



Law on Liability of Legal Persons for Criminal Offences: An Untapped Potential in Combating Corruption in Public Procurement

Introduction

Public institutions and publicly owned enterprises are required to procure goods, services, and works to fulfill their responsibilities and obligations. In 2023, the total value of public procurements in Kosovo reached €810,438,403.40, representing 8.23% of the Gross Domestic Product (GDP).¹ Public procurement is prone to irregularities and highly vulnerable to corruption.² In addition to the significant volume of contracts—over 10,183 signed in 2023³—and the substantial financial interests involved, corruption risks are exacerbated by the lack of a sufficiently robust and effective justice system to address violations in this area.

Kosovo's Criminal Code includes specific provisions addressing fraud and misuse in public procurement⁴. Additionally, the Criminal Procedure Code recognizes such acts as serious crimes.⁵ In 2011, Kosovo adopted the Law on Liability of Legal Persons for Criminal Offences⁶, establishing the criminal liability of legal persons and outlining penalties applicable to them. This law stipulates criminal liability for legal persons for criminal offences committed by individuals acting on their behalf, with the intention that engaging in illegal actions for personal gain will have consequences for the legal entity itself and not just for the individuals involved.

1 2023 Annual Report. Public Procurement Regulatory Commission. Available at: <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raport%20Vjetor%202023.pdf>

2 Kosovo Report 2024. European Commission. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?file-name=Kosovo%20Report%202024.pdf

3 Ibid.

4 Criminal code of the Republic of Kosovo. Article 415. Available at: <https://md.rks-gov.net/desk/inc/media/6A2D4377-6AE1-4530-909F-3FB2680CD1EC.pdf>

5 Code no. 08/L-032 of Criminal Procedure. Article 22, 1.2.75. Available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61759>

6 Law No. 04/L-030 on Liability of Legal Persons for Criminal Offences Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2766>

The law prescribes substantial fines for the criminal offences of legal persons, which cannot be less than €1,000 and not more than €100,000. In addition to fines, the provisions of this law foresee the dissolution of the legal person, suspended sentences, security measures including the prohibition of performing certain activities, and the confiscation of illicit gains.

Despite its potential, this law remains underutilized in Kosovo, particularly in cases involving misuse in public procurement. Courts continue to impose minimal penalties on individuals, such as company owners, while ignoring the liability and sanctions applicable to the legal entities themselves.

An analysis of three cases demonstrates a recurring pattern of amnesty granted to legal entities that have obtained significant public contracts through fraud and forgery. These entities have not been subjected to the sanctions mandated under the Law on Liability of Legal Persons for Criminal Offences.

Case 1

Penalty Imposed Solely on the Company Owner

In 2022, the Basic Court in Gjilan issued a guilty verdict against J.M.⁷, the director of the company “Tribune Sh.P.K.”. The case involved J.M. submitting falsified documentation during the bidding process for the contract titled “Renovation and Repair of Hospital Facilities and Central Heating System” at the General Hospital of Gjilan in 2021. This fraudulent documentation enabled “Tribune Sh.P.K.” to win the contract, valued at €47,058.03.

The court relied exclusively on the provisions of the Criminal Code and the Criminal Procedure Code, without applying the Law on Liability of Legal Persons for Criminal Offences. As a result, the court found J.M., as a physical person, guilty and fined €4,780 and prohibited from participating in public procurement procedures for one year, but did not issue accessory punishment on the legal entity “Tribune Sh.P.K.” despite the company directly benefiting financially from the criminal act.

⁷ Basic Court in Gjilan. PKR. Nr.208/2021. Available at: [0191-RulingOnDetention](#)

Case 2

Harm Close to €2 Million, Fine of €20,000

In 2022, the Basic Court in Gjilan issued a guilty verdict against⁸ I.H., the founder and director of the business “Globi – MI.” Between 2018 and 2020, I.H. submitted falsified documents in five (5) tendering procedures. In three (3) of these procedures, his company was declared the winner, securing contracts with the Municipality of Gjilan and the Municipality of Kamenica. I.H.’s actions, carried out on behalf of the company “Globi – MI,” eliminated other competitors, resulting in material benefit for his company amounting to €1,919,644.24. However, the court, relying solely on the Criminal Code, sentenced I.H. to a fine of €20,000 and a one-year prison sentence, which would not be enforced if the defendant refrained from committing another criminal offense during a probation period of two (2) years. The court also banned I.H. from participating in public procurement, since I.H. had only participated in public procurement as a legal person.

The ban on I.H.’s participation in public procurement did not impose any effective sanction on the company, which had benefited from the criminal offense, as I.H. never participated as a natural person in public contracts. Meanwhile, the company “Globi – MI,” which faced no restriction on its participation in public procurement, secured another public contract of €77,550.00 with the Municipality of Gjilan just five months later.⁹

Case 3

Multiple Convictions, Company Continues Winning Public Contracts

In 2022, the Basic Court in Prishtina – Serious Crimes Department¹⁰ issued a guilty verdict against T.S., the owner of the company “NTB ING Sh.P.K.” In 2020, T.S. had submitted falsified documents in a tender for renovating the building of the Special Prosecution of Kosovo. The tender was awarded to “NTB ING Sh.P.K.” with a contract value of €811,372.13. Through this verdict, the court only penalized the company’s owner with a fine of €2,000 and a prison sentence of one (1) year. Additionally, T.S. was prohibited from participating in public procurement procedures for one (1) year. However, no sanctions were imposed on the company “NTB ING Sh.P.K.” itself.

Despite these legal actions, the company continued to secure public contracts. Notably, the owner, T.S., had also been convicted in 2021 for document forgery in another public contract valued at an estimated €1,000,000.00. Nevertheless, “NTB ING Sh.P.K.” won another public contract valued at €386,096.29 for the renovation of the roof of the Prishtina Municipality building.

⁸ Basic Court in Gjilan. PKR.nr79/2022. Available at: https://www.gjuqesori-rks.org/wp-content/uploads/verdicts/GJ_PKR_2022-276619_SQ.pdf

⁹ Contract No. 651-22-11891-5-2-1/C417 titled “Sports Fields in the Schools of the Municipality of Gjilan”.

¹⁰ Court of Appeals of Kosovo upheld the verdict of the Basic Court in Prishtina. PAKR.nr.602/2022. Available at: [0191-RulingOn-Detention](#)

CONCLUSIONS:

The Law on Liability of Legal Persons for Criminal Offenses is not being adequately implemented in Kosovo. Legal entities are not held criminally accountable, and courts fail to impose criminal sanctions on them for offenses committed to achieve material gain.

Due to the lack of enforcement, there is a significant disparity between the illegal profits made by irresponsible companies in public contracts and the penalties imposed on them. For instance, in the case of the company “Globi – MI,” the company fraudulently secured public contracts worth €1,919,644.24 through forgery, while the fine imposed on the company owner was a mere €20,000, or only 1% of the profit made from the criminal offense.

Minimal penalties targeting only individuals involved in criminal activities and the disqualification of company owners from participating in public procurement create an environment where such companies not only evade the fines and suspensions envisioned by the law but continue to secure public contracts. This undermines fair competition and the integrity of the public procurement process.

RECOMMENDATIONS:

- Justice institutions, including the Prosecution and Courts, must apply the provisions of the Law on Liability of Legal Persons for Criminal Offenses. This includes imposing fines, bans, and the confiscation of material benefit obtained, or harm caused by companies as a result of criminal offenses outlined in the Criminal Code.
- Disqualifications from public procurement should target legal entities (companies), as it is the companies, not the owners as natural persons, that win public contracts through tendering procedures.
- Continuous training programs should be provided to judges and prosecutors to better address criminal offenses involving legal entities and ensure that sanctions are proportional and effective.
- Launch a public awareness campaign to inform citizens and legal entities about the importance of holding legal entities criminally accountable and the consequences of corruption.