



*Duke Mbështetur Qeverisjen e Mirë dhe Qytetarinë Aktive
Supporting Good Governance and Active Citizenry*

Public Procurement Monitor

Legal irregularities of public institutions and enterprises
January-December 2011



Publication of this report is supported by OSI/CRD. The views expressed in this report does not reflect the views of OSI / CRD.

Content

Executive Summary	3
Violations of Ministries	4
Ministry of Justice	4
Ministry of Public Administration	5
Ministry of Infrastructure	6
Ministry of Culture	9
Ministry of Agriculture	10
Ministry of Economic Development	11
Ministry of KSF	12
Ministry of Health	12
Legal Violations of ministries in a tender	13
Violations of Public Enterprises	14
Kosovo Energy Corporation	15
Post and Telecom of Kosovo	16
Violations of Municipalities	18
Municipality of Lipjan	18
Municipality of Suhareka	19
Municipality of Prishtina	19
Municipality of Gjilan	20
Municipality of Rahovec	21
Municipality of Vitia	22
Municipality of Graçanica	22
Municipality of Podujeva	23
Municipality of Shterpca	23
Municipality of Kamenica	24
Violations of Municipalities in a Tender	24
Recommendations	27
Acknowledgements	27
About Movement FOL	27

List of Acronyms/Abbreviations

CA - Contracting authority
IAP - International Airport of Prishtina
EU - European Union
CRD - Civil Rights Defenders
LPP - Law on Public Procurement
KEC - Kosovo Energy Corporation
AK - Assembly of Kosovo
PPRC - Public Procurement Regulatory Commission
MEST - Ministry of Education, Science and Technology
MPA - Ministry of Public Administration
MI - Ministry of Infrastructure
MH - Ministry of Health
MTC - Ministry of Transport and Communications
PFM - Public Finance Management
EO - Economic Operators
OSI - Open Society Institute
PRB - Procurement Review Body
RP - Review Panel (Body of PRB)
PTK - Post and Telecom of Kosovo
PPR - Public Procurement Regulation
OAG - Office of the Auditor General

Executive Summary

Ministries have committed numerous legal violations in thirty (30) different tenders. Ministry of Justice has committed violations in 5 tenders, Ministry of Public Administration, Ministry of Infrastructure and Ministry of Culture in four (4) tenders, the Ministry of Security Force and Ministry of Agriculture in 3 tenders, Ministry of Health and Ministry of Economic Development in 2 tenders. Meanwhile, the ministries with a violation in only one tender are the Ministry of Finance, Ministry of Internal Affairs and Ministry of Diaspora.

Fifteen (15) of these tenders are returned in re-evaluation, thirteen (13) have returned to re-tender and only two (2) tenders had to continue their procurement activity and are not allowed to be cancelled by contracting authorities - ministries.

However, because of legal irregularities and non-application of the instructions of Public Procurement Review Body, the Ministry of Health has been fined in a value of 30,000.00 euro, the Ministry of Infrastructure in a value of 25,000.00 euro and the Ministry of Agriculture, Forestry and Rural Development in a value of 15,000.00 euro.

Public companies have made numerous legal violations in nine (9) various procurement activities. Kosovo Energy Corporation has made violations on six (6) tenders, and the Post and Telecom of Kosovo has made violations on three (3) various procurement activities. 3 of them had to re-tender, one was not allowed to be cancelled and five other tenders had to be re-evaluated.

During this time the Post and Telecom of Kosovo was fined in the amount of 20,000.00 euro, while the procurement manager was fined in the amount of 2,000.00 euro.

Municipalities in 2011 have committed numerous legal violations in 37 procurement activities. Twenty-four (24) of them had to be re-evaluated, 11 in re-tendering and only 2 were not allowed to be cancelled by contracting authorities. Municipalities with more violations are municipality of Lipjan of Municipality of Suhareka, with four (4) tenders. Then the Municipality of Pristina, Gjilan, Rahovec and Vitia with three (3) tenders. Meanwhile, with two (2) tenders are municipality of Gracanica, Podujeva, Shterpce and Kamenica. With one (1) tender are Municipality of Peja, Ferizaj, Prizren, Kacanik, Istog, Klokot, Fushe Kosova, Mitrovica and of Klina.

However, due to neglect of the decision of the PPRB in the case of the tender "Supply and installation of equipment for monitoring the streets of Gracanica," Public Procurement Review Body fined the municipality of Gracanica in the amount of 6,000.00 euro.

Violations of Ministries

Ministries have committed numerous legal violations in 30 different tenders. Ministry of Justice has made violations in 5 different tenders, the Ministry of Public Administration, Ministry of Infrastructure and Ministry of Culture, Youth and Sports in 4 tenders, the Ministry of Security Force and Ministry of Agriculture in 3 tenders, Ministry of Health and Economic Development in 2 tenders. Meanwhile, the ministries with violation in only one tender are the Ministry of Finance, Ministry of Internal Affairs and Ministry of Diaspora.

Fifteen (15) of these tenders are returned in re-evaluation, thirteen (13) have returned to re-tender and only two (2) tenders had to continue their procurement activity.

Ministry of Justice

Ministry of Justice has committed violations in five (5) different tenders. Three of these tenders have returned to be re-evaluated, and one to re-tender. Procurement Review Body ordered the Ministry of Justice that the procurement activity "supply of meat and meat products" to re-evaluate once again.¹ Initially the Company "APETIT" had won the bid in the amount of € 502,800.00, but then the PRB has returned it to be re-evaluated after the complaint of another economic operator² who had bid the cheapest price in the amount of € 363,355.00. This company made a complaint after the bank had specified a bank guarantee for only one day, and which is supposed to be 90 days - according to the Law on Public Procurement. Then the Contracting Authority (MJ) has requested an interpretation by the PPRC, but PRB through an order determined that MJ had to implement its final decision, and not require interpretation by the PPRC.³ In this case, the PRB has requested from the Contracting Authority's Management in case of non-implementation of this decision they will apply disciplinary measures to the Procurement Manager in accordance with provisions of the Law on Civil Servants neglecting to enforce the decision of PRB and request the Review Panel to impose a fine of € 5000.00.⁴ Seeing this situation, the Minister of Justice has completely cancelled the tender in consultation with the Anti-Corruption Agency and Procurement Regulatory Commission.

Procurement Review Body in April issued two directives to the Ministry of Justice. With these directions the PRB has ordered the Ministry of Justice to abide its decision to re-evaluate the procurement activity "Supply of meat and meat products".⁵ Initially the Company "APETIT" had won the bid in the amount of € 502,800.00, but then the PRB has restored it to re-evaluate, after the complaint of another economic operator⁶ who had bid the cheapest price in the amount of € 363,355.00. This company was complaining after the bank had specified a bank guarantee for only one day, and which is supposed to be 90 days according to the Law on Public Procurement. Then the Contracting Authority (MJ) has requested an interpretation by the PPRC, but PRB through an order determined that MJ had

¹ Protocol No 34/11, Procurement Review Body, 30 March, 2011, p.1

² N.T.P. Hajdini Comerc

³ Public Procurement Regulatory Commission. For further details see: <http://www.ks-gov.net/krpp/>

⁴ Protocol no. 34/11, Procurement Review Body, 30 March, 2011., p. 2

⁵ Procurement Review Body, *protocol no. 34/11, 30 March, 2011, p.1*

⁶ N.T.P. Hajdini Comerc

to implement its final decision, and not require interpretation by the PPRC.⁷ In this case, the PRB has requested from the Contracting Authority's Management in case of non-implementation of this decision they will apply disciplinary measures to the Procurement Manager in accordance with provisions of the Law on Civil Servants neglecting to enforce the decision of the PRB and request the Review Panel to impose a fine of € 5000.00.⁸ Seeing this situation, the Minister of Justice has completely cancelled the tender in consultation with the Anti-Corruption Agency and Procurement Regulatory Commission. Seeing that MJ is not implementing the decision of the PRB, the latter has issued two warning orders that the contracting authority be fined with 5000.00 euro and disciplinary action against the procurement officer of this Ministry.⁹

However, during the last three months, the Ministry of Justice has made violations in three different tenders. Because of legal violations, respectively articles 50 and 60 of the PPL, the PRB has determined that this bid should be return for re-evaluation. However, due to numerous irregularities that have accompanied the tender "Renovation of Correctional Center Smerkovica" this tender had to re-tender. Review Panel has concluded that the validity of competitive economic operators' bids had expired and was not renewed as required by the Public Procurement Regulation - Part B, article 19.2. However, after Mj had expressed its interest in this tender was returned to re-tender, but because of violation of Articles 59 and 60 of the PPL had to go back to re-evaluation.

Ministry of Public Administration

Ministry of Public Administration has violated four different tenders. 2 of them returned to re-evaluation and two other tenders had to re-tender. The first violations have been part of the tender "Supply of fuel for the needs of the MPA". The Review Panel after reviewing the case, the evaluation report of Evaluation Committee, the findings stated in the expertise of the reviewing expert, the statement of the representative of the economic operator "Kastrioti Petrol" and explanations given during the hearing by both parties determined that the tender comes back to re-evaluation. RP stated that MPA has violated considering the economic operator as irresponsible alleging that he lacks the "contract for supplies at the station in Ferizaj".¹⁰

Ministry of Public Administration has violated even with the tender "hygiene and technical maintenance for government buildings - Part 1, Part 2 and Part 4". This ministry has violated the legal provisions, respectively the article 61 (too low tender) and 69 (Technical and / or professional) of the PPL during the bid evaluation process. Considering such violations economic operator "Uni Project" was complaining in the Procurement Review Body. The latter, based on the expertise of the reviewing expert has decided to return this tender to re-evaluation. With this decision agreed also the contracting authority MPA.¹¹ In addition to these violations, MPA has also made other violations regarding the tender "Constructing the Building of Kosovo Security Force". After the appeal of the economic opera-

⁷ Public Procurement Regulatory Commission. For further details see <http://www.ks-gov.net/krpp/>

⁸ Procurement Review Body, *protocol no 34/11, 30 March, 2011, p. 2*

⁹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Udheres_Fur_Mish.pdf

¹⁰ Procurement Review Body, no. 04/11, 31 January, 2011, p. 2-3

¹¹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/mirem_higjin_tek_nder_korrik11.pdf

tor "Al-Ber" about the irregularities related to this procurement activity and the expertise of the reviewing expert, PRB decided that this tender should return to re-tender. Justification for such a decision has been a disregard of Article 7.4 (Equality of Treatment / Non-discrimination and transparency), Article 69 (Technical and / or Professional capability), article 6.1 (Cost and Efficiency). Apart from such legal violations, the contracting authority has violated also the Article 11.3 of the Regulation "B" of Public Procurement.¹²

Public Procurement Review Body has issued two reports addressed to the Ministry of Public Administration: one for the violations during the drafting of the tender dossier "advancement and maintenance of civil registration system within the E-government" and the other for "hygienic and technical maintenance of government buildings." In the first case the appeal was made by the economic operator "CSE", where PRB has subsequently appointed a reviewing expert to consider the appeal of this company. According to the reviewing expert, the contracting authority had violated Article 7 (Equality of Treatment / Non-discrimination and transparency) and recommended not to make the elimination of bidders who do not have these references. After receiving this report, the MPA has agreed with the opinion of the expert and promised to adhere to applicable legal provisions. While in the second case, the appeal was made by the bidder "MSS". After this appeal PRB has appointed a review expert, which found numerous violations of law: Article 6 (Cost and Efficiency), 7 (Equality of Treatment / Non-discrimination and transparency), 60 (Criteria of Giving the Contract), 61 (too low tenders) and 63 (Performance Security) of the Law on Public Procurement. With this expert's opinion agreed the Ministry of Public Administration. Thus, the procurement activity has returned to re-tender

Ministry of Infrastructure

Ministry of Infrastructure has committed violations in four (4) various procurement activities. In January of this year, the PRB has issued an additional order for MTC regarding the tender of last year (2010) "supervision of construction and management services, Street 7: Merdare-Morine highway." According this instruction MTC had to sign a contract with the winning economic operator "Merlino Progetti & Politecnica".¹³ On the other hand, MTC has "justified" its non-signing the contract with this company due to the fact that in its bank statement does not appear any clue about the financial value of this consortium. According to this ministry, the tender had to be cancelled completely. Considering that the Contracting Authority is not respecting the decisions of the PRB, the latter has issued a fine in a value of 20.000.00 Euro.¹⁴ The procurement officer was supposed to be fined as well, financially and removal of the right of exercising any public function, he wasn't indeed.

Ministry of Infrastructure on 15 June 2011 announced the winner the company "Hill International" (6 million 950 thousand euro) in the tender for supervision of works on the highway. In the announcement of the contract award of this Ministry, reads that the winner is the branch of this American company in Luxembourg. Two vice presidents of this company in America have worked for years in the American corporation "Bechtel", which is con-

¹² http://oshp.rks-qov.net/repository/docs/vendimet/2011/Mir_Hiqj_Qever.pdf

¹³ As above, no. 351/10, 6 June, 2011, p. 1

¹⁴ As above, no. 351/10, 15 March, 2011, p. 1-4

tracted for the construction of highway¹⁵. The election of the company lasted close to a year due to problems with supervising tender. At the beginning of last year the winner was announced "Hill International", when the evaluation commission of the Ministry has evaluated with the highest points - even though it had a price of more than 8 million euro more expensive than the bidder with lowest price free. This company had received 99 points from the evaluation commission even though its bid was worth of 11 million, which is about 9 million more than the bidder "Grusamar" from Spain, which had received only 80 points in the bid price of 2 million and 750 thousand euro. According to the tender dossier 80 points are received for meeting the technical criteria, while 20 points for the cheapest price. Company "Hill" had received 19 points for the cheapest price even though its bid was two-three times more expensive than other companies.

MTC had cancelled the tender after the Evaluation Committee had done its job. As a reason for cancellation of the tender in Public Procurement Regulatory Commission on April MTC had noted that "cancellation is necessary due to objective and demonstrable reasons that were unpredicted at the time of initiation of the procurement activity"¹⁶. This tender is accompanied by procedural violations. Opening of the bids was done in five-month delay, on 6 April 2010. The date of the publication of this tender was September 12, 2009, while the closing date was November 3, 2009. But in July 2010 the winner was declared the consortium of Italian companies "Merilino Progeti the Politecnica", which required 6.8 million euro.¹⁷ The contract with Italians had been signed several months after the announcement of the winners. Procurement Review Body fined MTC with 20 thousand euro for failing to sign the contract with the winner of the tender¹⁸ The Minister of this Ministry justified that the MTC was to verify the documentation of this company - as he had aroused the suspicions of their authenticity. Meanwhile the Ministry of Infrastructure has filed crgesha against the PRB in the Supreme Court rejecting its decision which requires the payment of 20 thousand euro due to the violations of the Law on Public Procurement.

In addition, the Ministry of Infrastructure in May has awarded with a tender of 1.8 million euro the company "Arda Rei" - to accomplish the construction of roundabout ".¹⁹ Although for this tender had applied 12 other companies, the contracting authority has selected the company "Arda Rei" - even though in the first round this company did not finish the work by the deadline of 18 months. Ministry of Transport had awarded with another contract this company in October 2008 in a value about 12.7 million euro. The first contract was about the same work: the construction of roundabout at the entrance of Pristina, while

¹⁵ Hill International (2008). Hill International Promotes Two Professionals to Vice President in Dubai. Marlton, NJ & Dubai. http://files.shareholder.com/doenloads/HINT/1327672254x0x209745/e6d11aed-a3cb-4807-aaec2c0af76c119f/HIL_Neës_2008_6_30_General.pdf

¹⁶ Ministry of transport and Communication (2010). Cancellation announcement: "Supervision of Constructions and Management Services Street No.7, MORINË-MERDARE Highway". Prishtina. <http://krpp.rks-gov.net/Default.aspx?PIDcNotices&LIDc1&PCIDc-1&CtIIDcVieëNotices&IDc29194>

¹⁷ Ministry of transport and Communication (2010). Cancellation announcement: "Supervision of Constructions and Management Services Street No.7, MORINË-MERDARE Highway". Prishtina. See: <http://krpp.rks-gov.net/Default.aspx?PIDcNotices&LIDc1&PCIDc-1&CtIIDcVieëNotices&IDc32353>

¹⁸ Procurement review Body (2011). Verdict 351/10: Supervision of Constructions and Management Services, street nr. 7, Morinë-Merdare Highway. Prishtina. http://oshp.rks-gov.net/repository/docs/vendimet/2011/urdh_mtpt_mirem_outs_jan11.pdf

¹⁹ Ministry of transport and Communication (2010). Contract Award Announcement: Construction of the roundabout at the junction of the National Roads M9 and M2 in Prishtina, Phase E II-TË. Prishtina. <http://krpp.rks-gov.net/Default.aspx?PIDcNotices&LIDc1&PCIDc-1&CtIIDcVieëNotices&IDc44193>

the company to carry out this work was in consortium with the company "Dinaric". According to the contract the work was supposed to be completed after 18 months, but it did not. Also with the company "Arda Rei" two years later on 25.08.2010 Ministry of Transport has signed an a follow up contract for this work. Although the deadline of works was determined 30 days work, the project is not completed neither according to the follow up contract.

Also, the tender for summer and winter maintenance of national and regional roads of Ministry of Infrastructure (MI) is cancelled by the Procurement Review Body (PRB)²⁰. The tender was closed on April 15, 2011, while the opening bid was made three days later, where winners were announced nine companies, while 33 had applied. Later, four companies complained to the PRB. Companies that had complained are "Magjistralka", "Eurokos & Drenica," the company "Shkoza & Marsi" and "Bejta Commerce". PRB after the complaints of these companies cancelled the tender, which was about 10 million euro, justifying that this ministry has violated two articles of the Public Procurement Law (PPL). According to the decision of the PRB, MI violated Article 7 of the PPL, which regulates the equal treatment of companies competing for tenders, and Article 27 of this Law, which deals with criteria of the tender dossier. The essence of violations is the use of eliminating criteria. According to experts MI regarding criteria was not supposed to require only companies that have experience in road maintenance, but leave open the possibility that this tender for road maintenance to other companies that did not have any experience last three years, and also are constructing companies. This tender is re-announced (re-tender), but there was no any public notice regarding actions taken against someone in the Ministry of Infrastructure for the violations identified.

However, during the last three months the Ministry of Infrastructure has committed legal violations in three different tenders. At the tender "signalling and maintenance of equipment in highways and regional roads for the year 2011 - part 1, 2, 4, 5, 6, 7 and 8" MI has violated Articles 7, 52, 59 and 60 of the Public Procurement Law . Based on such legal violations, the Procurement Review Body has decided to return this tender for re-evaluation. MI violated also the tender "Construction of the road Kuqishte - Boge - L = 8509m", which has to return to re-tender. Contracting Authority, in this case MI, has violated the Article 32, paragraph 4 of the PPL, which states that "if during the implementation of procurement procedures are accepted less than two responsive bidder, or where applicable, the demand for participation, CA must cancel the procurement. " Besides the violation of Article 32, MI has violated Articles 59 and 60 of PPL, in which the tender was cancelled. Also, the Ministry of Infrastructure has violated the tender "Supply of industrial salt for winter maintenance of national and regional roads of Kosovo for the winter season 2011/2012. This tender is returned to be re-evaluated due to the violation of Article 59 of the Law on Public Procurement. During this time, the Procurement Review Body has fined the ministry with 5,000.00 euro for ignoring of its decision regarding the tender "Repairing the regional

²⁰ Procurement Review Body (2011). Verdict PSH.nr. 77/78/79/81/11. summer and winter maintenance of national and regional roads of the Republic of Kosovo regarding regions 1, 2, 3, 4, 5, 6, 7, 8 and 9. Prishtina. <http://oshp.rks-gov.net/repository/docs/vendimet/2011/MIRmb-Ver-Dimer.pdf>

road R-105, segment-Brojë Kline L = 4.0km" and required to take measures against the main official procurement.

Ministry of Culture, Youth and Sports

Ministry of Culture has committed violations in four different tenders. In the tender " Gym Construction in Dardana Kamenica)-Phase II" MC has violated the Public Procurement Law, Article 62 (Termination of Activity of Procurement), Section 6 (Cost and Efficiency) and 19 (Classification of Public contract by Estimation). Such violations have been due to the ignoring of public procurement procedures, negligence of the contracting authority and confusion caused by the Kosovo government - because of the unclear situation whether the ministers should sign the tenders of medium and high value. This tender since its initiation has been associated with numerous irregularities. At first it was described as "high value tender ", while later qualified as "medium value tender." However, this violation is not rated as more severe by the reviewing expert, since the cancellation of this tender by the contracting authority, in violation of existing legal provisions, has been crucial to the Review Panel of the PRB to ask for re-evaluation. Such cancelling is contrary to Article 6 of the PPL, as harming the economy and efficiency of economic operators and contracting authority - the Ministry of Culture.²¹

In the tender "Gym Construction in Dardana (Kamenica)-Phase II" MC has again violated the Public Procurement Law, Article 57 (Provision of Tender). The tender since its initiation has been associated with numerous irregularities. At first it is described as " high value tender ", while later qualified as "medium value tender." However, this violation was not assessed as serious by the reviewing expert, since the cancellation of this tender by the contracting authority, in violation of existing legal provisions, had been crucial to the Review Panel of the PRB to re-evaluate. Such cancellation according to PRB was against article 6 of the PPL, as it harms the economy and the efficiency of economic operators and contracting authority - the Ministry of Culture.²² Therefore, the PRB concluded at that time that CA has violated Article 62 (Termination of Activity of Procurement), Section 6 (Cost and Efficiency) and 19 (Classification of Public Contract by Estimation). So, this tender (re-evaluated) again went for re-evaluation.

Also, during this time MCYS committed violations in two different tenders. At the tender "GYM Construction in the Municipality of Drenas - Phase II" was a violation of Article 32.4, stating that "if during the implementation of procurement procedures are accepted less than two responsive bids, or where applicable, requests to participate, the Contracting Authority must cancel the procurement."This tender is back in re-tendering. Meanwhile, in another tender "GYM Construction in Klina municipality - Phase II" are committed violations of Articles 7, 51, 59 and 60 of the Law on Public Procurement. Even this procurement activity was returned to re-tender.

²¹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Nder_Pale_spor_Dard_II.pdf

²² http://oshp.rks-gov.net/repository/docs/vendimet/2011/Nder_Pale_spor_Dard_II.pdf

Ministry of Agriculture, Forestry and Rural Development

Ministry of Agriculture has violated the legal provisions in three (3) procurement activities. The first violation occurred in a tender "Cultivated area in the municipality of Gjakova". Initially the complaining company (Intershped AK from Gjilan) had made the complaint and then the Procurement Review Body appointed the reviewing expert to collect facts and to ascertain whether or not there was a violation. After hearing the evidence: by the complainant, the contracting authority and expertise of the reviewing expert, the panel decided that the above mentioned tender should be re-evaluated due to violations of Articles 59 (Examination, Evaluation and Comparison of Tenders) and 60 (criteria for Award of Contract). Review Panel has concluded that the Ministry of Agriculture in evaluating the bids did not make fair assessment of the points associated with professional staff, professional equipment and the references presented by the complaining economic operator. Similarly RP stated that the economic operator which received most points does not possess sufficient funds because such funds have been owned by the Institute of Geodesy in Pristina.²³

Public Procurement Review Body during September has fined the Ministry of Agriculture, Forestry and Rural Development in the amount of 15,000.00 euro.²⁴ This decision was taken due to the failure to comply with the decision of the institution on the tender "Cultivated area in the municipality of Gjakova".

Review Panel has concluded that the Ministry of Agriculture in evaluating the bids did not make fair assessment of the points associated with professional staff, professional equipment and the references presented by the complaining economic operator. Similarly RP stated that the economic operator which has received most points does not possess sufficient funds because such funds have been owned by the Institute of Geodesy in Pristina.²⁵ Meanwhile, re-evaluation committee on July 21, 2011 has found that by 7 offers operators, 6 of them have been irresponsible and only one responsible, forgetting that the previous commission had announced 6 companies irresponsible, while only 1 responsible. Subsequently, the contracting authority has notified the cancellation of the procurement activity, ignoring the recommendations of the Review Panel. Considering these legal irregularities, the PRB has issued a directive in August 15, 2011 for non-cancellation of the procurement activity, but a re-evaluation should be done according to the law. Implementation of this directive should be done within 5 days, while CA had ignored this directive and therefore the PRB fined it with 15,000.00 euro.

Besides this violation, MAFRD committed other violations in the tender "Construction of watering channel in Mushtisht and dam in the village Postisht". In this tender the contracting authority had violated Article 7 (Equality of Treatment / Non-Discrimination and Transparency) and Article 59 (Examination, Evaluation and Comparison of Tenders). In this case, the PRB has approved its decision to re-tender the procurement activity.

Ministry of Economic Development

²³ http://oshp.rks-gov.net/repository/docs/vendimet/2011/komosa_toka_gjki.pdf

²⁴ http://oshp.rks-gov.net/repository/docs/vendimet/2011/studim_shpernd_shtat11.pdf

²⁵ http://oshp.rks-gov.net/repository/docs/vendimet/2011/komosa_toka_gjki.pdf

Ministry of Economic Development during a period of one year has committed numerous legal violations in three different tenders. First violations were found in the tender "Implementation of energy efficiency measures in public institutions in meeting national EE plan as required by EU and TKE - Implementation of government verdict for saving energy bulbs - street lighting ". In this tender the contracting authority has discriminated economic operators, for illegally demanding by bidders of having a financial flow in the amount of 700,000.00 only for the year 2010. After that, the company "Multi Business Group" has complained to the PRB, where the latter has informed the Ministry of Economic Development that the financial turnover should be for last three years, and not as it was required only for 2010.²⁶ This tender was back in re-evaluation. In addition, the Ministry of Economic Development has also violated the tender "study on the distribution of energy consumption in the household sector and opportunities for improving energy efficiency." In this tender MED had violated Article 59 (Examination, Evaluation and Comparison of Tenders), as the economic operator from Croatia, "Institute Hrvoje Energetski Poshar" unjustly was declared irresponsible - on the grounds that the bank guarantee has not been sealed. However, although CA has insisted that no violation were committed, based also on the expertise of the reviewing expert the panel has made a decision to re-evaluate this tender, because the ministry eliminated the before mentioned bidder unjustly from competition.²⁷ Meanwhile, another violation was committed during the other procurement activity "supporting program - public buildings audit." After analyzing the facts given by the complaining operator, contracting authority, the reviewing expert and the PPRB, the Review Panel has decided to re-tender.²⁸

Ministry of Security Force

July-September - Ministry of KSF has violated procurement activity "vehicle maintenance services - Mitsubishi jeeps for the needs of MSF need KSF".²⁹ After the appeal of the economic operator "Allmakes Global Services (AGS), Procurement Review Body has appointed a reviewing expert, who found major violations during the evaluation of this tender:

- There were no at least three responsible operators;
- Economic Operator recommended for the contract has not been authorized by the manufacturer or the authorized distributor;
- Economic Operator recommended for contract offered extraordinary low prices for items / vehicle parts.

However, MSF disagreed with the expert's report, thus a hearing was held, where the involved parties have submitted their arguments before the Review Panel. After analyzing the evidences, RP, has decided to return to re-tender that tender.

Also, MSF has returned to re-evaluate the tender "supply of inventory for KSF and MSF." Violation of Article 28 and Article 7 of the PPL, because in technical specifications was favoured the productions of 'Volkswagen' vehicles. During this time MSF committed violation

²⁶ oshp.rks-gov.net/repository/docs/v/2011/zbatim_masave_be_gusht11.pdf

²⁷ http://oshp.rks-gov.net/repository/docs/vendimet/2011/studim_shpernd_shtat11.pdf

²⁸ See: http://oshp.rks-gov.net/repository/docs/vendimet/2011/studim_shpernd_shtat11.pdf

²⁹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/studim_shpernd_shtat11.pdf

in the tender "Supply of military shoes for KSF needs." In this tender MSF has committed a violation of Article 51, 59 and 109.2, thus the tender had to be re-evaluated.

Ministry of Health

Ministry of Health has committed numerous legal violations in two different procurement activities. First violations are found in the tender "Supply of medicines and expendable medical material from the essential list of the Ministry of Health". Initially, the company "REDONI HM" had complained to the Public Procurement Review Body. Then, the PRB has appointed a reviewing expert to analyze the process of procurement activity, who did not find any violations of the contracting authority in this tender. However, the Review Panel, after analyzing the evidences of complaining operator, claims of the contracting authority, the expertise of the reviewing expert, decided that this procurement activity should be re-tendering because during this activity were not followed Article 10 (Means to promote Transparency) and Article 59 (Examination, Evaluation and Comparison of Tenders).³⁰

Meanwhile, other legal irregularities have occurred in the tender "Supply with cytostatic-Retender Lot 6". Initially, the company "REDONI HM" complained to PRB about irregularities in the tender, because the awarded economic operator did not have any authorization from the manufacturer, since "Imatinib Mesylate" is a patented product and the only manufacturer that has the right to produce is "Novartis" from Switzerland. Subsequently, the Public Procurement Review Body has appointed a reviewing expert, who has concluded that CA has not committed any violations and the EO's complaint was declared ungrounded. The Complaining Company disagreed with the findings of the expert, thus hearing session was held. Based on the evidences of the economic operator, the winning company "RIMED" was rewarded with a contract authorized by the manufacturer "FARMAKOS" which did not produce this product, but only import the product. However, the claims of the contracting authority and reviewing expert according to PRB have been ungrounded and decided to return the tender for re-evaluation.³¹

Considering that the Ministry of Health did not respect this final decision, the PRB has issued a directive addressed to the Ministry, requiring to immediately apply for re-evaluation of the tender. On the contrary, the PRB has threatened to fine in the ministry in an amount of 5,000.00 euro, while to the procurement manager will be taken disciplinary measures - in accordance with the Law on Civil servants.³² Since the Ministry of Health did not respect that decision, the Public Procurement Review Body fined the ministry with 30,000.00 Euros and has asked for disciplinary measures to be taken against the main procurement officer.

Procurement Review Body has refused the request of MH for the revocation of Article 30 of the Law on Public Procurement on procurement activity "Supply of medicines and expend-

³⁰ http://oshp.rks-gov.net/repository/docs/vendimet/2011/furnz_barna_msh_korrik11.pdf

³¹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/furnz_citos_shtat11.pdf

³² http://oshp.rks-gov.net/repository/docs/vendimet/2011/urdh_furnz_citostatik_shtat11.pdf

able material from the essential list”.³³ Reviewing Expert in its report concluded that the fundamental principle of equal treatment / non-discrimination is not respected by the Ministry of Health. In this case, the Public Procurement Agency has decided to refuse the request of the MH on the grounds that in the tender dossier were not required samples or catalogs, by not giving sufficient time for economic operators to bring them. Therefore, the Review Panel concluded that MH has not followed Article 6.6 of the PPL, which emphasizes that any request, requirement or specification that is not required in the contract notice and tender dossier cannot be used in the selection process or award of contracts.³⁴ Besides this violation, the procurement officer, Ekrem Maliqi, through a submission informed the PRB about the complaint filed in the Ministry of Health Appeals Commission. According to this official, the Permanent Secretary (PS) of this ministry, Ilir Tolaj, pressured him to achieve his personal interests regarding this tender.³⁵

Legal Violations of Ministries in a tender

Ministry of Finance - has committed numerous violations during the implementation of procurement procedures for the tender "banking services, debit cards, credit cards and checking account services to foreign embassies and credit card services to the government of Kosovo". Once the economic operator "Commercial Bank" from Pristina was complaining about numerous legal irregularities regarding this procurement activity, the PRB has appointed a reviewing expert to see whether or not there was a violation. According to him contracting authority has not respected the implementation of procurement procedures in violation of Section 9 (definition of needs that must be met), Article 27 (tender dossier) is not prepared according to the services required, Article 28 (Technical Specifications) and Section 62 (completion of procurement activity). The Review Panel informed the Ministry of Finance for such violations and the latter agreed that this procurement must be cancelled - re-tendering.³⁶

Ministry of Internal affairs - violated the procurement activity in the tender "toners supply ". Companies "Europrinty" and "Aerocom" from Pristina complained to the Public Procurement Review Body for irregularities that have accompanied that tender. The PRB has appointed a reviewing expert, who did not find any violations during the evaluation of bids - as complaining companies have claimed. However, the Review Panel, after reviewing the case file, evaluation report of evaluating commission, the findings of the expert, review of applicants claiming , found that MIA had violated Article 58 (Opening of Tenders) and 32 (General Rules) of the Law on Public Procurement. In this case it was decided to re-tender.

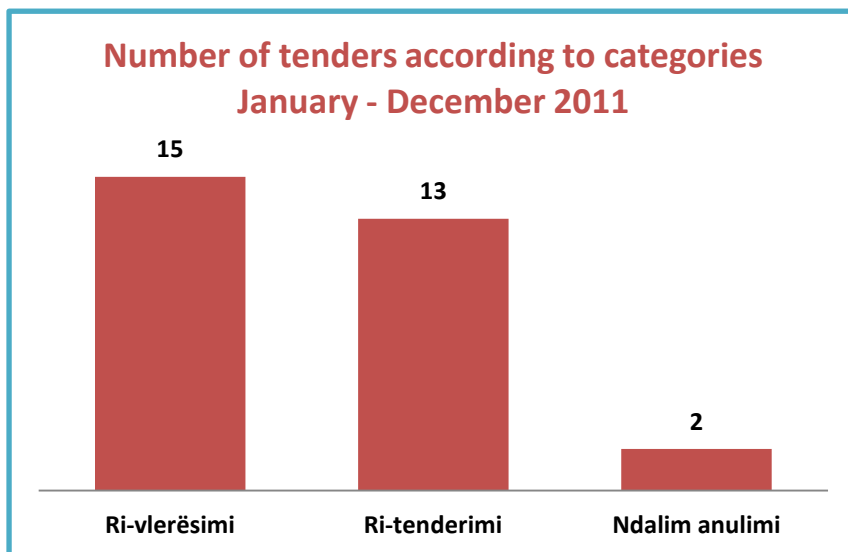
³³ Ibid, No. 13/11, 28 February, 2011, p.1

³⁴ Ibid, p. 2

³⁵ Ibid, no. 09/2011, 24 June, 2011

³⁶ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Sherb_bank_Amba_Hua_%20Qever_Kos.pdf

Ministry of Diaspora - has violated the tender "Supply of vehicles for purposes of the Ministry of Diaspora - 3 lots", thus it had to return to re-tender, because the Ministry of Diaspora has decided preference specification of the type of vehicles, which is prohibited by provisions of the Law on Public Procurement.



Violations of Public Enterprises

Public enterprises have committed numerous legal violations in nine (9) different tenders. Kosovo Energy Corporation has committed violations on six (6) tenders, and the Kosovo Post and Telecom of

Kosova has committed violations on three (3) various procurement activities. 3 of them had to re-tender, one was not allowed to be cancelled and five other tenders were re-evaluated. During January, the PRB has issued another financial fine for PTK in the amount of 20.000.00 euro and 2000.00 euro for Procurement Manager. This decision was approved because PTK has not respected the decision and the order of the PRB on the tender last year (2010) "hardware supplies, software and associated technological equipment for automation of the Receptions of the Post of Kosovo.

Kosovo Energy Corporation

KEC has committed violations in six (6) different tenders. The first violation was committed on the tender "The audit of financial statements of KEC for the period VF 2010"³⁷, while in the second tender "Supply and Delivery of electricity meters for domestic customers"³⁸. In the first case KEC has not respected the Law on Public Enterprises, because the economic operator "Grant Thornton" has been engaged as external auditor for KEC for the years 2005, 2006 and 2007. Based on this law, public companies have no right to award tenders to companies that have previously been engaged for three years - up to a six year period. Considering this violation PRB has decided to cancel this tender - in accordance with the findings of the reviewing expert. In the second case RP, based also on the findings of the reviewing expert, determined that KEK during the tender evaluation process has failed to respect Article 30 of the PPL A.4, since in this procurement activity no economic operator has been responsible. PRB then decided to return this tender to re-tender.

Third violation is committed on the tender "Supply of electrical filters for blocks A3, A4 and A5 in Kosovo A-including projection, reconstruction and implementation in accordance

³⁷ PRB decision, no. 559/10, 14 January, 2011, p. 2

³⁸ Ibid, no. 579/10, 19 January, 2011, p. 1-2

with standards of LCPD (2001/80/EC) on the concentration of dust emissions in atmosphere 50 mg/nm³- part 1 and part 2".³⁹ Meanwhile, a fourth violation is committed in the procurement activity "Supply and Delivery of electricity meters for KEC". In the case of the third tender, reviewing expert has stated that KEC has failed to respect Article 34.4 (negotiated procedures after publication of a contract). In this procurement activity, Contracting Authority sought additional clarification only from operators "Hamon Environmental GmbH & Interling GmbH" and PB & EKTEN D.O.O & Prima Commerce", but not also from the complaining company "VEC" from Croatia. Considering this violation reviewing expert concluded that the Contracting Authority should seek clarification from the economic operator "VEC" and thus continue with further proceedings in accordance with the Law on Public Procurement⁴⁰. With expert's opinion agreed also KEK. Meanwhile, on the fourth procurement activity KEK has not complied with legal provisions in evaluating the bids, in violation of Articles 7 (Equality of Treatment / Non-discrimination and transparency), 28 (Technical Specifications) and 59 (Examination Evaluation and Comparison of Tenders). This tender was re-evaluated⁴¹.

Next violation was committed in the procurement activity "Supply and delivery of electricity meters for domestic customers." In this tender KEC has made numerous legal violations, where the economic operator "Sagecom Energy & Telecom SAS" from France has complained to the Public Procurement Review Body. Afterwards, the reviewing expert concluded that KEC has not made any violations during the procurement activity. However, after the rejection of this expertise by the economic operator, and hearing the evidence at the hearing, the Review Panel has found violations of Article 10 (Means of Promoting Transparency), 29 (Variants of technical specifications), 53 (Provision of Additional information for candidates and bidders) and 59 (Examination, Evaluation and Comparison of Tenders) of PPL. In this case it was decided that this procurement activity must return to re-tender.

The next legal violations have occurred in another tender "Supply of overvoltage discharger." In this tender KEC did not treat economic operators equally, where they favoured the company "Ukab" and has discriminated the complaining company "Elmonti". Considering these irregularities, the PRB has determined that this procurement activity must return for re-evaluation.

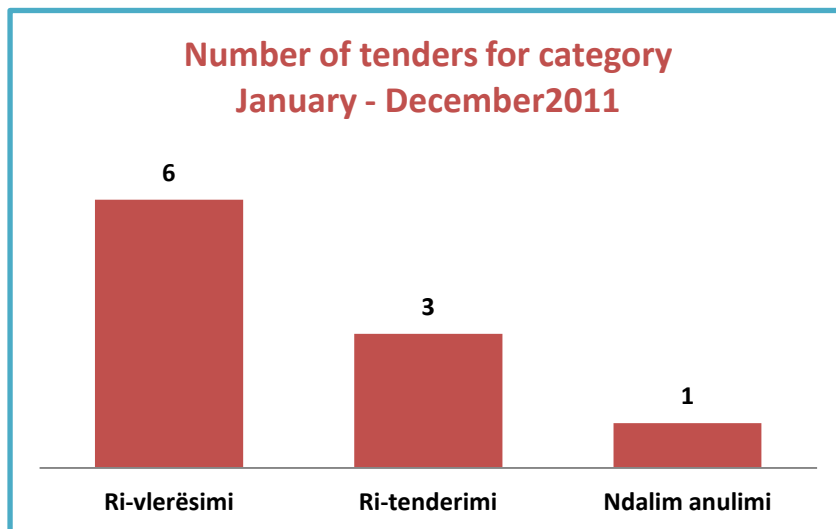
Another violation occurred on the tender "educational campaign, public awareness". In this tender KEC has discriminated complainant economic operator "N.SH.2B", while they favoured the company "New Film & the Group" from Pristina. In the announcement of the contracting authority was shown that the company was awarded the contract, even though did not meet the requirements of the dossier tender. Some of them are non-provision of evidence of qualifications of employees of this company, then they only offered a reference to the amount of 250,000.00 euro, while it supposed to be two of them, etc... Thus, considering these irregularities, the PRB has determined that this procurement activity should return for re-evaluation.

³⁹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Fur_Filtra_TC-Kos_A.pdf

⁴⁰ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Fur_Filtra_TC-Kos_A.pdf

⁴¹ http://oshp.rks-gov.net/repository/docs/vendimet/2011/furnz_liferimi_kek_qersh11.pdf

Then, KEC had to re-evaluate this tender but they cancelled it instead. Considering such a violation, the company "New Hollywood & the Group" which was awarded this tender first time has filed a complaint to Public Procurement Review Body; the latter cancelled KEC decision for the cancellation of this activity procurement.



Post and telecom of Kosova

PTK has committed major legal violations on 3 different tenders. In procurement activity "optical network construction in Dardania quarter in Prizren - Phase II" reviewing expert concluded that PTK has made numerous legal

violations: Article 27 (tender dossier), Article 57 (provision of tender) Article 59 (examination, evaluation and comparison of tenders), article 60 (award criteria), Article 66 (professional adjustment)⁴² and violation of the provisions of Article 29.15 of the Rules of Public Procurement - Part B.⁴³ Although CA has specified that the contract would be awarded to the economic operator with the cheapest price, it was awarded to the company with a higher price, 9.438.59 Euro. Then the Procurement Review Body has decided to return this tender to re-tender. However, during January PRB has issued a financial fine for PTK in the amount of 20.000.00 euro and 2000.00 euro for Procurement Manager. This decision was approved because PTK has not respected the decision and order of the PRB on the tender last year (2010) "hardware supplies, software and associated technological equipment for automation of receptions of Post of Kosovo ".According to PRB, PTK had no right to eliminate the economic operator "DataProgNet". For this reason this tender had to return to be re-evaluated. However, PTK had refused to do so and then the PRB has issued a warrant for execution of its decision to re-evaluate. Considering that PTK neglected its decisions, the PRB has decided to fine PTK in a value of 20.000.00 Euro, while the Procurement Manager with 2,000.00 EUR.⁴⁴

PTK has also violated the tender "Server Supply, SAN, expansion and maintenance of existing SAN".⁴⁵ Initially, the bidder "PBC - Kosovo" from Pristina is appealed against PTK decision for cancellation of the procurement activity. Evaluation Commission in the evaluation report has justified its recommendation for cancellation, noting that none of the four economic operators for Lot 1 and 2 bidders for Lot 2 did not have original authorizations ac-

⁴² Ibid, no. 16/11, 11 March, 2011, p. 1-2

⁴³ Public procurement Regulation

⁴⁴ Procurement review Body, no. 317/10, 480/10, 13 January, 2011, p. 1-3

⁴⁵ http://oshp.rks-gov.net/repository/docs/vendimet/2011/furnz_serv_san_shtat11.pdf

ording to the tender dossier, and did not own the statement for compliance of technical specifications for the offered goods. However, the reviewing expert concluded that during the examination, evaluation and comparison of bids PTK failed to respect Article 59 of the PPL, while the claims of the complaining economic operator were considered ungrounded. In addition, the reviewing expert also notified electronically the Austrian company "Hewlett Packard" to verify whether this company has issued authorizations for both economic operators "PBC-Kosovo" and "ASSECO SEE-SPT" from Kosovo and the "Neocom" from Macedonia. The company "Hewlett Packard" has confirmed that the three economic operators have been authorized by it. Further, the expert has claimed that the statement of compliance of technical specifications for the goods provided is complete in accordance with the tender dossier, so for LOT 1 concludes that economic operators meet the three criteria, whereas for LOT 2 only two bidders meet the criteria determined by the contracting authority. However, PTK disagreed with expert's opinion, thus they asked for a hearing. After collecting facts and evidences, the Review Panel has decided in favour of the appealing company and reviewing expert's analysis. Therefore, this tender is back in re-evaluation.

Violations of Municipalities

Municipalities in 2011 have committed legal violations in a total of 37 procurement activities. Twenty-four (24) of them had to be re-evaluated, 11 in re-tendering and only 2 were not allowed to be cancelled by contracting authorities. Municipalities with more violations are municipality of Lipjan and Suva Reka and, with four (4) tenders. Then, the municipality of Pristina, Gjilan, Rahovec and Vitia with three (3) tenders. Meanwhile, with two (2) tenders are municipalities of Gračanica, Podujeva, Shetpce and Kamenica. And with a single tender are municipalities of Peja, Ferizaj, Prizren, Kacanik, Istog, Klokot, Fushe Kosova, Mitrovica and Klina.

Municipality of Lipjan

Municipality of Lipjan has committed violations in four different tenders. In early 2011 the PRB has cancelled the decision of the municipality for the cancellation of the tender "Construction of the Building in village Kraishtë". Once the companies "Albert" and "Te Muhameti" complained to PRB, the latter authorized the reviewing expert, who, after the review of this case concluded that the CA when annulling the above mentioned tender failed to respect Article 62 (completion of Procurement Activity) and 109 (Deadlines for filing the complaint) of the Law on Public Procurement. CA Instead of complying with the deadline of 10 days to appeal regarding the cancellation, on the day of cancellation it has also made the contract notice. Therefore, in this case, the Review Panel has cancelled the decision of the CA for the cancellation of the procurement activity.

Throughout this period numerous violations have been committed in three different tenders. In the first "reconstruction of the primary school" Zenel Hajdini in Gadime " is in violation of Article 52⁴⁶ dhe 54⁴⁷ of the Law on Public Procurement. Initially, the company "Te Muhameti" had complained to the PRB, thus, a reviewing expert was appointed to analyse

⁴⁶ Announcement of criteria for contract award, Public Procurement Law, no. 03/L-241, p. 55

⁴⁷ Announcement of candidates and disqualified bidders, Public Procurement Law, no. 03/L-241, p. 57

this case. According to the expert's report it was concluded that the contracting authority did not respect the provisions in evaluating the bids. However, the Municipality of Lipjan disagreed with the recommendation of the expert to return the tender for re-evaluation. In this case, the PRB has scheduled a hearing, where violations were confirmed by reviewing expert. Based on the observed findings, the Review Panel issued a decision on re-evaluation of the procurement activity. Additionally, the municipality of Lipjan committed violations also in another tender "reconstruction of the Municipal Hospital facility." After the complaint filed by the economic operator "Euro-Service" from Pristina, the PRB assigned a reviewing expert to check the case. Since the contracting authority lacked a complete tender dossier, the expert has recommended that the procurement activity must return for re-evaluation. However, the municipality did not agree with such an assessment. Then, a hearing was held where the involved parties in this dispute have offered their arguments. In this case, the Review Panel concluded that CA has failed to respect Article 10 of the PPL and therefore the tender should be returned in re-evaluation.

Also, the municipality of Lipjan has violated in another tender "regulation of sewerage in Sllovi - Phase II". Since the company "Muratori" complained about irregularities that have accompanied the tender, the PRB has appointed a reviewing expert. According to the expert's report the Contracting Authority has not acted in accordance with legal provisions, making numerous legal violations. In this case, the expert has recommended that the procurement activity should return in re-evaluation, the Review Panel agreed in general with such expertise and has made a decision in accordance with the requirements of expert and economic operator complaints.

Municipality of Suhareka

Municipality of Suhareka has committed numerous violations in four different procurement activities, initially violating the tendering process "Construction of water supply in the village Grejkoc". After notification of contract award, the company "Qami Rrezon" complained to PRB, claiming the CA has deliberately chosen "Berisha Company" as the winner of this tender, even though at a price of 7.200.00 higher. After collecting evidences, the Review Panel concluded that CA has committed a violation of Article 50.2, 50.3 and 58.2 of the PPL in awarding the contract. In this case RP has returned this tender on re-tender.

Municipality of Suhareka has violated the law in the tender "Construction of the house of elders in the village Gjinovc - Municipality of Suhareka." Initially the company "Maloku" complained about violations during the procurement activity and then the reviewing expert has found major violations. Considering these irregularities that had accompanied the tender, the Public Procurement Review Body has decided to turn the tender in re-evaluation. This decision was taken because the evaluation commission has unfairly eliminated the company in question - due to the fact that the economic operator has applied as a group of economic operators with OE "Iliri", which offered as proof all required documents: adaptability, business certificate, tax certificate number, certificate of VAT registration, Constructing license, affidavit, Certificate of the Commercial Court, the tax Administration certification, and certification for payment of municipal obligations - as required by section 71.4 the PPL.

The Public Procurement Review Body has asked for re-evaluation of the tender "Maintenance and renovation of facilities of Municipal Hospital and renovation of ambulances in the village of Samadraxha and Dobërdolan ". After the appeal of "Agrolimpex" and the assignment of the reviewing expert on this case, it was concluded that the contracting authority had violated Article 49.1 and 50.1 of the PPL, thus, the procurement activity was returned in re-evaluation.

Municipality of Prishtina

Pristina municipality committed violations in three (3) different tenders. The first violation was committed in the tender "Cleaning the green school building and annexes of primary schools" Naim Frasheri "and" Dardania".⁴⁸ Initially the company "MSS-Mobile Sanitary Service" has complained to Procurement Review Body, the latter approved the EO complaint as grounded. Afterwards Pristina municipality and the company in question have offered their arguments at the Review Panel of the PRB, the latter decided to return the tender in re-evaluation, since during the evaluation process in this procurement were not respected Articles 57 and 58 of the PPLsë.⁴⁹

Municipality of Prishtina has violated also in procurement activity "Supply with municipal administrative material." After the appeal of economic operators "NTG Blendi" and " NTGT Grafo Trade " the reviewing expert concluded that their claims are grounded, as the Contracting Authority has not fully implemented the evaluation criteria during the evaluation of bids - considering the height of prices for parts 2, 3 and 4. However, although the Municipality of Prishtina did not agree with the opinion of the reviewing expert, the PRB after hearing the arguments at a hearing session concluded that the municipality has violated Article 10 (Means of Promoting Transparency) and 60 (Criteria for Award of Contract). In this case the PRB Review Panel has decided to return the tender on re-evaluation.⁵⁰

Municipality of Prishtina has violated procurement activities regarding the tender "supply and installation of traffic lights in three traffic light spots in Prishtina". After the appeal of the economic operator "Road Sings & Marketing" reviewing expert concluded that the complaint is grounded, as the Contracting Authority has not fully implemented the evaluation criteria during the tender evaluation process - in violation of Article 59 (Examination, Evaluation and comparison of Tenders) of the Law on Public Procurement. Although the Municipality of Prishtina did not agree with the opinion of the reviewing expert, the PRB after hearing the arguments at a hearing session concluded that the municipality has violated Sections 32 (General Rules) and 59 (Examination, Evaluation and Comparison of Tenders) of PPL, thus, this procurement activity has returned to re-tender.

Municipality of Gjilan

Municipality of Gjilan has committed numerous legal violations in three procurement activities. Initially, several violations were committed in the tender "Maintenance of public

⁴⁸ No. of Procurement 616/11/001/221, Municipality of Prishtina, 28 March, 2011.

⁴⁹ No. 26/11, Procurement Review Body, 30 March, 2011, p. 1-2

⁵⁰ http://oshp.rks-gov.net/repository/docs/vendimet/2011/Fur_mat_Zyr_Komu.pdf

lighting." In this tender according to the reviewing expert the Articles that were violated are: article 7 (Equality of Treatment / Non-discrimination and transparency), 52 (Notification of contract award criteria), 66 (Professional adjustment) and 71 (Groups of Economic Operators and Foreign Operators). Contracting Authority and complaining economic operator "Termomontimi" agreed with the opinion of the reviewing expert. In this case, the PRB decided that the procurement activity in question should return on re-evaluation, because during the tender evaluation processes were not respected the procedures and provisions of public procurement.

This contracting authority committed numerous violations during the cancellation of the tender "Construction of the river BAJA banks". According to the reviewing expert this tender was cancelled rightly by the Municipality of Gjilan - due to changes that were supposed to be in the project by the Mayor. However, when examining the facts in the tender dossier and the flow of the process until the cancellation by CA, the Review Panel has made a decision to cancel the cancellation of the tender by the Municipality of Gnjilane. Further, the PRB has requested that the tender be activated immediately and in no way should be canceled. Municipality of Gjilan has violated also in another tender "Fasade of collective building in the neighborhood of Illyria." According to the reviewing expert the complaining company "ENGROUP - KPS" was unfairly eliminated from the procurement activity, thus, the contracting authority had violated Article 59 (Examination, Evaluation and Comparison of Tenders), 64 (Evidence Requirements) and 65 (Eligibility of Candidates or Bidders) of the Law on Public Procurement. In this case, the reviewing expert has recommended that the procurement activity should return on re-evaluation, since the complaining company, which was eliminated for that lack of confirmation from the Tax Administration of Kosovo, possesses such a certificate instead and its complaints are grounded. Municipality of Gnjilane - the contracting authority agreed with the evaluation of the reviewing expert.

This municipality has committed violations during the last three months in two other tenders as well. First violations were in the tender "Supply of office paper, toner and paper publishers - divided into three lots." In this tender were violated Articles 1, 6, 7, 52 and 59 of the PPL, the RP decided this tender should return to re-tender. Also in the tender "The physical security of Gjilan Municipal Building" the municipality committed violations, by awarding the company "SAS" - which did not meet the criteria specified by the contracting authority. So, this tender is back in re-evaluation by the PRB.

Municipality of Rahovec

Municipality of Rahovec committed several violations in three procurement activities. First violations have been in the procurement activity "Constructing the Central heating in primary school" Isa Boletini "in Rahovec". Although the reviewing expert did not find any violations, the Review Panel has concluded that in this procurement was violated the Article 59 (Examination, Evaluation and Comparison of Tenders). Thus, the RP has decided to return this tender on re-evaluation. Besides the violations in this tender, Rahovec Municipality has also committed other violations in the tender "purchase of two vehicles for the Municipality of Rahovec." In this procurement activity 3 economic operators are declared responsible, and the operator recommended for the contract was "Autosalloni Morina". How-

ever, the company "AGS" complained to the PRB for legal irregularities and the reviewing expert has concluded that in this procurement was violated the Article 59 (Examination, Evaluation and Comparison of Tenders) of the Law on Public Procurement. After hearing the evidence at the hearing session, the PRB has decided that the recommended EO to be contracted did not meet technical specifications and tender dossier thus, the operator had to be declared irresponsible. PRB requested that the tender should return on re-evaluation.

Besides violations in these two tenders Municipality of Rahovec has committed another violation in the tender: "Constructing Elementary School in Malesi e Vogel". Initially, the company "Coneng" from Prizren complained to PRB, and the latter appointed a reviewing expert to analyze the claims of the company. The expert found out that contracting authority has complied with the applicable provisions of the PPL, but the Review Panel did not agree, returning this procurement activity to re-tender

Municipality of Viti

Viti Municipality has committed violation in the tender "Supply of printed material, advertising and sports equipment for the needs of municipal administration and the Department of Education - Viti". Review Body after receiving the complaint by the economic operator "Studio Grafik- Visual media +" DBT "Albi" has assigned a reviewing expert to examine the process of this procurement activity and the validity of the allegations of the complaining party. The reviewing expert submitted an expertise report, where he found that the Contracting Authority during the tender evaluation process has not respected the provisions of the PPL. In this case, the Review Panel has decided to return the tender on re-evaluation because CA has committed a violation of Article 54 (Notice of eliminated Candidates and Bidders) and 59 (Examination, Evaluation and Comparison of Tenders).

The municipality of Viti also has committed legal violations in the tender "Construction of the defense wall in elementary school "Alia Hasan" in the village Remnik". It was decided that this procurement activity returns on re-evaluation, since the contracting authority has ignored the provisions of Article 59 of the PPL, as it has unjustly disqualified one of the economic operators. Once the tender has been re-evaluated again by the municipality of Viti, it was canceled entirely - because only one bidder was responsible. However, at the first municipality of Viti had announced two tenders responsible and not just one as stated later. Thus, PRB issued a fine to this municipality in amount of 10,000.00 euro and cancel the decision of cancellation of this procurement activity.

Municipality of Graçanica

Has violated provisions in the tender "Supply and installation of equipment for monitoring the streets of Graçanica." In this tender have applied 9 (nine) economic operators, one of them is considered as irresponsible. After notification of contract award, 2 (two) economic operators⁵¹ have submitted their complaints to PRB for legal irregularities. The Review Panel has come to conclusion that the tender evaluation process has been violated by CA

⁵¹ Company "Pro 4" and "Treo Electronics"

in article 6⁵² and 57⁵³ of PPL. In this case the Procurement Review Body has decided to return the tender on re-evaluation.

Due to the failure to implement the decision of the PRB for re-evaluation of the tender "Supply and installation of equipment for monitoring the roads of Gracanica", CA was punished with a penalty fine of 6,000.00 euro. This sentence was because the Contracting Authority has not respected the previous decision of the PRB for re-evaluation of this tender. In that tenders had applied 9 (nine) economic operators, one of them was declared as irresponsible. After notification of contract award, 2 (two) economic operators⁵⁴ had submitted their complaints to the PRB for legal irregularities. The Review Panel concluded that during the tender evaluation process CA had violated article 6⁵⁵ and 57⁵⁶ of PPL. In this case the Procurement Review Body has decided to return the tender on re-evaluation. Since the Gracanica municipality did not respect such a decision the PRB has fined it with 6,000.00 euro.

Komuna e Podujevës

Procurement Review Body in January issued a directive to the municipality of Podujevo to respect the decision on "the construction of sewerage in the village of Dumnicë e Poshtme- Lot 1 and Lot 2". Due to irregularities in the procurement process PRB has decided that this tender must return on re-evaluation. However, Podujeva municipality has not respected this decision and the tender was cancelled at all. In this case, the PRB has decided that the Contracting Authority in the notice for cancellation of the procurement activity was not grounded on any legal provision - as required by article 50 A of the PPL. If the Municipality of Podujeva does not respect this decision of the PRB then it will be fined over 5000.00 euro and the official (procurement officer) will be fired and also fined over 1000.00. euro⁵⁷.

Podujeva municipality has violated also during the tender "flour supply for families in poor social conditions." The Review Body after receiving the complaint by the economic operator DPT "Albi", has authorized the reviewing expert to review the process of this procurement activity and the validity of the allegations of the complaining party. Reviewing Expert submitted in May a report of expertise, where he found that the Contracting Authority during the tender evaluation process has not respected the provisions of the PPL. In this case, the Review Panel has decided to cancel the tender and return it to re-tender.

Municipality of Shterpce

Municipality of Shterpce has committed violations in two different tenders. In the first, the economic operator "Infra Tek" from Pristina, as the unsatisfied party with the notice of contract award, has filed a complaint regarding the tender procurement activity "Compilation of detailed project according to the request of municipality of Shterpce." According

⁵² Article Economy and Efficiency

⁵³ Article - Provison of the tender

⁵⁴ Company "Pro 4" and "Treo Electronics

⁵⁵ Article Economy and Efficiency

⁵⁶ Article - Provison of the tender

⁵⁷ Procurement Review Body, no. 528/10, 18 January, 2011, p.1

to reviewing expert, complaining party claims were consistent and grounded on law, because Municipality of Shterpce had disregarded the procedure of the Article 60 - for the award of the contract with the lowest price. The CA stated that the offer of this company was extraordinary low, but that the PRB did not agree with this assessment, since this company has pledged to perform services at the prices specified in the specification. In this case, the PRB has issued a decision on re-evaluation of this tender.

This contracting authority has violated the tender "Construction of the Gym". The Reviewing expert has concluded that Municipality of Shterpce has failed to respect Article 59 and 60 of the PPL, because the economic operator recommended for contract award does not meet all requirements provided by the tender dossier of CA. considering such violations, the reviewing expert has recommended that the tender should return on re-evaluation and with such a suggestion were agreed the CA and the complaining company "NPN Clirimi". However, due to changes in budget lines from the central level, the procurement activity is cancelled.

Municipality of Kamenica

Municipality of Kamenica offense has committed violation during the procurement activity "Construction of the roads in villages Muhagjerët e Topanicës and Behajt e Rogacices". Public Procurement Review Body, after receiving the complaint of the complaining operator "Company Zuka Commerce - SHPK" assigned a reviewing expert. The Expert submitted his report in August, and declared that Municipality of Kamenica did not respect the Article 59 and 112 of PPL - and the procurement activity was cancelled. In this case, the expert has recommended that the tender should be re-tendered. With that opinion agreed the Municipality of Kamenica and Economic Operator, as well.

Municipality of Kamenica has ignored PPL even in the tender "Construction of the roads in villages Muhagjerët e Topanicës and Behajt e Rogacices". Because the economic operator recommended for contract did not meet the criteria and requirements provided in this tender dossier, including a very short dynamic plan of (impossible) works and list of employees who also work for other companies, RP decided to return this tender on re-evaluation.

Violations of the Municipalities in a tender

Municipality of Peja - had violated procurement activity "Compilation of a regulatory plan of a part of BT "Kapashnica" and "Sahat Kulla" in Peja ". Although in this bidding process all economic operators have been irresponsible, Evaluation Commission has declared two companies responsible, where the company awarded was "Vision Project" in consortium with "Arketima". This company was declared the winner even though it did not possess the property tax certificate, then the certification of KTA has been scanned (while the original is required) and the license from MTI was also copied (even it had to be original or notarized). Considering these violations the company "Urban Plus" complained to PRB and then

this body has concluded that on this occasion the Contracting Authority has violated Article 34.4⁵⁸ of PPL and therefore the tender should return to re-tender.⁵⁹

Komuna e Ferizajt - Has committed numerous violations in the tender "Construction of pavement in the road "Brahim Ademi" in Ferizaj". Initially the company "Kompakt" complained about violations during the procurement activity and then the reviewing expert has found major violations. Considering the irregularities that had accompanied this tender, the Public Procurement Review Body has decided to return it to re-tender. This decision came as a result that the evaluation commission has failed to respect Article 29 (Public Procurement Regulation B), article 35 (negotiated procedures without publication of a contract), 52 (Notification of contract award criteria), 54 (Notification of the eliminated Candidates and Bidder) and 58 (Opening of Tenders) of the Law on Public Procurement.

Komuna e Prizrenit - has violated the tendering process "green space maintenance and repair of environmental equipment in oasis and public squares." Evaluation Commission of this procurement activity had wrongfully declared the company "Limit" as irresponsible on the grounds that this company does not offer references of a similar nature and that lacks certification by KTA. However, after evaluating the evidence offered by this company, the Review Panel of the Procurement Review Body has come to the conclusion that contracting authority has committed violation and that the complaint of the economic operator is grounded and demonstrable. In this case the body has decided to return this tender on re-evaluation.⁶⁰

Municipality of Kaçanik - Has committed violations of the provisions of the tender "removal of waste from illegal storage and cleaning of streams". Although, in this procurement activity have applied 4 economic operators, only one was responsible. However, this did not prevent the contracting authority to recommend the contract award to the only responsible economic operator. Furthermore, at the hearing session organized by PRB, the representative of CA himself has confirmed such a thing. Considering such a violation, the Review Panel has concluded that this procurement activity should return to re-tender - for there were no responsible bidders.

Municipality of Istog - has committed violations in the tender "provision of food, drinks and hygienic sanitation for gardens and other municipal institutions." The Economic operator "Burimi" from Pristina, as an unsatisfied party with the CA notice of contract award, has filed a complaint to PRB. Hereby the authorized PRB reviewing expert, in his report has identified major violations of legal provisions: Article 58 (Opening of Tenders), 59 (Examination, Evaluation and Comparison of Tenders) and 60 (Criteria for Contract Award) of the PPL. However, Istog municipality disagreed with the conclusions of the expert, thus a hearing session had to be held. In this session were presented all arguments of each part involved in this dispute, but the Review Panel has identified that the offer of the company ("Jafa") which was recommended the contract contents prices that are not compatible

⁵⁸ "If during the implementation of procurement procedures are accepted less than two (2) responsible tenders or when it is applicable the request for participation, contracting authority must cancel the procurement activity", Public Procurement Law, No. 03/L-241, p. 40.

⁵⁹ http://oshp.rks-qov.net/repository/docs/vendimet/2011/Har_plan_Kapesh_Sah_Peje.pdf

⁶⁰ http://oshp.rks-qov.net/repository/docs/vendimet/2011/Mir_Pas_Gjel_Prizren.pdf

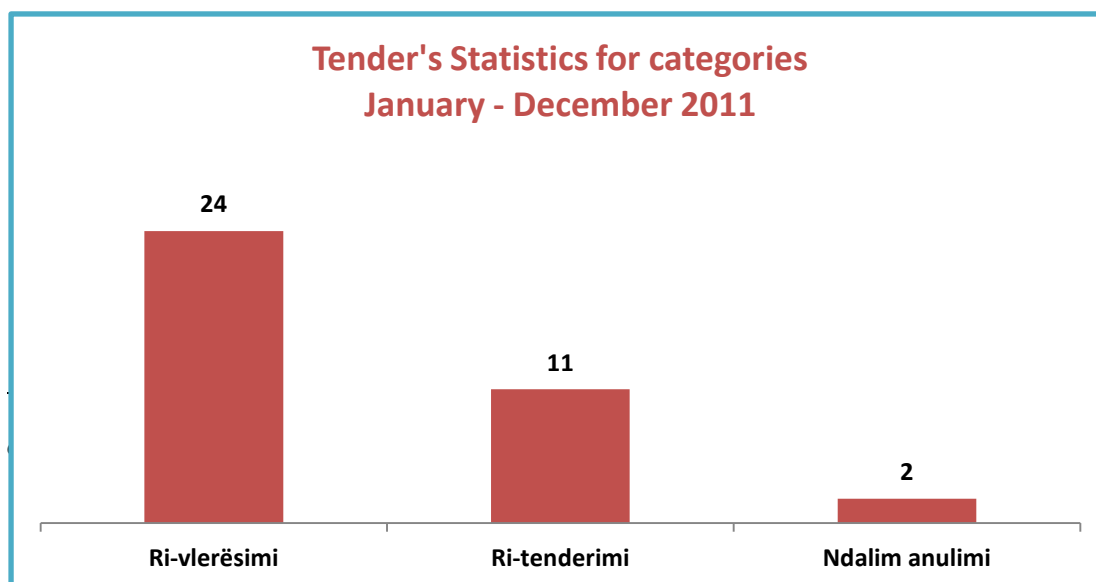
with market prices and therefore would harm the budget of the Republic of Kosovo. In this case, the PRB has decided to re-tender this procurement activity for the fourth time.

Municipality of Klllokot - has violated the tendering process "Constructing roads in Klllokot". Economic operator "Zuka Commerce Company - SHPK" as unsatisfied party, filed an appeal against the notice of contract award to the economic operator "Euro Abi" from Ferizaj. After, the complaint was submitted; PRB has authorized the reviewing expert to examine the procurement activity and the validity of the allegations of the complaining party. Afterwards, the expert concluded that the Municipality of Klllokot has violated Article 7 and 59 of the PPL. Although the municipality did not agree with this conclusion, the Review Panel has decided that this tender must return to re-tender, as any economic operator did not meet the criteria specified in the tender.

Municipality of Fushë Kosova - Has committed violations in the procurement activity "Construction of dwelling houses for the poor families." This procurement activity was returned on re-evaluation because the recommended economic operator for contract "Bashkimi" from Drenas had a higher price than the complaining economic operator "CTA" from Pristina.

Municipality of Mitrovica - Public Procurement Review Body has returned to re-tender the tender of this municipality, "Construction of two Noter's offices in Shupkocv and Cinare." In this tender RP has concluded that the economic operator "Kalaja" was unfairly eliminated from participation - due to the fact that in the same banking report, it is clear that the company has released twice more than the offer for identical projects. Therefore, in this case the contracting authority had violated Article 59 and 60 of the Law on Public Procurement.

Municipality of Klina- has violated the tender "Construction of water supply in the village Cerravik". In this tender were unfairly eliminated three economic operators ⁶¹, and only three others were declared responsible. Among these economic operators has also been complaining EO "Haxhia Kom", which has offered cheaper price than the recommended contract operator. However, the evaluation commission has unjustly evaluated as extraordinary low price offer. Thus, considering such irregularity PRB has concluded that this tender returns on re-evaluation.



Recommendations:

1. Movement Fol recommends that the Government of Kosovo must take into account the recommendations of the European Commission that the new Public Procurement Law is in accordance with EU criteria, where the Kosovo claims to be a member;
2. Movement Fol recommends that the Contracting Authority must allow civil society supervision of the procurement process;
3. Movement FOL recommends that Contracting Authorities must respect the decisions of the PRB and not ignore or reject them;;
4. Movement FOL recommends PRB and CA to sentence the procurement officials who commit intentional violations of legal provisions and regulations;

Acknowledgements

Publication of this report was supported by OSI / CRD. This report is a product of FOL Movement staff and external collaborators. In this context, the Movement FOL publicly thanks all those who worked in providing information and preparation of the report. All FOL Movement Reports are published in this website: www.levizjafol.org

About Movement FOL

Movement FOL is engaged to empower the civilian impact on decision - making process, responsible and efficient gover-nance. FOL is deeply devoted to work on improvement and attainment of a better civil representation in public life. FOL works for a good governance and grounded on democratic principles, for responsible, transparent and accountable institutions, and for application and compilation of lwith participation. Therefore, expenditure of public funds, conflict of interest, negligence and institutional responsibility and access to official information, are the main components of FOL engagement. FOL attempts to fulfill these goals by fighting the citi-zens' apathy and indifference and make citizens more active and more voiced, in order to serve the community interests and always alert to oppose abuse, misuse, corruption and other malpractices of governance.