



Rooftop Collapse of Prishtina Municipality Building - A Wake- Up Call for Fighting Corruption in Public Procurement

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Introduction

On January 18, 2024, due to subpar construction work, winds caused the collapse of the rooftop of the new municipal building in Prishtina, resulting in material damage and injuries to people.¹ This incident highlights the consequences arising from the lack of sanctions against companies that consistently violate the Public Procurement Law (PPL).

This brief analysis aims to highlight specific cases of procurement fraud that have gone unpunished by the responsible authorities. The analysis further reveals that even when companies or their owners have been convicted by courts for procurement fraud, the penalties have been lenient, failing to deter these entities from continuing similar fraudulent practices. In conclusion, the analysis provides recommendations for relevant institutions to enhance the system and promote integrity in public procurement.

NBT-ING Sh.P.K. and the History of Fraud in Public Contracts

In January 2023, the Municipality of Prishtina allocated €700,000.00² for the reconstruction of the rooftop of the new municipal building. The contract was awarded to NBT-ING Sh.P.K., which submitted a bid of €386,096.29—approximately €313,903.71 lower than the estimated value for this project. The awarded company that completed the work on the rooftop of the municipal building has a history of involvement in public procurement fraud.

1 What Happened to the New Prishtina Municipality Building's Rooftop? Kallxo.com, 2024. LINK: <https://kallxo.com/komuna/cka-ndodhi-me-kulmin-e-objektit-te-ri-te-komunes-se-prishtines/>
2 The tender number for this procurement was 616-22-14609-5-1-1. LINK: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=2614795

As we delve deeper into this matter, it's worth noting that the owner of NBT-ING Sh.P.K. was found guilty of forgery and fraud in public tenders on two distinct occasions. However, the company was never excluded from participating in public procurement activities.

Let's consider the **FIRST CASE**. In 2018, NBT-ING Sh.P.K. submitted falsified documents for the tender titled 'Construction of the Mushtisht-Vërbeshticë-Shtërpc road'. This project, initiated by the Municipality of Suhareka, had an estimated value of €1,000,000.00.³ The Basic Court in Prizren - Suhareka Branch, under judgment no. 341/2019 dated 29.06.2021, found the company's owner guilty of document forgery related to this case. Consequently, a fine of €900.00 was imposed.

Moving on to the **SECOND CASE**, NTB-ING Sh.P.K. continued to secure public contracts. One such contract was the "Renovation of the Special Prosecutor's Office" tender, valued at approximately €999,800.00.⁴ During this 2020 procurement activity, the company once again committed fraud by submitting falsified documents. The Basic Court in Prishtina – Department for Serious Crimes, in its judgment No. 450/2021 dated 10.10.2022, found the owner of NTB-ING Sh.P.K. guilty of abuse and fraud in public procurement. As a result, a fine of €2,000.00 was imposed, and the owner was sentenced to one year in prison. This judgment was later upheld by the Court of Appeals in its decision No. 602/2022 dated 12.01.2023.

Despite these two convictions in 2018 and 2020 for procurement fraud, NTB-ING Sh.P.K. continued to participate in and win tenders. In 2023, the company won the tender from the Municipality of Prishtina for the reconstruction of the rooftop of the new municipal building. This was possible because the contracting authorities (the Municipality of Suhareka in the first case and the Kosovo Prosecutorial Council in the second case) did not request the Procurement Review Body (PRB) to disqualify the company, thereby allowing it to remain eligible to compete in public tenders.

“The Blacklist” as an Underutilized Mechanism in Combating Procurement Fraud

When companies aiming to secure public contracts submit falsified documents or provide false information, it's the responsibility of public institutions to enforce legal mechanisms for their punishment.

One of the most effective mechanisms that can be applied in cases where companies submit forged documents or declare false information is their disqualification from participating in public tenders, commonly known as “The Blacklist.” The main advantage of this tool, provided by the Public Procurement Law (PPL), has a significant advantage: the speed of decision-making. PRB can decide to disqualify companies for up to one year without a court decision, based solely on a request from the public institution (the contracting authority).⁵

Despite the courts confirming on two occasions that NBT-ING Sh.P.K. had forged documents, neither the Municipality of Suhareka nor the Kosovo Prosecutorial Council, as contracting authorities, submitted a request for the company's disqualification. This is surprising, given that it was their exclusive responsibility to do so. In fact, these two institutions should have made such a request, especially at the moment when suspicions of document forgery arose.

3 The tender number for this procurement was 624-17-4850-5-1-1. LINK: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=170683

4 The tender number for this procurement was 250-19-8457-5-1-1. LINK: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=839000

5 Official Gazette of the Republic of Kosovo. The Law No. 04/L-042 on Public Procurement, Article 99.2. LINK: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

Looking at the disqualification cases from January 1, 2021, to January 1, 2024, the PRB disqualified only 36 companies⁶ from participating in public procurement. This number is relatively small, considering that approximately 30,000 public contracts were awarded during this three-year period.⁷ “The Blacklist” is currently the only legal mechanism that allows contracting authorities to proactively safeguard the integrity of public procurement. However, the disqualification of merely 36 companies over a three-year period indicates a significantly low utilization of this mechanism.

Courts’ Issuance of Mild Sanctions

In addition to “The Blacklist,” criminal sanctions imposed by the courts serve as another tool in combating procurement fraud. These sanctions are based on the Criminal Code of the Republic of Kosovo, which includes provisions for criminal acts such as forgery, fraud, and misuse in public procurement.

Unlike “The Blacklist,” which is initiated by the contracting authority, investigations into criminal acts in public procurement are officially carried out by the prosecutor’s office. However, a significant issue with this approach is the lenient sanctions imposed on companies found guilty of procurement fraud. Therefore, the courts are imposing light sanctions that do not result in an improvement in the situation on the ground despite the provisions of the Criminal Code. This is evident from the court decisions regarding NBT-ING Sh.P.K.’s actions.

Although the Criminal Code in force in 2018 provided for fines or imprisonment of up to three (3) years⁸ for anyone falsifying a document, the owner of NBT-ING Sh.P.K., in the first case, was fined only €900.00. In the second case, despite the 2019 Criminal Code increasing the severity of imprisonment for such cases, the company’s owner was fined €2,000.00 and sentenced to one year in prison. It is worth noting that according to the Criminal Code passed in 2019, for cases of forgery, it provides for fines and imprisonment of up to four (4) years for whoever draws up a false document, alters a genuine document with the intent to use such document as genuine⁹, and fines or imprisonment of up to (5) years for anyone committing the acts of fraud and misuse in public procurement.¹⁰

Such sentences are not proportionate to the level of risk posed by the fraudulent actions of these companies. In fact, these sentences not only demonstrate a profound mismatch between the severity of the violation and the punishment but also encourage the commission of similar acts in the future. This is evidenced by the case of the company awarded the contract for the reconstruction of the rooftop of the Prishtina Municipality building.

6 Lack of criminal prosecution for cases of document forgery in procurement processes in 2023. Democracy Plus. LINK: https://dplus.org/wp-content/uploads/2023/12/27-12-23_Mungesa-e-ndjekjes-penale-per-rastet-e-falsifikimit-te-dokumenteve-ne-procset-e-prokurimit-publik.pdf

7 2022 and 2023 Public Procurement in numbers. Democracy Plus. LINK: https://dplus.org/wp-content/uploads/2023/05/22-05-2023_Prokurimi-publik-ne-numra-gjate-vitit-2022-1.pdf

8 Official Gazette of the Republic of Kosovo. Criminal Code no. 04/L-082 of the Republic of Kosovo, Article 398. Repealed by the Criminal Code no. 06/L-074 of Republic of Kosovo. LINK: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

9 Official Gazette of the Republic of Kosovo. Criminal Code no. 06/L-074 of the Republic of Kosovo, Article 390.1. LINK: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

10 Official Gazette of the Republic of Kosovo. Criminal Code no. 06/L-074 of the Republic of Kosovo, Article 415.1. LINK: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

Loopholes in the Public Procurement Law

In addition to the inaction of institutions in enforcing their rights and responsibilities, another issue is the existence of loopholes in the legal framework that allow non-compliant companies to continue securing public contracts.

The Public Procurement Law (PPL) in principle prohibits a company from participating in procurement activities or executing a contract if any of its directors, managers, or executives have been declared guilty by a competent court in the past ten years.¹¹ However, according to the interpretation of the Public Procurement Regulatory Commission (PPRC)¹², this provision only applies to current directors, managers, or executives employed in the company. It excludes former directors, managers, or executives who may have committed criminal acts for the company's benefit.

According to the PPRC, this provision does not apply to former staff who may have committed criminal acts while at the company. This interpretation allows a company to continue operating unhindered by simply changing its team, specifically the owner, manager, or director.

11 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement, Article 65 paragraph 3, point 1. LINK: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

12 A request for interpretation was sent to the PPRC by D+ on January 24, 2024.

CONCLUSIONS AND RECOMMENDATIONS

Based on the discussion above, we can draw several conclusions:

- The collapse of the Prishtina Municipality building rooftop should serve as a wake-up call for all public institutions, especially those enforcing the Public Procurement Law (PPL), to take appropriate actions to combat irregularities in public procurement.
- The underutilization of legal mechanisms such as “The Blacklist” indicates a lack of awareness among law enforcers regarding the preventive effects of these mechanisms and evasion of responsibility. The fact that the case is handled by judicial authorities does not mean that other institutions are exempt from responsibility and the right to request disqualification.
- Minimal penalties are insufficient in sanctioning perpetrators of criminal acts in public procurement. The significant disparity between the severity of the offense and the imposed sanction is creating a culture of impunity, undermining the integrity of the process.
- There are loopholes in the PPL that leave room for manipulation regarding whether former company executives who are no longer in leadership positions should be punished, although the fraud was committed during their tenure.

Based on these conclusions, several recommendations can be made as follows:

- Public institutions (contracting authorities) should, in every case where they find that an economic operator has submitted forged documents or made false declarations, submit a request to the Public Procurement Review Body (PRB) for the disqualification of the company.
- Courts, when making decisions, should consider the risk posed and, in proportion to the violation, impose sanctions on perpetrators of criminal acts in public procurement, adhering to the principle of proportionality between the damage caused and the punishment imposed.
- In addition to imposing penalties in proportion to the offense, judicial authorities should ensure the application of other measures provided by the Penal Code, which ensure the effective implementation of penalties.
- The new Public Procurement Law and secondary legislation should provide prohibitions on public tendering for companies that make changes to their management team with the intention of circumventing eligibility criteria.