

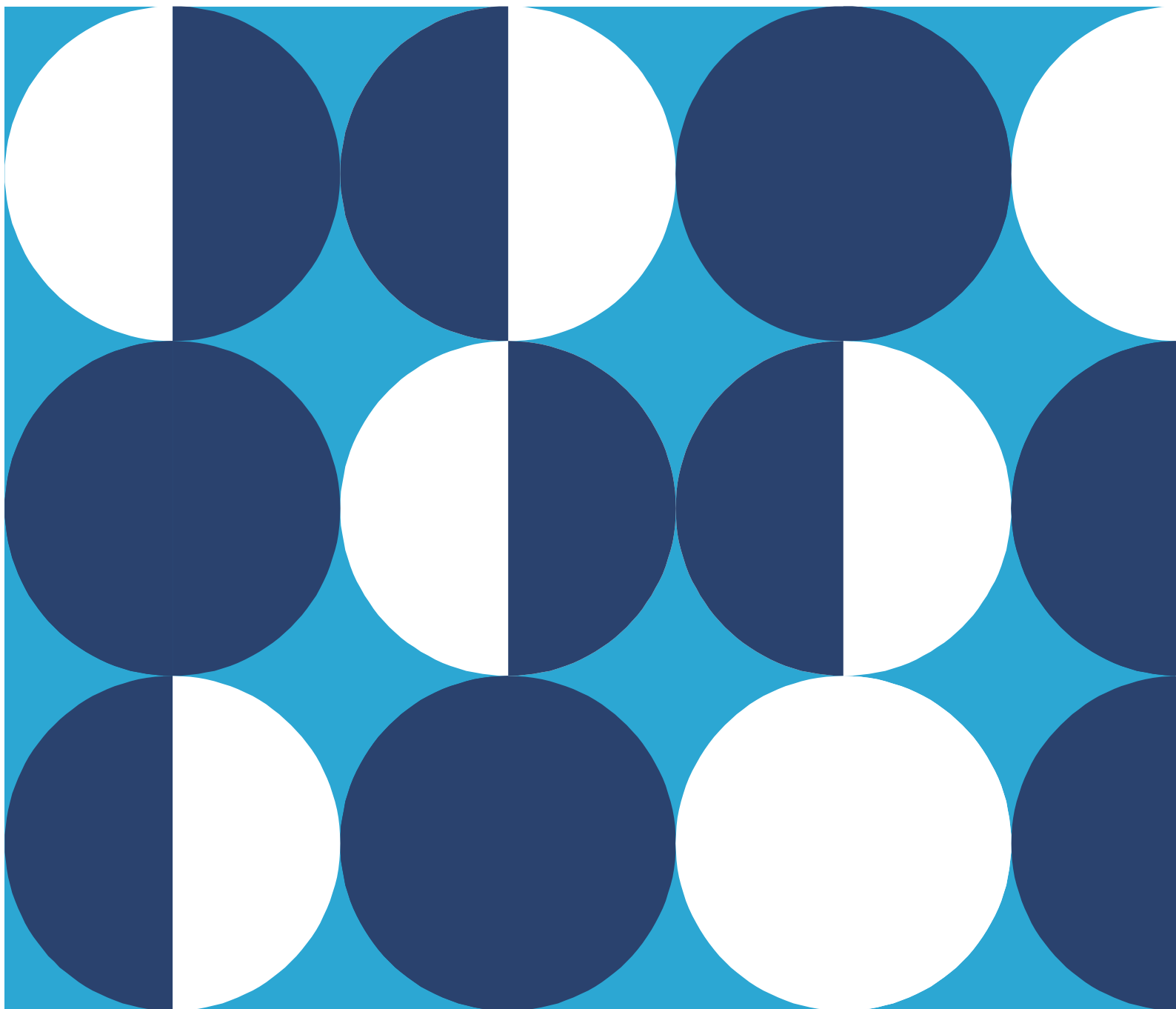


USAID
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA



MONITORING REPORT OF THE PROCUREMENT REVIEW BODY

(January 2020 – March 2021)



AUTHOR:

Agon Hysaj

October 2021

This Report was produced by Democracy Plus (D+) and supported by USAID through its Transparent, Effective and Accountable Municipalities (USAID TEAM) activity. The views and opinions expressed herein are those of the author and do not necessarily reflect the views of the U.S. Agency for International Development (USAID) nor the Government of the United States of America.



MONITORING REPORT OF THE PROCUREMENT REVIEW BODY

(January 2020 – March 2021)



Table of Contents

Table of Contents	4
List of Acronyms	5
Introduction	6
Summary	7
PRB in 2020 and 2021	8
Role of PRB in Public Procurement Inefficiency	8
Delays in Decision-Making	9
Transparency	10
Inconsistencies and Inaccuracies in Decision-Making	11
Abnormally Low Tenders	11
<i>Contracting Authority Discretion in Tender Clarification</i>	12
<i>Contracting Authority Discretion in Abnormally Low Tender Determination</i>	12
<i>Abnormally Low Tender in Price Scoring Tenders</i>	13
<i>Contradictions in Reasoning within a Single Decision</i>	14
Partial Approval of Complaint to Avoid Fee Forfeiture	14
Approval of Tender Complaints Cancelled by the PRB	15
Approval of Complaint on EO Ineligibility According to Article 65 of LPP	18
EO on the Blacklist, PRB Approves Its Complaint	19
<i>PRB “Mix-Up” in Company Disqualification</i>	20
Errors of Review Experts / Assignment of Incompetent Experts	21
Recommendations	23

List of Acronyms

CA	Contracting Authority
D+	Democracy Plus
EO	Economic Operator
LPP	Law on Public Procurement
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
ROGPP	Rules and Operational Guidelines for Public Procurement
TAK	Tax Administration of Kosovo



Introduction

Any company that claims to have been unjustly declared unresponsive by a public authority or alleging discrimination in any procurement activity should have access to a remedy before a competent authority. In Kosovo, companies count on the Procurement Review Body (PRB) who is mandated to protect them from unlawful decisions of contracting authorities. In such cases, companies first complain directly to the contracting authority as the first instance of complaint, but in most cases such complaints are rejected, thus, the complainant companies hold out hope on the PRB.

Democracy Plus (D+) has been monitoring the public sessions of the PRB since 2016. Through its report, D+ aims to improve the quality of decision-making at the PRB, to ensure that decisions are taken in a prompt and fair manner for all parties. In addition, D+ strives to ensure that the PRB provides improved reasoning in its decisions, so that a decision does not simply serve a party in proceedings, but also constitutes a precedent for future cases.

In its five PRB monitoring reports so far, D+ found that the biggest problem is the inconsistency in decision-making, as the PRB in many cases had ruled differently on cases with similar cases. Failure to use the internal database has caused the PRB to have many problems with consistency in decisions. In fact, this finding is featured repeatedly in each D+ report and this shows that the PRB has not improved sufficiently in terms of consistency in decision-making. Moreover, the current practice where a company files a complaint for review, then in case the PRB upholds the complaint, it refers back the tender for reevaluation instead of deciding on the merits of the case, which again leads to further procedural complaints, falls short of achieving the purpose of the Law to ensure efficient procurement activities. The inherent risk of the current system is that it encourages companies to constantly complain and slows down the procurement procedure in a manner that jeopardizes public contracting entirely.

This practice has a direct impact on the lives of citizens as it delays and complicates the delivery of services to citizens causing difficulties in their daily lives. D+ found that a complaint to the PRB, delays the signing of the contract by an average of about 8 months. However, there are such cases of tenders where even after four years at the PRB, a contract award decision is still pending.¹

The ineffective Blacklist remains an issue. According to the current practice, the PRB may debar a company from participating in any procurement process for a certain period, its owners may be punished, nevertheless, the same company may still submit tenders. There is a lack of an Information Technology (IT) system which would allow blocking such companies from accessing the e-procurement system. The interpretation of the current law from the PRB perspective is that a company shall not be debarred if it violates the terms of the contract or withdraws after being selected for the award. In one case, the PRB approved the complaint of a company, even though it established that the owner had been punished for fraud and forgery, in an earlier decision of the PRB. It is especially important that companies punished for forgery and fraud are not allowed to participate in tendering activities as this erodes the confidence of other companies that they will be able to win contracts fairly, knowing that another company that has forged a document is likely to get the award.

¹ Tender for Construction of Water Supply for several villages in Dragash has been at the PRB for four years

Summary

This report examines the decisions and practices of the PRB, to assess the effectiveness of implemented measures and the impartiality of the PRB in delivering justice for the parties.

Like earlier reports by D+, findings again point to lack of consistency, showcasing several decisions of the PRB that contradict previous decisions where the complaint allegations by the complainants are the same. The PRB does not appear to have employed any methodology of referring to previous decisions, while handling complaints. If this were to be practiced, the number of inconsistent decisions would likely be reduced. D+ has consistently stressed the need for greater standardization of PRB decisions, ensuring a decision outcome that is reasonably predictable by the parties, due to precedent.

The number of complaints in 2020 increased significantly, with 203 more complaints filed than in 2019. A similar trend of complaints is also expected in 2021. This represents a 20.7% increase in the workload of the PRB, which until March 31, 2021, operated at minimum capacity, since only three of five members that the PRB is required to have by law, were exercising their function, as the term in office for the other two had ended.

The PRB approved several complaints of companies that it had blacklisted itself. In two cases, the complaint was approved in relation to the same tender which led to their inclusion in the Blacklist.

A major problem is the partial approval of complaints to avoid forfeiture of the complaint fee. D+ found that the PRB, during 2020 and 2021, has partially approved the complaint in 104 cases, while rejecting all allegations in the complaint. By such ruling, the PRB has caused harm to the budget of Kosovo in the amount of EUR 246,822.

Another persistent problem is how the PRB handles complaints on abnormally low tenders. The Review Panel has provided four different reasonings, making it impossible to predict decision-making in such cases.

Yet another issue are the erroneous recommendations by review experts in some cases. The Panel, lacking the required knowledge in certain areas, in some cases decides based entirely on the recommendations of experts, who in certain cases have provided erroneous recommendations.

PRB in 2020 and 2021

In the period between January 1, 2020, to March 31, 2021, D+ engaged in monitoring PRB decision-making processes. Due to the COVID-19 pandemic, initially, most hearings were not held at all and after a while they resumed online, via the Zoom platform. There were 1520 decisions made during this period. From the monitoring of hearings, panel decisions, expert examinations, and complaints, D+ found that, in this period, the PRB made the following types of decisions:

Out of 1520 decisions, 841 were in favor of complainant economic operators (EOs), in 26 cases the complaints were withdrawn, in 51 cases the Panel issued a Notice, and 601 decisions affirmed the decision of the Contracting Authority (CA). In 26 decisions in favor of complainant EOs, the PRB also issued ordinances for failure to comply with previous decisions by contracting authorities (CA).

Review expert recommendations were in favor of complainant EOs in 879 cases and against complainant EOs in 545 cases.

EOs mostly file complaints against the Contract Notice, Contract Award Notice, and Tender Cancellation Notice, with Contract Notice Complaints well ahead of other types. However, there are many cases where EOs file complaints against the Contract Award Notice, but the complaint lists multiple counts pertaining to the selection criteria, in which case EOs should file a complaint against the Contract Notice.

Overall, panel decisions and expert recommendations do not match in 381 cases or 26.4% of cases. In 841 decisions in favor of the complainant companies, experts gave opposing recommendations in 191 cases or 22.7% of cases. In 601 panel decisions against the complainant companies, experts recommended the opposite in 190 cases or 31.6% of cases.

Role of PRB in Public Procurement Inefficiency

At the PRB, having several rounds of complaints on the same tender is a persistent issue. In this regard, PRB's practice of referring tenders back for unwarranted reevaluation is a contributing factor. Another contributing factor is the practice of not reviewing all bids. By way of illustration, let us consider the situation where company A files a complaint against company B which was recommended for award, the complaint is approved, and the tender is referred back for reevaluation. Upon reevaluation, the CA chooses company A for award, in turn company B files a complaint against company A. Such a practice produces significant delays in contract awards, resulting in situations where citizens are left without the required works and services.

D+ used the oshp.dplus.org and e-Procurement platforms to extract information showing that there were 1479 complaints received during 2020 and that in the first quarter of 2021, the complaints related to 583 specific tenders alone. This means that for a single tender there have been multiple complaints by several EOs, and such complaints were filed in several rounds. Out of 583 tenders, only 361 contracts were signed, with an average of 157 days from the date of contract notice until the date of contract signing. While on 113 tenders with more than one round of complaints (i.e., tender was referred back for reevaluation once and there were complaints again thereafter), the contract was signed within an average of 255

days. By contrast, in tenders where there are no complaints at all, the contract is signed on average after 54 days. Of concern is the fact that 173 tenders were cancelled after an average of 130 days. While 49 tenders are still pending due to active complaints, which cannot be reviewed because the PRB lacks a fully staffed board.

As the PRB usually handles complaints about high value contracts, many significant capital investments are deferred for months because of such complaints. The most problematic are the tenders that have a seasonal impact, e.g., a tender for the supply of wood would experience many problems if the complaints would delay the signing of the contract after the start of winter. The same applies for contracts for winter road maintenance, which as a result of complaints and lack of contract can endanger the lives of citizens. An example that proves the inefficiency of case resolution practices at the PRB is the tender of the Municipality of Pristina for the supply of information technology equipment for educational institutions. The contract was signed after 501 days and after five rounds of complaints to the PRB. Consequently, the municipality was not able to put the equipment to use for the second semester of 2019/2020 school year and the entire 2020/2021 school year. Considering that during this time Kosovo was dealing with the COVID-19 pandemic, the inability to sign a contract for a long time ended up hurting the students.

All the above indicate that the PRB should be vested with the power to review all bids at once and decide which company should get the award. This practice would allow for only one round of complaints, and consequently shorten the average time from the date of contract notice to the date of contract signing.

Delays in Decision-Making

Upon receipt of complaint, the PRB has 34 days² to decide and publish it on its website. During 2020 and in the first quarter of 2021, compared to previous years, the average time for decision-making was shorter. This was due to the COVID-19 pandemic, where a large number of hearings were not held, affecting shorter average times.

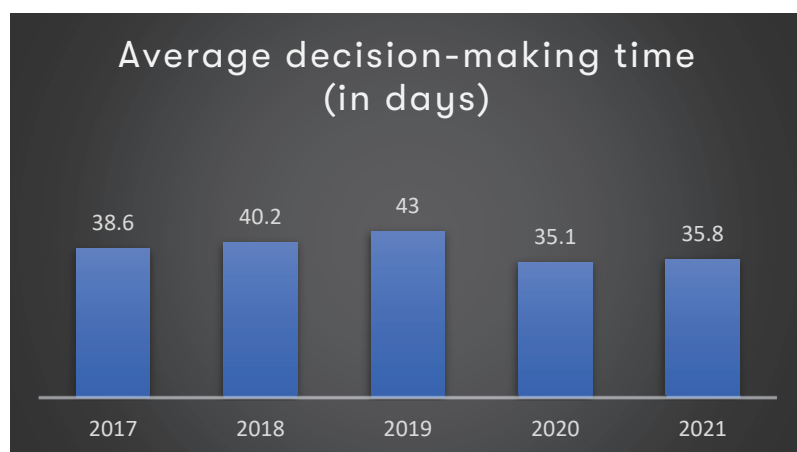


Table 1: Average decision-making time over the last five years

² According to the LPP, the review expert has 10 days to review the complaint, the CA and the EO have 4 days to respond to the expert examination, the Review Panel has 15 days to make a decision, and there are 5 days to publish the decision, totaling 34 days.

Transparency

The new website launched in December 2019 has significantly enhanced transparency. Complaints are already being published in full (in the past only the cover page of the complaint was published) and expert review reports are published too. However, the decisions are still published in scanned format, which does not allow to perform any search in the text as the documents are not in a machine-readable format. The PRB should replicate the practice of the PPRC, where only the page requiring signature and stamp is scanned, while the rest is a document which can be searched.

However, although the publishing of complaints in full and of the review expert reports has become mandatory, in some cases they are still falling short. Expert examination reports in many cases are not published and it is difficult to establish who was the expert assigned to review the case.

On the old website, the date of uploading the documents was attributed by the system, while the new website allows the option for the date to be set by the person uploading the documents. Therefore, in some cases it appears that the date of the decision precedes the date of the complaint, which is nonsensical. This may very well be a technical glitch, but to remove any doubt, the document upload date should be attributed by the system automatically, which also reduces the chances of any abuse.

The new website has significantly improved the capability to find cases using different filters. Now the case can be searched by protocol number, procurement number, or even tender title. Chart reports are also automatically generated, for a user-friendly visual representation of decision-making by the PRB.

One of the biggest problems on the old website was with the blacklisting decisions, which were clustered together with the complaint decisions. If a contracting authority wanted to see which companies are on the Blacklist for a specific period, it would be hard pressed to find such information. Now on the new website, the Blacklist is a special category, listing companies that are on the Blacklist and those that have been previously on it. This has greatly facilitated the work of contracting authorities, because while evaluating bids it is quite easy to find if any bidders are on the Blacklist. Again, this does not replace the need for the e-procurement platform to suspend the accounts of such operators or alert the CA that the company is on the Blacklist.

Inconsistencies and Inaccuracies in Decision-Making

Many complaints have similarities in terms of complaint allegations. This is because many institutions commit unlawful actions that are also replicated by other institutions. During the five years of monitoring the PRB, D+ has found that the complaint allegations are repeated across many complaints. From the information collected by D+, it would be quite easy for the PRB to achieve decision-making uniformity, however it remains elusive. Inconsistency continues to be a commonplace occurrence in the decisions of the PRB. But why does it happen that for the same type of complaint allegation there are different decisions outcomes by the PRB? Reasons for inconsistency may vary, from negligence to lack of professionalism.

The following section showcases inconsistent decisions on several matters. Inconsistency causes negative impacts on many fronts, including creating legal uncertainty in public procurement, loss of confidence by parties in the PRB, and growing suspicions of bias in the handling of cases by both the experts and the panel.

Abnormally Low Tenders

One of the most common allegations by complainant EOs to the PRB relates to tenders with abnormally low prices or parts of tenders that have such prices. The PRB is the body that should render a final and consistent decision regarding this major problem. According to Article 61 of the Law on Public Procurement (LPP), the contracting authority makes the determination whether an economic operator has submitted an abnormally low tender. Aggrieved parties may complain to the PRB, which in turn does not have a consistent position on this matter. The disputed issue is whether the PRB should engage in the evaluation of prices, i.e., determining if pricing is in line with market conditions, or is this right reserved for the contracting authority only. According to Article 61 of the LPP, a tender may be considered abnormally low if it meets the requirements of the formula provided in Article 3.1 of *Rules for Abnormally Low Tenders* adopted by the Public Procurement Regulatory Commission (PPRC). The formula for determining abnormally low tenders is:

- *the price offered is more than 30% lower than the average price of the responsive tender*
- *the price offered is more than 10% lower than the price or costs of the second lowest tender*
- *at least 3 (three) tenders have been submitted.*

However, according to Article 3.2 of this regulation, a tender may be considered abnormally low for reasons other than those above. But in both cases the tender may not be rejected without seeking clarification from the bidder on the offered prices. If the CA agrees with the explanations, then it accepts the bid, if not, the tender is rejected as abnormally low. The PRB does not employ the same approach across the board on whether it is the responsibility of the CA to evaluate the tender prices, should the formula be used or not, and whether the

PRB should engage in the determination that the clarification provided by the bidder is compelling or not.

D+ has found dozens of inconsistent decisions where the PRB does not apply the same standard. This phenomenon has also been identified in past D+ reports, yet the PRB has failed to take any action to enhance consistency in decision-making regarding abnormally low tenders. The following section provides an examination of some decisions where the PRB conflicts with its own decisions.

Contracting Authority Discretion in Tender Clarification

If an economic operator submits a tender that appears low, in full or in part, the contracting authority shall request clarification. If the CA is satisfied by the clarification, then it proceeds with bid evaluation and does not consider it an abnormally low tender. If the CA is not satisfied by the clarification, then the EO's bid is considered unresponsive due to an abnormally low tender. In large part in its decisions, the PRB on this point usually sides with the CA. However, in some cases it has taken the opposite decision.

In Decision [626/20](#)³, the Review Panel did not uphold the allegation by the EO, ARF, regarding the bid prices of the recommended EO, *Focus Print*. ARF claimed that *Focus Print* had bid abnormally low prices on some items. The CA requested tender clarification from *Focus Print* and was satisfied by the provided clarifications. In the reasoning of its decision, the Review Panel stated that the allegation by ARF is unfounded, because the CA requested tender clarification from *Focus Print* and is satisfied by the provided clarification.

In one [other](#)⁴ decision taken two weeks later, the Review Panel stated that the bid of EO *Multi Business Group* cannot be considered an abnormally low tender because the total bid price is very close to that of the EO recommended for award. However, the CA did follow the letter of the law. The CA questioned the price of the complainant EO and requested tender clarification. Upon review, the CA was not satisfied by the provided clarification and designated the tender unresponsive.

These are just two examples how the PRB has contradicted itself, but there are similar cases in Decisions [564/20](#), [573/20](#), [964/20](#) where the PRB did not observe the CA's determination. While there are other decisions ([462/20](#)) where the PRB did observe the CA's determination. In this complaint, the CA had requested tender clarification from the complainant EO, regarding the pricing of certain items. The EO provided its clarification, however the CA was not satisfied and rejected the bid. While in the three decisions above, the PRB did not engage in any determination whether the CA was satisfied by the clarification provided by the EO, in this decision the PRB does not consider that the CA was not satisfied by the clarification provided by the complainant EO.

Contracting Authority Discretion in Abnormally Low Tender Determination

As noted above, there are several steps required to make a determination of abnormally low tender. The first step is when the CA "notices/spots" abnormally low prices in a tender. However, there are cases where even though it is manifestly evident that a bid has extremely low prices (e.g., one cent per work hour), the CA decides not to designate the tender as

³ Procurement Review Body. Decision 626/20, page 13. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/9f4b29c3-2802-eb11-b591-005056ba09d5>

⁴ Procurement Review Body. Decision 664/20, page 8. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/e98eadf2-530d-eb11-b591-005056ba09d5>

abnormally low. In such cases, many EOs have filed complaints claiming that the EO recommended for award has bid abnormally low prices. Even in the decisions for these complaints there is inconsistency from the PRB.

In the Decision [954/20](#) the Panel's reasoning provides:⁵ "... that the evaluation of prices according to the provisions of Article 61 of the LPP is at the discretion of the contracting authority (CA) and in this specific case the CA has not noted any abnormally low prices."

In this case, the complainant EO, *Ejona SH.P.K.*, claimed that the bid of the recommended EO, *Ekotermika*, is by 25% lower than estimated contract value.

However in an earlier decision, 353/20, the Review Panel [upheld](#)⁶ the allegation by the complainant EO, *NNP Wenda*, that the recommended EO had submitted an abnormally low tender on two items. Based on past decisions, in responding to this allegation, the PRB should have stated that it is the discretion of the CA to evaluate prices.

Abnormally Low Tender in Price Scoring Tenders

Price scoring is a procedure used in public procurement in cases where the contracting authority "does not know" the quantity of items to be ordered, and for this reason, the quantity of each item in the price list is set at "1". During contract implementation, orders are made contingent on the needs that arise. The price list is divided into several categories and each of them is given a certain weight in the total of 100%. Price scoring only serves to evaluate bids, while the contract is implemented according to price per unit. The formula for calculating abnormally low tenders cannot be applied to these tenders, as the price is subject to scoring. However, for this type of tenders, Article 3.2 of Form B57 may be used, providing that:⁷ 3.2 Where tenders appear to be abnormally low for other reasons than those provided in paragraph 3.1 of these rules, contracting authorities may assess the reliability of such tenders and consequently request explanations according to the following paragraphs and Article 61 of the LPP.

Exactly this article may be used to designate as abnormally low the prices bid per item, in cases where the price scoring procedure is used. This is because the payment of invoices in such contracts is made for unscored prices, which are the real contract prices. In its Decision [590/19](#), the PRB erroneously determined that the Rules on Abnormally Low Tenders are not applicable to price scoring tenders. Although this determination is wrong, nevertheless, for a while, in some cases, the PRB has used it in its decision reasoning whenever such allegations were made. An erroneous reasoning would be fairer if it were applied consistently to all complaints. However, the Review Panel, in at least three other decisions, examined allegations of abnormally low tender even though such cases involved price scoring tenders. The PRB ruled in favor of the contracting authority in its Decision [352-358-359/20](#)⁸, where the PRB referred the tender back for reevaluation even though it was a price scoring tender and the allegations were related to abnormally low prices. Subject to the application of the reasoning of Decision 590/19, the PRB would have decided according to the standard that

⁵ Procurement Review Body. Decision 954/20, page 3. 2021.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/dd8c4282-7335-eb11-b593-005056ba09d5>

⁶ Procurement Review Body. Decision 353/20, page 9. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/fadf3897-8ac2-ea11-b58d-005056ba09d5>

⁷ PPRC. B57 Rules on Abnormally Low Tenders – Corrected Version. 2016.

<https://dpl.us/b57>

⁸ Procurement Review Body. Decision 352-358-359/20, pages 13-14. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/119c3bba-90c2-ea11-b58d-005056ba09d5>

the scored prices cannot be considered abnormally low. Decision 352-358-359/20 is special in that it involves a tender for vehicle maintenance. The price scoring procedure is always used for this type of tender and usually the prices are abnormally low in many items. On the same tender, in Decision 1054/20, the PRB [rejected](#)⁹ the complaint allegation filed by the complainant EO, *DPT Autopjesë Buqa*, noting as reason that prices cannot be compared with the recommended EO, as the case involves price scoring. In support of its reasoning, the Panel cited Decision 590/19, which the PRB has violated in the three cases noted above. Notably, the above information provides that the Review Panel is able to cite a previous decision, when it wants to do so anyway.

Contradictions in Reasoning within a Single Decision

In addition to inconsistent decisions, the Review Panel in some cases also provides contradictions in reasoning within a single decision. In its Decision [903/19](#)ⁱ, the PRB approved the complaint by consortium *Millennium Konstruktion & Anuar* against the recommended EOs on three different lots. In an unprecedented case, the Panel summarily declared the bids of the recommended EOs unresponsive because, according to the formula for abnormally low tenders, the applicable condition was met.

On page 13 of the Decision, the Panel submits that the bid of the recommended EO for Lot 2 must be rejected as abnormally low tender.

According to Article 61 of the LPP, no EO can be summarily eliminated without seeking clarification. If the CA is not satisfied after taking into consideration the provided clarification, then the tender shall be rejected. However, on the last page of the Decision, the Panel states:

“The Review Panel obliges the contracting authority to apply Article 3.1 of the Rules for Abnormally Low Tenders in reevaluation and at the same time treat all bidders equally.”

Such reasoning is contrary to the reasoning it provided earlier in the same decision. The PRB itself failed to observe Article 61 in declaring the bids of the recommended EOs unresponsive, while it proceeded to oblige the CA to apply Article 61 (*Rules on Abnormally Low Tenders* derive from Article 61). Such a contradictory decision can create confusion with the CA and the EOs that have been declared unresponsive. The Panel cites exactly Article 3.1 of the *Rules on Abnormally Low Tenders* for the rejection of three bids, while at the end of the Decision, it requires adherence to Article 3.1. This Article provides thatⁱⁱ contracting authorities **shall require** from the economic operators **to explain** the price offered, where all of the conditions according to the formula are met. Accordingly, this article does not vest the PRB with the authority to declare bidders unresponsive without requesting an explanation.

Partial Approval of Complaint to Avoid Fee Forfeiture

Any company wishing to file a complaint against a decision of the contracting authority must pay a filing fee to the PRB. The filing fee for a complaint to the PRB ranges from EUR 100 to 5,000. According to the *Rules of Procedure of the PRB*¹⁰, if complaint allegations are unfounded, the complaint filing fee shall be forfeited. If the complaint is approved in whole

⁹ Procurement Review Body. Decision 1054/20, page 6. 2021.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/d9c8511f-0c4a-eb11-b594-005056ba09d5>

¹⁰ Procurement Review Body. Rules of Procedure, Article 31. 2020.

<https://oshp.rks-gov.net/en/Pages/Details?id=6>

IN TOTAL, THERE ARE EUR 246,822, WHICH HAVE NOT BEEN FORFEITED CAUSING HARM TO THE BUDGET OF THE REPUBLIC OF KOSOVO, AS THE FORFEITED FUNDS SHOULD BE TRANSFERRED TO THE STATE BUDGET.

or in part, the filing fee shall not be forfeited. In 2020 and the first quarter of 2021, the PRB partially approved the complaint and upheld the decision of the contracting authority in 376 cases. However, in 104 complaints, the PRB partially approved the complaint, although all

complaint allegations were rejected. In 2020, the filing fee should have been forfeited in 71 out of 227 (26.6%) complaints that were partially approved, and the decision of the CA was upheld, while in the first quarter of 2021 alone, 34 out of 65 (52%) complaints were partially approved, which should have been rejected. It should be noted that there is a growing trend in 2021, where in just three months, the number of complaints which should have been rejected is almost half of those in 2020.

In 59 out of 104 complaints, the review experts recommended that the complaint be rejected. While in aggregate terms the discrepancy between the decision of the review panel and the recommendation of the review experts is 26.4%, here the discrepancy is 57%. Another clue is that, overall, complaints that are partially approved even where allegations are rejected are those for high value contracts. In 25 cases the filing fee was EUR 5,000, i.e., the maximum possible according to the LPP.

On all 104 complaints, the decision should have been to reject the complaint and forfeiture of filing fee.

Partial approval of the complaint for the sake of avoiding forfeiture of complaint fee encourages companies to file frivolous complaints and at the same time increases the number of complaints. D+ expects the new Board to observe the *Rules of Procedure of the PRB*, i.e., where the complaint's allegations are denied, the complaint shall be rejected, and the filing fee shall be forfeited. Further, this would reduce the number of complaints as the EOs, knowing that the complaints will be rejected more often, will be reluctant to complain and block tenders in the PRB.

Approval of Tender Complaints Cancelled by the PRB

One of the decisions taken by the PRB is the cancellation of tenders. This is usually done when none of the bidders are found responsive. Following cancellation of tender by the PRB, the contracting authority is required to publish the Notice of Cancellation of the Procurement Activity in the e-Procurement platform. However, the LPP allows economic operators to file complaints against such notices.

In two cases, the PRB has approved the complaint of the EO even though the tender had been cancelled previously by decision of the PRB. In the decision to cancel the tender, there is a section noting that parties have the right to an effective remedy against the decision. But how did it happen that the PRB referred back for reevaluation the tender that it had already cancelled itself? The company *NNP Elektro* filed a complaint against the decision of the University of Prishtina (UP) to award the contract to EO *Nart Group*. The PRB, in its

Decision [225/20](#)¹¹ provided that the bids of both EOs are unresponsive, and since there were no other bids, decided to cancel the tender.

The University of Prishtina, after the decision of the PRB, published the relevant *B10 Cancellation Notice for the Procurement Activity*. The reasoning provided by the UP for the cancellation is based on the decision of the PRB and Article 62 of the LPP, which states that in cases where there are no responsive bids then the tender must be

Paneli Shqyrtues duke u bazuar në shkresat e lëndës të cilat i ka pasur në dispozicion, si dhe në bazë të sqarimeve të ekspertit shqyrtues/teknik konsideron se tenderët e operatorëve ekonomik janë të papërgjegjshëm. Në mungesë të tenderëve të përgjegjshëm, autoriteti kontraktues **duhet ta anuloj këtë** aktivitet të prokurimit konform nenit 62 të LPP-së.

Paneli shqyrtues konform nenit 117 të LPP-së, si dhe duke u bazuar në provat e prezantuara si më lart vendosi si në dispozitiv të këtij vendimi.

KËSHILLË JURIDIKE:
Kunder këtij vendimi nuk është e lejuar ankesa, por pala e pakënaqur me kërkesëpadi mund t'i drejtohet Gjykatës themelore-Departamentit për çështje Administrative në afat prej 30 ditësh nga data e pranimit të këtij vendimi.

Kryesuesi i Panelit Shqyrtues
Nuhi Paçarizi

Figure 2: Reasoning of the PRB to cancel the UP tender

cancelled. Against such decision, the company *Nard Group* first complained to the contracting authority, where the complaint was rejected. Subsequently, this company filed a complaint with the PRB, which in turn approved the complaint. The first mistake is that the complaint should not have been accepted, as the tender had already been cancelled by the PRB. However, the complaint was reviewed, where the review expert rightly recommended that the complaint be rejected since the tender was cancelled by the PRB. The Review Panel did not take into account this recommendation and in gross contradiction with the previous decision, in its [reasoning](#)¹² states that the cancellation of the tender by UP (Document B10 mentioned above) was in violation of Article 62 of the LPP and referred the tender back for reevaluation. In its previous decision, the PRB had decided that the tender should be cancelled based on, notably, Article 62.

Upon reevaluation, UP awarded the contract to *Nard Group*. *NNP Elektro* filed a complaint against this decision with the PRB. The Review Panel partially approved the complaint but upheld the decision of the CA on contract award.

There were five complaints submitted in relation to this procurement activity. All this waste of time could have been prevented if the bids of both companies had been considered. The PRB, in approving the complaint [380/20](#)¹³ of EO *Nard Group*, provided in the decision reasoning that the UP had failed to set a deadline for submitting the extension of validity and tender security. On March 24, 2020, the procurement officer requested the extension of validity and tender security but did not specify when this should be done. Only *NNP Elektro* responded to the request, while *Nard Group* did not. One of the claims of *NNP Elektro* in Complaint 225/20 was exactly this, that *Nard Group* failed to submit the extension of validity and tender security. Lack of deadline to respond to the request of the UP could have been noticed earlier by both the expert and the review panel.

¹¹ Procurement Review Body. Decision 225/20. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/a412f9ac-1d91-ea11-b58c-005056ba09d5>

¹² Procurement Review Body. Decision 380/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/88e3c696-96d8-ea11-b58f-005056ba09d5>

¹³ Procurement Review Body. Decision 380/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/88e3c696-96d8-ea11-b58f-005056ba09d5>

The PRB with its Decision 380/20 put itself in contradiction with Decision 225/20. The PRB could have corrected its Decision 225/20 and there would be no need for further complaints. Accepting, reviewing, and approving a complaint in relation to a tender cancelled by the PRB itself, represents gross negligence and professional misconduct by the PRB.

This is not an isolated case, as the same has happened with another tender. The PRB, in its decision on complaint 132/20 [cancelled the tender](#)¹⁴ because both the complainant EO and the EO recommended for award were unresponsive. The CA implemented the provisions of the LPP and published the *Cancellation Notice for the Procurement Activity*. Following this notification, EO As Tech which was recommended for contract award last time, complained to the PRB. In this case too, the complaint should not have been reviewed at all, as the tender was previously cancelled by the PRB. However the Review Panel [rejected complaint 249/20](#)¹⁵ and ordered complaint fee forfeiture. But even though it was reviewed, the decision should have been to dismiss the complaint as inadmissible, since As Tech was declared unresponsive in the previous decision. The practice established at the PRB is that where the bid of an EO is declared unresponsive and the EO complains on the same tender in the future, then the complaint shall be rejected as inadmissible. In this case the PRB has unfairly ordered complaint fee forfeiture.

Another case of review of a complaint in relation to a tender that was cancelled by the PRB, occurred for Complaint 622/20 filed by EO *Lirimed*. The PRB decided to [cancel](#)¹⁶ the tender, as the bid submitted by *Lirimed* was unresponsive. In this case too, the CA, namely the Ministry of Health, acted according to the LPP and published the *Cancellation Notice for the Procurement Activity*. Again, *Lirimed* complained to the PRB, which unlike in Decision 249/20, now [decided](#)¹⁷ that Complaint 910/20 shall be dismissed as inadmissible, while fee forfeiture was not required.

While the PRB itself has reviewed complaints related to cancelled tenders, in Decision [130/21](#), the Review Panel cancelled the tender that it had already cancelled in Decision [1031/20](#). The Municipality of Viti failed to observe the decision of the PRB as after the *Cancellation Notice for the Procurement Activity* was issued, it awarded the contract to an EO. For failure to implement Decision 1031/20 in relation to the procurement activity **Construction of the Viti-Kërbliq-Kaçanik Road Phase II (two)**, the PPRC [revoked](#) the procurement license of the Procurement Manager in the Municipality of Viti.

The review of complaints in relation to tenders that have been cancelled by the PRB itself, stands to become a common precedent unless the new PRB Board takes action to put an end to this practice. Namely, every complaint submitted to the PRB, during initial review, should be screened for any prior complaint related to tender cancellation.

¹⁴ Procurement Review Body. Decision 132/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/44ccefce-7a72-ea11-b58c-005056ba09d5>

¹⁵ Procurement Review Body. Decision 249/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/da474169-499b-ea11-b58d-005056ba09d5>

¹⁶ Procurement Review Body. Decision 622-627/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/87410991-650c-eb11-b591-005056ba09d5>

¹⁷ Procurement Review Body. Decision 910-913/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/8cbea1f6-0c3f-eb11-b594-005056ba09d5>

Approval of Complaint on EO Ineligibility According to Article 65 of LPP

Article 65 of the Law on Public Procurement, *inter alia*, prohibits participation in a procurement activity or in the performance of any public contract if an economic operator, or any executive, manager, or director thereof, has, in the past ten years:

3.1. *been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in paragraph 1 of Article 130 of this law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions.*

The (then) owner of the company *Linda SH.P.K.* was convicted of a criminal offense in 2016, and this was also affirmed by the PRB in Decision 345/17¹⁸. However, the same Panel that declared this company ineligible, ruled to approve its complaints in three cases during 2020. Based on the above provisions of Article 65 of the LPP, this company is ineligible to participate in any procurement activity or in the performance of any public contract. This means that this company is ineligible for such activities from 2016 until 2026. This case was known to the public and covered in the media and such information should not have been overlooked by the Review Panel.

However the Review Panel in its Decision [274/20](#)¹⁹ partially approved the complaint by the consortium including *Linda SH.P.K.* In the decision reasoning, the Review Panel did not mention at all that this company is ineligible to participate in tenders and implement public contracts. Upon reevaluation, *Linda SH.P.K.* complained again and neither this [time](#)²⁰ did the Review Panel take into account that this company is ineligible to tender for any contracts. However, the complaint was only partially approved, as the Review Panel upheld the decision of the Municipality of Prishtina to award the contract to *Rexha* company.

In Decision [216/20](#)²¹, the complaint of EO *Linda SH.P.K.* against the cancellation of the procurement activity by the Municipality of Ferizaj was partially approved and the tender was referred back for reevaluation. *Linda SH.P.K.* was the sole bidder in this call to tender. Upon reevaluation, the Municipality announced the award to *Linda SH.P.K.* at EUR 443,777.77. Moreover though, in this tender, all bids had expired terms of validity. Here the PRB contradicted itself, as in some [other](#) decisions, at the moment when the validity of the bids expired, the tender was cancelled by the PRB.

In its Decision [311-318/20](#)²², the PRB partially approved the complaints of the companies *Limitproject & Mirusha Company & AK-Invest & Aksi Project* and the other consortium *Olti Trasing & Sinani & Beni Dona*, but upheld the decision of the Municipality of Ferizaj to award the contract worth about EUR 3.3 million to consortium *B-Bardhi & Linda & Euro Infrastructure*. Although none of the complainant EOs claimed that EO *Linda SH.P.K.* was

¹⁸ Procurement Review Body. Decision 345/17. 2017.

http://arkivaoshp.rks-gov.net/repository/docs/vendimet/2017/345-17vendim_1.PDF

¹⁹ Procurement Review Body. Decision 240/20. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/0ead313c-fbae-ea11-b58d-005056ba09d5>

²⁰ Procurement Review Body. Decision 594/20. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/7f86b4d6-fd02-eb11-b591-005056ba09d5>

²¹ Procurement Review Body. Decision 216/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/e4c4d15f-cf83-ea11-b58c-005056ba09d5>

²² Procurement Review Body. Decision 311-318/20. 2020.

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/8dca76b6-eadb-ea11-b58f-005056ba09d5>

ineligible to get the contract, the Review Panel should have decided based on Decision 345/17.

Approval of the complaint filed by *Linda SH.P.K.* in three cases and in one case allowing it to get the award shows that the Review Panel in the best case demonstrated a lack of professionalism and failed to consult previous decisions and in the worst case the Panel knew that this company was ineligible to get public contract awards and still approved its complaints. Of concern remains the fact that it is exactly the Municipality of Ferizaj that should have known about the case of this company, as the story of *Linda SH.P.K.* getting an award in this municipality while its owner was convicted of a criminal offense was breaking news. The case of *Linda SH.P.K.* unveiled the failure of all stakeholders in public procurement including:

- The Contracting Authority that should have rejected the company's bid.
- The competent Court that issued the certificate that stated only that the company neither has been declared bankrupt nor is currently subject to insolvency proceedings. While Article 65 of the LPP provides a series of other requirements, including evidence that neither the EO nor its executives have been found by a competent court to have committed an offense in the past ten years. The certificate currently issued by the court is virtually invalid and wanting, thereby rendering Article 65 of the LPP unimplementable.
- The Procurement Review Body that should not have approved the complaints.

EO on the Blacklist, PRB Approves Its Complaint

The company *D.SH. AMTelecomunication* was introduced to the [Blacklist](#)²³ (for the period September 3, 2020 to March 2, 2021), because it provided a false statement by forging a letter of authorization. In the same period, this company had filed a complaint in relation to the same tender. The company *D.SH. AMTelecomunication* submitted a complaint on August 6, 2020, on the call to tender by the University of Prizren (UPZ) – Ukshin Hoti entitled *Supply, installation and operationalization of equipment and accessories for the Time & Attendance System for the University staff*. The review expert submitted the expert examination report on August 26, 2020 and recommended that the tender be referred back for reevaluation.

On the other hand, a few months earlier, on May 28, 2020, UPZ made a request to the PRB that the company be introduced to the Blacklist, in relation to the same tender.

The Review Panel, just five days later, on September 8, 2020, decided that the complaint filed by the company *D.SH. AMTelecomunication* be [approved](#)²⁴ and the tender be referred back for revaluation. The reasoning of the Review Panel is literally the same as that of the review expert. It should be noted that the expert examination report was submitted before the PRB made a decision for the company to be blacklisted. The PRB, as noted from the dates mentioned above, took too much time to issue the disqualification decision. It took the PRB 99 days to make a decision, while the average time for making a decision during 2020 was 35 days.

²³ Procurement Review Body. Decision 172/20. 2020.

<https://oshp.rks-gov.net/sq/Documents/Download?id=39767996-aaee-ea11-b590-005056ba09d5>

²⁴ Procurement Review Body. Decision 564/20. 2020

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/e0c99595-2df7-ea11-b591-005056ba09d5>

Disqualification of company *D.SH. AMTelecomunication* and the subsequent approval of its complaint related to the same tender undermines the professionalism of the PRB. The reasoning of the Panel should have stated that the complaint is rejected because the company has been blacklisted rather than copying the report of the review expert. D+ has also noted this phenomenon in its [past reports](#)²⁵ highlighting further negligence by the Review Panel in cases where the Review Panel agrees with the expert examination report, and proceeds to use the same reasoning, with only this wording added at the beginning “*The Review Panel in conformity with the review expert...*”.

The PRB cannot use the justification that the complaint was submitted before the blacklisting decision was made, as it would then contradict another decision where it was decided otherwise. The PRB blacklisted *Lirigzoni SH.P.K.* on November 19, 2019. This company had filed a complaint in relation to a tender on October 21, 2019. In Decision [728/19](#),²⁶ dated 23 December 2019, the PRB rejected the complaint filed by the company (PRB mixed-up the company, you can read about it in more detail below) on grounds of disqualification. This means that the complaint was rejected, even though the complaint by the EO was submitted before being introduced to the Blacklist.

A similar case re-occurred in 2021. The PRB partially approved the complaint of the EO which was blacklisted on the same day that its complaint was approved and both matters related to the same tender. Company *2-Tech SH.P.K.* was blacklisted on January 22, 2021 because it [forged](#) a tax certificate from TAK claiming no outstanding liabilities, for the tender *Maintenance of Antenna Sites* published by the CA – Kosovo Police.²⁷ On that same tender, *2-Tech SH.P.K.* filed a complaint to the PRB, which on the same day, on January 22, 2021, partially approved the complaint, but upheld the decision of the CA on contract award. This case is also detrimental to the reputation of the PRB in that it [approved](#)²⁸ the complaint filed by a debarred company. Furthermore, the complaint was partially approved even though the decision states that TAK determined that the tax certificate was forged. There is no other item in the decision for which the compliant could be partially approved. This could have happened because the review expert in this case had [recommended](#) that the complaint be partially approved, although even the expert examination did not uphold any allegation. The chain of irresponsibility ends with legal officers writing the decisions, who apparently did not have in mind that the company was blacklisted. The complaint filed by *2-Tech SH.P.K.* should have been rejected on disqualification grounds. Furthermore, the complaint should have been rejected just because TAK determined that the tax certificate was forged.

PRB “Mix-Up” in Company Disqualification

Extremely similar names of two companies, *Lirigzoni SH.P.K.* and *Lirigzoni S SH.P.K.*, have caused the PRB to blacklist the wrong company. The PRB, on November 19, 2019, [introduced](#)²⁹ *Lirigzoni* to the Blacklist on grounds of forgery. But in its Decision [728/19](#)³⁰, the PRB dismissed

²⁵ Democracy Plus. The Role of Procurement Review Body in Public Procurement Inefficiency Page 37. 2019
<https://dpl.us/x38>

²⁶ Procurement Review Body. Decision 728/19. 2019
<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/dfb0bbf2-8d25-ea11-b589-005056ba09d5>

²⁷ Procurement Review Body. Decision 973/20. 2021
<https://oshp.rks-gov.net/sq/Documents/Download?id=5b9ff99d-1a5f-eb11-b595-005056ba09d5>

²⁸ Procurement Review Body. Decision 10/21. 2021.
<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/796ae902-af5f-eb11-b595-005056ba09d5>

²⁹ Procurement Review Body. Decision 1148/19. 2019
<https://oshp.rks-gov.net/sq/Documents/Download?id=6a4b1d3c-0c20-ea11-b589-005056ba09d5>

³⁰ Procurement Review Body. Decision 728/29. 2019.

the complaint filed by *Lirigzoni S SH.P.K.* as inadmissible on grounds of disqualification through Decision 1148/19, published on November 19, 2019. In fact, that Decision provided for the disqualification of *Lirigzoni SH.P.K.* This has nothing to do with any technical error, as Complaint 728/19 clearly states that the complainant is *Lirigzoni S SH.P.K.*, the introductory part of Decision 728/19 states that the complainant is *Lirigzoni S SH.P.K.*, the Decision for disqualification of *Lirigzoni SH.P.K.* lists the unique identification number, business number, and fiscal number. So, the PRB knew which company was involved, but due to negligence and lack of professionalism it rejected the complaint filed by the company that was not on the Blacklist.

Errors of Review Experts / Assignment of Incompetent Experts

The review expert assigned to Complaint [1095/20](#) filed by EO *D&T Group*, erroneously designated the change of VAT rate as an arithmetical error. According to the interpretation of the PPRC, if the VAT rate is wrong, then it shall be corrected by the contracting authority and shall not be considered an arithmetical error. According to the LPP, if the bid contains arithmetical errors at a rate exceeding 2% then the bid must be rejected. The EO bid the price with 18% VAT, while according to the contracting authority, VAT should have been 8%. Precisely for this reason, the review expert determined that the offer of *D&T Group* contains arithmetical errors. Even in the past, D+ [found](#)³¹ that the same expert has made serious mistakes, but apparently no action has been taken against him. Fortunately, his recommendation was not taken into account by the Review Panel, which on this point cited the interpretation by the PPRC that differences in VAT do not qualify as arithmetical errors.

In another case, the PRB assigned an information technology expert to review a complaint which involved allegations related to procurement procedures only. Namely, the contracting authority *Kosovo Telecom*, was correct in eliminating the consortium *Fahredin Pllana BI & NTSH Stina shpk* on grounds that its member *NTSH Stina* had not submitted its *Declaration under Oath*. EO *Fahredin Pllana BI* as the leader of the consortium, claimed that since he had submitted a *Declaration under Oath* on behalf of the consortium, it should apply to both members. The expert in this case upheld this allegation in full and [recommended](#) that the complaint be approved and clarifications be sought on the *Declaration under Oath*. In this case, the request for clarification means that the EO shall be allowed to submit a new declaration under oath. However, Article 65 of the LPP and Article 39.8 of the ROGPP require each member of the consortium to submit a *Declaration under Oath*, as the group leader cannot guarantee, e.g., that the other member is not convicted of any criminal offense. The fact that the PRB assigned an inadequate expert to handle the complaint remains an issue of concern. Even in this case, the Review Panel [failed](#) to take into account the recommendation of the expert and decided to reject such complainant allegations, as the CA was correct to eliminate the consortium for failure to submit the *Declaration under Oath* by *NTSH Stina*.

In another case, the review expert mixed-up an interpretation by the PPRC and provided an erroneous recommendation. In the call to tender for the *Construction of the Ukë Bytyqi Culture House – Phase II*, among other bidders *ISeferi SH.P.K.* submitted its bid, while the EO recommended for award, *Euroing SH.P.K.* had rented some equipment from *ISeferi SH.P.K.* On this matter, a complaint was filed by *Ada Consulting Group SH.P.K & Krapì Com*, claiming

<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/dfb0bbf2-8d25-ea11-b589-005056ba09d5>
³¹ Democracy Plus. The Role of Procurement Review Body in Public Procurement Inefficiency Page 38. 2019
<https://dpl.us/x38>

that *ISeferi SH.P.K.* had bid both individually and with a group of economic operators. Such bidding would render both bids unresponsive under Article 71 of the LPP. However, in this case this did not happen, as *ISeferi SH.P.K.* had bid individually and some of its equipment was leased out. The bid does not consist of the equipment alone, which in this case was valued at EUR 2.6 million. The review expert based his recommendation on the interpretation by the PPRC, *Frequently Asked Questions No. 48*. However, he misinterpreted this provision. The interpretation refers only to cases where an EO is ineligible to bid individually and as a member of a consortium. This happens rarely if ever, as EOs know that they will be considered unresponsive if they bid in such manner. However, the review expert determined that the allegation of the two complainants is grounded. The Review Panel, instead of correcting the erroneous recommendation by the expert, decided in conformity with the expert examination. Although there are other allegations in these two complaints, the approval of this allegation by the Review Panel sets a wrong precedent. Pursuant to an erroneous recommendation by the expert, the Review Panel determined the bids submitted by *ISeferi* and *Euroing* (which had rented the equipment from *ISeferi*) as unresponsive, because according to the Panel, *ISeferi*, upon concluding the lease agreement with the recommended EO, had become part of its bid. By virtue of such reasoning, the Panel considered that *ISeferi* had bid both individually and together with *Euroing*.

However, as has usually been the case in the past, an error in decision-making leads to inconsistent decisions. A few months later, EO *Gurëbardhi*, in its [complaint](#) referred to Decision 984/20, where the allegation was the same. Again, *ISeferi* had bid individually and had leased out its equipment to the EO recommended for award. The review expert, [established](#) this and said that Decision 984/20 applies to this allegation. However, the Review Panel [disagreed](#) with the recommendation of the expert and its reasoning provided that *ISeferi* had bid individually and that it had leased out its equipment. According to the Panel, here we are dealing with two different bids. In fact, this should have been the reasoning in Decision 984/20. However, the Review Panel, to justify its error, based its reasoning on the interpretation provided by the PPRC, *Frequently Asked Questions No. 12*, which states that the bidder shall confirm not participating in the tender with any other group. This interpretation is so old³², that at the time it was issued, the PRB had not been established yet and another law on public procurement was in effect. On this point, it would have sufficed for the Review Panel to refer to Article 71 of the LPP or interpretation No. 44 by the PPRC.

³² Interpretation published in 2011.

Recommendations

Based on the findings of the present Report, and the ongoing monitoring of the PRB, for purposes of improving decision-making at the PRB, D+ proposes the following recommendations:

- PRB should not partially approve the complaints for the sake of avoiding filing fee forfeiture. PRB should order complaint fee forfeiture more often.
- PRB should establish an advanced database of its decisions, making it easier to find decisions by issue to ensure consistency in decision-making. PRB should always decide on a certain issue in the same manner or, where this is inappropriate, it should provide reasons for deviation from previous precedents.
- PRB should measure the performance and quality of work of experts to ensure professionalism and impartiality, especially where there are allegations against them for failing to do the job properly. An urgent audit of their recommendations is warranted. This should be conducted by contracting a third party.
- Each expert should be subject to performance quality appraisal by tracking the success of his/her recommendations, case clearance rate, and other indicators, to determine whether they should be retained at the PRB or replaced with others.
- PRB should handle any allegations of abnormally low tenders with special care and maintain uniformity.
- PRB should compile a list of most common allegations by EOs and publish on its website how it will decide on such allegations. In this way, EOs will know in advance whether their allegation will be upheld. This would reduce the number of submissions.
- PRB should pay more attention to the implementation of its decisions, establishing monitoring mechanisms to track decision implementation, and apply punitive measures against CAs that fail to implement its decisions or adhere to deadlines.
- All decisions, complaints, expert reports, and other documents that are relevant should be published in a machine-readable format.
- PRB should not approve complaints filed by companies which, in previous decisions of the PRB, have been confirmed of having executives convicted of a criminal offense as defined in Article 65 of the LPP.
- Review Panel should provide relevant reasoning in decisions where it does not agree with the expert recommendation. While where the Panel agrees with the expert the sentence begins with “*The Review Panel in conformity with the review expert...*,” then the Panel must also provide relevant reasoning where it does not agree with the review expert.



USAID
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA

