

THE BOARDS OF POLITICS

PRISHTINA – JUNE 2021



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ABBREVIATIONS

- KDI** **Kosova Democratic Institute**

- TI** **Transparency International**

- Government** **Government of the Republic of Kosovo**

- CPE** **Central Public Enterprises**

- LPE** **Local Public Enterprises**

- Law** **Law on Publicly Owned Enterprises and its amendments**

- NGO** **Non-Governmental Organization**

- Assembly** **Assembly of the Republic of Kosovo**

INTRODUCTION

This paper addresses some of the challenges faced by central public enterprises in Kosovo, with particular emphasis on the ways in which the Boards of Directors of Central Public Enterprises are appointed and operate. In order to understand these challenges, the current Law on Public Enterprises and the administrative instructions deriving from it, Government decisions, reports of non-governmental organizations and reports from the print media in Kosovo have been analyzed.

During the analysis of legal procedures for the selection of directors of boards of central public enterprises we focused on identifying legal deficiencies, cases of non-compliance with legal provisions during the selection and appointment of directors of boards of central public enterprises, cases of non-declaration of assets by directors of the boards and the lack of transparency of the work of these boards.

The boards analyzed in this study are those that led the central public enterprises during 2020, such as Kosovo Power Corporation, Kosovo Post, System, Transmission and Market Operator (KOSTT), Trainkos, Infracos, Landfill Management Company, NPH Ibër Lepenc and Trepça.

Finally, the analysis provides some concrete recommendations in order to improve the situation of the public enterprise sector.



In order to understand these challenges, **the current Law on Public Enterprises and the administrative instructions deriving from it, Government decisions, reports of non-governmental organizations and reports from the print media in Kosovo have been analyzed.**



OPERATION OF PUBLIC ENTERPRISES IN KOSOVO

Since the declaration of independence, Kosovo has begun the process of building functional and democratic state institutions. Kosovo functions as a parliamentary democracy, whose leadership is based on the principle of separation of powers. The parliamentary governance of Kosovo is exercised by the Assembly of Kosovo, from which derives the executive power exercised by the Government of Kosovo. The Assembly also elects the President of Kosovo who represents the unity of the people.

Kosovo, as a new state, is still in the process of building stable and transparent governing structures and institutions. Corruption continues to be one of the main challenges in achieving the necessary development and condition for the European Union membership process or the abolition of visas. Corruption Perceptions Index (CPI) by Transparency International¹ for 2020 ranked Kosovo in the 104th position, with only 36 points. The unchanged results of this Index for years confirm the stagnation in the fight against corruption and the failure of institutions to address it.

Features of state stagnation are also present in public enterprises in Kosovo which operate within the Government of Kosovo or Municipalities, depending on who owns them. The services provided by public enterprises affect the wider social interest and affect the quality of life of citizens. The purpose of the operation of these enterprises is to provide

public services that meet the daily requirements and needs of the citizens of a country, starting from water supply, electricity, public transport, waste collection, street cleaning, etc.

Public enterprises in Kosovo are regulated by a special law and their ownership is regulated by the Constitution of Kosovo. According to Article 160 of the Constitution, all public enterprises are owned by Kosovo. This article also allows municipalities to own companies that provide services only in certain municipalities.²

In 2008 Kosovo adopted the Law on Publicly Owned Enterprises, the purpose of which was to regulate the organization of public enterprises in Kosovo, their management and operation. According to this law, public enterprises in Kosovo are organized as companies based on the Law on Business Organizations, which are headed by management boards, while depending on the owner, they are divided into local and central level. Due to the requirements of the time, problems encountered during the management of enterprises and recommendations from institutional and extra-institutional stakeholders, the Assembly of Kosovo on the proposal of the Government has supplemented and amended twice this law, in 2012³ and in 2015.⁴

¹ https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf

² Constitution of Kosovo, Article 160 https://kryeministri-ks.net/ep-content/uploads/2018/03/Kushtetuta.e.Republikes.se_Kosoves-2.pdf

³ Law no. 04 / L-111 on Amending and Supplementing Law no. 03/L-087 on Publicly Owned Enterprises <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>

⁴ Law no. 05/L-009 on Amending and Supplementing Law no. 03/L-087 on Publicly Owned Enterprises Amended and Supplemented by Law no. 04/L-111 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10822>





DIFFERENCES BETWEEN CENTRAL AND LOCAL PUBLIC ENTERPRISES

Public enterprises in Kosovo are divided into central and local public enterprises. The essential difference between them lies in the owner. Central public enterprises are owned by the Republic of Kosovo and the Government is competent for them, while local public enterprises are owned by the municipality or municipalities, depending on how it is defined by the Law on Public Enterprises.⁵

The other difference between these enterprises is that central public enterprises provide public services to all citizens of Kosovo, while local public enterprises provide services only to residents of the municipality or municipalities they own.

The composition of the Board of Directors respectively their number is another difference between central and local enterprises. While the board of directors of central public enterprises consists of 5 or 7 members, that of local public enterprises consists of 5 members.

The commonality of these Boards lies in their mandate of 3 years.

The Law on Public Enterprises contains the lists of central and local public enterprises. The law defines as follows: Kosovo Electric Power Corporation JSC (KEK), Transmission System and Market Operator (KOSTT), Kosovo Post and Telecommunications (PTK), Kosovo Railways and Prishtina International Airport. Whereas, Local POEs defined by law are as follows: Termokos City Heating JSC-Prishtina, Gjakova City Heating JSC-Gjakova, Regional Waste Company Çabradi JSC-Gjakova, Waste Company JKP Standard-Mitrovica, Regional Waste Company Ambienti JSC-Peja.⁶ The Government of Kosovo is authorized and obliged to make changes to these lists in cases when these changes are necessary. Over the years, the Government as well as the Municipalities have established new enterprises, depending on the jobs and needs they had.



While the board of directors of central public enterprises consists of 5 or 7 members, **that of local public enterprises consists of 5 members.**

⁵ Law on Publicly Owned Enterprises, Article 3 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>

⁶ The lists of central and local public enterprises are defined by the Law on Public Enterprises <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>





SHAREHOLDERS

Public enterprises in Kosovo are organized as joint stock companies in accordance with the Law on Business Organizations. According to this law, a joint stock company is a legal entity which is owned by shareholders. Shares in a joint stock company serve to determine the interests and property rights of shareholders.⁷ Thus, shares are the unit on the basis of which the rights of shareholders are divided into the ownership of the joint stock company.

According to the law, all shareholders of an enterprise are equal in terms of their rights and obligations. The board of directors is obliged to ensure that all shareholders of the enterprise are treated equally. This legal obligation of the Board is very important especially for local public enterprises which may be jointly owned by some municipalities or in cases when the shares of central public enterprises are partially sold and we have other shareholders besides the Government of Kosovo.⁸

The shareholders of the enterprise have **supervisory role** in the work of the Board of Directors and Audit Committees of the designated enterprise. This supervision by law must be carried out continuously and rigorously. According to the Law on POEs, governing boards on an annual basis make systematic evaluations of their work and prepare quarterly and annual reports on their activities and the effectiveness of their work (Articles 28, 29, 31). However, the law provides that shareholders have the right to request a performance report whenever they notice that the performance of the enterprise is poor or inconsistent with the objectives and plan of the enterprise.

Shareholders also have reporting role. The Government of Kosovo, as a shareholder of central enterprises, is legally obliged to report to the Assembly of Kosovo on its work.

Every year, the Government, respectively the Municipal Shareholder Commission, prepares an annual report for the Assembly of Kosovo, respectively the Municipal Assemblies, regarding the exercise of competencies and authorizations as a shareholder of enterprises.

The sale of shares is regulated by Article 9 of the Law on Publicly Owned Enterprises. The government, as a shareholder, may decide to sell all or part of the shares of a public enterprise. For each sale of shares, the Government must receive the consent of the Assembly, which through a majority vote decides to approve or reject the sale of shares of an enterprise

⁷ Law on Business Organizations, Article 118 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16426>

⁸ See Article 12 paragraph 3 of the Law on Publicly Owned Enterprises <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16426>





GOVERNING BOARD OF THE CENTRAL PUBLIC ENTERPRISE

Boards are entrusted with the operation and management of enterprises.⁹ During the analysis of the law, we notice that the competencies and tasks of the board are distributed in many articles, which does not help the public at all to understand exactly what the competencies and tasks of the boards are.

The general duties of the directors of the Boards are defined by Article 12 of the Law on Public Enterprises which are as follows:

-
- (A) exercising the activity in order to increase the long-term value of the enterprise and its shareholders;

 - (B) exercising duties in accordance with the business and financial strategies described in the approved Business Plan of the enterprise,

 - (C) treating shareholders equally and

 - (D) regular exercise of their duties as director.¹⁰

This article defines the competencies and duties of the board, but without regulating the entirety of the rights and obligations arising from the law itself. The distribution of board rights and obligations across different articles creates the possibility of exploiting legal shortcomings by board members to the detriment of the public enterprise.

⁹ Law on Publicly Owned Enterprises, Article 15, paragraph 1 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>

¹⁰ See Article 12 of the Law on Publicly Owned Enterprises <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>





The board of directors is responsible for appointing company officials and overseeing their work and has the power to dismiss them. The law even stipulates that this dismissal can be done **in the absence of a statement of the reason for the termination of the contract**¹¹. Such a legal provision causes uncertainty to officials employed in the enterprise and is **contrary to the Law on Labor**. According to the labor law, the employer is obliged to hold a meeting with the employee in order to explain the termination of the employment contract.¹²

A public enterprise operates on the basis of the Enterprise Business Plan. This plan is approved by the Board which monitors the performance of the enterprise in order not to deviate from the objectives of the enterprise set out in this plan. If the Board finds that the performance of the enterprise has deviated from the business and economic goals set out in the Business Plan then it shall hold the executive director of the enterprise accountable for the causes of the deviations.

In addition to evaluating and supervising the work of enterprise officials, the Board is also obliged to evaluate its own work, an evaluation which is done systematically. According to the Law on Publicly Owned Enterprises, the Chairman of the Board is responsible for conducting the evaluation which must be conducted in a timely and orderly manner. The purpose of this evaluation is for the board to analyze and document the overall work done within the reporting year. In addition to the overall evaluation of the board performance, the board analyzes the work of its individual members. So, part of this evaluation is the assessment of the skills, experience and professional qualifications of the board members and the analysis of the contribution and effectiveness that they bring to the overall performance of the board. This evaluation is intended to highlight how effective the board is in exercising its duties and responsibilities.¹³

So, we see that the importance of the board of directors is significant for the well-functioning of the enterprise and their work directly affects the lives of citizens and the public services they receive.



If the Board finds that the performance of the enterprise has deviated from the business and economic goals set out in the Business Plan **then it shall hold the executive director of the enterprise accountable for the causes of the deviations.**

¹¹ Law on Publicly Owned Enterprises, Article 21 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>

¹² Law on Labor, Article 70 paragraph 3 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735>

¹³ See Article 28 of the Law on Publicly Owned Enterprises <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16426>



SELECTION OF THE DIRECTORS OF BOARDS

The difference between **selection** and **appointment** of members rests on the procedure followed by the Government. The procedure for selecting members usually begins with the opening of a public competition and the determination of the criteria necessary to qualify for the required position. Then, from the persons who have applied for the vacant position, the person who is considered to meet the required criteria is selected. Whereas, the competition does not apply to the appointment process, but the shareholder identifies the most suitable candidate for the vacancy and he/she is offered the job.

The procedure for selecting Directors is regulated by the Law on Public Enterprises.¹⁴ According to this law, all directors are selected by the Government of Kosovo, a procedure which has often been criticized for lack of transparency and avoiding the practice of public competition.¹⁵

Full compliance with legal provisions and procedures means that the Government will have to follow these steps:

- ① The Secretary General of the Government through a decision appoints a Recommendation Committee, whose task is to identify and recommend to the Government potential candidates for the position of director in the Board of POEs. The secretary in this committee should appoint 7 members to identify potential candidates for the board of directors. According to the law, only senior civil servants can be appointed as members of the Recommendation Committee, or external experts

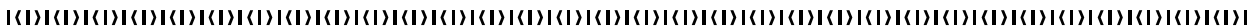
provided they are qualified and experienced in the relevant industry, finance or corporate governance can be appointed too.

- ② At the same time, the Government opens a public vacancy for positions on the boards of public enterprises, whereby, according to the law, the criteria required for vacancies must be clearly described in the vacancy.
- ③ After the deadline for receipt of documentation and application, the Recommendation Committee convenes, which has the obligation to review applications if they have met the required criteria. After listing the persons who have passed the first phase, then the Recommendation Committee conducts the interviewing and evaluation of the candidates.
- ④ After interviews and evaluations, the committee prepares a list of candidates who receive a positive evaluation. This list is then sent to the Government with the results achieved by each candidate.
- ⑤ The Government, after receiving the list of candidates from the Recommendation Committee, selects the members of the Board.

So the whole procedure of selecting Board members starts and ends within the Government itself. We see that a large part of the responsibility for the selection of these Boards belongs

¹⁴ See Article 15 of the Law on Publicly Owned Enterprises <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>

¹⁵ CORPORATE GOVERNANCE IN PUBLIC ENTERPRISES IN KOSOVO. Improving transparency and governance of public funds in Kosovo, RIINVEST INSTITUTE, 2012. Accessed on 24 June 2021. <https://www.riinvestinstitute.org/uploads/files/2016/October/17/alb-u1476694068.pdf>



to the Recommendation Committee. This way of selecting the members of the Boards creates space for abuses and space for the selections by the Recommendation Committee to be politically influenced and to favor the ruling parties.¹⁶

The law states that as members of the Recommendation Committee should be appointed only senior civil servants or external experts with high qualifications and experience in the relevant industry, experience in finance or corporate governance. Also, no more than one person can be appointed by a public authority or designated institution, and in cases where a ministry has a leading policy-making role in the sector in which the POE operates, one person must be appointed by that ministry¹⁷.

When selecting these Boards, it is mandatory to apply the legal provisions regarding respect for non-majority communities in Kosovo and gender equality. The Law on Publicly Owned Enterprises requires that one of the elected directors belong to the non-majority community¹⁸ and that the composition of Enterprise Boards should be in accordance with the Law on Gender Equality¹⁹.

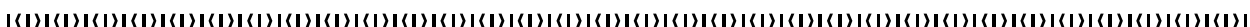
Representation of women in the management of Central Public Enterprises continues to remain low, despite the obligations arising from the Law on Gender Equality.²⁰ According to the Law on Gender Equality, state bodies and public institutions are obliged to take measures to achieve equal gender representation, a representation which is achieved when we have a minimum representation of fifty percent (50%) for each gender.²¹ Latest amendment to the Law on Public Enterprises requires appointment of women to the composition of boards of directors, according to the legal requirements of the Law on Gender Equality.²²

The management of Kosovo's central public enterprises is dominated by men.²³ In most Boards, we have only one or two women in the position of board director and very often we have had cases where no woman has been appointed as board director by the Government. This male dominance and the Government's failure to achieve equal gender representation in leadership undermine the basic democratic values of equality and justice.

Problem after selection or appointment of the Board of Directors has been noticed to be the declaration of assets by the Directors of the Board. Declaring the assets of senior public officials is one of the instruments for preventing corruption and detecting the illegal enrichment of public officials. The declaration of assets of public officials in Kosovo is regulated by the Law on Declaration, Origin and Control of Assets of Senior Public Officials.²⁴ According to this law, the declaration of assets of senior public officials is a legal obligation, non-compliance with which results in the commission of the offense and in case it is discovered that the offense has been committed, then the perpetrator will be sanctioned as provided by law.

Senior public officials according to the Law on Declaration, Origin and Control of Assets of Senior Public Officials are obliged to declare their existing assets after taking office. The law on declaration of assets gives them a period of thirty (30) days to declare their assets to the Anti-Corruption Agency.²⁵ In cases of violation of this provision and non-compliance with this legal obligation, the senior public official commits a minor offense and is punished by a fine of one thousand (1000) to two thousand five hundred (2500) Euros.²⁶

16 CORPORATE GOVERNANCE IN PUBLIC ENTERPRISES IN KOSOVO. Improving transparency and governance of public funds in Kosovo, RIINVEST INSTITUTE, 2012. Accessed on 24 June 2021. <https://www.riinvestinstitute.org/uploads/files/2016/October/17/alb-u1476694068.pdf>
 17 Law on Publicly Owned Enterprises, Article 15.2 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>
 18 Law no. 04 / L-111 on Amending and Supplementing Law no. 03/L-087 on Publicly Owned Enterprises, Article 8 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2822>
 19 Law no. 05/L-009 on Amending and Supplementing Law no. 03/L-087 on Publicly Owned Enterprises Amended and Supplemented by Law no. 04/L-111, Article 6 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10822> See Law on Gender Equality, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>
 20 Law on POEs, Article 6 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10822>
 21 Law on Gender Equality, Article 6, paragraphs 7 and 8 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>
 22 See Article 17.4a of the law amending and supplementing law no. 03/L-087 for public enterprises amended and supplemented by law no. 04/L-111 <https://kallxo.com/lajm/bordet-e-ndermarrjeve-publike-te-rezervuara-per-burra/>
 24 Law on Declaration, Origin and Control of Assets of Senior Public Officials <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>
 25 Law on Declaration, Origin and Control of Assets of Senior Public Officials, Article 7 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>
 26 Law on Declaration, Origin and Control of Assets of Senior Public Officials, Article 17 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>



QUALIFICATION CRITERIA

The importance and role that board directors have in the management of enterprises makes it necessary for candidates to meet the criteria and conditions in order for them to exercise these duties. Mandatory criterion to be met is the professionalism of the board members. Article 17 of the Law on Publicly Owned Enterprises stipulates that in order to achieve professionalism in the management and well-functioning of the enterprise, the candidate must meet the following conditions:

- (A) 5 years of work experience at a senior management level,
- (B) at least 5 years of work experience as a public accountant, as a qualified lawyer or
- (C) qualified member of any other profession which is closely related to the activity of the enterprise.

It is necessary for the selected person to have integrity. Integrity at work is an important factor for professional governance, involving several character traits such as honesty, trustworthiness, transparency and work ethic. Above all, integrity includes the ability to judge different situations "soundly", people who know how to make the right and proper decisions, as well as people who are reliable and predictable in dealing with others.²⁷

The selection of boards with persons with integrity affects the creation of citizens' trust in the leadership of these boards. According to the Law on Publicly Owned Enterprises, integrity can be proven with a clean legal background, so that board directors have not been convicted of any criminal or civil offense by a court, including fraud, corruption, theft, and laundering. of money and bribery.²⁸ Therefore, it is no coincidence that integrity is a criterion legally required by

individuals who are entrusted with the management of such enterprises which directly affect the daily life of the citizen of Kosovo.

Paragraph 2 of Article 17 of the Law on Publicly Owned Enterprises requires board members to be independent. According to this law, independence has been interpreted in various forms and situations mentioning all cases which could violate the independence and neutrality of the leadership of the boards. Officials, managers, current employees or those who have held this position in recent years (these years are defined by law and vary depending on the position)²⁹ are not considered independent and consequently can not be selected as board director.

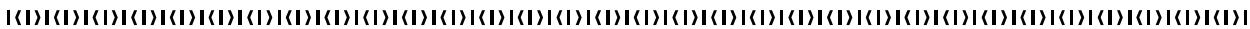
It is important to dwell on points k and l of Article 17, paragraph 2. At the point k this article requires the political independence of board members. The law prohibits the election of a board director to anyone who during the period of 36 months prior to the date of application has been "(i) a publicly elected official, (ii) a political appointee or (iii) a holder of a leadership or decision-making position in a political party".

However "the placement of political persons at the head of the boards of public enterprises occurs due to the two major interests of political parties. On the one hand, the opportunity to place members and senior party representatives in these senior positions serves as a temptation or reward from the party to its members. This creates the opportunity to strengthen the ranks of the party. Moreover, when these persons are appointed, they are given the power to employ even more politicized persons in the lower ranks of the enterprise, thus giving a greater impetus to the party. On the other hand, the placement of party members on the boards

²⁷ <https://aabri.com/manuscripts/10504.pdf>

²⁸ KDI, Assessment of the National Integrity System, 2015, p.240 https://kdi-kosova.org/ep-content/uploads/publikime/71-kdi-nis-alb_all_single_final.pdf

²⁹ According to this article, a person who within the last 5 years has served as an official or manager of the enterprise, who within the last 3 years has served as a high-level employee of the enterprise, during the last 3 years has had material business relations with the enterprise cannot be selected director of the board, except in cases when he has been an individual consumer of the services provided by the enterprise.



of directors of public enterprises empowers political parties to influence this enterprise to push their policies.”³⁰

The law does not regulate the situation when a person who is a board director is appointed member of a political party. There are many cases when candidates for deputy of the Assembly of Kosovo or candidates for mayor from the ranks of the ruling political party, who have not received enough votes for that position are selected as board directors by the parties of which they are members.

On the other side point l regulates conflict of interest. According to the Law on Prevention of Conflict of Interest in the exercise of public office, conflict of interest is defined as “the circumstances in which the official has a private interest which may or may not affect the impartiality and objectivity of the performance of his official duties”.³¹ According to Transparency International, conflict of interest is defined as “The situation when an individual or institution for which they work, whether government, business, media or civil society organization, is faced with a choice between the tasks and requirements of their position and their private interests.”³²

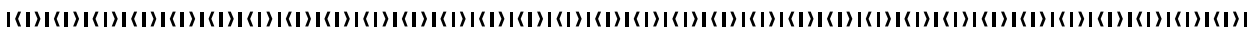
Accordingly, the duty of director of the board can not be exercised by a person who has any conflict of interest, a conflict which would affect that person not to be able to exercise routinely, independently, objectively and faithfully his/her duties and obligations to the enterprise. Conflict of interest affects the fluctuation of impartiality and being subjective in the exercise of duties.

Despite this legal regulation, boards of public enterprises are often seen as politicized due to numerous political appointments, persistent nepotism, and lack of transparency in the selection of board members.³³ As a result, such appointments create space for boards not to exercise their functions in accordance with the objectives of the enterprise, but to act on the basis of the likes and interests of the political parties which have brought them to those positions.



Paragraph 2 of Article 17 of the Law on Publicly Owned Enterprises requires board members to be independent. **According to this law, independence has been interpreted in various forms and situations mentioning all cases which could violate the independence and neutrality of the leadership of the boards.**

30 Public management: Analysis of Boards of Public Enterprises and Independent Agencies, KIPRED, May 2011, page 15, accessed 13 June 2021 in http://kipred.org/repository/docs/Menaxhimi_Publik-_Analiz%3%AB_e_Bordevet%3%AB_Nd%3%ABrmarrjeve_Publike_dhe_Agjencive_t%3%AB_Pavarura__535599.pdf
 31 Law on Prevention of Conflict of Interest in the Exercise of Public Function, Article 6 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16314>
 32 <https://transparency.org/en/corruptionary/conflict-of-interests>
 33 KIPRED. Public management: Analysis of boards of public enterprises and independent agencies, 2012. Accessed on 24 June 2021.





TEMPORARY BOARDS OF PUBLIC ENTERPRISES

The Law on Publicly Owned Enterprises enables the establishment of Temporary Boards of Directors of Publicly Owned Enterprises. This law authorizes the Government of Kosovo to appoint an Interim Board of Directors, which serves as the Board of Directors until the election of the permanent board.³⁴

Although the two types of boards, the permanent and the temporary, exercise the function of leading the Publicly Owned Enterprise, there are some differences between them.

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- (A) The first difference is that the Permanent Board is elected by the Government of Kosovo with a procedure defined by the Law on Publicly Owned Enterprises, while the Temporary Board is appointed by the Government.
-
- (B) The second difference is in the time period during which this board serves. The Permanent Board is elected by the Government for a term of 3 years, while the Temporary Board serves for a term of six months.
-
- (C) The third difference is in the number of board members, where the Permanent Board consists of 5 or 7 members, while the Temporary Board consists of 5 members.
-

During the analysis of the appointment of the Interim Boards, KDI found shortcomings in the implementation and observance of the legal provisions required for the appointment of a professional and functional board. The most frequent violations are related to non-compliance with the criteria for political independence, gender equality or non-appointment of full boards as required by law.

³⁴ Law on Publicly Owned Enterprises, Article 43 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>





WHAT ARE THE PRACTICES IN PUBLIC ENTERPRISES IN KOSOVO?

This research work has analyzed the boards of central public enterprises which were appointed or elected in the second half of 2020 by the Hoti Government, but without leaving aside some other boards that have been appointed during the past years but continue to lead these enterprises. KDI has found many cases of board politicization and irregularities in the appointment and selection of directors of perma-

nent and temporary boards. Furthermore, we find several cases when the Government of Kosovo had placed at the head of public enterprises persons who did not meet the criteria of independence and lack of conflict of interest, they had not respected the procedure for selecting the board as defined by law or the directors of the boards had not complied with their legal obligations.

| Central Public Enterprise | Board members with political connections | Political connection | Declaration of assets of the directors of the Board | Number of leading women |
|--------------------------------|--|---|---|-------------------------|
| Kosovo Electricity Corporation | Musa Misini | <p>He was a candidate for MP of the Democratic League of Kosovo in the early elections of 2014 ³⁵ and former mayor of Viti.³⁶</p> <p>According to the media in Kosovo ³⁷the same, at the time he was voted as a board member was retired, having reached the age of 67</p> | <p>The directors of the KEK Board, except for Fatime Grajcevc, have not yet declared their assets. Of them, Petrit Ibraj was appointed by decision of the Government on third of August 2020,³⁸ four months after his appointment, he has not yet fulfilled this legal obligation.</p> | |

³⁵ List of candidates of political entities for the 2014 elections https://kqz-ks.org/ep-content/uploads/2018/04/143_2014-Broshura_sq-sr-tr.pdf
 Candidates' results <https://kqz-ks.org/ep-content/uploads/2018/04/3.-Rezultatet-e-t%C3%AB-gjith%C3%AB-kandidat%C3%ABve-2014.pdf>
³⁶ <https://kallxo.com/lajm/onetari-i-ldk-se-emerohet-kryesues-i-bordit-te-kek-ut/>
³⁷ <https://ballkani.info/hoti-e-nxorri-nga-pensioneri-musa-misinin-e-ldk-se-per-ta-bere-kryetar-te-bordit-ne-kek/>
³⁸ Decision of the 19th meeting of the Government <https://kryeministri-ks.net/ep-content/uploads/2020/08/Vendimet-nga-mbledhja-e-19-t%C3%AB-e-Qeveris%C3%AB.pdf>



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| Central Public Enterprise | Board members with political connections | Political connection | Declaration of assets of the directors of the Board | Number of leading women |
|---------------------------|--|---|---|-------------------------|
| Post of Kosovo | Fadil Aliu Elda Maloku Leonard Shabanaj Ujkan Kameraj | Fadil Aliu was a candidate for MP from the ranks of the Democratic League of Kosovo in the early elections for the Assembly of Kosovo in 2017. ³⁹ Elda Maloku is an activist of the Social Democratic Initiative. ⁴⁰ On the other hand Leonard Shabanaj, who has been appointed as chairman of this Board, was an official in the Directorate of Education in the municipality of Peja, at the time when this municipality was governed by the Alliance for the Future of Kosovo (AAK) and was part of this party. ⁴¹ Ujkan Kameraj comes from the Egyptian Liberal Party-PLE, which is part of the ruling coalition. Furthermore, Kameraj was a candidate for MP in the early central elections of 2014, from the ranks of this party. ⁴² | None of the directors of the Board have declared their assets, even though 30 days had passed since the day of their appointment. | 1/4 |
| Infrakos | Brahim Selimaj | Brahim Selimaj, who has been appointed as Chairman of the Board, was a candidate for MP from the ranks of LDK, in the early elections of 2017 and 2019. | They have declared all their property. | 0 |
| Trainkos | Ramiz Rrustaj | Was a candidate for member of the Municipal Assembly of Klina in the local elections of 2017 from the ranks of the Democratic Party of Kosovo. ⁴³ The same, according to the social networks of the political entity Alliance for the Future of Kosovo, had joined the AAK in 2018. ⁴⁴ | None of the directors of the Board have declared their assets, even though 30 days had passed since the day of their appointment. | 1/3 |

39 List of candidates of political entities for the 2017 elections https://kqz-ks.org/ep-content/uploads/2018/02/Broshura_Kuvend-i-Kosoves-2017.pdf
Candidates' results <https://kqz-ks.org/ep-content/uploads/2018/01/3.-Rezultatet-e-t%C3%AB-gjith%C3%AB-kandidat%C3%ABve.pdf>

40 <https://kallxo.com/lajm/aktivistja-e-nismes-socialdemokrate-emerohet-aretare-e-bordit-te-postes-se-kosoves/>

41 <https://kallxo.com/lajm/lidhjet-politike-te-bordit-te-postes-qe-vendosi-per-pagat-e-larta-te-menaxhereve/>

42 List of candidates of political entities for the 2014 elections https://kqz-ks.org/wp-content/uploads/2018/04/143_2014-Broshura_sq-sr-tr.pdf

43 https://kqz-ks.org/wp-content/uploads/2018/02/08_343_Broshura_Kline.pdf

44 <https://facebook.com/Aleanca.Official/posts/2388737347834012/>

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| Central Public Enterprise | Board members with political connections | Political connection | Declaration of assets of the directors of the Board | Number of leading women |
|------------------------------------|--|---|--|-------------------------|
| Trepça | Esat Peci | Was a candidate for Mayor of Mitrovica from the Alliance for the Future of Kosovo (AAK). He was elected as a member of the Municipal Assembly of Mitrovica in the 2017 local elections. ⁴⁵ Peci was initially appointed director of the Trepça Supervisory Board by the Haradinaj Government in 2018. With the coming to power of the Kurti Government, in February 2020 this board was dismissed. ⁴⁶ A few months after his dismissal, Esat Peci was reappointed director of the Supervisory Board by decision of the Hoti Government. ⁴⁷ | Only one director (Safet Sadiku) has not declared his assets. | 0 |
| NPH Iber-Lepenc | Afërdita Llumina | KDI has found that Llumina was a member of the Democratic League of Kosovo-LDK. According to the social networks of the political entity LDK, Llumina, in addition to being an LDK activist, in 2019 she was elected chairwoman of the presidency of the VII Sub-branch of the 1st Branch of the LDK in Kodra e Trimave. ⁴⁸ | Only one director (Berat Lushtaku) has declared his assets. | 2/4 |
| Kosovo Landfill Management Company | Selatin Retkoceri | He was a candidate for MP from Vetëvendosje Movement in the early parliamentary elections of 2017. ⁴⁹ Retkoceri was also a candidate for mayor of Lipjan in the 2017 local elections of the political entity Lëvizja Vetëvendosje. ⁵⁰ The same in September 2019, after being appointed director of the board, had joined the Democratic Party of Kosovo (PDK). ⁵¹ | Three board directors have not declared assets (Selatin Retkoceri, Gazmend Bytyqi and Bashkim Krasniqi). | 0 |

45 List of candidates for mayor of South Mitrovica in 2017 https://kqz-ks.org/wp-content/uploads/2018/02/11_200_Fletevotimi_Mitrovica-e-Jugut_Kryetar.pdf
Election results <https://kqz-ks.org/ep-content/uploads/2018/04/1.pdf>

Final results for the municipal assembly of the 2017 elections <https://kqz-ks.org/ep-content/uploads/2018/01/2.pdf>

46 Government decision to dismiss the board of Trepça <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimet-e-Mbledhjes-s%C3%AB-4-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%AB-s%C3%AB-Kosov%C3%AB-2020.pdf>

47 Decision of the 36th meeting of the Government <https://kryeministri-ks.net/wp-content/uploads/2020/10/Vendimet-e-mbijes-s%C3%AB-36-t%C3%AB-t%C3%AB-Qeveris%C3%AB.pdf>

48 <https://www.facebook.com/1450643445246730/posts/2218779158433151/>

49 https://kqz-ks.org/ep-content/uploads/2018/02/Broshura_Kuvend-i-Kosoves-2017.pdf

50 https://kqz-ks.org/ep-content/uploads/2018/02/13_200_Fletevotimi_Lipjan_Kryetar.pdf

51 <https://kallxo.com/lajm/kadri-veseli-e-mirepret-ne-pdk-ish-kryetarin-e-vetevendosjes-ne-lipjan/>



NON-COMPLIANCE WITH PROCEDURES IN THE APPOINTMENT

Another problem which was noticed during this analysis is the non-observance of legal procedures during the appointment of temporary boards. Hoti Government on 15.07.2020 had opened a competition for the appointment of directors of the Interim Boards of Central Public Enterprises.⁵²

When appointing the members of the temporary board, the Government is not legally obliged to follow the same procedure as during the selection of the members of the board, but in cases when the Government appoints the temporary board, the law does not oblige it to follow this procedure.

However, the Government had announced a vacancy for director of the boards of these public enterprises and then announced the lists of candidates who were invited for an oral interview. Furthermore, the Government had taken the decision to appoint temporary boards of some of the public enterprises.⁵³ While analyzing the lists of candidates invited for oral interviews and appointed directors, KDI finds cases when persons who have been appointed as Directors of Boards are missing in the lists of persons invited for interviews. Among them is the name of Musa Misini, appointed as chairman of the Board of the Kosovo Electricity Corporation, as well as the name of Leonard Shabanaj and Elda Maloku, appointed director of the Post of Kosovo Board.

Although it is not obliged to follow these procedures during the appointment, the Government had decided to follow and eventually deviated from the procedure by appointing persons who were not even part of the appointment procedure.



When appointing the members of the temporary board, the Government is not legally obliged to follow the same procedure as during the selection of the members of the board, **but in cases when the Government appoints the temporary board, the law does not oblige it to follow this procedure.**

⁵² Competition announced by the Government of Kosovo <https://kryeministri-ks.net/dokumente/page/2/?kategoria=konkurse-njoftime-dhe-shpallje&viti=2020#038;viti=2020>

⁵³ Government decisions on the appointment of temporary boards <https://kryeministri-ks.net/ep-content/uploads/2020/10/Vendimet-e-mbledhjes-s%C3%AB-t%C3%AB-t%C3%AB-Qeveris%C3%AB.pdf>

https://kryeministri-ks.net/ep-content/uploads/2020/10/Vendimi-i-mbledhjes-s%C3%AB-37-t%C3%AB-Qeveris%C3%AB-1.pdf?__cf_chl_jschl_tk__=1d3210397c69b1e16f0d3ce53e2af14e6da3b7a2-1619688438-0-ASUeDL1vS5vPXditB1s7xxXeshKLCnKl9sZqU3b8AD551sGz8jxè11NFrDYgE4nKgfvèBgJHeUdc3b3kq6lRhMAjJ36lZ3X-S678èyn7lpKpm1u-bb6l1èGn1bn0ctG80UzmK32Se7hP3ljbGhèlnj9lxH7vnr9g03MGvFK0Beg33a1mSjhrSKsproZUshBh-JrQ7G_RU4vfmLqR85-TFMQANSdda2Pè4h-9PvQYD-xh5zVbVCbSloC2A5oe0fv2MrMrR3Zz4d6JxEr5B-feGyl3Q1AN05JmXPRHUsBnèY0XIX8b7UjppqEdvJoVNU6NyxixhZHDvTxTctosFZxHgMI8YKV1rU8RRzQJHC-cepTvhfDykqIBX_zcc4èèi29tKHdo7X57BZ7tNSDj82mmnrC1hmsyl-oYMH_U1nOfRxiKJKX-1GL3G-_QDTMVQ1A03TSJKXLH0bVqRp0zJPRE8è5fl1BrXcYzjpvKYKg93èl-nr0AphM0n5QPmoKj3t7RNOzN8A



RECOMMENDATIONS

- The Law on Publicly Owned Enterprises should be amended in order to increase transparency and oversee the process of appointment and selection of Board members by the Recommendation Committee and the Government of Kosovo in order to prevent the politicization of Boards by selection of unprofessional and partial members coming from political parties.
- Amend the Law on Publicly Owned Enterprises to limit the age of board directors to 65 years.
- Implement the formula that requires full boards of public enterprises in accordance with the Law on Public Enterprises in order for them to be functional and capable of decision-making.
- Review the conflict between Article 21 of the Law on Public Enterprises and Article 70 of the Labor Law.
- Publish CVs and biographies of Board members on the website of public enterprises.
- Respect the Law on Gender Equality by taking the measures defined by law to achieve equal gender representation both in leadership and in other forms of functioning of POEs.
- The Anti-Corruption Agency should ensure that the Law on Declaration, Origin and Control of Assets of Senior Public Officials is complied with.
- Comply with the legal provisions for the prevention of conflict of interest of the Law on Publicly Owned Enterprises.



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