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JULY 2018

TRANSPARENCY INDEX IN PUBLIC PROCUREMENT 2017

**FOR MUNICIPALITIES
 OF KOSOVO**



TRANSPARENCY AND
 ANTI-CORRUPTION



JULY 2018

TRANSPARENCY INDEX IN PUBLIC PROCUREMENT 2017

FOR MUNICIPALITIES
OF KOSOVO





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CONTENT

INTRODUCTION	7
METHODOLOGY	10
ACCESS TO PUBLIC DOCUMENTS.....	12
BUDGETARY TRANSPARENCY.....	15
TRANSPARENCY IN PROCUREMENT	20
TRANSPARENCY IN PUBLIC AUCTIONS	24
INFORMATION IN THE FIRST INSTANCE COMPLAINTS RELATING TO PUBLIC PROCUREMENT PROCESS ...	26
CONCLUSIONS	28
ANNEX 1.....	32

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“The object of government is the welfare of the people. The material progress and prosperity of a nation are desirable chiefly so far as they lead to the moral and material welfare of all good citizens.”

(THEODORE ROOSEVELT)

INTRODUCTION


Over the past few years, the Government of Kosovo has improved the management and transparency of public expenditure by incorporating EU directives for public procurement¹ into the legal and regulatory framework, increasing public participation², building training programs,³ and launching an electronic procurement platform.⁴ This latter reform, in particular, has introduced new levels of transparency into the procurement process.

1 Law on Public Procurement in Republic of Kosovo, Nr.04/L-042, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092

2 Law No. 03/L-040 on local self-Government (Sub Normative Acts: Regulation (GRK) no. 01/2016 on administrative review of municipal acts, Regulation no. 02 / 2017 on municipal performance management system, Regulation (MLGA) no. 01/2017 on the procedure for drafting and publishing municipal acts; Administrative Instruction (MLGA) no. 01/2016 on the procedure of establishment, organization and competencies of the consultative committees in the municipalities; Administrative Instruction (MLGA) no. 01/2015 for the transparency in municipalities

3 Law on Public Procurement in Republic of Kosovo, Nr.04/L-042, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 25

4 E-Procurement; FreeBalance, <http://opendata.rks-gov.net>, etc.

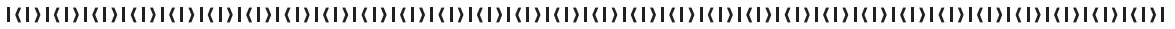


“PUBLIC EXPENDITURE AND THE COLLECTION OF PUBLIC REVENUE SHALL BE BASED ON THE PRINCIPLES OF ACCOUNTABILITY, EFFECTIVENESS, EFFICIENCY AND TRANSPARENCY.”

CONSTITUTION OF THE REPUBLIC OF KOSOVO,
ARTICLE 120

BENEFITS OF TRANSPARENCY

- Increasing trust in good governance through accountability in public spending;
- Increasing competition by providing economic operators with the opportunity for preliminary planning and preparation for the identified requests
- Increasing accountability by providing comparative analysis of the need and realization of, or deviation from these plans;
- Strengthening efforts to combat corruption by reducing the possibilities of providing additional information and price adjustments by public institutions with particular economic operators;
- Capacity building through constructive criticism, which would help institutions improve governance;
- Increasing efficiency by reducing opportunities for corruption and misuse.



The e-Procurement platform ensures that all bidders have the same information and reduces the ability of individuals to manipulate tenders for personal gain. From January 1, 2017, all municipalities were mandated to use the e-Procurement platform to issue all tenders for small-, medium-, and large-scale procurements, which they have been doing with a 100% compliance rate.

Transparency International noted Kosovo's progress in the Corruption Perception Index (CPI) for 2017.⁵ In the CPI, Kosovo's score improved by 10 points from the previous year,⁶ leading to a new ranking of 85th out of 180 countries measured.

Despite these improvements in government transparency, this Transparency Index for Public Procurement for Municipalities of Kosovo indicates that there is still room for improvement. For example, despite the fact that all municipal procurements are issued through the e-Procurement platform, municipalities are still legally required to publish procurement information on their own municipal websites; however, this practice appears to have slipped in 2017 compared to previous years. In some cases, this was because municipalities struggled with broken or disabled websites as a result of a project to upgrade and standardize municipal web sites initiated by the central government and therefore out of the control of the municipalities. In other cases, municipal procurement officers were not aware that procurement information had to be published both on the e-Procurement platform and the municipal web site. KDI also found that municipal websites lack consistency and clarity in the presentation of public procurement information. And further, KDI found that many municipalities have not met the legal requirement for public hearings, thus missing an important opportunity to share information about projects and procurement plans with the public.

The Organization for Economic Co-operation and Development (OECD) estimates 20-30% of project value can be lost in government procurement when corruption is present.⁷ Therefore, to ensure Kosovo municipalities deliver the maximum value for money to their citizens, it is essential that public expenditures are as transparent as possible.

Levels of transparency in public procurement continue to improve, but delays or denials of access to public documents limit the ability of citizens, civil society, and the media to monitor the municipal procurement process effectively and hold local officials to account. Without fully functioning accountability mechanisms, the consequences of malfeasance and mismanagement at the municipal level are borne by the citizens of Kosovo.⁸

Through the regular publication of this Transparency Index, Kosova Democratic Institute (KDI)/Transparency International Kosova (TIK) aims to shed light on municipal procurement activities and thereby incentivize institutions to improve the quality of services delivered to citizens. The goal of this Index is to inform citizens about the levels of transparency and efficiency with which local governments are able to provide goods, works, and services, and to encourage institutions to conduct more efficient and transparent procurements. Improved transparency and access to information about public expenditure would enable the public to understand how their taxes are spent.

5 https://www.transparency.org/news/feature/corruption_perceptions_index_2017

6 http://issuu.com/transparencyinternational/docs/2016_cpireport_en?e=2496456/43483458

7 OECD Preventing Corruption in Public Procurement, 2016

8 KTV, Government denies KTV access to public contract for highway "Prishtina-Skopje", evening news 09 July 2018; RIINVEST Institute, Harmful Contracts of Kosovo, July 2018; RIINVEST Institute, How open is the Kosovo Government? Kosovo Open Governance Scorecard results, 2016; KDI, Transparentitis Virus, 2016





IN KOSOVO, MUNICIPALITIES
SPEND AN AVERAGE OF

40-60%

**OF THEIR BUDGETS THROUGH
PUBLIC PROCUREMENT.**

WHEN THERE IS A LACK OF TRANSPARENCY OR
ACCOUNTABILITY, MUNICIPAL PROCUREMENT
CAN BE HIGHLY VULNERABLE TO CORRUPTION.
ACCORDING TO TRANSPARENCY INTERNATIONAL,
THE KEY MECHANISMS IN THE FIGHT AGAINST
CORRUPTION ARE AN ADEQUATE LEGAL
FRAMEWORK, PUBLIC PARTICIPATION,
TRANSPARENCY, INTERNAL CONTROLS, PUBLIC
OVERSIGHT, AND TRAINING.

METHODOLOGY

Kosova Democratic Institute (KDI), a branch of Transparency International (TI) for Kosovo, has developed a methodology to measure transparency in the area of public procurement for all central and local institutions. Such methodology was first implemented in 2014, when transparency was first measured in municipalities across four thematic pillars. With the legal amendments to the Public Procurement Law, KDI added an additional pillar to the previous methodology, measuring transparency in procurement and municipal expenditure in five pillars and 19 indicators as follows:

PILLAR 1: ACCESS TO PUBLIC DOCUMENTS WILL BE MEASURED BY:

- 1 Number of requests for access to public documents, in any area;
- 2 Number of denied requests for access to public documents, in any area;
- 3 Number of requests for access to public documents in public procurement;
- 4 Number of requests denied for access to public documents in the area of public procurement.

PILLAR 2: BUDGETARY TRANSPARENCY:

- 5 Publication of the approved budget for 2017 on the municipality's website;

- 6 Publication of the 2017 procurement plan on the municipality's website;
- 7 Publication of the audit report for 2016 on the municipality's website;
- 8 Number of public hearings;
- 9 Publication of quarterly and semi-annual/ annual financial reports on the website.

PILLAR 3: TRANSPARENCY IN PUBLIC PROCUREMENT:

- 10 Number of tenders published on the municipality's website (contract notices);
- 11 Number of tenders published on the Public Procurement Regulatory Commission's website;
- 12 Number of awards published on the municipality's website (contract award notices);
- 13 Number of awards published on the Public Procurement Regulatory Commission's website.



PILLAR 4: TRANSPARENCY IN PUBLIC AUCTIONS:

- 14 Notices announcing public auction on the municipality’s website;
- 15 Notices announcing public auction on the Public Procurement Regulatory Commission’s website;
- 16 Notice of the auction winners on the municipality’s website;
- 17 Notice of the auction winners on the Public Procurement Regulatory Commission’s website.

PILLAR 5: INFORMATION ON THE FIRST INSTANCE COMPLAINTS REGARDING THE PUBLIC PROCUREMENT PROCESS:

- 18 Number of requests/complaints filed by economic operators to review contract awards;
- 19 Number of decisions (responses) to requests for review.

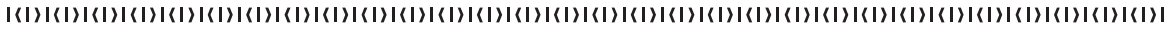


This Transparency Index covers all 38 Kosovo municipalities

CLARIFICATION

During 2017, the municipalities of Gjakova, Klina, Ferizaj, Hani i Elezit, and Mitrovica North did not have functional websites, therefore, there were no data available in Pillars 2, 3 and 4 for these municipalities.





ACCESS TO PUBLIC DOCUMENTS

The Transparency Index measures, in Pillar 1, access to public documents. Through this Pillar, KDI observed the extent to which the Law on Access to Public Documents is implemented. In addition, KDI assessed the ability of citizens, civil society organizations, and media to use this mechanism to demand accountability from municipal institutions.

The focus was on requests for access to public documents in public procurement. According to the information provided by municipalities in response to the request from KDI, citizens submitted 939 requests for access to public documents to all municipalities in

2017. Of these, 335 were related to public procurement. Municipalities with the largest number of requests for access to public documents were Prishtina with 166, Klina with 105, Lipjan with 68, Drenas with 61, and Prizren with 61.

Only 29 out of 38 municipalities responded to the KDI survey providing data on their activities pertaining to the Law on Access to Public Documents. The nine municipalities below did not respond to the requests for information about access to public documents in 2017.



ACCORDING TO THE INFORMATION PROVIDED BY MUNICIPALITIES IN RESPONSE TO THE REQUEST FROM KDI, CITIZENS SUBMITTED **939 REQUESTS FOR ACCESS TO PUBLIC DOCUMENTS TO ALL MUNICIPALITIES IN 2017. OF THESE, 335 WERE RELATED TO PUBLIC PROCUREMENT.**





THE NUMBER OF REQUESTS FOR ACCESS TO DOCUMENTS SENT BY KDI TO MUNICIPALITIES AND RESPONSES TO SUCH REQUESTS



LIST OF MUNICIPALITIES THAT HAVE NOT RESPONDED

- | | | |
|-----------|-------------------|---------------|
| 1 DRAGASH | 4 LEPOSAVIC | 7 SHTERPCE |
| 2 JUNIK | 5 MITROVICA NORTH | 8 ZUBIN POTOK |
| 3 KLLOKOT | 6 RANILUG | 9 ZVECAN |

TABLE 1. Municipalities that have not responded to requests for information





BUDGETARY TRANSPARENCY

The municipal budget-setting process enables local governments to plan the use of limited financial resources to deliver value to citizens, including through the implementation of public contracts for goods, works, or services.

In this Pillar, KDI measured the budget transparency of municipalities. Budget planning at the municipal level entails procurement of capital investments, goods, or services.

TO MEASURE BUDGET TRANSPARENCY, KDI USED THE FOLLOWING INDICATORS:

- 1 Publication of the budget document on the municipality's website;
- 2 Publication of the procurement plan on the municipality's website;
- 3 Publication of audit reports on the municipality's website;
- 4 Number of public hearings in 2017;
- 5 Number of financial expenditure reports during the period January-December 2017 published on municipality's website.





LIST OF MUNICIPALITIES THAT HAVE PUBLISHED THEIR BUDGET FOR 2017

1 Dragash

2 Drenas

3 Istog

4 Kaçanik

5 Kamenica

6 Lipjan

7 Malisheva

8 Mitrovica

9 Novoberde

10 Peja

11 Prishtina

12 Prizren

13 Rahovec

14 Shtime

15 Skenderaj

16 Suhareka

17 Viti

18 Vushtrri

PUBLICATION OF THE APPROVED BUDGET ON THE WEB SITE

During the period January to December, 2017, 53% of municipalities did not publish their budget plans on their websites. Out of 38 municipalities, only 18 municipalities published the budget.

According to the Ministry of Local Government Administration (MLGA) Administrative Instructions 01/2015, all municipalities are legally required to publish the budget, budget plan, and investment plan. Publication of the budget by the municipality helps citizens understand how their taxes are being spent. Through the budget plan, citizens are able to see whether their street, neighborhood, or their community will be part of the plans of their elected officials. Municipalities should inform citizens through budgetary transparency measures about upcoming municipal investments. This would also help businesses prepare more effectively to participate in public investments.

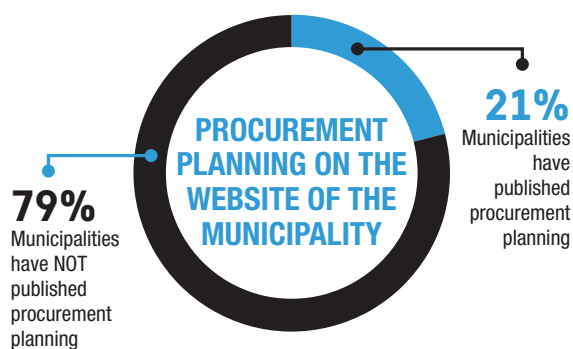


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PROCUREMENT PLANNING ON THE WEB SITE

Ideally, municipalities develop their procurement plans through a process of prioritizing citizen needs for capital investments, goods, works, or services. Through the procurement planning process, municipal decision makers determine procurement methods and expectations for the fulfilment of these requirements.

Procurement planning is important because a procurement plan lists all expected requirements to be acquired during a period of time, sets the timeframe for the completion of procurements, and provides forecasts on the procurement value. In addition to providing the possibility of consolidating procurement of similar products or of common interest, this planning process, when published, provides an opportunity for businesses to make necessary plans and preparations for access to public procurement and make their bids more competitive. Publication of this plan on the municipal web site is also a requirement of the Ministry of Public Administration (MPA) Administrative Instructions 01/2015.¹⁰



¹⁰ MPA Administrative Instructions 01/2015: [https://map.rks-gov.net/getattachment/5409918d-193e-4372-88b6-3ba29358bc89/Ud-hezimi-Administrativ-\(MAP\)-nr-01-2015-per-Ueb-Fa.aspx](https://map.rks-gov.net/getattachment/5409918d-193e-4372-88b6-3ba29358bc89/Ud-hezimi-Administrativ-(MAP)-nr-01-2015-per-Ueb-Fa.aspx)

¹¹ https://krpp.rks-gov.net/Default.aspx?PID=StdForms&LID=1&P-PRCMenu_OpenNode=62

LIST OF MUNICIPALITIES THAT HAVE PUBLISHED THEIR PROCUREMENT PLANS

1	Kamenica	6	Prishtina
2	Klina	7	Rahovec
3	Lipjan	8	Viti
4	Malisheva	9	Vushtrri
5	Podujeva		

Under the previous secondary legislation for Public Procurement (A01 Rules and Operational Guidelines for Public Procurement),¹¹ which was in force during the evaluation period, publication of procurement plans was prohibited under the pretext that publication of the forecasted values of procurements would result in loss of market value, and that economic operators would bid prices close to the budget values provided. This provision was in direct conflict with the legal requirements set by the Ministry of Public Administration on the minimal content of web sites of public institutions. However, out of 38 municipalities surveyed, nine municipalities were proactive and published procurement plans in the form of prior notification, or with redacted prices. The ROGPP was amended at the beginning of 2018 to permit publication of procurement plans. (See above list of municipalities that have published their procurement plans)

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AUDIT REPORT ON THE WEB SITE

Publication of the audit report for 2016 is another important indicator because it provides the public with information on how public funds are managed by municipalities. Most of the municipalities still do not publish audit reports on their websites.

It should be noted that audit reports for all municipalities are available on the website of the National Audit Office of Kosovo. However, municipalities are still required to publish the audit report on their websites according to Administrative Instructions 01/2015 of the MLGA on the transparency of local governance.¹²



LIST OF MUNICIPALITIES THAT HAVE PUBLISHED THEIR AUDIT REPORTS

1 Dragash

2 Drenas

3 Lipjan

4 Malisheva

5 Prishtina

6 Prizren

7 Rahovec

8 Shtime

9 Vushtrri



26 MUNICIPALITIES THAT HAVE RESPONDED TO THE REQUEST FOR ACCESS TO PUBLIC DOCUMENTS HAVE ORGANIZED 238 PUBLIC HEARINGS

¹² MLGA Administrative Instructions 01/2015: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11403>



NUMBER OF PUBLIC HEARINGS IN 2017

Municipalities have been very active with regard to public hearings. The required number of public hearings is a minimum of two for the budget circular as part of the budget hearing. According to the data received from the 26 municipalities that responded to the request for information, during 2017, these municipalities organized 238 public hearings, of which the most active municipalities were as follows:

MUNICIPALITY	NO. OF PUBLIC HEARINGS IN 2017
PRISHTINA	24
VITI	24
RAHOVEC	17
LIPJAN	16
GJILAN	15
GJAKOVA	14

However, announcements for only 54% of these public hearings were published on municipal websites.

NUMBER OF FINANCIAL EXPENDITURE REPORTS JANUARY-DECEMBER 2017

The current legal framework requires publication of quarterly and annual expense reports by all public financial institutions. During 2017, 21 municipalities published a total of 74 quarterly, semi-annual, and annual reports on their municipal websites. Municipalities that published four reports per year were considered to have fulfilled the basic legal requirements for this indicator. Prishtina was the leading municipality in 2017 publishing monthly, quarterly, semi-annual and annual expenditure reports.

MUNICIPALITY	NO. OF FINANCIAL EXPENDITURE REPORTS DURING JANUARY- DECEMBER 2017
DEÇAN	0
DRAGASH	4
DRENAS	0
FERIZAJ	0
FUSHË KOSOVA	0
GJAKOVA	0
GJILAN	2
GRACANICA	0
HANI I ELEZIT	4
ISTOG	1
JUNIK	2
KAÇANIK	1
KAMENICA	0
KLINA	3
KLLOKOT	0
LIPJAN	4
MALISHEVË	4
MAMUSHË	0
MITROVICË	1
MITROVICË E VERIUT	0
NOVO BËRDË	1
OBILIQ	1
PARTESH	0
PEJË	5
PODUJEVË	2
PRISHTINË	18
PRIZREN	3
RAHOVEC	4
RANILLUG	0
SHTËRPECË	0
SHTIME	4
SKENDERAJ	2
SUHAREKË	4
VITI	4
VUSHTRRI	0
LEPOSAVIQ	0
ZUBIN POTOK	0
ZVECAN	0
TOTAL	74

TRANSPARENCY IN PROCUREMENT

TRANSPARENCY IN TENDERING

This Transparency Index, in this Pillar, measures the transparency of municipal tender documents. In this phase, KDI compared four indicators to find the difference between notices that were published on the websites of the municipalities versus the notices these institutions published on the PPRC website or the e-Procurement platform.

Pursuant to Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, which was in force during the evaluation period, as well as the secondary legislation (A01 Rules and Operational Guidelines for Public Procurement), all contract notices over € 1,000 and all contract award notices shall be published on the PPRC website. Also, according to the same legal provisions, notices for purchases over € 10,000 shall be published on the e-Procurement platform. According to the MLGA Administrative Instructions 01/2015 on transparency of local government, these notifications shall also be published on the web sites of municipalities.

To evaluate the level of transparency in this Pillar, KDI measured the following four indicators, with the aim of illustrating the difference between the websites of municipalities and the notices these institutions have published on the PPRC website:

- 1 Number of contract notices published on the website of the municipality during January-December 2017;
- 2 Number of contract notices published on the PPRC website (or e-Procurement platform) during January-December 2017;
- 3 Number of contract award notices published on the website of the municipality during January-December 2017;
- 4 Number of contract award notices published on the PPRC website (or e-Procurement platform) during January-December 2017.



REMARKS: The e-Procurement platform entered into force in January 2017 for municipalities.¹³ During a transition period from January-March 2017, publication of tender documents was enabled on both the PPRC webpage and the e-Procurement platform). This has caused overlapping information and inaccurate statistics on the overall number of procurement activities.

Currently, there is still a confusing requirement, as the awards of minimal value continue to be published in the PPRC archives, but other notifications are published on the e-Procurement platform. To avoid further confusion, KDI recommends that the e-Procurement platform be utilized to its full potential and the PPRC mandate its use for the publication of all procurement documents, regardless of the value of the procurement.

¹³ PPRC decision number 112/2016, dated 29.08.2016



CONTRACT NOTICES

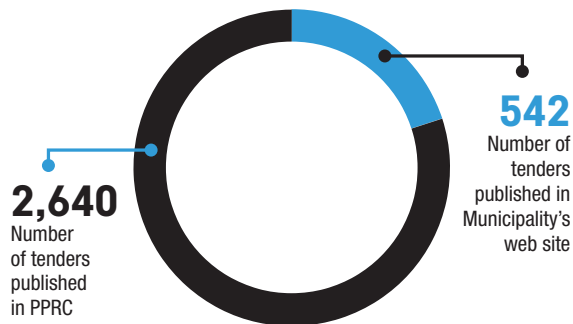
The number of tenders published on the municipal websites is usually different from the number of tenders published on the PPRC website. Most municipalities are focused on fulfilling the legal provisions of the Public Procurement Law but may overlook the requirement from the MLGA AI 01/2015 to publish the notifications on their web sites, as well.

Businesses in Kosovo are aware of the central platforms; however, this is not the case with citizens and smaller enterprises. Publication of procurement notices on the municipality's website is important for local small businesses and citizens.

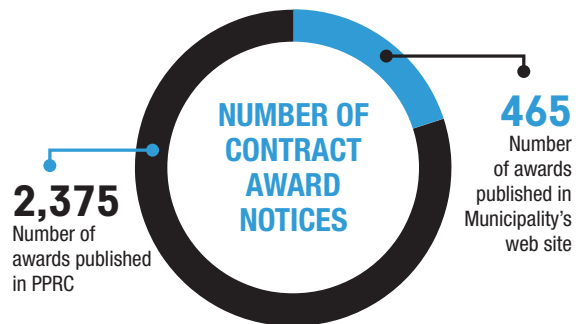
Out of 2,640 tender notices that were published on the PPRC website or e-Procurement platform, only 542 of them were also published on the municipal websites. This represents only 21% of the tenders issued.

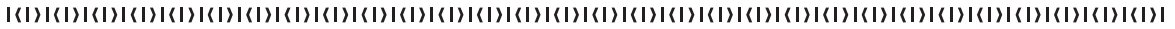
Regarding contract award notices, out of 2,375 notices published on the PPRC website or e-Procurement platform, only 465 of them were also published in municipal websites. This represent only 20% of the contract award notices.

COMPARISON OF PUBLISHED TENDERS BETWEEN PPRC AND MUNICIPALITIES' WEBSITES

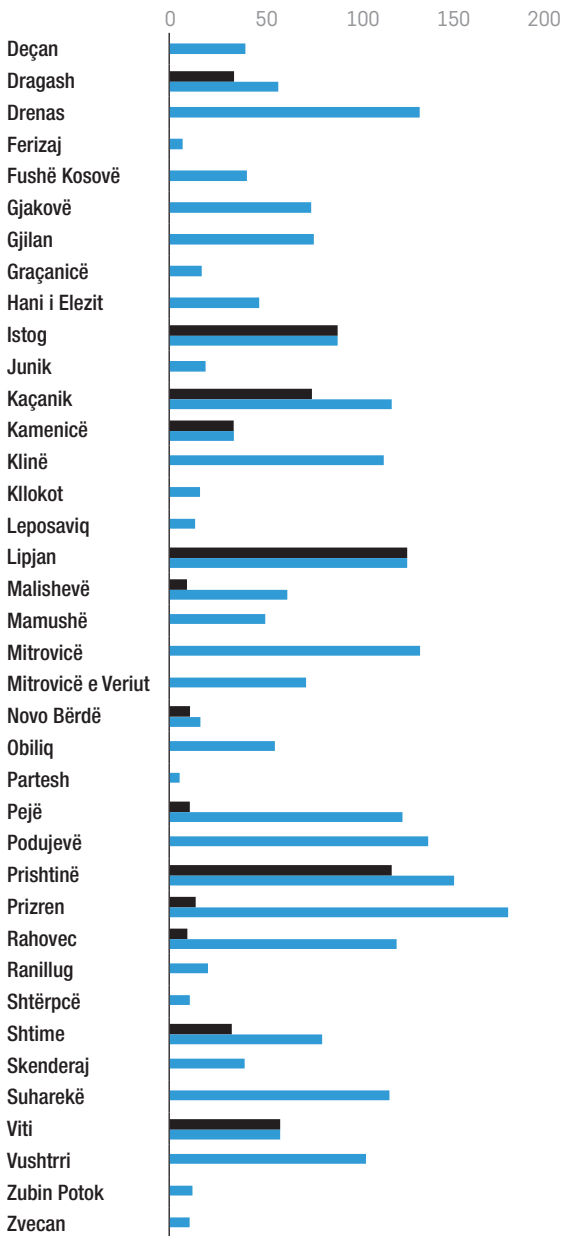


NUMBER OF CONTRACT AWARD NOTICES



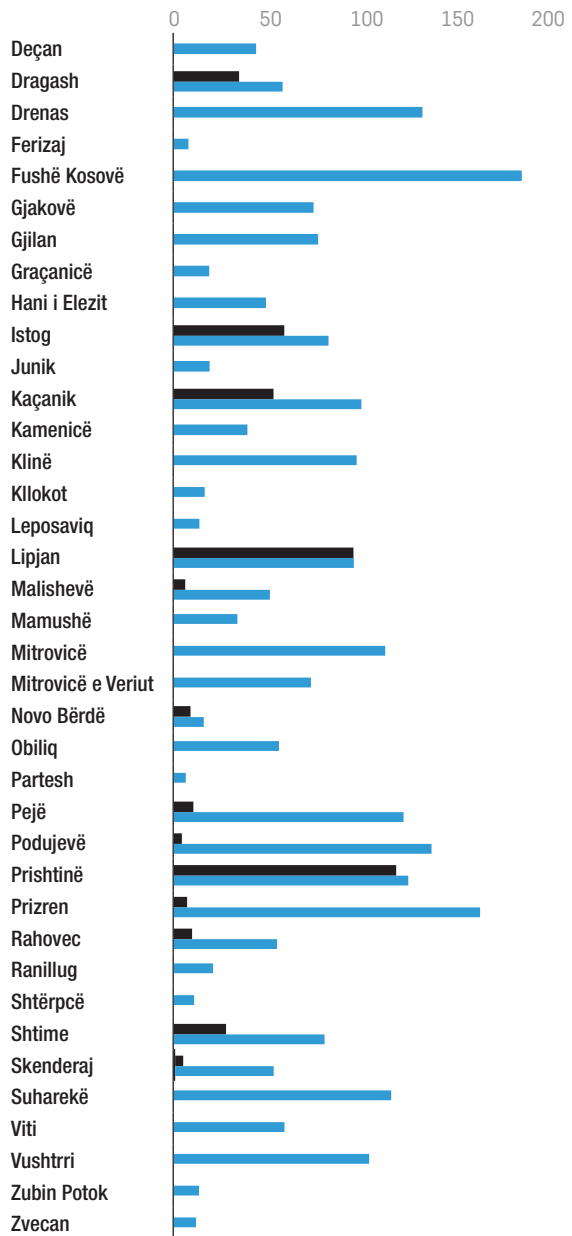


COMPARISON OF PUBLICATION OF CONTRACT NOTICES FOR ALL MUNICIPALITIES



■ Number of tenders published in Municipality's web site ■ Number of tenders published in PPRC

COMPARISON OF THE PUBLICATION OF CONTRACT AWARD NOTICES



■ Number of awards published in Municipality's web site ■ Number of awards published in PPRC



|||||

Municipalities with the highest transparency in public procurement:

#	MUNICIPALITY	CONTRACT NOTICES JANUARY-DECEMBER 2017	CONTRACT AWARD NOTICES JANUARY-DECEMBER 2017	COMBINED PERCENTAGE
1	Lipjan	100%	100%	100%
2	Vitia	100%	100%	100%
3	Prishtina	78%	95%	87%
4	Istog	100%	71%	86%
5	Novo Brdo	71%	53%	62%
6	Kacanik	64%	53%	59%
7	Kamenica	100%	0%	50%



REMARK 1: The Municipality of Vitia posted a hyperlink on their web site to the e-Procurement platform, which guides its citizens to all notifications for the Municipality. This may be a best practice for other municipalities.



REMARK 2: During the period January – December 2017, the Municipalities of Lipjan and Kamenica published contract notices for minimal value purchases (under €1,000.00), on their websites. While this is not required by current legislation, such voluntary dissemination of procurement information is seen as a best practice.

|||||

TRANSPARENCY IN PUBLIC AUCTIONS

NOTICE OF SALE OF ASSETS

In Kosovo, the number of public auctions is quite small compared to the overall number of public procurements. Items sold through auctions are not of high monetary value, however, publication of these activities in the municipalities' websites is a legal requirement of Law No. 04/L-144 on allocation for use and exchange of immovable property in the municipality.

Additionally, the procedures for the public auction notifications and award are regulated through the secondary legislation for public procurement, and therefore, their publication on the PPRC website is also required.

To measure the level of transparency in this process, the Index compared the following four indicators:

- The number of asset sale notices published on the municipal website from January to December 2017;
- The number of asset sale notices published on the PPRC website from January to December 2017;
- The number of contract award notices published on the municipal website from January to December 2017;
- The number of contract award notices published on the PPRC website from January to December 2017.

Municipal compliance with all requirements to publish information about auctions is low. In 2017, out of the 72 auction notices that were published on the PPRC website, only seven were published on the websites of municipalities. Out of 43 contract award notices that were published on the PPRC website, only four were published on the websites of municipalities.

The only four municipalities that have shown transparency in the process of publication of auctions notices are the municipalities of Istog, Mitrovica, Rahovec and Vushtri. Whereas, the only six municipalities that have shown transparency in the process of publication of the notices for contract award in public auctions are the municipalities of Istog, Mitrovica, Rahovec, Vushtri Gjilan and Kacanik.



THE ONLY SIX MUNICIPALITIES THAT HAVE SHOWN TRANSPARENCY IN THE PROCESS OF PUBLICATION OF AUCTIONS NOTICES ARE THE MUNICIPALITIES OF ISTOG, MITROVICA, RAHOVEC, VUSHTRRI, GJILAN AND KAÇANIK



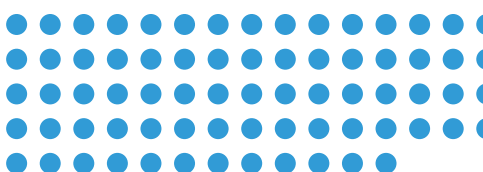
10%

7



Number of asset sale notices published on the municipality website

72



Number of asset sale notices published on the PPRC website

9%

4



Number of contract award notices published on the municipality website

43



Number of contract award notices published on the PPRC website





INFORMATION IN THE FIRST INSTANCE COMPLAINTS RELATING TO PUBLIC PROCUREMENT PROCESS

This Pillar deals with the procurement review (or bid protest) process. KDI measured the transparency of first instance complaints – that is, complaints addressed by the municipalities themselves before escalating to the Procurement Review Body (PRB). The Public Procurement Law was amended by Law No. 05/L-068 that entered into force in January 2016, mandating contracting authorities, themselves, including municipalities, to serve as the first instance of review for procurement complaints. KDI found that, despite the law enabling first instance review, municipalities

(and other budgetary units in Kosovo) do not publish information about first instance complaints. This information is only available to public institutions and the complaining parties.

With the aim of analyzing the accountability and responsiveness of municipal decisions, the Index also measured the number of claims that escalated to the PRB. According to information provided by municipalities, in 2017, economic operators filed 216 first instance complaints related to procurement.

LIST OF MUNICIPALITIES THAT HAVE NOT RESPONDED

1 DRAGASH

2 JUNIK

3 KLLOKOT

4 MITROVICA NORTH

5 RANILUG

6 SHTERPCE

7 LEPOSAVIC

8 ZUBIN POTOK

9 ZVECAN





During this same time period, economic operators submitted 442 complaints to the PRB, including complaints for the same procurement activities that were addressed by municipalities as the first instance, which raises a concern related to the quality and professionalism of decisions makers in the first instance, especially as they are not public or monitored by another institution.¹⁴

noted the contracting authorities, in many cases, did not address the complaints satisfactorily.¹⁶ The same cases were then sent to the PRB for review, and after investigation, were returned to the contracting authorities for re-evaluation, raising questions about the quality of the original findings. Lack of oversight, poor quality of resolution, and lack of transparency delay procurement award time and impose other negative impacts on both contracting authorities and economic operators.

During 2017-2018, KDI received several complaints on its toll-free telephone line for victims or witnesses to corruption, pertaining to the quality of municipal procurement review decisions.¹⁵ After reviewing the complaints and researching the specific cases, KDI

14 Statement by Sami Uka, Board Member Public Procurement Regulatory Commission (PPRC), D+ Roundtable on the performance of PRB and PPRC, held on 11 July 2018, 10:00 hrs., Prishtina

15 KDI Advocacy and Legal Advice Center (ALAC) for victims and witnesses of corruption: 0800 77 7777 (also displayed in PPRC website)

16 Procurement Number V1657-18-025-121; Procurement Number 622-17-3318-5-1-1; Procurement Number: 214-18-3864-5-1-1; Procurement Number: 1020890500-18-3408-1-1-1

Out of 38 municipalities in Kosovo, nine municipalities did not respond to the request for information in relation to first instance complaints and decisions relating to procurement processes.

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MUNICIPALITY

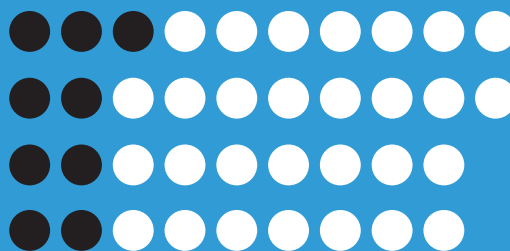


38

SUBMITTED
REQUESTS FOR
ACCESS

9

DID NOT
RESPOND TO
THE REQUESTS



29

RESPONDED TO
THE REQUESTS





CONCLUSIONS

GENERAL

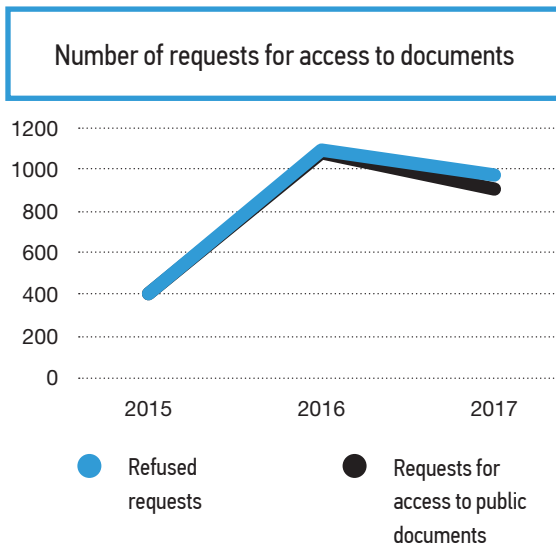
In 2017, municipalities faced two major changes: local elections and delays in launching new municipal websites. These two events have also affected the following issues:

- Information pertaining to the budget, auditing, planning, contract notices, contract awards, and auctions are available on central government platforms; however, the law requires municipalities to publish this information on municipal websites, as well. Additionally, citizens would benefit from the ability to gather information in one place to track budget expenditure, audit, and other public actions that involves public expenditures for the benefit of the community.
- While municipalities are fully employing the e-Procurement platform to issue procurement tenders for all small-, medium-, and large-scale procurement, KDI noted a negative trend in terms of publishing procurement documents on municipal websites.
- Kosovo municipalities lack capabilities in procurement planning and do not consult with citizens in the planning process.
- Municipal websites lack consistency and clarity in terms of presenting information about public expenditure.
- Many municipalities have not met the legal requirement to hold public meetings with citizens, thus missing an opportunity to disseminate information about municipal projects which will benefit citizens.
- Information prepared by municipalities such as contract notices and contract award notices can easily

be published on municipal websites. Similarly, the National Audit Office reports and Treasury reports can readily be added to municipal websites. This information can easily be used to enrich the websites of the municipalities without spending time and resources.

ACCESS TO PUBLIC DOCUMENTS

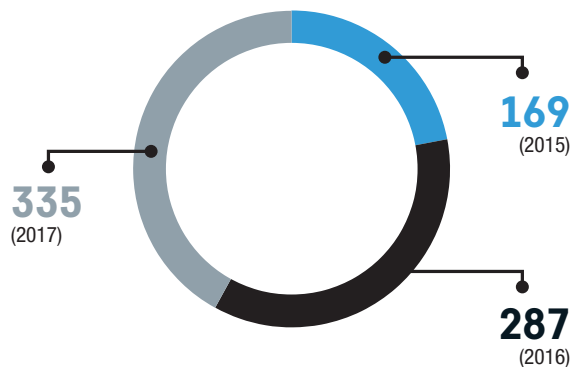
Although some municipalities have not disclosed the number of requests received for access to public documents, in 2017, there was a decrease in the number of requests submitted to the municipalities from 2016 numbers. The total number of requests received in 2016 was 1,080 (covering 34 municipalities reporting), while this figure dropped to 939 in 2017, marking a decrease of 13%.



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In 2016, 34 municipalities received 287 requests for access to public documents in public procurement. The number of requests in 2017 increased to 335, which marks an increase of 14% in the number of requests.

REQUESTS TO ACCESS TO PUBLIC DOCUMENTS PERTAINING PROCUREMENT



The decrease in overall requests for access to public documents may indicate that more information is available to citizens through the e-Procurement platform or other sources.



BUDGETARY TRANSPERENCY

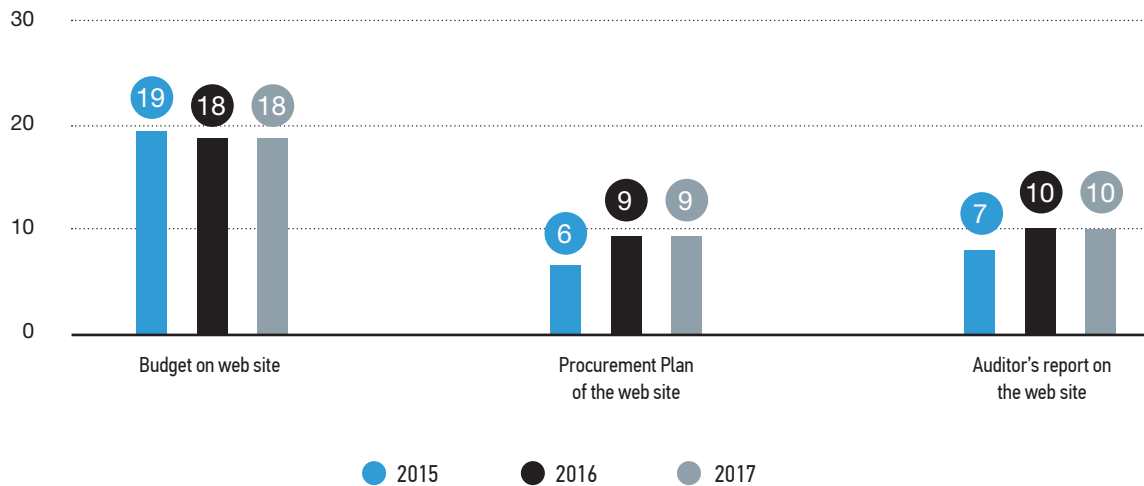
Although Kosovo municipalities have improved the level of transparency in several indicators compared to 2016, in general, municipalities still display a very low level of budget transparency. Most municipalities do not publish even basic documents such as the municipal budget document or expenditure report for the relevant year. The municipalities' websites are also missing important documents such as procurement plans, and even the report of the National Audit Office. Regarding budget transparency, KDI notes the following:

- Municipalities that have published the budget for 2017 are Dragash, Drenas, Istog, Kaçanik, Kamenica, Lipjan, Malisheva, Mitrovica, Novoberde, Peja, Prishtina, Prizren, Rahovec, Shtime, Skenderaj, Suhareka, Viti, and Vushtrri.
- Proactive municipalities that have published their procurement plans are: Kamenica, Klina, Lipjan, Malisheva, Podujeva, Prishtina, Rahovec, Vitia, and Vushtrri.
- Municipalities that have published the National Audit Office report on their website are Dragash, Drenas, Lipjan, Malisheva, Prishtina, Prizren, Rahovec, Shtime, and Vushtrri.
- Municipalities with the highest number of public hearings are: Prishtina (24), Vitia (24), Rahovec (17), Lipjan (16), Gjilan (15), and Gjakova (14).

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BUDGETARY TRANSPARENCY



TRANSPARENCY IN PROCUREMENT

The Law No. 04/L-042, as amended and supplemented by Law no. 04 / L-237, Law no. 05 / L-068, and the Law no. 05 / L-092 on Public Procurement, requires that all notices pertaining to the public procurement process must be published on the e-Procurement platform, which municipalities are doing in all caes. However, according to the MLGA Administrative Instructions 01/2015 on transparency of local government, these notifications must also be published on municipal web sites.

The majority of municipalities did not publish contract notices or contract award notices on their websites in 2017. There are 23 municipalities that reached 0% in both indicators measured in this Pillar. Compared to 2016, 2017 marked a decrease of 17% for the average overall transparency level, from 37% to 21%.

The indicator measuring transparency in contract award notices also declined by 17%, from an average level of 37% in 2016 to 20% in 2017.

The most transparent municipalities in terms of procurement are Lipjan, Vitia, Prishtina, Istog, Novo Brdo, Kaçanik, and Kamenica.

TRANSPARENCY IN PUBLIC AUCTIONS

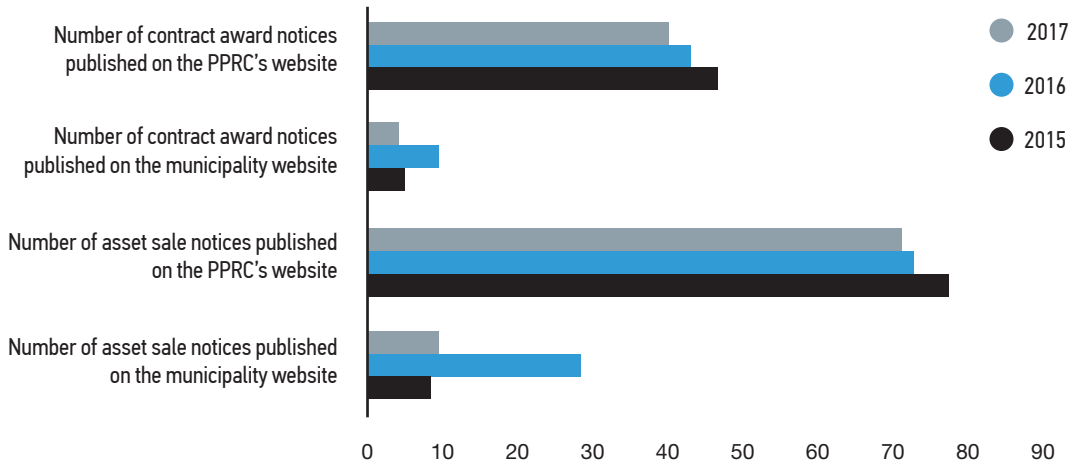
Through auctions, municipalities usually sell confiscated goods or equipment that are no longer usable by the institution. Although publication of notices in municipal websites is a legal requirement through Law No. 04/L-144 on allocation for use and exchange of immovable property and the municipality, this category remains non-transparent. The most transparent municipalities in this Pillar are those of Istog, Mitrovica, Gjilan, Kaçanik, Vushtri, and Rahovec.



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TRANSPARENCY IN AUCTIONS

AUCTIONS



INFORMATION ON THE FIRST INSTANCE COMPLAINTS RELATING TO PUBLIC PROCUREMENT PROCESS

Law No. 05/L-068 which supplemented the primary Law No. 04/L-042 on Public Procurement, through Chapter III Initiation and Initial Application of Review Procedures, imposed a new (first instance) level of claims resolution. The overall objective of this addition is to increase accountability at the contracting authority's level and decrease the number of complaints submitted to the PRB. These legal changes did not mandate the publication of decisions, therefore, this information is only available to public institutions and complainants.

KDI added this Pillar with the purpose of informing citizens about the number of complaints addressed at

the municipal level and at the PRB. According to the information provided by 29 municipalities, in response to KDI's survey, economic operators filed 216 first instance complaints relating to procurement processes in 2017.

While economic operators submitted 216 complaints to municipalities, they also submitted 442 complaints to the PRB, including complaints for the same procurement activities directed to municipalities in the first instance. This high level of appeal to the PRB suggests that contracting authorities are not fully addressing the concerns of economic operators in the first instance. For example, in the municipality of Novoberda there were zero complaints in the first degree, but there were still two complaints submitted to the PRB. The only municipalities where the number of complaints submitted to the PRB was smaller than the number of complaints submitted to the municipality in the first instance were Drenas, Malisheva, Suhareka, and Vushtri.

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ANNEX 1.

THE LIST OF QUESTIONS SENT TO ALL MUNICIPALITIES

- QUESTION 1** What is the total number of requests for access to public documents in your municipality during the period January - December 2017?

- QUESTION 2** What is the total number of rejected requests for access to public documents in your municipality during the period January - December 2017?

- QUESTION 3** What is the number of requests for access to public documents in your municipality in the area of public procurement during the period January - December 2017?

- QUESTION 4** What is the number of rejected requests for access to public documents in your municipality in the area of public procurement during the period January - December 2017?

- QUESTION 5** What is the number of public hearings organized by your municipality in 2017, during the process of drafting the 2017 budget?

- QUESTION 6** What is the number of requests / complaints of Economic Operators, received during 2017, for reviewing contract award estimates?

- QUESTION 7** What is the number of decisions (responses) to claims from Economic Operators, received during 2017?

- QUESTION 8** Do you publish in your website information such as: report of the Auditor, report on expenditures, contract notice and contract award notice, auctions?

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KDI is a Non-Governmental Organization (NGO) engaged to support democracy development by involving citizens in public policy-making and strengthening civil society sector, with the aim to impact the increase of transparency and accountability by public institutions.

For more information on KDI, please visit www.kdi-kosova.org

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