



Summary and Conclusions

PUBLIC PROCUREMENT THROUGH THE LENS OF EUROPEAN INTEGRATION

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The topic of public procurement and the topic of European integration are not new in Albania. They have been talked about and discussed for years. What is special today is the merging of the two into a single one, incrementing thus the value of each of them many times over. The public sector - i.e. the state - through public procurement, spends the largest percentage of the national budget. On the other hand, being one of the areas which, as per the widely accepted principles, faces the highest risk of corruption, it becomes even more important to address the topic.

Meanwhile, the path of Albania's European integration seems to be approaching a new phase, even more so following the lessons of the past, it is appropriate that this journey becomes the main priority of all state actors and civil society, so it can be completed in the shortest time possible.

Addressing both topics simultaneously is, therefore, the best solution.

The European Union has made it clear in its fundamental documents, directives and the jurisprudence of its institutions that the field of public procurement in the European space must respect and guarantee the following:

- Prohibition of discrimination on the basis of nationality;
- Free movement of goods;
- Freedom to provide services;
- Freedom of establishment.

Some general principles have also emerged from the cases tried in the Court of Justice of the European Union and they are commonly used to fill gaps in legislation and to provide solutions to situations which are often very complex. The most important of these general principles in the procurement context are:

- Equality of treatment;
- Transparency;
- Mutual recognition;
- Proportionality.

Directives must be implemented or "transposed" into national law. Member States should take the necessary measures to give full force to the provisions of the Directives in national



law and to ensure that there are no other national provisions/laws which impair their applicability. One of the main goals of public procurement legislation is to eliminate existing barriers and prevent new ones from being set up. It does this by applying the basic principles deriving from legislation.

Albania is required to approximate its public procurement legislation to the Stabilization and Association Agreement of 2006 and it has, for this purpose, approved and amended its old public procurement law in time. The most important and culminating point, in terms of legislation through this approximation, can be considered the adoption of the new law no. 162/2020 "On public procurement", which entered into force on March 31, 2021.

Meanwhile, in the framework of monitoring its implementation, the European Commission in each progress report has dedicated a special chapter to public procurement and its implementation, including the recommendations that Albania had to fulfil in yearly basis.

Conclusion:

Public Procurement is a dynamic field that is constantly changing and evolving as a result of changes in the trade and business climate, as well as technological developments and improvements. Procurement has a cross-sectoral nature and is closely interrelated with other important areas, such as: the fight against corruption, free and fair competition, health and consumer protection, environmental protection, business climate and development of small and medium enterprises (SME), sustainable development, etc.

It is clear that having good laws on financing political parties, high ethical standards in the civil service, low concentration of suppliers, a satisfactory level of resources and technical expertise, as well as transparent information on the controlling bodies of civil servants or elected officials in charge of public procurement, stronger anti-corruption laws would contribute in public procurements meeting, in procedure and results, the requirements of the European Union and reduce the spread of corruption in the area.

In order to achieve this goal:

- It is worth mentioning that the implementation of anti-corruption or competition laws should not be independent of the implementation of anti-corruption laws (usually entrusted to anti-corruption and judicial bodies). Systematic exchange of information between law enforcement agencies and joint investigations are highly recommended measures in the Albanian circumstances. In particular, it seems appropriate to systematically open a competitive investigation into procurement markets for which potential evidence of corruption has been found.

- We need to better harmonize the implementation of different laws in Albania that regulate the same topic. For example, Article 92/1 of the Electoral Code, the fourth paragraph, stipulates that “4. *Natural persons or legal entities that have made donations to an*

electoral subject or its candidates in elections, cannot benefit for a period up to 3 years after the election date public contracts, public-private partnership contracts or in any other way funds with a total value exceeding the amount of ALL 10 million, including as subcontractors of a public contract/concession. ”

The other points of Article 92/1 of the Electoral Code, on the other hand, define prohibitive criteria for those financing electoral subjects and whose verification belongs directly to the CEC, at least regarding the formulations relevant of the law "On public procurement" and the Electoral Code, it is not clear how this legal definition should be implemented in the post-election period as well, by the procurement authority and other central and local public procurement institutions.

It is not known and there are no by-laws or a Cooperation Agreement how the legal definition present in the Electoral Code shall be materialized in relation to public procurements. We still do not have data on the implementation of these provisions, and it is difficult to think that in Albania there has been no violation of these articles.

- We need to avoid frequent changes in procurement legislation. This is a lesson from the past. Although there are many skeptics about this (justice reform with frequent changes of laws is a clear indicator), frequent changes need to be eliminated and transparency and inclusiveness must be ensured throughout the legislative process.

- There is a specific phenomenon in Albania in the field of procurement. Thus, the more the legal basis of public procurement is improved, the greater the number of special procedures that circumvent these procurement provisions, both by special laws and by decisions of the Council of Ministers. The law "On public procurement" is a law assessed by local actors, international actors and the bodies of the European Union, as a good law in accordance with the best standards in this field.

Being a complete procurement law, it provides and finds legal solutions for any concrete situation in which the public authority can be found, therefore the approval and implementation of special *ad hoc* procedures outside the provisions of this law, constitutes a serious obstacle in the path towards European integration.

A valuable lesson for the regulation, in the future of special laws/DCMs should serve the decision of the Constitutional Court regarding the so-called special law "On the construction of the National Theatre". With a unique procedure and duration of proceedings by both the executive and the Assembly, the content of the special law was subject to a constitutional judgment that found it to be unconstitutional for more than one reason. Of course, from this decision we can draw a series of valuable lessons and steps on how to and how not to act.

We believe that one of the first lessons that should become a habit is self-restraint, the Council of Ministers and the Assembly should exercise self-restraint before issuing exclusionary procedures outside the common rule. If we cannot manage to restrain ourselves



- and there might be many in this room rightfully thinking that this is unlikely to happen - then we need to establish strong legal mechanisms so that exclusion does not become the rule.

- In addition to the necessary legal basis, Albania has also completed its strategic framework for procurement through its relevant strategy 2020-2023. This strategy clearly defines the objectives and path that will be followed for the development of this field and the operators involved by the end of 2023. Its implementation remains a challenge and especially, the following of all the steps and the completing of the tasks on time.

Public procurement is one of the aspects of Albanian public life and reality. Therefore, it is subject to the same general rules of assessment that are applied today for the Albanian state and society. And on the path of European Integration there is a sentence that we hear very often, which has now become a postulate "*You have good laws, but you face challenges implementing them*". Therefore, the fair and complete implementation of legislation, including the public procurement law, remains key to Albania's successful European journey.

*The policy paper “**Public Procurement through the Lens of European Integration**” was presented in Tirana as part of the February 2022: Month of European Integration Initiative, through the engagement of Civil Society.*

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