



# The Procurement Law in Albania: Effects in the Albanian Economy and State Budget

**BA. MSc. PhD. Sorina Koti**  
University "Fan S. Noli" Korce-Albania

## Abstract

The purpose of the study is to analyze and discuss Law no. 162/2020, "On the procurement public", which is a law harmonized and integrated with the directives of the European Union (2014/24, directive 2014/25 and directive 89/665 EEC, 92/13/EEC on legal remedies and administrative review) and, for this, it is necessary to analyze the effects of this Law in the Albanian economy as well as in the state budget. Also, based on the data from public institutions, possible recommendations will be given to further align the Albanian procurement legislation with the relevant European Union acquis. In addition, the problems arising during the implementation of this law in practice by contracting authorities and economic operators will be analyzed, with the aim of facilitating the procurement process for all parties and the regulatory authority in the field of public procurement through the further transposition of European Union directives as well as addressing ambiguities and problems.

**Keywords:** tenders, budget deficit, price, value, corruption

## 1. Introduction

Law no. 162/2020, "On public procurement", is a harmonized law and integrated with the directives of the European Union (2014/24, directive 2014/25 and directive 89/665 EEC, 92/13/EEC on legal remedies and review administrative) and, in this context, there is a need for further alignment of Albanian procurement legislation with the relevant EU acquis.

The purpose of this paper is to analyze the public procurement regulatory framework in Albania, aiming at the further alignment of the law with the directives of European Union. This is part of the commitments made by following the bilateral meeting in within the "screening" process for chapter 5 "Public Procurement", developed on November 18, 2022, in Brussels.

The paper aims to analyze the problems issued during the implementation of this law in practice by the authorities contractors and economic operators, in order to facilitate the process of procurement for all parties involved in it, since March 2021.

The concrete objectives, which are intended to be achieved through this paper, are the improvements of the regulatory framework in the field of public procurement through further

transposition of European Union directives, as well as addressing ambiguities and problems arising from the practical application of the law for a period of two years from its entry into force.

The law is in full compliance with the internal legal order and with international legislation ratified and, consequently, binding for Republic of Albania. The law is in accordance with the implementation of the objectives provided in analytical program of government acts, as it directly affects funding them through budget funds.

## **2. Analysis of Procurement Law-Economic issues**

In the public procurement law no. 162/2020, the criterion for announcing the winning bid is "The most economically advantageous bid", which is identified on the basis of price or cost, and this evaluation criterion is suitable for these types of services, without including those in a special type of procurement procedure, such as "consulting service", with a special methodology that has not necessarily been effective in practice.

Firstly, from the Annual Report of Procurement Public Commission (2023), it appears that the Public Procurement Commission has 7 vacancies, for which the recruitment procedures have been opened 5 times, but have been unsuccessful due to the lack of candidates who meet the criteria or lack of applications. Regarding this matter, this has affected the fulfillment of the obligations that Law no. 162/2020 charges the Procurement Public Commission, as the highest administrative body that examines complaints in the procedures of public procurement. Based on the recommendation in progress in the European Union Report for the year 2022, it is required the improvement of the capacities of the Procurement Public Commission for handling complaints. In this context, the study shows that the lack of employees in this Institution may come from several reasons: a) there is no interest or the applications are unsuccessful; b) the departure of professionals from country; c) fear of law enforcement bodies, especially the Special Structure Anti-corruption (SPAK), as the employees of these institutions have turned out to be in many cases prosecuted due to the implementation of illegal orders from their superiors.

Secondly, referring to the data from the Annual Report of Procurement Public Commission (2023), it results that 866 complains were deposited in 2023, while since 2022, 55 complaints have been filed. From these complaints have been reviewed 847 complaints, while 74 complaints were carried over for 2023. So, we are dealing with an increase of carried complaints. To continue further, it turns out that 32 decisions of the Procurement Commission have appealed to the Administrative Court. Meanwhile, it turns out that 464 complaints or 54.8% of their acceptance has been decided in full (220) or in part (244). Number of contractors for which an appeal was filed is 213, while the number of economic operators for which an appeal was filed is 291. At this point, several problems should be addressed in the future: i) The increasing number of the reported cases. Does this data indicate problems efficiency in reviewing complaints? ii) How to explain the high number of cases for which the Procurement Public Commission has established acceptance in full or in part? Did it testify to a high level of legal violations of public authorities in public procurement procedures? iii) Referring to the cases appealed to court, for how many of them there was a court decision and how were these decision-making in relationship with the decisions of the Procurement Public Commission? iv) The low number of the court judicial appeals are also related to the duration of court proceedings? The legal cases in the Court Administrative Appeals takes years, being one of the courts with the highest number of issues carried.

Thirdly, based again on the Annual Report of Procurement Public Commission (2023), it was stated that there is a low level of cooperation on the part of the public administration bodies for reporting cases of corruption. While it is evident that the cases investigated and tried by the special anti-corruption structures are mainly related to tenders and public procurement procedures.

Starting from the very high number of complaints, but also the decision-making of the Procurement Public Commission, where 55% of the reviewed cases has legal violations, it's still unclear: i) Which is the most common typology frequency of detected violations? ii) Which are the most frequent institutions where they were found these violations? iii) Has the Procurement Public Commission recommended of taking concrete measures against employees who have committed these violations? iv) How many cases have been reported from Procurement Public Commission to Special Structure Anti-corruption?; v) Which is the cooperation of the Procurement Public Commission with law-enforcement bodies, especially with the General Prosecution, Special Structure Anti-corruption and High Public Audit Institution?

Furthermore, there are problems related to some procurement procedures in some public institutions, such as: i) Complaints related to public procurement procedures in specific sectors of investments such as energy and construction ii) The decision from the Procurement Public Commission in suspected cases of possible conflict of interest, criminal group / investors included or money laundering (Procurement Public Agency, 2012a,b,c).

The investigative report shows that certain economic operators are owned or managed by persons with criminal records. They have been investigated by Special Structure Anti-corruption and there are no clear reactions/measures taken by Procurement Public Commission, in order to secure that the money of Albanian citizens do not fall into the hands of individuals or criminal groups who mainly use these businesses for money laundering from illegal activities (Open Procurement Albania, 2023).

Moreover, referring to the data published in the Annual Public Procurement Report (2023), the budget spent on public procurement reached the value of 1.1 billion euros or 9.4% of GDP, being in the first position regarding the other Western Balkan Countries (Serbia 9.3%, Montenegro 8.7%, North Macedonia 8.6% and Kosovo 5.6%).

However, the main problem with the winning contracts is that they are very close to the limit fund (the overall average is calculated at 85%) and the public procurement procedures with direct negotiation without preliminary announcements remain very high. Meanwhile, the number of the public procurement procedures with a single economic operator, also known as Red Flag Tenders, are in critical levels. All these indicators are a clear evidence that public procurement procedures continue to be used throughout the year 2023 as a mean of enrichment for companies directly or indirectly owned by officials' politics, their family members or persons related to them. There are evidences for an overall revealed well-organized schemes of corruption where the heads of contracting authorities signed public contracts with companies owned by a/m groups (Open Procurement Albania, 2023).

However, The Public Procurement Commission, with its owned decision-making, has saved the money from the state budget in a value of about 342,136,660.00 ALL without VAT

(around 3,4 Million Euro, Middle Exchange Rate 1 Euro = 100 Albanian Lek), calculated as the difference between the qualified offer and the decision-making of the contracting authorities and the complained economic operators, whose complaint has been accepted by the Procurement Public Commission.

The use of the Electronic Complaints System by the Contracting Authorities has reduced the time of decision's taking, as well as facilitated communications between contracting authorities/entities with the Public Procurement Commission and economic operators.

There are many lessons that can be drawn from the decision-making of procurement review bodies, lessons that can serve to improve the procurement system as a whole, starting from legal issues, issues in the implementation of the law, as well as various risks for repetition of procedural errors. Therefore, in this context, the Procurement Public Commission has presented a series of proposals for changes to the public procurement law, placing emphasis on two main elements, that of increasing transparency and digitalization of procurement processes. The use of advanced technologies of artificial intelligence and robotic processes, can improve some of the problems in public procurement, especially procedural mistakes by all parties involved in the process (Procurement Public Agency, 2012a,b,c).

It's also important to mention the correct application of the law on the complaints process and the correct time of complaints considering. It is worth noting that the Procurement Public Commission has continued with the trend of speeding up the time for reviewing complaints for 2023, reducing the indicator of complaints reviewed outside the deadline to the value of 9.4%, from 10.1% in 2022 and 10.8% since was in 2021. The annual average decision-making time of Procurement Public Commission per case for the year 2023 is 10 days, meanwhile to the decision-making time for the year 2022 was 12 days and 17 days for the year 2021. It shows the improvement on increasing the speed of decision-making by 2 days comparing the year 2023 with 2022 (Annual Report of Procurement Public Commission, 2023).

However, the Annual Report of Procurement Public Commission (2023) mentions the need for further efforts in improving the implementation of procedures and preventing corruption. The Albanian Constitution and the Law on Public Procurement have been assessed for compliance with European directives, while the capacity of institutions to handle complaints still needs improvement. The public procurement law adapts to the 2014 directives, however, the thresholds for competition remains high. The law on concessions and public-private partnerships is partially compatible with European directives. The European Commission in its Annual Progress Report of 2023, has left several tasks to be completed by Albania in the field of procurement. Some of them are as follows:

Compared to previous years, the European Commission continues to emphasize the need for progress in these areas and remains active in monitoring and evaluating developments in the public procurement sector in Albania. The report also evaluates the reforms undertaken and the work done by the Public Procurement Commission. Specifically, the report indicates that The Constitution and the Public Procurement Law contain provisions regarding legal review tools that are largely in line with the Directive. The system of legal remedies is easily accessible to economic operators, without discrimination, although it is subject to a certain fee. The Procurement Public Commission is an independent review body with 36 positions, six of which are vacant, that deals with complaints related to public procurement procedures. Its decisions can be appealed to the Administrative Court of Appeal. Complaints processing within the statutory time limit was further improved.

The capacity of the Procurement Public Commission to deal with a large number of complaints needs to be further improved. The report shows that the legal framework for public procurement is generally in line with the 2004 European Union directives on public procurement and the procurement of municipal services, as well as with the relevant administrative and budgetary provisions. The new law on public procurement which opened the way in 2021, further aligned the framework with the 2014 European Union directives on

public procurement, but the thresholds set for the competitive procurement of goods and services remain high. The Law on Concessions and Public-Private Partnerships (PPP) is partially compatible with the European Union Directive on the granting of concessions.

In comparison with the reports of previous years and the recommendations left by the European Commission, a fulfillment of the recommendations by the Public Procurement Commission is found. Continuation of efforts for competitive procurement, Encouraging the use of criteria of the most economically advantageous offer and framework contracts, Efforts to comply with the EU acquis, Ensuring the compliance of intergovernmental agreements, Controlling and ensuring that the terms of the agreements signed with countries the third comply with the requirements of the acquis of the European Union and Stabilization Association Agreement in the field of public procurement. (Progress Report for Albania, European Commission 2023)

Furthermore, based on High Public Audit Institution Report (2023), 102 cases of procurement orders registered in the system in the budget year 2022 have been found, which are related to a contract signed in the previous budget years (2011-2021); 52 cases in which procurement orders result in being registered up to 10 days apart from the date of the contract; the 3-day deadline for the registration of contracts from the date of their signing was not respected in 10,602 cases; the increase in expenses for concessionary contracts/Public Private Partnership from year to year constitutes a fiscal risk for the budget. Moreover, in the absence of measurable indicators of their performance, it is questionable the timely achievement of their objectives with efficiency, economy and effectiveness.

### **3. Conclusion and Recommendations**

The need conducting this study came as a result of the necessity of improving the legislative framework for public procurement, analyzing the problems arising during the implementation of the law in practice by the authorities' contractors, economic operators and audit bodies, in order to facilitate procurement process, but also aiming at further alignment of the law with EU directives.

Based on the arise problems, amendments of the Procurement Law should be taken in consideration, such as:

- Previewing for the first time the concept of auxiliary activity and providers of the procurement service;
- Abolition of the type of procurement procedure "Consulting service", as one procedure that is not defined by the directives;
- Defining the concept of the procurement order in the definitions of the law, as procedural moment for initiating a procurement procedure;
- Anticipating the development of procurement procedures, making complaints and managing the implementation of contracts using electronic tools communication;
- Exemption from the implementation of the procedures of the procurement of goods/works/services with value below the upper monetary limit;
- Revision of the conflict of interest article, also anticipating the case of taking measures in case of its identification during the implementation of the contract;
- Review of the powers of the Public Procurement Agency, regarding the monitoring of contracts, database administration, as well as exception cases of economic operators from the right to win public contracts;

- Reformulation of the article related to the concentrated purchase;
- Completing the determination of the moment of disqualification of an economic operator when he withdrew from signing the contract;
- Specifying the term when an economic operator is excluded from the procedures procurement or participation in procurement or concession procedures;
- Specifying the cases when a contracting authority/entity reports to the Procurement Public Commission related to the withdrawal of economic operators;
- Revision of the mandatory exclusion criteria article;
- Revision of the dynamic purchasing system article;
- Forecasting the use of electronic catalogs;
- Regarding the various aspects of the development of the procurement procedure through electronic systems, the necessary changes come within the increasing transparency and efficiency in procurement procedures. Within the framework of development of technology and innovation in the field of public services, with aimed at facilitating procedures, increasing transparency and avoiding conflict of interest, it is necessary to be involved in this development technological and public procurement process.
- Within the framework of increasing transparency and efficiency, some procurement processes public, such as: calculating the limit value of the contract, market research, the drafting of technical specifications must be carried out in electronic systems certified, supported in interaction with other Platform Systems Governmental Interaction. For this purpose, it is proposed that the system should be developed using advanced artificial intelligence technology and processes robotized in accordance with European forecasts.
- Within the framework of increasing transparency and responsibility in the assessment process, it is necessary to carry out the automatic evaluation of the fulfillment of the general criteria and special qualifications of bidders for the first phase of pre-qualification, as well as the development of the dynamic purchase and auction electronic system, using advanced artificial intelligence technology and robotic processes.
- The obligation of the Procurement Public Commission to cooperate with the justice bodies, in cases where flagrant violations of the law are found in public procurement procedures, especially in cases where there are indications of exercising illegal influence, conflict of interest or corruption.

To conclude, the overall recommendation of the paper is the revision of the Procurement Law in Albania, based on the European Commission Recommendations. There is a high necessity for the right implementation of the law, by using the post legislative scrutiny. Furthermore, it is believed that by adopting the correct Procurement Law, the corruption level will be decreased significantly. Albania is still in a transition period, where it is needed a full surveillance by the European Commission.

### **Acknowledgment**

This paper is an output of the studies on Public Procurement Law and Management of Public Finances.

## **References**

Albania Progress Report (2023) Available: [https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023_en)

Annual Report of High Public Audit Institution (2023) Available at <http://www.klsh.org.al>

Annual Report of Public Procurement Commission (2023) Available: <http://www.kpp.al>

Open Procurement Albania (2023) Available <https://openprocurement.al/sq/index/list>

Public Procurement Agency (2012a) Manual mbi Shqyrtimin e Procedures se Prokurimit.

Public Procurement Agency (2012b) Manual mbi Shqyrtimin e Procedures se Prokurimit.

Public Procurement Agency (2012c) Udhezues mbi Perzgjedhjen e Kontratave Publike.

Available <https://www.app.gov.al/GetData/DownloadDoc?documentId=24a48be8-63bb-4bf8-b7cc-522c399f8ee1>

Publik per Autoritetet Kontraktore. Available

<https://www.app.gov.al/GetData/DownloadDoc?documentId=b1c6eb7d-98a2-4dd0-ac72-8c4162fc51c6>

Publik per Operatoret Ekonomike. Available

<https://www.app.gov.al/GetData/DownloadDoc?documentId=49d96489-3a68-42f2-86fc-83cb98caabe0>