

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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KOSOVO: SLAPP SUITS SEEKING TO SILENCE ENVIRONMENTAL ACTIVISTS MUST END

Kelkos Energy should withdraw the defamation lawsuits filed against environmental activists in Kosovo* as they appear to be designed to obstruct their work, intimidate, and silence them, Amnesty International said today. As unfounded and disproportionate claims for damages have become a clear barrier for the work of human rights defenders and civil society organizations, authorities should take appropriate measures to ensure a safe and enabling environment in which they can operate without fear of reprisals.

Kelkos Energy, a large Austrian-based hydropower management company with operations in Kosovo,¹ has used defamation lawsuits and threats of such lawsuits to target activists who publicly speak about the environmental impact of hydropower plants operating in the country's natural protected areas and the lack of necessary scrutiny by Kosovo's authorities in the process of issuing operating licenses for such plants.

On 1 June 2020, Kelkos Energy filed a defamation lawsuit against Shpresa Loshaj, an environmental activist and the founder of the non-governmental organization Pishtarët (Torches). In the lawsuit, Kelkos Energy asked for EUR 100,000 in damages for Ms Loshaj's public campaigning against the company's operations in the Deçan/Deçani (Deçan) region, where Kelkos Energy manages four hydropower plants. Kelkos Energy has also demanded that Ms Loshaj publicly retract and apologize for her statements and refrain from stating "untrue facts" about the company in the future.² In a similar lawsuit in January 2020, Kelkos Energy demanded EUR 10,000 in reputational damages from Adriatik Gacaferi, an environmental activist from Deçan resulting from a Facebook post criticizing the company's hydropower plant operations in the Deçan region.³ Kelkos Energy demanded that Mr Gacaferi remove the contested post and publish a retraction. Both lawsuits are still pending.

Amnesty International has worked closely with the lawyer representing the two activists⁴ and considers the lawsuits against Ms Loshaj and Mr Gacaferi in Kosovo to be Strategic Lawsuits Against Public Participation (SLAPPs). Such lawsuits are meritless in nature and intended to intimidate and silence critical voices on issues of public interest. SLAPPs are increasingly becoming a barrier for human rights defenders and journalists who expose those in power, particularly corporations, as they unduly restrict the right to freedom of expression and discourage the public from exposing wrongful conduct by the authorities and corporations.

* Amnesty International includes an asterisk at the end of the name "Kosovo" as it is a designation that has broad international agreement. It is the result of a 2012 agreement to allow Kosovo* to represent its institutions without the authority of the United Nations Mission in Kosovo (UNMIK) in regional forums. The EU-negotiated Agreement on Regional Representation and Cooperation states that Kosovo* shall be referenced at regional meetings and in regional agreements with an asterisk and a footnote reading "This designation is without prejudice to positions on status, and is in line with UN Security Council Resolution 1244 and the International Court of Justice Opinion on the Kosovo declaration of independence."

¹ Kelkos Energy is a subsidiary of Kelag-Kärntner Elektrizitäts, a large public provider of energy in Austria. Kelkos Energy owns four hydropower plants in Kosovo's west: Lumbardhi 1 (8 MW), Lumbardhi 2 (7 MW), Belaja (7.5 MW) and Deçani/ Deçani (9.5 MW).

² Kelkos Energy Sh.P.K Lawsuit for damage compensation due to defamation against Ms Shpresa Loshaj, 27 May 2020, available to Amnesty International.

³ Kelkos Energy Sh.P.K Lawsuit for damage compensation due to defamation against Mr Adriatik Gacaferi, 31 January 2020, available to Amnesty International.

⁴ Amnesty International has collaborated closely with the lawyer representing Ms Loshaj and Mr Gacaferi in their case. In addition to representing the activists, the lawyer is also serving as a Fellow in Amnesty International's Gender, Sexuality and Identity team. This is a temporary position and not paid by Amnesty International. The research conducted for this public statement and the findings are the sole responsibility of the Europe Regional Office team, which covers the Balkans.

Amnesty International has requested and received an official response from Kelkos Energy concerning the findings included in this document. Parts of the company's statement are referenced in the text. Kelkos Energy's statement is reproduced in its entirety and annexed to this public statement.

CASE OF SHPRESA LOSHAJ AND HYDROPOWER PLANTS IN DEÇAN

Over the years, Ms Loshaj has been a vocal critic of the growing, and seemingly unchecked, exploitation of Kosovo's water resources for the production of energy. She has used social media and appeared on television to raise concerns about the environmental impact of the hydropower plants operating in the Deçan region, a protected national park in western Kosovo set against the backdrop of the dramatic Bjeshkët e Nemuna/Prokletije range (the Accursed Mountains) - the natural border between Kosovo, Albania and Montenegro. Having personally observed massive excavation in the area, frequent landslides and parched riverbeds in places where water was once abundant, Ms Loshaj started questioning the legality of Kelkos Energy's operations in the valley. Her public engagement on this issue and her demands for greater transparency in the licensing process and better oversight over energy companies' operations have led to the defamation lawsuit filed by Kelkos Energy.

"When I visited the Deçan valley in 2018, having been away from Kosovo for many years, I was shocked to see how much it's changed. Instead of pristine rivers and pastures I remember from my childhood, there was large-scale destruction. People living there were unhappy. Yet, no one was willing to speak up. That made me even more determined to speak about hydropower plants because someone must. This is not just about rivers. It is about our institutions too – they failed to protect the environment, they failed to consult with the communities and they failed to enforce the law." – *Shpresa Loshaj, an environmental activist*

Lack of transparency and community consultations

In May 2020, Ms Loshaj wrote to the government authorities in Kosovo to inquire as to how Kelkos Energy was able to obtain a temporary operating license from the Energy Regulatory Office (ERO) without first securing an environmental permit from the Ministry of Environment, Spatial Planning and Infrastructure (Ministry of Environment) as required by law.⁵ She also publicly questioned the way in which the process was conducted and raised broader concerns about the government's commitment to ensure proper licensing, operating and supervision of hydropower plants. Based on an independent legal analysis⁶ of the licensing process concerning two companies, including Kelkos Energy, Ms Loshaj argued that the companies were operating in Kosovo on what she called "fictitious licenses."

Although Kosovo's ERO issued temporary licenses to Kelkos Energy in 2019, Kelkos Energy had not obtained the required environmental permits until November 2020.⁷ Ms Loshaj questioned the legality of the process, as temporary licenses too require that the applying company meets all the legal requirements, including obtaining an environmental permit.⁸

⁵ Kosovo's Law on Environmental Protection stipulates that constructed facilities, installations and machinery that have been subject to Environmental Impact Assessment cannot start operations without an environmental permit, which must be obtained within six months during the application procedure and probation period for technical approval. See Article 31 of the Law on Environmental Protection, no. 03/L-025. Deputy Minister of Environment confirmed for Amnesty International that all hydro powerplants must obtain an environmental permit and a water permit in order to operate. Amnesty International interview (on-line) with Deputy Minister of Environment, 22 June 2021.

⁶ Ms Loshaj has asked the Balkans Investigative Reporting Network (BIRN)'s Legal Department for a legal assessment of Kosovo's Regulation on Licensing of Electricity Activities, which confirmed that for a company must obtain an environmental permit in order to be licensed to operate. Correspondence between Ms Loshaj and BIRN is available to Amnesty International.

⁷ In November 2020, Ministry of Environment issued the environmental permits for hydropower plants Belaje and Decan/ Deçani, but not for Lumbardhi II, as noted in Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021. See also Prishtina Insight, "Two KelKos hydropower plants granted 40-year licence," 12 November, 2020, <https://prishtinainsight.com/two-kelkos-hydropower-plants-granted-40-year-licence/>. At the time of the defamation lawsuit against Ms Loshaj, in June 2020, Kelkos did not have an environmental permit. In July, Kosovo's Energy Regulatory Office (ERO) confirmed for Der Standard that the environmental permits had not been issued to Kelkos by the time of writing, but noted that Kelkos received "temporary operating licenses" for its hydropower plants. Director for Environment and Water Protection in the Ministry of Economics and Environment told Der Standard that the environmental impact assessment had not been carried out. See Der Standard, "Flusssterben im Kosovo: NGOs wehren sich gegen Kelag-Tochter," 7 July 2020, <https://www.derstandard.at/story/2000118556793/kelag-tochter-klagt-kosovarische-ngo>

⁸ Law on Environment, Art.31. Energy Regulatory Office, Rule ZRRE/Nr.07/2017, Arts. 5, par.6 & 9, par. 1.3.

Moreover, the company had for years operated at least two of its hydropower plants without the necessary licenses.⁹ Kelkos Energy has disputed this stating that at no time did its hydropower plants operate without the explicit approval of ERO.¹⁰ However, ERO found in its 2019 annual report that Kelkos Energy has had active commercial operations in Deçan and Belaje since 2016 despite not having a license for energy production or an environmental permit.¹¹ ERO's report states that "this enterprise [Kelkos Energy] still does not have electricity generation license for any of the three (3) hydropower plants due to the non-issuance and non-submission to the Regulator of the Environmental Permit issued by the Ministry of Environment and Spatial Planning of Kosovo."¹²

Kelkos Energy acknowledged that "the post-construction permission process for the Environmental Permits lasted more than 4 years (despite a legally prescribed period of a maximum of 6 months for the permission process)" but that this was due to the hydropower project being the "first project of such complexity" and the delays in the Ministry of Environment, which was also criticized by ERO for "continuously violating the deadlines" for the permits.¹³

Ms Loshaj questioned the legality of the decisions without ensuring that all legal requirements, including environmental permits, are first met.¹⁴ While the laws on environmental protection and laws regulating licensing of energy activities¹⁵ provide for a rigorous and transparent process for obtaining operating licenses, in practice, the authorities - from individual municipalities to the national ministries - have often negotiated contracts with or issued permits to energy companies without securing the necessary environmental impact assessments or without the required consultations with local communities.¹⁶

The lack of proper environmental scrutiny has not been the only irregularity in the licensing process. The affected communities in Deçan and other areas, such as Shtërpçë/Štrpçe municipality, have been denied access to information and excluded from decision-making on the activities of hydropower plants operating in the areas where they live. Kosovo's Law on Environmental Protection¹⁷ and Law on Waters¹⁸ stipulate that the authorities have a responsibility to ensure active public participation in decision-making on matters of the environment, including water-management, and to take into consideration the interest of all stakeholders when making decisions that affect water resources. The rights of people to access public documents and influence decisions related to the environment in which they live are also guaranteed by Kosovo's Constitution.¹⁹

Yet, Ms Loshaj argued that ERO failed to make Kelkos Energy's license applications public or solicit feedback from the affected communities.²⁰ Kosovo's Ombudsperson Institution noted in April 2021 that the authorities at all levels, including the Ministry of Environment and the Deçan municipal authorities, actively denied access to information and relevant documents concerning the operations of hydropower plants to civil society organizations and the local community and failed to comply with a request for information during the Ombudsperson's inquiry on the licensing process.²¹ Kelkos Energy told Amnesty International that the company organized a public consultation process with the community at the very start of the project in 2011.²² In February 2021, months after the defamation lawsuits against Ms Loshaj and Mr Gaceferi were filed, Kelkos Energy voluntarily published documentation and expert studies pertaining to the hydropower plants in order to "overcome potential transparency deficit...which Ms Loshaj continuously criticized".²³

⁹ Energy Regulatory Office (ERO), Annual Report 2018, March 2019.

¹⁰ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg. 3

¹¹ Energy Regulatory Office (ERO), Annual Report 2018, March 2019.

¹² Energy Regulatory Office (ERO), Annual Report 2018, March 2019.

¹³ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg. 4

¹⁴ Letter from Shpresa Loshaj to Kosovo's Minister of Environment Lumir Abdixhiku, 06 May, 2020. Available to Amnesty International.

¹⁵ Kosovo's Law on Environmental Protection, no.03/L-25, Art.2 & 6; Kosovo's Law on Water, no.04/L-147, Art.84. Kosovo's Law on Energy Regulator, Art.28, para. 3. Energy Regulator Office Rule on Licensing Energy Activities in Kosovo, 31.03.2017, Art.6.

¹⁶ Ombudsperson Institution, Report with recommendations regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country and access to documents, 03 February 2021.

¹⁷ Kosovo's Law on Environmental Protection, no. 03/L-025, Art. 57.

¹⁸ Kosovo's Law on Water, no. 04/L-147, Arts. 3 & 6.

¹⁹ Kosovo's Constitution, Arts. 41 & 52 (2).

²⁰ Balkan Energy News, "Small hydropower plant owner sues activist Shpresa Loshaj in Kosovo* for defamation," 22 February 2021, <https://balkangreenenergynews.com/small-hydropower-plant-owner-sues-activist-shpresa-loshaj-in-kosovo-for-defamation/>

²¹ Ombudsperson Institution, Report with recommendations regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country and access to documents, 03 February 2021.

²² Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg. 5.

²³ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg. 4.

In conversation with Amnesty International, the Ministry of Environment confirmed that - up until now - it was not possible for the public to request and obtain documents relating to the hydropower plants that were held by the Ministry.²⁴ The Ministry, however, plans to launch a new initiative that would provide a public permit-tracking system and access to relevant documents and procedures to increase the transparency of the process.²⁵ There is little doubt that the public campaigning by Ms Loshaj and Mr Gacaferi and civil society organisations in Kosovo has increased public awareness about the licensing process and encouraged both Kelkos Energy and the new Ministry of Environment to more meaningfully engage with citizens and enable them to access important documents on issues of public interest.²⁶

In 2019, amid growing concerns about the lax procedures and potentially irreversible consequences on the environment, Kosovo's Ombudsperson Institution urged the Ministry of Environment to temporarily suspend the operations of hydropower plants in Deçan and Shtërpcë, but the Ministry did not comply with the interim measures.²⁷ Kosovo's Ombudsperson's further inquiry into the licensing and operation of hydropower plants across Kosovo revealed "shortcomings regarding the process of operation" and "uncertainty regarding the legality of the operations of hydropower plants as a result of lack of transparency and accountability of competent bodies".²⁸ The Ombudsperson Institution's report published in February 2021 concluded that contract procedures and the process by which operating licenses were awarded often fell short of ensuring the communities' rights to access to information, public participation in decision-making and access to justice.²⁹ It specifically cited the lack of transparency on the part of responsible authorities and widespread ambiguity regarding the procedures for organising public hearings and ensuring public participation.³⁰

In September 2020, Kosovo's Parliament opened an official inquiry on the licensing, operation, supervision and application process for hydropower licenses.³¹ At the time, the then Minister of Economy and Environment, Blerim Kuçi, said that the concerns of environmental activists and affected communities were "legitimate" and conceded that some of the irregularities may have occurred as the government "was under pressure to issue permits due its commitment to boost the share of renewable energy to 30%".³² The Parliamentary committee overseeing the inquiry has held a number of hearings over the last year but the results of the inquiry were not available at the time of writing.³³

In December 2020, NGO Pishtarët and Group for Legal and Political Studies (GLPS) filed a lawsuit against the Ministry of Environment and ERO in which they requested that the environmental permits and operating licences issued to Kelkos in

²⁴ Amnesty International interview (on-line) with Deputy Minister of Environment, 22 June 2021.

²⁵ Amnesty International interview (on-line) with Deputy Minister of Environment, 22 June 2021.

²⁶ Ms Loshaj and Mr Gacaferi's influence was acknowledged both by Kelkos Energy in their response to Amnesty International, but also all other interlocutors in public institutions.

²⁷ Ombudsperson Institution, Report with recommendations regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country and access to documents, 03 February 2021. The Ombudsperson Institution concluded that "the issue of operation of the above-mentioned hydropower plants [operated by Kelkos] is being followed with great uncertainty, due to lack of transparency of the institutions responsible for the legality of their operation, as well as due to the shortcomings regarding the process of public participation in decision-making. According to the Ombudsperson, the responsible institutions have never managed to be clear enough about the legality of the operation of hydropower plants and their actions have continued to remain weak in terms of resolving the issue, while the reaction and dissatisfaction of citizens and civil society are growing."

²⁸ Kosovo Ombudsperson Institution Report, <https://www.oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/>

²⁹ Ombudsperson Institution, Report with recommendations regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country and access to documents, 03 February 2021.

³⁰ See also Kosovo Civil Society Consortium for Sustainable Development (KOSID), "Legal violations running rivers dry", November 2020, <https://www.kosid.eu.com/wp-content/uploads/2020/12/Legal-violations-running-rivers-dry-KOSID-.pdf?fbclid=IwAR2gQyvXs8iss2jstXzxEDnL3k-zaJGa2yrQyggmT5wmYg704WFitnrTVB4>

³¹ Balkan Green Energy News, "Kosovo parliamentarians reviewing small hydropower permits," 29 September 2020, <https://balkangreenenergynews.com/kosovo-parliamentarians-reviewing-small-hydropower-permits/>

³² Kallxo, "The Minister of Environment feels 'ashamed' over the degradation of the river in Decan," 22 September 2020, <https://kallxo.com/lajm/ministri-i-mjedisit-ndihet-i-turperuar-nga-degradimi-i-lumit-ne-decan/>

³³ Kosovo's Parliamentary majority has changed after the snap elections in February 2021, which contributed to the delay in finalizing and publishing the findings of the inquiry. A member of Kosovo's Parliament Fitore Pacolli told Amnesty International that the new Parliament would continue with the activities started by the inquiry. Amnesty International interview with Member of Kosovo's Parliament and Chairwoman of the Parliamentary Committee for Agriculture, Forestry, Rural Development, Environment, Spatial Planning and Infrastructure Fitore Pacolli, 22 June 2021.

November 2020 for two hydropower plants (Deçani and Belaje) are annulled due to irregularities in the licensing procedures.

While the court is still to decide on the merits of this case, in two related procedural decisions, in December 2020 and again in February 2021, the Basic Court in Prishtina decided to temporarily suspend the concession for the two licences until the final court decision in the above case due to the risk of “potentially irreversible damage to the environment.”^{34 35} In April 2021, however, the Court of Appeals overturned the first instance decisions by Basic Court, allowing Kelkos Energy to continue to operate until the court issues its final decision in the original case from December 2020.”³⁶ Pishtarët and GLPS lodged a request for extraordinary review to the Supreme Court of Kosovo against the April Court of Appeal ruling on 23 June 2021.

In April 2021, the Minister of Environment announced plans to establish a working group to review the administrative procedures for the issuance of licenses to hydropower plants.³⁷ Most recently, on 25 May 2021, a disciplinary committee of the Ministry of Environment discharged the Acting Director of the Regional River Basin Authority, Gani Berisha, because of violations in the licensing process of hydropower plants, including water permits issued to Kelkos Energy for three of its hydropower plants in Deçan – Lumbardhi II, Belaja and Deçani.³⁸ The working group’s report and the findings are expected to be released by the end of June.

Despite the acknowledgement by government officials and the Ombudsperson Institution of wrongdoing in the official process to grant licenses – supporting the concerns initially raised by Ms Loshaj and other environmental activists - Kelkos Energy appears decided to continue with its defamation suits. Kelkos Energy told Amnesty International that the company “pursued attempts to mediate” with Ms Loshaj and Mr Gacaferi and would prefer to settle the dispute.³⁹ While Kelkos Energy did not specify the exact terms of such settlement, they said that, for example, if Mr Gacaferi were “prepared to retract his untrue statements, Kelkos Energy would withdraw the pending claim”.⁴⁰ Ms Loshaj denied that Kelkos Energy directly engaged her on this issue but stressed that a retraction of her statements would not be acceptable.

The ongoing judicial proceedings against Ms Loshaj and Mr Gacaferi are diverting their energy and resources towards defending themselves in court and having a potentially devastating impact on their human rights and environmental work. The seemingly unfounded claims and excessive damages sought by Kelkos Energy could hinder the power of civic action in raising awareness about issues of public interest and holding governments and corporations to account. Attempts to silence critical voices through the misuse of the justice system not only undermine the rights to freedom of expression and access to information but can have a tremendous chilling effect on civil society organizations and other public watchdogs.

Environmental damage

Like other countries in the region, Kosovo has enthusiastically embraced the construction of small hydropower plants. As an aspiring EU country, it had a considerable incentive to join EU’s pursuit of renewable energy to replace the old coal-fired power stations and it has greatly benefited from credits for renewable energy projects provided by the European financial institutions and commercial banks.⁴¹

The government’s commitment to increase renewable energy and strong commercial interests combined with weak institutions and widespread corruption,⁴² however, resulted in poorly enforced regulations and led to the proliferation of hydropower plants in a process that prioritized profits over the environment. Over the years, dozens of hydropower plants were constructed on fast-flowing mountain rivers and streams. As a result, construction sites and temporarily constructed

³⁴ Basic Court of Prishtina, Department of Administrative Matters, Decision A.nr.2081/2020, 08 December 2021.

³⁵ Basic Court of Prishtina, Department for Administrative Matters, Decision A.nr.2081/2020, 11 February 2021.

³⁶ Court of Appeals Prishtina, Decision AA.nr.320/21, 24 May 2021

³⁷ The new Minister of Environment, Liburn Aliu, announced in April 2021 that the government would renew all licenses issued to hydropower plants. See: Kallxo, “Minister Aliu warns of review of hydropower plant permits,” 24 April 2021, <https://kallxo.com/lajm/ministri-aliu-paralajmeron-shqyrtim-te-lejeve-te-hidrocentraleve/>

³⁸ Koha, «The director of ARPL is fired for violations in HPP licensing», 25 May 2021, https://www.koha.net/arberi/272584/shkarkohet-drejtori-i-arpl-se-per-shkelje-ne-licencim-te-hc-ve/?fbclid=IwAR1MARgVil4cwUX4kSfdnQhXabz__AzWw7mnlFQhSHEh-R85rtz2RPVzpFk

³⁹ Kelkos Energy/Kelag International’s written response to Amnesty International’s request for information, 21 June 2021, pg 1 and 4.

⁴⁰ Kelkos Energy/Kelag International’s written response to Amnesty International’s request for information, 21 June 2021, pg 15

⁴¹ Balkan Insight, “Green Ideals, Dirty Energy: The EU-backed renewables Drive That Went Wrong,” 15 December 2020, <https://balkaninsight.com/2020/12/15/green-ideals-dirty-energy-the-eu-backed-renewables-drive-that-went-wrong/>

⁴² Kosovo ranks 101st out of 180 countries on Transparency International’s Corruption Perception Index.

roads used for transport of materials have spoilt the pristine mountainside and large pipes and turbines have gradually depleted water sources that farmers have used to irrigate their fields for generations.

Ms Loshaj, Mr Gacaferi and other environmental activists in Kosovo have frequently spoken in public about the environmental degradation caused by hydropower plants. Ms Loshaj has argued that the hydropower plants, which siphon water from rivers to generate electricity, have caused severe water shortages in the villages in the region and had a significant negative impact on the ecology of the rivers. Indeed, the Kosovo Environmental Protection Agency (KEPA) reported on the damage to the environment caused by the proliferation of hydropower plants, including in the Deçan area where Kelkos Energy operates a plant. KEPA found that the riverbed at the source of Lumbardhi river has been so degraded due to the operations of hydropower plants that the surrounding plant life that heavily relies on the water and humidity provided by the river has been practically decimated.⁴³ KEPA, environmental activists and civil society organizations,⁴⁴ as well as the communities living in the affected areas, have noted a significant decrease in water volumes that affects aquatic animal species and changes in air humidity and microclimate endangering the surrounding forest and increasing the risk of landslides.⁴⁵ Kelkos Energy disputed these findings in a letter to Amnesty International, noting that the company has made significant investments into the rehabilitation of the Lumbardhi river since the start of the construction.⁴⁶ The company further cited a letter submitted to Ombudsperson's Institution by the Kosovo Police Environmental Crime Unit, which stated that their inspection did not notice any degradation of environment around the three hydropower plants operated by Kelkos.⁴⁷ Nevertheless and despite the findings of the Kosovo Police, the Ombudsperson's Institution made the recommendation that the Ministry of Environment should temporarily suspend the hydropower operations, citing lack of transparency, irregularity in licensing procedures, but also "clear impact on the degradation of the environment."⁴⁸

The uncontrolled growth of hydropower plants has not only been a concern for environmental activists. Over the past two years, local communities have become increasingly distrustful of the licensing process and resistant to the plans of new plants constructed in their areas. The Albanians and Serbs living in divided villages after the 1989-1990 conflict in Kosovo protested together throughout 2019 and 2020 against the construction of new hydropower plants in Shtërpçë/Štrpce,⁴⁹ (which is managed by a different company) while demonstrations of thousands of citizens have already stopped similar projects in the city of Peja. "These hydropower plants have been a rallying point for these communities who got together to save their river," a Member of Parliament of Kosovo Fitore Pacolli told Amnesty International.⁵⁰ "They didn't care about their nationality; they cared about their water."⁵¹

In April 2021, the Minister of Environment and Spatial Planning, Liburn Aliu, reported that during unannounced visits to some of the hydropower plants sites (not operated by Kelkos Energy) in Sharr/ Šar Mountain his team encountered disturbingly low levels of water in the affected rivers, which on the day of the official visit flowed regularly, suggesting that municipal officials and energy companies may be trying to conceal the true impact of their operations.⁵²

⁴³ Kosovo Environmental Protection Agency (KEPA), "Hydropower plants in national parks: Biodiversity risks," 25 February 2019. Kosovo Environmental Protection Agency (KEPA), "Report on State of Nature 2015-2017", page 68, available at: https://www.ammk-rks.net/repository/docs/Raporti_natyra_eng.pdf.

⁴⁴ Balkan Green Foundation and INDEP, "Hydropower plants in Kosovo – the problems and their real potential", March 2019, page 18. https://www.balkangreenfoundation.org/uploads/files/2020/July/13/Hydropower_Plants_in_Kosovo_the_problems_and_their_real_potential1594649058.pdf

⁴⁵ Kosovo Environmental Protection Agency (KEPA), "Hydropower plants in national parks: Biodiversity risks," 25 February 2019.

⁴⁶ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg 7.

⁴⁷ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg 8.

⁴⁸ Ombudsperson Institution, Report with recommendations regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country and access to documents, 03 February 2021, Para. 9

⁴⁹ Reuters, "Divided Kosovo mountain village unites to fight hydropower plant," 11 October 2019, <https://www.reuters.com/article/us-kosovo-environment-protest-idUSKBN1WQ21H>, N1, "Serbs, Albanians protest together against small hydropower plants in Kosovo," 27 February, 2020, <https://rs.n1info.com/english/news/a573059-serbs-and-albanians-join-in-protest-against-small-hydropower-plants-in-kosovo/>

⁵⁰ Amnesty International interview with MP Fitore Pacolli, 22 June 2021.

⁵¹ Amnesty International interview with MP Fitore Pacolli, 22 June 2021.

⁵² Kallxo, "Minister Aliu warns of review of hydropower plant permits," 24 April 2021, <https://kallxo.com/lajm/ministri-alIU-paralajmeron-shqyrtim-te-lejeve-te-hidrocentraleve/>

According to the World Bank's Water Security Outlook for Kosovo, the country is water scarce and experiencing among the lowest levels of water resources in the region.⁵³ Its limited water resources, with all but one river flowing out of its territory, are considered stressed and vulnerable due to institutional mismanagement, population and economic growth, irrigation needs, and additional demands of the energy sector, among other things.⁵⁴

With over 60% of the population in Kosovo living in rural areas and some of the highest poverty rates in Europe (25% of people live either below the national poverty line or in extreme poverty),⁵⁵ agriculture, which is heavily reliant on water resources, provides the only safety net for a significant percentage of the Kosovo's population. The unchecked proliferation of hydropower plants further threatens their livelihoods.

A PATTERN OF JUDICIAL HARASSMENT

Kelkos Energy's lawsuit against Ms Loshaj is not an isolated instance in the company's attempts to silence environmental activists. In a similar lawsuit in 2020, Kelkos Energy sued Mr Gacaferi, an environmental activist from Deçan, over his post on social media stating that one of the Kelkos Energy's hydropower plants had been syphoning 100% of the water in its pipes and failed to leave at least 30% of water in the riverbed.⁵⁶ Kelkos Energy demanded EUR 10,000 from Mr Gacaferi in compensation for reputational damage.

Kelkos Energy has used legal proceedings or the threat of lawsuits to try to discourage any discussion about its operations. In June 2020, 60 NGOs and activists from Kosovo (including Ms Loshaj) sent a letter to the Austrian Ministry of Foreign Affairs, the Austrian Embassy and the EU Delegation Office in Kosovo, in which they raised concern about the environmental degradation caused by the hydropower plants as well as the potentially irregular involvement of Austrian diplomats who, they argued, may have put undue pressure on local authorities during the licensing process.⁵⁷ Shortly before the NGO action, Kelkos Energy's lawyers wrote to all involved NGOs and Ms Loshaj, notifying them that they had submitted a defamation lawsuit against Ms Loshaj and threatened to take further legal action against her unless she retracted the letter within eight hours and apologized in writing "for causing irreparable reputational damage" to the company.⁵⁸ In the same vein, Kelkos threatened to take "legal approach against any individual who disseminates false information - with the intent to damage its reputation as a company."⁵⁹ In a communication with Amnesty International, Kelkos Energy strongly denied any improper intervention by the Austrian Embassy to Kosovo on behalf of the company and noted that the Ambassador accompanied Kelkos Energy to an occasional meeting "intended to find pragmatic solutions for ... administrative deficits," referring to the delays relating to the issuance of various outstanding permits.⁶⁰

While neither Ms Loshaj nor any other organization complied with Kelkos Energy's demands, no lawsuit was filed against the organisations at the time.⁶¹ However, the mere threat of a lawsuit can be sufficient to silence critical voices and has a chilling effect on human rights defenders and civil society organizations working to expose those in power. "I live abroad and can afford being vocal, but other activists in Kosovo have a lot more to lose – their jobs and their livelihoods. These lawsuits are intimidating and are meant to be so," Ms Loshaj told Amnesty International.

Kelkos Energy argues that Ms Loshaj and Mr Gacaferi's public campaigning against the hydropower plants have caused the delays in the licensing procedures and significant economic losses, as well as reputational damage to the company. Kelkos Energy claims that the lawsuits are "defensive measure of last resort to prevent [activists'] untrue statements from further damaging our company."⁶² Amnesty International, however, considers that official reports issued by public

⁵³ World Bank Group 2018, "Water Security Outlook for Kosovo," p.11.

⁵⁴ World Bank Group 2018, "Water Security Outlook for Kosovo," p.11.

⁵⁵ Kosovo Agency of Statistics & World Bank Group, "Consumption poverty in the Republic of Kosovo," May 2019, <http://documents1.worldbank.org/curated/en/210201560762490515/pdf/Consumption-Poverty-in-the-Republic-of-Kosovo.pdf>

⁵⁶ Basic Court of Peja, Lawsuit for damage compensation due to defamation against Mr Adriatik Gacaferi, 31 January 2020.

⁵⁷ Prishtina Insight, "60 organisations condemn Austrian embassy's role in 'illegal' hydropower operation," 30 June 2020, <https://prishtinainsight.com/60-organizations-condemn-austrian-embassys-role-in-illegal-hydropower-operation/>

⁵⁸ Email from Kelkos's lawyer Arianit Koci to Shpresa Loshaj and multiple NGOs, 26 June 2020. Available to Amnesty International.

⁵⁹ Email from Kelkos's lawyer Arianit Koci to Shpresa Loshaj and multiple NGOs, 26 June 2020. Available to Amnesty International.

⁶⁰ Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg 13.

⁶¹ In the email addressed to Ms Loshaj, Kelkos Energy lawyers informed her that they had already sued her in court and that if she sent the letter, they would extend the claims in the lawsuit to include the letter. This lawsuit is the one that Ms Loshaj received on 16 February 2021 and was filed on 1 June 2020. It, however, did not include the claims related to the letter.

⁶² Kelkos Energy/Kelag International's written response to Amnesty International's request for information, 21 June 2021, pg 1.

institutions, such as ERO, cast sufficient doubt on the licensing procedures to give space for Ms Loshaj and Mr Gacaferi to question the process. These reports include statements that provide basis for both environmental activists to engage publicly and express their concerns. Ms Loshaj and Mr Gacaferi filed numerous requests for documents pertaining to hydropower plants under the Freedom of Information Act, but received very few responses, prompting them to publicly demand greater transparency by both the authorities and the energy companies and more meaningful community involvement.⁶³

It is undeniable that Ms Loshaj and Mr Gacaferi's public engagement and tireless activism either directly led or contributed to the recent efforts by public institutions to investigate possible irregularities and ensure greater transparency of procedures. Some of these processes confirmed the activists' concerns and suspicions. The formation of the Parliamentary inquiry in September 2020, Ombudsperson Institution's investigation in 2019/2020 and Ministry of Environment's decision from April 2021 to review the licensing procedures for hydropower plants speak to the power of civic activism and the importance of public scrutiny of governmental processes that directly affect the lives of citizens. Ms Loshaj's efforts were recognized in March when she was awarded a Presidential honor for her work on protecting the rivers of Kosovo and praised by the President for "her courage to challenge injustice."⁶⁴

SLAPP SUITS SILENCE CRITICAL VOICES AND UNDERMINE FREEDOM OF EXPRESSION

"We, the people of Kosovo, went through the war so that we would be able to live and speak freely. I cannot accept that we fought and sacrificed so much for this land and our rights only to be told that we are not allowed to say anything about the destruction of our land and waters. But I won't stop. This is what freedom is – being able to speak up when you see injustice. We are the first generation of Kosovars to live in democracy and we owe it to those who gave their lives to enable us to live in democracy" - *Shpresa Loshaj, environmental activist*

SLAPP suits are legal cases brought, or threatened to be brought, with the intention of silencing or intimidating public participation. SLAPP suits often target journalists, human rights defenders, civil society organizations, activists or academics with the aim of silencing them and deterring other critical voices. SLAPP suits are not necessarily aimed at protecting the honour or reputation of an individual or a corporation, but rather to intimidate, tire and deplete the financial and psychological resources of their target.⁶⁵

The cost of fighting these legal actions can put extreme financial and other pressure on human rights activists forcing them to repurpose the already limited funds and resources from their work to defending the lawsuit. The litigation is often also successful in diverting the attention from the environmental or human rights issue to the legal defamation case itself. In the words of UN Special Rapporteur on the rights to peaceful assembly and of associations, SLAPP suits deflect discussions on corporate social responsibility that, "by masquerading as ordinary civil lawsuits, convert matters of public interest into technical private law disputes."⁶⁶ In Europe, SLAPP suits are mostly taking the shape of defamation charges with unfounded or disproportionate claims for damages.⁶⁷

⁶³ Interviews with Ms Loshaj and Mr Gacaferi, 16 June and 21 June 2021.

⁶⁴ Office of the President of the Republic of Kosovo, "Acting President Osmani awards the 'Shotë Galica' order to 8 women," March 22, <https://president-ksgov.net/en/news/acting-president-osmani-awards-the-shote-galica-order-to-8-women>

⁶⁵ Petra Bard, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, Ad-Hoc Request SLAPP in the EU Context, EU-Citizen: Academic Network on European Citizenship Rights, May 2020, https://ec.europa.eu/info/sites/info/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf. The Foreign Policy Centre, "The increasing rise, and impact, of SLAPPs: Strategic Lawsuit Against Public Participation," 09 December 2020, <https://fpc.org.uk/the-increasing-rise-and-impact-of-slapps-strategic-lawsuits-against-public-participation/>

⁶⁶ United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Info note on SLAPPs and FOAA rights, accessed on 12 May 2021

⁶⁷ University of Amsterdam & Greenpeace International, "SLAPP Research – provisional conclusions," https://www.umweltinstitut.org/fileadmin/Mediapool/Downloads/01_Themen/05_Landwirtschaft/Pestizide/Suedtirol/University_of_Amsterdam_GPI_Research_SLAPPs_.pdf

The use of SLAPPs have been identified by multiple human rights mechanisms as a violation of international human rights law that is posing increasing challenges to the right to freedom of expression and to the ability of human rights defenders to operate in a safe and enabling environment.⁶⁸ SLAPP suits undermine the right to freedom of expression of those who speak out in the public interest and due to their chilling effect, create increasingly hostile environments for journalists, human rights defenders and civil society organizations.⁶⁹ When individuals who could deliver important information of public interest are silenced, this discourages public debate and impairs the rights of people to access information and public participation.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to hold opinions without interference and the right to freely express ideas and opinions of all kinds.⁷⁰ The right to freedom of expression, which encompasses the right to seek, receive and impart information and ideas without interference, are also guaranteed by Article 10 of the European Convention of Human Rights. The UN Declaration on Human Rights Defenders affirms that all States must protect the right to seek, obtain, receive and hold information in relation to human rights and to impart that information to others, and to ensure that human rights defenders can exercise this right without fear of reprisals.

States have both the negative obligation to respect the exercise of these rights and the positive obligation protect the exercise of these right, in this case to prevent their unnecessary curtailment by third parties. The UN Committee on Economic, Social and Cultural Rights (CESCR)⁷¹ has set out states' obligations to protect individuals from interference by third parties in the context of business activities. Specifically, the CESCR has noted that the "introduction by corporations of actions to discourage individuals or groups from exercising remedies, for instance by alleging damage to corporation's reputation, should not be abused to create a chilling effect of the legitimate exercise of such remedies."⁷²

Further, the European Court of Human Rights has (ECtHR) consistently recognized the important role of civil society in holding the authorities and businesses to account and required states to create a safe and enabling environment for human rights defenders to be able to participate in a public debate and allow everyone to express their ideas and opinions without fear.⁷³ States have a positive obligation to protect the right to freedom of expression from any infringement, including by private individuals and entities.⁷⁴ The ECtHR has also ruled that unreasonably high damages for defamation can have a chilling effect on freedom of expression.⁷⁵

⁶⁸ United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Info note on SLAPPs and FOAA rights, accessed on 12 May 2021.

⁶⁹ Petra Bard, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, Ad-Hoc Request SLAPP in the EU Context, EU-Citizen: Academic Network on European Citizenship Rights, May 2020, https://ec.europa.eu/info/sites/info/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf

⁷⁰ Kosovo is not a member state of the UN or Council of Europe and cannot formally become a party to international human rights conventions and mechanisms, however, Kosovo's Constitution (Article 22) stipulates that eight UN and regional human rights instruments directly apply in Kosovo, and prevail in case of conflict with domestic legislation, including Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Also, the Kosovo Constitution (Article 53) stipulates that human rights have to be interpreted consistent with the court practice of the European Court of Human Rights.

⁷¹ The International Covenant on Economic, Social and Cultural Rights (ICESCR) is not listed in Kosovo's Constitution among the international human rights instruments that are directly applicable in the country. However, the ICESCR is applicable in Kosovo as a result of Section 1.1 of UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo read in conjunction with article 210 of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (see HRI/CORE/UNK/1, para. 121). The ICESCR rights are justiciable and enforceable in Kosovo courts or tribunals, as the major human rights instruments are directly applicable in the territory of the province by virtue of UNMIK Regulation 1999/24. Furthermore, Art. 9. Of the Declaration of Independence of Kosovo of 17 February 2008, reiterates the commitment of Kosovo to comply with international obligations, including those concluded on behalf of Kosovo by UNMIK".

⁷² United Nations Economic and Social Council, General comment no. 24 (2017) on State obligations under International Covenant on Economic, Social and Cultural Rights in the context of business activities," E/C.12/GC/24, 10 August 2017

⁷³ *Affaire Dink v. Turkey*, 14 September 2010

⁷⁴ *Independent newspapers limited v. Ireland* (no. 28199/15), 15 June 2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174419%22%5D%7D>

⁷⁵ *Independent newspapers limited v. Ireland* (no. 28199/15), 15 June 2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174419%22%5D%7D>

In addition to state obligations, the unanimously endorsed UN Guiding Principles on Business and Human Rights (UN Guiding Principles) state clearly that business enterprises must respect all internationally recognized human rights wherever they operate.⁷⁶ This corporate responsibility is independent of obligations imposed by domestic law. As stated by the UN Guiding Principles, “[i]t exists independently of State’s abilities and/or willingness to fulfil their own human rights obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”⁷⁷

In this context, business enterprises must identify, prevent, mitigate and account for how they address actual and potential impacts on human rights.⁷⁸ This is particularly relevant in cases where business enterprises use SLAPPs to silence human rights defenders, thereby infringing upon their internationally-recognized rights to freedom of expression, association and peaceful assembly.

SLAPP suits can be identified by several key elements: (i) they are often politically motivated and meritless; (ii) they claim monetary damages or an injunction; (iii) they are often filed by officials in power or business entities against a non-governmental individual or group; (iv) over their engagement on an issue of a public interest.⁷⁹ Kelkos Energy’s cases against Ms Loshaj and Mr Gacaferi meet all the above elements and appear to be no more than a legal tactic to tarnish their reputation and the validity of their findings through intimidatory practices to force them to stop the public debate on the licensing process and an environmental impact of Kelkos Energy’s operations in Kosovo. As such, they constitute an unnecessary and disproportionate interference on the rights to freedom of expression and access to information.

CONCLUSION

Kelkos Energy’s defamation lawsuits against environmental activists in Kosovo are an illustration of the growing trend across Europe of powerful corporations and public officials misusing the justice system to target and harass human rights defenders to shield themselves from public scrutiny. Unfounded and disproportionate claims for damages are being used as a wider strategy to intimidate and silence human rights and environmental activists and to limit public participation, rather than obtain a remedy for the alleged reputational damage.

Journalists across Kosovo have also been a frequent target of defamation suits by public officials and corporations over the past several years. The Standing Rapporteur of the European Parliament for Kosovo Viola von Cramon-Taubadel criticized Kelkos Energy’s lawsuits against Ms Loshaj and Mr Gacaferi arguing that an increasing number of SLAPP suits in Kosovo presents a considerable threat to public debate and freedom of expression.⁸⁰

Kelkos Energy should without delay withdraw the defamation lawsuits filed against Shpresa Loshaj and Adriatik Gacaferi in Kosovo to uphold Kelkos Energy’s responsibility to respect human rights and allow free public debate on the environmental concerns of the communities affected by the operations of their hydropower plants.

Furthermore, Kosovar authorities should act to ensure that all persons can freely exercise their rights to free expression, access to information and public participation without fear of reprisal, including through SLAPP suits or other abuses of the justice system. Amnesty International welcomes the recent decision of the Ministry of Environment to review the procedures granting operating licenses energy companies managing hydropower plants.

The authorities, including the Ministry of Environment, the Environmental Regulatory Agency and relevant municipalities, should take the necessary steps to ensure that all affected communities have access to information and documents relating to consultations of large-scale projects related to the exploitation of natural resources in their areas and an opportunity to effectively participate in the decision-making process. The authorities should also adopt laws and policies to comply with their obligation to respect and protect human rights in the context of corporate activities through adequate regulation, oversight, investigation, adjudication and punishment.

⁷⁶ UN Guiding Principles on Business and Human Rights (UN Guiding Principles), Principles 11 and 12.

⁷⁷ UN Guiding Principles, Principle 11 (Commentary).

⁷⁸ UN Guiding Principles, Principle 15(b).

⁷⁹ Bard, Petra, Bayer, Judit, Chun Luk, Ngo & Volsyliute, Lina, “SLAPP in the EU Context,” 29 May 2020 based on the original definition of SLAPP suits by Pring & Canan, SLAPPs: Getting Sued for Speaking Out, 1996, p. 221. See also Ravo, L., Borg-Barhet, J. & Kramer, X, “Protecting public watchdogs across the EU: A proposal for an Anti-SLAPP law,” 1 December 2020, https://dq4n3btxmr8c9.cloudfront.net/files/zkecf9/anti-SLAPP_model_directive_paper_final.pdf

⁸⁰ Viola von Cramon’s web page, <https://violavoncramon.eu/themen/inhalt/increasing-slapp-lawsuits-in-kosovo/> and Twitter Account Post, 19 February 2021, <https://twitter.com/ViolavonCramon/status/1362848511851692033?s=20>

SLAPP suits are increasingly perceived as a serious threat to the rights of the freedom of expression and access to information across Europe. Amnesty International welcomes the European Commission Vice-President Věra Jourová's commitment to initiate the development of an EU-wide legislation to counter SLAPP suits. An anti-SLAPP Directive should set a minimum standard for protection against such litigation, including ensuring that courts could promptly identify and dismiss SLAPP suits at an early stage of proceedings, prescribing sanctions for vexatious litigants abusing the law and mandating courts to provide procedural safeguards, including free legal assistance, to victims of SLAPP suits.⁸¹ Such measures should seek to ensure equality of arms between the parties in disputes that involve public participation and concern a matter of public interest, and ultimately provide an effective remedy for both claimants and defendants.

Although Kosovo is not an EU Member State, EU-wide legislation would set an important standard for the existing and aspiring members alike. Without immediate action and greater awareness of the threats posed by vexatious litigation, SLAPP suits can have a potentially devastating impact on human rights defenders and civil society organizations.

/END

⁸¹ See, for example, Euroactive, "We don't want to be sued into silence," by a group of international organisations and NGOs, 16 November 2020, <https://www.euractiv.com/section/all/opinion/we-dont-want-to-be-sued-into-silence/> and Ravo, L., Borg-Barhet, J. & Kramer, X., "Protecting public watchdogs across the EU: A proposal for an Anti-SLAPP law," 1 December 2020, https://dq4n3btxmr8c9.cloudfront.net/files/zkecf9/anti-SLAPP_model_directive_paper_final.pdf

Annex: Kelkos Energy/Kelag International – response to Amnesty International’s Public Statement

Dear Mr Moratti,

This responds to your letter dated 7 June 2021 and the concerns you raise regarding defamation lawsuits initiated by KelKos Energy against Ms Shpreza Loshaj and Mr Gacaferi. We refute the serious accusations that are made against KelKos Energy in this letter.

1. Executive Summary

At the outset, we wish to stress that KelKos Energy unconditionally respects human rights wherever it operates. KelKos Energy is not opposed to a public debate on policy issues such as the urgent need to reduce carbon emissions, the most suitable forms of alternative energy and the potential destruction of the environments by power plants. Ms Loshaj and Mr Gacaferi are entitled to publicly express their views on hydropower plants, including those operated by KelKos Energy. We respect that they, as other environmental activists, may disagree with our views on green energy and have every right to state their views publicly.

However, KelKos Energy is extremely concerned that Mr Gacaferi and Ms Loshaj have made, and (the latter) continue to make, factual statements that are demonstrably wrong and have a profound impact on our business. To be clear: Our concern is not about opinions, but about untrue factual statements. We have tried to obtain from Ms Loshaj and Mr Gacaferi corrections of their untrue statements. This was to no avail. The pending defamation lawsuits are a defensive measure of last resort to prevent their untrue statements from further damaging our company.

KelKos Energy is part of the Kelag group which is a responsible European operator of hydropower plants since almost 100 years. Kelag Group successfully operates more than 85 hydropower plants in Austria and other European countries. For all its enterprises the long-term cohabitation with the local communities and with the civil society is of key importance.

As a matter of fact, the Decan River hydropower plant project has been monitored, inspected, and investigated throughout its development according to highest standards that are comparable to those known from Western European countries. There is no evidence of environmental degradation, not a single formal note has been received from the authorities in this regard. KelKos Energy has not committed any violations of law. Every visitor to Decan can examine the real conditions on site, which present a state-of-the-art cascade of emission-free hydropower plants and an environment that has been rehabilitated to an extent which resembles the pre-construction situation.

Despite this, KelKos Energy faces an ongoing defamation campaign from Ms Loshaj that is, in essence, based on factually untrue statements. Ms Loshaj receives support from Vetevendosje, the former biggest opposition party that is now in the government. With this comes, according to the realities in Kosovo, the support of her campaign from certain media and interest groups. In the same vein, Mr Gacaferi has made wrong factual statements that are proven false and have a profound impact on our business.

KelKos Energy is, above all, interested in a fact-based discussion. Already since last year, KelKos Energy has sought to find ways out of the present escalation and pursued attempts to mediate the present controversy. **We will certainly continue and intensify these efforts.**

In the following, we will respond in detail to the allegations in your letter. We note that some of the allegations in your letter seem to reproduce statements of Ms Loshaj and Mr Gacaferi. We urge you to

make an independent verification of these claims, which will show that these statements have no basis in the facts.

2. Response to the allegations in your letter

2.1 Introductory remarks

We agree with you that SLAPPs are an undue restriction on the right to freedom of expression. However, the specific cases against Ms Loshaj and Mr Gacaferi are no such suits. They are a response to a campaign against KelKos Energy that is based on untrue or misleading factual statements.

For instance, Ms Loshaj presented photos from the construction phase of the Decan hydropower plant that date several years ago but suggests that the photos are showing the present situation. KelKos Energy had no other option than to resort to the courts to protect itself against repeated slanderous claims against our company.

Free speech does not, in our understanding, include the right to make false claims about facts. KelKos Energy must have the right to protect itself against false statements. The recent developments in the United States have underlined that an adequate protection against false claims is essential to maintain our institutions and to enable a meaningful public debate. This is especially the case where social media are used to pursue campaigns based on untrue statements.

In the debate about the impact of hydropower plants on the environment, it is essential to realize that this is not a “black and white” debate with a “good” side and a “bad” side. In order to prevent the total collapse of our planet, the drastic reduction of greenhouse emissions is necessary. Hydropower plants are undeniably part of a zero-emission green energy concept for the future. The debate should be about which impact on the environment is acceptable to maintain our standard of living. The one-sided portrayal of KelKos Energy as a company destructing the environment is, in our view, grossly distorting the reality.

This is especially true in a country where many children suffer from lung diseases, caused by severe emissions of the prime electricity producer, the coal power plant of Obiliq, which is located nearby Prishtina, the capital of Kosovo. Tellingly, Ms Loshaj and Mr Gacaferi are not campaigning against this lignite fired powerplant of Obiliq, which operates, to our knowledge, until today without an environmental permit. The reasons for this are apparently not environmental considerations, but political ones.

Some of the key facts of the controversy are:

1. Ms Loshaj has been living since more than 20 years in Canada and started her campaign against KelKos Energy from outside of Kosovo in autumn 2018, admitting that she had heard about the “problems” with KelKos Energy only few months before.¹ Apparently, she operates mainly based on hearsay evidence, failing to verify her accusations.

¹ Refer to Attachment 20.

2. The permission process of KelKos Energy was one of the most transparent and best supervised processes ever executed in Kosovo. Both ERO² and MESP³, the two authorities which lead the process, have coordinated the process between each other and have controlled every step of the permission and licensing process⁴.
3. The organisation of the legal and administrative system of Kosovo is the result of more than 3 years of post-war governance by the United Nations Mission in Kosovo (UNMIK). Most of the applicable legislation reflects internationally recognized best practice comparable to the European and US-American legal frameworks. After the handover of competences to local governance, UNMIK and OSCE continued to guide the further implementation of today's legislation of Kosovo and trained administrative officers until the year of independence in 2008.
4. Being situated partly in the Special Protective Zone of the Serb-Orthodox Monastery of Decan, the project was reviewed in its initial stage very carefully by the international community, especially the then co-governing ICO⁵. Its head and ICR⁶, Pieter Feith, personally coordinated the supervisory process and involved other institutions such as the UN and OSCE. In a letter to the then Minister of Environment, Mr Dardan Gashi, Mr Feith notified the positive result of a review process that took almost 2 years and gave his approval for the release of the project permits⁷.
5. During the 10-years of project implementation of the Decan hydropower plant cascade, KelKos Energy was confronted with seven ministers from different political parties, three different permanent secretaries and two different construction laws, all deviating substantially from each other. Contrary to what Ms Loshaj claims, there were numerous instances reviewing the process over the years.
6. On top of this, Kelkos Energy actively communicated with both MESP and ERO with permission related update requests, requests for site inspections etc.⁸
7. Due to the size of the hydropower cascade project of KelKos Energy, the first project of such complexity in Kosovo, the related legal framework was, at the time when the permission process started, not sufficiently elaborate for this type of project. Consequently, the administrative officers in charge worked with exceptional care (and considerate slowness) before they issued a permit. Because of this, the post-construction permission process for the Environmental Permits lasted more than 4 years (despite a legally prescribed period of a maximum of 6 months for the permission process, starting with the date of construction completion). ERO closely monitors this lack of progress and repeatedly criticized MESP for it⁹.
8. Ms Loshaj has at no point of her campaign tried to get a comprehensive understanding of the complex legal framework for the different permission stages. Her technical understanding of run-off-river hydropower plant operations deviates largely from reality. She has not, to our

² ERO = Energy Regulatory Office of Kosovo

³ MESP = Ministry of Environment and Spatial Planning

⁴ Attachment 1: Summarized permission chronology of the Decan River hydropower plant project of KelKos Energy

⁵ ICO = International Civilian Office of Kosovo

⁶ ICR = International Civilian Representative in Kosovo

⁷ Attachment 2: Letter of ICR Pieter Feith to the Minister of Environment Dardan Gashi, 15.09. 2011

⁸ Attachment 3: Letter of KelKos Energy to ERO with permission process and deadline updates of MESP - excerpt, 27.06.2019.

⁹ Attachment 4: E-Mails of ERO investigating the permission progress of KelKos Energy with MESP, 02/20.10. 2017 and 07.12. 2018.

knowledge, tried to communicate directly with the authorities in charge, i.e. MESP and ERO. Apparently as a result of this, she published continuously false analyses.

9. In order to overcome the potential transparency deficit, which Ms Loshaj continuously criticized, KelKos Energy decided a few months ago to publish voluntarily Gigabytes of permission documentation and expert studies of the whole project. The material was handed over to MESP and from there freely distributed to NGOs, media and stakeholders.¹⁰
10. In this context, MESP offered to Ms Loshaj to discuss her allegations in a mediated talk with KelKos Energy, based on the now publicly available facts. To everybody's surprise, Ms Loshaj refused this invitation and continued her defamatory campaign.¹¹

2.2 “KelKos obtained operating licenses without securing the Environmental Permit”

This statement of Ms Loshaj is a typical example for her lack of understanding of the legal framework and her refusal to discuss her questions with the authorities in charge, in this case ERO and MESP.

As a matter of fact, the hydropower plants of KelKos Energy were never operating without an authorization from ERO, who is the final instance for any such permission.

Both ERO and MESP have repeatedly explained upon public request the logic behind this sequence of authorizations¹². For the whole Decan River hydropower plant project, the Environmental Consent was given on 2 March 2012¹³. This Environmental Consent is considered by law as the overall environmental framework permission¹⁴.

Only for large scale hydropower plant projects (>10 MW, as applicable for the Decan project), a second post-construction permission process with an amended Water Use Permit and an updated Environmental Permit is obligatory. The latter permit covers framework aspects such as post-construction environmental conditions, rehabilitation etc., which are independent from the operational approval of the hydropower plant. Therefore, ERO considers the given Environmental Consent as sufficient formal basis in the case of KelKos Energy for the commencement of the test production phase.

KelKos Energy started test operations with the two hydropower plant stages of Decan and Belaje in April 2016, as foreseen by the Law on Energy and based on Power Purchase Agreements which were authorized by ERO.¹⁵ This test operation phase lasted until 2019, mainly in order to harmonize operational, technical and seasonal aspects of the cascade operation with the later completed stage Lumbardhi II and the existing stage Lumbardhi I, but also due to permission delays, which were in the responsibility of MESP.

¹⁰ Attachment 5: E-Mail of Kelkos Energy to MESP with public project data download link, 05.02. 2021.

¹¹ Attachment 6: Facebook post of Ms Loshaj, where she refuses communication with MESP and KelKos Energy, 10.02. 2021

¹² Attachment 7: Email of ERO to daily Austrian newspaper “Der Standard” (extracts), June 2020

¹³ Refer to Attachment 1.

¹⁴ Note: For hydropower plants with less than 5 MW installed capacity, a post-construction Environmental Permit is not obligatory. They commence with electricity production within the framework of the pre-construction Environmental Consent as soon as the facility inspection by MESP is successfully completed.

¹⁵ Attachment 8: Power Purchase Agreement between KelKos Energy and KESCO, exemplified with EGU Decan and authorized by ERO, 01.04.2016.

Your reference to the ERO annual report 2019 (your footnote 5) is a misinterpretation. It was ERO who monitored the KelKos Energy test phase closely from the first day of test operations, both through repeated update requests from KelKos Energy as well as through unannounced site visits by members of the Board of ERO. In parallel ERO monitored the permission progress of MESP closely and repeatedly requested the Ministry to speed up the procedures and issue the outstanding permissions, as MESP departments continuously violated the deadlines for permissions, which are prescribed by the legal framework.¹⁶ The ERO notice is thus to be read as critical observation towards MESP.

The commencement and continuation of the KelKos Energy test operation were always subject to the decision of ERO. Not a single minute of electricity production by KelKos Energy was performed without the explicit approval of ERO.

The statement that commercial operations since 2016 were not in line with the respective authorities and/or legal framework, is therefore not correct.

2.3 “In practise, authorities have often issued permits without securing the necessary environmental impact assessments of without consultation with local communities”

You mention in the context of this statement that the laws on environmental protection and licensing of electricity production provide for a rigorous and transparent process. This is correct and KelKos Energy has complied with the legally required procedures point by point and without exemption.

The Environmental Impact Assessment Study of KelKos Energy for the Decan River hydropower project (which KOSID/Pishtaret only few months ago falsely considered to be still missing),¹⁷ was in fact delivered to MESP on 21 March 2011.¹⁸

A public discussion, as prescribed by the law, was held on 14 July 2011 in Decan with active participation of residents. This information was orderly announced in local newspapers¹⁹. Ms Loshaj did not participate in this discussion.

The permission authority for a large-scale project like the one of Kelkos Energy is exclusively allocated to MESP and ERO. The local municipality, which might be interested in some kind of “deal” with the operator, has no influence whatsoever on it.

The 2021 report of the Ombudsperson, which your letter quotes, apparently refers to other hydropower plant projects of smaller scale (less than 10 MW of installed capacity), where the permission authority is in the hands of the local municipality.

Just recently, the new Minister of Environment, Liburn Aliu, made an unannounced visit of several such small-scale hydropower plants under municipal supervision and detected relevant environmental violations. He announced that legal investigations into these cases shall be started. Minister Aliu, when

¹⁶ Attachment 9: Law nr. 05/L-031 on General Administrative Procedures, 21.06.2016

¹⁷ KOSID = Kosovo Civil Society Consortium for Sustainable Development (NGO, affiliated with Haki Abazi, VV) – Facebook post, reposted by Ms. Loshaj, listing false accusations about legal violations of KelKos Energy, e.g. a missing Environmental Impact Assessment, 22.09.2020

¹⁸ Attachment 10: Environmental Impact Assessment Report for the Decan River hydropower plant cascade of KelKos Energy, 23.03. 2011.

¹⁹ Attachment 11: Documentation of the legally prescribed public participation of KelKos Energy between 2010 and 2019, presented to the Parliamentary Commission on hydropower plants, 2020.

questioned by media, did not mention in this context KelKos Energy but gave a general answer regarding the permission process.²⁰ He is well acquainted with our operations since several years and was on site repeatedly, then as member of the Kosovo parliament.

The recommendations of the Ombudsperson (your footnotes 11, 12, 13) refer to the general complexity of the applicable legal framework, which was also extremely burdensome for KelKos Energy, as our project was the first practical test case for this legal framework²¹.

In order to address the criticism of a lack of transparency, KelKos Energy has distributed gigabytes of data about its permission documentation and expert studies to media and NGOs.

2.4 “Ms Loshaj accuses KelKos of causing severe water shortages in the villages in the region”

This accusation of Ms Loshaj is technically impossible and another example of her manipulative misinformation.

1. The hydropower plants at issue are run-of-river hydropower plants. A run-of-river hydropower plant does not store or “swallow” water. There is no sizeable storage reservoir. The average period water is used by the hydropower plant between the intake and the tailrace channel, located downriver of the powerhouse, i.e. where water re-exits into the river, is around 30-40 minutes.
2. 100% of the water that has entered the hydropower plant system, also exits the system. Every competent engineer will confirm this statement.
3. As described in chapter 5, KelKos Energy has reconstructed and upgraded the complete drinking water supply system of Decan and nearby villages, which before our reconstruction showed major deficits (lack of catchment installations, use of asbestos components deriving from the 1960ies, etc.). This had nothing to do with the Decan River project, but with the inadequacy of the prior water supply and the lack of as-built documentation. The new system functions flawlessly since 2015 and is operated by the local water management company Hidrodrini. Tests show that the amount of available drinking water per minute has increased substantially for both Decan city and the nearby villages.²²
4. KelKos Energy respects precisely the legal framework for the minimal ecological flow²³. Since August 2018, several automated monitoring stations operate along the Decan River HPP cascade. Additional ones will be installed voluntarily by KelKos Energy this year to increase transparency. The data is presented to MESP as the responsible authority. KelKos Energy is the only hydropower generator in Kosovo who operates such a 24/7 data collection system.
5. During summer months, when the water level in the river is generally low, KelKos Energy has decided to extract only marginal amounts of available water above the ecological water flow level but regularly shuts down operations during daylight in order to preserve the full water flow capacity for the local residences for leisure activities. During this low water period, energy

²⁰ Attachment 12: Interview of Minister Aliu for RTK television about impressions from site visits to small hydropower plant locations, other than KelKos Energy, 22.04. 2021.

²¹ Note: The problems may be exemplified with one out of many practical issues. In the context of the construction permit, which legal basis was apparently designed for structural engineering, the technical acceptance for the elevator system had to be provided. No such system exists with hydropower plants.

²² Attachment 13: Hidrodrini test report of the new DN.315 drinking water pipeline of Decan, 28.05. 2015.

²³ Attachment 14: Residual water flow calculation – legal framework and implementation of the ecological water flow rules, 2018.

production is either restricted to night hours (23-4) or is suspended completely. KelKos Energy considers this as a voluntary contribution to a harmonized partnership with the Decan community.

2.5 “Ms Loshaj and KEPA²⁴ report a significant negative impact on the ecology of Lumbardhi river”

The quoted negative impacts on the ecology of Lumbardhi River have not been documented or proven in a single case. Instead, the opposite is true.

1. When KelKos Energy started construction works at Decan River, the river and its banks were regularly used for illegal waste disposal. Repeatedly, illegally dumped municipal waste had to be collected and orderly disposed of by KelKos Energy during the construction works. Numerous parts of wrecked cars, which were buried in the banks of the riverbed, leaking oil and other (e.g. battery-) substances into the water, were secured and removed by KelKos Energy.
2. KelKos Energy constructed voluntarily fish stairs at its intakes, which ensure a continuous uninhibited movement of fishes between the stages, which are not even prescribed by the applicable legal framework.²⁵
3. The new natural reservoirs, which accrued as side effect of the Tyrolean weir intake structures, provide the ideal habitat for the fauna and flora beyond the potential of a free-flow river.
4. KelKos Energy has revegetated tens of thousands of square meters of riverbanks and constructed flood barriers at critical locations of the river, where before bridges were often destroyed and the nearby road was regularly damaged during flood events.

The “findings” of the KEPA report (your footnote 8) do not correlate with the factual situation on site and bare any evidence. Not a single place with the stated “degradation” can be found on site. A report of the Environmental Crime Police unit, which made a site visit in October 2018, and which is quoted in the 2021 report of the Ombudsperson, confirms that “no degradation can be found”²⁶.

2.6 “KEPA reports that the riverbed has been so degraded due to operations of the hydropower plants that the humidity, provided by the river, is decimated”

During the operational phase, hydropower plants per se do not affect the geotechnical conditions of a riverbed at all. This is world-wide technical status and has been confirmed during numerous inspection visits of MESP. The related statement of KEPA neither correlates with the factual situation on site, nor with the universally recognized state-of-the-art assessment by experts in this field. Tens of thousands of hydropower plants all over Europe prove this every day.

Had the KEPA reports been based on facts, which they do not, the degradation findings of KEPA would have been an obligatory condition for rehabilitation, ordered by the Environmental Department of MESP to KelKos Energy in the context of further inspections and a precondition for the final issuing of the Environmental Permits. This was visibly not the case.

²⁴ KEPA = Kosovo Environmental Protection Agency

²⁵ Attachment 15: Fish stairs, voluntarily constructed by KelKos Energy along the whole hydropower plant cascade and exemplified with photos of Intake Lumbardhi II and Intake Decan.

²⁶ Attachment 16: Report with Recommendations of the Ombudsperson Institution, 3 February 2021, point 6.

The Deputy Director of KEPA, Ali Sefaj, must be considered as biased in relation to KelKos Energy. He has repeatedly reposted defamatory statements of Ms Loshaj in private Facebook postings without any objective verification.

Only a few weeks ago Mr Sefaj has made, as a member of the MESP Minister's working group on hydropower plants during a site-visit at the KelKos Energy operations, a number of clearly unobjective statements. These statements were, among others, witnessed by members of the working group²⁷.

Such biased and offensive language, paired with the apparent intention to disregard the facts, disqualifies Mr Sefaj's statements. KelKos Energy has complained about this to Minister Aliu.²⁸

2.7 Quotes from the Report of the Ombudsperson Institution of 2021

It must be underlined that the Ombudsperson Report does not state in any part, neither directly nor indirectly, that KelKos Energy has harmed the environment or has been involved in any activity that can be considered as against the law.

Furthermore, this report in its point six (6) clearly states that *"On 24 October 2018, the Ombudsperson received a response from the Environmental Crime Unit of the Kosovo Police, through which it was announced that they have held meetings with the MESP Inspectorate, the Inspectorate of the Municipality of Deçan, the Independent Commission for Mines and Minerals (ICMM), with various citizens and activists from the municipality of Deçan, as well as with the owners of the company 'KelKos Energy'."*

According to the Kosovo Police, *"[...] after the visit to the scene in the Deçan Mountains, to the place called "Zalli i Rupës" as well as to the four hydropower plants "Lumbardhi", then to the "Lumbardhi II", "Bellaja" and "Deçani", it was not noticed that there are degradations of the environment, [...] In that location it is true that sand was taken / exploited due to the increase of water volume, but there was a project to build a dam there and for this project and for the whole project, the company 'KelKos Energy' has environmental approvals, building permit as well as water permit."*

According to the Police, *"[...] from the findings and the collection of information in the field, no evidence has been found that any criminal offense related to environmental degradation has been committed."* However, they are *"continuously conducting other investigative actions [not involving KelKos Energy] in the "Bjeshkët e Nemuna" with special focus on the Municipality of Deçan."*

²⁷Note: Witnessed statements of Mr. Sefaj towards representatives of KelKos Energy:

"You can explain to us, but it's not necessary, we are not interested to listen to your explanations".

"I would never meet you, but you came here so I am talking to you, in other case I would not talk to you".

"I came here to see the beautiful nature, damaged by you".

"You destroyed the biodiversity of the river" (when requested to show concrete examples, he answered "I am a lawyer, no engineer").

"These people who signed your permits need to get educated from primary school".

"You will see at the end we will stop you to use the water, starting from up from Lumbardhi 2".

"You will see when we close your hydropower plants. The water will not go in your turbines anymore, after we finish the report".

²⁸ Attachment 17: E-Mail of KelKos Energy to Minister Aliu, complaining about the incident with Mr. Sefaj, 04.06.21

The further conclusions of the Ombudsperson regarding “shortcomings” and “uncertainties” may have a factual basis concerning other small hydropower plant projects in Kosovo, which KelKos Energy is not affiliated with.

We fully agree with the statement of the Ombudsperson regarding “communities rights to access the information, public participation in decision making and access to justice”. KelKos Energy considers it has contributed to this policy with the aforementioned transparency initiative regarding all permissions and the expert assessment data²⁹.

However, turning such voluntary actions into a formal obligation requires an amendment of the legal framework in force. It is neither in the capacity of KelKos Energy to introduce such an amendment, nor can this argument be used to question the permission process under the applicable legal framework, where all legal conditions have been fulfilled.

2.8 Parliamentary Commission on hydropower plants

The parliamentary commission on hydropower plants (your footnote 14) performed for several months an in-depth investigation into the permission process of KelKos Energy and conducted dozens of interrogative hearings with ministers and leading officers of MESP and ERO. Even selected NGOs were heard, as you mention in your letter.

However, KelKos Energy as the investor and operator of the project was never heard. We consider this contrary to basic due process requirements.

In any event, during months of investigations and interrogations not a single irregularity of the permission process regarding KelKos Energy was detected.

The parliamentary commission could not conclude its final report due to the early dissolution of the Kosovo Parliament before the February 2021 general elections. We are convinced that such a report would not have put into question the regularity of the permission process regarding KelKos Energy. It can be safely assumed that only the slightest indication of such a finding would have found its way to the media through some members of the commission.

It is definitely incorrect that the government “under pressure speeded up the issuing of permits” for KelKos Energy. The opposite is true. It took the MESP administration – up to now, and an end is not yet in sight – almost 4 years for the formal completion of the environmental permits monitoring alone, which by law is scheduled for a period of max. 6 months. A lack of on-site evidence cannot be an excuse, as even the completion of the year-long rehabilitation has been officially confirmed by MESP inspectors already back in the year 2020.³⁰

The parliamentary commission apparently had the informal political objective to detect violations of laws committed by KelKos Energy and MESP/ERO during the permission process. This attempt failed completely; not even procedural deficits could be identified. The new government, who had the

²⁹ Refer to Attachment 5.

³⁰ Attachment 18: Letter from the Commission for Environmental Permit to KelKos Energy, confirming that only the Water Use Permit is missing anymore for the issuing of the Environmental Permit, and indicating with this that the rehabilitation obligation (another important precondition) is considered as fulfilled by MESP, 12.10. 2020

opportunity to re-activate this commission and to draw up the final report, up to now did not set any related initiative.

2.9 “Concerns about lax procedures [grew] in April 2021”

We do not share this interpretation of the events.

As a matter of fact, because of the general elections held on 14 February 2021, the former opposition party Vetevendosje, who was one of the driving forces behind the long-term campaign against KelKos Energy, gained enough votes to form a government without having to form a coalition.

While the factual evidence on site in favour of KelKos Energy had not changed during the winter months of 2021, the new government continued to agitate against the KelKos Energy project, respectively the responsible administrative officers.

Unsurprisingly, political forces within Vetevendosje immediately started to unload pressure against a key officer of MESP, Mr Gani Berisha, who had conducted an orderly water permission process and who had not given in to numerous threats to boycott the permission procedures of KelKos Energy³¹. Eventually, a disciplinary sanction was imposed on Mr Berisha.

In our opinion, this disciplinary decision against Mr Berisha is unfounded and a clear sign of a politically motivated intervention, but certainly not a sign of “growing concerns” – this term reflects rather the wording of Ms Loshaj, lacking any evidence.

In actual fact, the KelKos Energy hydropower plants are state-of-the-art and represent European best practice in hydropower plants. Among members of the working group on hydropower plants of MESP it was informally considered during their recent site visit to recommend taking the intake design of KelKos Energy hydropower plants as model for future hydropower plants projects in Kosovo.

2.10 Decision of the Appeal Court in favour of ERO, MESP and KelKos Energy

On 26 April 2021, the Appeal Court decided against a request of a local claimant associated with Vetevendosje for the suspension of certain permits and licenses issued to KelKos Energy³². The court’s reasoning speaks for itself:

“[The] claimants did not offer any proves that the operation of the hydropower plants [of KelKos Energy] would in any way be in contrary to the public interest; or that it would bring any damages, directly or indirectly, to the inhabitants; and Kelkos Energy possesses all the necessary documents, decision, permits and licenses”. Ms Loshaj has been part of these rejected claims.

2.11 Concluding remarks

The following conclusions may be drawn from the above:

- The parliamentary commission found no irregularities, despite intensive interrogations.

³¹ Note: Even Minister Aliu, whom we consider as a serious and considerate politician, seems to have indicated privately that he had strong pressure from inside his party to introduce disciplinary measures against Mr Berisha. The fact that Mr Berisha is accused of actions, which reach back to 2017 and which were never considered as professional violation during the past four years, speaks for itself.

³² Attachment 19: Decision of the Appeal Court, 26.04.2021

- Even the new government under Vetevendosje leadership set no initiative until now to extend the parliamentary commission.
- The Ombudsperson confirmed in its 2021 report that the accusations against KelKos Energy regarding environmental degradation could not be proven, based on an on-site investigation of the Environmental Crime Police of Kosovo.
- The Minister of Environment (from Vetevendosje) seems to be forced to eliminate, likely due to internal party pressure, one of the most competent officers of MESP, who's only failure was to withstand outside political pressure from Vetevendosje in the past.
- All these facts are in direct contradiction to the negative picture of KelKos Energy which Ms Loshaj continuously tried to paint.

In actual fact, there is an ongoing defamation campaign by mainly one individual, Ms Loshaj. Her accusations have turned out, one by one, to be incorrect. Her questionable efforts are supported by Vetevendosje, the biggest former opposition party (and now forming the government) of Kosovo, as well as certain media and interest groups.

You write that “the unfounded and excessive damages sought by KelKos Energy further threaten to hinder the power of civic action in raising awareness about issues of public interest and holding governments and corporations to account”.

It is certainly not in the interest of KelKos Energy to hinder public awareness about environmental aspects of energy production or to prevent governments and operators from being accountable for such projects. But any such discussion or public participation process must be based on facts.

The campaign of Ms Loshaj has had a substantial impact on the corporate reputation and business of KelKos Energy. Damages are by far exceeding the amount claimed from Ms Loshaj. Delays in the permission process, which can be directly related to outside intimidation attempts towards the responsible administrative officers in the wake of the Loshaj campaign, had serious negative effects on our business.

Nevertheless, KelKos Energy and the Kelag Group always strive to form a harmonious long-term partnership with the local communities but also with critical voices from NGOs side that is based on trust and mutual respect. Therefore, since several months potential mediation initiatives are evaluated in order to overcome the current legal conflict with a fair agreement.

The following overview of events shows that the prime interest of Ms Loshaj seems to be publicity at any cost, rather than fact-based actions to protect the environment.

3. Examples of defamatory public statements of Ms Loshaj

Mrs. Loshaj is a citizen of Kosovo living in Canada since the Kosovo war of 1999.

Her first appearance in the context of the KelKos Energy project was in September 2018. At that time, all construction works of KelKos Energy were already completed and the rehabilitation efforts had begun. Ms Loshaj had neither been present during the public hearing of the Environmental Impact Assessment in 2011, nor during the whole construction phase, nor did she respond to any of the project related public announcements of KelKos Energy between 2010 and 2019³³.

³³ Refer to Attachment 11.

She publicly stated that she learned first about the “problems” of the KelKos Energy project in the year 2018. Without apparently being a personal eyewitness, she seems to substantially rely on hearsay.

During the period between September 2018 and May 2021 the legal team of KelKos Energy identified a large number of public defamatory statements about KelKos Energy by Ms Loshaj. We were compelled to publicly refute each of these unfounded accusations based on evidence. Unimpressed by this, she continues to publish false accusations about KelKos Energy and our hydropower project in Decan River valley, causing further economic and reputational damage to KelKos Energy.

Her language is unbalanced and aggressive. She often makes offensive statements (which frequently contain demonstrably false statements) and tries to provoke strong reactions from the public and the media reactions. Her supporters mirror these statements largely without any attempt to verify the statements in television and online media.

3.1 18 September 2018

The first action of Mrs. Loshaj was a letter sent to the then Prime Minister Haradinaj, introduced through an appearance in the TV show of Mrs. Xharra the night before³⁴.

Without any personal perceptions, apparently based exclusively on hearsay information, Ms Loshaj complained in the letter about the “irreversible destruction” of the Decan River valley “in the name of economic development” and accuses government and municipality of “committing a series of violations” with the approval of the HPP construction, “without supervision and accountability from the responsible institutions”.

It was apparent that she had not verified with the criticized institutions these accusations, which would have shown that her statement had no basis. She failed to present any evidence of her accusations.

The Decan River valley has been rehabilitated by KelKos Energy between 2016 and 2020 to an equal status of fauna and flora as before the construction works. Dozens of inspections and supervisions by MESP and ERO as well as by international expert teams have monitored the progress.³⁵ During the complete project period, KelKos Energy has provided maximum transparency about the project and the rehabilitation progress.

Please see attached a photo documentation, comparing the situation during the construction period 2013-2017 and the rehabilitation status in 2020³⁶.

3.2 6 May 2020

In a public letter to the Minister of Environment, Mr Abdixhiku, Ms Loshaj claimed that KelKos Energy “operates illegally on Kosovo territory”³⁷.

³⁴ Attachment 20: Open letter of Ms Loshaj to PM Ramush Haradinaj, 18.09. 2018.

³⁵ Reviser Reports, prepared by international teams of experts “Nr. 3 as-built evaluation”, “Nr. 3-L2 as-built evaluation” and “Nr. 4-L2 post-construction evaluation”.

³⁶ Attachment 21: Photo documentation of the hydropower plants project of KelKos Energy, comparing the construction period 2013-2017 with the rehabilitation status in 2020.

³⁷ Attachment 22: Public letter of Ms Loshaj to Minister Abdixhiku, 06.05.2020.

This is a profoundly serious allegation, and it is absolutely false. For an overview of the above-described permission process, please see the attached chronology³⁸.

3.3 16 May 2020

In an interview on the KTV television network, Ms Loshaj stated that “KelKos has completely destroyed the environment”. She further stated that KelKos “don’t apply for the Environmental Permit on purpose because they don’t want to rehabilitate the nature”³⁹. In this context Mrs. Loshaj presented pictures from the construction works in 2015, pretending they were recently taken.

These accusations are, again, altogether false and misleading. The applications for the Environmental Permits of KelKos Energy had long been submitted by that date. They need to follow a formal sequence of permit-applications, prescribed by MESP. This means that an investor cannot apply for a subsequent permit before having received the preceding permit, which in this case were the Use Permits.

As of May 2020, the date of the interview, the rehabilitation process in Decan River valley was already completed and approved by the inspectors of MESP and ERO. An excerpt can also be seen in the attached photo documentation⁴⁰. A simple visit of Ms Loshaj (or of the TV journalist) to the site would have proven that.

At his point, KelKos Energy had no other option than to initiate legal action to protect its reputation against defamatory claims⁴¹.

3.4 29 June 2020

In a public letter to the Austrian Foreign Minister and the Austrian Ambassador, Ms Loshaj made new and severe accusations against Kelkos Energy⁴². She wrote that KelKos Energy “have corrupted many officials, made backdoor deals and threatened and intimidated those who they didn’t corrupt. Simply they behave like a gang who is running an illegal enterprise ...”. The letter continued: “We accept that many of our public officials are corrupt and are also to blame for allowing KelKos Energy to turn Decan valley into wild-wild west”. She also accused the former Austrian Ambassador in Kosovo, stating “Some political leaders refuse to address KelKos Energy legal violations in public, and they even deny that there is a problem. But in private we were told that the reason for this silence is that the previous Austrian Ambassador in meetings with them used quite an aggressive language in support of KelKos Energy’s operations”. Again, the letter lacks any evidence for the stated accusations.

All these statements are false and pure defamations. Since its foundation in 2009, KelKos Energy, as member of the Kelag Group is strictly bound to the compliance rules of the Kelag Group and is continuously monitored in this respect.

KelKos Energy has always refrained from requesting interventions through the Austrian Embassy. In rare occasions, maybe once or twice a year, when facing administrative delays during the permission process, KelKos Energy requested the Austrian Ambassador to arrange a meeting with the respective

³⁸ Refer to Attachment 1.

³⁹ Attachment 23: Interview excerpts of Ms Loshaj on KTV television network, 16.05. 2020.

⁴⁰ Refer to Attachment 20.

⁴¹ Attachment 24: Defamation claim of KelKos Energy against Ms Loshaj, submitted on 27.05. 2020.

⁴² Attachment 25: Public Letter of Ms Loshaj to the Austrian Minister of Foreign Affairs Schallenberg, 29.06. 2020

Minister. In such cases usually certain departments of the Ministry had not met legally binding permission deadlines. To avoid the introduction of formal complaints from the investor's side, such meetings were intended to find pragmatic solutions for such administrative deficits. During such meetings, the Ambassador usually opened the meeting with introductory words but did not actively intervene into the subject of discussion.

3.5 1 February 2021

In a Facebook post, Ms Loshaj accused KelKos Energy of “misusing and drying out” the traditional water source Zeke Ademi in Decan River valley⁴³.

This is another false statement. In a written confirmation, the water management directorate Hidrodrini clarified that this water source is operated by Hidrodrini since the year 2010, long before the construction works of KelKos Energy even started, which not even took place near to this water source⁴⁴.

3.6 Concluding Remarks

These are few examples of false accusations against the KelKos Energy hydropower project and defamations of KelKos Energy, which mark the path of Mrs. Loshaj. Many more can be presented upon your request.

During the past 10 years KelKos Energy has met with many residents and discussed their concerns. Usually, common interest and feasible solutions could be identified, as both sides presented and evaluated facts. None of these persons used an escalating, offensive and defamatory approach like Mrs. Loshaj.

Unfortunately, for KelKos Energy the prime impression of Ms Loshaj during the past three years is that of continuous defamation.

The legal action of KelKos Energy solely aims at protecting its reputation and to obtain the retraction of clearly untrue statements gravely harming KelKos Energy. At present, given the absence of any signal from Ms Loshaj to enter into a de-escalating and fact-based communication with us, we have no other option to achieve this.

Due to the aggressive defamation campaign of Ms Loshaj and her political and media supporters, numerous MESP officers admitted in informal talks that they are increasingly intimidated to issue the – factually fully grounded – final permissions of our project. Instead, the legally binding deadlines for the post-construction permission procedure are ignored by the authorities.

After the completion of the construction works, the permission procedure for our hydropower plant cascade should be concluded ex lege within a period of maximum 6 months, but which took until now almost 4 years, largely due to effects of the negative campaigning of Ms Loshaj.

The economic losses from production outages during the years 2019-2021 caused by unlawfully delayed permits of MESP and consequently delayed production licenses amount to a seven-digit figure.

⁴³ Attachment 26: Facebook post of Ms Loshaj/Pishtaret, 01.02. 2021

⁴⁴ Attachment 27: Confirmation letter of Hydrodrini water management directorate, 04.02. 2021

In the context of a contact with a member of the European Parliament in 2020, the idea of a mediation between KelKos Energy and Mrs. Loshaj was developed, and an initial contact was established. Unfortunately, Ms Loshaj does not seem to favour this idea, as she continued to escalate the situation.

Nevertheless, **KelKos Energy will continue this mediation** initiative, as a de-escalation and long-term harmonized neighbourhood should be in the interest of both sides. Even more, as the pretended environmental destruction is non-existent. This lack of (negative) environmental impact of our hydropower plant cascade operations on the local community has just recently been confirmed by the Appeal Court⁴⁵.

4 The defamation statement of Mr Gacaferi and its context

On 1 November 2019, Mr Gacaferi made a Facebook post in which he accused KelKos Energy of having extracted 100% of the river water with HPP Lumbardhi II⁴⁶.

The accusation was false and had very serious consequences. If true, it would mean that KelKos Energy would breach the rules for ecological water flow of MESP. In addition, in the concrete case of HPP Lumbardhi II, the accusation was even more critical, as ERO had ordered KelKos Energy as of 15 April 2019 to shut down the test operations of HPP Lumbardhi II until the necessary permits for starting the commercial operations are issued by MESP.

ERO, becoming aware of the Facebook post of Mr Gacaferi, immediately approached Kelkos Energy with the suspicion of illegal operation of the HPP Lumbardhi II. During an ongoing permission process, such suspicions are even more critical. KelKos Energy had no other choice than to introduce a defamation claim against Mr Gacaferi in order to protect its reputation⁴⁷.

Mr Gacaferi's accusation is plainly incorrect. The electricity counter of HPP Lumbardhi II as of 2 November 2019 shows the same value as on the shutdown date 15 April 2019⁴⁸.

In your letter, you claim that the action against Mr Gacaferi is about a Facebook post, "criticizing the company's hydropower plant operations in the Decan region". His Facebook post was, however, not just a criticism of our operations, but was plainly false and raised the suspicions of the authorities at a critical moment.

Based on the evidence presented by KelKos Energy, Mr Gacaferi should realize by now that his accusations were false. If he were prepared to retract his untrue statement, Kelkos Energy would withdraw the pending claim against Mr Gacaferi.

With the recent decision of the Appeal Court to refuse the request for suspension of the permits and licenses of KelKos Energy because of suspected environmental damage, the lawfulness of the emission-free operations of our hydropower plants has been confirmed. With the valid production licenses for two out of three newly built hydropower plants for the upcoming 40 years, it is the strong desire of

⁴⁵ Refer to Attachment 19.

⁴⁶ Attachment 28: Facebook post of Adriatic Gacaferi, falsely accusing KelKos Energy of excessive river water extraction with HPP Lumbardhi II, 01.11.2019.

⁴⁷ Attachment 29: Defamation claim of KelKos Energy against Mr Gacaferi, 31.01.2020.

⁴⁸ Attachment 30: Articles of Periskopi/RTK news portals about the accusations of Mr Gacaferi and the contradictory evidence of KelKos Energy, 03/04.11.2019.

KelKos Energy to have a harmonious partnership with the local communities, which also includes environmental activists such as Mr Gacaferi.

Therefore, the legal team of KelKos Energy has started some time ago preparations for a mediation initiative with Mr Gacaferi as described above. We hope that we can report an amicable settlement on this case in the near future.

5 Background to Kelag Group and other actors in the project

5.1 Kelag Group

Kelag Group is one of the major energy generators in Austria, producing and distributing electricity exclusively from renewable sources (water, solar, wind). With more than 85 hydropower plants in operation in Austria, Southern Europe and France, Kelag Group looks back at almost 100 years of professional experience in the construction and operation of hydropower plants. Kelag Group is A/stable-rated by Standard and Poors, Silver-rated by Ecovardis for its CSR engagement and is subject to auditing by the Court of Auditors of the Republic of Austria.

Several of the HPPs of Kelag Group are situated in topographically and ecologically challenging Alpine terrain, in touristic areas and in the vicinity of National Parks. Kelag Group is aware of the sensitivity of operating powerplants in ecologically important areas. Kelag Group has a long and successful track record of emission-free HPP operations under strict environmental conditions and in harmony with residents, with the civil society and with nature.

The Kelag Group was one of the first international investors in Kosovo after the Declaration of Independency. Kelag Group's investment was broadly welcomed. The initial investment step of Kelag International into Kosovo was the purchase of the existing hydropower plant Lumbardhi I at Decan River in 2009 through its subsidiary KelKos Energy. In the following months, this hydropower plant was refurbished and integrated into the state-of-the-art operating system and the automated ecological monitoring concept of Kelag Group.

During the following years, KelKos Energy received invitations of the Kosovo government, the Municipality of Decan and the then International Civil Administration (ICO) to consider the extension of its hydropower operations along Decan River. A special focus was put by ICO on the fact that this would also include operations inside the Special Protective Zone of the Serbian Monastery in Decan. Facing a lot of tensions between the Albanian and Serbian communities since the end of the war, this was seen especially by the international community (UNMIK, OSCE etc.) as pilot project for a peaceful partnership between these groups.

In the following, a two-year long dialogue process between KelKos Energy, the Decan Monastery and the Decan Municipality started, which was closely observed by ICO. Based on the feasibility concept of Kelkos Energy, ICO (under the personal monitoring of its head, ICR Pieter Feith) performed an in-depth assessment of the project, also involving institutions such as UNESCO, OSCE etc. In September 2011, ICR Pieter Feith gave his approval for the project in a letter to the then Kosovo Minister of Environment, Dardan Gashi⁴⁹. With this background, the project received since then continuous monitoring and inspection not only by the local authorities, but also by international organizations, especially during

⁴⁹ Refer to Attachment 2.

the construction and operational phase, also including regular supervision by the international military task force in Kosovo, KFOR.

One of the preconditions for the approval of ICO was a long-term servitude agreement between KelKos Energy and the Decan Monastery, which includes the construction of a direct backup power supply line into the monastery (to overcome regular power cuts of the public network) and a direct utility water supply line (for fire-fighting purposes). The related MoU was signed in June 2010 and the servitude contract agreed for a period of 99 years⁵⁰.

The total volume of the investment into the Decan River hydropower plant cascade amounted to more than 60 million Euros, making it the biggest private investment into Green Energy in the history of Kosovo. This project size as well as certain political pre-conditions created much support, but also some opposition to the project.

5.2 Decan Municipality

An integral element of every large-scale project development of Kelag Group is a framework agreement with the hosting municipality about the analysis and development of sustainable partnership projects. A similar agreement is part of the servitude contract with the Decan Municipality⁵¹.

Unfortunately, the early discussions with the previous Mayor of Decan Municipality showed certain discrepancies regarding potential funding objectives. The partnership project preferred by the Decan Municipality, a new-to-be built large-scale football stadium, was presented to KelKos Energy as a 'conditio sine qua non' for the project. However, this type of infrastructural funding does not meet the compliance rules of the Kelag Group, which require a focus on infrastructure projects for the general public or social or cultural projects. With a continuing disagreement about this municipal request, the then Mayor, who was first an ardent supporter of the project⁵²⁵³, started step by step to oppose the project during the construction phase.

However, as both the permission and the inspection authority for such large-scale projects lies with MESP and not the Municipality, the municipality lacked legal powers to block the project. A long-term conflict of competences between the inspection departments of Decan Municipality and of MESP ensued. Municipal inspectors tried to question the inspection powers of MESP through negative media reporting about the ongoing construction works and repeated and unfounded criminal claims against KelKos Energy for natural degradation. In fact, while a certain degradation is an inevitable side effect during the construction phase, this must be reversed (and was indeed reversed) by the investor through sustainable and quality rehabilitation. A related claim of the Decan Municipality Inspectorate was suspended by court, who confirmed the inspection competence of MESP.⁵⁴

The change in the mayor's position few years ago brought a de-escalation of the tensions and lead into a constructive dialogue about sustainable sponsoring and funding for municipal projects.

⁵⁰ Attachment 31: Memorandum of Understanding between Decan Monastery and KelKos Energy, 09.06.2010

⁵¹ Attachment 32: Contract Agreement between Decan Municipality and KelKos Energy, 16.03. 2012

⁵² Attachment 33: Project support letter of Decan Mayor to Abbot Sava of Decan Monastery, 18.01. 2012

⁵³ Attachment 34: Reply letter of Abbot Sava of Decan Monastery to Decan Mayor, 30.01. 2012

⁵⁴ Attachment 35: Ruling of the Basic Court in Decan No. 3300-16 - the minor offence procedure against KelKos Energy is suspended, 21.05. 2018.

5.3 League of historians / association of independent intellectuals of Decan

A small but very vocal group of radical ex-fighters of the Kosovo Liberation Army is acting under these misleading titles. They conduct an aggressive campaign against any kind of Serbian institution in Kosovo. Their prime target of attacks is the Serb-Orthodox monastery of Decan and its head, the Abbot Father Sava⁵⁵.

With the servitude agreement between KelKos Energy and Decan Monastery at hand, their aggression was automatically extended to KelKos Energy, who is considered by them as a foreign supporter of the Monastery⁵⁶.

5.4 Koha media group

The Decan municipality and the surrounding region are considered a stronghold of the political party AAK and its leader Ramush Haradinaj. Veton Surroi, an ex-politician and powerful media group owner (including the newspaper Koha Ditore, the TV-Channel KTV etc.) considers Haradinaj as war criminal and leads a nearly 20 year-long media campaign against Haradinaj and his party AAK.

With the presentation of the hydropower project of KelKos Energy for Decan River, the Koha media group automatically tagged the project as being related with Haradinaj. This was the start of a media campaign of the Koha group against the project and against KelKos Energy, which lasts until today.

A closer analysis of the media coverage of the false accusations of Ms Loshaj shows that most of it is published by media of the Koha Group. The vast majority of Kosovo media does not publish these articles, which are mostly repeating statements of Ms Loshaj, due to the lack of any factual basis and because of defamation concerns.

5.5 Jeta Xharra and affiliated media

Jeta Xharra is the Kosovo regional director of BIRN, an important Balkan-wide NGO, which works for more transparency of political processes and the rights of journalists. In parallel she operates online media such as “Kallxo” and “Balkan-/Prishtina insight” and hosts the TV-show “Jeta in Kosovo” on KTV.

During the past years Jeta Xharra has distinguished herself with an overly aggressive investigation style against the public administration of Kosovo and individual government officers. In parallel she became increasingly affiliated with the opposition party Vetevendosje and was transporting through her media their political campaigns. She has a close economic affiliation with the former Deputy Prime Minister of Vetevendosje, Haki Abazi.

Ms Xharra is one of the key promoters of Ms Loshaj and distributes her accusations and defamations – largely unquestioned – through her media platforms Kallxo and Prishtina-/Balkan insight. Ms Xharra organized the first public appearance of Ms Loshaj in her TV-show “Jeta in Kosovo” in the year 2018, which was the kick-off event for her campaigning. Ms Xharra actively supports the media strategy of

⁵⁵ Attachment 36: Letter of the “Association of Independent Intellectuals of decan” to President of Kosovo Vjosa Osmani, declaring the Abbot of the Monastery of Decan the “instigator of hatred”, 10.04. 2021.

⁵⁶ Attachment 37: Press statement of the “League of Historians” in Decan, reiterating unfounded and false accusations against KelKos Energy, 20.02. 2021.

Ms Loshaj, to place unproven allegations against responsible authorities of MESP and ERO regarding the permission process of KelKos Energy, as well as serious defamations against KelKos Energy.

Recently published media investigations seem to provide evidence that Ms Xharra is discreetly affiliated with major energy import companies from Serbia into Kosovo.⁵⁷ This might explain her aggressive approach against KelKos Energy, who could be seen as potent competitor and investor into the autonomous energy production of Kosovo. In another published investigation a Kosovo media representative accuses Ms Xharra of blackmailing.⁵⁸

5.6 Vetevendosje Movement (VV)

The Vetevendosje movement was during the past 10 years the prime opposition party of Kosovo, with a continuously growing number of supporters. Their key strategy was the blaming of the “old-parties-network” for alleged lack of transparency and potential corruption. With this background, KelKos Energy became a logic aggression point, boosted by negative campaigning of the Decan municipality as described above. By means of unbalanced negative (and largely false) public statements, emission-free hydropower plants were continuously stigmatized by VV as “destructors” of the environment.

This approach is a questionable one in a country where more than 95% of the energy production is derived from the lignite fired powerplant at Obiliq, which severely affects the air quality for the more than 600.000 inhabitants in the nearby capital Prishtina and caused numerous cases of lung diseases in children. The collection of related statistical data has been discontinued by the responsible authorities.

During the most recent election campaign, VV intensified its attacks against hydropower plants in general and KelKos Energy in particular. A Decan representative of VV filed, together with Ms Loshaj, a claim against ERO and MESP, requesting the temporary suspension of some permissions and the production licenses of KelKos Energy due to massive environmental impacts on the local community⁵⁹. There is no evidence for these accusations.

A judge of the Basic Court in Pristina approved this suspension request in the first instance, leaking his court decision to VV and media before notifying it to the parties MESP and ERO. However, the Appeal Court decided just recently against this judgment and dismissed the suspension request case in favour of ERO, MESP and KelKos Energy. The Appeal Court ruled that the claimant failed to provide any evidence of the argued damage to the local community⁶⁰.

The outcome of the most recent general elections brought a large majority of votes for VV, enabling them to establish a government without having to form a coalition with other parties and to fill the position of the President of Kosovo. The new Minister of Environment, Liburn Aliu, has recently established a new ministerial working group⁶¹, which is reviewing the permission processes of all hydropower plants (a task, which during the previous VV-government the then VV Deputy Minister of

⁵⁷ Attachment 38: Article in the independent internet portal “Periskopi” about affiliations of Jeta Xharra with Serbian energy trading companies, who are contracted with the import of energy into Kosovo, 10.12. 2020

⁵⁸ Attachment 39: Article in the independent internet portal “Periskopi” about blackmailing accusations against Jeta Xharra by a manager of RTK public television, 25.05. 2021

⁵⁹ Attachment 40: Claim of Faton Selmanaj (VV) against ERO and MESP, 04.12.2020

⁶⁰ Refer to Attachment 19.

⁶¹ Attachment 41: Article in newspaper “Koha” about the establishment of a working of MESP regarding the permission review of hydropower plants, 14.05. 2021

Environment has already ordered for the case of KelKos Energy, without finding any questionable aspect in it). The report is expected in the coming weeks.

In order to support these investigations, KelKos Energy has voluntarily provided just a few days ago a comprehensive documentation of its complete project permission process during the years 2010-2021 to Minister Aliu, responding to a complaint expressed by him in an earlier meeting with KelKos Energy about the difficulty to get access to all the permission and licensing data in the different administrations involved.⁶²

The overall impression is that parts of VV seem to have somewhat abandoned their principled negative attitude towards KelKos Energy. Especially Minister Aliu, who has actively investigated during the past weeks different hydropower plant projects, seems to distinguish now between professionally constructed hydropower plants such as those of KelKos Energy, which are in full conformity with European state-of-the-art technology, and other, privately operated projects. The latter projects often seem to lack both professional expertise as well as sufficient investment capital, especially for the post-construction rehabilitation obligations.

On the other hand, individual political representatives of VV continue their aggressive negative campaigning against KelKos Energy, often due to personal motives, which may be related to campaigning for the upcoming municipal elections.

6 Investments of KelKos Energy into the regional development since 2013

The Kelag Group and KelKos Energy are committed to contributing to the sustainable development of the regions in which they operate. The corporate policy of Kelag Group foresees a close partnership with the municipality hosting the project and the local community. Therefore, voluntary investments in the fields of public infrastructure, social and cultural development as well as projects to increase the environmental awareness are an integral part of the long-term project implementation of KelKos Energy.

During the construction phase, KelKos Energy has implemented the following investment projects in Decan Municipality, which amount to a total of more than 3 million Euros.

- New construction of the road between Lumbardhi II and Zali Rupe
 - The original situation was a narrow walkway of some 1-2 m
 - The dimension of the new road is equal to road between Decan and Lumbardhi
 - Reconstruction of all bridges over the Albanski River

- New construction of the drinking water pipeline of Decan
 - Complete supply lines of Decan
 - Complete supply lines of nearby villages
 - 4 additional collectors/intakes
 - Substantial increase of total water volume

⁶² Attachment 42: Letter of KelKos Energy to Minister of Environment Aliu, providing a comprehensive permission documentation of the Decan hydropower plant project between 2011-2021, 03.06. 2021

- New construction of 20 km of underground high voltage 35 kV cable
 - Substitution of overhead power supply line between the powerhouse Lumbardhi II and the powerhouse Decan with high voltage underground cables
 - Upgrade of overhead power supply line between the powerhouse Decan and the substation Isnig
 - Construction of underground high voltage 35 kV cable between substations Isnig and Decan
 - Upgrade of the substation Isnig with a transformer unit 35/110 kV.
- New construction of pedestrian walkways and road segments along the underground cable track through Isnig
- New construction of some 15 km of glass fibre cable along Decan valley

The total investment volume of more than 3 Mio. Euros equals 5% of the overall project investment value. Further investments, this time into social, cultural, and touristic projects of Decan municipality are currently evaluated with the Mayor of Decan and his team. Another share of the project investment budget is dedicated for long-term rehabilitation of fauna and flora of the Decan River basin.

We hope that this letter answers your concerns regarding the pending lawsuits in Kosovo. We would hope that you duly consider our position and conduct your own independent investigations before you publish a statement in this regard.

Please do not hesitate to revert to us if you have any questions.