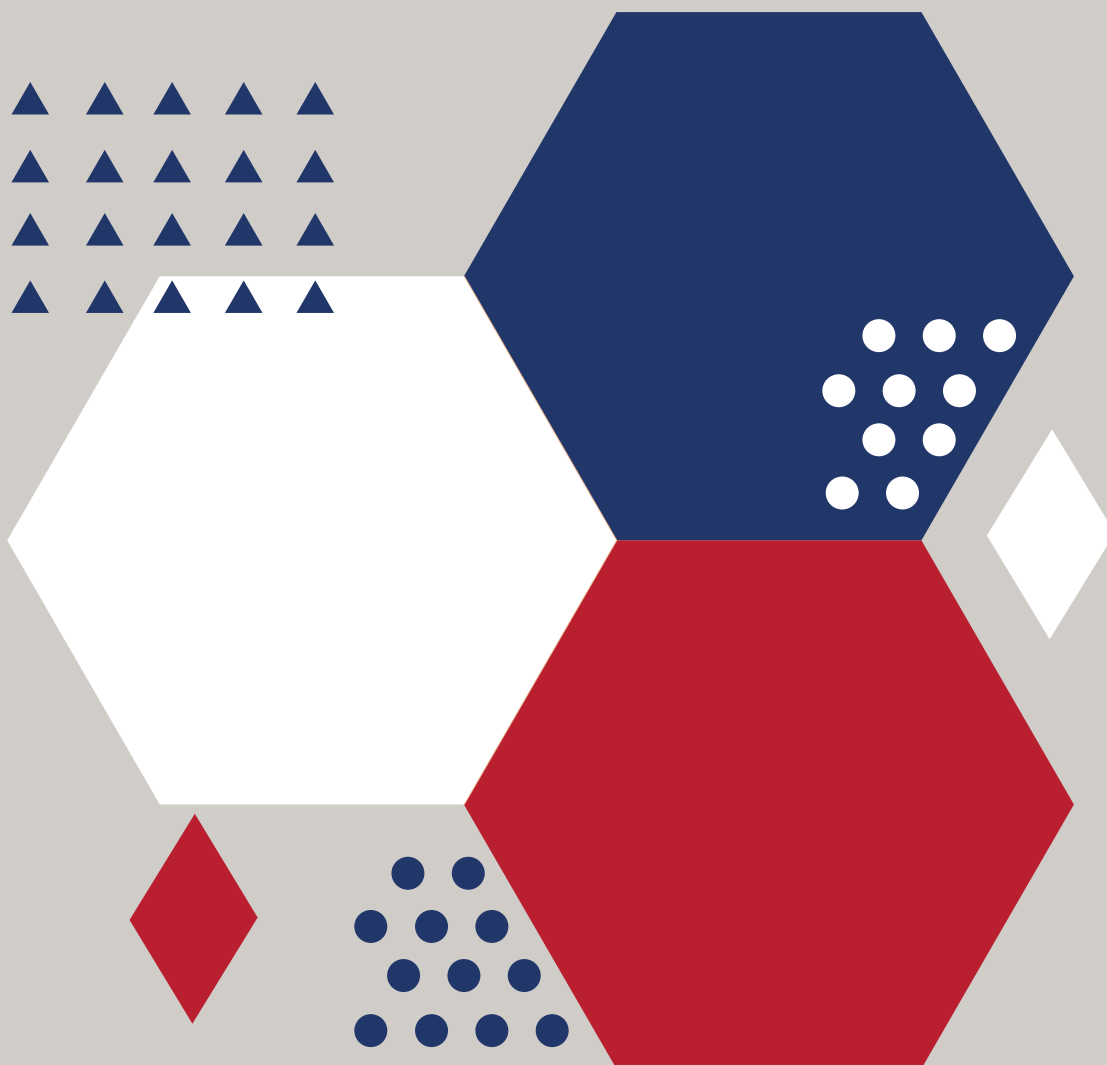




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Assessing the Procurement Review Body: A Six-Month Review and Recommendations (January – June 2023)



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USAID Kosovo Municipal Integrity activity

DISCLAIMER: The author's views expressed in this report do not necessarily represent the views of the United States Agency for International Development (USAID) or the United States government.

Abbreviations

CA	→ Contracting Authority
D+	→ Democracy Plus
FVA	→ Food and Veterinary Agency
ICMM	→ Independent Commission on Mines and Minerals
IT	→ Information Technology
KCS	→ Kosovo Correctional Service
LPP	→ Law on Public Procurement
MIA	→ Ministry of Internal Affairs
EO	→ Economic Operator
PRB	→ Procurement Review Body
TAK	→ Tax Administration of Kosovo
UHCSK	→ University Hospital and Clinical Service of Kosovo

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Executive summary

This monitoring report, developed by Democracy Plus (D+) sub-contracted by USAID Kosovo Municipal Integrity (KMI) activity, presents an assessment of the Procurement Review Body (PRB), the administrative body that adjudicates bid protests or complaints, based on observations by monitors over a six-month period, from January through June 2023. The monitors observed PRB decisions and practices to assess its impartiality in handling complaints submitted by various parties. This report underscores various challenges with the PRB's performance over the past six months, such as inconsistent decision-making, expert errors, delays in decision making, and insufficient transparency.

Throughout the monitoring period, the PRB did not appear to employ a methodology that referenced past decisions when addressing new complaints. Adopting such a methodology would expedite decision-making and reduce the chances of errors when handling complaints.

From April 2021 to June 2022, the PRB operated without a board. Without a decision-making body in place, the PRB could not resolve disputes. As a result, contracting authorities were forced to halt capital projects that were under review. During this period, a backlog of over 700 unresolved complaints piled up amounting to over 500 million euros in procurement disputes.

In June 2022, the Assembly of the Republic of Kosovo appointed five new members to the PRB board. However, six months later, one member resigned, leaving the board with only four. The board's efficiency was compromised as the remaining members had to manage the increased workload. The challenge was further amplified by the carryover of 146 unresolved complaints from 2022 into the first half of 2023. Compounding this, there was a spike in the number of complaints in the first half of 2023, totaling 445. Compared to the same period in the previous year, this constitutes an increase of 203 complaints. The PRB's capacity to manage this surge was strained, especially with one board member's resignation.

Due to this reduced number of board members and the significant backlog of unaddressed complaints from 2022, the PRB often failed to adhere to the official legal deadline for issuing decisions about complaints from EOs during the period January – June 2023. According to the Law on Public Procurement, the legal deadline to issue a decision is 34 days, which can be extended by an additional 20 days in special cases.

The PRB's review panel faces challenges in consistently using expert knowledge. While they can consult specialists for technical procurement cases, they don't always integrate this advice into their decisions. Sometimes they rely entirely on expert recommendations, but at other times, they overlook them. This inconsistency underscores a key area for enhancement. Data from the past six months confirm that these issues, evident in the first half of 2023, have been ongoing challenges for the institution.

In technical cases, especially in IT and medical equipment, the PRB board often lacks expertise. As a result, many of their decisions rely solely on expert recommendations, which sometimes overlook or ambiguously address parties' claims. This reliance, combined with the lack of specialized experts and mishandling of appeal claims, has eroded confidence in the institution.

During the review period, monitors noted a significant drop in the PRB's previous practice of partially approving complaints. Before this change, partial approval allowed the PRB to fully refund appeal fees to Economic Operators (EO) even if the decision was in favor of the Contracting Authority (CA). This leniency often led EOs to lodge complaints without careful thought, knowing they wouldn't face financial consequences. The decrease in such approvals suggests the PRB is adopting a more balanced approach, which might discourage frivolous appeals.

Echoing previous civil society reporting, the monitors in this case also reported issues with transparency at the PRB. They haven't published interim or annual reports on their website, not all sessions are broadcast online, some EO complaints aren't uploaded, and decisions are shared in hard-to-read scanned formats. These are among the key findings in this report.

Introduction

The Procurement Review Body (PRB) is an independent administrative body responsible for addressing public procurement complaints from private sector companies (also known as EO) who have submitted bids in response to procurement tenders. When an EO submits a written complaint or bid protest about a decision made by a contracting authority (CA), the PRB has the mandate to examine the allegations in the complaint. The review process is conducted within legally mandated deadlines to ensure timely resolution. Upon conclusion of the review, the PRB provides a written decision that addresses both the specific complaint (the party's claim) and the associated procurement activity.

There are several actions that the PRB can take:

Reviewing Complaints:	The PRB evaluates and makes rulings on complaints submitted by parties involved in each procurement activity.
Imposing Penalties:	The PRB has the authority to impose and enforce penalties (or take other punitive measures) for breaches or misconduct during procurement.
Handling Incomplete Appeals:	The PRB addresses and resolves appeals that are rejected or found to be incomplete.
Managing the Blacklist:	The PRB decides which entities are added to or removed from the Blacklist, based on non-compliance or other issues.
Issuing Fines:	The PRB levies fines based on the specifics of the procurement situation.

The decisions of the PRB are binding on all contracting authorities involved in procurement procedures. This includes ministries, municipalities, public enterprises, and any other institutions conducting such procedures. Once the PRB issues a decision, the contracting parties must comply with it promptly. If a party disagrees with the PRB's decision, they can seek a court review. However, it is essential to understand that the execution of the PRB's decision is not postponed during the court review process. Moreover, aggrieved parties have the right to claim damages or lost profits as outlined in the Law on Public Procurement (LPP) (Article 119)¹. The PRB is mandated by both the LPP in Kosovo² and the Law on Public Private Partnership (Article 46)³ To address complaints in line with these statutes.

1 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 119 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed June 30, 2023)

2 The Official Gazette of the Republic of Kosovo. Law on Public Procurement in the Republic of Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed June 30, 2023)

3 The Official Gazette of the Republic of Kosovo. Law on Public Private Partnership, article 46 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2784>) (finally accessed June 30, 2023)

1. The number and the types of PRB's decisions in the first six months of 2023

The number and the types of PRB's decisions in the first six months of 2023

272

decisions by PRB

173

complaints still under process

PRB held

66

hearing sessions

From January 1st to June 30th, 2023, D+ monitored the decisions issued by the PRB. During this period, the PRB issued a total of 272 decisions, with 173 cases still under review. Furthermore, the PRB held 66 public hearings in front of parties related to the complaints.

Categorizing the decisions from this reporting period, the PRB issued:



125 decisions in favor of the EO that filed the complaint (referred to as grounded complaints); 144 decisions unfavorable to the EO that filed the complaint. On 51 occasions, the PRB's decisions diverged from their experts' recommendations. This trend is concerning, suggesting that expert advice might be overlooked. It could also diminish trust in the PRB's decision-making and prompt questions about resource efficiency and transparency.

Regarding the distribution of received complaints:



54

complaints related to contract notifications;



95

complaints addressed notices of procurement activity cancellations;



280

complaints concerned contract award notices; and



5

additional complaints focused on EO qualifications.

2. Duration in decision-making and consequences in public procurement

Unlike the court appeal procedure, which does not suspend the execution of a decision even if the EO files an appeal, the PRB's appeal process leads to the suspension of all procurement activities⁴ until a final decision is reached. Consequently, many critical public procurement activities often remain blocked until the PRB reaches a decision. The delays caused by complaints can result in significant postponements in capital investments, affecting projects of considerable value for months. Tenders with seasonal impacts, such as summer and winter road maintenance, are particularly at risk for negatively impacting citizens. The suspension of these procurement activities can have adverse effects on public services and infrastructure, further highlighting the urgency of addressing and resolving complaints in a timely and efficient manner.

For example, the PRB was responsible for a significant delay of 90 days in publishing a decision concerning the tender for "summer and winter maintenance of the national and regional roads of Kosovo for the years 2022, 2023, 2024 and 2025." The Ministry of Infrastructure had initially published the notice of the contract for this procurement activity⁵, which was divided into several lots⁶ on April 11, 2022. However, due to successive complaints from EOs, the publication of notice for signing the contract was significantly postponed and was only released nearly a year later April 4, 2023.⁷ The prolonged timeline caused by the complaints had a considerable impact on the procurement process, resulting in significant delays and disruptions to the essential road maintenance activities planned for those years.

On December 30, 2022, a group of EOs, Kosova Asphalt, AAB Construction, N.N.P.Ndërtimi, Urban O.P, Adnan Bislimi B.I and Premium-ks Sh.P.K, submitted a complaint to the PRB regarding lot 3. The PRB reached a decision in their favor on March 30, 2023. These significant delays, particularly for procurement activities with seasonal implications, have resulted in financial losses for the EOs involved and have had adverse effects on the well-being of citizens. Such delays can disrupt the planned operations and investments of businesses, impacting both the EOs and the public. Prompt resolution of complaints is essential for smooth project execution and to avoid financial setbacks and disruptions for all stakeholders.

⁴ The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 112 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) [finally accessed on June 30, 2023]

⁵ The procurement activity numbered: 205-22-3039-2-1-1 (https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=1812209) [finally accessed, June 30, 2023]

⁶ Lots in public procurement refer to a way of dividing a procurement contract into smaller, more manageable parts. By dividing contracts into lots, a public authority can make the contract more accessible to small and medium-sized enterprises (SMEs), which may not have the resources to bid for larger contracts. This also allows the public authority to better manage and allocate resources

⁷ The contract notice and binding of contract (<https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=327>) [finally accessed, June 30, 2023]

3. Consistency in decision-making

Throughout the monitoring period of 2023, D+ identified a considerable number of cases in which EOs presented similar claims based on legal grounds. Despite these similarities, the responses from the PRB showed variations, indicating a need for enhanced consistency in their decision-making processes.

For example, as per Article 99 of the LPP, EOs placed on the Blacklist are prohibited from participating in public procurement activities for up to one year⁸. However, there exists ambiguity regarding whether this ban applies exclusively to procurement activities published after the disqualification decision, or if it also extends to procurement activities initiated before the operator's inclusion on the Blacklist.

Additionally, D+ observed that the decisions made by the PRB regarding the grounds for EO disqualification are inconsistent and occasionally surpass the basis specified in the law. For example, in the case of University Clinical Hospital Service of Kosovo (UCHSK) v. Matkos Pharm (no. 274/22)⁹, the PRB dismissed the CA's request, asserting that non-implementation of the contract is not a valid basis for disqualification. Surprisingly, only a month later, in the case of NPB v. Bajram Ha. Gashi B.I (no. 409/22)¹⁰, the PRB disqualified the EO for three months based on non-implementation of a contract assigned by the CA.

While the LPP permits the disqualification of EOs for up to one year, it fails to distinctly categorize violations and their corresponding disqualification periods. This lack of clarity contributes to the inconsistency in PRB's decisions and necessitates further attention to ensure fair and uniform application of disqualification measures.

In 2022, the PRB issued 16 approval decisions for the Blacklist, resulting in EOs being disqualified from participating in public procurement activities. On average, these disqualifications lasted for 5.3 months. However, throughout that year, no EO received the maximum penalty of disqualification for a full year.

Despite the disqualifications, the PRB's decisions lack consistency, even in terms of the duration of disqualification for similar violations. Different decisions have been rendered for violations of the same nature, resulting in discrepancies in outcomes. For instance, in the case of the Municipality of Gjakova/Djakovica v. Ero Project (No. 386/22)¹¹, the PRB disqualified the EO for a six-month period due to the lack of documentation by the Tax Administration of Kosovo (TAK) and the Court. Conversely, in a different case involving the Independent Commission on Mines and Minerals (ICMM)¹² v. Mediatech & Print Sh.P.K. (No. 885/21)¹³, the PRB disqualified the EO for the same reason but only for a three-month period.

The inconsistent application of disqualification periods raises concerns regarding the fairness and transparency of the PRB's decisions, highlighting the need for a review to ensure more uniform and equitable outcomes.

8 The Procurement Review Body' Work Regulatory, article 32-The disqualification of economic operators, point 1 and 2 (<https://oshp.rks-gov.net/sq/Documents/Download?Id=0d49ce49-afc2-eb11-b59b-005056ba09d5>) [finally accessed, June 30, 2023]

9 Black List-Procurement Activity: Supply of medical materials from the Essential List (<https://OSHP.rks-gov.net/sq/Reports/ComplaintByBlackList>) [finally accessed on June 30, 2023]

10 Blacklist-Procurement Activity: The renovation SHFMU "Iliria" (<https://OSHP.rks-gov.net/sq/Reports/ComplaintByBlackList>) [finally accessed, June 30, 2023].

11 Black List, Procurement Activity: Construction of the school depot (<https://OSHP.rks-gov.net/sq/Reports/ComplaintByBlackList>) [finally accessed June 30, 2023]

12 ICMM stands for Independent Commission on Mines and Minerals.

13 Blacklist, Procurement Activity: Supply of official consumables (<https://OSHP.rks-gov.net/sq/Reports/ComplaintByBlackList>) [finally accessed, June 30, 2023]

4. Delays in decision-making

Upon receiving a complaint from an EO, the PRB is obligated to publish its decision on the website¹⁴ within 34 days. According to the LPP¹⁵, the reviewing expert is allotted 10 days to assess the complaint, while both the CA and the EO have four days to provide responses to the experts. Subsequently, the PRB has 15 days to reach a decision and within the subsequent five days, this decision must be published, resulting in a total timeframe of 34 days. In certain cases where the PRB considers a case to be highly complex, it has the authority to extend the deadline for delivering its decision by a maximum of 20 days. In these cases, the PRB must provide a rationale and directive to justify the extension.

During the monitoring period, the PRB issued a total of 272 decisions on complaints submitted in 2023. In addition, they addressed 146 cases carried over from the previous year for a combined total of 418 decisions from January 1st to June 30, 2023.

Unfortunately, the issue of exceeding the legal deadline for case examinations persisted during this reporting period. Out of the 272 decisions published, only 82 were completed within the required 34-day deadline. An illustrative example of this concerning delay was found in the case of EO Pharma Leader LLC against the Ministry of Health, which was related to the procurement activity “Emergency Supply of Analogue Insulins from the Essential List”, (case 57/23). Although the complaint was submitted on January 31, 2023, the PRB’s decision wasn’t published until June 30, 2023, resulting in a wait of 150 days.

418

decisions by the PRB during the period January-June 2023

Only

82

decisions within the time limit set by law

Forfeiture of appeal fee

Any EO wishing to contest a CA decision must pay the PRB an appeal fee ranging from 100 to 5,000 euros. Per the PRB’s Rules of Procedure, if the appeal is deemed baseless, the EO must forfeit the fee. During the monitoring period, EOs forfeited the appeal fee in 97 cases, totaling 209,948.33 euros. However, the EO doesn’t have to forfeit the fee if the PRB board determines that the EO’s case is fully or partially approved. In the first half of 2023, the PRB largely curtailed the trend of partially approving appeals, ensuring most fees were retained. However, an oversight in one instance led to the fee being refunded to the EO. In the case of INFINITT Sh.P.K. against KRU Hidroregjioni Jugor SH.A. case 234/23, the PRB enlisted a review expert to evaluate the claims. After the expert submitted the report and both the CA and EO who submitted the claim agreed with the findings, the PRB deemed the review procedure concluded.

¹⁴ The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, articles 114,115,116 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed on June 30, 2023)

¹⁵ The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, articles 115,116 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed on June 30, 2023)

All parties assumed the EO that had submitted the complaint had withdrawn the complaint and did not forfeit the appeal fee¹⁶. However, according to the PRB's Rules of Procedure, if the complainant withdraws the complaint after the review expert's appointment and the acceptance of their report, the appeal fee should be forfeited as procedural costs¹⁷. In this case, the PRB erroneously applied the term "withdrawal of the complaint" despite clear evidence of an agreement reached between the parties involved.

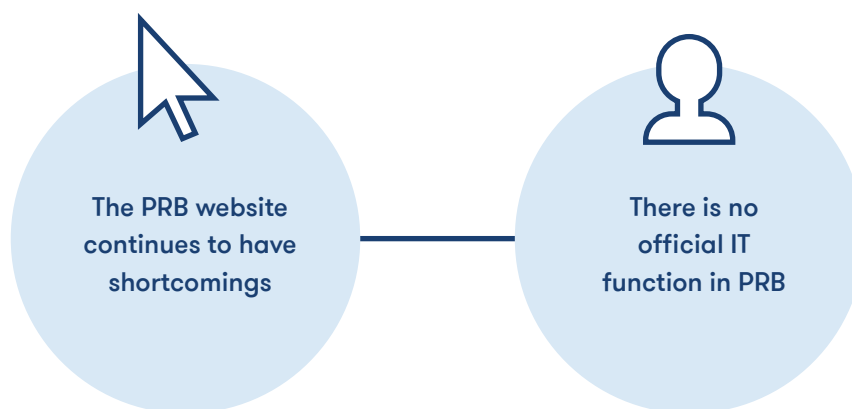
¹⁶ The decision's number 234/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/1875a8e6-92fb-ed11-b5b8-005056ba09d5>) (finally accessed on June 30, 2023)

¹⁷ Regulation no. 01/2020, Article 28, point 1 (<https://oshp.rks-gov.net/sq/Documents/Download?Id=0d49ce49-afc2-eb11-b59b-005056ba09d5>) (finally accessed on June 30, 2023)

5. Transparency

The official website of the PRB¹⁸ was launched at the end of 2019 and has proven to be an invaluable tool for significantly enhancing the transparency of the institution. Over the past four years, the PRB has consistently published complete complaints, reports from review experts, and decisions from the review panel. This approach has significantly improved the capability to search for cases using various filters, granting users the option to search by decision number, procurement number, or even the title of the tender. Furthermore, the website showcases decisions for operators listed on the Blacklist¹⁹, providing a comprehensive perspective on relevant information.

While the website enhances transparency, it has notable gaps. A key concern is the two-year absence of IT officials present at the PRB, leading to technological gaps such as missing EO complaints on the site. Specifically, complaints with protocol numbers 702/22, 726/22, and 676/22 weren't uploaded. Without these documents, it's impossible to access the parties' claims, creating a critical information gap that must be addressed.



In relation to case 676/22, the website only provides access to the expert's opinion and the reasoning behind the PRB's decision. The complaint submitted by the operator InterLab Sh.P.K. regarding the supply of medical devices and equipment has been classified as unfounded by the relevant body. The estimated value of this contract was 76,000.00 euros.

The issue became even more problematic when it was discovered that the subject, as categorized by the system, belongs to the "Mental Health Center and Integrative House in the Community - Mitrovica" for procurement activity: 71206-22-9986-5-2-1. However, upon reviewing the documents, it became evident that the complaint and the expertise of the reviewing expert pertain to two entirely different subjects. Specifically, the complaint filed in case 618/22 related to the Malisheva/Mališevo Municipal Assembly for the procurement activity 62500-22-5914-1-1-1 "Supply and planting of decorative trees", while the expert's opinion was related to the Ministry of Internal Affairs (MIA) for procurement activity 214-22-3241-111 "Supply of personal identification documents and maintenance of electronic systems".

¹⁸ The official website of the Procurement Review Body (PRB) (<https://OShPrks-gov.net/sq>)

¹⁹ Black List (<https://OShPrks-gov.net/sq/Reports/ComplaintByBlackList>) (finally accessed June 30, 2023)

During the six-month review period, the PRB made it a priority to publish decisions on its website regarding operators who have been Blacklisted. In response to requests from contracting authorities, the PRB added five EOs to the Blacklist. Out of these, two operators received a one-year ban from participating in procurement activities, while three operators were banned for six months. These actions were taken due to the operators' non-compliance or violations of public procurement rules and regulations. They serve as deterrents against future misconduct and emphasize the importance of adhering to procurement regulations.

PRB publishes all the operators it blacklists

On October 20, 2022, the Municipality of Pristina, acting as the CA, submitted a request to the PRB to Blacklist the EO Matkos Pharm Sh.P.K due to the submission of false data in the procurement activity "Supply of medical equipment". The PRB approved the request in accordance with Article 99, paragraph 2, of the LPP²⁰, resulting in the EO being banned from participating in public procurement activities for a duration of one year²¹. This ban will be effective from May 2, 2023, and will conclude on May 1, 2024. Similarly, the PRB also approved the request of CA NH Ibër Lepenci to Blacklist the EO JakupNeziri B.I-NT Abetarja, for the same reason, imposing a one-year ban on their participation in public procurement activities²², effective from May 8, 2024. This request was made following the CA's allegation that the EO in question had submitted false or forged documents for the procurement activity "Supply of official material".

Due to their six-months suspension from participating in public procurement activities²³, the PRB has made decisions concerning the operators N.T.P Acvilla, N.T.Sh Nazi Travel and N.T.Sh Bedi Com based on a request from the Municipality of Dragash/Dragaš. The assertion was that these EOs had presented false or falsified documents during their participation in the procurement activity "Supply of fuel (wood)". The suspension period began on May 8, 2023, and will remain in effect until November 8, 2023.

The listening sessions were broadcast without audio

Another transparency-related issue pertains to the broadcasting of sessions directly through the YouTube platform, which continues to pose problems. While a written record is kept during the session, EOs who lodged complaints can theoretically view the session afterward via YouTube, but they must submit a written request to the PRB for the appropriate broadcast link. However, for case numbers 765-816/22 and 31/23, the recorded hearings were video-only, without any audio. This lack of sound compromises the clarity and accuracy of the information presented. One such case involved the EO complainant

20 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 99, paragraph 2 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) [finally accessed June 30, 2023]

21 The PRB's decision (<https://oshp.rks-gov.net/sq/Documents/Download?id=50c7b4d7-03ef-ed11-b5b8-005056ba09d5>) [finally accessed June 30, 2023]

22 The PRB's decision (<https://oshp.rks-gov.net/sq/Documents/Download?id=87a71140-1aef-ed11-b5b8-005056ba09d5>) [finally accessed, June 30, 2023]

23 The PRB's decision (<https://oshp.rks-gov.net/sq/Documents/Download?id=f5e2e716-05ef-ed11-b5b8-005056ba09d5>) [finally accessed, June 30, 2023]

Rahovica Commerce Sh.P.K which requested the broadcast link as evidence²⁴ for the procurement activity “Summer and winter maintenance of the national and regional roads of Kosovo for the years 2022, 2023, 2024, and 2025,” with a contract value of 30,921,000.00 euros. Upon accessing the link, the EO found that the recording of the session lacked audio, making it an incomplete piece of evidence. It is important to note that access to these broadcasts is only possible through an official request to the PRB, which then provides the broadcast link. However, ensuring the inclusion of sound in the broadcasts is crucial to upholding transparency and allowing all concerned parties to have access to complete and accurate information during the decision-making process. Another crucial aspect of ensuring operational transparency is providing public access to hearing sessions via live broadcasts. However, the PRB has adopted a new practice of deactivating the links after these live sessions. Again, the PRB justifies this practice by citing concerns about potential misuse by third parties. As a result, the sole method to access these broadcasts is by submitting an official request to the PRB, which subsequently provides the broadcast link. During the reporting period from January to June 2023, instances arose where hearing sessions were not broadcast at all due to technical problems, as reported by the PRB. Specifically, cases 166/23 and 153/23 had hearings that were not broadcast on the platform. However, it is important to note that the PRB did not consistently apply the same approach for all cases when technical difficulties arose with the device used for live broadcasting. In the case of 74/23, the PRB decided to postpone the hearing session due to equipment problems.

²⁴ The Procurement Activity (205-22-3039-2-1-1) (https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=2382431) (finally accessed June 30, 2023)

6. Engagement of experts, mistakes, and inadequate handling of cases

If the PRB determines that a complaint was submitted within the specified timeframe by the EO and met all the conditions outlined in paragraph 1 of Article 111²⁵ of the LPP, it will promptly proceed to appoint an expert for review, in accordance with Article 113 of the respective law²⁶.

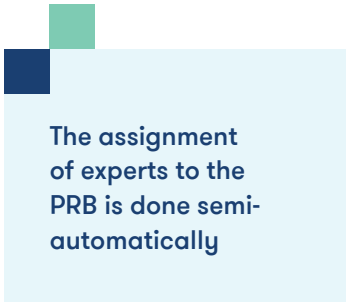
As per article 114 of the LPP²⁷, within ten days of their appointment, the reviewing expert will thoroughly examine the procurement documentation of the CA, in addition to any pertinent notes. If deemed necessary or appropriate, the expert may conduct interviews with officers, employees, or advisors from both the CA and the party that issued the complaint. Following this, the reviewing expert will provide the PRB review panel, the complainant, and the head of the CA with a comprehensive written assessment of the procurement activity in question.

The reviewing expert plays a crucial role in the process by recommending necessary corrective actions to be taken by the CA. These actions may include, as deemed appropriate and based on the specific circumstances: canceling the procurement activity, awarding the contract or the result of a design competition, extending the deadline, changing, or canceling a decision made by the CA, or implementing any other measures necessary to rectify the violations committed by the CA²⁸.

The appointment of review experts at the PRB was done manually until the recent integration of an electronic system at the PRB. Now, there is a mechanism in place that automatically generates a recommendation of three experts' names for any case reviewed by the review panel. From this list, the PRB administration appoints the most suitable expert to conduct the necessary assessment. This digital integration signifies a positive stride towards streamlining and enhancing the efficiency of the PRB's operations.

The engagement of review experts remains a matter of concern, with several issues observed during the monitoring period. Some of the problems include:

- **Handling of claims:** In some cases, review experts didn't address all claims presented, leading to partial assessments and potential oversight of key issues.
- **Divergence from original claims:** At times, review experts addressed issues not in the initial complaint, diverting focus from the main concerns.



The assignment of experts to the PRB is done semi-automatically

25 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo paragraph 1. Article 111 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed June 30, 2023)

26 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 113 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed June 30, 2023)

27 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo paragraph 1. Article 114 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>) (finally accessed June 30, 2023)

28 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 114, the responsibilities of the review expert

- **Expert withdrawal:** There were cases in which experts pulled out from their assigned claims, causing review disruptions and delays.
- **Sample assessment:** Experts sometimes struggled to properly evaluate samples from EOs, which could impact the accuracy of their evaluations and subsequent decisions.

These persistent issues necessitate a thorough evaluation of the processes related to the engagement and performance of review experts to ensure greater efficiency, consistency, and reliability in the PRB's decision-making process. In a specific case (714/22²⁹), concerning the procurement activity "Supply of vaccines" from the Food and Veterinary Agency (FVA) with a value of 250,000.00 euros, an examining expert encountered a notable issue. The EO Monuni Sh.P.K. who filed the complaint, raised a claim (claim no. 3) asserting that the winning operator had provided a different vaccine (measles) instead of the requested vaccine against Swine Flu. Interestingly, the reviewing expert deemed this claim as well-founded, even though the expert had the opportunity to seek clarification from a competent institution, the FVA. Despite this chance to gain further insights and validate the claim, the expert proceeded to characterize it as well-founded without seeking the necessary clarifications. Such a decision has raised concerns regarding the thoroughness and accuracy of the review process.

In response to the review panel, the Directorate of Animal Health and Welfare of the FVA provided information regarding the application and issuance of the Summary Application Sheet for Marketing Authorization of Veterinary Medicinal Products, which was issued by FVA on June 28, 2022. According to the FVA's assessment, the required vaccine was intended to prevent the disease Classical Swine Fever. This assessment contradicted the decision of the examining expert and the claim made by the complainant EO Monuni Sh.P.K. regarding the use of a different vaccine (measles) by the winning operator. The FVA's clarification supported the contention that the correct vaccine was indeed used for preventing the Classical Swine Fever disease, thereby dismissing the examining expert's earlier conclusion, and validating the procurement activity as compliant with the specified requirements.

In the case of the procurement activity "Supply of uniforms for correctional staff", the company A&V Collection submitted a complaint against the decision of the Kosovo Correctional Service (KCS). However, during the review process, the examining expert withdrew from providing his evaluation. Subsequently, during a hearing session conducted by the PRB on March 1, 2023, the reviewing expert made a public admission. He acknowledged that while preparing the evaluation for case 603/22³⁰, he had failed to thoroughly analyze the laboratory certificates provided by the complainant EO. As a result, he had to revise his position and reject his own submitted assessment. The PRB's review panel in this case concluded that the certificates issued by the certified laboratory used by the complainant EO were not in line with the specifications outlined in the tender documents set by the CA (KCS).

The KCS initiated a procurement activity for the supply of uniforms for the correctional staff with an estimated contract value of 1,029,460.95 euros³¹. The PRB upheld the decision to cancel the activity. This case serves as a prime example of the importance of both the CA and the complaining party providing written evidence³² within the specified time frame to support their (dis)agreement with the review expert's opinion. In many cases, both parties simply state their disagreement with the expert's assessment, without presenting any substantive argu-

29 The decision number 714/22 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/48a3fef3-faa2-ed11-b5b4-005056ba09d5>) (finally accessed on June 30, 2023)

30 The decision number 603/22 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/51455c19-f5bb-ed11-b5b5-005056ba09d5>) (final access on June 30, 2023)

31 The procurement number 33600-22-5065-1-1-1 (https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=2335686) (final access on June 30, 2023)

32 The Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 115, paragraph 2

ments to support their position. To ensure a fair and transparent review process, providing well-founded evidence is essential for the parties involved in the procurement dispute.

It is imperative to provide a detailed written argument either supporting or contesting the conclusions drawn by the review expert. This becomes especially crucial given that the review panel doesn't consistently schedule in-person hearings for parties to present their cases. Another case that was addressed by the PRB involved procurement activity for the supply of plasticized adhesive paper (stickers) for aluminum license plates for the MIA. The contract in question was valued at 384,000.00 euros, and the complaint was submitted by the EO CETKOS L.L.C³³. The complaining EO had been disqualified by the CA on the grounds that the paper sample did not meet technical specifications.

Upon receiving the complaint, the PRB review panel engaged an expert to provide an evaluation on the subject in question. During the hearing, the expert stated that for claim number 2, which pertained to the complaint about paper samples, the adhesive paper had been requested from the complaining EO directly, rather than from the CA. This approach raised concerns about the potential for manipulation or bias. To ensure a fair and transparent evaluation process, the examining expert, at the moment of assessing the samples, requested the CA provide the samples submitted by all EOs during the application for procurement activity. This would eliminate any suspicion of misuse and ensure that all samples are evaluated based on the same criteria without favoritism towards specific operators.

During the monitoring period from January to June 2023, the PRB encountered several cases where the review panel rejected the expertise of the engaged experts, leading to special decisions. Examples of such cases include 655/22, 678/22, 695/22, 696/22, 701/22, 789/22, 17/23 and 20/23, where the PRB disagreed with the experts' findings.

One such case involved the procurement activity "Supply of medicines from the essential list for the needs of University Hospital and Clinical Service of Kosovo (HUCSK), lot 1, with an estimated value of 207,000.00 euros. In this case, the review panel disregarded the assessment of two experts. While the panel found the expert findings acceptable, they disagreed with the recommendation to cancel the entire activity³⁴. The review panel emphasized the sensitivity of this procurement activity, as conveyed in letters from the CA to the PRB, highlighting the crucial need to supply the product 'Fentanyl', which is vital for the functioning of operating rooms.

It is worth noting that, despite the letters from the CA, the PRB took 56 days to issue a decision for this case after the Liri-Med operator submitted the complaint. This delay could have had significant implications, considering the importance of timely medical supplies in critical healthcare settings.



On
51
occasions, the
PRB's decisions
diverged from
their experts'
recommendations

33 The decision number 91/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/f75e57ad-c8f0-ed11-b5b8-005056ba09d5>) (finally accessed on June 30, 2023)

34 The decision number 20/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/97f51de0-7bc1-ed11-b5b5-005056ba09d5>) (finally accessed on June 30, 2023)

Conclusions

BASED ON OBSERVATIONS MADE BY MONITORS FROM JANUARY TO JUNE 2023, THE PRIMARY CHALLENGES PERSISTENTLY ENCOUNTERED BY THE PRB ENCOMPASS THE FOLLOWING KEY AREAS:

Delays in decision-making

Exceeding the legal deadline for the publication of decisions remains a persistent and concerning issue faced by the PRB. This problem not only affects the efficiency and effectiveness of the public procurement process but also undermines the trust and confidence stakeholders place in the PRB's ability to resolve complaints in a timely and fair manner.

One of the primary consequences of these delays is the prolonged duration of public procurement activities. When complaints are not promptly addressed and decisions are not published within the prescribed timeframe, the smooth flow of procurement processes is hindered. The uncertainty faced by all parties involved, including the contracting authorities and EOs, can result in project delays, financial setbacks, and missed economic development opportunities.

The delays can be particularly detrimental in cases where procurement activities have seasonal or time-sensitive implications. For instance, tenders related to road maintenance during the winter or summer, or the supply of goods for certain events, may have limited windows of opportunity. When decisions are delayed, the purpose of these activities may become obsolete or less relevant, negatively impacting the efficiency and cost-effectiveness of the projects.

Moreover, exceeding the legal deadline erodes the integrity and reputation of the PRB as an independent and impartial body responsible for resolving procurement disputes. Stakeholders, including EOs, CAs, and the general public, may perceive the PRB as inefficient or unable to fulfill its mandate, leading to a lack of trust in the institution.

Lack of consistency in decisions

Inconsistency in decisions continues to be a significant challenge for the PRB, and its implications go beyond the realm of EOs. This issue has a profound impact on the credibility and reliability of the PRB as an institution responsible for reviewing public procurement complaints. The inconsistency of decisions raises concerns about the fairness and impartiality of the review process.

For EOs, facing unpredictable and varying outcomes can lead to uncertainty and frustration. A lack of clarity in the PRB's decisions makes it difficult for operators to understand the criteria used to assess their complaints, hindering their ability to navigate the procurement process effectively. This uncertainty can discourage EOs from raising legitimate complaints, as they may perceive the process as futile or biased.

Moreover, inconsistency erodes public trust in the PRB's ability to uphold the principles of transparency and accountability in public procurement. A perception of bias or arbitrary decision-making can erode citizens' confidence in the integrity of the procurement system, which is essential for promoting fair competition and ensuring taxpayers' money is used efficiently.

The engagement of experts

The PRB's effective functioning relies heavily on the expertise of its review experts, particularly in specialized fields such as IT and medicine. To ensure the PRB can handle complex and technical complaints with accuracy and proficiency, it is essential to address the issue of expert engagement and expertise enhancement.

Lack of transparency

Transparency in the PRB's work needs improvement. This includes broadcasting all hearings online, maintaining hearing links for public access, publishing the complaints and decisions in a readable format on the official website, and ensuring proper documentation.

Recommendations

BASED ON THE FINDINGS REPORTED HERE, D+ RECOMMENDS THE FOLLOWING ACTIONS TO IMPROVE THE PRB'S PERFORMANCE:

1

Strengthen the database system:

The PRB should prioritize the recruitment of an IT specialist to refine and enhance their database. This enhancement is geared towards simplifying the search for decisions on particular matters and promoting consistent decision-making. A robust IT infrastructure will optimize case management, ensure secure document storage and retrieval, and ultimately elevate the PRB's transparency standards.

2

Publish expected decisions:

Compile a list of common claims from EOs and proactively publish anticipated decisions for these claims. This will provide EOs with advanced insight and potentially reduce the number of complaints. The PRB should work towards the establishment of well-defined and uniform criteria for decision-making across various cases. This standardization will streamline the process, promoting a more consistent decision-making approach and ensure fairness in addressing the complaints received.

3

Revise the process for the automated selection of experts:

Modify the system to generate a single expert's name instead of offering three recommendations. This adjustment will enhance transparency and avoid favoritism. Given that the PRB heavily relies on the expertise provided by the expert, this adjustment is even more critical.

4**Evaluate the performance experts:**

Regularly assess the performance and quality of expert's work to ensure professionalism and impartiality, particularly in cases involving inadequate performance. The PRB should prioritize the recruitment of experts, especially in the fields of IT and medical equipment, to address cases with higher accuracy and efficiency. Implementing training programs and opportunities for professional development opportunities can elevate the expertise level within the PRB and ensure better consistency. Additionally, consistent engagement with stakeholders, including EOs, CAs and civil society organizations, can promote transparency, as well as gather relevant feedback for the better functioning of the PRB.

5**Eliminate the practice of partially founded cases:**

Encourage examining experts not to categorize cases as partially founded, as this practice complicates the decision-making process for the review panel.

6**Publish fines levied against contracting authorities:**

Make public the list of contracting authorities that have been fined due to non-compliance with PRB decisions. This measure would discourage future violations.

7**Enhance document accessibility:**

Store all essential documents, including decisions, appeals, and expert reports, in a legible (machine readable) electronic format for convenient public access. This step will increase transparency and accountability. Additionally, publishing comprehensive annual reports containing information about contracting authorities that have not complied with PRB decisions, performance, statistics on the backlog, incoming cases, and results thereof, will allow interested parties to evaluate the effectiveness and efficiency of the PRB.

8**Fully implement key transparency measures:**

Implement the direct broadcasting of all hearings and sessions, retain accessible links for the previous sessions, and publish complaints and decisions in a clear and legible format on the PRB webpage. This will enhance transparency and public access to the operations and procedures of PRB.

By implementing these recommendations, the PRB can enhance its transparency, credibility, and effectiveness in addressing public procurement complaints, contributing to a more accountable and efficient public procurement system in Kosovo.

