

A Comparative Analysis of Corporate Governance in Public Enterprises in Kosovo - The Difference Between Central and Local Public Enterprises

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Abstract

The purpose of this paper is to analyze and evaluate the implementation of OECD principles and practices for Corporate Governance in Public Enterprises in Kosovo, as well as to present the divergences of Corporate Governance between Central Public Enterprises and Local Public Enterprises. The study is based on primary and secondary data, where the latter are findings from overviews and reports of international organizations. Was used qualitative research methods, through interviews and the comparison method in order to identify the advantages and disadvantages of the CG in Public Enterprises with different ownership.

The findings and results show that in Kosovo there is a low application of the OECD principles and there is a marked lack of entrepreneurs in the leadership of Public Enterprises. The legal loopholes and large debts of Enterprises to TAK have been identified as the main weaknesses of the CG. Public Enterprises in Kosovo are important for the local economy as they number about 10,152 employees or about 3.1% of the total employees in Kosovo. The only success we can mention is the separation of ownership from control, as among the fundamental issues of the CG. The study concludes that the differences between Central and Local PEs lie in the reporting and monitoring process, where Central PEs are monitored by Unit for Monitoring Public Enterprises and report to the Assembly of Kosovo, while Local PEs de facto have no monitoring, but only report to the Municipal Shareholders.

Keywords: Corporate Governance, CG, OECD, Public Enterprises, PE

Introduction

Corporate governance refers to the structures and mechanisms through which the enterprise is governed: its governing bodies, the rights and obligations of these bodies, the treatment of shareholders and the relationship between management and various actors. As for Corporate Governance, we can say that it is one of the most controversial topics in the contemporary period of the free market, and which has received great focus both in developed countries and in developing countries such as Kosovo.

The word governance derives from the Greek language "governare", which means direction or to direct, in the sense of leadership and management. The name corporation derives from the Latin language, from the word "corpus", which means body, which represents a group of people [1].

The main bases of Corporate Governance according to international standards are the applications of OECD principles, based on which the law on Public Enterprises, Corporate Governance Codes and Statutes are harmonized.

Corporate Governance in Public Enterprises in Kosovo began to be implemented at the beginning of 2006 and as a concept is relatively new, even though Corporate Governance has been addressed in discussions and debates of the post-war period as part of analyzes related to privatization policy, this concept has not been the focal point of the debate and has mainly been used to highlight some of the consequences of alternative privatization methods [2].

The corporatization of Public Enterprises in Kosovo has its beginnings in the period of 2004, when the Kosovo Trust Agency

developed a program towards the corporatization of Enterprises in two phases. In the first phase, the existing Public Enterprises were transformed into Joint Stock Companies. Until, in the second phase, "spin-off" was used to create new enterprises in the form of JSC.

In Kosovo, Public Enterprises numbered about 10,152 employees or about 3.1% of the total number of employees in the Republic of Kosovo in the same year, having an important role in the employment of citizens, but also in the provision of services. Of the number of employees, approximately 19% have a high, superior qualification, over 60% have a secondary school qualification, and 21% only have a lower school qualification (NJMPNP, 2016).

Based on the statistics of the Unit for Policy and Monitoring of Public Enterprises (NJPMNP) in Kosovo, there are 17 central PEs and 55 local PEs. (GAP, 2015) Although the Law on Public Enterprises recognizes 56 local enterprises, KRM Higijena in Gjilan, since July of 2013 operates as a public-private partnership (PPP) enterprise with 51% of the shares owned by the private shareholder as the owner and according to the law on Public Enterprises, this enterprise is no longer considered public, but operates on the basis of the special Law No. 04/L-045 For Public Private Partnership.

Literature Review

As a basis for the literature review in this paper are the OECD reports, the books of Llaci & Tabaku, the law on public enterprise in Kosovo, and the analyzes of organizations such as GAP, World Bank, IFC, RIINVEST, ISA and NJPMNP were analyzed.

These authors and reports highlighted the problems and rise of Corporate Governance in analyzing various theories of eminent authors, the role of governance in corporate performance and (failure) success, profitability, interest groups, advantages and disadvantages, governance models and development over the years of the CG.

Also, the international principles of the OECD, the Code of Ethics and Corporate Governance, ownership and management, standards and comparison of different models were also addressed in the focus of this paper.

There are several definitions and definitions regarding Corporate Governance, from different authors, on the basis of which comparisons or even the suitability of the definitions can be made [3]. define Corporate Governance as "relationship between different participants such as shareholders, board of directors and managers" define Corporate Governance as the way

in which financial investors ensure themselves, to get a return on their investment [4, 5].

Corporate Governance has been put in focus, especially after the financial crisis of 2008, where the problems and malfunctions in the relationship between the owners, the board and the managers have appeared, in which case the problems like that of the principal-agent have arisen.

Typically, the authors analyze three approaches or theoretical thoughts of Corporate Governance, comparing them among themselves as: Agency Theory (principal-agent), Stakeholders Theory and Stewardship Theory.

Also, the three governance models were analyzed, from which the Governing Boards are derived, and as such they are also applied in Kosovo: the Anglo-American model, the Japanese model and the German model. The author has worked on statistical and graphic analysis regarding these divisions and their application in practice.

As a topic, it is minor or almost not treated in Kosovo; therefore, the literature review has been complex, except for the credible reports of high-level organizations.

Corporate Governance in Kosovo

Kosovo, as part of the former RSFJ (Federal Socialist Republic of Yugoslavia) for nearly 45 years was based on the planned economy of the socialist-self-government system, being shunned by the free market economy. The entire economic organization was oriented to state ownership, and then to social ownership, where as a result of this approach, the concept of Corporate Governance has been missing in Kosovo. It was only in the early 90s that the establishment of private enterprises was allowed, organized into SH.P. K (Limited Liability Companies) and SH. A (Joint Stock Companies) [6-10].

All PEs in Kosovo must be organized as Joint Stock Companies in accordance with the law in force on Commercial Companies and all ownership interests in a PE are represented by shares. The division of PE is based on the Law on Public Enterprises and classifies them into two types: Central PE and Local PE. The main shareholder in the Central PE is the Government of the Republic of Kosovo, while in the Local ones it is the Municipality (Municipalities, when the PE extends to more than one Municipality). If an PE provides services to less than three (3) municipalities in the field of waste collection, that enterprise is a Local PE, otherwise it will be a Central PE. If this Local PE provides services to more than one municipality, each municipality's percentage ownership (shares) will be equal to the percentage of registered customers of this Local PE in that municipality.

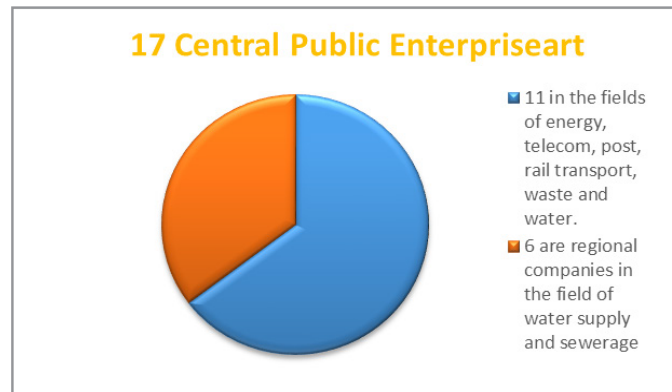


Figure 1: Sorting of Central Public Enterprises based on the nature of service provision

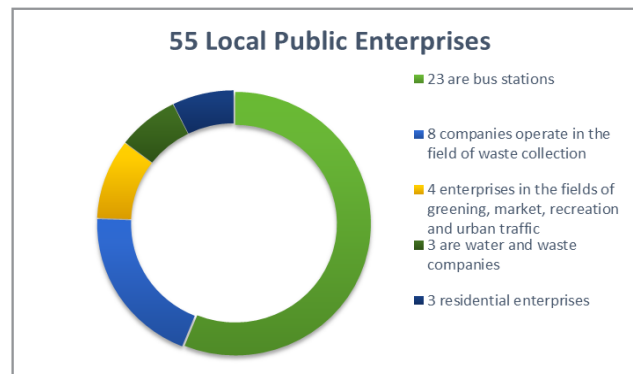


Figure 2: Sorting of Local Public Enterprises based on the nature of service provision

Source: Author's research based on Law No. 03/L-087 For Public Enterprises, Assembly of the Republic of Kosovo, June 2008. Article 3 (3.1)

Public enterprises in Kosovo perform with high rates of bad debts, small collection, commercial losses and technical problems. Considering these indications, we have a great impact on the lack of investments, which means non-advancement of services to customers, citizens. Many Public Enterprises are important for the state budget, since they do not have financial stability, thus obliging the government for subsidies and investments.

The provision of these subsidies, defined in the Law on Budgetary Allocation through MZE, has supported Central and Local

Public Enterprises with financial means with a total budget of 92.4 million in 2009, with a downward trend, when in 2012 it fell to 31.09 million euros. This trend of Government subsidies for PEs has had a linear decline, where in 2018 there were only 4.04 million euros or in 2021 only 1.92 million euros, and in 2022 to 12.39 million euros there was an enormous increase, compared to the previous years, especially with the year 2021 where the difference was 545% [10-25].

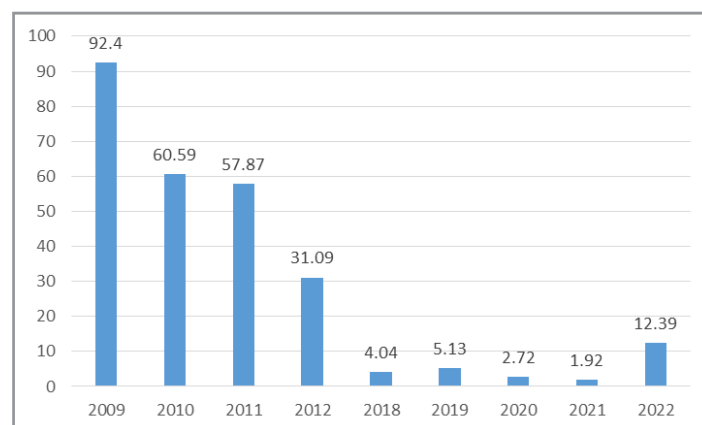


Figure 3: Government Subsidies for Public Enterprises in million €, during the period 2009-2022

Source: Ministry of Finance of the Republic of Kosovo <https://mf.rks-gov.net/page.aspx?id=1,29>

This tendency of reduction within the decade of subsidies of PEs is an indication that discipline has begun in the management of the own revenues of these Central and Local Public Enterprises.

This reduction of the subsidy from the Government is in harmony with the requirements of the Association Stabilization Agreement, as it recommends that the subsidy from the state be allowed only when there are general interests. Although this support from the state has existed, the investments in these enterprises have not increased, and at the same time the collection in relation to the services provided has remained low, especially in the water supply and waste cleaning sector, with about 65%.

Appointment of Shareholders and Selection of the Board of Directors

The Government of the Republic of Kosovo is the owner of the shares of Central Public Enterprises and through the establishment of a commission that includes the Ministry of Infrastructure, the Ministry of Finance, the Ministry of Trade, the Ministry of the Environment and the Ministry of Economic Development, it exercises its right. When a municipality is a shareholder in a Local PE, its shareholder rights will be exercised by a Municipal Commission of Shareholders, which consists of (a) one member appointed by the Mayor of the Municipality and (b) two other

members of appointed by the Municipal Assembly. This Municipal Commission has the right and responsibility to act on behalf of the Municipality, in accordance with the Law on Commercial Companies and the Law on Public Enterprises.

The right of shareholders is manifested through the election or appointment of a Board of Directors. The boards of PEs in Kosovo use the one-level board model, or the Anglo-American model, where the Board of Directors consists of 5 or 7 people and all directors, except one, will be elected by the Government. The other director will be the Chief Executive Officer of the PE who is elected by the Board and no member of the board, except the Chief Executive Officer (CEO), has executive powers. According to the practices of the OECD principles, the CEO cannot be the Chairman of the Board at the same time.

In Central Public Enterprises, Board members, the Government can only choose from the list recommended by the relevant Commission. During the selection process of Board members (directors), the Government of Kosovo is obliged to select at least two (2) directors who are technocrats or experts in the field, or who have knowledge of accounting. Other criteria are: political impartiality, professionalism, not to be criminally prosecuted, etc [26-36].

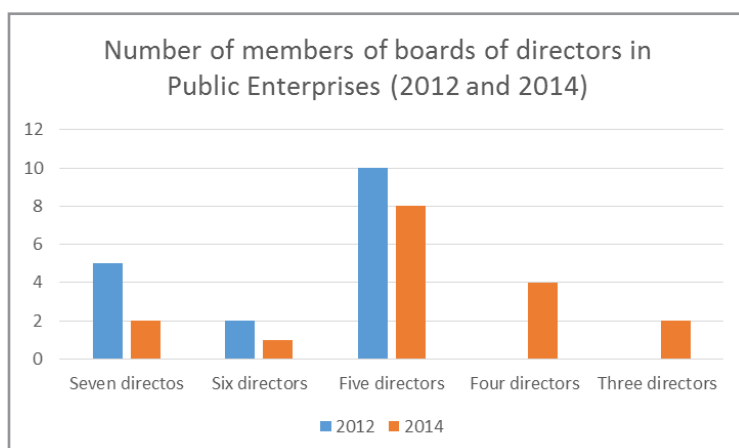


Figure 4: Number of members of boards of directors in Public Enterprises (2012 and 2014)

Source: NJPMNP 2013. Annual performance report of PE, 2012

In the Local PE, the right of the shareholder of the PE is exercised by the Municipal Shareholders' Committee, which consists of: (a) a member appointed by the Mayor of the Municipality; and (b) 2 other members who are elected by the Municipal Assembly. The Board of Directors of a Local PE will consist of five (5) directors, where four (4) directors are elected at a meeting of shareholders, while the other director is the EC of the Public Enterprise who is then elected by the Board of Directors. (GZK,

2008) The Commission selects the boards of the Local PE and reports to the Municipal Assembly on an annual basis on the performance of the Local PE.

In cases where one or more municipalities have shares in a Local PE, then each Municipal Shareholder Committee has the right to elect a director. The representation of each municipality in the Board of Directors is regulated by an Administrative Instruction.

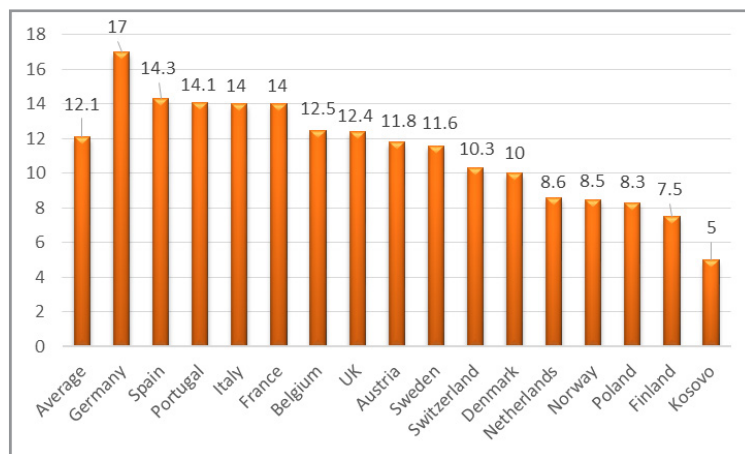


Figure 5: Average number of board directors in several European countries.

Source: Heidrick & Struggles (2014: 19), Towards Dynamic Governance 2014 – European Corporate Governance Report.

This tendency of the decrease within the decade of the subsidies of the PEs is an indicator that discipline has begun in terms of the management of own revenues, of these Central and Local Public Enterprises.

This reduction of the subsidy by the Government is in harmony with the requirements of the ASA, as it recommends that the subsidy from the state is allowed only when there are general interests. Although this support from the state has existed, the investments in these enterprises have not increased, and at the same time the collection in relation to the services provided has remained low, especially in the water supply and waste cleaning sector, with about 65%.

Monitoring and Transparency of Public Enterprises

Monitoring as a process of Central Public Enterprises is done by the Public Enterprises Monitoring Unit, which is a department within the Ministry of Development, while Local Enterprises are monitored by the Municipalities, namely the Municipal Assembly.

NJPMNP has the role of observer in the Central Public Enterprises, having the right to be part of the meetings of the Board of Directors and at the same time supports the Minister of Economic Development for the supervision and operation of the PEs. In addition to these responsibilities, this unit has an obligation for transparency and disclosure. (RIINVEST, 2012)

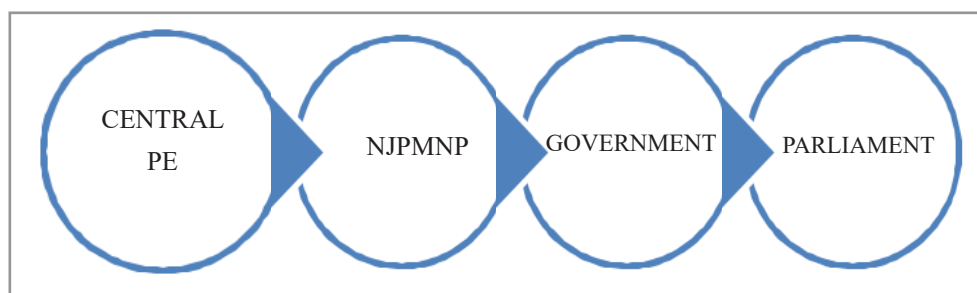


Figure 6: The cycle of reporting from public enterprises to Parliament

Source: NJPMNP 2013. Annual performance report of PE, 2012.

NJPMNP has managed to issue several important documents in the direction of advancing the Corporate Governance of PEs. This unit has drawn up and approved the Code of Ethics and Corporate Governance for PEs, as well as issued PE performance evaluation reports.

Data and Methodology

The methodology used in this paper includes primary and secondary data. The primary data were obtained through interviews, carried out through an online questionnaire and physically, with open questions, in the Public Enterprises "Hidroregjioni Jugor"

and "Eko Regjioni" with shareholders, members of the Board and Chief Executive Officers. The secondary data is the result of a review of a wide and contemporary literature on corporate governance. This literature has been provided by researching the reports of various organizations and primary and secondary legislation, including reports of NJPMNP, financial statements, reports of the National Auditor, reports of foreign organizations, etc.

In this study, the qualitative research method was used, since it enables us to collect data from interviews with the responsible persons. The comparison method was used in order to identify

the advantages and disadvantages of the CG in Public Enterprises with different ownership, central and local, to highlight the legal and practical divergences [37-45].

The research on which this research paper was carried out is based on some of the following methods:

- Deductive method to analyze the historical retrospective, the background and the evidence from the legal-economic literature,
- The method of comparison between different ownership of PEs
- The analysis method for evaluating the implementation of OECD principles in the CG.

Conclusions and Recommendations

The state of Corporate Governance in Kosovo, with special emphasis on Central and Local Public Enterprises, is on the way to improvement, but there is room for intervention, standardization and harmonization.

Public Enterprises in Kosovo do not have improvement indicators for the development of transparency, as a prerequisite for local and foreign investors for Public-Private Partnership, by not publishing the audited financial reports, operational reports and access to the resources of the Enterprise. This situation is more serious in Local and Regional PEs.

As a small achievement for the Government and Municipalities, we can point out the implementation of the Law on PEs, for the division of ownership over control, as among the fundamental issues of the "contemporary" CG, but the small interest of state shareholders, such as the Government of Kosovo for Central PEs and Municipalities for Regional (Local) PEs, on the performance and profitability of PEs represents a great concern since many PEs have performed with losses and debts, depending on subsidies and grants.

Knowing the rapid development of technology and European standards on machinery, these PEs find it difficult to survive as state monopolies, knowing the approach of Kosovo that has embraced the free market and capitalism as an economic philosophy.

The internal control system is one of the issues where a great focus should be shown, since it is a prevention of misuse. None of the analyzed PEs has a Risk Management Committee, separate from the Audit Committee.

Social responsibility is one of the points that increases the reputation of Public Enterprises, but in our study case they are unknown concepts in theory, but also inapplicable in practice. There is no example of the implementation of social responsibility in relation to the environment, customers or workers, even though it falls within the OECD principles.

NJPMNP has shown improvements in the monitoring process of Central PEs, but the small number of staffs remains a challenge in itself.

Financially, the sustainability of PEs depends on CEO, as research examples have shown this in different periods of leadership. Inherited debts and millions of debts to TAK remain a

problem, which can paralyze the PEs, in case the PEs' accounts are blocked through execution.

Based on the results of the research, we can establish a number of challenges and problems faced by Corporate Governance in Public Enterprises in Kosovo and which we can group into several points, as follows:

1. Implementation of good practices based on OECD principles
2. Strengthening the role of the Board of Directors
3. Protection of small shareholders (potentially private)
4. Transparency
5. Strengthening the internal control system and the division of commissions
6. Transparent reward system (remuneration)
7. Social responsibility of PEs
8. Principal-agent problem.

Recommendations

- To reduce the subsidy from the Ministry for the expenses of PEs and to increase it for capital investments.
- To increase the number of NJPMNP officials in monitoring the PEs.
- To adjust the accountability regarding Local PEs that receive subsidies from the Central Level (Government) but do not report to the Government.
- It should be introduced as a criterion that the CEO has managerial experience and adequate school preparation (not like the cases where the CEO is a former military superior or a former official in the administration).
- To initiate the establishment of the Institute for Corporate Governance in Kosovo.
- To organize more advanced trainings for Corporate Governance and Risk Management.
- To incorporate in the Law and Statutes the establishment of the Risk Management Commission, separate from the Audit Commission.
- The government should stimulate the Central and Local PEs with a profit of grants, based on performance
- To create a genuine system of the process of remuneration (remuneration) of directors and officials and supervision by shareholders
- To apply the social responsibility of PEs towards the environment and citizens
- To functionalize the Assembly of Shareholders, in Regional Companies (operating as Local Enterprises), which extend to more than one municipality, since they function only on the basis of Municipal Commissions of Shareholders, for each municipality.
- Municipalities and the Government to facilitate the procedures for PEs with PPP - Public-Private Partnership.
- To be applied in practice to Regional (Local) Enterprises, the right to vote for the preferential shareholder (for the Municipality that has more than 51% of the shares)
- To create mechanisms or committees at the PEs, to deal with the agency (principal-agent) problem.

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