence– lack of managerial capacity and lack of political will**

Kosovo judiciary is short of staff, in particular during the process of re-evaluation of judges and prosecutors when judges and prosecutors failed the test on ethics code, it is expected that their number will reduce even further during other re-evaluation phases.

Judges and prosecutors, who failed the ethics test, continued to exercise their functions until the completion of judicial process and showed no attention in solving cases that resulted in a judge or prosecutor, in charge of cases, having hundreds of unsolved cases.

It was never clear why the Judicial Council kept in the same position a judge or a prosecutor that failed re-evaluation process and was aware of the fact that he was not going to perform the same task following the completion of re-evaluation process? This for sure has nothing to do with improvement of their ethical and professional values. Moreover, institutions of Kosovo failed to take concrete actions in such a situation (influence of utterly political nature) in eliminating the gap of the number of judges and prosecutors during and after the re-evaluation process. Not all positions for judges and prosecutors in the country have been filled, not even now long after the process has been completed.

Continuous preparation of candidates for judges and prosecutors has been and still remains one of the most important issues in eliminating the big number of cases but bar examination had not been held for more than two years and it impeded continuation of professional enhancement of new lawyers.

Even after the completion of reappointment process, there is no way out of situation of the increase of huge backlog of cases.

## **Consequences**

In this institutional environment, economic development is hampered and it is impossible to guarantee legal security and Euro-Atlantic integrations.

It is impossible to believe that Kosovo can attract credible foreign investors at times when the judicial system has more than 200.000 pending cases, in a system when cases are not processed automatically, despite the instalment of the program for automatic systematization of cases.

At such a stage of judiciary development, it would be impossible for every citizen of Kosovo to trust rule of law institutions. This high level of backlog of cases bears direct influence on reduction of legal and institutional security in Kosovo.

Judiciary remains the most anathematized institutional branch in our country<sup>4</sup> and as such it is difficult to realise the concept of division of powers and mutual institutional control.

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4 Judicial Council budget is about 1% of the total of Kosovo consolidated budget.

## Reappointment of judges and prosecutors

Reappointment of judges and prosecutors should have started in 2007. Despite delays, the beginning of the process in 2008, which continues to be carried out with delays, is overwhelmed by absence of transparency and poor management of re-evaluation process. Half of prosecutors and judges failed ethical evaluation in the very first stage. Although they had failed and should not have continued to occupy those positions after the end of this process, they had continued to exercise same responsibilities as if nothing had happened.

### Case description

The reappointment process was initially provided by Framework Regulation on the Justice Sector No. 2006/25 of 2006 then this process was regulated in more details by Administrative Instruction No. 2008/2.

Following entry into force of the Constitution of Kosovo, this process was given stronger legal grounds, through the Constitution of the Republic of Kosovo, Article 150, which among others provides that "The comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments, until the retirement age determined by law, as judges and public

prosecutors in Kosovo shall continue to be carried out in accordance with Administrative

Direction 2008/02 and shall not be affected by the termination of the United Nations Mission in Kosovo (UNMIK)'s mandate or the entry into force of this Constitution".

The process of reappointment of judges and prosecutors was foreseen to take place in 2007. It was dragged on without a reason and, as provided below, continues to drag on<sup>5</sup>. The process should be conducted in 4 stages. Ethical testing and application stage, the second stage that deals with appointment for supreme level (which was said to have been accomplished), whereas the third stage, including appointments in districts, and the last stage that includes appointments at the municipal level should be carried out.

### Shortcomings and dragging on

The reappointment process, together with preparation of systematic legal infrastructure on organizing judiciary in Kosovo dealt with by this summary of institutional delays, comprise two of the most important processes in the field of justice in Kosovo following the declaration of independence.

<sup>5</sup> Despite public announcement of institutions on completion of the first part of reappointment "project", there are still vacant positions in Supreme Court but also in State Prosecutor's Office. There are 8 vacant positions in the Supreme Court and 3 vacant positions in the Prosecutor's Office.

Nevertheless, the process of reappointment of Kosovan judges and prosecutors should have started at the beginning of 2007. Delays in this process happened because of interferences from local and international<sup>6</sup> institutions, either by acting or failing to act<sup>7</sup>, thus causing insecurity and big stagnation in entire sector.

Initially, the reappointment process started with a two-year delay, precisely on 13 February 2009. In the beginning, delays were caused since local institutions, in the sense of decision making authority, had no power to seek acceleration of this process (both this process and the judiciary were completely responsibility of UNMIK before Kosovo was declared a sovereign state), therefore, by remaining at the discretion of the international community, namely the First Pillar of UNMIK and the SRSG, the process had been prolonged several times. In this period, Kosovo institutions, the Government and the Assembly were only spectators of this process.

Following the declaration of independence, the Independent Judicial and Prosecutorial Council assumed and still has the responsibility to carry out evaluation of performance of Kosovan judges and prosecutors with the purpose of their re-appointment. The IJPC is managed by internationals and is funded by a donation provided by the European Union and the USA State Department.

This process was foreseen to go through four stages and may last from 18 to 24 months.

This process, which started in February 2009, was accompanied by great lack of transparency and inappropriate technical preparations (most of judges and prosecutors had failed the initial test, the ethical one, due to the fact that for most of them testing was impossible to be conducted in time and in suitable technical circumstances). The manner of organizing this test was not in compliance with traditions of legal work and studies in Kosovo, a situation which had lasted for decades. It was impossible for judges and prosecutors to adapt to this manner because some of them were fairly old to be so agile and succeed in completing all the testing of the first stage on time, the one on code of ethics.

Reasons behind the dragging on of this process are different, both professional and pertaining to political influences.

Initially, the Kosovo Judicial Council and the Independent Judicial and Prosecutorial Council were unable to harmonize their stands in relation to proposals made. As a consequence of this obstruction, the reappointment of some judges and prosecutor, despite being planned to take place in December 2009, was postponed without any official justification, which involved the President of the Republic of Kosovo too, who would appoint the first judges and prosecutors as a result of this process. After such a delay, since this delay was publicly talked about and discussed in printed media and due to public pressure, first staff was appointed by the President of the Republic in the beginning of 2010.

<sup>6</sup> Donors of this process are the European Commission and the Justice Department of the USA.

<sup>7</sup> Local institutions failed to show constructive and useful role in proper conduct of this process, apart from causing delays in approving recommendations for judges and prosecutors in December 2009.

## Consequences

Consequences of dragging on of this system are rather big and have direct impact on functionality of judicial system in Kosovo, on judicial and administrative staff and on reduction of cases dealt with and solved by the court. This issue will be dealt with by the chapter on the number of backlog of cases of this paper.

Among other things, due to evaluation and appointment process judges and prosecutors are going through, their efficiency at work has considerably dropped (see the number of backlog of cases during last year).

The test on ethics, which had consequences for those that failed it, caused insecurity and drop of moral among those that have failed this evaluation stage, therefore they perform their tasks sloppily<sup>8</sup>.

There were cases when judges and prosecutors that were not selected, showed no commitment at work and there might be cases that they had not maintained their ethical and professional level (that was "tested" in advance) until they were replaced by appointed judges and prosecutors.

Apart from these consequences, our institutions, to date, failed to ensure legal basis that provides legal security and enables future re-evaluation process based on lessons learned from this process that is over now.

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<sup>8</sup> This situation was created because results of ethics test were published and it was known who will not remain in judiciary following the completion of the process. On the contrary, even the candidates that failed in this process remain in their position until the process is completed.

## **Organization for Democracy, Anti-corruption and Dignity ÇOHU!**

This publication is a summary of activities carried out by the Organization for Democracy, Anti-corruption and Dignity ÇOHU! in the course of five years of its existence. ÇOHU! is the first organization that was established with the mission to fight corruption and organized crime. In the present publication you will be provided with main publications and information on main activities related to carrying out campaigns or monitoring, separated in several categories and provided in single chronological line. Texts published in the present summary are authentic without a change in the content. They have been abridged with the purpose of including more activities but relevant arguments and main facts have been included.

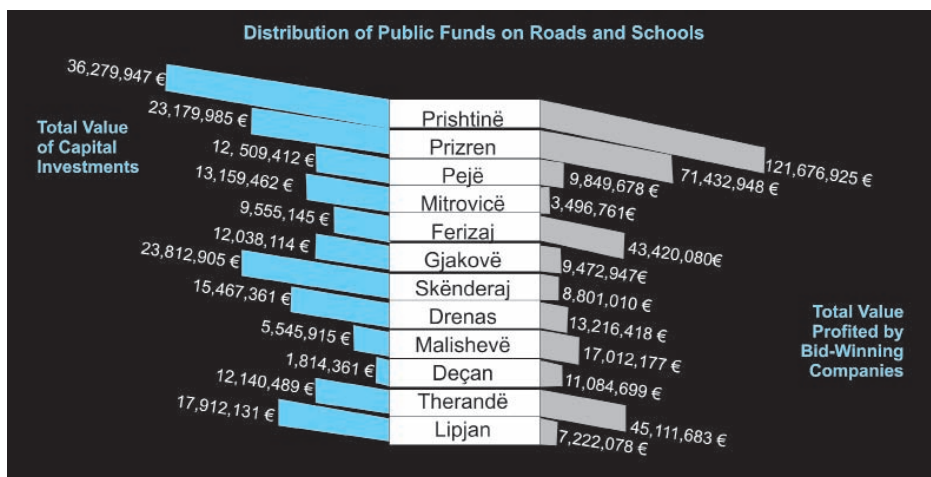


# Investigative Journalism

From Preportr

## Public Investments based on interests of the political parties in power, not the plans and Laws: purchasing political land with public funds:

Artan M.Haraqia, Lorik Bajrami



Political parties win elections through support they receive from affiliated businesses and then use the power to reward them financially. Taking over power at central level, besides rewarding the businesses and interest groups, the winning party starts planning public expenditures totally depending on own objectives of winning and holding power in certain municipalities. This way, the municipalities that share evenly power between the two main parties in the meantime benefit mostly, as the power won centrally is being used to secure votes locally. The best example is the municipality of Prizren, in which according to few Preportr researches, PDK has made invested disproportionally compared to other municipalities.

So the distribution of revenues from the public investments made between 2008 and 2010 has largely followed the interests of the party in power and not a specific criteria or regional development plan. Interests of the party in power also directed the public expenditures, totally disregarding the basic requirement that public funds be managed according to a previous plan that derives from a development program.

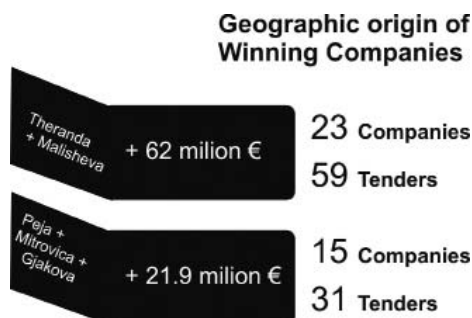
This way, millions of public investments have been allocated to municipalities and approved to certain companies with the determining criteria being the home regions of the ministers or greater electoral interest of the party. In the same manner, the public investments made during the two years, have been disproportional with the size of residential areas and the number of inhabitants in different municipalities, as they are directed primarily politically. A "Preportr" analysis of 98 per cent of contracts signed by

the Ministry of transport and the Ministry of education during 2008-2010 shows that a total of 416 mil Euros has been distributed to 199 companies through 385 public calls for bids.



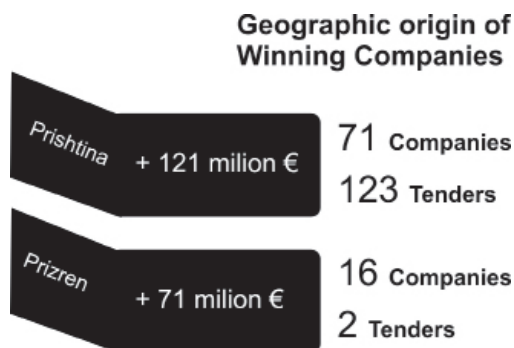
## Companies that Come from Ministers' Regions and PDK Strongholds

"Preportr" research shows that a number of municipalities have been more important for the PDK. Ministry of Transport and the Ministry of Education have been careful to channel millions of Euros to companies that originate from the ministers' regions or to those with dominant PDK interest, having great chances to win the local and national elections. Results show that companies that originate from Malisheva and Theranda, hometowns of former Minister of Education, Enver Hoxhaj, and former Minister of transport, Fatmir Limaj. Have received millions of euros of Kosovo budget exceeding the larger municipalities such as Peja, Mitrovica, and Gjakova. In total 23 companies from Theranda and Malisheva have won 59 bids benefitting this way over 62 million euros. During the same period, "Preportr" has proved that from these two ministries, only 15 companies from Peja, Mitrovica, and Gjakova have won bids in total amount of 12.5 mil euros. Of these, only three companies from mitrovica have won bids from these two ministries.



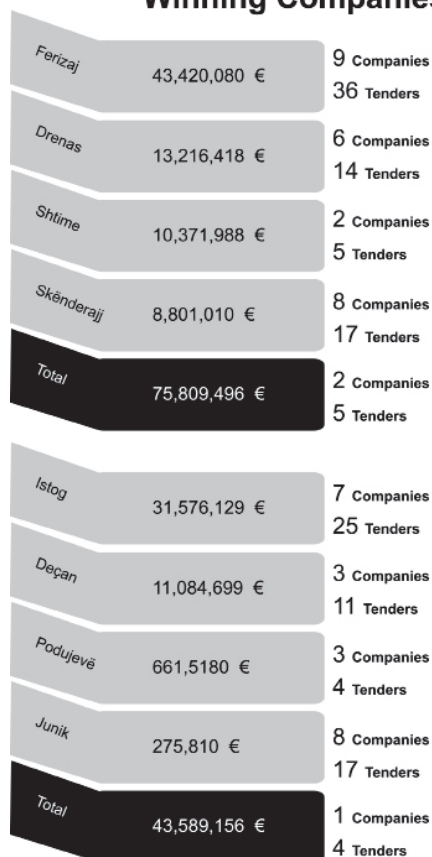
More or less, the same trend follows allocating the public funds to companies in municipalities with broad electoral interests of the PDK. Prizren has been the primary

battlefield for electoral win since 2007. The companies from Prizren, a city qualified as PDK's Jerusalem during local elections in 2007, have benefitted much more during the last two years compared to companies in other municipalities. Research reveals a huge disbalance between Prizren companies, which benefitted from MEST and MTPT bids, and Prishtina ones. Whereas 61 Prishtina companies have benefitted over 121 million Euros from 123 bids, only 16 companies from Prizren have received 71 million through 42 bids.



In the same manner, companies based in the municipalities known as PDK strongholds have benefitted multimillion amounts of Kosova budget compared to municipalities known to belong to political opponents such as LDK and AAK. Companies from Shtime, Skenderaj, Drenas, and Ferizxaj have received 30 mil Euros more than municipalities of Podujeva, Deçan, Istog, and Junik. Besides, when bids had been granted to the "neighboring" municipalities, usually a considerable amount has ended in the bank accounts of the companies close to the people of the party in power

### Geographic origin of Winning Companies



The graph shows that municipality of Deçan and Istog have been left out of the trend and the reason why few companies in these municipalities have been granted bids was, as you will see below, that they belong to people close to PDK.

### Companies close to PDK

Presenting the distribution of public funds based on municipalities from where the winning companies originate does not present a clear picture on who are the real beneficiaries of millions of Euros of tax-payers money. "Preportr" has noticed a relation between the connections of the company owners and the municipalities where the companies have been registered in when winning the bid. Also, "Preportr" has found that companies in the municipalities that have not been traditionally governed by PDK have won bids when acting in consortia with companies from the regions qualified as municipalities of PDK. Besides, "Preportr" has noticed cases when certain companies,

from non-PDK municipalities, have won multimillion bids due to family ties with PDK officials. In the case of Prishtina, there are companies that have won bids of tens of millions in consortia with companies from Malisheva and Ferizaj. The company "Euro-Kos" from Prishtina, has won a tens of millions bid from the MTPT, and in majority of cases has been in consortia with companies from Drenica region or companies from PDK municipalities, such as Ferizaj. The company "Kastrioti" from Prishtina has won bids of more than 5 mil euros, but its owner comes from Drenica region. Besides these, the company "Damastion Projekt" has won bids of almost 3 million Euros in consortium with companies from Drenas and Ferizaj. The company "Ada Consulting Group," also from Prishtina, owned by Avni Kastrati from Buroja, has won a 2 million bid. The same company employs Fadil Demaku as an adviser, a PDK deputy at the Assembly of Kosovo and brother of current Drenas mayor, Nexhat Demaku.

1. Kompania, "Euro-kos", nga Prishtina në konsorcium me kompaninë "Burimi Malishevë" nga Malisheva, si dhe me kompaninë "Drenica" nga Ferizaj, ka fituar tender nga MTPT-ja në vlerë prej **17,294,971 €**.
2. Kompania, "Kastrioti", nga Prishtina, pronari i së cilës është nga rajoni i Drenicës, ka fituar tender nga MTPT-ja në vlerë prej **5,399,707 €**.
3. Kompania, "Damastion Projekt", nga Prishtina, në konsorcium me kompaninë "NN Shkembj" nga Drenasi, ka fituar tender nga MTPT-ja në vlerë prej: **2,997,196 €**.
4. Kompania, "Ada Consulting Group", nga Prishtina, që si këshilltarë ka Fadil Demakun, deputet i PDK-së në Parlamentin e Kosovës, ka fituar tender nga MTPT-ja në vlerë prej: **1,922,810 €**.

Although municipality of Istog has continuously been governed by LDK, certain companies have won millions of Euros of public investments due to close ties to PDK structures. The Company "Albes," owned by Hajredin Mavraj, is seen close to PDK structures, as the owner is a relative of "Epoka e Re" daily publisher, Muhamet Mavraj. This daily has traditionally been close to PDK. Similarly, the municipality of Deçan has benefitted from millions of public bids, although it has never been governed by PDK. The reason why companies here have won public bids has partly to do with family ties the company owners have with certain PDK Deputies. The company "Arfa," owner by Fadil Hadërgjonaj, has won almost 2 million Euros from MTPT. Fadil Hadërgjonaj is a relative of PDK deputy to the Parliament, Safete Hadërgjonaj.

1. Kompania "Albes" nga Istogu, ka fituar tender nga MTPT-ja në vlerë prej **5,702,519 €**.
2. Kompania "Arfa" nga Deçani" ka fituar tender nga MTPT-ja në vlerë prej **1,896,563 €**.

## Media reporting on companies close to PDK

Kosovo media have continuously reported on companies close to people in PDK winning the bids from public institutions. For this edition, "Preportr" has found that an amount of 40 million Euros has been granted/contracted by the Ministry of Transport and the Ministry of Education to the companies that have directly financed PDK's electoral campaign during 2009. "KOHA Ditore" has reported months ago on how certain companies have benefitted millions of Euros and are listed in official reports of CEC as financiers of PDK's electoral campaign in 2009. The Weekly "Prishtina Insight" in one of its editions, had reported on companies close to Minister of Transport Fatmir Limaj which had won tens of millions of Euros from road construction. From these three media only one can conclude that about 63 mil Euros, from MTPT and MEST, have been contracted to the companies connected to PDK, as financiers of electoral campaign or close to people within party structures.

### Millions of Euros for Companies Close to PDK

Prishtina Insight	
1. Delia Group, 1 tender MTPT, vlera totale 11,760,439 €.	
2. AHN Group & Timi Krsko, 1 tender MTPT, vlera totale 5,792,435 €.	
Koha Ditore	
3. R. Rukolli, 1 tender MTPT, vlera 288,799 mijë euro. 2 tenderë MASHT, vlera 1,180,836 €.	
4. Ndërtimi, 2 tenderë MTPT, vlera 484,581 mijë euro. 2 tenderë MASHT, vlera 336,961 €.	
5. Jehona, 2 tenderë MTPT, vlera 688,285 €.	
6. Burimi, 2 tenderë MTPT, vlera 12,953,264 €.	
Preporter	
7. Getoari, 3 tenderë MTPT, vlera 3,469,557 €. 1 tender MASHT, vlera 689,626 €.	
8. Engineering, 3 tenderë MASHT, vlera 1,735,631 €.	
9. Bageri, 1 tenderë MTPT, vlera 829,569 €.	
10. Bajraktari, 1 tenderë MTPT, vlera 123,287 €.	
11. Beni Com, 5 tenderë MTPT, vlera 9,157,830 €.	
12. Tali, 6 tenderë MTPT, vlera 5,457,108 €.	
13. Bejta Commerce, 3 tenderë MTPT, vlera 7,545,543 €.	
14. Magjistrallja, 1 tender MTPT, vlera 291,251 €.	

## Investment in Ministers' regions and PDK strongholds

When looking into regional distribution, Drenica comes clearly as a region which has benefitted mostly from investments of MTPT. Moreover, there have been more investments in the small town of Skenderaj than in the capital of Kosovo. In the two year period, the MTPT has invested about 18.7 mil Euros, while in Skenderaj nothing less than 19 mil from the state budget. In Drenas, another small town in Drenica, the amount



invested between January 2008 and December 2010 almost equals investments in Prizren. In larger towns, like Peja and Mitrovica, the investments are clearly much lower than in few clearly smaller municipalities.



Concerning investments made by MEST, there is a more proportional distribution among Kosovo municipalities. Nevertheless, the municipality of Theranda, hometown of then Minister of Education Enver Hoxhaj, has benefitted millions of Euros more than larger municipalities like Peja, Mitrovica, or Gjakova.



“Preportr” has analyzed the overall distribution of public investments made by these two ministries among Kosovo municipalities. Of total, municipalities known as traditional strongholds of PDK and those with considerable electoral interest have benefited more compared to municipalities with larger number of inhabitants.

#### Municipal Distribution of Total Investments made by MTPT and MEST

	MTPT	MASHT
Prishtinë	18,711,795 €	17,568,152 €
Total		36,279,947 €
Skënderaj	19,002,584 €	4,810,321 €
Total		23,812,905 €
Prizren	12,484,173 €	10,695,812 €
Total		23,179,985 €
Lipjan	13,518,671 €	4,393,460 €
Total		17,912,131 €
Drenas	12,137,395 €	3,329,966 €
Total		15,467,361 €
Mitrovica	8,061,438 €	5,098,024 €
Total		13,159,462 €
Peja	5,614,044 €	6,895,368 €
Total		12,509,412 €
Therandë	4,505,105 €	7,635,384 €
Total		12,140,489 €
Gjakova	6,210,926 €	5,827,188 €
Total		12,038,114 €

Based on public investments made, municipality of Skenderaj sits atop of much larger municipalities such as Prizren, Mitrovica, Peja, Gjakova. Nevertheless the graph remains the same as there are no drastic differences between the municipalities. However, a large portion of the bids has been contracted to companies close to PDK, or consortia that include at least one company from traditional strongholds of PDK. Clearly, the contracts assignment has been conducted based on political interests. Therefore, these investments do not have the stated effect for the areas since the winning companies are those close to the political power. This way, the funds dedicated to the municipal investments, even in those not traditionally known as PDK ones, are diverted

to the municipalities that have always voted this party. The graph also shows that small municipalities like Theranda, Skënderaj, or Drenas have either even or exceed amounts of public investments in Mitrovica, Gjakova, or Peja. Therefore it is clear that we are dealing with certain benefits from public investment projects, but also profiting of companies with certain origins from such projects depending on the interest of the political party in power.

## Ministries reject meeting “Preportr”

“Preportr” has requested the Ministry of Transport and Ministry of Education to provide access to bid documents, in order to gain a complete and clearer insight on procedures according to which contracts have been assigned by these two ministries during 2008 – 2010. Preportr’s aim was to verify the compliance of these bids with the provisions of the Law on Public Procurement and to find out if these two ministries had previous capital investment plans before deciding to invest on certain regions of the country. In spite of official request made for meeting and following up for three weeks the departments of procurement in both ministries did not respond to “Preportr’s” request.

## Public Procurement – the most affected sector by corruption

According to the Kosovo Anti-Corruption Agency the public procurement is the sector mostly affected by corruption. The Agency has continuously stressed in its reports that public procurement in Kosovo in most cases violates the law to benefit certain persons or companies. “Deeds or misdeeds in most cases refer to clear violation of procurement procedures as prescribed by the law through assignment of contracts that favor certain economic operators, and eliminating the operators that fulfilled the criteria of the call for bids file” says in Agency’s report for 2010. Senior Investigations Officer at the Agency, Blerim Kelmendi, informed “Preportr” that most frequent form of corruptive action regarding public procurement relates to abuse of official duty, favor certain companies over the others, massive falsifying of documents, abuse of official duty by procurement commissions, falsifying the diplomas of technical staff, falsifying authorization of international enterprise representation or falsifying their licenses, and bribery. The Agency’s report for 2010 supports the claims of this officer. The report claims that: “during investigations proofs have been found that indicate massive falsification of official documents that intend providing certain economic operators with public contracts. In cases they even use fictional names of professional personnel and falsify contracts with specific persons that have never been employed by those economic operators, or falsify reports for completion of duties that have not been completed although the contracting authority has completed the payment. Equally problematic is proving and verifying the completion of the duties towards the state as such documents have also been falsified continuously. Bribery takes place mainly in cases when favors are other benefits are to be exchanged”. Since its establishment, the ACA reports have stressed that public procurement is the most affected sector by public funds abuse. The 2009 report concludes a situation similar to one in 2010. It states that “most often, open violation of public procurement procedures and the Law on Public Procurement has taken place by favoring certain economic operators for public contracts and eliminating other operators in spite of fulfilling the criteria ascribed by the call for bid file.”

Also the 2008 report of the Agency concludes that the situation within procurement system is very grave with constant violation of the law in power. "Application of procurement procedures by the departments violated the law on public procurement; frequently the law is not applied at all, official documents are falsified (such as reports on procurement procedures), payments being made prior to completion of the assignment or before they have even started. The most scandalous part of this is that such documents are approved by the managers of the institutions" states the Agency report.

## **Results of positive investment contested**

Those closely informed on the government's public expenditure state that capital investments made by these two ministries have not generated the expected results. They are skeptical with the manner how these investments were made and where the money has been invested. For them, the governments until now, and especially the last one, did not have a specific economic development plan or a feasibility study which would determine the investment priorities.

Lumir Abdixhiku, director of Riinvest Institute, disagrees with the way how millions of Euros have been expended for capital investments. He considers that the justifications of the government officials that the public funds have been invested in the areas that have not seen any investment for years are not just since the public funds must be invested projects that can regenerate them. "The government's argument state that, the regions where investments were made, the regions they come from, have historically been the least developed. However, the capital investments are made wherever there is regeneration potential" states Abdixhiku. For the Chair of the Kosovo Chamber of Commerce, Safet Gërxhaliu, public investments were made without a concrete plan and as such have ended in the pockets and regions close to the politics. "Kosovo lacks a development plan. Had we a development plan, investments would generate economic development and reduce unemployment" states Gërxhaliu.

## **MEST and MTPT Award Bids to Companies With Suspended Licenses:**

**Arton Demhasaj**



A number of ministries of the Kosovar government violate openly the law on public tenders.

Several millions of Euros have been given in an open violation of the law. The violation of the law in a number of bids investigated by "Preportr" has been confirmed by very officials of Kosovo institutions. The investigation shows that in seven reviewed bids more than 2 million Euros have been awarded to 4 private construction companies although at that time the Ministry of Trade and Industry had suspended their licenses due to failure to meet the operation criteria.

<b>1. NNT "Mirusha Transport"</b> nga Klina, ka marrë tender nga MTPT-ja më 24.10.2008, në vlerë 114,719 €.
<b>2. NNP "Tosi"</b> nga Peja, ka fituar tre tenderë nga MASHT-i.
a) Më 06.10.2008, ka fituar tender në vlerë 815,840 €.
b) Më 03.11.2008 ka fituar tender në vlerë prej 427,842 €.
c) Më 17.10.2008 ka fituar tender në vlerë prej 81,878 €.
<b>3. NNTSH "Sallahu"</b> nga Kaçaniku, ka fituar tender nga MTPT-ja, në vlerë prej 326,400 €.
<b>4. NPN "Bajramaj"</b> nga Theranda, ka marrë dy tenderë nga MASHT-i.
a) Më 07.11.2008, ka fituar tender në vlerë 126,602 €.
b) Më 02.10.2008 ka fituar tender në vlerë 252.924 €.
<b>Totali i shumës së dhënë katër kompanive me licenca të pezulluara është:</b>
<b>2.146.205 €</b>

The Committee on Constructions and Licenses at the Ministry of Trade and Industry, according to the law on construction, is authorized to suspend and revoke licenses of economic operators when failing to meet technical criteria. According to the law, a company with suspended or revoked licenses cannot be awarded a public bid. In spite of this, companies with revoked bids have won bids of the Ministry of Transport, Post, and Telecommunications (MTPT) and of the Ministry of Education, Science, and Technology (MEST).

#### Duration of Suspended Licenses

<b>1. NNT "Mirusha Transport"</b> - Klinë 926-70457391 6 muaj 17.09.2008-17.03.2009
<b>2. NNP "Tosi"</b> - Pejë 383 80461275 6 muaj 17.09.2008-17.03.2009
<b>3. NNTSH "Sallahu"</b> - Kaçanik 541-80021194 6 muaj 17.09.2008-17.03.2009
<b>4. NPN "Bajramaj"</b> - Therandë 448-70251052 6 muaj 17.09.2008 -17.03.2009.

In spite of clear prohibitions, these companies have been awarded bids to construct and reconstruct roads and schools.

As these companies did not have the right to exercise construction activities, while the decision of the Commission on Licenses was still in power, awarding bids to them contains acts punishable by the law ranging from abuse with official duty, impingement of free competition, to potentially corruptive acts. Further, according to the law, the companies should re-apply for licenses after expiration of revocation period. When

"Preportr" contacted "Bajramaj" company from Theranda to ask about their revoked license, their representative claimed that the company's license had never been revoked, although such decision has been made public in the website of the MTI. The representative of "Mirusha Transport" from Klina admitted the licenses revocation, but stated that the company had complained and has no information on what has happened afterwards, meaning if the decision had been annulled or not. He also confirmed the bid awarded by MTPT. Nevertheless the complaint filed by "Mirusha Transport" legally does not nullify the decision, until a new one has been taken. On the MTI's website one cannot find a new decision related to revoked license for this company. "Preportr" has made attempts to have answers from representatives of two other companies, "Sallahu" and "Tosi" through their official numbers. However, communicating with them was impossible.

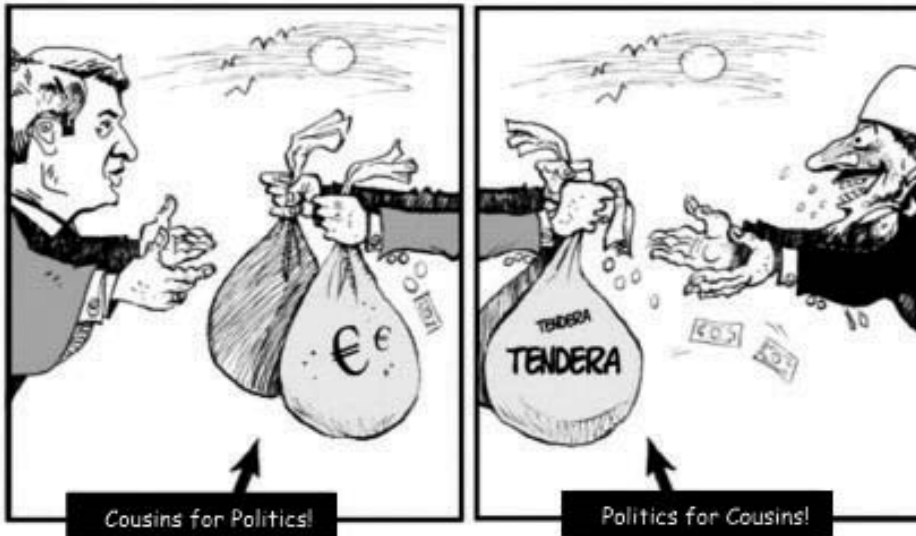
Although "Preportr" has made several attempts to contact representatives of MTPT and MEST, none has accepted to meet. Ilir Kryeziu, Director of Department on Construction at MTI confirms for "Preportr" that each construction subject must be licensed by MTI. "Companies cannot exercise their activity without a license." The Market Inspectorate is in charge of overseeing the licenses," states Kryeziu. According to him, the Commission for Licensing Construction Subjects decided on revocations, and the list of revoked subjects, that it annulled ones, and those decisions are made public on the MTI's webpage, and are passed on to competent bodies such as KRPP, Institute of Public Health, and APP.

Kryeziu explains that the Commission for Licensing Construction Subjects does not undertake punishing measures against the companies that have violated the decision on revocation. According to him, the sole punishment measure applied by the Commission is suspension, in fact, the decision to revoke the license. On the other hand, Ilaz Duli, member of KRPP states that according to the law in power the economic operator cannot be contracted a new service for the period of suspended license, and that the ministries that approve such bids violate the law. Such prohibition is made possible by the current law on public procurement with Article 65 paragraph 4, paragraph 4.5, and paragraph 4.11 and Article 69. The Administrative Directive 10/2010 on "Licensing construction subjects" through article 35 paragraph 4 and article 40 paragraphs 1 and 3 prohibit awarding bids to companies with suspended licenses. According to Blerim Kelmendi, senior investigation officer at the Kosovo Agency against Corruption, awarding bids by the Procurement Departments of respective Ministries to the companies with suspended licenses could be considered as abuse of official duty by the representatives of the procurement commissions. According to the Criminal Code of Kosovo, abuse with official duty is considered a criminal act against the official duty and as such is punishable criminal act. Although majority of cases in possession of the KAaA come from the procurement sector, they claim that they had had no information that bids had been issued to companies with suspended licenses. Annual reports of KAaA for 2009 and 2010 provide proofs on massive falsification of official documents that intend securing bids for certain economic operators, using at times fictional names of professional personnel and falsifying employment contracts with individual that have never been employed by those operators.





## PDK Financiers win multi-million euro bids: the Political



### Magic of 500 Euros Donation

Florie Xhemajli, Qëndrim Bunjaku

Many financiers of PDK, that have won public bids, have stated that they had donated 500 Euros to this party. But the auditor's reports show an enormous disproportion between declared and donated amounts. Millions Euros of public funds have been given to companies that declared donations of 500 Euros to the party in power.

Millions of Euros, funds of national budget, have been given to a number of private enterprises, whose owners have financed the Democratic Party of Kosova's (PDK) electoral campaign during local elections of 2009. The amount of almost 40 million Euros has been given to 8 companies through 24 public bids by the Ministry of Transport and the Ministry of Education. Owners of these companies, according to the official audit report of CEC, have provided funds for campaign financing during PDK's electoral campaign in local elections of 2009.



A comparison between companies that have won bids of these two companies with the data acquired from the Kosovo Agency for Business Registration (KABR), and official audit report of CEC, shows that millions of Euros of public funds have been given to the companies that have directly financed the PDK's electoral campaign in local elections of 2009.

The companies had won the bids during 2008-2010, period when PDK held power after elections in late 2007.

From contacts established with a number of chairs of these companies, the "Preportr" has received confirmations that those companies that had provided funds to PDK's local election campaign in 2009. A number of them have denied financing PDK, although data from the CEC report are identical with those in contracts that Ministry of Transport and the Ministry of Education have signed with their companies. The data match also those provided by the KABR. A chair of company has categorically rejected to answer "Preportr"'s question related to financing of PDK, claiming it a personal matter. Beside data from the auditor and KABR, "Preportr" has found that the law on Financing of Political parties has been violated in two cases. Such violation has taken place when chairs of two companies, winners of bids, have exceeded the limits prescribed by the law related to the amount of funds that physical subjects can donate to political parties.

## Confirmed donations

After contacting a number of financiers to the party in power, it is clear that bid winners have donated to PDK.

Although they talk of low amounts, auditor's reports often show that amounts reported by political parties are disproportionate with those reported by legal or natural persons. The company "Magjistrallja" declared to have financed the PDK branch in Gjilan with 2,500 Euros, but according to the auditor, the amount reaches 31,500, as the real amount donated to finance the PDK campaign.



Megjithëse ata flasin për shuma shumë më të ulëta, nga raportet e auditorit del se jo "Preportr" has found that Naim Besimi, owner of Getoari Company from Prizren has financed the PDK's Shtime branch with 500 Euros for electoral campaign in 2009. His

company has benefitted 3,469,557 Euros through three contracts signed with Ministry of transport and 689,626 Euros from a bid won at the Ministry of Education.

Naim Besimi confirmed for "Preportr" he had donated funds for PDK's local election campaign in 2009. In addition, he asked about the amount that CEC had presented in its report, implying that the amount Besimi had donated could be larger than the one reported. "What is the stated amount in the report? Yes, yes, I have donated that amount" added Besimi when "Preportr" journalists asked him if he had financed PDK's local election campaign in 2009.

Reshat Kamberi, who owns "Engineering" company in Viti, has also donated the PDK branch in this municipality with amount of 1000 Euros. His company has benefitted 1,735,631 Euros through winning 3 bids of the Ministry of Education. Kamberi has also confirmed for "Preportr" to have funded PDK's campaign in 2009. "Yes, it is true that I have donated that amount to PDK's branch in Viti election campaign" admitted Kamberi.

Viktor Delia owns "Delia Group" company, based in Tirana, and his company financed PDK's branch in Shtime with 500 Euros. "Delia Group" has won 1 bid of the Ministry of Transport. Viktor Delia also admitted to "Preportr" to have provided financial means to PDK in 2009. "Yes, I have given money to PDK during electoral campaign, Shtime Branch, in 2009," explains Delia.

**Jep 500 €, merr  
11 milionë €:**  
Viktor Delia, pronar i kompanisë "Delia Group" nga Tirana, ka financuar PDK-në, dega e Shtimës me 500 €. "Delia Group" ka fituar 1 tenderë nga MTPT-ja në vlerë:  
**11,760,439 €**

## They Do Not Confirm But The Data Match

Bujar Shabani, owner of "Bageri" company in Ferizaj, financed PDK branch in Shtime with 1000 Euros. The same company won a bid from MTPT in amount of 829,569 Euros. Shabani refused to respond to "Preportr" whether he had provided financial means to PDK's campaign in 2009. Further he claimed that data on financing PDK are his personal secret. Nevertheless according to official data, Bujar Shabani, owner of Bageri Company is in fact one of the people who have given money to PDK. The data of Business Registration Agency list Bujar Shabani as company owner, and official reports of the CEC auditor on electoral campaigns list his name as one of the financiers of PDK campaign in 2009.

Mustafe Bajraktari, owner of "Bajraktari" company has donated 500 Euros to PDK branch in Vushtrri. The company he runs has won a bid of MTPT, in amount of 123,287

Euros for a project of "Constructing Sidewalk in Runik." "Preportr" has attempted to contact Mustafe Bajraktari, but with no success. Nevertheless the "Preportr" has found out that Mustafe Bajraktari comes from village Maxhunaj of Vushtrri municipality, and according to the contract, the winning economic operator of the MTPT bid, "Bajraktari" is also from Magjunaj.

#### 500 EUROS TO EVERYBODY!

Është interesante që edhe pse të dhënat e auditorit kanë konfirmuar se ekziston shpërputhje mes shumave të deklaruar dhe atyre të dhëna, në të vërtetë shumica e donatorëve që kanë fituar tenderë publik deklarojnë se kanë dhënë donacion prej vetëm 500 eurosh për PDK-në.

Ismet Konushevci, pronar i kompanisë "Beni Com" nga Prishtina, ka financuar degën e PDK-së në Podujevë me 1900 euro. Kompania "Beni Com" ka përfituar 9,157,830 euro përmes 5 tenderëve publik nga MTPT-ja. Konushevci i kontaktuar nga "Preportr", nuk ka pranuar që ka dhënë donacion për fushatën e PDK-së.

## Thyerja e Ligjit për Financimin e Partive Politike

Ismet Konushevci, owns company "Beni Com" in Prishtina and had financed the Podujeve PDK branch with 1900 Euros. Company Beni Com has won 9,157,830 euro on 5 bids from the MTPT. Konushevci did not confirm to the "Preportr" that he has donated to the PDK campaign.

## Law Violation for Political Party Financing

During the investigation, Preportr has found that dy company owners, who have donated to PDK campaign, have violated the Law on Political Party Financing. Moreover, "Preportr" has also found that a company that has directly benefitted from public bids and has financed the PDK campaign, according the official audit report of CEC has declared smaller amounts of campaign financing than those donated.

Florim Zuka, who owns company Tali from Gjilan, has donated to PDK's branch in Gjilan 8,000 Euros. For the last three years his company has won 6 bids from the MTPT amounting to € 5,475,108.

Basri Kqiku, who owns "Bejta Commerce" in Gjilan has donated €10,000 to Gjilan branch. His company has won 3 bids from the MTPT with total value of €7,545,543.

According to official audit report of the Central Election Commission, these two persons, as natural persons, have violated the law on financing political parties in 2009 with the amounts they had donated. The report states that Florim Zuka has donated €8,000 and Basri Kqiku has donated €10,000. Their acts have violated the Kosovo law on financing political parties as in capacity of legal persons they are not permitted to

donate more than 2000 Euros within in a calendar year. "Political subjects are allowed to receive contribution from natural persons in the amount not exceeding €2,000 (two thousand Euros) per calendar year," states article 5, paragraph 1.1.

Law on financing political parties foresees that such amounts can be donated only by legal entities, and not natural persons. Article 5, paragraph 1.2 states that "political subjects are allowed to receive contributions from legal entities in the amount not exceeding ten thousand (10.000) Euro per calendar year." Nevertheless, "Preportr" has found that the company Magjistralja had declared to have financed PDK's Gjilan branch with €2,500, while the auditor report shows that the amount of €31,500 has been donated to fund the PDK campaign. In 2008, Magjistralja had won a portion of the bid "Winter maintenance of the regional roads in Kosova" for Gjilan region which amounted to €291,251. The bid had been issued by the MTPT.

## Gaps in the law on financing political parties

The Law on Financing Political Parties does not prohibit private companies that had won contracts with public institutions to donate funds towards financing political parties. Neither does the law prohibit the private companies that finance political parties to compete and win bids of public institutions. On the contrary, the law on financing political parties indirectly allows private companies that provide services to public institutions to also finance political parties.

Article 15, paragraph 3.3.5 states that "political subjects that accept contributions from public<sup>9</sup> enterprises, which, through contracts with state institutions perform services, should prepare a special list of accepted contributions." There are other shortcomings in the law especially related to penalty provisions. Realistically, the law imposes only fines when its provisions have been violated, but no other penal sanctions. As such, the law is considered incomplete to prevent or fight activities that may be of corruptive character. "Preportr" sought to contact officers at the Ministry of Transport and Ministry of Education but neither responded to requests for meeting. Furthermore, "Preportr" has sent official requests for meeting and in spite of waiting the response for more than three weeks, neither of ministries replied back.

<sup>9</sup> The Albanian version of the law uses the term Ndermarrje Private which means Private enterprise, while the English version uses the term Public Enterprise throughout the article.

List of Bid- Winning Companies and the amount won
<b>1. "Getoari"</b>
Në vitin 2008, kompania "Getoari" ka fituar tender nga MTPT-ja për "Ndërtimin dhe Asfaltimin e Rrugës Dragobillë-Shkozë" në vlerë prej 365,865 €.
Kompania e njëjtë në vitin 2009 ka fituar tender nga MTPT-ja për "Ndërtimin e rrugës Reqaq-Llukvicë-Struzhë" në vlerë 2,416,111 €.
Në vitin 2009, kompania "Getoari" ka fituar një pjesë të tenderit përkatësisht LOT 6 për "Ndërtimin e urave në zgjerimin e rrugës nacionale M9, segmenti Sllatinë-Gjurgjicë" në vlerë prej 687,581 €.
"Getoari" ka marrë punë edhe nga MASHT-i, ku në vitin 2008 ka fituar tenderin për "Ndërtimin e shkollës fillore në Prizren faza e II-të". Kontrata për këtë punë kap vlerën prej 689,626 €.
<b>2. "Engineering"</b>
Kompania "Engineering" në vitin 2008 ka fituar tenderin nga MASHT-i për "Ndërtimin e shkollës fillore" Letanc-Podujevë në vlerë 491,648 €.
Në vitin 2009, "Engineering" ka fituar një tender tjetër nga MASHT-i për "Ndërtimin e murit mbrojtës në shkollën fillore Nebregoshte-Prizren" në vlerë 23,439 €.
Në vitin 2008, kompania "Engineering" ka fituar tenderin për "Ndërtimin e objektit të shkollës fillore në Kamenicë, faza e I-rë" në vlerë prej 1,220,554 €.
<b>3. "Delia Group"</b>
Kompania "Delia Group", në vitin 2009 ka fituar LOT-in 2C në tenderin nga MTPT-ja, "Zgjerimi i rrugës nacionale M9, segmenti Sllatinë-Gjurgjicë i ndarë në 5 LOT-e". Vlera e kontratës që "Delia Group" e ka fituar është 11,760,439 €.
<b>4. "Bajraktari"</b>
Kompania "Bajraktari" ka fituar tender në vitin 2009 për "Punimin e trotuarit Runik" në vlerë prej 123,287 €.
<b>5. "Bageri"</b>
Kompania "Bageri" ka fituar tenderin për "Rehabilitimin e rrugës M25.2 Prishtinë-Gjilan, pjesa Hajvali-Mramuer", në vlerë prej 829,569 €, nga MTPT-ja.
<b>6. "Beni Com"</b>
Në vitin 2008, kompania "Beni Com" ka fituar tenderin për "Ndërtimin dhe asfaltimin e rrugës Jezerc L=7.270M" në vlerë 950,023 €, nga MTPT-ja.
Në vitin 2008, "Beni Com", bashkë me një kompani tjetër ka marrë tender për "Mirëmbajtjen dimërore të rrugëve magjistrale regionale të Kosovës" regjioni Prishtina A në vlerë prej 618,987 €, nga MTPT-ja.
"Beni Com" ka fituar tenderin për "Ndërtimin e rreth rrotullimit Obiliq (rrugë-kryqi Shkabaj)", në vlerë prej 2,745,984 €, nga MTPT-ja.
Në vitin 2008, "Beni Com", ka fituar tenderin për "Zgjerimin e rrugës M2 (Prishtinë-Mitrovicë) segmenti Prishtinë Shkabaj, LOT II" në vlerë 4,266,234 €, nga MTPT-ja.
Në vitin 2010, "Beni Com" ka fituar tender për: "NDËRTIMI I RRUGËS STROFC-BEQUK-MIHALIQ (K.K. VUSHTRRI)", në vlerë prej 616,602 €, nga MTPT-ja.
<b>7. "Tali"</b>
Në vitin 2008, kompania "Tali" ka fituar nga MTPT-ja tenderin "Hartimi i projektit për zgjerimin e rrugës magjistrale M9 Prishtinë-Pejë, segmenti rrugor Udhëkryqi F.Kosovë – Udhëkryqi Arllat L=25 km" në vlerë 576,345 €.
Në vitin 2009, ka fituar tenderin "Rikonstruimi i rrugës Hogosht-Kopernicë" në vlerë prej 410,152 €.
Në vitin 2008, kompania "Tali", së bashku me 2 kompani tjera, ka fituar tenderin për "Zgjerimin e rrugës M2, Pjesa Çagllavicë-M2/M25 (QMI) km 1+600 deri km 5+200 faza e dytë, LOT 1" në vlerë 2,799,411 €.
Në vitin 2008 ka fituar tenderin për "Asfaltimin e rrugës lokale Muqivërc-Dajkoc-Qarakoc-Kolloleq" në vlerë 410,131 €.
Në vitin 2008 ka fituar tenderin për "Asfaltimin e rrugës Karaqevë e Poshtme-Muhovc" në vlerë 149,635€.
Kompania "Tali" ka fituar edhe një tender tjetër nga MTPT-ja, për "Asfaltimin e rrugës Pogragjë-Dobrosin" në vlerë 1,121,434€.
<b>8. "Bejta Commerce"</b>
Në vitin 2008, kompania "Bejta Commerce" ka fituar tenderin për ndërtimin dhe asfaltimin e rrugës Zajqec-Tuxhec, L=6,547,71 km në vlerë 1,043,543€.
"Bejta Commerce" ka fituar një pjesë të tenderit për "Ndërtimin e rrugës regionale R (105) Palca – Vushtri, pjesa e I-rë prej km 0+000 deri 8+583,06 dhe pjesa e dytë prej 8+583,06 (e ndarë në dy pjesë/LOT-e) në vlerë 1,677,786€.
Në vitin 2009, "Bejta Commerce", ka fituar edhe një tender tjetër nga MTPT-ja për "Ndërtimin e rrugës regionale R209 Bresalc-Kishnapole-Gadime-Vrellë-17.17km" në vlerë 4,824,214€.

## The Physiognomy of Corruption in Kosovo

Avni Zogiani

The relation between politics and business, the transparency in this segment, is a crucial factor for rule of law, for building of a democracy and institutions system with a standing integrity. Most common and safest way to achieve this is when the financial settings of politics can easily be monitored by the public, a matter that is generally referred to as transparency. This is the crucial precondition for a consolidated democracy and state of the law.

When this segment, the relation between politics and private business, remains dark, so dark remains the country's vision for its future. According to numerous national and international reports, our own journalists' experience of several years, and the investigative reports you will be able to read on the monthly addition "Preportr", one can easily conclude that Kosovo is a country with crucial lack of transparency of interactions between private and public sectors.

However, stating this we have said nothing new. Other countries have been there before Kosovo. Nevertheless, the difference remains in the degree of lack of transparency and accountability. The lack of transparent decision-making in Kosovo, has created an environment in which the so-called national and international "advisors", for whom the term national and international dealers can refer best, have become very influential. Through their influence, interests of the public sector are transferred into private interests of individuals and companies, both national and international. This transfer of public values and assets in private ownership happens through public bids, privatization process, and strategic economic decisions. And the debate that follows questions on who realistically benefits from this. Considering that 90% of Kosovo capital is under the control of foreign financial institutions, then we start understanding the problem. Influences on decision-making from the dark backgrounds become visible also when graduation the exploitation of public resources by private interests into different three levels depending on the values in question. The process of acquiring public resources and assets for private benefit can be divided in three levels:

- low level (regular public bids that call mainly for goods and services)
- middle level (bids that call for national project, mainly infrastructure and energy, but also contracts with important public companies), and
- high level (which related to strategic documents and decisions on important contracts between the public and private sectors – such as highway, airport concession, Strategy on Energy, or Strategy on Post and Telecommunications).

The decision-making at all three levels is closed and depending on the level involved different stakeholders. Mainly national dealers close to political parties rank in the lowest level. They manage small public bids in a way that companies that finance parties are later rewarded with bids. This level contains that segment of public fund expenditure which is controlled mainly by local persons and companies. The influence in these cases is placed on budgetary organizations that in all the cases aim the national budget funds. Practically this means that the bids range between few hundred

thousand to few million Euros.

Actors involved in the middle level of acquisition of the national assets and resources are national, but many international as well. They influence high level decisions of the government directly. They concentrate largely on the Prime minister, but also on the boards of public agencies. The public companies are the main target of these actors, especially the international ones, since during the last ten years they have accrued huge amounts of wealth.

Through contract they mainly provide for supplies or consultancies that range from 5 million Euros and above.

The highest degree of public assets acquisition includes creation of strategic documents, primarily for the public enterprises. Here we find serious businesses that cannot compare with two prior levels of acquisition. The benefitting actors are foreign, while the Kosovars are the so-called decision-makers. A term adopted especially for Kosovo in this case is "transaction advisers," who are brought in by embassies and the World Bank offices. Formally, they do not decide, but they mainly write them down. They are merciless on national economy and strong proponents of what is well known in anti-globalization language as "asset rip-off." A number of such documents have been prepared for Kosovo as well, including: Strategy on Energy, Strategy on Privatization of PTK, Strategy on Trepca, contract for construction and concession of the airport, etc. however, there are other contracts of this nature that include those on energy supply, equipment purchase, and power plant system repairs. There was no resistance when these contracts were signed with the governments executive, and in a number of cases have been forcefully imposed to the Assembly of Kosovo. For the Strategy on Energy, according to former Minister on Energy, Justina Pula Shiroka, the World Bank and USAID advisors have exercised open pressure against Kosovo institutions to adopt this document. The document takes off Kosovars hands the most important asset and the sole potential for economic development, the coal and energy sector, to set it aside for future investors.

Depending on the degree of acquisition of public assets, the lack of transparency aggravates exponentially a document of a bid. This way, if we need to measure the lack of transparency in all three levels and graduate it between 1 and 3, then we can easily conclude that if the lack of transparency at the low level of public resource control is qualified as 1, at the middle level as 2, then at the high level it is 3. In other words, if at the low level there is a fog of information that show connections between political and private interest, at the high level there is a total fog and darkness with a zero visibility. On the other hand, while the first two levels refer mainly to a technical method of taking control over public assets (manifested mainly through technical criteria of the bids), the high level implies a methodology totally political in nature. On behalf of important international institutions (mainly the World Bank and International Monetary Fund), or governments known as "friends of Kosovo," international advisers who practically behave as swindlers, meet national officials in power of decision-making and order them how to behave, what to vote, and what to say. It is therefore a direct political influence which not only damages public interests, but deprives the functioning of democracy making it function not only from top to bottom, but rather from outside to inside. It is interesting to note that the dominant debate in the society focuses on



violations and manipulations taking place mainly at the low level of public assets control. This happens because the actors in the other two levels are mainly international. If an expat appears in the radar screen of corruption watchdogs, whether national or international, they end up treated as invisible and untouchable. For example, it is unimaginable that journalists, civil society, or politicians debate on expats' conflict of interest in Kosovo. International institutions can exercise functions and role that conflict certain interests from which they can benefit public assets. No one takes notice of such action being punishable. Strangely enough, of all the involvement of international institutions in governing the country not a single case has ever been reported on influences directed to public offices, which aim taking control over public assets. One such case is the influence and pressure of the World Bank "advisers" which the former minister of Energy refers to. However, the necessity of having a clear environment for operations has forced the expats to create a sphere of interest for the national politics. As a result, at the lower level of profiting of the public sector, national politicians and businessmen operate freely with no fear of "Kosovar" justice, which for ten years has been dominated by the expats. In other words, enabling the expats uninterrupted operations at the middle and high level of corruption, national politicians have been left with the low level through which they secure own financing with no benefit for their own country. On the other hand, the foreigners have established a kind of effective exploitation system of the Kosovar market, which has excluded majority of values and impoverished the country continuously for ten years in a row. "Preportr," a project of Kosovar Center for Investigative Journalism, will seek to continuously report and investigate the relation between the private and public sectors, i.e. deconstructing the use of public offices for direct or indirect benefit of political and business actors from the public sector. At this edition, the investigations focus on the segment that links these two sectors and which largely qualify on the first two levels of controlling public assets. We will consequently attempt to deconstruct all three levels of corruption in Kosovo, although the "Preportr" journalists have ran into serious and systematic obstacles during information gathering, which is also considered a public property. Preportr reporters have been continuously met with authority's resistance to provide information and an extraordinary diligence to reduce amount of accessible information. Clearly, their aim was to conceal the relation between politics and public offices with private sector. For example, until the current government took power, the forms of the Kosovar Agency for Business Registration required, and consequently provided, much more information on the business. In 2008 the required information has been reduced to a minimum. Therefore, when researching, one has to pay huge amounts of money to officers of the agency in order for them to "prepare" the requested information, although the information should be a public property. Today you are reading the third edition of Preportr published by Organization COHU! under the trademark of Kosovar Center for Investigative Journalism. "Preportr" will utilize other means as well to expose the abuse with public offices for parties' and politicians' benefit. But it will not stop here. "Preportr" will have a special online edition, in the shape of a magazine with specific identity.

# A RETROSPECTIVE OF ÇOHU! PROJECTS

## CIVIL SOCIETY FOR CLEAN PARLIAMENT

(June – November 2007)

When a group of ten non-governmental organizations (NGOs) gathered in 2007 to establish the coalition for clean parliament, they initiated the project "Civil Society for Clean parliament). The coalition started work in July, and the Kosovo Foundation for Open Society (KFOS) supported it with the first grant, to be followed by other donors including the Balkan Trust for Democracy (BTD).

The project Civil Society for Clean Parliament aimed to establish a parliament clean of corruption, organized crime, and any other illegal activity. The project would implement before the general elections of November 17, 2007, compiling personal histories of candidates from all six major political parties running for Kosova's national parliament. The histories would be compiled based on criteria set by the coalition. The coalition hired more than 30 independent researchers, most of them experienced journalists from Kosova, to investigate candidates. The researchers compiled histories based on the articles published in national and local media during the past 8 years, but also included information from the reports published by the Auditor general, municipal court decisions, and other credible institutions.

Once the researchers had compiled the lists, the coalition established the independent Overseeing Board in October, with the primary mandate to verify and controlled the prepared reports. As a result, the lists were massively edited to create as credible and standing list. In specific cases the researchers were requested to investigate further to prove more credibly the suspected violations by certain candidates.

Due to the short period before the elections, the coalition agreed on a preliminary list which was submitted to the political parties in order for them to have sufficient time to respond with facts and counterarguments. All parties, but the two in power at the time (LDK and AAK) responded to the coalition's list, to be followed by joint discussions phase.

The list published on November 4, 2007 numbered less candidates (total of 55) compared to the preliminary list due to the counterarguments the parties had provided in acceptance of the coalition's initiative "Civil Society for the Clean Parliament." The coalition had provided the parties with three weeks-time to contest the findings. Besides, the coalition maintained open-doors during election campaign and after the list had been made public. As a result, three candidates had been removed from the list due to the provided arguments.

### Initiative's results

The coalition's initiative had a huge echo in Kosovar media all daily newspapers and two national televisions, RTK and KTV, published the list of the candidates unclean for the parliament. As a result, the coalition was regularly on the media throughout the election campaign, either through interviews on the candidates or direct reference to the initiative. In a word, the media gave a valuable impetus to the initiative through

its regular coverage.

To convey the message to the Kosovar voter on not to vote the unclean candidates and prevent the ones with suspected criminal activity, the coalition published 50,000 leaflets with names and personal histories of the candidates. The leaflets were distributed throughout Kosovo, in all municipalities both major and smaller ones like Rahovec, Malisheva, Podujeva, Drenas, etc, two days prior to election day.

The election results were satisfactory for the coalition, based on which one can conclude that the coalition for clean parliament was successful in achieving its goal, in spite of limited impact such a civil initiative can have in Kosovo. The largest party in the country lost elections, and the biggest opposition party won. The low voter turn-out had an impact on the election results and the coalition's effects. It all resulted with the decline of number of voters for each party compared to elections of 2004.

## Threats

Confronting the candidates with their violations at a sensitive time such as elections had upset a number of them significantly. The party in power at the time, AAK, issued a press release requesting state institutions to investigate "suspicious funds" of Organization ÇOHU! A week later, a number of officials of the Department for NGO registration, in the Ministry of Public Services showed up in the organization's premises to "investigate", violating their own legal mandate. The same party, in a subsequent communiqué called for lynching of organization's members labeling them among others as "pro-Yugoslavs." Similar threats had been directed to the partner in coalition for clean parliament in Ferizaj, the Initiative for Progress (INPO). The LDD branch notified them of consequences "with unknown ending."

## Coalition Members

The following organizations constituted the coalition "Civil Society for Clean Parliament" Organization ÇOHU!, Initiative for Progress (Ferizaj), Community Building Mitrovica (Mitrovicë), Syri i Vizionit (Pejë), Young European Federalists (Vushtri), Llapi Civil Initiative (Podujevë), OJQ Çelnaja (Malishevë), and NGOs Forum (Gjakovë).

## The unclean candidates who did not make it to the Parliament

The overall candidates' list who were identified as unclean to become members of parliament was published on November 4, 2007 and contained 58 names. After list's publication, 3 candidates have been removed due to the additional facts and counter-arguments they had provided. The following list has been published and distributed throughout Kosovo. It contains 55 unclean candidates, of which 28 did not succeed to become re-elected members of the Parliament of Kosovo<sup>10</sup>.

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<sup>10</sup> This list contains all the unclean candidates, while the names of un-elected ones are on bold

AKR:	Behxhet Pacolli; Musa Limani
PDK:	Bajram Rexhepi; Hajredin Kuçi; Rustem Mustafa; Arsim Bajrami; Bedri Selmani; Sali Ahmeti; Zekë Çeku;
AAK:	Ramush Haradinaj; Bajram Kosumi; Ibrahim Selmanaj; Donika Kadaj; Ardian Gjini, Et'hem Çeku; Jahja Lluka; Bujar Dugolli; Jonuz Salihi; Merxhan Avdyli; Lulzim Leci; Agim Elshani
LDK:	Fatmir Sejdiu; Sabri Hamiti; Eqrem Kryeziu; Lutfi Haziri; Kolë Berisha; Ismet Beqiri; Melihate Tërmeti; Agim Veliu; Ali Lajçi; Haki Shatri; Bujar Bukoshi; Zef Morina; Fatmir Rexhepi, Faik Grainca; Mursel Ibrahim; Zejnullah Rrahmani; Haki Rugova; Ibush Jonuzi, Qemajl Ahmeti; Anton Berisha; Rexhep Osmani; Behxhet Brajshori; Ali Sadriu
LDD:	Nexhat Daci; Berim Ramosaj; Adem Salihaj; Synavere Rysha; Hafiz Krasniqi; Ramadan Kelmendi; Sejdë Tolaj; Enver Muja; Pajazit Pllana, Ramiz Zeka

## **Corruption and Organized Crime: Reflections on Status Negotiations (October 2006)**

This report of the Organization for Democracy, Anti-corruption, and Dignity "ÇOHU" argues that involvement of certain political party structures in organized crime and corruption reduces the negotiation capabilities of the Kosovar party in the status negotiation and representation of majority of Kosovar people's will. As a consequence, Kosova will be able to win "a kind of independence" which is not consistent with the majority's will.

The fact that frequently Kosovar politicians have been mentioned about abuse of power, involvement in criminal acts, irregular and unprincipled favoring has made a considerable number of them easy subject of blackmailing, which has reflected on their positions throughout the status negotiation process.

There are many potential scenarios to the negotiations outcome, but the most likely one is of another status quo. Due to continuous pressure to compromise in order to achieve a negotiated agreement, Kosova may come out with a hybrid and unclear status. Powerful pressure is being exercise to concede to decentralization in which Kosova Serbs are likely to gain more than de-facto territorial autonomy and strong vertical ties with Belgrade. Such scenario would exacerbate functioning of Kosova institutions resulting in a hybrid "state".

This report focuses on three biggest Kosovar political parties, LDK, PDK, and AAK, since they represent the largest part of Kosovar electorate.

### **Politicians' involvement in organized crime and corruption**

The activity of political leaders and subjects is the first and gravest reason for political compromises that harm Kosova's functioning as a unit. Through such activities they have secured support through grave legal violations, abuse of power, and frequently with criminal acts or involvement in organized crime. The latter has rendered Kosovar politicians powerless in effort on Kosovo status due to their vulnerability on blackmailing. Senior officers owe to external "advisors" of political parties. Political party officials have admitted that their parties are subject to influence of security people who control economic interests. On September 30, the daily Lajm Ekskluzive wrote on its addendum Lajm Plus that more than 30 bodyguards of senior political, party, and institutional leader are involved in grave criminal acts such as murder and rape proving the close connection of Kosovar politics to crime.

The second reason is that a good number of them strongly believe that their political career depends on the position and support of the international factor towards own actions, rather than the voters themselves. A special political corruption results this way since politicians are not loyal to the political will they represent, and they become loyal to whomever they define as "international community" and furthermore to those who may hold something compromising in their hands. Frequently, the intervening of foreign politicians has directly determined the decisions of Kosovar Albanian politicians.

## Political parties and status negotiations

### Democratic League of Kosova (LDK)

Corruption and organized crime have been this party's the main source of power after the war. Informal structures had developed so strongly that downgrading of party activists under the robe of politicians may have gone as far as demanding proofs of loyalty towards them or pay money to receive a position in Kosovar institutions. The police has never explained what happened after the raid in Kosovo's presidency in 2004, but only confirmed uncovering a considerable amount of illegal weapons and people never registered as presidency employees. On the other hand, important politicians who participated directly in Kosova's status negotiations have never dared to distance themselves from structures suspected of involvement in organized crime. Sheltered in the presidency for a long time. Seemingly, the presidency served as a party's "headquarter" through which politicians would be promoted or downgraded not only within the party hierarchy, but the institutional one as well. There are two key people of this party that represent Kosova in negotiation process: Fatmir Sejdiu and Lutfi Haziri.

The current president of Kosova, Fatmir Sejdiu, must act the obedient, tolerant, cosmopolitan politician in order not to be deprived of the main source of his political power that is the belief among people that he has been placed there with the Americans' support. This is very important to him as the next party elections, anticipated for late this year, should determine whether he or former speaker of the Parliament enjoys the support of the party. Actually, the "anti-Americanism" has been the main weapon of Sejdiu wing in battle against Daci as the president of LDK.

Lutfi Haziri, a politician without any specific qualification, has been speculated to have been elevated in politics by party structures supervised by the international forces for suspicions on exercising organized crime. Currently, deeply involved in promises on decentralization to people in Kosova, but also to the internationals, Mr. Haziri faces another burden that reduces his decision making powers. During his tenure as mayor of Gjiilan municipality (2001-2004), the Auditor General had uncovered severe violations and manipulations with public funds. His name is connected to 2 million Euros dedicated to repairs after the earthquake in Gjiilan, allocated in 2002.

Beside these facts, LDK has in general downgraded its credibility with scandalous cases of corruption and organized crime that involved its representatives in central and municipal institutions the very Minister of Internal Affairs, Fatmir Rexhepi, has been appointed to the position by the LDK's chief of intelligence, otherwise suspected of connections to organized crime, Rame Maraj. Furthermore, the inherited practice in the party to agree with anything "the international community" presents to the table is very problematic in defending Kosova's interest during status negotiations.

## Alliance for Future of Kosova (AAK)

At the time when the current governing coalition were being established, otherwise a totally unnatural cooperation, the Hague Tribunal was getting ready to file charges against the chairman of one of the parties. Ramush Haradinaj resigned from the post of Prime Minister after charges were made public. Soon afterwards, Mr. Haradinaj returned to Kosova along with a group of "internationals" who would run the Fund for his defense. His heir, Bajram Kosumi and the following ministers, afforded themselves limitless practices of corruption, continuously reported by the dailies published in Prishtina.

At the time when the public was increasingly starting to believe that too many scandals are evolving around this party's people in government and the Kosovar media made impression that actions were to be taken against the corrupted, Agim Çeku came to chair the government. At the time when everyone expected numerous discharges, and Çeku's promises that he were to take actions against corruption, the party president, Haradinaj cut those expectations short through a communiqué stating that AAK ministers have been successful in their jobs. It was very difficult to argue the grounds of this statement, but as of this moment the Prime minister's language shifted entirely. The success of Haradinaj Fund was mentioned in the same context claiming that in a one year period time 5 million Euros had been raised. In the same press conference Haradinaj called for additional 5 million.

On the other hand, Mr. Haradinaj continues to be preoccupied with fill up of his fund. Aware of this along with the fact that AAK's representatives in the state institutions are suspected of heavy involvement in serious corruptive activities it is unlikely that this party will generate a significant representative power of majority of Kosova people. Overall, the Hague charges on war crimes still hang above AAK's president Ramush Haradinaj due to which he will have to act "obediently" towards the internationals, a situation which suggests that he will be willing to compromise in order to avoid Hague.

## Democratic Party of Kosova (PDK)

Democratic Party of Kosova is the first party to have held the post of Prime minister in a broad coalition government. This government has marked the initiation of corruptive practices within the young Kosova institutions. PDK Ministers and officials in this mandate have never been accountable. Besides, the PDK structures have been reported to be close to informal economy including the organized crime, after the war. On top of that, operation of PDK parallel intelligence service, ShIK, a name which is often connected with a series of criminal activities, had been allowed. Tolerating such service by the public order bodies, ran mainly by internationals, implies a direct inter-dependency of this party with foreign structures. Naturally, this damages seriously the autonomy of this party's representatives in the negotiation process.

It is clear that the Chief of Democratic Party of Kosova, Hashim Thaçi, cannot resist the desire to become country's Prime minister. At the early stages of Joint Administrative Structures, he had demonstrated rebellious indications towards documents that he considered harmful for Kosova, as was the case with Constitutional Framework for Kosova and the Çović-Hakerup Agreement. However, soon afterwards it became clear that his wish to build a political career would be more powerful than any engagement to defend the will of Kosova people. Today, Thaci has become part of politicians in



power rhetoric leaving behind completely his party's role as opposition.

Furthermore, the inclusion of PDK in the Negotiation Team proves that beside desiring to be part of the processes, this party and its chief do not want the "international community" qualify them as "disobedient" which according to the reasoning of Kosovar politicians would damage their chances to become part of government once the status negotiations have been concluded. In this manner, the chief of this party has found himself between the opposition rhetoric and constant search for international support. Today, it can effortlessly be concluded that he is vulnerable on how he is being perceived by the representatives of foreign offices in Prishtina.

One should not forget that the Hague shadow hangs above PDK as well, since its officials have been accused of war crimes in the past.



## Report on 100 Days of “Çeku” Government

July 2006

### Introduction

This is a research by Organization for Democracy, Anti Corruption and Dignity ÇOHU! on the first 100 days of the “Çeku” Government. When we thought of starting to monitor the media with the aim of preparing a report on the first 100 days of the “Çeku” Government dilemmas were born. How can you talk of the first 100 days knowing that the composition of the Government has not changed since it was formed in December 2004? Three prime ministers have been at the head of this coalition Government whereas no minister has been replaced. Many reasons lead us to the conclusion that this Government does not deserve any report. One of the reasons is that the Government has shown no efforts to achieve any result. It seems simply that with the passing of time the Government has got the message that it is created to be a status quo Government until the exit strategy of UNMIK has been executed.

Be this as it may, the “Çeku” Government did not make efforts to break the status-quo of bad governance. Therefore Organization ÇOHU! decided to make a report to re-emphasize the violation of laws, corruption, misuse of funds etc., phenomena which have occurred as long as the present Government has governed Kosovo.

Firstly it should be stressed that the report issued by the Prime Minister Agim Çeku on the work performed by the ministers since he was appointed is full of self-praise and as such does not merit any attention. There is in the report no self-criticism at all. The Government’s report does not address the big problems challenging it such as corruption, non-professionalism, misconduct in carrying out official duties, misuse of public funds etc. These concurrencies in the ministries have been continuously reported on by the daily press and have to a large extent been verified by the Office of the Auditor General (OAG).

Secondly, Prime Minister Çeku, as can be seen from the monitoring of the media, has shown a lack of elementary consistency in the way he is expressing himself. His promises and positions to various issues have varied in complete accordance with the opinion of the party (AAK) which put him in the position as Prime Minister.

We re-emphasize that the aim of the investigation is to demonstrate that the first 100 days of this Government were not characterized by “increased dynamism” of work which is said to be the case according to the Government’s own report for the 100 days. In fact, there are no concrete results, especially in economic development. To the contrary it can be said that the work of the Government is continuously showing that corruption is ongoing. Moreover the actions of the Government demonstrate a total lack of regard to the wellbeing and dignity of the citizens of Kosovo.

## The circumstances surrounding the change of Prime Minister

An extraordinary pressure was exerted against ex-Prime Minister Kosumi as he in fact was proven to have broken the law. However, the breaches of law committed by the ministers were even more drastic and frequent. These ministers are continuing in their positions to this very day. The Kosovo press started to write about the total lack of political power shown by Kosumi vis-a-vis the party which had nominated him. Very soon he ended up in a rough relation with the head of the party (AAK) and thus he was fired. The reason behind the dismissal was not to punish Kosumi for his inefficiency or corruption but was simply a price he had to pay because he had lost the confidence he enjoyed from the head of AAK. On the 1st of March, 2006, Bajram Kosumi resigned as Prime Minister of Kosovo, claiming that this was his moral obligation whereas in fact he had no other choice.

At the same time as Kosumi was dismissed also the head of Parliament, Daci, was dismissed on the 1st of March. Daci, an arrogant leader and with corruption affairs behind him, had won the trust from his party, LDK, only three weeks earlier.

However, time has shown that the changes were just of a cosmetic nature aiming at calming the public opinion which kept turning more and more hostile to the Kosovo Government institutions<sup>11</sup>.

### Mr. Çeku "Burned"

On the 10th of March, 2006, by 65 votes pro, 33 against, and 5 abstaining, Agim Çeku was appointed the new Prime Minister of Kosovo, inheriting all ministers and deputy ministers from the "Kosumi" and "Haradinaj" governments, respectively.<sup>12</sup> The first bitter taste Mr Çeku experienced by not being allowed to carry out what normally is the right of any Prime Minister: to appoint his own cabinet. His room for manouver was limited from the very beginning. It was expected that he would refuse to be Prime Minister in these circumstances but instead he stepped forward with a statement which surprised a lot. He said: We will start like this and then we will see what to do.

After the first Government meeting headed by new Prime Minister Çeku, he had told his ministers that they had 100 days to prove themselves and after this period he would evaluate each minister separately to decide if they could stay as ministers or not.<sup>13</sup> The two parties had previously unanimously declared their strong support for their ministers. This happened in spite of the fact that the majority of the ministers repeatedly had proven themselves to be corrupted, in breach of law and incompetent to head the work of their ministries. Some of them had even shown the same behavior and incompetence already when previously they were head of municipalities. However that may be, the Kosovo opinion, lacking mechanisms to express their support or

<sup>11</sup> See Early Warning Report #12 by UNDP October-December, 2005.  
<[http://www.kosovo.undp.org/publications/ews12/ewr12\\_eng.pdf](http://www.kosovo.undp.org/publications/ews12/ewr12_eng.pdf)>

<sup>12</sup> All daily papers.

<sup>13</sup> All daily papers.

discontent for giving the ministers a deadline of 100 days, received the decision with silence.

The new Prime Minister started by promising that he would pardon nobody who was in breach of law. With this strong declaration he gave the impression that he was preparing to punish ministers and high officials who were accused of breaching the law. The statements from Mr Çeku were overrun by a press release from the Board of the AAK party which declared: "the board gives it's full support to the ministers for their work so far." This was of course a heavy blow to the new Prime Minister. By the end of the 100 days the Prime Minister no longer used the word "accountability", a word he so often used during the beginning of his mandate.

### How the language of the Prime Minister "evolved".

Below we will show how the rethoric of Prime Minister Agim Çeku gradually changed concerning the fight against corruption and planned reforms during the first 100 days. It clearly demonstrates that his possibility to efficiently lead his cabinet as Prime Minister was limited.

1. After being informed that he would not be able to create his own cabinet, having met with deputy head of LDK, Eqrem Kryeziu, Prime Minister Çeku said:
  - Wishes is one thing but possibilities something else.
2. To convince the public opinion that he would not tolerate violations of law and corruption he said:
  - No one will be saved from the consequences of his/her wrong doing.
3. When he received AAK's press release stating the full support for its present ministers he said:
  - Their will be no dismissals unless there are strong arguments for such a measure.
4. When the first reports from the Auditor General appeared, the Prime Minister got cold feet and declared:
  - If the auditors show that there have been wrong doings no one will be saved from the consequences of such acts.
5. The Prime Minister gave up completely when he went back on his own words saying that not even the results of the audits would be enough to take measures. After a press conference held by the leaders of his party he said:
  - We will take action only if the wrong doings have taken place after 12th of March this year.
6. Lately he has started to distance himself from responsibility by saying:
  - The legal authorities should now deal with the audit reports.

The Prime Minister seems to forget that the courts in Kosovo are threatened and corrupt and in serious problems. Law enforcement is the weakest point in the Kosovo institutions and needs strong political support. It does not need interference nor should it be ignored the way the Prime Minister seems to be doing.

Corruption cases during the 100 days of Agim Çeku

Some cases were to remain challenges which Mr. Çeku was never to have the power or courage to face:

- The failure to functionalize the Anti Corruption Agency.
- The failure to re-open the main road between Prishtina and Skopje in due time.
- The reports from the Auditor General demonstrating that the present ministers are involved in misuse of funds.
- The suspicions that minister Bujar Dugolli has accepted bribes in connection with the privatization of Ferronikel and also in connection with the issuing of licenses for casinos, especially Swiss Casino.
- The illegal transfer of approximately one million Euros from the minister Melihate Tërmkolli to the account of the Presidency and the later return of this money back.
- The controversy surrounding the signing of a draft-law aimed at supporting war veterans.
- The Minister Petković case.
- The renovation of a Kosova A generator, the solemn re-inauguration and the total destruction by fire of the generator within 24 hours.

## **The Anti Corruption Agency**

**March 15:**

The delay to put the Anti Corruption Agency in function approaches two years. In one of his first public appearances Mr Çeku chose to call for the immediate putting into function of this agency. He realized that within a very short time he would be put to hard pressure for not fighting corruption within the Government. After 100 days the agency has no office, no budget, has no director and there is no political will to support it. Finally, on the 17th of July the Government elected Hasan Pretenin as executive director for the Anti Corruption Agency. It remains to be seen how fast the Agency, now with a director, can start its anti corruption work.

## **Ministry of Transport: Highway Prishtina-Skopje and Other Ghosts from the Past**

**March 18:**

The Minister of Transport Qemajl Ahmeti continued to ignore the seriousness of a problem that was to cost Kosova a lot. On March 18, after visiting the land-slide site he stated: the conditions of the road to Skopje are stable. The road remained blocked for three months, blocking the main road artery of crucial economic and strategic importance for Kosova. Many accusations of budget abuse have been made on this matter

and the minister never held himself accountable to anyone.

## **The Affair related to Sales of Technical Control Licenses**

The Prishtina-Skopje motorway was not the only one connected to MTPT. Officials of this ministry were never held accountable for the statements witnesses provided that this ministry sold licenses for the vehicles technical control. No action has been taken to investigate the allegations that drivers' licenses were being sold.<sup>14</sup> Witnesses have claimed that usual amount to purchase a license for vehicles technical control amounted to 10,000 Euros. A witness, using his name, last name, and providing a photo, spoke openly to Gazeta Express on March 16th on the bribery he had to pay to one of the youth forum activists at LDK, Sejde Tolaj, to have the licenses issued.

### **Petković Case**

**March 22**

Many allegations have been directed to Minister for Communities and Returns on abuse of funds dedicated for construction of houses for returned Serbs. These allegations have been raised by Petrović's very former chief of cabinet, Mr. Radomir Dimić. Dimić spoke of inflated invoices, while Kosovo's Auditor General has raised suspicions on committed violations.

According to allegations, the Ministry for Communities has paid 80,000 euros to gravel few kilometers of a road and to fence a football mini-stadium. Similar allegations have been raised that this ministry has committed another violation when purchasing 20 jeeps of "Skoda" brand.

## **Reallocation of fund MPS – Presidency – MPS**

**March 20**

The Minister of Public Services, Melihate Tërmkolli, has transferred a fund of more than 1 million euros to the Presidency for vehicles purchase that had cost 2 575 000 euros, in spite of the fact that the fund had already been dedicated to the Pallati I Shtypit. Committing the act, she has violated the law on management with public finances.<sup>15</sup> Although a person has ended in prison, Minister Tërmkolli has never held herself accountable to anyone and has failed to show herself on interpellation called for by deputies at the Parliament of Kosovo.

Reports of April 1 claimed that the Presidency had decided to return 1 million euros to the Ministry of Public Services, transferred by Minister Tërmkolli on April 25, 2005 to the Presidency of Kosovo's account. The transfer had been approved by Minister of Finance, Haki Shatri<sup>16</sup>. The fund has been returned after Minister Tërmkolli's request due to investigations initiated on this case.

14 Gazeta Express, March 16,

15 Koha ditore, March 20

16 Lajm Ekskluzive, April 1

## **Trade and Industry's: Dugolli's Ministry**

### **Casinos**

For a casino license issue, the Law on games of chance requires deposit of 2 million euros and payment of 1 million euros to Kosova Consolidated Budget account. The Ministry of Trade and Industry, in particular the Minister Bujar Dugolli, have violated the two provisions of the law when licensing Swiss Casino and Kasino King. Both casinos have provided proofs of possessing 2 million euros but the provision of depositing the amount in a specific bank account of the Ministry of Economy and Finance has not been respected.

## **Privatization**

### **March 18**

Minister Dugolli has been alleged for corruption in Ferronikel's privatization as well. The company Adi Nikel filed charges against him at the Prishtina Municipal Court on account that he had demanded a bribery of 3 million euros. The case has later been transferred to the Serious Financial Crimes Unit. The company's representative, Muhamet Jaku, accused Minister Dugolli, who sits as deputy-chair at the Board of Directors of KTA, on demanding bribery during the calls for bids to privatize Ferronikel. Deciding on the second bidder, Alferon, was very surprising since "Adi Nikel" offered 17 million euros more for Ferronikel's purchase.

## **Airport**

### **March 18**

The United Nations Office of International Oversight Services reported a large number of violations at the Prishtina International Airport<sup>17</sup>. The SRSJ Soren Jessen Petersen claimed that reported violations had no ground and continued to be indifferent towards crime and corruption in Kosova, for which he has been accused by important international bodies as well, such as Contact Group. The Government of Kosova on the other hand treated the scandals at the airport as though happening in another state.

## **Energy**

### **"Kosova A" 10 million burnt down**

The Minister of Energy Et'hem Çeku has always been known to specially enjoy his presence in front of cameras. He took such opportunity again during spectacular inauguration of the renovated block of Kosova A, which cost millions of Euros of Kosova's budget. Repairing this block cost 10.3 million Euros of Kosova budget, while the rest has been paid by KEK.<sup>18</sup> No one demanded accountability on how it was possible that the repaired power plant that cost 11 million Euros broke down only three days afterwards.

<sup>17</sup> See Organization ÇOHU! research on Prishtina Airport: Senior Officers Lack Accountability in Penalizing the Serious Violations of Law during 2000-2005, May 2006, available at [www.cohu.org](http://www.cohu.org)

<sup>18</sup> Official webpage of the Ministry of Energy and Mining, <[http://www.ks-gov.net/mem/pdf/raporte/Riparimitca\\_170606.pdf](http://www.ks-gov.net/mem/pdf/raporte/Riparimitca_170606.pdf)>



## Post and Telecom of Kosova (PTK)

On June 5 and 6 Gazeta Express reported that UNMIK had knowingly allowed intrusion of Serbia's telecom into Kosova's already chaotic mobile network, damaging PTK, while the government ignores the fact without explanations. Express also accused directly the chief of UNMIK, Soren Jessen Petersen, who remains silent, same as in airport case.

## Kosovo's Budget

The audit of Kosovo's Consolidated Budget showed that expenditures had no cover in 11 cases. In 200 cases transaction documents did not comply with payment procedures, alleging abuses.<sup>19</sup> In 32% of payments, transactions had not been authorized. In over 200 cases, payments were made by single-source tendering – meaning the provisions of the law on public procurement and law on management which demand disclosure of bidders and tenders with public finances had been violated. If the budget of Kosova fails to achieve financial integrity, obviously a similar conclusion can be made – and has been made – for municipalities as well. The audit reports have already proved excessive violations of Law on Procurement and the Law on Management of Public Finances in municipalities, as well.

## Recommendations

The Organization for Democracy, Anticorruption, and Dignity ÇOHU! has no recommendations for the government. The government has continuously proven to be the least qualified in the region, the most corrupted (financially and morally), and it has become clear that the Parliament does not determine decision-making of this government, but rather people from political backstage. In this manner, the current government has continued to strengthen Kosovars' inferiority not towards international factor only, but also towards countries in the region.

The government of Kosova functions as an oligarchy with the power concentrated on few groups and persons with intertwined interests, while the citizens serve solely to legitimize the process holding them into power through the free vote. Actually, the sole recommendation to Mr. Çeku would be that the ministers in his government and the Parliament of Kosova should truly understand the seriousness of current governance handicap and they should start thinking seriously for its thorough change. Kosova needs a government with a vision for economic development, for transparent governance, for officials accountable to the citizens. Kosova needs a government citizens' welfare is the primary interest.

<sup>19</sup> Koha ditore, Lajm Ekskluzive, April 1 and 5, respectively



## A Rhetoric Fight against Corruption: 100 Days of Thaçi Government

April 2008

This is a report on first 100 days of Taçi 1 government prepared by Organization ÇOHU! in monitoring the new executive of Kosova. Taçi government, respectively the PDK-LDK coalition, has been established at a time when reports on organized crime and corruption were at a peak. The Kosovar opinion already been so exhausted with reports on violations, corruption, government failures, power abuse, and total ignorance of citizens' problems that elections had become just another tool to confirm introduction of a prime minister still uncompromised with the power. The only such larch party left was PDK and its Hashim Taçi. It was in these circumstances that Taçi government had been established with expectations that it would make a turn towards good governance. It was unimaginable that there could be a worse government than the preceding one.

What followed after establishment of the current government contained in itself a fortune and a reward for Mr. Taçi since the declaration of independence and its recognition created unfavorable circumstances to properly evaluate the governance of his cabinet. Nevertheless, at the end of 100 days of governance one could speak of attempts and activities towards good governance, but as will be seen in this report, decisions and actions have often favored violations and corruption, the fight against which stood at the core of PDK's electoral promises. Hardly anything was done towards fulfillment of such promise.

In general, this government has campaigned much more on making good first impression rather than take decisions and actions to keep its promises. Fight against corruption was a promise, but in fact nothing has been done to fight it substantially. Rather, there were cases of favoring corruption instead.

### The Main Violations That Marked First 100 Days

Short period of time and focus on status resolve could be considered the main obstacles to fulfill the promises, but such circumstances do not justify intentionally mistaken and unlawful decisions, to be presented in this report. In the following, the report will briefly summarize the main achievements and failures of the current government in its first 100 days.

Main Achievements:

- Tendency to reduce Government's operational expenses on vehicles, fuel, and telephones
- Decision for the Board of the Kosovo Accreditation Agency to constitute completely of international staff and freezing the professor's position to the Minister of Education Enver Hoxhaj in order to avoid the conflict of interest (both of these achievements will be contested in practice and this will be made clearer in the report on accreditation of private institutions for higher education)

### Main violations/failures:

- Conflict of interest with the candidate Dino Asanaj at the Board of KTA
- Nominating LDK's deputy chair and Mayor of Istog municipality, Fadil Ferati, for the KTA Board in spite of promises on depoliticizing
- Contracting the private marketing company that designed and ran PDK's last election campaign with 600 000 Euros without prior call for bids
- Appointing a person close to PDK and suspected of corruption as Acting Director of Prishtina Airport
- Failure to address energy situation and narrowing own action to accusations against KEK without a concrete plan or action
- Government's shut-down from the public by monopolizing the sources of information
- Failure to protect public companies due to delay on establishing their boards and due to favoring conflict of interest at the KTA in relation to PTK
- Selection of former chair of PDK branch in Podujeva as General Director of Tax Administration of Kosova
- Selection of the candidate with suspected corruption affairs as the Chief of Central Banking Authority in spite of alarms from the Parliament
- Selection of two candidates as Directors of procurement offices at the Ministry of Public Services and Ministry of Transport and Telecommunication although audit report claim of having committed serious violations
- Failure to keep the ministers' promises made at the government's first meeting that they would resign from their previous engagements
- Worsened public health situation due to personality-based differences between Minister Gashi and Secretary Tolaj
- Further politicization of public administration

Understandingly neither of these two lists presents all achievements or violations of the government, but present simple summaries of most important cases Organization ÇOHU! has identified.

## Centralized Transparency

A tendency to centralize the communication with public and media features Thaçi government, contradicting the essential principals of transparency and good governance. Instead of appointing a spokesperson to maintain relations with media and respond to their requests for official information, Prime Minister Thaçi has appointed his first deputy at the party and executive, Deputy Prime Minister Hajredin Kuçi.

Charging Number 2 official with "responsibility for media" speaks of a tendency to entrust communication with public to his most loyal person, whom he can "control" but who is also positioned highly in the party and government hierarchy. As such he is a person who knows what the public "should know." Media have revealed in the meantime that the person in charge of media was available only when questioned matters were affirmative on government's work and promoted "achievements" and plans. But he never responded when journalists investigated corruption and government's abuses.

## Corrupted Celebration of Independence

The government had decided to allocate 1 million Euros for independence celebration. Overall, the fund was expended with a grave lack of transparency and accelerated procedures, sidelining the regular ones. The government decided that a huge portion of this fund would be contracted to the same company that was in charge of PDK's previous election campaign. B2-Media Solutions is the company that made about 600,000 Euros for independence celebration. This allows be interpreted that Kosovar tax-payers' money has been used to finance PDK's election campaign. Independence celebration expenditure has been floated failing to reflect the genuine prices of the products produced during this period. Overall, this matter needs more transparency and the entire fund should be audited independently.

## Public Companies: Battle over Narrow Interests

Soon after taking office, Prime Minister Thaçi pledged to address the weaknesses of public companies, which during the previous mandate generated largely from the companies' boards, supposed to protect and develop them. Thaçi rhetorically promised to media that he would engage in depoliticizing, strengthening, and privatizing public companies. In doing so, Thaçi and his cabinet declared the boards of public companies illegitimate as they consisted of former ministers. They did so to reform them by including experts and competent people instead the former members who were alleged for corruption.

## KEK: Plenty Accusations but no Plan

Even after 100 days of work the government has practically done nothing to fight corruption and bad management in KEK, besides pointing fingers to the company's management. The current government's plan to improve supply with electric power has not changed significantly compared to the previous one. In fact, this government has presented to plan to solve the shortage of electricity supply in Kosova, although one of the most pompous promises of Mr. Thaçi was to secure electricity supply 24/7. The only plan currently is the long-term plan to build new energy capacities, respectively the Kosova C 2100 project.

## PTK: With No One to Rule the House

The largest public company in country, PTK, was left without management in the first 100 days of Thaçi government. Leaving PTK without management came at the worst timing possible due to unfair competition in market created by a private operator. The current government did not complete the PTK's board creating a gap that handicapped further development of services and offers for almost 1 million consumers. In this manner, the government created a vast opportunity to the second mobile operator to influence the already corrupted regulatory authority, RAT, and win in an unfair market. The operator arbitrated the prices that protect private operator's interest damaging the loyalty in the market and the interests of public operator. Such scenario resembles the previous ones that aim damaging a public corporation undermining it to the pri-

vate corporation and as such establish market monopoly. The Government's decision to introduce a shareholder of IPKO telecommunications to KTA Board, Mr. Dino Asanaj, must have served that purpose, although made a pure case of conflict of interest.

On the other hand, the telecommunications market remains totally corrupted since the call to bid for the second mobile operator. The Board of the Regulatory Authority for Telecommunications (RAT) has not constituted yet, although strategic decisions were continuously made by its head Anton Berisha and a group of people. RAT's decisions have constantly been biased. The government has not yet taken a single step to establish rule of law in the RAT camp, and as such it continues to be an authority closely determined by its head, Anton Berisha.

## **Prishtina International Airport: Substituting with Loyal Structures**

The Prishtina International Airport (PIA) was perhaps the only success after Prime Minister's famous declarations that announced the corruption champions among public companies. This company's management director was arrested along with the chief of procurement and the owner of Petrol Company, suspected of involvement in corruptive affair with fuel supplies to the airport and a number of other contracts signed with the management of PIA. Nevertheless, it became clear soon that the government's aim was to remove this structure within the airport and replace it with another, with direct loyalty lines. Appointing a person with close family ties to PDK as acting director demonstrates that the campaign aim to simply substitute the old with new loyal structures, and not to professionalize the company based on principles of meritocracy and good management.

## **Public Administration: (Politicization) Tradition Continues**

Building an unbiased, un-political, and professional public administration is the key requirement for any country aspiring integration into the European Union. The current leadership in power had promised there would be no political retaliation, but there were numerous cases when civil servants have been substituted with party activists during the first 100 days of governance. This form of replacing the senior officers does not comply with the code and procedures of civil service. Very often, such officers are discharged, only to be replaced by other party activists or without a prior open call for application. For example, the call for director of TAK has resulted with a former head of PDK branch become a director. Administration employees explain there are many cases when people have been parachuted into the civil service position by the current government based on nepotism. Officers at the Public Information Office of the Prime Minister and the Ministry of Labor and Social Welfare have been replaced with people with close ties to PDK.<sup>20</sup>

There are other institutions that have been victims of such an approach, including the Tax Administration of Kosovo and Central Banking Authority. Former head of PDK branch in Podujeva, Naim Fetahu, has been appointed director of Tax Administration of Kosovo (TAK), a practice frequently exercised by the former government and criticized by the current leadership in power. The director of Central Banking Authority (CBA),

<sup>20</sup> Kosovar daily press on March 20 and 26, 2008.

a person suspected for corruption, Hashim Rexhepi has been appointed in similar manner. The Parliament of Kosovo, specifically members of the party in power, have ignored the allegations and without any prior verification have voted appointment of Mr. Rexhepi the director of CBA.

Thaçi had committed earlier that he would seriously consider the reports of Office of General Auditor (OGA), and in particular the past audits that prove serious violations in almost every budgetary organization. What happened in fact was that the officer reported by the auditor to have committed violations have been engaged by this government in very sensitive duties, including procurement offices. The current chief of procurement at the Ministry of Transport and Telecommunications, Nexhat Krasniqi, has been suspected for serious violations. The General Auditor's report alleges on abuses at times when he served as chief of procurement at the Ministry of Trade and Industry. The same thing has happened with the current chief of Procurement at the Ministry of Public Services.

## **Politicizing of the University of Prishtina**

Considering that a large number of professors in the University of Prishtina are active members of Democratic Party of Kosovo and that this party currently runs the Ministry of Education, Science, and Technology, it is highly unlikely that any of the ministers-professors will be required to resign from the University of Prishtina. Their resignation becomes even less likely considering the trend at the current government to replace people of former government with its own. There is an immediate risk for PDK to completely monopolize the sector which should the best be under the politics' control. Besides, this is the sector that demands urgent thorough reforms. Various student unions at the UP have frequently been manipulated for political aims.

## **Partisans' Health Sector**

Since the very first days as Minister of Health Sector, Minister Gashi found himself in a political battle and personal retaliation with former Permanent Secretary of the Ministry, Ilir Tolaj and the director of Clinical Center of University of Prishtina, Isuf Ulaj. In spite of scandals and contradictions on Ilir Tolaj's work, known of close ties with AAK, the minister's focus to discharge Tolaj of duty was a typical case of personal retaliation. During his mandate, Ilir Tolaj has discharged Minister's brother, Afrim Gashi, director of the Internal Medicine Clinic, at the CCUP. Later on, Gashi employed his brother as personal advisor, and his nephew as a senior advisor in the Ministry.

In the meantime, the CCUP continues to lack essential medicines, x-rays films, basic treatment, endangering seriously the patients' health in the center.

## **Conclusion**

Fierce rhetoric against corruption on one hand and serious tolerance on corruption on the other hand are the main features of the first 100 days of Thaçi Government. Essentially, this is fierce fight to replace the partisans of former government with those of current one. The rhetorical commitment to fight corruption widely used by Mr. Thaçi and the lack of substantial results during the 100 day period could have been

understood due to short time and focus on status related activities. However, when one considers the decisions and actions of this government that favored conflict of interest, corruption, politicizing of public enterprises and institutions, one can easily conclude that the fight against corruption focused much more on replacing the previous corrupted structures with new ones, loyal to political and party interests of the current government.



## Expanding Control to Conceal Corruption – Second 100 days of Thaçi Government

*Korrik 2008*

### [Lack of] Fight against Corruption

In general, the second 100 days of Thaçi Government were dedicated to establishing the image of a government that fights corruption. But the practice proved the opposite. The second 100 days served mainly the consolidation of positions gained in the first 100 days. Political people have been appointed in all the boards of public companies. Direct influence has also been installed in the so-called independent agencies.

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Contradicting totally this lack of transparency, the Prime Minister Thaçi had committed at the beginning of his mandate that the information reported by the Office of the Auditor General would not remain dead facts on paper, but would create cases for the courts. This statement remained a dead statement on paper. Not a single auditor report has been processed further nor has been used to open court cases on corruption. One cannot exclude the arrest of Airport's former director, Afrim Haziri, nor his release soon after the position had been filled with a person close to PDK. Practically, not a single case of corruption has been addressed to the judiciary by the current government. Corruption and blackmail allegations in the Airport, KEK, and PTK remained such with no concrete action in the second 100 days.

### Main Achievements:

- Presenting the Donors' Conference as Successful<sup>21</sup>
- Few infrastructure developments consisting of few roads and schools construction
- Taking initiative to regulate the chaotic sector of private higher education

### Main Violations:

- Intrusion of Deputy Prime Minister Kuqi in independence of Kosovo Anti-Corruption Agency through a press conference
- Appointment of Bahri Shabani to the Board of Kosovo Privatization Agency in spite that he is being investigated by prosecutor and police on abuse allegations
- Law violation by the Government of Kosova when appointing people from the governing coalition to the board of PTK and Airport
- Appointing Mr. Skender Krasniqi to chair the Board of KEK, a former

<sup>21</sup> The public was never informed on what happened to the pledged donations in the conference. Moreover, from large scale promises for financial assistance from members of the EU, today majority of them have frozen relations with Kosova, that resulted from broken agreement with the IMF due to Prime Minister's ignoring this institution's recommendations.

- director of Kosovapress news agency, known for close ties to PDK
- Arrest of director of Prishtina Airport, Afrim Haziri, and subsequent immediate release after replacing him with Agron Mustafa, known also for close ties to PDK
- Failure to make public the sources of PDK's pre-electoral financing
- Violating the independence of Kosova Accreditation Agency by Minister Enver Hoxhaj during accreditation of private universities
- Conflict of interest during medicines purchase by the Director of Pharmaceuticals in the Ministry of Health, Nexhdet Kondirolli
- Purchase of illegal medicines by the Department of Pharmaceuticals in the Ministry of Health
- Creating legal foundation for politicizing of Kosova Intelligence Agency

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## Expenditure

One of the first decisions Thaçi Government took after taking power was to reduce expenditures for up to 50 million Euros. During the first 6 months there were times when despite reduction, the expenditures have reached the levels of the previous government. In certain cases, they have also exceeded them. For luncheons and dinners only, Thaçi Government has spent 1.3 million Euros, as presented in quarterly expenditure report for this year. The staff at the Office of Prime Minister has spent € 300,000 more than the Office of former Prime Minister, Agim Çeku, at the same period of time. The quarterly expenditures report of the Ministry of Economy and Finance (MEF) reveals that during the first three months of this year, the budgetary agencies have increased their expenses for 40,000 Euros compared to the same period a year earlier. Expenses in few budgetary lines have increased for 1 million Euros.

Before winning the elections, Hashim Thaçi, had committed to drastically reduce fuel expenditure. According to MEF reports, the fuel expenditure are for about 1 million Euros higher compared to the same quarter in 2007. Based on government's quarterly report, the Office of the Prime Minister Thaçi and all ministries lead by his party have increased expenses of goods and services. In effort to hide the violation of government's decision for reduced use of official vehicles for private purposes, officers in Thaçi cabinet have changed the car plate of a number of vehicles of Skoda brand. Instead of 000, their plates resemble car plates of private vehicles as their first digit is 5. Violation of independent powers and influence on media

If the main feature of first 100 days of this government was the political battle to remove people of the previous government from key positions in public companies and independent institutions and replace them with own people, the main feature of the second 100 day period was consolidation of main coalition party's power, that is PDK. Power consolidation meant not only capturing the sources of public finances but also capturing independent institutions with crucial importance for power maintenance.

## Kosova Anti-Corruption Agency (KAA)

On July 17, the Kosovo Anti-Corruption Agency invited a press conference during which it launched its annual report. The report shows that the Government of Kosovo and the judiciary system lead in number of cases suspected of corruption. Since its establishment, this was the strongest position held by the Agency, which in fact seemed to have softened a day after when the Deputy Prime Minister Hajredin Kuqi invited the head of the Agency, Hasan Preteni, to a meeting. In this meeting Mr. Kuqi explicitly had stated: "We have raised the KAA salaries ... corruption cases relate to the former government". This was a typical case of using stick and carrot against the KAA and direct intrusion into its independence on behalf of government's commitment to support it.

## Kosova Accreditation Agency (KAA)

The Minister of Education, Science, and technology Enver Hoxhaj has intruded into the independence of Kosova Accreditation Agency during accreditation of private universities, when according to the Agency's Board, he ignored the institution.

In an analysis on accreditation process, the Organization ÇOHU! has argued that Minister of Education, Enver Hoxhaj, has attempted to monopolize the process of accrediting private universities by ignoring the agency, the institution mandated with this responsibility. Minister Hoxhaj, whose name continues to appear as faculty staff in leaflets of a number of private universities, during a number of interviews given during accreditation process has states that a number of universities are doing a great work, implying that a number of them would be licenses and accredited <sup>22</sup>.

The statement of the minister has been thoroughly disputed by the report of the British Accreditation Council (BAC) and government's decision made public in July.

## Kosova Tax Administration (KTA)

During almost all previous governments, the Kosovo Tax Administration has suffered continuous erosion of independence and professionalism. Since bringing this agency under MEF's oversight, the selected directors have been exclusively political. The same tradition has been adopted by the current government with appointment of Naim Fetahu as director of KTA, former head of PDK branch in Podujeva and member of Podujeva municipal Assembly. The government's decision has been approved by the SRSG Joachim Rucker on April 20. Fetahu has never worked at KTA, nor on matters that deal with taxes. Currently he attends post-graduate studies.

An IMF assessment conducted in June shows that KTA has suffered decline in tax collections, in identifying tax-paying subjects, and in increasing professionalism of tax administration. The report also concludes that KTA has failed to implement IMF recommendations, an approach qualified as obstacle to foreign investments.

22 <http://it.youtube.com/watch?v=laAy4yCJuMI>

## Procurement Review Body

As of July 1, there is no authority in Kosova to control the tenders. The government has not yet completed the list of five members to the Procurement Review Body, which should have been adopted by the Parliament of Kosova the latest by June 30. In fact, this was the cause for dispute between the Minister of Transport Fatmir Limaj (PDK) and Deputy Minister of Trade Naser Osmani (LDK) as PDK strove to have Parliament vote only three members of the body, who came from PDK. As such PDK tried to establish total control over the most important procurement body.

## Establishment of Kosovo Privatization Agency

During establishment of the Board's Agency, the government ignored the warnings of the Union of Independent Trade Unions of Kosovo (BSPK) that one of the nominees, Bahri Shabani, who had lead the Union for Several years, is suspected of corruption. The BSPK and a number of its branches saw Shabani as a person who had for a long time concealed abuses at the KTA with the current Minister of Economy and Finance, Ahmet Shala. According to BSPK, prosecution and police currently investigate Shabani for abuse and bad management as head of BSPK, abuses that have been confirmed and reported by the auditor as well during 2002-2006.

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## Keeping Media under Control

Violating the independence of independent powers and obstructing establishment of such institutions has been twinned with taking under control the media as well. Half of daily newspapers published in Kosova presently are under direct control of Government of Kosova. The government has imposed strong control over electronic media as well, all aiming to create a supportive biased public opinion. The propaganda language of media influenced by government has at times achieved resemblance with communist rhetoric. A report in one of the dailies wrote: Twenty hours work and only four hour rest ... this is how workers work until 2:00 AM<sup>23</sup>.

## Public Enterprises

During the second quarter the Government approved the Law on Public Enterprises, which requires the boards of public enterprises be independent of industrial and political influences. Despite such provision, the Government of Kosova appointed members of parties in coalition to sit in the board of the Post and Telecommunication of Kosova and in the board of Prishtina Airport.

The following party members have been appointed to the PTK Board:

- Rexhë Gjonbalaj, PDK member of former Peja Municipal Assembly
- Elmaze Pireva, former deputy-director of Kosova Tax Administration, appointed by the President of Kosova
- Abdyl Imeri, senior advisor in Municipal Assembly of Skenderaj

Members to sit in the Board of Prishtina Airport include:

- Bislim Zogaj, director at NLB Prishtina, member of PDK Presidency at Drenas branch, influential with both political and industrial interests
- Hanefi Muharremi, former director in Prizren municipality, LDK activist

Chair of KEK Board:

- Skënder Krasniqi, former director of Kosovapress, a news agency close to PDK

Member of Kosovo Pension Savings Trust Board:

- Ruzhdi Morina, Former Chair of Democratic Youth of Kosova

## PTK Competing with Hands Tied

Private sector influences on the only public company that provides mobile telephony and internet, PTK have spread extensively. The influence has been caused by corrupted political parties and ignoring of conflict of interest in the boards of public enterprises and Kosovo Trust Agency. The same board constellation, which in the case of Telecommunications Regulatory Agency had caused the failure of tender for the second mobile operator due to corruption, continues to approve important decisions for this market although the TRA board had not assembled completely and that politics feels totally powerless to bring this agency within the rule of law. No wonder this is a clear indicator of corruption of most important political actors.

During licensing of the second mobile telephony operator, the value of the public operator Vala 900 had been estimated between 800 million and 1 billion Euros. The value of its assets have declined progressively since then. The Government of Kosova, particularly, the Ministry of Transport, Post, and Telecommunications, Fatmit Limaj, has continuously promoted the idea for Vala's privatization. Appointing Dino Asanaj, shareholder of IPKO, second mobile telephony provider, to chair the board of PTK and charge him with developing the policies of public operator Vala, the government caused an obvious conflict of interest.

## Ignorance About to Destroy KEK

Kosovo Energy Corporation (KEK) has continued to consume millions of Euros from Kosovo budget and still failing to provide steady supply with electric power. So far, 59.5 million Euros have been spent on KEK, excluding the foreseen loan of 94 million Euros.

In spite of numerous promises to improve electric power supply, the Government of Kosovo has not succeeded neither at the end of the second 100 day period to present a plan based on which power cuts during winter season would be avoided. In the past, Kosovo has imported electricity based on the so-called emergency contracts which resulted in high energy prices. Only during the first quarter of this year, the government has spent about 200 million Euros in energy purchase.

A proper plan of the government could have established non-discriminatory position for Kosovo in the electric energy market.

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## **Airport: a Soap Bubble**

Prishtina International Airport has been one of the most talked about public enterprises by the Prime Minister Thaçi since he took office. The pressure to fight corruption in this enterprise has fallen apart when the former director, Afrim Haziri, had been arrested then released, and when Board of the Airport appointed Agron Mustafa to act as Managing Director, a person with close ties to PDK. Regardless of the fact that alarms were set off to point to numerous evidence of corruption committed by previous management structures, to this day, the Kosovo justice has not processed a single case.

What has happened since the shifts in Airport management is new employments' campaign, which qualify employees of this companies as acting managing directors.

## **Conclusion**

Even in the second 100 day period, Thaçi government has continued exercising practice of violations, abuse, and conflict of interest. The government has failed to establish accountability practice to the members of Parliament, as the highest state institution. In cases when government spoke to the MPs, it showed total ignorance of topics with crucial importance for public integrity, rule of law, economic development, and good governance. Frequently, it ministers and the Prime Minister have failed to show themselves to the Parliament and respond to the MP's questions. It is the crucial moment for the Parliament of Kosovo to finally act its mandate, while media and civil society should demonstrate boldness in taking initiatives to monitor and criticize the government.

## Monopolizing The State And Institutionalizing Corruption: One Year With Thaçi Government

January 2009

This is a monitoring report of Organization ÇOHU! on the first anniversary of Thaçi government covering the period since January 2008 to this year. This report, similar to previous ones, touches upon the most important sectors of governance in Kosova and the citizens' priorities based on various public polls.

### Governance Logic

#### Focusing on Public Image

Since taking office in January 2008, it was obvious unemployment and poverty or fight against corruption<sup>24</sup>, were not two priorities of this government, as Prime Minister Thaçi had pompously declared. Instead, paving the roads and constructing as many schools were the priorities of the government. Constructing the physical infrastructure is one of pre-conditions for poverty and unemployment reduction, but in Kosova these were not supported with an economic program that would list these two as priorities. In fact, Kosovar citizens are not informed on which criteria the government sets its priorities. Why road infrastructure and school building are priority rather than poverty and unemployment reduction, fight against corruption, or health sector reform? Does the Government of Kosova have a comprehensive plan that integrates priorities and interests of Kosovar citizens, which would also include construction of roads and schools? Or a plan where these two would be integral part of overall, sustainable, and long-term economic development?

This government has neither economic nor governance program. But, it has a sophisticated strategy to control public information. Two parallel processes are taking place simultaneously. On one hand, the government is being careful to maintain its image intact, while on the other hand numerous violations are taking place in public companies, privatization, and governance. The government is over focusing on its public image to hide the violations in public companies, agreements with Dardafon that are damaging for PTK, agreement between KOSTT and Komtel, political appointments on the boards of public companies, failed privatization, and authoritarian tendency to control independent institutions.

Prime Minister Thaçi has also shown a tendency to fabricate history and monopolize the truth. On government's first anniversary report, the Prime Minister attributes all the merits of Kosova's independence to himself and states that declaration is a merit of government he leads. Media controlled by the Prime Minister have initiated ungrounded debates. Firstly, they aim to divert the opinions attention from the government's failure to reduce poverty, unemployment, and failure to extend authority in the country's north. Secondly, they tend to monopolize the truth and history attributing

<sup>24</sup> UNDP's Early Warning Reports show poverty, unemployment, and corruption as three most concerning problems for Kosovar citizens. Report n0. 20/21, Special Edition, Janar – Qershor 2008 <[http://www.kosovo.undp.org/repository/docs/EWR20\\_alb\\_press.pdf](http://www.kosovo.undp.org/repository/docs/EWR20_alb_press.pdf)> and "Fast Facts", Early Warning Report 23. December 2008 [http://www.kosovo.undp.org/repository/docs/Fast\\_Facts\\_23\\_EnglishFINAL.pdf](http://www.kosovo.undp.org/repository/docs/Fast_Facts_23_EnglishFINAL.pdf)

the merits of country's independence and all other historic achievements to Prime Minister Taçi and Democratic Party of Kosova.

## **Spectacular arrests and lack of cases in the courts**

The second half of 2008 was marked by a number of cases when police conducted spectacular arrests, almost resulting from Prime Minister's accusatory statements directed to a company or institution. In March last year, police arrested the former managing director of the Prishtina Airport, and the board influenced by PDK people, appointed Agron Mustafa instead, another person close to this party. In spite of spectacular arrestment and government's and Prime Minister's declarations that it was an act in their fight against corruption, no case was ever presented to the courts.

Another spectacular arrest which was never finalized with an important trial in the courts was the arrest of six customs officers on the day when government was forced to annul its decision to dismiss the Customs Director, Naim Huruglica. Similarly, when public pressure was directed to government for failing to take actions against smuggling in the north, six people were arrested for fuel smuggling. As no other action was taken to prevent fuel smuggling, this case just added onto the list of suspicious ones.

## **Rhetorical fight against corruption**

As soon as mandated to govern the country, Taçi government has rhetorically declared war to organized crime and corruption. No practical have been made, but declarations. The Progress Report of the European Commission for Kosova in 2008 assesses that corruption remains the most wide-spread and serious problem in Kosova and that there is no will to fight against it.<sup>25</sup> The fact can best be seen when analyzing the government's approach to adopt basic laws that aim to prevent and fight corruption. After government's proposal and approval of the Parliament's presidency, two last on fight against corruption and organized crime have been withdrawn before the President's final approval. The Law on Declaring of the Origins of Public Officials' Wealth and the Law on Financing Political parties have been returned to initial procedures without an objective justification for such a decision.<sup>26</sup> The current legal infrastructure in power is incomplete and inadequate.<sup>27</sup> It is exactly these two and amendment of the other laws that could complete the legal and institutional framework to fight corruption.

To this day, the Democratic Party of Kosova has not made public its sources of financing. Further, PDK has continuously violated the deadlines, set by OSCE, to declare the financing of election campaign. This proves that PDK, as the largest party in the country, has established a precedent for total disregard of its duties and responsibilities as a political entity and has continuously violated the principles of good governance, transparency, and accountability.

<sup>25</sup> Progress Report (2008), European Commission, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/kosovo\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf)

<sup>26</sup> According to the Action Plan on Prevention of Informal Economy, adoption of The Law on Declaring of the Origins of Public Officials' Wealth was expected for late 2008. See p.13.

<sup>27</sup> [http://www.cohu.org/raporte/COHU\\_Infrastruktura\\_ligjore.doc](http://www.cohu.org/raporte/COHU_Infrastruktura_ligjore.doc)



## Interfering in governance of independent bodies

The government has violated the constitutional independence of agencies, a number of which have fallen under its total control. The Kosovo Agency against Corruption has been government's target for submission and control, especially during July, when the Deputy Prime Minister Kuçi made efforts to silence the Agency after it had reported that the Government of Kosova and judiciary lead in suspected cases of corruption. The Accreditation Agency and Procurement Review Body are already under government's control with political people, selected by certain ministers, installed as Chief Executives and its members. Kosova Tax Administration and Kosova Privatization Agency are lead by heads of PDK branches, respectively by a person favored by Prime Minister Thaçi, but with obvious conflict of interest.<sup>28</sup>

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## Politicizing of public enterprises

Another concern reported and criticized by the European Commission in the Progress Report was politicizing of public enterprises. Criticism was directed to the government as well which in spite of open call for application appointed PDK, LDK, and SHIK loyalists to the boards of public enterprises, as was the case with the current director of the Airport. Another blatant case of politicization is appointment of former SHIK director as director of Trepça. Ferat Shala, former finance director of SHIK, has been appointed to run Trepça enterprise, although this case conflicts the interests since his spouse, Sala Shala, sits at the Parliamentary Committee on Mines.

On the other hand, the role of Prime Minister's advisor Arie Rabfogel remains completely mysterious, who with his businesses has been involved in issuing licenses for mineral researches outside the Ferronickel premises. He was also included in the Steering Committee of the Kosova e Re power plant project.

## Post-Telecom of Kosova (PTK)

Government's policies on this company have been very damaging. First of all, a very powerful influence of private sector that is of companies competing against the PTK, over the Government has been established. Such influences have obviously damaged this company.

Totally political Board of the PTK has signed an agreement according to which, based on information made public, Dardafon has been provided with 78% of Vala business to operate the so-called Mobile Virtual Network Operator (MVNO). This agreement, reached in totally non-transparent manner, determines totally unfavorable and damaging conditions for PTK. A working group within PTK have alarmed on this through an evaluation report of this agreement.<sup>29</sup> Signing of the agreement became a condition for the person to be appointed Director of PTK.

<sup>28</sup> To read more on control over independent institutions, see Organization ÇOHU! report on 200 days of Thaçi government, Për më shumë mbi kontrollin në institucionet e pavarura shih raportin e Organizatës ÇOHU! mbi 200 ditëshin e Qeverisë Thaçi "Expanding Control to Conceal Corruption" [http://www.cohu.org/raporte/200diteshi\\_QeveriaThaci\\_final\\_COHU.doc](http://www.cohu.org/raporte/200diteshi_QeveriaThaci_final_COHU.doc)

<sup>29</sup> Report on commercial aspect of the draft-agreement MVO PTK-Dardafon, Document of the Board of Directors, PTK, October 10, 2008

There is a high likelihood for manipulation of PTK's privatization process bearing in mind that there is still no strategy for privatization of publicly owned enterprises.<sup>30</sup> Minister Shala stated to Kosovar media that "PTK's privatization will be uncut and not partial,"<sup>31</sup> a fact that demonstrates that although lacking ideas on privatization of public companies, decision has already been made on privatization of the most profitable company, that is PTK. Also, no price has been determined for PTK, but it has merely been claim that market would determine the price. This is another absurd fact on the process which enables the value of PTK to remain completely unknown to the Kosovar public. Such obscurity leaves the leaders of the process with an opportunity to endlessly devalue the company.<sup>32</sup>

## Prishtina Airport

It has been in almost completely consecutive manner, very soon after declarations of the Prime Minister Thaçi that public companies are champions of corruption that the managing director of Prishtina Airport had been arrested. In following, he was substituted with a person in the acting capacity who without respect of the institution's open call for applications was later appointed director. In support of violation of the open call procedures, the Board of the Airport provided a ridiculous justification, stating that "they had consulted the Airport's legal office," which practically had been subordinated to the then-acting, now company's managing director.

As soon as taking the office, the director initiated a new employment campaign, through both open call and without. Employment of people in the airport with or without open call has always been a problematic aspect of the company management, which includes even murders related to bribery for employment in this company.

## Kosova Energy Corporation

The main obstacle and risk that has ever threatened KEK is exactly the Government of Kosova, without any regard on who was running it. This took place for the interest of foreign companies which utilize the political influence of diplomatic representation in Kosova. This was best seen in a workshop, organized by USAID, in which Prime Minister Thaçi, Ambassador Tina Kaidanow, Minister of Energy Justina Pula, and Minister of Economy Ahmet Shala were among the participants. The USAID consultant, Michael Jake Delphia, when discussing about privatization of KEK's distribution network stated that they would not consider the values in the region for public companies.<sup>33</sup> To the international experts' efforts in selling the public companies below the prices in the region, the Minister Shala responded with simply stating "that we need a strategic partner." The statement came in spite of the fact that in these privatizations Kosova will not be a partner as the government is preparing for complete sale of the public companies. On the other hand, the government is not determining the value of its own companies, but continues to maintain the position that the value should be determined by the market.

30 Koha ditore, September 11, 2008

31 Kosova sot, Lajm, October 2008

32 OIOS: Report on Pristina International Airport, March 2006, Organizata ÇOHU!, Report on PIA: Lack of High Officials' Accountability to Penalizing the Violations conducted between 2000-2005

33 Koha ditore, 10 December, "Qeveria Paralajmëron Privatizimin e KOSST"

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## **Economy**

### **Employment in Road Construction – is this development?**

The most frequent conclusion of the current government, whenever talking about economy, was that the roads being constructed by the Ministry of Transport employ thousands of workers in the contracted companies. This could be accepted as a positive development compared to the situation when the government took power. But constructing the roads without evaluating investment priorities and without conducting a prior study on the impact it could have on economic development become nothing but a way to avoid the budgetary surplus caused at the end of the year with shortage of projects. Constructing the roads and building the schools is a relatively simple activity of the government which requires no particular wisdom besides ruthless expending of the tax-payers' money without a prior plan. The so much propagated employment in construction of the roads cannot be treated a contribution to the sustainable economic development as they are temporary solutions that do not offer a long-term solution to the situation.

## **Non-transparent Tendering**

Seriously lacking transparency, tendering has been confined to a close circle between the institution calling for tender and the Agency for Procurement. The Procurement Review Body (PRB) is totally dominated by PDK members, which constitutes a violation of the Law on Public Procurement and provides opportunities to manipulate the tender for political motives.

On the other hand, important procurement processes are being prepared with no transparency and sufficient prior publicity. The government's tender on marketing which cost € 10 million is worth mentioning as it has largely been criticized for the biased criteria which made it impossible for many national businesses to apply. It is very likely that criteria developed for this tender are to favor an interest group close to the government. There are also suspicions from within institutions that certain people who backed financially the PDK's election campaign may influence the process.

The other procurement which raises suspicions over massive manipulation is the one signed between the KEK Distribution (KOSTT) and the engineering company Komtel. It is not the first time that the head of KOSTT signs agreements with company KOMTEL. But the fact that its current director of KOSTT, Fadil Ismaili, is known to the public as the founder of Komtel, and that former deputy-minister of energy Agron Dida were present in the contract signing ceremony raises suspicions over the influences on the agreement.

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## Conclusion

Public health and education, public companies, political appointment, and suspicious contracts with private companies, lack of accountability, risk of authoritarian approach towards the Assembly of Kosovo, opposition's neutralization, capture of the independent state agencies, politicization of police and judicial system, as well as control of the media by the Executive – all these have been features of the current governance logics. This is the logics of concentrating on the public image and consolidation of PDK's control on the vital public aspects.

## Analysis of Legal Framework against Anticorruption

May 2010

The anti-corruption legal framework emphasizes primarily preventive aspect of the fight against corruption. Less emphasis is made to penalizing provisions. The very focus on the preventive aspect makes these laws ineffective in practice. This way, the new laws against corruption have become legal mechanisms with no teeth which make the fight against corruption unsuccessful. In general, the new laws of fight against corruption place the Anti-corruption Agency into an inferior position against the level of presence and the type/shape of the manifestation and distribution of corruption across sectors. This results from the fact that the new laws allow the agency competences to primarily fight the so-called petty corruption, while the fight against high level political corruption has been made extremely difficult.

Therefore, this analysis reviews the legal framework on anticorruption. Analysis will focus mainly on the context of creation of an adequate and effective legal framework against corruption which aimed primarily prevention and fight against corruption. This way, the analysis will deconstruct four key aspects which prove that the new anti-corruption legal framework will practically produce no positive results in institutions efforts to fight corruption.

### Legislation with no teeth

Organization ÇOHU! has identified few essential flaws in the new legal framework on anti-corruption. Firstly, the new laws do not cover several substantial aspects of expected to be covered by an anti-corruption framework. For instance, the set competences, procedures, and methods for uncovering and investigating corruption do not empower the Agency on prevention and fight against corruption. In general, the Agency's mandate is again limited in conducting administrative investigation while criminal investigation remains a competency of the Prosecution. This fact places the Agency in direct conflict with its own mission, since the corruption acts as determined with the Criminal Code of Kosova are criminal acts and as such fall out of the Agency's competences. In principle, it is paradoxical to expect that an institution with a mandate limited to administrative investigation to prevent and fight acts that are in their core criminal ones.

Besides this, the issues like "false declaration of wealth" or "continues exercise of conflict of interest" do not get penalized by the Kosova's Criminal Code. As a result, they do not get penalized neither by the new laws against corruption. Similarly, "refusal to declare wealth" or "refusal to declare conflict of interest" is sanctioned only with soft administrative measures, but not with criminal ones as well.

The second flaw of the current anticorruption legal framework consists in the conflicts that the laws against corruption have with the Kosova's Criminal Procedure Code (KCPC). Article 18, paragraphs 1.1, 2.2, subparagraph 3 and article 20 paragraph 1 of the Law on Agency against Corruption and article 12 paragraph 2 of the Law on Declaration of Wealth contradict directly with the KCPC, and as such render the anti-corruption laws impossible to be implemented in practice.

Another flaw is the acute leeway to diverse interpretations of the laws by the Agency

itself. Diverse interpretations can be made to the definition “prior investigations” which as a legal category has not been defined neither by the KCPC nor by the Law on Agency. Also, the registry of the high officials’ wealth will not necessarily be made available to the public as this aspect has been left to different interpretations to be made to the laws by competent bodies. The law on declaration of wealth regulates the access of public to the registry of high officials’ wealth based on the procedures determined by the Law on access to official documents. As such it enables high public officials to request the Agency not to publish the wealth registry. Although the law on declaration of wealth does not determine the deadline for publication of the Wealth registry, the Agency interpreted the articles 12 paragraph 3.2 as the legal deadline. Besides, the Agency has decided that in the registry of declared wealth, to be made for the public, it will provide only wealth information declared by the public officials’ and not of the close family members, although there is no legal provision for such decision. Also, the article 22 paragraph 2.3 of the Law on Agency against Corruption, including the article 12 paragraph 5 of the Law on Declaration of Wealth can be used by the Agency as legal norms that make it impossible for the public to access the wealth registries.

The fourth flaw Organization ÇOHU! has identified is the conflict between the legal norms within the very laws against corruption and the conflict between the legal norms with the very spirit of the law. Although article 12 paragraph 3.1 of the Law on declaration of wealth provides for the public to access the registry of wealth declared by high public officials, the same article but paragraph 3.5 of the same law and the articles 4.2 and 4.6 of the Law on Access to Official Documents provide for the Agency to refuse the public’s access to these registries. On the other hand, the Law on Prevention of Conflict of Interest, article 17 paragraph 1 provides for the transfer of rights towards a trusted person, and as such contradicts completely the very intention of the law to prevent the conflict of interest.

## Conclusion

Overall, the new legal framework against corruption will not enable the Agency to fight successfully against corruption. The flaws in the legal framework as identified by Organization ÇOHU! show that the laws against corruption will not provide for an adequate and effective legal foundation to prevent and fight corruption. As such, these laws must be completely reviewed in order to eradicate the essential flaws they contain.

## Political Use of Audits

January 2007

Today Kosovo citizens pay taxes to enable the functioning of the institutions, which on the contrary, do not even secure them access and information on what is happening to their own money. One of the most common ways in a democratic world to explain to the citizens what has happened with the money is the financial audit conducted to those that expend public funds. In the institutions' language, spenders are the budgetary organizations. However, as is to be seen in this report, the true spenders are the political functionaries and different leaders, be they international or national, who expend the public funds on primarily corruptive foundations. The biased informing of the citizens on what happens to one's budget, while reporting the unnecessary truths from the past, and while hiding the true information on what in fact the leaders of Kosovar institutions do, resembles much more to the effort to sell smoke and mirror to the citizens. For the Kosovar citizen, an unpublished auditor's report is equal to an unfinished report.

### Audits as political instrument

The main argument of this report is that a number of budgetary organizations in Kosovo that make income from Kosovo's Consolidated Budget (hereinafter the budget) have never undergone auditing by the Office of the Auditor General (hereinafter the Auditor) for political reasons. There were also cases that although auditing had been conducted, for political reasons the reports were never published.

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Arguing that the decision on when and where to conduct an audit of a budgetary organization has been influenced or oriented politically completely, the report does not question the professionalism of the auditor's work while specific reporting until present. On the contrary, the Auditor's reports published so far have shed light to many information on the violation and abuses conducted by Kosovar and UNMIK institutions while expending public funds. Overall, the Auditor's reports have identified violation and abuses in almost 100% of completed audits. Some of them could easily be defined as grave violations penalized by the law.

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According to the manner the audits were conducted so far and based on the published reports, the Auditor has preserved UNMIK and the current governing coalition between LDK-AAK as untouchable committing a grave violation of regulation 2002/18, paragraph 2.3, which provides for the Auditor to maintain independency in its work, especially related to:

- a) Decision on whether to conduct an audit or not
- b) Manner on how an audit is to be conducted, and
- c) Priority to be given to any specific audit

## Political Responsibility

So far, the Auditor has published only 13 reports from audit conducted to the budgetary organizations of central level institutions in Kosova. Of these, only three have been conducted in the ministries of the Government of Kosova since their establishment. Neither of audited ministries are run by the current governing coalition. This could easily be justified by the fact that auditing has been initiated from the first institutions of the PIDG established after the first local and national elections (which include the ministries, the Parliament, and independent agencies of the Government of Kosova) moving towards other institutions and periods later. Nevertheless this argument becomes easily invalid by the fact that a number of audits have covered the period after establishment of the coalition. Frequently, these have been conducted in a selective manner sidelining institutions. Such audits are the one conducted at the Ministry Communities and Returns and the Audit of the Assembly of Kosova, which cover year 2005, including the first half of 2006.

Aware of the political environment created after changes of March 2005, when former speaker of the Assembly Nexhat Daci was revoked his powers for not-completely clear reasons, aware that the Ministry of Communities and Returns has been lead by a party that is close to neither of coalition members, and aware that neither of central institutions has been audited for the period since the coalition were established, than one cannot but conclude that the Auditor has followed the current political interest in power and as a consequence has violated the Regulation based on which it operates. During 2006, same to the years before, the Government of Kosova and its ministries have been through a number of financial scandals in the same manner and intensity as the Ministry for Communities and Returns, the Assembly of Kosova, and the Presidency of Kosova. These scandals have caused an increase in the outstanding pressure against government's abuses. Most likely, at the peak of this pressure, it became of political benefit for the Government of Kosova to find a scapegoat that would not have an impact on neither of main actors in the coalition. There is a high likelihood that this was the reason why the Ministry of Communities and Returns had been selected and its minister would be sacrificed by the government for its financial corruptive affairs. There is a risk for the Auditor's reports to be used by the Kosovar and international politicians, especially by those in UNMIK, to exercise pressure against political actors for different purposes. One of the possibilities is to use the reports towards "demanding discipline" over certain politicians so they behave in a certain way. In December last year, Nexhat Daci and his supporters at the Assembly raised their hands to adopt the Kosovo budget for 2007, although two weeks earlier he had been expelled from his party by the same people who had released him of party duties a year earlier. The Daci file is thick and charges him with numerous financial abuses while holding office of the speaker of parliament, and he is aware of this. Publishing a partial report on Daci allows for numerous speculations and blackmailing.

There is a same risk with the unpublished reports of the Auditor. Deciding not to publish them creates the opportunity to blackmail the national politicians by threatening them on report publication unless they behave certain way, especially during the status negotiations. On the other hand, their publication would generate tremendous public pressure that would force for necessary measures to be taken. In addition, taking measures would be able to create a political crisis in Kosova, causing the fall of the



entire Government of Kosovo. Such an outcome is desired by neither international community nor the current governing coalition. Therefore, the interests between the Government and UNMIK are closely inter-connected in this regard, which as a result provide for a safe haven to the political crime and corruption.

## The right of the sovereign

The SRSG, as the ultimate authority in Kosovo according to Resolution 1244/99 of the UN Security Council, enjoys the right not to publish the Auditor's report. According to the Regulation on establishment of the Auditor General 2002/18, article 3, paragraph 3.3 b): "Within thirty (30) days following receipt of such report, the SRSG shall issue to the Auditor-General a written instruction stating whether the Auditor General may provide the report to other persons, institutions or entities, as set out in the present Regulation."<sup>34</sup>

## Audits of sectors controlled by the UNMIK

Till present, no institution categorized as an UNMIK's reserved competence has been audited or such reports about it been published. According to unofficial media information, an audit had been conducted in the Kosovo Trust Agency, the body in charge of the privatization process. The report on KTA, according to the same sources, has not been published by the auditor, but the financial audit has uncovered numerous violations by the institutions.

In case this audit has been conducted, as the newspaper reports, the Auditor's decision not to publish it just proved the audits not only take place depending on the political interests of those in power, but the publication of such reports is politically motivated as well. In fact, the matter becomes clearer when sources from UNMIK claim that the publication of the Auditor's report on KTA has been blocked by Joachim Rucker, himself, as until a year ago, he had been the main power in the KTA. Another case brought into debate the Rucker's name quite a lot. This had to do with his responsibility, or at least abstention, that would prevent manipulations during Ferronickel's privatization. UNMIK sources claim that the publication of the Auditor's report on Ferronickel has also been stopped by Rucker.

## Audits of sectors controlled by the Government of Kosovo

There are other reports that UNMIK prevents the Auditor General from their publication, beside those of KTA and Ferronickel. Such are reports on the Prime Ministry, Ministry of Economy and Finance, and Ministry of Public Services. Although the reports on the Ministry of Trade and Industry for the period prior to the current governing coalition and the report on the Ministry of Community and Returns have been published shortly after their completion the Auditor General and UNMIK continue to keep secret reports on these three budgetary organizations during the rule of the current governing coalition.

<sup>34</sup> Official UNMIK website, Official Gazette, Regulation 2002/18, available at <[http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2002regs/RA2002\\_18.pdf](http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2002regs/RA2002_18.pdf)>

The Auditor has identified a great number of violations by the public companies, which compared to the ministries, are almost completely controlled by the Government of Kosovo. The most blatant case is the one of the Kosova Energy Corporate (KEK). The Auditor found such grave failures the responsibility over which could be tracked all to the Prime Ministry. Accounting procedures, control procedures, and balance check have never been upgraded in KEK. These irregularities cause a difference in current balance for different fiscal years, creating opportunities for financial manipulation, while in the meantime obstructing from identification and uncovering of corruptive practices. According to the Auditor, this company lacked formal control for completed transactions causing a high manipulation risk in financial reporting, creating again an environment conducive for financial abuses. The Auditor has identified hundreds of violations during KEK's auditing.

## **The untouchables of Kosova**

In spite of the fact that auditing had been directed in a manner that leaves the governing coalition and UNMIK untouched, the reports published so far on the Auditor General[s webpage have presented numerous and sufficient arguments that prove that the institutions and public companies have been led on totally abusive foundation. It would not be a mistake to state that in over 90 per cent of audits, the reports on public fund expending have generated grave violations. The Auditor concluded of such violations in almost every municipal audit report, reports on ministries, and especially reports on public companies.

Failing to audit the institutions proves continuously that neither government nor UNMIK consider it of interest to act against law violators to maintain inter-connected interests untouched.

## The Government's Political Axe on Kosovar Administration

### Case Study: Kosova Tax Administration

June 2007

Kosova Tax Administration (KTA) has begun building own professional capacities far from political influences as this sector fell completely under UNMIK competences, along with customs administration. As soon as its command and control were transferred to the Ministry of Economy and Finance, the KTA became subdued to a political reorganization, while the institution's founders were kicked out in the streets and replaced with people, loyal to political parties.

People on whom it had been invested for a long time were kicked out, losing the generated expertise, only to replace it with amateurs and political loyalists. This was a heavy stroke of politics with destructive consequences for the foundations of the KTA. It caused an immediate erosion of the three-year long donor investment in building administrative capacities of the sector. Of course, the UNMIK during the whole time simply provided blessings by not taking a single act to protect the professional structures from political cleansing.

### Building an Administration in Kosova and the EU Context: Kosova All but EU criteria

The European Commission has a series of specific criteria for adhering countries, but the reform of the civil service is among the top demanding the guarantee of professionalism and political independence and guaranteeing a career based and training system.<sup>35</sup> The Provisional Institutions of Self-Governance (PISG) have to a considerable degree not only failed to respect this criteria, but on the contrary, they have violated them in the simplest for possible. An international expert confirms that the Kosovar administration is currently moving on the opposite direction compared to the one needed to meet the EU criteria. The civil service must be an important nucleus that does not change with the minister. It starts with the Secretary Permanent in the ministry all the way to the KTA managers, but the replacements always happen<sup>36</sup>.

In this manner, all the Governments in Kosova have employed within the civil service members of their close family, including brother, sister, wife, mothers-in-law, nephews, sons-in law. Etc. The building of the Ministry of Economy and Finance had been initiated by the minister Ali Sadria on nepotism basis, while his nepotism structures in the government and institutions of financial administration have only been replaced by nepotism structures of the current minister, Haki Shatri <sup>37</sup>.

<sup>35</sup> Verheijen, Tony 1999. Civil Service Systems in EU Candidate States: Introduction, 1999:90

<sup>36</sup> Interview, UNMIK expert on tax administration, May 2007

<sup>37</sup> See the following of this report

The current battle to capture the boards of Publicly Owned Enterprises (POEs) is an indicator on how far the Kosovar institutions are from building an independent administrative structure. The POE Boards have been continuously dominated by the political figure and the final decision to reconfirm the Minister Et'hem Çeku, professionally a historian, as the Chair of the KEK Board shows that the government is not applying professionalism as a management criteria. This case illustrates the best the consequences from politicizing the very mechanisms which should be founded first of all on professionalism. It is a well-known fact that the Minister Çeku leads the campaign on construction of the private power plant Kosova C. To lobby for such a cause that conflicts directly with his position as the Chair of the KEK Board, since KEK and power plant Kosova C should compete against each other.

Ultimately, a degradation of KTA's work has been noticed in June 2006 by the EU – CA-FAO (the mission of customs and fiscal assistant) when of 72 evaluated criteria, only five had been evaluated as completed.<sup>38</sup>

#### Kosova Tax Administration – Where Did It Start and How Did It End

Kosova Tax Administration has been established almost from scratch. The Central Fiscal Authority, later KTA, and the Customs Administration have been the first part of Kosovar administration built after the war. As such, Kosova Tax Administration has been established before the PISG became operational, at the times when UNMIK was in fact administering with Kosova. For this reason, during the period before the PISG, a considerable number of Kosovars have been trained and educated with Anglo-Saxon tax administration standards. At this time, the KTA had several advantages:

1. Inability to exert political influence on staff selection and on determining tax collection
2. Vast possibilities to benefit reap the knowledge on the matter through practical trainings and to equip oneself with theoretical knowledge on administration of developed countries including Great Britain and USA
3. Introduction of modern technological systems based on producers' competency level rather than political influence as often happened with PISG

### **Minister Shatri Dismisses the Partisans of the Former Minister Sadriu – to Replace Them With His Own**

Once the competences had been transferred to MEF, employees that initiated the CFA/ KTA began being replaced with people whose political determinations were more suitable. The preferential approach has been initiated by the very appointment of the former Minister of Economy and Finance, Ali Sadriu, in close cooperation with the former director of KTA, Mustafë Hasani. In such a situation of new government creation in late 2004, coming to power of Haki Shatri could not help hoping for a more professional approach. But Mr. Shatri was too good to quickly disappoint even the big-

<sup>38</sup> Report for the European Commission and the 10th meeting of the Stabilization and Association tracking Mechanism, June 20, 2006

gest optimists of to be found among the small group of professional experts left in the KTA. During this replacements campaign, the then-director Mustafë Hasani obediently acted on orders from MEF while preserving his own post. Later, the MEF's Secretary Permanent had also been replaced.

## Political Appointments in the KTA

During fall 2003, KTA published an open call for application to hire for the recently created post of the deputy directors. The managers of the regional offices in Prishtina, Prizren, Peja, Gjilan, Ferizaj, Mitrovica, and Gjakova had been serving in their positions for more than three years, and after numerous trainings had gained an significant experience with relatively satisfactory results. In spite of this fact and in violation of the laws and regulations of the Ministry of Public Services, the KTA management decided to vacate all the positions of regional managers.

The following people were selected at the end of this manipulation:

- Ramiz Gaxherri in Peja – husband of Besa Gaxherri, former leader in LDK
- Fehmi Veselaj in Prizren – back by Bujar Kuqi for this position, a cousin of former minister of interior Blerim Kuqi, later to be appointed Chair of the Board for Financial reporting within MEF
- Ruzhdi Sadriu in Ferizaj – brother of former minister Ali Sadriu
- Tefik Ujkani – a well-known LDK activist in Mitrovica
- Alban Qerimi – Gjilan, closely related to Lutfi Haziri and former minister Fatmir Rexhepi

As a result of all these manipulations, the politics accomplished its objectives, which in essence were completely unprofessional:

- Protection of businesses on selective grounds
- Control over businesses on selective grounds
- Payment of old debts on selective grounds
- Complete spread-out of political control over financial resources

KTA'S officials, when interviewed by Organization ÇOHU! claimed that at that time one was obliged to know which businesses are out of reach as their had own protectors within the KTA.

## Destruction of the Most Successful Sectors

In late 2004, Haki Shatri was appointed Minister of Economy and Finance. Again in early 2005 the positions of operational managers and deputy directors (managers of regional operations) became vacant, as the minister demanded new managers loyal to him. In spring 2005, almost all those involved in establishment of KTA, already in managerial or deputy director positions with successful records behind were out on the streets. They were replaced with people who had no previous whatsoever experience in such institutions.

All these people have been removed from their positions as the first stage of action. Later at the second stage, the last ones standing in the KTA, were also removed. By April, Shaqir Totaj had also been removed. Totaj had been the most successful manager, who lead the Prizren regional office and had registered the highest tax collection, or 70% of KTA income. The UNMIK expert claimed two reasons for Mr. Totaj's dismissal: 1) they wanted a total control over the most important taxing unit, and 2) because the KTA director, Krasniqi, felt threatened by Mr. Totaj professional competence.

A similar dismissal process was applied during removal of another regional manager, also one of the founders of the KTA, Elmaze Pireva. Ms. Pireva had been for a long time the KTA's public image. She was dismissed in fall 2006.

According to the proposal of Minister Shatri, illegally and without respecting the procedures as advertised by the call for application, Jonuz Krasniqi had been appointed KTA Director. An international expert involved for a long time at KTA claimed that connections between Krasniqi and Shatri had been well-known.

Ultimately, a degradation of KTA's work has been noticed in June 2006 by the EU – CAFAO (the mission of customs and fiscal assistance) when of 14 evaluated criteria, only one, the taxing legislation had been evaluated as completely fulfilled. KTA nowadays has none of its founders left in a managerial position. A large portion of the administration has been replaced by political partisans of the parties in power. This may cause serious deregulation of the tax-collection system in Kosova.

## Conclusion

KTA's politicization, nepotism, and regionalism has and continues to damage further this institution. The institution's development has been disabled and its perspective to building of a professional KTA has been damaged. So have been damaged the prospects for free market and fair competition. Moreover, the securing of quality services to the business community has been prevented.

## Monitoring the Licensing and Accreditation Process of Private Institutions for Higher Education (PIHE)

July 2008

During the mandate of the current government, the Ministry of Education, Science, and Technology (MEST) has decided that licensing and accrediting the private institutions for Higher Education would be among its priorities. In this context, the Government of Kosova decided to establish the Commission for Accreditation of Private Institutions of Higher Education, and authorized MEST to functionalize this Commission. As a result, the MEST contracted the British Accreditation Council to conduct the external evaluation of the PIHE, based on which the MEST would decide on their licensing and accreditation.

The current legal cadre for regulation of higher education is incomplete and often contradictory. There are inconsistencies between the English and Albanian version of the law, between the law and the administrative directive (AD) for licensing, including those within the UA itself. Besides, two by-laws have still not been adopted on regulation of accreditation, as required by the Law on Higher Education.

Neither the methodology applied by the MEST for PIHE evaluation guarantees to be an additional tool for successful completion of this process. The reason derives from the fact that the data generated by the MEST questionnaire have no clearly predetermined criteria based on which the data could be compared, but also because the methodology had not been adapted to Kosovar specifics on the deformations available at the private higher education sector.

Beside these violations, the process of licensing and accreditation of PIHEs suffered from political interference, which compromised the entire process, threatening it to become subjective and corruptive

### The context of PIHE establishment: “Mushrooms after the rain”

After-war Kosova saw establishment of a large number of private institutions for higher education. Since 2001, 30 such institutions have been licensed, of which 24 are still active. Approximately, 4 private institutions of higher education were established in each year. Three key elements enabled their establishment, including: young Kosovar population, lack of rigorous licensing criteria from MEST, and lack of effective oversight by MEST.

Approximately 70% of Kosovar population are younger than 30 years old, while those younger than 25 consist about 50% of population.<sup>39</sup> Clearly, this is a very stimulating element for establishment of institutions of higher education. Knowing that the University of Prishtina has so far absorbed 6300 students of potentially 24000 high schools graduates, these factors become even more powerful.<sup>40</sup> MEST has licensed 30

<sup>39</sup> Statistical Office of Kosova, [www.ks-gov.net/ESK/](http://www.ks-gov.net/ESK/)

<sup>40</sup> “Pasqyrë e Arsimit të Lartë në Kosovë – Instituti GAP – Maj 2008.

PIHEs without prior clarification of procedures to be followed towards licensing and accreditation. Nowadays, majority of PIHEs are profit-making businesses which operate in a market that in 2007 generated an amount of 26.5 million euros.<sup>41</sup>

## Legal Framework: Incomplete and Confusing

Law on Higher Education in Kosova (2002/3) created the first legal foundation for establishment of the PIHEs. Nevertheless, this law does not offer clear criteria and procedures for operation of PIHEs.

First of all, the legal framework for PIHEs accreditation has not been completed yet, although required by the Law on Higher Education. The Ministry is still short of two very much needed Administrative Directives for accreditation process.

Secondly, while the law distinguishes clearly between accreditation<sup>42</sup> and licensing<sup>43</sup>, there is an inconsistency between the Albanian and English version related to procedures to be followed during those very processes.

Thirdly, neither the Law 2002/03 nor AD 14/2003 offer clear criteria on establishment and accreditation of PIHEs. They both provide for general criteria and conditions which legally can only provide for licensing of PIHEs, but not their accreditation as well.

## Lack of transparency: Government's violation of the law

On January 30, 2008, the government decided on establishment of the "Commission for Accreditation of Private Institutions of Higher Education"<sup>44</sup>. The government also decided that the members of the commission would be experts from international universities and obliged the Ministry of Education to functionalize it in next to no time. Therefore, the MEST contracted the British Accreditation Council to conduct an assessment of PIHEs based on which the MEST would decide on licensing and accreditation. It is here that the government, more precisely, the Ministry of Education, committed a legal violation by contracting the British Accreditation Council. The law defines clearly that the accreditation is a mandate of Kosova Accreditation Agency, while licensing is a mandate of the Ministry.

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[http://www.gapinstitute.org/gap/docs/pdf/Pasqyre\\_e\\_Arsimit\\_të\\_Lartë\\_në\\_Kosovë.pdf](http://www.gapinstitute.org/gap/docs/pdf/Pasqyre_e_Arsimit_të_Lartë_në_Kosovë.pdf)

41 Po aty

42 Neni 1 – Përkufizime: "Akreditim", do të thotë njohje formale se një institucion i arsimit të lartë dhe programet e tij plotësojnë standardet e cilësisë përgjithësisht të pranura dhe se kualifikimet e tij i japin bartësve të tyre (në përputhje me ligjin përkatës) një numër të drejtash, p.sh. mundësi për të ndjekur një nivel të mëtejshëm arsimor, për vende pune specifike, për të përdorur një titull.

43 Neni 10 - Licencimi i bartësve të institucioneve: Çdo bartës i arsimit të lartë në Kosovë duhet të ketë një licencë për të kryer punën e tij. Licenca lëshohet nga Ministria sipas dispozitave të këtij Ligji dhe dokumenteve plotësuese të nxjerra mbi bazën e saj.

44 <http://www.ks-gov.net/pm/LinkClick.aspx?fileticket=DoSzs43zbl0%3d&tabid=57&id=370>



## Lack of Clear Criteria and Procedures for Accreditation

Besides requiring extensive period of time (between 6-12 months), process of institution's accreditation obliges for clear criteria based on which the respective bodies can decide on accreditation of education institutions. In spite of this, the BAC had only 40 days available for its evaluation (19 May – 30 June). With no administrative directive to define clearly the basic criteria the PIHEs should fulfill and with no clear definition of quality assessment procedures, no decision on accreditation can be taken. Secondly, the PIHEs accreditation process, as a final act, demands a test which resembles the state graduation test depending on the academic programs offered by the PIHEs. Thirdly, the Minister of Education misjudges when insisting that PIHEs should first receive accreditation and later be licenses. According to the law, licensing implies permission to specific subject to operate, meaning the subject must initially fulfill a set of minimal criteria. Accreditation on the other hand refers to the evaluation of quality standards of an PIHE<sup>45</sup>.

## Methodology Applied by MEST

Methodology applied by MEST on evaluation of PIHEs does not provide for an adequate method to decide on accreditation of these institutions. The reason for this is the fact that the data generated by the questionnaire, sent to PIHEs by MEST, have no prior clear criteria set based on which data could be compared and in this manner generate an evaluation on PIHEs level of met criteria. Accreditation could have been conducted only when the MEST would have produced the administrative directives on accreditation and quality assessment and based on those decide on which institutions and programs of PIHE deserve accreditation and licensing.

## Political Interferences during Licensing and Accreditation Process

One of the first and most overt political interferences in the process was the declaration of Bajram Rexhepi, the deputy-chair of PDK in the premises of AAB that this institutions is among the first that should be licensed and accredited. Also, placement of the Minister of Education's spouse high in the hierarchy of AAB University and her lecturing there create a conflict of interest situation, as practically the Ministry takes over the mandate of the Accreditation Agency for final decision.

Participation of Minister Ahmet Shala and Minister Justina Pula on the 13th anniversary of Riinvest Institute represented also a political interference sending a clear message of their support. Such support was not coming only from the former (and present) colleagues at the UP, but as ministers of the government to decide on licensing and accreditation of PIHEs in Kosova.

The Rector, Vice-Rector and a number of lecturers at University College Victory are members of Democratic Party of Kosova (PDK), a number of which had run the last elections. Also, the Minister's failure to declare clearly on cancellation of his lecturing activities in all PIHEs he was engaged in but the UP also represents a clear conflict of

45 Po aty, Neni 10 - Licencimi i bartësve të institucioneve.

interest in the entire licensing and accreditation process.

## **Conclusion**

The political interferences and conflicts of interest, lack of legal framework, lack of clear criteria for licensing and accreditation, government's violation of the law during establishment of Commission on Accreditation, the incomplete methodology and short time, allow for the entire "accreditation" process to become subjective, and ultimately corrupted. The current process that MEST has undertaken cannot be named accreditation, but rather a re-licensing, licensing, or current state of affairs within the PIHEs.

## European Integration, Judiciary, and the Fight against Corruption:

### Report on the State of Affairs in the Judiciary System in Kosovo, prepared by Organization ÇOHU! January 2009

Among the most often identified as main problem in Kosovo that resulted by qualifying the judicial system as failed is the lack of engagement in resolving a number of important cases that affect the interests of Kosovar society; lack of decisiveness and partiality in implementing the law; backlog of cases accumulated for a long period of time; numerous charges of corruption of judiciary workers; a considerable number of identified cases of law violation; and dismissal and investigation of a number of judges and prosecutors. Among these problems one can include also the slow pace of reforms and political influence on the functioning of justice system.

In a number of cases, it seems that the bodies of Kosovar justice system have been used by individuals and certain groups to advance their interest in public companies or other institutions. Sensational arrests that attract public opinion's attention are not followed by investigations of serious trials making impression that opinion's attention was their sole purpose, and the placement of certain people in positions from where they can draw illegal profits. The European Commission's report of few weeks ago stated that justice system remains weak in all levels and the progress remains isolated to very low ones only. This is one of many critiques directed to the Kosovar justice system by either national or international organizations throughout its existence.

### Problems of the Justice Sector

Diverse actors within the justice sector believe that they have limited responsibilities on this matter. A number of interviews with managers, judges, and prosecutors at the courts and prosecutor's offices in five largest municipalities and districts identified several causes to the created situation, including: lack of political will to facilitate the judiciary's and prosecutor's work, interference in many cases to prevent reforms, low number of judges, low salaries of judges and prosecutors, difficult working conditions, incomplete legal framework along with ambiguities, etc. this position delegates the responsibility largely to the other powers, including the legislative and the executive. Many interviewed judges identified the backlog of cases and low financial remuneration as two key problems that obstruct the normal operation of the justice sector. Among the prosecutors, the dominant problem remains the low remuneration system. Other interviewees both within and outside the sector believe that lack of professionalism among the judges and prosecutors are key to lack of functionality of the system. They also talk of no-merit based appointments, vulnerability to pressures from certain groups or people over judges and prosecutors with a past during the Serb regime, and interests that contradict the law or the interests of Kosovar society. Five judges and ten prosecutors claimed of knowing colleagues that have had political influence

when appointed or promoted within the system.

Another dimension of the Kosovar justice system that requires attention is that of multi-ethnicity. Judges of the Serb community have rejected to contribute to the system after February 17, 2008, beside accepting their salaries. Aware of the low number of judges and prosecutors that face an increasing number of cases and a low budget is another fact that cannot be denied. The substitution of those that retire due to age, or those dismissed takes a very long process. So far, it has been very difficult for the Kosovar society to identify individuals or institutions with responsibility on bad functioning of the justice system. Further, the situation does not seem to change in a near future.

## UNMIK Justice System

The merits and responsibilities for creation and setting up of the Kosovar justice system belong to UNMIK and other international agencies engaged in its development and consolidation. As such the system has both its own advantages and weaknesses. International judges and prosecutors have contributed to proper functioning of Kosovar justice. But the cases that these structure paid attention to were those that implies inter-ethnic and war crimes. With the increasing number of judges and prosecutors the cases they engaged in belonged to a broader spectrum of problems. Nevertheless their number was limited. The quality of this engagement remains unclear to this day. Mr. Alexander Borg Olivier, legal advisor to the UN's Special Representative of Secretary General claimed during an interview early this year that "no country sends its best judges and prosecutors to missions, because they are needed in their own country. The countries provide only with those less needed. Those we have in Kosovo are the best we could get. Some stay for two-three months, and majority of them are not that committed to know the country they work in"<sup>46</sup>.

Another weakness of international engagement seems to have reflected in the recruitment of Kosovar judges and prosecutors. The recruitment seems not to have considered the context of political and social developments in the country that has not developed an enabling environment for the highly needed reforms of the justice sector. Establishment of courts which combined national and international judges was a development that took place for the first time Kosova, in entire UN practice. Hence, the lack of experience must have had own impact. But after an 8 year experience, much more could have been achieved.

The Kosovar society is going through important and intensive developments which make the progress of justice sector difficult and complicate the efforts to evaluate and interpret the impact. The purpose of this report was to identify and evaluation the relations the Kosovar justice has established with Kosovar politics and other institutions in general. In this effort, the research group focused on the politicization and the partiality of the judiciary.

## Recommendations

Proper functioning of the justice sector in Kosova needs proper functioning of other state mechanisms as well. Already identified lack of political will to fight corruption and organized crime in Kosova affects first and foremost the justice sector. In this context, reforming and proper functioning of the judiciary will result from completion of the projects by engaged stakeholders in overall proper functioning of Kosovar society. In the meantime, the quality of the judiciary's work, until the consolidation of the Kosovar state, will be closely inter-linked with the political cost of the engaged actors. Inclusion of international institutions in the functioning of justice sector makes it difficult for the citizens to identify the contributors or those responsible for created situation. For this purpose, it is highly necessary to set clearly which are the objectives of the listed institutions for certain periods of time and who are those responsible for certain actions. The public opinion must be informed on the entire process, and not only when certain developments make "news." Increasing the access to information for the media and public is a high necessity that requires urgent attention by Kosovar justice sector.

To overcome the backlog of accumulated cases for a period of time that would be considered acceptable, the Kosovar courts must increase the number of judges at sensitive levels. Otherwise, the justice sector would be left with an over-floated administration. Putting into function the expedited procedures, establishment of 'ad hoc' institutions to treat certain categories of cases, or putting into action extra-judiciary resolution practices like mediation and arbitration could be only few elements of this strategy.

Finally, there is an urgency to complete the legal framework which would enable progress on system's reformation, with a special emphasis on creating of an enabling environment for a justice sector independent of politics.



## PTK in Danger of Corrupted Privatization

November 2008

The ultimate goal of each privatization is to benefit the public and economic development of the country. However, not every privatization in Kosova aimed so. More so, privatization of most important companies in Kosova created damage more than benefit. Ferronickel is one such case. Today, Kosova proves to be simply powerless to act against the further damages that result from insufficiently studied and corrupted privatizations, as the damaging contracts have been set as irrevocable. In Ferronickel's case, Kosova accepted slightly more than 30 million Euros from the sales of the economic giant, but each year it has lost 20 million due to completely not-transparent and corrupted privatization.

A destiny similar to Ferronickel is currently being prepared by the Government of Kosova's decision to privatize the largest public company, PTK. The scandalous decision to give away of 80% of Vala's business to a phantom company is being defended by the person who lead in Ferronickel's privatization, the Minister of Economy and Finance, Ahmet Shala. Shala sat on top of privatization of socially owned enterprises and the company RAR Sh.P.K. he has established with the promoted chair of the board of PTK Rexhë Gjonbalaj has been projected by them in a manner to receive the largest benefits from the privatization so far. Hence, people who lead in the privatization of the publicly owned companies are not a guarantee that the process will comply with the laws and secure economic profit to Kosova.

Kosova will lose from PTK's privatization for the following reasons:

1. Corrupted people sit on top of the privatization process, the same who have failed in the privatization of the socially owned enterprise until now.
2. Almost 80% of Vala has been illegally given to a phantom company called Dardafon
3. This privatization is being initiated without evaluating the impact of the socially-owned enterprises' privatization – considered a failure by many experts.
4. International financial markets are going through a crisis with impacts the potential investors' purchase power and therefore reduced the PTK's market price
5. The privatization is to happen with no awareness on its overall value, creating an opportunity for price manipulation.
6. Government has decided to privatize PTK without considering whether is it necessary and knowing whether it should be complete or partial
7. The ART continues to regulate the mobile telephony market, although it is perceived to be extensively corrupted and currently is not functional and has an incomplete board.

## Privatization by Corrupt People and in Conflict of Interest

The person who sits on top of this process is the same person who led privatization in Kosova for five years, that is, the current Minister of Economy and Finance and

former director of KTA, Ahmet Shala. When looking back on the privatization of Ferronickel, Llamkos, Sharrcem, and other socially owned enterprises, it becomes obvious very quickly that Kosova has not benefitted from this process. Failure factors become clearer when observing that the Minister Shala and other persons who currently lead publicly owned enterprises, such as the chair of the PTK Board, Rexhë Gjonbalaj, had acted and continue to do so in completely suspicious circumstances and not rarely in clear conflict of interest. Rexhë Gjonbalaj has been politically placed to chair the Board of PTK, since along with Minister Ahmet Shala they are partners in a joint private business RAR SH.P.K., established to create and adapt with the purpose to profit from the privatizations through KTA<sup>47</sup>.

During privatization of Ferronickel and agreeing on the contract with Dardafon, the conditions were set by the investor with total disregard of the Kosovar interest. To avoid the same destiny as in these two cases, the current government should think twice before deciding to relinquish the companies that consist the core of Kosovar economy, like PTK, KEK, and Prishtina International Airport, to a structure already proven as failed and suspected as corrupt. If the international offices exert pressure over the government, as its representatives state off-the-record, it should risk once for the sake of interests of crushed Kosovar economy and say "no" to those pressures.

## **Contract with Dardafon may devalue PTK for 70%**

The government decided on privatization at a time when it is to shadow and agreement that PTK has reached with Dardafon, a phantom company. The decision on privatization has bypassed the harsh discussions over the agreement which the current board of PTK, dominated by party people, has rewarded Dardafon company with 78% of Vala's business with the so-called Mobile Virtual Network Operator (MVNO). The agreement reached with no transparency determines totally unfavorable and damaging conditions for PTK, as a working group of PTK has alarmed through an evaluation report of the contract<sup>48</sup>.

The government of Kosova has directly interfered with appointing Adnan Merovci a director, who resigned as soon as he signed the agreement, which bear potential to collapse Vala operator after providing the Dardafon, phantom company with 78% of its business shares. Such decision, according to experts' evaluation, may devalue Vala for 70%. Initially, the board took the decision, chaired by the politicized Rexhep Gjonbalaj. Due to his partnership with Ahmet Shala in company RAR sh.p.k, the decision places both in conflict of interest, as Shala will be the person in charge of privatization of POEs.

Additional information worth mentioning is the fact that ICO policies on publicly owned enterprise are overseen by Ilir Salihu, who had similar responsibilities while working with KTA. Right under his and other KTA national and international staff's nose, extreme manipulations took place in publicly owned companies for several years.

47 <http://www.arbk.org/arbk/KerkimiBizneseve/tabid/66/language/sq-AL/Default.aspx>

48 Report on the commercial aspect of the draft-agreement MVO- PTK-Dardafon, Document of PTK's Board of Directors, 20 October 10.2008



## **Failure to study privatization till present risks to be repeated**

No substantial document on privatization of public companies has been produced by the government. There are no information on what has happened with the process to this day and whether it brought or took something from Kosovar economy. Although a number of analysis have evaluated privatization in Kosova as failed, unsuccessful<sup>49</sup>, and even damaging, the government of Kosova has decided on privatization of the most profiting company, the PTK.

Most likely, the reason why the government does not have a comprehensive evaluation of the process so far is the fact that people who led it intend to privatize the most important part of Kosovar economy, the public companies. In addition, the government decided on PTK's privatization without allowing the opportunity to debate on it, which would impose the process's transparency. Till today, privatization has not helped Kosova since the generated income are blocked and will most likely be used by international's to bargain with Serbia during "negotiations."

## **International financial crisis renders privatization timing inconvenient**

International economic institutions are constantly ringing the alarm bell for the world's most powerful countries on recession for the next year. The financial crisis has reduced the businesses' purchase power and unpredictability threatens to create an insecure environment for investments. Practically, the situation will create a misbalance between demand and offer, already visible in many powerful countries. The declined investments, declined demand and consumption will by default generate drastic decline of prices. The Government of Kosova's decision to sell PTK comes at time with high risk on the company's price to be reduced to minimum.

## **Insisting to privatize PTK without prior knowledge on its overall value**

The Minister Shala's statement that the market will set the PTK's value is another absurdity of the process as it practically creates opportunity for PTK's value never to be made public to Kosovar audience and for the leaders of the process to reduce the company's value to a banal value, as was the case with phantom company Dardafon. The value of PTK has changed over the time, but an overall evaluation of early 2007 has made an estimated its price to approximately € 1 billion. Clearly, there are opinions of this value having declined over time, but there are also experts who believe that the value may be over € 1 billion. A realistic evaluation of PTK would render very difficult the process manipulation. It seems that this is the very reason why controversial Minister Shala insists on not having an evaluation prior to privatization.

## Still not clear on what basis the privatization decision was taken

Manipulation with the PTK's privatization process is very likely as there is still no strategy for privatization of public companies (Koha Ditore, 11 September, 2008). Minister Shala has declared to the media that "PTK's privatization will be complete or partial" (Kosova sot, Lajm, October 2008). This shows that with no clear idea on public company's privatization, it has been decided on privatization of PTK, the most profitable public company.

Beside the factors already mentioned that threaten PTK's devaluation, there is a huge difference between "complete privatization" and "partial privatization." The decision on these two alternatives has practically been taken, excluding the possibility for the established Committee to conclude otherwise, such as PTK should not be privatized yet. Hence, practically, there is not explanation on the foundations on which the privatization decision has been made.

## Mobile Telephony Market Still Under the Governance of Corrupt ART

To this day, the telecommunications market is regulated by a single person, the chair of ART Board, Anton Berisha, whose violations have never been addressed by Thaci government in spite of the Prime Minister's declaration to fight corruption. Berisha has violated all possible regulations and law on telecommunications, including the laws and principles on procurement of the tender for the second operator or mobile telephony and the regulation on establishment of ART authority (see: Dëmtimi i sektorit publik nga korrptimi i politikës, Rast studimi: tregu i telekomunikacionit, Organizata ÇOHU!, Analizë #2, Qershor 2008 – [www.cohu.org](http://www.cohu.org)).

For three consequent times, Berisha led ART has awarded the license for second mobile telephony operator to Dukagjini company. In addition, ART has awarded the same company with a license for MVNO, a payment for an old due of Anton Berisha to the Dukagjini owner Ekrem LLuka. ART has damaged Kosovo budget for €16.2 million by not collecting Dukagjini's dues when withdrawing request on license for the second mobile operator. Besides, ART and its director, have signed an interconnection agreement between Vala and IPKO, which is very unfavorable for the public operator.

## Recommendations

Unless all the circumstances and listed factors have been studied thoroughly privatizing the largest public company threatens to be another failed privatization. Pre-requirement to be met include:

- Adopting a privatization strategy
- Serious appraisal for PTK's privatization
- Clarifying the contract with Dardafon
- Setting transparency on people to lead the process
- Determining the company's overall value

## Energy File – An Alarm for All of Us

*"We have not inherited earth from our fathers, we are borrowing it from our children"*

Dear representatives of Kosovo Institutions

In this file you will find few of the most essential information on energy sector, the Kosova C 2100 project, and environmental and social problems that threaten Kosova for as long as a more sincere and thorough debate on investments on lignite coal energy production does not begin.

The purpose of this file is to inform properly the Kosovar decision-makers on the committed violations, problems, and risks, contained in the power-plant Kosova C of 2100 MW construction project. A series of documents, and in particular the study in front of you "Kosovo C: A Modern Tale" present hundreds of arguments that the project needs to be revised if we are to know its true consequences.

- Violation of Parliament's decision on energy strategy – 2100 vs. 1000 MW

The Parliament of Kosova has adopted a strategy according to which energy facility to be constructed should not exceed a capacity of 1000 MW. Tendering and other documents prepared by the Steering Committee of the Kosova C project foresaw construction of 2100 MW capacity, which is the double of the one planned by the Parliament's Strategy on Energy.

As the representatives of Kosovar institutions have never respected the Parliament's strategy so far and have never been sensitive to the project's consequences. Bearing in mind the importance this project has for the future of Kosova, we propose:

2. to send back the entire process of Kosova C2100 to the Parliament of Kosova for revision
  3. to create the necessary sensitiveness among the decision-makers for the problems to be described in the following:
- Proceeding with no strategic assessment on project's environmental and social impact

Many EU documents require impact assessment prior to initiation of any program that may have environmental implications. Kosova will face tremendous challenges when respecting of EU's demands on environment become obligatory. It is a well known fact that the EU's criteria are the strictest in the world in this field.

To illustrate, we will refer to the European Parliament's and the Council's Directive 2000 on Environment Impact Assessment of certain plans and programs.

All the plans and programs with a potential impact assessment should become subject

to Environmental Strategic Impact Assessment.<sup>50</sup> In Kosova C 2100 case, the World Bank has initiated such assessment. However, numerous decisions that should have been made have already been taken.

But the EU's legislation on Environmental Systemic Assessment requires a report on potential effects on the environment due to implementation of a certain program or plan. It also requires consideration of reasonable alternatives, including objectives and identification, explanation, and assessment of geographical scale of the plan or program's impact.<sup>51</sup>

- Violation of EU documents that regulate energy issues, public's information and participation in decision-making

**Aarhus Convention**<sup>52</sup> on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters entitles the public with:

- i. the right to have information on environment under the public authority's ownership
- ii. the right to participate environmental decision-making
- iii. the right to review the procedures, to challenge the decisions of public authorities adopted without respect to the abovementioned rights or environmental legislation in general

**The EU documents oblige that relevant authorities are informed for adoption of plans and programs and he public has access to important information on the plan or program.**<sup>53</sup> Kosovar authorities have provided general information on construction of Kosova C 2100, but have not created a possibility for the public to have main information on the plan.

**EU legislation requires identification of the public and non-governmental organizations such as organizations active on environmental protection and other relevant NGOs.** Kosovar authorities have never identified an organization active on environmental protection, but have engaged an NGO with no experience or developed reputation on the matter to conduct opinion poll related to the problem. Such activity cannot substitute for public information.

**The legislation also requires for the authorities and public with related responsibilities be consulted during plan or program's evaluation and that a sufficient time must be provided for sufficient consultation and collection of opinions.** Kosovar authorities have not set reasonable time-frame for consultation and information collection. But the few consultations between representatives of the Steering Committee and citizens uninformed on environmental problems have been superficial and have not included single information on the necessity of Environmental Strategic Impact Assessment.

50 Directive 2000 Of The European Parliament And Of The Council on impact assessment

51 Ibid

52 <http://www.unece.org/env/pp/documents/cep43e.pdf>

53 Ibid

**EU legislation demands a notification on integration of environmental problems in the plan or program.** Kosovar authorities have not conducted yet the Environmental Strategic Impact Assessment, let alone to integrate such information in the plan.

- Pretending Kosova will develop economically

**It has been propagated that Kosova C will be the savior of Kosovar economy.** Almost entire profits of this project will belong to the investing company, which most likely will be completely foreign although the Parliament's Strategy requires joint investments.

Profits from coal sales are constantly being propagated. With this it is referred to the closure of national energy production capacities, which would cause losses to Kosovar economy. The estimated loss is approximate to the profit to be made from low royalties the investing company is to pay. This sector has not been regulated by law yet. Therefore we have no law and sufficient knowledge on concessions, and lignite price determination.

**It is propagated that employment will cause economic development.** First of all, employment will not reach the expected level since the modern technology has minimized the necessity for human labor force. Secondly, from other investment projects that employed Kosovar workers it has become clear that Kosovar institutions have failed to oblige the investor on reasonable wages for their employees. As a result, their wages have often been lower than the minimal wage as determined by law.

**It has been claimed that Kosova budget will benefit from investors tax payment which will impact country's development.** In fact, the losses incurred to the Kosovar economy by this project will be for several times larger than the collected taxes. Opening new coal mines will take away considerable arable land from farmers. Due to the project's geographical impact, the family farms will become smaller. Kosovar economy will suffer from aggravated water supply and its further pollution to be caused by massive energy production from low quality lignite. More on this problem will be discussing the following:

- Documents prepared by previous and current government on energy sector related to Kosova C 2100 project will cause severe damage to Kosovar economy as they discriminate against national companies and favor foreign investors:
- a) Prioritizing the investor on Kosova C for water supply compared to Kosova A/B, population, and agriculture<sup>54</sup>; International principles on usage of water resources determine the following prioritization of water supply: population supply => agriculture supply => industry supply. In Kosova C project Kosovar authorities have set priority on supplying the power plant Kosova C, reversing the international principle to Kosova C => population supply => agriculture supply

<sup>54</sup> Carl Bro Group, Environmental Impact Assessment and Action Plan for Kosovo A and B Power Plants and Coal Mines, Environmental Action Plan, June 2003., Also "Kosova C Ē A Modern Tale", pg. 28

=> Kosova A/B

- b) Through a decision of KEK's Board, led by former Minister of Energy, who while in conflict of interest led the Kosova C 2100 project as well, KEK was revoked the license for coal mines exploitation, reserving that right for the future energy operator. To resemble competition loyalty in the market, documents of Kosova C 2100 project foresee the same royalty for both foreign private investor and KEK. This price discriminates against the only public energy corporate when considering the technical and technological circumstances of KEK's operations. Compared to the technology to be used in Kosova C 2100, KEK's old technology will demand double amount of coal to produce 1 kW of electric energy.

Dear representatives of Kosovar institution,

This intervention to prevent the approaching disaster has nothing to do with the political identity of any Kosovar, but has to do with our lives and the lives of our children. Haste decision-making on the sector which will bear consequences for future generations is injustice we are not allowed to commit to our children.

After observing how the world is being destroyed by industry, an American Indian said:

"We have not inherited earth from our fathers, we are borrowing it from our children"

## Funds from Privatization and Billions of the Highway

### Question marks on Privatization of Public Companies and the Cost of the Highway

August 2010

Announcing the tendering process for PTK's privatization and warnings on increasing cost of Vermicë-Merdare highway for more than double consist a sabotage of Kosovar economy and its citizens by the Ministry of Economy and Finance (MEF) along with Prime Minister Taçi.

In its substance, the strategy for PTK's privatization has been rejected by the Parliament of Kosova. The draft should be sent back to the Parliament for discussion. In spite of this, the MEF has initiated the tendering process for PTK's privatization, sabotaging directly the country's highest institutions, the Parliament.

With the Strategy on PTK, the government has not provided any answer that elucidates the main concerns on the process, although the Parliament also requested explanations. Why should PTK privatize at times of financial crises? What does Kosova benefit and loose from the privatization? What analysis concluded that on sales of 75% of shares? Why the Prime Minister and the Minister of Economy and Finance are in such rush to complete privatization so hastily? Why the government did not analyze the impact of previous privatizations before entering a new phase of privatizing the most important pillars of Kosovar economy, the PTK, KEK, the airport, etc?

These are only few of questions posed by Kosova's legislative in a closed session for the strategy. Besides, the Organization ÇOHU! has made continuously posed tens of other questions. How is it possible for MEF to multiply transaction and strategic advisors, paying them millions of euros, and never explaining the reason for imposing three consulting companies? How can a PTK transaction advisor be a representative of a company that already has expressed interest in privatization that is Austrian Telekom? Why should privatization take place at times when large important projects, such as implementing the fourth mobile operator in Albania, are in process of implementation?

The last question leads to another government's sabotage of Kosovar interest for clientele's benefit. How is it possible to more than double the highway's cost to reach half of country's national budget? Why is this all taking place in a mysterious way without any discussion? Who need such a huge investment at times when the standards of public health and education in Kosovo are in war-time levels, and poverty and unemployment have plagued the country?

Such policies were generated under the directives of foreign diplomats and their "experts" who operate as true ministers of Kosova's economy. Direct involvement of the American ambassador in airport's concession debate without providing any argument to justify the most scandalous concession ever not only in Kosova, but the region as well, explains why the processes are closed and damaging to Kosovar economy. When

offers for Prishtina Airport's concession were opened, Kosovar media were invited, but their content was not made public.

Overall, Kosovar politics has proven to have tied hands on the expedited bargains during the hot summer period. A number of opposition parties have raised their voice against the suspected abuse of € 700,000 in tender for car plates, but have never dared to raise their voice against a project whose cost increased in a night for € 700 million, as it happened with the Highway project. The consortium that will build the highway has been declared winner for the lowest offer. The trick of making the lowest offer was clear since the very beginning. Organization ÇOHU! has more than once foreseen that the price will multiply, to ultimately exceed other offers.

## Hidden Strategies and Offers

Strategies on the most of economy and decisions and policies with high social and environmental impact should be a product of broad discussion and stakeholders' participation. Strategies by international advisors of Government of Kosova are developed in a closed circle, with no consultations and in completely obscure manner. Such drafting and processing of a strategy has taken place in energy and PTK cases. Members of Parliament admit these strategies are voted in the parliament through open manipulations, under pressures from international "advisors" as well, but also manipulation of electronic voting. Further, in a press conference, one of opposition parties has accused that voting on the Strategy on PTK has been manipulated.

## Strategy on Energy

The first draft of the Strategy on Energy has existed for a long time, passed on from the last government's mandate. Due to pressures from various stakeholders and especially from the civil society, the draft went through essential changes. The new draft, adopted by Parliament of Kosova this spring, went through important changes. There is a completely new approach to the Sibovc mine, and the project "Kosova e Re" has been reduced for 50%. The old power plant "Kosova B" would become part of the project. However, it is still unclear how the plant Kosova A will be repaired.

The draft of the new Strategy on Energy has been kept closed for the public opinion, but few of its parts have been enabled to limited groups of civil society through few round tables organized by the government.

The main problem of this draft consisted of the fact that Kosova B should be included in "New Kosova," while the public's participation in the project was not made clear. It has been rumored that public will participate between 15% – 25% in "New Kosova" shares, although never properly explained. On another count, it remains completely unclear what would be public's participation in the mining company at Sibovc mine.

Considering all these elements, the Parliament of Kosova rejected the Strategy on Energy early April, to approve it only few weeks later due to pressures which according to the Chairwoman of the Parliamentary Committee on Economy and Finance, Myzejane Selmani with international advisors. In this case, the Thaçi cabinet could not agree more according to the chairwoman of the Parliamentary Committee on, were exerted



by international advisors. Neither Thaçi cabinet agreed on the strategy entirely. In August this year, the Minister of Energy and Mining, Justina Pula Shiroka talked of her concern why Kosova B is not part of Kosova e Re project. The Members of Parliament who talked against the strategy expressed wonder and suspicions that the Strategy was adopted on the second attempt as a result of voting manipulation and pressured from outside.

## PTK Strategy

The process of Strategy on PTK drafting was also closed among MEF's the engaged and own advisors. Surprised for this draft was also the Minister of Health, Bujar Bukoshi, who confirmed that government cabinet has been completely ignorant on the matter.

Practically, the Strategy on PTK has been rejected by the Parliament. All discussions among members in July session, with very little exclusion, have rejected on the draft. The opposition and a considerable number of members of position parties practically boycotted the morning session, leaving the Parliament without a quorum to decide. Another session had been called that very day, and according to few members that observed the session from outside, there were no quorum to vote the strategy. Even in the Parliament's afternoon session on Strategy on PTK, the vocal members disagreed on most important parts of the draft.

Seeing that the Strategy would not have the Parliament's support, Prime Minister Thaçi and Minister Shala got together *tete-a-tete* to decide on how to proceed. After a pressure they exerted on the Speaker of Parliament, the strategy was voted and this time it was considered as adopted although with a minimum number of votes, only 44. The next day, the opposition accused on manipulated voting of the strategy.

MEF initiated the tendering process while committing grave violation of the law and of the will of the Parliament of Kosova. It was obvious that the Prime Minister and the Minister of Economy were under pressure to adopt the strategy during summer vacations and as such open the tendering process at times when the attention of media and public opinion are difficult to attract.

## Concession of Prishtina International Airport (PIA)

Whoever does not understand the potential consequences of closed privatization of public companies and of the stakeholders who exert pressure on the government to process quickly without complying to the law must take a look at the PIA case. In completely obscure circumstances and in a closed circle of Government-USAID-World Bank triangle, PIA's concession was approved with most scandalous conditions ever to happen in Balkans. PIA was relinquished covertly, under the government's tutelage by international "advisors."

Offers to concession were not opened in spite of the fact that the Government invited media to a press conference. To this day, the Kosovar public has information neither on the winning bid, nor other offers made to the concession. American ambassador Christopher Dell responded harshly to Organization ÇOHU! through an explanatory opinion to the public published in majority of cases on front pages. In a similar manner, the French ambassador to Prishtina wrote a similar letter a day later. Neither did

French ambassador provide any additional explanation on requests for a transparent process. Why were the bids not open and why Kosovar opinion is being kept in ignorance to this day on conditions under which the PIA was given to concession? Both ambassadors provided their guarantees, but they failed to respond to our demand for transparency and why did they get involved in a process which should have been led from head to toes by the Government of Kosova.

It has been said that € 100 million are to be invested, but in reality, according to the information leaked from this process, we are talking about a workload that does not exceed €45 million. There were attempts to deceive the public with claims that the Kosova budget would benefit between 25 - 45% of gross income from this company. The changes of percentage for almost double of its value were never explained. Neither the public was aware of how to you determine what consist of 25 and 45%. How will the income of this company monitored when such a thing was impossible also when these companies were public.

## Conclusion

Kosovo's wealth is being relinquished under the government's tutelage by the so-called "technical advisors," who in reality draft policies, strategy, and decisions for government. How is it possible for Government of Kosova to operate as a tool of "international advisors" who use the government to also violate the will of Parliament of Kosova? How can one treat legitimate processing of documents with crucial importance for Kosova's economy, while there are serious accusations passing through the Parliament through pressure and manipulation of votes? Can one call the process legitimate and with integrity when led by ministers who receive decisions on dealing with corruption allegations. Could the increased suspicions on minister's corruption involved in privatization of public companies be in fact a blackmailing against those who give up of national treasure? All these questions and conclusions will cherish a strong support for as long as the process does not become transparent.

## Law Violations of High Officials in Prishtina International Airport 2000-2005

May 2006

### Introduction

This is a research by Organization for Democracy, Anti-Corruption and Dignity ÇOHU! in relation to the reports concerning the management of Prishtina International Airport (PIA) during 2000/2004. The reports were issued by OIOS, the Task Force and the Ad-Hoc Commission and were again objects of renewed attention during March in Kosovo. The research covers public appearances by local and international officials, experts' opinions, reports in daily news papers and also interviews performed with officials and workers at PIA during March-May this year.

The research is focused on finding new facts on the breaches of law at PIA and to put them in context, to outline the responsibilities concerning the irregularities, to clarify connections to institutions involved in these cases and to outline what responsive actions have been taken concerning the corruption cases reported in PIA.

Three methods have been used for the investigation:

- Monitoring three daily newspapers during March-May 2006
- Interviews with Airport staff and with individuals and officials who have been involved in the work at the Airport
- Reviewing the reports issued by Task Force/OIOS, Commission Ad Hoc and other documentation which have come into our possession by officials and experts.

### Summary

On the 14th of March 2006 the Office of OIOS delivered a report to the Secretary General of UN in which are stated 35 cases of breach of law of which 9 are considered as suspected criminal acts.

Cases suspected to be of criminal nature:

- suspected breach of law in connection with the construction of the Airport apartments
- stealing and fraud in connection with cargo operations
- bribes taken for work contract

Cases suspected to be in serious breach of administrative procedures:

- work on heating and ventilation system
- building the car park
- non reporting the criminal history of one deputy general manager
- stealing and corruption concerning definition of tariffs for passenger

planes.

In addition there have been suspicions on other criminal cases such as sexual abuses, violence, stealing of money in Airport bars etc.

The Task Force moreover concludes that there has been no intention to hold the Airport Management accountable for how public money was spent. Also it is stated that there is a clear lack of will from UNMIK to supervise the work of the Airport Management.

The audit, covering 2001-2003, has concluded that there were a basic lack of adequate skills in management, administration and finance, both as concerns KTA as well as the Airport Management. The two share the responsibility with Kosovo Institutions but ultimately the responsibility lies with the Special Representative of UN. The most frequent reasons given by people in power and by Airport Management have been that they have not been in a position to follow the procurement rules, but this answer is considered irrelevant, especially for the years 2002-2003.

## Unreported irregularities

A research has been carried out by ÇOHU! sending e-mails to airport employees to find out if they are aware of some other cases of irregularities listed in the e-mails. These cases have been made known to ÇOHU! from different sources and also from a heap of documents secured from sources at the Airport. The result of this investigation shows that the cases are believed correct and they are therefore included in this report.

- At least two workers have received salaries for five or six months respectively without being present at work. One of them is a worker in the Technical Service who, during 2004, received salary six months in a row without being present claiming reasons of ill health. However, during the same period he was listed as working at OSCE in Prishtina.
- At least three persons have received traveling visas as being employees of the Airport although they have never been employed there. One example is the wife of a technical manager who got a visa in April 2004 appearing as airport staff.
- High Airport managers have used their positions for personal benefits in various ways. One was to assign airport apartments to themselves even though the apartments were meant for airport workers and the managers already owned at least one house in Prishtina.
- The practice to take hue bribes in exchange for work has continued and has caused a redundancy. Until year end some 200 workers will be dismissed. Until now 37 workers have been dismissed. The Task Force also reports on a case where a young man from Halilaq, Fushe Kosove was killed in this context.
- A number of workers at the Airport report that the proper procedures for selecting and employing staff are not followed. As a result, very often, professional criteria have been put aside in favor of nepotism. One case happened in 2004 when the brother of the chairman of the KTA BoD for the Airport was employed. The workers who have participated in the investigation state that the nepotism and other irregularities could concern as many as 70% of the whole workforce

employed at the airport.

Task Force received testimonies from people who had paid bribes. The bribes were paid to middlemen employed at the airport and who were linked to ex MD Ioan Woollett and the main part of his co-managers. Most of them are still working at the airport.

One of the managers, Adem Gashi, is said to have employed some family members. The head of security, who ironically is also head of the union, Sylejman Zeneli, according to the workers interviewed, has employed some 17 "close" persons.

- One other irregularity, which has been re-confirmed from many sources, is the discriminating way in which expropriation of land has been carried out. In some cases the agreement has been imposed upon the landowner. In other cases owners have received counter bids as high as twenty times the market value.

One case, which was also reported in the daily papers, was the compensation that the regional Office of KTA offered to ex-minister Rexhep Osmani. He received industrial land in Fushe Kosove worth at least twenty times the value of his expropriated land. Another flagrant case is the agreement with the owner Rexhep Zeka, who was even permitted to build a hotel in violation of the airport master plan.

## **Indifference of the Airport Board of Directors**

In spite of the fact the cases presented by Task Force are quite worrying, not only considering the number of suspected criminal cases but also their seriousness, today's Airport management continues to show no willingness to fight this situation. To the contrary they have voiced promises or have done things just to give the impression that in fact they are doing something about it.

A statement by the Chairman of the Board of Directors for Public Enterprises at KTA, Mr Ilir Salihu, after the UN report was published was rather an encouragement for continued irregularities. In a press conference Mr Salihu said that in severe cases they would send a letter of warning. This shows that he had no plan to take usual administrative measures, not even in serious cases.

Be it as it may, he admitted that there have been breaches of law, but, as has been reported in the daily papers, he tried to explain this by stating that most of the reports cover the period when Kosovo was in a reconstruction period and when the Airport had no system for internal control.

It is not very likely that the irregularities will be fought by the present board members of the Airport. Many facts show that the brother of the Chairman of the Board, Mr. Salihu, was employed at the Airport in 2003 without competition. Also, during the period when he was deputy director of the regional Office of KTA in Prishtina the ex-minister of education, Rexhep Osmani, was granted the industrial area in Fushe Kosove in exchange for expropriated land at the airport.

Another reason often heard from the leaders of KTA and from the Board of Directors at the airport for not taking adequate measures against irregularities after the Task Force

report was published is that the irregularities occurred earlier. In those days there was no law and no well developed banking system. Scrutinizing these reasons give the conclusion that these arguments are irrelevant for three reasons:

- The gravity of committed acts includes penal cases which are not limited by statutory limitation.
- During the period when most of the irregularities occurred there was a functional banking system in Kosovo and a law to regulate public finances as well as public procurement, and
- The main part of the irregularities was performed when the emergency period was over, which means that during the period in question there was administrative capacity available to fight the cases which is elementary.

## **The indifference of UNMIK and KTA**

The OIOS investigators have concluded that from the beginning of 2005 the focus of the high leadership in UNMIK has turned away from the fight against corruption. Years ago it was clearly seen that corruption had run out of control in Kosovo, which is shown by Task Force and from external audits, and still the leaders of the Mission hesitate to take action. The Kosovo media continue to report on irregularities at the Airport but the opinion of UNMIK, KTA and Kosovo officials remains as before: no serious measures against misuse. This lack of action/reaction, a Kosovo expert calls a mystery which undoubtedly will be unveiled one day.

The international officials in KTA have not been far from the opinion voiced by the BoD and even the chairman of the board, Salihaj, concerning the accusations raised by Task Force. The fact that no measures are taken against the accused persons are based on the statement that there was no law.

In addition, Jessen Petersen gave a heavy blow to the hopes that the UN report on irregularities at the Airport would open the door to fight corruption in public enterprises. Petersen has contested most of the recommendations for disciplinary measures on the basis that the conditions are difficult in peacekeeping missions. Be that as it may, he also refused to admit that corruption is a broad and all encompassing phenomenon at the Airport. Of course he ignored the report for a long time although local media reported in detail about the reports issued by his own organization. Finally he had to deal with the report but only after it had turned into a scandal in the international media. Immediately after Reuter published the report the head of UNMIK reacted and called the OIOS report unsubstantiated.

In a press conference the head of Pillar IV of UNMIK, Joachim Rücker, defended the construction of a hotel near the Airport in spite of the fact that this is not in accordance with the Master Plan. In a press conference, defending the non-transparent agreement made with one of the owners, he said that the Master Plan is of a dynamic nature and should be changed. This is in total contradiction to the reasons why master plans exist. They are made for the very purpose of avoiding sporadic constructions which cause problems to the development of the airport infrastructure.

## Conclusions and recommendations

For a long time in Prishtina Airport internal systems for reporting and control have been lacking. During these years there have been systematic breaches of law and thus corruption has reached uncontrollable levels. In this company bribes have been accepted in the tendering processes, when assessing tariffs, when employing staff, when purchasing fixed assets, when allocating apartments and maybe in every other line of business.

In this environment of irregularities the Airport management not only did not play their controlling role but often by their own actions even incited irregularities. This applies to both international and local managers. The answers given by these high officials, locals and internationals, make us believe that there is more a lack of will to fight the irregularities in this company than a lack of facts to prove the irregularities.

We stress again that it is extremely necessary to initiate investigations in those areas where there is reason to suspect that intentional misuse of Airport funds or assets has occurred. Above a number of facts were presented. It is not only a question of misuse based on ignorance but rather a well-founded suspicion that the misuses are intentional. Be it how it may, an investigation should be carried out to confirm or turn down the allegations made. If proofs are found for irregularities due measures should be taken.

