



# Legal Violations: The Cleaning Contract and the Strike of Workers in the Assembly of Kosovo

## Introduction

In September 2024, technical workers employed by Schafberger Jr. GmbH – Kosovo Branch, who provided support services at the Kosovo Assembly, initiated a strike within the institution’s premises, demanding an increase in wages from €270 to €550.

These technical workers, who remained on strike for 79 days, were not directly employed by the Kosovo Assembly but were part of Schafberger Jr. GmbH – Kosovo Branch, a company awarded a single-source contract for providing support services.

This analysis examines the process leading to signing the contract that was in force during the strike period, identifying legal violations in the public procurement procedure. It focuses on the Kosovo Assembly’s responsibility as the contracting authority in creating an emergency due to mismanagement and negligence, restricting competition through the applied procedure, and the impact of this process on working conditions and the financial rights of technical workers.

## Delay in Initiating the Open Procurement Procedure

The Assembly of Kosovo, as a public institution, procures cleaning and technical maintenance services through the contracting of external companies via public procurement procedures. As a contracting authority, in April 2023, the Assembly signed a contract with the consortium “Schafberger Jr. GmbH - Kosovo Branch; Uni - Project O.P.” for the provision of support services, with a total contract value of €214,090.00<sup>1</sup>. This contract, which was awarded through an open procedure that ensured free competition among economic operators, remained in force until April 30, 2024.

<sup>1</sup> Contract 101-23-624-2-1-1/C111

For the year 2024, the Assembly planned<sup>2</sup> to initiate the procurement procedure for a new contract on January 22, 2024, allowing four months for the completion of the procurement process and signing of the new contract. However, this process was delayed and was instead initiated on March 20, 2024, with the final deadline for bid submission set for April 30, 2024—the same day the existing contract was set to expire. This 58-day delay made it impossible to secure a new contract within the regular timeframes, as the evaluation of bids and the signing of a new contract cannot be completed on the same day as the bid submission deadline.

According to the Public Procurement Regulation<sup>3</sup>, following the bid submission deadline, the evaluation committee has up to 30 days to review and assess the bids, after which a recommendation for contract award may be issued. Once a bidder is recommended for contract award, there is a mandatory five-day standstill period for potential appeals before the contract can be signed. For example, in the same procurement process in 2023, the Assembly required 37 days from the bid submission deadline to the signing of the new contract.

Therefore, the delay in initiating the procurement procedures and setting the bid submission deadline on the exact expiration date of the existing contract created a situation where the Assembly would be left without essential services necessary for its functioning.

## The Mistake Leading to the Cancellation of the Open Procedure

In addition to delays in initiation, the Assembly of Kosovo made a mistake in drafting the Tender Dossier for the open procedure, which resulted in the cancellation of this procurement activity. This mistake stemmed from the inclusion of multiple distinct service categories within a single contract, despite the need for separate treatment. These services included technical, hygiene, and garden maintenance, disinfection, deratization, and disinsection services, as well as generator servicing.

For technical maintenance, a framework contract with a weighted price mechanism should have been used, given the unpredictable nature of equipment failures and damages. Since these were heterogeneous services, a single company could not effectively provide all of them with the required quality and efficiency. Therefore, the contract should have been divided into lots to ensure fair competition.

This procurement activity, with an estimated value of €630,000.00, was monitored by the Public Procurement Regulatory Commission (PPRC), which recommended dividing the contract into lots to promote competition. However, since the Assembly had already initiated the procedure as a single contract, it was no longer possible to modify it at that stage. As a result, the procedure was cancelled on April 5, 2024.

<sup>2</sup> Final Procurement Plan of the Assembly of Kosovo for the year 2024.

<sup>3</sup> Regulation No. 001/2022 on Public Procurement. Article 40, point 3. Found at: <https://e-prokurimi.rks-gov.net/HOME/Cla-nakItemNew.aspx?id=233>

## Emergency Situation and the Award of the Single-Source Contract

Following the cancellation of the open procedure, the Assembly was left without a contract for support services. On May 2, 2024, it initiated a negotiated procedure without prior publication of a contract notice, arguing that an emergency had arisen<sup>4</sup>. In its justification submitted to the PPRC<sup>5</sup>, the Assembly stated that Assembly premises could not be left without hygiene and technical maintenance services even for a single day, as this would impact its functionality and create operational risks.

The Assembly justified the use of this procedure on Article 35 of the Law on Public Procurement (LPP)<sup>6</sup>, which sets out the conditions under which competition among economic operators may be restricted. However, the justification provided by the Assembly did not meet the conditions outlined in this aforementioned article. This procedure according to article 35 of LPP may only be used in cases of extreme emergencies that are objectively verifiable and could not have been foreseen by the contracting authority. The article also specifies that the procedure cannot be used if the circumstances leading to the emergency were caused by the contracting authority's own negligent or intentional actions or omissions.

In this case, the emergency was neither external nor unforeseeable; rather, it was a direct result of the Assembly's failure to properly manage the procurement process. The Assembly had been aware for over a year that the existing contract for support services would expire on April 30, 2024. Despite this, it delayed the initiation of the open procurement procedure and then failed to structure the contract into separate lots.

As a result, the Assembly was left without a contract for support services and used this self-created emergency as a justification for applying the negotiated procedure without prior publication. The institution invited the company, Schafberger Jr. GmbH, to submit an offer and subsequently awarded it a six-month contract for cleaning and hygiene maintenance services worth €65,981.94. This action not only restricted competition but also directly favored this company, as no other economic operator had the opportunity to submit an offer for the contract.

The irregular use of the negotiated procedure due to a self-created emergency makes the Assembly accountable for violating free competition in the public procurement process and for favoring a specific economic operator.

## (Ir)responsibility of the Assembly in Determining Wages for Cleaning Workers

Four months after signing the single-source contract No. 101-24-4341-2-2-5/C133 between the Assembly of Kosovo and the company Schafberger Jr. GmbH – Kosovo Branch, technical workers providing cleaning services at the Assembly's premises went on strike, demanding higher wages. During the strike, the Assembly maintained a neutral stance regarding the workers' demands, arguing that, as the contracting authority, it was merely the recipient of services provided by the contracted economic operator and, according to the applicable legislation, had no right to intervene in staff selection or working conditions, which were determined by the company.

<sup>4</sup> The Assembly of Kosovo previously initiated another negotiated procedure without the publication of the contract notice, with procurement number 101-24-3745-2-2-5, which was canceled because no offer was deemed responsive.

<sup>5</sup> The Public Procurement Regulatory Authority (PPRC) must be notified by the contracting authority within two (2) days from the date the decision is made to use the negotiated procedure without the publication of the contract notice.

<sup>6</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement. Article 35. Found at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

However, beyond managing procurement procedures, the Assembly played an active role in determining the wages of technical staff in maintenance contracts. In the 2023 contract signed with the consortium of economic operators Schafberger Jr. GmbH - Kosovo Branch; Uni - Project O.P., the Assembly explicitly set the gross minimum wage for hygiene maintenance staff at €300<sup>7</sup>. Similarly, in the 2022 contract, it had set a minimum gross wage of €280 for the same staff<sup>8</sup>. These two contracts demonstrate that the Assembly had discretion in establishing wage levels in contracts for support services.

In contrast, in the single-source contract signed in May 2024 with Schafberger Jr. GmbH – Kosovo Branch, the Assembly did not set a minimum wage level—neither in the tender dossier nor in the contract. The argument that setting minimum wage was solely the company’s responsibility contradicts the Assembly’s previous practices. Moreover, since the 2024 contract, which was in force during the strike, was awarded through a negotiated procedure, the Assembly had an even greater role in defining contract terms, including workers’ wages, as the economic operator was not required to offer a lower price to win the contract.

Beyond wages, the Assembly has consistently determined working hours and financial compensation conditions for workers. In the tender dossier for the contract under which the strike occurred, the Assembly explicitly stated that no additional compensation would be provided for work performed beyond office hours or on weekends<sup>9</sup>. Additionally, this document stipulated a 24/7 on-call system without any extra compensation for this commitment. Similar provisions were included in the 2023 tender dossier, which stated that if required, all company workers had to work overtime or on weekends without additional financial compensation. This contradicts the Labor Law<sup>10</sup>, which requires additional payment when working overtime, on weekends and public holidays, ensuring compensation as a percentage of the base salary for such engagements.

By specifying in the tender documents that no company employee would receive additional pay for overtime work, the Assembly created a basis that enabled the contracted company to violate workers’ rights.

The situation with the technical workers’ strike was resolved in November 2024, when the Assembly signed another single-source contract with the same company, this time setting the gross minimum wage at €450<sup>11</sup>. However, even in this contract, the Assembly included a clause stating that working overtime or on weekends would not be financially compensated.

Since 2018, the Assembly of Kosovo has signed nine contracts for support services with Schafberger Jr. GmbH – Kosovo Branch, six of which were awarded as single-source contracts.

7 Special Conditions of Contract 101-23-624-2-1-1/C111

8 Special Conditions of Contract 101-22-11113-2-2-5/C96

9 Tender File, Management Plan 3.3.3.

10 Official Gazette of the Republic of Kosovo. Law No. 03/L-212 on Labor. Article 56. Found at: <https://gzk.rks-gov.net/ActDocument-Detail.aspx?ActID=2735>

11 Special Conditions of Contract 101-24-11537-2-1-5/C154.

## RECOMMENDATIONS:

1. The Assembly of Kosovo as contracting authority should ensure careful drafting and implementation of the Annual Procurement Plan, adhering to the defined deadlines and initiating procedures on time to avoid delays that could impact the provision of services.
2. The Assembly of Kosovo should allocate sufficient time for the evaluation and signing of new contracts, also considering the potential time required for the review of complaints. This would ensure that the institution does not face a gap in contracts while procurement procedures are ongoing.
3. The Assembly of Kosovo should prioritize open procedures for securing support services, avoiding single-source contracts except in extraordinary emergencies as defined by the Public Procurement Law (LPP).
4. The Assembly should conduct an internal analysis of procurement practices and decision-making processes to identify and address mismanagement or negligence. Ensuring accountability in procurement decisions would help prevent future emergencies and enhance public trust in the institution's operations.
5. In cases where the subject of the contract is heterogeneous, and to ensure broader and fairer competition, the Assembly should consider dividing contracts into lots. This would enable the participation of specialized companies for specific services, improving the quality and efficiency of contracted services.
6. Future contracts for support services should explicitly include provisions that guarantee minimum wages, overtime pay, and compensation for weekend and holiday work, in full compliance with the Labor Law.