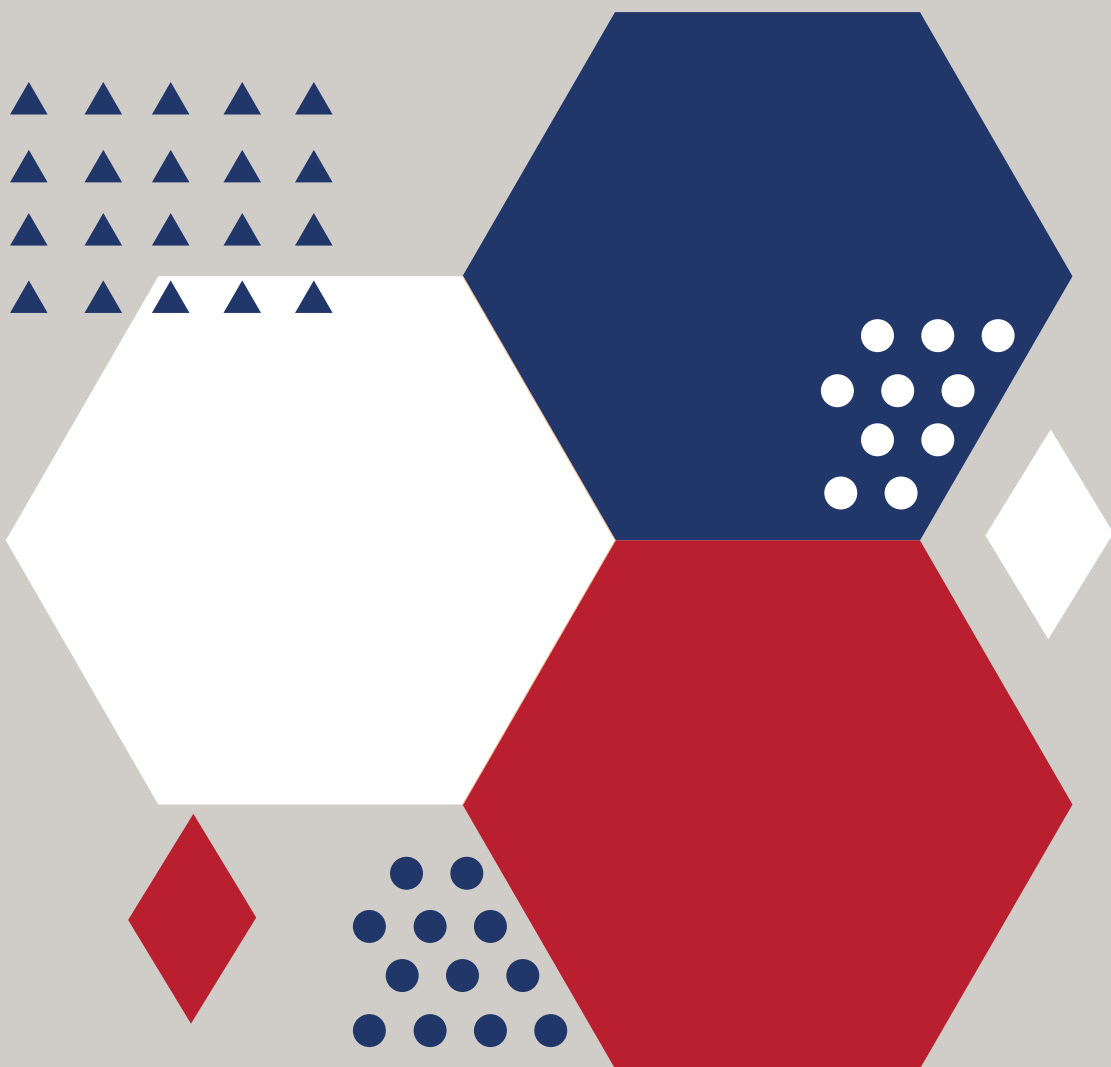




USAID
NGA POPULLI AMERIKAN
OD AMERIČKOG NARODA

Assessing the Procurement Review Body: A Six Month Review and Recommendations (January - June 2024)



Assessing the Procurement Review Body: A Six Month Review and Recommendations (January - June 2024)

USAID's Kosovo Municipal Integrity activity

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

List of abbreviations

- CA** → Contracting Authority
- CMIS** → Case Management Information System
- D+** → Democracy Plus
- EO** → Economic Operator
- KC** → Kosovo Customs
- KEC** → Kosovo Energy Corporation
- LPP** → Law on Public Procurement
- PRB** → Procurement Review Body

Table of contents

List of abbreviations	4
Executive Summary	6
Comparative Analysis: January – June 2023 vs. January – June 2024	7
Introduction	8
Number and nature of PRB decisions in the first quarter of 2024	9
Decision Timeliness and Impact on Public Procurement	11
Challenged PRB Decisions and Disqualification List	13
Lack of Consistency in Decision-Making	15
Delays in Decision-Making	16
Partially Grounded Decisions and Non-Forfeiture of Complaint Filing Fee.....	18
Transparency	20
Engagement of experts, errors and inadequate handling of cases	22
Conclusions	24
Recommendations.....	25

Executive Summary

This monitoring report, developed by Democracy Plus (D+), under the USAID Kosovo Municipal Integrity (KMI) activity, presents an assessment of the Procurement Review Body (PRB) based on observations conducted over a six-month period, from January to June 2024. The monitors closely examined the PRB's decisions and practices to evaluate its impartiality and effectiveness in handling complaints submitted by Economic Operators (EOs). This report highlights several ongoing challenges faced by the PRB, including inconsistent decision-making, expert errors, delays in decision-making, and insufficient transparency.

Throughout the monitoring period, the PRB continued to struggle with adhering to legal deadlines for issuing decisions on complaints. According to the Public Procurement Law (PPL), the PRB is required to issue decisions within 34 days, with a possible extension of 20 days in special cases. However, the PRB frequently exceeded these deadlines, which exacerbated the backlog of unresolved complaints from previous periods.

The PRB's board operated with only three of the required five members for most of the first half of 2024. This was due to the resignation of one member at the end of 2023 and the dismissal of another, which was later declared unconstitutional by the Constitutional Court. The absence of two members further strained the board's capacity, leading to delays in decision-making and an inability to effectively manage the caseload.

Despite the challenges, there were some improvements in the PRB's transparency, particularly in involving stakeholders in public discussions for proposed amendments to its Rules of Procedure. However, significant issues remain, including technical problems with the PRB's website, inconsistent publication practices, and delayed disclosure of disqualification requests.

The PRB's reliance on expert recommendations remains inconsistent. While experts are consulted for technical procurement cases, their advice is not always fully integrated into the decision-making process. This inconsistency, especially in technical areas such as IT and medical equipment procurement, has led to concerns about the board's expertise and the reliability of its decisions.

During the monitoring period, there was a noticeable continuation of the PRB's practice of issuing partially grounded decisions, which was largely reduced in the first half of 2023. This practice, where complaints are partially upheld and appeal fees are refunded to EOs, continues to raise concerns about the PRB's decision-making process and its impact on discouraging frivolous appeals.

In conclusion, while the PRB has made some strides in improving transparency and stakeholder engagement, it continues to face significant challenges that hinder its effectiveness. The report outlines recommendations to address these issues, aiming to enhance the PRB's performance in the future.

Comparative Analysis: January – June 2023 vs. January – June 2024

The challenges faced by the PRB in 2024 closely mirror those observed in the previous year, with several key issues persisting. In both periods, the PRB struggled with delays in decision-making, primarily due to an understaffed board and a significant backlog of unresolved complaints. However, while the PRB in 2023 operated with four members following the resignation of one, the situation in 2024 worsened as the board was reduced to just three members for most of the period. This reduction further strained the PRB's capacity, leading to more pronounced delays and operational inefficiencies.

In terms of transparency, while there were some improvements in 2024—particularly in stakeholder engagement and the amendment of rules—critical issues from 2023 remained unresolved. Both periods were marked by inadequate publication practices, technical issues with the PRB's website, and inconsistent use of expert recommendations, particularly in technical cases. Additionally, the continuation of partially grounded decisions in 2024, a practice that saw a significant reduction in 2023, suggests a regression in the PRB's efforts to streamline its decision-making process and reduce frivolous appeals.

Overall, the PRB's performance in 2024, while showing some areas of progress, reflects ongoing challenges that were also prominent in 2023. These persistent issues underscore the need for more robust reforms to improve the PRB's efficiency, consistency, and transparency in the future.

Introduction

The Procurement Review Body (PRB) is an independent administrative body responsible for reviewing complaints in public procurement from suppliers, service providers, and/or contractors (known as economic operators). Upon receiving a written complaint regarding a decision made by a contracting authority, the PRB is mandated to review such complaints within legally specified timeframes to ensure timely resolutions. Following the review process, the PRB issues a written decision addressing the complainant's claims and rendering a decision on the procurement activity against which the complaint was filed.

For most of the first half of 2024, the PRB operated with only three members out of the required five. This was due to one member resigning for personal reasons at the end of 2023 and another being dismissed by the Assembly of Kosovo for alleged professional ethics violations in the procurement case for insulin supply. This dismissal was later declared unconstitutional by the Constitutional Court in June 2024.¹ The full decision of the Constitutional Court has not yet been published, so it remains unclear whether the dismissed member will be reinstated.

The absence of two members for most of this reporting period jeopardized the board's efficiency, as the remaining three members had to manage an increased workload. This was, further strained by the carryover of 219 unresolved complaints from 2023 into the first half of 2024. Compared to the second half of 2023, the number of received complaints was smaller by 60, totaling 568 complaints.

Compared to the previous year, when the PRB decided to amend Regulation No. 01/2020, specifically Article 21², the PRB faced criticism for a lack of transparency. This year, the PRB initiated another amendment to its Rules of Procedure, this time including stakeholders in the public discussion.³ Although the draft regulation was subject to public hearings at the beginning of 2024 and underwent numerous changes based on received comments, it has not yet been approved by the PRB.

In April 2024, the PRB gained a fourth member after one of the two candidates proposed by the Government of Kosovo was voted in by the Assembly on April 25, 2024.⁴ The new member assumed her position at the end of May. During this reporting period, the PRB also faced the absence of an IT specialist, as the previous specialist resigned at the end of January. In February, the PRB announced a competition for hiring an IT officer⁵. However, after the preliminary evaluation phase⁶, the process was canceled in April⁷ because none of the candidates achieved the required scores for appointment.



During the first half of 2024, PRB has been operating without a complete board

568

complaints were received within six months

The new Work Regulation was not approved

1 Decision of the Constitutional Court (<https://gjk-ks.org/njoftim-per-vendim-ne-rastin-ko157-23/>), (last accessed on 30 June 2024)

2 Amended Regulation no. 01.2020 (<https://oshp.rks-gov.net/sq/Documents/Download?id=32d256d8-2a52-ee11-b5bc-005056ba09d5>), (last accessed 30 June 2024)

3 Draft/Regulation of the Work of Public Procurement Review Body (<https://oshp.rks-gov.net/sq/Pages/Details?id=6>), (last accessed 30 June 2024)

4 The PRB's decision on the selection of the new member can be found here ([https://www.kuvendikosoves.org/Uploads/Data/Session-Files/2024_05_02_\(25_04_2024\)Vendim-PerzgjedhjaneanetaritteOrganitShqirtuesteProkurimit_DrhzDXJV3N.pdf](https://www.kuvendikosoves.org/Uploads/Data/Session-Files/2024_05_02_(25_04_2024)Vendim-PerzgjedhjaneanetaritteOrganitShqirtuesteProkurimit_DrhzDXJV3N.pdf)), (last accessed June 30)

5 Details of the IT officer competition announcement (<https://oshp.rks-gov.net/sq/Documents/Download?id=22d6722d-fccf-ee11-b5c1-005056ba09d5>), (last accessed June 30)

6 The preliminary evaluation phase for the IT officer (<https://oshp.rks-gov.net/sq/Documents/Download?id=a6bdc7d5-7df2-ee11-b5c2-005056ba09d5>), (last accessed June 30)

7 The cancellation decision for IT officer position (<https://oshp.rks-gov.net/sq/Documents/Download?id=ed4183d6-7517-ef11-b5c5-005056ba09d5>), (last accessed June 30)

Number and nature of PRB decisions in the first quarter of 2024

The number and the types of PRB's decisions in the first six months of 2024:

D+ monitored the PRB's decision-making process from January 1 to June 30, 2024. During this period, the PRB issued 367 decisions on the complaints filed, while 201 complaints remained unresolved. A total of 25 hearings were held with the involved parties, 13 fewer than in the second half of 2023.

367
decisions

201
complaints still under process

PRB held
25
hearing sessions

The decisions made during this reporting period are categorized as follows:



114

decisions favored the economic operators who filed complaints.



253

decisions were against the complainant economic operators.



In 64

cases, the PRB's decisions did not align with the experts' recommendations.

Out of 367 completed cases:

93 **complaints** were dismissed as inadmissible because they either lacked proof of payment for the complaint fee or the complaining economic operator did not first appeal to the Contracting Authority (CA) as required by the Public Procurement Law (PPL).

9 **complaints** were dismissed for being filed outside the legally defined timeframes. **In 30 cases**, the parties reached an agreement, and the PRB issued a decision acknowledging the settlement.

Categorization of decisions according to the number of members in the Review Panel:



Nature of accepted complaints:




Decision Timeliness and Impact on Public Procurement

Delays in the PRB’s decision-making process and the filing of complaints by economic operators can significantly postpone capital investments, impacting valuable projects and causing considerable setbacks for several months. Tenders with seasonal impact are particularly vulnerable, resulting in negative effects on citizens. The suspension of these procurement activities detrimentally affect public services and infrastructure, emphasizing the urgency of addressing and resolving complaints promptly and efficiently.

In one instance, the PRB delayed its decision by 91 days, identifying several violations by the Contracting Authority (CA). However, the CA’s decision remained effective because the contract in question had already been over 70% fulfilled. This case involved the tender for “Physical Security Services at the Gjilan/Gnjilane General Hospital,” initiated by the Gjilan/Gnjilane General Hospital. The complaint was filed with the PRB on November 9, 2023, by the economic operator “Scorpion,” but the review panel did not render a decision until February 7, 2024. The review expert confirmed that the CA had violated the Public Procurement Law, specifically Article 7⁸, which mandates equal treatment and non-discrimination of operators in procurement procedures.

The CA failed to invite the complaining operator to the negotiated procurement procedure, even though the operator was under a previous contract for the same services. Despite identifying violations, the expert recommended that, at this stage of contract signing, the complainant should be considered as party having no interest, as they were not involved in the procurement activity. The review panel agreed with the expert’s findings and decided to uphold the CA’s decision. The justification for not canceling the contract, despite the identified violations, was that the contract, signed on October 27, 2023, was set to end on April 27, 2024.

By the time the Review Panel reached its decision, approximately 70% of the contract had been executed, with only a short time remaining until its completion. The Review Panel acknowledged that the delay in decision-making was significant in this case. They noted that if the contract had an indefinite end date, as sometimes seen in negotiated procedures where the contract lasts until a new one is signed, the Review Panel’s decision might have been different. For the observed violations, the PRB warned the CA that if such violations were repeated, they would refer the case to the Public Procurement Regulatory Commission (PPRC) to request the revocation of the procurement certificate, according to Article 25, paragraphs 8 and 9 of the LPP.⁹



PRB took 93 days to reject a complaint that should have been dismissed upon receipt

⁸ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 7 (<https://gzk.rks-gov.net/Act-DocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

⁹ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 25, paragraph 8 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

In another case, it took the PRB 93 days to declare a complaint inadmissible, whereas the PRB typically issues an administrative decision for such cases within 10 to 15 days from the date of the complaint. Article 111, paragraph 3 of the LPP¹⁰ states that PRB shall, upon receiving a complaint, immediately review it to ensure it meets the requirements of paragraph 1 of this Article, and complete this review in one (1) day. On December 11, 2023, the PRB received complaint 995/23 from “Crystal Clear” Sh.P.K regarding the procurement activity “Maintenance of Buildings - Cleaning of KPSH and QPS Buildings” initiated by the Municipality of Gjakova/Djakovica as the CA. The PRB determined that the complainant did not comply with Article 108/A, paragraph 3, point 1 of the PPL¹¹, which requires that the request for review be submitted to the relevant contracting authority within five days before the deadline for submitting bids if the alleged violation concerns the contract notice or tender documents. In this case, the complainant filed the complaint one day before the bid submission deadline. Despite this, the PRB took 93 days to declare the complaint inadmissible. For similar cases (251/24, 432/24, 446/24, 510/24) that do not require the involvement of a review expert, the PRB typically issues a decision within 10-15 days.

During this monitoring period, D+ observed that for a particular procurement activity, although two similar complaints were submitted to the PRB, only one decision was published, while the other case remained undecided for more than 90 days after the complaint was filed. On September 25, 2023, the Kosovo Energy Corporation (KEC), acting as the CA, published a “Contract Notice” for the procurement activity “Transport of KEC Workers,” with an estimated value of €4,482,760.00, divided into lots. For Lot 1, the contract was awarded to “Flutura Reisen.” Disgruntled with this decision, the operators “Autotransporti” Sh.A. and “Dita Travel” Sh.P.K. filed complaints with the PRB, cases 313/24¹² and 314/24¹³ respectively, arguing that the recommended operator for the contract did not meet the tender requirement that the minibuses used for worker transportation must have more than 18 seats.

The review panel, after receiving the expert analysis, which recommended the same outcome for both complaints, issued a decision for “Autotransporti” Sh.A.’s complaint after 61 days. However, “Dita Travel” Sh.P.K.’s complaint remains unresolved. To determine if this was a technical oversight, D+ requested clarification from the PRB. The PRB confirmed that the case was still under review and that once a decision was made, it would be published on their official website. They did not provide any further information on why the decision for “Dita Travel” Sh.P.K.’s complaint had been pending for 90 days.

For case 313/24, a decision was made by the Review Panel, while a similar case (313/24) remains in process, despite both cases involving the same procurement activity

These delays in decision-making, caused in part by the circumstances within the PRB during this period—including the resignation or dismissal of members—result in financial losses for the involved economic operators and have adversely affected the well-being of citizens. Such delays disrupt planned operations and investments for businesses, impacting both economic and public sectors. Immediate resolution of complaints is crucial for the seamless execution of projects and to prevent financial obstacles and disruptions for all stakeholders.

10 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 111, paragraph 3 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

11 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 108A, paragraph 3, item 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

12 PRB case number 313/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/a4ac1bf0-03f8-ee11-b5c3-005056ba09d5>) (last accessed on 30 December 2024)

13 PRB case number 314/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/1c3be7af-04f8-ee11-b5c3-005056ba09d5>) (last accessed on 30 December 2024)

Challenged PRB Decisions and Disqualification List

If a complainant believes that a PRB's final decision or a review panel's findings contradict the facts or the LPP, they can request a review by the Basic Court according to Article 119, paragraph 1 of the LPP.¹⁴ This request must be submitted within thirty (30) days from the date of the PRB decision's publication. During the reporting period from January 1 to June 30, 2024, no court rulings have been received by the PRB in response to lawsuits filed by economic operators against the review panel's decisions.

The only documents received by the PRB from the Commercial Court during this period were ten rulings on requests by economic operators to postpone the execution of Review Panel decisions. Out of these, nine requests from EOs for postponement were rejected at the first level, with two also rejected at the second level. Only one request for postponement of the execution of Review Panel decision was approved. This approved request involved the procurement activity "Construction of the Isa Boletini Economic High School", conducted through an open procedure and classified as a works contract, with an estimated value of €2,000,000.00. The complaining operator, "Arad 94" Sh.P.K, was disgruntled with the PRB decision, which partially upheld their complaint but still allowed the contracting authority's decision to award the contract to stand. They appealed to the court for a postponement of the decision's execution, which was granted. The PRB challenged this court decision at the second level, but a final decision has not yet been made.

According to Article 99, paragraph 1 of the LPP¹⁵, upon a written request by a contracting authority regarding the submission of false information or forged documents by an economic operator, the PRB is obliged and authorized to review and disqualify the economic operator from participation in public procurement for up to one year.

From January to June 2024, the PRB published decisions on its website regarding the economic operators added to the disqualification list in response to requests from contracting authorities. The PRB disqualified eight economic operators, imposing bans ranging from 6 to 12 months. However, a persistent issue is the delayed publication of disqualification requests on the website, as these requests become public only after the PRB issues a decision.

PRB did not receive any court rulings for responses to Review Panel's decisions

PRB received **10 rulings** from the Commercial Court regarding OE requests to suspend the execution of Review Panel's decision

PRB added **eight operators** to the disqualification list

¹⁴ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 119, paragraph 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

¹⁵ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 99, paragraph 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

TABLE 1: List of Economic Operators Added to the Disqualification List (January-June 2024)

REQUESTS FROM CONTRACTING AUTHORITIES	OPERATOR	PRB DECISION	DISQUALIFICATION DURATION	JUSTIFICATION
Ministry of Internal Affairs	Al Ber Sh.P.K.	✘ Disqualification	 12 months	Falsified sworn statement
General Hospital - Gjakovë/Đakovica	Pharma Leader	✘ Disqualification	 12 months	Catalogue falsification
Ministry of Health	Pharma Leader	✘ Disqualification	 12 months	Document falsification
Hortikultura	Compass IT Sh.p.k	✘ Disqualification	 6 months	Falsified certificate evidence
Kosovo Energy Corporation	Ardi&Ari SH.P.K.	✘ Disqualification	 6 months	Falsified distribution rights
Municipality of Dragash/Dragas	Albani Construction SHPK	✘ Disqualification	 6 months	Certified/ admitted to tax debt
Kosovo Police	NTSH Creative Design	✘ Disqualification	 6 months	Falsified certificates
Independent Mines Commission	GeoTECH Sh.p.k.	✘ Disqualification	 6 months	Failure to submit compliance evidence

Lack of Consistency in Decision-Making

The PRB has not yet finalized a detailed methodology to ensure uniform decisions and equal treatment of complaints. During the launch event for the internal use of the Case Management Information System (CMIS), the PRB announced that this system would help the board achieve consistency in decision-making and equal treatment of complaints. The CMIS, developed for internal use, aims to increase consistency by allowing complaints to be submitted in a readable format and providing the board with access to all complaints and decisions on a case-by-case basis.¹⁶ Although there was progress in decision-making consistency during this monitoring period, and the PRB now uses an internal database for this purpose, D+ noted that there is still room for improvement in this area.

In one instance, PRB did not forfeit the complaint fee from an economic operator, even though the complainant withdrew the complaint

According to Article 28 of the Regulation of the Work of PRB¹⁷, if a complaining economic operator withdraws their complaint before the review process begins or before the appointment of a review expert and the preparation of the expert report, the fee will be refunded. However, if the complaint is withdrawn after the appointment of the expert and the receipt of the expert report, the fee will be forfeited.

In one specific case, the PRB did not forfeit the appeal fee from the complaining operator, even though the complainant withdrew the appeal. For the procurement activity 'Services for the Destruction of Cigarettes, Tobacco Products, and Other Goods as Needed by the Customs,' initiated by Kosovo Customs with an estimated value of €300,000.00, the economic operator 'Met Bat Sh.P.K' submitted a complaint to the PRB against the decision to cancel the procedure, case number 248/24.¹⁸ The review expert did not side with the complaining operator, recommending that the CA's decision to cancel the procurement procedure remain in force. Both the contracting authority and the complaining operator agreed with the expert's opinion, which implied that the operator had withdrawn the complaint.

In cases where parties agree with the expert's findings, the Review Panel issues a decision noting that an agreement has been reached. However, in the aforementioned case, the Review Panel incorrectly applied the PRB's Rules of Procedure by deciding to refund the complaint fee to the complainant. According to Article 28, paragraph 1 of the PRB's Rules of Procedure, if the complainant withdraws their complaint after the appointment of the expert and the receipt of the expert report, the fee should be forfeited to cover procedural costs. The panel's decision in this instance was inconsistent with previous decisions. In three other cases (126/24, 155/24, and 481/24), where the expert's findings favored the contracting authority and the parties reached an agreement, the panel forfeited the complaint fees to cover procedural costs.

¹⁶ Procurement Review Body, press release, 31/01/2023. (<https://oshp.rks-gov.net/sq/Pages/Details?id=351>)

¹⁷ Regulation of the Work of Public Procurement Review Body (<https://oshp.rks-gov.net/sq/Documents/Download?id=0d49ce49-afc2-eb11-b59b-005056ba09d5>), (last accessed on 30 June 2024)

¹⁸ Decision number 248/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/0ba6badf-e082-ee11-b5bd-005056ba09d5>) (last accessed on 30 June 2024)

Delays in Decision-Making

According to articles 115 and 116 of the LPP¹⁹, the PRB is required to publish its decision on its website within 34 days of receiving a complaint from the Economic Operator. The procedural timeline includes a 10-day period for the Examining Expert to assess the complaint,²⁰ followed by four days for the CA and the EO to respond to the expert's findings²¹. The PRB then has 15 days to reach a decision and must publish it within the next five days²², totaling 34 days. However, if the PRB deems a case to be complex, it can extend the deadline for issuing a decision by up to 20 days. In such instances, the PRB is obligated to provide a justification and a statement explaining the extension.

During the monitoring period, the PRB issued a total of 367 decisions on complaints submitted in the first half of 2024. Additionally, the PRB addressed 219 cases carried over from the first half of 2023, resulting in a total of 586 decisions published from January 1 to June 30, 2024. The PRB continued to face challenges in meeting the legal deadlines for handling complaints. Out of the 367 published decisions in 2024, only 122 complaints were addressed within the mandated legal deadline of 34 days. Notably, half of these decisions were related to untimely or unauthorized appeals, which are not considered by the panel.

As stipulated by the LPP, outside the 34-day period, the PRB has the authority to extend the deadline for issuing a decision by a maximum of 20 days, totaling 54 days²³. However, such extensions must be accompanied by a rationale and a statement justifying the need for the extension.



19 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, articles 115 and 116 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

20 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo, article 114, paragraph 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

21 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 115, paragraph 1, (last accessed on 30 June 2024)

22 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 117, paragraph 1, (last accessed on 30 June 2024)

23 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 117, paragraph 1, (last accessed on 30 June 2024)

Handling of complaints (January-June 2024)²⁴



122

cases, the PRB issued a decision within a period of **34 days**



173

cases, the PRB issued a decision within the extended **54-day period**



72

cases, the **54-day** period was exceeded

During monitoring D+²⁵ identified five complaints with the longest decision-making deadline:

996/23

Supply of vehicles for the institutions of the Republic of Kosovo (Central Procurement Agency): 144 days to decision.

94/24

Maintenance and servicing of vehicles for the entire company KRU Gjakova sh.a (Regional Water Company Gjakova SH.A.): 116 days to decision.

97/24

Supply of various items for prisoners - canteen (Kosovo Correctional Service): 115 days to decision.

39/24

Supply of garbage trucks for the needs of NPL Përparimi sh.a. (Local Public Enterprise Përparimi SH.A.): 110 days to decision.

25/24

Supply of police equipment (Kosovo Police): 107 days to decision.

²⁴ Officially Confirmed Data from PRB Administration:

²⁵ The data were acquired from the website of the PRB (<https://oshp.rks-gov.net/sq/default/index>)

Partially Grounded Decisions and Non-Forfeiture of Complaint Filing Fee

According to Article 111, paragraph 4²⁶ of the LPP, any economic operator wishing to contest the contracting authority's decision must pay a complaint fee upon submitting their complaint. This fee ranges from €100 to €5,000 . Proof of payment must be attached to the complaint in compliance with Article 111, paragraph 4 of the PPL.

According to the Regulation of the Work of the PRB, if the allegations in a complaint are found to be ungrounded, the PRB is obligated to forfeit the complaint filing fee.²⁷

During the monitoring period by D+, the complaint fee against EOs was forfeited in 71 cases, totaling €134,216.00. This amount is approximately €15,000 less than in the second half of 2023²⁸, when the fee was forfeited in 117 cases.

According to the PRB's Work Regulation, the complaint fee is not forfeited if the complaint is found to be justified, withdrawn before the review or appointment of the expert, or deemed inadmissible by the PRB. Unlike in the first half of 2023, the PRB continued the practice of partially approving complaints during the second half of 2023 and the first half of 2024. This practice allows the CAs decision to remain intact, ensuring that the fee is not forfeited. During the monitoring period, 58 review panel decisions were partially justified, but the decisions of the CAs were upheld. It is noteworthy that the partial approval of complaints is not specified in the Public Procurement Law.

.For example, in one case, the Review Panel fully agreed with the expert's recommendation to consider the complaint partially justified while upholding the contracting authority's decision, despite identifying irregularities in the procurement process. On November 4, 2023, the Kosovo Correctional Service, acting as the CA, published a "Contract Notice" for the procurement activity "Servicing and Maintenance of Generators in Kosovo Correctional Service Institutions and the Institute of Forensic Medicine." On December 8, the contract was awarded to "Liria Sh.P.K." for a procurement activity conducted through an open procedure for a service contract with an estimated value of €43,000.00. "AS Tech Sh.P.K." filed a complaint (complaint no. 1061/23²⁹), alleging that the CA did not address a specific grievance in the request for reconsideration and subsequently rejected the request.

The complaint fee against EOs was forfeited in

71

cases, totaling
€ 134,216.00

²⁶ Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 118, paragraph 4, (last accessed on 30 June 2024)

²⁷ Regulation of the Work of Public Procurement Review Body (<https://oshp.rks-gov.net/sq/Documents/Download?Id=0d49ce49-afc2-eb11-b59b-005056ba09d5>), (last accessed on 30 June 2024)

²⁸ PRB Monitoring Report from D+ (January - June 2023), (https://dplus.org/wp-content/uploads/2023/09/18-09-23_Organi-Shqyrtues-i-Prokurimit-Monitorim-dhe-rekomandime.pdf)

²⁹ Complaint number 1061/24 (This amount is approximately 15,000 euros less than in the second half of 2023, during which the fee was forfeited in 117 cases.) (last accessed on 30 June 2024)

The review expert confirmed that in the decision to reject the request for reconsideration included elimination reasons not mentioned in its initial decision or the standard letter to the eliminated bidder, as required by Article 54, paragraph 1, point 1.2 of the LPP.³⁰

³⁰ Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 51, paragraph 1, item 1.1 (last accessed on 30 June 2024)

Transparency

The PRB continued to make progress in increasing its transparency during the first half of 2024. However, there are still some issues that need to be addressed. While the official PRB website remains a valuable tool that has significantly enhanced transparency, it continues to face problems that have increased in number compared to the previous six-month period. The practice of uploading documents in scripted formats persists, text search difficult and rendering the documents unreadable by a computer system.



The PRB made progress in enhancing the transparency of its work, there remain certain issues that warrant attention in the future



The PRB website continues to have shortcomings



CA requests for inclusion in the disqualifying list of EOs are not published on the website

The PRB continues to fall short in publishing, in real-time, requests from CAs to disqualify EOs on the grounds of submitting false information or forged documents. These requests are often made public only when the PRB issues a decision. Publishing these disqualification requests as soon as they are received would significantly enhance the transparency in the PRB.

The PRB must exercise caution when publishing decisions to avoid potential misunderstandings. For example, in the case 871/23, the PRB initially created confusion by incorrectly labeling the complaint as justified. This technical error was later corrected, with the PRB revising the decision to rejected the complaint as unfounded. Additionally, the website has issues with incorrect publication dates. In some instances, the publication date of the decision by the panel matches the date the complaint was filed by the EOs, leading to confusion. This issue is notably evident in case number 870/23³¹, where the complaint date coincides with the decision date by the review panel.

31 PRB case number 870/23 (<https://oshp.rks.gov.net/sq/ProcurementActivities/Search?>) (last accessed on 30 June 2024)

Similarly, in cases 899/23³², 127/24³³, and 211/24³⁴, the expert opinions are not published at all, with some parts only available in the panel's decision. During monitoring, there have been instances where decisions confirmed by the PRB are made but not published on the website (e.g., cases 951/23, 998/23, 09/24, 14/24, 44/24, 137/24). Additionally, in the case of complaint 991/23, the uploaded decision corresponds to case 997, and for complaint 816/23, the decision is published as a scanned document, making text search impossible.

There have been delays in publishing decisions on the website

Another transparency-related concern involves the live streaming of hearings through the YouTube platform, which remains problematic. Although a written record is kept during the session, the complaining economic operator can only view the session after it ends via YouTube platform. To obtain the link in advance, a written request must be submitted to the PRB. During this period, the PRB occasionally published links to hearing sessions on its website, but this practice was inconsistent, partly due to the absence of an IT expert.

Hearing session links are not consistently published on the website

Ensuring public access to hearings through live broadcasts is a crucial aspect of transparency. Unfortunately, the schedule for these hearings remains outdated on the PRB website. The PRB justifies not publishing the hearing schedule by citing concerns about potential misuse by third parties. Consequently, the only way to access the broadcasts is by submitting an official request to the PRB, which then provides the link. Delays in responding to these requests can negatively impact stakeholders and directly affect the transparency of this body.

During the reporting period, there were instances when hearings were not broadcast live due to technical problems, as reported by the PRB. One such case identified by D+ is case 996/23.³⁵ Additionally, for this same case, D+ did not receive an invitation to participate in the hearing session. The PRB explained that this oversight occurred because the official responsible for scheduling the sessions was on annual leave. The PRB explained that this oversight occurred because the official responsible for scheduling the sessions was on annual leave.

32 PRB case number 899/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Search?>) (last accessed on 30 June 2024)

33 PRB case number 127/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Search?>) (last accessed on 30 June 2024)

34 PRB case number 211/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Search?>) (last accessed on 30 June 2024)

35 PRB case number 211/24 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Search?>) (last accessed on 30 June 2024)

Engagement of experts, errors and inadequate handling of cases

If the PRB determines that the complaint was submitted on time by the economic operator and meets the conditions outlined in paragraph 1 of Article 111³⁶ of the LPP, it will promptly proceed with the appointment of an expert for review, in accordance with Article 113³⁷ of the law in question.

According to Article 114 of the LPP³⁸, within ten (10) days from the appointment, the Review Expert will thoroughly examine the procurement documentation of the CA along with relevant notes. If necessary, the expert may conduct interviews with officials, employees, or advisors from both the CA and the complaining party. Following this, the review expert will provide a comprehensive written assessment of the procurement activity to the PRB Review Panel, the complainant, and the head of the CA.

The Review Expert plays a crucial role in the process by recommending necessary corrective actions to be for the Contracting Authority. These recommendations may include canceling the procurement activity, the contract award, or the result of a design contest; extending a deadline; reversing or voiding a decision of the CA; or any other action needed to address a violation by the CA³⁹. During this period, it has been observed that the assessments by Review Experts have been provided in a timely manner.

Previously, the assignment of reviewing experts at PRB was done manually. However, with the recent integration of an electronic system within PRB, there is now a mechanism that automatically generates a list of three experts candidates for each case reviewed by the panel. The PRB administration then appoints the most suitable expert from the list to conduct the assessment. In a previous report, D+ recommended changing the form of expert appointment⁴⁰ and in the last report, D+ suggested that the electronic system should automatically select the expert for each case to enhance the transparency of PRB's operations. Despite this recommendation being included in PRB's Performance Plan, it has not yet been implemented.

→ The assignment of experts to the PRB is done semiautomatically

→ In general, expert opinions are published within legal deadlines

36 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 111, paragraph 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

37 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 113, amended by Law No. 05/L-068 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 December 2024)

38 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 114, paragraph 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

39 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 114 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

40 PRB Monitoring Report from D+ (January - June 2023), (https://dplus.org/wp-content/uploads/2023/09/18-09-23_Organi-Shqyrtues-i-Prokurimit-Monitorim-dhe-rekomandime.pdf)

According to the PRB, the manual selection of experts, despite the electronic system recommending three names, continues for several reasons. These include the tendency for repeat cases, scenarios where an expert might lack the required professional expertise, the need for an alternative expert, and cases where flexibility is required due to their complexity. D+ remains committed to the idea that modifying the expert selection process—such as having the system suggest only one candidate—would improve transparency. This change should also allow for the possibility of replacing the recommended expert, with the administration providing a justification document explaining the reasons for such changes..


Regarding the engagement of review experts, D+ observed that most expert opinions were issued within the legal deadline during the monitoring period. However, some issues were noted, including instances where experts' opinions did not address all examined claims and lacked detailed reasoning..

The Municipality of Lipja/Ljipljan, as the CA had published a notice canceling the procurement activity 'Construction of the water supply network in the village of Vrellë in Magurë and the Gllavicë – Babush supply pipe,' valued at €135,000.00. The cancellation was attributed to an incorrect quantity listed in the bill of quantities. In response, the EO Diamanti Sh.P.K. filed a complaint with PRB. The review expert, while identifying errors in the bill of quantities, recommended that the procurement activity be returned for re-evaluation. Such errors can potentially lead to budget issues and failure to meet procurement objectives, which are in conflict with Article 1 of the LPP.⁴¹

The Review Panel did not concur with the review expert's recommendation and upheld the CA's decision to cancel the procurement procedure..

The CA, Kosovo Police, issued a contract award notice for the y 'Supply of Shoes for the Kosovo Police - Re-Tender' with an estimated value of €1,240,860.00 . The EO "Sabit Makiqi B.I" contested this decision with a complaint to the PRB, arguing that the CA' claim—that they did not meet the required value of €1,500,000 in similar contracts—was incorrect. The review expert confirmed that the complainant had provided evidence meeting CA's requirement and recommended returning the procurement activity for reevaluation. However, the Review Panel determined that the expert's recommendation lacked adequate evidence regarding the classification of these contracts as similar. Consequently, the Review Panel upheld the CA's decision.

.In another case, the CA, Municipality of Vushtri/Vučitrn, issued a contract award notice for the 'Maintenance of Fourth-Order Roads' with an estimated value of €130,000.00. The EO "N.N.P. Hysnia" filed a complaint with the PRB against this decision. The review expert's handling of the case was flawed, as no findings were made, leading to an incorrect conclusion that the CA did not request additional clarifications from the recommended operator during the evaluation of offers. The Review Panel, however, confirmed that the CA had indeed requested such clarifications from the winning operator, as detailed in CA's published decision.



In general, expert opinions are published within legal deadlines

⁴¹ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 30 June 2024)

Conclusions

BASED ON THE MONITORING PERIOD FROM JANUARY TO JUNE 2024, THE PRB CONTINUES TO FACE SEVERAL SIGNIFICANT CHALLENGES, INCLUDING:

Delays in Decision-Making

.A persistent issue for the PRB is its failure to comply with legal deadlines for publishing decisions. This ongoing problem hampers the efficiency and effectiveness of the public procurement process and erodes stakeholders' confidence in the PRB's ability to address complaints promptly and fairly.

The repercussions of these delays extend to the prolonged duration of public procurement activities. When complaints are not addressed promptly and decisions are not published within the stipulated timeframe, it disrupts the procurement processes. This uncertainty impacts all parties involved, including CAs and EOs, potentially leading to project delays, financial setbacks, and missed economic development opportunities.

These delays can be especially detrimental in cases where procurement activities are seasonal or time-sensitive. For example, tenders for winter or summer road maintenance, or the supply of seasonal goods often have narrow windows of opportunity. If decisions are delayed, the relevance of these activities may diminish, adversely affecting the efficiency and cost-effectiveness of projects.

Moreover, exceeding legal deadlines undermines the integrity and reputation of the PRB as an independent and impartial body responsible for resolving procurement disputes. This failure to adhere to deadlines can lead stakeholders-including EOs, CAs and the general public-to perceive the PRB as inefficient in fulfilling its mandate, resulting in diminished trust in the institution.

Lack of Consistency in Decisions

The PRB continues to face significant inconsistency in its decision-making, undermining its credibility as the institution responsible for reviewing public procurement complaints. This inconsistency raises concerns about the fairness and impartiality of the review process, leading to unpredictable and varied outcomes for stakeholders, particularly EOs. This uncertainty can foster a lack of confidence in the PRB's decision. For instance, in case 284/24, the PRB's handling differed from its approach in similar cases such as 126/24, 155/24, and 481/24, highlighting the ongoing issues of inconsistent decision-making.

Engagement of Experts

The effective operation of the PRB relies heavily on the expertise of its review panel. To enable the PRB to accurately and competently handle complex and technical complaints, it is essential to continuously recruit review experts, expand their areas of expertise, and offer ongoing training.

Lack of Transparency

.Transparency in the PRB's operations requires significant improvement. Key areas for enhancement include hiring an IT specialist, consistently streaming all hearing sessions online, maintaining public access links, publishing complaints and decisions in a readable format on the official website, and ensuring proper documentation is available, including the publication of requests from CAs for the disqualification of EOs

Recommendations

IN LIGHT OF THE REPORT'S FINDINGS, D+ PROPOSES THE FOLLOWING ACTIONS TO ENHANCE THE PRB'S PERFORMANCE:

1 Improve Database:

The PRB should recruit an IT expert to address and reduce database errors. This will significantly enhance transparency, improve data access, and simplify operational processes.

focusing on critical areas such as IT and medical devices, to address cases with greater accuracy and efficiency. Implement training programs and professional development opportunities to enhance expertise and ensure greater consistency within the PRB.

6 Claims for Disqualification:

Make public the requests for disqualification submitted by CA for EOs. This transparency will provide an overview of the number of requests, and the time the PRB takes to decide on such matters.

2 Automated Selection of Experts:

Adjust the system to generate the name of a single expert for each case instead of providing three recommendations. This change will enhance transparency, minimize favoritism, and increase accountability, given the critical role experts play in PRB's procedures.

4 Elimination of 'Complaint is Partially Grounded' Practice:

Discourage review experts from categorizing cases as "partially grounded" to simplify the decision-making process for the Review Panel.

7 Transparency:

Publish the schedule of hearing sessions on the website and ensure live streaming of all sessions. Address issues such as the lack of broadcast for case 996/24. Ensure that links to the recorded sessions are consistently accessible, noting that links for 232/24 and 226/24 are currently not available, while the link for case 02/24 is available. Additionally, publish complaints and decisions in a clear, readable format on the official website to enhance transparency and improve public access to PRB's procedures.

3 Evaluation of Expert Performance:

Regularly assess the performance and quality of experts' work to ensure professionalism and impartiality. Address cases of inadequate performance promptly. The PRB should prioritize recruiting internal experts over external experts ones,

5 Publication of Fines Imposed on Contracting Authorities:

Publicly disclose a list of contracting authorities fined for non-compliance with PRB decisions. This transparency will act as a deterrent against future violations and encourage adherence to PRB rulings.

