




THE ISSUE OF
TREPCA COMPLEX IN THE
CONTEXT OF AN EVENTUAL **'GRAND FINALE'**
BETWEEN
KOSOVO AND SERBIA

November 2019

Supported by:



Norwegian Embassy





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Abbreviations

ARBK	Agency for Registration of Businesses in Kosovo
BOAL	Basic Organisation of Associated Labour
BU	Business Unit
COAL	Complex Organisation of Associated Labour
KTA	Kosovo Trust Agency
PAK	Privatization Agency of Kosovo
PPP	Public-Private Partnerships
SFRY	Socialist Former Republic of Yugoslavia
SOE	Socially Owned Enterprises
UNMIK	United Nations Mission in Kosovo

Background

1. It is important to highlight the legal status of enterprises in former Yugoslavia and also the relevance of the relations between the constituent units of the Socialist Federal Republic of Yugoslavia (SFRY). Based on the 1974 Constitution, Yugoslavia was a federation of eight equal constituent units (six Republics and two Autonomous Provinces), each of them in charge and in control of their own economy and politics, with their own institutions of autonomous government (Assemblies, Governments, courts, etc.). Indeed, the two provinces had to agree to changes in Serbian laws that could affect them. Any change in the Constitutional arrangements in Serbia had to be agreed to by the Assemblies of the two Provinces of Kosovo and Vojvodina.
2. The ownership of enterprises in former Yugoslavia was based on the concept of 'social ownership'. This meant that enterprises were owned by the society but were entrusted to their employees to manage them, maintain them and benefit from them. The 1974 Constitution introduced the notion of 'Basic Organisation of Associated Labour (BOAL)' (a company or a sub-unit of a company which could be identified as a separate technical/economic unit) as the basic decision-making unit deciding on all matters related to their enterprise or sub-unit of the enterprise. A large company was called a Complex Organisation of Associated Labour (COAL); it brought together representatives of all its BOALs in order to coordinate their decisions particularly in terms of the current and strategic production and investment plans (without interfering in the decision-making process of individual units). Employees exercised their self-management rights through the organs of self-management in their enterprise (the Assembly, the Workers' Council and Management Board). The society, in the form of municipal, provincial or republican government, was responsible to make sure that the assets are looked after, maintained and enhanced (therefore, there were rules on how to divide the net income of an enterprise between employees' wages and investment in the company). But the employees had full rights to decide on the affairs of their company.
3. In the late 1980s, the Law on Social Capital of 1989/1990 (better known as the 'Marković Law') enabled employees to decide on full or partial privatisation of their

company with some shares going to employees (at discounted prices depending on their length of service) and others to pension funds or external investors. But it was employees who had the right to make such decisions - and not the government (Provincial or Republican). So, for any company, including Trepça, any decision on restructuring or any ownership transfer could only have been made by its own employees and organs of self-management.

4. Trepça was the largest socially owned enterprise in Kosovo and a major exporter and source of foreign exchange earning in Yugoslavia. It was a large industrial, metallurgical and chemical complex based in Kosovo (though it also had some assets in other parts of Yugoslavia). At its height in the early 1980s, it employed some 22,000 people though the employment level was gradually reduced during the 1980s and later years. By the end of 1980s, the COAL Trepça consisted of 21 BOALs (each mine, each flotation unit, each metallurgical unit, each factory, etc. was one BOAL). Each BOAL was responsible for its own decisions and had its own board and general manager.
5. Despite its importance for Kosovo and the Yugoslav economy, Trepça was in general a loss-making enterprise during the Yugoslav period and depended on subsidies from the Government, loans from banks and credit from the Federal Fund for the Accelerated Development of Less Developed Republics and Provinces.¹
6. In March 1989, the Serbian Government abolished Kosovo's autonomy in violation of the Yugoslav Constitution by engineering a vote in the Kosovo Assembly consenting to constitutional changes in the Republic of Serbia which enhanced the power of Serbia over the two Autonomous Provinces. The fact that the Constitutional Court of Kosovo annulled this decision in November 1989 was ignored by the Serbian Government.
7. Through a series of laws and decrees passed by the Serbian Parliament in 1989 and 1990, Serbia took direct control of political and economic life in Kosovo, abolishing

¹ Palairret, M. (2003), 'Trepca, 1965-2000, p.8.' Available at: https://www.esiweb.org/pdf/esi_document_id_62.pdf [Accessed on October 12, 2019].

the Assembly of Kosovo, appointing managers to Kosovo enterprises in violation of self-management rules and dismissing some 140,000 Albanian employees of these enterprises (including a large number in Trepça).

- 8.** The majority of the Albanian employees of Trepça were dismissed by the management appointed by the Serbian Government (an illegal action under Yugoslav laws) and the wholesale reorganisation of Trepça took place without the participation and agreement of thousands of rightful employees (also illegal under Yugoslav laws). The decrees and laws passed after the removal of Kosovo's autonomy were in violation of the constitution of Yugoslavia and, as such, illegal. They were also discriminatory as they were heavily loaded against the Albanian nationality. The Serbian authorities or their appointed managers violated the self-management rights of employees and did not have the legal power to reorganise Kosovar enterprises or change their ownership structure.
- 9.** One of the first decisions of UNMIK was to declare the so-called 'applicable laws' in Kosovo. All Yugoslav laws were regarded as applicable in Kosovo except those that were discriminatory against the Albanian citizens of Kosovo. The removal of autonomy, the direct control of enterprises, the dismissal of Albanian employees and the subsequent decisions to change the ownership of the Company were prime examples of discriminatory laws and were thus considered null and void.
- 10.** Following the events of the 1990s and the 1998-99 War, much of the old SOE Trepça has been either not in operation or working well below capacity. At present Trepça consists of mining and flotation (these two activities are very closely linked as the lead-zinc ore has to be transformed to lead or zinc concentrate by going through the flotation process), metallurgical, chemical and other manufacturing and service producing sub-units. These are described in the following paragraphs. Broadly speaking, Trepça units are located in three areas of North, Central and South Trepça with the North Trepça being under the control of Serb employees and to a large extent separate from the rest of Trepça's units. The location of mines (active and non-active), flotation and smelting units are indicated on the map provided in Annex 1.

11. Mining and Flotation: The Trepça mining belt consists mainly of Zinc and Lead ores with smaller quantities of silver, gold, and other precious and heavy metals. The active mines and their flotation units are:

- Stantërg mine, located some 9 Km Northeast of Mitrovica, served by the flotation unit Tuneli i Parë.
- Artanë mine served by the flotation unit at Kishnica (there are several mines in this area which used to feed the Kishnica flotation unit but these have been all flooded).
- Belo Brdo mine, located some 16 Km Northeast of Leposavic and right on the border with Serbia; 77% of deposits of this mine are located in the territory of Serbia and 23% in the territory of Kosovo. Some of the facilities such as ventilation and water facilities are located on the Serbian side.
- Cërnac mine, located some 10 Km Southwest of Leposavic, also located on the border with Serbia; 58% of deposits of this mine are located in the territory of Serbia and 42% in the territory of Kosovo. Some of the facilities such as ventilation and water facilities are located on the Serbian side.
- The Belo Brdo and Cërnac mines are served by the flotation unit at Leposavic.

12. The metallurgical activities consist of:

- Lead smelter and refinery producing lead and silver in Zvecan. The lead smelter was closed down by UNMIK and KFOR in 2000 because of the hazardous levels of pollution. Currently, there is some small battery recycling (extraction of lead from used batteries) taking place in the Zvecan plant.
- Zinc electrolytic plant at Mitrovica Industrial Park. The zinc metallurgy was closed down because of a fire, also in 2000. In recent years, they have been working on rebuilding a Zinc Oxide (ZnO) oven in Mitrovica but this has not been completed yet.

13. Chemical and other manufacturing activities consist of:

- Chemical industry, which used to produce mainly Sulphuric Acid, is located in the Mitrovica Industrial Park, now produces only a small amount of

aluminium sulphate for water treatment plants across Kosovo, employing about 40 workers.

- Process Equipment (and Tractor Trailer) Factory, Mitrovica. This company now is only involved in the maintenance of equipment in Trepça, with 25 employees. It is able to produce tractor trailers if there is any demand.
- Battery Factory, also located in the Mitrovica Industrial Park, but is not operational now.
- Trepça Energetic, Zvecan, used to produce electricity from thermal power plant and distribute it to mines and flotation units, but is not operational now.

14. The service producing sub-units of Trepça are:

- Trepça Institute, Zvecan, was a research institute engaged in scientific work related to Trepça's activities. It is now involved in monitoring water, air and earth pollution levels for units under the Zvecan Management (the so-called North Trepça).
- Trepça Trans, Zvecan, was in charge of transporting goods in the whole of Trepça. Currently, it provides transportation services only for units directed by the Management in Zvecan.
- Trepça Standard, Mitrovica, was responsible for preparing food for employees as well as recreational, cultural and educational activities for the whole of Trepça. It now provides these services only for the units under the Management in Zvecan.
- Trepça Laboratory, Zvecan was responsible for controlling the quality and quantity of produced goods and granting of Certificates for the whole of Trepça. It now provides these services only for units directed by the Management in Zvecan.
- Accounting Centre, Mitrovica, provided some accounting service for the company. It is not operational now.
- Trepça Commerce, Mitrovica, was engaged in sales and supplies for the whole of Trepça. It is not operational now.
- Occupational Medicine, Zvecan, a small medical unit providing medical treatments for employees. It is not operational now.

- Trepça Bank, Zvecan, provided banking services for Trepça. It is not operational now.
- Property Protection, Zvecan, was responsible for the protection of Trepça's assets and the security of all factories and assets. It is not operational now and security is provided by the two separate parts of Trepça.

15. In addition to the sub-units listed under Paragraph 11-14 above, the SOE Trepça also included the following sub-units which were put under the SCSC moratorium. But in January 2011, the SCSC released these non-core enterprises from the moratorium and transferred them back to PAK for privatisation or liquidation. Some of these companies have already been privatised while others are still under PAK administration or in the privatisation process.

- Factory for production of hunting ammunition Skenderaj - still under PAK administration
- Factory for production of metal products Famipa, Prizren - has completed the privatisation process
- Paint factory Extra, Vushtrri - has completed the privatisation process
- Polyester factory, Podujevë - is in the privatisation process, the sale being finalised
- Factory for production of Nickel – Cadmium batteries, Gjilan - has completed the privatisation process
- Metal industry, Metaliku, Gjakova - still under PAK administration with a temporary measure due to the claims of the so-called 'shareholders'
- Factory for industrial Batteries, Peja - has completed the privatisation process.

16. During the 1980s and earlier period, Lead and Zinc ores as well as other minerals were produced in a large number of mines but during the 1998-99 war, mining activities came to a halt and the mines were quickly flooded. Of the 15 active mines in Kosovo only four of them (Stantërg, Artanë, Belo Brdo and Cërناق, listed in Paragraph 11) are in operation currently. These four account for about 50% of the estimated geological reserves of all 15 mines (FS, p. 143). The estimated 'geological reserves' of

Kosovo mines amount to approximately 62 million tons, though these estimates are old.

Trepça during the period of control by Serbia (March 1989-June 1990)

- 17.** From 1989 until the departure of Serbian troops and officials from Kosovo in June 1999, Trepça was under the direct rule of the Serbian government and their appointed managers. The period is characterised by mismanagement, incompetence and corruption. The Company faced deteriorating conditions with falling output, lack of investment, unmaintained equipment, rising debt, shortage of input for processing units, and a vicious downward cycle. The management tried to maximise output (in order to earn the much needed foreign exchange and provide inputs for metallurgical and chemical industry) with minimum investment – a destructive policy with long term negative effect on Trepça.
- 18.** From 1989, the output of mines, flotation and smelters fell dramatically, reaching their lowest point around 1994 bringing the company almost to a standstill (the output of these activities in 1994 was about 5% of 1988 levels). Annex 2 provides the data on the long term changes in the output of mining and flotation units and the production of lead and zinc concentrates from 1979 to 2000.
- 19.** As Annex 2 demonstrates, the total output of the lead and zinc ore from the three Trepça mining areas had been falling since the early 1980 (the three mining areas reached their maximum in different years but the total began to decline in 1980). The flotation units where lead and zinc concentrates are produced, had already reached their maximum output in 1979.
- 20.** After the 1999 War, gradually some of the mines and flotation units were rehabilitated and made ready for production, though at much lower levels of output than before. The four main mines of Artanë, Stantërg, Belo Brdo and Cërñac began to produce from around 2004/2005. Annex 3 shows the level of output of ores and concentrates from 2005 to 2016, demonstrating how the level of output has gradually

increased in all mining and floatation units though they have still not reached their 1989 levels.

21. Between 1989 and 1990, the overall employment in mining, flotation, metallurgy, accumulators and chemicals fell by 50% (from 13,261 to 5,720) but that of Albanian employees fell by 95% (from 9,004 to 436) while the number of Serbian employees rose by about 30% (from 3,742 to 4,644). The detailed structure of employment according to the nationality of employees in the main sub-units of Trepça in this period is presented in Annex 4. The total number of Albanian employees dismissed in all of Trepça has been estimated to be much higher, around 16,000.² This was the most obvious evidence of the discriminatory policies implemented after Serbian Government took direct control of Trepça.

22. By 1991, the company's financial position had deteriorated significantly. The dismissal of the Albanian employees had made it impossible to maintain the previous levels of production as there were not enough qualified Serbian employees to replace the dismissed workers. It is important to note that Albanian employees ranged from low skilled workers to highly skilled engineers and managers, including the general managers of 13 sub-units of Trepça,³ almost all of whom were fired. It was clear that the politically motivated policy of dismissing Albanian employees had been implemented despite its economic consequences. The company became heavily indebted to banks, suppliers, workers, Electricity Company and others. The only solution offered by the management was to increase borrowing and, later, attempting to offer bundles of shares to creditors in exchange for their claims.

23. In 1991, the Serbian management which had taken over the company and dismissed the bulk of its Albanian workforce, embarked on a major reorganisation of the company combining all 21 sub-units (BOALs) into one enterprise. The Mining, Metallurgy and Chemical Combine Trepça was registered as a socially owned

² Mikullovc et al.,(2002), 'Trepca- A Case Study, presented at the Conference on Privatization of SOEs and the Reform of Utilities in Kosova, p.5.' Available at: <https://www.esiweb.org/pdf/bridges/kosovo/20/6.pdf> [Accessed on October 10, 2019].

³ Mikullovc et al.,(2002), 'Trepca- A Case Study, presented at the Conference on Privatization of SOEs and the Reform of Utilities in Kosova, p.6.' Available at: <https://www.esiweb.org/pdf/bridges/kosovo/20/6.pdf> [Accessed on October 10, 2019].

enterprise on 22 November 1991 by the District Commercial Court of Prishtina (No. 2320/91), as “Rudarsko-Metalursko-Hemijski Kombinat RMHK Trepča”. As mentioned earlier, this reorganisation was illegal because the bulk of employees who had the right to make such decisions had been dismissed and thus deprived of their self-management rights guaranteed by the SFRY Constitution.

24. Also in 1991, Trepča witnessed a major change in its ownership structure. It was converted to a Joint Stock Company with 89.3% of shares in ‘social’ ownership and the rest transferred to two banks and 9 enterprises. There was no formal sale of shares to these entities and there had been no formal valuation of shares. Banks and most of these enterprises were creditors of Trepča who converted all or some of their claims to shares of Trepča at some nominal price (effectively a debt-equity swap). This became a common method of raising cash to pay Trepča’s debts over the next decade. Two foreign trade enterprises (Progres and Genex) paid for their shares, thus injecting some cash into the company.⁴ Annex 5 shows the structure of ownership of Trepča at the end of 1992 and 1999, demonstrating how the shares of SOE Trepča was gradually transferred to other private or public entities mainly in Serbia.

25. By 1992, over 63% of shares in the so-called ‘social ownership’ category was transferred to the Fund for Development of Serbia. Further transfer of shares to enterprises and banks took place in the following years. By the end of 1999, about 70% of shares were in the hands of 3 banks, an insurance company, and several enterprises (that had been creditors of Trepča in previous years) and some 30% under ‘social ownership’ (see Annex 5).

26. Effectively, shares of Trepča were transferred to Serbian institution and companies in exchange for debts arising from the mismanagement of the company or fresh cash injection to deal with liquidity problem, unpaid wages and other financial difficulties. All aspects of these share transfers were illegal. Serbia must take responsibility for creating these debts and changing the ownership of an SOE to a different form without the agreement of employees- even Serb employees of that period.

⁴ Palairat, M. (2003), ‘Trepca, 1965-2000, p.23.’ Available at: https://www.esiweb.org/pdf/esi_document_id_62.pdf [Accessed on October 12, 2019].

27.In February 1995, a new Director-General was appointed. The new Director, Novak Bjelić, who was the owner of many private enterprises in Yugoslavia, including FAGAR, later FAN (in Podujevë) and other companies in Serbia, entered his private companies into business transactions with Trepça, thus helping to siphon off Trepça's assets into private hands. Bjelić, who was a member of the Federal Assembly, a party activist and close to Milosević, remained in power until the fall of Milosević. He was dismissed in January 2001 by the Management Board of Trepça. Criminal charges were filed against him and two of Trepça officials for abuse of official position and signing contracts damaging to Trepça.⁵

28.During Bjelić's reign, Trepça's position deteriorated further; minerals and metals were sold to buyers before they were produced; foreign buyers of minerals and metals were encouraged to provide loans to the company against future delivery of metals; labour dispute and strikes resulted in further reduction in production and failure to meet the deadlines, creating more debts. Later, some of the loans were converted to shares; some shares were sold to banks and other entities to raise money for the cash strapped company. Also, many claims were filed against Trepça by banks, foreign businesses, suppliers, employees, etc. The bulk of these claims were filed by two foreign companies Mytileneous Co. from Greece and SCMM Co. from France, both with a close connection to Bjelić and his private companies (for a detailed discussion of arrangements between these companies, Trepça and Bjelić, see Palairret, 2003).

29.One of Bjelić's illegal actions with serious consequence for employees was to bypass the regulations requiring companies to pay taxes, pension, and health contributions through the banking system. Bjelić arranged for the payment of net wages to employees through the postal saving bank, thus avoiding automatic deductions of taxes and contributions of employees and depriving many (largely Serbian) employees of their pensions (for details see Palairret, 2003, Summary, p. 5). The total tax and contribution avoidance amounted to €11.6 mil by the end of 2000. This action

⁵ Palairret, M. (2003), 'Trepca, 1965-2000, p.86.' Available at: https://www.esiweb.org/pdf/esi_document_id_62.pdf [Accessed on October 12, 2019].

was known to all, including the tax authorities in Serbia, but Bjelić's political connections ensured that no action was taken to stop this practice.

30. In 2001, Trepça had an official total debt of €76.7 mil to tax authorities (for the unpaid taxes and contributions of employees mentioned in the previous paragraph), suppliers, banks and some creditors who had successfully sued the company. However, this is only a part of the company's total obligations. In the same year, there were 113 lawsuits filed by creditors against Trepça for a total amount of €84.2 mil (two main foreign claimants were mentioned in an earlier paragraph). Annex 6 provides a break-down of the balance sheet debts and the off-balance sheet lawsuits filed against the company in 2001. ⁶

31. Environmental damage to Kosovo was also huge (and still continues despite UNMIK and later Kosovo Government trying to ameliorate the worse examples). UNMIK and KFOR had to close down the smelter in Zvečan for excessive pollution and danger to citizens' health. The lack of attention to the environmental costs during the 1990s resulted in widespread damage to water and soil resources around Trepça flotation, chemical and metallurgical units. During their control of Trepça in the 1990s, the Serbian management almost completely ignored the environmental damage and took no significant action to mitigate against the contamination of air, water and soil. This is another area where Serbia has to accept the responsibility for damage to the environment in Kosovo.

32. Trepça also had a significant amount of assets outside Kosovo, in mining as well as other sectors (including a farm in Vojvodina). During the 1996-2000 period, about 25% of the aggregate payroll of Trepça was paid to employees in various units of Trepça located in Serbia.⁷

⁶ Palairat, M. (2003), 'Trepca, 1965-2000, p.88.' Available at: https://www.esiweb.org/pdf/esi_document_id_62.pdf [Accessed on October 12, 2019].

⁷ In addition to the activities in Serbia, accounting for around a quarter of the aggregate payroll, Trepça also had assets in Montenegro and Vojvodina (Palairat, 2003, Summary, p.2).

Trepça under UNMIK and Independent Kosovo

- 33.** UNMIK took over control of the Company in June 1999 after the departure of Serbian troops and officials from Kosovo. The management of Trepça was transferred to the Kosovo Trust Agency (KTA) after it was set up in 2002 and later to the Privatization Agency of Kosovo (PAK) after the declaration of independence in 2008. Recently the company has been reorganised on the basis of the 2016 Law on Trepça. It is now effectively under the Ministry of Economic Development who exercises the rights of the government's 80% shares.
- 34.** When, in 1999, UNMIK took over the management of SOE Trepça, the conditions of the company had deteriorated significantly and production was at a standstill in almost all units. Many mines had been or became quickly flooded and the production came to a halt not just in mines but also in flotation and metallurgical units and the downstream companies using the output or by products of these three stages. Many of the dismissed Albanian workers and managers returned to Trepça and began the task of restarting the company. It was only in 2005 when the production began fully in the three mining areas of Stantërg, Artanë and Kopaonik (Belo Brdo and Cërñac) (see Annex 3).
- 35.** During the past 19 years, UNMIK and then the Kosovo Government have tried to improve the conditions of Trepça but the company's situation is far from ideal. Trepça needs a massive injection of capital in order to bring in new technology and management – something that has been beyond the ability of successive governments.
- 36.** In 2006, KTA applied to the SCSC to place Trepça under a moratorium in order to prevent any change in its assets or the creation of any new obligations, and to protect it against any attempt to force it into liquidation or bankruptcy. Later on, the Assembly passed a Law preventing the bankruptcy/liquidation of Trepça. Finally, in 2016, the Assembly passed the Law on Trepça, changing the status of the company to a joint stock company with 80% of shares allocated to the government and 20% to employees (more on the new Law below). Despite the legal changes and the passage of control from one institution to another, the production of mineral ores and

concentrates by the Company has continued, though at much lower levels than previous peaks (perhaps in the North Trepça part, the mineral production has almost reached the pre-1989 levels - see Annex 3).

37. The lead and zinc metallurgical units (smelters) have been closed down (in Zvečan because of pollution and in Mitrovica because of a fire). Most of the other Trepça companies are either inactive or working at very low capacities. Successive Governments have continued to provide some subsidy to Trepça in order to enable it to maintain its current level of operations and employment (the Government is now one of the major creditors of SOE Trepça with a claim of around €150 mil.). Some of the mines in Central and Southern Kosovo have never been revitalised since the war and remain flooded. These need large investments to be returned to production.

38. PAK has prepared a list of claimants against Trepça and studied the nature of these claims. They have considered in detail the merits of 51 claims over €100,000 and a small number of claims under €100,000. They have reached the conclusion that only some 3 claims have a high probability of success and one claim with a reasonable chance of success. The rest of the claims, they believe have little chance of success.

Trepça under the new Law

39. In 2016, the Law on Trepça was passed, converting SOE Trepça to a joint stock company with 80% of shares belonging to the Government and 20% to employees, and opening the possibility of private sector (particularly foreign investors) participation in Trepça.⁸ The Law established three Business Units (BU) consisting of:

- BU1: Mines with Flotation Stantërg-Tuneli i Parë;
- BU2: Mines with Flotation Artanë-Kishnicë;
- BU3: Mines with Flotation Belo Brdo and Cërnac-Leposavic

⁸ In March 2016, in preparation for the new Law on Trepça, the Committee for Economic Development, Infrastructure, Trade and Industry of the Assembly of Kosovo commissioned six reports by international experts on different aspects of the restructuring of, and private sector participation in, large mining and metallurgical sector companies in other countries (former socialist countries as well as other developing and developed market economies). Later, in October 2016, a summary of these six reports was presented at a Conference on 'Revitalisation of Trepça through Public-Private Partnership: Lessons from other countries', organised by Forum 2016 in Prishtina.

The Law also provided for the possibility of establishing two other business units covering Lead Metallurgy, Zinc Metallurgy and possibly other business units covering other activities of SOE Trepça later, subject to a Feasibility Study and economic and financial analysis.

The Law foresaw that other sub-units of SOE Trepça may be incorporated into one of the existing Business Units upon the completion of a Feasibility Study (which was undertaken in 2017) and its recommendations. The non-core and loss making sub-units of Trepça were to be returned to PAK for privatisation or liquidation.⁹

The Law also opened the possibility of private sector participation (mainly foreign investors) in joining and developing the existing business units or establishing new business units in partnership with Trepça JSC.

40. The Statute of Trepça was approved by the Assembly in 2019 and the company was registered at the Agency for Registration of Businesses in Kosovo (ARBK) as Trepça SH.A. (JSC) on 8 March 2019 under the Registration no. 45352898.

41. Although the due diligence and economic and financial analysis mentioned has not been undertaken, the Statute of Trepça passed by the Assembly, provides for the establishment of ten more Business Units in Trepça. Article 6.4 of the Statute establishes the following business units:

1. Lead metallurgy;
2. Zinc Metallurgy;
3. Chemical Industry;
4. Akumulator (automotive battery) Factory in Mitrovica;
5. Process Tool Factory;
6. Energy Stations (Energetics);
7. Laboratory in Zvecan;

⁹ Assembly of the Republic of Kosovo (2016), 'LAW No. 05/L-120 ON TREPÇA' Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12988> [Accessed on October 14, 2019].

8. Lead and Zinc Institute;
9. Kishnica Administrative Complex in Prishtina;
10. Administrative Complex in Zvecan.

Clearly, there is a conflict between the Law on Trepça and the Statute of Trepça in the concept of Business Unit. There has been no study or investigation about whether the above sub-units can operate independently and profitably. It seems that some of them are more suitable for being merged with the three Business Units foreseen in the Law than being separate Business Units.

- 42.** The environmental damage goes back to the period before UNMIK with the poor condition of tailing dams from the flotation and metallurgical units, acid mining drainage, many contaminated sites and the conditions of air, water, and soil. Indeed, because of the seriously high levels of pollution, UNMIK, with the support of KFOR, closed down the Lead Metallurgy unit in Zvecan in 2000. A number of reports have been commissioned by UNMIK, UNDP, and governmental organisations to identify and assess details of environmental condition and appropriate measures to reduce the impact of contamination (e.g., Humboldt University Berlin, 2005 and 2011; HU Berlin, LMBV and Bevercon Management, 2012; UNDP, 2014, among others). During their control of Trepça in the 1990s, the Serbian management almost completely ignored the environmental damage and took no significant action to mitigate against the contamination of air, water, and soil.
- 43.** Although the Trepça Complex has been held by KTA and then PAK as one company, in reality, there are two sets of management, one for the North Trepça area and one for the Central and South Trepça areas. In many ways, the North Trepça management operates independently and although it provides certain documents to PAK (e.g., documents relating to the sale of ores), these are fairly limited. Any visit to North Trepça has to be arranged with their prior agreement and is fairly restricted. In reality, under the present conditions, it is doubtful if the management there can be changed by the authorities in Prishtina. This provides both a challenge and an opportunity to work with the Serbian community for the management of 'North Trepça' business units.

Conclusions and Recommendations: Main issues of concern for Kosovo

- 44.** Although Trepça's recent and current condition is rather poor and characterised by loss-making operations, low productivity, low capacity utilisation, flooded mines, closed down metallurgical processes, severe contamination of the environment, financial difficulties, etc., the company still remains an important historical asset for Kosovo. The company has the potential to be a profitable going concern, contributing to economic growth, exports and employment.
- 45.** The Serbian government's intervention in Kosovo in 1989 and the abolition of its autonomy derived from the 1974 Yugoslav constitution was illegal. So was the takeover of enterprises in Kosovo and their reorganisations, restructuring and the transformations of ownership of companies during the 1990s. All that followed should be considered null and void as per UNMIK regulation on applicable law.
- 46.** Assets located in Kosovo belonged to socially owned enterprises in Kosovo (and socio-political communities in Kosovo) according to the 1974 Constitution. Any reorganisation, restructuring and full or partial privatization according to the Markovic Law could only be done only by the decision of employees and the organs of self-management of these enterprises. This is true of Trepça and other Kosovar companies taken over by the Serbian regime after the abolition of Kosovo's autonomy. Reorganisations and transfers of ownership of Trepça's shares to Serbian institutions, banks and individuals during the 1989-99 period were illegal and discriminatory against the citizens of Albanian nationality (under both Yugoslav laws and by UNMIK Regulation on Applicable Law).
- 47.** The rights of Albanian employees who were illegally dismissed were violated and this has to be recognised and compensated. The number of these employees are between 9000 and 16000. Most importantly, while they paid their contribution to the pension funds, they are not receiving their pensions from these funds as they were based in Serbia. The Kosovar Government has become responsible for the payment of pension

to these former employees who are largely retired now. This is a burden on the Kosovo budget which needs to be resolved.

- 48.** The rights of Serbian employees of Trepça are recognised by the Kosovo Government as demonstrated in the new Law on Trepça where all employees (Albanian, Serb or others) have been allocated 20% of shares of their Business Units. The Business Units of Trepça which are located in Serb-majority areas of Kosovo (and are largely staffed by Serbian employees) have been treated exactly the same as Business Units located in other parts of Kosovo with largely Albanian employees.
- 49.** All mining and flotation units, chemical industry, and other manufacturing and service units of Trepça are located in the Kosovo territory and are matters for the Kosovo Government only. Serbia has no competence to be involved in these units.
- 50.** During the 1990s, Trepça's economic condition deteriorated rapidly because of mismanagement, corrupt practices, rising debt, tunnelling (siphoning off company's profits to private companies belonging or related to company managers) and the shortage of skilled labour caused by the dismissal of Albanian managers and high-skilled technical staff. The Serbian Government is responsible for the losses suffered by the company during this period.
- 51.** In this period (1990s), shares of SOE Trepça were transferred to the Development Fund of Serbia, banks, and creditors of Trepça. These entities were also engaged in further transactions of shares so that by 1999, over two-thirds of Trepça's shares were in the hands of four banks, one insurance company, Elektroprivreda Srbija, and a number of Serbian companies and their employees. The decisions to transfer shares of SOE Trepça to other entities either for cash or in exchange for writing off Trepça's debt were illegal as they were not made by the rightful employees of the company (who had been dismissed illegally). As such, these shares have no value and should be treated as illegally gained documents.

52. Officially, in 1999, Trepça had a debt of €76.7 mil and off-balance sheet claims against it of €84.2 mil. These are the responsibility of Serbian Government and the managers appointed by them.
53. Kosovo will be ready to seriously engage and consider any claims against Trepça, in particular any loans obtained from international organisations by the Federal or Republican authorities in former Yugoslavia for (or on behalf of) Trepça relating to the period before 1989 (the abolition of Kosovo's autonomy and direct control of Serbia over Trepça), or any arising from the operation of Trepça under UNMIK, KTA and PAK. In order to discuss these issues, however, the documents for such claims and loans have to be provided by the Serbian side. Most of Trepça's documents and archives were removed by the Serbian management in the 1999-2000 period. Although some documents were returned to the Company later, these were not complete documents.
54. Only four mining areas of Trepça (Artanë, Stantërg, Belo Brdo and Cërnac) are operational at the moment. Other mines, which used to produce ore before the War, are flooded and will require large investments before they are revitalised. It is important to note that these four mines account for only 50% of Trepça's geological deposits. In other words, it is essential for Trepça JSC to invest in the revitalisation of other mines as it will not only increase the production of Lead and Zinc ores but will also use the unused capacity of flotation units, thus reducing the unit cost of production.
55. During the period under Socialist Yugoslavia, Trepça was for the most part a loss-making company and it has remained so under UNMIK and independent Kosovo. Although companies similar to Trepça in other former socialist countries have been restructured and transformed into private profit-making companies, Trepça has remained a loss-making company under state ownership. The experience of mining and metal extraction industries in other countries can be useful in the future transformation of Trepça.

- 56.** Hence, it is crucial that the Government of Kosovo moves forward with the aim of involving the private sector in the ownership and management of Trepça, both the existing and future business units. The ownership status and the management structures need to be unequivocally accepted by all the stakeholders. The management team of Trepça should only work for the benefit of the company and of the shareholders and without any political agenda. The political domination of Trepça will continue as long as the state remains the major owner of the company.
- 57.** The 2016 Law on Trepça was the first step in the long-term reorganisation of the company and opening it to private sector participation (especially foreign investors). The concept of 'Business Units' as separate technical and financial units which could operate profitably in a competitive environment, was developed and four Business Units were established by this Law.¹⁰ Other Business Units, particularly for the metallurgical activities and even other sub-units of Trepça were foreseen in the Law but the details were postponed awaiting the completion of a Feasibility Study for the strategic development of Trepça.
- 58.** Pursuant to the Law on Trepça, the Kosovo Assembly recently (2019) approved the Statute of Trepça JSC. The Statute provides for the establishment of ten more Business Units. The Statute seems to be in conflict with the 2016 Law and needs to be reconsidered very soon.
- 59.** Given that Kosovo has declared independence in 2008 and recognised by the majority of member states of the United Nations, and considering that the International Court of Justice to which the UN General Assembly referred the case of Kosovo, ruled in July 2010 that in declaring independence Kosovo did not violate any applicable international law or the provisions of the UN Resolution 1244, the separation of Kosovo from Serbia is *fait accompli*. The two sides have to agree on a principle for the separation of their assets, liabilities and debt. The precedent for this separation has already been set by the Badinter Commission¹¹ and used by other federal units of

¹⁰ Assembly of the Republic of Kosovo (2016), 'LAW No. 05/L-120 ON TREPÇA' Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12988> [Accessed on October 14, 2019].

¹¹ The Arbitration Commission of the Conference on Yugoslavia (known as the Badinter Commission in short) was established by the European Economic Community in October 1991 to provide legal advice for

former Yugoslavia under the intermediation of IMF. The same principle should apply between Kosovo and Serbia.

- 60.** The fate of Trepça's assets outside Kosovo, particularly those located in the Republic of Serbia has to be discussed. The issue of branches of SOEs located outside the territory of their mother company was a common issue at the time of the dissolution of former Yugoslavia and was addressed by the Badinter Commission. The Commission's Opinion on this set a precedent which can be used again. PAK is also aware of this issue and has a policy in place for it.
- 61.** Given that the mines of Belo Brdo and Černac are located precisely on the border of the two countries and the fact that the deposits are shared between Kosovo and Serbia, it is in the interest of the two countries to cooperate and reach an agreement on the joint exploitation of minerals from these two mines. This will also set the precedent for joint excavation and exploitation of other seams located on the borders of the two countries.
- 62.** As the North Trepça mines and facilities located in the Serb-majority areas of Kosovo are currently operating under effectively separate management in a semi-autonomous manner and not really under the control of PAK or the Ministry of Economic Development, it is essential that this situation is brought to closure in an acceptable manner. Trepça should be considered as one company and should only have one management with control over all its sub-units. The challenge facing the organs of management of Trepça JSC is avoiding and preventing multiple decision-making powers on the one hand while, at the same time, allowing the autonomy of Trepça's Business Units on the other.

the Conference on Yugoslavia and rule on major legal issues arising from the dissolution of former Yugoslavia.

Annex 1 - Geographic position of some key Trepça assets



‘Spatial Position of some key Trepça assets’

Adapted from the presentation: TREPÇA UNDER KOSOVO PRIVATISATION AGENCY, dr.Ing. Ahmet Tmava , Managing Director, May 2015.

Annex 2 - Output of Mining and Flotation 1975-2000 (in Tons)

Year	Mining				FLOTATION		
	Stantërg and Central Mines	Artanë and Southern Mines	Kopaonik and Northern Mines	Total	Pb Concentrate	Zn Concentrate	Total
1975	636,700	717,398	353,226	1,707,324			
1976	658,355	734,706	359,656	1,752,717			
1977	671,758	821,322	374,591	1,867,671			
1978	603,187	796,003	359,052	1,758,242			
1979	74,801	786,654	362,586	1,824,041	77,087	69,767	146,854
1980	668,418	882,605	376,031	1,927,054	73,322	67,964	141,286
1981	696,216	840,508	383,285	1,920,009	72,457	61,098	133,555
1982	628,037	852,979	402,606	1,883,622	65,810	60,994	126,804
1983	672,262	710,797	354,907	1,737,966	62,179	57,146	119,325
1984	702,724	718,708	371,089	1,792,521	60,271	52,803	113,074
1985	687,558	582,002	340,388	1,609,948	55,564	48,629	104,193
1986	647,078	523,351	297,409	1,467,838	51,499	44,329	95,828
1987	636,935	527,930	267,281	1,432,146	52,837	49,371	102,208
1988	571,618	442,664	264,857	1,279,139	44,949	41,690	86,639
1989	368,573	413,244	237,028	1,018,845	36,113	33,886	69,999
1990	204,570	298,143	217,755	720,468	25,300	22,415	47,715
1991	206,489	177,553	105,322	489,364	23,176	21,520	44,696
1992	134,946	62,449	90,020	287,415	11,891	11,066	22,957
1993	48,612	22,953	26,437	98,002	4,327	3,578	7,905
1994	32,475	26,125	13,663	72,263	2,571	2,909	5,480
1995	125,761	47,566	86,448	259,775	10,404	11,194	21,598
1996	181,809	102,641	111,225	395,675	17,319	20,678	37,997
1997	257,888	117,201	138,881	513,970	15,699	20,285	35,984
1998	311,315	143,178	178,365	632,858	21,674	20,843	42,517
1999	87,296	49,490	105,640	242,426	-	-	-
2000	-	-	28,321	28,321	-	-	-

Source: based on Palairët (2003)

Annex 3 - Output of Mining and Flotation 2005-2016 (in Tons)

	Mining					FLOTATION
	Stantërg	Artanë	Belo Brdo	Cërnac	Total	PB and Zn concentrates combined
2005	14,670	7,358	7,357	14,670	29,385	518
2006	41,830	15,701	20,500	56,080	92,281	12,163
2007	52,350	6,613	25,170	81,600	113,383	16,332
2008	69,854	20,964	27,800	105,500	154,264	20,226
2009	89,225	30,530	16,360	84,700	131,590	19,670
2010	96,123	34,973	31,016	112,300	178,289	25,280
2011	112,915	39,190	34,830	145,660	219,680	23,444
2012	125,945	37,669	37,000	120,350	195,019	24,440
2013	139,459	46,783.2	58,800	127,300	232,883	30,189
2014	146,475	57,665.4	68,200	134,200	260,065	32,217
2015	145,000	60,000	60,000	125,000	245,000	24,920
2016	112,000	49,000	62,000	124,000	235,000	-

Source: based on PAK documents

Annex 4 - The structure of employment in Trepça by nationality in 1989 and 1990

Section	Nationality Structure							
	Albanian		Serbian		Others		Total	
	1989	1990	1989	1990	1989	1990	1989	1990
Stantërg mine	2,588	40	368	564	105	113	3,061	717
Kisnica & Novi Brdo mines	2,446	166	880	953	108	116	3,434	1,235
Leposavic mines	87	49	1,296	1,175	39	32	1,422	1,256
Metal Complex, Zvecan	1,238	115	406	635	81	95	1,725	845
Accumulator factory, Mitrovica	1,070	15	224	413	85	140	1,379	568
Chemical plant, Mitrovica	809	29	229	223	56	61	1,094	313
Total	9,004	436	3,742	4,644	515	640	13,261	5,720

Source: Based on Palairret (2003)

Annex 5 - Ownership structure of "Trepča" shares, 1992 and 1999

Owner	Share of stock on 10.7.92	Share of stock on 31.12.99
Social capital (undistributed)	25.87	31.27
Fund for the dev. of Serbia	63.38	0
Progress	3.42	12.01
Jugobanka	2.51	14.79
Geneks	2.28	2
Elektroprivreda Srbije	1.85	0
Beobanka	0.27	0
Ibar-Lepenac	0.11	0
Termoelektro, Belgrade	0.09	0.06
Stocarpromet, Pozega	0.09	0
Grading, Pristina	0.07	0
Dunav (Insurance co) Belgrade	0.04	10.37
Kontaktburo, Pristina	0.02	0
Beogradska banka - Beograd	0	11.83
"Gosa" Smed. Palanka	0	6.65
Jugobanka Jubanka K. Mitrovica	0	1.91
"Zorka" Sabac	0	0.67
DDOR Novi Sad	0	0.02
Employees of "Ikaterm" Zemun	0	0.02
Beobanka, Pristina	0	1.49
14 Oktobar, Krusevac	0	6.78
INOS, Belgrade	0	0.09
Employees of Jedinstvo, Kumane	0	0.04
Other	0	0.02
Total stock capital	74.13	68.73
Social capital	25.87	31.27
Total	100	100

Source: based on Palairret (2003).

Annex 6 - Total Liabilities of Trepça in 2001

Balance Sheet Liabilities	Principal	Interest	Total
Tax	5,047	9,420	14,466
Suppliers	28,002		28,002
Court decisions	10,488	29,863	13,471
Banks	7,780	12,977	20,757
Total	51,317	25,381	76,697
Lawsuits filed against Trepça in 2001 (off balance sheet items)			
Claimant			Amount (€mil)
Mytileneos (Greek partner)			53.2
SCMM (French partner)			3.9
Jugobanka (3 lawsuits)			4.3
Others (108 lawsuits)			22.8
Total (113 lawsuits)			84.2

Source: based on Palairret (2003)

