

An Education in Deal-Making, Kosovo Style

A former official for the country's international overlords cries foul over a deal that he says illustrates "what is wrong in Kosovo today." by [Andrea Lorenzo Capussela](#) 13 July 2011

Accusations of corruption and incompetence have dogged Kosovo's government since it declared independence in 2008. Before and since, however, the province-turned-country's international overseers, from the UN to the European Union to the United States, have been painted variously as colonialist, self-interested, short-sighted, inert, or compromised. Considering that Kosovo is a small country with several layers of authority, embedded within a region with a reputation for official corruption, it's not difficult to see why, for outsiders, the frequent reports of graft and chicanery tend to evaporate into a mist of confusion and even indifference.

But last week, the country's most respected daily newspaper, Koha Ditore, ran a first-person account by Andrea Lorenzo Capussela, a former official in that international apparatus, that took apart, step by step, one deal that he says was illegal. This is an edited version of his account of a proposed transfer of publicly administered property to the private American University of Kosovo. Since its publication in Koha Ditore, Pieter Feith, Capussela's former boss, has responded by saying that the deal is not concluded yet and that "the government needs to explain the public interests" that would be served by it and that would therefore render it legal.

A response from the press office of Feith's International Civilian Office mentions "an educational complex which would also house the American University in Kosovo." Here, again, Capussela smells a rat pointing out that a transfer of property for a (presumably) public educational complex could be done without handing over a portion of it to a private university in a no-bid process.

The ICO's statement also mentioned "inaccuracies" in Capussela's account. Transitions asked the ICO's press office to elaborate and received this response:

"As yesterday's statement sets out, the account of events given by Mr. Capussela does not in our view provide an accurate or complete picture of the ICO's engagement on this issue. For example, we consider the characterization of ICO action on this matter as 'too little too late' as inaccurate, as Mr. Capussela has no knowledge (and could have no knowledge) of the continuing work on this unresolved issue given that he departed the ICO at end March 2011. Given possible legal steps and our ongoing duties of confidentiality, including towards Mr. Capussela, it is not possible to go into further detail but I hope this helps to illustrate our view somewhat."

At 9:10 a.m. on 23 September 2010, as I took my seat for a board meeting of the Privatization Agency of Kosovo, I found a set of papers on a matter that was not on the agenda.

I quickly looked through them during the discussion of other matters and saw that some land was being taken from a publicly owned business to allow the American University of Kosovo to build a new campus there.

At 12:30, after our frugal lunch, the chairman of the board, Dino Asanaj, took the floor and asked us to approve the expropriation and the compensation offered for it, saying that this was important to support higher education in Kosovo.

This was an ambush: proposed resolutions and the supporting papers must be sent to board members five days before the meeting. I said that the board should not vote because we had not had time to study the matter, and I expressed doubts over the legality of the expropriation. The chairman insisted on a vote: a colleague and I abstained, and the six other board members voted in favor. The only thing I had achieved was to have the proposal approved only "in principle," pending advice on the legality of the expropriation.

In the late afternoon I studied the papers: on 16 June 2010 the government had begun the process to expropriate 30 hectares of land near a new, American-style housing project called the International Village, which is being developed by a company of which **Asanaj is the managing director**.

The property in question belonged to AIC Kosovo Export, which is administered by the privatization agency. The papers showed that construction of the campus on the land had already started. A letter showed that the terms of the expropriation had been discussed and, apparently, agreed upon at a June meeting of the then-minister of economy and finance, Ahmet Shala, the then-education minister, Enver Hoxhaj, the privatization agency's sales director, Mrika Tahiri, and Chris Hall, the university's president. A letter dated 3 September showed that the government, not the university, was to pay the privatization agency 3.4 million euros for the land.

Everything had been decided before the agency's board was even informed.

I concluded that the transaction was illegal for two reasons. First, Kosovo Export, the holder of the land, falls into a very common category of businesses in Kosovo called socially owned enterprises. They are in industries that were once nationalized and they constitute a major part of the workload of the privatization agency. Under Kosovo's constitution, such businesses must be privatized through a competitive bidding process. The government can take their property only for a clear public purpose. It can then confer only the use, not ownership, of the property on a private person through a competitive bidding process. This deal met none of those criteria.

Second, contrary to the law, the compensation the government proposed to pay the agency was much lower than the market value of the land. A study commissioned by the agency to determine the value of the land showed that when banks accepted comparable land as collateral for loans, they valued it conservatively at between 50 and 60 euros per square meter. Still, the valuation report settled on the barely credible figure of 15 euros per square meter, for a piece of property in a booming area of Kosovo with construction permits, and easy connections to roads, water, sewage, and electricity. But even then, the compensation proposed in this deal was only 11 euros per square meter. In other words, the agency should have received, conservatively, 39 to 49 euros more per square meter, or nearly 12 million to 15 million euros above what had been agreed on.

Who was paying the real price? The proceeds of such sales are used to pay the workers and creditors of a socially owned enterprise, and what remains goes to the national budget; so if the price is not sufficient to pay workers' and creditors' claims, they lose the difference and nothing remains for the citizens of Kosovo. When it accepted that compensation, therefore, the privatization agency knowingly deprived all those people of at least 12 million euros.

So much for the legality of the deal. But it was simply a bad idea for several other reasons.

Such open breaches of the law and of creditors' rights further deteriorate the quality of both the rule of law and the investment climate, and make Kosovo an even less attractive destination for foreign investment. This harms the prospects of its economic development.

Further, with this illegal deal the government made a large gift to the university, which always showed little generosity toward Kosovo.

The American University in Kosovo is a private, nonprofit institution, supported by a charitable foundation in New York, that issues degrees from the Rochester Institute of Technology in New York state. Audited financial statements on its website show that in the past four years its average revenue was 2.8 million euros, and its average expenditure 3.1 million euros (I exclude from these numbers a large contract with the Education Ministry, which, in the last two years, yielded an average profit of 270,000 euros per year). Tuition fees represent 95 percent of the university's revenue. Its expenditures are more diverse: 37 percent go to the Rochester Institute of Technology, 32 percent is paid for teachers' salaries, 9 percent goes to the New York charitable foundation, and 4 percent is the salary of the university president. The rest is for computers, books, and the like, and for scholarships. But most of these scholarships are funded by donors or the Kosovo government: the university kicks in for only 35 percent of such scholarships, which is only 8 percent of its overall expenses and a little less than the profits it makes on the government contract.

In essence, the university is a business that exploits the facts that the public University of Pristina offers inadequate education and that rich students have difficulty in getting visas to study abroad: in exchange for high fees, it provides them rather good teaching and a U.S. degree, and transfers about half of the fees they pay to the Rochester Institute of Technology and the New York charitable foundation.

The institution is tax-exempt, and its preference for sending money to New York rather than spending it in scholarships or charitable activities in Kosovo implies that, in purely financial terms, the relationship between it and Kosovo's citizens is a net loss for the latter. Still, private education is a perfectly legitimate business, and the American University does it rather well: it produces graduates with better average skills than those of the University of Pristina or most private universities, which somehow compensates for that loss.

But what if the agency had demanded market value for the land and used the proceeds to fund the government's development policies, instead of, essentially, giving them to the American University?

That 12 million to 15 million euros could, for instance, have paid for computers, laboratories, and other improvements for the University of Pristina, whose budget is considered “modest” by the World Bank.

This deal, instead, reflects an education policy whereby the state arbitrarily subsidizes the university of the rich and neglects public education; and by neglecting it, supports the demand for the rich university’s services.

The solution seemed simple: stop the expropriation and the construction of the campus, and sell the land in an open and competitive tender, as the law requires. If the American University didn’t offer enough to win the tender, it could build its campus elsewhere; of course, it would have lost the cost of the construction works done until then, but that is what happens to people who build on someone else’s land.

The day after the board meeting, I sent my conclusions to several colleagues in the International Civilian Office, which is charged with implementing Kosovo’s status settlement and represents the United States and European powers that were the architects of the young state. In the space of 10 minutes two replied to my email, writing prudently only to me: “Careful my dear. You’re entering a minefield!” wrote one. Another sent me a more informative warning: “Be aware that this deal was negotiated in a number of Sunday walks between [U.S. Ambassador Christopher Dell and Kosovo Prime Minister Hashim Thaci]. Might be difficult to fight.” The matter seemed more delicate than I thought, and I discussed it with my boss, Pieter Feith, the EU’s special envoy to Kosovo as well as director of the International Civilian Office. He encouraged me to act.

I then asked a high-ranking American diplomat within the ICO to talk to his embassy to see if changes could be made to the deal. “Nobody is against [the American University] opening a new campus: the issue is how they buy it,” I wrote in an email.

His answer was pro forma, offering to pass along my concerns but reminding me that the university had “no link to the U.S. government,” despite the embassy and USAID being listed as partners on the university’s website.

That was the end of my indirect discussion with the U.S. embassy: nothing followed.

When I outlined my objections to Hall, the university president, his face became red and he promised proposals to “improve” the deal. Again, nothing followed.

Shala, the finance minister, did not respond to my emails.

EULEX, the European Union's law-enforcement mission in Kosovo, did, but its answer to my letter was both useless and rather stupid. In a 13 October letter, Isabelle Arnal, the head of the Kosovo Special Prosecution Office, advised me to request the privatization agency to challenge the expropriation and the compensation. The same agency that had already accepted both.

I had sent my arguments also to the privatization agency's legal department. But on 28 October, with four votes in favor, one (mine) against, and two abstentions, the agency's board gave final approval to both the expropriation and the compensation, despite the fact that its lawyers had advised that the legal authorization for the property's expropriation was "questionable."

I then reported my failures to Feith and urged the ICO to stop the expropriation and the deal built around it: he asked me to discuss the matter with his deputy (an American diplomat), and other high-ranking staff and submit an action plan.

For more than three months my requests to devise an action plan met delays, questions, futile comments, and fruitless and well-spaced meetings. This unsubtle reaction confirmed to me that the defects of this transaction were intended and led me to think that the U.S. ambassador probably had participated in designing the deal, because never, in the last year, had the ICO taken a position not approved by the embassy. But the delaying tactic of my colleagues was effective, because it brought us close to the natural end of my tenure, on 31 March.

In late February I told Feith and my colleagues that I would not tolerate further delays: unless they convinced me that my reading of the deal was wrong, I expected the ICO to stop it before the end of my contract. Things rapidly reached a crisis: a U.S. colleague falsely accused me of lying to support my reading of the deal, and a week later our chief of staff – rather than sanctioning my colleague, as I had demanded – instructed me in writing not to talk of the deal outside of the ICO. I then set Feith a deadline to sanction these two colleagues and stop the expropriation, warning him that otherwise I would write to his supervisors (the states that compose Kosovo's International Steering Group) to criticize both the university deal and his own deliberate inaction on it. Feith reiterated the order to keep silent, and threatened to fire me if I breached it. The deadline passed, and I wrote to a few ISG states (Feith found out – I believe by examining, unbeknownst to me, my email correspondence with others – and fired me for disciplinary reasons on 30 March).

As this colorful story unfolded, I came to see the American University deal as a laboratory specimen, displaying the worst face of the Kosovo elite and of its international supervisors and foreign friends: their greed, pettiness, timidity; their disregard for their duties, the public interest, and the very dignity of their public functions. But the determination with which its worst aspects were defended shows that they were not accidental mistakes, but the product of a design: abusing public power to satisfy private interests, and maximizing private benefits at the expense of the public interest, is the *raison d'être* of this deal.

In subsequent correspondence, Feith has told me that after I left he took "adequate steps" on the deal, although he has declined to say what those steps were. In any event, it appears to have been too little, too late: I understand that the building of the campus continues, and I think that by now those profiting from this deal have secured their gains.

Perhaps the parliamentary opposition, the press, or civil society can still do something about it. If they were to stop this deal, which exemplifies what is wrong in Kosovo today, they would score an important symbolic victory and perhaps show the way to further positive developments: where the political system is closed and inefficient, important changes can be sparked by apparently minor episodes. At the very least, by winning a fight that the ICO and EULEX didn't even want to begin, those in Kosovo who aspire to better governance will gain empirical evidence that these two imperfect international creatures have become damaging or, at least, superfluous; which seem good arguments to ask Brussels and Washington to either reform or withdraw them.

Even if nothing changes, I would urge the university to be more generous to Kosovo. In 2010 it allocated less than 343,000 euros for scholarships, but paid 1.5 million euros to the Rochester Institute of Technology, 360,000 euros to the New York charitable foundation, and 138,000 euros to its president. It made a 341,000 euro profit on the contract with the Kosovo government. If one deducts this profit from the scholarship donation, only about 1,500 euros remain.

Andrea Lorenzo Capussela is former director of the International Civilian Office's economic and fiscal affairs unit in Kosovo. A version of this commentary originally appeared in *Koha Ditore*, a daily newspaper in Pristina.