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# PUBLIC PROCUREMENT MONITORING REPORT IN KOSOVO

October 2017 – October 2018



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# **PUBLIC PROCUREMENT MONITORING REPORT**

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PRISHTINA  
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# ACRONYMS

<b>ACA</b>	—	Anti-Corruption Agency
<b>BIRN</b>	—	Balkan Investigative Reporting Network
<b>CA</b>	—	Contracting authorities
<b>CPA</b>	—	Central Procurement Agency
<b>EO</b>	—	Economic Operators
<b>I/KS</b>	—	Internews Kosova
<b>KEC</b>	—	Kosovo Energy Corporation
<b>KPC</b>	—	Kosovo Prosecutorial Commission
<b>MAFRD</b>	—	Ministry of Agriculture, Forestry, and Rural Development
<b>MCR</b>	—	Ministry for Community and Return
<b>MCYS</b>	—	Ministry of Culture, Youth and Sport
<b>MDSI</b>	—	Ministry of Diaspora and Strategic Investment
<b>MED</b>	—	Ministry of Economic Development
<b>MEI</b>	—	Ministry of European Integration
<b>MESP</b>	—	Ministry of Environment and Spatial Planning
<b>MEST</b>	—	Ministry of Education, Science, and Technology
<b>MF</b>	—	Ministry of Finance
<b>MFA</b>	—	Ministry of Foreign Affairs
<b>MH</b>	—	Ministry of Health
<b>MI</b>	—	Ministry of Infrastructure
<b>MIA</b>	—	Ministry of Internal Affairs
<b>MJ</b>	—	Ministry of Justice
<b>MKSF</b>	—	Ministry for the Kosovo Security Forces
<b>MLGA</b>	—	Ministry of Local Government Administration
<b>MPA</b>	—	Ministry of Public Administration
<b>MTI</b>	—	Ministry of Trade and Industry
<b>MLSW</b>	—	Ministry of Labor and Social Welfare
<b>PPRC</b>	—	Public Procurement Review Commission
<b>PRB</b>	—	Procurement Review Body

# EXECUTIVE SUMMARY

This reports covers developments between October 2017 – October 2018, although some cases/procurement procedures discussed in the report began before this time period. BIRN reported those cases in this report because they are only now beginning to piece together a more complete picture of what happened in those cases.

This is the third consecutive report from BIRN Kosovo and Internews Kosova (I/KS) on public procurement monitoring, produced for the purpose of monitoring procurement activities in the Republic of Kosovo. Besides looking at public documents, this report also includes records of legal violations published on *KALLXO.com*, the anti-corruption platform of both BIRN Kosovo and I/KS. These reports have been addressed and published on *KALLXO.com* and BIRN Kosovo's other media platforms.

The report also analyzes the transparency of contracting authorities (CA) with the public, with regard to access to information, in particular regarding public procurement. According to the law that guarantees access to public documents, BIRN Kosovo and I/ KS submitted a total of 69 requests to the contracting authorities.

From the requests submitted, BIRN Kosovo and I/KS received 55 responses, many of which did not fulfill BIRN Kosovo's requests. Therefore, BIRN Kosovo has evaluated that information and documents on public procurement are partially accessible. It is worth mentioning that some contracting authorities responded within the day, and some others did not respect the legal time frame.

In 2016<sup>1</sup>, the Law on Public Procurement was amended twice within three months. The second amendment came as a result of mistakes made in the first amendment.

The main legal change made in 2016 was the opportunity given to economic operators (EO) to complain in the first instance to the contracting authorities in case of dissatisfaction with the decision of the contracting authority on a certain procurement activity. A complaint to the PRB is now considered a “second instance complaint.”

Based on the gathered data, a total of 272 requests for the re-evaluation of decisions have been submitted to ministries, municipalities, and public enterprises<sup>2</sup>. Among these, 15 percent of decisions favored the economic operators, and 85 percent favored the contracting authorities.

BIRN Kosovo found that the number of decisions in favor of economic operators by the PRB, as a second instance review body, is very high in comparison with the decisions in favor of the contracting authorities. Based on responses from contracting authorities (see Annex 1), BIRN Kosovo found that contracting authorities find the procedure of re-evaluation of requests from the complainant economic operators unclear. Contracting authorities used various ad hoc procedures to address requests for re-evaluation.

Part of this report also contains a case study about a tender in the Municipality of Prizren. The first violation in this tender involves not respecting the right of the EO to complain to the contracted authority. BIRN Kosovo finds that this tender, valued at 350,000 euros, exhibits a series of violations throughout the procurement process, including the illegal signing of the contract and suspicious implementation of the contract.

In addition, the report incorporates a summary of dozens of fact-checking/Krypometër reports with regard to transparency and public procurement. Krypometër is a fact-checking tool on *KALLXO.com*. Throughout the last year, Krypometër researchers gathered electoral pledges from mayoral candidates, and since the beginning of the year, Krypometër has verified whether these promises were kept during their first governing mandate.

Despite violations in the field of procurement on individual tenders, two positive things happened this year in the system as a whole: the full implementation of electronic procurement was completed after a long delay, as well as the publishing of contracts between institutions and businesses. This report also addresses problems encountered by contracting authorities with electronic procurement, and the strengthening of their skills to use the platform.

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<sup>1</sup> Changed and amended law nr. 04/L-042 for public procurement of the Republic of Kosovo, changed and amended by Law nr. 04/L-237- <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

<sup>2</sup> There are 12 public enterprises included in this report.

# METHODOLOGY

This report includes data gathered from direct monitoring of procurement processes in all municipalities in Kosovo. BIRN Kosovo monitored procurement processes that were initiated in all municipalities in Kosovo. The focus was in the first stage of procurement, evidencing violations before offers were submitted from economic operators.

The selection of tenders was made based on a few factors: cases that had complaints from economic operators, procurement cases that had adjustments before the offering phase, cases addressed at the PRB, and cases reported on *KALLXO.com*.

Besides procurement cases reported on *KALLXO.com*, the report also includes isolated procurement cases which had numerous legal violations.

Considering the legal changes in 2016 that created the two instances for complaints about procurement activities, BIRN Kosovo wanted to test the first instance of complaints at the contracting authorities. Through structured and semi-structured interviews, BIRN Kosovo gathered information from contracting authorities on the first instance of complaints at the contracting authorities.

The same methodology includes information from contracting authorities on the performance of electronic procurement. Officials of municipalities and those from the PPRC were interviewed for this matter. The goal of this methodology is to identify problems encountered by the contracting authorities with the electronic platform.

# REQUESTS FOR RE-EVALUATION

Following the amendment of the Procurement Law, the EO has the right to file a “request for re-evaluation” of the tender, as the “first instance of complaint,” with the contracting authorities. This request is a precondition if the EO wants to complain to the second instance complaints body, which is the PRB.

Article 108/A, added to the Procurement Law in 2016, stipulates preliminary solutions to disagreements between the economic operator and the contracting authorities. *The Economic Operator has the right to file a “request for re-evaluation” from the notice for the contract up to the “notice for the provision of the contract,” anytime they claim that their rights are being violated<sup>3</sup>.*

The Law on Public Procurement enables the contracting authority to correct their mistakes during the procurement activity if the request for re-evaluation of the economic operator is backed, or partially backed, by the law.

*The contracted authority can approve or refuse the request for re-evaluation of one economic operator by turning the procurement process onto the phase of re-evaluation or re-tendering. Based on legal procedures, economic operators have the right to complain at the Procurement Review Body, if they are not satisfied with the decision of the contracting authority.*

This twofold complaint procedure was put in place to decrease the number of complaints at the PRB, and to decrease costs to all stakeholders. **BIRN Kosovo found that this twofold process did not yet manage to achieve its goal. In most cases, Municipalities did not change their initial decisions despite the requests for re-evaluation received from economic operators.**

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<sup>3</sup> See article 108/A of the Law on Public Procurement <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

Data from the Public Procurement Regulatory Commission shows that only two procurement activities were canceled after the request for re-evaluation. These two activities were canceled before offers were opened. However, based on the report of the Public Procurement Regulatory Commission, in 19 cases, contracting authorities canceled the “contract award notice,” thus canceling the award of contract to the recommended company, and returning the process for re-evaluation.

This number is very low in comparison with the number of complaints filed at the first instance. At the PRB, during the year 2017, 553 cases were addressed. During 2017, 553 appeals (complaints) were processed at the PRB. Of them, 26 appeals were rejected for being unfinished, meaning that the rest were settled by the contracting authorities based on the “Request for Re-evaluation.”

Data from the PRB states that the Review Panel verified 161 decisions from contracting authorities, rejecting the claims of the complainant economic operators while in 322 other cases, the Review Panel of the PRB found legal violations. In 281 cases, they decided that the procurement activity should return to re-evaluation and in 41 cases they decided to cancel the procurement procedures and return to retendering. Based on this data, we see a big difference in the decisions of the PRB and contracting authorities in favor of economic operators. Thus, only a small number of first level complaints received responses from the contracting authorities to the satisfaction of economic operators.

Based on the number of requests for re-evaluation, BIRN Kosovo conducted an investigation with some contracting authorities at the central and local level, and some public enterprises. Data gathered by BIRN Kosovo based on the institutions that responded show that 272 requests for re-evaluation of tenders were made from economic operators.

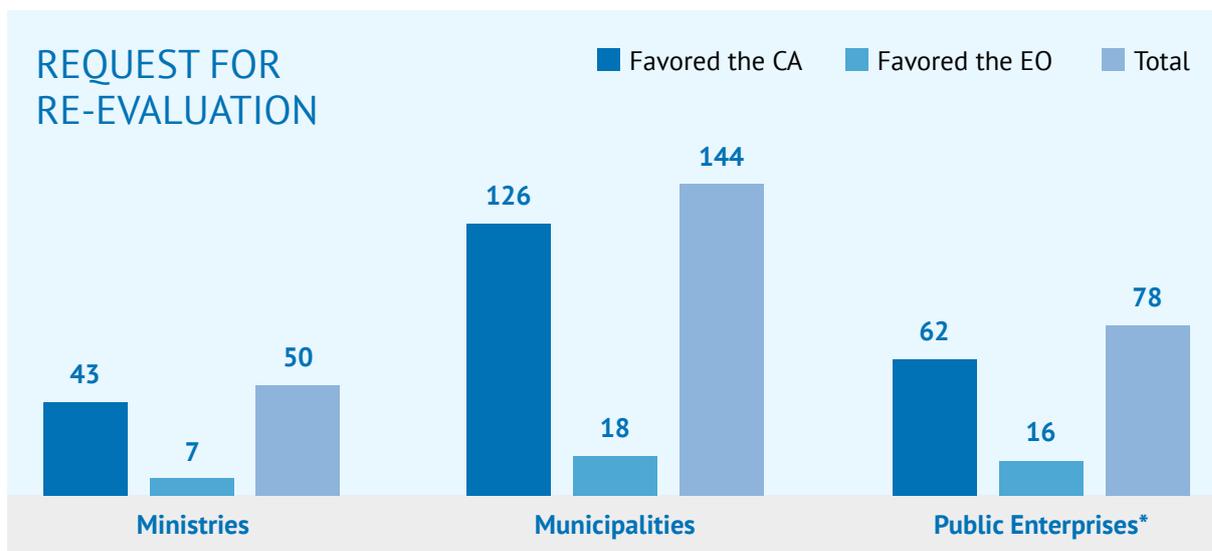
From all requests addressed for re-evaluation, around 15 per cent, or 41 cases, favored the economic operators<sup>4</sup>, while 85 per cent or 231 cases from the total re-evaluated requests, favored the contracting authorities.

Whereas, some institutions did not receive any complaints from economic operators, and as such there were also no requests for re-evaluation. Institutions that did not receive complaints during the referenced period are: Leposavic, Mitrovica, Partesh, Podujeva, Skenderaj, Zubin Potok, Zvečan, and public enterprises such as K.R.M Cabrati Landfill Management Company, Sh.A, K.R.M Ekoregjon Sh.a, K.R.M Uniteti Sh.a, K.U.R. Bifurkacion Sh.a, and the Public Housing Enterprise.

In addition, more requests for re-evaluation were seen in other municipalities, with the Municipality of Prishtina having 38 requests. At the central government-level, the Ministry of Internal Affairs had 16 requests for re-evaluation. In public enterprises, KEC received 71 cases for re-evaluation, reaching the highest number of cases for re-evaluation.

One of the problems identified by BIRN Kosovo is the lack of information from contracting authorities pertaining to the methods and persons responsible for addressing requests for re-evaluation. From the data gathered, it is apparent that some contracting authorities are still unclear on who should address the re-evaluation of economic operators. Contracting authorities gave different responses when asked. Some authorities stated that a request for re-evaluation should be addressed to the main procurement officer of the same contracting authority. Some other institutions say that the request for re-evaluation should be handled by the same review commission, but there are other institutions that say another commission should be formed to address the request. There were responses stating that the body responsible to address these requests is the representative of the procurement office. All responses of contracting authorities on how they address “requests for re-evaluation” can be found in Annex 1.

<sup>4</sup> The Municipality of Gračanica did not give an explanation of its decisions for nine requests for re-evaluation in the year 2016.



**FIGURE 1.** Data on requests for re-evaluation based on contracting authorities. “The Municipality of Graçanica provided only the number, and how the decisions were made on those requests for re-evaluation.”

In the Law on Public Procurement, and the “Rules for filling complaints at contracting authority,” the full competence was left to the “Responsible Procurement Official” to decide with regards to addressing the request for re-evaluation of the economic operator. The Public Procurement Regulatory Commission offered an interpretation for BIRN Kosovo with regard to the procedures of addressing requests for re-evaluation: “Based on the Law for Administrative Procedure, the process of re-evaluation is done by the body that made the decision. In this case, the decision is not made by the Commission, it is rather made by the responsible official of procurement, in cooperation with the main administrative official. There is no need to form a commission or technical material for the re-evaluation of the complaint.”<sup>5</sup>

The possibility to send a request for re-evaluation to the contracting authority with claims of legal violations, without the need to send it to the PRB first, has not yet proven to be productive. Data shows that the majority of decisions at the first instance are in favor of the contracting authority, itself,, rejecting the claims of the economic operator. On the other

hand, the PRB decides, in the majority of cases, in favor of the economic operators. In the PRB’s annual reports, it states that only 30% of their decisions are in favor of contracting authorities.

Besides the quality of decisions, the “requests for re-evaluation” did not have an effect in decreasing the quantity of complaints submitted to the PRB, since data show an increase in complaints in comparison to previous years. Based on annual reports from the PRB, from around 481 complaints received from economic operators, only 158 cases (32 per cent) resulted in fair decisions from the contracting authorities, 242 cases (50 per cent) decided to repeat the procurement process, and 81 cases (16 per cent) for other issues. But in 2017, the number of requests at the PRB increased 15 per cent, with more than 72 additional requests.

This data therefore shows that not only has the PRB not been discharged from the great number of complaints but addressing these requests in the first instance with the contracting authorities has not yet resulted in improvements.

<sup>5</sup> Interview with Safet Hoxha, Head of the PPRC, June 14, 2017.

# ILLEGAL SIGNATURE



During procurement monitoring in Kosovo municipalities, we encountered an unusual tendering process. We have found a signed contract and a number of decisions from the PRB received that were made after the signature of the contract. After some time and with the collection of additional information, BIRN Kosovo found that, in fact, the contract had already begun to be implemented. Considering that we are dealing with major violations, and considering the risk of those being used as precedent for the future, this special case has been included in the report.

This section concerns a tender on the “Horizontal and vertical marking and placement of barriers in the streets of Prizren,” with procurement number 622/16/086/511, initiated by the Municipality of Prizren. The tender was opened on August 17, 2016, and was divided into lots. The second lot was problematic, for up to the signing of the contract there were violations in a number of the procurement phases. The second lot had foreseen the horizontal marking with a planned budget from 490,000 euros<sup>6</sup>. In this lot, 16 requests for asphalt colors were foreseen.

In this procurement process, according to PRB, legal violations were made during certain periods which to be understood have to be explained in chronological order. The municipality of Prizren announced the tender for the provision of services for horizontal marking of the roads twice, for which tender, complaints were submitted five times. Beside this, there was a signed contract between the municipality and economic operator EOs, *Sinjalizimi SH.P.K*, from Suhareka and ‘ZMAS’ DOO from Dobova of Slovenia. The contract has not been repealed despite the decision of the PRB on this matter.

<sup>6</sup> <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtIID=ViewNotices&ID=125399>

The contract was signed on July 2017, when Ramadan Muja was mayor of Prizren. However, it was the current mayor, Myhater Haskuka, who decided to implement this contract. Haskuka stated that in order not to defer the procedure any longer, and for the sake of the public interest, he was forced to implement the contract. Another justification was that

a possible court contest would overturn the municipality's decision.

According to the PRB, the execution of this contract between the municipality and the EO was illegal. Marking and naming of streets in Prizren began with Sinjalizimi & ZMAS Company.

## CHRONOLOGY OF VIOLATIONS

On August 17, 2016, the Municipality of Prizren announced the tender notice "Horizontal and vertical marking and placement of barriers in the streets of Prizren," with the contract number 622/16/086/511. The tender was divided into three lots.

Initially, the Municipality of Prizren recommended *Limit L&B Company*, for two lots: lot II- 302, 140 euros and lot III- 80, 956 euros.

The second lot encountered issues and legal violations. On November 9, 2016, the Municipality of Prizren canceled the contract issuance referring to article 108.A of the Law on Procurement, after the request for re-evaluation.

After this cancellation, *Limit L&B Company* submitted a request for re-evaluation to the Municipality of Prizren. On November 16, 2016, the head of Procurement, Isa Osmankaj, decided to reject the complaint filed by this company and confirmed the Municipality's decision.

As required by law, after the complaint had been refused from the contracting authority, the economic operator, *Limit L&B Company*, complained to the PRB on November 29, 2016. The PRB delayed the decision with regard to the filed complaint.

The complainant EO, *Limit L&B Company*, sent a request to the PRB on January 30, 2017 asking to expedite the decision for a complaint they sent two months earlier (on November 29, 2016). One day after this request, the PRB published their decision but the official date of the decision was January 17, 2017 – fully two weeks before the decision was announced.

*Limit L&B Company* complained before any company was recommended for the contract. The Review Panel of the PRB (Nr: 435/16) partially approved the complaint of *Limit L&B Company* but decided to leave in power the "announcement of the issuance of the contract." In this decision, the PRB concluded that *Limit L&B Company* is not responsive.

After this decision was made, *Limit L&B Company* approached the PRB asking them to correct their decision: the announcement date is not correct, and there was no "contract award



announcement” as the complaint was made after the elimination of *Limit L&B Company*.

Simultaneously, the Municipality of Prizren prepared the “contract award announcement” on February 3, 2017, which was published on February 6, 2017. The municipality had recommended *Sinjalizimi & ZMAS* consortium for the contract award, with a price of 358,039 euros for the tender “Horizontal and vertical marking and placement of barriers in the streets of Prizren,”–Lot 2.”

After this decision, the complainant operator, *Limit L&B Company*, requested access to documents and after that filed a complaint in the first instance to the municipality, claiming that the recommended companies (*Sinjalizimi & ZMAS* consortium) were not responsive. After a negative response, *Limit L&B Company* complained to the PRB again. This time, besides the previous claims that *Limit L&B Company* was responsive and has been unfairly rejected from the competition, it claimed that the consortium economic operator has been illegally issued the contract.

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## SECOND DECISION FROM THE PRB

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The PRB then took the second decision for the same procurement process. The complaint from *Limit L&B Company* had been partially approved, while the decision of the Review Panel (nr 435/16) was abolished. Simultaneously, the decision of the Municipality of Prizren to issue the contract had been canceled and the case was returned for re-tendering.

The Review Panel claimed that the previous decision was based on a fact that, at that time, was unknown to the panel, justifying that the case was not judged incorrectly. This fact, only recently discovered by the panel, was the length and width of the tables. Therefore, the main reason on which the PRB’s decision was based was the request in the tender dossier that the width of the tables should be 25 centimeters, while the recommended EO offered a width of 24.9 cm.

After this decision, on May 8, 2017, the Municipality of Prizren sent a note to the PRB requesting the correction of the decision of the Review Panel (15/17), with the justification that there were other operators in the competition for this procurement activity, besides the two EOs, *Limit L&B Company* and *Sinjalizimi*.

“The case should be returned for re-evaluation and not for re-tendering, because there are other operators for the lot,” the conclusion of the PRB read, which cites the request from the Municipality of Prizren.

The Review Panel of the PRB, in accordance with article 96 of the Law on Procurement, revised its decision and returned the case for re-evaluation. This decision was made on June 5, and published on June 8.

The Municipality of Prizren re-evaluated the offers once more. However, even after the re-evaluation, it recommended the same consortium, *Sinjalizimi & ZMAS*.

“The announcement for the contract award” was published on June 19. This recommendation was against the PRB’s decision, which concluded that the consortium in question was non-responsive, but was also against the request of the municipality to change the PRB’s decision, with the justification that there are other economic operators in the competition.

After the decision of the Municipality of Prizren, *Limit L&B Company* submitted a request for re-

evaluation at the Municipality, according to article 108/A of the Law on Procurement.

Previously, Liman Asllani from *Limit L&B Company* wrote a letter to the head of the procurement office in Prizren, saying that based on the procurement process and decisions of the PRB, the Municipality of Prizren should also re-evaluate the offer of their company. On the request for re-evaluation, a meeting between Asllani and the head of procurement on this municipality, Osmankaj, was mentioned.

The request for re-evaluation was made on June 23, 2017. However, this company did not receive a response from the Municipality of Prizren, as is required by law.

“On June 23, 2017 we submitted a ‘request for re-evaluation’ but did not get a response from the contracting authority. On June 29,

2017 we went to the PRB offices to submit the complaint, and we were asked to wait until Friday since maybe the Municipality of Prizren will respond on the request for re-evaluation, because they have 3+3 days available,” as written on the complaint sent to the PRB from *Limit L&B Company*.

During one of the PRB sessions, the head of procurement, Osmankaj, justified why they did not send a response.

This delay took a toll on the *Limit L&B Company*. On the day that *Limit L&B Company* submitted their complaint at the PRB, according to PRB recommendations, the Municipality of Prizren signed the contract in value of 358,000 euros. This signing of the contract was placed despite that *Limit L&B Company* had made a request for re-evaluation, and based on the Law on Procurement, the process had to be suspended.

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## THIRD DECISION FROM PRB

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PRB found a few legal violations by the Municipality of Prizren. The main violation was signing the contract, which the PRB requested to terminate.

The contract between the Municipality of Prizren and the economic operator, *Sinjalizimi*, made for the procurement activities titled: “Horizontal and vertical marking and placement of barriers in the streets of Prizren –Lot 2,” with the procurement number 622/86/511, based on the decision of the PRB, was terminated.

Osmankaj declared that “we have signed the contract with the recommended EO, however, there is no implementation of the contract due to the suspension of activity that we have received

the day we signed the contract.” He also justified the fact that they did not address the request for re-evaluation made by the complainant economic operator, *Limit L&B Company*.

“According to article 111 related to article 4 of the Law on Procurement, the PRB should not have accepted the complaint from the EO because this EO had been a party with no interest in the matter at hand. Based on this fact, and based on other circumstances such as the law on administrative procedure that regulates efficiency and economy of procedures, and with intent of having to spare the parties, whether from material costs or for extending the validity of the files, I have not made a request for re-evaluation for these two economic operators, *Limit* and *Malesia*, because the two PRB decisions and three from the contracting authority showed that they are irresponsible.”<sup>7</sup>

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<sup>7</sup> Citation of the head of procurement in the Municipality of Prizren, Isa Osmankaj, part of the decision-making in the PRB <https://oshp.rks-gov.net/repository/docs/vendimet/2017/206-17vendim.pdf>

The PRB concluded that not re-evaluating the offers is a violation, and concluded the same regarding not responding to requests for re-evaluation from the complainant economic operator, *Limit L&B Company*.

“The Review Panel explains that the previous decision clearly declares that both the complainant EO, *Limit L&B Company*, and the recommended EO, *Sinjalizimi*, are irresponsible.”<sup>8</sup> In this decision, the PRB made a charge of five thousand euros for the contracting authority, and threatened the procurement head with license withdrawal. After this PRB decision, the Municipality of Prizren canceled the announcement for contract issuance, but did not terminate the signed contract for the same tender.

After the cancelation, the Municipality of Prizren re-evaluated the offers again, as if the contract had not been signed. After the re-evaluation of offers, again the consortium *Sinjalizimi* was recommended despite the PRB’s decision that this EO is non-responsive.

The Municipality of Prizren also published three new contract award notices, despite the fact that there was already a signed contract for the same issue. The Municipality of Prizren each time recommended *Sinjalizimi* Company, with which the contract had already been signed.

On August 10, the “contract award notice” was published, in which the same company, *Sinjalizimi*, was recommended. After the announcement of this decision by the municipality, *Limit L&B Company* again filed a complaint at the PRB.

The PRB made a decision for the case of *Limit L&B Company*, demanding the Municipality

of Prizren cancel the decision of contract award, and to re-evaluate this procurement. Following the PRB’s decision, the Municipality of Prizren canceled the contract award. The Municipality re-evaluated the offers, but it did not change its decision, and recommended the same company. The contract award notice was published on October 10, 2017.

The complainant company, *Limit L&B Company*, complained again at the PRB, claiming that the Municipality of Prizren violated the Law on Procurement, obligating the PRB to re-evaluate the tender for the fifth time. The PRB again decided that the Municipality of Prizren made legal violations. This time, the PRB requested to re-tender the entire procurement process due to lack of responsive economic operators. After this decision, the Municipality of Prizren published the cancelation of procurement process on December 5, 2017.

The head of the procurement office, Isa Osmankaj, said that the Municipality of Prizren does not have to cancel the signed contract since it had already been effectively canceled by the PRB. “On 04.08.2017, we received the decision from the PRB, which abolished this contract and the case goes back to re-evaluation. On 08.08.2017, the Municipality of Prizren re-evaluated the tender, and again announces the same EO as a winner (which was the signatory of the contract abolished by the PRB).”<sup>9</sup>

This office justifies that it proceeded with the procurement process by canceling the procurement as a whole, and by publishing the contract award cancellation on December 5, 2017 on the e-procurement platform, and sending the case on for re-tendering.

<sup>8</sup> Same as above

<sup>9</sup> Interview with Isa Osmankaj, head of the procurement office in Prizren, August, 2018.

In the midst of these tender procedures, the Municipality of Prizren held local elections which led to a new municipal government. At the end of 2017, Mytaher Haskuka from Lëvizja Vetëvendosje (the Self-Determination Movement) became the mayor of the municipality, as a successor to Ramadan Muja, from the Democratic Party of Kosovo (PDK). Despite the fact that the procurement office claims that the signed contract was terminated, the new mayor of the municipality decided to implement it, with the justification that this decision was taken after an analysis from a commission formed by him. . One of the reasons behind the implementation of the contract was “the evaluation states that the municipality can lose the case in court.”<sup>10</sup>

The implementation of the contract was a surprise for the complainant economic operator, since this company possesses documents and notes from the Municipality of Prizren, stating that there will be a new procurement process. “We were getting ready for a new tender, when we heard that the operator who was announced as irresponsible is implementing a project based on [an] illegal contract.”<sup>11</sup>

BIRN Kosovo found out that there are alleged disagreements between the procurement office and the office of the mayor of the Municipality of Prizren. These disagreements are allegedly the result of a tendency to blame one another. The Mayor, Mytaher Haskuka, reportedly concludes that, in fact, violations have been made with the signing of the contract between the procurement office and former Mayor, Ramadan Muja.

On the other hand, the procurement office claims that the award contract notice has been abolished from the PRB, and there was need for a new tendering process. “As a procurement office, I had notified and told them, if you want to do this work you have to make a new request, and I will announce the tender. If you don’t bring those to me, there is nothing I can do.”<sup>12</sup>

BIRN Kosovo tried to contact the representative of *Sinjalizimi Company*, Mr. Musli Llugaxhiu who appeared to be the head of the company but did not have a valid phone number or other means of identification.

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10 Interview with the Mayor of the Municipality of Prizren, Mytaher Haskuka, May, 2018.

11 Interview with the president of Limit L&B Company, Liman Asllani, August, 2018.

12 Interview with Isa Osmankaj, head of the procurement office in Prizren, September, 2018.

# SUSPICIOUS TENDERS

During monitoring of procurement processes, monitors from BIRN Kosovo identified many tenders with legal violations that had been delayed and canceled numerous times. The majority of monitored tenders have to do with violations at the first phase of procurement, which is before the offers were evaluated. Part of this report contains research that has revealed violations that may be precedents for the future or which might have direct consequences on the lives of citizens.

## **DELAY OF COAL SUPPLY IN THE MUNICIPALITY OF LIPJAN**

A tender initiated and delayed by the Municipality of Lipjan was encountered during monitoring. The delay of the tender announced in July 2017 led to delays in the actual supply of coal for schools and health centers. The tender for the coal supply went to the PRB twice. In the first case, the PRB concluded that there were legal violation, while in the second case, it favored the Municipality of Lipjan and allowed the signature of the contract<sup>13</sup>. These delays on the tender caused serious issues with school heating in the Municipality of Lipjan. Fortunately, the schools did not stop working thank to some fuel reserves from the past year.



<sup>13</sup> <https://kallxo.com/gjnk/lemshi-tenderit-per-thengjill-vonon-ngrohjen-ne-shkolla/>

### WATER DEPRIVATION IN THE MUNICIPALITY OF DRAGASH

Water supply is a responsibility of the regional public enterprises. However, municipalities are required to construct the water network. The Municipality of Dragash initiated a tender to expand the water network in this municipality. On two different tenders for the same work, this municipality violated the law and deferred the supply of water to some villages. The first tender was canceled four times by the PRB due to continuous violations of the Law on Procurement by the Municipality of Dragash.

After receiving a fine from the PRB for non-compliance with the decision, the Municipality of Dragash decided to start from zero on the new tender which incorporated work foreseen in the first tender<sup>14</sup>. However, the Municipality of Dragash continued to violate the Law on Procurement, as noted by the PRB. The main people affected by these violations were the citizens of the city who have been struggling with access to clean water for more than two years, despite the fact that the financial means to implement this investment were distributed earlier.

To date, this tender is not finalized, because in the beginning of September, the Municipality of Dragash recommended the same operator for the second time. The same company that is now recommended for the contract was announced as a winner earlier, however, the PRB canceled the “contract award notice” after considering the legal violations.

### THE OLYMPIC POOL OF THE MUNICIPALITY OF PRIZREN

The Municipality of Prizren planned to build an Olympic swimming pool of five thousand square meters, but this procedure has been delayed since July 2017. From the economic

operators, the municipality asked only evidence for experience building private pools.<sup>15</sup> For professional suitability, the municipality did not request EOs submit proof of projects for construction of Olympic pools because Kosovo does not have Olympic pools. They had only required similar works, which in this case are private pools. The Municipality of Prizren faced difficulties to finalize this procurement process.

The notice for awarding the contract was published on October 2, 2017 on the e-Procurement platform while the contract was planned to be signed on October 9, 2017 with *NPN Clirimi* which offered the lowest price at 2.5 million euro. One of the 11 bidding companies, *Kag Asphalt & Powatec GmbH*, on October 9 filed a complaint at the PRB. The complainant asserts that the *Clirimi* economic operator did not offer proof of bank transactions for the construction of two private pools.

The PRB decided to return this process to re-evaluation. The Municipality of Prizren, even after the decision to return to re-evaluation, recommended the same company, *Clirmi*. The PRB then reviewed this tender for a second time, finding in favor of the Municipality of Prizren, and thereby allowing them to sign the contract. The Municipality of Prizren signed the contract with *Clirimi Company* on April 25, 2018..

### DELAY OF TENDERS IN THE MUNICIPALITY OF FERIZAJ

BIRN Kosovo identified delays in three tenders in the Municipality of Ferizaj. These delays slowed the implementation of a rehabilitation project for the Nerodime riverbed. This project was supported by the Ministry of Environment. However, the Municipality failed to demonstrate it had sufficient funds for this project – a prerequisite for issuance of the tender.<sup>16</sup>

14 <https://kallxo.com/gjnk/shkeljet-recidiviste-ne-tenderin-per-ujin/>

15 <https://kallxo.com/gjnk/favorizimi-kompanive-vendore-per-ndertimin-e-pishines-olimpike/>

16 <https://kallxo.com/gjnk/shkeljet-ne-tender-qe-cuan-ne-humbjen-e-donacionit/>

Violations were found in another tender from this Municipality related to capital investment for the refurbishment of the town square. On October 19, 2016, the Municipality initiated the tendering process for the modification of the main square and on November 2 published the contract award announcement. According to the announcement, this is a three-year project with a value of 1.3 million euros.<sup>17</sup>

Based on the budget of the Municipality of Ferizaj for 2016, when the procurement procedure on “Refurbishment of the City Square, Phase 2” started, the Municipality had projected the cost at only 190,000 euros for three years. While the medium-term budget framework for the years 2016-2018 had foreseen the third phase, it had omitted the second phase of the refurbishment of the square.

The budget of Kosovo reflects an estimated value of 190,000 euros budgeted for all three years for the implementation of this project.

According to these budget projections, the Municipality of Ferizaj did not have the financial means to start procurement procedures. In other words, the contracting procedure for this procurement with the value of 1.3 million euros was initiated despite the fact that the Municipality had only budgeted 190,000 euros for the same contract.

The Municipality of Ferizaj also struggled to procure a company to clear the roads during the winter months. In fact, the Municipality was not able to contract a company for this purpose throughout the entire winter season.

The Municipality of Ferizaj delayed the initiation of the procurement process despite the fact that there is a legal minimum time limit needed to procure such services. Delays increased due to legal violations<sup>18</sup> and when the snow had covered the streets of the city, the Municipality of Ferizaj asked for help from private companies to clear the streets. BIRN Kosovo requested information regarding companies voluntarily helping to clear the snow. Based on an official response provided by the Municipality of Ferizaj, three private companies volunteered to clear the streets, which were compensated with fuel. The Municipality of Ferizaj did not provide information about any compensation paid for employees or for amortization of assets.

#### EARLY INAUGURATION IN MITROVICA

The Mayor of the Municipality of Mitrovica, Agim Bahtiri, inaugurated public works before procurement procedures were completed<sup>19</sup>. On March 25, 2016, the foundation of the Eksodi 99 statue in the Ura e Gjakut Park was laid in Mitrovica, marking the official launch of the construction of this memorial. The notice for contract award indicates that the municipality signed the contract one month later, on April 19, 2016, for the value of 5,610 euros. Sabri Behramaj, the owner of NSH ART Merisi in Mitrovica, announced as the winner of this tender, confirmed [to BIRN] that they had started work before the tendering procedures were finalized.

<sup>17</sup> <https://kallxo.com/gjnk/rregullimi-sheshit-pa-siguarar-mjetet-e-fut-ne-borxhe-komunen-e-ferizajt/>

<sup>18</sup> <https://kallxo.com/gjnk/shkeljet-ligjore-qe-rrezikuan-jeten-e-qytetareve/>

<sup>19</sup> <http://kallxo.com/bahtiri-inauguron-punimet-pa-u-mbylle-tenderi/>

## FACT-CHECKINGS - KRYPOMETËR

(see the full list on Anex 2)

Krypometër was launched as a response to the uncertainty, obscurity, and lack of accountability for public statements, and it is the first tool in Kosovo that evaluates truthfulness – in other words, a fact-checker. Krypometër is made possible through the continuous work of our researchers, journalists, and legal advisors that work and report from the field. Krypometër/Fact-checking is a continuous activity for BIRN Kosovo and our investigative teams.

During pre-electoral debates, *Life in Kosovo*, a weekly current affairs program produced by BIRN, sent questions to all candidates 48 hours before the debate. We received responses from candidates related to capital projects and commitments for transparency. Candidates were reminded that BIRN, through the Krypometër fact-checking tool, will check if the candidates

are keeping their promises. This was the first time that such fact-checking was used by Kosovo media to follow-up on campaign promises. Besides following-up on mayoral candidates' campaign promises, *KALLXO.com* also reported on commitments for specific projects.



The following are some of the facts checked by Krypometër:

1

### THE MINISTRY DENOUNCES THE MAYOR OF RAHOVEC FOR CHANGING THE PIPE

The Mayor of the Municipality of Rahovec, Smajl Latifi, on an interview conducted for the televised program *Justice in Kosovo*, said that a part of the funds needed for replacing the pipes will be provided by the Ministry of Economic Development. *Justice in Kosovo* received a response from this ministry denying what mayor Latifi had said. This reveals that the mayor did not speak truthfully. This will affect the municipal budget since the Municipality will have to cancel other projects in order to finance the replacement of the pipes.

2

### HAZIRI'S LIES WITH REGARD TO THE BRIDGE THAT JEOPARDIZES LIVES OF CITIZENS

The mayoral candidate for the Municipality of Gjilan, in a debate on *Life in Kosovo*, was confronted with a picture showing a bridge with no protective rails. Children use this bridge on their way to school. This bridge is a safety hazard for citizens, including school children. Haziri promised to come up with a quick solution for this problem but the bridge still does not have guardrails.

3

### GJAKOVA, THE FIRST MUNICIPALITY TO PUBLISH CONTRACTS WITH BUSINESSES

Gjakova has become the first municipality to publish contracts signed with economic operators for works, services or supplies. In May, BIRN used the Krypometër to evaluate the campaign pledge of the mayor of the Municipality of Gjakova, Ardian Gjini. Since the municipality of Gjakova began the publication of contracts, Krypometër consider this a "promise kept," despite some delays in the realization of this promise.

# SMALL TENDERS FOR BIG SPENDING

Although 10 years have passed since Kosovo declared its independence, some pre-Independence laws and regulations from the United Nations Mission in Kosovo (UNMIK), are still in force. The administrative guideline<sup>20</sup> No. 04/2008, for the use of telephones (landline and mobile phones) in the Government of Kosovo was promulgated on February 12, 2008, five days after the declaration of independence. Citing this administrative guideline, public officials in Kosovo have used this to justify the purchase of expensive phones.

These purchases of phones and other items, represent a violation of the Law on Public Procurement. The goal of this law, among others, is to ensure that public funding is used efficiently and with transparency<sup>21</sup>.

Investigations of BIRN Kosovo and Internews Kosova show that the Law on Public Procurement was not applied for the purchase of telephones in some contracting authorities.

Besides small tenders, central level institutions have spent thousands of euros of public money to purchase smartphones, watches, “integrated umbrellas,” decorations, wines, and raki (a traditional alcoholic drink) for end-of-the-year holidays.

These small but luxurious purchases were discovered only after changes to the Law on Public Procurement were passed, requiring contracting authorities to disclose information about all procurements including small-value procurements, or price quotations from 1,000 – 10,000 euros.

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20 [http://www.kryeministri-ks.net/repository/docs/Udhezim\\_Administrativ\\_Nr.04-2008.pdf](http://www.kryeministri-ks.net/repository/docs/Udhezim_Administrativ_Nr.04-2008.pdf)

21 Law on Public Procurement in the Republic of Kosovo nr. 04/-042 changed and adjusted with Law Nr. 04/L-237, Law Nr. 05/L-068 and Law Ne. 05/L-092, article 1.

KALLXO.com found, in their reports, that these luxury purchases are not consistent with the aim of the Law on Public Procurement. For example, the Ministry of Local Government Administration bought a Samsung S6<sup>22</sup> for the Minister Gjergj Dedaj.

This purchase was made in mid-2016 when this was the latest model. This Ministry had difficulties to take back equipment given to Dedaj, including the phone and a laptop. The Ministry reported Dedaj's purchases to the police when Dedaj refused to return the laptop.

Luxurious purchases were also made by other institutions. The Ministry of European Integration spent 850 euros on a mobile telephone<sup>23</sup>. The Municipality of North Mitrovica spent over 630 euros for a telephone and 9,500 euros for 15 others. The Basic Court of the same municipality bought a phone valued at 995 euros.

The Regulatory Authority of Electronic and Postal Communications (RAEPC) spent 2,802 euros for five mobile phones, or 560 euros for each. The trend of phone purchases continues into 2017. In 2017, the office of Prime Minister spent 890 euros on an iPhone. In addition, the Commission for Mines and Minerals distributed 2,400 euros for the purchase of three mobile phones.

Luxury technology and smartphone purchases impacted the justice domain, as well. The cabinet of Ministry of Justice, Dhurata Hoxha, spent over 4,000 euros on smartphones. The Judiciary Council spent 20,700 euros on smartphones. The Constitutional Court distributed phones valued at 3,500 euros.<sup>2425</sup>

Phones were not the only luxurious devices on which public money was spent. The taxpayers' money was also spent to purchase tablets. For example, the Commission for Mines and Minerals spent 950 euros on one tablet. The Energy Regulatory Office spent 1,912 euros<sup>26</sup> on another tablet purchase.

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22 <http://kallxo.com/ministria-i-blen-samsung-s6-gjergj-dedajt/>

23 <http://kallxo.com/ministria-e-integrimet-evropian-blen-850-euro-telefon/>

24 <http://kallxo.com/keshilli-gjyqesor-shpenzon-20700-euro-per-25-telefona/>

25 <http://kallxo.com/gjnk/telefona-luksoze-per-kushtetuesen/>

26 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtlID=VieëNotices&ID=116675>

# ELECTRONIC PROCUREMENT

The opportunity for digitalized procurement came to life for the first time in 2014. This project, financed by the World Bank (WB), cost 578,990 euros. *Infodom* from Croatia and *Komtel* from Kosovo created a consortium to implement this project.

The Public Procurement Regulatory Commission conducted a feasibility study (with international experts) of companies and contracting authorities to see if they were ready to use an electronic procurement system. Based on the IT infrastructure that businesses and contracting authorities have, the study concluded that the digitalization of procurement is possible in Kosovo<sup>27</sup>.

In the beginning of 2016, the Government of Kosovo initiated electronic procurement in six institutions as a pilot project. In March, 2016, the government decided to make electronic procurement obligatory for all centralized procurements. In the same resolution, the government emphasized that from September, use of the platform would become obligatory for central-level government agencies, and from 2017 it would become obligatory for all other contracting authorities.<sup>28</sup>

Supporting the government's decision, in August 2016, the PPRC required<sup>29</sup> all central contracting authorities to register all medium and large-value procedures on the platform. However, electronic procurement was only partially implemented because private sector economic operators still had the opportunity to submit offers in hard copy.

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27 <http://kallxo.com/kosova-synon-platforme-elektronike-te-prokurimit-publik/>

28 [http://www.kryeministriks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_79te\\_te\\_Qeverise\\_se\\_Republikes\\_se\\_Kosoves\\_2016.pdf](http://www.kryeministriks.net/repository/docs/Vendimet_e_Mbledhjes_se_79te_te_Qeverise_se_Republikes_se_Kosoves_2016.pdf)

29 <http://krpp.rks-gov.net/krpp/PageFiles/File/AK%20niveli%20qendrore.pdf>

In December, 2016, the PPRC decided<sup>30</sup> that economic operators must submit their bids electronically through the platform for centralized procurement, with plans to mandate submission of electronic bids for other tenders at a later date.

During 2016, the PPRC held two-day trainings<sup>31</sup> on electronic procurement. There were 170 participants from the central level, 94 from the local level, and 130 participants from public enterprises. The USAID Transparent, Effective and Accountable Municipalities activity also held additional training events for more than 1,000 participants.

Despite many warnings, the full implementation of electronic procurement was delayed. The submission of electronic bids for centralized procurements and large-value procurements became mandatory only in early September, 2018. In their recent decision, the PPRC requires all institutions to proceed electronically with tenders of high value (over 150,000 euros), including the submission of offers. September can be considered the month when public procurement was fully implemented and from this date, we expect to see positive results in comparison to the classical (hard-copy) procurement process.



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30 <http://krpp.rks-gov.net/krpp/PageFiles/Vendimet/vendimi%2020161130.pdf>

31 PPRC – Response through the electronic post, January 13, 2017

# ACCESS TO INFORMATION AND PUBLIC DOCUMENTS ON PROCUREMENT

The Law on Access to Public Information requires that institutions respond to public requests for access to information within a given timeframe. Backed by this law, BIRN Kosovo sent 69 requests for information about public procurement to contracting authorities. We received responses to 55 requests, which is 80% of the requests. Nineteen requests were submitted at the central level and 38 requests were sent to municipalities. Twelve requests went to public enterprises. Ministries responded to 73.7% requests (14 responses); municipalities responded to 80% of the requests; and public enterprises responded to 91.6% of the requests (11 responses). However, even though most institutions responded, not all institutions sent the requested document. BIRN Kosovo gained access to requested public documents<sup>32</sup> on procurement from six ministries, 22 municipalities, and six public enterprises.

There were a total of 14 authorities that did not respond to BIRN Kosovo's requests. From those, five are ministries<sup>33</sup>, eight are municipalities<sup>34</sup>, and one is a public enterprise<sup>35</sup>.

At the central level, some ministries did not respond, within the deadline foreseen by law. The Ministry of Public Administration, Ministry of Infrastructure, Ministry of European Integration, and Ministry of Trade and Industry did not respond at all.

Municipalities were more careful than ministries with regard to their responses to BIRN Kosovo's requests. From 38 municipalities where BIRN Kosovo submitted their requests for access to public information on procurement, including requests for re-evaluation, specific tenders, and requests for procurement plans,

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<sup>32</sup> "Annual Report for Signed Public Contracts 2016"

<sup>33</sup> Ministry of Public Administration, Ministry of Infrastructure, Ministry of European Integrations, Ministry of Health, Ministry of Trade and Industry.

<sup>34</sup> M. of Gjilan, M. of Dragash, M. of Peja, M. of Prizren, M. of Sterpca, M. of Klllokot, M. of Ranilug, M. of North of Mitrovica

<sup>35</sup> K.R.U Hidrodrini Sh.A

amongst others, BIRN Kosovo received 30 responses. But in substance, the responses were not complete. Eight municipalities<sup>36</sup> did not send the requested document or annual report on public contracts. In this case, BIRN Kosovo considers them to be partial responses.

BIRN Kosovo received responses from 17 municipalities within three days. This response time is even quicker than what is required by law. Other municipalities responded within four and six days. The Municipality of Malisheva responded on the eighth day, while the Municipality of Skenderaj and Viti responded within the day.

Based on the gathered data, municipalities needed approximately three days to respond. In addition, BIRN Kosovo submitted requests to 12 public enterprises, from which 11 responded.<sup>37</sup>

BIRN Kosovo and I/KS gathered data from contracting authorities by submitting questions, such as: How many requests for re-evaluation did the contracting authorities receive? Who addressed their requests? Did they favor the Economic Operator or the Contracting Authority? Is/how is the staff prepared to use the electronic platform, e-procurement?

Together with the requested information, six public enterprises sent the "Annual Report for Public Signed Contracts 2016," like the Regional Waste Company K.R.M Ekoregjioni, Sh.A.K.R.U Prishtina, Public Housing Enterprise, and Kosovo Energy Corporation. Other public enterprises such as K.R.M. Çabрати, K.R.M Uniteti, K.U.R Mitrovica, K.U.R Bifurkacioni, did not attach the required document. There are eight public enterprises that needed one to three days to respond to our requests<sup>38</sup>, while KEC took up to seven days and K.U.R Bifurkacioni up to eight days.

Procurement documents retain confidentiality during the whole evaluation process, and documents under evaluation cannot be published. As soon as offers are evaluated

and an Economic Operator is recommended for a contract following a public procurement competition, the documents and the tender, including the offers of economic operators cease being confidential<sup>39</sup>. Thus, during the time the evaluation committee is reviewing documents, publication of those documents is not allowed. In spite of that, the law enables Economic Operators to list documents that they consider confidential when they submit their offers. Thus, by law, institutions are required to give access to the documents of a tender immediately after the Contracting Authority issues a decision to recommend (or refuse) any operator for contract.

BIRN Kosovo found violations in the submission of annual reports at the PPRC as well. Many institutions do not have annual reports in procurement at all, or delay them. This shows a lower level of discipline at work, and therefore maladministration is arguably more of a factor than outright efforts to evade transparency measures.<sup>40</sup>

Contracting authorities oftentimes do not have annual reports: "Very often, authorities do not create final reports even for their needs, oftentimes they submit them unfinished."<sup>41</sup>

Even the Procurement Review Body responsible for adjudication of procurement protests and reviews, was not fair pertaining to their openness with the public. The PRB held 105 sessions but 61 of these sessions were closed, thus we evaluate the PRB as only 40% transparent<sup>42</sup> with the public.

36 Municipalities of: Istog, Kamenica, Leposaviq, Skenderaj, Suhareka, Malisheva, Partesh, Prishtina.

37 K.R.U. Hidrodrini Sh.A

38 Landfill Management Company in Kosovo, K.R.U. Radoniqi Sh.A, Regional Waste-Environment Company Sh.A, K.R.M. Cabрати Sh.A, K.R.M. Ekoregjioni Sh.A, K.U.R. Mitrovica Sh.A, Public Residential Enterprise.

39 Interview with Mr. Safer Hoxha, president of PPRC, June 14, 2017.

40 Same as above.

41 Same as above.

42 Democracy Plus Report "Without Justice in Procurement," page 5.

The KALLXO.com team tried to participate with a camera in a public session of the PRB, but their request was denied by the same institution.<sup>43</sup> This changed at the end of last year when the board of the PRB allowed the team of Justice in Kosovo to record the whole session about the tender of the Gjilan highway.

In the past, in cases when access to public documents was denied, budget organizations encountered charges. The Office of the Prime Minister has been charged for not giving access to invoices. BIRN Kosovo won the legal battle against the Office of the Prime Minister<sup>44</sup>, and during the months of August and September 2018, the content of invoices from the prime minister and his deputy minister were published on our media platforms.

At this point, these invoices can only be used to inform the public. Even if the invoices show suspected criminal violations, due to the statute of limitations, they cannot be used in a court as evidence. The Anti-Corruption Agency said they cannot investigate the possible conflict of interest of the former Prime Minister, Behgjet Pacolli, who paid his own hotel, because the offense, if it occurred, is old. Access to public documents is guaranteed by law, and this was corroborated by BIRN Kosovo's success in court against the Kosovo Prosecutorial Commission<sup>45</sup>, after the latter refused to give access to public documents.

BIRN Kosovo made a request for access to the spending of heads of municipalities and their directorates. To date, we have received responses from some municipalities. BIRN Kosovo will soon start the publication of the municipalities' spending.

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43 <http://kallxo.com/oshp-nuk-lejon-kamerat-ne-seancen-per-tenderin-9-milionesh/>

44 <http://kallxo.com/birn-fiton-rastin-gjyqesor-ndaj-zyres-se-kryeministrit/>

45 <http://kallxo.com/birn-fiton-betejen-ndaj-kpk-se/>

# CONCLUSIONS

The year 2018 will be remembered for two main things in procurement: the opening of contracts and full implementation of electronic procurement. Both steps can be considered revolutionary for procurement, because the opening of contracts allows civil society and journalists to analyze procurements and their implementation. Electronic procurement aims to prevent violations in the procurement process and all procedures up to the signing of contracts. Both processes are in the initial phase, so only the first act for the two processes can currently be evaluated.

Issues with tenders continued this year, too. At the central level, the biggest scandal was that related to the Gjilan/Gnjilane highway project and the report of the threat to the head of the Court of Tenders. While on the local level, violations at all phases of the tender process continued.

One of the positive things evaluated in the past, specifically in 2016, was the decision to enable economic operators to complain at two separate instances, if they claim that there are legal violations in the procurement processes. Economic operators can initially complain to the contracting authority, and in the second instance, to the Procurement Review Body. However, BIRN Kosovo found that the goal of the two-tiered complaints process has not yet been achieved. Contracting authorities did not seriously consider the complaints of economic

operators in first instance reviews. In the meantime, the PRB continues to acknowledge and uphold half of the complaints made by economic operators. In addition, BIRN Kosovo's investigation in all municipalities in Kosovo finds that there is a lack of unified procedures to address requests for re-evaluation made by EOs. The PPRC states that complaints have to be addressed by the head of the procurement of the contracting authority, while municipalities have followed different procedures to address requests for re-evaluation.

Some procurement cases which are an integral part of this report have dragged on for more than two years. BIRN Kosovo finds that tenders are sent for a decision to the PRB many times, thus delaying implementation of projects. Despite violations from some contracting authorities, the PRB and the PPRC did not take any measures against officials responsible for violations in procurement processes.

Not all contracting authorities responded to BIRN Kosovo's requests for access on public documents pertaining to procurement. Some authorities that did respond gave partial responses. Access to documents is crucial in order to investigate and monitor recruitment processes. Despite the published contracts, the necessity for transparency of institutions still stands large. Especially for access to documents during procurement processes, for only through this can legal violations be prevented.

# RECOMMENDATIONS

Institutions should ensure citizens have full access to public documents, especially those related to public procurement;

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Besides publishing the contracts, other information on tenders have to be published, such as: publication of invoices, payments, review commission reports, as well as the publication of the review commission report that made the technical approval of a project;

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It is recommended that the budget of the PPRC and the Kosovo Institute for Public Administration (KIPA) be increased to offer trainings for procurement officials to increase the level of professionalism;

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There should be ongoing trainings for procurement officials;

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There should be trainings for officials of procurement, especially those that are part of institutions whose decisions are continually being rejected by the PRB;

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Submission of electronic offers should be mandatory for all contracting authorities and all kinds of tenders;

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For the initial complaints mechanism to have the weight it was intended to have, there should be a standard procedure with which complaints are addressed. Their evaluation should be done by a commission consisting of the main administrative official, the main procurement official, and a person coming from the complaints office;

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The PPRC should increase the number of tenders they monitor, especially those processes against which there are complaints in the first instance at the contracting authorities, and second instance at the PRB;

# ANNEX 1

Institutions	1.2 Who, usually, addresses requests for re-evaluation?	1.3 If a new commission is established, were they addressed from the same commission of the first phase, or was another commission established?
Deçan	Addressed by officials of the Procurement office.	
Gjakove	Requests for re-evaluation are addressed by procurement officials and officials of specific departments.	Requests for re-evaluation from Economic Operators are usually addressed by procurement officials, from other members that were a part of review commissions, in special cases also from the same members (since the Law on Procurement article 108/A, does not specify who should treat the complaints, it only specifies that the Contracted Authority will address the complaint within 3 days).
Glllogoc	This request was addressed immediately from the responsive official together with the Main Family Medicine Center (officials working with tools- since even the request for re-evaluation had to do with parts of a tool from 3 that have been tendered).	
Istog	Requests for re-evaluation are addressed from competent procurement officials, according to the regulations for the submission of the request for re-evaluation at the contracting authorities.	Requests for re-evaluation from EOs, which are backed and justifiable on their points of complains, have been reviewed by a new commission. So, the structure of the commission was of a different composition from the previous one.

Kaçanik	Requests are addressed based on article 108/A of the Law on Procurement.	
Kline	Requests are addressed by the manager of the procurement office, in accordance to the competences and responsibilities that come from the Law on Procurement and the Public Procurement Guideline.	
Kamenice	One request was addressed from the commission formed by the National Audit Office to review the complaint from the EO, while after consultations with the PPRC, other requests have been addressed by the responsible official of procurement.	
Mitrovica	Were not addressed for the reason that we did not have such requests, but if we did, they would have been treated by the procurement office in collaboration with NAO.	
Lipjan	From the director and two procurement officials.	The other commission
Novobërdë	The request was addressed by the procurement manager based on the F03 regulation to submit the request for re-evaluation at the CA. Article 6 point 6.3.	Based on the regulation mentioned above, the procurement official addresses the request for re-evaluation, for the re-evaluation of the decision of CA.
Obiliq	Addressed by the procurement official.	From the same commission that had been established.
Rahovec	From engineers, judges, economists, with the decision of the mayor.	Addressed by different commissions, for example: review commission evaluated the offers, while re-evaluation had another new commission established, with the decision of the president.

Shtime	Requests are addressed from the procurement official.	
Suharekë	From the responsible procurement official, in accordance with the Law on Procurement – and naturally also in consultation with the commission that gave the recommendations.	
Ferizaj	Requests for re-evaluation are addressed from the main procurement official (manager).	
Viti	Procurement Office	Procurement Office
Zveçan	We have no request for re-evaluation, or any complaint of the first degree. If there was a complaint, we would act as foreseen by article 108/A of the law.	
Malisheve	From the official procurement official	Addressed by the responsive procurement official and from the same review commission.
Han i Elezit	Requests for re-evaluation are done by the responsible procurement official based on the Law on Procurement and the regulations on form F03.	The law does not foresee a commission, but it does foresee a responsible procurement officer – Form F03 (regulations for the submission of complaint).
Mamushë	Requests for re-evaluation are addressed by the responsible procurement official.	
Junik	The procurement office did not have such requests, and it is not the competence of the procurement office.	Their request was addressed by the procurement office, which made the decision within the legal timeframe.
Graçanice	Commission for decisions	No response
Prishtine	In all cases in harmony with legal provisions, requests were addressed by the responsible procurement official.	In all cases, the same commission addressed the requests based on the decision made by the responsible procurement official.

# ANNEX 2

<http://kallxo.com/ministria-demanton-kryetarin-e-rahovecit-per-nderrimin-e-gypit/>

<http://kallxo.com/Krypometër/rrena-per-arsyen-e-nderrimit-te-gypit/>

<http://kallxo.com/Krypometër/rrene-apo-veper-penale-me-pranimin-teknik-te-projektit-ne-rahovec/>

<http://kallxo.com/Krypometër/rrena-e-hazirit-per-uren-qe-perben-rrezik-per-jeten-e-qytetareve/>

<http://kallxo.com/Krypometër/qeveria-e-ndihmon-komunen-e-varfer-ne-ndertimin-e-ures/>

<http://kallxo.com/Krypometër/gjakova-nuk-publikon-kontratata-me-operatoret-ekonomike/>

<http://kallxo.com/Krypometër/kacaniku-ne-pritje-te-ujit/>

<http://kallxo.com/Krypometër/transparenca-e-pjesshme-e-gjinit-per-publikimin-e-vendimeve/>

<http://kallxo.com/Krypometër/rrena-per-funksionalizimin-e-objektit-te-zjarrfikesve-ne-decan/>

<http://kallxo.com/Krypometër/zvarritja-e-emertimit-te-rrugeve-ne-prizren/>

<http://kallxo.com/Krypometër/rrena-e-kryetarit-rreth-funksionalizimit-te-salles-sportive-ne-shtime/>

<http://kallxo.com/Krypometër/kryetari-i-lipjanit-mban-premtimin-per-ujin-ne-janjeve/>

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<http://kallxo.com/Krypometër/impianti-i-fjetur-i-junikut/>

<http://kallxo.com/Krypometër/tahiri-e-mban-fjalën-per-publikim-te-shpenzimeve/>

<http://kallxo.com/Krypometër/istogu-nuk-i-publikon-vendimet-e-rugoves/>

<http://kallxo.com/Krypometër/haskuka-e-hap-komunen-e-prizrenit/>

<http://kallxo.com/Krypometër/malisheva-fajeson-ministrin-per-zvarritjen-e-puneve-ne-stadium/>

<http://kallxo.com/Krypometër/rrena-e-hazirit-per-rrugen-e-livocit/>

<http://kallxo.com/Krypometër/zvarritja-e-transportit-per-nxenesit-e-vushtrrise/>

<http://kallxo.com/Krypometër/frika-nga-diga-e-demtuar-ne-lumin-mirusha/>

<http://kallxo.com/Krypometër/rrena-per-publikimin-e-listes-se-uzurpatoreve-dhe-kontratave-me-biznese/>

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# PUBLIC PROCUREMENT MONITORING REPORT IN KOSOVO

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### Photography Legend

A photograph reported to KALLCO.com from a citizen from Viti, where some seedlings are seen planted on the middle of the street on the holes that were not covered by no one. 11 February 2015

This report has highlighted the fact that some roads that are in poor condition in Kosovo are built by companies that are qualified for public contracts only for the sake of political or family connections that they had with a public authority that have granted them contracts.

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