



GROUP FOR LEGAL  
AND POLITICAL  
STUDIES

2nd October, 2017

**From:** Institute for Development Policy (INDEP)  
Institute for Advanced Studies (GAP)  
Group for Legal and Political Studies (GLPS)

**To:** Prime Minister of the Republic of Kosovo, Ramush Haradinaj

**Subject:** Request to review the decision for partial implementation of the Opinion of Anti-Corruption Agency for depoliticization of Publicly Owned Enterprises boards.

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Dear Prime Minister,

Your decision of 29th of September 2017 for discharging 20 directors of the Publicly Owned Enterprises boards is not welcome nor supported by us, three non-governmental organizations, for the following reasons:

1. This decision is a selective implementation of law and legal opinion of Anti-Corruption Agency.
2. If this decision would have as its purpose the implementation of law, the following phase would be by entitling the members' replacement by the Recommendation Lists, as law requires.
3. Part of this decision includes members of a body that is no longer under the responsibility of the Government, rather of the National Assembly of Kosovo, and only the National Assembly is able to discharge these members.

In this regard, we are against this selective enforcement of law and we request any decision taken to serve to the full implementation of justice.

On 29th of September, You issued a decision to discharge some members of Publicly Owned Enterprises boards. This decision has been taken based on the request letter received

from the Office of Prime Minister with the protocol number 462, dated 22. 02. 2016, which recommended measures to be undertaken toward people who have been appointed in positions of Publicly Owned Enterprises Boards in violation with legal dispositions. Meanwhile, this request letter was issued after institutes, INDEP, GAP and GLPS investigated the politicization of Publicly Owned Enterprises boards. In the same line, Your decision was also influenced by the Document ERA (European Reform Agenda) which was approved by the government and was proceeded in the National Assembly last year. This document requires that: “Ensuring transparent, merit-based and non-political selection processes in line with the law for all independent institutions, agencies and regulatory bodies as well as in public companies, including and in particular in relation to pending selection processes and ensure full implementation of the recommendations by the Kosovo Anti-Corruption Agency.”.

Nevertheless, besides the hopeful headline of the news, the content was not that hopeful for the future of Publicly Owned Enterprises. Before arguing this decision and our request; let us remind You how all this problem evolved. On February, 2015, the Government of Kosovo opened a call for 15 job vacancies in Publicly Owned Enterprises boards. Over 1800 candidates applied. A part of these candidates were not eligible to apply because of the disposition of Law No. 03/L-087 for Publicly Owned Enterprises. More precisely, they were not legally independent to be appointed to these positions because they already held leading positions in political parties or had run for elected positions in last three years, an exclusive disposition for the respective position based on the Article 17.2 (k) of this Law.

Decision on the appointment of the boards members were published during September and October of that same year, 2015. Our institutes, INDEP, GAP and GLPS, immediately objected the obvious violations of the law and requested to the government of that time to annul the illegal decisions immediately. When this did not occur, in contrary more illegal appointments were coming out, we informed about this the embassies of Quint, the office of Commissioner for Enlargement, Hahn and media. Moreover, we issued a suit in the Anti-Corruption Agency and cooperated with the investigation department by providing them the whole material of our research.

A year after the call was announced, on 15th of February 2016, Anti-Corruption Agency published its Legal Opinion no. AKK-DLK-3113/15 that fully verified out claims. Moreover, the Anti-Corruption Agency had issued remarks to the Office of the Prime Minister for not specifying, in its call, the legal demands which were clearly stated by the Law Nr. 03/L0087 for Publicly Owned Enterprises.

But, facts are as follow, Dear Prime Minister:

- 19 people were appointed through a flagrant violation of Law No. 03/L-087 for Publicly Owned Enterprises.

- These people, during the application process have signed a Statement under Oath by claiming that they are not violating the Law. The Article 15.3 foresees a fine up to 10 thousand Euros for false statement under oath.
- Anti-Corruption Agency proved our claims and found guilty the Prime Minister office for failing to organize the contest according to the law.
- The office of the commissioner Johannes Hahn, diplomatic representatives, the European Reform Agenda, a row of European Commission reports and we, tens and hundred of nongovernmental organisations, have request the full depoliticization and rule of law.

This decision would be a promissory one if only it would entirely comply with the law in power. Although you have decided to partially take into account the opinion of Anti-Corruption Agency, which clearly required the establishment of legality that implies full legitimacy provided for all. For instance, if you would follow legal instructions, it would be necessary that in addition of discharging those 19 people, you would entitle their replacement namely from the recommendation's lists which were compiled upon the applications of 1800 candidates. According to Article 15 of the law:

*If a member of a POE Board is unable to complete his/her term, a successor shall be chosen by the Government (i) **from the list of candidates most recently recommended by the Recommendation Committee** or, (ii) if no such candidate is then available, in accordance with then procedure prescribed above.<sup>1</sup>*

Beside this, your decision on discharging these board members, in one case, also represents interference in Assembly's competences. Thus, your discharging list includes also the board members of Transmission, System and Market Operator (KOSTT). Dear Prime minister, we kindly remind you, as this you probably know, that with the approval of the last year's third legislation pack in the energy sector, one of the stakeholders of KOSTT is the Assembly of the Republic of Kosovo, which is competent of appointing and discharging board members of KOSTT. Regarding this, Dear Prime minister, the dismissal of KOSTT members represents interference in the competences of the Assembly of the Republic of Kosovo which can be detrimental to the independence of the operator and its position in the market which already is becoming liberalized.

Even at this point, the Law is clear and also conditions the Assembly when to discharge a board:

*The rights of shareholder for Transmission System Operator shall be exercised by the Assembly of the Republic of Kosovo (Article 13.2)*

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<sup>1</sup>Republic of Kosovo, (2012), Law No. 03/L-087 On Publicly Owned Enterprises, Article 15.8, Election of Directors of a Central POE, Pristina: GZRKS, available: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>(accessed in 2017).

*Assembly of the Republic of Kosovo can initiate a dismissal procedure for the Chairperson and members of the board of the Transmission System Operator when, after two (2) consecutive years of the review of performance of the Transmission System Operator, functional committee discovers that:*

*6.1. Transmission System Operator has failed to prove that completely and actively has implemented functions and duties under the laws regulating energy sector in Kosovo; and*

*6.2. Such failure of implementation has damaged seriously efficient and independent functioning of the Transmission System Operator.* <sup>2</sup>**(Article 13.6)**

In order for you to demonstrate that you truly aim to depoliticize the boards, in your decision you should have included also the current board members who, in flagrant violation of law, are running for members of municipality assembly. For example, probably the news regarding ‘Trainkos’ board member who is the leader of the candidates list of the Democratic Party of Kosovo for municipality assembly in Gllogovc, **Labinot Halilaj**, will not get you surprised. By making your decision, you could be able not only improve a violation which was conducted two years ago, but also to prevent a violation which is happening at the moment.

Dear Prime minister,

Anti-Corruption Agency, European Reform Agenda, European Commission Reports on Kosovo and us, as civil society organizations that have contributed in this issue, have not insisted on partial depoliticization, but a complete one. We have not tried to be cited on legitimizing selective implementation which would not guarantee independence to publicly owned enterprises. As civil society organizations, we are willing to help you with anything that we are capable of, in case your true aim is to properly implement the law, depoliticize publicly owned enterprises and establish the legitimacy standard which would guarantee a better performance of these enterprises, would increase the trust in you and your governance and undoubtedly, would be an incredible achievement in regards to European Agenda. For the case to be as such, your decision needs to be reviewed in order to be fundamentally met.

Sincerely,

INDEP, GAP and GLPS

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<sup>2</sup>Republic of Kosovo, (2016), Law No. 05/L-085 On Electricity, Article 13, Corporate governing, competencies, reporting, available: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12744> (accessed in 2017).