

## **PRIVATISATION IN MONTENEGRO – HIGHWAY TO DESTITUTION?**

### **ABSTRACT**

The privatisation process in Montenegro has been a fertile ground for corruption, with devastating effects on the national economy.

Privatisations were often prepared and conducted behind closed doors, with companies often sold to allegedly murky businessmen or investors with close ties to high-ranking state officials. After privatisation, the relevant institutions generally failed to conduct oversight of investor behaviour in the newly privatised companies. The Government nevertheless provided significant State aid to investors through annexes to the privatisation contracts signed, providing in some cases hundreds of millions of Euros from the state budget to investors. Even with such significant levels of state support, the new owners often managed to leave the newly privatised companies destitute and bankrupt. Until now, the officials involved in corrupt privatisations have not faced any criminal accountability or political consequences for their actions.

In the years to come, the Government will conduct privatisations of Montenegro's remaining important Montenegrin service and export companies. This policy brief offers suggestions for necessary preventive steps that need to be taken by amending relevant laws in order to decrease the risks of repeating familiar scenarios from past privatisations.

### **BACKGROUND**

In the early 2000s, following a decade of economic sanctions and instability in the Balkan region, affecting also Montenegro, privatisation was perceived by the public and especially by workers as an opportunity to restructure and grow a strained economy and to improve living conditions. These hopes were further ignited by senior Government officials who promised that with the proceeds of privatisation Montenegro's first highway would be built<sup>1</sup>, new jobs created, economic growth accelerated, and environmental issues resolved.

However, corruption became a major obstacle in the eventual success outcomes of Montenegro's privatisation program. Instead of economic growth, some privatisations "severely drained public funds"<sup>2</sup> and lead to the deepening devastation of national and local economies.

Privatisation in Montenegro has been conducted in accordance with the *Law on Privatisation*,<sup>3</sup> which was adopted by Parliament in 1996 and amended most recently in 2004.

#### **The 24 Articles of the *Law on Privatisation***

The *Law on Privatisation* contains only 24 articles that define the privatisation processes in Montenegro. Of this number, six articles are general provisions, four articles are transitional and final provisions, while two articles refer to mass voucher privatisation and the distribution of stocks to employees – with both of these processes completed in the early 2000s. Therefore, only twelve articles are more closely concerned with defining the privatisation processes.

<sup>1</sup> Milić, Rajko, "Telekom" from the state monopoly transformed to private monopoly, Daily Vijesti, Podgorica, 11<sup>th</sup> January 2012

<sup>2</sup> European Commission, *Montenegro 2014 Progress Report* Brussels, 8<sup>th</sup> October 2014.

<sup>3</sup> *Law on Privatisation*, adopted by Parliament of Montenegro in 1996 and last time amended in 2004

Additionally, state-owned companies faced with bankruptcy are privatised through the *Law on Insolvency Procedures*<sup>4</sup>.

However, both of these laws provide too much space for discretionary decision-making by relevant institutions and state officials<sup>5</sup>. Montenegrin privatisations were generally conducted through a non-transparent decision-making process, followed by an almost total lack of oversight and corrective measures in cases where contractual breaches and investment failures took place. At the same time, the Government provided extensive state aid or other benefits to these same investors. In spite of this, prosecutors have not taken any concrete measures against government officials who may have been responsible at any stage of these corrupt privatisations.

The proceeds of privatisation were never directly allocated to the development of public infrastructures. For example, Montenegro never got the promised highway that was supposed to be built following the privatisation of *Montenegrin Telekom*<sup>6</sup>. Contrary to promises of an economic boom, privatisations generally incurred substantial costs to the state budget and its citizens, while strategic investors frequently profited from it.

Currently, privatising some of Montenegro's largest public service enterprises<sup>7</sup>, export companies,<sup>8</sup> and tourism companies<sup>9</sup> is on the Government's agenda. This process is being undertaken with the existing laws and malpractices exercised by state officials in previous harmful privatisations still in place – including restrictions on transparency and the participation of the public in monitoring of all stages of the privatisation process. Such privatisations, if conducted in accordance with existing laws and

practices, may result in further failures, corruption, and economic burdens on the state budget.

## METHODS OF PRIVATISATION

The vulnerability of privatisation to corruption is critically determined by the chosen methods and modalities for undertaking the process.<sup>10</sup>

Privatisation in Montenegro can be conducted through at least ten methods<sup>11</sup> and three modalities – including public auction, public tender and public offer<sup>12</sup>. In accordance with the Law, only public auctions and public tenders are further defined through general by-laws,<sup>13</sup> which are too general and leave ample space for arbitrary interpretation.

When state owned enterprises are bankrupt they are privatised in accordance with the *Law on Insolvency procedures*, which defines public auctions, public collection of offers, and direct contracting as privatisation modalities.<sup>14</sup>

The *Privatisation Law* and the *Law on Insolvency Procedure* do not provide detailed elaborations on when and under which circumstances these methods and/or modalities of privatisation are to be used and/or combined.

Moreover, there is no publicly available information that in the past the Government has used cost-benefit analyses or feasibility studies to assess potential macro-economic, sectoral, or regional aspects of privatisation before initiating these processes or choosing a particular method and modality of privatisation.

Also, in preparing for privatisation, outdated, and sometimes decades old<sup>15</sup> assessed values of the firms were used as a basis for determining their

<sup>4</sup> *Law on Insolvency Procedures*, adopted by Parliament of Montenegro on session held on 22<sup>nd</sup> December 2010

<sup>5</sup> In accordance with the *Act on Organization and Modes of Work of Public Administration* (article 15), Ministry of Economy is in charge for transition of the economy and initiation, establishment and evaluation of program of transformation, participating on evaluation of the value of the companies and monitoring of implementation of privatisation contracts. In accordance with the *Law on privatisation*, Council for Privatisation and Capital Projects (article 2a.) is responsible for management, control and ensuring the implementation of the privatisation. In the cases when the company faces bankruptcy whole privatisation is conducted solely by Commercial courts (*Law on Insolvency Procedures*, articles 14, 23, 24).

<sup>6</sup> Milić, Rajko, "Telekom" from the state monopoly transformed to private monopoly, *Daily Vijesti*, Podgorica, 11<sup>th</sup> January 2012

<sup>7</sup> Including Montenegro's postal services, airports, and the national air carrier.

<sup>8</sup> Including the Podgorica Tobacco Combine and the "Plataže" wine distillery.

<sup>9</sup> Including several hotel consortiums on the coast and the Medical Institute "Dr Simo Milošević."

<sup>10</sup> GTZ, *Avoiding Corruption in Privatization, A Practical Guide*, Eschborn 2004

<sup>11</sup> The methods of privatisations, in accordance with *Law on Privatisation* adopted by Parliament of Montenegro in 1996 and last time amended in 2004, article 7a : shares sale, sale of the companies' properties, issuing of the shares to employees of the companies, exchange of the shares for privatisation vouchers, registration of new shares through recapitalization, exchange of the debts for the shares, joint ventures, combination of methods and other methods defined by the law or plan of privatisation

<sup>12</sup> *Law on Privatisation*, adopted by Parliament of Montenegro in 1996 and last time amended in 2004, article 7a

<sup>13</sup> *Act on Sale of Shares and Properties Through Public Tender*, adopted by the Government of Montenegro on 1 June 2000 and last amended in 2003, *Act on Sale of the Shares and Properties Through Public Auction*, adopted by the Government of Montenegro on 1 June 2000 and last amended on 26 March 2004

<sup>14</sup> *Law on Insolvency Procedures*, adopted by the Parliament of Montenegro at its session held on 22<sup>nd</sup> December 2010, article 134

<sup>15</sup> Press release by NGO MANS, *Secret deals on privatisation of "The New Tobacco company"*, Podgorica, 7<sup>th</sup> May 2015

selling price. This practice decreased the selling price of these companies. The assessments took into account the old market prices of the companies' real estate – which had dramatically increased in the meantime.<sup>16</sup> Also, prior to privatisation, some companies received substantial government assistance, increasing their value – though this again was not taken into account, since outdated valuations were used.<sup>17</sup> All this meant that the enterprises to be privatised were more valuable than their out-dated valuations, allowing them to be sold below their real market price.

In this way investors, most likely connected to senior politicians, were able to profit by selling the real estate properties of these privatised companies.<sup>18</sup> Also, most probably, state officials involved in these privatisations received personal kickbacks from these privatisations – harming the public interest.<sup>19</sup> For example, the buyers of the *Južni Jadran* company bought majority shares in this company for € 500,000, while later they only sold a part of its real estate for € 12 million.<sup>20</sup>

## PRIVATISATIONS DECLARED SECRET

Transparency is the first tool in preventing and combating corruption. It should be the primary principle to be respected in the privatisation of state owned enterprises.

However, Montenegro's *Law on Privatisation* does not contain any provisions for transparency or public participation in the privatisation process. In the past decade access to information for civil society actors<sup>21</sup> was often restricted and obstructed by state institutions.<sup>22</sup> They banned access to

privatisation data on different grounds or by simple non-response to requests for information.

Moreover, neither the *Council for Privatisation and Capital Investments*<sup>23</sup> nor the commercial courts conducted any consultations or public debates regarding concrete privatisations. Privatisations were prepared and conducted without any substantial public oversight or participation. Consequently, the details and conditions of privatisation contracts were agreed upon behind closed doors, and in some cases in informal meetings and negotiations with future investors - all of which were beyond the scope of existing procedures.

### The Biggest Privatisation was Arranged in a Private Conversation

This was the case with the privatisation of, at the time, Montenegro's most important exporter, the *Aluminium Plant Podgorica* (KAP), which operated well prior to its privatisation (generating 16% of GDP and 65% of Montenegro's total exports<sup>24</sup>). This first major privatisation was conducted in 2005 behind closed doors and finalized in direct negotiations between Prime Minister Milo Đukanović and Russian tycoon Oleg Deripaska.<sup>25</sup> Following the negotiations, the state tender commission declared that the Russian company had ranked first.<sup>26</sup>

Following these privatisations, all contractual details, including investment commitments and social programs<sup>27</sup>, were kept from the public and

<sup>16</sup> Press release of NGO MANS, *The Government wants to sell the "Adriatic Shipyard" through insolvency procedures*, Podgorica, 21<sup>st</sup> January 2015

<sup>17</sup> Information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015

Janković, Srđan, *What led privatised companies on the brink of collapse*, Radio Free Europe, Podgorica, 29<sup>th</sup> June 2012

J.V., *For three million two companies and hotel "Park"*, Daily Dan, Podgorica, 26<sup>th</sup> August 2015

NGO MANS, *Why the Laws do not apply for the businessmen close to the Prime minister Djukanović*, NGO MANS, Podgorica, 24<sup>th</sup> May 2010

<sup>19</sup> Information from the interview with the Chairperson of the Parliament Commission for Monitoring and Control of Privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>20</sup> Milošević Milorad, *Suspicious Businesses of Čedo Popović: Privatisation of "Južni Jadran"*. Daily Vijesti, Podgorica, 12<sup>th</sup> January 2015

<sup>21</sup> The request for information were mainly submitted by NGO MANS and later by workers or shareholders

<sup>22</sup> NGO MANS, *Free access to information, Behind the Closed Doors, Case Study of "Aluminium Plant Podgorica"*, Podgorica, 2006

Portal PCNEN, *Insolvency procedures are in a "black box"*, Portal PCNEN, Podgorica, 16<sup>th</sup> February 2010

Ćeranić, Zorica, *Insolvency procedures are non-transparent*, NGO MANS, Podgorica, 25 February 2010

Sadiković, Aida, *"Successful" privatisations ended up by closure of the companies*, Daily Vijesti, Podgorica, 19 February 2012

Čalović, Vanja, Maraš, Vuk, Ristović, Boris, *The first report on monitoring of transparency of privatisation processes in Montenegro*, NGO MANS, Podgorica, December 2009

NGO MANS, *Corruption is encouraged by hiding information on key privatisations*, NGO MANS, Podgorica, 5 May 2015

<sup>23</sup> According to Decision on Scope of Work and Structure of the Council for Privatization and Capital Projects, adopted by Montenegrin Government at the session held on 10<sup>th</sup> December 2009, this institution adopts decisions on sale of shares of the State owned enterprises, provides instructions to the companies for sale of shares, ensures publicity and transparency of privatisation processes, provides approval for privatisation of companies in which the state is majority owner

<sup>24</sup> Statement of the former director of "Aluminium Plant Podgorica" Mihailo Banjević, published by Daily Republika, *Experts are solving vexed questions, before the arrival of the Russians*, Podgorica, 15 February 2005

<sup>25</sup> B. Vlahović – Č. Prelević, *To the Russians half of Montenegro*, Daily Večernje novosti, Belgrade, 6 April 2005

<sup>26</sup> Contract on privatization of "Aluminium Plant Podgorica" signed on 27 July 2005

<sup>27</sup> This plans usually contain information on investors obligations regarding workers in the company

even from the workers and minority shareholders of the privatised companies for a number of years. For example, the contracts and information regarding the privatisation of the *Aluminium Plant Podgorica* (KAP) - and some of the biggest companies privatised at that time - were declared secret on different grounds for many years. The relevant state institutions mainly responded by arguing that foreign investors demanded that the privatisation procedure and documents remain confidential. They also stated that publishing privatisation information would cause enormous damage for Montenegro, since in that case the foreign partner could have enough grounds to terminate the contract and subsequently request exorbitant indemnities.<sup>28</sup>

The privatisation of the *Aluminium Plant Podgorica* (KAP), illustrates how contracts signed in completely non-transparent procedures were ultimately detrimental to the Montenegrin economy. Only after years of litigation, some information on the privatisation of KAP was released, when significant damage to the public interest had already been incurred, and after the contract was substantially altered by annexes that were (again) kept secret. Only then the public found out that KAP was actually sold to a company with only € 1,700 in capital, in spite of guaranteeing over € 75-million in future investments.<sup>29</sup> Not only did the new owner fail to fulfil his investment obligations, but “the company faced a number of crises and incurred 350 million Euros in costs”<sup>30</sup> to the state budget. This was money that was given to the new owner in the form of state assistance and guarantees for new loans. This public assistance to the investor imposed additional burdens on citizens. In 2012, after foreign banks activated the state guarantees that had been provided to KAP, the government introduced a “euro by euro” tax on citizens’ phone, electricity, and cable TV bills.<sup>31</sup> In spite of all this assistance to the investor, the company nevertheless went into

bankruptcy in 2013. Moreover, this might not be the end of costs to the state budget, since the investor is now seeking €900-million in damages from the Government through arbitration. The investor claims that the state introduced bankruptcy procedures in KAP and then sold the company to another, this time, domestic investor. According to the former Russian owner, by introducing bankruptcy procedures, the Government had violated the settlement contract between the two sides<sup>32</sup> and international agreements<sup>33</sup> that caused real losses.<sup>34</sup>

Moreover, a report by the *State Audit Institution*<sup>35</sup> found that the Government<sup>36</sup> did not provide all the necessary documents for assessing the legality of the issued state guarantees to KAP<sup>37</sup> further underscoring how transparency was blatantly ignored in the privatisation processes. The Law obliged the Government to provide documents to the *State Audit Institution*,<sup>38</sup> but even though they failed to provide the requested documentation, no sanctions were imposed.

The non-transparent practices of the past are again being reintroduced in this latest round of privatisation. *The Council for Privatisation* proactively restricted access to information in the privatisation of 13 companies<sup>39</sup> by adopting a *Decision establishing levels of secrecy over privatisation data*.<sup>40</sup> Based on this *Decision*, all data related to these privatisations will be made public only after five years – when the possible harm to the public interests will have already been made. The council used similar justifications to the ones made in recent decades in restricting access to privatisation information, arguing that with this decision Montenegro’s interests and security were

<sup>28</sup> NGO MANS, *Free access to Information, Behind the Closed Doors, Case Study of “Aluminium plant Podgorica”*, Podgorica, 2006

<sup>29</sup> Daily Vijesti, *MANS submitted appeal against Djukanović and Lukšić*, Podgorica 3rd July 2013

<sup>30</sup> Information on the total amount of the “Aluminium Plant Podgorica” costs for Government provided in European Commission, *Montenegro 2014 Progress Report* Brussels, 8<sup>th</sup> October 2014.

<sup>31</sup> Lučić, Dragan, *Appropriate to be robbed*, *Weekly Monitor*, Podgorica, 3<sup>rd</sup> August 2012

According to information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015, after the activation of the 150 million Euros worth state guaranties for “Aluminium Plant Podgorica” there was no revision of the State budget – meaning that the means were to be found from the alternative sources and in this case it was, at the time, newly introduced Tax bill.

<sup>32</sup> Settlement agreement signed on 16<sup>th</sup> November 2009.

<sup>33</sup> Signed between Montenegro and Cyprus where the company is registered.

<sup>34</sup> Milošević, Milorad, Milić, Rajko, *In Deripaska’s firm are optimistic: They believe that they will take 900 million from Montenegro*, Daily Vijesti, Podgorica, 18<sup>th</sup> May 2015

D.M, *Make an agreement with the Russians or you will bankrupt*, Daily Dan, Podgorica, 04. March 2015

<sup>35</sup> *Law on the State Audit Institution*, adopted by Montenegrin Parliament in 2004 and last time changed in 2014, article 4 - defines that the State Audit Institution is the highest body for control of management of state budget and property, local governments, funds, Central Bank of Montenegro and other legal entities in which the state participates in the property, data from official web page of the State audit Institution

<sup>36</sup> More concretely Ministry of Economy and Ministry of Finance

<sup>37</sup> State Audit Institution, *Report on audit: State Guaranties issued by The Government of Montenegro in 2010 and 2011*, Podgorica, 29<sup>th</sup> April 2013.

<sup>38</sup> Law on the State Audit Institution, adopted by Montenegrin Parliament in 2004 and last time changed in 2014, article 10

<sup>39</sup> Including: “Montenegro Airlines Company”, “Post of Montenegro” etc

<sup>40</sup> *Decision Establishing Levels of Secrecy over Privatisation Data*, adopted by the Council for Privatisation and Capital Projects on 27<sup>th</sup> January 2014

being protected.<sup>41</sup> In addition to this, the commercial courts have also reintroduced practices that limit access to information on privatisation conducted through insolvency. They are refusing to provide any information on privatisations on different grounds or by simply failing to respond to requests.

These longstanding practices by state institutions can have further devastating effects on Montenegro, taking into account the fact that in the past non-transparent privatisations ended up imposing significant burdens on the state budget and left enterprises destitute.

### NO CONTROLS – NO INVESTMENTS

One important aspect of accountability in privatisation processes is connected to the obligation of responsible institutions to control the implementation of investments defined by contracts.

However, the *Montenegrin Privatisation Law* and the *Law on Insolvency Procedures* do not contain any provisions related to the obligations for relevant institutions to monitor privatisation contracts, nor do they contain information or details on modes of monitoring and control over the implementation of contractual obligations. Furthermore, these laws do not define any corrective or sanctioning system for investors that fail to invest in companies or breach their contracts.

On the other hand, in practice, in most privatisation contracts, the obligation to monitor contracts was introduced. Nevertheless, the contracts fail to thoroughly define how the monitor is selected, which conditions he/she has to fulfil, what is her/his authority and obligation, what aspects he/she should monitor, and how the whole process is conducted.

However, even this overly general and broad set of obligations was not respected in most cases. This left a wide open space for investors to breach the privatisation contracts they had signed – failing to respect associated investment, social, and ecological commitments.<sup>42</sup> Instead of improving

production and employment, many privatised enterprises entered into a whirlwind of asset stripping, money laundering and massive layoffs.<sup>43</sup>

### The “Daughters” of Privatisation

In 2010, the NGO MANS obtained information that the privatised *Steel Company Nikšić* was allegedly being used for money laundering or funnelling money out of the company by establishing a daughter company in the Netherlands. The daughter company was located in a residential area of Amsterdam, sharing the same address with another 154 firms, of which at least 86 had the same phone number, 26 had the same website, and at least nine had the same directors, including the daughter company of *Steel Company Nikšić*.<sup>44</sup> In spite of this, the Government continued to provide additional subsidies and benefits to this company through contractual annexes.<sup>45</sup>

Without control over the actions of the new owners, some companies were literally pulled down. Also a number of privatised companies were sold below market value and the new owners obtained vast real estate properties<sup>46</sup> on which they could build residential complexes or use the property as collateral for millions of Euros in loans.

### “Holy” Privatised Ground

The new owner of the wood processing company *Velimir Jakić* used 183,784 square meters of real estate as mortgage on a € 73-million loan, which was never returned to the bank. Subsequently, the bank seized the property. This was a direct breach of the privatisation contract that forbids any transfer of property to third parties before fulfilling investments – which were never realized.<sup>47</sup>

<sup>41</sup> | *Decision Establishing Levels of Secrecy over Privatisation Data*, adopted by the Council for Privatisation and Capital Projects on 27<sup>th</sup> January 2014

<sup>42</sup> Information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015

Information from the interview with the Chairperson of the Parliament Commission for Monitoring and Control of Privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>43</sup> Information from the interview with the Chairperson of the Parliament Commission for Monitoring and Control of Privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>44</sup> Krcić, Esad, *MANS discovered potential causes for troubles of “Steel Company” Nikšić*, Radio free Europe, Podgorica, 30<sup>th</sup> March 2010

<sup>45</sup> Press release of Vanja Čalović, Executive director of NGO MANS, *The Government and Inspections tolerated breaches of law made by the new owners of “Steel Company Nikšić”*, NGO MANS, Podgorica, 29<sup>th</sup> September 2010

<sup>46</sup> Information from the interview with the Chairperson of the Parliament Commission for Monitoring and Control of Privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>47</sup> Information from the Criminal Appeal (NGO MANS number:16085/02 , submitted to the Basic State Prosecutor, Podgorica, 28.02.2012)



However, even though most contracts provided for a number of sanctions, the monitoring failed as well as subsequent penalties. One of the main reasons for this oversight failure could be that the new investors were closely connected to high-ranking state officials, and in some cases there are a suspicions that the new owners of privatised enterprises are, in fact, government officials and politicians who are hiding behind front investors or offshore companies.<sup>48</sup>

### PRIVATISATION FAILED - NOBODY IS RESPONSIBLE

Even though workers and minority shareholders have provided information on the violation of laws and privatisation contracts to the relevant institutions<sup>49</sup>, these institutions rarely took action to protect the public interest and prevent breaches of relevant laws and contracts.

Based on information obtained from workers/minority shareholders, and some information obtained through investigations, the NGO MANS has submitted nearly 110 criminal appeals/initiatives against state officials responsible for privatisation. However, state prosecutors rejected over 65% of the cases raised, while in over 30% of cases MANS still lacks information<sup>50</sup> on prosecutorial actions or outcomes. Only one case was brought before the courts and has been ongoing for years.<sup>51</sup>

Following, the *Telekom example* illustrates how the tentacles of corruption can lead to Montenegro's top politicians, in power since the beginning of the privatisation processes. This appears to be the main reason for the demonstrated lack of political will to prosecute corrupt practices in the privatisation process.<sup>52</sup>

### Did Somebody Mention Corruption in Privatisation?

The only, to some extent, officially proven corruption case - in terms of establishing facts, but not by the Montenegrin prosecution - is the case of *Montenegrin Telekom's* privatisation. In early 2012, the *U.S. Securities and Exchange Commission (SEC)* found that *Magyar Telekom*, which had purchased *Montenegrin Telekom* in 2005, had bribed a number of Government and state officials.<sup>53</sup> In 2014, the *U.S. Embassy in Podgorica* confirmed that the SEC had found that *Magyar Telekom* made € 7.35-million in corrupt payments to government officials in Montenegro to facilitate the acquisition of *Montenegrin Telekom*.<sup>54</sup> Some media claimed that the SEC report notes the involvement of "the sister of a high-ranking state official, who is working as a lawyer."<sup>55</sup> The media has speculated that this person is the sister of Prime minister Djukanović and that she took bribes on behalf of her brother.<sup>56</sup> Djukanović and his sister claim that she was not involved with *Magyar Telekom* in the privatisation process and that she was working on the process of *Montenegrin Telekom's* "legal reorganization" following its privatisation.<sup>57</sup> In 2014, only a few days after the US Embassy's statement, the Montenegrin prosecutor for organized crime and corruption declared that based on the information available from the *U.S. SEC*, there was no corruption in this case.<sup>58</sup> Media claimed that the prosecution for years avoided collecting remaining information on the case from U.S. relevant institutions<sup>59</sup> and only recently Montenegrin prosecution confirmed that they finally obtained these new data<sup>60</sup>.

<sup>48</sup> Information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015

<sup>49</sup> They approached a number of executive institutions, judiciary and the Parliament

<sup>50</sup> For almost three years, prosecution have not provided any information on the joint criminal appeal for 28 privatised companies – which was signed by over 600 workers and their fellow citizens.

<sup>51</sup> The Basic State Prosecutor Podgorica in response (MANS number 13-318/PVDT, received on 5<sup>th</sup> December 2013), to NGO MANS criminal appeal, regarding the case of "Tehnosteel HVT" Nikšić, which was submitted in 2010, stated that the case is ongoing in the Basic Court Nikšić

<sup>52</sup> Information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015

<sup>53</sup> Statement given by legal representative of U.S. Securities and Exchange Commission, published by Daily Dan, *We have evidences who is bribed in Montenegro*, Daily Dan, Podgorica, 10<sup>th</sup> January 2012

<sup>54</sup> *U.S. Embassy Statement Regarding Telekom Case*, Podgorica 19<sup>th</sup> March, 2014

<sup>55</sup> Milić, Rajko, A year after the disclosure of the "Telekom" Affair: We found out only who is the sister, Daily Vijesti, Podgorica, 23<sup>rd</sup> December 2012

<sup>56</sup> Aljazeera Balkans, *Djukanović has no information on corruption*, Aljazeera Balkans, 28<sup>th</sup> September 2012

<sup>57</sup> Milošević, Milorad, Milić, Rajko, Ana Kolarević worked for "Telekom" through "Sigma", Daily Vijesti, Podgorica, 26<sup>th</sup> January 2012

<sup>58</sup> Information from the interview with journalist of weekly Monitor Zoran Radulović held on 15<sup>th</sup> September 2015

<sup>59</sup> Prekić, Adnan, *New Information in Telekom Case*, Independent Balkan News Agency, Podgorica, 26<sup>th</sup> March 2014

<sup>60</sup> Ibid

<sup>61</sup> S. Đokić, *Affair Telekom, corruption without evidences*. Daily Večernje Novosti, Podgorica, 21<sup>st</sup> March 2014

<sup>62</sup> Jovović Mihailo, Radulović Mila, *They do not know English, or they are afraid what they could find out*, Daily Vijesti, Podgorica 15<sup>th</sup> March 2015

<sup>63</sup> Portal Vijesti online, *Stanković on Telekom affair: Nobody will be spared*, Portal Vijesti online, 2<sup>nd</sup> May 2015

Despite the devastating effects of corruption in privatisation, there is no single verdict for corruption related to privatisation. Since the privatisation processes began almost two decades ago, until now there are no concrete results in prosecuting corruption in privatisation. There are concerns that a number of these cases will not be prosecuted due to the expiration of the statute of limitations.<sup>61</sup> So far, the Government has not initiated legal amendments that would prevent such scenario, even though there are some good practices in neighbouring countries. Namely, Croatia solved this issue by amending its Constitution and subsequently adopting a new law<sup>62</sup> stipulating that criminal deeds in the area of privatisation should not be dismissed due to the expiration of the statute of limitations.<sup>63</sup>

Even for the biggest privatisation failures in Montenegro, there has been no political accountability or even corrective measures taken for those involved in privatisations.<sup>64</sup>

#### Exclusive Membership

Members of the *Council for Privatisation and Capital Investments* are appointed by the Government.<sup>65</sup> However, the majority of Council members are at the same time members of the Government. 52% of the members of the current *Council for Privatisation* are members of the Government,<sup>66</sup> including the deputy prime minister, six ministers, and the President of the Council is Prime Minister Djukanović. Since most of the members of the Council are top Government officials, this situation does not provide an adequate environment for the independent work of the *Privatisation Council* or for the objective monitoring of its activities.

Parliamentary oversight mechanisms for the privatisation process have generally failed to

<sup>61</sup> The statute of limitation for corruption in privatisation differs and depends on type of criminal activities committed in this process

<sup>62</sup> *The Law on no statute of limitation for war profiteering and criminal deeds in the process of transformation and privatisation*, Croatian Official Gazette number 57/11

<sup>63</sup> Information presented at MANS 8<sup>th</sup> National Anticorruption Conference by Krešimir Sikavica, Head of the Department for Economic Crime and Corruption of the Ministry of the Interior of Republic of Croatia, Podgorica, 9<sup>th</sup> December 2014

<sup>64</sup> Information from the interview with the Chairperson of the Parliament Commission for monitoring and control of privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>65</sup> *Decision on scope of work and structure of the Council for Privatisation and Capital projects*, adopted by Montenegrin Government at the session held on 10<sup>th</sup> December 2009 and last time amended in 2011, article 4

<sup>66</sup> *Decision on appointment of the members of the Council for Privatisation and Capital Investments*, adopted by the Government at the session held on 27<sup>th</sup> December 2012

produce concrete results.<sup>67</sup> Parliamentary working bodies usually could not agree on conclusions and recommendations regarding the privatisation processes.

For example, Parliament formed a Committee of inquiry to investigate the *Telekom* case, but after months of work not a single conclusion was agreed upon by Committee members.<sup>68</sup>

Even in cases where some conclusions and recommendations are adopted, they generally remain unimplemented by the executive and/or prosecution.<sup>69</sup> For instance, the Parliament adopted conclusions regarding the *Aluminium Plant Podgorica (KAP)* on four occasions,<sup>70</sup> in order to resolve issues in the company and prevent further burdens on the state budget, which were mainly not implemented by the executive.<sup>71</sup> Also, the Parliamentary permanent working body, the Commission for Monitoring and Control of Privatisation,<sup>72</sup> for years has been holding sessions dedicated to concrete privatisations, including the adoption of a number of conclusions that were not implemented by the executive.<sup>73</sup>

Even though Members of Parliament were informed on a number of issues in the privatisation process, they never used their right to initiate analysis of the Law and identify weaknesses and loopholes in relevant legislation.

<sup>67</sup> Information from the interview with the Chairperson of the Parliament Commission for monitoring and control of privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>68</sup> European Commission, *Montenegro 2013 Progress Report Brussels*, 16<sup>th</sup> October 2013

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<sup>69</sup> Information from the interview with the Chairperson of the Parliament Commission for monitoring and control of privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

<sup>70</sup> Conclusions adopted by Parliament of Montenegro, Podgorica, 29<sup>th</sup> December 2013

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<sup>71</sup> CDM online portal, *Conclusions related to "Aluminum Plant Podgorica" met as much as it was possible*, Podgorica, 14<sup>th</sup> April 2015

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<sup>72</sup> *Law on Privatisation*, adopted by Parliament of Montenegro in 1996 and last time amended in 2004, article 18a

<sup>73</sup> Information from the interview with the Chairperson of the Parliament Commission for monitoring and control of privatisation Janko Vučinić, held on 18<sup>th</sup> September 2015

## CONCLUSION AND RECOMMENDATIONS

Based on the analysis of privatisation legislation in Montenegro, it has become apparent that it leaves room for discretionary decisions and free interpretation of its provisions by state officials. Also, the Government has recognised in its Strategy for the fight against corruption and organised crime, that privatisation is an area prone to corruption. Consequently, the Action Plan for the implementation of a Strategy proscribed a number of changes to the *Privatisation Law*, as well as a number of measures to increase transparency, public participation, and oversight over the privatisation processes – all aimed at preventing and fighting corruption. However, most of these measures have remained unimplemented for years.

In order to prevent the same scenarios that played out in previous privatisations from repeating themselves, some essential changes to the relevant privatisation legislation are necessary, including concrete changes in the policies and practices of prosecuting authorities and the Parliament. Therefore, MANS recommends following steps:

### **Introduce a more strategic approach to planning and preparing state owned enterprises for privatisation by amending the *Law on Privatisation* and the *Law on Insolvency Procedures* to:**

- ✓ Proscribe obligations of development of feasibility studies, cost-benefit analysis, and risk assessments for each company slated for privatisation;
- ✓ Define methods through which certain privatisations are conducted, with clear criteria for opting for specific methods and clear procedures for their implementation;
- ✓ Proscribe obligations of asset valuation for the companies that must be conducted, at the earliest, a year before privatisation.

### **Improve the monitoring and penalty system for the implementation of privatisation contracts by amending the *Law on privatisation* and the *Law on insolvency procedures* to:**

- ✓ Proscribe obligations for the semi-annual control of the implementation of privatisation contracts by new investors, with defined criteria on the selection of monitors, their focus of control, and their method of reporting to the relevant institutions;
- ✓ Establish a penalty system for investors that breach contracts and fail to invest in their companies, with defined penalties for all types of contractual violations and defined criteria and steps for contract termination by the Government;
- ✓ Define strict rules based on which annexes and protocols to the privatisation contracts can be done, ensuring that the annexes must be grounded in additional analyses of effects of possible contractual changes and to be available before final decisions for public discussion.

### **Increase transparency of all phases of the privatisation procedure by amending the *Law on Privatisation* and the *Law on Insolvency Procedure* in order to:**

- ✓ Ensure access to public information related to the preparation of privatisation contracts and annexes as well as to information on the implementation of privatisation obligations;
- ✓ Ensure opportunities for public discussions on the conducted analysis, in preparation for privatisation, and the planning of strategic privatisations;
- ✓ Define clear criteria for the appointment of members to the *Council for Privatisation*, ensuring that at least one member is representative of NGOs with expertise in this area.

### **Ensure effective prosecution in future possible cases of corruption in privatisation by amending relevant legislation to insure no statute of limitation is applied for criminal deeds in the process of privatisation.**

### **Improve proactive oversight mechanisms of the *National Parliament* in the privatisation process by:**

- ✓ Increasing use of control mechanisms of the National Parliament in the privatisation processes;
- ✓ Developing a system for monitoring the implementation of conclusions and recommendations by the Commission for the monitoring and control of privatisation;
- ✓ Analyzing relevant legislation in order to identify the main weaknesses and loopholes in adopting improved legislation.



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