



Riinvest Institute 2014

TRANSPARENCY IN KOSOVO

A collection of short articles

advocacy for
open government

civil society agenda-setting
and monitoring of country action plans

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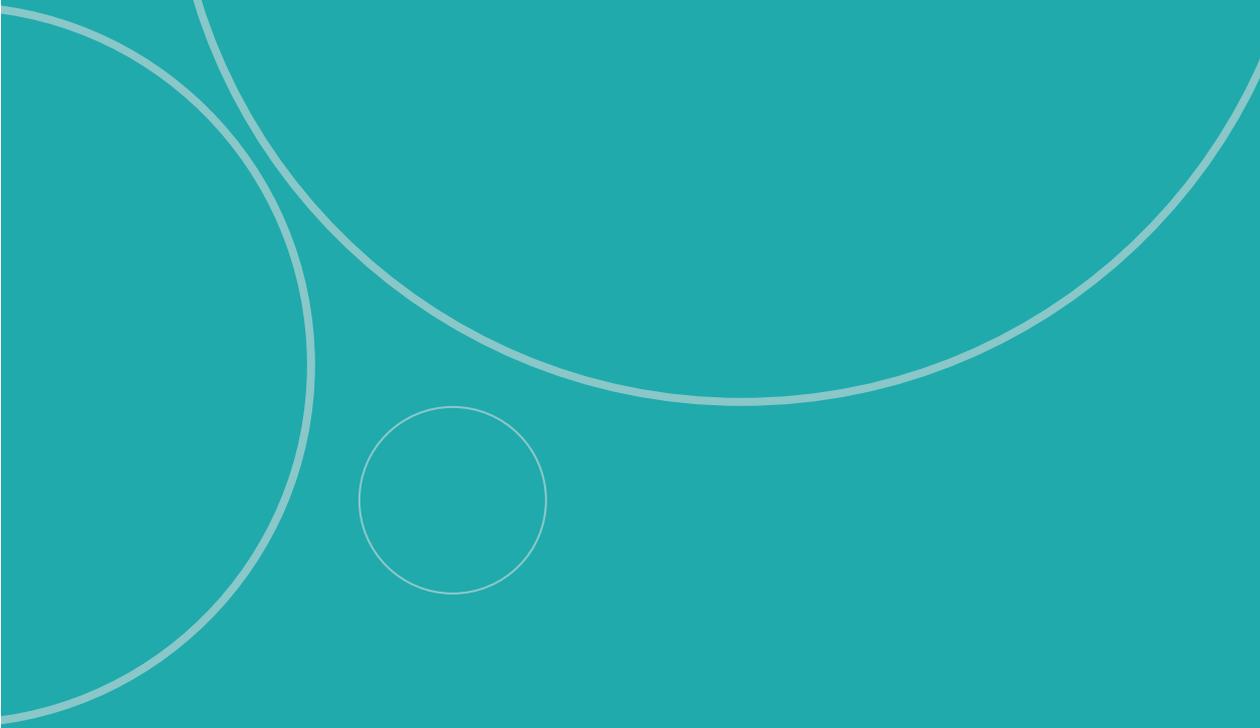


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INTRODUCTION

Demand for transparency is an issue which many authorities, institutions, businesses across the world have to deal with. It is one of the essential principles for achieving a healthy democracy and a well-functioning state or society in general. It is of a particular importance for countries who are aiming to join international bodies such as the European Union (EU) or Open Government Partnership (OGP) as they have certain disclosure requirements. Considering the importance of transparency, many countries on an international level, especially the developing ones, are taking different initiatives, such as new government websites, open data platforms, and other initiatives that contribute to the involvement of the public in government decision-making processes.

Kosovo, as many other countries, is struggling to build transparent and accountable institutions. Judiciary system, government institutions, publicly-owned companies – to name a few – suffer a lot from the absence of transparency. In order to take an insight look on the issues related with (lack of) transparency in Kosovo, Riinvest Institute provides a collection of short articles. These short articles, more specifically,

analyse different sectors in Kosovo and reveal what went wrong in terms of transparency. The articles are meant to help Kosovo become more transparent as well as contribute to the advancement of the OGP agenda.

The rest of this piece of work is organized as follows. *Article I* gives a summary of transparency problems that portray the expenditures of public money in Kosovo. *Article II* provides a short summary that sheds light on transparency and accountability in the processes that are related with energy in the country. *Article III* introduces some of the problems that have characterized and continue to characterize the process of privatization in Kosovo. *Article IV* provides some insights on transparency-related problems in the judiciary system. *Article V* gives a summary that sheds light on the non-transparent financing of political parties in Kosovo. *Article VI* provides some deficiencies concerning transparency in Kosovo's public procurement. *Article VII* tackles corporate governance in publicly-owned enterprises in Kosovo. Finally, *Article VIII* provides a few problems linked with accessing public documents.

Lumir Abdixhiku

BUDGET TRANSPARENCY

A summary of problems that portray the expenditure of public money in Kosovo

■ The linkage between good governance practices and economic and social welfare is widely accepted¹. In this regard, transparency - or openness about intentions, formulations and implementations - is a key element in policy making. The state budget, on the other hand, is one of the most important documents that the government and parliament produce. Thus, transparency about a document – that is considered the most important one - is a precondition for the realization of linkage between good governance and economic and social prosperity.

In Kosovo budget transparency concludes far from any international standardized rate, and rounds up international analysis and reports that address the topic in question². In this section, I will try to review some of the most important deficiencies linked to budget transparency.

The first problem, and the most important one at the same time, relates to the lack of intention in – initially - budget planning and - consequently - the sharing of information about this planning to the general public; notably the taxpayers. Indeed, the Kosovo budget turned out to be an ad-hoc document in the last four years and without any linkage to other more long-term documents; without any linkage to the Action

Plan of the Economic Vision of Kosovo³ or the Medium Term Expenditure Framework⁴ - both documents which should frame the budget expenditures; at least that was expected. So the lack of thorough planning essentially is a lack of openness about the financial intentions of decision makers in Kosovo.

The second problem, relates to the quality of discussions regarding the drafting of the budget – the professionalism of the participants and the time allocated by the Government and the Assembly. In the last fifteen years, the Kosovo institutions have never aimed for the involvement of outer-institutional groups in the budget discussions - primarily, business associations, civil society or independent experts; all major contributors to the Kosovo budget. The drafts and proposals have largely been unilateral and without the possibility of public discussion. Such a practice limits possible contributions relating to prioritizing public expenditure. Besides, parliamentary discussions about the budget, not longer than two days at best, clearly expose the lack of quality and inclusive participation in drafting the budget. Lack of long and meaningful discussions may be the product of parliamentary incapability; where many members from different political parties prefer ad-hoc approvals rather than detailed elaboration.

¹ OECD 200. “Best Practices for Budget Transparency”.

² Open Society Foundation 2012. “Budget Transparency: New Frontiers in Transparency and Accountability”. Alta Folscher.

³ Republic of Kosovo. Prime Minister’s Office 2011. “Action Plan of Economic Vision of Kosovo 2011-2014”.

⁴ Republic of Kosovo. Ministry of Finance 2013. “Medium Term Expenditure Framework 2014-2016”.

The third problem, relates to the accountability on the planned expenditures during budget preparation. The largest parts of the budget summaries, presented in the annual budget document, are very general summaries and without any additional information about their content. So, the standard presentation of the Ministry of Finance⁵ that passes through the Government is approved by the Parliament and presented to the public, it is impossible to identify the exact content of the planned expenditures.

Here derives the fourth problem, which has to do with the reporting of these expenditures by budget organizations. According to an analysis of GAP Institute⁶, a small number of budget organizations make budget expenditures public; exactly, only one of 19 ministries delivers a distinct and more detailed report on budget expenditures. Evenly, out of the 37 municipalities of the Republic of Kosovo, only one publishes the detailed expenditures report on its website. Such a practice of non-transparency, at central and local level, best demonstrates the level of accountability on the spending of public money.

The fifth problem, and no less important, is linked to the information shared about major contracts in the category of capital investment under the state budget - among other things, for example, the contract of the planned highway Vermice-Merdarë. The total lack of transparency in regard to the information about this contract represents an unprecedented case in the practices of good and open governance, where about 18% of the annual budget - in four consecutive years - is presented as a general sum and without the right of information to parliamentarians and Kosovo taxpayers.

The sixth problem derives from the lack of public information about the taxes on natural resources Kosovo; or royalty tax. The institutions still leave the public in complete darkness regarding information on the course, linkage, and tax expenses of these kinds of taxes throughout the years of exploitation of - mainly – underground resources.

Finally, the seventh problem, relates to the description of government goals on spending, which usually appears in the macroeconomic analysis part of the budget. This goal and this analysis continues to appear only as an additional document of political reasoning, which tries to argue on the political and party basis, instead of showing a proper economic and informative analysis, primarily for the members of the parliament, and then also for the general public.

⁵ Republic of Kosovo. Ministry of Finance 2013. "Law on Budget 2013. Macroeconomic Framework 2013-2015".

⁶ GAP Institute 2013. "Kosovo Budget– Transparency and Forms of Budget Reporting".

Luan Shllaku

TRANSPARENCY AND ACCOUNTABILITY IN ENERGY

A short summary that sheds light on transparency and accountability in the processes that are related with energy in the country

■ For several years now the general public has been concerned with the issue of energy and its future; in the “laboratories” that projected the development of this sector, there have been tried out almost all options and ingredients, all development models, however, the concept was wrong: they always tried to come up with a “product” that basically burns coal! They represented one-way attempts by the Kosovar government and their international consultants, bilateral and multilateral offices that tried to “discover” the true formula for the Kosovar energy. All these initiatives had a lot in common: (1) they were dictated by international consultants, something that pleased the Kosovar politicians dealing with the sector, (2) they all saw salvation exclusively in the development of thermo-based energy relying on coal, (3) and they all were completely non-transparent to the public until they had to be presented in front of the Parliament to give way to these initiatives.

The lack of transparency in major projects, that had a value of over 4 billion euros, has surely always generated lack of accountability for accounts made arbitrarily. In all development options that were presented to us, at the end of the day the bill will be paid

by the citizen, through taxes that in the future will be allocated to fix the harmed environmental and health situation, which according to the World Bank study sum up to 350 million euros per year.⁷ Why do we declare that the energy sector was among the least transparent sectors and consequently show no accountability to the citizens?

If we refer to the last decade, when the big plans to “save” the Kosovar economy began by building a 2100 MW PP, and up to this day, we see that the information was only shared with citizens when pushing different building alternatives, or when international tenders were opened, which had to be transparent. How the models of construction were selected, how we were certain that these are the best models, how we selected the location, how we prepared financial accounts, were never given out to the public. The law was violated, parliamentary procedures were violated and the international norms were violated⁸, without hesitation. The law was violated, which requires development versions of major (energy) projects to be discussed in public before a decision is made to continue. This never occurred!

⁷ World Bank: WB Environmental Externalities Study

⁸ A Modern Tale - <http://kfos.org/a-modern-tale-kosova-c-2100/>

Furthermore, parliamentary procedures were violated because the parliament's decision taken to build new energy generators was ignored⁹.

From the current practices it can be concluded that larger deficiencies are expressed through: (1) not respecting the decisions of the Parliament¹⁰, (2) keeping in confidence the process of development of international tenders for the construction of new generators, which were entirely elaborated by international institutions, without sufficient consultation with national experts and institutions, (3) not discussing publicly the different development options of this sector by communicating rarely and with incomplete information with citizens, civil society and institutions with expertise in this area, and (4) the smuggling of development options without strategic documents drawn up beforehand like VSSM¹¹ and without communicating and discussing the results of these studies with the general public.

The lack of a long-term development vision in this sector creates room for quick decision-making, not well controlled: Kosovo has never drafted a long-term development plan in this sector. If we do not have a vision for the sector for at least the next 40 years, then we are not responsible for the "ad hoc" measures that we are constantly taking. The lack of a long-term development vision of this sector undermines decisions that were taken, and shows a blurry picture of where we want to go and how we want to arrive there. EU energy policies already require concrete actions from member states and those who want to join the EU by 2040. Besides, new generators are placed with an operational term

of 40 years. How can we see their effect, as well as how can we plan the additional generation without having clear picture of how the alternative sector of renewable energy will develop, that of gas, oil, synthetic fuels etc. These issues need to be constantly debated by experts from various fields. A broad public debate must be kept in motion all the time, because the energy and mining sector are constantly evolving and require multidisciplinary expertise.

Kosovo's mineral potential is a double-edged sword: if we want to use it for our benefit, we have to firstly ensure transparency and above all accountability from all those who have the political mandate to project its future. However, if it proceeds with the same pace, with quick ideas, kept away from public discussion, with lots of outside interference, and without long-term strategic plans, the development potential could turn into a potential for permanent crisis both inside and outside Kosovo, especially towards our European perspective.

The sale of the distribution division of KEK, the failure of three tenders for new generators, harmful procurement and the spending of more than a billion euros of investment in the sector, without lasting effect, make the sector very vulnerable. The first responsibility of political leaders is to be transparent to the end and collaborative to ensure full implementation of international conventions especially of the Aarhus, and European "AQIT" which regulate the issue of public participation in decision-making.

⁹ The strategy was first approved by the Government and was then sent for approval in the Assembly. MPs received on August 18, 2005 Strategy and the Strategy was approved in the Assembly session beginning on September 28, 2005 02 and ended October 5, 2005.

¹⁰ Op. cid. – A Modern Tale

¹¹ VSSM - Strategic Assessment of Environmental Impact <http://www.kuvendikosoves.org/?cid=1,191,632> <http://www.kuvendikosoves.org/?cid=1,191,334>

Alban Hashani

TRANSPARENCY IN THE PRIVATIZATION PROCESS

A summary of problems that have characterized and continue to characterize the process of privatization in Kosovo

■ The privatization process in Kosovo must be treated from two perspectives due to the specific nature of ownership of the two different groups of enterprises in Kosovo as well as since the privatization processes in the respective groups have been managed by different institutions. The first group represents social enterprises, which primarily operated in competitive markets. Whereas, the second group represents public enterprises that mainly provide public services, especially at national level where the privatization process is still ongoing.

Regarding social enterprises, the privatization process has started in 1989 under the Law on Social Capital of the former Yugoslav Federation. Nevertheless, the number of companies that have gone through this process has been very small, mainly from the region of Gjakova. At that time, the privatization process was interrupted quickly due to the onset of violent measures that followed the abolition of Kosovo's autonomy. During this period, thousands of employees were laid off; companies were stripped of their assets and investments were lacking. The real privatization process started after the war, in 2002, and was managed by the Kosovo Trust Agency (KTA), continuing under the framework of the Privatization Agency of Kosovo (PAK) after the country's independence.¹²

The privatization process of these enterprises managed by of KTA and later PAK was accompanied by contradictions and marked problems. Initially, the process of privatization has been treated, by UNMIK and Kosovo institutions afterwards, as an end in itself and has not been part of a long-term strategy for economic development. Decisions on the privatization process before independence were made within a closed institutional environment which, one could argue, did not show an appropriate representative character. Even after independence, this process has continued in a similar way. Although the process went pretty well for several years, it was stopped several times, either because of legal problems caused by Serbia, or as a result of delays in the transfer of power to the PAK.

Regardless whether the process continued or was interrupted, the lack of real transparency associated with this process has been chronic. Moreover, there was a lack of proper reporting procedures and transparency towards investors, the general public and national institutions (government and assembly) (RIINVEST/Forum 2015, 2008). Although, the applied methods of privatization of socially owned enterprises in Kosovo, theoretically, create less discretion

owned enterprises in Kosovo see RIINVEST (2001, 2002), and RIINVEST / Forum 2015 (2004a, 2004b, 2008).

¹² Regarding the course of the privatization process of socially

for officials that implement the process than other methods used elsewhere in transition countries, nevertheless, lack of transparency, in addition to the low performance of privatized companies, has fueled opposition and skepticism among the Kosovar society regarding the process (RIINVEST/Forum 2015, 2004). This lack of transparency continues even now that the process of privatization of PEs is coming to an end. In particular, there is not sufficient transparency regarding the process of resolving legal disputes with creditors. As a result of these unresolved disputes, accumulated income from the sale of privatized assets, which represent one-seventh of the country's economy, continues to be held in a trust account, frozen and withdrawn from economic activity.

Regarding PEs, the privatization process was initiated in the central public enterprises (KEK, Airport and Telecom) managed by the Kosovar government, which is the owner in trust of these enterprises. The format of the process of privatization of these enterprises has been done without consensual consultations and without qualitative debate. In fact, it created the impression that the government is trying to keep this debate within relatively narrow circles (RIINVEST/Forum 2015, 2009). In the absence of comprehensive public debates through which a basic consensus should be reached among key stakeholders linked to this matter, political and social tensions have been created, which in particular in the case of the privatization of the Telecom, have compromised the process.

In the absence of transparency, there is continued uncertainty regarding the format of privatization as well as the assumptions on which these privatization models are built. Besides, there is a concentration of power at the Government Committee on Privatization and the Advisory Committee on Privatization, without clear oversight by the parliament, which is not witnessed in any other country in the region. Also, the level of support in the consulting teams is at unprecedented levels compared to other experiences in the

region and beyond; while the general public, including representative institutions, do not get informed enough about this issue (RIINVEST/Forum 2015, 2009).

Lack of transparency is the common denominator in all cases of privatization led by the government, which has failed to clarify the expectations from these arrangements. Such a situation creates room for concern among the society. Especially for the fact that the sectors, in which central public enterprises operate, are of strategic importance and show features of natural monopolies. First of all, decisions regarding these sectors should go through and be monitored by the parliament as a representative body of public interest. Also, the direct participation of civil society in the process is essential to create comprehensive social compliance regarding the way forward in this process. Despite these concerns, there has been no qualitative debate yet; the process is not embedded in an adequate legal framework and therefore the application of adequate procedures of transparency and accountability has not been ensured.

Diellza Gashi

TRANSPARENCY IN THE JUDICIARY SYSTEM

A summary of problems that characterize transparency in the judiciary system of Kosovo

■ The importance of transparency in a country's judicial system can never be overstated. In democratic, market-based societies, independent and impartial judiciaries contribute to equitable and stable balance of power within the government.¹³ Lack of transparency in judiciary creates more opportunities for corruption, going beyond bribes or misuse of funds allocated to judiciary, to biased participation in trials and judgments as a result of the politicization of the judiciary and the party loyalties of judges.¹⁴

In Kosovo, amongst many other issues, an on-going feature of judiciary is lack of transparency.¹⁵ Transparency plays a key role in the ability of citizens to enforce their rights and obtain accountability in the justice system.¹⁶ In a survey conducted in Kosovo by the Justice and the People Campaign (2011), 16.2 percent of the respondents stated that they did not trust the justice system due to lack of transparency. In this section, I will try to summarize some of the problems that characterize transparency in the Kosovo judiciary system.

13 Office of Democracy and Governance 2001. "Guidance for promoting judicial Independence and impartiality", pg. 6.

14 United Nations Office on Drug and Crimes 2007. "Commentary on the Bangalore principles of judicial conduct", pg.17.

15 Balkan Investigative Reporting Network 2013. "Court Monitoring Annual Report", pg.4.

16 Justice and the People 2013. "Citizens' Rights and the Accountability of the Kosovo Justice System", pg.4.

The first problem related to transparency is low usage of announcement boards. Balkan Investigative Reporting Network (BIRN) in their Court Monitoring Annual Report for 2012 state that courts still failed to announce trials in the announcement boards.¹⁷ Although LCD projectors have been placed in municipal, district and supreme courts in order to electronically present the schedule of trials and hearings, BIRN monitors came to the conclusion that the objective was not achieved.

The second problem is related to the venue of the hearings. Judges often decide to hold proceedings in their offices instead of in courtrooms. According to BIRN (2013), 40% of monitored cases in 2012 (426 out of 1032) were held in judges' offices. As a result, members of the public that were interested to attend the trials were deprived of that possibility.¹⁸

The third problem deals with misunderstanding of transparency. In Kosovo, there are a lot of cases when transparency is misunderstood. Quite often it happens that judges and prosecutors are involved in public debates where they talk about specific cases which are in procedure or are under investigation. Such appearances in debates do not contribute to transparency since they contradict with the princi-

17 Balkan Investigative Reporting Network 2013. "Court Monitoring Annual Report", pg.4.

18 Ibid, p.30

ples of professional conduct and ethics. In addition, they neither serve the common good nor do they provide better information to the public, thus affecting negatively the justice system in the country.¹⁹

The fourth problem deals with access to records. It is generally very difficult for citizens in Kosovo to obtain justice system records. In 2013, Justice and the People Campaign noticed that EULEX and the State Prosecutor do not provide access to indictments in criminal cases in a timely manner. Access to indictments serves transparency since the indictment is an official act of the State Prosecutor and courts, and it presents charges being made against plaintiffs in the name of the people of Kosovo.²⁰ In addition, numerous judges do not allow filming of court hearings, excluding, in this way, citizens from judicial proceedings to which they are entitled to and violating the Kosovo Criminal Procedure Code.²¹ Lack of indictments leads to ambiguity since the press does not have all the information needed to provide the citizens with so that they can evaluate the way the state is carrying out its responsibilities and how it is exercising its power.

The fifth problem that judiciary in Kosovo faces is the nontransparent way of allocating cases among judges and prosecutors.²² The allocation of cases is not actually done based on a well explained procedure or objective criteria. As a result, opportunities are created for political interference in the selection of judges and prosecutors.²³ This has led to many cases where judges were actually ruling the cases of family members or acquaintances.

The sixth problem derives from the fact that Kosovo

Judicial Council and Prosecutorial Council do not publish the names of the judges and prosecutors that have been found guilty of wrongdoing. The usual justification for not doing so is not to damage the specific officials' reputation or breach privacy rights.²⁴ One positive step that has been taken by the Kosovo Chamber of Advocates is the adoption of the new Statute and Regulation of Disciplinary Procedure which allows publishing of all the names of lawyers who have been found guilty of any misconduct.²⁵

The last, but not the least problem, deals with the failure of courts to provide written records in the mother tongue of the affected party.²⁶ This proves very burdensome to affected parties since they do not understand the actions taken against them, thus violating their rights.

19 Kosovo Institute of Justice 2013.

20 Justice and the People 2013. "Citizens' Rights and the Accountability of the Kosovo Justice System" pg. 4.

21 Ibid

22 European Court of Auditors 2012. "European Union Assistance to Kosovo Related to Rule of Law" pg. 22.

23 Ibid

24 Justice and the People 2013. "Citizens' Rights and the Accountability of the Kosovo Justice System" pg.4.

25 Kosovo Chamber of Commerce 2014.

26 Justice and the People 2013. "Citizens' Rights and the Accountability of the Kosovo Justice System" pg.5.

Agon Nixha

FINANCING OF POLITICAL PARTIES IN KOSOVO

A brief summary shedding light on the financing of political parties in Kosovo

■ Transparency in financing political parties and their electoral campaigns is of a vital importance for Kosovo; especially when having in mind that this country aspires to be part of the Open Governance Partnership (OGP) platform. In an attempt to provide a uniform framework for registering, reporting, and disclosing incomes and expenditures of political parties, the parliament of Kosovo passed a very important law - *the Law on Political Parties Financing*.²⁷ Although this law provides a relatively good basis to ensure transparency, the Kosovo political parties and other institutions responsible for its implementation, failed to fully comply with it, thus creating many ambiguities with respect to their financing. The following paragraphs of this sub-section, present some law-violating financial activities in which political parties in Kosovo have been involved. Additionally, some of the paragraphs demonstrate a number of legal loopholes that make the actual legal framework for financing political parties not very adequate.

The law on Political Parties Financing²⁸ and CEC (Central Election Commission) rules²⁹ oblige political parties to keep books on income (amount of income, name of the donor, and their ID number), expenditures (the date of each expense, the amount of each expense, and the name of each vendor), and assets. According to the

audit report of 2010, political parties have often failed to comply with the law and CEC rules.³⁰ For instance, most of the political parties did not disclose the names of the individuals or entities that have given funds to them. In such cases, it was quite hard to prove whether the income of political parties flew from legal or illegal sources. Also, as far as expenditures are concerned, the audits report of 2010 reveals that most of the political parties have underestimated their rents, salaries, and other utility expenses³¹. In addition to that, very large amounts of expenses have been recorded as “other expenses”³², making one think that the received funds were mismanaged to a large extent. It is worth mentioning that the law does not contain anything with regards to the qualifications of financial accountants. As a consequence, most of the accountants hired by political parties lack the qualifications needed for book-keeping.³³

The law also obliges political parties to submit the annual financial report to CEC no later than March 1. This report must contain: the state balance, the statement of benefits and losses, and the statement showing

²⁷ Republic of Kosovo, Law 03-174 On Financing Political Parties

²⁸ Ibid.

²⁹ CEC Rule No. 01/2008 on Registration and Activities of Political Parties, Article 20

³⁰ Audit Report 2010 http://www.kqz-ks.org/Uploads/Documents/Raporti%20vjetor-%202010_momkdeiudt.pdf

³¹ Audit Report 2010 http://www.kqz-ks.org/Uploads/Documents/Raporti%20vjetor-%202010_momkdeiudt.pdf

³² KDI 2013, “Untangling Political Financing”

³³ Ibid.

every payment that exceeds €5,000.³⁴ Additionally, it must include bank balances, invoices for expenditures exceeding €100, and detailed information regarding the donations received. Despite these regulations, the financial reports of political parties submitted to CEC suffered from many irregularities. The audit report of 2011 indicates that the in-kind contributions have not been reported at all by some political parties.³⁵ For instance, Alliance for the Future of Kosovo (AAK) failed to report contributions over the periods 2010 and 2011.³⁶ Additionally, some other political parties did not provide their receipts and invoices needed to verify the expenses exceeding €100. To illustrate that, the audit report of 2010 reveals that the Democratic Party of Kosovo (PDK) has not submitted any proof for the following income amounts - €125,782 and €57,101.³⁷

Furthermore, the law requires CEC to disclose the financial reports of all political parties, but it does not specify the channels of communication; neither does it specify any timeframe when these reports need to be published. Benefiting from these legislative loopholes, CEC has never published any financial report of the political parties³⁸. Apart from that, CEC does not have any official who is in charge of processing requests for financial reports, indicating that no information on these reports could be obtained even if a personal request is made to this oversight institution.³⁹

The political parties in Kosovo are also required to submit their financial reports for electoral campaigns, and, besides that, to submit their annual financial reports containing every financial activity over the previous year. When these two reports were compared with one another, major inconsistencies were found with

regards to income. For instance, the income sources of PDK and the Democratic League of Kosovo (LDK) declared in their annual report did not match the income declared in the report of 2009 local elections. Major discrepancies were also found between the expenses shown in the annual financial reports of PDK, LDK, the New Kosovo Alliance (AKR), and AAK and those reported on the electoral financial reports.⁴⁰ AAK, for instance, went too far by not including any electoral expenses in its annual financial report, even though, based on the electoral financial report, their expenses amounted to €154,874.⁴¹

Finally, in order to prevent the fraudulent practices, the law specifies that all donations to political parties should go via bank accounts of beneficiary political parties.⁴² Despite this law obligation, most of their financial transactions were made in cash.⁴³

A major cause of the above-mentioned law-violating activities is related with the absence of rigorous penalties. Although many irregularities and violations were found in the audit reports, the total amount of fines issued to political parties was only €2700.⁴⁴ In addition, the same source stated that CEC has not issued any fine at all for those political parties who have not respected financial accounting standards.

34 Ibid.

35 Audit&Conto 2011, "Financial Statements and Auditor's Report for 2009 and 2010"

36 Ibid.

37 Ibid.

38 KDI 2013, "Untangling Political Financing"

39 Ibid.

40 GLPS 2013, "Financing of Political Parties in Kosovo"

41 Ibid.

42 Law No. 04/L-058 On Amending and Supplementing the Law on Financing Political Parties, Article 5.3

43 KDI 2013, "Untangling Political Financing"

44 Ibid.

Premton Hyseni

PUBLIC PROCUREMENT

Transparency in procured public projects in Kosovo

■ Public goods and services are delivered by contracting private companies in a competitive process which ensures utility maximization for the taxpayer. As such, not having an efficient and just procurement system not only risks receiving suboptimal quality public goods, but also distorting the market. Therefore, public procurement is the one area of governance where it is crucially important to have transparency as it is relevant for all public institutions, makes up the bulk of public spending, and has implications for the functioning of the market.

According to the Public Procurement Regulatory Commission (PPRC) the yearly value of public contracts in Kosovo fluctuates around €800 million⁴⁵. Almost all contracts are awarded using the Lowest Price Criterion and only a small portion using the Most Economically Advantageous Tender (MEAT). The losses incurred in paperwork, bureaucracy, and the inefficiency associated with these two, are huge.

Lack of e-procurement is one of the major threats to transparency in the procurement of public funds. Currently the Public Procurement Regulatory Commission makes public in its website almost all public contracts; however, the process up to the point of contracting is not easily followed by all interested parties. Also, the contract notices are not always published on the PPRC web. The current legislation ensures that the process must be transparent, however, there is a lack of mechanisms that ensure easy access or one has to work through the Review Bod-

ies or courts. Electronic procurement solves many of these issues. The instructions for application are embedded in the system and troubleshooting in the application process becomes less costly. There is also less room for the procurement officials to illegitimately favor certain applicants by giving information not available to all. Electronic auctioning can also be used as a way to increase transparency and get the best value for taxpayer money. Electronic procurement makes the entire process more transparent by making information more readily accessible and leaving less discretion to procurement officials. It also makes it more efficient, as a European Commission report⁴⁶ finds “Public entities that have already implemented e-procurement report savings of between 5% and 20% of their procurement expenditure”.

Unclear guidelines on the procurement process are another source of uncertainty that businesses face in bidding for public funds and holding accountable the procuring agency for fair treatment. Riinvest study⁴⁷ finds that “companies complain that tendering procedures and paperwork is very complicated and sometimes they get disqualified due to non-compliance with the requirements”. The ambiguity on requirements makes the whole process less transparent as illegitimately favored companies are given inside information which other bidders do not have access to. In light of this, Civil Society Organizations have advocated for more spending in making sure the public officials are properly trained and the informa-

⁴⁵ RIINVEST 2012, “Improving Transparency and Governance of public funds in Kosovo”

⁴⁶ European Commission Press Release 2012, “Delivering savings for Europe: moving to full e-procurement for all public purchases by 2016”

⁴⁷ Ibid.

tion on procedures is easily available to all interested parties. Electronic procurement, for example, would single-handedly solve much of this problem.

Room for interpretation of the requirements is almost always left for procuring officials. For example, the law leaves room for the correction of arithmetic errors in the contract dossier. This gives the procurement officials of the contracting authority the power to selectively eliminate companies. The law should specify an acceptable margin error within which the companies are called upon to make corrections. In other words, the loopholes that allows the contracting authority officials to interpret the law in a way which serves their private interests, should be eliminated. This has implication for the transparency of the contracting authorities in dealing with each tender in a just and equal manner.

Framework contracts are problematic as they include items that possibly will never be requested from the framework contract holders. Thus, companies with 'inside information' will quote higher prices on the items they know will be in great demand, and low prices on those they will know there will hardly be any demand. This makes the offer look appealing, however, it is damaging to the taxpayer. Transparency in what the contracting authority will need exactly during the framework contract duration, and maybe also have some sort of post-examination of the value received can help create a balanced playing field for all bidders.

FOL Movement monitors the public procurement activities in Kosovo and finds that the trend of irregularities and legal violations is continuing⁴⁸. "In a three month period the public institutions have made legal violations in 29 tenders." National Democratic Insti-

tute (NDI) report⁴⁹ finds that the Public Procurement Regulatory Commission has not been successful, albeit for objective reasons, in its supervisory role in many occasions, especially in the case of the Health Ministry which has been notable for scandals in dealing with its funds and contracted companies. The Health Ministry makes a perfect case study as the lack of transparency in selecting suppliers has led to low-quality pharmaceutical supplies which are either given to the patients and putting them at risk or had to be exterminated.

Kosovo currently falls short in achieving a transparent and accountable public procurement system. The issues range from information inefficiency to illegitimate practices. The use of electronic systems and better practices in supervising the use of authority can do much to improve the use of our public contributions.

⁴⁸ FOL 2013, "Procurement Monitoring, Quarterly Report, April-June"

⁴⁹ National Democratic Institute (NDI) 2013, "Public Procurement Monitoring in the Health Ministry"

Saxhide Mustafa

CORPORATE GOVERNANCE AND TRANSPARENCY IN PUBLIC ENTERPRISES

A summary of problems characterizing transparency in Kosovo

■ Based on the guidelines of the Organization for Economic Co-operation and Development (OECD) on Public Enterprises (PEs) (2005) and according to the Transparency Directive of the European Commission (2004), public enterprises should create rigid rules and high standards for the implementation of transparency.⁵⁰

The legal infrastructure (Law on Business Organizations, the Law on PE and laws that regulate some of the sectors where these companies operate) and institutional infrastructure (establishment of the Monitoring Unit of Public Enterprises - MUPE) are largely in place but lack of the implementation of legal provisions can be witnessed as well as quality oversight of activities by shareholders. Although the Law on PEs creates considerable space for the state to act as an effective owner of the enterprises; creates conditions for transparency in managing these enterprises and equal treatment of shareholders and defines, to a large extent the duties and responsibilities of the board, this law does not address issues relating to the political independence of board members and their professionalism. The involvement of civil society representatives (even just as observers) in the recruitment and selection process

of board members still remains just an ambition, although this rather important issue has been addressed by credible research institutions in Kosovo⁵¹ and has been recommended to the government and assembly.

MUPE operates under the Ministry of Economic Development and has legal responsibility to monitor and report the performance of PEs with a focus on operational performance, financial performance, corporate governance and future prospects. However, even 6 years after its establishment staff hiring is not completed, notably the analyst position for monitoring and auditing of PEs, only for budgetary reasons even though it was arranged in 2008 by the Ministry of Finance's decision that the unit should have 12 employees.⁵² In 2013 this sub-unit managed to employ the analyst for policies and public relation. This sub-unit is bound by legal definition, among others, to coordinate the work with internal and external auditors of PEs and review and monitor audit reports in collaboration with the Office of the Auditor General (OAG).

MUPE has managed to draft some important documents towards advancing corporate governance in

⁵⁰ Corporate Governance 1, Riinvest Institute 2006

⁵¹ Riinvest Institute 2009; 2012; KIPRED 2011; FOL, 2010;

⁵² Ramadan Sejdiu, Director MUPE, interview 13.02.2014.

PEs. This unit has drafted and adopted the Code of Ethics and Corporate Governance for PEs as well as has issued reports evaluating the performance of PEs including the performance of the boards and the manual to guide members of the boards. This fulfillment of legal requirements is an important step in advancing corporate governance in PEs in Kosovo. Strengthening the capacities should be considered a priority so that the unit can properly supervise the activities of PEs, provide support PEs towards the advancement of corporate governance and implement corrective measures when irregularities become evident.⁵³ Mr. Dardan Abazi⁵⁴, who represents the Institute for Development Policies (INDEP) in the commission for economic, infrastructure, trade and industry in the Assembly of Kosovo declares that numerous problems related to transparency and accountability have accompanied PEs even in 2013. Mr. Abazi said that the institution he represents is concerned with the self-assessment of the boards (see Article 28 of the Law on PEs) and also the assessment of consumer satisfaction that also has shortcomings in the law. Measuring of the satisfaction from the institution itself does not produce a valuable report and can be subjective.

Selection of board members remains one of the biggest problems and most non-transparent processes. From 2011 to 2013 three consecutive contests of selecting board members were canceled for political reasons. In late 2013 the boards of the two largest enterprises, Post and Telecommunications (PTK) and the Kosovo Energy Corporation (KEK) were chosen. Mr. Sejdiu agrees that the recruitment process of board directors of PE should be transparent and also considers that the involvement of civil society is inevitable. Regarding this Mr. Abazi has shown concern, since he considers the selection of the new directors of PTK and KEK to be in direct conflict with the law. According to our research it appears that some of the elected directors in these companies were part of political party lists or public or municipal officials

in the last 36 months before applying and being selected for the position.

A major impact on the selection and appointment of board members, remains with small groups of political interest which through the composition of the boards intend to impact the decision making process in their favor. These concerns were raised years ago by the Kosovar Institute for Policy Research and Development (KIPRED)⁵⁵ and RIINVEST Institute⁵⁶ stating that in most cases board members are people close to the ruling parties. The PTK chairman elected in 2009 and re-elected in 2013, was one of the most controversial directors after having been part of the list of PDK in parliamentary elections in 2009. Mr. Abazi stressed that the performance of the board of PTK is evaluated negatively, so he considers his re-election as an urgent step⁵⁷. The law does not specify the mandate of directors, so this should be addressed in case of an amendment of the law as well. This influence of groups with political and economic interest will prevail as long as the recruitment process is managed and monitored by office of the Secretary General in the office of the Prime Minister. The Law on PEs lacks adequate treatment of political influence of candidates for board members.

After the discussion about the report on the performance of PEs for 2012 in the Kosovo assembly, the report was further sent to the Commission for Economic Development, Infrastructure, Trade and Industry to address the issues which has come up with recommendation on how the Law on PEs should be changed⁵⁸. This is confirmed by Mr. Ramadan Sejdiu and Mr. Abazi, who were part of the discussion. Mr. Abazi considers that relative to the assembly's capacities it has contributed considerably to the improvement of transparency and accountability of PEs.

⁵⁵ Analysis of boards of PEs and independent agencies, KIPRED 2011, f.28-29

⁵⁶ Corporate Governance and Transparency of PEs, Riinvest Institute 2012

⁵⁷ Government Decision nr.10/149, 19.09.2013 on board appointment of PEs (www.mzhe.rks-gov.net/njpmnp)

⁵⁸ Record of the meeting of KPZHEITI, 22/11/2013

⁵³ Corporate Governance and Transparency of PEs, Riinvest Institute 2012

⁵⁴ Dardan Abazi, INDEP, interview 19/02/2014

ACCESS TO PUBLIC DOCUMENTS

Access to public documents as a tool for greater transparency

■ Kosovo Government has often been criticized for not granting access to all documents required by civil society, media and other interested parties, which by Kosovo Constitution and Law are granted rights to all citizens of Kosovo. On the other hand, Kosovo Government has committed to become member of the Open Government Partnership (OGP) where transparency is considered as one the key pillars for good governance. Greater transparency might affect better governance, which in turn leads to improvement of the socio-economic conditions in the country and faster integration in the European Union. Kosovo Government has made some steps in improving transparent governance, but still there is lot of weaknesses.

The Government of Kosovo has entered in various contractual agreements related to public investments during the last six years. The overall public procurement amounts to around 1/5 of the Kosovo GDP (Riinvest, 2012).⁵⁹ Having in mind that these projects are financed by Kosovo budget (taxpayer's money), it should be mandatory for the government to enable access to all contracts related to public investments as this would ensure a higher level of accountability towards its citizens. Riinvest (2013) opinion poll results have shown that citizens' demand for access to public documents is high.

About 77% of interviewed respondents agree that all financial, performance and technical information on government funded contracts should be made public. However, some technical and financial parts of the public contracts are generally to be shown upon request.⁶⁰ Nevertheless, throughout last couple of years, efforts of the civil society organizations and media representatives many times were hopeless in aiming to get access to government contracts on public investments.

As it is stated in the Kosovo Constitution "Every person has right to access public documents", while as Kosovo Law states "Every natural and legal person has right to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions."⁶¹ Citizens who request access to public documents are not obliged to have a specific reason for that, whereas government officials are obliged to grant them access on public documents they require.

To ensure a better response of the institutions on citizen's requests, each institutions has assigned an official responsible for granting access to public documents, whereas the Prime-minister's office

⁵⁹ Riinvest, 2012. Improving Transparency and Governance of Public Funds. Public Procurement Process in Kosovo.

⁶⁰ Riinvest, 2013. Transparency: Mapping of Open Government Policies in South East Europe, the case of Kosovo.

⁶¹ See Article 40 of the Kosovo Constitution and Kosovo Law No.03/L-215.

has published list of all public officials responsible for granting access to public documents at each institution.⁶²

However, despite established legal framework for the access to public documents and some improvements on the administrative side, there is lack of efficient response by the Kosovo institutions at the central and the local level, and there is limited granted access to key public documents with high public interest. At the side of Kosovo institutions all rejections of request for the access to public documents are based on the Kosovo Law which allows withholding some information from the public.

The Article 12 of the Law gives a number of reasons why by Law some documents or information can be considered as classified, but the definitions are too general.⁶³ This generates some vagueness in clarifying what information is not allowed to be public. Consequently, if the documents required to be accessed are of public interest and they contain information which government officials do not want to reveal, it increases probability that public officials will tend to categorize these documents under the protected documents. Hence, each public official dealing with access to public documents should be provided with clear and unambiguous instructions related to the information they are obliged to reveal to the public. However, if citizens demand information on the investments financed by their own money, there should be no reason for upholding this information from them.

Nevertheless, Kosovo authorities have denied access to public documents in some cases (BTI, 2012). The most relevant case is the contract on the construction of the highway "Ibrahim Rugova" which absorbed around 40% of the annual capital

investments during last three years. The government of Kosovo has kept the contract away from the public eye and has not granted access to all parts of the contract when requested by civil society or media. The contract was only revealed by opposition parties who got access on the contract through their own channels. This then created some uncertainty in the public as the revealed information was not considered to be true by the government officials. The other important file kept away from the public view is the KEDS privatization dossier. Prepotr (2013) reports that all attempts of the Consortium of Civil Society for Sustainable Development (KOSID) to have access to the privatization dossier turned out negative.⁶⁴ Even though public officials are covered by Law in regard to rejecting access to some particular information demanded by citizens, not granting access to information on finance and other technical issues related to public investments and privatization details related to public assets raises suspicions about corruption.

As access to public documents is one of the key criteria in measuring transparency of institutions, Kosovo Government should also be transparent in providing citizens with the information on how many cases and on what basis access to public documents was rejected. There are lot of contradictions between Kosovo Government statistics and reports of civil society and other independent organizations.

According to the Kosovo Government report on the implementation of the right on access to public documents, around 80% of requests to access public documents have been granted (Comprehensive Report, 2012).⁶⁵ The same report indicates that at the municipal level around 80% of requests

⁶² Riinvest, 2013. Transparency: Mapping of Open Government Policies in South East Europe, the case of Kosovo.

⁶³ See Article 12 of the Kosovo Law No.03/L-215.

⁶⁴ Prepotr, 2013. Periodic publication of the Kosovar center for investigative journalism.

⁶⁵ Comprehensive Report, 2012. Government of Kosovo, Prime Minister's Office, Comprehensive report on the right to access public documents by public institutions.

received positive answers, whereas other requests were refused or access was limited. On the other hand, independent organizations report a much lower rate of granting access to public documents. According to findings reported by the Center for Policies and Advocacy (CPA, 2012) between December 2011 and February 2012 out of 128 sent requests at central and local institutions only around 41% have received positive answers.⁶⁶ Moreover, BIRN (2013) research indicates that only around 33% of requests sent to Kosovo Government insti-

⁶⁶ See http://www.qpa-ks.org/index.php?option=com_content&view=article&id=147%3Azbatimi-i-ligjit-per-qasje-ne-dokumente-publike-ka-permiresimesidoqofte-ende-jo-ne-nivelin-e-deshiruar&catid=45%3A-publikime&Itemid=82&lang=sq

tutions between January 2012 and May 2013 have received positive responses.⁶⁷

In general, Kosovo institutions should improve the process of granting access to public documents. Nevertheless, using public (citizens') money to finance public projects obliges Kosovo institutions to be transparent and accountable towards its citizens. Granting access to public documents should not be a matter of institutional or public official's discretion, but it is a constitutional right granted to Kosovo citizens and should be respected by each public institution.

⁶⁷ BIRN, 2013. The State: Accessible to citizens. Balkan Investigative Reporting Network – BIRN Kosova.



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