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Research on the composition of management boards in the public enterprises and institutions

### An unregulated sphere that creates ample opportunity for corruption

The complete politicization of the management boards of the public enterprises and institutions at state and local level, which is carried through at the expense of the expertise and competence of their members, is evaluated, both by domestic experts and international organizations, as a condition which enables corruption and contributes to the further development of this problem. The selection of the members of the management boards according to party and ethic criteria rather than expertise and competence, a fact verified in this research as well, creates an atmosphere in which the decisions in these enterprises are made on the basis of party or personal interest, rather than the best interest of the citizens, who both finance and use the services of the public enterprises and institutions.

The strongest arguments that the civil interest has been suspended are the frequent losses from the work these enterprises and institutions suffer, as well as the decrease of the quality of services they give to the citizens. Apart from the lack of expertise and the incompetence of a large number of the members of the management boards, a realm for corruption is created by the absence of obligation for public presentation of the work of these enterprises and institutions, and ultimately, by the fact that the members of the management boards are not liable whatsoever for the decisions they approve.

### An analysis and evaluation of the current state

The legal experts locate the starting point for this state in the "poor and very general" legal regulation, whereby the selection of the members of the management boards in the public enterprises and institutions is defined. The law on public enterprises devotes just one article to the criteria for appointing members of the management boards in public enterprises. The article states that "in the management board the founder appoints, i.e. dismisses representatives, such as eminent and renowned experts in the area of work of the public enterprise..." But, the research has shown that in reality not even this legal decree for the selection of members of public enterprises is observed. The decisions published in the Official Gazettes, whereby members of management boards have been appointed in the last few years, and which

have been the subject of a thorough and detailed analysis in this research, show a large number of cases in which this general legal condition has been violated.

There are numerous examples of appointing members who, according to the specified qualifications, do not only lack expertise and recognition in the area of work of that enterprise, but frequently have no connection to that area whatsoever. The extent of this nonchalance in appointing members of management boards in these enterprises is exemplified in cases when the decisions are published in the Official Gazettes, and apart from the name and surname of the appointed member, there is no information on his/her education or work position, so that his/her competence could be evaluated.

This condition is best reflected in the composition of management boards in the public health institutions throughout the country where, in opposition to the expected expert knowledge, in the sense of offering greater quality health services or more efficient financial management, there are such individuals participating who, with their professions or education cannot be qualified for membership in an institution from the public health area. Thus, in the numerous health institutions, bureaux for health protection, medical centres and general hospitals, as members of management boards are appointed teachers, political theoreticians, agronomists, as well as construction, architectural, traffic, and textile engineers. There is even a case in which, out of the four external members of the management board in one medical institution, only one is from the health area, while two are agricultural engineers and the fourth member is a metallurgical engineer. In yet another medical institution the four external members of the management board are a political theoretician, an economist, a pedagogue, and a high - school graduate. There are even registered cases of management boards of public medical institutions and other public enterprises where students participate.

How serious this condition is can be seen from the fact that, on the one hand, there are no detailed specified procedures and criteria for appointing members of a management board, while on the other hand, these members are given big and wide legal authorization. The Law for Public Enterprises prescribes that the management board brings the statute, adopts a program for work and development of the public enterprise, decides on the business politics, adopts an annual account and report on the operation, decides on the funds gained through the operation and on covering the losses, brings decisions about investments, determines the prices of products and services, and decides about the inner organization of the public enterprise.

In the appointment of party people in positions where experts should be, Dr. Gordana Siljanovska - Davkova, a Professor at the Faculty of Law in Skopje, sees an introduction to corruption. " People appointed by a political party are susceptible to corruption since they need to return the favour to the one who appointed them, for they have not been appointed in that position as a result of their expertise and competence and in order to apply their knowledge and experience, but according to other criteria. That is why we have chaos in the

spacial and urban planning, in health, education, and social protection, because these people are terribly appropriate for manipulation. "

Deeming the problem with the composition of management boards a serious one and that laymen, incompetent, and incompatible people are present in hundreds of management boards, Dr. Borce Davitkovski, a Professor at the Faculty of Law in Skopje, also sees grounds for corruption in this practice.

" Management boards exist in order to govern, i.e. protect the interests of the users in the name of the state. We do not have that segment and it is primarily for party benefits that parties seek to satisfy their party choice of representative. But, in this way, a huge mistake is made and the quality of work is damaged. As regards corruption, on the one hand, the government can allow certain agreements to be made, while on the other hand, the directors themselves may behave in a corrupt manner without the government's awareness. An incompetent management and supervisory board can only vote, which leaves a space for the director to hide his corrupt dealings behind those decisions. And the resulting damage is not paid by them, but by the citizens."

Another issue which further complicates this state is that, in the very same manner, the members of the boards for control of the material and financial operation are appointed, who are a key internal organ which needs to control the functioning of the management board, although in this area the law is more specific in prescribing the criteria for the election of members. These are boards which have to exist in every public enterprise, and which are obliged to examine the annual accounts and reports on the operation of the public enterprise and give their opinion to the management board after the supervision. The management board cannot adopt the annual account and the report on the operation of the public enterprise if it does not previously obtain a positive opinion from this control board. Precisely because of these authorizations, the Law for Public Enterprises provides "for members of the Board for Control of the material and financial operation to be appointed individuals with high education, who possess knowledge and experience, especially in the realm of financial operations and accountancy."

However, the analyses made in this research show inconsistency in observing the law decree for the required qualification of the members of the board for control of the material and financial operations. In reality, the control of the financial operation in the public enterprise is carried out by musicians, engineers, and philologists.

Through the research it has been established that examples of this kind of appointments, among others, can be found in the management boards or the boards for control of material and financial operations in: Macedonian Railways, Studencica, Zletovica, GAMA, City Pharmacies - Skopje, Student Center - Skopje, Macedonian Forrests, Fund for Waters, Children's Resort "Mladost", Medical Center - Gevgelija, Health Centre - Vinica, General Hospital - Tetovo, Health Centre - Strumica, Health Centre - Negotino, etc. The experts consider the condition in local public enterprises to be more critical.

The domestic experts and the experts from international organizations point out that the governing parties have been able to use this practice because of the absence of any responsibility or liability of the public enterprises and institutions to the citizens. The reports on the operations are reduced to mere formal annual reports, which the boards for control are obligated to submit to the Ministry of Finance, and on a local level, to the founder, i.e. the municipal councils. " We have no system of internal control, a system of liability and measuring the efficiency of the public enterprises and institutions," says Dr. Vesna Guteska - Biseva, an expert in the UNDP office in the Republic of Macedonia.

The absence of liability of the public enterprises, the weak internal controls, and the uncritical management boards, along with the insufficient interest on the part of the authorities, were evaluated as a highly risky area, which is especially sensitive to corruption in the Evaluation of the Financial Liability in the Country, made by the World Bank in 2003. In the meantime, no significant progress has been noted with respect to any increased liability and responsibility of the public enterprises and their management boards.

It is estimated that the big political parties have been consciously postponing the regulation of this area both on a central and local level. The motifs for this can be traced in the fact that, on the one hand, a wide space for financial maneuvering is maintained, while on the other hand, the management boards are used for post - election compensation to part of the party members.

### **Recommendations for replacement of the existing informal and party procedure with clearly prescribed legal solutions**

The comparative experiences of other countries show that the members of the management boards in the public enterprises and institutions are appointed through a selection by means of a public vacancy announcement with previously clearly specified criteria for the required qualifications. The experts consider that we too must introduce a practice of selecting the members of management boards in the public enterprises and institutions by means of a public announcement of vacancies as soon as possible, as opposed to the present recruitment on the basis of party, ethnic, friendly, or family affiliation.

" Clear standards and criteria are needed. This should be done through a public announcement and the criteria and conditions for what kind of profile and for which institution is needed should be clearly known. If for no other reason, at least to reduce the potential for corruption, since now we have members who don't understand anything," states Professor Davitkovski. Considering that, up to now, "the regulation of this sphere has been consciously postponed", Dr. Siljanovska too suggests that the criteria and procedures for the selection of members of the management boards should be specified with precise legal solutions. " The criteria should be stated in an act, and not like at present, with party lists that no one verifies. Currently, we have no acts, both on state and local level. I believe that they postpone the regulation on purpose. You understand why. So that a field for maneuver can exist."

However, in order to narrow the existing field for maneuver, apart from the selection of the members of management boards through a public announcement, it is necessary to prescribe stronger mechanisms of internal control; an increased responsibility of the members of the boards accompanied by sanctions for improper working; as well as complete liability for the operations of these institutions to the public, since the money of the citizens are concerned. All this should enhance a continuous and thorough insight into the work of the public enterprises and institutions, starting with what was planned, and was achieved, and what kind of quality of public service was obtained for the money spent.

The application of these proposals is considered as the only opportunity for reducing corruption and the misuse of public money for personal gains, which the present unregulated state allows.

As there are no other visible obstacles, when the proposed procedure will be adopted and how precise the criteria and procedure for the selection of members of management boards in the public enterprises and institutions will be, depends entirely on the political will of all participants in the government both on a state and local level.

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